

**Volume 39, No. 7, Pages 5518 to 6442,
May 16 – June 11, 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. 7, Pages 5518 to 6442, May 16 – June 11, 2024



FEDERAL COMMUNICATIONS COMMISSION

Jessica Rosenworcel, Chairwoman
Brendan Carr
Geoffrey Starks
Nathan Simington
Anna M. Gomez

The contents of this document are subject to correction by means of an erratum appearing at a future date in the FCC Record. Users should notify the Secretary of errors so that an erratum can be inserted in a later publication.

The appropriate citation for documents printed in the FCC Record should include the volume number, page number, and year. See 47 C.F.R. Section 1.14. Earlier Commission documents may continue to be cited to the FCC Reports.

Citation Form: 39 FCC Rcd 1 (2024)

Federal Communications Commission Record

Table of Contents

Volume 39

Issue 7

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

Federal Communications Commission Record

Table of Cases Volume 39 Issue 7

Case Name	Page
WTB Grants License Modification/Rule Waivers Promoting Railroad Safety	5518
OET Announces Ex Parte Status for Experimental License WW9XPI	5533
OIA Notifies Quickly Phone of Intent to Terminate International Section 214 Authorization	5534
MB Announces Effective Date for FM Broadcast Booster Station Rules	5565
EB Proposes \$100K Fine Against Communications Technologies	5566
FCC Warns Providers About Debt Consolidation Robocalls from Alliant Financial	5579
WTB Seeks Comments on GeoLinks Request	5584
PSHSB Grants Limited Waiver of MDRI Rules	5587
WCB Seeks Comments on Domestic Section 214 Application	5592
Satellite Licensing Division and Satellite Programs and Policy Division Information Actions Taken	5596
WCB Grants Interconnected VoIP Numbering Authorizations	5600
World Radiocommunication Conference Advisory Committee Schedule Their Meetings	5601
PSHSB Announces Region 14 (IN) 700 and 800 MHz RPCs to Hold Meetings	5606
SB Issues Grant-in-Part of License to the Tomorrow Companies, Inc.	5607
WCB Seeks Comments on Domestic Section 214 Application	5618
FCC Announces TAC Meeting on June 21, 2024	5628
WCB Invites Comments on Section 214 Discontinuance Application(s)	5629
MB Opens MB Docket Nos. 24-147 and 24-148	5633
WCB Issues Monthly USF Appeals	5634
North Texas Public Broadcasting, Inc., NALF	5661
AT&T Texas v. AEP Texas, Dismissal Letter	5669
International Authorizations Granted	5671
Actions Taken Under Cable Landing License Act	5681
Domestic Section 214 Application Granted	5684
WCB Reminds Eligible Telecommunications Carriers of Lifeline Requirements	5689
OGC Issues Notice of Prohibited Presentations in Restoring Internet Freedom	5693
Satellite Licensing Division and Satellite Programs and Policy Division Information Actions Taken	5700
FCC Seeks Comment on Impact of Geomagnetic Storm on Communications	5702
WCB Issues Streamlined Resolution of Reimbursement Program Term Extension Requests	5704
PSHSB Announces DIRS Exercise	5711
WCB Invites Comments on Section 214 Discontinuance Application(s)	5713
MB Incorporates 2020 U.S. Census Data into TVStudy	5717
MB Announces Class A and LPTV Channel Change Opportunity	5718
OET Announces Release of Version 2.3.0 of TVStudy	5722
WTB & OET Approves Additional ESC Sensors for 3.5 GHz Band	5723
WCB Announces Comment and Reply Dates for 988 Georouting Second FNPRM	5725
Best Country Broadcasting, LLC, Consent Decree	5726
WCB Announces Compliance Date of July 15, 2024 For Safe Connections Act Rules	5735
OEA & WCB Announces Publication of the ACP Transparency Data Collection	5736
WCB Invites Comments on Section 214 Discontinuance Application(s)	5737
Satellite Licensing Division and Satellite Programs and Policy Division Information Actions Taken	5741
MB Denies Augustana College's Petition for Reconsideration	5744
MB Opens Class A Window Pursuant to the LPPA	5749
WCB Announces Procedures for Obtaining Confidential Annual Tariff Filings	5752
CGB Grants Clear Rate Slam Order	5759

Federal Communications Commission Record

Case Name	Page
CGB Grants Clear Rate Slam Order	5762
CGB Grants Clear Rate Slam Order	5765
CGB Grants Clear Rate Slam Order	5768
WTB Seeks Comment on IDS GeoRadar's Request to Expand Its Waiver	5771
CGB Issues Reminder for 2024 TRS Complaint Logs and Reporting Obligations	5774
WCB Seeks Comment on Petitions Filed by Conexon Connect LLC & Scott County Telephone Cooperative, Inc.	5777
WCB Adopts Order Reconsidering 2024 NECA Average Schedule Modifications	5779
OET Approves Request from AFC Operators to Modify their AFC Code	5782
MB Dismisses Petition Filed by Jackson County Commission	5784
Scottsboro Electric Power Board, Dismissal Order	5786
WTB Grants MatrixSpace's 24.45- 24.65 GHz Waiver Request	5788
WTB Issues Extension of Echodyne Waiver for Ground-Based 24 GHz Radiolocation	5793
PSHSB Announces Compliance Date and Instructions for 911 Discontinuance Notice	5797
WCB Invites Comments on Section 214 Discontinuance Application(s)	5799
WCB Adopts RHC Program Rurality Designation Update Order	5803
PSHSB Announces How States Can Request the Mandatory Disaster Response Initiative	5808
International Authorizations Granted	5810
Actions Taken Under Cable Landing License Act	5816
Table of Allotments, FM Broadcast Stations, Mattoon, Illinois	5818
FCC Announces June 26, 2024 Consumer Advisory Committee Meeting	5820
Satellite Licensing Division and Satellite Programs and Policy Division Information Actions Taken	5821
PSHSB Grants New Bedford, Mass. T-Band Waiver Requests	5823
MB Grants the Objection and Dismisses the Application for Lake Powell Community Radio	5827
MB Grants the Objection and Dismisses the Application for EMC Squared Communications, Inc.	5832
WCB Confirms No New Texting Formats For Text-to-988	5836
MB Issues Public Notice Listing Special Relief and Show Cause Petitions	5837
OET Seeks Comment on On-Board Unit Power Limits For C-V2X Operations	5839
WCB Invites Comments on Section 214 Discontinuance Application(s)	5844
WCB Issues Supply Chain Reimbursement Program Status Update Deadline Reminder	5848
WCB Seeks Comments on Domestic Section 214 Application Filed	5850
SB Issues Grant of Spire's NVNG LEO Constellations	5854
WCB Releases Emergency Order Waiving the Commission's Number Porting Rules and Processes for Hawaiian Homelands Residents	5866
WCB Denies Petition to Stay 2024 Open Internet Order	5870
CGB Extends VRS Privacy Screen Waiver for Video Conferencing	5878
WCB Issues Erratum - Connect America Fund	5882
FCC Announces Commencement of CSRIC IX	5883
MB Dismisses Texas Mennonite Conference LPFM Application	5890
MB Dismisses God's Property Mennonite Fellowship Church Application	5892
WTB Approves Revised Performance Plans Under Alaska Plan	5898
Commissioner Gomez to Host an IPCS Listening Session in Phoenix, AZ	5903
FCC Announces Meeting of the North American Numbering Council	5905
FCC Proposes Over \$3M In Fines Against TouchTone Communications	5907
FCC Proposes \$400K Fine Against Telco Experts	5923
FCC Dismisses AFR Seeking Waiver of FM Translator Rules	5944
FCC Proposes National Security Protections for Equipment Program	5950
FCC Proposes \$6M Fine For N.H. Robocalls	6004
FCC Proposes \$2M Fine Against Carrier Behind N.H. Robocalls	6027

Federal Communications Commission Record

Case Name	Page
FCC Amends and Clarifies Foreign Sponsorship ID Requirements	6049
FCC Proposes Internet Routing Security Reporting Requirements	6101
FCC Adopts \$200M Cybersecurity Pilot Program for Schools & Libraries	6158
FCC Proposes Updated Letter of Credit Rules For Rural Broadband Support	6286
FCC Proposes Revisions to LPTV Public File and LPTV Service Rules	6318
FCC Reinstates Radio Non-Duplication Rule for Commercial FM Stations	6399
FCC Proposes \$2.6M Penalty for Payment Violations	6418

Federal Communications Commission Record

Table of FCC and Delegated Authority Numbers Volume 39 Issue 7

DA/FCC Number	Page	DA/FCC Number	Page
DA 24-397	5518	DA 24-517	5779
DA 24-461	5533	DA 24-519	5782
DA 24-464	5534	DA 24-520	5784
DA 24-465	5565	DA 24-521	5786
DA 24-466	5566	DA 24-522	5788
DA 24-467	5579	DA 24-523	5793
DA 24-468	5584	DA 24-524	5797
DA 24-469	5587	DA 24-525	5799
DA 24-470	5592	DA 24-526	5803
DA 24-471	5596	DA 24-527	5808
DA 24-472	5600	DA 24-528	5810
DA 24-473	5601	DA 24-529	5816
DA 24-475	5606	DA 24-530	5818
DA 24-476	5607	DA 24-531	5820
DA 24-477	5618	DA 24-532	5821
DA 24-478	5628	DA 24-533	5823
DA 24-479	5629	DA 24-534	5827
DA 24-480	5633	DA 24-535	5832
DA 24-482	5634	DA 24-536	5836
DA 24-483	5661	DA 24-537	5837
DA 24-484	5669	DA 24-538	5839
DA 24-485	5671	DA 24-539	5844
DA 24-486	5681	DA 24-540	5848
DA 24-487	5684	DA 24-541	5850
DA 24-489	5689	DA 24-542	5854
DA 24-490	5693	DA 24-543	5866
DA 24-492	5700	DA 24-544	5870
DA 24-493	5702	DA 24-545	5878
DA 24-494	5704	DA 24-546	5882
DA 24-495	5711	DA 24-547	5883
DA 24-496	5713	DA 24-549	5890
DA 24-497	5717	DA 24-550	5892
DA 24-498	5718	DA 24-551	5898
DA 24-499	5722	DA 24-552	5903
DA 24-500	5723	DA 24-554	5905
DA 24-501	5725	FCC 24-55	5907
DA 24-502	5726	FCC 24-56	5923
DA 24-503	5735	FCC 24-57	5944
DA 24-504	5736	FCC 24-58	5950
DA 24-505	5737	FCC 24-59	6004
DA 24-506	5741	FCC 24-60	6027
DA 24-507	5744	FCC 24-61	6049
DA 24-508	5749	FCC 24-62	6101
DA 24-509	5752	FCC 24-63	6158
DA 24-510	5759	FCC 24-64	6286
DA 24-511	5762	FCC 24-65	6318
DA 24-512	5765	FCC 24-66	6399
DA 24-513	5768	FCC 24-67	6418
DA 24-514	5771		
DA 24-515	5774		
DA 24-516	5777		

Federal Communications Commission Record

Table of Docket Numbers Volume 39 Issue 7

Docket Number	Page	Docket Number	Page
17-105	5565	23-1	5905
24-150	5584	24-136	5950
21-346	5587	20-299	6049
24-129	5592	24-146	6101
24-95	5600	23-234	6158
24-30	5601	10-90	6286
02-378	5606	24-148	6318
10-90	5618	17-105	6399
24-142	5629		
24-148	5633		
02-60	5634		
22-357	5669		
24-48	5684		
11-42	5689		
17-108	5693		
24-161	5702		
18-89	5704		
24-100	5713		
15-319	5723		
18-336	5725		
11-42	5735		
21-450	5736		
24-32	5737		
23-126	5749		
24-41	5752		
17-358	5771		
03-123	5774		
09-197	5777		
23-415	5779		
21-352	5782		
24-84	5784		
24-81	5786		
23-216	5788		
17-352	5793		
04-35	5797		
24-70	5799		
02-60	5803		
21-346	5808		
24-83	5818		
18-336	5836		
24-166	5837		
19-138	5839		
24-158	5844		
18-89	5848		
24-92	5850		
95-116	5866		
17-108	5870		
10-213	5878		
23-117	5882		
16-271	5898		
12-375	5903		

Federal Communications Commission Record

Table of Localities Volume 39 Issue 7

City/State	Page	City/State	Page
Mattoon, IL	5818		

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

In the Matter of	)	
	)	
PTC-220, LLC	)	File No. 0010226683
	)	
For Modification of License for	)	
Automated Maritime Telecommunications System	)	
Station WRQI879 (Region 3)	)	

ORDER

Adopted: May 22, 2024

Released: May 22, 2024

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. By this Order, the Mobility Division of the Wireless Telecommunications Bureau (Bureau) grants the license modification application filed by PTC-220, LLC (PTC-220)—a joint venture of the nation’s Class I freight railroads¹—for permanent authority to operate 265 positive train control (PTC) wireless radio base stations, 497 PTC wireless radio wayside stations,² and related mobile (locomotive) radio stations under Automated Maritime Telecommunications System (AMTS) Station License WRQI879 in AMTS Region 3, Southern Atlantic (AMTS-3).³ This grant of permanent operating

¹ FCC File No. 0010226683 (filed Oct. 3, 2022, amended Oct. 4 and Nov. 15, 2022) (Modification Application). The Modification Application includes several exhibits, discussed below, in support of the request for permanent operating authority. PTC-220’s member railroads are: BNSF Railway Company (BNSF Railway), Canadian National Railway Company, Canadian Pacific Railway Company, CSX Corporation, Kansas City Southern, Norfolk Southern Corporation, and Union Pacific Corporation (Union Pacific).

² Base stations typically operate at antenna heights of 50 to 175 feet above ground level (AGL) and at effective radiated power (ERP) levels ranging from 100 to 400 watts. Wayside stations are “radio sites at intermediate or control point railroad signals” and have a typical antenna height of 30 to 60 feet AGL and communicate with approaching locomotives and nearby base stations at ERP levels up to 76 watts. *See* Modification Application, “Engineering Study Report and Plan to Limit Interference from AMTS Stations to Over-the Air Reception of TV Channels 13 and 10, Covering WRQI879 (AMTS Region 3)” (Oct. 3, 2022) at 2, 8 (TV Engineering Study). PTC notes that it assigned consecutive page numbers to the Study (unnumbered except for page ii) using the PDF version on file in ULS, starting with “I. Introduction.”

³ PTC-220 will operate in AMTS-3 using the upper portion of the A Block at 219.5-220 MHz, adjacent to its 220 MHz spectrum. *See* TV Engineering Study at 2. The Commission originally intended that AMTS stations would be used to provide service to tugs, barges, and other commercial maritime vessels. *Amendment of Parts 2, 81 and 83 of the Commission’s Rules to Allocate Spectrum for an Automated Inland Waterways Communications System along the Mississippi River and Connecting Waterways*, GEN Docket No. 80-1, Report and Order, 84 F.C.C.2d 875 (1981). The Commission amended the AMTS rules in 1997 to permit AMTS stations to serve fixed, mobile, and handheld units on land. *Amendment of the Commission’s Rules Concerning Maritime Communications*, PR Docket (continued....)

authority is subject to certain conditions adopted below. We also grant PTC-220's request for waiver of two Commission rules to facilitate PTC and related (non-PTC) rail safety systems in AMTS-3.⁴

2. WRQI879's license area encompasses all of AMTS-3 except Puerto Rico and the Virgin Islands.⁵ Hence, today's action will enable PTC-220's member railroads to deploy Congressionally-mandated, interoperable PTC and related (non-PTC) rail safety systems on rail lines serving Georgia, Florida, and South Carolina, and certain counties in Alabama and North Carolina.⁶ Today's action also will benefit Amtrak and other railroads that operate as tenants on the members' railroad networks as well as passenger and commuter railroads leasing spectrum from PTC-220 to implement PTC and related rail safety systems on their own lines in the license area.⁷

II. BACKGROUND

A. Positive Train Control

3. The Rail Safety Improvement Act of 2008, as amended by the Positive Train Control Enforcement and Implementation Act of 2015 (together, the Rail Safety Act), required most U.S. freight, passenger, and commuter railroads to install and operate interoperable PTC systems by December 31, 2018.⁸ Four railroads timely met this deadline.⁹ As the Rail Safety Act permits, the remaining railroads subject to the PTC mandate, including PTC-220's member railroads, requested up to a two-year extension, until December 31, 2020, to implement PTC.¹⁰ The FRA found that these railroads met the

No. 92-257, *Second Report and Order*, 12 FCC Rcd. 16949, 16964-65, paras. 24-25 (1997). It now licenses AMTS stations by geographic area; the band includes two spectrum blocks in 10 geographic license areas. *Amendment of the Commission's Rules Concerning Maritime Communications*, PR Docket No. 92-257, Second Memorandum Opinion and Order and Fifth Report and Order, 17 FCC Rcd. 6685, 6696, para. 24 (2002) (*Maritime Communications Fifth R&O*); 47 CFR § 80.385 (frequencies for AMTS systems). We regulate PTC base and wayside stations as AMTS coast stations for licensing purposes because they are fixed stations. We regulate locomotive stations as AMTS ship stations for licensing purposes because they are mobile. Incumbent site-based stations are grandfathered and are entitled to protection from a geographic licensee. *See Maritime Communications Fifth R&O*, 17 FCC Rcd. at 6699-701, paras. 30-35; 47 CFR § 80.773.

⁴ *See infra* Sections III.A and III.B (discussing PTC-220's requests for waiver of 47 CFR §§ 1.913(b) and 80.215(i)).

⁵ TV Engineering Study at 2, n.9.

⁶ *See* Station License WRQI879 in ULS, "Market" and "Map" tabs. *See also* Modification Application, "Schedule D PTC Site Data."

⁷ *See* FCC File No. 0009803741 (Feb. 23, 2022) (AMTS-3 Assignment Application) (granted Apr. 11, 2022), "Request for Waivers for AMTS Spectrum to be Assigned from Call Sign WQGF311," at 3 (Assignment Waiver Request) (noting that Amtrak operates its trains over track belonging to freight railroads in this region, and that PTC-220 has lease (or sublease) agreements in place with the Florida Department of Transportation (Sunrail), the South Florida Regional Transportation Authority, and Brightline Trains Florida, LLC within AMTS Region 3).

⁸ *Rail Safety Improvement Act of 2008*, Pub. L. No. 110-432, § 104, 122 Stat. 4848, 4857 (2008), amended by *Positive Train Control Enforcement and Implementation Act of 2015*, Pub. L. No. 114-73, § 1302, 129 Stat. 568, 576 (2015). The Federal Railroad Administration (FRA) is responsible for approving each railroad's PTC system, including design, testing, and implementation and for ensuring compliance with the Rail Safety Act and FRA regulations implementing that statute. Positive Train Control (PTC) Information (R&D), Federal Railroad Administration (updated Nov. 13, 2019), <https://www.fra.dot.gov/Page/P0152> (last visited Mar. 5, 2024).

⁹ Statement on Positive Train Control Implementation, U.S. Department of Transportation (updated Dec. 31, 2018), <https://www.transportation.gov/briefing-room/statement-positive-train-control-implementation> (last visited Mar. 5, 2024).

¹⁰ *Id.*

statutory criteria necessary to qualify for an extended implementation schedule and, subsequently, that they met their extended deadlines.¹¹

4. PTC systems are designed to reduce the risk of human-error rail accidents, by “prevent[ing] train-to-train collisions, over-speed derailments, incursions into established work zone limits, and the movement of a train through a switch left in the wrong position.”¹² The U.S. rail industry has chosen to implement PTC through wireless networks that use radio spectrum. These networks have the capacity to enable information sharing between trains, rail wayside stations, and back office applications, regarding train movement authorities, speed restrictions, train position and speed, and the state of signal and switch devices.¹³

B. Spectrum Acquisitions

5. PTC-220 was formed to acquire and manage the necessary spectrum resources for its freight railroad members to implement PTC systems throughout the United States.¹⁴ PTC-220 has acquired a nationwide footprint of spectrum in the 220-222 MHz (220 MHz) band for its members and other railroads, including commuter railroads, to deploy PTC and related rail safety systems.¹⁵ However, because of the need for its members to deploy two additional PTC common channels—which locomotive radios use to attach to PTC base stations and receive instructions regarding the proper frequency on which to operate in an area—and the lack of additional suitable 220 MHz spectrum, PTC-220 has been driven to acquire 500 kilohertz of immediately adjacent AMTS spectrum (from 219.5 to 220 MHz).¹⁶

6. In 2022, PTC-220 acquired the AMTS-3 spectrum from Intelligent Transportation & Monitoring Wireless LLC (ITMW).¹⁷ PTC-220 has acquired AMTS spectrum in several other regions as well. For example, in 2023, PTC-220 consummated an assignment of spectrum from ITMW in AMTS Region 1 (Northern Atlantic) to deploy PTC and related rail safety systems.¹⁸ In 2020, PTC-220 acquired spectrum from Thomas K. Kurian to deploy PTC and related rail safety systems on rail lines serving 16 western states in AMTS Region 10 (Mountain).¹⁹ The prior year, PTC-220 likewise consummated assignments of spectrum from Choctaw Holdings, LLC (Choctaw) for AMTS Regions 2 (Mid-Atlantic), 4 (Mississippi River), 5 (Great Lakes), and 6 (Southern Pacific).²⁰

¹¹ Positive Train Control (PTC), U.S. Department of Transportation, <https://railroads.dot.gov/train-control/ptc/positive-train-control-ptc> (last visited Mar. 5, 2024).

¹² 49 U.S.C. § 20157(i)(5).

¹³ See Modification Application, “Request for Waiver of Section 80.215(i)” (Power Waiver Request), at 2.

¹⁴ Assignment Waiver Request at 2.

¹⁵ *Id.* at 3. PTC-220 holds 31 separate 220 MHz licenses. *Id.* n.6.

¹⁶ *Id.* at 2-3.

¹⁷ See AMTS-3 Assignment Application; Station License WRQI879.

¹⁸ See *Intelligent Transportation & Monitoring Wireless LLC, Assignor, PTC-220, LLC, Assignee, Application to Partially Assign Licenses for AMTS Station WQGF310*, Order, DA 23-928, 2023 WL 6537413 (WTB MD 2023) (*AMTS-1 Assignment Order*). See also FCC File No. 0010322233 (assignment application for AMTS Region 1) (consummated Nov. 20, 2023).

¹⁹ *Application of Thomas K. Kurian, For Partitioning and Disaggregation of License for Automated Maritime Telecommunications System Station WQCP809 to PTC-220, LLC*, Order, 35 FCC Rcd. 13105 (WTB MD 2020) (*Kurian/Region 10 Assignment Order*).

²⁰ See FCC File Nos. 0008527475 (WQGF315), 0008530247 (WQGF316), 0008527617 (WQGF317), and 0008527687 (WQGF318) (the Choctaw licenses) (all filed Feb. 15, 2019; all granted Apr. 1, 2019). These
(continued....)

7. In the short term, PTC-220's member railroads will use the AMTS spectrum to implement two additional PTC common channels, which will improve system reliability and safety.²¹ In the long term, the railroads will leverage the spectrum to: (1) expand PTC deployment onto non-mandatory lines; (2) support other, related train control safety applications, including End-of-Train devices and distributed power systems; and (3) support future safety-related functions, such as improvements to the monitoring of grade crossing equipment.²²

C. Grant of Associated Request for Waiver of Certain Part 80 Rules with PTC-220's AMTS-3 Assignment Application

8. In connection with the AMTS-3 Assignment Application, PTC-220 filed a request for waiver of eight Commission Part 80 rules in anticipation of its permanent operations under Station WRQI879. Specifically, to enable its deployment of PTC and related rail safety systems, PTC-220 requested, and the Bureau granted, waiver of the following rules:²³

- Section 80.92(a), which requires licensees to monitor a frequency before transmitting;²⁴
- Section 80.105, which requires coast stations to receive calls from ship and aircraft stations;²⁵
- Section 80.106, which requires a coast station to receive communications from mobile stations and to transmit communications delivered to it, which are directed to mobile stations;²⁶
- Section 80.123(a), which requires an AMTS land station to secure a letter authorizing the land station to communicate with a coast station;²⁷
- Section 80.123(b), which requires coast stations to afford priority to marine-originating communications;²⁸
- Section 80.123(f), which provides that AMTS land stations may only communicate with coast stations;²⁹
- Section 80.215(h)(5), which requires coast stations' transmitter power, as measured at the

assignments resulted in the issuance to PTC-220 of new Station Licenses WRDI936, WRDH825, WRDH826, and WRDH972.

²¹ See Power Waiver Request at 1.

²² *Id.*

²³ See AMTS-3 Assignment Application; Station License WRQI879. The rule waivers are listed in a special condition on the license, which specifies that they are for the purpose of "enabl[ing] the provision of Positive Train Control (PTC) and related rail safety applications in AMTS Region 3." If PTC-220 assigns, partitions, disaggregates, or leases to a third party any of its licensed AMTS-3 spectrum, the waiver relief granted in connection with grant of the AMTS-3 Assignment Application, as well as the additional waiver relief granted herein (*see infra* Sections III.A. and B.), would likewise apply solely for the same purpose.

²⁴ 47 CFR § 80.92(a).

²⁵ *Id.* § 80.105.

²⁶ *Id.* § 80.106.

²⁷ *Id.* § 80.123(a).

²⁸ *Id.* § 80.123(b).

²⁹ *Id.* § 80.123(f).

input terminals to the station antenna, to be 50 watts or less;³⁰ and

- Section 80.385(a)(2), which divides the AMTS spectrum band into coast (base) station frequencies (217-218 MHz) and ship (mobile) station frequencies (219-220 MHz).³¹

9. The Bureau's waiver grant was consistent with several prior Orders in which it had discussed at length the rationale for waiver pursuant to sections 1.925(b)(3) and/or 1.3 of the Commission's rules.³² In 2021, for example, the Bureau waived the same rules to enable PTC-220 to deploy PTC and related rail safety applications in AMTS Regions 2, 4, 5, and 6,³³ and likewise waived them in 2020 to enable PTC-220 to deploy PTC and related rail safety applications in AMTS Region 10.³⁴ In 2016, the Bureau waived six of these rules (as requested) to enable Southern California Regional Rail Authority (SCRRA) and its three tenant railroads—Amtrak, the BNSF Railway, and the Union Pacific Railroad—to deploy PTC in an area partitioned from AMTS Region 6 (adjoining PTC-220's AMTS Region 6 license area),³⁵ and in 2015, it waived seven of these rules (as requested) to enable Amtrak to deploy PTC using AMTS spectrum in the Northeast Rail Corridor (from New York to Washington DC).³⁶

10. With the adoption of today's Order, the waiver relief regarding the above-listed eight rules will remain in place to govern PTC-220's permanent operations in the license area. PTC-220 has requested two additional rule waivers associated with the instant Modification Application. We address those waiver requests in Section III. below.

D. Special Temporary Authorization (WRVR980) for AMTS-3 Operations

11. Following consummation of its acquisition of the AMTS-3 spectrum from ITMW, PTC-220 sought—and the Bureau granted—a special temporary authorization (STA) to operate in the AMTS-3 license area.³⁷ With its request for STA, PTC-220 requested waiver of the same eight Part 80 rules listed above,³⁸ and consistent with the precedents cited in the preceding Section II.C. of this Order, the Bureau

³⁰ *Id.* § 80.215(h)(5).

³¹ *Id.* § 80.385(a)(2).

³² *Id.* §§ 1.925(b)(3), 1.3.

³³ *PTC-220, LLC, Modification of Licenses for Automated Maritime Telecommunications System Stations WRDI936, WRDH825, WRDH826, and WRDH972*, Order, 36 FCC Rcd. 18183, 18187, 18189-91, paras. 16, 20-27 (WTB MD 2021) (*PTC-220 2021 AMTS Modification Order*).

³⁴ *Kurian/Region 10 Assignment Order*, 35 FCC Rcd. at 13114-16, paras. 30-35.

³⁵ *Maritime Communications/Land Mobile, LLC and Southern California Regional Rail Authority File Applications to Modify License and Assign Spectrum for Positive Train Control Use, and Request Part 80 Waivers*, WT Docket No. 10-83, Order, 31 FCC Rcd. 9826, 9835-40, paras. 27-39 (WTB 2016) (waiving the same Part 80 rules except 47 CFR §§ 80.106 and 80.215(h)(5), which SCRRA did not include in its waiver request).

³⁶ *National Railroad Passenger Corporation (d/b/a Amtrak), Request for Waiver of Certain Part 80 Automated Maritime Telecommunications System Rules to Implement Positive Train Control*, Order, 30 FCC Rcd. 2038, 2040-43, paras. 8, 11-14 (WTB MD 2015) (waiving the same Part 80 rules except 47 CFR § 80.215(h)(5), which Amtrak did not include in its waiver request). Most recently, the Bureau evaluated and granted PTC-220's request for waiver of the same eight Part 80 rules pursuant to 47 CFR §§ 1.925(b)(3) and 1.3 in the *AMTS-1 Assignment Order*, 2023 WL 6537413 at *5-8, paras. 14-27.

³⁷ FCC File No. 0010264274 (filed Oct. 28, 2022, amended Dec. 16, 2022) (STA Application); STA License WRVR980 (granted Dec. 28, 2022). The STA has since been renewed. *See* FCC File Nos. 0010561609 (May 26, 2023) and 0010771376 (Nov. 13, 2023).

³⁸ *See* STA Application, "Request for Waivers Associated with Special Temporary Authority Operations" (STA Waiver Request).

waived the eight rules to govern PTC-220's temporary operations under STA Station License WRVR980.³⁹

12. Additionally with its STA Application, PTC-220 requested waiver of section 80.215(i) of the Commission's rules so that its members could operate locomotive radios at up to 50 watts transmitter power output (TPO) with an ERP up to 39 watts using its STA license.⁴⁰ Specifically, PTC-220 sought waiver of the rule's provision that a mobile station's TPO not exceed 25 watts and its ERP not exceed 18 watts unless two conditions are satisfied.⁴¹ PTC-220 submitted the requisite plan to control interference, pursuant to section 80.215(j) of the Commission's rules, and the Bureau waived the two conditions under section 80.215(i) to facilitate temporary PTC operations in the license area.⁴²

13. The Bureau's grant of the STA with waiver relief was subject to interference control conditions, requiring that PTC-220 do the following:

- provide 24-hour advance written notice by email, prior to operating a PTC base or wayside station, to all channel 13 TV stations within 169 kilometers (105 miles) and all channel 10 TV stations within 129 kilometers (80 miles) of that base or wayside station;
- maintain a 24-hour Trouble Desk to receive interference complaints;
- address each interference complaint reported to the Trouble Desk, including opening a Trouble Ticket and a tracking number that the viewer or broadcaster may use as a reference;
- investigate any reported interference within 48 hours of receiving a report;
- resolve any interference caused by PTC operations at its own expense within 72 hours of receiving a report; resolution may include, for example, PTC-220 remotely adjusting PTC base or wayside station power levels, antennas, or installing a notch filter at a viewer's residence; and
- submit monthly reports by email to specified FCC staff stating: (a) the number of interference reports received; (b) the date and time of reported interference; (c) the affected broadcast station; (d) a description of the base station that caused the interference, including its location, height, and other pertinent characteristics; and (e) the period from receipt of a report to resolution, and the type of resolution.⁴³

³⁹ See STA Application; STA License WRVR980. PTC-220 also requested—and the Bureau granted—waiver of 47 CFR § 1.913(a), to the extent the rule would require PTC-220 to file a separate FCC Form 601 Schedule D for each individual radio station rather than in a consolidated format. See STA Application, “Request for Waiver of 47 CFR 1.913(a)(1) and Schedule D Instructions.” These waivers are listed in a special condition on STA Station License WRVR980.

⁴⁰ 47 CFR § 80.215(i)(1)-(2); STA Waiver Request at 10-11 and Appendix A. TPO is the power level at the output terminals of a radio transmitter. PTC-220 submitted the identical waiver request with its Modification Application. Below in Section III.A, we discuss in detail the section 80.215(i) provisions and PTC-220's request for waiver in the context of its Modification Application.

⁴¹ 47 CFR § 80.215(i)(1) (requiring that increases exceeding 25 watts are made only by radio command from the controlling base station) and (2) (requiring that the application for an equipment authorization demonstrate that the TPO is 25 watts or less when external radio commands are not present).

⁴² See “Section 80.215(j) Plan for Higher Mobile Power” attached to the STA Application. Waiver of 47 CFR 80.215(i) is included in the special condition that lists the other rule waivers on STA License WRVR980.

⁴³ In addition, a separate special condition explains that grant of the STA is without prejudice to FCC review of the TV Engineering Study. Our review and assessment of the Study is discussed below in Section III.C.

In accordance with the requirement for monthly reports to specified FCC staff, PTC-220 has been sending monthly emails since the time it commenced operations using STA License WRVR980. It has reported thus far that it has received no reports of interference to television stations operating on channel 10 or channel 13 in AMTS-3.

E. Modification Application

14. PTC-220 seeks to modify its geographic area license (WRQI879) to authorize, on a permanent (non-STA) basis and subject to the applicable license terms, operation of 265 PTC base stations, 497 PTC wayside stations, and related mobile (locomotive) stations. Although AMTS geographic licensees generally are authorized to deploy base stations anywhere within their licensed geographic service areas, section 80.215(h) of the Commission's rules requires individual licensing of base stations located less than 169 kilometers (105 miles) from a channel 13 TV station, or less than 129 kilometers (80 miles) from a channel 10 TV station.⁴⁴

15. Pursuant to section 80.215(h), PTC-220 conducted its analysis and submitted the TV Engineering Study describing its methodology and results in support of the Modification Application. Using the Commission's "*TVStudy*" software, the TV Engineering Study addresses the potential number of channel 10 and channel 13 over-the-air (OTA) TV households that could be impacted by operation of PTC-equipped base, wayside, and mobile stations in its AMTS-3 license area.⁴⁵ Additionally, as also required by section 80.215(h), PTC-220 has committed to eliminate any interference actually caused by operation of the proposed base and wayside stations to channels 10 and 13 OTA television reception (Channel 10/13 Plan).⁴⁶ PTC-220 has certified that PTC-220, its members, and spectrum lessees will adhere to this Plan.⁴⁷ We discuss the TV Engineering Study's findings and the Channel 10/13 Plan below in Section III.

16. As required by section 80.475(a)(2) of the Commission's rules,⁴⁸ PTC-220 served written notice of the Modification Application on potentially affected broadcast stations on October 4, 2022, and, as supplemented, on November 15, 2023.⁴⁹ No broadcast station or other party has filed a comment on, or opposed, the Modification Application.

17. The Modification Application also includes requests for waiver of two Commission rules: section 80.215(i) concerning power limits; and section 1.913(b) concerning the FCC Form 601 Schedule D filing requirements. We discuss these rules and the waiver requests below in Sections III.A. and B.

III. DISCUSSION

18. We have reviewed the Modification Application, PTC-220's TV Engineering Study, Channel 10/13 Plan, waiver requests, and all other associated filings before us. Based on the record, and as discussed below, we find that the public interest in facilitating rail safety will be served by granting the

⁴⁴ 47 CFR § 80.215(h)(2); *see also id.* § 80.475(a)(1). AMTS base stations are authorized "subject to the condition that no harmful interference will be caused to television reception except that TV services authorized subsequent to the filing of the AMTS station application will not be protected." *Id.* § 80.215(h).

⁴⁵ *See* TV Engineering Study at ii, 4-10 (explaining that PTC-220 used the Commission's *TVStudy* software, citing, at 6 n.17, the Commission's Office of Engineering and Technology *TVStudy* version 2.2.5).

⁴⁶ PTV-220's Channel 10/13 Plan is included in the Study. *See* TV Engineering Study at 16-20.

⁴⁷ Modification Application, "Certification of PTC-220, LLC" (signed by Tom Burns, its President, dated Sept. 29, 2022) (PTC-220 Burns Certification).

⁴⁸ 47 CFR § 80.475(a)(2).

⁴⁹ Modification Application, "TV Station Letter and Certificate of Service" (Oct. 4, 2022) and "November 15 Supplement" (Nov. 15, 2023).

Modification Application and associated waiver requests, thereby authorizing permanent operations of the proposed 265 PTC base stations, 497 PTC wayside stations, and related mobile (locomotive) stations in PTC-220's AMTS-3 license area.

A. Waiver of 80.215(i)—Power Limits, for Wireless Mobile (Locomotive) Radio Stations

19. Section 80.215(i) of the Commission's rules provides that AMTS mobile radio stations (here, locomotive radios) must have a transmitter power output (TPO) "not exceeding 25 watts and an ERP not exceeding 18 watts."⁵⁰ The rule permits increased TPO, up to 50 watts, provided that the following two conditions are met: (1) "[i]ncreases exceeding 25 watts are made only by radio command from the controlling [base] stations"; and (2) TPO "is 25 watts or less when external radio commands are not present."⁵¹ Section 80.215(j) provides that mobile radio stations that meet both of these conditions are "exempted from the limitation of 18 watts ERP when operating in specific geographical areas identified in a plan for the use of higher power."⁵²

20. PTC-220 seeks waiver of the two conditions in sections 80.215(i)(1) and (2)—which it cannot meet for technical reasons—so that its members may permanently operate locomotive radios at up to 50 watts TPO with an ERP up to 39 watts in AMTS-3.⁵³ The Bureau granted PTC-220 identical relief to enable deployment of PTC and related rail safety systems in AMTS Regions 2, 4, 5, and 6,⁵⁴ and to enable its members, their tenant railroads, and Amtrak to implement PTC and related rail safety systems using spectrum in AMTS Region 10.⁵⁵ The Bureau also granted SCRRRA the same relief to enable SCRRRA and its three tenant railroads—Amtrak, and PTC-220 members BNSF Railway and Union Pacific—to implement PTC and related rail safety systems using AMTS spectrum in a partitioned license area abutting PTC-220's AMTS Region 6 license area.⁵⁶ We grant PTC-220's request for the reasons that follow.

21. The Rail Safety Act required U.S. railroads to deploy interoperable PTC systems so that when a railroad enters another's territory as a tenant, it can safely use the host rail's PTC system where required.⁵⁷ To comply with this statutory requirement, PTC-220's member railroads deployed an integrated PTC system, which uses a combination of their base and wayside radio stations operating on PTC-220's 220 MHz band spectrum.⁵⁸ Due to a shortage of available spectrum in that band for PTC deployment, PTC-220 created a common pool of PTC spectrum channels drawn from 220 MHz band spectrum and from adjacent band AMTS spectrum licensed to PTC-220.⁵⁹ PTC-220 explains that to

⁵⁰ 47 CFR § 80.215(i).

⁵¹ *Id.* § 80.215(i)(1)-(2).

⁵² *Id.* § 80.215(j).

⁵³ Power Waiver Request at 5-7.

⁵⁴ *PTC-220 2021 AMTS Modification Order*, 36 FCC Rcd. at 18192-95, paras. 28-36.

⁵⁵ *PTC-220 LLC, Call Sign WRKK374*, Letter Order, 36 FCC Rcd. 17160, 117164-67 (WTB MD 2021).

⁵⁶ *Southern California Regional Rail Authority, Call Sign WQYR421*, Letter Order, 35 FCC Rcd. 11912, 11917-20 (WTB MD 2020).

⁵⁷ 49 U.S.C. § 20157(a)(2)(A)(i)(1) (a railroad "must provide for interoperability of the system with the movements of trains of other railroad carriers over its lines"). The Rail Safety Act defines "interoperability" as "the ability to control locomotives of the host railroad and tenant railroad to communicate with and respond to the positive train control system, including uninterrupted movements over property boundaries." *Id.* § 20157(i)(3).

⁵⁸ Power Waiver Request at 2.

⁵⁹ *Id.*

implement interoperable PTC systems that can use channels drawn from the common spectrum pool, it requires a limited waiver of section 80.215(i)'s power limits.⁶⁰

22. PTC-220's member railroads and their tenant railroad partners have deployed more than 16,000 Meteorcomm PTC locomotive radios across the country, using the spectrum PTC-220 holds in the 220 MHz band.⁶¹ Consistent with applicable Commission Part 90 rules, the railroads configured their mobile radios to operate at a constant 50-watt TPO in the 220 MHz band.⁶² PTC-220 explains that these "locomotive radios do not have the ability to have their power dynamically controlled by" base stations, and that adjustment of a radio's TPO "would require that a technician manually connect to the radio to program in the new value."⁶³ It further states that, "[a]s a result, the radio's power is not variable as it moves from one base station's coverage to another's."⁶⁴

23. Pursuant to section 1.925(b)(3)(ii), in view of the unique circumstances here, including Congress' mandate that PTC safety systems be interoperable, we find that application of the two conditions required by section 80.215(i) to operate mobile radio transmitters at up to 50 watts TPO in the AMTS band—(1) that TPO increases exceeding 25 watts are made only by base station radio command, and (2) that TPO must be 25 watts or less when external radio commands are not present—would be contrary to the public interest in the safety of life and property.⁶⁵ We also find that not permitting PTC-220's member railroads to operate mobile radios at 50 watts TPO would be contrary to the public interest because it would preclude sharing of scarce spectrum resources, which are needed for robust interoperable PTC deployment throughout the country. Further, we find that PTC-220 has no reasonable alternative. As noted in the preceding paragraph, PTC-220's member railroads have installed more than 16,000 locomotive radios that operate at a constant 50 watts TPO in the 220-222 MHz band. The record shows that it is not possible to program the radios to operate at 50 watts TPO and satisfy the condition that TPO be 25 watts or less when external radio commands are not present. Accordingly, given the totality of the circumstances on the record before us, we hereby waive the conditions in sections 80.215(i)(1) and (2) to the extent necessary to allow PTC-220 to operate locomotive radios at 50 watts TPO using Station License WRQI879 for PTC and related rail safety system deployment.

24. PTC-220 also requests waiver of section 80.215(i)'s 18-watt mobile radio ERP limit so that its members can operate PTC locomotive radios at up to 39 watts ERP.⁶⁶ As explained above, although section 80.215(i) generally limits mobile radio ERP to 18 watts, section 80.215(j) exempts mobile radio operations from this ERP limit provided that the two conditions in section 80.215(i)(1)-(2) are met "when operating in specific geographical areas identified in a plan for the use of higher power."⁶⁷ PTC-220 has submitted a plan to deploy mobile radios with a peak ERP from 24 to 39 watts in specific geographical areas of AMTS-3, including maps of the specific rail lines where its mobile radios will

⁶⁰ *Id.* at 6-8. *See also* TV Engineering Study at 7 (explaining that the Study was "also prepared to support PTC-220's request for waiver of the power limits contained in Section 80.215(i)(1)-(2) . . ." and that such waiver is required "to allow mobile power limits in the AMTS band that are consistent with the power levels allowed and used for PTC in the 220 MHz Band.").

⁶¹ Power Waiver Request at 6. The radio's specifications are provided in Exhibit 1 to PTC-220's "Section 80.215(j) Plan for Higher Mobile Power" (discussed further below), attached to the Modification Application.

⁶² *See* Power Waiver Request at 7; 47 CFR § 90.729(b).

⁶³ Power Waiver Request at 6-7.

⁶⁴ *Id.* at 7.

⁶⁵ *See* 47 CFR § 1.925(b)(3)(ii); 47 U.S.C. § 151 (establishing the Commission "for the purpose of promoting safety of life and property through the use of wire and radio communications . . .").

⁶⁶ *See* Power Waiver Request at 6-7.

⁶⁷ 47 CFR § 80.215(j).

operate and a showing regarding the radios' peak ERP levels.⁶⁸ PTC-220 states that no appreciable additional interference would result from operation of the mobile radios because their transmit duty cycle is extremely low, their antennas are much lower to the ground than base and wayside station antennas, and they operate at much lower power levels.⁶⁹

25. As discussed above, today we grant a waiver of the two conditions of section 80.215(i) concerning use of mobile radios with TPO exceeding 25 watts ERP. Once these two conditions are either met, or waived as here, a licensee is exempt from the rule's 18-watt ERP limit, provided that it has submitted an appropriate plan for use of higher mobile power under section 80.215(j). We have reviewed PTC-220's Section 80.215(j) Plan for WRQI879 and find that it meets the requirements for exemption of mobile radio operations from section 80.215(i)'s 18-watt ERP limit. Accordingly, we hereby grant the waiver request and authorize PTC-220 to operate mobile radios at up to 39 watts ERP under Station License WRQI879.

B. Waiver of Section 1.913(b)—Form 601 Schedule D Requirements for Wireless Base and Wayside Stations

26. PTC-220 seeks to provide the data for the wireless radio base and wayside stations in a consolidated format. Pursuant to section 1.925(b)(3)(ii) of the Commission's rules, PTC-220 requests that we waive section 1.913(b) to the extent the rule would require PTC-220 to file a separate FCC Form 601 Schedule D for authorization of each of the radio stations.⁷⁰ PTC-220 argues that the number of base and wayside radio stations included in its Modification Application (a total of 762) presents unique factual circumstances that would render the requirement to complete a Schedule D for each station unduly burdensome and contrary to the public interest.⁷¹ PTC-220 requests that we accept the information required by Schedule D in a spreadsheet attached to its Modification Application.⁷² It asserts that the spreadsheet provides location and other pertinent station parameters in a format that can be analyzed more easily by interested parties and FCC staff, rather than having to parse through voluminous Schedule D filings.⁷³

⁶⁸ See "Section 80.215(j) Plan for Higher Mobile Power" (Section 80.215(j) Plan) and "AMTS Region 3 Maps of Base Stations and Waysides," attached to the Modification Application. Depending on their configuration, PTC-220's member railroads' locomotive radios operate at an ERP ranging from 24 to 39 watts. See Section 80.215(j) Plan at 2.

⁶⁹ Section 80.215(j) Plan at 3-4 (adding, at 4, that mobile radios' 30% duty cycle is rarely met; the manufacturer estimates they typically transmit less than one percent of the time; mobile radio antennas are mounted on the top of locomotives from 17-19 feet AGL, while wayside antennas are mounted at 60-80 feet above ground level (AGL) and base station antennas at 150 or more AGL). See also TV Engineering Study at 8-9 (stating that the power of wayside stations (up to 76 watts ERP) and base stations (up to 400 watts ERP) is typically much greater than mobiles (up to 39 watts ERP)).

⁷⁰ See Modification Application, "Request for Waiver of 47 C.F.R. § 1.913(b) and Schedule D Instructions," at 1 (filed Oct. 3, 2022) (Schedule D Waiver Request) (citing 47 CFR § 1.925(b)(3)(ii); also noting that under 47 CFR § 1.3, the Commission may waive any provision of its rules "for good cause shown"). Section 1.913(b) requires that "associated schedules . . . be filed electronically in accordance with the electronic filing instructions provided by ULS." 47 CFR § 1.913(b). Schedule D is titled "Wireless Telecommunications Bureau and/or Public Safety and Homeland Security Bureau Schedule for Station Locations and Antenna Structures." The Schedule D filing instructions state that "[t]his schedule must be completed when any station location is to be added, modified, or deleted," and that an applicant must "[u]se as many copies of Schedule D as necessary to provide information for all stations." FCC Form 601, Schedule D – Instructions, at 1 (Feb. 2024).

⁷¹ Schedule D Waiver Request at 1.

⁷² *Id.* at 2.

⁷³ See *id.*

27. We find that this case presents unique factual circumstances, especially given the importance of PTC and additional rail safety operations in promoting the safety of life and property related to U.S. freight and passenger rail operations, and that application of section 1.913(b) in this case would be unduly burdensome to the extent that it would require submission of 762 separate Schedule D filings. Accordingly, pursuant to section 1.925(b)(3)(ii), we grant PTC-220's waiver request and accept its presentation of the Schedule D data in consolidated format, as submitted in its attachment to the Modification Application.⁷⁴

C. TV Engineering Study and Channel 10/Channel 13 Plan to Control Interference

28. In compliance with section 80.215(h), PTC-220 submitted its TV Engineering Study and Channel 10/13 Plan analyzing the potential interference from its operations to viewers' OTA reception of channels 10 and 13 and committing to eliminate any actual interference to such stations caused by its operations.⁷⁵ We evaluate PTC-220's Study and Channel 10/13 Plan below.

1. Channel 10 Broadcast Stations

29. For its analysis, PTC-220 identified all full power, Class A low power (Class A), and low power television (LPTV) digital stations that transmit on channel 10 within 129 kilometers (80 miles) of a PTC site in its AMTS-3 license.⁷⁶ Section 80.215(h) also requires applicants seeking to operate in the AMTS band to submit a plan addressing potential interference to TV channel 10.⁷⁷ However, the Commission adopted this rule, which was intended to protect *analog* TV channel 10 receivers from intermodulation interference, before the transition from analog to digital television. The transition resulted in a lack of criteria to assess the potential for interference to digital channel 10 receivers, and in 2017, the Commission's Office of Engineering and Technology (OET) issued Supplement A to its 2015 OET Bulletin No. 74 to provide guidance on evaluating potential interference to television stations, targeted to applicants seeking to use AMTS spectrum for PTC.⁷⁸ OET-74A states that, "to assert compliance with the protection and mitigation requirements in [section 80.215(h)] regarding potential interference to channel 10, PTC applicants intending to operate in the AMTS band should briefly explain (1) that the transition to digital TV results in a lack of criteria to assess potential interference to channel 10, (2) that harmful interference to TV Channel 10 is unlikely, and (3) that if such interference is caused by PTC operations, it will be cured at the applicant's expense."⁷⁹

30. PTC-220 excluded channel 10 digital stations from its interference analysis.⁸⁰ Consistent with the requirements of OET-74A, PTC-220 states that "the transition [from analog] to digital TV results

⁷⁴ See Modification Application, "Schedule D PTC Site Data."

⁷⁵ See TV Engineering Study, which includes PTC-220's Channel 10/13 Plan at 16-20.

⁷⁶ See TV Engineering Study at 4, 20. See also Modification Application, Appendices A (Channel 13 stations) and C (Channel 10 stations).

⁷⁷ 47 CFR § 80.215(h)(1).

⁷⁸ Both OET Bulletin No. 74, *Longley-Rice Methodology for Predicting Inter-Service Interference to Broadcast Television from Mobile Wireless Broadband Services in the UHF Band* (Oct. 26, 2015) (OET-74), and Supplement A, *Guidance for Predicting Inter-Service Interference to Broadcast Television in the VHF Band from Positive Train Control (PTC) Systems* (Sept. 18, 2017) (OET-74A), are available at OET's "Bulletins On-line" website, <https://www.fcc.gov/general/oet-bulletins-line>. See also TV Engineering Study at 2, 20 (citing OET-74A). PTC-220 notes that there are no analog channel 10 TV stations in AMTS-3 that are within 129 km of a PTC base station and/or wayside station. *Id.* at i, 2-3.

⁷⁹ OET-74A at 5.

⁸⁰ See TV Engineering Study at 2-3, 20. Appendix C to PTC-220's Study (attached to the Modification Application as a separate exhibit) identifies channel 10 stations within 129 kilometers of a PTC site in the license area.

in a lack of criteria to assess potential interference to digital transmissions on channel 10,” and “the threat of harmful interference to digital channel 10 broadcast is not likely.”⁸¹ Further consistent with the requirements of OET-74A, PTC-220 acknowledges that it is responsible for curing any interference to viewers of OTA channel 10 digital TV stations at its own expense.⁸² We therefore find that PTC-220 properly excluded channel 10 digital stations from its interference analysis.

31. We emphasize that if a railroad’s operations under Station License WRQI879 were to interfere with OTA reception of a channel 10 station, the railroad must resolve such interference at its own expense as required by section 80.215(h) and the interference resolution conditions we adopt below. We also remind PTC-220 that if it were unable to remedy reported interference to a channel 10 station, Commission rules would require it to discontinue use of an offending base or wayside radio station altogether.⁸³

2. Channel 13 Broadcast Stations

32. PTC-220’s TV Engineering Study identifies a total of nine channel 13 digital television stations—seven full power, one Class A, and one LPTV—within 169 kilometers (105 miles) of a PTC site.⁸⁴ Using the *TVStudy* software and a threshold desired/undesired (D/U) signal ratio of -33 dB, PTC-220 applied the Longley-Rice radio propagation model to calculate the number of television households that potentially could be affected by the operation of the proposed radio stations.⁸⁵ PTC-220 further explains that it used a matrix of square tiles—two kilometers per side for full power channel 13 stations and one kilometer per side for LPTV channel 13 stations—to identify the tiles with insufficient D/U ratio inside a television station’s service area and the number of potential households within those tiles that potentially could be affected by the proposed PTC operations.⁸⁶

33. Section 80.215(h)(3) of the Commission’s rules provides for authorization of an individual fixed AMTS station where a licensee shows that fewer than 100 households would be impacted by its operations.⁸⁷ However, rather than providing data for each fixed station, PTC-220 chose to aggregate the data for all stations.⁸⁸ PTC-220 predicts that, before undertaking interference mitigation, the aggregate transmissions of all PTC stations in AMTS-3 have the potential to affect a total of 75,103 channel 13 TV households. Specifically, of the 7,855,065 full power and Class A households, PTC-220 predicts that 74,425 households (i.e., 0.9%) would potentially suffer harmful effects from its PTC operations in the aggregate, and that 678 of the 981,754 LPTV households (i.e., 0.1%) would potentially suffer harmful effects.⁸⁹ Given this aggregation, to analyze the potential impact on channel 13 households, we will assume for purposes of this AMTS-3 analysis that each PTC base and wayside

⁸¹ TV Engineering Study at 20.

⁸² *Id.* We discuss PTC-220’s Channel 10/13 Plan in more detail in the next Section.

⁸³ See 47 CFR 80.215(h)(4).

⁸⁴ See TV Engineering Study at i, 4.

⁸⁵ *Id.* at ii, 6-7 (citing *Longley-Rice Methodology for Evaluating TV Service Coverage and Interference*, OET Bulletin No. 69 (Feb. 6, 2004) (OET-69), and OET-74A, available at OET’s Bulletins On-line website, <https://www.fcc.gov/general/oet-bulletins-line>). Again citing OET-69 and OET-74A, as well as OET-74, PTC-220 describes nine steps in its methodology for the Study. *Id.* at 11-12. See also *id.* at 5, Fig. 2 (Full Power and Class A Channel 13 Stations) and at 6, Fig. 3 (LPTV Channel 13 Stations).

⁸⁶ See *id.* at ii, 6, 11.

⁸⁷ 47 CFR § 80.215(h)(3).

⁸⁸ TV Engineering Study at 14-16.

⁸⁹ *Id.* at 14-16.

station in the license area has the potential to impact more than 100 channel-13 households.

34. To obtain authorization for a station that potentially would impact more than 100 households, a licensee must satisfy three requirements under section 80.215(h)(3).⁹⁰ Specifically, the Commission may approve a fixed AMTS station where 100 or more households are within the interference contour of that station and a television station's analog Grade B contour (here, PTC-220 used the TV stations' noise-limited service contours),⁹¹ provided that the applicant: (1) shows that the proposed site is the only suitable location (at the application stage, it is sufficient to establish that the site is especially well-suited to provide the proposed service); (2) develops a plan to control any interference caused to TV reception from its operations; and (3) agrees to make adjustments in the TV receivers affected "as may be necessary to eliminate interference caused by its operations."⁹²

35. PTC-220 claims that it has satisfied these three requirements. First, PTC-220 certifies that each of the proposed station locations is "especially well-suited to provide the proposed [PTC] service."⁹³ PTC-220 explains that, "[b]ecause the proposed services are designed specifically for communications with trains, the sites must be placed in close proximity to railroad tracks and appropriately spaced to ensure a good quality signal along all segments of the tracks."⁹⁴ Regarding the second and third requirements in the rule, and as discussed further in the next Section, PTC-220 has developed its Channel 10/13 Plan to control potential interference and has committed to eliminate, at its own expense, actual interference if caused by its operations to any household's OTA reception of a channel 13 station (including the installation of notch filters, which PTC-220 predicts would eliminate interference to all households).⁹⁵

3. Channel 10/13 Plan; Special Conditions for Permanent Operations

36. PTC-220's Channel 10/13 Plan describes and establishes a process for PTC-220 to comply with section 80.215(h)(4)'s requirement that interference to channel 10 and channel 13 reception caused by its operations be resolved within 90 days.⁹⁶ PTC-220 has committed to be more responsive and resolve reports of interference within 60 days of receiving a report.⁹⁷ First, PTC-220 will investigate

⁹⁰ *Id.*

⁹¹ 47 CFR § 80.215(h)(3). Historically, the Commission analyzed the potential for interference according to a TV station's analog Grade B predicted contour. To account for the conversion to digital television, the Commission developed the noise-limited service contour (NLSC) to approximate the same probability of service as the analog Grade B contour. The NLSC is defined using the F(50,90) field strength contour, the area in which at least 50% of the locations can be expected to receive a signal that exceeds a specified field strength value at least 90% of the time. *See Establishment of a Model for Predicting Digital Broadcast Television Field Strength Received at Individual Locations*, ET Docket No. 10-152, Notice of Proposed Rule Making and Further Notice of Proposed Rule Making, 25 FCC Rcd. 10474, 10485, para. 25 (2010). *See also Avista Corporation*, Order, 27 FCC Rcd. 263, 266-67, paras. 6-7 (WTB MD 2012) (Longley-Rice propagation model and NLSC used to predict potential interference to DTV station by AMTS licensee).

⁹² 47 CFR § 80.215(h)(3)(i)-(iii).

⁹³ PTC-220 Burns Certification; TV Engineering Study at 3 (adding that many of the sites already constructed as part of the railroads' existing PTC networks have been selected for deployment of the AMTS spectrum).

⁹⁴ PTC-220 Burns Certification; TV Engineering Study at 3.

⁹⁵ TV Engineering Study at 15-19. A notch (band reject) filter attenuates one frequency band and passes both a lower and a higher frequency band.

⁹⁶ *Id.* at 16-20. As noted above, *see supra* para. [15], PTC-220 has committed PTC-220, its member-owners, and non-member spectrum lessees to implement the interference resolution measures.

⁹⁷ TV Engineering Study at 17. *See also* PTC-220 Burns Certification (stating that PTC-220 "will require its non-member spectrum lessees to abide by the same interference resolution timelines.").

within 30 days whether a transmitter owned or controlled by a PTC-220 member is the source of any reported interference, and if interference resolution is required, PTC-220 has committed to resolve the interference by one of three possible measures.⁹⁸ PTC-220 states it would change the frequency of the interfering transmitter either to another licensed AMTS frequency or to a frequency in the 220 MHz band on spectrum licensed to PTC-220 or modify the RF configuration of the site (*e.g.*, ERP, orientation, and tilt); but if interference were to persist despite the foregoing measures or if such measures are impractical, then PTC-220 would provide, free of charge, TV notch filters (with a minimum notch depth of 40 (+/-1) dB) to affected viewers, which it predicts would eliminate interference caused to any affected TV receiver.⁹⁹ According to PTC-220, application of these filters “will result in zero households experiencing interference” in the license area.¹⁰⁰

37. Based on our review of PTC-220’s TV Engineering Study, which includes its Channel 10/13 Plan, we find that PTC-220 has satisfied the requirements of section 80.215(h) and, accordingly, we hereby grant its application for permanent authority to operate the 265 base stations and 497 wayside stations, as listed in its Modification Application, as well as the related mobile (locomotive) radio stations, subject to certain interference resolution conditions. Specifically, we require PTC-220 to:

- establish, prior to commencing the service, and maintain, a 24-hour helpdesk to receive reports of potential interference;
- provide each potentially affected broadcaster contact information to report possible interference to the helpdesk;
- provide a party reporting interference a unique tracking number for each interference report;
- investigate any reported interference within 30 calendar days of receiving a report; and
- resolve any interference caused by its operations at its own expense within 60 calendar days of receiving an interference report.¹⁰¹

Notwithstanding our adoption of the special conditions listed above, we again remind PTC-220 that if it were unable to resolve reported interference despite implementing the measures established in its Channel 10/13 Plan, Commission rules would require it to discontinue use of an offending station altogether.¹⁰²

IV. CONCLUSION AND ORDERING CLAUSES

38. For the reasons stated above, we conditionally grant PTC-220’s Modification Application and related waiver requests for permanent authority to operate 265 PTC wireless radio base stations, 497

⁹⁸ TV Engineering Study at 16-17; PTC-220 Burns Certification.

⁹⁹ TV Engineering Study at 16-17.

¹⁰⁰ *Id.* at 17. In the context of channel 13 households, PTC-220 adds that, “[i]n the very rare event that the *TVStudy* results understate the interference such that interference from PTC operations persists after the insertion of a notch filter, PTC-220 is prepared to undertake a more extensive change to the site to ensure that no interference to channel 13 viewers continues,” and this could include, *e.g.*, “replacing the antennas, lowering the antennas, or relocating the site.” *Id.* at 17-18 and n.38. While its Channel 10/13 Plan addresses channel 10 households in broader terms based on the lack of criteria to assess potential interference to digital transmissions on channel 10, PTC-220 states that any interference caused by its operations “will be cured at PTC-220’s expense.” *Id.* at 20.

¹⁰¹ PTC-220 also must comply with the ERP limits and all other conditions enumerated in the Letter of Concurrence from the National Radio Quiet Zone Administrator, Paulette W. Woody, to PTC-220, dated November 20, 2019 (NRQZ ID 12167_04SEP2019) and the related notification procedures enumerated in the PTC-220 Letter, dated January 17, 2020, FCC File No. 0008834433.

¹⁰² 47 CFR § 80.215(h)(4).

PTC wireless radio wayside stations, and related mobile (locomotive) radio stations under Station License WRQI879 in AMTS-3, limited to deployment of PTC and related (non-PTC) rail safety systems. Our action today will serve the public interest in rail safety in the AMTS-3 South Atlantic region covering (as specified in the Application) Georgia, Florida, South Carolina, and several counties in Alabama and North Carolina, where PTC-220 lacks sufficient spectrum capacity to implement its PTC operations and related rail safety systems. In addition, as noted above, today's action also will benefit Amtrak and other railroads that operate as tenants on the members' railroad networks, as well as passenger and commuter railroads leasing spectrum from PTC-220 in the licensed area.¹⁰³ Granting the Modification Application and waiver requests therefore also serves the Commission's core policy goals of promoting the safety of life and property.

39. Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and (j), 303(r), and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), 309, the application filed on October 3, 2022, as amended on October 4 and November 15, 2022, to modify the license for Automated Maritime Telecommunications System station WRQI879 (AMTS-3 – Southern Atlantic), FCC File Number 0010226683, IS GRANTED, subject to the conditions stated herein.

40. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and section 1.925 of the Commission's rules, 47 CFR § 1.925, the requests for waiver of sections 1.913(b) and 80.215(i), 47 CFR §§ 1.913(b), 80.215(i), filed on October 3, 2022, by PTC-220, LLC, ARE GRANTED as described and subject to the conditions stated herein.

41. 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

Roger S. Noel
Chief, Mobility Division
Wireless Telecommunications Bureau

¹⁰³ We reiterate that if PTC-220 assigns, partitions, disaggregates, or leases to a third party any of its licensed AMTS-3 spectrum, the waiver relief granted in connection with grant of the AMTS-3 Assignment Application, as well as the additional waiver relief granted herein, would apply solely for providing PTC or related rail safety applications.



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 24-461

Released: May 16, 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 0934-EX-ST-2023 as "permit-but-disclose" for purposes of the Commission's rules governing ex parte communications, effective May 15, 2024. On May 13, 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).



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 24-464

Released: May 16, 2024

NOTICE OF INTENT TO DECLARE QUICKLY PHONE USA, LLC'S INTERNATIONAL SECTION 214 AUTHORIZATION TERMINATED

File No. ITC-214-20120920-00244

By this Public Notice, the Office of International Affairs (OIA) provides notice that it intends to declare Quickly Phone USA, LLC's (Quickly Phone) international section 214 authorization terminated for its failure to comply with an express condition for holding its international section 214 authorization. Specifically, we intend to declare that Quickly Phone failed to comply with the terms of the Letter of Agreement (LOA) it entered into with the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee), compliance with which is an express condition of its international section 214 authorization.¹ The Committee "recommend[ed] that the Commission terminate the international section 214 authorization for Quickly Phone for noncompliance with the LOA."² Additionally, Quickly Phone's apparent willful noncompliance with Commission rules, including rules that are designed to ensure its ability to communicate with the authorization holder, also warrants termination, wholly apart from Quickly Phone's noncompliance with the terms of the LOA. Finally, Quickly Phone may be subject to possible enforcement action, as discussed below.

Information from the Committee. The Committee contends that Quickly Phone failed to comply with certain terms and conditions contained in the LOA entered into by Quickly Phone and the Department of Justice (DOJ), including the National Security Division (NSD) and the Federal Bureau of Investigation (FBI).³ The specific terms and conditions in the LOA are intended to "mitigate national security and law enforcement concerns."⁴ In particular, the Committee states that Quickly Phone was required to: (1) designate a law enforcement point of contact in the United States to receive service of process for U.S. Records; (2) pay for and undergo annual third-party audits, including financial audits;

¹ Department of Justice, Department of Homeland Security (DHS), Petition to Adopt Conditions to Authorizations and Licenses, File No. ITC-214-20120920-00244 (June 18, 2014) (Petition to Adopt Conditions); Letter from Marco Antonio Fernandez Martinez, President, Quickly Phone USA, LLC, to John Carlin, Acting Assistant Attorney General, National Security Division, U.S. Department of Justice, and Unit Chief, Science and Technology Policy and Law Unit, Federal Bureau of Investigation at 1-7 (June 19, 2014) (LOA); *International Authorizations Granted; Section 214 Applications* (47 C.F.R. § 63.18); *Section 310(b) Requests*, File No. ITC-214-20120920-00244, Public Notice, 29 FCC Rcd 9189 (IB 2014) (IB Public Notice) ("[w]e condition grant of this international section 214 authorization on compliance by Quickly Phone USA, LLC with the commitments and undertakings set forth in the June 19, 2014 [LOA].").

² Letter from Eileen Keenan, Attorney Advisor, Foreign Investment Review Section, National Security Division, U.S. Department of Justice, to Marlene H. Dortch, Secretary, FCC at 1 (July 22, 2022) (DOJ Letter) (stating that the Committee recommends that "the Federal Communications Commission (FCC) terminate the above referenced international section 214 authorization in accordance with Section 10(f) of Executive Order 13913"). A confidential version of the DOJ Letter was also filed. The letter is attached to this Public Notice as an Exhibit.

³ *Id.* at 2-4.

⁴ *Id.* at 2.

and (3) submit an Annual Report to the DOJ on January 31 of each calendar year, beginning January 31, 2015, regarding its compliance with the specific terms of the Agreement.⁵

The Committee states that Quickly Phone did not nominate a law enforcement point of contact within 14 days of FCC approval of the authorization and it has not yet received such a nomination.⁶ Additionally, the Committee states it did not receive within 60 days of the LOA, notice of a proposed third-party auditor from Quickly Phone,⁷ the required reports regarding the initial annual audit, or the four subsequent annual audits.⁸ The Committee adds that it has not received any of the seven required annual reports on the agreed upon date of January 31 of each calendar year.⁹

The Committee states that “DOJ has made multiple attempts via telephone, email, and certified mail to contact Quickly Phone” but DOJ “has not received a response from Quickly Phone.”¹⁰ The Committee states that DOJ made the following attempts to contact Quickly Phone:

- On September 9, 2020, DOJ called (786) 464-8145, a phone number listed on Quickly Phone’s international section 214 application, but the number was out of service.¹¹
- On April 12, 2021, April 14, 2021, and May 7, 2021, DOJ called (832) 229-3101, an additional number listed on Quickly Phone’s application.¹² The phone calls were unanswered and DOJ left voicemails, which, as of July 22, 2022, have not been returned.
- On June 1, 2020, DOJ emailed Raul Magallanes at raul@rmtelecomlaw.com, the attorney listed for Quickly Phone on its international section 214 application, in its answers to triage questions, and on the FCC’s website.¹³ Mr. Magallanes responded that same day stating he no longer represents Quickly Phone.¹⁴ He also forwarded to DOJ a 2016 letter in which he notified the FCC he had ceased serving as the Communications Assistance for Law Enforcement Act (CALEA) compliance point of contact.¹⁵ Additionally, Mr. Magallanes stated he had no way of contacting the company, though in a subsequent email with DOJ, he provided the last email address he had on file for Quickly Phone.¹⁶
- On June 2, 2020, DOJ attempted to email Quickly Phone’s owner, Marco Fernandez, at the email address provided by Mr. Magallanes.¹⁷ DOJ received two automated responses: the

⁵ *Id.* (citing LOA at 1-6).

⁶ *Id.* In its LOA, Quickly Phone committed to “give notice of its [law enforcement point of contact] to DOJ for approval within 14 days of the date Quickly Phone receives from the FCC the telecommunications certification at issue herein.” *Id.*

⁷ *Id.* In its LOA, Quickly Phone committed to “[w]ithin sixty (60) days from the execution of this Agreement . . . provid[ing] notice of its proposed third-party auditor for the Initial Audit to DOJ.” *Id.* at 3.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*; *id.* at 9, Exh. 4.

¹⁴ *Id.* at 3.

¹⁵ *Id.*; *id.* at 10, Exh. 5.

¹⁶ *Id.* at 3; *id.* at 11, Exh. 6.

¹⁷ *Id.* at 3; *id.* at 13, Exh. 7.

first noting the email delivery was delayed and the second noting the email was undeliverable due to permanent fatal errors.¹⁸

- On June 23, 2020, DOJ sent a certified letter to Quickly Phone at 17971 Biscayne Blvd, Suite 201, Aventura, Florida 33160, the address listed for Quickly Phone on the international section 214 application.¹⁹ On August 3, 2020, that letter was returned to DOJ as undeliverable.²⁰
- On June 23, 2020, DOJ sent a certified letter to Quickly Phone at 7950 NW 53rd Street, Suite 337, Miami, FL 33166, the address listed for Quickly Phone on the Florida Secretary of State, Division of Corporations official webpage.²¹ DOJ notes that the Florida Secretary of State page lists Quickly Phone as “inactive” in Florida.²² On July 20, 2020, that letter was returned to DOJ as undeliverable.²³

The Committee states that it, through the DOJ as the Chair of the Committee, “has been reasonable, diligent, and thorough in its attempts to contact Quickly Phone to allow for it to cure its noncompliance with the LOA.”²⁴ The Committee states that because these communications have not been returned and the noncompliance with the LOA has continued, it recommends the Commission terminate the international section 214 authorization for Quickly Phone for noncompliance with the LOA.²⁵

Subsequently, on January 4, 2024, the Chief of OIA’s Telecommunications and Analysis Division sent a letter to Quickly Phone forwarding the DOJ Letter and requesting a response by February 2, 2024.²⁶ Notably, the Quickly Phone Letter states that “[a] failure to respond to this letter will be deemed as an admission of the facts alleged by the Committee in the DOJ Letter and could result in the . . . [the termination] of Quickly Phone’s section 214 authorization.”²⁷ The letter was mailed on January 4, 2024 via first-class and certified mail, return receipt requested to Marco Antonio Fernandez Martinez, President of Quickly Phone at the address listed in its international section 214 application and the

¹⁸ *Id.* at 3; *id.* at 14, Exh. 8 (Mail Delivery Subsystem - Delayed Delivery Response to DOJ’s Email to Quickly Phone (dated June 5, 2020)); *id.* at 15, Exh. 9 (Mail Delivery Subsystem - Undeliverable/Fatal Errors Response to DOJ’s Email to Quickly Phone (dated June 4, 2020)).

¹⁹ *Id.* at 3; *id.* at 19, Exh. 11 (Certified Letter to Aventura, Florida Address, Returned to DOJ on August 3, 2020).

²⁰ *Id.* at 3; *id.* at 16-17, Exh. 10 (USPS Tracking for Certified Letter to Aventura, Florida Address).

²¹ *Id.* at 3; *id.* at 24, Exh. 14 (Certified Letter to Miami, Florida Address, Returned to DOJ on July 20, 2020) (Exh. 14 to DOJ Letter). This address is also listed as Quickly Phone’s address in the FCC’s Form 499 database. *See* FCC Form 499-A Filer Database Detailed Information, ITC-214-20120920-00244, <https://apps.fcc.gov/cgb/form499/499detail.cfm?FilerNum=829951>.

²² DOJ Letter at 3; *id.* at 22-23, Exh. 13 (USPS Tracking for Certified Letter to Miami, Florida Address).

²³ *Id.* at 3; *id.* Exh. 14 to DOJ Letter.

²⁴ *Id.* at 4.

²⁵ *Id.* FCC staff called Quickly Phone at (832) 229-3101, a phone number on Quickly Phone’s international section 214 application, regarding these allegations on December 7, 2023, and left a voicemail and Quickly Phone has not returned the call.

²⁶ Letter from Denise Coca, Chief, Telecommunications and Analysis Division, FCC Office of International Affairs, to Marco Antonio Fernandez Martinez, President, Quickly Phone USA, LLC (Jan. 3, 2024) (on file in ITC-214-20120920-00244) (Quickly Phone Letter).

²⁷ *Id.* at 2.

address listed for Marco Antonio Fernandez Martinez in the FCC's Form 499 database.²⁸ On January 4, 2024, FCC staff also mailed the letter to Quickly Phone's D.C. agent for service of process, Cecilia Padilla, Incorp Services²⁹ and emailed the letter to Cecilia Padilla.³⁰ Finally, FCC staff posted a copy of the letter in the Commission's Office of the Secretary.³¹ To date, we have not received a response from Quickly Phone.

Apparent Failure to Comply with a Condition of the Commission's Grant of the Authorization.

Quickly Phone has not responded to any of our multiple requests or requests from DOJ. Thus, it appears that Quickly Phone has failed to satisfy its LOA commitments, which the DOJ and DHS relied upon in providing their non-objection to the grant of Quickly Phone's application,³² and compliance with which is an express condition of Commission grant of Quickly Phone's international section 214 authorization.

Apparent Willful Violations of the Communications Act and Commission Rules.

In addition, it appears that Quickly Phone willfully has failed to comply with the basic requirements of the Communications Act and its implementing rules that are designed to ensure its ability to communicate with the authorization holder and other requirements. Specifically, based on the information provided by the Committee and our attempts to reach Quickly Phone, it appears that Quickly Phone willfully failed to maintain accurate contact information for Quickly Phone's President, Marco Antonio Fernandez Martinez

²⁸ The certified letter sent to the address listed in Quickly Phone's international section 214 authorization application (17971 Biscayne Blvd., Suite 201, Aventura, Florida 33160) was received at that address on January 8, 2024. See USPS.com, USPS Tracking, Tracking Number 70041160000026181052, https://tools.usps.com/go/TrackConfirmAction?qt_c_tLabels1=70041160000026181052# (stating "Your item was delivered to the front desk, reception area, or mail room at 3:12 pm on January 8, 2024 in NORTH MIAMI BEACH, FL 33160."). The certified letter sent to the address listed for Quickly Phone in the Form 499 database (7950 53rd Street, Suite 337, Miami, FL 33166) was returned to the FCC. See USPS.com, USPS Tracking, Tracking Number 70041160000026181069, https://tools.usps.com/go/TrackConfirmAction?qt_c_tLabels1=70041160000026181069 (stating "Your item has been delivered to the original sender at 6:49 am on January 29, 2024 in WASHINGTON, DC 20554."). Neither of the first-class letters to Quickly Phone's addresses were returned to the FCC. We did not receive a response for either of these letters. We did not send the letter to the counsel of record identified in Quickly Phone's application, Raul Magallanes. As noted above, Mr. Magallanes stated to DOJ via email that he had withdrawn from representing Quickly Phone and provided a 2016 letter declaring his withdrawal from representation. See *infra* at 2. On November 30, 2023, FCC staff requested that Mr. Magallanes file a letter in ICFS stating that he had withdrawn as counsel for Quickly Phone. However, he did not respond to our inquiries. Based upon the 2016 letter and our attempts to reach Mr. Magallanes, we consider Mr. Magallanes to have withdrawn his representation of Quickly Phone and added a memo to that effect in Quickly Phone's ICFS file. See Memorandum to the File Regarding Counsel of Record for Quickly Phone, USA LLC, ITC-214-20120920-00244 (filed Jan. 3, 2024) https://licensing.fcc.gov/myibfs/download.do?attachment_key=25969698.

²⁹ The certified letter to Cecilia Padilla, Quickly Phone's D.C. agent at 1090 Vermont Avenue, NW, No. 910, Washington, D.C. 20005 for service of process was returned to the FCC. See USPS.com, USPS Tracking, Tracking Number 70041160000026181076, <https://tools.usps.com/go/TrackConfirmAction?tRef=fullpage&tLc=2&text28777=&tLabels=70041160000026181076%2C&tABt=true> (stating "Your item has been delivered to the original sender at 6:55 am on January 17, 2024 in WASHINGTON, DC 20554."). The returned certified envelope contained the following notations: "Return To Sender, Not Deliverable as Addressed, Unable To Forward" and we did not receive a signature card. The first-class letter to Cecilia Padilla was not returned to the FCC and we did not receive a response

³⁰ Email from Joseph Meyer, Attorney Advisor, Federal Communications Commission, Telecommunications and Analysis Division, FCC Office of International Affairs, to Cecilia Padilla, D.C. Agent for Service of Process for Quickly Phone USA, LLC (Jan. 4, 2024, 9:22 EST). The email to Cecilia Padilla was delivered on January 4, 2024, but we did not receive a read receipt nor did we receive a response to the email.

³¹ 47 U.S.C. § 413.

³² Petition to Adopt Conditions at 1-2.

as required by section 63.21(a) of the Commission's rules.³³ In particular, section 63.21(a) is designed to ensure authorization holders maintain the accuracy of their application certifications. Quickly Phone also apparently no longer has a valid D.C. agent in violation of section 413 of the Communications Act and its implementing rules.³⁴ All correspondence sent to Quickly Phone's corporate contact and D.C. agent by DOJ and FCC staff has gone unanswered, suggesting that this contact information is no longer valid or, to the extent it is valid, that Quickly Phone has willfully disregarded its compliance obligations. Moreover, Quickly Phone's FCC Form 499-A file has been inactive since July 2014.³⁵ In light of Quickly Phone's failure to respond to the DOJ's³⁶ and FCC's³⁷ communications, there is no indication that Quickly Phone is providing service pursuant to its international section 214 authorization.

Additionally, as part of its authorization that was granted on July 18, 2014, Quickly Phone was required to file annual international telecommunications Traffic and Revenue Reports, pursuant to section 43.62 of the Commission's rules, for calendar year 2014, by July 31, 2015 and for calendar year 2015, by July 31, 2016.³⁸ Specifically, section 43.62(b)(1) stated that "[n]ot later than July 31 of each year, each person or entity that holds an authorization pursuant to Section 214 to provide international telecommunications service shall report whether it provided international telecommunications services during the preceding calendar year."³⁹ Quickly Phone, however, did not submit traffic and revenue reports for the 2014 and 2015 reporting periods indicating whether or not it provided services.⁴⁰ Thus, it appears that Quickly Phone willfully violated section 43.62 of the Commission's rules.

³³ 47 CFR § 63.21. Section 63.21 of the Commission's rules sets forth several conditions applicable to all international section 214 applications including the requirement under section 63.21(a) that "[e]ach carrier is responsible for the continuing accuracy of the certifications made in its application." 47 CFR § 63.21(a). These certifications include the requirements under section 63.18(h) for international section 214 applicants to certify "[t]he name, address, citizenship and principal businesses of any person or entity that directly or indirectly owns at least ten percent of the equity of the applicant, and the percentage of equity owned by each of those entities (to the nearest one percent)". 47 CFR § 63.81(h).

³⁴ 47 U.S.C. § 413; 47 CFR §§ 1.47(h) and 64.1195(g). Quickly Phone listed an agent with Incorp Services in Form 499-A, but the FCC database states, "This account was inactive for an extended period and closed because the administrator could not contact the filer." See FCC Form 499-A Filer Database Detailed Information, <https://apps.fcc.gov/cgb/form499/499detail.cfm?FilerNum=829951>. On July 18, 2023, an Incorp Services representative advised FCC staff by telephone that Quickly Phone is not listed as a client of Incorp services. See also 2024 Telecommunications Reporting Worksheet Instructions, FCC Form-499A, at 12 ("New carriers and VoIP providers (including interconnected and non-interconnected) must identify an agent for service of process within the District of Columbia. Although alternate agents may be included in the filing, a resident D.C. agent must be designated. Carriers that hold international section 214 authorizations must designate a U.S. citizen or U.S. lawful permanent resident as their agent for service of process. Filers must update their registration information, including a DC Agent for Service of Process in accordance with these instructions to the FCC Form 499-A.").

³⁵ See *supra* note 34.

³⁶ DOJ Letter at 4.

³⁷ See *supra* 3-4.

³⁸ 47 CFR § 43.62 (formerly 47 CFR § 43.61(a)). Compliance with 47 CFR § 43.61(a) (consolidated into 47 CFR § 43.62 in 2013), which requires carriers to "file annual reports of overseas telecommunications traffic," is a condition of Quickly Phone's international section 214 authorization. See IB Public Notice.

³⁹ 47 CFR § 43.62(b)(1). In 2013, the Commission adopted section 43.62(b) of its rules, which went into effect on February 11, 2015. *Reporting Requirements for U.S. Providers of International Telecommunications Services; Amendment of Part 43 of the Commission's Rules*, IB Docket No. 04-112, Second Report and Order, 28 FCC Rcd 575 (2013); *Reporting Requirements for U.S. Providers of International Telecommunications Services*, 80 Fed. Reg. 7547 (Feb. 11, 2015).

⁴⁰ If Quickly Phone has discontinued international services, it may be in violation of section 214 of the Act and its implementing rule, section 63.19 of the Commission's rules, which requires prior notification for such

(continued....)

Thus, based on our analysis, Quickly Phone's willful failure to comply with sections 63.21(a) and 43.62 of the Commission's rules would warrant termination wholly apart from its failure to comply with the LOA.⁴¹

Quickly Phone must respond within 30 days of the date of this Public Notice, by June 17, 2024, and address the issues alleged by the Committee and the apparent FCC statutory and rule violations described in this Public Notice.⁴² Quickly Phone's failure to respond to this Public Notice will be deemed as an admission of the facts alleged by the Committee and of the apparent statutory and rule violations set out above. Absent a timely and complete response from Quickly Phone demonstrating why a finding of termination is not warranted, OIA intends to declare that Quickly Phone's international section 214 authorization has terminated based on Quickly Phone's failure to comply with the conditions of its authorization. OIA also advises Quickly Phone that its noncompliance with the Communications Act and Commission rules may result in forfeitures or other enforcement action.

Quickly Phone should send its response to Denise Coca, Chief, Telecommunications and Analysis Division, Office of International Affairs at Denise.Coca@fcc.gov and Joseph Meyer, Telecommunications and Analysis Division, Office of International Affairs at Joseph.Meyer@fcc.gov. The response must also be filed in File No. ITC-214-20120920-00244 via ICFS at <https://www.fcc.gov/icfs>.

The proceeding in this Notice shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.⁴³ Persons making *ex parte* presentations must file in ICFS, under File No. ITC-214-20120920-00244, a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of 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

discontinuance if Quickly Phone had customers at the time of discontinuance. 47 U.S.C. § 214; 47 CFR § 63.19. We have not received any notice of discontinuance, but, as noted above, it appears that Quickly Phone is not currently providing service pursuant to its authorization.

⁴¹ The final year Traffic and Revenue Reports were required to be filed was for calendar year 2015 (to be submitted by July 31, 2016). On March 23, 2017, the Commission adopted a Notice of Proposed Rulemaking proposing to eliminate the international Traffic and Revenue Reports. *Section 43.62 Reporting Requirements for U.S. Providers of International Services; 2016 Biennial Review of Telecommunications Regulations*, IB Docket Nos. 17-55 and 16-131, Notice of Proposed Rulemaking, 32 FCC Rcd 2606, 2606, para. 1 (2017). On May 1, 2017, the International Bureau temporarily waived the requirement to file annual Traffic and Revenue Reports until after 60 days of the release of a Commission Order addressing the proposed elimination of the international Traffic and Revenue Reports. *Section 43.62 Reporting Requirements for U.S. Providers of International Services; 2016 Biennial Review of Telecommunications Regulations*, IB Docket Nos. 17-55 and 16-131, Order, 32 FCC Rcd 3765, paras 2-3 (IB 2017). Thus, filing entities were not required to submit by July 31, 2017 Traffic and Revenue Reports for the 2016 calendar year. On October 24, 2017, the Commission eliminated the annual traffic and revenue reporting requirement. *Section 43.62 Reporting Requirements for U.S. Providers of International Services; 2016 Biennial Review of Telecommunications Regulations*, IB Docket Nos. 17-55 and 16-131, Report and Order, 32 FCC Rcd 8115, 8119-8126, paras. 8-23 (2017); *Section 43.62 Reporting Requirements for U.S. Providers of International Services; 2016 Biennial Review of Telecommunications Regulations*, 83 Fed. Reg. 17931 (Apr. 25, 2018).

⁴² See DOJ Letter & Exhibits.

⁴³ 47 CFR § 1.1200 *et seq.*

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).⁴⁴ 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.

Accordingly, IT IS ORDERED, pursuant to sections 4(i), 214, and 413 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 214, 413, and sections 1.47(h), 1.80, 43.62, 63.18, 63.21(a), 63.23(e), and 64.1195 of the Commission's rules, 47 CFR §§ 1.47(h), 1.80, 43.62, 63.18, 63.21(a), 63.23(e), 64.1195 that Quickly Phone USA, LLC SHALL RESPOND to this Public Notice within 30 days of the date of release and that if it fails to respond in a complete and timely manner and demonstrate that termination of its authorization is not warranted based on the issues identified in this Public Notice, the international section 214 authorization issued under File No. ITC-214-20120920-00244 WILL BE TERMINATED AND DECLARED NULL AND VOID.

IT IS FURTHER ORDERED that this Public Notice shall be posted in the Commission's Office of the Secretary;⁴⁵ mailed, via first-class and certified mail, return receipt requested to the following addresses of record for Quickly Phone's President: 17971 Biscayne Blvd., Suite 201, Aventura, Florida 33160 and 7950 NW 53rd St., Suite 337, Miami, Florida 33166 and to the following address of record for the D.C. agent for service of process, Cecilia Padilla, Incorp Services: 1090 Vermont Avenue, NW, No. 910, Washington, D.C. 20005; and emailed to Cecilia Padilla, Incorp Services, at cecilia.padilla@incorp.com.

IT IS FURTHER ORDERED that this Public Notice is issued on delegated authority under 47 CFR §§ 0.19, 0.204, and 0.351 and is effective upon release.

For further information, contact Joseph Meyer at Joseph.Meyer@fcc.gov or (202) 418-7843.

⁴⁴ 47 CFR § 1.1206(b).

⁴⁵ 47 U.S.C. § 413; 47 CFR § 1.47(h).



U.S. Department of Justice

National Security Division

Foreign Investment Review Section

Washington, D.C. 20530

July 22, 2022

Submitted via IBFS

Ms. Marlene H. Dortch
Federal Communications Commission
445 12th St. SW, Room TW-B204
Washington, DC 20554

**Re: Recommendation for Termination of International Section 214 Authorization
for Quickly Phone TT 12-63, ITC-214-20120920-00244**

Dear Ms. Dortch:

The Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (hereinafter the "Committee") hereby recommends the Federal Communications Commission ("FCC") terminate the above referenced international section 214 authorization in accordance with Section 10(f) of Executive Order 13913. Exec. Order No. 13913, 85 Fed. Reg. 19643 (Apr. 4, 2020).

I. Legal Authority

On April 4, 2020, the President signed Executive Order 13913 (hereinafter "the Executive Order") establishing the Committee and designating the Attorney General as Chair. The Committee is charged with reviewing and assessing applications referred by the FCC to determine whether granting an authorization or the transfer of an authorization poses a risk to national security or law enforcement interests of the United States. Upon completing that review, the Committee may advise the FCC that it has no recommendation and no objection to granting an authorization to the applicant; recommend that the authorization be denied; or recommend that the authorization be granted with conditions to mitigate national security or law enforcement concerns.

After a recommendation to the FCC that an authorization be granted with conditions to mitigate national security or law enforcement concerns, the Executive Branch, through the Committee negotiates a Letter of Agreement ("LOA"). The Committee, and the applicant agree to specific terms and conditions prior to the FCC's approval of the authorization. These terms and conditions are memorialized in the LOA and create reporting, operating, and notification requirements among other mandatory obligations upon which the authorization is conditioned.

Strict adherence to these terms is integral to ensure the national security and law enforcement risks identified by the Executive Branch are mitigated appropriately. The Executive Order provides the Committee with the ability to recommend action to the FCC “[i]f the Committee determines that a licensee has not complied with a mitigation measure and has not cured any such noncompliance in a satisfactory manner.” Exec. Order No. 13913, 85 Fed. Reg. 19643 (Apr. 4, 2020). If a company falls within this area of noncompliance, the Executive Order allows the Committee to recommend actions consistent with subsection 9(b). Following this directive, the Committee construes actions consistent with the subsection to establish general parameters ranging from a recommendation for revocation to no action.

II. Quickly Phone USA LLC’s (“Quickly Phone”) Authorization

The following events describe Quickly Phone’s 214 authorization:

- September 20, 2012: Quickly Phone applied for an International 214 Authorization, requesting to provide resale services between the United States and permissible international points. FCC File No. ITC-214-20120920-00244 (July 18, 2014).
- November 9, 2012: Quickly Phone’s application was removed from streamline and reviewed by the Committee. FCC, Report No. TEL-01587NS (Nov. 9, 2012).
- June 19, 2014: Quickly Phone signed an LOA with the Department of Justice (“DOJ”), creating various obligations as a condition for receiving the 214 Authorization. *See* Quickly Phone LOA.
- July 25, 2014: the FCC issued a Public Notice advising that on July 18, 2014, it had approved Quickly Phone’s request and granted the International 214 Authorization to Quickly Phone. FCC File No. ITC-214-20120920-00244 (Grant date July 18, 2014) DA Number: 14-1062.

To mitigate national security and law enforcement concerns, the Committee conditioned Quickly Phone’s authorization with several obligations. Specifically, Quickly Phone is required to comply with the following conditions, among others:

1. Quickly Phone must designate a Law Enforcement Point of Contact (“LEPOC”) in the U.S. to receive service of process for U.S. Records;
2. Quickly Phone must pay for and undergo annual third-party audits, including financial audits;
3. Quickly Phone must submit an Annual Report to the Department of Justice on January 31 of each calendar year, beginning January 31, 2015, regarding its compliance with the specific terms of this Agreement.

See Quickly Phone LOA pgs. 1-6.

As of the date of this letter, Quickly Phone has failed to comply with the specific requirements noted above and has not cured its non-compliance. First, Quickly Phone did not nominate a LEPOC within 14 days of FCC approval of the authorization. To date, DOJ has not received a LEPOC nomination from Quickly Phone. Second, DOJ did not receive, within 60 days of the Agreement, notice of the proposed third-party auditor. To date, DOJ has not received

this mandatory notification from Quickly Phone. Further, DOJ has not received the required reports regarding the initial annual audit or the four subsequent annual audits. Finally, DOJ has not received any of the seven required annual reports on the agreed upon due date of January 31 of each calendar year. To date, DOJ has not received an annual report from Quickly Phone.

III. DOJ's Documented Outreach

DOJ has made multiple attempts via telephone, email, and certified mail to contact Quickly Phone, and to date has not received a response from Quickly Phone. DOJ has afforded Quickly Phone the opportunity to respond by any of the means discussed to ensure that it was afforded reasonable due process; to this date, DOJ has not received a response from Quickly Phone. The numerous attempts to contact Quickly Phone and affiliated individuals are described in detail below.

On September 9, 2020, DOJ called (786) 464-8145, a phone number listed on Quickly Phone's 214 application but the number was out of service. *See* Ex. 2. On April 12, 2021, April 14, 2021, and May 7, 2021, DOJ called (832) 229-3101, an additional number listed on Quickly Phone's Application. *See* Ex. 3. The phone calls were unanswered and DOJ left voicemails, which, to date, have not been returned.

On June 1, 2020, DOJ emailed Raul Magallanes (at raul@rmtelecomlaw.com), the attorney listed for Quickly Phone on its 214 application, in its answers to triage questions, and on the FCC's website. *See* Ex. 1-3. Mr. Magallanes responded that same day stating he no longer represents Quickly Phone. *See* Ex. 4. He also forwarded DOJ a 2016 letter in which he notified the FCC he had ceased serving as the CALEA compliance point of contact. *See* Ex. 4, 5. Additionally, Mr. Magallanes stated he had no way of contacting the company, though in a subsequent email with DOJ, he provided the last email address he had on file for Quickly Phone, [REDACTED] *See* Ex. 6.

On June 2, 2020, DOJ attempted to email Quickly Phone owner, Marco Fernandez at [REDACTED], the email address provided by Mr. Magallanes the day before. *See* Ex. 7. DOJ received two automated responses back: the first noting the email delivery was delayed and the second noting the email was undeliverable due to permanent fatal errors. *See* Ex. 8, 9.

On June 23, 2020, DOJ sent a certified letter to Quickly Phone at 17971 Biscayne Blvd, Suite 201, Aventura, Florida 33160, the address listed for Quickly Phone on the 214 application and the FCC website. *See* Ex. 1, 3, 10, and 11. On August 3, 2020 that letter was returned to DOJ as undeliverable. *See* Ex. 10, 11.

On June 23, 2020, DOJ sent a certified letter to Quickly Phone at 7950 NW 53rd Street, Suite 337, Miami, FL 33166, the address listed for Quickly Phone on the Florida Secretary of State, Division of Corporations official webpage. *See* Ex. 12-14. DOJ notes that the Florida Secretary of State page lists Quickly Phone as "inactive" in Florida. *See* Ex. 12. On July 20, 2020, that letter was returned to DOJ as undeliverable. *See* Ex. 13, 14.

IV. Conclusion

The Committee, through the Chair, has been reasonable, diligent, and thorough in its attempts to contact Quickly Phone to allow for it to cure its noncompliance with the LOA. As these communications have not been returned, and the noncompliance with the LOA has continued, the Committee, through the Chair, recommends the FCC terminate the international section 214 authorization for Quickly Phone for noncompliance with the LOA.

Thank you for your consideration.

Regards,

/s/

Eileen Keenan
Attorney Advisor
Foreign Investment Review Section
National Security Division
U.S. Department of Justice
Eileen.Keenan@usdoj.gov
(202) 598-6401

INDEX OF EXHIBITS

Ex. No.	Description
1	FCC Website Entry for Quickly Phone
2	Quickly Phone Business Contact Information, as listed in answers to triage questions
3	Quickly Phone 214 Authorization Application
4	June 1, 2020 Email from Mr. Magallanes
5	Withdrawal of Mr. Magallanes as CALEA contact
6	Quickly Phone email address provided by Mr. Magallanes
7	DOJ Email to Quickly Phone
8	Delivery Delayed Response to DOJ's Email to Quickly Phone
9	Undeliverable/Fatal Errors Response to DOJ's Email to Quickly Phone
10	USPS Tracking for Certified Letter to Aventura, Florida Address
11	Certified Letter to Aventura, Florida Address, Returned to DOJ on August 3, 2020
12	Florida Secretary of State, Division of Corporations website entry for Quickly Phone
13	USPS Tracking for Certified Letter to Miami, Florida Address
14	Certified Letter to Miami, Florida Address, Returned to DOJ on July 20, 2020

Exhibit 1: FCC Website Entry for Quickly Phone

5/20/2021		FCC INTERNATIONAL BUREAU	
			
INTERNATIONAL BUREAU FCC SELECTED APPLICATION LISTING BY FILE NUMBER REPORT WR07 - Thu May 20 20:43:04 US/Eastern 2021			
File Number = ITC2142012092000244;			
File Number: ITC-214-20120920-00244 Callsign: None Streamlined: N Environmental Impact: None Status: Action Taken Public Notice Red Light: N Status Date: 07/25/2014 Last Action: Grant of Authority Grant Date: 07/18/2014 DA #: 14-1062 Released Date: 07/24/2014 Service Type: Global or Limited Global Resale Service		Accepted For Filing PN Date: 11/09/2012 Action Taken PN Date: 07/25/2014 Term Begin Date: None Term End Date: None Date Filed: 09/20/2012 Last Action Date: 07/18/2014 Bond Date: None Adopted Date: 07/24/2014	
Document Viewing			
Site Information Other filings related to this application (Petitions, comments, etc) Attachment Menu PDF Version of this application			
		Public Notice List HTML version of this application Licensee History	
Old File Number: None			
Applicant: Quickly Phone USA, LLC 17971 Biscayne Blvd, Suite 201. Aventura, Florida, FL 33160 USA		Contact: RAUL MAGALLANES THE LAW OFFICE OF RAUL MAGALLANES, PLLC PO BOX 1213 FRIENDSWOOD, TX 77549 USA	
Description: Application for authority to provide resale service in accordance with section 63.18(e)(2) of the Commission's rules, 47 C.F.R. § 63.18(e)(2). We grant the Petition to Adopt Conditions to Authorizations and Licenses filed in this proceeding on July 18,			

REDACTED FOR PUBLIC INSPECTION

Exhibit 2: Quickly Phone Business Contact Information, as listed in answers to triage questions

FOR OFFICIAL USE ONLY

Last updated on: 6/19/2013 3:17 PM

Confidential Exhibit

REDACTED FOR PUBLIC INSPECTION
Exhibit 3: Quickly Phone 214 Authorization Application

5/10/2021

HTML.htm

Approved by OMB
3060-0686

INTERNATIONAL SECTION 214 APPLICATION
FCC FORM 214
FOR OFFICIAL USE ONLY

APPLICANT INFORMATION

Enter a description of this application to identify it on the main menu:
Authorization for Global or Limited Global Resale Authority pursuant to Section 63.18(e)(2)

1. Applicant	
Name: Quickly Phone USA, LLC	Phone Number: 832-229-3101
DBA Name:	Fax Number:
Street: 17971 Biscayne Blvd, Suite 201.	E-Mail:
City: Aventura, Florida	State: FL
Country: USA	Zipcode: 33160 -
Attention: Mr Marco Fernandez	
2. Contact	
Name: Raul Magallanes	Phone Number: 281 317 1397
Company: The Law Office of Raul Magallanes, PLLC	Fax Number: 281 271 8085
Street: PO Box 1213	E-Mail: raul@rmtelecomlaw.com
City: Friendswood	State: TX
Country: USA	Zipcode: 77549 -
Attention: Raul Magallanes	Relationship: Legal Counsel
3. Place of Incorporation of Applicant Florida	
4. Other Company(ies) and Place(s) of Incorporation	
5. Service Type(s) (check all that apply)	
☐ Global or Limited Global Facilities-Based Authority (Section 63.18(e)(1))	
☒ Global or Limited Global Resale Authority (Section 63.18(e)(2))	
☐ Individual Facilities-Based Service (Section 63.18(e)(3))	
☐ Individual Switched Resale Service (Section 63.18(e)(3))	
☐ Individual Facilities-Based and Resale Service (Section 63.18(e)(3))	
☐ Switched Services over Private Lines (ISR) (Section 63.16 and/or 63.18 (e)(3))	
☐ Inmarsat and Mobile Satellite Service (Section 63.18(e)(3))	
☐ Overseas Cable Construction (Section 63.18(e)(3))	
☐ Individual Non-Interconnected Private Line Resale Service (Section 63.18(e)(3))	
☐ Other (Section 63.18(e)(3))	
6a. Is a fee submitted with this application?	
☒ If Yes, complete and attach FCC Form 159.	
If No, indicate reason for fee exemption (see 47 C.F.R. Section 1.1114).	
☐ Governmental Entity ☐ Noncommercial educational licensee	
☐ Other (please explain):	

file:///gsd-nas-tcs01/home/zahogarth/Citrix/Downloads/HTML.htm

1/3

Exhibit 4: June 1, 2020 Email from Mr. Magallanes

Hogarth, Zachary (NSD)

From: Raul Magallanes [REDACTED]
Sent: Monday, June 1, 2020 1:58 PM
To: Keenan, Eileen (NSD)
Cc: Compliance.Telecom
Subject: Re: Quickly Phone, ITC-214-20120920-00244
Attachments: Letter of withdrawal re CALEA contact - Quickly Phone.pdf

Dear Eileen,

I no longer represent Quickly Phone and have no idea as to where to find the principals or new counsel, if they have any. I filed this letter withdrawing as CALEA contact in 2016.

Regards,

On Mon, Jun 1, 2020 at 11:56 AM Keenan, Eileen (NSD) [REDACTED] wrote:

Good afternoon,

Our records show that Quickly Phone signed a Letter of Agreement with the Department of Justice in June 2014. You were previously listed as the attorney of record for this company.

Do you continue to represent this company? If not, do you have contact information for the attorney, owners or members of the Board of Directors?

Please be sure to include the Compliance email address, cc'ed above, in any response.

Many thanks,

Eileen Keenan

Attorney Advisor

U.S. Department of Justice

National Security Division

Telework number: [REDACTED]

Exhibit 5: Withdrawal of Mr. Magallanes as CALEA contact



FCC LICENSING & REGULATION
P.O. Box 1213, Houston, TX 77549
(281) 317-1397 T, (281) 271-8085 F
raul@rmtelecomlaw.com
www.rmtelecomlaw.com

Federal Communications Commission
International Bureau
Policy Division
445 12th Street, SW
Washington D.C. 20554

Re: Notification of withdrawal of contact, ITC-214-2012-0920-00244

April 11, 2016

Dear International Bureau Staff,

By this letter I am notifying you that, effective immediately, I will no longer serve as contact on behalf of Quickly Phone, LLC for purposes of CALEA compliance.

Sincerely,

/s/ *Raul Magallanes*

Raul Magallanes

John Carlin
Acting Assistant Attorney General
National Security Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530
ttelecom@usdoj.gov

Unit Chief, Science and Technology Policy and Law Unit
Federal Bureau of Investigation
935 Pennsylvania Avenue, NW
Room 7350
Washington, D.C. 20535

REDACTED FOR PUBLIC INSPECTION
Exhibit 6: Quickly Phone email address provided by Mr. Magallanes

Hogarth, Zachary (NSD)

From: Keenan, Eileen (NSD)
Sent: Friday, June 5, 2020 9:45 AM
To: Raul Magallanes
Cc: Compliance.Telecom
Subject: RE: Quickly Phone, ITC-214-20120920-00244

Many thanks!

From: Raul Magallanes <raul@rmtelecomlaw.com>
Sent: Tuesday, June 2, 2020 5:59 PM
To: Keenan, Eileen (NSD) [REDACTED]
Subject: Re: Quickly Phone, ITC-214-20120920-00244

Sure. This is the email I have on file.

[REDACTED]

Regards,

On Mon, Jun 1, 2020 at 2:49 PM Keenan, Eileen (NSD) [REDACTED] wrote:

Thanks, Raul, for your quick response.

Would you mind sharing the last email address that you had for Quickly Phone?

Many thanks,

Eileen

From: Raul Magallanes <raul@rmtelecomlaw.com>
Sent: Monday, June 1, 2020 1:58 PM
To: Keenan, Eileen (NSD) [REDACTED]
Cc: Compliance.Telecom [REDACTED]
Subject: Re: Quickly Phone, ITC-214-20120920-00244

Dear Eileen,

I no longer represent Quickly Phone and have no idea as to where to find the principals or new counsel, if they have any. I filed this letter withdrawing as CALEA contact in 2016.

Regards,

On Mon, Jun 1, 2020 at 11:56 AM Keenan, Eileen (NSD) [REDACTED] wrote:

Good afternoon,

Our records show that Quickly Phone signed a Letter of Agreement with the Department of Justice in June 2014. You were previously listed as the attorney of record for this company.

Do you continue to represent this company? If not, do you have contact information for the attorney, owners or members of the Board of Directors?

Please be sure to include the Compliance email address, cc'ed above, in any response.

Many thanks,

Eileen Keenan

Attorney Advisor

U.S. Department of Justice

National Security Division

Telework number: [REDACTED]

--

Raul Magallanes

REDACTED FOR PUBLIC INSPECTION
Exhibit 7: DOJ Email to Quickly Phone

Keenan, Eileen (NSD)

From: Keenan, Eileen (NSD)
Sent: Tuesday, June 2, 2020 6:20 PM
To: [REDACTED]
Cc: Compliance.Telecom
Subject: Quickly Phone, ITC-214-20120920-00244

Good afternoon,

Our records show that Quickly Phone signed a Letter of Agreement with the Department of Justice in June 2014. You were previously listed as a point of contact for this company.

Do you continue to serve as a point of contact for this company? If not, do you have contact information for the attorney, owners or members of the Board of Directors?

Please be sure to include the Compliance email address, cc'ed above, in any response.

Many thanks,

Eileen Keenan

Attorney Advisor

U.S. Department of Justice

National Security Division

Telework number: [REDACTED]

Exhibit 8: Delivery Delayed Response to DOJ's Email to Quickly Phone

Keenan, Eileen (NSD)

From: Mail Delivery Subsystem - [REDACTED]
To: [REDACTED]
Sent: Tuesday, June 2, 2020 10:31 PM
Subject: Delivery delayed:Quickly Phone, ITC-214-20120920-00244

** THIS IS A WARNING MESSAGE ONLY **
** YOU DO NOT NEED TO RESEND YOUR MESSAGE **

The original message was received at Tue, 2 Jun 2020 22:20:40 GMT
from [10.187.9.62]

----- Transcript of session follows -----
[REDACTED].. Deferred: Connection timed out with [REDACTED]
Warning: message still undelivered after 4 hours
Will keep trying until message is 2 days old

Exhibit 9: Undeliverable/Fatal Errors Response to DOJ's Email to Quickly Phone

Hogarth, Zachary (NSD)

From: Mail Delivery Subsystem [REDACTED]
To: [REDACTED]
Sent: Thursday, June 4, 2020 6:30 PM
Subject: Undeliverable: Quickly Phone, ITC-214-20120920-00244

The original message was received at Tue, 2 Jun 2020 22:20:40 GMT from [10.187.9.62]

----- The following addresses had permanent fatal errors ----- [REDACTED]

----- Transcript of session follows ----- <[REDACTED]> ... Deferred: Connection timed out with [REDACTED]

Message could not be delivered for 2 days Message will be deleted from queue

REDACTED FOR PUBLIC INSPECTION
Exhibit 10: USPS Tracking for Certified Letter to Aventura, Florida Address

5/7/2021

USPS.com® - USPS Tracking® Results

USPS Tracking®

FAQs >

Track Another Package +

Tracking Number: 70060810000046073282

Remove X

Your item has been delivered to the original sender at 4:52 am on August 3, 2020 in WASHINGTON, DC 20530.

 **Delivered, To Original Sender**

August 3, 2020 at 4:52 am
WASHINGTON, DC 20530

Feedback

Get Updates v

Text & Email Updates



Tracking History



August 3, 2020, 4:52 am

Delivered, To Original Sender

WASHINGTON, DC 20530

Your item has been delivered to the original sender at 4:52 am on August 3, 2020 in WASHINGTON, DC 20530.

August 2, 2020, 10:49 am

Available for Pickup

WASHINGTON, DC 20530

<https://tools.usps.com/go/TrackConfirmAction?tRef=fullpage&tlc=2&text128777=&tlLabel=s=70060810000046073282%2C&tABt=false>

1/3

5/7/2021

USPS.com® - USPS Tracking® Results

August 2, 2020, 10:39 am
Out for Delivery
WASHINGTON, DC 20018

August 2, 2020, 10:28 am
Arrived at Hub
WASHINGTON, DC 20018

July 31, 2020
In Transit to Next Facility

July 27, 2020, 6:07 pm
Departed USPS Regional Facility
MIAMI FL DISTRIBUTION CENTER

July 7, 2020, 12:23 pm
Addressee Unknown
NORTH MIAMI BEACH, FL 33160

June 30, 2020, 12:35 pm
Addressee Unknown
NORTH MIAMI BEACH, FL 33160

June 25, 2020, 1:22 pm
Arrived at USPS Regional Facility
MIAMI FL DISTRIBUTION CENTER

June 24, 2020, 12:49 am
Departed USPS Regional Facility
GAITHERSBURG MD DISTRIBUTION CENTER

June 23, 2020, 10:09 pm
Arrived at USPS Regional Facility
GAITHERSBURG MD DISTRIBUTION CENTER

Feedback

Product Information



5/7/2021

USPS.com® - USPS Tracking® Results

See Less ^

Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

FAQs

Feedback

REDACTED FOR PUBLIC INSPECTION

Exhibit 11: Certified Letter to Aventura, Florida Address, Returned to DOJ on August 3, 2020

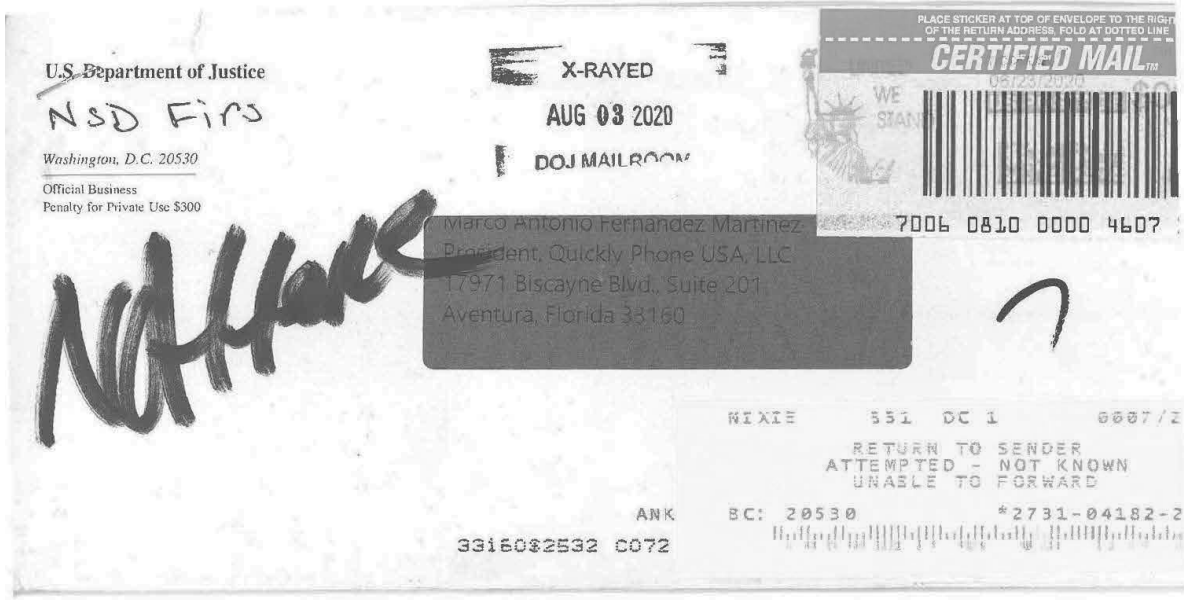


Exhibit 12: Florida Secretary of State, Division of Corporations website entry for Quickly Phone

6/2/2020

Detail by Entity Name

DIVISION OF CORPORATIONS



[Department of State](#) / [Division of Corporations](#) / [Search Records](#) / [Search by Entity Name](#) /

Detail by Entity Name

Florida Limited Liability Company
QUICKLY PHONE USA LLC

Filing Information

Document Number L12000096626
FEI/EIN Number 46-0662392
Date Filed 07/26/2012
State FL
Status INACTIVE
Last Event ADMIN DISSOLUTION FOR
ANNUAL REPORT
Event Date Filed 09/25/2015
Event Effective Date NONE

Principal Address

7950 NW 53rd Street
Suite 337
Miami, FL 33166

Changed: 09/23/2014

Mailing Address

7950 NW 53rd Street
Suite 337
Miami, FL 33166

Changed: 09/23/2014

Registered Agent Name & Address

FERNANDEZ MARTINEZ, MARCO A
7950 NW 53rd Street
Suite 337
Miami, FL 33166

Address Changed: 09/23/2014

Authorized Person(s) Detail

Name & Address

Title Authorized Member

FERNANDEZ MARTINEZ, MARCO

search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail?inquirytype=EntityName&directionType=Initial&searchNameOrder=QUICKLYPHON... 1/2

6/2/2020

Detail by Entity Name

7950 NW 53rd Street
Suite 337
Miami, FL 33166

Annual Reports

Report Year	Filed Date
2013	09/19/2014
2014	09/23/2014

Document Images

09/23/2014 - AMENDED ANNUAL REPORT	View Image in PDF format
09/19/2014 - REINSTATEMENT	View Image in PDF format
07/10/2013 - I.C. Amendment	View Image in PDF format
07/09/2013 - I.C. Amendment	View Image in PDF format
09/28/2012 - I.C. Name Change	View Image in PDF format
07/26/2012 - Florida Limited Liability	View Image in PDF format

Florida Department of State, Division of Corporations

REDACTED FOR PUBLIC INSPECTION
Exhibit 13: USPS Tracking for Certified Letter to Miami, Florida Address

2/25/2021

Tracking Results | USPS



70060810000046073299

Add Name

Delivered:

MIAMI, FL 33166 on June 29,
2020 at 7:02 pm

Additional Information

Your item was delivered to the front desk, reception area, or mail room at 7:02 pm on June 29, 2020 in MIAMI, FL 33166.

Get Text and Email Updates

Tracking History

June 29, 2020

7:02 pm

Delivered, Front Desk/Reception/Mail Room,
MIAMI, FL 33166

June 26, 2020

6:50 pm

Delivery Attempted - No Access to Delivery Location,
MIAMI, FL 33166

June 26, 2020

2:10 pm

Out for Delivery,
MIAMI, FL 33152

June 26, 2020

1:59 pm

Arrived at Post Office,
MIAMI, FL 33152

June 25, 2020

10:37 pm

Departed USPS Regional Facility,
MIAMI FL DISTRIBUTION CENTER

June 25, 2020

1:22 pm

Arrived at USPS Regional Facility,
MIAMI FL DISTRIBUTION CENTER

Feedback

https://m.usps.com/m/TrackConfirmAction_detail?tlLabels=70060810000046073299

1/2

2/25/2021

Tracking Results | USPS

June 24, 2020

12:49 am

Departed USPS Regional Facility,
GAITHERSBURG MD DISTRIBUTION CENTER

June 23, 2020

10:09 pm

Arrived at USPS Regional Facility,
GAITHERSBURG MD DISTRIBUTION CENTER

[Remove from Tracking](#)

[Feedback](#)

REDACTED FOR PUBLIC INSPECTION

Exhibit 14: Certified Letter to Miami, Florida Address, Returned to DOJ on July 20, 2020





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 24-465

Released: May 16, 2024

EFFECTIVE DATE FOR FM BROADCAST BOOSTER STATION RULES

MB Docket Nos. 20-401, 17-105

Effective Date: May 16, 2024

On April 2, 2024, the Commission released a Report and Order in this proceeding and revised its rules to permit limited, voluntary program origination on FM booster stations.¹ The *R&O* established that the revised rules would become effective 30 days after publication of the *R&O* in the Federal Register.²

By this *Public Notice*, the Media Bureau announces that the *R&O* was published in the Federal Register on April 16, 2024.³ Accordingly, the *R&O* and the amendments to the rules adopted and set forth in Appendix B therein are effective as of May 16, 2024.

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) (*R&O*). The *R&O* is also available on the Commission's website. <https://docs.fcc.gov/public/attachments/FCC-24-35A1.pdf>.

² *See id.* at 1.

³ 89 Fed. Reg. 26786 (Apr. 16, 2024).

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

In the Matter of	)	
	)	
Communications Technologies, Inc.	)	File No.: EB-IHD-23-00035751
	)	NAL/Acct. No.: 202432080017
	)	FRN: 001958200

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: May 17, 2024**Released: May 17, 2024**

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. Under the Communications Act of 1934, as amended (Act), and the rules and orders of the Federal Communications Commission (Commission or FCC), telecommunications carriers providing interstate telecommunications services, and certain other interstate telecommunications providers (collectively, Service Providers) are required to file Telecommunications Reporting Worksheets (Worksheets) with the Universal Service Administrative Company (USAC) in furtherance of the Commission's universal service and other federal payment requirements implemented under the Act. USAC and the administrators of the Telecommunications Relay Service (TRS) Fund, Local Number Portability (LNP), and the North American Numbering Plan (NANP) rely on information filed in the Worksheets to determine, as prescribed in the Commission's rules, each Service Provider's equitable contributions responsibilities for the Universal Service Fund (USF), TRS Fund, LNP, and NANP. Likewise, the Commission relies on the information filed in Worksheets to assess equitable federal regulatory fees owed by Service Providers.

2. In this Notice of Apparent Liability for Forfeiture (NAL), the Enforcement Bureau (Bureau) proposes a penalty of \$100,000 against Communications Technologies, Inc. (Communications Technologies or Company) for apparently failing to comply with Worksheet documentation requirements in apparent violation of section 54.711(a) of the Commission's rules.¹

II. BACKGROUND**A. Legal Framework**

3. The Act codifies Congress's long-standing commitment to promoting universal service to ensure that consumers in all regions of the nation have access to affordable, quality telecommunications services. In particular, section 254(d) of the Act requires, among other things, that "[e]very telecommunications carrier [providing] interstate telecommunications services . . . contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service."² In implementing this Congressional mandate, the Commission directed all telecommunications carriers providing interstate telecommunications services to contribute to the USF based on their interstate and international end-user

¹ 47 CFR § 54.711.

² 47 U.S.C. § 254(d).

telecommunications revenues.³ The Commission also requires certain providers of interstate telecommunications to contribute to the USF.⁴

4. The Commission has established specific procedures to administer the USF. Each Service Provider, with certain exceptions, is required to contribute to the USF, file annually an FCC Form 499-A (Annual Worksheet),⁵ and file quarterly an FCC Form 499-Q (Quarterly Worksheet).⁶ USAC, as the Commission's administrator of the USF, uses the revenue projections submitted in the Quarterly Worksheets to determine and invoice each Service Provider's monthly universal service contribution obligation.⁷ Monthly USF contributions that were invoiced based on projected revenues reported in a Service Provider's Quarterly Worksheets are then subject to an annual true-up based on actual revenues reported in the Service Provider's Annual Worksheet.⁸ The Annual Worksheet for 2022 revenues was due by April 3, 2023.⁹ The Commission's rules require that Service Providers report accurate information in the Annual Worksheets.¹⁰ The Commission's rules also explicitly warn Service Providers that the failure to file timely and accurate Worksheets potentially subjects them to enforcement action.¹¹

5. To ensure that the information submitted to USAC by Service Providers is complete, timely, and accurate, the Commission's rules grant USAC the authority to verify any information contained in Annual and Quarterly Worksheets.¹² Filers are required to maintain records and documentation to justify the information reported in the Worksheets, including the methodology used to determine revenue projections, for a period of three years, and to provide it to the Commission or USAC

³ 47 CFR § 54.706(b).

⁴ *Id.* § 54.706(a) ("Entities that provide interstate telecommunications to the public, or to such classes of users as to be effectively available to the public, for a fee will be considered telecommunications carriers providing interstate telecommunications services and must contribute to the universal service support mechanisms.").

⁵ *See id.* § 54.711; *Telseven, LLC*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 6636, 6637, para. 2 (2012) (*Telseven NAL*), Forfeiture Order, 31 FCC Rcd 1629 (2016) (*Telseven Forfeiture Order*). Within 30 days of beginning to provide service, new Service Providers must register with the Commission by obtaining an FCC registration number (FRN) from the Commission Registration System (CORES) and obtaining a FCC Form 499 Filer ID Number (FCC Filer ID Number) from USAC's E-File system. *Wireline Competition Bureau Releases the 2023 Telecommunications Reporting Worksheets & Accompanying Instructions*, Public Notice, 37 FCC Rcd 12124, 12148 (WCB 2022) (*2023 Annual Worksheet Instructions*).

⁶ *See* 47 CFR § 54.711; *Telseven NAL*, 27 FCC Rcd at 6637, para. 2. *2023 Annual Worksheet Instructions*, 37 FCC Rcd at 12198-99.

⁷ *E.g.*, *2023 Annual Worksheet Instructions*, 37 FCC Rcd at 12183-84.

⁸ *See Federal-State Joint Board on Universal Service*, Report and Order and Order on Reconsideration, 16 FCC Rcd 5748, 5752-53, para. 12 (2001); 47 CFR § 54.711.

⁹ *See 2023 Annual Worksheet Instructions*, 37 FCC Rcd at 12148. Quarterly Worksheet filings are due on February 1, May 1, August 1, and November 1 of each year. *See, e.g., id.* at 12198-99. Since April 1, 2023, fell on a Saturday, the Annual Worksheet would then be due on Monday, April 3, 2023. *See also 2023 Annual Worksheet Instructions*, 37 FCC Rcd at 12148, n.32 ("In 2023, April 1 is a Saturday. Accordingly, in 2023, FCC Forms 499-A, as well as any accompanying traffic studies or filer certifications, will be due on Monday, April 3, 2023.").

¹⁰ 47 CFR §§ 54.711(a), 54.713. An officer of a company completing an Annual Worksheet must certify, in part, as follows: "I have examined the foregoing report and, to the best of my knowledge, information and belief, all statements of fact contained in this Worksheet are true and that said Worksheet is an accurate statement of the affairs of the above-named company for the previous calendar year." 2023 FCC Form 499-A, Line 606. While the Commission requires revisions to Worksheets when errors are discovered, *2023 Annual Worksheet Instructions*, 37 FCC Rcd at 12148-49, the requirement does not affect the separate requirement to submit accurate information in the first instance to the best of the filer's knowledge, information and belief. *See* 2023 FCC Form 499-A, Line 606.

¹¹ 47 CFR § 54.713.

¹² *Id.* § 54.711(a); *see also id.* § 54.707 (providing that USAC has the authority to audit contributors reporting data to USAC).

upon request.¹³ The recordkeeping requirement is necessary to verify that contributors report correct information in the Worksheets.¹⁴ The Commission and USAC can review records and documentation underlying revenue reported in a Service Provider's Worksheets to determine whether the contributor is properly reporting revenues, and thus contributing its fair share to the costs of the universal service program and other cost recovery requirements implemented under the Act.

6. Section 225 of the Act, which codifies Title IV of the Americans with Disabilities Act of 1990, directs the Commission to "ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States."¹⁵ To that end, the Commission established the TRS Fund to reimburse TRS providers for the costs of providing interstate TRS.¹⁶ The Commission implemented TRS capability rules to enable persons with hearing and speech disabilities to communicate by telephone with voice-telephone users.¹⁷ Such services provide telephone access to a significant number of Americans who without it might not be able to make calls to or receive calls from voice-telephone users.¹⁸ Pursuant to section 64.604(c)(5)(iii)(A) of the Commission's rules, certain Service Providers¹⁹ must contribute to the TRS Fund based on their interstate end-user revenues.²⁰ Under the Commission's rules, the TRS Fund administrator, Rolka Loube Associates, LLC (Rolka Loube), uses Annual Worksheet filings to determine each Service Provider's annual or monthly TRS Fund contribution amounts.²¹

7. Telecommunications number portability concerns the ability of consumers of telecommunications services to "retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another."²² The presence of this feature in the telecommunications marketplace fosters consumer choice and enhances competition. The inability of customers to retain their telephone numbers

¹³ *Id.* § 54.711(a). Additionally, under section 54.706(e) of the Commission's rules, any entity required to contribute to the USF shall retain, for at least five years from the date of the contribution, all records that may be required to demonstrate to auditors that the contributions made were in compliance with the universal service Commission's rules. These records include without limitation the following: financial statements and supporting documentation; accounting records; historical customer records; general ledgers; and any other relevant documentation. *Id.* § 54.706(e).

¹⁴ *Federal-State Board on Universal Service*, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 25791, para. 34 (2002).

¹⁵ 47 U.S.C. § 225(b)(1).

¹⁶ See *Telecommunications Relay Servs. & the Ams. with Disabilities Act of 1990*, Third Report and Order, 8 FCC Rcd 5300, 5301, para. 7 (1993).

¹⁷ See *Telecommunications Relay Servs. and Speech-to-Speech Servs. for Individuals with Hearing and Speech Disabilities*, Report and Order, 15 FCC Rcd 5140, 5143, para. 5 (2000).

¹⁸ *Id.*

¹⁹ Every carrier providing interstate or intrastate telecommunications services (including interconnected VoIP Service Providers pursuant to 47 CFR § 64.601(b)) and every provider of non-interconnected VoIP service must contribute to the TRS Fund. See 47 CFR § 64.604(c)(5)(iii)(A).

²⁰ *Id.* Under the Commission's rules, Service Providers must contribute at least \$25 per year, and Service Providers whose annual contributions are less than \$1,200 must pay the entire amount at the beginning of the contribution period. Otherwise, if their account is in good standing, Service Providers are permitted to divide their contributions into 12 equal monthly payments. See *id.* § 64.604(c)(5)(iii)(B).

²¹ *Id.* Rolka Loube replaced the National Exchange Carrier Association as the TRS Fund administrator effective July 1, 2011. See *Interstate Telecommuns. Relay Serv. (TRS) Fund Adm'r Transition*, Public Notice, 26 FCC Rcd 8436 (2011).

²² 47 CFR § 52.21(m). See also 47 U.S.C. § 153(37).

when changing local Service Providers would otherwise hamper the development of local competition.²³ Section 251(e)(1) of the Act directs the Commission to oversee the administration of telecommunications numbering to ensure the availability of telephone numbers on an equitable basis.²⁴ Section 251(e)(2) of the Act requires that “[t]he cost of establishing telecommunications numbering administration arrangements and numbering portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.”²⁵ In carrying out these statutory directives, the Commission adopted sections 52.17 and 52.32 of the Commission’s rules,²⁶ which require Service Providers²⁷ to contribute to the costs of numbering administration and LNP on the basis of their end-user telecommunications revenues.²⁸ The NANP administrator’s billing and collection agent, Welch LLP (Welch),²⁹ and the LNP administrator, iconectiv, LLC (iconectiv),³⁰ use Annual Worksheet filings to determine Service Providers’ required payments for covering, respectively, the costs of NANP and LNP administration.³¹

²³ The Commission has observed that in requiring number portability, “Congress recognized that the inability of customers to retain their telephone numbers when changing local Service Providers hampers the development of local competition.” *Telephone Number Portability*, Third Report and Order, 13 FCC Rcd 11701, 11702, para. 3 (1998) (*Telephone Number Portability Report and Order*), *aff’d*, Memorandum Opinion and Order on Reconsideration and Order on Application for Review, 17 FCC Rcd 2578 (2002). *See also* H.R. Rep. No. 104-204(I), 104th Cong., 1st Sess. at 113 (1995) (Joint Explanatory Statement) (stating that “[t]he ability to change [S]ervice [P]roviders is only meaningful if a customer can retain his or her local telephone number”).

²⁴ 47 U.S.C. § 251(e)(1).

²⁵ *Id.* § 251(e)(2). “Number Portability” means “the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.” *Id.* § 153(37). The inability of customers to retain their telephone numbers when changing local Service Providers would hamper the development of local competition. *Telephone Number Portability Report and Order*, 13 FCC Rcd at 11702, para. 3.

²⁶ 47 CFR §§ 52.17, 52.32.

²⁷ All telecommunications carriers and interconnected VoIP providers in the United States shall contribute to meet the costs of establishing numbering administration and LNP. *See id.* §§ 52.17, 52.32; *see also id.* § 52.5(i) (stating that, for part 52 of the Commission’s rules, “telecommunications carrier” includes interconnected VoIP providers).

²⁸ *See id.* § 52.17(a) (“Contributions to support numbering administration shall be the product of the contributors’ end-user telecommunications revenues for the prior calendar year and a contribution factor determined annually [with] such contributions to be no less than twenty-five dollars (\$25).”); *id.* § 52.32(a) (Service Providers that have no intrastate, interstate, or international end-user telecommunications revenues derived from providing telecommunications service in areas a regional database serves must pay \$100 contributions for LNP, and if Service Providers derive intrastate, interstate, or international end-user telecommunications revenues in areas a regional database serves, the Service Providers must pay a charge that recovers the remaining shared costs of long-term number portability attributable to each Service Provider on a proportional basis.).

²⁹ In 2004, the Commission selected Welch & Company, LLP as the billing and collection agent for the NANP. New Release, Fed. Comm’n Comm’n, Federal Communications Commission Selects Welch & Co., LLP as the Next North American Numbering Plan Billing & Collection Agent (WCB Apr. 12, 2004), <https://www.fcc.gov/document/federal-communications-commission-selects-welch-company-llp-next>. In 2007, the billing and collection agent changed its name to Welch LLP. *See* Welch LLP, <https://welchllp.com> (last visited March 20, 2024); Ottawa Business Journal, *Welch LLP celebrates 100th anniversary in Ottawa* (Feb. 8, 2018), <https://obj.ca/welch-llp-celebrates-100th-anniversary-in-ottawa>.

³⁰ *See Third Local Number Portability Administrator Selection Process*, DA 24-104, 2024 WL 488170, at *4 (WCB Feb. 6, 2024) (extending the North American Numbering Council (NANC) contract with iconectiv to serve as the LNP administrator until May 2031).

³¹ *See* 47 CFR §§ 52.17(b), 52.32(b).

8. The Act directs the Commission to “assess and collect regulatory fees to recover the costs of carrying out” the functions of the Commission,³² including “enforcement activities, policy and rulemaking activities, user information services, and international activities.”³³ Consistent with this directive, the Commission has implemented rules for annual regulatory fees for entities regulated by the Commission.³⁴ Service Providers³⁵ must pay federal regulatory fees annually based on interstate and international end-user revenues as reported in Annual Worksheets.³⁶

9. Because USAC, Rolke Loube, iconectiv, Welch, and the Commission rely on Worksheets to determine respective payment requirements for administration of the USF, TRS Fund, LNP, NANP, and federal regulatory fees, the accuracy and timeliness of Worksheet filings are vital. The Commission, through USAC, must be able to verify that each Service Provider is compliant with the Commission’s rules, including being able to review documents that support the accuracy of information reported in Worksheets.³⁷ When a Service Provider underreports its revenues in its Worksheets, and subsequently fails to comply with USAC’s attempts to verify the reported revenues through supporting documentation, the Service Provider could prevent administrators from fully invoicing the Service Provider for its USF, TRS Fund, LNP, NANP, and federal regulatory fee payment obligations.³⁸ A contributor’s failure to comply with the Worksheet filing and verification functions can impede the very purpose for which Congress enacted section 254(d)—to ensure that every required contributor to the USF “contribute[s], on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.”³⁹ The effects on the administration of TRS Fund, LNP, NANP and on the Commission’s assessment of federal regulatory fees are similar. Indeed, a Service Provider that impedes the Commission and USAC from verifying the revenue information submitted in Worksheets can evade its federal obligations to contribute fully toward the vital programs linked to the reporting rules.⁴⁰ As a consequence of this evasion, other Service Providers carry an unfair burden of funding the USF and the other federal regulatory requirements arising under the Act.⁴¹ Delinquent Service Providers obtain an unfair competitive advantage over Service Providers that comply with the reporting provisions, and fully pay USF, TRS Fund, LNP, NANP, and federal regulatory fee assessments, required under the Commission’s rules.⁴²

³² 47 U.S.C. § 159(a); *see also id.* § 156(a).

³³ 2023 Annual Worksheet Instructions, *supra* note 5, at 12140.

³⁴ *See* 47 CFR §§ 1.1152-1.1156, 1.1157(b).

³⁵ *See* Fed. Comm’n Comm’n, *Regulatory Fees*, <https://www.fcc.gov/licensing-databases/fees/regulatory-fees> (identifying Commission licensees and other regulated entities that must pay federal regulatory fees) (last visited May 14, 2024).

³⁶ *See* 47 CFR § 1.1154.

³⁷ *See id.* § 54.711(a); *see also id.* § 54.706(e).

³⁸ *See id.* § 54.711(a); *Telseven NAL*, *supra* note 5, at 6643-44, 6646-48, paras. 15, 23-25, *Telseven Forfeiture Order*, *supra* note 5, at 1636, para. 20; *Telrite Corp.*, Notice of Apparent Liability for Forfeiture and Order, 23 FCC Rcd 7231, 7241-42, para. 24 (2008), *consent decree adopted*, Order, 27 FCC Rcd 4110 (2012).

³⁹ 47 U.S.C. § 254(d).

⁴⁰ *See, e.g., Telseven NAL*, *supra* note 5, at 6638-39, para. 6; *Globalcom, Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 3479, 3484, para. 12 (2010) (*Globalcom NAL*), *consent decree adopted*, Order, 29 FCC Rcd 2593 (2014); *Local Phone Services, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 9974, 9977-78, para. 9 (2006) (*LPSI NAL*), *forfeiture issued*, Order of Forfeiture, 23 FCC Rcd 8952 (2008).

⁴¹ *See Telseven NAL*, *supra* note 5, at 6638-39, 6647, paras. 6, 23; *Globalcom NAL*, 25 FCC Rcd at 3484, para. 12; *LPSI NAL*, 21 FCC Rcd at 9977-78, para. 9.

⁴² *See Telseven NAL*, *supra* note 5, at 6646-47, para. 23; *Globalcom NAL*, 25 FCC Rcd at 3485, para. 15; *LPSI NAL*, 21 FCC Rcd at 9978-79, para. 12.

B. Factual Background

10. Communications Technologies is a “privately held stand-alone business corporation” that was incorporated in the state of Missouri on January 15, 1999.⁴³ The Company is headquartered in Chesterfield, Missouri,⁴⁴ and began providing interstate telecommunications services “on or about the year 2020.”⁴⁵ The Company filed its 2023 Annual Worksheet filing on March 2, 2023. USAC requested supporting documentation from the Company on March 16, 2023, and again on April 28, 2023, to verify the accuracy of the data reported by the Company for the total gross billed revenues reported on line 418.⁴⁶ USAC’s March 16, 2023 letter directed the Company to respond by March 23, 2023, and USAC’s April 28, 2023 letter directed the Company to respond by May 28, 2023. Communications Technologies did not respond to either of these requests.

11. Subsequent letters were sent by USAC to the Company on June 2, 2023, and July 7, 2023, notifying the Company that it had not provided sufficient information to support the information reported on the 2023 Annual Worksheet and that the Company was no longer in compliance with section 54.711 of the Commission’s rules and the Instruction to the Telecommunications Reporting Worksheet.⁴⁷ The Company did not provide USAC the documentation it requested regarding the 2023 Annual Worksheet until December 7, 2023, over eight months from when it was first due on March 23, 2023.⁴⁸ In August 2023, USAC referred this matter to the Bureau for investigation of the Company’s failures to respond to USAC’s directives to provide documentation supporting the Company’s 2023 Annual Worksheets.⁴⁹ On November 15, 2023, the Bureau issued a Letter of Inquiry (LOI) concerning the Company’s compliance with requirements arising under the Act and the Commission’s rules.⁵⁰ On January 15, 2024, Communication Technologies submitted a response to the LOI.⁵¹

III. DISCUSSION

12. Based on the evidence developed through the Bureau’s investigation, Communications Technologies apparently willfully violated section 54.711(a) of the Commission’s rules by failing to comply with USAC’s directives to provide documentation supporting the accuracy of Communication’s

⁴³ See Response to Letter of Inquiry, from Leon Nowalsky, Nowalsky & Gothard, Counsel to Communications Technologies, Inc., to Patrick M. McGrath, Chief, Investigations and Hearings Division, FCC Enforcement Bureau, at 1, Response to Question 1 (Jan. 15, 2024) (on file in EB-IHD-23-00035751) (LOI Response).

⁴⁴ *Id.* at 1, Response to Question 3.

⁴⁵ *Id.* at 7, Response to Question 20.

⁴⁶ Letter from Elfren “Freddie” Castro, Sr. Manager of Contributor Operations, Universal Service Admin. Co., to Pam Slipakoff, Investigations & Hearings Division, FCC Enforcement Bureau, at 1 (May 13, 2024) (on file in EB-IHD-23-00035751) (USAC Letter).

⁴⁷ *Id.* at 1.

⁴⁸ *Id.* at 2.

⁴⁹ *Id.* at 1-2.

⁵⁰ See Letter from Patrick M. McGrath, Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to Robert Hymes, President, Communications Technologies, Inc. (Nov. 15, 2023) (regarding compliance with 47 U.S.C. §§ 214, 222, 251(e)(2), 254(d), and 310; 47 CFR §§ 1.1154, 1.1157, 1.7001-02, 1.8002, 52.17, 52.32, 54.706, 54.711, 54.712, 54.713, 63.11-63.18, 63.21-63.24, 64.604, 64.2009(e), and 64.2115) (on file in EB-IHD-23-00035751). Communications Technologies and the Commission agreed to toll the one-year statute of limitations for 60 days. See Tolling Agreement executed by Patrick M. McGrath Chief, Investigations and Hearings Division, FCC Enforcement Bureau, and Bob Hymes, President, Communications Technologies, Inc. (Dec. 15, 2023) (on file in EB-IHD-23-00035751) (Tolling Agreement). The statute of limitations for the earliest of these apparent violations, which occurred on March 23, 2023, therefore expires on May 22, 2024.

⁵¹ See generally LOI Response, *supra* note 43.

Technologies 2023 Annual Worksheet.⁵² Specifically, Communications Technologies failed to submit supporting documentation to USAC by the March 23, 2023 and May 28, 2023 deadlines to support revenues reported in the Company's 2023 Annual Worksheet filing.⁵³

13. USAC's ability to verify the accuracy of Worksheets on behalf of the Commission is fundamental to implementing the Congressional directive to ensure the equitable and non-discriminatory distribution of universal service costs among all Service Providers. Service Providers have an obligation to respond in a timely, complete, and accurate manner in every instance, regardless of the number of times USAC must follow up to obtain or clarify a response. Companies that file Worksheets are required to maintain documentation to justify the information reported in the Worksheets and provide it to the Commission or USAC upon request.⁵⁴ This obligation is clearly stated in the Commission's rules and orders, is reiterated in the instructions to the Worksheets, and has been the subject of prior enforcement actions.⁵⁵ More importantly, the goal of section 54.711(a) of the Commission's rules—to allow USAC to verify each Worksheet to ensure compliance with payment requirements under FCC rules—is frustrated when the Commission and USAC have to make multiple requests, or wait multiple months, to obtain the documentation needed to verify the accuracy of a Worksheet.⁵⁶ Each individual failure to respond fully and accurately by a deadline is considered to be a separate violation of section 54.711(a) of the Commission's rules.⁵⁷

14. In this case, on two occasions, USAC directed the Company to provide documentation that supported the total gross billed revenues reported on line 418 of the Company's 2023 Annual Worksheet, including the name of the product/service, revenue for product/service for the 2022 calendar year, a brief description of the product/service, and a brief justification for the product/service being report as Non-US Telecom Revenues on line 418.⁵⁸

15. On March 16, 2023, USAC requested supporting documentation from the Company to demonstrate whether the Company's USF contributions to support data reported in any

⁵² 47 CFR § 54.711(a).

⁵³ USAC Letter, *supra* note 46, at 1.

⁵⁴ See 47 CFR § 54.711(a) ("Contributors shall maintain records and documentation to justify information reported in the Telecommunications Reporting Worksheet, including the methodology used to determine projections, for three years and shall provide such records and documentation to the Commission or the Administrator upon request."); *id.* § 54.706(e) ("Any entity required to contribute to the federal universal service support mechanisms shall retain, for at least five years from the date of the contribution, all records that may be required to demonstrate to auditors that the contributions made were in compliance with the Commission's universal service rules.").

⁵⁵ See, e.g., 47 CFR § 54.711(a); *Enhanced Communications Group, LLC*, Notice of Apparent Liability for Forfeiture, FCC 23-54, 2023 WL 4587311, at *13, para. 38 (July 14, 2023) (*Enhanced NAL*); *RevTel Communications, LLC*, Notice of Apparent Liability for Forfeiture, DA-23-423, 2023 WL 3685841, at *5, para. 18 (May 19, 2023) (*RevTel NAL*); *PayG, LLC*, Notice of Apparent Liability for Forfeiture, 37 FCC Rcd 11021, 11026-27 para. 38 (2022) (*PayG NAL*) (forfeiture paid); *Correct Solutions, LLC*, Notice of Apparent Liability for Forfeiture, 37 FCC Rcd 4468, 4479, para. 27 (EB 2022) (*Correct Solutions NAL*); *2023 Annual Worksheet Instructions*, *supra* note 5, at 12144, n.23, 12149; *US South Commc'ns, Inc.*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 12668, 12676, para. 22 (EB 2020) (*US South NAL*) (forfeiture paid); *Compu-Phone Voice & Data, Inc.*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 6573, 6583, para. 23 (EB 2020) (*Compu-Phone NAL*) (forfeiture paid); *Blue Casa Tel., LLC*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 6333, 6344, para. 25 (EB 2020) (*Blue Casa NAL*) (forfeiture paid).

⁵⁶ In this case, USAC began requesting supporting documentation for the 2023 Worksheet on March 16, 2023, and did not obtain any of the documentation needed to verify the 2023 Annual Worksheet filing until December 7, 2023. See USAC Letter, *supra* note 46.

⁵⁷ E.g., *Enhanced NAL* at *14, para. 39; *RevTel NAL* at *6, para. 19; *PayG NAL*, 37 FCC Rcd at 11030, para. 22; *Correct Solutions NAL*, 37 FCC Rcd 4474-75, para. 16; *US South NAL*, 35 FCC Rcd at 12674, para. 14.

⁵⁸ USAC Letter, *supra* note 46, at 1.

Telecommunications Reporting Worksheets.⁵⁹ The Company also states that the deadline for this request was “not specific.”⁶⁰ This is incorrect, as USAC requested a response within one week of the Company’s receipt of the email.⁶¹ Thus, the information was first due to USAC on March 23, 2023.⁶² As discussed herein, the Company did not respond and USAC again requested this information on April 28, 2023, with a due date of May 28, 2023.⁶³

16. Communications Technologies claimed it failed to respond fully and timely to USAC’s correspondence because the request “came shortly after CTI’s [FCC Form] 499-A was filed and while CTI’s accounting firm was preparing year-end taxes and closing CTI’s books and records.”⁶⁴ The Company also states that the accounting firm was unable to respond timely to the request and the information requests “required a more in-depth review of CTI’s revenue.”⁶⁵

17. Communications Technologies’ arguments are without merit. First, under section 54.711(a) of the Commission’s rules,⁶⁶ Communications Technologies must ensure that USAC obtains supporting documentation upon request.⁶⁷ The fact that the request came shortly after the Annual Worksheet was filed and at the same time the Company’s accounting firm was preparing year-end taxes is irrelevant. The Annual Worksheet is due on April 1,⁶⁸ and USAC has the authority to ask questions about the filing at any time once it is submitted. If the Company could not obtain a timely response from its accounting firm, then it needed to designate someone else to handle the matter.⁶⁹ It is well established that entities regulated by the Commission are responsible for the acts or omissions of their agents.⁷⁰ Thus, the accounting firm’s inability to respond to USAC’s directives is imputed to the Company.⁷¹

⁵⁹ *Id.*

⁶⁰ LOI Response, *supra* note 43, Response to Question 48b.

⁶¹ USAC Letter, *supra* note 46, at 1.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ LOI Response, *supra* note 43, at 18, Response to Question 49.

⁶⁵ *Id.* at 18-19, Response to Question 49. The Company notes that although the response to USAC’s questions “was not timely responded to, USAC did accept the responses which resolved the outstanding issue.” *Id.* at 19, Response to Question 49.

⁶⁶ 47 CFR § 54.711(a).

⁶⁷ *Id.*

⁶⁸ Since April 1, 2023, fell on a Saturday, the Annual Worksheet would then be due on Monday, April 3, 2023. *See 2023 Annual Worksheet Instructions*, *supra* note 5, at 12148, n.32 (“In 2023, April 1 is a Saturday. Accordingly, in 2023, FCC Forms 499-A, as well as any accompanying traffic studies or filer certifications, will be due on Monday, April 3, 2023.”).

⁶⁹ *See PayG NAL*, *supra* note 55, at 11031, para. 25.

⁷⁰ *See* 47 U.S.C. § 217; *see also Telecom Mgmt., Inc.*, Order of Forfeiture, 21 FCC Rcd 10470, 10474, para. 11 (2006) (finding telecommunications provider liable for failure of its designated agent to comply with USF payment obligations on its behalf); *Eure Family LP*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21864, para. 7 (2002) (“Further, the Commission has explained that under long established principles of common law, statutory duties are nondelegable and that employers are routinely held liable for breach of statutory duties by their independent contractors”). *See also MTD, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 34, 34, para. 5 (1991); *Wagenvoord Broadcasting Co.*, Memorandum Opinion and Order, 35 FCC 2d 361, 361-62, para. 3 (1972) (both cases stating that responsibility is not lessened when independent contractors are used).

⁷¹ *See Correct Solutions, LLC*, *supra* note 55, at 4475, para. 18 & n.57 (forfeiture paid) (noting that section 54.706(e) requires contributors’ contractors and consultants to retain documentation supporting contributions).

18. Finally, Communications Technologies cannot ignore documentation requests from USAC. At no time after receiving USAC's request for information did the Company request an extension of time to respond to USAC's requests.⁷² Rather, the Company remained silent and appears to have ignored USAC's documentation directives until after receiving the Bureau's LOI. Moreover, even though USAC accepted the Company's late filed response this does not change the fact that the response was late, and the Company can be held responsible for its failure to respond in a timely manner to USAC's directives.

19. The Company apparently violated section 54.711(a) of the Commission's rules by willfully failing to respond timely to two USAC directives to provide documentation supporting the accuracy of the Company's 2023 Annual Worksheet. Regardless of whether USAC ultimately accepted the filings, the fact remains that they were late. Specifically, Communications Technologies failed to submit documentation requested by USAC for the 2023 Annual Worksheet by March 23, 2023, and again by May 28, 2023.⁷³

IV. PROPOSED FORFEITURE

20. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against any entity that "willfully or repeatedly fail[s] to comply with any of the provisions of [the Act] or of any rule, regulation, or order issued by the Commission[.]"⁷⁴ For the violations at issue here, section 503(b)(2)(B) of the Act authorizes us to assess a forfeiture against Communications Technologies of up to \$244,958 for each day of a continuing violation, up to a statutory maximum of \$2,449,575 for a single act or failure to act.⁷⁵ In exercising our forfeiture authority, the Commission must consider the "nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."⁷⁶ In addition, the Commission has established forfeiture guidelines that establish base penalties for certain violations and identify criteria considered when determining the appropriate penalty in any given case.⁷⁷

21. The Commission may adopt upward or downward adjustments to forfeitures when appropriate.⁷⁸ Under section 1.80 of the Commission's rules, a forfeiture may be adjusted upward for egregious misconduct, ability to pay and relative disincentive, an intentional violation, substantial harm, prior violations of Commission requirements, substantial economic gain, or repeated or continuous

⁷² USAC Letter, *supra* note 46, at 2.

⁷³ USAC Letter, *supra* note 46, at 1.

⁷⁴ 47 U.S.C. § 503(b).

⁷⁵ See *id.* § 503(b)(2)(B); 47 CFR § 1.80(b)(2). See *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 23-1198, 2023 WL 8889597 (EB Dec. 22, 2023); see also *Annual Adjustment of Civil Monetary Penalties to Reflect Inflation*, 89 Fed. Reg. 2148 (Jan. 12, 2024) (setting January 12, 2024 as the effective date for the increases).

⁷⁶ 47 U.S.C. § 503(b)(2)(E).

⁷⁷ 47 CFR § 1.80(b)(11), Note 2 to paragraph (b)(11).

⁷⁸ See *Commission's Forfeiture Policy Statement & Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17110, para. 53 (1997) (*1997 Forfeiture Guidelines Order*), *recon. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

violations.⁷⁹ Further, a forfeiture may be adjusted downward for a minor violation, good faith or voluntary disclosure, a history of overall compliance, or an inability to pay.⁸⁰

22. As the Commission observed in another USF enforcement action,⁸¹ “the size and scope of the universal service and [other federal regulatory] programs impose a monumental burden on the Commission [and] USAC . . . to verify that each and every carrier has complied with the revenue reporting requirements. By necessity, the Commission and the other entities must rely on carriers’ compliance with our rules.”⁸² To assist the Commission and USAC in this endeavor, the Commission’s document retention and production rules were adopted to ensure the accuracy of each Worksheet and thus ensure compliance with the Commission’s contributions requirements.⁸³ The Commission has previously imposed a \$50,000 base forfeiture for a Service Provider’s failure under section 54.711(a) of the Commission’s rules to maintain documentation that supports revenues reported in Worksheets, and provide it to USAC upon request.⁸⁴ Thus, a \$50,000 base forfeiture is proposed against the Company for each of its two failures to submit timely and complete responses to USAC’s directives by the response deadlines, for a total forfeiture of \$100,000. In addition, based on the totality of the circumstances and our prosecutorial discretion, we do not propose any changes beyond the base forfeiture.

23. In this case, forfeitures are proposed for the Company’s apparent failures to submit timely and complete responses to USAC’s directives to provide supporting documentation by the March 23, 2023 and May 28, 2023 response deadlines.⁸⁵ Therefore, after applying the *Forfeiture Policy Statement*, section 1.80 of the Commission’s rules, and the statutory factors, a total forfeiture of \$100,000 is proposed for which Communications Technologies is apparently liable.⁸⁶

V. CONCLUSION

24. Communications Technologies apparently willfully violated section 54.711(a) of the Commission’s rules by failing to respond to two USAC documentation directives with two separate due dates. As such, Communications Technologies is apparently liable for a forfeiture of \$100,000.

VI. ORDERING CLAUSES

25. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act, 47 U.S.C. § 503(b), and section 1.80 of the Commission’s rules, 47 CFR § 1.80, Communications Technologies, is

⁷⁹ 47 CFR § 1.80(b)(11), Tbl. 3 to para. (b)(11). *See also 1997 Forfeiture Guidelines Order*, 12 FCC Rcd at 17098-99, para. 22 (noting that “[a]lthough we have adopted the base forfeiture amounts as guidelines to provide a measure of predictability to the forfeiture process, we retain our discretion to depart from the guidelines and issue forfeitures on a case-by-case basis, under our general forfeiture authority contained in Section 503 of the Act”).

⁸⁰ 47 CFR § 1.80(b)(11), Tbl. 3 to para. (b)(11).

⁸¹ *Globcom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893 (2003) (*Globcom NAL*), forfeiture issued, Order of Forfeiture, 21 FCC Rcd 4710 (2006).

⁸² *Globcom NAL*, 18 FCC Rcd at 19904, para. 30.

⁸³ *See Federal-State Board on Universal Serv.*, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 24971, para. 34 & n.99 (2002) (noting that “persons willfully making false statements in the Worksheets can be punished by fine or imprisonment under title 18 of the United States Code, and citing 18 U.S.C. § 1001).

⁸⁴ *See Enhanced NAL*, *supra* note 55, at *7, para 50; *RevTel NAL*, *supra* note 55, at *7, para. 25; *PayG NAL*, *supra* note 55, at 11026, para. 37; *see also US South NAL*, *supra* note 55, at 12676, para. 22; *Compu-Phone NAL*, *supra* note 55, at 6583, para. 23; *Blue Casa NAL*, *supra* note 55, at 6344, para. 25.

⁸⁵ The Bureau entered into a tolling agreement with Communications Technologies that extended the statute of limitations for these violations to May 22, 2024, and July 29, 2024. *See Tolling Agreement*, *supra* note 50.

⁸⁶ 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.

hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of one hundred thousand dollars (\$100,000) for willful violations of section 54.711(a) of the Commission's rules, 47 CFR § 54.711(a).

26. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules, 47 CFR § 1.80, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Communications Technologies, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 29 below.

27. In order for Communications Technologies, Inc. to pay the proposed forfeiture, Communications Technologies, Inc. shall notify Patrick.McGrath@fcc.gov, Kalun.Lee@fcc.gov, Georgina.Feigen@fcc.gov, Pam.Slipakoff@fcc.gov, and EnforcementBureauIHD@fcc.gov of its intent to pay, whereupon an invoice will be posted in the Commission's Registration System (CORES) at <https://apps.fcc.gov/core/userLogin.do>. Upon payment, Communications Technologies, Inc. shall send electronic notification of payment to Patrick McGrath, Kalun Lee, Georgina Feigen, and Pam Slipakoff, Enforcement Bureau, Federal Communications Commission, at Patrick.McGrath@fcc.gov, Kalun.Lee@fcc.gov, Georgina.Feigen@fcc.gov, and Pam.Slipakoff@fcc.gov on the date said payment is made. Payment of the forfeiture must be made by credit card using CORES at <https://apps.fcc.gov/core/userLogin.do>, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:⁸⁷

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned above and the letters "FORF". In addition, a completed Form 159⁸⁸ or printed CORES form⁸⁹ must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 or CORES may result in payment not being recognized as having been received. When completing FCC Form 159 or CORES, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).⁹⁰ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using CORES at <https://apps.fcc.gov/core/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (e.g., NAL 1912345678 would be associated with FCC Bill Number 12345678). After selecting the bill for payment, choose the "Pay by Credit Card" option. Please note that there is a \$24,999.99 limit on credit card transactions.

⁸⁷ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6).

⁸⁸ FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

⁸⁹ Information completed using the Commission's Registration System (CORES) does not require the submission of an FCC Form 159. CORES is accessible at <https://apps.fcc.gov/core/userLogin.do>.

⁹⁰ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

- 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.

28. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554.⁹¹ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

29. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Commission’s rules.⁹² The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554, ATTN: Enforcement Bureau – Investigations & Hearings Division, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to Patrick McGrath, Kalun Lee, Georgina Feigen, and Pam Slipakoff, at Patrick.McGrath@fcc.gov, Kalun.Lee@fcc.gov, Georgina.Feigen@fcc.gov, Pam.Slipakoff@fcc.gov, and EnforcementBureauIHD@fcc.gov.

30. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits the following documentation: (1) federal tax returns for the past three years; (2) financial statements for the past three years prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status.⁹³ 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 the Commission retains the discretion to decline reducing or canceling the forfeiture if other prongs of 47 U.S.C. § 503(b)(2)(E) support that result.⁹⁴

⁹¹ See 47 CFR § 1.1914.

⁹² *Id.* §§ 1.16, 1.80(g)(3).

⁹³ 47 U.S.C. § 503(b)(2)(E).

⁹⁴ See, e.g., *Ocean Adrian Hinson, Surry County, North Carolina*, Forfeiture Order, 34 FCC Rcd 7619, 7621, para. 9 & n.21 (2019); *Vearl Pennington and Michael Williamson*, Forfeiture Order, 34 FCC Rcd 770, paras. 18-21 (2019); *Fabrice Polynice, Harold Sido and Veronise Sido, North Miami, Florida*, Forfeiture Order, 33 FCC Rcd 6852, 6860–62, paras. 21-25 (2018); *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018); *Purple Communications, Inc.*, Forfeiture Order, 30 FCC Rcd 14892, 14903-04, paras. 32-33 (2015); *TV Max, Inc., et al.*, Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014).

31. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail, return receipt requested, to Robert Hymes, President, Communications Technologies, Inc., 18110 Chesterfield Airport Rd, Suite E., Chesterfield, MO 63002 and to Leon Nowalsky, Esq., Nowalsky & Gothard, 1420 Veterans Memorial Boulevard, Metairie, LA 70005.

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Chief
Enforcement Bureau



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-467

Released: May 20, 2024

ROBOCALL ENFORCEMENT NOTICE TO ALL U.S.-BASED VOICE SERVICE PROVIDERS

FCC Enforcement Bureau Notifies All U.S.-Based Voice Service Providers of Rules Permitting Them to Block Calls Transmitting from Alliant Financial.

File No. EB-TCD-23-00035896

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 of substantial amounts of apparently unlawful robocalls related to debt consolidation loans originating from Alliant Financial (Alliant). **Pursuant to section 64.1200(k)(4) of the Commission's rules, we hereby notify all U.S.-based voice service providers that if Alliant fails to effectively mitigate illegal traffic, including the identified traffic described in the cease-and-desist letter (CDL) listed below and substantially similar traffic, within 48 hours of the date of this *Public Notice*, U.S.-based voice service providers may block voice calls or cease to accept traffic¹ from Alliant, without liability under the Communications Act of 1934, as amended, or the Commission's rules.²**

Contemporaneous with this *Public Notice*, the Bureau is issuing a CDL to the following voice service provider:³

- **Alliant Financial**

Alliant—an originating voice service provider that does not appear to offer financial services—apparently originated a substantial volume of unlawful robocalls related to purported debt consolidation loans to wireless telephone numbers in apparent violation of the Telephone Consumer Protection Act (TCPA) and the Commission's implementing rules.⁴ Pursuant to the CDL, Alliant must: (1) promptly investigate the traffic identified in the CDL; (2) block or cease accepting the identified traffic and substantially similar traffic on an ongoing basis (unless it determines that the identified traffic is legal and provides a reasonable explanation to support that conclusion); and (3) report the results of the investigation to the

¹ A provider may not block a voice call if the call is an emergency call placed to 911. See 47 CFR § 64.1200(k)(5).

² *Id.* § 64.1200(k)(4) (permitting downstream providers to block calls from a notified provider that fails to either (a) effectively 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).

³ Cease-and-Desist Letter from Loyaan A. Egal, Chief, Enforcement Bureau, to Mohammed Hossain, Member/Management, Alliant Financial (May 20, 2024) (Alliant CDL). This CDL is available on the Commission's website at <https://www.fcc.gov/robocall-facilitators-must-cease-and-desist>.

⁴ See Traceback Consortium Subpoena Response (Dec. 11, 2023) (on file at EB-TCD-23-00035896) (December ITG Subpoena Response); Traceback Consortium Subpoena Response (Mar. 7, 2024) (on file at EB-TCD-23-00035896) (March ITG Subpoena Response); see also 47 U.S.C. § 227(b)(1)(A)(iii); 47 CFR § 64.1200(a)(1)(iii), (2). The CDL explains in detail the basis for our conclusion that Alliant originated the relevant calls in apparent violation of the TCPA and the Commission's rules.

Bureau within 14 days of the date of the CDL.⁵ If Alliant fails to comply with those requirements, the Bureau may ultimately issue a Final Determination Order, which would require downstream voice service providers to block and cease accepting all traffic from Alliant.⁶

The CDL also serves as notice to Alliant that downstream U.S.-based voice service providers may begin blocking all calls or cease accepting traffic from Alliant after notifying the Commission of their decision, and providing a brief summary of their basis for making such determination, if Alliant either (a) fails to effectively mitigate illegal traffic within 48 hours of the date of the CDL (which is the same as the date of this Public Notice) or (b) fails to implement effective measures to prevent new and renewing customers from using its network to originate illegal calls within 14 days of the date of the CDL.⁷ **U.S.-based voice service providers may block ALL call traffic transmitting from Alliant's network if it fails to act within either deadline.**

Purpose. Protecting individuals and entities from the dangers of unwanted and illegal robocalls is the Commission's top consumer protection priority.⁸ As part of its multi-pronged approach to combatting illegal robocalls, the Commission has taken steps to encourage voice service providers to block suspected illegal robocalls.⁹ The Commission permits voice service providers to block traffic from other voice service providers that the Bureau has warned are originating or transmitting suspected illegal robocalls, if the warned voice service provider fails to take appropriate and timely action to mitigate such traffic.¹⁰ The Bureau has issued numerous "cease-and-desist" letters, warning voice service providers that they were originating or transmitting suspected illegal robocalls and could be subject to blocking.¹¹ The Bureau may also ultimately order voice service providers that are immediately downstream to cease accepting traffic from an upstream voice service provider that does not comply with the Commission's rules.¹²

Nature of Apparently Unlawful Robocall Traffic. USTelecom's Industry Traceback Group (ITG)¹³ conducted tracebacks on 13 calls, identified in Attachments A and B to the CDL, placed to wireless

⁵ See Alliant CDL at 6-7; see also 47 CFR § 64.1200(n)(2)(i)(A).

⁶ 47 CFR § 64.1200(n)(2)-(3).

⁷ *Id.* § 64.1200(k)(4).

⁸ *Consumer Guide: Stop Unwanted Robocalls and Texts*, Fed. Comm'n's Comm'n, <https://www.fcc.gov/consumers/guides/stop-unwanted-robocalls-and-texts> (last visited Apr. 12, 2024) ("Unwanted calls – including illegal and spoofed robocalls – are the FCC's top consumer complaint and our top consumer protection priority.").

⁹ See 47 CFR § 64.1200(k); see, e.g., *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 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).

¹⁰ See *July 2020 Call Blocking Order*, 35 FCC Rcd at 7628-29, paras. 36-39; 47 CFR § 64.1200(k)(4).

¹¹ These CDLs are available on the Commission's website at <https://www.fcc.gov/robocall-facilitators-must-cease-and-desist>.

¹² 47 CFR § 64.1200(n)(2)-(3).

¹³ The ITG is the registered industry consortium selected pursuant to the TRACED Act to conduct tracebacks. See *Implementing Section 13(d) of the Pallone-Thune 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).

numbers between November 10, 2023 and February 3, 2024.¹⁴ The calls delivered prerecorded messages purportedly related to debt consolidation loans and claimed to be from “One Street Financial,” “Main Street Financial,” and “Alliant Financial.”¹⁵ The use of the latter two names risks confusion for consumers because the names are similar to the names of entirely unrelated financial entities: (1) MainStreet Financial Services; and (2) Alliant Financial Solutions. Both companies have posted warnings on their websites that their names are being used by another party to make “spam type calls offering lending services.”¹⁶

These 13 tracebacks appear to be a subset of a vast and relentless campaign of “debt consolidation” calls.¹⁷ Many consumers reported being contacted multiple times, which caused frustration and annoyance and hampered their ability to use their phones.¹⁸ Consumers who returned calls from Alliant Financial, Main Street Financial, and One Street to request removal from the entities’ calling lists assert that they continued to receive an influx of calls despite these requests.¹⁹

Campaigns of this nature, however, are not only nuisances, they are often scams to obtain personal information or illegal upfront payments and often do not consolidate debt or otherwise improve the consumer’s financial situation.²⁰ Veterans and service members, in particular, are vulnerable to such

¹⁴ See December ITG Subpoena Response, *supra* note 4; March ITG Subpoena Response, *supra* note 4.

¹⁵ See December ITG Subpoena Response, *supra* note 4; March ITG Subpoena Response, *supra* note 4.

¹⁶ See Alliant Financial Solutions, <https://www.alliantfinancialsolutions.com/> (last visited Apr. 4, 2024) (screenshot on file at EB-TCD-23-00035896) (“Alliant Financial Solutions is aware that another company is using the name ‘Alliant Financial’ and making spam type calls offering lending services. Alliant Financial Solutions will never make unsolicited calls.”); MainStreet Financial Services, <https://www.mainstreetfinancialservices.com/> (last visited Apr. 2, 2024) (screenshot on file at EB-TCD-23-00035896) (“For those receiving multiple daily calls from a ‘Main Street Financial’ regarding debt consolidation from (855) area code number or other numbers. THIS IS NOT OUR FIRM.”).

¹⁷ See *Daily Call Volume per Campaign*, YouMail, Inc., <https://app.sigmacomputing.com/youmailinc/workbook/> (last visited Mar. 19, 2024) (screenshot on file at EB-TCD-23-00035896).

¹⁸ See, e.g., FCC Complaint # 6598935 (Nov. 22, 2023) (on file at EB-TCD-23-00035896) (“Alliance [sic] Financial Bogus Company . . . I am receiving multiple calls every day from different numbers with the message, ‘Alliant Financial our records indicate you have a pre-approval which is set to expire from one of our partners of up to 100,000 dollar personal loan to speak with a member of our team please press 2 to speak to . . .’ My voicemail is constantly full of their messages and others who I want to talk to are unable to leave me a message. How do I stop the calls?”); FCC Complaint # 6731862 (Jan. 29, 2024) (on file at EB-TCD-23-00035896) (“I have been receiving calls from ‘Brian at Main Street financial’ multiple times a day for months now. I block the number but they call back shortly after using a similar number. The calls come in 7 days a week from 7am until 9pm. Please help.”); FCC Complaint # 6736964 (Jan. 31, 2024) (on file at EB-TCD-23-00035896) (“Several times a day from several different numbers I get ‘Sarah’ from One Street Financial calling me about a debt consolidation loan that expires at the end of 2023. It WONT stop. I have blocked 20+ different [sic] numbers and each time they leave a message on the voice mail. I have enabled my cell phone carriers scam shield. Nothing helps.”).

¹⁹ See, e.g., FCC Consumer Complaint #6576747 (Nov. 11, 2023) (“I have been getting calls from a company called ‘Alliant Financial’ . . . I have tried to ask them multiple times to remove me from their call list and they just hang up the phone or act very rude.”); FCC Consumer Complaint #6664167 (Dec. 28, 2023) (Main Street financial. Call from multi [sic] numbers. Have asked to be removed multiple times over several months and calls continue . . .”); FCC Consumer Complaint #6820086 (“One street financial calls me up to 10 times a day. It’s been going on for months. I have called and requested to be taken off their call list and they just will not remove me. I have blocked their number but then they call from a different number.”).

²⁰ See *How to Get Out of Debt*, Fed. Trade Comm’n, <https://consumer.ftc.gov/articles/how-get-out-debt#Credit%20Repair> (last visited Apr. 4, 2024) (discussing signs that a consumer is dealing with a debt settlement scam); Ana Staples, *How to avoid a debt settlement scam—and get the help you need*, CNBC (June 8, 2023), <https://www.cnbc.com/select/how-to-avoid-a-debt-settlement-scam/>; Emily Cahill, *Signs of Debt Settlement Scams to Watch For*, Experian (Mar. 8, 2023), <https://www.experian.com/blogs/ask-experian/signs-of-debt-settlement-> (continued....)

campaigns because predatory lenders target them more frequently.²¹ Falling prey to such scams can be destructive to Veterans and their families as “studies have confirmed a link between troubled financial status and poor physical and mental health in veterans.”²² Financial stressors have similarly damaging effects on active duty soldiers.²³ These types of calls pose a significant threat to the safety of the financial and personal identifying information of the public, and in particular, Veterans, active duty service members, and their families.

The ITG investigated the calls described in Attachments A and B to the CDL and determined that Alliant was the originating provider.²⁴ The ITG notified Alliant of these calls and provided the Company with supporting data identifying each call.²⁵ Alliant did not contest that it had originated the calls and identified one client as the source of all of the calls.²⁶ The Bureau was unable to reach Alliant at the physical address Alliant lists in the Commission’s Robocall Mitigation Database (RMD),²⁷ and the Bureau’s emails to the email address Alliant lists in the RMD remain unanswered.²⁸

Alliant failed to provide sufficient evidence of consent for any of the calls identified in Attachments A and B to the CDL. For six of the calls, Alliant claimed that its customer who initiated the calls had prior consent, which it purportedly obtained through opt-in webpages.²⁹ Despite this claim, Alliant provided no evidence of such prior express written consent for the identified calls.³⁰ For the remaining seven calls, Alliant provided videos of online consent forms supposedly being filled out by consumers with their names and numbers.³¹ The numbers in these forms, however, were assigned to Verizon’s *internal* collection of wireless numbers, *i.e.*, they were not assigned to any subscriber.³² As such, no subscriber

[scams/](#); see also *What is a Debt Consolidation Loan? Does Debt Consolidation Hurt Your Credit?*, Equifax, <https://www.equifax.com/personal/education/debt-management/articles/-/learn/what-is-debt-consolidation/> (last visited Mar. 28, 2024).

²¹ See Eric B. Elbogen et al., *Financial Status and Well-being in Recently Separated Military Veterans*, 188 Mil. Med. e2181, e2182 (2023), <https://academic.oup.com/milmed/article/188/7-8/e2181/6540063>.

²² See *id.*

²³ See *id.*

²⁴ See December ITG Subpoena Response, *supra* note 4; March ITG Subpoena Response, *supra* note 4.

²⁵ See December ITG Subpoena Response, *supra* note 4; March ITG Subpoena Response, *supra* note 4.

²⁶ See December ITG Subpoena Response, *supra* note 4; March ITG Subpoena Response, *supra* note 4.

²⁷ See Affidavit of Attempted Service of {[]}, Director of Operations, United Processing, Inc., (Mar. 18, 2024) (on file at EB-TCD-23-00035896). Material set off by double brackets {[]} is confidential and redacted from the public version of this document.

²⁸ See Email from Caitlin Barbas, Attorney Advisor, Telecommunications Consumers Division, FCC Enforcement Bureau, to Mohammad Hossain, Member/Management, Alliant Financial (Mar. 11, 2024) (on file at EB-TCD-23-00035896); see also Email from Caitlin Barbas, Attorney Advisor, Telecommunications Consumers Division, FCC Enforcement Bureau, to Mohammad Hossain, Member/Management, Alliant Financial (Mar. 12, 2024) (on file at EB-TCD-23-00035896). The Bureau did not receive a response to either email.

²⁹ See December ITG Subpoena Response, *supra* note 4; March ITG Subpoena Response, *supra* note 4; see also 47 CFR § 64.1200(a)(2)-(3) (describing requisite consent levels).

³⁰ See December ITG Subpoena Response, *supra* note 4; March ITG Subpoena Response, *supra* note 4.

³¹ See December ITG Subpoena Response, *supra* note 4; March ITG Subpoena Response, *supra* note 4.

³² See December ITG Subpoena Response, *supra* note 4; March ITG Subpoena Response, *supra* note 4; see also *Verizon Works with Wireless Carriers in US to Combat Robocalls*, Verizon News Center, <https://www.verizon.com/about/news/verizon-carriers-combat-robocalls> (last visited Apr. 12, 2024) (describing “honeypots”).

could have consented to have those numbers called.³³ Accordingly, these calls were apparently illegal, and Alliant is responsible for allowing these apparently unlawful calls to originate on its network.

Potential Further Enforcement Action. The Bureau may issue an Initial Determination Order stating the Bureau's initial determination that Alliant is not in compliance with section 64.1200 of the Commission's rules if: (a) Alliant fails to respond to the CDL; (b) Alliant provides an insufficient response; (c) Alliant continues to originate substantially similar traffic or allow substantially similar traffic onto the U.S. network after the 14-day period identified above; or (d) the Bureau determines the traffic is illegal despite Alliant's assertions to the contrary.³⁴ If the Bureau issues an Initial Determination Order, Alliant will have an opportunity to respond.³⁵ If Alliant does not provide an adequate response to the Initial Determination Order or continues to originate or allow substantially similar traffic onto the U.S. network, the Bureau may issue a Final Determination Order in EB Docket No. 22-174 concluding that Alliant is not in compliance with section 64.1200 of the Commission's rules.³⁶ **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 U.S.-based voice service providers shall be required to block Alliant's traffic beginning 30 days from the release date of the Final Determination Order.**³⁷

Contact Information. For further information, please contact Kristi Thompson, Division Chief, Telecommunications Consumers Division, Enforcement Bureau at Kristi.Thompson@fcc.gov or Daniel Stepanicich, Assistant Division Chief, Telecommunications Consumers Division, Enforcement Bureau at Daniel.Stepanicich@fcc.gov.

ENFORCEMENT BUREAU
Loyaan A. Egal
Chief

³³ Further, with regards to one of the videos purporting to show consent, the inputted number does not match the number called. See December ITG Subpoena Response, *supra* note 4. The consent form supplied showed an inputted number of {[]} while the called number was {[]}. *Id.*

³⁴ 47 CFR § 64.1200(n)(2)(ii).

³⁵ *Id.*

³⁶ *Id.* § 64.1200(n)(2)(iii), (3); *Advanced Methods to Target and Eliminate Unlawful Robocalls, Call Authentication Trust Anchor*, 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 (May 19, 2023).

³⁷ 47 CFR § 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: www.fcc.gov
TTY: 888-835-5322

DA 24-468

Released: May 17, 2024

WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON GEOLINKS' REQUEST FOR MODIFICATION OF LOCAL MULTIPOINT DISTRIBUTION SERVICE LICENSES

WT Docket No. 24-150

Comments Due: June 17, 2024

Reply Comments Due: July 2, 2024

By this Public Notice, we seek comment on a request by California Internet, L.P. DBA GeoLinks (GeoLinks) that the Commission modify some of GeoLinks' Local Multipoint Distribution Service (LMDS) licenses to substitute unassigned frequencies currently held in Commission inventory for GeoLinks' existing geographically and spectrally separated license holdings.¹

There are two available LMDS licenses in each basic trading area (BTA) - the "A Block" and "B Block" licenses.² The A Block license is comprised of 300 megahertz of total bandwidth, and the B Block license is comprised of 150 megahertz of total bandwidth.³ The A Block consists of the sub bands 29.10-29.25 GHz (the A2 Band) and 31.075-31.225 GHz (the A3 Band).⁴ The B Block consists of the sub bands 31.00-31.075 (the B1 Band) and 31.225-31.30 GHz (the B2 Band).⁵

GeoLinks is a telecommunications company that uses a combination of fixed wireless and fiber technology to serve commercial, residential, and community anchor institution customers in California and in parts of Nevada and Arizona.⁶ GeoLinks is a participant in the Commission's Connect America Fund Phase II (CAFII) and Rural Digital Opportunity Fund (RDOF) programs. With funding from these programs, GeoLinks asserts that it is "on track to offer service to nearly 47,000 locations across Arizona, California, and Nevada that lack access to high-speed broadband services."⁷

The *GeoLinks Request* involves 51 active LMDS licenses held by GeoLinks - nine A block licenses and 42 B block licenses. Under GeoLinks' proposal, 32 of those licenses would be modified, and

¹ See California Internet, L.P. DBA Geolinks, Request for Modification, WT Docket No. 24-150 (filed Mar. 18, 2024) (*GeoLinks Request*).

² See 47 CFR § 101.1005.

³ *Id.*

⁴ See 47 CFR § 101.1005. The 27.5-28.35 GHz band was originally part of LMDS (as the A1 Band) but was converted to the Upper Microwave Flexible Use Service in 2016. See 47 CFR § 30.102.

⁵ See 47 CFR § 101.1005.

⁶ *GeoLinks Request* at 4.

⁷ *Id.* at 5.

the other 19 licenses would be relinquished to the Commission.⁸ Of the 32 modification requests, 30 involve changes in the licenses' geographic areas by changing the BTA in which each license authorizes operations. The remaining two modification requests seek changes to both the BTA and frequency assignment within the LMDS band (from the B-Block to the A-Block).⁹ GeoLinks asserts that its proposed modifications would result in the company surrendering more licenses, more markets, and more MHz-pops than it would receive, but consolidating A and B license blocks and gaining contiguous spectrum that would allegedly result in more efficient and economic deployment targeted to rural and underserved areas in its core service areas.¹⁰

Exhibit 1 of the *GeoLinks Request* provides details on the BTA (and where applicable, spectrum block) for the requested modification of each GeoLinks license. Exhibit 2 provides the list of licenses that GeoLinks intends to relinquish if the Commission grants the full set of modifications as requested. The exhibits detail GeoLinks' estimates of the MHz-pops for each license swap as well as the overall MHz-pops the Commission would gain as a result of the proposed modifications and relinquishment.¹¹

The Bureau seeks comment on the *GeoLinks Request*. Interested parties may file comments on or before the date indicated on the first page of this document.

Procedural Matters

To develop a complete record on the issues presented by the Requests, the proceeding will be treated, for *ex parte* purposes, as a "permit-but-disclose" proceeding in accordance with section 1.1200(a) of the Commission's rules,¹² subject to the requirements under section 1.1206(b).¹³ GeoLinks filed its Request electronically in the Commission's Electronic Comment Filing System (ECFS). We have opened a new docket, **WT Docket No. 24-150**, to facilitate consideration of the Request and have moved GeoLinks' Request into this docket. Parties should file all comments and reply comments in **WT Docket No. 24-150**.

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.¹⁴ Parties may file comments, identified by **WT Docket No. 24-150**, by any of the following methods:

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

⁸ *Id.* at 7.

⁹ *Id.* at 7.

¹⁰ *Id.* at 2.

¹¹ *Id.* at 7, Exhibits 1 and 2.

¹² 47 CFR § 1.1200(a).

¹³ 47 CFR § 1.1206(b).

¹⁴ See Federal Communications Commission, *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (June 30, 1998).

- 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-19.¹⁵

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 & Government Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

Ex Parte Rules. As stated above, the proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.¹⁶ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Additional Information. For further information regarding this Public Notice, please contact Erin Fitzgerald Dobozy at Erin.Fitzgerald@fcc.gov.

-FCC-

¹⁵ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, DA 20-304 (Mar. 19, 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

¹⁶ 47 CFR §§ 1.1200 *et seq.*

**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

Adopted: May 16, 2024

Released: May 16, 2024

By the 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 limited waiver request jointly submitted by Southern Communications Services, Inc. d/b/a Southern Linc (Southern Linc) and Pine Belt Cellular, Inc. (Pine Belt).¹ Southern Linc and Pine Belt request a limited waiver of the Commission's Mandatory Disaster Response Initiative (MDRI) bilateral roaming testing requirement to allow the parties to defer testing of their roaming capabilities pursuant to their roaming under disaster (RuD) agreement from the expected compliance date of May 1, 2024 until six months after Pine Belt has completed the removal, replacement, and disposal of all covered ZTE equipment on its network.² Based on the circumstances discussed below, we find that a waiver of the Commission's rule would serve the public interest.

II. BACKGROUND

2. In 2022, the Commission adopted the MDRI in order to improve the reliability and resiliency of facilities-based mobile wireless networks in light of disasters and other emergencies of increasing frequency and severity.³ The MDRI codified the voluntary commitments of the Wireless Network Resiliency Cooperative Framework making such commitments mandatory and extended them to all facilities-based mobile wireless providers.⁴ Under the MDRI, all facilities-based mobile wireless providers are required to: (1) provide for reasonable RuD arrangements when technically feasible; (2) establish mutual aid agreements with other facilities-based mobile wireless providers; (3) take

¹ Request for Limited Waiver by Southern Linc and Pine Belt Cellular, PS Docket Nos. 21-346 and 15-80, and ET Docket No. 04-35 (filed Apr. 22, 2024) <https://www.fcc.gov/ecfs/search/search-filings/filing/1042261095263> (Joint Waiver).

² Joint Waiver at 1-2.

³ *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, Report and Order and Further Notice of Proposed Rulemaking, FCC 22-50 (rel. July 6, 2022) (*Order*).

⁴ *Order* at para. 3.

reasonable measures to enhance municipal preparedness and restoration; (4) take reasonable measures to increase consumer readiness and preparation; and (5) take reasonable measures to improve public awareness and stakeholder communications on service and restoration status, through Commission posting of data on cell site outages on an aggregated, county-by-county basis in the relevant area through its Disaster Information Reporting System (DIRS).⁵ Facilities-based mobile wireless providers are required to perform “annual testing of their roaming capabilities and related coordination processes, with such testing performed bilaterally with other providers that may foreseeably roam, or request roaming from, the provider during times of disaster or other exigency.”⁶

3. In its *Order on Reconsideration* in this proceeding, the Commission established a single compliance date of May 1, 2024 for all facilities-based mobile wireless providers to implement all provisions of the MDRI under section 4.17.⁷ The *Order on Reconsideration* also recognized the possibility that a provider’s need to complete activities pursuant to the Secure and Trusted Communications Networks Reimbursement Program (Reimbursement Program)⁸ prior to implementing or completing initial testing of RuD or mutual aid agreements under the MDRI could delay timely compliance with the MDRI rules, stating that such instances could be addressed in a petition for waiver.⁹

4. On April 22, 2024, Southern Linc and Pine Belt jointly filed a Request for Limited Waiver pursuant to section 1.925 seeking an extension of the May 1, 2024 compliance deadline to complete initial bilateral testing of their RuD agreement as required by section 4.17(b).¹⁰ Southern Linc, a wholly owned subsidiary of Southern Company, operates a commercial digital 800 MHz ESMR system in Georgia, Alabama, and southeastern Mississippi that is widely used by state and local public safety agencies, school districts, rural local governments, public utilities, and other emergency responders.¹¹ Southern Linc also provides private network services that support “critical electric utility operations.”¹² To protect the security of its network and electric grid operations, Southern Linc prohibits “any

⁵ *Order* at paras. 5 and 11.

⁶ 47 CFR § 4.17(b).

⁷ *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, *Order on Reconsideration*, FCC 23-71, at para 1 (rel. Sept. 15, 2023) (*Order on Reconsideration*),.

⁸ 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). 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, Appx. A (2021) (*2021 Supply Chain Order*). The Commission later clarified that, for purposes of the Reimbursement Program, covered communications equipment or services is limited to the 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. *See 2021 Supply Chain Order*, 36 FCC Rcd at 11965, Appx. A; *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).

⁹ *See Order on Reconsideration* at para. 22.

¹⁰ Joint Waiver at 1-2.

¹¹ *Id.* at 2, 3.

¹² *Id.* at 3.

communications equipment or service” on its network that is on the Commission’s Covered List as well as “any infrastructure connection with any network or system that has covered communications equipment or services.”¹³

5. Pine Belt operates a commercial mobile wireless LTE network that provides 4G mobile voice and data services to customers in west central Alabama.¹⁴ Pine Belt is a participant in the Commission’s Reimbursement Program and is in the process of removing, replacing and disposing of covered ZTE equipment and services from its network.¹⁵ Pine Belt separately requested and received a six-month extension until January 17, 2025 to complete its removal, replacement, and disposal activities in light of significant and unavoidable delays due to supply chain and other logistical issues, as well as significant financial constraints due to the lack of full Reimbursement Program funding.¹⁶

6. Southern Linc and Pine Belt jointly seek a waiver pursuant to section 1.925 of the Commission’s rules for the completion of the initial round of bilateral testing of roaming capabilities between the parties.¹⁷ The request argues that in light of the specific factual circumstances presented, grant of the limited waiver requested would be in the public interest.¹⁸ Southern Linc and Pine Belt assert they are unable to perform a complete first round of testing under their RuD agreement by the May 1, 2024 compliance date because, given insecure elements present on Pine Belt’s network,¹⁹ establishing the connections necessary to perform such testing would introduce security vulnerabilities and create increased security risks to Southern Linc’s network.²⁰ The waiver request represents that it is not possible to remove the insecure elements of Pine Belt’s network before the May 1, 2024 MDRI compliance date.²¹ The Joint Waiver describes how Southern Linc implements security measures to “mitigate some risks,” but expresses concern about “the potential for a sophisticated nation-state actor, like China’s Volt Typhoon, to exploit a roaming partner’s network as a conduit for attacks against Southern Linc, Southern Company, and the broader Southeast United States electric grid....”²² The parties assert that to protect Southern Linc’s network security and electric grid operations, Southern Linc “cannot permit any infrastructure connections – including those required to test and support roaming – with Pine Belt’s network” until Pine Belt removes and replaces all ZTE communications equipment and services on its network.²³

III. DISCUSSION

7. Under section 1.925(b)(3), the Commission may grant a request for waiver if it is shown

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 4.

¹⁶ *Id.* at 4 and Attachment A. *See also Streamlined Resolution of Requests Under the Secure and Trusted Communications Networks Reimbursement Program*, Public Notice, DA 24-407, at 7 (rel. Apr. 30, 2024).

¹⁷ *Id.* at 1, 9. Southern Linc and Pine Belt do not request a waiver of any other provisions of the MDRI rules. Joint Waiver at 9.

¹⁸ *Id.* at 2.

¹⁹ *Id.* at 8. These elements include Pine Belt’s “insecure ZTE 4G LTE core and several ZTE 4G LTE RAN nodes....” *Id.* (citing *Id.* at Attachment A at 2). “[T]hese insecure elements will need to remain in service until funds are available to make the final replacements or the allowed time expires....” *Id.* (citing *Id.* at Attachment A at 2).

²⁰ *Id.* at 7.

²¹ *Id.* at 9.

²² *Id.*

²³ Joint Waiver at 8-9.

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 factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.²⁴ In addition, section 1.3 provides that the Commission may waive any provision of its rules on its own motion for good cause.²⁵ In this case, we are persuaded that based on the factual circumstances of the instant case, it would be contrary to the public interest to require strict application of the May 1, 2024 compliance date.

8. Southern Linc has demonstrated that its networks carry a variety of public safety communications and support critical electric utility operations. We agree that completing initial testing of bilateral RuD arrangements as required by the MDRI rules would require Southern Linc and Pine Belt to have network infrastructure connections between their systems. We find that the ZTE equipment and services on Pine Belt's network present national security risks and that infrastructure connections between Pine Belt and Southern Linc could, therefore, introduce vulnerabilities and run counter to Southern Linc's established network security practices. We further agree that it is not feasible for Pine Belt to remove the insecure ZTE equipment and services by the May 1, 2024 MDRI compliance deadline in light of its ongoing removal, replacement, and disposal efforts under the Reimbursement Program. We appreciate the high level of caution Southern Linc exercises to protect the critical traffic carried on its networks from known security risks and its recognition that existing risk mitigation measures may not provide complete protection from threats from sophisticated actors.

9. We are therefore persuaded that, in light of the critical traffic and electric grid operations Southern Linc's networks support, it would not serve the public interest to require Southern Linc to establish network infrastructure connections with a network that has equipment and services known to pose a national security risk and thereby create vulnerabilities and introduce risks to its own network security. We find that granting a limited waiver of section 4.17(b) as requested in the Joint Waiver will promote important network and national security interests and best support critical infrastructure and public safety operations. Indeed, the Joint Waiver is precisely the sort of waiver request the Commission anticipated and provided for in the *Order on Reconsideration*. Accordingly, we grant the Joint Waiver and allow Southern Linc and Pine Belt until six months after the removal, replacement, and disposal of covered ZTE equipment and services in Pine Belt's network to complete initial bilateral testing of their RuD agreement. We condition this grant on Pine Belt keeping the Bureau apprised of its Reimbursement Program timeline. To this end, we therefore require Pine Belt to notify the Bureau by filing updates in the above-captioned dockets of (1) any extension(s) Pine Belt receives from the Commission to its Reimbursement Program removal, replacement, and disposal term deadline beyond January 17, 2025; and (2) the date Pine Belt completes the removal, replacement, and disposal of covered ZTE equipment and services in Pine Belt's network.

IV. ORDERING CLAUSE

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i)-(j) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i)-(j), and Section 1.925 of the Commission's rules, 47 CFR § 1.925, Section 4.17(b) of the Commission's rules, 47 CFR § 4.17(b), **IS WAIVED**, to extend the compliance date for Southern Linc and Pine Belt to complete initial bilateral testing of their RuD agreement from May 1, 2024 until six months after the date Pine Belt has completed removal, replacement, and disposal of covered ZTE equipment and services in Pine Belt's network, subject to the conditions described herein. This action is taken under delegated authority pursuant to Sections 0.191

²⁴ 47 CFR § 1.925.

²⁵ 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).

and 0.392 of the Commission's rules, 47 CFR §§ 0.191 and 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Debra Jordan
Chief
Public Safety and Homeland Security Bureau



PUBLIC NOTICE

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

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

DA 24-470
Released: May 16, 2024

DOMESTIC SECTION 214 APPLICATION FILED FOR THE TRANSFER OF CONTROL OF 123.NET, INC. TO 123NET HOLDINGS, LLC

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 24-129

Comments Due: May 30, 2024
Reply Comments Due: June 6, 2024

By this Public Notice, the Wireline Competition Bureau (Bureau) seeks comment from interested parties on an application filed by 123.Net, Inc. (123.Net or Transferor) and 123Net Holdings, LLC (123Net Holdings or Transferee) (Transferor and Transferee collectively, the Applicants), pursuant to section 214(a) of the Communications Act of 1934, as amended, and sections 63.03-04 of the Commission's rules,¹ requesting approval for the transfer of control of 123.Net, which holds domestic and international Section 214 authority, to 123Net Holdings.²

123.Net, a Michigan corporation, is a network and data center services company that provides voice, data, and fiber Internet services to business and residential customers in Michigan.³ 123.Net also offers Voice over Internet Protocol (VoIP) and unregulated communications services in Michigan, Illinois, Indiana, Kentucky, and Ohio.⁴ 123.Net's 10% or greater owners are Dan Irvin (58.33%) and Ryan Duda (31.67%), both U.S. citizens.⁵

123Net Holdings, LLC, a Delaware limited liability company, is a direct, wholly-owned subsidiary of GCOF IV 123Net Aggregator, L.P. (GCO Fund IV),⁶ a Delaware investment fund comprised of passive financial investors managed by GCOF IV Management, L.P. (GCOF IV

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

² Application Filed for the Transfer of Control of 123.Net, Inc. to 123Net Holdings, LLC, pursuant to Section 214 of the Communications Act of 1934, as Amended, WC Docket No. 24-129 (filed Apr. 25, 2024) (Application). Applicants also filed an application for the transfer of authorizations associated with international and wireless services. Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

³ Application at 2.

⁴ *Id.*

⁵ *Id.* at 12-13, Exh. B.

⁶ *Id.* at 2, Exh. B.

Management).⁷ GCOF IV Management, a Delaware entity, is, in turn, a wholly-owned subsidiary of Grain Management, LLC (Grain Management), a U.S. private equity entity, which invests in and manages communications businesses in North America and South America.⁸ Grain Management is ultimately controlled by David Grain, a U.S. citizen and founder and owner of Grain Management.⁹ There are no additional individuals or entities that own or control, directly or indirectly, a 10 percent or greater equity or voting interest in 123Net Holdings.¹⁰

Pursuant to the terms of the proposed transaction, 123Net Holdings will purchase the majority of the equity interests in 123.Net Intermediate, LLC (65%) (123.Net Intermediate), a Delaware limited liability company that will be created specifically for the purposes of the proposed transaction and that will hold all of the outstanding equity interests of 123.Net.¹¹ Applicants note that the current 10% or greater owners of 123Net, Inc. will hold the remaining interest in 123.Net Intermediate (35%) through 123.Net Carryover Member, Inc., a Delaware holding company created for purposes of the proposed transaction.¹² Applicants explain that as a result of the proposed transaction, 123.Net will become an indirect subsidiary of 123Net Holdings, which itself is an indirect subsidiary of GCO Fund IV, which in

⁷ Application at 2, 13-17, Exh. B. Applicants state that the limited partnership interests in GCO Fund IV are directly held by the following passive financial investors: Grain Communications Opportunity Fund IV-A, L.P. (GCOF IV-A) (66%) and GCOF IV 123Net Blocker, LLC (GCOF IV Blocker) (32.8%). *Id.* at 16-17. Three entities have a 10% or greater equity interest in GCOF IV-A: California Public Employees' Retirement System (24.5%), State of Connecticut (18.4%), and District of Columbia Retirement Board (12.2%). *Id.* Grain Communications Opportunity Fund IV-C, L.P. (GCOF Fund IV-C) holds a 92.5% equity interest in GCOF IV Blocker. *Id.* at 17. GCOF IV GP, L.P. is the general partner of GCOF Fund IV, GCOF Fund IV-A, GCOF IV Blocker, and GCOF Fund IV-C. GCOF IV Management, L.P. is the manager of GCOF Fund IV-A and GCOF Fund IV-C. *Id.* at 18.

⁸ *Id.* at 2-3, 13-16, Exh. B. Grain Management also manages and controls the following entities authorized to provide telecommunications services: Spectrotel Services, LLC, which, through various operating subsidiaries, provides telecommunications services in every state (including Washington, D.C.), except for Alaska and Hawaii; Great Plains Communications LLC, Great Plains Communications Long Distance LLC, and Great Plains Broadband LLC, which provide telecommunications services in Colorado, Kansas, Nebraska, and South Dakota; InterCarrier Networks, LLC, which provides telecommunications services in Illinois, Indiana, and Kentucky; Miles Communications, LLC, Sunman Telecommunications, LLC, and Sunman Telecommunications Long Distance, LLC, which provide telecommunications services in Indiana; E. Ritter Telephone Company, LLC and Tri-County Telephone Company, LLC, which provide telecommunications services in Arkansas; Millington Telephone Company, LLC, which provides telecommunications services in Tennessee; E. Ritter Communications, LLC, which provides telecommunications services in Arkansas, Tennessee, and Texas; Orlando Telephone Company, Inc. (d/b/a Summit Broadband), which provides telecommunications services in Florida; and Hunter Communications and Technologies LLC, which provides telecommunications services in California, Oregon, and Washington. *Id.* at 3-4. Grain Management also manages a fund that owns a controlling interest in Quintillion Subsea Operation, LLC, which holds a submarine cable landing license. *Id.* at 4.

⁹ *Id.* at 3, Exh. B. Although Grain Management does not hold a 10% or greater equity or voting interest in GCO Fund IV, the sole general partner of its passive investors, GCOF IV GP, L.P. (GCOF IV GP), a Delaware investment fund, is ultimately controlled by David J. Grain. *Id.* at 13, 16-19 (explaining that control of GCOF IV GP resides in its general partner, Grain Capital UGP, LLC; the sole shareholder of GCOF IV GP and sole member of Grain Capital UGP, LLC is Grain Capital II, LLC, which is wholly held by Grain Capital, LLC, which in turn, is wholly held by David Grain).

¹⁰ *Id.* at 19.

¹¹ *Id.* at 4, Exh. B.

¹² *Id.* at 12-13, Exh. B.

turn is owned by investment funds ultimately controlled by David Grain.¹³ As part of the proposed transaction, Applicants explain that 123.Net will convert from a corporation to a limited liability company prior to closing.¹⁴ Applicants assert that there will be no service area overlap between the facilities-based telecommunications services provided by 123.Net and any of 123Net Holdings' affiliates.¹⁵

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.¹⁶ We accept the Application for streamlined processing under section 63.03(b)(2)(iii) of the Commission's rules.¹⁷

Domestic Section 214 Application Filed for the Transfer of Control of
123.Net, Inc. to 123Net Holdings, LLC, WC Docket No. 24-129 (filed Apr. 25, 2024).

GENERAL INFORMATION

The transfer of control identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Pursuant to section 63.03(a) of the Commission's rules, 47 CFR § 63.03(a), interested parties may file comments **on or before May 30, 2024**, and reply comments **on or before June 6, 2024**. Pursuant to section 63.52 of the Commission's rules, 47 CFR § 63.52, commenters must serve a copy of comments on the Applicants no later than the above comment filing date. Unless otherwise notified by the Commission, the Applicants may transfer control on the 31st day after the date of this notice.

Pursuant to section 63.03 of the Commission's rules, 47 CFR § 63.03, parties to this proceeding should file any documents using the Commission's Electronic Comment Filing System (ECFS): <http://apps.fcc.gov/ecfs/>.

In addition, e-mail one copy of each pleading to each of the following:

- 1) Tracey Wilson, Competition Policy Division, Wireline Competition Bureau, tracey.wilson@fcc.gov;
- 2) Megan Danner, Competition Policy Division, Wireline Competition Bureau, megan.danner@fcc.gov;
- 3) David Krech, Office of International Affairs, david.krech@fcc.gov;
- 4) Nadja Sodos-Wallace, Broadband Division, Wireless Telecommunications Bureau, nadja.sodoswallace@fcc.gov; and
- 5) Jim Bird, Office of General Counsel, jim.bird@fcc.gov.

¹³ *Id.* at 5, Exh. B.

¹⁴ *Id.* at 5.

¹⁵ *Id.* at 6.

¹⁶ *Id.* at 23-24.

¹⁷ 47 CFR § 63.03(b)(2)(iii).

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.

The proceeding in this Notice shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b), 47 CFR § 1.1206(b). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

To allow the Commission to consider fully all substantive issues regarding the application in as timely and efficient a manner as possible, petitioners and commenters should raise all issues in their initial filings. New issues may not be raised in responses or replies.¹⁸ A party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously. Submissions after the pleading cycle has closed that seek to raise new issues based on new facts or newly discovered facts should be filed within 15 days after such facts are discovered. Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission.

For further information, please contact Megan Danner at (202) 418-1151.

FCC

¹⁸ See 47 CFR § 1.45(c).



PUBLIC NOTICE

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

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

DA No. 24-471

Friday May 17, 2024

Report No. SAT-01822

Satellite Licensing Division and Satellite Programs and Policy Division Information

Actions Taken

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

SAT-AMD-20231013-00251	E	S3152	Planet Labs PBC
Amendment			
Granted in Part/ Deferred in Part			
			Effective Date: 05/10/2024

Nature of Service: Earth Exploration Satellite Service

See ICFS File No. SAT-LOA-20220920-00112 for a description of the action taken.

SAT-LOA-20220920-00112	E	S3152	Planet Labs PBC
Launch and Operating Authority			
Granted in Part/ Deferred in Part			
			Effective Date: 05/10/2024

Nature of Service: Earth Exploration Satellite Service

On May 10, 2024, the Satellite Programs and Policy Division granted in part and deferred in part, the application of Planet Labs PBC to deploy and operate a non-geostationary orbit satellite system known as Tanager. See DA 24-446. Specifically, Planet Labs is authorized to deploy and operate two satellites in the Earth exploration-satellite service at altitudes between 402 km and 435 km with orbital inclinations between approximately 96.51 and 97.59 degrees. The satellites are authorized to operate using the 25.5-27.0 GHz (space-to-Earth), 8025-8400 MHz (space-to-Earth), and 2025-2110 MHz (Earth-to-space) frequency bands.

SAT-MOD-20230628-00150	E	S2110	Iridium Constellation LLC
Modification			
Grant of Authority			
			Effective Date: 05/16/2024

Nature of Service: Mobile Satellite Service

On May 16, 2024, the Satellite Programs and Policy Division granted, with conditions, a modification to the license of Iridium Constellation, LLC for its non-geostationary orbit system. Specifically, Iridium is authorized to conduct operations to maintain and reposition 14 in-orbit spare satellites at altitudes between 615 km and 780 km.

SAT-MOD-20240306-00048	E	S3138	SES Americom, Inc.	08/02/2022 - 08/02/2037
Modification				Effective Date: 05/10/2024
Grant of Authority				

Nature of Service: Direct to Home Fixed Satellite, Fixed Satellite Service

On May 10, 2024, the Satellite Programs and Policy Division granted, with conditions, a modification of the authorization for the SES Americom, Inc. SES-22 space station. Specifically, SES is authorized to conduct telemetry, tracking, and command (TT&C) operations necessary to drift SES-22 from the 135° W.L. orbital location to the 139° W.L. orbital location, and to conduct operations with SES-22 from the 139° W.L. orbital location. SES-22 operates using the 3.7-4.2 GHz (space-to-Earth) and 5.925-6.425 GHz (Earth-to-space) frequency bands. TT&C is performed within the 6415-6425 MHz (Earth-to-space) and 4190-4200 MHz (space-to-Earth) frequency bands.

SAT-STA-20230626-00148	E		Iridium Constellation LLC	
Special Temporary Authority				Effective Date: 05/16/2024
Returned No Action				

SAT-STA-20230712-00167	E		Iridium Constellation LLC	
Special Temporary Authority				Effective Date: 05/16/2024
Grant of Authority				

Application listed as granted in ICFS to reflect operations pursuant to Section 1.62 of the Commission's rules.

SAT-STA-20230712-00169	E		Iridium Constellation LLC	
Special Temporary Authority				Effective Date: 05/16/2024
Grant of Authority				

Application listed as granted in ICFS to reflect operations pursuant to Section 1.62 of the Commission's rules.

SAT-STA-20230809-00197	E		Iridium Constellation LLC	
Special Temporary Authority				Effective Date: 05/16/2024
Grant of Authority				

Application listed as granted in ICFS to reflect operations pursuant to Section 1.62 of the Commission's rules.

SAT-STA-20230912-00223	E		Iridium Constellation LLC	
Special Temporary Authority				Effective Date: 05/16/2024
Grant of Authority				

Application listed as granted in ICFS to reflect operations pursuant to Section 1.62 of the Commission's rules.

SAT-STA-20231009-00241	E	S2110	Iridium Constellation LLC	
Special Temporary Authority				Effective Date: 05/16/2024
Grant of Authority				

Application listed as granted in ICFS to reflect operations pursuant to Section 1.62 of the Commission's rules.

SAT-STA-20231113-00280	E	S2110	Iridium Constellation LLC
Special Temporary Authority			
Grant of Authority			Effective Date: 05/16/2024

Application listed as granted in ICFS to reflect operations pursuant to Section 1.62 of the Commission's rules.

SAT-STA-20231204-00299	E		Space Exploration Holdings, LLC
Special Temporary Authority			
Grant of Authority			Effective Date: 05/16/2024

On May 16, 2024, the Satellite Programs and Policy Division granted, with conditions, the request of Space Exploration Holdings, LLC for special temporary authority for an additional period of 180 days to permit communications between SpaceX first generation satellites and U.S. earth stations at latitudes above 53 degrees using elevations down to ten degrees. Specifically, SpaceX is authorized to temporarily adjust the minimum elevation angle from 25 degrees to ten degrees at latitudes above 53 degrees for communications in the 10.7-12.7 GHz (space-to-Earth) and 14.0-14.5 GHz (Earth-to-space) frequency bands.

SAT-STA-20231206-00304	E	S2110	Iridium Constellation LLC
Special Temporary Authority			
Grant of Authority			Effective Date: 05/16/2024

Application listed as granted in ICFS to reflect operations pursuant to Section 1.62 of the Commission's rules.

SAT-STA-20240110-00011	E	S2110	Iridium Constellation LLC
Special Temporary Authority			
Grant of Authority			Effective Date: 05/16/2024

Application listed as granted in ICFS to reflect operations pursuant to Section 1.62 of the Commission's rules.

SAT-STA-20240205-00022	E		Iridium Constellation LLC
Special Temporary Authority			
Grant of Authority			Effective Date: 05/16/2024

Application listed as granted in ICFS to reflect operations pursuant to Section 1.62 of the Commission's rules.

SAT-STA-20240313-00055	E	S2110	Iridium Constellation LLC
Special Temporary Authority			
Grant of Authority			Effective Date: 05/16/2024

Application listed as granted in ICFS to reflect operations pursuant to Section 1.62 of the Commission's rules.

SAT-STA-20240408-00075	E		Iridium Constellation LLC
Special Temporary Authority			
Grant of Authority			Effective Date: 05/16/2024

Application listed as granted in ICFS to reflect operations pursuant to Section 1.62 of the Commission's rules.

SAT-STA-20240510-00098	E	Planet Labs PBC	
Special Temporary Authority			
Grant of Authority			Effective Date: 05/16/2024

On May 16, 2024, the Satellite Programs and Policy Division granted, with conditions, special temporary authority to Planet Labs PBC for an additional period of up to 30 days to operate its Pelican-1 satellite in the 2020-2025 MHz frequency band (Earth-to-space) using different duty cycles than specified in its license.

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



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 24-472

Released: May 17, 2024

NOTICE OF INTERCONNECTED VOIP NUMBERING AUTHORIZATION GRANTED

WC Docket No. 24-95

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 TNS Transline, LLC
Pursuant to Section 52.15(g)(3) of the Commission's Rules, WC Docket No. 24-95 (Mar. 12, 2024), Public Notice, DA 24-367 (WCB Apr. 18, 2024).

Effective Grant Date: May 18, 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, D.C. 20554

News Media Information 202 / 418-0500

Internet: <https://www.fcc.gov>

TTY: 1-888-835-5322

DA 24-473

Released: May 17, 2024

**INFORMAL WORKING GROUP 1, INFORMAL WORKING GROUP 2, INFORMAL
WORKING GROUP 3, AND INFORMAL WORKING GROUP 4 OF THE WORLD
RADIOCOMMUNICATION CONFERENCE ADVISORY COMMITTEE SCHEDULE
THEIR MEETINGS**

OIA Docket No. 24-30

This notice advises interested persons that Informal Working Group 1 (IWG-1), Informal Working Group 2 (IWG-2), Informal Working Group 3 (IWG-3) and Informal Working Group 4 (IWG-4) of the 2027 World Radiocommunication Conference Advisory Committee (WRC-23 Advisory Committee) have scheduled meetings as set forth below. The meetings are open to the public.

The Commission's WRC-23 website (www.fcc.gov/wrc-27) contains the latest information on all scheduled meetings, meeting agendas, and WRC-23 Advisory Committee matters.

For further information on the attached meeting schedule, contact Gregory Baker, the Designated Federal Official for the Advisory Committee, gregory.baker@fcc.gov or WRC-27@fcc.gov (telephone: (202) 919-0758).

**WRC-27 ADVISORY COMMITTEE
SCHEDULE OF MEETINGS OF INFORMAL WORKING GROUPS 1, 2, 3 AND 4**

Informal Working Group 1: Maritime, Aeronautical and Radar Services

Chair— Kim Kolb, kim.1.kolb@boeing.com (703) 220-2438

Vice Chair— Nicholas Shrout, njs@asri.aero (443) 951-0335

FCC Representatives: Louis Bell, louis.bell@fcc.gov, telephone: (202) 418-1641; Allen Yang, allen.yang@fcc.gov, telephone: (202) 418-0738; Dante Ibarra, dante.ibarra@fcc.gov, telephone: (202) 418-0610

IWG-1—Meetings:

Dates: Monday, June 17, 2024, Wednesday, July 17, 2024, Wednesday, July 24, 2024, Wednesday, July 31, 2024

Time: 11:00 AM ET

<https://fcc-gov.zoomgov.com/j/1610847619?pwd=NXozd0djb1lxQ2dWVytOG1PckF3Zz09>

Meeting ID: 161 084 7619

Passcode: 064531

- +1 669 254 5252 US
- +1 669 216 1590 US

Informal Working Group 2: Mobile and Fixed Services

Chair— Daudeline Meme, daudeline.meme@verizon.com, (202) 253-8362

Vice Chair— Reza Arefi, rezaa@apple.com, (202) 235-7298

FCC Representatives: Louis Bell, louis.bell@fcc.gov, telephone: (202) 418-1641; Dante Ibarra, dante.ibarra@fcc.gov, telephone: (202) 418-0610

IWG-2—Meetings:

Dates: Monday, June 17, 2024, Wednesday, July 17, 2024, Wednesday, July 24, 2024, Wednesday, July 31, 2024

Time: 2:00 PM ET

[https://fcc-gov.zoomgov.com/j/1617093171?pwd=ZTVER1NIRDZKVINMSGhQNnRKU1BFdz09](https://fcc.gov.zoomgov.com/j/1617093171?pwd=ZTVER1NIRDZKVINMSGhQNnRKU1BFdz09)

Meeting ID: 161 709 3171

Passcode: 193943

- +1 669 254 5252 US
- +1 669 216 1590 US

Informal Working Group 3: Fixed-Satellite Service and Regulatory Matters

Chair – Alex Epshteyn, epshteyn@amazon.com, (703) 963-6136

Vice Chair – Ryan Henry, ryan.henry@ses.com, (202) 878-9360

FCC Representatives: Clay DeCell, clay.decell@fcc.gov, telephone: (202) 418-0803; Kathryn Medley, kathryn.medley@fcc.gov, telephone: (202) 418-1211; Eric Grodsky, eric.grodsky@fcc.gov, telephone: (202) 418-0563; Dante Ibarra, dante.ibarra@fcc.gov, telephone: (202) 418-0610

IWG-3 – Meetings:

Dates: Thursday, June 13, 2024, Thursday, June 20, 2024, Wednesday, July 3, 2024, Friday, July 19, 2024, Thursday, July 25, 2024, Thursday, August 1, 2024

Time: 2:00 PM ET

<https://fcc-gov.zoomgov.com/j/1607899181?pwd=REdqM0MrUUllUmlsMGRkOFhPTlcvUT09>

Meeting ID: 160 789 9181

Passcode: 442135

- +1 669 254 5252 US
- +1 669 216 1590 US

Informal Working Group 4: Mobile Satellite and Space Science Services

Chair – Damon Ladson dladson@hwglaw.com, (202) 730-1315

Vice Chair – George John, george.john@hoganlovells.com, (202) 673-6989

FCC Representatives: Dante Ibarra, dante.ibarra@fcc.gov, telephone: (202) 418-0610; Clay DeCell, clay.decell@fcc.gov, telephone: (202) 418-0803

IWG-4 – Meetings:

Dates: Thursday, June 13, 2024 , Thursday, June 20, 2024, Wednesday, July 3, 2024, Friday, July 19, 2024, Thursday, July 25, 2024, Thursday, August 1, 2024

Time: 11:00 AM ET

<https://fcc-gov.zoomgov.com/j/1607899181?pwd=REdqM0MrUUllUmlsMGRkOFhPTlcvUT09>

Meeting ID: 160 789 9181

Passcode: 442135

- +1 669 254 5252 US
- +1 669 216 1590 US

- FCC -



PUBLIC NOTICE

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

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

DA 24-475
May 20, 2024

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES
REGION 14 (INDIANA) 700 MHz AND 800 MHz REGIONAL PLANNING COMMITTEES
TO HOLD MEETINGS

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

The Region 14 700 MHz and 800 MHz Regional Planning Committees (RPCs) will hold two consecutive RPC meetings on Thursday, June 20, 2024. Beginning at 2:30 PM (EDT), the Region 14 700 MHz RPC meeting will convene at the IPSC CTC, 128 South Park Boulevard, Greenwood, IN 46143. The Region 14 800 MHz RPC meeting will convene immediately following the conclusion of the 700 MHz RPC meeting. The meetings will be also be available remotely via Zoom. The purpose of the meetings is to elect new officers and introduce amended by-laws that better fit Region 14's current needs.

- To participate via Zoom, click link below:
https://teams.microsoft.com/dl/launcher/launcher.html?url=%2F_%23%2F1%2Fmeetup-join%2F19%3Ameeting_NjE2NjA1MjYtODBkNy00NDg4LWFhMzktZGZlZWm3MjRlYzJh%40thread.v2%2F0%3Fcontext%3D%257b%2522Tid%2522%253a%2522199bfa-a409-4f13-b0c4-18b45933d88d%2522%252c%2522Oid%2522%253a%25220973ff5e-018d-4929-a48c-461f375f06ff%2522%257d%26anon%3Dtrue&type=meetup-join&deeplinkId=8b17da61-b282-4b6d-a58a-739967559c9e&directDl=true&msLaunch=true&enableMobilePage=true&suppressPrompt=true
- Meeting ID: 236 603 576 068, Passcode: iPj4LR
- Meetings also available by phone: +1 317-552-1674, ID: 729918675#

The Region 14 RPC meetings are open to the public. All public safety providers in Region 14 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 14 should plan to attend. For further information, please contact:

Larry Turner
IPSC Connection Center (ICC)
Integrated Public Safety Commission
100 N. Senate Avenue, N825
Indianapolis IN 46204
PH: 317-234-1540
Email: ICC@ipsc.in.gov

- FCC -

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

In the Matter of	)	
	)	
The Tomorrow Companies, Inc.	)	ICFS File Nos.:
	)	SAT-LOA-20221201-00167
Application to construct, deploy, and operate an	)	SAT-AMD-20230406-00075
NGSO satellite system for weather monitoring	)	
	)	Call Sign: S3156
	)	
	)	

ORDER

Adopted: May 17, 2024

Released: May 17, 2024

By the Chief, Satellite Programs and Policy Division, Space Bureau:

I. INTRODUCTION

1. In this Order, we address the request of Space Exploration Technologies Corp. (SpaceX), filed in an *ex parte* letter, that the Commission impose certain conditions on a license for deployment and operations of a new satellite system requested by The Tomorrow Companies, Inc. (Tomorrow.io).¹ We grant in part SpaceX's request that we impose conditions on this license, but deny that request insofar as it involves conditions that are not germane to the facts presented in this case. The grant-in-part of Tomorrow.io's request to deploy and operate satellites as part of what it refers to as the "Tomorrow.io Weather Constellation,"² is contained in the attached grant stamp and includes relevant license conditions.

II. BACKGROUND

2. On January 17, 2023, SpaceX filed a letter requesting that certain conditions that have been imposed on SpaceX's license to construct, deploy, and operate up to 7,500 satellites in its Second Generation (Gen2) constellation also be imposed on several pending non-geostationary satellite applications and petitions, including the instant Tomorrow.io application.³ In support of its request,

¹ *Satellite Licensing and Satellite Programs and Policy Division Information*, Space Station Applications Accepted for Filing, Public Notice, Report No. SAT-01745 (July 28, 2023). This proceeding was also designated as "permit-but-disclose" for purposes of the Commission's rules governing *ex parte* communications. *See Satellite Policy Branch Information, Actions Taken*, Public Notice, Report No. SAT-01695 (Jan. 20, 2023); 47 CFR §§ 1.1200(a), 1.1206 and 1.1208 note 2. *See also* Letter from David Goldman, Director of Satellite Policy, SpaceX, to Marlene H. Dortch, Secretary, FCC at 1 (dated Jan. 17, 2023) (SpaceX Letter). This letter was filed prior to the public notice period.

² Tomorrow.io requested authority to deploy and operate up to 18 satellites. *See* ICFS File Nos. SAT-LOA-20221201-00167; SAT-AMD-20230406-00075.

³ *See* SpaceX Letter at 1; *see also Space Exploration Holdings, LLC, Request for Orbital Deployment and Operating Authority for the SpaceX Gen2 NGSO Satellite System*, Order and Authorization, FCC 22-91 (2022) (SpaceX Gen2 Order). The SpaceX Letter requests that the FCC impose the following license conditions: (1) file semi-annual reports on collision avoidance maneuvers and satellite disposal, including any difficulties or failures related thereto; (2) apply an object-years metric for assessing disposal failures that accounts for both the number of failed satellites and their entire passive decay time; (3) communicate and collaborate with NASA to promote space safety and

(continued....)

SpaceX cites concerns raised by the National Aeronautics and Space Administration (NASA) and the National Science Foundation (NSF) in its own licensing proceeding, as well as “space sustainability requirements” from its 7,500 satellite license. SpaceX argues, among other things, that concerns expressed by NASA in connection with the Commission’s orbital debris proceeding suggest that any constellation of 25 or more satellites should be subject to additional debris mitigation requirements.⁴ Tomorrow.io filed a responsive *ex parte* letter on March 10, 2023,⁵ and SpaceX filed a further consolidated response directed to several of the NGSO applicants on March 31, 2023.⁶

III. DISCUSSION

3. We conclude that some adoption of conditions analogous to the conditions specified in the SpaceX grant, but suited for the specific and distinct factual scenario presented by the Tomorrow.io Weather Constellation satellites, would serve the public interest.

4. The Tomorrow.io Weather Constellation satellites that will be launched prior to September 29, 2024 are planned to operate at altitudes of 500-600 km (+/- 20 km) and any satellites launched on or after September 29, 2024 will operate at 500-580 km (+/- 20 km).⁷ The satellites do not have a propulsion capability and plan to deorbit passively.⁸ The satellites will pass through the International Space Station (ISS) and Chinese space station orbit altitude during natural decay and Tomorrow.io has explained that although the satellites do not possess propulsion capability, Tomorrow.io can employ differential drag techniques to adjust the rate of orbital decay.⁹ Considering this, we adopt a condition that Tomorrow.io maintain control of its satellites to the greatest extent possible, including during deorbit through altitudes with inhabited space stations in order to facilitate collision avoidance.¹⁰ In addition, we are granting authority for Tomorrow.io to deploy and operate four satellites at this time, but are deferring action on the remaining 14 requested satellites pending filing and approval by the Commission of a modification to the application with an updated orbital debris mitigation demonstration addressing the re-entry casualty risk associated with the deployment of future satellites.¹¹ Additionally, each satellite is larger than 10 cm in their smallest dimension¹² and Tomorrow.io has explained that the satellites will carry the latest attitude determination control system (ADCS) technology and avionics equipment, such that precise knowledge of each satellite’s location can be maintained.¹³ Tomorrow.io will also continue to provide updated ephemeris data to the 18th Space Control Squadron and any other

sustainability; (4) take all possible steps to assess and mitigate collision risk after receiving a conjunction warning from the 19th Space Defense Squadron or other source; and (5) coordinate with NSF to reach a mutually acceptable agreement to mitigate the impact of its satellites on optical ground-based astronomy, with associated annual reporting requirements). *Id.*

⁴ SpaceX Letter at 2.

⁵ See Letter from Kristina Hlopsidis, Vice President, Regulatory and Operations, The Tomorrow Companies Inc., to Marlene H. Dortch, Secretary, FCC (filed March 10, 2023) (Tomorrow.io Response Letter).

⁶ See Letter from David Goldman, Senior Director of Satellite Policy, to Marlene H. Dortch, Secretary, FCC at 2 (filed Mar. 31, 2023) (SpaceX Omnibus Response).

⁷ See attached grant stamp at condition 19.

⁸ Revised Tech. Narrative at 10, 13 (filed June 14, 2023).

⁹ *Id.* at 12. See also ODAR Update Ver B. at 18 (filed Dec. 12, 2023); ODAR Ver. C at 17 (filed Jan. 4, 2024).

¹⁰ See attached grant stamp at condition 15.

¹¹ See attached grant stamp at condition 13.

¹² *Id.* at 9.

¹³ See Narrative at 7.

operators involved in a conjunction warning.¹⁴ Once the satellites descend to an altitude of 350 kilometers, we expect that the satellites would decay from orbit in a relatively short amount of time. In considering SpaceX's first generation satellite system, the Commission defined a disposal failure as any case in which control of a satellite is lost at an altitude of 350 kilometers or greater.¹⁵ Under the circumstances, we adopt a condition that Tomorrow.io report any inability to command the Tomorrow.io Weather Constellation satellites in a way necessary to perform differential drag maneuvers at altitudes above 350 km.¹⁶ 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.¹⁷ Inclusion of a 100 post-failure object years metric in this instance, as with SpaceX's Second Generation grant, identifies a relevant metric where additional Commission action would be necessary before deployment of additional Tomorrow.io satellites following a certain level of failure.¹⁸

5. We also condition Tomorrow.io to provide information regarding potential conjunction events during the reporting period for its satellites, particularly with respect to any difficulties encountered in the collision avoidance process. We believe that such information can help identify potential issues in operator-to-operator coordination.

6. There have been no concerns raised in this proceeding by NASA, NSF, or any other party except SpaceX regarding the instant application. We are including conditions requiring coordination with NASA, including operator-to-operator coordination of physical operations. Additionally, we condition this grant to require Tomorrow.io to coordinate with NSF as well.¹⁹ We conclude that it is in the public interest for Tomorrow.io to bear the responsibility of ensuring that these coordinations, which are separate from coordination of spectrum use, have been completed with these potentially interested federal agencies.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED that the Tomorrow Companies, Inc. request for a license to deploy and operate a non-geostationary satellite orbit system is GRANTED-IN-PART and DEFERRED-IN-PART, pursuant to section 303(r) of the Communications Act of 1934, as amended, 47

¹⁴ See attached grant stamp at condition 11.

¹⁵ As the Commission observed in its authorization of the SpaceX Gen2 system, "SpaceX's practice of testing its satellites at injection altitude, before orbit-raising, allows it to deorbit any non-functional satellites in a matter of days or weeks, helping to ensure that non-maneuverable satellites do not reach operational orbit." *Request for Orbital Deployment and Operating Authority for SpaceX Gen2 NGSO Satellite System*, Order and Authorization, FCC 22-91, at 91 (Nov. 29, 2022).

¹⁶ See attached grant stamp at condition 16.

¹⁷ There are potentially material differences between the Tomorrow.io Weather Constellation and the Starlink constellation that may warrant differing treatment of the two constellations. These include smaller satellite size, and consequent lower collision risk when comparing non-maneuverable satellites and a smaller number of satellites requested overall. There is also no indication that the Tomorrow.io satellites will be "checked out" at lower altitudes, so immediate identification of any issues with effective maneuverability, rather than periodic reporting, is warranted.

¹⁸ See attached grant stamp at condition 16. Although this partial grant is limited to four satellites, each of which will re-enter the Earth's atmosphere within 25 years even if a disposal failure occurs immediately upon deployment, we include this metric in anticipation that there may be favorable action regarding additional satellites in the Tomorrow.io Weather Constellation. This makes it clear that the satellites authorized herein would be taken into account for any assessment of post-failure object years.

¹⁹ See attached grant stamp at condition 18.

U.S.C. § 303(r), and sections 0.51 and 0.261 of the Federal Communication Commission's rules, 47 CFR §§ 0.51 and 0.261.

8. IT IS FURTHER ORDERED that petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's Rules, 47 CFR §§ 1.106 and 1.115, may be filed within 30 days of the date of the public notice of this action taken.

FEDERAL COMMUNICATIONS COMMISSION

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

ATTACHMENT TO GRANT
The Tomorrow Companies, Inc.
ICFS File Nos. SAT-LOA-20221201-00167; SAT-AMD-20230406-00075

ICFS File No(s):	SAT-LOA-20221201-00167; SAT-AMD-20230406-00075 ²⁰	GRANT IN PART / DEFER IN PART – With Conditions  Space Bureau Satellite Programs and Policy Division
Licensee/Grantee:	The Tomorrow Companies, Inc. (Tomorrow.io)	
Call Sign:	S3156	
Satellite Name:	Tomorrow.io Weather Constellation	
Orbital Location: (required station-keeping tolerance)	Non-geostationary orbit (NGSO) with operational apogee and perigee altitudes from 500-600 km (+/- 20 km) for satellites launched on or before September 29, 2024, and from 500-580 km (+/- 20 km) ²¹ for any satellites launched after September 29, 2024. Two satellites with 97.7 degrees inclination (+/- 0.4 degrees) and two satellites with 45 degrees inclination (+/- 1.1 degrees). ²² Each plane will consist of 2 satellites equally spaced within the plane.	
Administration:	United States of America	
Nature of Service:	Earth Exploration-Satellite Service (EESS)	
Scope of Grant:	Authority to deploy and operate up to four non-geostationary orbit satellites ²³ as part of the Tomorrow.io Weather Constellation ²⁴	
Service Area(s):	Global, subject to conditions (<i>see also</i> Appendix A)	
Frequencies:	EESS: 8025 - 8400 MHz center frequency of 8030.0 MHz on right RHCP with 8.0 MHz bandwidth (space-to-Earth) EESS (Passive): 90.13 – 92.65 GHz 114.5 – 122.75 GHz 182.19 – 191.31 GHz 202.04 – 205.8 GHz	

²⁰ This application was placed on public notice on July 28, 2023. *Satellite Licensing and Satellite Programs and Policy Division Information, Space Station Applications Accepted for Filing*, Public Notice, Report No. SAT-01745 (July 28, 2023). This proceeding was also designated as “permit-but-disclose” for purposes of the Commission’s rules governing *ex parte* communications. *Satellite Policy Branch Information, Actions Taken*, Public Notice, Report No. SAT-01695 (Jan. 20, 2023); *see* 47 CFR §§ 1.1200(a), 1.1206 and 1.1208 note 2.

²¹ *See* ODAR Update Ver. B (filed Dec. 12, 2023); ODAR Ver. C at 17, 20 (filed Jan. 4, 2024). Tomorrow.io requested an orbital altitude range up to 600 km (+/- 20 km), however given that satellites placed into orbits above 600 km would require more than five years to deorbit post-operations or require Tomorrow.io to cut short its scientific mission, *see* ODAR Update Ver. B Table 10 and ODAR Ver. C at 17, 20, we only authorize the full requested range of 500-600 km (+/- 20 km) for satellites launched on or before September 29, 2024, after which the Commission’s 5-year post-mission disposal requirement will be in effect. *See Space Innovation, Mitigation of Orbital Debris in the New Space Age*, IB Docket Nos. 22-271, 18-313, Report and Order, 37 FCC Rcd 11818, 11827 para. 22 (2022).

²² *See* Letter from Kristina Hloptsidis, Vice President, Regulatory & Operations, The Tomorrow Companies, Inc., to Marlene H. Dortch, Secretary, FCC at 1-2 (dated Apr. 23, 2024) (describing inclination range).

²³ Tomorrow.io has requested authority to deploy and operate 18 satellites. *See* Narrative at 7. We defer action of the remaining 14 satellites. *See* Condition 13.

²⁴ On January 17, 2023, Space Exploration Technologies Corp. (SpaceX) filed an *ex parte* letter. Letter from David Goldman, Director of Satellite Policy, SpaceX, to Marlene H. Dortch, Secretary, FCC at 1 (dated Jan. 17, 2023) (*SpaceX Letter*). These issues are fully addressed in the accompanying Order.

ATTACHMENT TO GRANT
The Tomorrow Companies, Inc.
ICFS File Nos. SAT-LOA-20221201-00167; SAT-AMD-20230406-00075

	Telemetry, tracking, and command (TT&C): 2025 - 2110 MHz (center frequency of 2054.625 MHz on right hand circular polarization RHCP) with 200 kHz bandwidth) (Earth-to-space) 8025 - 8400 MHz center frequency of 8030.0 MHz on right RHCP with 8.0 MHz bandwidth (space-to-Earth) GPS L1 (receive-only): 1575.42 MHz (space-to-space)
Unless otherwise specified herein, operations under this grant must comport with the legal and technical specifications set forth by the applicant or petitioner and with the Federal Communications Commission's rules not waived herein. This grant is also subject to the following conditions²⁵: 1. Tomorrow.io must prepare the necessary information, as may be required, for submission to the International Telecommunication Union (ITU) to initiate and complete the advance publication, coordination, due diligence, and notification process for these space stations, in accordance with the ITU Radio Regulations. Tomorrow.io will be held responsible for all cost-recovery fees associated with ITU filings. No protection from interference caused by radio stations authorized by other administrations is guaranteed unless coordination and notification procedures are timely completed or, with respect to individual administrations, by successfully completing coordination agreements. Any radio station authorization for which coordination has not been completed may be subject to additional terms and conditions as required to effect coordination of the frequency assignments of other administrations. <i>See</i> 47 CFR § 25.111(b). 2. We grant, on our own motion, a waiver of the U.S. Table of Frequency Allocations, 47 CFR § 2.106(a), to allow non-conforming use of the 2025-2110 MHz band for Tomorrow.io's satellites TT&C, subject to the condition that Tomorrow.io operates on an unprotected and non-interference basis, accepts any interference from authorized services, and complies with the other conditions below regarding operations in this band. Tomorrow.io intends to operate TT&C in these frequencies but will not operate in the EESS using these frequency bands. In the band 2025-2110 MHz, non-Federal Earth-to-space transmissions may be authorized in the space research and Earth exploration-satellite services, however, this does not include operations solely in the space operations service. 47 CFR § 2.106(a), (c)(347). In this instance we find good cause to waive the Table of Allocations to allow Tomorrow.io to operate command links only with its satellites based on Tomorrow.io's coordination with federal users in the frequency band, which should ensure that any authorized federal users are protected from harmful interference. 3. Tomorrow.io's request for a waiver of the U.S. Table of Frequency Allocations, 47 CFR § 2.106(a), to allow reception of data for EESS (passive) in certain bands not allocated for EESS (passive) use is GRANTED.²⁶ We note that the allocations for EESS (passive) in the international and U.S. Table of Frequency Allocations do not include Tomorrow.io's requested EESS (passive) operations between 92 to 92.65 GHz and between 122.25 to 122.75 GHz. However, in this case we find that the reception by Tomorrow.io satellites of weather data in these frequency bands will not alter the interference environment as no signals will be transmitted in those frequency bands either by Tomorrow.io's satellites or by any earth station facility. Tomorrow.io will be operating on an unprotected and non-interference	

²⁵ With respect to those frequency bands shared with Federal spectrum users, Federal operators have indicated that Federal missions brought into use after Tomorrow.io's requested 18-satellite constellation may prevent future modification or renewal of Tomorrow.io's operations.

²⁶ *See* Letter from Kristina Hloptsidis, Vice President, Regulatory & Operations, The Tomorrow Companies, Inc., to Marlene H. Dortch, Secretary, FCC at 1-2 (dated Mar. 29, 2024).

**ATTACHMENT TO GRANT
The Tomorrow Companies, Inc.**

ICFS File Nos. SAT-LOA-20221201-00167; SAT-AMD-20230406-00075

basis and cannot claim protection from authorized users in the frequency bands. Based on the limited, receive-only operations by Tomorrow.io's "sounder" instrument, we find good cause to grant a waiver in this instance. The non-conforming use will augment the quality of the measurements for Tomorrow.io's scientific mission, and we conclude that in these circumstances grant of a waiver to permit these EESS (passive) operations is in the public interest. Waiver is limited to this authorization, and is without prejudice to any determination the Commission may make on a future request for waiver to operate in these frequency bands by Tomorrow.io or any other party. Tomorrow.io shall not claim protection from nor cause harmful interference to any authorized users operating consistent with the U.S. Table of Frequency Allocations, 47 CFR § 2.106(a).

4. Tomorrow.io shall be aware that space-to-Earth and Earth-to-space operations shall be strictly limited to durations when the Tomorrow.io space stations referenced within this license request are visible to the corresponding earth station locations listed in Appendix A of the attachment to this grant, noting the additional restrictions within this grant.
5. Transmissions in the 2025-2110 MHz and 8025-8400 MHz bands may only be made to/from earth stations coordinated with federal agencies, including National Aeronautics and Space Administration (NASA), Department of Commerce/National Oceanic and Atmospheric Administration (DOC/NOAA), and the United States Air Force Spectrum Management Office (AFSMO). Any use of Federal ground stations shall be coordinated by Tomorrow.io's federal government customers with AFSMO (jimmy.nguyen@us.af.mil), NASA (HQ-SatCoord@mail.nasa.gov) and DOC/NOAA (edna.prado@noaa.gov). A list of coordinated non-Federal earth stations is attached as Appendix A. Tomorrow.io shall provide the FCC with an updated list of coordinated non-Federal earth stations within ten business days following any changes to that list.
6. Transmissions in the 2025-2110 MHz and 8025-8400 MHz bands are limited to the center frequencies and emission bandwidths coordinated with Federal users set forth in the Frequencies section of this grant. Combined uplink (Earth-to-space) and downlink (space-to-Earth) per earth station per satellite duty cycles shall be limited to no more than 59% for the mid-inclination satellites and no more than 49% for the near-polar satellites, with the uplink (Earth-to-space) typically requiring less than 1 minute per visibility opportunity and the downlink (space-to-Earth) typically requiring less than 3 minutes per visibility opportunity.
7. Earth station transmissions from the United States to Tomorrow.io Weather Constellation satellites in the 2025-2110 MHz band must be coordinated with the SBE (Society of Broadcast Engineers).
8. Power flux-density levels at the surface of the Earth from space-to-Earth operations in the 8025-8400 MHz band must not exceed the limits in No. 22.5 and Table 21-4 of the International Telecommunication Union's Radio Regulations, the power spectral density levels at space research service earth stations from space-to-Earth operations in the 8025-8400 MHz band must not exceed the protection criteria in Recommendation ITU-R SA.1157-1, and the guidelines for systems operating in the 8025-8400 MHz band in Recommendation ITU-R SA.1810 must be followed.
9. Given the opportunity for additional entrants to operate in Tomorrow.io's requested frequency bands, we grant Tomorrow.io's request for a waiver of the modified processing round requirements in 47 CFR §§ 25.156 and 25.157. *See DigitalGlobe, Inc.*, Order and Authorization, 20 FCC Rcd 15696 (Sat. Div., Int'l Bur. 2005) at para. 8.
10. Tomorrow.io shall provide the FCC and other federal agencies the initial orbital parameters (e.g. operating altitudes, inclination angle) for each pair of satellites in a plane within 30 days following launch. Notification shall be provided to AFSMO (jimmy.nguyen@us.af.mil), NASA (HQ-SatCoord@mail.nasa.gov) and DOC/NOAA (edna.prado@noaa.gov).

**ATTACHMENT TO GRANT
The Tomorrow Companies, Inc.**

ICFS File Nos. SAT-LOA-20221201-00167; SAT-AMD-20230406-00075

11. Upon receipt of a conjunction warning from the 18th Space Control Squadron or other sources, Tomorrow.io must review and take all possible steps to assess the collision risk, and mitigate collision risk if necessary. As appropriate, steps to assess and mitigate should include, but are not limited to: contacting the operator of any active spacecraft involved in such warning; sharing ephemeris data and other appropriate operational information with any such operator; and modifying spacecraft attitude and/or operations.
12. Tomorrow.io 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.
13. Tomorrow.io is authorized to deploy up to four Tomorrow.io Weather Constellation satellites. We defer action with respect to the additional satellites, pending filing and approval by the Commission of a modification to the application with an updated orbital debris mitigation demonstration addressing the re-entry casualty risk associated with the deployment of future Tomorrow.io Weather Constellation satellites, along with any other updated orbital debris mitigation information.
14. In connection with the provision of service in any particular country, Tomorrow.io is obliged to comply with the applicable laws, regulations, rules, and licensing procedures of that country.
15. Tomorrow.io must maintain control of the Tomorrow.io Weather Constellation satellites to the greatest extent possible to facilitate collision avoidance, including during deorbit through altitudes with inhabitable space stations.
16. Tomorrow.io 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: number of conjunction events identified for Tomorrow.io 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.

Tomorrow.io must report any inability to command the satellites in a way necessary to perform differential drag maneuvers at altitudes above 350 km not later than 10 days following the loss of ability.

Based on the information reported, the license may be subject to additional terms and conditions, including additional reporting obligations, limitations on additional deployments, requirements for early removal of satellites from orbit, or any other appropriate conditions to limit collision risk. In the event of Tomorrow.io Weather Constellation satellite failures resulting in more than 100 post-failure object years, Tomorrow.io may not deploy any additional Tomorrow.io Weather Constellation satellites until the Commission has approved a license modification that includes an updated orbital debris mitigation plan addressing reduction in the failure rate or mitigation of the risk of satellite failures.
17. Tomorrow.io must communicate and collaborate with NASA to support safety of both Tomorrow.io and NASA assets and to preserve long-term sustainable space-based communications services. Tomorrow.io must report on the progress of its communications and collaboration efforts to the Commission in its regular reports specified in condition 16, above. Tomorrow.io must coordinate and collaborate with NASA to promote a mutually beneficial space environment that would minimize impacts to NASA's science missions involving astronomy.
18. Tomorrow.io must coordinate with the National Science Foundation (NSF) to achieve a mutually acceptable agreement to mitigate the impact of its satellites (call sign S3156) on optical ground-based astronomy. Tomorrow.io must submit an annual report to the Commission, by January 1st each year covering the preceding year (1) describing whether it has reached a coordination agreement with NSF addressing optical astronomy. and (2) any steps Tomorrow.io has taken to reduce the impact of its

**ATTACHMENT TO GRANT
The Tomorrow Companies, Inc.**

ICFS File Nos. SAT-LOA-20221201-00167; SAT-AMD-20230406-00075

satellites on optical astronomy. If Tomorrow.io provides a statement in the record that NSF has no concerns within 45 days following arrival of the first two Tomorrow.io satellites at their operational altitude, no further reporting will be required.

19. Tomorrow.io satellites launched after September 29, 2024 must meet the Commission's five-year post-mission disposal requirement and must not be integrated into a launch vehicle that could place them into an orbital altitude above 600 km.²⁷
20. This authorization is also subject to the following requirements:
 - a. Tomorrow.io must post a surety bond in satisfaction of 47 CFR § 25.165(a)(1) & (b) no later than June 17, 2024, and thereafter maintain on file a surety bond requiring payment in the event of a default in an amount, at minimum, determined according to the formula set forth in 47 CFR § 25.165(a)(1); and
 - b. Tomorrow.io must launch at least two of its authorized Tomorrow.io Weather Constellation satellites, place them in the assigned orbit, and operate them in accordance with this authorization no later than May 17, 2030, and must launch the remaining space stations necessary to complete its authorized service constellation, place them in their assigned orbits, and operate them in accordance with the authorization no later than May 17, 2033. 47 CFR § 25.164(b).
21. Failure to post and maintain a surety bond will render this authorization null and void automatically, without further Commission action. Failure to meet the milestone requirements of 47 CFR § 25.164(b) may result in Tomorrow.io's authorization being reduced to the number of satellites in use at the milestone date. Failure to comply with the milestone requirements of 47 CFR § 25.164(b) will also result in forfeiture of Tomorrow.io's surety bond. By June 2, 2030, Tomorrow.io must either demonstrate compliance with this milestone requirement or notify the Commission in writing that the requirement was not met. 47 CFR § 25.164(f).
22. The license term is 15 years and will begin at 3 a.m. ET on the date that Tomorrow.io certifies to the Commission that the first of Tomorrow.io Weather Constellation space station(s) have been successfully placed into orbit and the operations fully conform to the terms and conditions of this authorization. Tomorrow.io must file such certification within five business days of placing the initial Tomorrow.io Weather Constellation space station(s) into operation.

²⁷ See *Space Innovation, Mitigation of Orbital Debris in the New Space Age*, IB Docket Nos. 22-271, 18-313, Report and Order, 37 FCC Rcd 11818, 11827 para. 22 (2022); see also ODAR Update V.B, Table 10, ODAR Ver. C at 20 (demonstrating that satellites placed into orbits above 600 km would not demise within the required timeframe even while employing maximum drag techniques).

**ATTACHMENT TO GRANT
The Tomorrow Companies, Inc.**

ICFS File Nos. SAT-LOA-20221201-00167; SAT-AMD-20230406-00075

Licensee/grantee is afforded thirty (30) days from the date of release of this action to decline the grant as conditioned. Failure to respond within this period will constitute formal acceptance of the grant as conditioned.

This action is taken pursuant to Section 0.261 of the Commission's rules on delegated authority, 47 CFR § 0.261, and is effective upon release.

Station licenses are subject to the conditions specified in Section 309(h) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(h).

Action Date:	May 17, 2024

Term Dates	From: see conditions	To: see conditions

Approved:

Merissa L. Velez
Chief, Satellite Programs and Policy Division

ATTACHMENT TO GRANT
The Tomorrow Companies, Inc.
ICFS File Nos. SAT-LOA-20221201-00167; SAT-AMD-20230406-00075

APPENDIX A

Earth Stations²⁸

GS # - City - Country - Max# of Passes per Day

1 Awarua 1 New Zealand 78
2 Barrow AK, USA 98
3 Dubai UAE 67
4 Dundee Scotland, UK 74
5 Mingenew Australia 80
6 Harmon Guam 57
7 Accra Ghana 55
8 Alice Springs Australia 66
9 Cordoba Argentina 82
10 **Fairbanks AK, USA 72**
11 Guildford UK 76
12 Ojebyn Sweden 74
13 **Pendergrass GA, USA 81**
14 Pretoria South Africa 69
15 Ushuaia Argentina 74
16 Awarua 2 New Zealand 78
17 Baku Azerbaijan 78
18 Blonduos Iceland 76
19 Kandy Sri Lanka 56
20 Peterborough South Australia 81
21 Plana Bulgaria 77
22 Unst Shetland (UK) 66
23 Azores (Santa Maria) Portugal 79
24 Nangetty West Australia 80
25 Mon Loisir Mauritius 61

²⁸ This list includes the locations of the baselined earth stations identified by Tomorrow.io, including expected future sites. *See* Updated Tech. Narrative (filed June 14, 2023) at 6-7, Table 2.



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 24-477
Released: May 20, 2024

**DOMESTIC SECTION 214 APPLICATION AND WAIVER REQUESTS FILED FOR THE
ACQUISITION OF CONNECT AMERICA FUND PHASE II AUCTION FUNDING AND
RELATED BUILDOUT AND SERVICE OBLIGATIONS OF
RIVERSTREET COMMUNICATIONS OF VIRGINIA, INC. BY
EMPOWER BROADBAND, INC.**

NON-STREAMLINED PLEADING CYCLE ESTABLISHED
WC Docket No. 24-145

LIMITED GRANT OF WAIVER OF NON-COMPLIANCE TIER 4 SUPPORT RECOVERY
DEADLINE FOR RIVERSTREET
WC Docket No. 10-90

Comments Due: June 3, 2024
Reply Comment Due: June 10, 2024

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

We also seek comment, in Section II of this Public Notice, on EMPOWER's request to waive, for the Assigned CBGs, certain service milestones and the certification requirements and non-

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

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

compliance measures associated with those service milestones, which EMPOWER included in the Application.³

Additionally, in Section III of this Public Notice, the Bureau grants RiverStreet a limited waiver of the CAF II non-compliance Tier 4 support recovery deadline, so that RiverStreet has until June 30, 2024 to pay the required support recovery amount or certify offering service to enough locations to move into a lower non-compliance Tier before the Bureau will direct the Universal Service Administrative Company (USAC) to draw on RiverStreet's letter of credit.⁴

I. DOMESTIC SECTION 214 APPLICATION

Applicants

RiverStreet, a Virginia corporation, provides service as a competitive local exchange carrier (LEC) in the following Virginia counties: Bedford, Brunswick, Campbell, Charlotte, King and Queen, and Pittsylvania. RiverStreet serves Internet subscribers in Pittsylvania, Campbell, Bedford, Franklin, Halifax, Charlotte, Prince Edward, King and Queen, Caroline, Essex, Middlesex, King William, Nelson, Albemarle, City of Danville (Pittsylvania), Pittsylvania, Charles City County, City of Emporia (Greensville County), Halifax, City of South Boston (Halifax), and City of Martinsville (Henry).⁵ RiverStreet has been designated as an Eligible Telecommunications Carrier (ETC) pursuant to section 214(e) of the Act in Virginia.⁶ On July 15, 2019, the Bureau authorized RiverStreet to receive \$32,140,887.10 in CAF II support to serve 13,518 locations in Virginia.⁷ RiverStreet does not have any customers in the Assigned CBGs.⁸

EMPOWER, a Virginia corporation, provides communications services in south central Virginia in the counties of Brunswick, Charlotte, Emporia, Greensville, Halifax, Lunenburg, Mecklenburg, Pittsylvania, Southampton, and Sussex.⁹ EMPOWER is a designated ETC pursuant to section 214(e) of the Act.¹⁰ On June 10, 2019, the Bureau authorized EMPOWER to receive \$1,868,320.00 in CAF II support in

³ Application at 15-18; 47 CFR §§ 54.310(c), 54.316(b)(4), 54.320(d)(i)-(iv).

⁴ RiverStreet Communications of Virginia, Inc. Petition for Expedited Waiver, WC Docket No. 10-90 (filed Jan. 12, 2024) (RiverStreet Waiver Petition); Application at 9 n.10; *see also* 47 CFR § 54.320(d)(1)(iv)(B); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., 31 FCC Rcd 5949, 6017, para. 190 (2016) (*CAF Phase II Auction Order*).

⁵ Application at 2-3. Applicants provide ownership and affiliate information related to RiverStreet in their Application. *Id.* at 3-5, 12. Applicants state that RiverStreet currently participates in the Commission's Lifeline and Affordable Connectivity Program. *Id.* at 8.

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

⁷ *Id.*; *Connect America Fund Phase II Auction Support Authorized for 2,413 Winning Bids*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 34 FCC Rcd 5966, Attach. A at 118 (AU/WCB 2019). Applicants note that RiverStreet also receives Rural Digital Opportunity Fund (RDOF) support. Application at 3. Specifically, on February 14, 2022, the Bureau authorized RiverStreet to receive \$39,777,711.20 in RDOF support in Virginia to serve 24,213 locations. *See Rural Digital Opportunity Fund Support Authorized for 2,576 Winning Bids*, AU Docket No. 20-34, WC Docket Nos. 19-126, 10-90, Public Notice, 37 FCC Rcd 1617, Attach. A (WCB/OEA 2022).

⁸ Application at 2.

⁹ *Id.* at 5-6. Applicants state that EMPOWER currently participates in the Commission's Lifeline and Affordable Connectivity Program and will continue to participate in both programs. *Id.* at 8.

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

Virginia to serve 838 locations.¹¹ EMPOWER is a wholly-owned subsidiary of Mecklenburg Electric Cooperative (Mecklenburg EC), a Virginia Corporation and rural electric cooperative that is owned by its members.¹² Applicants state that neither EMPOWER, EMPOWER TELECOM, nor Mecklenburg EC hold a 10% or greater interest in any other provider of domestic telecommunications services.¹³

Description of the Proposed Transaction

Pursuant to the terms of the proposed transaction, Applicants entered into an agreement on April 25, 2024, subject to Commission approval, whereby RiverStreet will assign the CAF II obligations for the Assigned CBGs to EMPOWER, who has agreed to assume and accept all future CAF II compliance obligations for the Assigned CBGs.¹⁴ Applicants state that, for the Assigned CBGs, EMPOWER will receive a total of \$8,173,842.00 in annual CAF II support for 3,757 locations.¹⁵ In addition, RiverStreet will pay to EMPOWER an amount equal to all CAF II support received to date by RiverStreet in the Assigned CBGs at closing.¹⁶ EMPOWER is not acquiring any of RiverStreet's infrastructure assets or customers.¹⁷

Statement of Public Interest

Applicants assert that the proposed transaction would serve the public interest, convenience, and necessity.¹⁸ They state that EMPOWER has both the necessary industry experience and requisite financial means to take on the responsibility of deploying CAF II-supported voice and broadband service in the CAF II-funded census blocks located with the Assigned CBGs.¹⁹ Applicants assert that customers in the Assigned CBGs would be best served by EMPOWER because of the overlap of the Assigned CBG areas with the electric service territory of Mecklenburg EC, as well as the proximity of the Assigned CBG areas to EMPOWER's broadband service area, existing operations, resources, and

¹¹ See *Connect America Fund II Support Authorized for 856 Winning Bids*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 34 FCC Rcd 4725, Attach. A at 10 (AU/WCB 2019). On October 14, 2021, the Bureau also authorized EMPOWER to receive \$5,053,914.90 in RDOF support in Virginia to serve 3,602 locations. See *Rural Digital Opportunity Fund Support Authorized For 469 Winning Bids*, AU Docket No. 20-34, WC Docket Nos. 19-126, 10-90, Public Notice, 36 FCC Rcd 14528, 14526, Attach. A (WCB 2021).

¹² Application at 6. Applicants state that no single member holds a 10% or greater interest in Mecklenburg EC. *Id.* Mecklenburg EC wholly owns EMPOWER TELECOM, Inc. (EMPOWER TELECOM), a Virginia corporation, that provides services as a rural incumbent LEC in south central Virginia. *Id.* at 7.

¹³ Supplement at 3.

¹⁴ *Id.* at 7.

¹⁵ Application at 7.

¹⁶ *Id.* EMPOWER states that it has filed contemporaneously with the Application a petition seeking FCC expansion of its ETC designation to include the CAF II-funded census blocks in the Assigned CBGs which, if granted, will make EMPOWER eligible to receive CAF II and federal Lifeline support in the Assigned CBGs. *Id.*; see also EMPOWER Broadband, Inc. Petition for Designation as an Expanded Eligible Telecommunications Carrier Pursuant to Section 214(e)(6) of the Communications Act of 1934, WC Docket No. 09-197 (filed May 14, 2024). In this petition, EMPOWER also seeks a Lifeline-only ETC designation in additional areas in south central Virginia.

¹⁷ Application at 2.

¹⁸ *Id.* at 8-10.

¹⁹ *Id.* at 9. Applicants note that the Commission has already reviewed and approved EMPOWER's CAF II and RDOF long-form applications and authorized EMPOWER to receive CAF II and RDOF support. *Id.* Applicants state that they do not anticipate that any changes to EMPOWER's operations or other circumstances might occur in the wake of the transaction that could compromise Applicants' ability to meet their service obligations. *Id.*

infrastructure.²⁰ Applicants assert the transaction will not result in any adverse alteration to the buildout plans that EMPOWER submitted to the Commission to be authorized to receive CAF II support.²¹ Applicants state that there will be no changes in the fiber-to-the-home technology being used by EMPOWER in executing its CAF II and RDOF buildout plans and that EMPOWER will continue to deploy fiber technology capable of providing symmetrical gigabit-tier speeds in meeting its CAF II and RDOF buildout milestones.²² Applicants further note that EMPOWER is not taking on any debt repayment obligations or otherwise increasing substantially its costs to deploy service, and will continue to have the same access to financial resources following consummation of the transaction.²³ Applicants assert that the proposed transaction will serve the public interest because it will not result in any harms to either Applicant's existing subscribers and will accelerate Empower's ongoing efforts to expand broadband service to unserved areas.²⁴ Applicants state that there will be no reduction in competitors in the Assigned CBGs and assert that the transaction is in line with the Commission's important CAF II program goals.²⁵

II. EMPOWER WAIVER REQUESTS

Next, we will comment on EMPOWER's request for waiver of several of the Commission's rules for the Assigned CBGs.²⁶ Currently, RiverStreet has a compliance gap of more than 50% of the required number of locations it was required to serve by December 31, 2022.²⁷ Accordingly, the Bureau is withholding 100% of RiverStreet's CAF Phase II auction support pursuant to the Commission's non-compliance rules.²⁸ For the Assigned CBGs, EMPOWER seeks waiver of the service milestones that would require it to have served 40% of the required number of locations in the Assigned CBGs by December 31, 2022, have served 60% of the required number of locations in the Assigned CBGs by December 31, 2023, and serve 80% of the required number of locations in the Assigned CBGs by December 31, 2024.²⁹ EMPOWER additionally seeks waiver of the requirement that EMPOWER certify compliance with the relevant service milestones and waiver of the non-

²⁰ *Id.* at 10. Applicants note a slight overlap between the service areas of RiverStreet and EMPOWER in the following Virginia counties: (a) Pittsylvania County; (b) in Halifax County, near its border with Pittsylvania County; and (c) in the City of Emporia. Supplement at 1-2; *see also id.*, Exh. A. (EMPOWER Broadband and RiverStreet Communications of Virginia Service Areas in South Central Virginia). Applicants note that there are no adjacent service areas between RiverStreet and EMPOWER. Supplement at 2.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ Application at 15-18.

²⁷ RiverStreet was required to be capable of providing service to 40% of its required CAF II locations by December 31, 2022, and 60% of its required CAF II locations by December 31, 2023. 47 CFR § 54.310(c). RiverStreet has not met its CAF II buildout milestones and has been subjected to some of the non-compliance measures set forth in section 54.320(d)(1)(iv) of the Commission's rules. Application at 9; *see also* 47 CFR § 54.320(d)(1)(iv).

²⁸ 47 CFR § 54.320(d)(1)(iv)(B).

²⁹ 47 CFR § 54.310(c). EMPOWER seeks waiver of the 40% and 60% service milestones until December 31, 2024 and waiver of the 80% service milestone until June 30, 2025. Application at 15 n.16.

compliance measures that would apply for failing to meet the relevant service milestones for the Assigned CBGs.³⁰ Finally, EMPOWER seeks waiver of the requirement that the Bureau withhold support for the Assigned CBGs, and instead requests that the Bureau make available to EMPOWER all CAF Phase II auction support that the Bureau previously withheld from RiverStreet due to its non-compliance with the applicable service milestones.³¹

Non-Streamlined Processing of the Application and EMPOWER's Waiver Requests

Because the proposed transaction would involve the exchange and assumption of Universal Service Fund high-cost mechanism obligations, along with EMPOWER's waiver requests, in order to sufficiently analyze whether the proposed transaction would serve the public interest, we accept the Application for non-streamlined processing.³²

III. RIVERSTREET'S REQUEST FOR WAIVER OF THE NON-COMPLIANCE TIER 4 SUPPORT RECOVERY DEADLINE

We grant RiverStreet a limited waiver of the six-month timeframe a CAF II support recipient has to pay the required support recovery if it is in non-compliance Tier 4—i.e., the recipient has a compliance gap of 50 percent or more of the number of locations that it was required to offer service by the relevant interim service milestone—and has been in Tier 4 for more than six months.³³ Specifically, we extend the deadline so that RiverStreet has until June 30, 2024 to pay the required support recovery amount.³⁴ If RiverStreet does not move into a lower non-compliance tier or pay back the required

³⁰ 47 CFR §§ 54.316(b)(4), 54.320(d)(1)(i)-(iv). For the certification requirement, EMPOWER seeks waiver of the third and fourth-year certifications until December 31, 2024, and waiver of the fifth year certification until June 30, 2025. Application at 15 n.17. Similarly, for the non-compliance measures, EMPOWER seeks waiver of section 54.320(d)(1)(iii), (iv) until December 31, 2024, and waiver of section 54.320(d)(1)(i), (ii) until June 30, 2025. *Id.* at 15.

³¹ 47 CFR § 54.320(d)(1)(iv)(B); Application at 15.

³² 47 CFR § 63.03(c)(1)(v).

³³ 47 CFR § 54.320(d)(1)(iv)(B); *CAF Phase II Auction Order*, 31 FCC Rcd at 6017, para. 190; RiverStreet Waiver Petition; Application at 9 n.10. If CAF II support recipients fail to meet their interim service milestones, they will be placed into non-compliance tiers and subject to non-compliance measures that scale with the extent of non-compliance, including additional reporting requirements, withholding of support, and support recovery. 47 CFR § 54.320(d)(1); *see also 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). Relevant here, if a support recipient is in Tier 4 because it has a compliance gap of 50% or more of the number of locations that it is required to have built out to by the interim service milestone, USAC will withhold 50% of its monthly support for the state and the support recipient must file quarterly reports on its deployment status. 47 CFR § 54.320(d)(1)(iv)(A). If after having 50% of its support withheld for six months, a CAF II support recipient has not certified serving more than 50% of the required number of locations, USAC will withhold 100% of the recipient's CAF II monthly support and will commence a recovery action for a percentage of support that is equal to the recipient's compliance gap plus 10% of the support that has been disbursed to date. 47 CFR § 54.320(d)(1)(iv)(B). The recipient has six months to pay the required support recovery or USAC will draw on the support recipient's letter of credit and the support recipient may be disqualified from the receipt of CAF II support or additional universal support. *CAF Phase II Auction Order*, 31 FCC Rcd at 6017, para. 190.

³⁴ On January 17, 2023, RiverStreet notified the Bureau that it had missed the 40% service milestone and detailed its plan for coming into compliance. Letter from Eric S. Cramer, President/CEO, RiverStreet Management

support recovery by this deadline, we will instruct USAC to draw on RiverStreet's letter of credit absent any further relief.³⁵

On January 12, 2024, RiverStreet filed a petition seeking waiver of the 40% and 60% service milestones, related certification requirements, and non-compliance measures for failure to meet the service milestones.³⁶ RiverStreet claims it is delayed in meeting its service milestone because "supply chain delays resulting from the global pandemic have severely impeded RiverStreet's ability to acquire the equipment necessary to progress with its buildout in the FCC prescribed time frame."³⁷ As an alternative, RiverStreet asks for an extension to pay back the required support recovery with the expectation that it will soon move into a lower non-compliance tier so that it will no longer be required to pay the required support recovery amount.³⁸

Several parties filed comments or *ex partes* opposing RiverStreet's request for waiver.³⁹ The commenters question the validity of RiverStreet's commitments to come into compliance and RiverStreet's claims that its inability to meet the service milestone was due to circumstances outside of

Services, LLC, to Trent Harkrader, Chief, Wireline Competition Bureau, FCC, WC Docket No. 10-90 et al. (filed Jan. 17, 2023). After the March 1 location reporting deadline and at the Bureau's direction, USAC notified RiverStreet that it had a compliance gap that qualified it for non-compliance Tier 4 and began withholding 50% of its CAF II support. 47 CFR § 54.320(d)(1)(iv)(A). RiverStreet filed quarterly reports reporting on its progress, but did not certify serving enough locations to be eligible for a lower non-compliance tier. *See, e.g.*, Letter from Eric S. Cramer, President/CEO, RiverStreet Management Services, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Aug. 31, 2023) (RiverStreet Aug. 2023 Status Report); Letter from Eric S. Cramer, President/CEO, RiverStreet Management Services, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Dec. 1, 2023) (RiverStreet Dec. 2023 Status Report); Letter from Eric S. Cramer, President/CEO, RiverStreet Management Services, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Mar. 1, 2024). Accordingly, the Bureau directed USAC to begin withholding 100% of RiverStreet's support and to commence a recovery action for the required support recovery amount with a due date of May 21, 2024. 47 CFR § 54.320(d)(1)(iv)(B); *CAF Phase II Auction Order*, 31 FCC Rcd at 6017, para. 190. As of the date of this Public Notice, RiverStreet remains in Tier 4 and has not paid the required support recovery amount. Application at 9 n.10.

³⁵ *CAF Phase II Auction Order*, 31 FCC Rcd at 6017, para. 190.

³⁶ RiverStreet Waiver Petition at 5-6. We do not address RiverStreet's request for waiver of the 40% and 60% service milestones or the related certifications and the non-compliance measures for failing to meet the service milestones. *Id.* We conclude it is premature to address these additional requests while the Application is pending given the outcome will determine how many CAF II locations RiverStreet must serve and may affect RiverStreet's build out schedule.

³⁷ RiverStreet Waiver Petition at 7; *see also id.* at 3-5 (describing the challenges RiverStreet claims to have faced in meeting its service milestones).

³⁸ RiverStreet Waiver Petition at 6; *see also* Application at 9 n.10.

³⁹ Opposition of Central Virginia Services, Inc. d/b/a Firefly Fiber Broadband to RiverStreet Communications of Virginia, Inc.'s Petition for Expedited Waiver, WC Docket No. 10-90 (filed Jan. 29, 2024) (CVSI Opposition); Brunswick County, Halifax County, and Mecklenburg County, Virginia Opposition to RiverStreet Communications of Virginia, Inc.'s Petition for Expedited Waiver, WC Docket No. 10-90 (filed Jan. 29, 2024) (Counties Opposition); Letter from Sarat Yellepeddi, President and Chief Executive Officer, PGEC Enterprises, LLC d/b/a Ruralband, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Feb. 12, 2024) (PGEC *Ex Parte* Letter). RiverStreet submitted replies to these filings. *See* Consolidated Reply to Oppositions to Petition for Expedited Waiver, WC Docket No. 10-90 (filed Feb. 5, 2024) (RiverStreet Consolidated Reply); Reply to Late-Filed Opposition to Petition for Expedited Waiver, WC Docket No. 10-90 (filed Mar. 6, 2024) (RiverStreet PGEC Reply).

its control.⁴⁰ They also claim that imposing non-compliance measures on RiverStreet will provide an incentive for RiverStreet to come into compliance with its service milestones.⁴¹

Generally, the Commission's rules may be waived for good cause shown.⁴² 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.⁴³

We find good cause to grant RiverStreet a limited waiver and extend the Tier 4 support recovery deadline to June 30, 2024. We conclude there are special circumstances because RiverStreet has taken steps that suggest it will imminently be able to move to a lower compliance tier that will not require us to recover support. Specifically, RiverStreet has made significant progress in deployment. RiverStreet has certified offering voice and broadband service to 3,520 locations consistent with its CAF II obligations and claims it will further close its non-compliance gap so that it can move out of Tier 4 "on or before June 30, 2024."⁴⁴ RiverStreet has also taken steps towards moving into full compliance by filing the pending Application with EMPOWER. If the Application is approved, RiverStreet will have 3,757 locations removed from its CAF II obligation, and thus will be closer to meeting its service milestones.⁴⁵ Finally, the Bureau and the Virginia Department of Housing and Community Development (Virginia DHCD) have worked closely with RiverStreet as part of our efforts to facilitate the coordination of federal and state funding programs to ensure that funds are being used most efficiently to provide service to as many unserved consumers living in Virginia as possible.⁴⁶

We also conclude that it serves the public interest to grant this limited waiver and provide RiverStreet with additional time to pay back the required support recovery. In deciding whether to grant a limited waiver of the rule, we must balance the potential risk to the public's funds in delaying our support recovery against our objective of incentivizing compliance so that consumers receive access to voice and broadband service as quickly as possible.⁴⁷ We find on balance it serves the public interest to grant a very short extension where RiverStreet has demonstrated that it has made substantial good faith efforts to move out of Tier 4 and also come back into full compliance, it intends to move out of Tier 4 shortly after the original deadline to make the required support recovery payment, and it has routinely coordinated and collaborated with the Bureau and the Virginia DHCD to help facilitate our interagency funding coordination objectives. We anticipate that recovering support at this point would materially jeopardize RiverStreet's ability to make further progress on its deployment, potentially further delaying service for consumers and ultimately undoing the extensive coordination efforts. The short extension means that RiverStreet will retain the already disbursed funds for a very limited

⁴⁰ Counties Opposition at 6-8; CVSI Opposition at 3-7; PGEC *Ex Parte* Letter at 2-4.

⁴¹ Counties Opposition at 8-9; CVSI Opposition at 8-9; PGEC *Ex Parte* Letter at 4.

⁴² 47 CFR § 1.3.

⁴³ 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*).

⁴⁴ Application at 9 n.10.

⁴⁵ *Id.* at 7.

⁴⁶ EMPOWER was awarded funding through the Virginia Telecommunication Initiative (VATI) program to serve over 14,500 homes in counties where Assigned CBGs are located, and EMPOWER claims that it "will be able to immediately utilize existing engineering and contractor resources" in these counties to meet its obligations in the Assigned CBGs if the Application is granted. Supplement at 2; Application at Exh. A.

⁴⁷ 2014 *Connect America Order*, 29 FCC Rcd at 15697, para. 148 n.328 ("Our overriding objective is to create a framework that incents full performance.").

additional amount of time if it remains in Tier 4, and we have the added protection of having already stopped all CAF II payments and drawing on the letter of credit if RiverStreet does not meet the extended deadline.⁴⁸

We disagree with commenters responding to the RiverStreet Waiver Petition (filed in WC Docket No. 10-90) to the extent they argue that we should not grant even this limited relief. While we acknowledge that RiverStreet initially deployed service more slowly than it anticipated it would,⁴⁹ RiverStreet has since demonstrated that it is proceeding down a path towards compliance—both with the pending Application and its significantly increased deployment since filing its petition for waiver. Thus, regardless of whether RiverStreet has not previously met its service milestones for reasons in or out of its control, or timely met its commitments for other funding programs,⁵⁰ we are persuaded that RiverStreet is likely to move out of Tier 4 by the extended deadline.⁵¹ Additionally, we are not waiving RiverStreet’s interim service milestones or the applicable non-compliance measures. We are simply providing a very limited additional amount of time for RiverStreet to either move out of Tier 4 or pay the required support recovery before we will draw on the letter of credit. Thus, for the reasons explained above, we believe our limited waiver retains the important incentives the Commission adopted for service providers to meet their deployment obligations.⁵²

IV. GENERAL INFORMATION REGARDING THE DOMESTIC SECTION 214 APPLICATION AND EMPOWER’S WAIVER REQUESTS

The section 214(a) transfer 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.

⁴⁸ 47 CFR § 54.320(d)(1)(iv)(B).

⁴⁹ See, e.g., Counties Comments at 6; CVSI Comments at 5-6 (noting that RiverStreet reported deploying to no locations in its quarterly status report despite stating in a previous status report that it anticipated “significant” progress); see also RiverStreet Aug. 2023 Status Report at 2 (noting that RiverStreet expected it “will be able to show significant gains in deployment in the coming quarter”); RiverStreet Dec. 2023 Status Report at 1-2 (explaining RiverStreet had not deployed to any additional locations since its August 2023 status report).

⁵⁰ See, e.g., Counties Comment at 7-8 (claiming “RiverStreet’s assertions concerning the impact of COVID-19 on the equipment supply chain are dubious” and that “[i]t is more reasonable to conclude that the Petitioner’s own internal business decisions in setting priorities for the use of its resources contributed, perhaps significantly, to its inability to meet its initial CAF II deployment obligations”); CVSI Comments at 3-5 (stating that RiverStreet’s “claims [about COVID-19] are not convincing and do not provide sufficient basis for the requested waivers”); PGEC *Ex Parte* Letter at 2-4 (claiming “RiverStreet has an exceptionally checkered history with respect to complying with broadband buildout obligations associated with federal and state funding programs”).

⁵¹ For these reasons, we are also not persuaded that we should further delay service to consumers in these areas by finding that RiverStreet has fully defaulted on its CAF II obligations in these areas. See CVSI Comments at 7; PGEC *Ex Parte* Letter at 4.

⁵² See also RiverStreet Consolidated Reply at 2-3 (“RiverStreet already has substantial incentive to complete its buildout as quickly as possible, both to avoid potential future penalties and to meet the demand of its rural customer base for high speed broadband.”). *Contra* Counties Comment at 8-9 (stating that “granting [RiverStreet’s waiver petition] . . . would dampen RiverStreet’s incentives for expediting its deployment efforts”); CVSI Comments at 7-8 (claiming “[i]f the Commission denies the waiver, it will create a strong incentive for RiverStreet to focus its efforts on meeting its deployment obligations”); PGEC *Ex Parte* Letter at 4-5.

Interested parties may file comments **on or before June 3, 2024**, and reply comments **on or before June 10, 2024**, addressing the section 214(a) transfer application and EMPOWER's request to waive, for the Assigned CBGs, certain service milestones and the certification requirements and non-compliance measures associated with those service milestones. 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.⁵³ 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) Gregory Kwan, Competition Policy Division, Wireline Competition Bureau, gregory.kwan@fcc.gov;
- 2) Nissa Laughner, Telecommunications Access Policy Division, nissa.laughner@fcc.gov; and
- 3) Jim Bird, Office of General Counsel, jim.bird@fcc.gov.

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

⁵³ Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (OS 2020).

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.⁵⁴ A party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously. Submissions after the pleading cycle has closed that seek to raise new issues based on new facts or newly discovered facts should be filed within 15 days after such facts are discovered. Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission.

For further information, please contact Gregory Kwan at gregory.kwan@fcc.gov or Nissa Laughner at nissa.laughner@fcc.gov.

-FCC-

⁵⁴ See 47 CFR § 1.45(c).



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-478

Released: May 20, 2024

FCC ANNOUNCES TECHNOLOGICAL ADVISORY COUNCIL MEETING ON JUNE 21, 2024

This Public Notice serves as notice that, consistent with the Federal Advisory Committee Act,¹ the next meeting of the TAC will be held on Friday, June 21, 2024 beginning at 10:00 am ET in the Commission Meeting Room of the Federal Communications Commission, 45 L Street, N.E., Washington, D.C. The public may attend the meeting in person at FCC headquarters at 45 L Street, NE, Washington, DC. Additionally, the meeting will be available to the public for viewing via the Internet at <http://www.fcc.gov/live>. While the TAC meeting is open to the public, the FCC headquarters building is not open access, and all guests must check in with and be screened by FCC security at the main entrance. Attendees are not required to have an appointment, but must otherwise comply with protocols outlined at: <https://www.fcc.gov/visit>.

The Technological Advisory Council (TAC) is comprised of a diverse group of leading technology experts. It provides technical expertise to the Commission to identify important areas of innovation and develop informed technology policies supporting the United States' competitiveness in the global economy. The TAC will consider and advise the Commission on topics such as continued efforts at looking beyond 5G advanced as 6G begins to develop so as to facilitate U.S. leadership; studying advanced spectrum sharing techniques, including the implementation of artificial intelligence and machine learning to improve the utilization and administration of spectrum; and other emerging technologies.

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

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

–FCC–

¹ 5 U.S.C. App. 2.



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 24-479

Released: May 20, 2024

COMMENTS INVITED ON SECTION 214 APPLICATION(S) TO DISCONTINUE DOMESTIC NON-DOMINANT CARRIER TELECOMMUNICATIONS SERVICES

WC Docket No(s). 24-142

Comments Due: June 4, 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 20, 2024**, the 31st day after the release date of this public notice, unless the Commission notifies any applicant(s) that their grant will not be automatically effective.⁴ We note that the date on which an application for Commission authorization is deemed granted may be different from the date on which applicants are authorized to discontinue, reduce, or impair service ("Authorized Date"). Any applicant whose application has been deemed granted may discontinue, reduce or impair their Affected Service(s) in their Service Area(s) on or after the authorized date(s) specified in the Appendix, in accordance with their filed representations. Accordingly, pursuant to section 63.71(f), and the terms outlined in each application, absent further Commission action, each applicant may discontinue, reduce or impair the Affected Service(s) in the Service Area(s) described in their application on or after the authorized discontinuance date(s) listed in the Appendix for that application. For purposes of computation of time when filing a petition for reconsideration, application for review, or petition for judicial review of the Commission's decision(s), the date of "public notice" shall be the later of the auto grant date stated above in this Public Notice, or the release date(s) of any further public notice(s) or order(s) announcing final Commission action, as

¹ 47 CFR § 63.71.

² 47 U.S.C. § 214.

³ 47 CFR § 63.71.

⁴ See 47 CFR § 63.71(f) (stating, in relevant part, that an application filed by a non-dominant carrier "shall be automatically granted on the 31st day... unless the Commission has notified the applicant that the grant will not be automatically effective.").

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

Comments objecting to any of the applications listed in the Appendix must be filed with the Commission on or before **June 4, 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 are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or

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

⁶ Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, 35 FCC Rcd 2788 (OMD 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

⁷ 47 CFR § 1.1200 *et seq.*

arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b).

People with Disabilities: We ask that requests for accommodations be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530.

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

– FCC –

Appendix

1) Applicant(s): Fusion LLC and Fusion Cloud Services, LLC (Fusion)

WC Docket No. 24-142, Comp. Pol. File No. 1911

Link – [https://www.fcc.gov/ecfs/search/search-filings/results?q=\(proceedings.name:\(%2224-142*%22\)\)](https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2224-142*%22)))

Affected Service(s) – voice and data services provided over copper, DSL, Ethernet, MPLS, and Endlink

Service Area(s) – California, Connecticut, District of Columbia, Florida, Georgia, Maryland, Massachusetts, Michigan, New Jersey, New York, North Carolina, Ohio, Oklahoma, Rhode Island, Tennessee, Texas, and Virginia

Authorized Date(s) – various dates on or after June 20, 2024

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

Note: Fusion plans to discontinue the Affected Services on or after the following dates: June 20, 2024 in California, Florida, Georgia, Maryland, Ohio, Oklahoma, Rhode Island, and Tennessee; June 21, 2024 in North Carolina, and Virginia; July 8, 2024 in Massachusetts, Michigan, New Jersey, and Texas; and August 6, 2024 in District of Columbia, Connecticut and New York.



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 24-480

Released: May 20, 2024

MEDIA BUREAU OPENS MB DOCKET NOS. 24-147 AND 24-148

MB Docket Nos. 24-147 and 24-148

By this Public Notice, the Media Bureau opens MB Docket No. 24-147, which is captioned “Political Programming and Online Public File Requirements for Low Power Television Stations” and MB Docket No. 24-148, which is captioned “Amendment of the Commission’s Rules to Advance the Low Power Television, TV Translator and Class A Television Service.”

Ex Parte Rules. Presentations are subject to “permit-but-disclose” *ex parte* rules. See 47 CFR §§ 1.1206, 1.1200(a). Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission’s meeting. See 47 CFR §§ 1.1200(a), 1.1203.

Accessibility Information. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice).

Action by Chief, Media Bureau.

- FCC -



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-482

Released: June 3, 2024

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

CC Docket No. 02-6
WC Docket No. 21-93
WC Docket No. 02-60

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

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

Dismissed on Reconsideration³

Independence School District, WI, Application No. 241039947, Petition for Reconsideration, CC Docket No. 02-6 (filed May 7, 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). Sections 54.719(b) and 54.1718(a)(1) of the Commission's rules provide that any person aggrieved by an action taken by a division of USAC, after first seeking review at USAC, may seek review from the Commission. Sections 54.719(c) and 54.1718(a)(3) of the Commission's rules provide that parties seeking waivers of the Commission's rules shall seek review directly from the Commission. 47 CFR §§ 54.719(b)-(c); 54.1718(a)(1)-(2). In this Public Notice, we have reclassified as Requests for Waiver any appeals seeking review of a USAC decision that appropriately should have requested a waiver of the Commission's rules. Similarly, we have reclassified as Requests for Review any appeals seeking a waiver of the Commission's rules but that are, in fact, seeking review of a USAC decision.

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

³ See, e.g., *Requests for Waiver and Review of Decisions of the Universal Service Administrator by 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).

Dismissed to Allow Appeal to be Filed with USAC⁴

Baystate Academy Charter Public School, MA, Application No. 161022422, Request for Waiver, CC Docket No. 02-6 (filed Dec. 8, 2019)

St. Leo the Great Catholic School, TX, Application No. 161044622, Request for Waiver, CC Docket No. 02-6 (filed Dec. 24, 2019)

Granted⁵*FCC Form 471 Applications Filed Timely⁶*

Exalt Academy of Southwest Little Rock, AR, Application No. 241035085, Request for Waiver, CC Docket No. 02-6 (filed Apr. 17, 2024)

Eligible Entities⁷

Baltimore City Board of School Commissioners, MD, Application Nos. 161003174, 171000385, 181014684, 181016980, 181018926, 201024172, 201024174, 211029432, 211029797, 211011944, 221037492, 221016014, Request for Review and/or Waiver, CC Docket No. 02-6 (filed Feb. 17, 2023)

⁴ See *Petitions for Reconsideration by Little Falls Township School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order on Reconsideration, DA 23-110, para. 10 (WCB 2023) (*Little Falls Township Order*) (dismissing without prejudice appeals that are filed with the Commission before being reviewed at USAC and waiving the 60-day appeal filing deadline to allow the party to refile its appeal at USAC and have it considered on the merits).

Parties seeking review of USAC decisions must first file an appeal with USAC. See 47 CFR § 54.719(a). Because the petitioners filed their appeals with the Commission first, we now provide Baystate Academy Charter Public School and St. Leo the Great Catholic School 60 days from the release date of this Public Notice to refile their appeals at USAC. Pursuant to the *Little Falls Township Order*, we also waive the 60-day appeal filing deadline, 47 CFR § 54.720(a), to allow the appeals to be considered on the merits by USAC without being considered late. See *Little Falls Township Order* at para. 10. Appeals for funding year 2016 and forward should be filed in the E-Rate Productivity Center portal, found here: [EPC](#). Appeals from funding year 2015 and prior funding years should be filed by email to Appeals@usac.org.

⁵ We remand these applications to USAC and direct USAC to complete its review of the applications and issue a funding decision based on a complete review and analysis, no later than 90 calendar days from the release date of this Public Notice. In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the equipment/services or the petitioners' applications. We also waive sections 54.507(d) and 54.514(a) of the Commission's rules and direct USAC to waive any procedural deadline that might be necessary to effectuate our ruling. See 47 CFR § 54.507(d) (requiring non-recurring services to be implemented by September 30 following the close of the funding year); 47 CFR § 54.514(a) (codifying the invoice filing deadline rule).

⁶ See, e.g., *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Academy of Math and Science et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 25 FCC Rcd 9256, 9259, para. 7 (2010) (*Academy of Math and Science Order*) (finding that petitioners timely filed their FCC Forms 471 within the relevant FCC Form 471 application filing window).

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

Brain Box Literacy Academy, IL, Application No. 231032182, Request for Review and/or Waiver, CC Docket No. 02-6 (filed Apr. 19, 2024)

*Granting Additional Time to Respond to USAC Inquiry*⁸

Branson School District R 4, MO, Application No. 171014586, Request for Review, CC Docket No. 02-6 (filed May 29, 2018)

Cheder Menachem Elementary School, PA, Application No. 181037682, Request for Review, CC Docket No. 02-6 (filed Jan. 11, 2020)

Gestalt Community Schools, TN, Application No. 171035547, Request for Review, CC Docket No. 02-6 (filed Nov. 9, 2018)

KIPP Chicago Schools, IL, Application No. 171034452, Request for Review, CC Docket No. 02-6 (filed June 14, 2018)

Manalapan-Englishtown School District, NJ, Application No. 171015199, Request for Review, CC Docket No. 02-6 (filed May 29, 2018)

Mendon Upton Regional School District, MA, Application No. 161014406, Request for Review, CC Docket No. 02-6 (filed Jan. 2, 2020)

*Inadvertent Cancellation of FCC Form 471*⁹

Lubbock-Cooper Independent School District, TX, Application No. 241000487, Request for Waiver, CC Docket No. 02-6 (filed May 6, 2024)

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).

On remand, to the extent possible, USAC should work with the applicants and authorize modifications to the Category Two funding requests to bring Branson School District R 4, Gestalt Community Schools, Manalapan-Englishtown School District and Mendon Upton Regional School District within their allowable Category Two budget.

On remand, USAC should also give KIPP Chicago Schools the opportunity to update its student count information and adjust its Category Two budget accordingly.

⁹ Lubbock-Cooper Independent School District seeks a waiver of Application No. 241040069, which was filed after the close of the application filing window because the school district inadvertently cancelled the initial FCC Form 471. On remand, USAC should reinstate the cancelled FCC Form 471. See, e.g., *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Joseph Jingoli & Son, Inc., et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 22 FCC Rcd 19227, 19228-29, paras. 3-4 (WCB 2007) (granting petitioners' requests to restore mistakenly cancelled funding requests)

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

A+ Arts Academy, Aventura City of Excellence School, Charter Schools USA, Episcopal Children's Services, Inc., Franklin Academy – Boynton Beach Campus, Franklin Academy – Cooper City Campus, Franklin Academy – Palm Beach Gardens Campus, Franklin Academy – Pembroke Pines (6-12) Campus, Franklin Academy – Pembroke Pines (K-8) Campus, Franklin Academy – Sunrise Campus, Application Nos. 241039740, 241032073, 241032047, 241039871, 241039739, 241039495, 241039500, 241039506, 241039509, 241039513, 241039514, Request for Waiver, CC Docket No. 02-6 (filed Apr. 18, 2024)

Abundant Life Christian Academy, Academy Prep Center of St. Petersburg, Academy Prep Center of Tampa, Academy Prep of Lakeland, Athenian School, Beth Haven Christian School, Calvert Hall College, Cathedral Catholic High School, Christian Academy of Lawrenceburg, Circle Unified School District 375, Clovis Christian Schools, Cornerstone Preparatory Academy, Crossroads Academy, Dekalb PATH Academy, Dunedin Academy and Day School, Inc., Einstein Montessori Academy, Esthers Schools, Firestone Charter Academy, Foundation Academy, Francis W. Parker School, Gainesville Christian Community School, Glendale Adventist Academy, Goodwill Excel Center Colorado, Goodwill Excel Center Colorado, Granby Public Schools, Holy Cross High School, Hope Academy/ Flying H Youth Ranch, Hope Christian School, Hope Community Public Charter School, Inc., Horizon Charter School of Tampa, Imagine Foundation Public Charter School, Laurence School, Madison Academy, Miami Valley Christian Academy, North Cross School, Pensacola Catholic High School, Regents School of Austin, Roanoke Catholic School, San Gabriel SDA Academy, St. Athanasius School, St. Gregory School, St. Luke's Lutheran School, St. Margaret Mary School, St. Michael, St. Stephen Martyr School, The Linfield School, Trinity Christian Academy, University Heights Academy, Walsingham Academy, Westminster Christian Academy, Worshipers' House of Prayer Academy, Application Nos. 241039526, 241039471, 241039472, 241039473, 241039418, 241039543, 241039470, 241039518, 241039282, 241039520, 241039469, 241039284, 241039551, 241039529, 241039355, 241039285, 241039373, 241039369, 241019233, 241039358, 241039416, 241039223, 241039914, 241039912, 241039468, 241039467, 241039283, 241039419, 241039533, 241039547, 241039530, 241039522, 241039922, 241039576, 241039527, 241039415, 241039356, 241039420, 241039550, 241039546, 241039542, 241039516, 241019232, 241039519, 241039545, 241039215, 241039417, 241039359, 241039357, 241039531, 241039523, Request for Waiver, CC Docket No. 02-6 (filed May 11, 2024)

Allendale-Hampton-Jasper Regional Library, SC, Application No. 241039746, Request for Waiver, CC Docket No. 02-6 (filed Apr. 24, 2024)

Alta Public Schools, Arizona Agribusiness and Equine Center, Cesar Chavez Community School, Edward B. Cole Charter School, Empower College Prep, Evergreen Virtual Academy, Excalibur Charter, Garden of the Sahaba Academy, Great Hearts Academies, Great Hearts Christos, Laurens Institute for Education Inc., Lyons Township High School District 204, Maryvale Prep, Meridian Public Charter School District, Mineral Springs School District, Nevada Prep Charter School, New Mexico School for the Arts, Ocali Charter High School, Pan American Charter

¹⁰ See, e.g., *Academy of Math and Science Order*, 25 FCC Rcd at 9259, para. 8 (finding special circumstances existed to justify granting waiver requests for petitioners who filed their FCC Form 471 applications within 14 days of the filing window deadline).

School, Solare Collegiate Charter School, The Maritime Academy of Toledo, Turquoise Trail Charter School, Waldorf School Assn. of Boulder Inc., Watts Learning Center Charter School - District Office, Youthbuild Charter School of California, Application Nos. 241039521, 241039179, 241039688, 241039440, 241039196, 241039272, 241039339, 241039342, 241039817, 241038799, 241039147, 241039320, 241039216, 241038896, 241039607, 241039789, 241039716, 241039826, 241039525, 241039524, 241039398, 241039217, 241039406, 241039496, 241039190, 241039192, 241039505, 241039286, 241039712, 241039595, 241039508, Request for Waiver, CC Docket No. 02-6 (filed Apr. 17, 2024)

Alternatives in Action High School, CA, Application No. 241039681, Request for Waiver, CC Docket No. 02-6 (filed Apr. 23, 2024)

Alton School District, NH, Application No. 241039582, Request for Waiver, CC Docket No. 02-6 (filed Apr. 19, 2024)

Amherst Exempted Village Schools, OH, Application No. 241039731, Request for Waiver, CC Docket No. 02-6 (filed May 2, 2024)

Annapolis Christian Academy, TX, Application No. 241037992, Request for Waiver, CC Docket No. 02-6 (filed Apr. 28, 2024)

Arlington Independent School District, TX, Application No. 241039687, Request for Waiver, CC Docket No. 02-6 (filed May 6, 2024)

Azle Independent School District, TX, Application No. 241039865, Request for Waiver, CC Docket No. 02-6 (filed May 6, 2024)

Bais Chaya Inc., Bais Reuvan Kaminitz of Lakewood, Bais Yaakov of Waterbury, Brandeis School, Chabad Lubavitch of Southside, Cheder Beer Yeshaya, Congregation Yeshiva Beis Chaya Mushka Inc., Foxman Torah Institute, Greek American Institute of New York Inc., Hanna Sacks Girls High School, Hebrew Academy of Long Beach, Hebrew Academy of Nassau County, Hebrew Academy of the Five Towns and Rockaway, Ivy Hawn Charter School of the Arts, Jewels Inclusive Preschool and Pediatric Therapy Clinic, Maimonides Hebrew Day School, New Horizon Community School, Ohr Chadash Academy, Orlando Torah Academy, Philips Academy Charter School of Paterson, Rambam High School, S A R Academy, Shulamith School for Girls, Solomon Schechter School of Queens, St. Francis De Sales Deaf School, St. Peters Child Care Center, Inc., St. Raymond Academy for Girls, Talmud Torah Toras Yisroel d/b/a Tiferes Yechiel, The Williamsburg Charter School, Toras Emes Academy Of Miami, Tree of Knowledge Learning Academy -New Jersey, Tree of Knowledge Learning Academy Ohio / FL, Valley Torah High School, Yeshiva Bais Chaya Esther, Yeshiva Gedolah of Waterbury, Yeshiva of Central Queens, Yeshiva of Greater Washington, Yeshiva Rav Isacsohn Academy, Yeshivat Ateret Torah School, Application Nos. 241039429, 241039856, 241039683, 241039556, 241039653, 241039554, 241039555, 241039676, 241039881, 241039536, 241039890, 241039827, 241039268, 241039114, 241039360, 241039750, 241039116, 241039427, 241039431, 241039457, 241039124, 241039866, 241039864, 241039184, 241039291, 241039367, 241039843, 241039421, 241039422, 241039860, 241039128, 241039130, 241039233, 241039232, 241039454, 241039565, 241039172, 241039146, 241039152, 241039163, 241039927, 241039627, 241039928, 241039234, 241039544, 241039851, 241039887, 241039237, 241039238, 241039541, 241039315, 241039460, 241039782, 241039888, 241039549, 241039714, Request for Waiver, CC Docket No. 02-6 (filed May 14, 2024)

Bais Chaya Mushka School of Los Angeles, Cheder Menachem Mendel, Kinneret Day School, Mesivta Kesser Torah of Baltimore, St. Mark's Day School, Westchester School for Special Children, Rabbinical Yeshiva of Cincinnati, Yeshiva Gedolah of Bayonne, Yeshiva Ketana of Los Angeles, Yeshiva Rabbi S. R. Hirsch School, Yeshiva School of Far Rockaway, Application Nos. 241039846, 241039586, 241039637, 241039254, 241039288, 241039134, 241039137, 241039574, 241039578, 241039924, 241039933, 241039622, 241039897, 241039241, 241039833, 241039862, 241039620, Request for Waiver, CC Docket No. 02-6 (filed May 14, 2024)

Bell County Public Library District, KY, Application No. 241039785, Request for Waiver, CC Docket No. 02-6 (filed Apr. 15, 2024)

Bishop Louis Reicher Elementary School, TX, Application No. 241039097, Request for Waiver, CC Docket No. 02-6 (filed Apr. 20, 2024)¹¹

Brazosport Independent School District, TX, Application No. 241039650, Request for Waiver, CC Docket No. 02-6 (filed May 6, 2024)

Broome-Tioga BOCES, Jefferson Township School District, Jefferson-Lewis-Hamilton-Herkimer-Oneida BOCES, Lebanon Township School District, Lodi School District, Lyme Central School District, Ocean County Vocational Technical School District, Runnemede Borough School District, Walton Central School District, Washington Borough School District, Application Nos. 241039859, 241039857, 241039861, 241039841, 241039882, 241039730, 241039835, 241039725, 241039918, 241039728, Request for Waiver, CC Docket No. 02-6 (filed Apr. 16, 2024)

Butte Falls School, OR, Application No. 241039403, Request for Waiver, CC Docket No. 02-6 (filed Apr. 30, 2024)

Carol Academy (Renee Sutton), TN, Application No. 241039138, Request for Waiver, CC Docket No. 02-6 (filed Mar. 28, 2024)

Carrollton-Farmers Branch School District, TX, Application No. 241039734, Request for Waiver, CC Docket No. 02-6 (filed May 6, 2024)

Cass City Public Schools, MI, Application No. 241033306, Request for Waiver, CC Docket No. 02-6 (filed Apr. 15, 2024)

Castle Rock Union Elementary School District, CA, Application No. 241033951, Request for Waiver, CC Docket No. 02-6 (filed Apr. 18, 2024)

Competitive Edge Charter Academy (CECA), CA, Application No. 241039361, Request for Waiver, CC Docket No. 02-6 (filed Apr. 19, 2024)

¹¹ We note that Bishop Louis Reicher Elementary School filed a waiver request April 2, 2024 for the same application number. That filing was resolved in a previous Public Notice. *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, 08-71, 10-90 and 18-143, Public Notice, DA 24-362 (WCB May 1, 2024) (*May 2024 USF Streamlined Resolution PN*).

Chabad of Southern Nevada d/b/a Dessert Torah Academy, Maimonides Hebrew Day School, Stanford Eisenberg Knoxville Jewish Day School, Torat Hayim Hebrew Academy d/b/a Tashbar Sephardic Yeshiva Katana, Yeshiva Primary, Application Nos. 241039113, 241039754, 241039189, 241039762, 241039878, 241039874, Request for Waiver, CC Docket No. 02-6 (filed May 14, 2024)

Circulo De La Hispanidad, Evergreen Charter School, Saugerties Public Library, St. Demetrios Greek American School, The Newgrange School of Princeton Inc., Yeshiva Har Torah, Yeshiva Ktana of Waterbury, Application Nos. 241039558, 241039557, 241039830, 241039362, 241039892, 241039450, 241039452, 241039278, 241039117, 241039239, 241039240, 241039243, 241039244, Request for Waiver, CC Docket No. 02-6 (filed May 14, 2024)

CMCH Elementary Inc., GA, Application Nos. 241039560, 241039561, 241039741, Request for Waiver, CC Docket No. 02-6 (filed May 14, 2024)

Columbia Falls School District 6, MT, Application No. 241039911, Request for Waiver, CC Docket No. 02-6 (filed Apr. 23, 2024)

Columbia Falls School District 6, MT, Application Nos. 241039911, 241039920, Request for Waiver, CC Docket No. 02-6 (filed Apr. 27, 2024)

Columbus County Public Library, NC, Application No. 241039423, Request for Waiver, CC Docket No. 02-6 (filed Apr. 24, 2024)

Commerce Independent School District, TX, Application No. 241039717, Request for Waiver, CC Docket No. 02-6 (filed May 6, 2024)

Cristo Rey San Jose Jesuit High School, CA, Application No. 241039855, Request for Waiver, CC Docket No. 02-6 (filed May 1, 2024)

Deer Park Independent School District, TX, Application No. 241039677, Request for Waiver, CC Docket No. 02-6 (filed May 6, 2024)

Deming Cesar Chavez Charter High School, NM, Application No. 241039801, Request for Waiver, CC Docket No. 02-6 (filed Apr. 18, 2024)

District of Columbia Public Schools, DC, Application No. 241039795, Request for Waiver, CC Docket No. 02-6 (filed Apr. 17, 2024)

Dream Dine' Charter School, NM, Application No. 241039300, Request for Waiver, CC Docket No. 02-6 (filed Apr. 19, 2024)

Dublin City School District, OH, Application No. 241039405, Request for Waiver, CC Docket No. 02-6 (filed Apr. 17, 2024)

Earlimart Elementary School District, CA, Application No. 241039722, Request for Waiver, CC Docket No. 02-6 (filed Apr. 15, 2024)

East Fort Worth Montessori Academy, TX, Application No. 241039812, Request for Waiver, CC Docket No. 02-6 (filed May 7, 2024)

Education Service Center Region 10 d/b/a Fiber Network Consortium, TX, Application Nos. 241039726, 241039807, Request for Waiver, CC Docket No. 02-6 (filed May 7, 2024)

Elmendaro Township Library, KS, Application No. 241039424, Request for Waiver, CC Docket No. 02-6 (filed May 1, 2024)

El Paso Leadership Academy Inc., TX, Application No. 241039659, Request for Waiver, CC Docket No. 02-6 (filed Apr. 24, 2024)

Eman Schools, IN, Application No. 241039820, Request for Waiver, CC Docket No. 02-6 (filed Apr. 17, 2024)

Ennis Independent School District, TX, Application No. 241039784, Request for Waiver, CC Docket No. 02-6 (filed May 7, 2024)

Episcopal Children's Services, Inc., FL, Application No. 241039738, 241039739, Request for Waiver, CC Docket No. 02-6 (filed Apr. 20, 2024)

Education Service Center Region 11 Consortium, TX, Application Nos. 241039845, 241039646, Request for Waiver, CC Docket No. 02-6 (filed May 7, 2024)

Education Service Center Region 20 Fiber Consortium, TX, Application No. 241039884, Request for Waiver, CC Docket No. 02-6 (filed May 7, 2024)

Ewing Marion Kauffman School, MO, Application No. 241039867, Request for Waiver, CC Docket No. 02-6 (filed May 1, 2024)

Excelsior Village Academy, GA, Application No. 241039635, Request for Waiver, CC Docket No. 02-6 (filed Apr. 24, 2024)

Explore Academy ABQ, NM, Application No. 241039808, Request for Waiver, CC Docket No. 02-6 (filed Apr. 18, 2024)

Explore Academy – Peoria, AZ, Application No. 241039368, Request for Waiver, CC Docket No. 02-6 (filed Apr. 19, 2024)

Falmouth Academy, MA, Application No. 241039811, Request for Waiver, CC Docket No. 02-6 (filed Apr. 28, 2024)

Farmersville School District, TX, Application No. 241039759, Request for Waiver, CC Docket No. 02-6 (filed May 7, 2024)

Fowler Public Schools, MI, Application No. 241039673, Request for Waiver, CC Docket No. 02-6 (filed Apr. 15, 2024)

Girls Global Academy Public Charter School, DC, Application No. 241034471, Request for Waiver, CC Docket No. 02-6 (filed Apr. 17, 2024)

Golden Rule Charter School, TX, Application No. 241039715, Request for Waiver, CC Docket No. 02-6 (filed May 8, 2024)

Greenwood County Library System, SC, Application No. 241039634, Request for Waiver, CC Docket No. 02-6 (filed Apr. 24, 2024)

Harborfields Central School District, NY, Application No. 241033869, Request for Waiver, CC Docket No. 02-6 (filed Apr. 16, 2024)

Harlingen Consolidated Independent School District, TX, Application No. 241039707, Request for Waiver, CC Docket No. 02-6 (filed May 8, 2024)

Hornbrook Elementary School District, CA, Application No. 241039630, Request for Waiver, CC Docket No. 02-6 (filed Apr. 18, 2024)

Igo-Ono-Platina Elementary School District, CA, Application No. 241033963, Request for Waiver, CC Docket No. 02-6 (filed Apr. 18, 2024)

Incarnation School, NY, Application No. 241039690, Request for Waiver, CC Docket No. 02-6 (filed Apr. 18, 2024)

Ingenuity Prep Public Charter School, DC, Application No. 241039494, Request for Waiver, CC Docket No. 02-6 (filed Apr. 17, 2024)

Inspire Development Centers, WA, Application No. 241033945, Request for Waiver, CC Docket No. 02-6 (filed Apr. 18, 2024)

Jarrell Independent School District, TX, Application Nos. 241039792, 241039154, Request for Waiver, CC Docket No. 02-6 (filed May 8, 2024)

Kingston Library, NY, Application No. 241039374, Request for Waiver, CC Docket No. 02-6 (filed Apr. 18, 2024)

Kingston Library, NY, Application No. 241039377, Request for Waiver, CC Docket No. 02-6 (filed Apr. 18, 2024)

LaPoynor Independent School District, TX, Application No. 241039815, Request for Waiver, CC Docket No. 02-6 (filed May 8, 2024)

Laurel County Public Library, KY, Application No. 241039633, Request for Waiver, CC Docket No. 02-6 (filed Apr. 16, 2024)

Lewisville Independent School District, TX, Application No. 241039788, Request for Waiver, CC Docket No. 02-6 (filed May 8, 2024)

Lincoln County Public Library, KY, Application No. 241039756, Request for Waiver, CC Docket No. 02-6 (filed Apr. 17, 2024)

Louisville Free Public Library, KY, Application No. 241039644, Request for Waiver, CC Docket No. 02-6 (filed Apr. 10, 2024)¹²

Louisville Free Public Library, KY, Application No. 241039877, Request for Waiver, CC Docket No. 02-6 (filed Apr. 16, 2024)

Lyford Consolidated Independent School District, TX, Application Nos. 241039776, 241039799, Request for Waiver, CC Docket No. 02-6 (filed May 9, 2024)

Lyndon Unified School District 421, KS, Application No. 241039847, Request for Waiver, CC Docket No. 02-6 (filed May 8, 2024)

Lyndon Unified School District 421, KS, Application No. 241039848, Request for Waiver, CC Docket No. 02-6 (filed May 8, 2024)

Madonna High School, WV, Application No. 241039366, Request for Waiver, CC Docket No. 02-6 (filed Apr. 24, 2024)

Marion County Library System, SC, Application No. 241039783, Request for Waiver, CC Docket No. 02-6 (filed Apr. 24, 2024)

McCloud Union Elementary School District, CA, Application No. 241033939, Request for Waiver, CC Docket No. 02-6 (filed Apr. 18, 2024)

Menifee County Public Library, KY, Application No. 241039780, Request for Waiver, CC Docket No. 02-6 (filed Apr. 16, 2024)

Morehouse Parish Library, LA, Application No. 241017276, Request for Waiver, CC Docket No. 02-6 (filed Apr. 5, 2024)

Mount Baker School District 507, WA, Application No. 241039872, Request for Waiver, CC Docket No. 02-6 (filed Apr. 23, 2024)

Muhlenberg County Libraries, KY, Application Nos. 241039770, 241039767, Request for Waiver, CC Docket No. 02-6 (filed Apr. 15, 2024)

Newtown-Harris School District R 3, MO, Application Nos. 241039583, 241034841, Request for Waiver, CC Docket No. 02-6 (filed Apr. 19, 2024)¹³

Nicholas County Public Library, KY, Application No. 241039821, Request for Waiver, CC Docket No. 02-6 (filed Apr. 16, 2024)

¹² The application number for Louisville Free Public Library was incorrect in a previous Public Notice. *See May 2024 USF Streamlined Resolution PN*. We are now including the correct FCC Form 471 application number in this Public Notice.

¹³ Newtown-Harris School District R 3 inadvertently listed an incorrect application number in its waiver request. We are including the correct FCC Form 471 application number in this Public Notice.

North Brookfield School District, MA, Application No. 241039375, Request for Waiver, CC Docket No. 02-6 (filed Apr. 29, 2024)¹⁴

Northport Public Library, NY, Application No. 241039832, Request for Waiver, CC Docket No. 02-6 (filed Apr. 30, 2024)

North Side School d/b/a Circle Academy, NY, Application No. 241039119, Request for Waiver, CC Docket No. 02-6 (filed May 9, 2024)

North Valley Academy, NM, Application No. 241039654, Request for Waiver, CC Docket No. 02-6 (filed Apr. 18, 2024)

Northwest Independent School District, TX, Application No. 241039910, Request for Waiver, CC Docket No. 02-6 (filed May 9, 2024)

Northwood Local School District, OH, Application No. 241039153, Request for Waiver, CC Docket No. 02-6 (filed Apr. 18, 2024)

Onondaga-Cortland-Madison BOCES, NY, Application Nos. 241039341, 241039325, 241039337, 241039333, 241039344, 241039292, 241039329, 241039334, 241039343, 241039299, 241039346, 241039338, 241039335, 241039308, 241039328, 241039296, 241039290, 241039893, 241039844, 241039909, 241039894, 241039915, 241039902, 241039904, 241039919, 241039908, 241039917, 241039898, 241039925, Request for Waiver, CC Docket No. 02-6 (filed Apr. 15, 2024, duplicate filing Apr. 23, 2024)

ORION E-Rate Consortium, TX, Application No. 241039459, Request for Waiver, CC Docket No. 02-6 (filed May 9, 2024)

Orleans Parish School Board, LA, Application Nos. 241029757, 241029751, Request for Waiver, CC Docket No. 02-6 (filed May 1, 2024)

Our Lady of Good Counsel School, NJ, Application No. 241039141, Request for Waiver, CC Docket No. 02-6 (filed Apr. 28, 2024)

Owsley County Public Library, KY, Application No. 241039791, Request for Waiver, CC Docket No. 02-6 (filed Apr. 18, 2024)

Plano Independent School District, TX, Application Nos. 241039719, 241039822 Request for Waiver, CC Docket No. 02-6 (filed May 9, 2024)

Preston High School, NY, Application No. 241039625, Request for Waiver, CC Docket No. 02-6 (filed Apr. 18, 2024)

Prospect Mountain High School, NH, Application No. 241039584, Request for Waiver, CC Docket No. 02-6 (filed Apr. 19, 2024)

¹⁴ We note that a separate representative from North Brookfield School District filed a waiver request April 3, 2024 for the same application number. That filing was resolved in a previous Public Notice. *See May 2024 USF Streamlined Resolution PN.*

Redding Schools Consortium, CA, Application No. 241039390, Request for Waiver, CC Docket No. 02-6 (filed Apr. 18, 2024)

Reed City Area District Library, MI, Application No. 241027832, Request for Waiver, CC Docket No. 02-6 (filed Apr. 17, 2024)

Regional School District 20, CT, Application No. 241039632, Request for Waiver, CC Docket No. 02-6 (filed May 1, 2024)

Regional School District 20, CT, Application No. 241039823, Request for Waiver, CC Docket No. 02-6 (filed May 1, 2024)

Reicher Catholic High School, TX, Application No. 241039098, Request for Waiver, CC Docket No. 02-6 (filed Apr. 20, 2024)¹⁵

Renick School District R 5, MO, Application No. 241039489, Request for Waiver, CC Docket No. 02-6 (filed Apr. 5, 2024)

Responsive Education Solution, TX, Application No. 241039818, Request for Waiver, CC Docket No. 02-6 (filed May 9, 2024)

Rowan County Public Library, KY, Application No. 241039775, Request for Waiver, CC Docket No. 02-6 (filed Apr. 16, 2024)

San Felipe-Del Rio CISD, TX, Application Nos. 241039778, 241039819, Request for Waiver, CC Docket No. 02-6 (filed May 10, 2024)

Scott County Public Library, KY, Application No. 241039592, Request for Waiver, CC Docket No. 02-6 (filed May 7, 2024)

Sesser-Valier School District 196, IL, Application No. 241039247, Request for Waiver, CC Docket No. 02-6 (filed May 1, 2024)¹⁶

Shepherd Christian School, OH, Application No. 241039539, Request for Waiver, CC Docket No. 02-6 (filed Apr. 24, 2024)

Sivells Bend Independent School District, TX, Application No. 241039710, Request for Waiver, CC Docket No. 02-6 (filed May 10, 2024)

Southfield Public School, MI, Application No. 241039490, Request for Waiver, CC Docket No. 02-6 (filed Apr. 15, 2024)

Special Education Services, Inc., IL, Application No. 241039745, Request for Waiver, CC Docket No. 02-6 (filed Apr. 24, 2024)

¹⁵ We note that Reicher Catholic High School filed a waiver request April 2, 2024 for the same application number. That filing was resolved in a previous Public Notice. *See May 2024 USF Streamlined Resolution PN.*

¹⁶ We note that Sesser-Valier School District 196 filed a waiver request April 1, 2024 for the same application number. That filing was resolved in a previous Public Notice. *See May 2024 USF Streamlined Resolution PN.*

St. Bartholomew Catholic Academy, NY, Application No. 241039744, Request for Waiver, CC Docket No. 02-6 (filed Apr. 18, 2024)

St. Bartholomew Catholic Academy, NY, Application No. 241039816, Request for Waiver, CC Docket No. 02-6 (filed Apr. 18, 2024)

St. Francis De Sales School, NY, Application No. 241039434, Request for Waiver, CC Docket No. 02-6 (filed Apr. 18, 2024)

St. Francis of Assisi Catholic Academy Brooklyn, NY, Application No. 241039364, Request for Waiver, CC Docket No. 02-6 (filed Apr. 19, 2024)

St. Gabriel School, OH, Application No. 241039564, Request for Waiver, CC Docket No. 02-6 (filed Apr. 22, 2024)

St. Joseph High School, PA, Application No. 241010988, Request for Waiver, CC Docket No. 02-6 (filed Apr. 28, 2024)

St. Kateri, NY, Application No. 241039645, Request for Waiver, CC Docket No. 02-6 (filed Apr. 18, 2024)

St. Laurence School, PA, Application No. 241039905, Request for Waiver, CC Docket No. 02-6 (filed Apr. 17, 2024)

St. Leo Catholic Academy, NY, Application No. 241039764, Request for Waiver, CC Docket No. 02-6 (filed Apr. 18, 2024)

St. Margaret School, NY, Application No. 241039852, Request for Waiver, CC Docket No. 02-6 (filed Apr. 18, 2024)

St. Mark Elementary School, NC, Application No. 241039461, Request for Waiver, CC Docket No. 02-6 (filed Apr. 24, 2024)

St. Nicholas Of Tolentine Catholic Academy, NY, Application No. 241039755, Request for Waiver, CC Docket No. 02-6 (filed Apr. 18, 2024)

St. Stanislaus Kostka Catholic Academy Of Queens, NY, Application No. 241039697, Request for Waiver, CC Docket No. 02-6 (filed Apr. 18, 2024)

Stevens County Rural Library District, WA, Application No. 241039212, Request for Waiver, CC Docket No. 02-6 (filed Apr. 18, 2024)¹⁷

Stockton Unified School District, CA, Application No. 241039853, Request for Waiver, CC Docket No. 02-6 (filed Apr. 15, 2024)

The New Life Child Development Center, NY, Application No. 241039563, Request for Waiver, CC Docket No. 02-6 (filed May 14, 2024)

¹⁷ We note that Stevens County Rural Library District filed a waiver request April 1, 2024 for the same application number. That filing was resolved in a previous Public Notice. *See May 2024 USF Streamlined Resolution PN.*

The Social Justice Public Charter School, DC, Application Nos. 241039699, 241039701, Request for Waiver, CC Docket No. 02-6 (filed Apr. 17, 2024)

Trinity Academy, NC, Application No. 241039824, Request for Waiver, CC Docket No. 02-6 (filed Apr. 24, 2024)

Trinity Lutheran School, MI, Application No. 241039642, Request for Waiver, CC Docket No. 02-6 (filed Apr. 15, 2024)

Triumph Public High School- Lubbock District, TX, Application No. 241039604, Request for Waiver, CC Docket No. 02-6 (filed May 10, 2024)

Upper West Shore School District 33, MT, Application No. 241039648, Request for Waiver, CC Docket No. 02-6 (filed Apr. 24, 2024)

Wapakoneta City School District, OH, Application No. 241032121, Request for Waiver, CC Docket No. 02-6 (filed May 7, 2024)

Wayne County Public Library, KY, Application Nos. 241039813, 241039810, Request for Waiver, CC Docket No. 02-6 (filed Apr. 15, 2024)

West Salem School District, WI, Application No. 241038165, Request for Waiver, CC Docket No. 02-6 (filed Apr. 24, 2024)

Westwood Regional School District, NJ, Application No. 241034373, Request for Waiver, CC Docket No. 02-6 (filed Apr. 23, 2024)

Wildflower Open Classroom, CA, Application No. 241039752, Request for Waiver, CC Docket No. 02-6 (filed Apr. 18, 2024)

William B. Harlan Memorial Library, KY, Application Nos. 241039836, 241039721, Request for Waiver, CC Docket No. 02-6 (filed Apr. 18, 2024)

Williamstown Independent School District, KY, Application No. 241032239, Request for Waiver, CC Docket No. 02-6 (filed Apr. 16, 2024)

Yeshiva Darchei Torah, NY, Application Nos. 241039198, 241039105, 241039185, 241039201, Request for Waiver, CC Docket No. 02-6 (filed Apr. 15, 2024)

Zion Evangelical Lutheran School, WI, Application No. 241039540, Request for Waiver, CC Docket No. 02-6 (filed Apr. 24, 2024)

Zion Lutheran Church School, CA, Application No. 241033678, Request for Waiver, CC Docket No. 02-6 (filed Apr. 15, 2024)

Late-Filed FCC Form 471 Applications – Filed Less than 30 Days Late Due to Unexpected Illness¹⁸

Paulsboro Public Schools, NJ, Application No. 241039941, Request for Waiver, CC Docket No. 02-6 (filed Apr. 30, 2024)

Late-Filed FCC Form 471 Applications – Filed More than 30 Days Late Due to Serious Illness¹⁹

Little Falls School District 482, MN, Application No. 241040060, Request for Waiver, CC Docket No. 02-6 (filed Apr. 29, 2024)

Robin Hill Elementary School, OK, Application No. 241040118, Request for Waiver, CC Docket No. 02-6 (filed May 6, 2024)

Late-Filed FCC Form 471 Applications – Filed Within Reasonable Period Despite School Reorganization²⁰

New Village Academy, MD, Application No. 241040052, Request for Waiver, CC Docket No. 02-6 (filed Apr. 29, 2024)

New Village Academy, MD, Application No. 241040070, Request for Waiver, CC Docket No. 02-6 (filed Apr. 29, 2024)

Ministerial and/or Clerical Errors²¹

City of Somerville, MA, Application No. 201032766, Request for Waiver and/or Review, CC Docket No. 02-6 (filed Apr. 26, 2023, supplemented Nov. 16, 2023)

Eastern Connecticut Regional Service Center, CT, Application No. 231031838, Request for Waiver, CC Docket No. 02-6 (filed May 2, 2024)

Trinity Lutheran Grade School, WI, Application No. 221037462, Request for Waiver, CC Docket No. 02-6 (filed Apr. 16, 2024)

Ministerial and/or Clerical Errors — FRN Omitted from FCC Form 471 Application²²

¹⁸ 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 of the FCC Form 471 application deadline where, for example, petitioners were delayed by an unexpected illness and still filed less than 30 days late).

¹⁹ See, e.g., *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Archdiocese of San Antonio et al.; Schools and Libraries Universal Service Support Mechanism, Establishing Emergency Connectivity Fund to Close the Homework Gap*, CC Docket No. 02-6, WC Docket No. 21-93, Order, 37 FCC Rcd. 4879, 4882-83, para. 7-8 (2022) (*Archdiocese of San Antonio Order*) (granting waiver requests for applications filed more than 30 days after the close of the filing window due to serious medical conditions).

²⁰ See, e.g., *Academy of Math and Science Order*, 25 FCC Rcd at 9259, para. 8 (finding special circumstances existed to justify granting waiver requests for petitioners who filed their FCC Form 471 applications within 14 days of the filing window deadline).

²¹ 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. 7, 9, 12, 17, 20 (WCB 2010) (*Ann Arbor Public Schools Order*) (granting waivers where the applicant or USAC entered the date or FCC Form 470 number, category of service or mischaracterized a month-to-month service as by contract, or omitted service from source documents onto its FCC Form 471).

Freetown Lakeville Regional School District, MA, Application No. 241040085, Request for Waiver, CC Docket No. 02-6 (filed May 8, 2024)

Gateway Community Action Partnership, NJ, Application No. 241040113, Request for Waiver, CC Docket No. 02-6 (filed May 6, 2024)

*Permitting Category Two Funding Change*²³

Branford Public Schools, CT, Application No. 181005582, Request for Waiver, CC Docket No. 02-6 (filed Dec. 18, 2018)

Fairfield School District 21 a/k/a Fairfield Public Schools, MT, Application No. 191027928, Request for Waiver, CC Docket No. 02-6 (filed Jan. 6, 2020)

Sacramento City Unified School District, CA, Application No. 171015016, Request for Waiver, CC Docket No. 02-6 (filed Nov. 9, 2018)

Tillery Charter, NC, Application No. 191030379, Request for Waiver, CC Docket No. 02-6 (filed Mar. 1, 2020)

*USAC Funding Denial Vague*²⁴

Appling County School District, GA, Application No. 685537, Request for Review and/or Waiver, CC Docket No. 02-6 (filed Aug. 4, 2014)

Appling County School District, GA, Application No. 633627, Request for Review and/or Waiver, CC Docket No. 02-6 (filed Aug. 4, 2014)

(Continued from previous page)

²² See, e.g., *Requests for Review of Decisions of the Universal Service Administrator by Archer Public Library et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 23 FCC Rcd 15518, 15521, n.19 (WCB 2008) (*Archer Public Library Order*) (permitting applicant to add a request omitted from its FCC Form 471, but included on its source list). These entities did not realize their funding requests were omitted until the FY 2024 application filing window had closed and it was too late to submit a Receipt Acknowledgment Letter (RAL) correction. We direct USAC to add these funding requests to the petitioners' timely-filed FY 2024 FCC Form 471 applications.

²³ Consistent with our obligation to conduct a *de novo* review of appeals of decisions made by USAC, we find merit in these appeals and remand them back to USAC for further review. See 47 CFR § 54.723. To the extent possible, and based on the facts and circumstances of these cases, USAC should work with these school districts to make modifications to their category two funding requests to bring the school districts within their allowable category two budgets.

²⁴ We remand these appeals to USAC to check its cost-effectiveness calculations and to provide adequate explanation of the basis of the funding denial. See *Petition for Reconsideration by Franklin County School District, Schools and Libraries Universal Service Support Mechanism*, CC Docket 02-6, Order, 26 FCC Rcd 14251, 14252, para. 2, n.13 (WCB 2011) (*Franklin County School District Order*) (remanding to USAC where vague language did not provide adequate explanation of denial).

*Waiver of Appeal Filing Deadline*²⁵

Fort Scott Unified School District 234, KS, Application No. 191021525, Request for Waiver, CC Docket No. 02-6 (filed Dec. 30, 2019)

Iglesia De Dios Pentecostal M.I., PR, Application No. 161039095, Request for Waiver, CC Docket No. 02-6 (filed June 19, 2017)

Jackson Township SD, NJ, Application No. 1012363, Request for Waiver, CC Docket No. 02-6 (filed Mar. 8, 2021)

Granted in Part*Late-Filed FCC Form 471 Applications*²⁶

St. Michael Indian School, AZ, Application Nos. 241039507, 241040135, Request for Waiver, CC Docket No. 02-6 (filed May 8, 2024)

Denied*Ineligible Services*²⁷

Yonkers Public Schools, NY, Application Nos. 528953, 536082, 535576, Request for Waiver, CC Docket No. 02-6 (filed Apr. 21, 2011)²⁸

²⁵ See, e.g., *Requests for Review of Decisions of the Universal Service Administrator by ABC Unified School District*, CC Docket No. 02-6, Order, 26 FCC Rcd 11019, para. 2 (WCB 2011) (*ABC Unified School District Order*) (granting waivers of appeal filing deadline when the petitioners submitted their appeals or waiver requests only a few days late or within a reasonable period of time after receiving actual notice of USAC's adverse decision). We make no finding on the underlying issues in these appeals and remand these applications to USAC to make a determination on the merits. See *supra* note 5.

²⁶ We grant St. Michael Indian School's request pertaining to FCC Form 471 Application No. 241039507. 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 St. Michael Indian School's request pertaining to FCC Form 471 Application No. 241040135. 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).

²⁷ 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).

²⁸ One of the application numbers for Yonkers Public Schools was incorrect in a previous Public Notice. See *May 2024 USF Streamlined Resolution PN*. We are now including the correct FCC Form 471 application number in this Public Notice.

*Late-Filed FCC Form 471 Applications*²⁹

Baker County School District, FL, Application Nos. 241039958, 241039962, 241039959, Request for Waiver, CC Docket No. 02-6 (filed Apr. 15, 2024)

Bath County School District, VA, Application No. 241039992, Request for Waiver, CC Docket No. 02-6 (filed Apr. 22, 2024)

Bicentennial Union High School District #76, AZ, Application Nos. 241039971, 241039972, Request for Waiver, CC Docket No. 02-6 (filed Apr. 17, 2024)

Birmingham Public Library, AL, Application No. 241040093, Request for Waiver, CC Docket No. 02-6 (filed May 3, 2024)

Bloomfield School District R 14, MO, Application No. 241040124, Request for Waiver, CC Docket No. 02-6 (filed May 7, 2024)

Briarwood Academy, GA, Application No. 241040142, Request for Waiver, CC Docket No. 02-6 (filed May 10, 2024)

Burlington Public Library, CT, Application No. 241039982, Request for Waiver, CC Docket No. 02-6 (filed Apr. 19, 2024)

Catholic School Region of Northwest & South Bronx, NY, Application No. 241033121, Request for Waiver, CC Docket No. 02-6 (filed Apr. 18, 2024)

C. E. Brehm Memorial Library, IL, Application No. 241039995, Request for Waiver, CC Docket No. 02-6 (filed Apr. 19, 2024)

Chicago Ridge Public Library, IL, Application No. 241040112, Request for Waiver, CC Docket No. 02-6 (filed May 8, 2024)

Clinton Public School District, MS, Application No. 241040051, Request for Waiver, CC Docket No. 02-6 (filed May 7, 2024)

Cole County R-V School District, MO, Application No. 241040030, Request for Waiver, CC Docket No. 02-6 (filed May 3, 2024)

Colfax Mingo Community School District, IA, Application No. 241040045, Request for Waiver, CC Docket No. 02-6 (filed Apr. 24, 2026)

Collegiate Charter School of Lowell, MA, Application No. 241024183, Request for Waiver, CC Docket No. 02-6 (filed Apr. 24, 2024)

County of Pope, AR, Application No. 241039984, Request for Waiver, CC Docket No. 02-6 (filed Apr. 22, 2024)

²⁹ 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).

Del Norte Public Library, CO, Application No. 241031294, Request for Waiver, CC Docket No. 02-6 (filed Apr. 25, 2024)

Derby Neck Library, CT, Application No. 241040036, Request for Waiver, CC Docket No. 02-6 (filed Apr. 22, 2024)

Earlimart Elementary School District, CA, Application No. 241039968, Request for Waiver, CC Docket No. 02-6 (filed Apr. 15, 2024)

Eldorado School District 4, IL, Application No. 241039987, Request for Waiver, CC Docket No. 02-6 (filed Apr. 17, 2024)

Elk Valley Unified School District 283, KS, Application No. 241008305, Request for Waiver, CC Docket No. 02-6 (filed May 3, 2024)

Fayette County School District, KY, Application No. 241040130, Request for Waiver, CC Docket No. 02-6 (filed May 8, 2024)

Fremont County School District #14, WY, Application No. 241040053, Request for Waiver, CC Docket No. 02-6 (filed Apr. 29, 2024)

Gesu Catholic Elementary School, MI, Application No. 241039946, Request for Waiver, CC Docket No. 02-6 (filed Apr. 16, 2024)

Grain Valley School Dist R 5, MO, Application No. 241039988, Request for Waiver, CC Docket No. 02-6 (filed Apr. 18, 2024)

Heritage Christian Schools, WI, Application No. 241039936, Request for Waiver, CC Docket No. 02-6 (filed May 3, 2024)

Holy Angels Academy Inc., KY, Application No. 241040029, Request for Waiver, CC Docket No. 02-6 (filed Apr. 23, 2024)

Kennett Public Schools, MO, Application No. 241039977, Request for Waiver, CC Docket No. 02-6 (filed Apr. 17, 2024)

Kenosha Public Library, WI, Application No. 241040048, Request for Waiver, CC Docket No. 02-6 (filed Apr. 23, 2024)

La Feria Independent School District, TX, Application No. 241040021, Request for Waiver, CC Docket No. 02-6 (filed May 2, 2024)

Mannheim School District 83, IL, Application No. 241040002, Request for Waiver, CC Docket No. 02-6 (filed Apr. 23, 2024)

Mannheim School District 83, IL, Application No. 241040028, Request for Waiver, CC Docket No. 02-6 (filed Apr. 23, 2024)

Maple Heights City School District, OH, Application No. 241040116, Request for Waiver, CC Docket No. 02-6 (filed May 10, 2024)

Metro Deaf School, MN, Application No. 241040022, Request for Waiver, CC Docket No. 02-6 (filed Apr. 22, 2024)

Metropolitan Arts Institute, AZ, Application No. 241040122, Request for Waiver, CC Docket No. 02-6 (filed May 7, 2024)

Mount Ayr Community School District, IA, Application No. 241008888, Request for Waiver, CC Docket No. 02-6 (filed May 9, 2024)

Mountain School, AZ, Application No. 241040003, Request for Waiver, CC Docket No. 02-6 (filed Apr. 19, 2024)

New Auburn School District, WI, Application No. 241040075, Request for Waiver, CC Docket No. 02-6 (filed Apr. 30, 2024)

New Hope Academy, MD, Application No. 241039996, Request for Waiver, CC Docket No. 02-6 (filed Apr. 19, 2024, duplicate filing Apr. 24, 2024)

New York Mills Independent School District #553, MN, Application No. 241040125, Request for Waiver, CC Docket No. 02-6 (filed May 8, 2024)

NLC Christian Academy, IL, Application Nos. 241040035, 241040034, Request for Waiver, CC Docket No. 02-6 (filed Apr. 24, 2024)

North Brookfield School District, MA, Application No. 241040104, Request for Waiver, CC Docket No. 02-6 (filed May 6, 2024)

North Brookfield School District, MA, Application No. 241040105, Request for Waiver, CC Docket No. 02-6 (filed May 6, 2024)

Northern Ozaukee School District, WI, Application No. 241040062, Request for Waiver, CC Docket No. 02-6 (filed Apr. 29, 2024)

Northern Ozaukee School District, WI, Application No. 241040066, Request for Waiver, CC Docket No. 02-6 (filed Apr. 29, 2024)

North Lakes Academy Upper School, MN, Application No. 241040067, Request for Waiver, CC Docket No. 02-6 (filed May 1, 2024)

NYSARC, Inc., NYC Chapter (AHRC), NY, Application No. 241040025, Request for Waiver, CC Docket No. 02-6 (filed Apr. 23, 2024)

Onondaga-Cortland-Madison BOCES, NY, Application Nos. 241040019, 241040016, 241040020, 241040014, Request for Waiver, CC Docket No. 02-6 (filed Apr. 22, 2024)

Pekin Community High School District 303, IL, Application No. 241037617, Request for Waiver, CC Docket No. 02-6 (filed Apr. 29, 2024)

Putnam School District, CT, Application Nos. 241040000, 241040004, Request for Waiver, CC Docket No. 02-6 (filed Apr. 19, 2024)

Ranch Academy District, TX, Application No. 241039983, Request for Waiver, CC Docket No. 02-6 (filed Apr. 17, 2024)

Resurrection Christian School, CO, Application No. 241039980, Request for Waiver, CC Docket No. 02-6 (filed Apr. 17, 2024)

Rodeph Sholom Day School, NY, Application No. 241008625, Request for Waiver, CC Docket No. 02-6 (filed May 3, 2024)

Sacred Heart Catholic School, MN, Application No. 241040154, Request for Waiver, CC Docket No. 02-6 (filed May 14, 2024)

Salem School District, CT, Application No. 241039999, Request for Waiver, CC Docket No. 02-6 (filed Apr. 19, 2024)

School Association for Special Education in DuPage County, IL, Application No. 241040041, Request for Waiver, CC Docket No. 02-6 (filed May 2, 2024)

Schuyler-Industry Community Unit School District 5, IL, Application No. 241008836, Request for Waiver, CC Docket No. 02-6 (filed Apr. 30, 2024)

Shining Star Christian Schools Capitol, WI, Application No. 241040098, Request for Waiver, CC Docket No. 02-6 (filed May 3, 2024)

Shining Star Christian Schools – Fairview, WI, Application No. 241040099, Request for Waiver, CC Docket No. 02-6 (filed May 3, 2024)

Shining Star Christian Schools – St. James, WI, Application No. 241040094, Request for Waiver, CC Docket No. 02-6 (filed May 3, 2024)

Shining Star Christian Schools – St. James, WI, Application No. 241040096, Request for Waiver, CC Docket No. 02-6 (filed May 3, 2024)

Smithton School District R 6, MO, Application No. 241039120, Request for Waiver, CC Docket No. 02-6 (filed Apr. 17, 2024)

St. Catherine of Siena Catholic School, KS, Application No. 241039976, Request for Waiver, CC Docket No. 02-6 (filed Apr. 24, 2024)

St. Francis Prep School, NY, Application No. 241040017, Request for Waiver, CC Docket No. 02-6 (filed Apr. 24, 2024)

St. Helen Elementary School, CA, Application No. 241039975, Request for Waiver, CC Docket No. 02-6 (filed Apr. 16, 2024)

St. Mary's School, MN, Application No. 241039985, Request for Waiver, CC Docket No. 02-6 (filed Apr. 17, 2024)

Sunnyside School District 201, WA, Application No. 241039989, Request for Waiver, CC Docket No. 02-6 (filed Apr. 30, 2024)

Texline Independent School District, TX, Application No. 241034181, Request for Waiver, CC Docket No. 02-6 (filed Apr. 22, 2024)

The UCAP School, RI, Application No. 241039950, Request for Waiver, CC Docket No. 02-6 (filed Apr. 22, 2024)

Troy School District #287, ID, Application No. 241039998, Request for Waiver, CC Docket No. 02-6 (filed Apr. 22, 2024)

Virtus Academy of South Carolina, SC, Application No. 241040026, Request for Waiver, CC Docket No. 02-6 (filed May 3, 2024)

Warren City School District, OH, Application Nos. 241027407, 241026282, Request for Waiver, CC Docket No. 02-6 (filed Apr. 17, 2024)

Warsaw R-IX School District, MO, Application No. 241040120, Request for Waiver, CC Docket No. 02-6 (filed May 7, 2024)

Wilkes County School District, GA, Application No. 241039963, Request for Waiver, CC Docket No. 02-6 (filed Apr. 15, 2024)

*Untimely Filed Appeals or Waiver Requests*³⁰

Clintonville Public School District, LA, Application No. 161003773, Request for Waiver, CC Docket No. 02-6 (filed May 21, 2019)

Howard School, LA, Application No. 161032976, Request for Waiver, CC Docket No. 02-6 (filed Nov. 8, 2019)

Servants of the Sacred Heart of Jesus and of the Poor/Father Yermo Schools, TX, Application No. 161047763, Request for Waiver, CC Docket No. 02-6 (filed July 8, 2022)

Union Chapel Christian Academy, AL, Application No. 161053380, Request for Waiver, CC Docket No. 02-6 (filed Mar. 17, 2022)

³⁰ See, e.g., *Requests for Review of the Decisions of the Universal Service Administrator by Agra Public Schools I-134; Schools and Libraries Universal Service Mechanism*, CC Docket No. 02-6, Order, 25 FCC Rcd 5684, 5688, para. 6 (WCB 2010) (*Agra Public Schools Order*); *Requests for Waiver or Review of Decisions of the Universal Service Administrator by Bound Brook School District; Schools and Libraries Universal Service Mechanism*, CC Docket No. 02-6, Order, 29 FCC Rcd 5823, 5823, para. 1 (WCB 2014) (*Bound Brook School District Order*) (denying requests for review and/or waiver on the grounds that the petitioners failed to: (1) submit their appeals either to the Commission or to USAC within 60 days or failed to submit their waiver requests to the Commission within 60 days as required by the Commission's rules; and (2) did not demonstrate special circumstances required for the Commission to waive the rule).

Each of these filings involve a denial and rescission of the entire funding request because the applicants requested more category two funds than were available in their five-year category two budgets. See 47 CFR § 54.502(b)(1) ("Each eligible school or library shall be eligible for a budgeted amount of support for category two services over a five-year funding cycle beginning the first funding year support is received."). While we deny these filings on procedural grounds, we direct USAC to recalculate the recovery based on the amount of funding that exceeded the applicant's category two budget and not reclaim the entire funding request amount. See, e.g., *Request for Review of a Decision of the Universal Service Administrator by Harrisburg City School District*, CC Docket No. 02-6, Order, 31 FCC Rcd 13549, 13553, para. 14 (2016) (remanding to USAC to recalculate the correct recovery amount).).

Emergency Connectivity Fund Program**WC Docket No. 21-93****Dismissed as Moot – USAC Took Action Requested**³¹

DuBois Integrity Academy, GA, Application No. ECF202100867, Request for Waiver, WC Docket No. 21-93 (filed Oct. 31, 2023)

Granted³²*Early Delivery*³³

John W. Rex Charter School, OK, Application No. ECF202209789, Request for Waiver, WC Docket No. 21-93 (filed Apr. 9, 2024)

Sheridan School District 2, CO, Application No. ECF202204401, Request for Waiver, WC Docket No. 21-93 (filed Apr. 1, 2024)

St. Louis City School District, MO, Application No. ECF202200964, Request for Waiver, WC Docket No. 21-93 (filed May 8, 2024)

Village Tech School, TX, Application No. ECF202109546, Request for Waiver, WC Docket No. 21-93 (filed Mar. 21, 2024)

³¹ See, e.g., *Requests for Review and/or Requests for Waiver of the Decisions of the Universal Service Administrator by Al Noor High School et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 8223, 8224, para. 2 (WCB 2012) (*Al Noor High School Order*) (dismissing as moot requests for review where USAC had taken the action the petitioner requested).

³² See *supra* note 5. We also waive section 54.1711(d) of the Commission's rules and direct USAC to waive any procedural deadline that might be necessary to effectuate our ruling. See 47 CFR § 54.1711(d) (codifying the invoice filing deadline).

³³ See *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket Nos. 21-93, 06-122, Public Notice, 37 FCC Rcd 7445, 7459 n.25 (WCB 2022) (granting requests for waivers for eligible equipment delivered before the start of the approved funding period).

*Waiver of ECF Special Construction Service Delivery Date*³⁴

A+ Partners in Education, WV, Application No. ECF222116734, Request for Waiver, WC Docket No. 21-93 (filed May 30, 2024)

Rural Health Care Program
WC Docket No. 02-60

Granted

*Appeal Filing Deadline*³⁵

Munising Memorial Hospital, MI, Request for Review and/or Waiver, WC Docket No. 02-60, Funding Request No. 20220010086 (filed May 24, 2023)

³⁴ See, e.g., *Requests for Waiver of the Decisions of the Universal Service Administrator by Grants/Cibola County School District and Jemez Pueblo Tribal Consortium*, CC Docket No. 02-6, Order, 33 FCC Rcd 10048, 10051, para. 8 (WCB 2018) (waiving the special construction service delivery deadline because the applicant was unable to complete implementation for reasons beyond the service provider's control and the petitioner made good faith efforts to comply with Commission rules and procedures). Consistent with the Commission's decision to adopt the similar appeal and waiver rules that govern all of the Universal Service Fund programs, including the E-Rate program, and to leverage existing E-Rate processes and forms in the Emergency Connectivity Fund program, we rely on E-Rate program precedent to resolve this petition for waiver of the Emergency Connectivity Fund program rules. We waive the network construction service delivery deadline and direct USAC to set a new service delivery deadline of June 30, 2025, and adjust any associated administrative or procedural deadlines, including the invoice deadline, that might be necessary to effectuate our ruling. We also waive any associated administrative or procedural deadlines that might be necessary to effectuate our ruling. While the COVID-19 emergency has ended and we are approaching the June 30, 2024 sunset date of the ECF program, we recognize the substantial amount of work that has already gone into completing this project in a timely manner, but was hindered by delays that could not have been anticipated. We further recognize that denying funding may lead to further delays in connecting these students, school staff, and library patrons. Therefore, we find this waiver is warranted by the special circumstances and is in the public interest to allow A+ Partners to complete construction and connect their students, school staff, and library patrons with ongoing unmet remote learning needs.

Because the ECF program is sunsetting on June 30, 2024, participants are statutorily required to "purchase" eligible equipment and/or services by no later than that date in order to be eligible for reimbursement through the ECF program. See H.R. 1319, tit. VII, § 7402(a) and (d)(5)(B). The Commission cannot waive or extend this date to provide applicants with additional time to *purchase* eligible equipment and/or services beyond June 30, 2024. Here, the applicant indicates that purchase has been made because it has entered into a mutually binding agreement with its service provider to perform and provide the services and the service provider may complete construction, file reimbursement requests, and receive ECF disbursements after June 30, 2024 subject to the new service delivery deadline. We further note that the applicant will need to provide recurring services to its students, school staff, and/or library patrons with unmet needs prior to June 30, 2025.

³⁵ See, e.g., *Request for Review of a Decision of the Universal Service Administrator by Sundale Elementary School District; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 29 FCC Rcd 4124 (WCB 2014) (*Sundale Elementary School District Order*) (finding that an appeal filed to USAC was timely and remanding that appeal to USAC that was timely filed). We remand this appeal to USAC and make no finding as to the substantive matters addressed in the appeal.

*Late-Filed FCC Form 462 or 466 Applications – Filed Within 14 Days of the Close of the Window*³⁶

Boone Health Consortium, MO, Request for Waiver, WC Docket No. 02-60, FCC Form 461 Nos. RHC46100010958, RHC46100010959, RHC46100010960, RHC46100010961 (filed April 29, 2024)³⁷

Claiborne County Hospital, MS, Request for Waiver, WC Docket No. 02-60, Funding Request No. RHC20240016247 (filed May 9, 2024)

Family Health La Clinica De Los Campesinos, WI, Request for Waiver, WC Docket No. 02-60, No Funding Request Number (filed May 1, 2023)

Mental Health Services for Mariposa County, CA, Request for Waiver, WC Docket No. 02-60, Funding Request Nos. RHC20230025920, RHC20230025919, RHC20230018506, RHC20230018505, RHC20230018504, RHC202300018503, RHC20220009016, RHC20220009015, RHC20220009013, RHC20220009006 (filed May 2, 2023)

North Olympic Healthcare Network Consortium, WA, Request for Waiver, WC Docket No. 02-60, Funding Request No. RHC20240016009 (filed May 9, 2024)

Roger Mills Memorial Hospital, OK, Request for Waiver, WC Docket No. 02-60, Funding Request No. RHC20240016248 (filed May 9, 2024)

*Service Substitution*³⁸

UAMS E-Link Network, AR, Request for Review, WC Docket No. 02-60, Funding Request No. RHC20220011479 (filed Nov. 2, 2023)

³⁶ See *Requests for Waiver by Bartlett Regional Hospital et al.*, WC Docket No. 02-60, Order, DA 24-366, 2024 WL 1715367, at *3, para. 8 (WCB Apr. 18, 2024) (*Bartlett Regional Hospital Order*) (granting a waiver of the application filing deadline when the application was filed within 14 days of the deadline and administration of the RHC Program was minimally affected). 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. In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the petitioners' applications.

³⁷ Boone Health Consortium (Boone) styled its request as a petition to waive the competitive bidding rules. Because Boone in effect seeks waiver of the deadline to apply for funding year 2024 support, we instead treat its submission as a request to waive the application filing deadline.

³⁸ See *Requests for Waiver of Sections 54.504(c), 54.504(f), 54.507(c), and 54.507(g) of the Commission's Rules, State of Louisiana Department of Education et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 25 FCC Rcd 1653, 1662, para. 17 (2010) (granting service substitution requests meeting the regulatory requirements for service substitutions). See also 47 CFR § 54.623 (allowing service substitutions in the RHC Program when (1) the substitution is provided for in the contract, within the change clause, or constitutes a minor modification; (2) the site is an eligible health care provider and the service is an eligible service under the Telecommunications Program or the Healthcare Connect Fund Program; (3) the substitution does not violate any contract provision or state, Tribal, or local procurement laws; and (4) the requested change is within the scope of the controlling Request for Services, including any applicable RFP used in the competitive bidding process); *Request for Waiver by GCI Communication Corp. and Southcentral Foundation*, WC Docket No. 02-60, 35 FCC Rcd 5872, 5874, paras. 6-7 (granting a waiver to allow a service substitution in the RHC Program and noting that the service substitution would have met the requirements for a service substitution under section 54.624 of the Commission's rules had that provision been effective during the relevant time period). We grant the petitioner's substitution of its 10 Gbps service for the 20 Gbps service at issue in its appeal.

*Waiver of the 60-Day Appeal Deadline*³⁹

Hot Spot Broadband, Inc., NV, Request for Waiver, WC Docket No. 02-60, Funding Request Nos. 17250061, 17250081, 17250091, 17250111, 17250151, 17250171, 17250191, 17250211, 17250241, 17250271, 17250281, 17250321 (filed June 29, 2023)

*Waiver of the Invoice Filing Deadline*⁴⁰

Arkwest Communications, Inc., AR, (Chambers Memorial – Plainview Clinic and Chambers Memorial Hospital d/b/a Havana Clinic), Request for Waiver, WC Docket No. 02-60, Funding Request Nos. 2073197, 2072637 (filed April 5, 2022)

Northwest Hospital Alliance, ID, Request for Waiver, WC Docket No. 02-60, Funding Request No. 21169021 (filed May 9, 2024)⁴¹

Zones LLC (Memorial Health Center and Carondelet Health Center), NY, Request for Waiver, WC Docket No. 02-60, Funding Request No. RHC20220011141 (filed April 22, 2024)⁴²

Denied*Application Filing Deadline*⁴³

Shenandoah Community Health – Behavioral Health, WV, Request for Waiver, WC Docket No. 02-60, Application Nos. RHC46100005659, RHC46100005665 (filed June 5, 2023);

³⁹ See, e.g., *Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by ABC Unified School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 11019, 11019, para. 2 (WCB 2011) (granting waivers of filing deadline for appeals because the petitioners submitted their appeals or waiver requests only a few days late or within a reasonable period of time after receiving actual notice of USAC’s adverse decision, or the reasons were “the result of clerical, ministerial, or procedural errors, or were due to circumstances beyond their control”).

⁴⁰ 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.

⁴¹ *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Abbotsford School District Abbotsford, Wisconsin, et al.*, CC Docket No. 02-6, Order, 27 FCC Rcd 15299, 15300, para. 2 (WCB 2012) (waiver of invoice filing deadline due to delays beyond the control of the entities requesting a waiver). We waive the petitioners’ invoice filing deadlines and allow them 120 days from the release of this Public Notice to file invoices.

⁴² See *Indiana Telehealth Network Order*, 33 FCC Rcd 12341. We waive the petitioners’ invoice filing deadlines and allow them 120 days from the release of this Public Notice to file invoices.

⁴³ See *Bartlett Regional Hospital Order*, 2024 WL 1715367, at *3; *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, 25 FCC Rcd 9256, 9261-62 (denying requests to waive application filing deadline filed more than 14 days after the filing deadline and absent special circumstances warranting a waiver of the deadline). Shenandoah Community Health – Behavioral Health (Shenandoah) requested a waiver of the funding year 2023 application filing deadline 35 days after the filing deadline and offered no special circumstances supporting its waiver request. We therefore deny Shenandoah’s untimely request to waive the application filing deadline.

supplemented on June 27, 2023)

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

- FCC -

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

In the Matter of	)	
	)	
NORTH TEXAS PUBLIC BROADCASTING, INC.	)	Facility ID No. 72353
	)	NAL/Acct. No. 202441420007
	)	FRN: 0006194633
Television Translator Station	)	LMS File Nos. 0000188462 and
K26NK-D, Wichita Falls, TX	)	0000243118

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

Adopted: May 22, 2024

Released: May 22, 2024

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it North Texas Public Broadcasting, Inc. (NTPB or Licensee), licensee of television translator (TV translator) station K26NK-D, Wichita Falls, Texas (K26NK-D or Station). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)*,¹ we find that NTPB apparently willfully violated section 73.3598(a)² of the Commission's rules (Rules) by failing to timely file a license to cover application (License App), and willfully and repeatedly violated section 73.1745(a) of the Rules³ and section 301 of the Act,⁴ by engaging in unauthorized operation. Based upon our review of the facts and circumstances before us, we conclude that NTPB is apparently liable for a monetary forfeiture in the amount of three thousand two hundred and fifty dollars (\$3,250).

II. BACKGROUND

2. K26NK-D is a TV translator station licensed on channel 26 that re-broadcasts the programming of NTPB's full power noncommercial educational (NCE) television station KERA-TV, Dallas, Texas, to the rural area of Wichita Falls, Texas.⁵ NTPB explains that, on December 18, 2020, a broadcast tower in Wichita Falls that held the Station's antenna was vandalized and fell.⁶ NTPB states that the damage to the antenna disrupted operations, the Station was forced to go off the air, and NTPB reported the Station's suspended operations in an request for silent special temporary authority (STA) filed January 6, 2021.⁷ Simultaneously, NTPB requested an engineering STA to continue operating the Station from a temporary tower location. That request was granted on January 25, 2021, and expired on

¹ This *NAL* is issued pursuant to sections 309(k) and 503(b) of the Communications Act of 1934, as amended (Act), and section 1.80 of the Commission's rules (Rules). See 47 U.S.C. §§ 309(k), 503(b); 47 CFR § 1.80. The Bureau has delegated authority to issue the *NAL* under section 0.283 of the Rules. See 47 CFR § 0.283.

² See 47 CFR § 73.3598(a).

³ 47 CFR § 73.1745(a).

⁴ See 47 U.S.C. § 301.

⁵ See LMS File No. 0000055164.

⁶ See LMS File No. 0000243118 (License App) – NTPB – Waiver Request at 1 (Waiver Request).

⁷ See LMS File No. 0000130569.

July 25, 2021.⁸ NTPB maintains that the Station resumed operations from the temporary tower location on April 21, 2021. NTPB subsequently filed an application for minor modification specifying the temporary tower site for its permanent operation. The minor modification was granted on May 6, 2021 (Minor Mod CP).⁹ Despite the fact that the Station was already operating from the Minor Mod CP site, NTPB admits that, due to “administrative oversight,” it failed to submit a license to cover its facility.¹⁰

3. On April 5, 2024, in response to a staff inquiry from the Video Division of the Media Bureau (Bureau), NTPB submitted a late-filed license to cover the Minor Mod CP and its Waiver Request.¹¹ NTPB provided documentation demonstrating the Station’s Minor Mod CP facilities were constructed and have been operating, as NTPB attests, since April 2021.¹² At the time the License App was filed, the Minor Mod CP was still valid and not scheduled to expire for over a month. NTPB requests that the Bureau waive its rules and accept its late-filed License App.¹³ NTPB notes that it is a not-for profit 501(c)(3) educational organizational and the PBS member station for North Texas.¹⁴ NTPB states that its relocation to a new tower site “was not a planned modification, but rather was obtained following vandalism that disrupted the (Station’s) operations and forced NTPB to incur the expense to relocate” the Station’s antenna.¹⁵ As a digital TV translator, NTPB maintains that the Station is “providing a secondary service” and is “not originating programming, but instead providing important ‘fill-in’ service to areas that otherwise may be unable to receive over-the-air television signals.”¹⁶

4. NTPB argues that grant of its Waiver Request is consistent with Commission precedent and “strict compliance with the rule would result in loss of service to the public and be inconsistent with the public interest.”¹⁷ NTPB maintains that the Station “has been providing important fill-in service operating pursuant to the authority granted in the Minor Mod CP and without causing any interference or harm.”¹⁸ NTPB also notes that it has limited revenues that are obtained primarily from viewer contributions, community service grants, and underwriting.¹⁹ NTPB includes copies of its most recent financial statements showing that for each of the past three years its operating expenses have exceeded revenues.²⁰ NTPB concludes that grant of its Waiver Request is further in the public interest “because it would permit (the Station) to continue broadcasting noncommercial educational programming to its viewers in Wichita Falls, Texas.”²¹

⁸ See LMS File No. 0000131217 (Engineering STA).

⁹ See LMS File No. 0000144493 (Minor Mod CP).

¹⁰ Waiver Request at 1.

¹¹ See License App, *supra* n. 6.

¹² *Id.* – Attachment 3 – Evidence of Continuous Operation.

¹³ Waiver Request at 2. Because the Minor Mod CP was still valid at the time the License to Cover was filed, reinstatement of the Minor Mod CP is not necessary.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 3 citing *Southwest Colorado TV Translator Association*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 18042, 18045, para. 6, n. 17 (MB 2021).

¹⁸ *Id.* at 3.

¹⁹ *Id.*

²⁰ License App – NTPB Audited Financial Statements 2021, 2022, 2023. In 2021, NTPB had revenues of \$24,459,334 and a deficit of -\$626,470; in 2022, revenues of \$25,602,362 and a deficit of -\$1,814,069 and in 2023, revenues of \$26,588,208 and a deficit of -\$3,292,029.

²¹ *Id.*

III. DISCUSSION

5. This *NAL* is issued pursuant to section 503(b)(1)(B) of the Act.²² Under that provision, a person who is found to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.²³ 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.²⁴ 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,²⁵ and the Commission has so interpreted the term in the section 503(b) context.²⁶ 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.”²⁷

6. *Apparent Violations.* NTPB concedes that it failed to timely file a license to cover as required by section 73.3598(a) of the Rules.²⁸ NTPB states that it failed to timely submit an application for license to cover due to an administrative oversight. It is well settled precedent that licensees are responsible for compliance with the Commission’s rules and that administrative oversight does not excuse a violation or non-compliance.²⁹ Further, following expiration of the Engineering STA in July 2021 and prior to filing of the License App in April 2024, it appears NTPB also engaged in unauthorized operation

²² 47 U.S.C. § 503(b)(1)(B).

²³ *Id.* See also 47 CFR § 1.80(a)(1).

²⁴ 47 U.S.C. § 312(f)(1).

²⁵ See H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

²⁶ See *Southern California Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991), *recon. denied*, Memorandum Opinion and Order, 7 FCC Rcd 3454 (1992).

²⁷ 47 U.S.C. § 312(f)(2).

²⁸ 47 CFR § 73.3598(a). NTPB also did not seek an extension of its engineering STA as required by section 73.1635(a) of the Rules. 47 CFR § 73.1635(a). The Engineering STA expired in July 2021. We decline to include an additional forfeiture for its failure to renew its STA given that the parameters set forth in its license to cover were identical to that of its engineering STA. Either would have been appropriate to file in this circumstance and proposing a forfeiture for both failures we believe would be duplicative. Cf. *Roseland Broadcasting, Inc.*, Forfeiture Order, DA 24-328 (MB 2024) (paid Apr. 15, 2024) (station not only failed to timely-file a license to cover but also began operating facilities that had been modified without authorization thus resulting in an additional forfeiture for unauthorized operations).

²⁹ See, e.g., *Adrian Abramovitch, Marketing Strategy Leaders, Inc. and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4674, para. 32 & n.79 (2018) (“[O]ne may not ‘claim ignorance of the law as a defense’” (internal cites omitted); *PTT Phone Cards, Inc.*, Forfeiture Order, 30 FCC Rcd 14701, 14704, para. 10 (2015) (“PTT’s purported ignorance of the law certainly does not excuse the fact that it . . . [was] out of compliance with all of the provisions of the Act and the [Commission’s] [r]ules to which it was subject.”); *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, para. 3 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (stating that “inadvertence . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance”) (internal cite omitted); see also *Townsquare Media of El Paso, Inc.*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 6661, 6665, para. 5 & n. 37 (EB 2020) (“It is immaterial whether . . . violations were inadvertent, the result of ignorance of the law, or the product of administrative oversight.”) (internal cites omitted); *Rufus Resources, LLC*, Forfeiture Order, 33 FCC Rcd 6793, 6794, para. 5 (MB 2018) (“It is well settled that ignorance of the [Commission’s] [r]ules does not excuse a violation.”) (internal cites omitted).

for nearly three years in violation of sections 73.1745(a) of the Rules and 301 of the Act.³⁰ We therefore find that NTPB has apparently violated the Rules and the Act and is apparently liable for forfeiture.

7. *Proposed Forfeiture Amount.* The Commission's *Forfeiture Policy Statement* and section 1.80(b)(10) of the Rules establish a base forfeiture amount of \$3,000 per violation for the failure to file a required form.³¹ The guidelines also specify a base forfeiture amount of \$10,000 per violation for construction and operation without an instrument of authorization for the service.³² 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."³³

8. When considering a licensee's ability to pay a forfeiture, the Commission will look at things such as: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status.³⁴ Any claim relating to ability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.³⁵ In general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture. The Commission has recognized that, in some cases, other financial indicators, such as net losses, may also be relevant.³⁶ If gross revenues are sufficiently great, however, the mere fact that a business is operating at a loss does not by itself mean that it cannot afford to pay.³⁷ In considering claims of financial hardship, the range of forfeitures that the Commission has deemed reasonable generally averages about five percent of the violator's gross annual income and has not exceeded eight percent thereof, although a forfeiture equal to five percent of gross revenues has been found to be excessive where a licensee operated at a significant loss.³⁸

9. In this case, NTPB failed to file a timely license to cover for the Station when it completed construction of its Minor Mod CP, and after expiration of its STA on July 25, 2021, engaged in unauthorized operation of the Station for nearly three years by operating without a valid instrument of

³⁰ See 47 CFR § 73.1745(a) and 47 U.S.C. § 301. Because the Station had a pending license to cover application on file that was submitted prior to expiration of its construction permit we will not consider the Station's operations on or after April 5, 2024, to be unauthorized for purposes of calculating the proposed forfeiture.

³¹ See *Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (*Forfeiture Policy Statement*), *recon. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b)(10), note to paragraph (b)(10), Section I. See also *Clear Channel*, 26 FCC Rcd at 7157 ("We note that the staff may also issue Notices of Apparent Liability for 'failure to file a required form' as authorized by Section 503(b)(1)(B) of the Communications Act of 1934, as amended (the 'Act') and Section 1.80 of the Rules, for such violations of covering license application filing deadlines or take other enforcement action.").

³² A broadcast station requires an authorization from the Commission to operate. See 47 U.S.C. § 301.

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

³⁴ See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7441, para. 28 (2004), *modified*, Memorandum Opinion and Forfeiture Order, 24 FCC Rcd 2206 (MB 2009) (reducing forfeiture amount after review of submitted federal tax returns demonstrated a financial hardship).

³⁵ *Id.*

³⁶ *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992).

³⁷ *Id.*

³⁸ See *Valley Air, LLC*, Letter, 24 FCC Rcd 5505 (MB 2009) (cancelling a \$4,000 forfeiture after finding that the amount was reasonable given licensee's gross revenues of \$75,167, \$90,106, and \$69,330, but finding amount would pose a financial hardship where licensee lost \$345,000 during the same period).

authorization.³⁹ Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act, the *Forfeiture Policy Statement*, and section 1.80 of the Rules we do not find it appropriate to entirely eliminate the forfeiture. However, we find it is appropriate to reduce the proposed forfeiture from the base forfeiture amount because of NTPB's financial inability to pay based on documentation provided, NTPB's history of compliance, and the unique facts and circumstances presented, notably that the Station is a TV translator, which not only provides a secondary service but is rebroadcasting NCE programming to a rural area that otherwise would have limited if, if any access to such over-the-air programming. Accordingly, propose a forfeiture in the amount of \$3,250.⁴⁰

10. In its Response, NTPB cites to other forfeiture proceedings where, on a per station basis, we have reduced the forfeiture for a secondary station to a lesser amount.⁴¹ Although we find the facts of this case clearly justify a reduction in the base forfeiture, the cases cited by NTPB are not entirely analogous and we find that a similar degree of reduction is not warranted. In the case of *Christian Broadcasting*, the licensee was a small, non-profit organization with average annual revenue of approximately \$27,900.⁴² With regards to the case of *Elko TV District*, the licensee was solely a rural county TV translator association with limited revenues primarily raised through taxes on residents within the TV district.⁴³ NTPB on the other hand is the licensee of both a full power television and FM radio station and raises tens of millions of dollars per year. Although NTPB's revenues are largely raised through donations, grants and underwriting, and it operates at a net loss, the loss is small compared to what it raises annually.⁴⁴ We find NTPB clearly has the resources and sophistication to enable it to ensure compliance with Commission's rules and filing requirements. As such, we do not think additional reduction is warranted even though the violation at issue solely involves a TV translator station.

11. In light of the facts and circumstances discussed above and our findings that forfeiture is a sufficient sanction for NTPB's apparent violations, we will act upon the License App and the Station's license renewal application⁴⁵ by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than those set forth in this *NAL* that would preclude grant.

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.61, 0.204, 0.283 and 1.80 of the Rules,⁴⁶ North Texas Public Broadcasting, Inc. is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of three thousand two hundred and fifty (\$3,250) for its apparent willful violation of sections

³⁹ See *supra* note 30.

⁴⁰ See *Methow Valley Communications District*, Forfeiture Order, 38 FCC Rcd 4262 (MB 2023) (reducing a proposed forfeiture based on the station's history of compliance and fact that the station was a community translator serving rural areas with limited or no over-the-air television service); *Garfield TV Club*, Memorandum Opinion and Order and Notice of Proposed Liability, DA 23-807 (MB 2023) (calculating a proposed forfeiture based on the licensee's financial ability to pay, history of compliance, and the unique facts and circumstances presented, notably that the Stations were community translators serving rural areas that would otherwise have limited, if any, over-the-air television service).

⁴¹ Waiver Request at 2-3 citing *Elko Television District*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 38 FCC Rcd 2540 (MB 2023) (*Elko TV District*); and *Christian Broadcasting of Yakima*, Forfeiture Order, 21 FCC Rcd 3823 (MB 2016) (*Christian Broadcasting*).

⁴² *Christian Broadcasting*, 21 FCC Rcd at 3826, para. 7.

⁴³ *Elko TV District*, 38 FCC Rcd at 2543 (reducing by fifty percent the base amount for failing to timely-file license renewal applications for eleven TV translators).

⁴⁴ See *supra* n. 20.

⁴⁵ LMS File No. 0000188462.

⁴⁶ 47 U.S.C. § 503(b); 47 CFR §§ 0.61, 0.204, 0.283 and 1.80.

73.3598(a) the Rules and apparent willful and repeated violation of section 73.1745(a) of the Rules and section 301 of the Act.⁴⁷

13. **IT IS FURTHER ORDERED**, pursuant to section 1.80 of the Commission's rules,⁴⁸ that, within thirty (30) days of the release date of this *NAL*, North Texas Public Broadcasting, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

14. 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),⁴⁹ or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. **Notification that payment has been made must be sent on the day of payment by e-mail to Shaun.Maher@fcc.gov and VideoNAL@fcc.gov.** Below are instructions that payors should follow based on the form of payment selected:⁵⁰

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. 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).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 the Commission's Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). After selecting the bill for payment, choose the "Pay by Credit Card" option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using the Commission's Registration System (CORES) at <https://apps.fcc.gov/cores/paymentFrnLogin.do>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL/Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). Finally, choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number

⁴⁷ 47 CFR § 73.3598(a); 73.1635(a); 73.1745(a); 47 U.S.C. § 301.

⁴⁸ 47 CFR § 1.80.

⁴⁹ Payments made using CORES do not require the submission of an FCC Form 159.

⁵⁰ 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.

⁵¹ Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

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

15. Any request for making full payment over time under an installment plan should be sent to: Associate Managing Director—Financial Operations, Federal Communications Commission, 45 L Street, N.E., Washington, DC 20554.⁵² Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

16. Any written response seeking reduction or cancellation of the proposed forfeiture must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Commission's rules.⁵³ The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street NE, Washington DC 20554, ATTN: Shaun Maher, Attorney, Video Division, Media Bureau, and **MUST INCLUDE** the NAL/Acct. No. referenced above. Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.⁵⁴ **A copy must also be e-mailed to Shaun.Maher@fcc.gov and VideoNAL@fcc.gov to assist in processing the response.**

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

17. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status.⁵⁵ Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we have discretion to not reduce or cancel the forfeiture if other prongs of section § 503(b)(2)(E) of the Communications Act of 1934, as amended, support that result.⁵⁶

18. **IT IS FURTHER ORDERED** that copies of this NAL shall be sent by First Class and Certified Mail, Return Receipt Requested, to North Texas Public Broadcasting, Inc., 3000 Harry Hines Boulevard, Dallas, Texas 75201 as well as by e-mail to cwagley@kera.org; and to NTPB's counsel, Stefanie Alphonso-Frank, Esq., Arnold and Porter, 601 Massachusetts Ave., NW, Washington, DC

⁵² See 47 CFR § 1.1914.

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

⁵⁴ Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, 35 FCC Rcd 2788 (2020).

⁵⁵ NTPB has provided financial documentation seeking reduction of the proposed forfeiture based on an inability to pay. We will look unfavorably upon a request for further reduction based on the same information.

⁵⁶ See 47 U.S.C. 503(b)(2)(E); *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).

20001-3743, as well as e-mailed to Stefanie.Alfonso-Frank@arnoldporter.com.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

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

In the Matter of	)	
	)	
Southwestern Bell Telephone Company	)	Proceeding No. 22-357
d/b/a AT&T Texas,	)	Bureau ID No. EB-22-MD-004
	)	
Complainant,	)	
	)	
v.	)	
	)	
AEP Texas Inc.,	)	
	)	
Defendant.	)	

ORDER OF DISMISSAL

Adopted: May 22, 2024

Released: May 22, 2024

By the Chief, Market Disputes Resolution Division, Enforcement Bureau:

I. INTRODUCTION

1. Southwestern Bell Telephone Company d/b/a AT&T Texas (AT&T) filed a Pole Attachment Complaint against AEP Texas Inc. (AEP) in the above-captioned proceeding on October 4, 2022.¹ On July 26, 2023, the Enforcement Bureau (Bureau) issued a decision granting in part and denying in part AT&T's Complaint.² Both parties subsequently filed Applications for Review challenging certain holdings in the *Order*.³

2. On May 20, 2024, the parties jointly moved to dismiss the Complaint with prejudice, including the parties' respective Applications for Review of the *Order*.⁴ In the Joint Motion, the parties state that they "have reached a settlement that resolves their dispute."⁵

3. We are satisfied that granting the Joint Motion will serve the public interest by promoting the private resolution of disputes, eliminating the need for further litigation, and conserving the resources of the Parties and the Commission.

¹ Pole Attachment Complaint of Southwestern Bell Telephone Company d/b/a AT&T Texas, Proceeding No. 22-357 (filed Oct. 4, 2022) (Complaint).

² See *Southwestern Bell Telephone Company d/b/a AT&T Texas v. AEP Texas Inc.*, Proceeding No. 22-357, Memorandum Opinion and Order, DA 23-635, 2023 WL 5090824 (EB 2023) (*Order*). Among other things, the Bureau directed the parties to negotiate in good faith to reach an agreement on new pole attachment rate terms consistent with the *Order*. *Id.*, 2023 WL 5090824, at *15, para. 50(c).

³ See Application for Review of Southwestern Bell Telephone Company d/b/a AT&T Texas, Proceeding No. 22-357 (filed Aug. 25, 2023) (AT&T Application for Review); AEP Texas Inc.'s Application for Review, Proceeding No. 22-357 (filed Aug. 25, 2023) (AEP Application for Review).

⁴ Joint Motion to Dismiss Pole Attachment Complaint, Proceeding No. 22-357 (filed May 20, 2024) (Joint Motion).

⁵ Joint Motion at 2, para. 4.

II. ORDERING CLAUSES

4. Accordingly, IT IS HEREBY ORDERED, pursuant to sections 4(i), 4(j), 5(c), 208, and 224 of the Communications Act, 47 U.S.C. §§ 154(i), 154(j), 155(c), 208, and 224, and sections 0.111, 0.311, 1.104, 1.115, 1.720-1.740, and 1.1401-1.1414 of the Commission's rules, 47 CFR §§ 0.111, 0.311, 1.104, 1.115, 1.720-1.740, 1.1401-1.1414, that the Joint Motion IS GRANTED and that this proceeding IS DISMISSED WITH PREJUDICE.

FEDERAL COMMUNICATIONS COMMISSION

Rosemary H. McEnery
Chief, Market Disputes Resolution Division
Enforcement Bureau



PUBLIC NOTICE

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

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

Report No. TEL-02364

Thursday May 23, 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-214-20240419-00064	E	Harmony Cloud 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: 05/17/2024

Harmony Cloud Inc. (Harmony Cloud) 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).

Harmony Cloud, a Delaware corporation, is wholly owned by Nicole Zhu, a U.S. citizen.

ITC-214-20240419-00065 E Uniti Fiber GulfCo 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: 05/17/2024

Uniti Fiber GulfCo LLC (GulfCo) 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).

GulfCo is a Delaware limited liability company. GulfCo is a wholly owned subsidiary of Uniti Fiber Bridge Borrower LLC which is a wholly owned subsidiary of Uniti Fiber Bridge Holdco LLC (Bridge Holdco), both Delaware limited liability companies. Bridge Holdco is a wholly owned subsidiary of Uniti Fiber ABS Parent LLC which is wholly owned by Uniti Fiber Holdings Inc. (Fiber Holdings), both Delaware entities. Uniti Group Finance Inc. (Group Finance), a Delaware corporation, has a 54.4% direct ownership interest in Fiber Holdings. CSL Capital, LLC (CSL Capital), a Delaware limited liability company, holds 100% of the common stock and 80% of the preferred stock of Group Finance. Uniti Group LP, a Delaware limited partnership, has a 45.6% direct ownership interest in Fiber Holdings and a 54.4% indirect ownership interest through its 100% ownership of CSL Capital. Uniti Group Inc., a publicly traded Maryland corporation, has direct 99.8% limited partner and general partnership interests in Uniti Group LP. According to the Applicants, the only individuals or entities with a 10% or greater interest in Uniti Group Inc. are BlackRock, Inc. (16.6%), a Delaware corporation, and The Vanguard Group (15.88%), a Pennsylvania entity.

ITC-214-20240425-00069 E MVNO Connect 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: 05/17/2024

MVNO Connect LLC (MVNO Connect) 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).

MVNO Connect, a Wyoming limited liability company, is wholly owned by Joe Phillips, a U.S. citizen.

ITC-ASG-20240510-00083 E Codecom LLC
Assignment
Grant of Authority Date of Action: 05/20/2024

Current Licensee: Optivon, LLC
FROM: Optivon, LLC
TO: Codecom LLC

On May 10, 2024, Codecom LLC (Codecom), a Puerto Rico limited liability company, filed a notification of the pro forma assignment of an international section 214 authorization to provide global resale service (ITC-214-20090915-00418), from Optivon, LLC (Optivon) to Codecom, effective May 1, 2024. Prior to the transaction, Optivon was controlled by The Luis G. Romero Trust Agreement dated November 28, 2018 (Trust), a Florida entity, through a direct 46.15% ownership in Optivon and an indirect 46.43% ownership through Codecom, which at that time was wholly owned by the Trust. Luis G. Romero, a U.S. citizen, held ultimate control of Optivon and Codecom as the sole grantor and Trustee of the Trust.

In the first step of a corporate reorganization, on April 20, 2024, the Trust transferred a 22.22% ownership interest in Optivon to Codecom, increasing Codecom's interest in Optivon to a controlling 68.65%. In the second step, on May 1, 2024, the international 214 authorization (ITC-214-20090915-00418) was assigned from Optivon to Codecom. The Trust now holds a 92.58% direct interest in Codecom. Luis G. Romero continues to have ultimate control as the sole grantor and Trustee of the Trust.

ITC-T/C-20230928-00118	E	Claro Enterprise Solutions
Transfer of Control		
Grant of Authority		Date of Action: 05/21/2024

Current Licensee: Claro Enterprise Solutions

FROM: America Movil S.A.B. de C.V.

TO: America Movil S.A.B. de C.V.

On September 28, 2023, Claro Enterprise Solutions, LLC (CES), a Delaware limited liability company that holds an international section 214 authorization for global facilities and resale service (ITC-214-20030312-00131), filed a notification of the pro forma transfer of control of CES, effective March 16, 2023. CES is an indirect wholly owned subsidiary of Telmex Holdings, LLC (Telmex Holdings), a Delaware limited liability company, and is indirectly owned and controlled by América Móvil, S.A.B. de C.V. (América Móvil), a Mexico entity. América Móvil is ultimately owned and controlled by Carlos Slim Helú and certain members of his immediate family (the "Slim Family"), all citizens of Mexico.

On March 16, 2023, América Móvil reclassified its separate classes of stock into a single class with equal voting rights. According to the Applicants, the reclassification did not affect the equity interests of the shareholders of América Móvil but did result in changes in their respective voting interests and reduced the voting interest of one of the Slim Family investment vehicles below 50%. Specifically, the stock reclassification resulted in the voting interest in América Móvil held by Trust No. F/0126 (Family Trust) decreasing from 51.7% to 28.1% to match the Family Trust's equity interest in América Móvil. The Trustee of the Family Trust is Banco Inbursa S.A., Institucion de Banca Multiple, Grupo Financiero Inbursa, Division Fiduciaria, (Trustee), a Mexico company. The Trustee holds no equity and/or voting interests in America Movil, and acts at the direction of the children of Carlos Slim Helú, who are the beneficiaries of the Family Trust.

According to the Applicants, the stock reclassification did not affect the Slim Family's overall equity and voting control of América Móvil. The Slim Family retains ultimate control of América Móvil, Telmex Holdings and CES, with 66.8% equity and voting interests in América Móvil.

ITC-T/C-20230928-00119	E	Latam Telecommunications, L.L.C.
Transfer of Control		
Grant of Authority		Date of Action: 05/21/2024

Current Licensee: Latam Telecommunications, L.L.C.

FROM: America Movil S.A.B. de C.V.

TO: America Movil S.A.B. de C.V.

On September 28, 2023, Latam Telecommunications, L.L.C. (LATAM), a Delaware limited liability company that holds international section 214 authorizations for global facilities and resale service (ITC-214-19980813-00564, ITC-214-20000519-00306), filed a notification of the pro forma transfer of control of LATAM, effective March 16, 2023. LATAM is a direct wholly owned subsidiary of Sercotel, S.A. de C.V. (Sercotel) and is indirectly owned and controlled by América Móvil, S.A.B. de C.V. (América Móvil), both Mexico entities. América Móvil is ultimately owned and controlled by Carlos Slim Helú and certain members of his immediate family (the "Slim Family"), all citizens of Mexico.

On March 16, 2023, América Móvil reclassified its separate classes of stock into a single class with equal voting rights. According to the Applicants, the reclassification did not affect the equity interests of the shareholders of América Móvil but did result in changes in their respective voting interests and reduced the voting interest of one of the Slim Family investment vehicles below 50%. Specifically, the stock reclassification resulted in the voting interest in América Móvil held by Trust No. F/0126 (Family Trust) decreasing from 51.7% to 28.1% to match the Family Trust's equity interest in América Móvil. The Trustee of the Family Trust is Banco Inbursa S.A., Institucion de Banca Multiple, Grupo Financiero Inbursa, Division Fiduciaria, (Trustee), a Mexico company. The Trustee holds no equity and/or voting interests in America Movil, and acts at the direction of the children of Carlos Slim Helú, who are the beneficiaries of the Family Trust.

According to the Applicants, the stock reclassification did not affect the Slim Family's overall equity and voting control of América Móvil. The Slim Family retains ultimate control of América Móvil, Sercotel and LATAM, with 66.8% equity and voting interests in América Móvil.

ITC-T/C-20230928-00120 E Telmex Holdings, LLC
Transfer of Control
Grant of Authority Date of Action: 05/21/2024

Current Licensee: Telmex Holdings, Inc.

FROM: America Movil S.A.B. de C.V.

TO: America Movil S.A.B. de C.V.

On September 28, 2023, Telmex Holdings, LLC (Telmex Holdings), a Delaware limited liability company that holds an international section 214 authorization for global facilities and resale service (ITC-214-19970227-00124), filed a notification of the pro forma transfer of control of Telmex Holdings, effective March 16, 2023. Telmex Holdings is an direct wholly owned subsidiary of Latam Telecommunications, L.L.C. (LATAM), a Delaware limited liability company, and is indirectly owned and controlled by América Móvil, S.A.B. de C.V. (América Móvil), a Mexico entity. América Móvil is ultimately owned and controlled by Carlos Slim Helú and certain members of his immediate family (the "Slim Family"), all citizens of Mexico.

On March 16, 2023, América Móvil reclassified its separate classes of stock into a single class with equal voting rights. According to the Applicants, the reclassification did not affect the equity interests of the shareholders of América Móvil but did result in changes in their respective voting interests and reduced the voting interest of one of the Slim Family investment vehicles below 50%. Specifically, the stock reclassification resulted in the voting interest in América Móvil held by Trust No. F/0126 (Family Trust) decreasing from 51.7% to 28.1% to match the Family Trust's equity interest in América Móvil. The Trustee of the Family Trust is Banco Inbursa S.A., Institucion de Banca Multiple, Grupo Financiero Inbursa, Division Fiduciaria, (Trustee), a Mexico company. The Trustee holds no equity and/or voting interests in America Movil, and acts at the direction of the children of Carlos Slim Helú, who are the beneficiaries of the Family Trust.

According to the Applicants, the stock reclassification did not affect the Slim Family's overall equity and voting control of América Móvil. The Slim Family retains ultimate control of América Móvil, LATAM and Telmex Holdings, with 66.8% equity and voting interests in América Móvil.

ITC-T/C-20230928-00121 E Puerto Rico Telephone Company, Inc.
Transfer of Control
Grant of Authority Date of Action: 05/21/2024

Current Licensee: Puerto Rico Telephone Company, Inc.

FROM: America Movil S.A.B. de C.V.

TO: America Movil S.A.B. de C.V.

On September 28, 2023, Puerto Rico Telephone Company, Inc. (PRTC), a Puerto Rico corporation that holds international section 214 authorizations for global facilities and resale service and individual switched resale service (ITC-214-19960215-00072, ITC-214-20000714-00410, ITC-214-20051129-00480), filed a notification of the pro forma transfer of control of PRTC, effective March 16, 2023. PRTC is a direct wholly owned subsidiary of Telecomunicaciones de Puerto Rico, Inc. (TELPRI), a Puerto Rico corporation, and is indirectly owned and controlled by América Móvil, S.A.B. de C.V. (América Móvil), a Mexico entity. América Móvil is ultimately owned and controlled by Carlos Slim Helú and certain members of his immediate family (the "Slim Family"), all citizens of Mexico.

On March 16, 2023, América Móvil reclassified its separate classes of stock into a single class with equal voting rights. According to the Applicants, the reclassification did not affect the equity interests of the shareholders of América Móvil but did result in changes in their respective voting interests and reduced the voting interest of one of the Slim Family investment vehicles below 50%. Specifically, the stock reclassification resulted in the voting interest in América Móvil held by Trust No. F/0126 (Family Trust) decreasing from 51.7% to 28.1% to match the Family Trust's equity interest in América Móvil. The Trustee of the Family Trust is Banco Inbursa S.A., Institucion de Banca Multiple, Grupo Financiero Inbursa, Division Fiduciaria, (Trustee), a Mexico company. The Trustee holds no equity and/or voting interests in America Movil, and acts at the direction of the children of Carlos Slim Helú, who are the beneficiaries of the Family Trust.

According to the Applicants, the stock reclassification did not affect the Slim Family's overall equity and voting control of América Móvil. The Slim Family retains ultimate control of América Móvil, TELPRI and PRTC, with 66.8% equity and voting interests in América Móvil.

ITC-T/C-20240311-00045 E Claro Enterprise Solutions
Transfer of Control
Grant of Authority Date of Action: 05/21/2024

Current Licensee: Claro Enterprise Solutions

FROM: Telmex Holdings, LLC

TO: Latam Telecommunications, L.L.C.

On March 11, 2024, Claro Enterprise Solutions, LLC (CES), a Delaware limited liability company that holds an international section 214 authorization for global facilities and resale service (ITC-214-20030312-00131), filed a notification of the pro forma transfer of control of CES from Telmex Holdings, LLC (Telmex Holdings) to Latam Telecommunications, L.L.C. (LATAM), effective February 29, 2024. Prior to the transaction CES was direct wholly owned subsidiary of Telmex Ventures USA, LLC (Telmex Ventures) which was a wholly owned subsidiary of Telmex Holdings which in turn was a wholly owns subsidiary of LATAM. In a corporate reorganization Telmex Ventures and Telmex Holdings were merged into LATAM. As a result, CES is now a direct wholly owned subsidiary of LATAM. LATAM, a Delaware limited liability company is indirectly owned and controlled by América Móvil, S.A.B. de C.V. (América Móvil), a Mexico entity. América Móvil is ultimately owned and controlled by Carlos Slim Helú and certain members of his immediate family (the "Slim Family"), all citizens of Mexico.

ITC-T/C-20240416-00068 E Nuso, LLC
Transfer of Control
Grant of Authority Date of Action: 05/17/2024

Current Licensee: Nuso, LLC

FROM: Nuso, LLC

TO: McCarthy Capital Fund VIII, L.P.

Nuso, LLC (Nuso), a Missouri limited liability company that holds an international section 214 authorization to provide global facilities-based and resale service (ITC-214-20100412-00154), filed an application for consent to the transfer of control of Nuso to McCarthy Capital Fund VIII, L.P. (McCarthy Capital VIII). The existing shareholders of Nuso are selling Nuso to the McCarthy Entities, a number of associated funds, for a combined 11.9% ownership interest in Nuso Parent, LLC (Nuso Parent), a Delaware limited liability company that will become the direct 100% parent of Nuso, and the cancellation of warrants and options related to Nuso.

MPM Nuso Investors, LLC (Investors), a Delaware limited liability company, will hold an 88.1% ownership interest in Nuso Parent. Investors is wholly owned by McCarthy Capital VIII, a pooled investment vehicle organized as a Delaware limited partnership. McCarthy Group LLC (McCarthy Group), a Delaware limited liability company that holds a 19.4% interest, is the only limited partner with a 10% or greater equity interest in McCarthy Capital VIII. McCarthy Capital VIII is controlled by McCarthy GP VIII, LLC (McCarthy GP VIII) and is managed by McCarthy Partners Management, LLC (McCarthy Management), both Delaware limited liability companies.

McCarthy GP VIII is owned by McCarthy Partners, LLC (McCarthy Partners) (90%), a Nebraska limited liability company, and McCarthy Group (10%). MCP Management Corp (MCP Management), a Nebraska corporation, holds a 90% interest in McCarthy Management. McCarthy Partners and MCP Management both have the same 10% or greater owners, all U.S. citizens with the same ownership interest in both entities: Patrick J. Duffy (31.9%), Chase M. Meyer (13.7%) and Robert Y. Emmert (12.0%). According to the Applicants no other individual or entity will hold a 10% or greater ownership interest in Nuso Parent or Nuso.

This authorization is without prejudice to the Commission's action in any other related pending proceedings.

ITC-T/C-20240502-00071 E Ziplly Fiber Northwest LLC
Transfer of Control
Grant of Authority Date of Action: 05/20/2024

Current Licensee: Ziplly Fiber Northwest LLC

FROM: Northwest Fiber, LLC dba Ziplly Fiber

TO: Ziplly Fiber Issuer, LLC

On May 2, 2024, Ziplly Fiber Northwest LLC (ZFN), a Delaware limited liability company that holds an international section 214 authorization to provide global facilities-based and resale service (ITC-214-20080219-00079), filed a notification of the pro forma transfer of control of ZFN from Northwest Fiber, LLC (NWF) to Ziplly Fiber Issuer, LLC (ZFI), effective April 3, 2024. Prior to the transaction ZFN was a direct wholly owned subsidiary of NWF and an indirect wholly owned subsidiary of Northwest Fiber Holdco, LLC, which is ultimately controlled by Searchlight Capital Partners II GP, LLC, all Delaware limited liability companies. In a corporate reorganization, ZFI and Ziplly Fiber Holdings, LLC (ZFH), a Delaware limited liability company, were inserted between ZFN and NWF. ZFN is now a direct wholly owns subsidiary of ZFI which is wholly owned by ZFH which in turn is wholly owned by NWF.

ITC-T/C-20240503-00072	E	Hawaiian Telcom Services Company, Inc.
Transfer of Control		
Grant of Authority		Date of Action: 05/21/2024

Current Licensee: Hawaiian Telcom Services Company, Inc.

FROM: Macquarie Group Limited

TO: Macquarie Group Limited

On May 3, 2024, Hawaiian Telcom Services Company, Inc. (HTSC), a Delaware corporation that holds international section 214 authorizations for global facilities and resale service (ITC-214-20010503-00269, ITC-214-20040630-00513), filed a notification of the pro forma transfer of control of HTSC, effective April 4, 2024.

HTSC is an indirect wholly owned subsidiary of Cincinnati Bell Inc., an Ohio corporation that is an indirect wholly owned subsidiary Red Fiber Holdings LLC (RF Holdings), a Delaware limited liability company. MIP V RF Partners, L.P. (MIP V RF Partners), a Delaware limited partnership, holds a 60.8% equity and 100% voting interest in RF Holdings. According to Applicants, MIP V RF Partners is managed by Macquarie Infrastructure Partners Inc. (MIP), a Delaware corporation, pursuant to an agreement with MIP V RF Partners' general partner, Macquarie Infrastructure Partners V GP, LLC (MIP V GP), a Delaware limited liability company. MIP V GP is controlled by Macquarie Infrastructure and Real Assets Inc. (MIRA), a Delaware corporation. MIRA is an indirect wholly owned subsidiary of Macquarie Group Limited (MGL), a publicly traded Australian company.

In a corporate reorganization, the entities between MIRA and MGL were changed. Specifically, Macquire Holdings (U.S.A.), Inc., Macquarie Equities (US) Holding Pty Limited, Macquarie Group (US) Holdings No. 1 Pty Limited, Macquarie Corporate International Holdings Pty Limited, Macquarie Corporate Holdings Pty Limited and Macquarie Financial Holdings Pty Limited were removed from the organizational structure. MIRA is now a direct wholly owned subsidiary of Macquarie Asset Management US Inc., a Delaware corporation, that is wholly owned by Macquire Asset Management US Holdings Pty Limited (US Holdings Pty), an Australian entity. US Holdings Pty is a direct wholly owned subsidiary of Macquarie Asset Management Holdings Pty Limited, an Australian entity that is a direct wholly owned subsidiary of MGL.

ITC-T/C-20240503-00073	E	Wavecom Solutions Corporation
Transfer of Control		
Grant of Authority		Date of Action: 05/21/2024

Current Licensee: Wavecom Solutions Corporation

FROM: Macquarie Group Limited

TO: Macquarie Group Limited

On May 3, 2024, Wavecom Solutions Corporation (Wavecom), a Hawaii corporation, filed a notification of the pro forma transfer of control of Wavecom, effective April 4, 2024. Wavecom is a direct wholly owned subsidiary of Hawaiian Telcom, Inc. (HTI), a Hawaii corporation. Wavecom provides international service under the international section 214 for global facilities-based and resale service held by HTI (ITC-214-20040630-00512) pursuant to section 63.21(h) of the Commission's rules. 47 CFR § 63.21(h).

Wavecom is an indirect wholly owned subsidiary of Cincinnati Bell Inc., an Ohio corporation that is an indirect wholly owned subsidiary Red Fiber Holdings LLC (RF Holdings), a Delaware limited liability company. MIP V RF Partners, L.P. (MIP V RF Partners), a Delaware limited partnership, holds a 60.8% equity and 100% voting interest in RF Holdings. According to Applicants, MIP V RF Partners is managed by Macquarie Infrastructure Partners Inc. (MIP), a Delaware corporation, pursuant to an agreement with MIP V RF Partners' general partner, Macquarie Infrastructure Partners V GP, LLC (MIP V GP), a Delaware limited liability company. MIP V GP is controlled by Macquarie Infrastructure and Real Assets Inc. (MIRA), a Delaware corporation. MIRA is an indirect wholly owned subsidiary of Macquarie Group Limited (MGL), a publicly traded Australian company.

In a corporate reorganization, the entities between MIRA and MGL were changed. Specifically, Macquire Holdings (U.S.A.), Inc., Macquarie Equities (US) Holding Pty Limited, Macquarie Group (US) Holdings No. 1 Pty Limited, Macquarie Corporate International Holdings Pty Limited, Macquarie Corporate Holdings Pty Limited and Macquarie Financial Holdings Pty Limited were removed from the organizational structure. MIRA is now a direct wholly owned subsidiary of Macquarie Asset Management US Inc., a Delaware corporation, that is wholly owned by Macquire Asset Management US Holdings Pty Limited (US Holdings Pty), an Australian entity. US Holdings Pty is a direct wholly owned subsidiary of Macquarie Asset Management Holdings Pty Limited, an Australian entity that is a direct wholly owned subsidiary of MGL.

ITC-T/C-20240503-00074	E	Hawaiian Telcom, Inc.
Transfer of Control		
Grant of Authority		Date of Action: 05/21/2024

Current Licensee: Hawaiian Telcom, Inc.

FROM: Macquarie Group Limited

TO: Macquarie Group Limited

On May 3, 2024, Hawaiian Telcom, Inc. (HTI), a Hawaii corporation that holds an international section 214 authorization for global facilities and resale service (ITC-214-20040630-00512), filed a notification of the pro forma transfer of control of HTI, effective April 4, 2024.

HTI is an indirect wholly owned subsidiary of Cincinnati Bell Inc., an Ohio corporation that is an indirect wholly owned subsidiary Red Fiber Holdings LLC (RF Holdings), a Delaware limited liability company. MIP V RF Partners, L.P. (MIP V RF Partners), a Delaware limited partnership, holds a 60.8% equity and 100% voting interest in RF Holdings. According to Applicants, MIP V RF Partners is managed by Macquarie Infrastructure Partners Inc. (MIP), a Delaware corporation, pursuant to an agreement with MIP V RF Partners' general partner, Macquarie Infrastructure Partners V GP, LLC (MIP V GP), a Delaware limited liability company. MIP V GP is controlled by Macquarie Infrastructure and Real Assets Inc. (MIRA), a Delaware corporation. MIRA is an indirect wholly owned subsidiary of Macquarie Group Limited (MGL), a publicly traded Australian company.

In a corporate reorganization, the entities between MIRA and MGL were changed. Specifically, Macquire Holdings (U.S.A.), Inc., Macquarie Equities (US) Holding Pty Limited, Macquarie Group (US) Holdings No. 1 Pty Limited, Macquarie Corporate International Holdings Pty Limited, Macquarie Corporate Holdings Pty Limited and Macquarie Financial Holdings Pty Limited were removed from the organizational structure. MIRA is now a direct wholly owned subsidiary of Macquarie Asset Management US Inc., a Delaware corporation, that is wholly owned by Macquire Asset Management US Holdings Pty Limited (US Holdings Pty), an Australian entity. US Holdings Pty is a direct wholly owned subsidiary of Macquarie Asset Management Holdings Pty Limited, an Australian entity that is a direct wholly owned subsidiary of MGL.

ITC-T/C-20240503-00075	E	Cincinnati Bell Extended Territories LLC
Transfer of Control		
Grant of Authority		Date of Action: 05/21/2024

Current Licensee: Cincinnati Bell Extended Territories LLC

FROM: Macquarie Group Limited

TO: Macquarie Group Limited

On May 3, 2024, Cincinnati Bell Extended Territories LLC (CBET), an Ohio limited liability company holds an international section 214 authorization for global facilities and resale service (ITC-214-20220801-00098), filed a notification of the pro forma transfer of control of CBET, effective April 4, 2024.

CBET is an indirect wholly owned subsidiary of Cincinnati Bell Inc., an Ohio corporation that is an indirect wholly owned subsidiary Red Fiber Holdings LLC (RF Holdings), a Delaware limited liability company. MIP V RF Partners, L.P. (MIP V RF Partners), a Delaware limited partnership, holds a 60.8% equity and 100% voting interest in RF Holdings. According to Applicants, MIP V RF Partners is managed by Macquarie Infrastructure Partners Inc. (MIP), a Delaware corporation, pursuant to an agreement with MIP V RF Partners' general partner, Macquarie Infrastructure Partners V GP, LLC (MIP V GP), a Delaware limited liability company. MIP V GP is controlled by Macquarie Infrastructure and Real Assets Inc. (MIRA), a Delaware corporation. MIRA is an indirect wholly owned subsidiary of Macquarie Group Limited (MGL), a publicly traded Australian company.

In a corporate reorganization, the entities between MIRA and MGL were changed. Specifically, Macquire Holdings (U.S.A.), Inc., Macquarie Equities (US) Holding Pty Limited, Macquarie Group (US) Holdings No. 1 Pty Limited, Macquarie Corporate International Holdings Pty Limited, Macquarie Corporate Holdings Pty Limited and Macquarie Financial Holdings Pty Limited were removed from the organizational structure. MIRA is now a direct wholly owned subsidiary of Macquarie Asset Management US Inc., a Delaware corporation, that is wholly owned by Macquire Asset Management US Holdings Pty Limited (US Holdings Pty), an Australian entity. US Holdings Pty is a direct wholly owned subsidiary of Macquarie Asset Management Holdings Pty Limited, an Australian entity that is a direct wholly owned subsidiary of MGL.

ITC-T/C-20240503-00076 E

CBTS Technology Solutions LLC

Transfer of Control

Grant of Authority

Date of Action: 05/21/2024

Current Licensee: CBTS Technology Solutions LLC

FROM: Macquarie Group Limited

TO: Macquarie Group Limited

On May 3, 2024, CBTS Technology Solutions LLC (CBTS), an Ohio limited liability company holds an international section 214 authorization for global facilities and resale service (ITC-214-20071024-00434), filed a notification of the pro forma transfer of control of CBTS, effective April 4, 2024.

CBTS is an indirect wholly owned subsidiary of Cincinnati Bell Inc., an Ohio corporation that is an indirect wholly owned subsidiary Red Fiber Holdings LLC (RF Holdings), a Delaware limited liability company. MIP V RF Partners, L.P. (MIP V RF Partners), a Delaware limited partnership, holds a 60.8% equity and 100% voting interest in RF Holdings. According to Applicants, MIP V RF Partners is managed by Macquarie Infrastructure Partners Inc. (MIP), a Delaware corporation, pursuant to an agreement with MIP V RF Partners' general partner, Macquarie Infrastructure Partners V GP, LLC (MIP V GP), a Delaware limited liability company. MIP V GP is controlled by Macquarie Infrastructure and Real Assets Inc. (MIRA), a Delaware corporation. MIRA is an indirect wholly owned subsidiary of Macquarie Group Limited (MGL), a publicly traded Australian company.

In a corporate reorganization, the entities between MIRA and MGL were changed. Specifically, Macquire Holdings (U.S.A.), Inc., Macquarie Equities (US) Holding Pty Limited, Macquarie Group (US) Holdings No. 1 Pty Limited, Macquarie Corporate International Holdings Pty Limited, Macquarie Corporate Holdings Pty Limited and Macquarie Financial Holdings Pty Limited were removed from the organizational structure. MIRA is now a direct wholly owned subsidiary of Macquarie Asset Management US Inc., a Delaware corporation, that is wholly owned by Macquire Asset Management US Holdings Pty Limited (US Holdings Pty), an Australian entity. US Holdings Pty is a direct wholly owned subsidiary of Macquarie Asset Management Holdings Pty Limited, an Australian entity that is a direct wholly owned subsidiary of MGL.

ITC-T/C-20240506-00078 E

Lingo Telecom, LLC

Transfer of Control

Grant of Authority

Date of Action: 05/20/2024

Current Licensee: Lingo Telecom, LLC

FROM: Impact Telecom, LLC

TO: Lingo Management, LLC

On May 6, 2024, Lingo Telecom, LLC (Lingo Telecom), a Texas limited liability company that holds international section 214 authorizations to provide global facilities-based and resale service (ITC-214-19900713-00004, ITC-214-19930330-00053, ITC-214-19940830-00266, ITC-214-19970415-00212, ITC-214-19980507-00300, ITC-214-19980915-00644), filed a notification of the pro forma transfer of control of Lingo Telecom from Impact Telecom, LLC (Impact Telecom) to Lingo Management, LLC (Lingo Management), effective August 26, 2023. Prior to the transaction, Lingo Telecom was a direct wholly owned subsidiary of Impact Telecom, a Nevada limited liability company, which was a direct wholly owned subsidiary of Lingo Management, a Delaware limited liability company. In a corporate reorganization, the direct ownership of Lingo Telecom was transferred to Lingo Management. Lingo Telecom and Impact Telecom are now both direct wholly owned subsidiaries of Lingo Management.

Lingo Telecom of Virgina, LLC, a Virgina limited liability company, is a direct wholly owned subsidiary of Lingo Telecom and provides international service under the international section 214 authority held by Lingo Telecom pursuant to section 63.21(h) of the Commission's rules. 47 CFR § 63.21(h).

INFORMATIVE

ITC-214-19981005-00686

Millennium Telcom, L.L.C., dba OneSource Communications

By letter dated May 20, 2024, Millennium Telcom, L.L.C., dba OneSource Communications notified the Commission that it will be discontinuing the provision of TDM-based international telecommunications services to customers in Texas on July 19, 2024, or soon thereafter.

SURRENDER

ITC-214-19970326-00170

CELEBRATE COMMUNICATIONS, LLC

CELEBRATE COMMUNICATIONS, LLC notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20041005-00393

Benchmark Communications, LLC d/b/a Com One

Benchmark Communications, LLC d/b/a Com One 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-MS-20181015-00182, Public Notice, 33 FCC Rcd 10008 (IB 2018).

(8) Any U.S. Carrier that owned or leased bare capacity on a submarine cable between the United States and any foreign point must file a Circuit Capacity Report to provide information about the submarine cable capacity it holds. 47 CFR § 43.82(a)(2). See <https://www.fcc.gov/circuit-capacity-data-us-international-submarine-cables>.

(9) Carriers should consult section 63.19 of the rules when contemplating a discontinuance, reduction or impairment of service.

(10) If any carrier is reselling service obtained pursuant to a contract with another carrier, the services obtained by contract shall be made generally available by the underlying carrier to similarly situated customers at the same terms, conditions and rates. 47 U.S.C. § 203.

(11) To the extent the applicant is, or is affiliated with, an incumbent independent local exchange carrier, as those terms are defined in section 64.1902 of the rules, it shall provide the authorized services in compliance with the requirements of section 64.1903.

(12) Except as otherwise ordered by the Commission, a carrier authorized here to provide facilities-based service that (i) is classified as dominant under section 63.10 of the rules for the provision of such service on a particular route and (ii) is

affiliated with a carrier that collects settlement payments for terminating U.S. international switched traffic at the foreign end of that route may not provide facilities-based switched service on that route unless the current rates the affiliate charges U.S. international carriers to terminate traffic are at or below the Commission's relevant benchmark adopted in International Settlement Rates, IB Docket No. 96-261, Report and Order, 12 FCC Rcd 19806 (1997). See also Report and Order on Reconsideration and Order Lifting Stay in IB Docket No. 96-261, FCC 99-124 (rel. June 11, 1999). For the purposes of this rule, "affiliated" and "foreign carrier" are defined in section 63.09.

(13) Carriers shall comply with the Communications Assistance for Law Enforcement Act (CALEA), see 47 CFR §§ 1.20000 et seq.

(14) Every carrier must designate an agent for service in the District of Columbia. see 47 U.S.C. § 413, 47 CFR §§ 1.47(h), 64.1195.

(15) Each carrier shall notify the Commission of any change in its contact information. Such notification shall be filed in the file number(s) for the international section 214 authorization(s) through the International Communications Filing System (ICFS).

Exclusion List for International Section 214 Authorizations

The following is a list of countries and facilities not covered by grant of global section 214 authority under section 63.18(e)(1) of the Commission's Rules, 47 CFR § 63.18(e)(1). Carriers desiring to serve countries or use facilities listed as excluded hereon shall file a separate section 214 application pursuant to section 63.18(e)(3) of the Commission's Rules. See 47 CFR § 63.22(c).

Countries:

None.

Facilities:

Any non-U.S.-licensed space station that has not received Commission approval to operate in the U.S. market pursuant to the procedures adopted in the Commission's DISCO II Order, IB Docket No. 96-111, Report and Order, FCC 97-399, 12 FCC Rcd 24094, 24107-72 paragraphs 30-182 (1997) (DISCO II Order). Information regarding non-U.S.-licensed space stations approved to operate in the U.S. market pursuant to the Commission's DISCO II procedures is maintained at <https://www.fcc.gov/approved-space-station-list>.

This list is subject to change by the Commission when the public interest requires. The most current version of the list is maintained at <https://www.fcc.gov/exclusion-list-international-section-214-authorizations>.

For additional information, contact the Office of International Affairs, Telecommunications and Analysis Division at (202) 418-1480.



PUBLIC NOTICE

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

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

DA No. 24-486

Report No. SCL-00462

Thursday May 23, 2024

Actions Taken Under Cable Landing License Act

Section 1.767(a) Cable Landing Licenses, Modifications, and Assignments or Transfers of Control of Interests in Cable Landing Licenses (47 CFR § 1.767(a))

By the Chief, Telecommunications and Analysis Division, Office of International Affairs:

Pursuant to an Act relating to the landing and operation of submarine cables in the United States, 47 U.S.C. §§ 34-39 (Cable Landing License Act), Executive Order No. 10530, Exec. Ord. No. 10530 reprinted as amended in 3 U.S.C. § 301, and section 1.767 of the Commission's rules, 47 CFR § 1.767, the following applications ARE GRANTED. These grants of authority are taken under section 0.261 of the Commission's rules. 47 CFR § 0.261. Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules may be filed within thirty (30) days of the date of this public notice. 47 CFR §§ 1.106, 1.115.

These applications have been coordinated with the Department of State and other Executive Branch agencies pursuant to section 1.767(b) of the Commission's rules and consistent with procedures established with the Department of State. 47 CFR § 1.767(b); see Review of Commission Consideration of Applications under the Cable Landing License Act, IB Docket No. 00-106, Report and Order, 16 FCC Rcd 22167, 22192-93, paras. 51-52 (2001) (Submarine Cable Landing License Report and Order); Commission Announces Department of State's Revised Procedures for its Consideration of Submarine Cable Landing License Applications, IB Docket No. 16-155, Public Notice, DA 22-435 (rel. Apr. 19, 2022).

This public notice serves as each cable landing licensee's Cable Landing License, or modification thereto, pursuant to the Cable Landing License Act and sections 1.767 and 1.768 of the Commission's rules. 47 CFR §§ 1.767, 1.768. Cable landing licensees should review the terms and conditions of their licenses. Failure to comply with these terms and conditions or relevant Commission rules and policies could result in fines or forfeitures.

SCL-T/C-20230928-00029	E	Puerto Rico Telephone Company, Inc.
Transfer of Control		
Grant of Authority		Date of Action: 05/21/2024

Current Licensee: Puerto Rico Telephone Company, Inc.

FROM: America Movil S.A.B. de C.V.

TO: America Movil S.A.B. de C.V.

On September 28, 2023, Puerto Rico Telephone Company, Inc. (PRTC), a Puerto Rico corporation, filed a notification of the pro forma transfer of control of PRTC, effective March 16, 2023. PRTC is a licensee on the America Movil Submarine Cable System (AMXI System) (SCL-LIC-20120330-00002). The Applicants filed a supplement on October 27, 2023.

PRTC is a direct wholly owned subsidiary of Telecomunicaciones de Puerto Rico, Inc. (TELPRI), a Puerto Rico corporation, and is indirectly owned and controlled by América Móvil, S.A.B. de C.V. (América Móvil), a Mexico entity. América Móvil is ultimately owned and controlled by Carlos Slim Helú and certain members of his immediate family (the "Slim Family"), all citizens of Mexico.

On March 16, 2023, América Móvil reclassified its separate classes of stock into a single class with equal voting rights. According to the Applicants, the reclassification did not affect the equity interests of the shareholders of América Móvil but did result in changes in their respective voting interests and reduced the voting interest of one of the Slim Family investment vehicles below 50%. Specifically, the stock reclassification resulted in the voting interest in América Móvil held by Trust No. F/0126 (Family Trust) decreasing from 51.7% to 28.1% to match the Family Trust's equity interest in América Móvil. The Trustee of the Family Trust is Banco Inbursa S.A., Institucion de Banca Multiple, Grupo Financiero Inbursa, Division Fiduciaria, (Trustee), a Mexico company. The Trustee holds no equity and/or voting interests in America Movil, and acts at the direction of the children of Carlos Slim Helú, who are the beneficiaries of the Family Trust.

According to the Applicants, the stock reclassification did not affect the Slim Family's overall equity and voting control of América Móvil. The Slim Family retains ultimate control of América Móvil, TELPRI and PRTC, with 66.8% equity and voting interests in América Móvil.

SCL-T/C-20230928-00030	E	Latam Telecommunications, L.L.C.
Transfer of Control		
Grant of Authority		Date of Action: 05/21/2024

Current Licensee: Latam Telecommunications, L.L.C.

FROM: America Movil S.A.B. de C.V.

TO: America Movil S.A.B. de C.V.

On September 28, 2023, Latam Telecommunications, L.L.C. (LATAM), a Puerto Rico corporation, filed a notification of the pro forma transfer of control of PRTC, effective March 16, 2023. PRTC is a licensee on the America Movil Submarine Cable System (AMXI System) (SCL-LIC-20120330-00002). The Applicants filed a supplement on October 27, 2023.

LATAM is a direct wholly owned subsidiary of Sercotel, S.A. de C.V. (Sercotel) and is indirectly owned and controlled by América Móvil, S.A.B. de C.V. (América Móvil), both Mexico entities. América Móvil is ultimately owned and controlled by Carlos Slim Helú and certain members of his immediate family (the "Slim Family"), all citizens of Mexico.

On March 16, 2023, América Móvil reclassified its separate classes of stock into a single class with equal voting rights. According to the Applicants, the reclassification did not affect the equity interests of the shareholders of América Móvil but did result in changes in their respective voting interests and reduced the voting interest of one of the Slim Family investment vehicles below 50%. Specifically, the stock reclassification resulted in the voting interest in América Móvil held by Trust No. F/0126 (Family Trust) decreasing from 51.7% to 28.1% to match the Family Trust's equity interest in América Móvil. The Trustee of the Family Trust is Banco Inbursa S.A., Institucion de Banca Multiple, Grupo Financiero Inbursa, Division Fiduciaria, (Trustee), a Mexico company. The Trustee holds no equity and/or voting interests in America Movil, and acts at the direction of the children of Carlos Slim Helú, who are the beneficiaries of the Family Trust.

According to the Applicants, the stock reclassification did not affect the Slim Family's overall equity and voting control of América Móvil. The Slim Family retains ultimate control of América Móvil, Sercotel and LATAM, with 66.8% equity and voting interests in América Móvil.

SCL-T/C-20240503-00011	E	Hawaiian Telcom, Inc.
Transfer of Control		
Grant of Authority		Date of Action: 05/21/2024

Current Licensee: Hawaiian Telcom, Inc.

FROM: Macquarie Group Limited

TO: Macquarie Group Limited

On May 3, 2024, Hawaiian Telcom, Inc. (HTI), a Hawaii corporation, filed a notification of the pro forma transfer of control of HTI, effective April 4, 2024. HTI is a licensee on the Hawaiian Islands Fiber Network (HIFN) (SCL-LIC-20220111-00003) and Hawaii Inter-Island Cable System (HICS) (SCL-MOD-20190305-00007). HTI has filed for new a 10-year license for HICS. See SCL-LIC-20240320-00009.

HTI is an indirect wholly owned subsidiary of Cincinnati Bell Inc., an Ohio corporation that is an indirect wholly owned subsidiary Red Fiber Holdings LLC (RF Holdings), a Delaware limited liability company. MIP V RF Partners, L.P. (MIP V RF Partners), a Delaware limited partnership, holds a 60.8% equity and 100% voting interest in RF Holdings. According to Applicants, MIP V RF Partners is managed by Macquarie Infrastructure Partners Inc. (MIP), a Delaware corporation, pursuant to an agreement with MIP V RF Partners' general partner, Macquarie Infrastructure Partners V GP, LLC (MIP V GP), a Delaware limited liability company. MIP V GP is controlled by Macquarie Infrastructure and Real Assets Inc. (MIRA), a Delaware corporation. MIRA is an indirect wholly owned subsidiary of Macquarie Group Limited (MGL), a publicly traded Australian company.

In a corporate reorganization, the entities between MIRA and MGL were changed. Specifically, Macquire Holdings (U.S.A.), Inc., Macquarie Equities (US) Holding Pty Limited, Macquarie Group (US) Holdings No. 1 Pty Limited, Macquarie Corporate International Holdings Pty Limited, Macquarie Corporate Holdings Pty Limited and Macquarie Financial Holdings Pty Limited were removed from the organizational structure. MIRA is now a direct wholly owned subsidiary of Macquarie Asset Management US Inc., a Delaware corporation, that is wholly owned by Macquire Asset Management US Holdings Pty Limited (US Holdings Pty), an Australian entity. US Holdings Pty is a direct wholly owned subsidiary of Macquarie Asset Management Holdings Pty Limited, an Australian entity that is a direct wholly owned subsidiary of MGL.

SCL-T/C-20240506-00012	E	Hawaiian Telcom Services Company, Inc.
Transfer of Control		
Grant of Authority		Date of Action: 05/21/2024

Current Licensee: Hawaiian Telcom Services Company, Inc.

FROM: Macquarie Group Limited

TO: Macquarie Group Limited

On May 6, 2024, Hawaiian Telcom Services Company, Inc. (HTC), a Delaware corporation, filed a notification of the pro forma transfer of control of HTC, effective April 4, 2024. HTC is a licensee on the Hawaiian Islands Fiber Network (HIFN) (SCL-LIC-20220111-00003) and the Southeast Asia-US submarine cable system (SEA-US) (SCL-LIC-20150626-00016).

HTC is an indirect wholly owned subsidiary of Cincinnati Bell Inc., an Ohio corporation that is an indirect wholly owned subsidiary Red Fiber Holdings LLC (RF Holdings), a Delaware limited liability company. MIP V RF Partners, L.P. (MIP V RF Partners), a Delaware limited partnership, holds a 60.8% equity and 100% voting interest in RF Holdings. According to Applicants, MIP V RF Partners is managed by Macquarie Infrastructure Partners Inc. (MIP), a Delaware corporation, pursuant to an agreement with MIP V RF Partners' general partner, Macquarie Infrastructure Partners V GP, LLC (MIP V GP), a Delaware limited liability company. MIP V GP is controlled by Macquarie Infrastructure and Real Assets Inc. (MIRA), a Delaware corporation. MIRA is an indirect wholly owned subsidiary of Macquarie Group Limited (MGL), a publicly traded Australian company.

In a corporate reorganization, the entities between MIRA and MGL were changed. Specifically, Macquire Holdings (U.S.A.), Inc., Macquarie Equities (US) Holding Pty Limited, Macquarie Group (US) Holdings No. 1 Pty Limited, Macquarie Corporate International Holdings Pty Limited, Macquarie Corporate Holdings Pty Limited and Macquarie Financial Holdings Pty Limited were removed from the organizational structure. MIRA is now a direct wholly owned subsidiary of Macquarie Asset Management US Inc., a Delaware corporation, that is wholly owned by Macquire Asset Management US Holdings Pty Limited (US Holdings Pty), an Australian entity. US Holdings Pty is a direct wholly owned subsidiary of Macquarie Asset Management Holdings Pty Limited, an Australian entity that is a direct wholly owned subsidiary of MGL.



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 24-487
Released: May 23, 2024

DOMESTIC SECTION 214 APPLICATION GRANTED FOR THE TRANSFER CONTROL OF COMMUNICATIONS 1 NETWORK, INC. TO WEBSTER-CALHOUN COOPERATIVE TELEPHONE ASSOCIATION AND WINNEBAGO COOPERATIVE TELECOM ASSOCIATION

WC Docket No. 24-48

By this Public Notice, the Wireline Competition Bureau grants 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

On April 26, 2024, the Bureau released a public notice seeking comment on the Application.³ We did not receive comments or petitions in opposition to the Application.

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.⁴ Comm 1 wholly owns Comm 1 Connects, Inc., a competitive LEC and provider of broadband, video, and voice services.⁵ 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 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 *Domestic Section 214 Application Filed for the Transfer of Control of Communications 1 Network, Inc. to Webster-Calhoun Cooperative Telephone Association and Winnebago Cooperative Telecom Association*, WC Docket No. 24-48, Public Notice, DA 24-401 (WCB 2024) (*Public Notice*).

⁴ Application at 3, 11.

⁵ *Id.* at 7.

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.⁶ 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.⁷ 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%).⁸

WebCal is an incumbent LEC member-supported telephone cooperative in north central Iowa.⁹ WebCal services twenty communities with a fiber-driven network just outside the Fort Dodge, Iowa area.¹⁰ WebCal wholly owns Webster-Calhoun Communications L.C. (WebCal Comm), a holding company for WebCal's investments, and Webster-Calhoun Long Distance, both of which currently have no operations and offer no services.¹¹ WebCal also has a 12.33% ownership interest in Alpine Communications, L.C. (Alpine) and its subsidiaries.¹² 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.¹³ Alpine's wholly-owned subsidiary, Alpine Acquisition Group (AAG), is an Iowa limited liability company that does not offer domestic telecommunications services.¹⁴ AAG is a holding company for and owns all outstanding shares of stock in La Porte City Telephone Company (LPC Telco) and its subsidiaries.¹⁵ 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.¹⁶ LPC Telco has two subsidiaries, LPC Long Distance, Inc., which holds an international section 214 authorization and operates CATV/multichannel video systems, and LPC Communications, Inc.,

⁶ *Id.*; Apr. 2 Supplement at 5; Apr. 17 Supplement at 7.

⁷ 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. Application at 15; Apr. 17 Supplement at 7-8.

⁸ 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.*

⁹ *Id.* at 10. The cooperative has approximately 3,300 members from sixteen communities in rural north-central Iowa. *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 4; Apr. 17 Supplement at 1-2.

¹² 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).

¹³ Application at 5; Apr. 17 Supplement at 2-3.

¹⁴ Apr. 17 Supplement at 4.

¹⁵ *Id.*

¹⁶ *Id.*

which offers no services.¹⁷ Alpine's other wholly-owned subsidiary, Alpine Long Distance, LC, provides long distance and broadband services.¹⁸

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 services in Hamilton County, Iowa (50%);¹⁹ 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%).²⁰ WebCal, an ETC, receives model-based high-cost universal service support from the A-CAM II support mechanism.²¹ 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.²² There are no individuals or entities that have a 10% or greater interest in WebCal,²³ and all of WebCal's affiliates are owned by U.S. citizens.²⁴

WCTA is an incumbent LEC and competitive LEC, depending on the study area code (SAC),²⁵ member-supported telephone cooperative in north central Iowa and southern Minnesota.²⁶ WCTA is a broadband Internet and communications provider with buried fiber optic service lines to 100% of its subscribers.²⁷ WCTA's wholly-owned subsidiary, WCTA Wireless, Inc. (WCTA Wireless), is a holding company for WCTA's investments.²⁸ 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.²⁹ WCTA, an ETC, receives model-based high-cost universal service support from the A-CAM II, the Rural Digital Opportunity Fund, and the CAF Phase II Auction support mechanisms.³⁰ There are no individuals or entities that have a 10% or greater interest in WCTA.³¹ Neither Transferees nor any of

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Application at 5; Apr. 17 Supplement at 5.

²⁰ Application at 5; Apr. 17 Supplement at 5.

²¹ Application at 13; Apr. 17 Supplement at 8. WebCal also participates in the Lifeline program. Application at 15; Apr. 17 Supplement at 8.

²² Apr. 17 Supplement at 8.

²³ Application at 5.

²⁴ Apr. 17 Supplement at 3-5.

²⁵ Applicants detail the SACs in which WCTA is an incumbent LEC or competitive LEC. *Id.* at 6.

²⁶ 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.

²⁷ *Id.* The cooperative provides fiber Internet connection to an estimated 13,066 homes. *Id.*

²⁸ *Id.* at 5; Apr. 17 Supplement at 6-7.

²⁹ Application at 5.

³⁰ April. 17 Supplement at 6, 8 (identifying the SACs and divisions of the company that receive each type of high-cost universal service support). WCTA also participates in the Lifeline program. *Id.*

³¹ Application at 5.

their affiliates or subsidiaries own or control a 10% or greater direct or indirect interest in any other domestic telecommunications provider.³²

Pursuant to the terms of the purchase agreement, Transferees will acquire control of Comm 1 through a stock transaction.³³ Applicants state that following the proposed transaction, WebCal Comm and WCTA Wireless will each have a 50% ownership interest in Comm 1.³⁴ 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.³⁵ Applicants assert that the ultimate result of the proposed transaction will be that Transferees will broaden their customer base so that they may provide Comm 1 subscribers with innovative telecommunications services and high-speed Internet access similarly offered to Transferees' members.³⁶ Moreover, Applicants assert that Transferees and Comm 1 will continue to hold domestic section 214 authority in their respective service areas.³⁷ Applicants also state there is no overlap in the service or fiber territories of any of the Applicants.³⁸ Applicants explain that Transferees will continue to exist and operate under their existing corporate structures and continue to provide services to their members without interruption or change to any existing services.³⁹ Finally, Applicants assert that there is no potential public interest harm related to WebCal's minority ownership in Alpine.⁴⁰

³² *Id.* at 5-6.

³³ *Id.* at 9.

³⁴ *Id.* at 2, 9.

³⁵ *Id.*

³⁶ *Id.* at 10.

³⁷ *Id.*

³⁸ *Id.* at 2, 12, 16; Apr. 2 Supplement at 4 (explaining that "WebCal, its affiliates, and other [p]arties to this transaction and their affiliates all have their separate service areas that are geographically separated by a significant distance").

³⁹ *Id.*

⁴⁰ Apr. 2 Supplement at 2. In the *Hargray/ComSouth Order*, the Commission found that "the combination of two companies that receive high-cost universal service support under different mechanisms, one fixed and one cost-based, could result in potential harm to the Commission's goal of ensuring that limited universal service resources are distributed efficiently and effectively" as a result of the companies having an incentive to shift costs from the model-based support company to the cost-based support company. *Joint Application of W. Mansfield Jennings Limited Partnership and Hargray Communications Group, Inc. for Consent to the Transfer of Control of ComSouth Corporation Pursuant to Section 214 of the Communications Act of 1934*, WC Docket No. 18-52, Memorandum Opinion and Order, 33 FCC Rcd 4780, 4784, para. 19 (2018) (*Hargray/ComSouth Order*). Although the section 214 authorization holder, Comm 1 (model-based high-cost universal service support), will ultimately be owned and controlled by WebCal and WCTA (model-based high-cost universal service support), WebCal's affiliates (cost-based high-cost universal service support) will not have the ability to engage in improper cost shifting as a result of its affiliates receiving universal service support under different mechanisms. Apr. 2 Supplement at 2-4. Applicants affirm that post-transaction, Comm1 and WebCal's affiliates will not have common control, shared or common costs, or the ability to consolidate corporate books. *Id.* at 3-4; *see also Domestic Section 214 Application for the Transfer of Control of Lavaca Telephone Company, Inc. to Dobson Technologies Inc.*, WC Docket No. 20-389, Order on Reconsideration, 36 FCC Rcd 8859, 8864, para. 14 (2021) (*Dobson Order on Reconsideration*) (stating that the Wireline Competition Bureau should continue to apply the *Hargray/ComSouth* condition to remedy a potential public interest harm caused by a mixed support transaction,

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

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

-FCC-

including in transactions in which post-merger affiliates have common control, common costs, cost sharing, or consolidation of corporate books). Specifically, Comm 1 is removed from the control of the cost-based support entities because it will be owned by WebCal, not WebCal's affiliates—the affiliates and WebCal have separate and distinct structures of ownership and control. Apr. 2 Supplement at 3 (noting “WebCal and/or its affiliates have no common ownership with Alpine and/or any of its affiliates, nor does WebCal and/or its affiliates exercise management in conjunction with Alpine and/or any of its affiliates”) Additionally, post-transaction, Comm 1 and WebCal's affiliates will continue to operate independently, i.e., “[n]o common costs and no cost sharing takes place or could potentially take place between WebCal and Alpine or between the affiliates of WebCal and Alpine and/or Alpine's affiliates,” “WebCal, along with WebCal's affiliates, and Alpine, along with Alpine's affiliates, each have their own corporate entities, employees, pricing, and product and service offerings,” and “no consolidated financial accounts exist or will exist between Alpine and/or its affiliates and WebCal and/or its affiliates.” *Id.* at 3. In addition, as discussed above, there is no overlap between the service territories of Comm 1 and WebCal's affiliates. Application at 2, 12, 16; Apr. 2 Supplement at 4. In light of the separate operations of Comm 1 and WebCal's affiliates as demonstrated on this record, we do not find a potential public interest harm associated with a mixed support transaction that we need to address, and we therefore exercise our authority to exclude the specific affiliates here from the *Hargray/ComSouth* condition. See *Dobson Order on Reconsideration*, 36 FCC Rcd at 8886, para. 14. We therefore grant the Application without applying the mixed support condition.



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 24-489

Released: May 23, 2024

WIRELINE COMPETITION BUREAU REMINDS ELIGIBLE TELECOMMUNICATIONS CARRIERS OF LIFELINE REQUIREMENTS

WC Docket Nos. 09-197, 11-42

The Wireline Competition Bureau (Bureau) issues this Public Notice to remind Eligible Telecommunications Carriers (ETCs)¹ of certain requirements under the Communications Act of 1934, as amended (the Act), and the Federal Communications Commission's (Commission) Lifeline rules. Due to a lack of additional funding from Congress, the Affordable Connectivity Program (ACP) will not provide benefits after May 2024, and the program will end this month. During this transition period, we anticipate that some ACP households may seek to participate in the Commission's longstanding Lifeline program, which provides low-income households discounted broadband service.² Accordingly, the Bureau issues the following reminders to ETCs of their responsibilities in the Lifeline program.³

Under section 254(e) of the Act, only carriers designated as ETCs may receive reimbursement for providing Lifeline service.⁴ ETCs must comply with all Lifeline requirements in the Act and Commission rules. The Bureau highlights several of these requirements focused on raising awareness of the Lifeline program, properly informing Lifeline consumers, and protecting the integrity of the Lifeline program. Specifically, this Public Notice reminds ETCs of their advertising obligations,⁵ Lifeline consent requirements and certifications,⁶ benefit pass-through requirements,⁷ Lifeline usage requirements for free-to-the-end-user service,⁸ and the Lifeline compliance plan requirement for non-facilities based providers.⁹

¹ 47 U.S.C. §§ 214(e), 254(e); 47 CFR §§ 54.201, 54.202. Carriers may be designated as an ETC for the limited purpose of participating in the federal Lifeline program.

² *Wireline Competition Bureau Announces the Final Month of the Affordable Connectivity Program*, WC Docket No. 21-450, Public Notice, DA 24-195, 1-2 (WCB 2024) (*ACP Funding Public Notice*). The Lifeline program reimburses providers up to \$9.25 per month for qualifying broadband service or \$5.25 for qualifying voice telephony service, or \$34.25 for service provided to eligible subscribers residing on Tribal lands. 47 CFR § 54.403(a)(1), (3); *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42, Order, DA 23-589, 1, para. 1 (WCB 2023).

³ This Public Notice is not an exhaustive list of Lifeline provider obligations, and ETCs are responsible for ensuring they remain in compliance with Commission rules.

⁴ 47 U.S.C. § 254(e).

⁵ See 47 CFR §§ 54.405(e)(3), 54.407(c). Subscribers subject to the usage requirement that have not used their service at least once every 30 days have 15 days to cure their non-usage.

⁶ 47 CFR § 54.404(b)(9), 54.410(d).

⁷ 47 U.S.C. § 254(e), 47 CFR § 54.403(a)(1).

⁸ 47 CFR § 54.405(e)(3).

Lifeline Advertising, Certification, and Consent Requirements. ETCs offering Lifeline must comply with requirements to raise awareness of the program and obtain the necessary consumer consents.¹⁰ One such obligation requires ETCs to “[p]ublicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service.”¹¹ All materials describing a Lifeline service must clarify that it is a Lifeline service, Lifeline is a government assistance program, benefits are non-transferable, only eligible consumers may enroll, and no household may receive more than one monthly benefit.¹² Based on our experience with the ACP, trusted community messengers play an important role in outreach to eligible households. We, therefore, encourage ETCs to partner with trusted community messengers in their efforts to publicize the Lifeline program.

ETCs also must receive and retain certain Lifeline certifications.¹³ Additionally, ETCs must obtain from each subscriber consent to transfer their demographic information to the National Lifeline Accountability Database.¹⁴ The consent request must clarify the specific types of information that will be transmitted, that it will be used to administer the program, and that failure to provide consent will result in denial of Lifeline service.¹⁵ These certifications and consents are different than those required in the ACP, and Lifeline providers must ensure that they are making the appropriate disclosures and collecting the appropriate consumer consent for the subscriber’s respective benefit.¹⁶

Requirement to “Pass Through” the Lifeline Benefit. ETCs are required to “pass through the full amount of support” that they receive in exchange for providing Lifeline-discounted service.¹⁷ Therefore, ETCs may not claim the full reimbursement amount for any plan that costs less than the maximum reimbursement amount the ETCs are eligible to receive in exchange for providing service to a particular customer. Reimbursement amounts not properly passed through to the Lifeline subscriber are subject to recoupment.

Lifeline Usage Requirement. Under the Commission’s rules, if an ETC does not assess and collect a monthly fee from a Lifeline subscriber, the subscriber must use the service at least once every thirty days to continue receiving Lifeline support. If a Lifeline subscriber receives a service that is priced equal to or less than the Lifeline support amount, that subscriber does not pay for service directly and the ETC providing the service does not “assess and collect a monthly fee” from the end-user.¹⁸ ETCs must track the usage of those subscribers for which the ETC does not “assess and collect a monthly fee.”¹⁹ If an ETC assesses and collects an end-user fee but does not do so on a monthly basis, the usage requirement applies to that subscriber. A one-time fee or a fee collected from the subscriber annually and

(Continued from previous page)

⁹ *Lifeline Reform Order*, 27 FCC Rcd at 6813, 6815-6817, paras. 368, 379-381, n.1000 (forbearing from the Lifeline facilities requirement in 47 U.S.C. § 214(e)(1)(A) to allow ETCs that have had compliance plans approved by the Bureau to provide Lifeline service without using their own facilities).

¹⁰ See, e.g., 47 CFR §§ 54.400-24.

¹¹ 47 CFR § 54.405(b); see 47 U.S.C. § 214(e)(1)(B).

¹² 47 CFR § 54.405(c).

¹³ 47 CFR §§ 54.410(b)(2), (c)(2).

¹⁴ 47 CFR § 54.404(b)(9).

¹⁵ *Id.*

¹⁶ 47 CFR § 54.1810.

¹⁷ See 47 U.S.C. § 254(e); 47 CFR § 54.403(a)(1).

¹⁸ See 47 CFR §§ 54.405(e)(3), 54.407(c).

¹⁹ See *id.*

decremented on a monthly basis does not satisfy the rule's requirement to "assess and collect a monthly fee."²⁰

Under the Commission's rules, a subscriber's usage includes completing an outbound call or data usage, buying minutes or data to add to their plan, answering an incoming call from a party other than their provider or a representative of their provider, responding to direct contact from the provider to confirm that the subscriber wishes to continue receiving Lifeline service, or sending an outbound text message.²¹ If a Lifeline subscriber does not use their Lifeline service for 30 consecutive days, an ETC must send communication providing the subscriber with "15 days' notice, using clear, easily understood language, that the subscriber's failure to use the Lifeline service within the 15-day notice period will result in service termination."²² ETCs are required to then de-enroll subscribers that do not use their service during this cure period.²³ ETCs cannot receive reimbursement for subscribers that failed to use their service at least once every thirty days and failed to cure their non-usage.²⁴

Lifeline Compliance Plan Requirement. By statute, ETCs are required to provide supported service using, in whole or in part, their own facilities.²⁵ Through forbearance in the *Lifeline Reform Order*, the Commission allows an ETC to offer Lifeline service not using its own facilities only if it submits and receives Bureau approval of a compliance plan discussing, in part, how it will comply with all Lifeline service provision and program integrity obligations, how and where it will provide service, Lifeline service plan offering details, subscriber enrollment and reimbursement processes, and sample marketing materials.²⁶ Lifeline compliance plans must list additional important information including how the company complies with public safety requirements, the company's non-usage policy (if applicable), and the names and identifiers used by the carrier, its holding company, operating company and all affiliates.²⁷ All ETCs operating pursuant to a Lifeline compliance plan must not operate contrary to any material terms of their approved Lifeline compliance plans without receiving prior Bureau approval and may not cease providing service without satisfying any applicable discontinuance or relinquishment requirements. Critically, the Bureau considers a Lifeline provider's corporate ownership and control foundational to its Lifeline compliance plan.²⁸ The approval of a Lifeline compliance plan is limited to the entity, and its ownership, as they are described in the Lifeline compliance plan approved by the Bureau, and any material changes in ownership or control require modification of the Lifeline compliance plan that must be approved by the Bureau in advance of the changes.²⁹ If an ETC is found to have transferred control to a new corporate entity without receiving the necessary approval of an updated

²⁰ *Id.*

²¹ See 47 CFR § 54.407(c)(2).

²² 47 CFR § 54.405(e)(3).

²³ See 47 CFR § 54.405(e)(3).

²⁴ See 47 CFR § 54.407(c); see also *Bridging the Digital Divide for Low-Income Consumers et al.*, WC Docket No. 17-287, Report and Order, 34 FCC Rcd 10886, 10937-10938, para. 120 (2019); *Nat'l Lifeline Ass'n v. FCC*, 983 F.3d 498, 510-511 (D.C. Cir. 2020).

²⁵ 47 U.S.C. § 214(e)(1)(A).

²⁶ *Lifeline Reform Order*, 27 FCC Rcd at 6815, para. 379.

²⁷ See *Wireline Competition Bureau Provides Guidance for the Submission of Compliance Plans Pursuant to The Lifeline Reform Order*, WC Docket Nos. 09-197, 11-42, Public Notice, 27 FCC Rcd 2186, 2189 (WCB 2012).

²⁸ *Wireline Competition Bureau Reminds Carriers of Eligible Telecommunications Carrier Designation and Compliance Plan Approval Requirements for Receipt of Federal Lifeline Universal Service Support*, WC Docket Nos. 09-197, 11-42, Public Notice, 29 FCC Rcd 9144, 9145 (WCB 2014).

²⁹ *Id.*

Lifeline compliance plan, then the ETC may be liable for recovery, forfeiture, and other enforcement actions.

For additional information, please contact Sam Lewis, Attorney Advisor in the Wireline Competition Bureau, Telecommunications Access Policy Division, at (202) 418-2659 or samuel.lewis@fcc.gov.

- FCC -



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-490

Released: May 23, 2024

NOTICE OF PROHIBITED PRESENTATIONS IN THE MATTER OF SAFEGUARDING AND SECURING THE OPEN INTERNET (WC DOCKET NO. 23- 320); RESTORING INTERNET FREEDOM (WC DOCKET NO. 17-108)

Notice is hereby given that the Commission received during the Sunshine Agenda Period prohibited written presentations listed in the attached Appendix.

With specified exceptions not applicable here, section 1.1203 of the Commission's Rules, 47 CFR § 1.1203, prohibits the making of any presentation, whether *ex parte* or not, to decision-making personnel concerning any matter listed on the Commission's Sunshine Agenda, from the day after the Sunshine Agenda is released until the Commission releases the text of a decision or order relating to that matter or removes the item from the Sunshine Agenda. The instant presentations addressed the merits of the above-referenced proceeding, which was included on the Commission's Sunshine Agenda by Public Notice released April 18, 2024 for consideration at the April 25 open Commission meeting. The Commission released the text of a decision terminating the Sunshine Period on May 7, 2024. *Safeguarding and Securing the Open Internet*, Declaratory Ruling, Order, Report and Order, and Order on Reconsideration, FCC 24-52 (rel. May 7, 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 presentations in the Appendix 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 texts of these presentations will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, 45 L Street, NE, Washington, DC 20554. These filings may also be viewed in the Commission's Electronic Comment Filing System (ECFS) at <https://www.fcc.gov/ecfs/search/search-filings>.

Action by the Office of General Counsel, Administrative Law Division.

APPENDIX

Filer	Date Received
Dana Ginn	April 19, 2024
Denis Christopher	April 19, 2024
Jason Stock	April 19, 2024
Griffin Rogers	April 19, 2024
Julie Bernstein	April 19, 2024
Erica Wagner	April 19, 2024
Maximus Mokry	April 19, 2024
Cameron McCuen	April 19, 2024
Olivia Spindle	April 19, 2024
Kamau Muhammad	April 19, 2024
Robert Fink	April 19, 2024
Sarah Deng	April 19, 2024
Key M	April 19, 2024
Dana Gilbertsen	April 19, 2024
Mary Morris	April 19, 2024
Katie Brown	April 19, 2024
Mark Best	April 19, 2024
Noah Intner	April 19, 2024
JA	April 19, 2024
Sophie Downey	April 19, 2024
Hanna Minkoff	April 19, 2024
Tom Gordon	April 19, 2024
Mary Carr	April 19, 2024
Gregory Stevens	April 19, 2024
Kory Holt	April 19, 2024

Matthew Glenn	April 19, 2024
Ingrid Chang	April 19, 2024
Michael and Krislyn Delgadillo	April 19, 2024
KW	April 19, 2024
Ceanna Burnheimer	April 19, 2024
Stephen Wilhelm	April 19, 2024
Daniel Karistai	April 19, 2024
Jed Frye	April 19, 2024
Scott Cranfill	April 19, 2024
Merilynn Hidalgo	April 19, 2024
William Ericson	April 21, 2024
Todd Strawn	April 21, 2024
Alonzo Wilkins	April 21, 2024
Liliana Yorgason	April 21, 2024
Chris Weiland	April 21, 2024
Gabriela Santiago	April 21, 2024
Erik Jerue	April 21, 2024
Sam Willett	April 21, 2024
Alfredo Ruvalcaba	April 21, 2024
Pin Ma	April 21, 2024
Jim	April 21, 2024
Sasha, Natasha, Joshua, Cristal, and Arturo Fernandez, and Freddy Arteaga	April 21, 2024
Holly Moore	April 21, 2024
R. Appling	April 21, 2024
Phillip Procyk	April 21, 2024
Curt Dunmire	April 21, 2024

Monte Jewell	April 21, 2024
William C. Hand	April 21, 2024
Michael Ramsey	April 21, 2024
Brandon Michael Danaher	April 22, 2024
Kenneth Wallace	April 22, 2024
Jaime Jacobs	April 22, 2024
David Paulino	April 22, 2024
Mark Steurer	April 22, 2024
Jason C. Cunningham	April 22, 2024
Vincent Boudry	April 22, 2024
Darrell Wilcox	April 22, 2024
C	April 22, 2024
Randy Ralston	April 22, 2024
Henry Tysinger	April 22, 2024
Paul Schacht	April 22, 2024
Elijah Taylor	April 22, 2024
John Bowen	April 22, 2024
Bernard Karmilowicz	April 22, 2024
Miriam Logan	April 22, 2024
Aaron Mitschelen	April 22, 2024
Andrew Gates	April 22, 2024
Deborah Rose	April 22, 2024
Sharon Paltin	April 22, 2024
Frederick S Anderson	April 22, 2024
Bruce Lerner	April 22, 2024
Ashley Burton	April 22, 2024

Jonathan Melusky	April 22, 2024
Michael Scepaniak	April 22, 2024
Marvin Hubble	April 22, 2024
Jeremy Pine	April 22, 2024
David Kawczynski	April 22, 2024
David Poteet	April 22, 2024
Mike Leary	April 22, 2024
Sarah Oberlin	April 22, 2024
Bill Johnson	April 22, 2024
Aaron McDaniel	April 22, 2024
Jonathan Hayes	April 22, 2024
Douglas B. Robinson	April 22, 2024
Lesandre Barley	April 22, 2024
Casey Stennick	April 22, 2024
Douglas James Lynn	April 22, 2024
Justin Myers	April 22, 2024
Charlton Rugg	April 22, 2024
Erik Schmitt	April 22, 2024
Garrett Therkorn	April 22, 2024
Andrew Rounding	April 22, 2024
Rashmika Kommidi	April 22, 2024
Carlton Gray	April 22, 2024
Rachel Waring	April 22, 2024
Stephen Tong	April 22, 2024
Lynne Kane	April 22, 2024
Julia M. Mallen	April 22, 2024
Donna Wytovak	April 23, 2024

Elijah Aosved	April 23, 2024
Katherine McBride	April 23, 2024
AC	April 23, 2024
Elizabeth Davis	April 23, 2024
Lisa T	April 23, 2024
Moya Ly	April 23, 2024
Ann Dorsey	April 23, 2024
Aaron Jacobs	April 23, 2024
Mr. James Parker Sr.	April 24, 2024
Ms. Susan Stock	April 24, 2024
Kyle T-B	April 24, 2024
Mr. William Toth	April 24, 2024
Blake C. Stacey	April 24, 2024
Jeremy Langley	April 24, 2024
Gale Langley	April 24, 2024
Brian Krueger	April 24, 2024
Amy Renz	April 24, 2024
Trevor Steffen	April 24, 2024
Ms. Sandra Duvall	April 24, 2024
Mr. Joseph Garrett	April 24, 2024
Greg Saxer	April 25, 2024
@Advocacy, Common Cause, Daily Kos, Friends of the Earth Action, and RootsAction	April 25, 2024
drakeredwind01	April 25, 2024
Ted Kyi	April 25, 2024
Matt Hobson	April 25, 2024
Sergi Pons Freixes	April 25, 2024

Daniel Malara	April 25, 2024
Andrew Parker	April 25, 2024
Shawn S Vega	April 25, 2024
Alexander Kane	April 25, 2024
Mr. Curtis Hornback	April 25, 2024
Sarah Sanger	April 25, 2024
Mrs. Penny Bowdish	April 25, 2024
Alvin Morales	April 26, 2024
Ms. Felice Casale in Felice Casale	April 26, 2024
AJ Cho	April 28, 2024
Payton Spaller	April 29, 2024
Ezequiel Lopez	April 30, 2024
Miss Patricia Marra	April 30, 2024
Mr. Anthony Brooks	May 1, 2024
Ms. Adele Leibowitz	May 1, 2024
Ollie Quinn	May 3, 2024



PUBLIC NOTICE

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

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

DA No. 24-492

Friday May 24, 2024

Report No. SAT-01824

Satellite Licensing Division and Satellite Programs and Policy Division Information

Actions Taken

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

SAT-AMD-20230406-00075	E	S3156	The Tomorrow Companies, Inc.
Amendment			
Granted in Part/ Deferred in Part			
			Effective Date: 05/17/2024

Nature of Service: Earth Exploration Satellite Service

See ICFS File No. SAT-LOA-20221201-00167 for a description of the action taken.

SAT-LOA-20221201-00167	E	S3156	The Tomorrow Companies, Inc.
Launch and Operating Authority			
Granted in Part/ Deferred in Part			
			Effective Date: 05/17/2024

Nature of Service: Earth Exploration Satellite Service

On May 17, 2024, the Satellite Programs and Policy Division granted-in-part and deferred-in-part, with conditions, the request of the Tomorrow Companies, Inc. for authorization to deploy and operate satellites to be known as the Tomorrow.io Weather Constellation. See DA 24-476. Specifically, Tomorrow.io is authorized to deploy and operate up to four satellites in non-geostationary orbit for operations in the Earth exploration-satellite service (EESS), with operating altitudes for satellites launched on or before September 29, 2024 between 500-600 km (± 20 km) and operating altitudes for satellites launched after September 29, 2024 between 500-580 km (± 20 km). The Tomorrow.io satellites are authorized to conduct telemetry, tracking, and command (TT&C) operations and EESS operations in the 8025-8400 MHz (space-to-Earth) and TT&C in the 2025-2110 MHz (Earth-to-space) frequency bands. The Tomorrow.io satellites will also engage in receive-only EESS (passive) operations in 90.13-92.65 GHz, 114.5-122.75 GHz, 182.19-191.31 GHz, and 202.04-205.8 GHz frequency bands and receive GPS signal at 1575.42 MHz (space-to-space).

SAT-STA-20240412-00078	E	S2811	EchoStar BSS Corporation
Special Temporary Authority			
Grant of Authority			
			Effective Date: 05/21/2024

Nature of Service: Direct Broadcast Satellite Service

On May 21, 2024, the Satellite Programs and Policy Division granted, with conditions, special temporary authority, for an additional period of 180 days, for EchoStar BSS Corporation to operate the EchoStar 15 satellite to provide Direct Broadcast Satellite Service over channels 1 and 2. EchoStar 15 is located at the 61.65° W.L. orbital location and will use the 12.2-12.7 GHz (space-to-Earth) and 17.3-17.8 GHz (Earth-to-space) frequency bands.

SAT-STA-20240412-00079	E	S2844	EchoStar BSS Corporation
Special Temporary Authority			
Grant of Authority			
			Effective Date: 05/21/2024

Nature of Service: Direct Broadcast Satellite Service

On May 21, 2024, the Satellite Programs and Policy Division granted, with conditions, special temporary authority, for an additional period of 180 days, for EchoStar BSS Corporation to operate the EchoStar 16 satellite to provide Direct Broadcast Satellite Service over channels 1 and 2. EchoStar 16 is located at the 61.5° W.L. orbital location and will use the 12.2-12.7 GHz (space-to-Earth) and 17.3-17.8 GHz (Earth-to-space) frequency bands.

SAT-STA-20240515-00103	E	S3143	Intelsat License LLC
Special Temporary Authority			
Grant of Authority			
			Effective Date: 05/22/2024

Nature of Service: Fixed Satellite Service

On May 22, 2024, the Satellite Programs and Policy Division granted, with conditions, Intelsat License LLC's request for special temporary authority, for an additional period of 60 days, to operate the Galaxy 35 space station at the 93.1° W.L. orbital location.

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



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-493
Released: May 24, 2024

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU SEEKS COMMENT ON THE IMPACTS OF THE MAY 2024 GEOMAGNETIC STORM ON THE U.S. COMMUNICATIONS SECTOR

PS Docket No. 24-161

Comments Due: June 24, 2024

The Federal Communications Commission's Public Safety and Homeland Security Bureau (PSHSB or Bureau) seeks comment on any observed impacts to communications that resulted from the May 2024 severe geomagnetic storm. On Thursday, May 9, 2024, the National Weather Service Space Weather Prediction Center (SWPC) issued a severe (G4) Geomagnetic Storm Watch, forecasting a series of coronal mass ejections (CMEs) that merged with the Earth's electromagnetic fields between May 7-11, 2024.¹ On May 11, 2024, the storm reached extreme (G5) conditions, the first time this severity has been observed since 2003.² According to the SWPC, CMEs are large expulsions of plasma and magnetic field from the Sun's corona.³ Electromagnetic currents generated by CMEs, when merged with the Earth's electromagnetic fields, may distort the propagation of radio frequency waves.

On May 11, 2024, the FCC High Frequency (HF) Direction Finding Center, which supports the public safety community and federal partners by locating interference to radio spectrum below 30 MHz, observed significant disturbance in the propagation of HF radio signals. This disturbance resulted in the disruption of voice and data communications passed over HF frequencies. To better understand the impacts of the geomagnetic storm on the U.S. communications sector, the Bureau is requesting information from communications service providers and the public regarding disruptions in communications between May 7 and 11, 2024, that it believes to be a result of the storm. The Bureau is encouraging commenters to provide any available evidence, particularly electromagnetic spectrum analyses, imagery, or chronological logs relating the storm's impacts. Where possible, the Bureau asks that commenters include the description of the impacts; make and model of affected communications equipment, which could include transmitters, receivers, transceivers, switches, routers, amplifiers etc.; make, model, and type of affected antennae and their composition; frequencies affected; type and composition of cable adjoining communications equipment and the antennae, if applicable; duration of the impact; and any residual effects observed in the hours following restoration.

¹ See Space Weather Prediction Center, National Oceanic and Atmospheric Administration, *Geomagnetic Storm WATCH for May 11, 2024*, <https://www.swpc.noaa.gov/news/g4-watch-effect-may-11> (last visited May 16, 2024).

² See Space Weather Prediction Center, National Oceanic and Atmospheric Administration, *G5 CONDITIONS OBSERVED!*, <https://www.swpc.noaa.gov/news/g5-conditions-observed> (last visited May 16, 2024).

³ See Space Weather Prediction Center, National Oceanic and Atmospheric Administration, *Coronal Mass Ejections*, <https://www.swpc.noaa.gov/phenomena/coronal-mass-ejections> (last visited May 16, 2024).

Procedural Matters

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 FCC's Electronic Comment Filing System (ECFS).

- Commenting parties may file comments in response to this Notice in PS Docket No. 24-161.
- 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>.

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).

Parties wishing to file materials with a claim of confidentiality should follow the procedures set forth in Section 0.459 of the FCC's rules. Casual claims of confidentiality are not accepted. Confidential submissions may not be filed via ECFS but rather should be filed with the Secretary's Office following the procedures set forth in 47 CFR § 0.459. Redacted versions of confidential submissions may be filed via ECFS. Parties are advised that the FCC looks with disfavor on claims of confidentiality for entire documents. When a claim of confidentiality is made, a public, redacted version of the document should also be filed.

We exempt the proceeding initiated by this Notice from the FCC's *ex parte* rules.⁴ This exemption serves the public interest by facilitating the full discussion of potentially sensitive matters. In the event the Commission were to take further action, any rule that the Commission were to propose would be subject to permit-but-disclose rulemaking procedures before it would be adopted, which would ensure the compilation of a full record.

For further information, contact Justin Cain, Chief, Operations and Emergency Management Division, Public Safety and Homeland Security Bureau, (202) 418-2924, justin.cain@fcc.gov.

- FCC -

⁴ 47 CFR § 1.1200(a).



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 24-494

Released: May 24, 2024

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

WC Docket No. 18-89

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

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

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

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

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

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

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

(Continued from previous page)

and disposal of covered communications equipment and services" and identifying that, across all filed applications, applicants sought a total of "approximately \$5.6 billion in gross program support").

⁴ See 47 U.S.C. § 1603(d)(5)(C); 47 CFR § 1.50004(f)(1); *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

(Continued from previous page)

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 – Beamspeed, L.L.C., SCRP0001010

Grounds for individual term extension – Beamspeed, L.L.C. (Beamspeed) requests a six-month extension of the deadline to remove, replace, and dispose of covered equipment and services in its network under 47 CFR § 1.50004(h)(2).¹⁸ Beamspeed asserts that its ability to complete the removal, replacement, and disposal of covered equipment and services by its June 21, 2024 deadline has, through no fault of its own, been materially affected by the lack of full funding and supply chain issues. Beamspeed states that the lack of full funding has forced it to “cherry pick” the work it performs, particularly to avoid compromising its network or customers’ level of service.¹⁹ Beamspeed explains that it has encountered difficulties in placing partial orders with vendors due to the lack of full funding.²⁰ Beamspeed explains it has been unable to procure all the materials it needs, including telecom cabinets appropriate for summers in Arizona, resulting in additional project delays.²¹ In spite of these issues, Beamspeed explains that it continues to make progress generally, including in working with Tribal entities to replace components of its network on Tribal lands.²² The Bureau finds Beamspeed’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 through December 21, 2024.

New RRD term expiration date – Beamspeed’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 21, 2024 to December 21, 2024.

Recipient – Eastern Oregon Telecom, LLC, SCRP0001037

Grounds for individual term extension – Eastern Oregon Telecom, LLC (EOT) requests a six-month extension of the deadline to remove, replace, and dispose of covered equipment and

(Continued from previous page) _____
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 Request of Beamspeed, L.L.C. for Extension of Time, WC Docket No. 18-89 (filed May 7, 2024).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

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).

services in its network under 47 CFR § 1.50004(h)(2).²⁴ EOT asserts that its ability to complete the removal, replacement, and disposal of covered equipment and services by its July 6, 2024 deadline has, through no fault of its own, been materially affected by the lack of full funding and supply chain issues. EOT explains that it has attempted to mitigate delays caused by the lack of full funding in several ways, including by obtaining a line of credit in 2023 to continue its work on the project and by reallocating resources from other business functions to its removal, replacement, and disposal work.²⁵ EOT notes that its vendors' equipment delivery deadlines have been delayed by up to six months.²⁶ EOT notes that this and other supply chain issues have caused it to change vendors, delaying its project schedule by seven months.²⁷ EOT also reports that one of its vendors is projected to experience delays in disposing of equipment that will further impact its overall project schedule.²⁸ EOT also notes that supply chain-related labor shortages have forced it to reallocate internal resources toward its project which has caused still further project delays.²⁹ The Bureau finds EOT'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,³⁰ and accordingly grants the requested extension through January 6, 2025.

New RRD term expiration date – EOT'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 6, 2024 to January 6, 2025.

Recipient – Hargray Communications Group, LLC, SCRP0001101

Grounds for individual term extension – Hargray Communications Group, LLC (Hargray) requests a six-month extension of the deadline to remove, replace, and dispose of covered equipment and services in its network under 47 CFR § 1.50004(h)(2).³¹ Hargray asserts that its ability to complete the removal, replacement, and disposal of covered equipment and services by its July 13, 2024 deadline has, through no fault of its own, been materially affected by the lack of full funding and supply chain issues. Hargray contends that the lack of full funding has impacted its progress in replacing its existing network.³² Hargray states that it has attempted to mitigate these impacts by reducing the operational footprint of its network from 24 to 20 sites and by leasing fiber to enhance its network capacity.³³ Hargray explains that the delivery of some

²⁴ See Request of Eastern Oregon Telecom, LLC for Extension of Time, WC Docket No. 18-89 (filed May 10, 2024).

²⁵ *Id.* at 2.

²⁶ *Id.* at 1.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* at 2.

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 (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).

³¹ See Request of Hargray Communications Group for Extension of Time, WC Docket No. 18-89 (filed May 14, 2024).

³² *Id.* at 2-3.

³³ *Id.* at 3.

equipment for its network was delayed by approximately nine months from an initially anticipated date of January 2023.³⁴ Hargray explains that this equipment has now been installed, but that network integration is still ongoing.³⁵ The Bureau finds Hargray'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 through January 13, 2025.

New RRD term expiration date – Hargray'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 13, 2024 to January 13, 2025.

Recipient – NE Colorado Cellular, Inc., dba Viaero Wireless, SCRP0001111; SCRP0001121

Grounds for individual term extension – NE Colorado Cellular, Inc., dba Viaero Wireless (NE Colorado) requests a six-month extension of the deadline to remove, replace, and dispose of covered equipment and services in its network under 47 CFR § 1.50004(h)(2) as to each of the above-identified applications.³⁷ NE Colorado contends that its ability to complete the removal, replacement, and disposal of covered equipment and services by its deadlines of July 27, 2024 (application SCRP0001111) and July 15, 2024 (application SCRP0001121) have, through no fault of its own, been materially affected by the lack of full funding for the required work, including undertaking necessary activities to install a replacement network, and that it will need additional time to complete its work.³⁸ NE Colorado further notes that it is a small, rural operation that lacks sufficient financial resources to complete its project activities by its currently-assigned deadline.³⁹ The Bureau finds NE Colorado's showing persuasive and that its situation is consistent with the situation of other recipients that have been granted extensions on similar grounds,⁴⁰ and accordingly grants the requested extension.

New RRD term expiration dates – NE Colorado's deadline to remove, replace, and dispose of covered equipment and services in its network under 47 CFR § 1.50004(h)(2) IS EXTENDED as follows:

- For File No. SCRP0001111, from July 27, 2024 to January 27, 2025; and
- For File No. SCRP0001121, from July 15, 2024 to January 15, 2025.

³⁴ *Id.* at 3-4.

³⁵ *Id.* at 4.

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. 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 NE Colorado Cellular Inc for Extension of Time, WC Docket No. 18-89 (filed May 17, 2024) (for application SCRP0001111) (NE Colorado SCRP0001111 Extension Request); see NE Colorado Cellular Inc for Extension of Time, WC Docket No. 18-89 (filed May 17, 2024) (for application SCRP0001121) (NE Colorado SCRP0001121 Extension Request). This is NE Colorado's first extension request as to each of applications SCRP0001111 and SCRP0001121.

³⁸ NE Colorado SCRP0001111 Extension Request at 2-3; NE Colorado SCRP0001121 Extension Request at 2-3.

³⁹ NE Colorado SCRP0001111 Extension Request at 3; NE Colorado SCRP0001121 Extension Request at 3.

⁴⁰ See, e.g., *WorldCell et al. Extension Order* at 5-7, paras. 11-15; *Point/SI Wireless Extension Order* at 5-6, paras. 12-14; *GigSky Extension Order* at 2, paras. 4-5; *January 2024 Streamlined Resolution Public Notice* at 5.

Recipient – Triangle Telephone Cooperative Association, Inc.; SCRP0001046

Grounds for individual term extension – Triangle Telephone Cooperative Association, Inc. (Triangle Telephone) requests an approximate six-week extension of the deadline to remove, replace, and dispose of covered equipment and services in its network under 47 CFR § 1.50004(h)(2).⁴¹ Triangle Telephone asserts that its ability to complete the removal, replacement, and disposal of covered equipment and services by its May 29, 2024 deadline has, through no fault of its own, been materially affected by supply chain issues.⁴² The Bureau had previously granted an individual term extension request for Triangle Telephone until May 29, 2024 and for its affiliate, Triangle Communications Systems, Inc. (TCS), until July 13, 2024 on the basis of lengthy lead-times to source replacement equipment.⁴³ Though Triangle Telephone asserts it was on track to complete the removal, replacement, and disposal work by the May 29, 2024 deadline, it discovered that TCS still relies on Triangle Telephone’s existing network core to serve fifty customers, and that extending Triangle Telephone’s deadline from May 29, 2024 to July 12, 2024 will allow TCS to continue to use the Triangle Telephone’s existing core to serve its customers, after which Triangle Telephone will complete the work to remove the core equipment.⁴⁴ The Bureau finds Triangle Telephone’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,⁴⁵ and accordingly grants the requested extension through July 12, 2024.

New RRD term expiration date: Triangle Telephone’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 29, 2024 to July 12, 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 -

⁴¹ See Request of Triangle Telephone Cooperative Association, Inc. for extension of time, WC Docket No. 18-89 (filed May 22, 2024) (Triangle Telephone Extension Request). This is Triangle Telephone’s second extension request.

⁴² *Id.*

⁴³ *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*).

⁴⁴ Triangle Telephone Extension Request at 2.

⁴⁵ See, e.g., *Stealth Extension Order* at 3-5, paras. 6-11; *WorldCell et al. Extension Order* at 7-8, paras. 16-19; *Point/SI Wireless Extension Order* at 6-7, paras. 15-18; *Triangle Extension Order* at 4-5, paras. 8-11; *January 2024 Streamlined Resolution Public Notice* at 4-5.



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

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

DA 24-495
Released: May 28, 2024

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES EXERCISE OF THE DISASTER INFORMATION REPORTING SYSTEM ON JUNE 10-12, 2024

The Federal Communications Commission's Public Safety and Homeland Security Bureau (Bureau) will conduct a voluntary Disaster Information Reporting System (DIRS) exercise on June 10th thru 12th, 2024. During times of crisis, such as hurricanes, wildfires, and earthquakes, the FCC may activate DIRS. Communications providers can use DIRS to quickly and efficiently report the operational status of their service and infrastructure to the FCC, as well as to request assistance. This is a voluntary exercise. The exercise will help ensure that communications providers, including broadcast, wireless, satellite, broadband, and wireline providers, can access and file reports in the DIRS system, train new employees to become familiar with the DIRS reporting process, and update DIRS contact information.

On December 4, 2023, the legacy DIRS system was decommissioned in favor of a new platform, accessible directly at <https://dirs.fcc.gov>. The new DIRS system has been modernized to enhance security and network features to better ensure the integrity of the system.

If you were a legacy DIRS user and did not have an existing account in the FCC's Commission Registration System (CORES), you will need to create a CORES account prior to accessing DIRS. If you were a legacy DIRS user with an existing CORES account, you will not need to create a new DIRS account. New DIRS users will first need to register in CORES, and then create new DIRS account. The username and password you established in CORES is also used for DIRS. Detailed information on creating DIRS accounts, as well as using the system, can be found in the user's guide, available at www.fcc.gov/sites/default/files/DIRS-UserGuide-122023.docx.

Providers that have not accessed the new DIRS system or have not participated in DIRS reporting before, are encouraged to take advantage of this opportunity to sign up and learn how the new system works. You can create an account in DIRS at <https://dirs.fcc.gov>.

The exercise will begin with the Bureau sending a mock activation letter on June 10th, to all registered DIRS participants. The activation letter will clearly state that this is only an exercise and not a real DIRS activation. The activation letter will provide a list of pre-selected counties that form the disaster area for this exercise. Providers will be asked to report data on any communications assets (e.g., wireline, wireless, broadband, satellite, and broadcast) it has in the affected area. As this is only an exercise, the Bureau does not expect to receive actual counts of outages. If a provider does not have any communications assets in the affected counties, it can still participate in the exercise by reporting mock data for the pre-selected counties.

We ask that exercise participants provide their initial data sets by 10:00AM EST on June 11th with an updated report filed by June 12th at 10:00 AM EST. The Bureau will send a deactivation letter by 3:00PM EST on June 12th letting all participants know that the exercise has been completed.

Providers that would like to participate in this voluntary exercise, should email michael.caiafa@fcc.gov and john.healy@fcc.gov by June 3rd with the following information:

1. Name of the provider;
2. Names of all participants from the provider;
3. Email and phone numbers of all participants from the provider; and
4. Specific geographic areas (counties, state) that the provider would like to have included in the disaster area for this exercise (optional).

Please provide this information in an excel format.

There is no response necessary for providers that do not wish to participate in this exercise.

Questions regarding the exercise or DIRS generally should be directed to Michael Caiafa, at michael.caiafa@fcc.gov or (202) 418-1311 or John Healy, at john.healy@fcc.gov, or 215-847-8094, both of the Public Safety and Homeland Security Bureau.



PUBLIC NOTICE

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

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

DA 24-496
Released: May 28, 2024

COMMENTS INVITED ON SECTION 214 APPLICATION(S) TO DISCONTINUE DOMESTIC NON-DOMINANT CARRIER TELECOMMUNICATIONS SERVICES

WC Docket No(s). 24-100

Comments Due: June 12, 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 28, 2024**, the 31st day after the release date of this public notice, unless the Commission notifies any applicant(s) that their grant will not be automatically effective.⁴ We note that the date on which an application for Commission authorization is deemed granted may be different from the date on which applicants are authorized to discontinue, reduce, or impair service ("Authorized Date"). Any applicant whose application has been deemed granted may discontinue, reduce or impair their Affected Service(s) in their Service Area(s) on or after the authorized date(s) specified in the Appendix, in accordance with their filed representations. Accordingly, pursuant to section 63.71(f), and the terms outlined in each application, absent further Commission action, each applicant may discontinue, reduce or impair the Affected Service(s) in the Service Area(s) described in their application on or after the authorized discontinuance date(s) listed in the Appendix for that application. For purposes of computation of time when filing a petition for reconsideration, application for review, or petition for judicial review of the Commission's decision(s), the date of "public notice" shall be the later of the auto grant date stated above in this Public Notice, or the release date(s) of any further public notice(s) or order(s) announcing final Commission action, as

¹ 47 CFR § 63.71.

² 47 U.S.C. § 214.

³ 47 CFR § 63.71.

⁴ See 47 CFR § 63.71(f) (stating, in relevant part, that an application filed by a non-dominant carrier "shall be automatically granted on the 31st day... unless the Commission has notified the applicant that the grant will not be automatically effective.").

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

Comments objecting to any of the applications listed in the Appendix must be filed with the Commission on or before **June 12, 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 are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or

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

⁶ Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, 35 FCC Rcd 2788 (OMD 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

⁷ 47 CFR § 1.1200 *et seq.*

arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b).

People with Disabilities: We ask that requests for accommodations be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530.

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

– FCC –

Appendix

- 1) **Applicant(s): CenturyLink Communications, LLC**
WC Docket No. 24-100, Comp. Pol. File No. 1904
Link – [https://www.fcc.gov/ecfs/search/search-filings/results?q=\(proceedings.name:\(%2224-100*%22\)\)](https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2224-100*%22)))
Affected Service(s) – Business Line Service; Integrated Services Digital Network; and Primary Rate Interface
Service Area(s) – Lawrence and Topeka, Kansas
Authorized Date(s) – on or after June 28, 2024
Contact(s) – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-497

Released: May 28, 2024

MEDIA BUREAU ANNOUNCES THE INCORPORATION OF 2020 U.S. CENSUS POPULATION DATA INTO THE COMMISSION'S *TVSTUDY* SOFTWARE AND REQUIREMENT TO UTILIZE SUCH DATA EFFECTIVE AUGUST 1, 2024

The Media Bureau announces, pursuant to sections 73.616(d)(1) and 73.620 of the Commission's rules,¹ that **effective August 1, 2024** the Commission's *TVStudy* software will incorporate the most recent U.S. Census Bureau decennial Census block and population data (2020 Census Data). The Commission's *TVStudy* software is used to perform coverage and interference analysis of television stations according to the procedures set forth in OET Bulletin No. 69: "Longley-Rice Methodology for Evaluating TV Coverage and Interference" in connection with the preparation and processing of full power rulemaking petitions to allot channels to the Table of TV Allotments² and applications prepared by all television licensees and permittees when they seek to modify their facilities.³ Therefore all television broadcast applications **filed on or after August 1, 2024**, will be required to utilize 2020 Census Data for purposes of conducting interference analyses. Failure to do so will require amendment and may result in dismissal of applications as defective.⁴

By separate Public Notice, The Office of Engineering and Technology announces the release of updated *TVStudy* software (Version 2.3.0).⁵ The *TVStudy* Version 2.3.0 software, the *TVStudy* 2.3.0 Installation and Upgrade Guide, and the template XML file are all available on the *TVStudy* website at <http://www.fcc.gov/oet/tvstudy>. As with prior updates, a full list of changes from *TVStudy* Version 2.2.5 is included in the "Differences Between 2.3.0 and 2.2.5" section of the Change Log in the *TVStudy* 2.3.0 Installation and Upgrade Guide.

For further information regarding this Public Notice, contact Kevin Harding at (202) 418-7077 or Kevin.Harding@fcc.gov; or Mark Colombo at (202) 418-7611 or Mark.Colombo@fcc.gov.⁶

-- FCC --

¹ 47 CFR §§ 73.616(d)(1) (References to TV station interference protection methodology; Calculation of interference); 73.620 (Interference calculation and protection of TV broadcast services).

² 47 CFR § 73.622(j).

³ See *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, n.60 (rel. Sept. 19, 2023).

⁴ See 47 CFR § 73.3566 (defective applications).

⁵ See *Office of Engineering and Technology Announces Release of Version 2.3.0 of TVStudy*, Public Notice, DA No. 24-499 (rel. May 28, 2024).

⁶ This action is taken by the Chief, Media Bureau, pursuant to authority delegated by sections 0.61 and 0.283 of the Commission's rules. 47 CFR §§ 0.61 and 0.283.



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-498

Released: May 28, 2024

MEDIA BUREAU ANNOUNCES COMMENCEMENT OF FIRST-COME, FIRST-SERVE CHANNEL CHANGE OPPORTUNITY FOR CLASS A TELEVISION, LPTV AND TV TRANSLATOR STATIONS BEGINNING ON AUGUST 20, 2024

By this Public Notice, the Media Bureau (Bureau) announces that beginning **August 20, 2024**, we will lift our current freeze on major modification applications and permit all Class A television (Class A), low power television (LPTV), and television translator stations (TV translator) stations to file major change applications in order to change their existing channel, subject to certain limitations. The current freeze will remain in place until further notice for all other major modifications and applications for new LPTV and TV translator stations.¹ This is our first step in the process of lifting the freeze that has been in place since 2010 restricting the filing of major modifications for Class A, LPTV, and TV translator stations and the filing of applications for new LPTV and TV translator stations. Outlined below and in the Appendix are the specific details and the procedures and rules that applicants must follow when filing as part of this opportunity.

Beginning **August 20, 2024**, all Class A, LPTV, and TV translator stations will be permitted, on a nationwide basis and without geographic limitation, to file a major modification to seek authority to change channel. No other major changes will be permitted and any changes to a station's facility are restricted to a change in channel and those that could otherwise be requested in a minor modification application.² For example, requests to move a facility greater than 30 miles (or 48 kilometers) are not

¹ See *Freeze on the Filing of Applications for New Digital Low Power Television and TV Translator Stations*, Public Notice, 25 FCC Rcd 15120 (MB 2010); *Initiation of Nationwide First-Come, First-Served Digital Licensing for Low Power Television and TV Translators Postponed Until Further Notice*, Public Notice, 25 FCC Rcd 8179 (MB 2010). The action described herein does not impact eligible LPTV stations' ability to apply for Class A status under the rules adopted by the Commission pursuant to the Low Power Protection Act once such opportunity is announced. See *Implementation of the Low Power Protection Act*, MB Docket No. 23-126, Report and Order, FCC 23-112 (rel. Dec. 12, 2023); Low Power Protection Act, Pub. L. 117-344, 136 Stat. 6193 (2023). A window for eligible LPTV stations under the LPPA to convert to Class A Status will be announced at a later date, pending Federal Register publication of PRA approval. See *Media Bureau Announces Effective Date of Certain Low Power Protection Act Rules*, MB Docket No. 23-126, Public Notice, DA 24-26 (MB rel. Jan. 10, 2024); Federal Communication Commission, Information Collections Being Submitted for Review and Approval to Office of Management and Budget, 89 Fed. Reg. 21519 (Mar. 28, 2024).

² Applications for major changes for LPTV and TV translator stations include: (i) Any change in the frequency (output channel) not related to displacement relief; (ii) Any change in transmitting antenna location where the protected contour resulting from the change does not overlap some portion of the protected contour of the authorized facilities of the existing station; or (iii) Any change in transmitting antenna location of greater than 30 miles (48 kilometers) from the reference coordinates of the existing station's antenna location. See 47 CFR § 74.787(b)(1). All other changes are considered minor changes. 47 CFR § 74.787(b)(2). In the case of Class A TV stations, a major change is any change in: (i) Frequency (output channel), except a change in offset carrier frequency; or (ii) Transmitting antenna location where the protected contour resulting from the change is not predicted to overlap any portion of the protected contour based on the station's authorized facilities. 47 CFR § 73.3572(a)(2). Other facilities changes are considered minor. 47 CFR § 73.3572(a)(3).

permitted and remain subject to the existing freeze.³ We find limiting major modifications in this manner is in the public interest as it will allow stations that have not had an opportunity to change channel since prior to the Incentive Auction the ability to resolve viewer reception issues that cannot be resolved through means other than changing channel. It will also allow stations to improve television service to existing viewers prior to providing an opportunity for other major modifications, such as moving greater than 30 miles, or allowing interested parties to apply for new stations.⁴

All applications will be processed on a first-come, first-serve basis and will be “cut off” daily for purposes of determining mutual exclusivity (MX).⁵ Applicants will be given an opportunity to resolve their mutual exclusivity through settlement or engineering amendment that may be submitted during a settlement window to be announced by the Bureau by separate public notice.⁶ Applications that do not comply with the parameters of this filing opportunity may be amended within 30 days to come into compliance, provided that the amended application does not create a new MX with any other application filed during this opportunity.⁷ Any application that fails to come into compliance will be dismissed.

At a future date, the Bureau will announce by Public Notice plans and procedures to lift the freeze on all major changes to Class A, LPTV, and TV translator stations (e.g., channel change, relocating transmitter sites greater than 30 miles or without contour overlap)⁸ and resume first-come, first-serve applications for new LPTV and TV translator stations. The opportunity for Class A, LPTV, and TV translator stations to change channels will remain available unless subsequently frozen by the Bureau.

Class A station applications must be filed electronically via the Commission’s Licensing and Management System (LMS) on FCC Form 2100 – Schedule E and applicants will be required to pay the requisite fee for a major change application (\$4,755.00).⁹ LPTV and TV translator station applications must be filed electronically via LMS on FCC Form 2100 – Schedule C and applicants will be required to pay the requisite fee for a major change application (\$865.00).¹⁰

³ Consistent with prior Bureau action, we are placing limits on the nature of major modifications for a limited period. *See Commencement of Rural First-Come, First-Served Digital licensing for Low Power Television and TV Translators Beginning August 25, 2009*, Public Notice, 24 FCC Rcd 8911 (2009) (*2009 Rural LPTV PN*) (prohibiting applicants from proposing facilities located within 121 kilometers (75 miles) of the reference coordinates for the top 100 markets in order to “ensure continued service for viewers of low power television and TV translator stations in the rural portions of the United States.”); 47 CFR § 74.787(a)(3).

⁴ *See Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF*, Notice of Proposed Rulemaking, 25 FCC Rcd 16498, 16511, para. 42 (2010) (recognizing reception challenges posed by VHF channels in providing digital television service). There remain a limited number of new, unbuilt LPTV stations that were authorized as part of the so-called “2009 Rural LPTV Window.” *See 2009 Rural LPTV PN*, 24 FCC Rcd 8911. These stations have never operated, but have unexpired construction permits. While these stations have not previously served the public, we find it is in the public interest to permit them to also apply to change their channel in order to avoid the need to double build their facilities – i.e., build their station on their currently permitted channel and then have to subsequently invest in modified facilities to move to a new channel.

⁵ *See* 47 CFR § 74.787(a)(3).

⁶ *See* 47 U.S.C. § 309(j)(6)(E); 47 CFR § 73.5002(d).

⁷ Applicants will be notified in writing by letter and electronic mail of any deficiency in their application(s).

⁸ *See supra* note 2.

⁹ 47 CFR § 1.1104, Table 1. Instructions for filing of major change applications are contained in the Appendix.

¹⁰ 47 CFR § 1.1104, Table 6. Instructions for filing of major change applications are contained in the Appendix. We note that this filing opportunity will come after the Commission begins using 2020 Census data for calculating interference percentages. *See Media Bureau Announces the Incorporation of 2020 U.S. Census Population Data into* (continued....)

For additional information, contact Shaun Maher, Video Division, Media Bureau at Shaun.Maher@fcc.gov or (202) 418-2324 (legal); or Mark Colombo, Video Division, Media Bureau at Mark.Colombo@fcc.gov or (202) 418-7611 (technical).¹¹

-- FCC --

(Continued from previous page) _____
the Commission's TVStudy Software and Requirements to Utilize Such Data Effective August 1, 2024, Public Notice, DA 24-497 (rel. May 28, 2024). As such, applications prepared for this filing opportunity should be prepared using 2020 Census data found in the new *TVStudy* 2.3.0 software. See *Office of Engineering and Technology Announces Release of Version 2.3.0 of TV Study*, Public Notice, DA 24-499 (rel. May 28, 2024).

¹¹ This action is taken by the Chief, Media Bureau, pursuant to authority delegated by sections 0.61 and 0.283 of the Commission's rules. 47 CFR §§ 0.61 and 0.283.

APPENDIX
INSTRUCTIONS FOR ACCESSING AND FILING ON LMS

General Log-in Instructions

1. Access the LMS applicant data entry home page here:

<https://enterpriseefiling.fcc.gov/dataentry/login.html>

2. Log-in using the FRN associated with the station.

For more information and help using the LMS system, contact: (877) 480-3201 TTY: (717) 333-2824.

Application For Major Change

1. Click on “Authorizations” tab on the left top of the page.
2. Click on the file number of the current license for the station.
3. Click on “File an Application” button.
4. Select “Major Change of a Licensed Facility (Schedule E)” for Class A stations or “Major Change of a Licensed Facility (Schedule C)” for LPTV/TV Translator stations from the drop-down menu.
5. Complete the application and click “Submit.”



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

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

DA 24-499
Released: May 28, 2024

OFFICE OF ENGINEERING AND TECHNOLOGY ANNOUNCES RELEASE OF VERSION 2.3.0 OF *TVStudy*

The Office of Engineering and Technology announces the release of updated *TVStudy* software (Version 2.3).¹ The *TVStudy* Version 2.3 software installation package, the *TVStudy* 2.3 Installation and Upgrade Guide, and the post-auction template XML file are all available on the *TVStudy* website at <http://www.fcc.gov/oet/tvstudy>. As with prior updates, a full list of changes from *TVStudy* Version 2.2.5 is included in the “Differences Between 2.3 and 2.2.5” section of the Change Log in the *TVStudy* 2.3 Installation and Upgrade Guide.

TVStudy 2.3 corrects a number of minor issues throughout the software. Additionally, *TVStudy* 2.3 contains several new features, including support for 2020 Census data, LMS FM data, gain and loss analyses, 2016 and 2021 land clutter data, and an overhaul of the KML map output functionality. *TVStudy* 2.3 also supports the export of matrix patterns in LMS-compatible XML format.

For further information regarding the *TVStudy* software and to submit bug reports, contact Mark Colombo at (202) 418-7611 or Mark.Colombo@fcc.gov.

– FCC –

¹ See *Office of Engineering and Technology Announces Release of Version 2.1 of TVStudy for Processing Construction Permit Applications Filed With the Media Bureau Implementing the Results of the Repacking Process*, Public Notice, 32 FCC Rcd 998 (OET 2017) (“OET will continue to make improvements and other changes to *TVStudy* that are necessary and appropriate, and will inform the public via public notice when new versions of *TVStudy* are released. OET welcomes feedback on this software’s features and functions.”).



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 24-500

Released: May 30, 2024

WIRELESS TELECOMMUNICATIONS BUREAU AND OFFICE OF ENGINEERING AND TECHNOLOGY ANNOUNCE THE APPROVAL AND REGISTRATION OF ADDITIONAL ENVIRONMENTAL SENSING CAPABILITY SENSORS FOR THE 3.5 GHZ BAND

GN Docket No. 15-319

With this *Public Notice*, the Wireless Telecommunications Bureau (WTB) and the Office of Engineering and Technology (OET) (collectively, WTB/OET) of the Federal Communications Commission (Commission or FCC) approve new Environmental Sensing Capability (ESC) sensor deployment and coverage plans (ESC Sensor Registrations) for Federated Wireless.¹ WTB/OET, in close consultation with the National Telecommunications and Information Administration (NTIA) and the Department of Defense (DoD), have reviewed and approved the new and updated ESC Sensor Registrations, which sufficiently describe the proposed coverage for the dynamic protection areas (DPAs)² listed below.

Federated Wireless is authorized to operate its ESC sensors consistent with the information—including sensor locations, configuration, and DPA coverage—submitted to, and approved by, WTB/OET.³ In addition, each ESC operator must operate in conjunction with at least one Spectrum

¹ Federated Wireless is an approved ESC operator. *Wireless Telecommunications Bureau and Office of Engineering and Technology Announce the Approval of Environmental Sensing Capabilities for the 3.5 GHz Band*, GN Docket No. 15-319, Public Notice, 34 FCC Rcd 2792 (WTB/OET 2019) (*2019 ESC Operator Approval Public Notice*). WTB/OET have established procedures for submitting ESC Sensor Registrations for approval. See *Wireless Telecommunications Bureau and Office of Engineering and Technology Establish Procedure for Registering Environmental Sensing Capability Sensors*, GN Docket No. 15-319, Public Notice, 33 FCC Rcd 10016 (WTB/OET 2018) (*ESC Sensor Registration Public Notice*); *Wireless Telecommunications Bureau and Office of Engineering and Technology Announce the Approval and Registration of Additional Environmental Sensing Capability Sensors of ESC Operators for the 3.5 GHz Band*, GN Docket No. 15-319, Public Notice, 34 FCC Rcd 11048, 11050 (WTB/OET 2019) (*November 2019 ESC Sensor Registration Public Notice*). Federated Wireless submitted ESC Sensor Registrations to WTB/OET consistent with the process described in the *ESC Sensor Registration Public Notice*, as updated in the *November 2019 ESC Sensor Registration Public Notice* and requested confidentiality. See Letter from Jennifer M. McCarthy, Vice President, Legal Advocacy, Federated Wireless, Inc. to Marlene H. Dortch, Secretary, FCC, GN Docket No. 15-319 (filed April 30, 2024), <https://www.fcc.gov/ecfs/document/10430186643842/1>.

² DPAs are pre-defined protection areas that extend beyond the coastline or that enclose a protected terrestrial radar facility, which may be activated or deactivated as necessary to protect DoD radar systems. *Promoting Investment in the 3550-3700 MHz Band*, GN Docket No. 17-258, Order, 33 FCC Rcd 4987 (WTB/OET 2018). NTIA depicts the DPAs in Attachment A of a letter sent by Paige R. Atkins, NTIA, to Julius P. Knapp and Donald K. Stockdale Jr. of the FCC on May 17, 2018. This letter and the specific coordinates for the DPAs are available at <https://www.ntia.doc.gov/fcc-filing/2015/ntia-letter-fcc-commercial-operations-3550-3650-mhz-band>.

³ *2019 ESC Operator Approval Public Notice*, 34 FCC Rcd at 2794, para. 5 (citing *ESC Sensor Registration Public Notice*, 33 FCC Rcd at 10016); see also *Amendment of the Commission's Rules with Regard to Commercial Operations in the 3550-3650 MHz Band*, GN Docket No. 12-354, Report and Order and Second Further Notice of

(continued....)

Access System (SAS) that has been approved for commercial deployment by the Commission.⁴ Before providing commercial service for any given DPA, each ESC operator must file a notification in GN Docket No. 15-319, which must affirm that the approved sensors covering the DPA are constructed and operational and must list the approved SASs with which the ESC is communicating.

Federated has satisfied the sensor coverage requirements for the following DPAs:

- Hawaii 1 through 9 and Pearl Harbor.⁵

Federated Wireless is permitted to update its ESC Sensor Registrations at any time in accordance with the process established in the *ESC Sensor Registration Public Notice*, and it must provide updates on an ongoing basis if any changes are made to the parameters of its approved ESC sensor deployments. WTB/OET will continue to approve ESC Sensor Registrations on a rolling basis as described in the *ESC Sensor Registration Public Notice*.⁶ We remind ESC operators that, going forward, they must file ESC Sensor Registrations and any supplements with the Commission using the Commission's Electronic Comment Filing System.⁷ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998). ESC operators may request confidential treatment of information contained in their filings consistent with section 0.459 of the Commission's rules.⁸ All such filings should refer to **GN Docket 15-319**. These modified procedural requirements supersede those set forth in the *ESC Sensor Registration Public Notice*.⁹

By the Chief, Wireless Telecommunications Bureau, and the Chief, Office of Engineering and Technology.

- FCC -

Proposed Rulemaking, 30 FCC Rcd 3959 at 4070-71, para. 386 (2015 Report and Order and 2015 FNPRM, respectively).

⁴ 2019 ESC Operator Approval Public Notice, 34 FCC Rcd at 2794, para. 5 (citing *ESC Sensor Registration Public Notice*, 33 FCC Rcd at 10016).

⁵ The DPAs around Hawaii will be protected by a portal-based scheduling solution through June 30, 2024. After that time, these DPAs will be protected by ESC sensors, including those approved herein. *Wireless Telecommunications Bureau and Office of Engineering and Technology Announce Temporary and Portal-Based Protections for Federal Operations in and Around Hawaii*, GN Docket Nos. 17-258 and 15-319, Public Notice, DA 23-894 (WTB/OET 2023).

⁶ *ESC Sensor Registration Public Notice*, 33 FCC Rcd at 10017.

⁷ November 2019 ESC Sensor Registration Public Notice, 34 FCC Rcd at 11050.

⁸ See 47 CFR § 0.459.

⁹ *ESC Sensor Registration Public Notice*, 33 FCC Rcd at 10018.



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 24-501

Released: May 29, 2024

WIRELINE COMPETITION BUREAU ANNOUNCES COMMENT AND REPLY COMMENT DATES FOR 988 GEOROUTING SECOND FURTHER NOTICE OF PROPOSED RULEMAKING

WC Docket No. 18-336

Comment Date: June 28, 2024

Reply Date: July 29, 2024

On April 25, 2024, the Federal Communications Commission (Commission) adopted a *Second Further Notice of Proposed Rulemaking (Second FNPRM)* seeking comment on a proposal to adopt rules requiring wireless carriers to implement a georouting solution for calls to the 988 Suicide & Crisis Lifeline (988 Lifeline) to ensure that calls are routed based on the geographic location for the origin of the call, rather than the area code and exchange associated with a wireless phone.¹ In the *Second FNPRM*, the Commission also invites comment on a variety of issues related to implementing a georouting solution for the 988 Lifeline, the Commission's authority to adopt rules requiring wireless carriers to implement one or more georouting solutions for calls to the 988 Lifeline, and any potential or needed georouting solutions for non-wireless calls and texts to the 988 Lifeline.²

On May 29, 2024, a summary of the *Second FNPRM* was published in the Federal Register.³ Comments are due on or before **June 28, 2024**, and reply comments are due on or before **July 29, 2024**. Complete comment filing instructions are set forth in the *Second FNPRM*.⁴

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

For further information, contact Merry Wulff, Wireline Competition Bureau, Competition Policy Division, at Merry.Wulff@fcc.gov or (202) 418-1084.

- FCC -

¹ *Implementation of the National Suicide Hotline Act of 2018*, WC Docket No. 18-336, Second Further Notice of Proposed Rulemaking, FCC 24-45 (Apr. 26, 2024) (*Second FNPRM*).

² *Id.*

³ Federal Communications Commission, National Suicide Hotline Act of 2018, Proposed Rule, 89 Fed. Reg. 46340 (May 29, 2024).

⁴ *Second FNPRM* at 20-21, para. 37.

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

In re Applications of	)	
	)	
Best Country Broadcasting, LLC	)	
	)	Facility ID No. 6316
For Renewal of Licenses for	)	Application File No. 0000107633
Station WBOX-FM, Varnado, Louisiana,	)	
	)	
and	)	Facility ID No. 6317
	)	Application File No. 0000107638
Station WBOX(AM), Bogalusa, Louisiana	)	

ORDER

Adopted: June 11, 2024

Released: June 11, 2024

By the Chief, Audio Division, Media Bureau:

1. In this Order, we adopt the attached Consent Decree entered into by the Media Bureau (Bureau) and Best Country Broadcasting, LLC (Licensee), the licensee for Stations WBOX-FM, Varnado, Louisiana, and WBOX(AM), Bogalusa, Louisiana (collectively, Stations). The Consent Decree resolves issues arising from the Bureau's review of the captioned license renewal applications for the Stations.¹ In particular, the Consent Decree resolves the Bureau's investigation of Licensee's compliance with the Online Public Inspection File Rule contained in section 73.3526 of the Commission's rules (Rules)² and section 73.3539 of the Rules,³ which sets forth the filing deadline for license renewal applications.

2. The Stations' license renewal applications for the 2019-22 Renewal Cycle were due on February 3, 2020.⁴ Licensee did not file the Renewal Applications until March 11, 2020. In the Renewal Applications, Licensee disclosed that it had not complied with section 73.3526 of the Rules.⁵ The Bureau's review of the Stations' online public inspection files revealed that Licensee had not uploaded a single issues and programs list as of the time Licensee filed the Renewal Applications, and did not upload any lists until May 10, 2024.

3. The Bureau and Licensee have negotiated the attached Consent Decree in which Licensee stipulates that it violated sections 73.3526 and 73.3539 of the Rules. Pursuant to the Consent Decree, Licensee agrees, among other things, to implement a comprehensive compliance plan to ensure future compliance with its online public inspection file obligations, and, one year after entering into the Consent Decree, submit a compliance report to the Audio Division.

4. After reviewing the terms of the Consent Decree, we find that the public interest will be served by its approval and by terminating all pending proceedings relating to the Bureau's consideration of potential violations of the Rules, and granting the Renewal Applications.

¹ Application File Nos. 0000107633 and 107638 (filed Mar. 11, 2020) (Renewal Applications).

² 47 CFR § 73.3526.

³ See 47 CFR § 73.3539.

⁴ See 47 CFR § 73.3539(a). Because February 1, 2020, was a Saturday, the Renewal Applications were due on the first business day after February 1, 2020, which was Monday, February 3, 2020.

⁵ Renewal Applications at Attach. "Ben Strickland Statement.pdf".

5. Based on the record before us, we conclude that nothing in that record creates a substantial and material question of fact as to whether Licensee possess the basic qualifications to be a Commission licensee.

6. **ACCORDINGLY, IT IS ORDERED** that, pursuant to section 4(i), 4 (j) and 503(b) of the Communications Act of 1934, as amended,⁶ and by the authority delegated by sections 0.61 and 0.283 of the Commission's rules,⁷ the Consent Decree attached hereto **IS ADOPTED** without change, addition or modification.

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

8. **IT IS FURTHER ORDERED** that the applications of Best Country Broadcasting, LLC, for renewal of licenses for Station WBOX-FM, Varnado, Louisiana (Application File No. 0000107633) and WBOX(AM), Bogalusa, Louisiana (Application File No. 0000107638) **ARE GRANTED**.

9. **IT IS FURTHER ORDERED** that copies of this Order and Consent Decree shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Best Country Broadcasting, LLC, c/o Ben Strickland, PO Box 280, Bogalusa, LA 70429, and to its counsel, Mark A. Balkin, Hardy, Carey, Chautin & Balkin, LLP, Attorneys at Law, 1080 West Causeway Approach, Mandeville, LA 70471.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

⁶ 47 U.S.C. § 154(i), 154(j), and 503(b).

⁷ 47 CFR §§ 0.61, 0.283.

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

In re Applications of	)	
	)	
Best Country Broadcasting, LLC	)	
	)	
For Renewal of License for	)	Facility ID No. 6316
Station WBOX-FM, Varnado, Louisiana,	)	Application File No. 0000107633
	)	
And	)	
	)	Facility ID No. 6317
Station WBOX(AM), Bogalusa, Louisiana	)	Application File No. 0000107638

CONSENT DECREE

1. The Media Bureau of the Federal Communications Commission and Best Country Broadcasting, LLC (hereafter “Licensee”, as defined below), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Media Bureau’s investigation into the Licensee’s compliance with sections 73.3539(a) and 73.3526 of the Commission’s rules.¹ To resolve this matter, the Licensee agrees to implement a comprehensive Compliance Plan to ensure its future compliance with section 73.3526.

I. DEFINITIONS

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) “Renewal Applications” means the pending applications for renewal of licenses for Stations WBOX-FM, Varnado, Louisiana, and WBOX(AM), Bogalusa, Louisiana Carolina (Application File Nos. 0000107633 and 0000107638).
 - (b) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (c) “Adopting Order” means an Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (d) “Bureau” means the Media Bureau of the Commission.
 - (e) “Commission” or “FCC” means the Federal Communications Commission and all of its bureaus and offices.
 - (f) “Compliance Plan” means the processes and procedures developed by the Licensee in an effort to ensure compliance with section 73.3526 of the Rules.
 - (g) “Covered Employees” means all employees and agents of the Licensee who are responsible for performing, supervising, overseeing, or managing activities related to the maintenance of online public inspection files, as required by the Online Public Inspection File Rule.
 - (h) “Effective Date” means the date on which the Bureau releases the Adopting Order.
 - (i) “Filing Deadline Rule” means 47 CFR § 73.3539(a).
 - (j) “Investigation” means the Bureau’s decision to hold and not process the Licensee’s license renewal applications due to the Licensee’s failure to comply with sections 73.3539(a) and 73.3526 of the Rules.

¹ 47 CFR §§ 73.3526, 73.3539(a).

- (k) “Licensee” means Best Country Broadcasting, LLC, and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.
- (l) “Online Public Inspection File Rule” means 47 CFR § 73.3526.
- (m) “Parties” means the Licensee and the Bureau, each of which is a “Party.”
- (n) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (o) “Stations” means Stations WBOX-FM, Varnado, Louisiana, and WBOX(AM), Bogalusa, Louisiana
- (p) “Violations” means the Licensee’s noncompliance with 47 CFR §§ 73.3539(a) and 73.3526 of the Rules.

II. BACKGROUND

3. Section 73.3539(a) of the Rules requires that applications for renewal of license for broadcast stations must be filed “not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed.”² License renewal applications for the Stations licenses for the 2019-22 Renewal Cycle should have been filed by February 3, 2020, the first full business day follow the first day of the fourth full calendar month prior to the Station’s license expiration date of June 1, 2020.³ Licensee filed the Renewal Applications on March 11, 2020.

4. Section 73.3526 of the Rules requires that quarterly issues and programs lists be uploaded to the station’s online public inspection file no later than the tenth day after each quarter.⁴ It is crucial that stations maintain online public inspection files that are complete and up to date because the information in them directly affects, among other things, the public’s ability to be informed about a station’s compliance with its obligations. In the Renewal Applications, Licensee disclosed that it had not complied with section 73.3526.⁵ The Bureau’s review of the Stations’ online public inspection files revealed that Licensee had not uploaded a single issues and programs list as of the time Licensee filed the Renewal Applications, and did not upload any lists until May 10, 2024.

5. The Bureau and Licensee have negotiated the terms of the Consent Decree that terminates the Investigation into the matters discussed above. As part of the Consent Decree, the Licensee has agreed to maintain a Compliance Plan designed to ensure its future compliance with the Online Public Inspection File Rule noted above for one (1) year after the Effective Date.⁶

III. TERMS OF AGREEMENT

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

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

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

² 47 CFR § 73.3539(a).

³ See 47 CFR §§ 73.1020, 73.3539(a).

⁴ 47 CFR § 73.3526.

⁵ Renewal Applications at Attach. “Ben Strickland Statement.pdf”.

⁶ Licensee has demonstrated, through appropriate documentation, that payment of a civil penalty for its violation of the Filing Deadline Rule would result in a financial hardship.

9. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In addition, the Bureau agrees to grant the Licensee's pending Renewal Applications (Application File Nos. 0000107633 and 0000107638). In consideration for such, the Licensee agrees to the terms, conditions, and procedures contained herein.

10. The Bureau agrees that, in the absence of new material evidence, the Bureau will not use the facts developed in this Investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion or in response to any petition to deny or other third-party objection, any new proceeding, formal or informal, or take any action on its own motion against the Licensee concerning the matters that were the subject of the Investigation. The Bureau also agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or to set for hearing the question of the Licensee's basic qualifications to be a Commission licensee or to hold Commission licenses or authorizations.⁷

11. **Admission of Liability.** The Licensee admits for the purpose of this Consent Decree that it failed to timely file the Renewal Applications for renewal of licenses, in violation of section 73.3539(a) of the Rules. Licensee also admits that it failed to maintain an online public inspection file, specifically, that it did not upload any issues and programs lists, in violation of section 73.3526 of the Rules during the Stations' prior license term.

12. Pursuant to section 503(b)(2)(E) of the Act, in exercising its forfeiture authority, the Commission may consider, among other things, "any history of prior offenses" by the licensee.⁸ The Licensee acknowledges that the Commission or its delegated authority may consider the Licensee's admission of liability in this Consent Decree in proposing any future forfeiture against Licensee in the event the Licensee is determined to have apparently committed a violation of the Act, the Rules, or of any orders of the Commission after the Effective Date, whether related to the timely filing of applications or otherwise.

13. **Compliance Officer.** Within 30 calendar days after the Effective Date, the Licensee shall designate a responsible party to serve as a Compliance Officer and to discharge the duties set forth below. The Compliance Officer shall report directly to the Licensee's President (or equivalent senior officer/owner) on a regular basis, and shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that the Licensee complies with the terms and conditions of the Compliance Plan and this Consent Decree. The Compliance Officer shall have specific knowledge of the Online Public Inspection File Rule prior to assuming his/her duties. The Bureau acknowledges that the Compliance Officer, Chancellor, and/or Board Member may be the same individual.

14. **Compliance Plan.** For purposes of settling the matters set forth herein, the Licensee agrees that it shall, within 30 calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the Online Public Inspection File Rule, and with the terms and conditions of this Consent Decree. The Compliance Plan, with the exception of the Compliance Report described below in paragraph 16(c), shall apply to all radio stations owned by the Licensee. The Compliance Plan shall contain, at a minimum, the following elements:

- (a) **Compliance Manual.** The Compliance Plan shall include a Compliance Manual that is distributed to all Covered Employees. The Licensee may adopt a Compliance Manual that it has prepared or one that has been prepared by an outside source, such as a trade

⁷ See 47 CFR § 1.93(b).

⁸ See 47 U.S.C. § 503(b)(2)(E).

association (e.g., the National Association of Broadcasters), another licensee, or a law firm. The Compliance Manual shall:

- i. thoroughly explain the requirements embodied in the Online Public Inspection File Rule;
 - ii. contain Operating Procedures that Covered Employees must follow to help ensure the Licensee's compliance with the Online Public Inspection File Rule. The Operating Procedures shall include internal procedures and policies specifically designed to ensure that the Licensee's stations upload all required information to their online public inspection files in a timely manner and otherwise maintain full, complete, and up to date information therein. The Operating Procedures shall also include a compliance checklist that describes the steps that a Covered Employee must follow to ensure compliance with the Online Public Inspection File Rule; and
 - iii. be periodically reviewed and revised as necessary to ensure that the information set forth therein remains current, complete, accurate, and effective.
- (b) **Compliance Training Program.** If the Licensee has Covered Employees, the Compliance Plan shall include a Compliance Training Program to provide periodic training to those Covered Employees on complying with the Online Public Inspection File Rule. As part of the compliance training program, Covered Employees shall be advised of the Licensee's obligation to report any noncompliance with the Online Public Inspection File Rule and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall receive initial training under the compliance training program within 30 calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after such initial training is provided shall receive training under the compliance training program within 30 calendar days after the date he or she becomes a Covered Employee. The Licensee shall provide training under the compliance training plan on at least an annual basis, and it shall periodically review and revise the compliance training program as necessary to ensure that it remains current, complete, and effective.
- (c) **Compliance Report.** One year after entering into this Consent Decree, the Licensee shall submit a compliance report to the Bureau for each station listed in Appendix A. The compliance report shall contain a certification of the Licensee's compliance with the Online Public Inspection File Rule during the previous year. The compliance report shall be submitted to the Bureau no later than 30 days after the one-year anniversary of the Effective Date. The Bureau may, within its sole discretion, require the Licensee to submit more frequent or additional compliance reports in accordance with the terms of paragraph 17 below.
- i. The compliance report shall include a certification by the Compliance Officer stating that the Compliance Officer has personal knowledge that the Licensee: (i) has established and implemented the Compliance Plan; (ii) has utilized the operating procedures since the implementation of the Compliance Plan; and (iii) is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree.
 - ii. The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and must comply with section 1.16 of the

Rules,⁹ and be subscribed to as true under penalty of perjury in substantially the form set forth therein.

- iii. If the Compliance Officer is unable to provide the requisite certification, the Compliance Officer shall provide the Bureau with a report detailing the noncompliance, as described below.
- iv. The compliance report shall be submitted to the Audio Division staff: Alexander Sanjenis (alexander.sanjenis@fcc.gov).

15. **Reporting Noncompliance.** The Licensee shall report any instance of noncompliance with the Online Public Inspection File Rule, and any instance of noncompliance with any applicable terms and conditions of this Consent Decree within 10 calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of: (i) each such instance of noncompliance; (ii) the steps that the Licensee has taken or will take to remedy such noncompliance, including the schedule on which such actions will be taken; and (iii) the steps that the Licensee has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventative action will be taken. All reports of noncompliance shall be submitted to the Audio Division staff: Alexander Sanjenis, Assistant Division Chief, at Alexander.Sanjenis@fcc.gov.

16. **Termination Date.** The obligations to which the Licensee is subject pursuant to this Consent Decree shall terminate upon submission of the Compliance Report pursuant to Paragraph 14(c), provided the Bureau is satisfied that the Licensee has demonstrated substantial compliance with its obligations. If the Bureau is not satisfied that the Licensee has demonstrated substantial compliance with its obligations, the Bureau may, within its sole discretion and authority, extend the termination date of this Consent Decree for up to an additional 24 months.

17. **Further Violation(s).** The Licensee acknowledges that the Bureau retains the discretion and authority to propose sanctions against the Licensee, including the issuance of notices of apparent liability for forfeitures, for any apparent willful and/or repeated violation by the Licensee of the Online Public Inspection File Rule that occurs during the term of this Consent Decree.

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

19. **Waivers.** As of the Effective Date, the Licensee waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order. The Licensee shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent Decree or Adopting Order, neither the Licensee nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and the Licensee shall waive any statutory right to a trial *de novo*. The Licensee hereby agrees to waive any claims it may have under the Equal Access to Justice Act¹⁰ relating to the matters addressed in this Consent Decree.

20. **Severability.** The Parties agree that if any of the provisions of the Consent Decree shall be held unenforceable by any court of competent jurisdiction, such unenforceability shall not render unenforceable the entire Consent Decree, but rather the entire Consent Decree shall be construed as if not

⁹ 47 CFR § 1.16.

¹⁰ See 5 U.S.C. § 504; 47 CFR §§ 1.1501-1.1530.

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

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

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

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

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

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

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

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



Albert Shuldiner
Chief, Audio Division

June 11, 2024
Date

Ben Strickland
Best Country Broadcasting, LLC

Date

consent) that provision will be superseded by such Rule or Order.

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

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

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

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

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

Albert Shuldiner
Chief, Audio Division

Date



Ben Strickland
Best Country Broadcasting, LLC

6/9/2024

Date



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 24-503

Released: May 29, 2024

WIRELINE COMPETITION BUREAU ANNOUNCES COMPLIANCE DATE OF JULY 15, 2024 FOR SAFE CONNECTIONS ACT RULES

WC Docket Nos. 22-238, 11-42, 21-450

On November 16, 2023, the Commission adopted the *Safe Connections Act Report and Order* to implement the Safe Connections Act of 2022 (SCA).¹ In that rulemaking, the Commission adopted rules to codify and implement the line separation provisions in the SCA. The Commission required covered providers to comply with the rules implementing the SCA's line separation provisions within six months after the effective date of the *Order*, or after review of the rules by the Office of Management and Budget (OMB) is completed, whichever is later.²

On May 3, 2024, OMB completed its review of the Commission's rules implementing the line separation provisions of the SCA. Accordingly, compliance with the line separation requirements adopted by the Commission in the *Safe Connections Act Report and Order* is required by July 15, 2024.

We note separately, as explained in the *Safe Connections Act Report and Order*, that the compliance deadline for protecting the privacy of calls and text messages to domestic violence hotlines will be no earlier than eight months after the Wireline Competition Bureau (Bureau) has published the database download file specification, which should be the final detail necessary for service providers to complete design of their systems.³ The Commission is currently working on database implementation and has yet to publish such specifications, which will be in the form of a public notice in the above-referenced dockets.

For further information regarding line separation provisions, contact Melissa Kinkel, Competition Policy Division, Wireline Competition Bureau, at (202) 418-7958 or Melissa.Kinkel@fcc.gov. For further information regarding the domestic violence hotline database, contact Ed Krachmer, Competition Policy Division, Wireline Competition Bureau, at (202) 418-1525 or Edward.Krachmer@fcc.gov.

- FCC -

¹ See *Supporting Survivors of Domestic and Sexual Violence* et al., WC Docket No. 22-238 et al., Report and Order, FCC 23-96 (2023) (*Safe Connections Act Report and Order*); see also Safe Connections Act of 2022, Pub. L. No. 117-223, 116 Stat. 2280 (Safe Connections Act or SCA). The *Safe Connections Act Report and Order* was effective on January 14, 2024. See 88 FR 84406 (Dec. 5, 2023), 88 FR 88261 (Dec. 21, 2023) (announcing a final rule correction). Compliance with the revisions to the Commission's part 54 rules implementing the emergency lifeline support provisions of the SCA is delayed until the Office of Management and Budget completes review of information collection requirements. The Commission will announce the compliance date in a subsequent Public Notice.

² See *Safe Connections Act Report and Order* at 56, para. 102.

³ *Id.* at 71, para. 138. In addition, the compliance deadline will be no earlier than two months after the Bureau announces that the database administrator has made the initial database download file available for testing. *Id.* at 71-72, para. 138. Smaller service providers are afforded a later compliance deadline. *Id.* at 72-74, paras. 139-42.



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 24-504

Released: May 30, 2024

THE OFFICE OF ECONOMICS AND ANALYTICS AND THE WIRELINE COMPETITION BUREAU ANNOUNCE PUBLICATION OF AFFORDABLE CONNECTIVITY PROGRAM TRANSPARENCY DATA COLLECTION SUMMARY

WC Docket No. 21-450

The Office of Economics and Analytics (OEA), in conjunction with the Wireline Competition Bureau (WCB), today released data related to the price, subscription rates, and plan characteristics of the internet service offerings of participating providers in the Affordable Connectivity Program (ACP), as required by the Bipartisan Infrastructure Law.¹ These data were collected through the ACP Transparency Data Collection (ACP Data Collection) and are available for download on the Commission's website at <https://www.fcc.gov/affordable-connectivity-program>.

The data we are releasing today offers a snapshot of the broadband services nearly 20 million ACP households were receiving on August 1, 2023. Sixteen hundred providers submitted ACP plan and subscription data at the ZIP code level, and OEA aggregated these data to the state and county level. Following is a description of the data sets being released:

- Nationwide data: Plan characteristics across all ACP households.
- State level data: Average base monthly prices of "plans in which ACP households are enrolled within designated download speed tiers and data on the number of subscribers of plans within those tiers."²
- County level data: Average base monthly price and subscription rate data for fixed and mobile service.³
- ZIP code data: Average base monthly price and subscription rate data for fixed and mobile service.

For further information related to the ACP Data Collection, please contact ACPDDataCollection@fcc.gov.

- FCC -

¹ Infrastructure Investment and Jobs Act, div. F, tit. V, § 60502(c)(1), (5); *see also Affordable Connectivity Program*, WC Docket No. 21-450, Fourth Report and Order and Further Notice of Proposed Rulemaking, 37 FCC Rcd 13774, para. 1 (2022) (*Report and Order*).

² *Report and Order*, 37 FCC Rcd at 13805-07, para. 67.

³ County and ZIP code level data are not designated by download speed tiers because of the potential to indirectly disclose subscriber personally identifiable information or result in the publication of provider-specific data. *Report and Order*, 37 FCC Rcd at 13812, para. 81.



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 24-505
Released: May 30, 2024

COMMENTS INVITED ON SECTION 214 APPLICATION(S) TO DISCONTINUE DOMESTIC NON-DOMINANT CARRIER TELECOMMUNICATIONS AND/OR INTERCONNECTED VOIP SERVICES

WC Docket No(s). 24-32 & 24-34

Comments Due: June 14, 2024

Unless otherwise specified, the following procedures and dates apply to the application(s) (the Section 214 Discontinuance Application(s)) listed in the Appendix.

The Wireline Competition Bureau (Bureau), upon initial review, has found the Section 214 Discontinuance Application(s) listed herein to be acceptable for filing and subject to the procedures set forth in Section 63.71 of the Commission's rules.¹ The application(s) request authority, under section 214 of the Communications Act of 1934, as amended,² and section 63.71 of the Commission's rules,³ to discontinue, reduce, or impair certain domestic telecommunications service(s) (Affected Service(s)) in specified geographic areas (Service Area(s)) as applicable and as fully described in each application.

In accordance with section 63.71(f) of the Commission's rules, the Section 214 Discontinuance Application(s) listed in the Appendix will be deemed granted automatically on **June 30, 2024**, the 31st day after the release date of this public notice, unless the Commission notifies any applicant(s) that their grant will not be automatically effective.⁴ We note that the date on which an application for Commission authorization is deemed granted may be different from the date on which applicants are authorized to discontinue, reduce, or impair service ("Authorized Date"). Any applicant whose application has been deemed granted may discontinue, reduce or impair their Affected Service(s) in their Service Area(s) on or after the authorized date(s) specified in the Appendix, in accordance with their filed representations. Accordingly, pursuant to section 63.71(f), and the terms outlined in each application, absent further Commission action, each applicant may discontinue, reduce or impair the Affected Service(s) in the Service Area(s) described in their application on or after the authorized discontinuance date(s) listed in the Appendix for that application. For purposes of computation of time when filing a petition for reconsideration, application for review, or petition for judicial review of the Commission's decision(s), the date of "public notice" shall be the later of the auto grant date stated above in this Public Notice, or

¹ 47 CFR § 63.71.

² 47 U.S.C. § 214.

³ 47 CFR § 63.71.

⁴ See 47 CFR § 63.71(f) (stating, in relevant part, that an application filed by a non-dominant carrier "shall be automatically granted on the 31st day... unless the Commission has notified the applicant that the grant will not be automatically effective.").

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 **June 14, 2024**. Comments should refer to the specific WC Docket No. and Comp. Pol. File No. listed in the Appendix for the particular Section 214 Discontinuance Application that the commenter intends to address. Comments should include specific information about the impact of the proposed discontinuance on the commenter, including any inability to acquire reasonable substitute service. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.⁵ Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs>. Filers should follow the instructions provided on the Web site for submitting comments. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number.

Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit one additional copy for each additional docket or rulemaking number associated with the proceeding in which they choose to file comments. Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail.⁶ All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, D.C. 20554.

Copies of the comments may also be emailed to the Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, using the contact information listed in the Appendix for the appropriate Section 214 Application. In addition, comments should be served upon the Applicant(s).

These proceedings are considered "permit but disclose" proceedings for purposes of the Commission's *ex parte* rules.⁷ Participants should familiarize themselves with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments,

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

⁶ Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, 35 FCC Rcd 2788 (OMD 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

⁷ 47 CFR § 1.1200 *et seq.*

memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b).

People with Disabilities: We ask that requests for accommodations be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530.

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

– FCC –

Appendix

- 1) **Applicant(s): Mitel Cloud Services Inc.**
WC Docket No. 24-32, Comp. Pol. File No. 1890
Link – [https://www.fcc.gov/ecfs/search/search-filings/results?q=\(proceedings.name:\(%2224-32*%22\)\)](https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2224-32*%22)))
Affected Service(s) – MiCloud Hospitality Service, which includes interconnected VoIP
Service Area(s) – throughout the United States, including the District of Columbia and Puerto Rico
Authorized Date(s) – on or after June 30, 2024
Contact(s) – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau
Note: On May 29, 2024, Mitel filed a supplemental letter to indicate that corrected notices were emailed to affected customers on May 29, 2024.

- 2) **Applicant(s): Mitel Cloud Services Inc.**
WC Docket No. 24-34, Comp. Pol. File No. 1892
Link – [https://www.fcc.gov/ecfs/search/search-filings/results?q=\(proceedings.name:\(%2224-34*%22\)\)](https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2224-34*%22)))
Affected Service(s) – MiCloud Business Service, which includes interconnected VoIP
Service Area(s) – throughout the United States, including the District of Columbia and Puerto Rico
Authorized Date(s) – on or after June 30, 2024
Contact(s) – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau
Note: On May 29, 2024, Mitel filed a supplemental letter to indicate that corrected notices were emailed to affected customers on May 29, 2024.



PUBLIC NOTICE

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

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

DA No. 24-506

Friday May 31, 2024

Report No. SAT-01825

Satellite Licensing Division and Satellite Programs and Policy Division Information

Actions Taken

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

SAT-AMD-20240329-00070	E	S3186	Umbra Lab Inc
Amendment			
Granted in Part/ Deferred in Part			Effective Date: 05/27/2024

Nature of Service: Earth Exploration Satellite Service

See ICFS File No. SAT-LOA-20240222-00038 for a description of the action taken.

SAT-AMD-20240417-00080	E	S3184	Loft Orbital Solutions Inc.
Amendment			
Grant of Authority			Effective Date: 05/30/2024

Nature of Service: Earth Exploration Satellite Service

See ICFS File No. SAT-LOA-20240202-00021 for a description of the action taken.

SAT-AMD-20240418-00083	E	S3178	Capella Space Corp.
Amendment			
Grant of Authority			Effective Date: 05/24/2024

Nature of Service: Earth Exploration Satellite Service

See ICFS File No. SAT-MOD-20240329-00071 for a description of the action taken.

SAT-LOA-20240202-00021	E	S3184	Loft Orbital Solutions Inc.
Launch and Operating Authority			
Grant of Authority			Effective Date: 05/30/2024

Nature of Service: Earth Exploration Satellite Service

On May 30, 2024, the Satellite Programs and Policy Division granted, with conditions, the request of Loft Orbital Solutions, Inc. to deploy and operate one non-geostationary satellite in the Earth exploration-satellite service (EESS) and space operation service, to be known as YAM-7, with a deployment altitude of approximately 510km (+/- 20 km) and 97.6 (± 0.1) degrees inclination. The Division authorized Loft Orbital to continue to operate in the EESS as the YAM-7 deorbits, until the satellite is in an orbit with a perigee of 350 km. The YAM-7 satellite is authorized to operate using the 2025-2110 MHz (Earth-to-space), 2200-2290 MHz (space-to-Earth), and 8025-8400 MHz bands. Specifically, Loft Orbital is authorized to operate with a center frequency of 2070.0 MHz with 99 kHz and 132 kHz bandwidths for telemetry, tracking, and command (TT&C) during launch and early orbit operations (LEOP); with a center frequency of 2097.5 MHz with 1.0 and 5.0 MHz bandwidths for EESS and command uplink post-LEOP; with a center frequency of 2230.0 MHz with 5 MHz bandwidth for EESS and TT&C; and with a center frequency of 8125.0 MHz with 100 MHz bandwidth for EESS and TT&C. The YAM-7 satellite is also authorized to operate in the 449.75-450.25 MHz band for back-up TT&C, using center frequencies of 450.125 MHz and 450.2 MHz, each with 17 kHz and 8.5 kHz bandwidths; as well as in the 400.15-401 MHz (space-to-Earth) band using a center frequency 400.875 MHz and 34 kHz emission bandwidth; and in the 401-402 MHz (space-to-Earth) band using center frequencies 401.017 MHz, 401.085 MHz, 401.155 MHz, 401.225 MHz, 401.375 MHz, 401.4375 MHz, 401.5 MHz, and 401.015 MHz, each with 34 kHz bandwidth. This application was granted under the streamlined small satellite procedures, 47 CFR § 25.122.

SAT-LOA-20240222-00038	E	S3186	Umbra Lab Inc	
Launch and Operating Authority				
Granted in Part/ Deferred in Part				Effective Date: 05/27/2024

Nature of Service: Earth Exploration Satellite Service

On May 27, 2024, the Satellite Programs and Policy Division granted-in-part and deferred-in-part, with conditions, the request of Umbra Lab, Inc. for authorization to deploy and operate two non-geostationary satellites in the Earth exploration-satellite service (EESS), to be known as Umbra Block 2.1, with a deployment altitude of approximately 590km, operating altitudes between 505 to 565 km with an inclination of 97.4 degrees (± 0.1 degrees). The Division also authorized Umbra to continue to operate in the EESS, including for synthetic aperture radar (SAR) imaging as the satellites deorbit until the satellites are in orbits with a perigee of 325 km. The Umbra Block 2.1 satellites are authorized to conduct telemetry, tracking, and command (TT&C) operations in the 2025-2110 MHz (Earth-to-space) frequency bands, TT&C operations with earth stations outside of the U.S. in the 2200-2290 MHz (space-to-Earth) frequency band, EESS operations in the 8025-8400 MHz (space-to-Earth) frequency band, and SAR operations in the 9300-9900 MHz and 9200-10400 MHz frequency bands. This application was granted under the streamlined small satellite procedures, 47 CFR § 25.122.

SAT-MOD-20240329-00071	E	S3178	Capella Space Corp.	
Modification				05/24/2024 - 04/12/2030
Grant of Authority				Effective Date: 05/24/2024

Nature of Service: Earth Exploration Satellite Service

On May 24, 2024, the Satellite Programs and Policy Division granted, with conditions, the request of Capella Space Corp. for modification of Capella's license for a non-geostationary orbit satellite system to deploy and operate two additional space stations, Acadia-5 and Acadia-6, at an altitude of approximately 550 kilometers (+/- 50 kilometers) and inclination between 95 and 99 degrees. The Division also modified Capella's license to authorize Capella to conduct Earth exploration-satellite service (EESS) operations, including for synthetic aperture radar (SAR), as its four Acadia satellites deorbit, to altitudes as low as approximately 350 km. Capella is authorized to operate in the following frequency bands: 9300-10000 MHz (space-to-Earth) for SAR imaging; 8025-8400 MHz (space-to-Earth) for the EESS downlink; 2025-2110 MHz (Earth-to-space) for a telemetry, tracking, and command (TT&C) uplink; 8025-8400 MHz (space-to-Earth) for a TT&C downlink; and 1525.0-1559.0 MHz receiving (space-to-space) and 1626.5-1660.0 MHz transmitting (space-to-space) for inter-satellite links with the Inmarsat system, including all the satellites on the Commission's "ISAT" list. Specifically, Capella is authorized to operate using a center frequency of 9650 MHz and bandwidths from 10 MHz to 700 MHz for SAR imaging, a center frequency of 8212.5 MHz and bandwidth of 337.5 MHz for its payload downlink, a center frequency of 2036 MHz and bandwidth of 1.4 MHz for its TT&C uplink, and a center frequency of 8027 MHz and bandwidth of 1.4 MHz for its TT&C downlink. In addition, Capella is granted temporary authority for the Acadia-5 and Acadia-6 satellites to receive a signal from a single earth station in the 9400-9900 MHz band (Earth-to-space) for a limited period following deployment in order to radiometrically calibrate radar measurements.

SAT-STA-20240523-00109	E	S2406	Intelsat License LLC	
Special Temporary Authority				
Grant of Authority				Effective Date: 05/30/2024

On May 30, 2024, the Satellite Programs and Policy Division granted, with conditions, special temporary authority for a period of 60 days, for Intelsat License LLC to operate Intelsat 902 in a ± 0.1 degree east-west station keeping box at the 50.1° W.L. orbital location.

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



Federal Communications Commission
Washington, D.C. 20554

May 31, 2024

DA 24-507
In Reply Refer to:
1800B3-SDW
Released: May 31, 2024

Vanguard Association of Sunbelt Colleges Corporation
c/o Donald E. Martin, Esq.
Law Office of Donald E. Martin
P.O. Box 8433
Falls Church, VA 22041
(sent by electronic email to dempc@prodigy.net)

Augustana College
c/o Derek H. Teslik, Esq.
Gray Miller Persh, LLP
2233 Wisconsin Ave., NW, Ste. 226
Washington, DC 20007
(sent by electronic email to dteslik@graymillerpersh.com)

In re: **NCE MX Group 74**

**Vanguard Association of Sunbelt
Colleges Corporation**
New NCE (FM), Dubuque, Iowa
Facility ID No. 768573
Application File No. 0000167716

Augustana College
New NCE (FM), Epworth, Iowa
Facility ID No. 766325
Application File No. 0000166936

Petition for Reconsideration

Dear Applicants and Counsel,

We have before us a Petition for Reconsideration (Petition),¹ filed by Augustana College (AC), the dismissed applicant for a construction permit for a new noncommercial educational (NCE) FM station in Epworth, Iowa,² and related pleadings.³ AC seeks reconsideration of the grant by the Audio Division,

¹ Pleading File No. 0000240655 (filed Mar. 11, 2024).

² Application File No. 0000166936 (AC Application).

³ Vanguard Association of Sunbelt Colleges Corporation (VASC) filed a motion for extension of time to respond to the Petition on March 19, 2024. Pleading File No. 0000241513. VASC filed its Opposition on March 29, 2024, and a supplement that corrected typographical errors in the Opposition on April 1, 2024. Pleading File Nos. 0000242659 and 0000242734, respectively. AC filed a motion for extension of time to respond to the Opposition on

Media Bureau (Bureau) of the above-referenced application of Vanguard Association of Sunbelt Colleges Corporation (VASC) for a new NCE FM station in Dubuque, Iowa (VASC Application).⁴ For the reasons discussed below, we deny the Petition and uphold the grant of the VASC Application.

Background. The subject applications were filed during the November 2021 NCE FM filing window.⁵ The Bureau determined that the AC Application and VASC Application were mutually exclusive.⁶ The Commission subsequently analyzed the applications under the point system, identified VASC as the tentative selectee in NCE MX Group 74,⁷ and established a 30-day period for filing petitions to deny.⁸ On November 25, 2022, AC filed a petition to deny the VASC Application in which it questioned VASC's financial certification, argued that VASC lacked reasonable site assurance, and alleged that the VASC Application was part of a scheme to circumvent the 2021 NCE FM filing window's 10-application cap.⁹ Additionally, on June 22, 2023, Iowa Public Radio, Inc. (IPR) filed an informal objection (Objection) alleging that VASC could not have obtained reasonable site assurance because the tower location specified in the VASC Application is already occupied by IPR's existing NCE FM station, KNSY(FM), Dubuque, Iowa.¹⁰

On February 8, 2024, the Bureau released the *Staff Decision*, which denied both the AC petition to deny and the IPR Objection and granted the VASC Application.¹¹ The *Staff Decision* found VASC financially qualified¹² and determined that the record did not reflect a scheme to circumvent the 10-application rule.¹³ Finally, the *Staff Decision* found that VASC provided sufficient documentation to establish that it had reasonable assurance of site availability at the time it filed the VASC Application.¹⁴

April 1, 2024, and filed its reply to the Opposition on April 12, 2024 (Reply). Pleading File Nos. 0000242761 and 0000243456, respectively.

⁴ See Application File No. 0000167716 (filed Nov. 9, 2021).

⁵ *Media Bureau Announces NCE FM New Station Application Filing Window; Window Open from November 2, 2021, to November 9, 2021*, MB Docket No. 20-343, Public Notice, 36 FCC Rcd 11458 (MB July 23, 2021).

⁶ *Media Bureau Identifies Groups of Mutually Exclusive Applications Submitted in the November 2021, Filing Window for New Noncommercial Educational Stations; Opens Window to Accept Settlements and Technical Amendments*, MB Docket No. 20-343, Public Notice, 36 FCC Rcd 16452 (MB 2021). The AC Application and VASC Application were designated as NCE MX Group 74.

⁷ *Comparative Consideration of 32 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, 37 FCC Rcd 12898, 12911, para. 53 (2022) (*Second Comparative Order*). VASC received two points for diversity of ownership; AC did not receive any points.

⁸ *Id.* at 12924, para. 118.

⁹ Pleading File No. 0000204282.

¹⁰ Pleading File No. 0000217055. See also Application File No. BLED-20170503AAR (active license for IPR's existing NCE FM station KNSY(FM)).

¹¹ *Vanguard Association of Sunbelt Colleges Corporation*, Letter Order, DA 24-119 (MB Feb. 8, 2024) (*Staff Decision*).

¹² *Id.* at 5-6.

¹³ *Id.* at 7.

¹⁴ *Id.* at 6.

Accordingly, the Bureau granted the VASC Application and issued VASC a construction permit for a new NCE FM station (Permit).

On March 11, 2024, AC filed the instant Petition, asserting that the *Staff Decision* “made errors of law and fact when it concluded that [VASC] had reasonable assurance of site availability . . . despite un rebutted record evidence that [VASC] cannot build at the parameters specified in its application.”¹⁵ AC further argues that, pursuant to section 1.65 of the Commission’s rules (Rules),¹⁶ VASC “was required to amend its application within thirty days once pleadings in the record put it on notice that another station’s facilities occupy the tower space it proposed,” and that its failure to amend the VASC Application “for more than a year” constitutes “either an intent to conceal information or a reckless irresponsibility,” both of which, it argues, “are disqualifying.”¹⁷ AC, therefore, urges the Commission to “reverse the [*Staff Decision*]” and “reevaluate the comparative status” of NCE MX Group 74 after VASC submits an amendment reflecting a buildable facility.¹⁸

In the Opposition, VASC resubmits e-mail correspondence it previously provided, in which the tower owner’s representative confirms to VASC’s consulting engineer that space was available on the Tower¹⁹ at various heights, including the height specified in the Application—77 meters above ground.²⁰ VASC states that, when it submitted the VASC Application proposing to install its antenna at 77 meters, it was unaware that the information provided by the tower owner’s representative was erroneous and that such installation would conflict with KNSY(FM). On March 11, 2024, VASC filed an application to modify the Permit, proposing to lower the proposed antenna height to approximately 60 meters above ground, and also revised the area and population that its proposed facility would serve.²¹ VASC states that the modified height “is also covered in the reasonable assurance correspondence” and resolves any conflicts with KNSY(FM).²² VASC asserts that although it did not “strictly observe the time constraints prescribed by” section 1.65 of the Rules in submitting its Permit Modification Application, it possessed

¹⁵ Petition at 1-2.

¹⁶ See 47 CFR § 1.65.

¹⁷ Petition at 2.

¹⁸ *Id.* at 9-10.

¹⁹ The e-mail correspondence identified the proposed tower as ASR #1037059 (Tower). This is the ASR identified in the VASC Application. See VASC Application at Antenna Location Data, ASR Number.

²⁰ The email correspondence, as originally submitted in response to a Bureau letter of inquiry, indicated that space was available on the proposed tower for VASC’s use. E-Mail from Donald E. Martin, Esq., counsel to VASC, to Alexander Sanjenis, Audio Division, FCC Media Bureau at Attach. 1 (June 1, 2023). VASC resubmitted the correspondence to include additional text that was omitted from the original email correspondence. The text provides specific details indicating that space was available on the Tower for VASC’s use between (1) the ground up to 153 meters, and (2) between 183 meters and 262 meters above ground. See Opposition at Attach. 1.

²¹ Application File No. 0000240650 (filed Mar. 11, 2024) (Permit Modification Application). VASC subsequently amended this application to provide population coverage data, noting that the population within the proposed 60 dbu contour is 93,700 people, and the area within the proposed 60 dbu contour is 1,600 square kilometers. Permit Modification Application, Amendment at Attach. “Purpose for Amendment to Minor Mod Application.” (filed Mar. 29, 2024).

²² Opposition at 2.

no “motive to deceive the Commission.”²³ Finally, VASC asserts that the comparative analysis for NCE MX Group 74, based on the Permit Modification Application, remains unchanged.²⁴

In the Reply, AC argues that the Opposition provides no justification for VASC’s failure to timely amend the VASC Application, and thus, the VASC Application should be denied.²⁵

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 petitioner’s last opportunity to present such matters.²⁶ We find that AC has not shown legal error in the *Staff Decision*.

AC asserts that the Bureau erred in finding VASC’s documentation sufficient to establish that it had reasonable site assurance at the time it filed the Application. We disagree. VASC submitted direct evidence from the Tower owner’s representative indicating that space was available on the Tower for its use, including at the height proposed in the original VASC Application. We find that, although the Tower owner’s representative was incorrect about the available height, this error does not diminish VASC’s good faith reliance on the assurance of site availability.²⁷ VASC has modified its Permit to lower the antenna’s location to a height on the Tower that it states is also covered by its reasonable assurance documentation.²⁸ Because the record reflects that VASC secured site assurance prior to filing the original VASC Application, there is no impediment to its subsequent minor Permit Modification Application.²⁹ Furthermore, we reject AC’s contention that, pursuant to section 1.65 of the Rules, the timing of VASC’s Permit Modification Application merits disqualification. Section 1.65 violations are potentially disqualifying only if an applicant has an intent to conceal information or if omissions of reportable information are so numerous and serious as to undermine the applicant’s basic qualifications.³⁰ AC has not provided any convincing evidence, and the record does not reflect, that VASC possessed an intent to conceal information from the Commission.³¹ Thus, we do not find VASC’s actions to be disqualifying.

²³ *Id.* at 3.

²⁴ *Id.* at 4.

²⁵ Reply at 2-3.

²⁶ See 47 CFR §1.106(c), (d); *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964).

²⁷ See, e.g., *Radio Free Moscow, Inc.*, Letter Order, 25 FCC Rcd 10111, 10113 (MB 2010) (finding applicant’s reliance on a third party’s confirmation of site availability was reasonable, even though the third party assurance was later found to be in error); *NCE MX Group 338*, Letter Order, 26 FCC Rcd 10423, 10426 (MB 2011) (explaining that an applicant’s reliance on a third party’s assurance of site availability, even if it is later proven to be inaccurate, plays a role in our analysis where such reliance was in good faith and was obtained from “site owners or individuals in a position to provide confirmation that the site is available for the proposed use.”).

²⁸ Permit Modification Application; Opposition at 2.

²⁹ See *Eagles Nest Fellowship Church*, Letter Order, 23 FCC Rcd 862, 865 (MB 2008)..

³⁰ See 47 CFR § 1.65; *David Ortiz Radio Corp. v. FCC*, 941 F.2d 1253 (D.C. Cir. 1991) (citing *Valley Broadcasting Co.*, Decision, 4 FCC Rcd 2611, 2618 (Rev. Bd. 1989)).

³¹ AC’s allegation that VASC’s motive in failing to timely amend its application was to conceal inferior technical parameters that would endanger VASC’s comparative position does not bear out. Based on VASC’s Permit Modification Application, its comparative position remains unchanged. Moreover, given that the matter of VASC’s proposed antenna height was public record, there is no logical basis to infer a motive to deceive. *Greater Muskegon Broadcasters, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 15464, 15472, para. 22 (1996).

Finally, we find that, based on the revised service area and population figures provided in the Permit Modification Application, both VASC and AC remain ineligible for any points under the best technical proposal criterion because neither proposes to serve at least 10% more area and population than the other.³² Therefore, our points system analysis is unchanged, and VASC remains the tentative selectee of NCE MX Group 74. Accordingly, we need not refer this group to the Commission to conduct a new point system analysis.³³ We thus deny the Petition.

Conclusion/Action. Accordingly, IT IS ORDERED that the Petition for Reconsideration, filed on March 11, 2024, by Augustana College (Pleading File No. 0000240655), IS DENIED.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

³² VASC's amended proposed 60 dBu contour would encompass 1,600 square kilometers with a population of 93,770. Permit Modification Application. AC's proposed 60 dBu contour would encompass 1,886 square kilometers with a population of 96,809. AC Application.

³³ *Second Comparative Order* at *21, para 102 (“We delegate to the staff authority to act on any routine matter that may be raised, including whether the applicant is eligible, as certified, for the points awarded herein, and whether the application complies with all relevant Commission rules and policies. The staff need not refer such matters to the full Commission unless the staff determines that the issues are new or novel, or raise a substantial and material question regarding the award of points.”).



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 24-508

Released: May 31, 2024

MEDIA BUREAU ANNOUNCES FILING WINDOW FOR QUALIFIED LOW POWER TELEVISION STATIONS TO CONVERT TO CLASS A STATUS PURSUANT TO THE LOW POWER PROTECTION ACT MAY 31, 2024 – MAY 30, 2025

All Rules Implementing the Low Power Protection Act are Effective

MB Docket No. 23-126

By this Public Notice the Media Bureau announces that all rules implementing the Low Power Protection Act (LPPA) are in effect and the one-year window for qualified low power television (LPTV) stations to apply for Class A status will open on May 31, 2024 and close on May 30, 2025 (LPPA Window).¹

On December 12, 2023, the Commission released a *Report and Order (Order)* that adopted rules to implement the LPPA.² The LPPA provides qualifying LPTV stations with a limited window of opportunity to apply for primary spectrum use status as Class A television stations.³ The rules adopted in the *Order* took effect on February 9, 2024, and sections 73.6030(c), 73.6030(d), 73.3580(c)(7), and the revisions to FCC Form 2100, Schedule F, which contain new or modified information collection requirements that required review by OMB,⁴ were approved by OMB on May 7, 2024.⁵ A notice announcing that these rules and other information collections were approved was published today in the

¹ The Bureau previously stated that at the conclusion of the OMB review process it would announce the effective date of the information collections in a document published in the Federal Register and thereafter, once the revised application is available for use by applicants, issue a Public Notice establishing the one-year LPPA Window. See *Media Bureau Announces Effective Date of Certain Low Power Protection Act Rules*, MB Docket No. 23-126, Public Notice, DA 24-26 (MB Jan. 10, 2024). Because revisions to the necessary application are complete, we are simultaneously publishing the aforementioned Federal Register notice and announcing the dates for the LPPA Window.

² Low Power Protection Act, Pub. L. 117-344, 136 Stat. 6193 (2023); *Implementation of the Low Power Protection Act*, MB Docket No. 23-126, Report and Order, FCC 23-112 (rel. Dec. 12, 2023) (*Order*).

³ See *Order* at para. 1.

⁴ See *Order* at para. 61 & Appx. B (Final Rules); 47 CFR §§ 73.6030(c) (Application Requirements); 73.6030(d) (Licensing Requirements); 73.3580(c)(7) (Local public notice of filing of broadcast applications). The information collection requirements contained in the rules that require OMB approval are subject to the Paperwork Reduction Act of 1995 (PRA). Pub. L. No. 104-13, 109 Stat. 163 (1995) (codified in Chapter 35 of title 44 U.S.C.). See Federal Communications Commission, 47 CFR Part 73, Low Power Protection Act, Final Rule, 89 FR 1466 (Jan. 10, 2024); *Media Bureau Announces Effective Date of Certain Low Power Protection Act Rules*, Public Notice, DA 24-26 (MB Jan. 10, 2024).

⁵ See Notices of Office of Management and Budget Action, ICR Reference Nos. 202403-3060-012 (OMB Control No. 3060-0928) and 202403-3060-013 (OMB Control No. 3060-1326), May 7, 2024.

Federal Register, and these rules and other information collections are effective.⁶

Applications in the LPPA Window will be filed electronically via the Commission's Licensing and Management System (LMS) on FCC Form 2100, Schedule F⁷ and applicants will be required to pay the requisite fee for an application for a "new license" for a Class A station (\$425.00).

In order to be eligible for Class A status under the LPPA, a qualified LPTV licensee must have complied with the eligibility requirements set forth in section 73.6030(b) of the Commission's rules⁸ and complete all required certifications in FCC Form 2100, Schedule F. A qualified LPTV licensee is required to submit, as part of its application, a statement concerning the station's operating schedule during the 90 days preceding January 5, 2023 and a list of locally produced programs aired during that time period.⁹ The applicant may also submit, or may be requested by Commission staff to submit, other documentation to support its certification that the licensee meets the eligibility requirements for a Class A license under the LPPA.¹⁰ All stations afforded Class A status under the LPPA are reminded that they will be required to continue to comply with the service requirements applicable to Class A stations in order to maintain such status.¹¹

For additional information, contact Kim Matthews, Policy Division, Media Bureau at Kim.Matthews@fcc.gov or (202) 418-2154; Emily Harrison, Video Division, Media Bureau at Emily.Harrison@fcc.gov or (202) 418-1665; Kevin Harding, Video Division, Media Bureau at Kevin.Harding@fcc.gov or (202) 418-7077; or Mark Colombo, Video Division, Media Bureau at Mark.Colombo@fcc.gov or (202) 418-7611.

-- FCC --

⁶ See 89 FR 47088. See also *Order* at para. 62 (delegating authority to the Media Bureau for the purpose of amending FCC Form 2100 as necessary to implement the licensing process adopted in the *Order* and to establish the one-year application filing window once the revised form is available for use by applicants).

⁷ Instructions on completing Form 2100, Schedule F are available at <https://docs.fcc.gov/public/attachments/DOC-332131A1.pdf>.

⁸ 47 CFR § 73.6030(b) (Eligibility Requirements).

⁹ 47 CFR § 73.6030(c) (Application Requirements).

¹⁰ *Id.*

¹¹ 47 CFR §§ 73.6030(e), (f). A station afforded Class A status under the LPPA must continue to operate in a Designated Market Areas (DMA) with not more than 95,000 television households in order to maintain its Class A status, subject to certain exceptions, and is not 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 its Class A status. 47 CFR § 73.6030(e).

APPENDIX
INSTRUCTIONS FOR ACCESSING AND FILING ON LMS

General Log-in Instructions

1. Access the LMS applicant data entry home page here:

<https://enterpriseefiling.fcc.gov/dataentry/login.html>

2. Log-in using the FRN associated with the station.

For more information and help using the LMS system, contact: (877) 480-3201 TTY: (717) 333-2824.

Application For Conversion to Class A

1. Click on the “Authorizations” tab on the left top of the page.
2. Click on the file number of the current license for the station.
3. Click on the “File an Application” button.
4. Select “Modification of License, Convert from LPTV to Class A (Schedule F)” from the drop-down menu.
5. Complete the application and click “Submit.”



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 24-509

Released: May 31, 2024

WIRELINE COMPETITION BUREAU ANNOUNCES PROCEDURES FOR OBTAINING CONFIDENTIAL INFORMATION FOR 2024 ANNUAL ACCESS CHARGE TARIFF FILINGS

WC Docket No. 24-41

By this Public Notice and Protective Order, the Wireline Competition Bureau (Bureau) sets forth the procedures governing the treatment of confidential information submitted by carriers in connection with the July 2024 annual access charge tariff filings.¹

This year, price cap incumbent local exchange carriers (LECs or carriers) and rate-of-return incumbent LECs subject to sections 61.38, 61.39, and 61.50 of the Commission's rules, must file annual access charge tariffs to be effective July 2, 2024.² Based on past experience, we anticipate that incumbent LECs will request confidential treatment for certain data filed in support of their 2024 annual access charge tariff filing.³ We therefore provide guidance to carriers and interested parties regarding the procedures they must follow to request access to confidential information filed with the 2024 annual access charge tariff filings.

In the *Tariff Streamlining Order*, the Commission adopted a standard protective order governing the confidential treatment of streamlined tariffs and accompanying material filed pursuant to section 204(a)(3) of the Communications Act of 1934, as amended.⁴ Carriers or interested parties seeking access to confidential information filed in this year's annual access charge tariff filing must comply with the protective order contained in the *Tariff Streamlining Order*, as updated and modified herein. Because there is limited time for review before annual access charge tariffs become effective on July 2, 2024, we recommend that carriers and interested parties complete the necessary Declaration ahead of time to expedite obtaining and reviewing confidential information. We provide the Protective Order and Declaration as an Attachment to this Public Notice.

For more information about this Public Notice and Protective Order, please contact Christopher S. Koves, Pricing Policy Division, Wireline Competition Bureau, Christopher.Koves@fcc.gov.

- FCC -

¹ *July 1, 2024 Annual Access Charge Tariff Filings*, WC Docket No. 24-41, Order, DA 24-434 (WCB May 10, 2024) (2024 TRP Order).

² *July 1, 2024 Annual Access Charge Tariff Filings*, WC Docket No. 24-41, Order, DA 24-294 (WCB Mar. 27, 2024). Ordinarily the effective date for annual access charge tariff filings is July 1, however, for this year's filings the Bureau established July 2, 2024 as the effective date. *Id.*

³ *Id.*; 2024 TRP Order.

⁴ *Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996*, CC Docket No. 96-187, Report and Order, 12 FCC Rcd 2170, 2210-16, paras. 87-95 (1997) (*Tariff Streamlining Order*); see 47 U.S.C. § 204(a)(3).

ATTACHMENT

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

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

PROTECTIVE ORDER

Adopted: May 31, 2024

Released: May 31, 2024

By the Chief, Wireline Competition Bureau:

1. This Protective Order is intended to facilitate and expedite the review of documents containing trade secrets and commercial or financial information that is privileged or confidential obtained from a Submitting Party. This Protective Order governs the manner in which “Confidential Information,” as that term is defined herein, is to be treated. This Protective Order is not intended to constitute a resolution of the merits concerning whether any Confidential Information would be released publicly by the Commission upon a proper request under the Freedom of Information Act or other applicable law or regulation, including 47 CFR § 0.442.

2. *Definitions.*

- a. Authorized Representative. “Authorized Representative” shall have the meaning set forth in Paragraph seven.
- b. Commission. “Commission” means the Federal Communications Commission or any arm of the Commission acting pursuant to delegated authority.
- c. Confidential Information. “Confidential Information” means: (i) information submitted to the Commission by the Submitting Party that has been so designated by the Submitting Party and which is not otherwise available from publicly available sources and that is subject to protection under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the Commission’s implementing rules. Confidential Information includes additional copies of Confidential Information or any notes or other information derived from Confidential Information.
- d. Declaration. “Declaration” means the Appendix to this Protective Order.
- e. Reviewing Party. “Reviewing Party” means a person or entity participating in this proceeding or considering in good faith filing a document in this proceeding.
- f. Submitting Party. “Submitting Party” means a person or entity that seeks confidential treatment of Confidential Information pursuant to this Protective Order.
- g. Third-Party Interest Holder. “Third-Party Interest Holder” means a person who is not a Submitting Party who has a confidentiality interest in Confidential Information submitted pursuant to this Protective Order.

3. *Claim of Confidentiality.* The Submitting Party may designate information as “Confidential Information” consistent with the definition of that term in Paragraph 1 of this Protective Order. By designating documents and information as “Confidential under this Protective Order, a

Submitting Party also will be deemed to have submitted a request that the material not be made routinely available for public inspection under the Commission's rules.⁵ The Commission may, *sua sponte* or upon petition, pursuant to 47 CFR §§ 0.459 & 0.461, determine that all or part of the information claimed as "Confidential Information" is not entitled to such treatment.

4. *Challenge to Designation.* Any person wishing to challenge the designation of a document, portion of a document or information as Confidential must file such a challenge at the Commission and serve it on the Submitting Party and any known Third-Party Interest Holders. The Submitting Party and any Third-Party Interest Holders must file any reply within five business days, and include a justification for treating the information as Confidential. The documents and information challenged will continue to be accorded confidential treatment until the Commission acts on the request and any timely motion for a judicial stay has been acted upon.⁶ Any decision on whether the materials should be accorded confidential treatment does not constitute a resolution of the merits concerning whether such information would be released publicly by the Commission upon an appropriate request under our rules implementing FOIA.⁷

5. *Procedures for Claiming Information is Confidential.* Confidential Information submitted to the Commission shall be filed under seal and shall bear on the front page in bold print: "CONTAINS PRIVILEGED AND CONFIDENTIAL INFORMATION - DO NOT RELEASE." Confidential Information shall be segregated by the Submitting Party from all non-Confidential Information submitted to the Commission. To the extent a document contains both Confidential Information and non-Confidential Information, the Submitting Party shall designate the specific portions of the document claimed to contain Confidential Information and shall also submit a redacted version not containing Confidential Information.

6. *Access to Confidential Information.* Confidential Information shall be made available only to Commission staff, Commission consultants and counsel to the Reviewing Parties, or if a Reviewing Party has no counsel, a person designated by the Reviewing Party, and as provided pursuant to paragraph 7. Before counsel to a Reviewing Party or such other designated person designated by the Reviewing Party may obtain access to Confidential Information, counsel, or such other designated person, must execute the appended Declaration. Consultants under contract to the Commission may obtain access to Confidential Information only if they have signed, as part of their employment contract, a non-disclosure agreement or if they execute the appended Declaration.

7. Counsel to a Reviewing Party or such other person designated pursuant to Paragraph 5 may disclose Confidential Information to other Authorized Representatives to whom disclosure is permitted under the terms of paragraph 7 of this Protective Order only after advising such Authorized Representatives of the terms and obligations of the Protective Order. In addition, before Authorized Representatives may obtain access to Confidential Information, each Authorized Representative must execute the appended Declaration. This Protective Order does not restrict a Submitting Party or its Counsel from disclosing or reviewing the Submitting Party's own Confidential Information

8. Authorized Representatives shall be limited to:

- a. Counsel for the Reviewing Parties to this proceeding, including in-house counsel actively engaged in the conduct of this proceeding and their associated attorneys, paralegals, clerical staff and other employees, to the extent reasonably necessary to render professional services in this proceeding;

⁵ See 47 CFR § 0.459(a).

⁶ Cf. 47 CFR §§ 0.459(g), 0.461(i).

⁷ See 47 CFR §§ 0.459(h), 0.461.

- b. Specified persons, including employees of the Reviewing Parties, requested by counsel to furnish technical or other expert advice or service, or otherwise engaged to prepare material for the express purpose of formulating filings in this proceeding, except that disclosure to persons in a position to use this information for competitive commercial or business purposes shall be prohibited; and
- c. Any person designated by the Commission in the public interest, upon such terms as the Commission may deem proper.

9. *Filing of Declaration.* Counsel for Reviewing Parties shall provide to the Submitting Party and the Commission a copy of the appended Declaration for each Authorized Representative within five (5) business days after the appended Declaration is executed, or by any other deadline that may be prescribed by the Commission.

10. *Procedure for Objecting to the Disclosure of Confidential Information to a Potential Reviewing Party.*⁸ Each Submitting Party and Third-Party Interest Holder shall have an opportunity to object to the disclosure of its Confidential Information to a person seeking to review that information pursuant to this Protective Order. A Submitting Party or Third-Party Interest Holder must file any such objection at the Commission and serve it on counsel for the person seeking access within three business days after receiving a copy of that person's Acknowledgment. Persons filing Acknowledgments shall not have access to Confidential Information before the period for filing objections has passed, unless both the Submitting Party and any known Third-Party Interest Holders waive this requirement. If a Submitting Party files additional documents containing Confidential Information, the Submitting Party shall notify any known Third-Party Interest Holders who have a confidentiality interest in the information before filing the additional documents. The Submitting Party shall file any objection to the disclosure of that additional Confidential Information to any Reviewing Party before or contemporaneous with the filing, and any Third-Party Interest Holder shall file any such objection as promptly as practicable. Until any timely objection is resolved by the Commission in favor of the person seeking access and, if a motion for a judicial stay is timely filed, until such a motion is acted upon, a person subject to an objection shall not have access to the relevant Confidential Information.⁹ If an objection is not timely filed with the Commission, the Commission will nonetheless consider the objection and retains its discretion to prohibit further access to Confidential Information by the Reviewing Party until the objection is resolved.

11. *Inspection of Confidential Information.* Confidential Information shall be maintained by a Submitting Party for inspection at two or more locations, at least one of which shall be in Washington, D.C. Inspection shall be carried out by Authorized Representatives upon reasonable notice, not to exceed one business day during normal business hours.

12. *Copies of Confidential Information.* The Submitting Party shall provide a copy of the Confidential Material to Authorized Representatives upon request and may charge a reasonable copying fee not to exceed twenty-five cents per page. Authorized Representatives may make additional copies of Confidential Information but only to the extent required and solely for the preparation and use in this

⁸ This paragraph describes the procedure for objecting to a specific individual being permitted to review Confidential Information pursuant to this Protective Order. If a party timely requests that certain information be entirely withheld from review by *any* individual under the Protective Order, we will not require that the information at issue be disclosed under the Protective Order until the Commission resolves the objection, and if a timely motion for judicial stay is filed, until the court rules upon the stay motion.

⁹ An objection ordinarily will first be ruled upon by the Wireline Competition Bureau (Bureau). If the Bureau rejects the objection, the objecting party will be provided 10 business days to file an Application for Review with the Commission; if an Application for Review is not filed within that time, the Confidential Information shall be made available to the Reviewing Party. If an Application for Review is timely filed and is denied by the Commission, the objecting party will be provided 10 business days to seek a judicial stay of the Commission's order; if a motion for stay is not filed within that time, the Confidential Information shall be made available to the Reviewing Party.

proceeding. Authorized Representatives must maintain a written record of any additional copies made and provide this record to the Submitting Party upon reasonable request. The original copy and all other copies of the Confidential Information shall remain in the care and control of Authorized Representatives at all times. Authorized Representatives having custody of any Confidential Information shall keep the documents properly secured at all times.

13. *Use of Confidential Information.* Confidential Information shall not be used by any person granted access under this Protective Order for any purpose other than for use in this proceeding (including any subsequent administrative or judicial review), shall not be used for competitive business purposes, and shall not be used or disclosed except in accordance with this Protective Order or with the prior written consent of the Submitting Party. This shall not preclude the use of any material or information that is in the public domain or has been developed independently by any other person who has not had access to the Confidential Information nor otherwise learned of its contents.

14. *Pleadings Using Confidential Information.* Submitting Parties and Reviewing Parties may, in any pleadings that they file in this proceeding, reference the Confidential Information, but only if they comply with the following procedures:

- a. Any portions of the pleadings that contain or disclose Confidential Information must be filed under seal;
- b. The portions containing or disclosing Confidential Information must be covered by a separate letter referencing this Protective Order;
- c. Each page of any Party's filing that contains or discloses Confidential Information subject to this Protective Order must be clearly marked: "Confidential Information included pursuant to Protective Order, WC Docket No. 24-41"; and
- d. The confidential portion(s) of the pleading, to the extent they are required to be served, shall be served upon the Secretary of the Commission, the Submitting Party, and those Reviewing Parties that have signed the appended Declaration. Such confidential portions shall be served under seal, and shall not be placed in the Commission's Public File unless the Commission directs otherwise (with notice to the Submitting Party and an opportunity to comment on such proposed disclosure). A Submitting Party or a Reviewing Party filing a pleading containing Confidential Information shall also file a redacted copy of the pleading containing no Confidential Information, which copy shall be placed in the Commission's public files. A Submitting Party or a Reviewing Party may provide courtesy copies of pleadings containing Confidential Information to Commission staff so long as the notation required by subsection c. of this paragraph is not removed.

15. *Courtesy Copies.* Filers are encouraged to email an electronic version of courtesy copies described in this Protective Order to Christopher Koves, Pricing Policy Division, Wireline Competition Bureau, at Christopher.Koves@fcc.gov. Courtesy copies containing Confidential Information must be password protected and the password communicated to Commission staff via telephone or in a separate email. Submissions may be broken into multiple emails when necessary.

16. *Subpoena by Courts, Departments, or Agencies.* If a court, or a federal or state department or agency, issues a subpoena for or orders the production of Confidential Information that a party has obtained under the terms of this Protective Order, such party shall promptly notify each relevant Submitting Party and each known Third-Party Interest Holder of the pendency of such subpoena or order. Consistent with the independent authority of any court, department or agency, such notification must be accomplished such that each Submitting Party and Third-Party Interest Holder has sufficient opportunity to oppose such production prior to the production or disclosure of any Confidential Information.

17. *Violations of Protective Order.* Should a Reviewing Party that has properly obtained access to Confidential Information under this Protective Order violate any of its terms, it shall

immediately convey that fact to the Commission and to the Submitting Party. Further, should such violation consist of improper disclosure or use of Confidential Information, the violating party shall take all necessary steps to remedy the improper disclosure or use. The Violating Party shall also immediately notify the Commission and the Submitting Party, in writing, of the identity of each party known or reasonably suspected to have obtained the Confidential Information through any such disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order, including, but not limited to, suspension or disbarment of attorneys from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential Information in this or any other Commission proceeding. Nothing in this Protective Order shall limit any other rights and remedies available to the Submitting Party at law or equity against any party using Confidential Information in a manner not authorized by this Protective Order.

18. *Termination of Proceeding.* Within two weeks after final resolution of this proceeding (which includes any administrative or judicial appeals), Authorized Representatives of Reviewing Parties shall destroy or return to the Submitting Party all Confidential Information as well as all copies and derivative materials made, and shall certify in a writing served on the Commission and the Submitting Party that no material whatsoever derived from such Confidential Information has been retained by any person having access thereto, except that counsel to a Reviewing Party may retain two copies of pleadings submitted on behalf of the Reviewing Party. Any Confidential Information contained in any copies of pleadings retained by counsel to a Reviewing Party or in materials that have been destroyed pursuant to this paragraph shall be protected from disclosure or use indefinitely in accordance with paragraphs 11 and 12 of this Protective Order unless such Confidential Information is released from the restrictions of this Protective Order either through agreement of the parties, or pursuant to the order of the Commission or a court having jurisdiction.

19. *No Waiver of Confidentiality.* Disclosure of Confidential Information as provided herein shall not be deemed a waiver by the Submitting Party of any privilege or entitlement to confidential treatment of such Confidential Information. Reviewing Parties, by viewing these materials: (a) agree not to assert any such waiver; (b) agree not to use information derived from any confidential materials to seek disclosure in any other proceeding; and (c) agree that accidental disclosure of Confidential Information shall not be deemed a waiver of the privilege.

20. *Additional Rights Preserved.* The entry of this Protective Order is without prejudice to the rights of the Submitting Party to apply for additional or different protection where it is deemed necessary, or to the rights of Reviewing Parties to request further or renewed disclosure of Confidential Information.

21. *Effect of Protective Order.* This Protective Order constitutes an order of the Commission and an agreement between the Reviewing Party, executing the appended Declaration, and the Submitting Party.

22. *Authority.* This Protective Order is issued pursuant to sections 4(i) and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), and 47 CFR § 0.457(d).

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief, Wireline Competition Bureau

APPENDIX TO PROTECTIVE ORDER

DECLARATION

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

I, _____, hereby declare under penalty of perjury that I have read the Protective Order that has been entered by the Commission in this proceeding, and that I agree to be bound by its terms pertaining to the treatment of Confidential Information submitted by parties to this proceeding. I understand that the Confidential Information shall not be disclosed to anyone except in accordance with the terms of the Protective Order and shall be used only for purposes of the proceedings in this matter. I acknowledge that it is my obligation to ensure that there is no disclosure of Confidential Information in my possession or in the possession of those who work for me, except as provided in the Protective Order. I certify that I have verified that there are procedures in place at my firm or office to prevent the unauthorized disclosure of Confidential Information. I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission. I acknowledge that this Protective Order is also a binding agreement with the Submitting Party.

(signed) _____

(printed name) _____

(representing) _____

(title) _____

(employer) _____

(address) _____

(phone) _____

(date) _____

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

In the Matter of	)	
	)	
Clear Rate Communications	)	Complaint No. 7023535
	)	
Complaint Regarding	)	
Unauthorized Change of	)	
Subscriber's Telecommunications Carrier	)	

ORDER

Adopted: May 30, 2024

Released: May 31, 2024

By the Deputy Chief, Consumer Policy Division, Consumer and Governmental Affairs Bureau:

1. In this Order, we consider a complaint alleging that Clear Rate Communications (Clear Rate) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant as required by the Commission's rules.¹ We conclude that Clear Rate's actions violated the Commission's slamming rules, and we grant Complainant's complaint.

2. Section 258 of the Communications Act of 1934, as amended (the Act), prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.² The Commission's implementing rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.³ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that satisfies our rules; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an appropriately qualified independent third party to verify the order.⁴ The Commission has also adopted rules to limit the liability of subscribers when an unauthorized carrier change occurs, and to require carriers involved in slamming practices to compensate subscribers whose carriers were changed without authorization.⁵

3. The Commission's slamming rules prohibit misrepresentations on sales calls to further reduce the incidence of slamming.⁶ Under the rules, upon a finding of material misrepresentation during

¹ See Informal Complaint No. 7023535 (May. 10, 2024); *see also* 47 CFR §§ 64.1100 – 64.1190.

² 47 U.S.C. § 258(a).

³ See 47 CFR § 64.1120.

⁴ See *id.* § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. *Id.* § 64.1130.

⁵ These rules require the unauthorized carrier to absolve the subscriber where the subscriber has not paid his or her bill. If the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change. See *id.* §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.* Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150 percent of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50 percent of all charges paid by the subscriber to the unauthorized carrier. See *id.* §§ 64.1140, 64.1170.

⁶ *Id.* § 64.1120(a)(1)(i)(A).

the sales call, the consumer's authorization to change carriers will be deemed invalid even if the carrier has some evidence of consumer authorization of a carrier switch, e.g., a third-party verification (TPV) recording. Sales misrepresentations may not be cured by a facially valid TPV.⁷ The rule provides that a consumer's credible allegation of misrepresentation shifts the burden of proof to the carrier to provide evidence to rebut the consumer's claim regarding misrepresentation. The Commission made clear that an accurate and complete recording of the sales call may be the carrier's best persuasive evidence to rebut the consumer's claim that a misrepresentation was made on the sales call.⁸

4. We received Complainant's complaint alleging that Complainant's telecommunications service provider had been changed from Frontier Communication to Clear Rate without their authorization.⁹ Complainant stated that "On April 17, 2024, I received a call from a man who said he was from Frontier Communication. He said my account was going to be switched from Frontier to Clear Rate Communications. My account was switched and it has been a nightmare ever since."¹⁰ Complainant explained that the phone in question is for their small business and it resulted in lost revenue daily due to technical errors.¹¹ Complainant states that "Clear Rate is incompetent to put it mildly but the disturbing part is their sales rep posed as someone from Frontier...I would have never switched but was told I didn't have a choice."¹²

5. Pursuant to our rules, we notified Clear Rate of the complaint, directing the company to address the allegation of misrepresentation and to provide evidence to rebut the claim.¹³ Clear Rate responded, stating that while initial confusion during sales calls is understandable, the completion of TPV and Quality Assurance calls, along with email engagement, suggests that complainant had ample opportunity to clarify any misunderstandings.¹⁴ Clear Rate also provided two audio recordings—the TPV recording and a recording Clear Rate characterized as a "quality assurance call." Clear Rate did not address Complainant's misrepresentation claim and did not provide a recording of the sales call or any other evidence related to the sales call.

6. Based on the evidence in the record, we find Complainant's allegation of a sales call misrepresentation to be credible. We further find that Clear Rate has failed to provide persuasive evidence to rebut Complainant's misrepresentation claim and therefore that Complainant's authorization to change carriers is invalid. As the Commission stated in the *2018 Slamming Order*, "[w]hen a consumer's decision to switch carriers is predicated on false information provided in a sales call, that consumer's authorization to switch carriers can no longer be considered binding."¹⁵ We therefore find

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. 7023535.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ 47 CFR § 1.719 (Commission procedure for informal complaints filed pursuant to section 258 of the Act); *id.* § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier). In the notification, we directed Clear Rate to respond to the specific misrepresentation allegation and to provide any evidence to rebut it.

¹⁴ See Clear Rate Response to Informal Complaint No. 7023535 (May. 14, 2024); see also 47 CFR § 64.1160.

¹⁵ *2018 Slamming Order*, 33 FCC Rcd at 5779, para. 18 (citing *Advantage Forfeiture Order*, 32 FCC Rcd 3723, 3725-30, paras. 7-13 (2017) (finding that the carrier's TPV recordings did not disprove that unlawful

that Clear Rate's actions resulted in an unauthorized change in Complainant's telecommunications service provider, as defined by the rules, and we discuss Clear Rate's liability below.¹⁶

7. Clear Rate must remove all charges incurred for service provided to Complainant for the first 30 days after the alleged unauthorized change in accordance with the Commission's liability rules.¹⁷ We have determined that Complainant is entitled to absolution for the charges incurred during the first 30 days after the unauthorized change occurred and that neither the Complainant's authorized carrier nor Clear Rate may pursue any collection against Complainant for those charges.¹⁸ Any charges imposed by Clear Rate on the Complainant for service provided after this 30-day period shall be paid by the Complainant to the authorized carrier at the rates the Complainant was paying the authorized carrier at the time of the unauthorized change of their telecommunications service provider.¹⁹

8. Accordingly, IT IS ORDERED that, pursuant to section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and sections 0.141, 0.361, and 1.719 of the Commission's rules, 47 CFR §§ 0.141, 0.361, 1.719, the complaint filed against Clear Rate Communications IS GRANTED.

9. IT IS FURTHER ORDERED that, pursuant to section 64.1170(d) of the Commission's rules, 47 CFR § 64.1170(d), Complainant is entitled to absolution for the charges incurred during the first 30 days after the unauthorized change occurred and that Clear Rate Communications may not pursue any collection against Complainant for those charges.

10. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kristi Thornton
Deputy Chief
Consumer Policy Division
Consumer and Governmental Affairs Bureau

misrepresentations were made during the telemarketing calls and further, that questions posed during the separate TPV calls did not cure those misrepresentations)).

¹⁶ If Complainant is unsatisfied with the resolution of the complaint, Complainant may file a formal complaint with the Commission pursuant to section 1.721 of the Commission's rules, 47 CFR § 1.721. Such filing will be deemed to relate back to the filing date of Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. *See id.* § 1.719.

¹⁷ *See id.* § 64.1160(b).

¹⁸ *See id.* § 64.1160(d).

¹⁹ *See id.* §§ 64.1140, 64.1160.

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

In the Matter of	)	
	)	
Clear Rate Communications	)	Complaint No. 7003739
	)	
Complaint Regarding	)	
Unauthorized Change of	)	
Subscriber's Telecommunications Carrier	)	

ORDER

Adopted: May 30, 2024

Released: May 31, 2024

By the Deputy Chief, Consumer Policy Division, Consumer and Governmental Affairs Bureau:

1. In this Order, we consider a complaint alleging that Clear Rate Communications (Clear Rate) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant as required by the Commission's rules.¹ We conclude that Clear Rate's actions violated the Commission's slamming rules, and we grant Complainant's complaint.

2. Section 258 of the Communications Act of 1934, as amended (the Act), prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.² The Commission's implementing rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.³ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that satisfies our rules; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an appropriately qualified independent third party to verify the order.⁴ The Commission has also adopted rules to limit the liability of subscribers when an unauthorized carrier change occurs, and to require carriers involved in slamming practices to compensate subscribers whose carriers were changed without authorization.⁵

3. The Commission's slamming rules prohibit misrepresentations on sales calls to further reduce the incidence of slamming.⁶ Under the rules, upon a finding of material misrepresentation during

¹ See Informal Complaint No. 7003739 (May. 1, 2024); *see also* 47 CFR §§ 64.1100 – 64.1190.

² 47 U.S.C. § 258(a).

³ See 47 CFR § 64.1120.

⁴ See *id.* § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. *Id.* § 64.1130.

⁵ These rules require the unauthorized carrier to absolve the subscriber where the subscriber has not paid his or her bill. If the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change. See *id.* §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.* Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150 percent of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50 percent of all charges paid by the subscriber to the unauthorized carrier. See *id.* §§ 64.1140, 64.1170.

⁶ *Id.* § 64.1120(a)(1)(i)(A).

the sales call, the consumer's authorization to change carriers will be deemed invalid even if the carrier has some evidence of consumer authorization of a carrier switch, e.g., a third-party verification (TPV) recording. Sales misrepresentations may not be cured by a facially valid TPV.⁷ The rule provides that a consumer's credible allegation of misrepresentation shifts the burden of proof to the carrier to provide evidence to rebut the consumer's claim regarding misrepresentation. The Commission made clear that an accurate and complete recording of the sales call may be the carrier's best persuasive evidence to rebut the consumer's claim that a misrepresentation was made on the sales call.⁸

4. We received Complainant's complaint alleging that Complainant's telecommunications service provider had been changed from Verizon to Clear Rate without her authorization.⁹ Complainant stated that "On April 29, 2024, I received a cold call on my business landline (that I have through Verizon) from . . . 312-219-2452. The woman misled me by representing herself as a Verizon employee more than once."¹⁰ Complainant explained that "I later learned she works for Clear Rate when I called Verizon two days later to report my caller ID no longer worked."¹¹ Verizon informed Complainant that her phone number had been ported out from Clear Rate. Complainant stated that "I never knew I wasn't talking to a Verizon employee who stated she was calling to make sure I was paying a good rate."¹²

5. Pursuant to our rules, we notified Clear Rate of the complaint, directing the company to address the allegation of misrepresentation and to provide evidence to rebut the claim.¹³ Clear Rate responded, stating that while initial confusion during sales calls is understandable, the completion of TPV and Quality Assurance calls, along with email engagement, suggests that complainant had ample opportunity to clarify any misunderstandings.¹⁴ Clear Rate also provided two audio recordings—the TPV recording and a recording Clear Rate characterized as a "quality assurance call." Clear Rate did not address Complainant's misrepresentation claim and did not provide a recording of the sales call or any other evidence related to the sales call.

6. Based on the evidence in the record, we find Complainant's allegation of a sales call misrepresentation to be credible. We further find that Clear Rate has failed to provide persuasive evidence to rebut Complainant's misrepresentation claim and therefore that Complainant's authorization to change carriers is invalid. As the Commission stated in the *2018 Slamming Order*, "[w]hen a consumer's decision to switch carriers is predicated on false information provided in a sales call, that consumer's authorization to switch carriers can no longer be considered binding."¹⁵ We therefore find

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. 7003739.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ 47 CFR § 1.719 (Commission procedure for informal complaints filed pursuant to section 258 of the Act); *id.* § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier). In the notification, we directed Clear Rate to respond to the specific misrepresentation allegation and to provide any evidence to rebut it.

¹⁴ See Clear Rate Response to Informal Complaint No. 7003739 (May. 6, 2024); *see also* 47 CFR § 64.1160.

¹⁵ *2018 Slamming Order*, 33 FCC Rcd at 5779, para. 18 (citing *Advantage Forfeiture Order*, 32 FCC Rcd 3723, 3725-30, paras. 7-13 (2017) (finding that the carrier's TPV recordings did not disprove that unlawful misrepresentations were made during the telemarketing calls and further, that questions posed during the separate TPV calls did not cure those misrepresentations)).

that Clear Rate's actions resulted in an unauthorized change in Complainant's telecommunications service provider, as defined by the rules, and we discuss Clear Rate's liability below.¹⁶

7. Clear Rate must remove all charges incurred for service provided to Complainant for the first 30 days after the alleged unauthorized change in accordance with the Commission's liability rules.¹⁷ We have determined that Complainant is entitled to absolution for the charges incurred during the first 30 days after the unauthorized change occurred and that neither the Complainant's authorized carrier nor Clear Rate may pursue any collection against Complainant for those charges.¹⁸ Any charges imposed by Clear Rate on the Complainant for service provided after this 30-day period shall be paid by the Complainant to the authorized carrier at the rates the Complainant was paying the authorized carrier at the time of the unauthorized change of their telecommunications service provider.¹⁹

8. Accordingly, IT IS ORDERED that, pursuant to section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and sections 0.141, 0.361, and 1.719 of the Commission's rules, 47 CFR §§ 0.141, 0.361, 1.719, the complaint filed against Clear Rate Communications IS GRANTED.

9. IT IS FURTHER ORDERED that, pursuant to section 64.1170(d) of the Commission's rules, 47 CFR § 64.1170(d), Complainant is entitled to absolution for the charges incurred during the first 30 days after the unauthorized change occurred and that Clear Rate Communications may not pursue any collection against Complainant for those charges.

10. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kristi Thornton
Deputy Chief
Consumer Policy Division
Consumer and Governmental Affairs Bureau

¹⁶ If Complainant is unsatisfied with the resolution of the complaint, Complainant may file a formal complaint with the Commission pursuant to section 1.721 of the Commission's rules, 47 CFR § 1.721. Such filing will be deemed to relate back to the filing date of Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. *See id.* § 1.719.

¹⁷ *See id.* § 64.1160(b).

¹⁸ *See id.* § 64.1160(d).

¹⁹ *See id.* §§ 64.1140, 64.1160.

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

In the Matter of	)	
	)	
Clear Rate Communications	)	Complaint No. 7031145
	)	
Complaint Regarding	)	
Unauthorized Change of	)	
Subscriber's Telecommunications Carrier	)	

ORDER

Adopted: May 30, 2024

Released: May 31, 2024

By the Deputy Chief, Consumer Policy Division, Consumer and Governmental Affairs Bureau:

1. In this Order, we consider a complaint alleging that Clear Rate Communications (Clear Rate) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant as required by the Commission's rules.¹ We conclude that Clear Rate's actions violated the Commission's slamming rules, and we grant Complainant's complaint.

2. Section 258 of the Communications Act of 1934, as amended (the Act), prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.² The Commission's implementing rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.³ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that satisfies our rules; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an appropriately qualified independent third party to verify the order.⁴ The Commission has also adopted rules to limit the liability of subscribers when an unauthorized carrier change occurs, and to require carriers involved in slamming practices to compensate subscribers whose carriers were changed without authorization.⁵

3. The Commission's slamming rules prohibit misrepresentations on sales calls to further reduce the incidence of slamming.⁶ Under the rules, upon a finding of material misrepresentation during

¹ See Informal Complaint No. 7031145 (May. 15, 2024); *see also* 47 CFR §§ 64.1100 – 64.1190.

² 47 U.S.C. § 258(a).

³ See 47 CFR § 64.1120.

⁴ See *id.* § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. *Id.* § 64.1130.

⁵ These rules require the unauthorized carrier to absolve the subscriber where the subscriber has not paid his or her bill. If the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change. See *id.* §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.* Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150 percent of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50 percent of all charges paid by the subscriber to the unauthorized carrier. See *id.* §§ 64.1140, 64.1170.

⁶ *Id.* § 64.1120(a)(1)(i)(A).

the sales call, the consumer's authorization to change carriers will be deemed invalid even if the carrier has some evidence of consumer authorization of a carrier switch, e.g., a third-party verification (TPV) recording. Sales misrepresentations may not be cured by a facially valid TPV.⁷ The rule provides that a consumer's credible allegation of misrepresentation shifts the burden of proof to the carrier to provide evidence to rebut the consumer's claim regarding misrepresentation. The Commission made clear that an accurate and complete recording of the sales call may be the carrier's best persuasive evidence to rebut the consumer's claim that a misrepresentation was made on the sales call.⁸

4. We received Complainant's complaint alleging that Complainant's telecommunications service provider had been changed from Verizon to Clear Rate without their authorization.⁹ Complainant stated that they "received a phone call from Clear Rate Communications claiming to be part of Verizon. Informing me that Verizon was not carrying our DSL line anymore."¹⁰ Complainant explained that "I responded that I didn't care if we had to upgrade as long as we stayed with Verizon."¹¹ According to Complainant, they sent a bill "and they took our lines from Verizon."¹² Complainant states that "I immediately contacted Verizon and had them moved back...I still have a copy of the bill they sent us."¹³

5. Pursuant to our rules, we notified Clear Rate of the complaint, directing the company to address the allegation of misrepresentation and to provide evidence to rebut the claim.¹⁴ Clear Rate responded, stating that while initial confusion during sales calls is understandable, the completion of TPV and Quality Assurance calls, along with email engagement, suggests that complainant had ample opportunity to clarify any misunderstandings.¹⁵ Clear Rate also provided two audio recordings—the TPV recording and a recording Clear Rate characterized as a "quality assurance call." Clear Rate did not address Complainant's misrepresentation claim and did not provide a recording of the sales call or any other evidence related to the sales call.

6. Based on the evidence in the record, we find Complainant's allegation of a sales call misrepresentation to be credible. We further find that Clear Rate has failed to provide persuasive evidence to rebut Complainant's misrepresentation claim and therefore that Complainant's authorization to change carriers is invalid. As the Commission stated in the *2018 Slamming Order*, "[w]hen a consumer's decision to switch carriers is predicated on false information provided in a sales call, that consumer's authorization to switch carriers can no longer be considered binding."¹⁶ We therefore find

⁷ See *Protecting Consumers from Unauthorized Carrier Changes and Related Unauthorized Charges*, 33 FCC Rcd 5773, 5778-80, paras. 17-19 (2018) (*2018 Slamming Order*); 47 CFR § 64.1120(a)(1)(i)(A).

⁸ See *2018 Slamming Order*, 33 FCC Rcd at 5781, para. 23. The Commission also stated that a carrier is uniquely positioned via its access to sales scripts, recordings, training, and other relevant materials relating to sales calls to proffer evidence to rebut a consumer's claims. *Id.*

⁹ See Informal Complaint No. 7031145.

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. 7031145 (May. 17, 2024); see also 47 CFR § 64.1160.

¹⁶ *2018 Slamming Order*, 33 FCC Rcd at 5779, para. 18 (citing *Advantage Forfeiture Order*, 32 FCC Rcd 3723, 3725-30, paras. 7-13 (2017) (finding that the carrier's TPV recordings did not disprove that unlawful misrepresentations were made during the telemarketing calls and further, that questions posed during the separate TPV calls did not cure those misrepresentations)).

that Clear Rate's actions resulted in an unauthorized change in Complainant's telecommunications service provider, as defined by the rules, and we discuss Clear Rate's liability below.¹⁷

7. Clear Rate must remove all charges incurred for service provided to Complainant for the first 30 days after the alleged unauthorized change in accordance with the Commission's liability rules.¹⁸ We have determined that Complainant is entitled to absolution for the charges incurred during the first 30 days after the unauthorized change occurred and that neither the Complainant's authorized carrier nor Clear Rate may pursue any collection against Complainant for those charges.¹⁹ Any charges imposed by Clear Rate on the Complainant for service provided after this 30-day period shall be paid by the Complainant to the authorized carrier at the rates the Complainant was paying the authorized carrier at the time of the unauthorized change of their telecommunications service provider.²⁰

8. Accordingly, IT IS ORDERED that, pursuant to section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and sections 0.141, 0.361, and 1.719 of the Commission's rules, 47 CFR §§ 0.141, 0.361, 1.719, the complaint filed against Clear Rate Communications IS GRANTED.

9. IT IS FURTHER ORDERED that, pursuant to section 64.1170(d) of the Commission's rules, 47 CFR § 64.1170(d), Complainant is entitled to absolution for the charges incurred during the first 30 days after the unauthorized change occurred and that Clear Rate Communications may not pursue any collection against Complainant for those charges.

10. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kristi Thornton
Deputy Chief
Consumer Policy Division
Consumer and Governmental Affairs Bureau

¹⁷ If Complainant is unsatisfied with the resolution of the complaint, Complainant may file a formal complaint with the Commission pursuant to section 1.721 of the Commission's rules, 47 CFR § 1.721. Such filing will be deemed to relate back to the filing date of Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. *See id.* § 1.719.

¹⁸ *See id.* § 64.1160(b).

¹⁹ *See id.* § 64.1160(d).

²⁰ *See id.* §§ 64.1140, 64.1160.

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

In the Matter of	)	
	)	
Clear Rate Communications	)	Complaint No. 6975805
	)	
Complaint Regarding	)	
Unauthorized Change of	)	
Subscriber's Telecommunications Carrier	)	

ORDER

Adopted: May 30, 2024

Released: May 31, 2024

By the Deputy Chief, Consumer Policy Division, Consumer and Governmental Affairs Bureau:

1. In this Order, we consider a complaint alleging that Clear Rate Communications (Clear Rate) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant as required by the Commission's rules.¹ We conclude that Clear Rate's actions violated the Commission's slamming rules, and we grant Complainant's complaint.

2. Section 258 of the Communications Act of 1934, as amended (the Act), prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.² The Commission's implementing rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.³ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that satisfies our rules; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an appropriately qualified independent third party to verify the order.⁴ The Commission has also adopted rules to limit the liability of subscribers when an unauthorized carrier change occurs, and to require carriers involved in slamming practices to compensate subscribers whose carriers were changed without authorization.⁵

3. The Commission's slamming rules prohibit misrepresentations on sales calls to further reduce the incidence of slamming.⁶ Under the rules, upon a finding of material misrepresentation during

¹ See Informal Complaint No. 6975805 (Apr. 29, 2024); see also 47 CFR §§ 64.1100 – 64.1190.

² 47 U.S.C. § 258(a).

³ See 47 CFR § 64.1120.

⁴ See *id.* § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. *Id.* § 64.1130.

⁵ These rules require the unauthorized carrier to absolve the subscriber where the subscriber has not paid his or her bill. If the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change. See *id.* §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.* Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150 percent of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50 percent of all charges paid by the subscriber to the unauthorized carrier. See *id.* §§ 64.1140, 64.1170.

⁶ *Id.* § 64.1120(a)(1)(i)(A).

the sales call, the consumer's authorization to change carriers will be deemed invalid even if the carrier has some evidence of consumer authorization of a carrier switch, e.g., a third-party verification (TPV) recording. Sales misrepresentations may not be cured by a facially valid TPV.⁷ The rule provides that a consumer's credible allegation of misrepresentation shifts the burden of proof to the carrier to provide evidence to rebut the consumer's claim regarding misrepresentation. The Commission made clear that an accurate and complete recording of the sales call may be the carrier's best persuasive evidence to rebut the consumer's claim that a misrepresentation was made on the sales call.⁸

4. We received Complainant's complaint alleging that Complainant's telecommunications service provider had been changed from Verizon to Clear Rate without her authorization.⁹ Complainant stated that the person that called her "presented herself as an employee of Verizon, that is our telecom carrier at this property. The caller sounded elderly, like a sweet little grandmother. I would not have proceeded with the call had I known that I was not speaking with a representative of Verizon."¹⁰ Complainant explained that they "provide emergency maintenance to our all our residents 24/7/365. [Due to the unauthorized carrier change, the] residents at this property went without emergency, after-hours support for an entire month. After-hours emergencies can literally be a matter of life, or death, so this so-called "provider" put our residents, and our company at risk."¹¹

5. Pursuant to our rules, we notified Clear Rate of the complaint, directing the company to address the allegation of misrepresentation and to provide evidence to rebut the claim.¹² Clear Rate responded, stating that while initial confusion during sales calls is understandable, the completion of TPV and Quality Assurance calls, along with email engagement, suggests that complainant had ample opportunity to clarify any misunderstandings.¹³ Clear Rate also provided two audio recordings—the TPV recording and a recording Clear Rate characterized as a "quality assurance call." Clear Rate did not address Complainant's misrepresentation claim and did not provide a recording of the sales call or any other evidence related to the sales call.

6. Based on the evidence in the record, we find Complainant's allegation of a sales call misrepresentation to be credible. We further find that Clear Rate has failed to provide persuasive evidence to rebut Complainant's misrepresentation claim and therefore that Complainant's authorization to change carriers is invalid. As the Commission stated in the *2018 Slamming Order*, "[w]hen a consumer's decision to switch carriers is predicated on false information provided in a sales call, that consumer's authorization to switch carriers can no longer be considered binding."¹⁴ We therefore find that Clear Rate's actions resulted in an unauthorized change in Complainant's telecommunications service

⁷ See *Protecting Consumers from Unauthorized Carrier Changes and Related Unauthorized Charges*, 33 FCC Rcd 5773, 5778-80, paras. 17-19 (2018) (*2018 Slamming Order*); 47 CFR § 64.1120(a)(1)(i)(A).

⁸ See *2018 Slamming Order*, 33 FCC Rcd at 5781, para. 23. The Commission also stated that a carrier is uniquely positioned via its access to sales scripts, recordings, training, and other relevant materials relating to sales calls to proffer evidence to rebut a consumer's claims. *Id.*

⁹ See Informal Complaint No. 6975805.

¹⁰ *Id.*

¹¹ *Id.*

¹² 47 CFR § 1.719 (Commission procedure for informal complaints filed pursuant to section 258 of the Act); *id.* § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier). In the notification, we directed Clear Rate to respond to the specific misrepresentation allegation and to provide any evidence to rebut it.

¹³ See Clear Rate Response to Informal Complaint No. 6975805 (Apr. 23, 2024); see also 47 CFR § 64.1160.

¹⁴ *2018 Slamming Order*, 33 FCC Rcd at 5779, para. 18 (citing *Advantage Forfeiture Order*, 32 FCC Rcd 3723, 3725-30, paras. 7-13 (2017) (finding that the carrier's TPV recordings did not disprove that unlawful misrepresentations were made during the telemarketing calls and further, that questions posed during the separate TPV calls did not cure those misrepresentations)).

provider, as defined by the rules, and we discuss Clear Rate's liability below.¹⁵

7. Clear Rate must remove all charges incurred for service provided to Complainant for the first 30 days after the alleged unauthorized change in accordance with the Commission's liability rules.¹⁶ We have determined that Complainant is entitled to absolution for the charges incurred during the first 30 days after the unauthorized change occurred and that neither the Complainant's authorized carrier nor Clear Rate may pursue any collection against Complainant for those charges.¹⁷ Any charges imposed by Clear Rate on the Complainant for service provided after this 30-day period shall be paid by the Complainant to the authorized carrier at the rates the Complainant was paying the authorized carrier at the time of the unauthorized change of their telecommunications service provider.¹⁸

8. Accordingly, IT IS ORDERED that, pursuant to section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and sections 0.141, 0.361, and 1.719 of the Commission's rules, 47 CFR §§ 0.141, 0.361, 1.719, the complaint filed against Clear Rate Communications IS GRANTED.

9. IT IS FURTHER ORDERED that, pursuant to section 64.1170(d) of the Commission's rules, 47 CFR § 64.1170(d), Complainant is entitled to absolution for the charges incurred during the first 30 days after the unauthorized change occurred and that Clear Rate Communications may not pursue any collection against Complainant for those charges.

10. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kristi Thornton
Deputy Chief
Consumer Policy Division
Consumer and Governmental Affairs Bureau

¹⁵ If Complainant is unsatisfied with the resolution of the complaint, Complainant may file a formal complaint with the Commission pursuant to section 1.721 of the Commission's rules, 47 CFR § 1.721. Such filing will be deemed to relate back to the filing date of Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. *See id.* § 1.719.

¹⁶ *See id.* § 64.1160(b).

¹⁷ *See id.* § 64.1160(d).

¹⁸ *See id.* §§ 64.1140, 64.1160.



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-514

Released: June 3, 2024

WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON IDS GEORADAR'S REQUEST TO EXPAND ITS WAIVER OF SECTION 90.103(b)

WT Docket No. 17-358

Comments Due: July 3, 2024

Reply Comments Due: July 18, 2024

By this Public Notice, we seek comment on IDS GeoRadar's (IDSG) request for modification of its presently held waiver of section 90.103(b) of the Commission's rules to expand the authorized uses of its 76–77 GHz band system and to allow its new system to operate for these expanded uses.¹

Section 90.103(b) sets forth the Radiolocation Service frequency table with the available frequencies for assignment.² The 76–77 GHz band is part of the 76–81 GHz band designated for license-by-rule operation under part 95 for use only at airports for specific purposes.³ We previously granted IDSG a part 90 waiver of the Radiolocation Service frequency table in section 90.103(b) to permit equipment authorization and site-based licensing of its Hyper Definition Radar (HYDRA) system for use in underground mines, open pit mines, and tunnels; it operates today under conditions stipulated in the waiver grant.⁴

IDSG seeks to modify its current waiver by broadening the waiver to include its new system and expanding use of its HYDRA system and new system “in two specific scenarios”: (1) structural health monitoring, and (2) quarry, cut-slope, and natural landslide monitoring.⁵ While IDSG's HYDRA system already operates for the limited uses permitted by the waiver grant, IDSG also seeks to use its new system, which IDSG considers “the next iteration of HYDRA,” in these requested scenarios.⁶ In its request, IDSG sets forth fifteen technical requirements and operational conditions that it would adhere to if granted this expansion.⁷

¹ IDS GeoRadar Waiver Request, WT Docket No. 17-358, at 1 (submitted Jan. 26, 2024), <https://www.fcc.gov/ecfs/search/search-filings/filing/10126261055454> (IDSG Waiver Request).

² 47 CFR § 90.103(b).

³ *IDS GeoRadar Request for Waiver to Allow Licensing and Use of Its 76-77 GHz Band Radar in Mines and Tunnels*, WT Docket No. 17-358, Order, 33 FCC Rcd 8099, 8100, para. 3 (2018) (*IDSG Waiver Grant*); *see also* 47 CFR § 95.3331. We note that, in addition to the specified uses at airports, the 76–77 GHz band is allocated to the Federal and non-Federal Radio Astronomy service on a primary basis, and to the Amateur service and the Federal and non-Federal Space Research (space-to-earth) services on a secondary basis. *See* 47 CFR § 2.106; *IDSG Waiver Grant*, 33 FCC Rcd at 8100, para. 3 n.9.

⁴ IDSG Waiver Request at 1–3; *IDSG Waiver Grant*, 33 FCC Rcd at 8100–01.

⁵ IDSG Waiver Request at 12–17.

⁶ *Id.* at 3 & n.8; *see also IDSG Waiver Grant*, 33 FCC Rcd at 8101, para. 9.

⁷ *Id.* at 35–37.

The Bureau seeks comment on IDSG's request for modification. Interested parties may file comments on or before the dates indicated on the first page of this document.

Procedural Matters

To develop a complete record on the issues presented by the Request, the proceeding will be treated, for *ex parte* purposes, as a "permit-but-disclose" proceeding in accordance with section 1.1200(a) of the Commission's rules,⁸ subject to the requirements under section 1.1206(b).⁹ IDS GeoRadar filed its Request electronically in the Commission's Electronic Comment Filing System (ECFS). We have opened a new docket, **WT Docket No. 17-358**, to facilitate consideration of the Request and have moved IDS GeoRadar's Request into this docket. Parties should file all comments and reply comments in **WT Docket No. 17-358**.

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.¹⁰ Parties may file comments, identified by **WT Docket No. 17-358**, by any of the following methods:

- Electronic Filers: Comments may be filed electronically using the Internet by accessing ECFS: <https://www.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - U.S. Postal Service First-Class, Express, and Priority Mail must be addressed to 45 L Street NE, Washington, 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-19.¹¹

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

Ex Parte Rules. As stated above, the proceeding this Notice initiates shall be treated as a "permit-

⁸ 47 CFR § 1.1200(a).

⁹ 47 CFR § 1.1206(b).

¹⁰ See Federal Communications Commission, *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (June 30, 1998).

¹¹ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, DA 20-304 (Mar. 19, 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.¹² Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

Additional Information. For further information regarding this Public Notice, please contact Christine Parola, Mobility Division, Wireless Telecommunications Bureau, at Christine.Parola@fcc.gov.

-FCC-

¹² 47 CFR §§ 1.1200 *et seq.*



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-515

Released: June 3, 2024

REMINDER THAT ANNUAL SUMMARIES OF TRS COMPLAINTS ARE DUE JULY 1, 2024; CONTACT INFORMATION AND SUBSTANTIVE CHANGES IN TRS PROGRAMS MUST BE REPORTED

CG DOCKET NO. 03-123

The Federal Communications Commission's Consumer and Governmental Affairs Bureau reminds state telecommunications relay services (TRS) programs and TRS providers of (1) their annual obligation to submit summaries of their consumer complaint logs on or before Monday, July 1, 2024; (2) their ongoing obligations to file and maintain TRS consumer contact information; and (3) the requirement to notify the Commission of any substantive program changes.

Annual Summary of Consumer Complaints

To assist the Commission in monitoring the service quality of TRS providers, the Commission requires state TRS programs and interstate and Internet-based TRS providers to collect and maintain a log of consumer complaints alleging violations of the federal TRS mandatory minimum standards.¹ State TRS programs and interstate TRS providers are required to log all complaints made to the state agency, as well as those made to the state's TRS provider. State programs and all TRS providers must file annually with the Commission a summary of the complaint log for the previous year.² These summaries are intended to provide an indication to the Commission of possible service quality issues. This information also allows the Commission to determine whether a state or a TRS provider has appropriately addressed consumer complaints, and to spot national trends that may lend themselves to coordinated solutions. Moreover, the information enables states to learn how other states are resolving complaints.³

Complaint log summaries shall cover all complaints received from June 1, 2023, through May 31, 2024, and shall include, at a minimum, the number of complaints alleging a violation of the federal TRS mandatory minimum standards; and, for each such complaint, the date of the complaint, the nature of the complaint, the date of its resolution, and an explanation of the resolution.⁴

Consumer Contact Information

We also remind certified state TRS programs, interstate and Internet-based TRS providers, and TRS

¹ See 47 CFR § 64.604(c)(1)(i); see also *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 5140, 5144-45, 5190-91 paras. 9, 120-122 (2000) (*Improved TRS Order*).

² 47 CFR § 64.604(c)(1)(ii).

³ *Improved TRS Order*, 15 FCC Rcd at 5190-91, para. 122.

⁴ See 47 CFR § 64.604(c)(1).

providers that have state contracts that they must maintain on file with the Commission the name of a contact person or office, or both, for the receipt of inquiries and complaints from consumers.⁵ The information on file with the Commission must include, at a minimum, the name and address of the state or TRS office that receives complaints, grievances, inquiries and suggestions; the voice, TTY, and fax numbers, e-mail address, and web address for that office; and the physical address to which correspondence should be sent.⁶

The Commission must be notified each time there is a change in any of this required information. Any changes in contact information should be sent to TRS_POC@fcc.gov.

Contact information for certified state TRS programs is posted on the Consumer and Governmental Affairs Bureau's website at: <https://www.fcc.gov/general/trs-state-and-territories>; contact information for Internet-based TRS providers is posted at: <https://www.fcc.gov/general/internet-based-trs-providers>.

Notice of Substantive Change in a TRS Program

We also remind certified state TRS programs and providers of Internet-based TRS that they must notify the Commission of any substantive changes in their TRS programs within 60 days of when they occur, and must certify that they continue to meet federal TRS mandatory minimum standards after implementing the substantive change.⁷

Filing Procedures

Complaint Log Summary filings and notices of substantive changes in TRS Programs must reference CG Docket No. 03-123. Submissions may be filed either by: (1) using the Commission's Electronic Comment Filing System (ECFS), or (2) filing paper copies.

- Federal Commission Commission's Website: <https://www.fcc.gov/ecfs/filings/standard>. Follow the instructions for submitting a standard filing.
- 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-19.⁸

Access to Filings

Filings may be found by searching on the Commission's ECFS at: <http://apps.fcc.gov/ecfs/> (insert

⁵ 47 CFR § 64.604(c)(2).

⁶ *Id.*

⁷ 47 CFR § 64.606(f)(1), (2).

⁸ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (March 19, 2020). <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>

CG Docket No. 03-123 into the Proceeding block).

Procedural Matters

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

Additional Information. For further information, please contact Dana Warrick, Disability Rights Office, Consumer and Governmental Affairs Bureau, at (202) 418-2247 (voice) or by email at: Dana.Warrick@fcc.gov.

-FCC-



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-516

Released: June 3, 2024

WIRELINE COMPETITION BUREAU SEEKS COMMENT ON PETITIONS FILED BY CONEXON CONNECT LLC AND SCOTT COUNTY TELEPHONE COOPERATIVE, INC.

WC Docket No. 09-197

Comment Date: July 3, 2024

Reply Comment Date: July 17, 2024

The Wireline Competition Bureau seeks comment on petitions filed by Conexon Connect LLC¹ and the Scott County Telephone Cooperative, Inc.² seeking designation as Eligible Telecommunications Carriers under Section 214(e)(6) of the Communications Act of 1934.

Filing Requirements. Interested parties may file comments on or before the dates indicated above.³ All filings must refer to **WC Docket No. 09-197**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).⁴

- Electronic Filers: Comments may be filed electronically using the Internet by accessing ECFS: <https://www.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
 - Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington DC 20554.

¹ Conexon Connect LLC Amended Petition for Expanded Designation as an Eligible Telecommunications Carrier in Florida Pursuant to Section 214(e)(6) of the Communications Act of 1934 for the Limited Purpose of Offering Federal Lifeline Benefits on Tribal Lands and Non-Tribal Lands, WC Docket No. 09-197, at 1, 13 (filed May 10, 2024), <https://www.fcc.gov/ecfs/document/1051023581374/1>.

² Scott County Telephone Cooperative, Inc. Updated Supplement to Petition for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended for Lifeline Support, WC Docket No. 09-197, at 2, 16 (filed May 30, 2024), <https://www.fcc.gov/ecfs/document/1053080142075/1>.

³ See 47 CFR §§ 1.2, 1.405, and 1.419.

⁴ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.⁵

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

Ex Parte Rules. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.⁶ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission’s rules. In proceedings governed by section 1.49(f) of the rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf).⁷ Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

For further information regarding this proceeding, please contact Denise Golumbaski, Telecommunications Access Policy Division, Wireline Competition Bureau at Denise.Golumbaski@fcc.gov.

- FCC -

⁵ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (Mar. 19, 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

⁶ See 47 CFR §§ 1.1200 *et seq.*

⁷ *Id.* § 1.1206(b).

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

In the Matter of	)	
	)	
National Exchange Carrier Association, Inc.	)	WC Docket No. 23-415
2024 Modification of Average Schedules	)	
	)	

ORDER ON RECONSIDERATION

Adopted: June 5, 2024

Released: June 5, 2024

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

1. In this Order on Reconsideration, we *sua sponte* reconsider the *2024 NECA Average Schedule Order* approving formulas for average-schedule interstate settlement disbursements by modifying by one day the effective date of those formulas to July 1, 2024.¹ Pursuant to section 1.113(a) of the Commission's rules, the Wireline Competition Bureau (Bureau) may, on its own motion, modify any action taken pursuant to delegated authority within 30 days after public notice of such action.²

2. The National Exchange Carrier Association, Inc. (NECA) submits proposed revisions to the average-schedule formulas that are used by incumbent local exchange carriers participating in the NECA access charge tariff pools to calculate average-schedule settlement disbursements for interstate access services pursuant to section 69.606(b) of the Commission's rules.³ Traditionally, the NECA average-schedule formulas remain in effect for a one-year period from July 1 to June 30 of the subsequent year.⁴ Consistent with past practice, on December 21, 2023 NECA submitted their proposed 2024 average-schedule formulas to remain in effect for the one-year period from July 1, 2024 to June 30, 2025.⁵

3. On May 10, 2024, the Bureau released the *2024 NECA Average Schedule Order* approving NECA's proposed 2024 average-schedule formulas.⁶ Because the effective date for annual access charge tariff filings is July 2, 2024 this year, the Bureau approved the NECA average-schedule

¹ *National Exchange Carrier Association, Inc. 2024 Modification of Average Schedules*, WC Docket No. 23-415, Order, DA 24-435 (WCB/PPD May 10, 2024) (*2024 NECA Average Schedule Order*).

² 47 CFR § 1.113(a); *see id.* § 1.106(k)(1); *Domestic Section 214 Applications Granted, Subject to Condition, for the Transfer of Control of Germantown Telephone Company, Inc., et al.*, WC Docket No. 22-421 et al., Order on Reconsideration, DA 23-800, at 1-2, para. 1 (WCB Sept. 1, 2023).

³ *2024 NECA Average Schedule Order* at 1, para. 2.

⁴ *See National Exchange Carrier Association, Inc. 2023 Modification of Average Schedules*, WC Docket No. 22-427, Order, 38 FCC Rcd 4340, 4341, para. 5 (WCB/PPD 2023) (*2023 NECA Average Schedule Order*); *Access Tariff Filing Schedules*, CC Docket No. 88-326, Report and Order, 3 FCC Rcd 5495, 5497-98, paras. 24-25 (1988) (*Access Tariff Order*) (revising section 69.606(b) of the Commission's rules to conform with the July 1 effective date for annual access charge tariff filings by requiring NECA to submit the average-schedule formulas on or before December 31 of the preceding year, six months before the July 1 effective date for annual access charge tariff filings).

⁵ Letter from Robert J. Deegan, Director-Government Relations, NECA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 23-415, Attach., NECA 2024 Modification of Average Schedules (filed Dec. 21, 2023).

⁶ *2024 NECA Average Schedule Order* at 1, para. 1.

formulas to be in effect from July 2, 2024 to June 30, 2025.⁷ The prior year 2023 NECA average-schedule formulas, however, were approved by the Bureau to be effective from July 1, 2023 through June 30, 2024.⁸ Thus, there was one day, July 1, 2024, that was unaccounted for in the NECA average-schedule formulas and settlement disbursement process.

4. On our own motion and pursuant to delegated authority, we modify the effective date for the NECA average-schedule formulas approved by the Bureau in the *2024 NECA Average Schedule Order* to be effective from July 1, 2024 to June 30, 2025.⁹ Approving the average-schedule formulas from July 1, 2024 to June 30, 2025 is consistent with section 69.606(b), which does not contemplate temporal gaps during which no average-schedule formulas are in place, will alleviate unnecessary administrative burdens for NECA and carriers, and is consistent with past practice.¹⁰ In 2018 and 2019, for example, the effective date for the NECA average-schedule formulas remained July 1, even though the tariff effective date was changed to July 3, 2018 and July 2, 2019, respectively.¹¹ Accordingly, we modify paragraphs 1, 4, and 5 of the *2024 NECA Average Schedule Order* by replacing “July 2, 2024” with “July 1, 2024.” All other holdings adopted in the *2024 NECA Average Schedule Order* remain in effect.

5. Accordingly, IT IS ORDERED, pursuant to sections 0.91, 0.291, and 1.113 of the Commission’s rules, 47 CFR §§ 0.91, 0.291, and 1.113, that this Order on Reconsideration IS ADOPTED.

6. IT IS FURTHER ORDERED, pursuant to sections 0.91, 0.291, 1.113, and 69.606 of the Commission’s rules, 47 CFR §§ 0.91, 0.291, 1.113, and 69.606, that the *2024 NECA Average Schedule Order* released May 10, 2024 IS MODIFIED to replace “July 2, 2024” with “July 1, 2024” in paragraphs 1, 4, and 5 and, accordingly, the average-schedule formulas proposed by the National Exchange Carrier

⁷ *2024 NECA Average Schedule Order* at 2, para. 5. Ordinarily the effective date for annual access charge tariff filings is July 1, however, for this year’s filings the Bureau established July 2, 2024 as the effective date so that carriers could avail themselves of the statutory 15-days’ notice period for “deemed lawfulness.” *July 1, 2024 Annual Access Charge Tariff Filings*, WC Docket No. 24-41, Order, DA 24-294, at 2-3, para. 5 (WCB/PPD Mar. 27, 2024).

⁸ *2023 NECA Average Schedule Order* at 2, para. 5.

⁹ *Id.*; see *Access Tariff Order*, 3 FCC Rcd at 5496, para. 8 (“Issues involving the details of the annual access tariff filings, including the historical and test years and waivers for individual LECs, frequently present complex and interrelated considerations which we have in the past allowed the Common Carrier Bureau to resolve based upon consultation with affected parties and the specific circumstances.”); *id.* at 5501 n.4 (“As discussed, *supra*, we believe issues of the appropriate historical and test years, as well as other details which must be resolved in planning for the annual access filings, are best dealt with at the staff level by the Common Carrier Bureau”); see *Establishment of the Media Bureau, the Wireline Competition Bureau and the Consumer and Governmental Affairs Bureau et al.*, Order, 17 FCC Rcd 4672, 4672, para. 1 (2002) (delegating to the Wireline Competition Bureau all functions previously delegated to the Common Carrier Bureau).

¹⁰ See 47 CFR § 69.606; see Letter from Robert J. Deegan, Director, Government Relations, NECA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 23-415 (filed May 31, 2024).

¹¹ *National Exchange Carrier Association, Inc. 2017 Modification of Average Schedules et al.*, WC Docket Nos. 16-400, 17-346, Order, 33 FCC Rcd 4956, 4957, para. 5 (WCB/PPD 2018) (July 1, 2018 effective date); *National Exchange Carrier Association, Inc. 2019 Modification of Average Schedules*, WC Docket No. 18-373, Order, 34 FCC Rcd 3782, 3782-83, para. 5 (WCB/PPD 2019) (July 1, 2019 effective date); see also *July 1, 2018 Annual Access Charge Tariff Filings*, WC Docket No. 18-100, Order, 33 FCC Rcd 3497, 3497, para. 2 (WCB/PPD 2018) (setting a July 3, 2018 effective date for July 2018 annual access charge tariff filings); *July 1, 2019 Annual Access Charge Tariff Filings*, WC Docket No. 19-47, Order, 34 FCC Rcd 2067, 2067, para. 2 (WCB/PPD 2019) (setting a July 2, 2019 effective date for July 2019 annual access charge tariff filings).

Association, Inc. on December 21, 2023 SHALL BECOME EFFECTIVE on July 1, 2024, and remain in effect through June 30, 2025.

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

FEDERAL COMMUNICATIONS COMMISSION

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



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-519
June 3, 2024

OFFICE OF ENGINEERING AND TECHNOLOGY APPROVES REQUEST FROM THREE AFC OPERATORS TO MODIFY THEIR AFC CODE

ET Docket No. 21-352

By this Public Notice, the Office of Engineering and Technology (OET) hereby approves a request filed by Broadcom Inc., Wi-Fi Alliance Services Corporation, and Wireless Broadband Alliance, Inc to modify their Open AFC code which determines available power spectral density (PSD) for 6 GHz standard power devices.¹

On February 23, 2024, OET issued a Public Notice approving Broadcom Inc., Wi-Fi Alliance Services Corporation, and Wireless Broadband Alliance, Inc as automated frequency coordination (AFC) system operators.² In the Public Notice, OET required that each AFC operator file a notice “informing OET and the public of any modification to its AFC system that can change the available frequency ranges and maximum power levels determined by its AFC system” and “receive OET approval prior to implementing any proposed modification.”³ Pursuant to the Public Notice, Broadcom Inc., Wi-Fi Alliance Services Corporation, and Wireless Broadband Alliance, Inc submitted a filing on March 20, 2024, seeking OET’s permission to modify the Open AFC code used by their AFC systems after computational discrepancies were found that affected four of the test vectors that had been used in laboratory testing of the AFC systems.⁴ In the filing, the AFC operators explained that their AFC systems “applied incumbent interference protection over a slightly wider bandwidth than was required” when determining available PSD for “test vectors with a Fixed Service (“FS”) receiver located completely inside the uncertainty volume of an RLAN access point.”⁵ As a result, the AFC systems returned available PSD results that were “significantly more conservative than necessary in the 1-megahertz segment on either side of the FS channel.”⁶ The AFC operators pointed out that with the code modification, their AFC systems were still in compliance with the expected results defined in the Wi-Fi

¹ Letter from Christopher Szymanski, Broadcom Inc.; Alex Roytblat, Wi-Fi Alliance Services Corporation; and Bruno Tomas, Wireless Broadband Alliance, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, ET Docket No. 21.352 (filed March 20, 2024) (*AFC Letter*).

² *OET Announces Approval of Seven 6 GHz Band Automated Frequency Coordination Systems for Commercial Operation and Seeks Comment on C3 Spectra’s Proposed AFC System*, Public Notice, DA 24-166, ET Docket No. 21-352 (rel. Feb. 23, 2024).

³ *Id.* at para. 13.

⁴ *See AFC Letter*.

⁵ *Id.* at 1.

⁶ *Id.* at 2.

Alliance AFC System Compliance test plan.⁷ After correcting the discrepancy, the AFC operators ran regression tests using the test plan and confirmed that the AFC systems were accounting “more accurately for the permitted PSD levels” and the results were “in line with those of other AFC system operators.”⁸ The AFC operators submitted a second filing on April 29, 2024, providing further details on the PSD availability results under the original code and the proposed modified code for the affected test vectors.⁹ The AFC operators conclude that “the available frequencies and power levels reported” are “fully in compliance with the Commission’s rules” when using the modified Open AFC code.¹⁰

Fixed Wireless Communications Coalition (FWCC) submitted a letter on April 12, 2024, requesting that any AFC operators making changes to their AFC system should “rerun the test vectors developed by the Wi-Fi Alliance and the WinnForum” and “submit a complete report” for public comment.¹¹ According to FWCC, the report should “include the new PSD EIRP limits for all test vectors over the UNII-5 and UNII-7 bands.”¹² FWCC argues a complete report detailing the proposed changes will ensure transparency and without said report, incumbent licensees and other interested parties cannot fully consider an AFC’s proposed changes.¹³ Given that the modifications were minor corrections, and OET’s internal analysis found no discrepancies, we find that additional testing is not needed.

After examining the results of the updated AFC code, we determine the proposed changes are acceptable and the updated AFC results are in compliance with our rules. Therefore, we approve the request of the AFC operators to use the updated open AFC code for commercial deployment.

By the Chief, Office of Engineering and Technology.

– FCC –

⁷ *Id.*

⁸ *Id.*

⁹ Letter from Christopher Szymanski, Broadcom Inc.; Alex Roytblat, Wi-Fi Alliance Services Corporation; and Bruno Tomas, Wireless Broadband Alliance, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, ET Docket No. 21.352 (filed April 29, 2024).

¹⁰ *Id.*

¹¹ Letter from Seth L. Williams to Marlene H. Dortch, Secretary, Federal Communications Commission, ET Docket No. 21.352 (filed April 12, 2024).

¹² *Id.* at 2.

¹³ *Id.*

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

In the Matter of:	)	
	)	
Jackson County Commission	)	MB Docket No. 24-84
Jackson County, Alabama,	)	CSR-9016-A
	)	
For Modification of the Satellite Television Market	)	
of Stations	)	
	)	
WAAY (ABC), Huntsville, Alabama	)	
WAFF (NBC), Huntsville, Alabama	)	
WHNT (CBS), Huntsville, Alabama	)	
WZDX (FOX), Huntsville, Alabama	)	

ORDER

Adopted: June 3, 2024

Released: June 3, 2024

By the Senior Deputy Chief, Policy Division, Media Bureau:

1. The Jackson County, Alabama, Commission (County or Petitioner) filed the above-captioned Petition seeking to modify the satellite television market of Stations WAAY, WAFF, WHNT, and WZDX, Huntsville, Alabama to permit carriage in Jackson County, Alabama.¹ The Petition was filed because, in October 2022, The Nielsen Company changed Jackson County's market assignment from the Huntsville, Alabama designated market area (DMA) to the Chattanooga, Tennessee DMA.
2. Since the filing of the Petition, The Nielsen Company changed the County's market assignment back to the Huntsville, Alabama DMA and this will be the assignment reflected in the October 2024 Local TV Station Information Report (Local TV Report), which is the relevant assignment for carriage purposes for the next election cycle (2027-2029).²
3. Based on the foregoing, Petitioner has requested that the Bureau dismiss its petition.³

¹ Jackson County, Alabama, Commission for Modification of the Television Market of Stations WAAY, WAFF, WHNT, WZDX, Huntsville, Alabama, Petition for Special Relief, MB Docket No. 24-84 (filed March 12, 2024) (Petition). The Media Bureau placed the Petition on Public Notice, Report No. 0511 (MB March 13, 2024) (Public Notice). Sarkes Tarzian, Inc., licensee of WRCB(TV) (NBC), Channel 3, Chattanooga, Tennessee, FCC Facility ID No. 59137 (WRCB); WTVC Licensee, LLC, licensee of WTVC(TV) (ABC and Fox), Channel 9, Chattanooga, Tennessee, FCC Facility ID No. 22590 (WTVC); and WDEF-TV, Inc., licensee of WDEF-TV (CBS), Channel 12, Chattanooga, Tennessee, FCC Facility ID No. 54385 (WDEF-TV) (together, the "Opposition Parties"), filed a Joint Opposition to the Petition (Joint Opposition).

² 47 CFR §76.66(e)(3) ("The October 2024 Nielsen Local TV Station Information Report shall be used for the retransmission consent-mandatory carriage election cycle commencing January 1, 2027, and ending December 31, 2029.").

³ Letter from Willie B. Nance Jr., Chairman, Jackson County (Alabama) Commission, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 24-81 (dated May 23, 2024).

Therefore, we dismiss the petition.

4. Accordingly, **IT IS ORDERED**, that pursuant to section 338 of the Communications Act, as amended, 47 U.S.C. § 338, and section 76.66 of the Commission's rules, 47 CFR § 76.66, the Petition filed in this docket **IS DISMISSED**.

5. This action is taken pursuant to authority delegated by section 0.283 of the Commission's rules.⁴

FEDERAL COMMUNICATIONS COMMISSION

Steven Broecker
Senior Deputy Chief, Policy Division, Media Bureau

⁴ 47 CFR § 0.283.

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

In the Matter of:	)	
	)	
	)	
Scottsboro Electric Power Board	)	MB Docket No. 24-81
Jackson County, Alabama	)	CSR-9015-A
	)	
For Modification of the Cable Television Market of	)	
Stations	)	
	)	
WAAY (ABC), Huntsville, Alabama	)	
WAFF (NBC), Huntsville, Alabama	)	
WHNT (CBS), Huntsville, Alabama	)	
WZDX (FOX), Huntsville, Alabama	)	

ORDER

Adopted: June 3, 2024

Released: June 3, 2024

By the Senior Deputy Chief, Policy Division, Media Bureau:

1. Scottsboro Electric Power Board (Petitioner) filed the above-captioned Petition seeking to modify the cable television market of Stations WAAY, WAFF, WHNT, and WZDX, Huntsville, Alabama to permit carriage in Jackson County, Alabama.¹ The Petition was filed because, in October 2022, The Nielsen Company changed Jackson County's market assignment from the Huntsville, Alabama designated market area (DMA) to the Chattanooga, Tennessee DMA.
2. Since the filing of the Petition, The Nielsen Company changed the County's market assignment back to the Huntsville, Alabama DMA and this will be the assignment reflected in the October 2024 Local TV Station Information Report (Local TV Report), which is the relevant assignment for carriage purposes for the next election cycle (2027-2029).²
3. Based on the foregoing, Petitioner has requested that the Bureau dismiss its petition.³ Therefore, we dismiss the petition.

¹ Scottsboro Electric Power Board, For Modification of the Television Market of Stations WAAY, WAFF, WHNT, WZDX, Huntsville, Alabama, Petition for Special Relief, MB Docket No. 24-81 (filed March 8, 2024) (Petition). Sarkes Tarzian, Inc., licensee of WRCB(TV) (NBC), Channel 3, Chattanooga, Tennessee, FCC Facility ID No. 59137 (WRCB); WTVC Licensee, LLC, licensee of WTVC(TV) (ABC and Fox), Channel 9, Chattanooga, Tennessee, FCC Facility ID No. 22590 (WTVC); and WDEF-TV, Inc., licensee of WDEF-TV (CBS), Channel 12, Chattanooga, Tennessee, FCC Facility ID No. 54385 (WDEF-TV) (together, the "Opposition Parties"), filed a Joint Opposition to the Petition (Joint Opposition).

² 47 CFR §76.55(e)(2)(i) ("The applicable DMA list for the 2023 election pursuant to § 76.64(f) will be the DMA assignments specified in the Nielsen October 2021 Local TV Station Information Report, and so forth using the publications for the October two years prior to each triennial election pursuant to § 76.64(f).").

³ Letter from Phillip D Chaney, General Manager, CEO, Scottsboro Electric Power Board, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 24-81 (dated May 22, 2024).

4. Accordingly, **IT IS ORDERED**, that pursuant to section 338 of the Communications Act, as amended, 47 U.S.C. § 338, and section 76.55 of the Commission's rules, 47 CFR § 76.55, the Petition filed in this docket **IS DISMISSED**.

5. This action is taken pursuant to authority delegated by section 0.283 of the Commission's rules.⁴

FEDERAL COMMUNICATIONS COMMISSION

Steven Broeckaert
Senior Deputy Chief, Policy Division, Media Bureau

⁴ 47 CFR § 0.283.

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

In the Matter of	)	
	)	
MatrixSpace, Inc.	)	WT Docket No. 23-216
	)	
Request for Waiver of Section 2.106 and for	)	
Sections 87.471 and 87.475 of the Commission's	)	
Rules	)	
	)	
	)	

ORDER

Adopted: June 4, 2024

Released: June 4, 2024

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. This Order addresses a request filed by MatrixSpace, Inc. (MatrixSpace) for a limited waiver of the Commission's rules to permit the use of its ground-based radar transmitter, the DopplerSpace MS01100 Radar (Radar), in the 24.45-24.65 GHz band for use in mobile and deployable systems.¹ For the reasons set forth below, we grant the waiver request, subject to specific conditions set forth below, as well as the outcome of Echodyne Corporation's (Echodyne) pending rulemaking petition that proposes to establish permanent rules for secondary use of the 24.45-24.65 GHz band for radiolocation operations.²

II. BACKGROUND

2. Radiodetermination—the determination of the position, velocity, and/or other characteristics of an object, or the obtaining of information relating to these parameters, by means of the propagation properties of radio waves—consists of radionavigation, which is radiodetermination for the purposes of navigation (including obstruction warning), and radiolocation, which is radiodetermination for purposes other than radionavigation.³ The 24.45-24.65 GHz band is allocated to the radionavigation and inter-satellite services on a primary basis for federal and non-federal use,⁴ and part 87 of the Commission's rules authorizes airborne and ground-based use of the band for aeronautical radionavigation, including obstruction warning.⁵ Radiolocation currently is not authorized in the band.

3. MatrixSpace states that its Radar can be used in the 24.45-24.65 GHz band for either radionavigation or radiolocation in security systems, target tracking systems, and uncrewed aircraft

¹ See Request by MatrixSpace, Inc. for Waiver of Section 2.106 and for Sections 87.471 and 87.475 of the Commission's Rules (filed Jan. 17, 2023), <https://www.fcc.gov/ecfs/document/107060854402877/1> (Request).

² Petition for Rulemaking, CG RM-11819 (filed Oct. 24, 2018), <https://www.fcc.gov/ecfs/document/102459526386/1> (Echodyne Rulemaking Petition).

³ See 47 CFR §§ 2.1, 87.5.

⁴ See 47 CFR § 2.106.

⁵ See 47 CFR §§ 87.5, 87.173(b), 87.187(x), 87.475(b)(14).

systems (UAS) or other drones.⁶ MatrixSpace maintains that its Radar offers a number of operational benefits, including the device's small size and weight, "industry leading" range/angular resolution and 3D fixing capability, a simple USB 3.0 interface, and lower power requirements (25 watts).⁷ MatrixSpace states that its Radar also offers public safety benefits, including "UAS detection at sensitive sites and group perimeter surveillance at the borders and other locations."⁸

4. MatrixSpace seeks a waiver of the section 2.106 Table of Allocations and of sections 87.471 and 87.475 of the Commission's rules to permit ground-based use of its Radar on a secondary basis. In addition, it proposes conditions identical to those adopted in the *Echodyne Order*, including being subject to the Commission's site-based application and licensing requirements, secondary status, a five-year initial licensing term, equipment authorization consistent with the waiver, and a limited number of units authorized for use.⁹ MatrixSpace asserts that grant of its waiver request would be in the public interest as the proposed waiver would greatly expand and enhance radiodetermination options for American users, including governmental and private entities seeking to protect public safety or sensitive facilities.¹⁰ The request went on Public Notice on June 26, 2023, comments were due July 26, 2023, and reply comments were due August 10, 2023.

5. Two parties, T-Mobile USA Inc. (T-Mobile)¹¹ and Echodyne, initially raised concerns regarding the waiver request. T-Mobile stated that this waiver request contained insufficient information to evaluate if the Radar would cause harmful interference to primary users of the 24.45-24.65 GHz band.¹² T-Mobile also requested information regarding co-channel interference,¹³ including the impact of operation of the Radar on the RF environment.¹⁴ T-Mobile suggested that the Commission adopt the same conditions as in the *Echodyne Order*.¹⁵ Echodyne supported T-Mobile's request for additional technical information about the proposed operation of the Radar in order to assess whether its operation would cause harmful interference to other licensed users of the spectrum.¹⁶ Echodyne also noted that MatrixSpace did not indicate any conversations with the Federal Aviation Administration (FAA) had taken place.¹⁷

6. In its reply, MatrixSpace submitted detailed technical appendices setting forth the technical characteristics of the Radar, which it maintains demonstrates that its operations will have a "comparable or lesser impact on the RF environment" than Echodyne's device and will not exceed the

⁶ Request at 1.

⁷ *Id.* at 2.

⁸ *Id.* at 4.

⁹ *Id.* at 5; See *Echodyne Corporation: Request for Waiver of Part 2 and Part 87 of the Commission's Rules*, WT Docket No. 17-352, Order, 34 FCC Rcd 4830 (WTB-MD 2019) (*Echodyne Order*).

¹⁰ Request at 6.

¹¹ T-Mobile Petition to Deny (Petition to Deny).

¹² *Id.* at 2. T-Mobile sought detailed information regarding the unit's size, weight, and power, emission characteristics, including a description of the waveform, a narrative description of the transmitter behavior, and antenna characteristics, including the beam shape, beam steps, the number of beams, and directivity. *Id.* at 3.

¹³ *Id.* at 3.

¹⁴ *Id.* at 4.

¹⁵ *Id.* at 5.

¹⁶ Echodyne Corp. Reply at 1 (Echodyne Reply).

¹⁷ *Id.* at 3.

technical characteristics of Echodyne's device as required by the Commission.¹⁸ In addition, MatrixSpace reiterated its commitment to abide by all of the conditions placed on Echodyne's device in our *Echodyne Order*.¹⁹ Further, MatrixSpace noted that interagency coordination with the FAA and other federal agencies was commenced through NTIA.²⁰

7. Subsequently, T-Mobile withdrew its Petition to Deny stating that it could manage the interference risk that MatrixSpace's operations would create based on the commitments submitted on the record, including site-specific licensing of the Radar.²¹ T-Mobile requested that the Commission make these commitments conditions of any waiver granted to MatrixSpace.²² In addition, T-Mobile asked that a "stop buzzer" point of contact to be identified for immediate interference resolution.²³ Similarly, Echodyne withdrew its concerns, noting that it had satisfactory discussions with MatrixSpace regarding technical parameters of the Radar.²⁴

III. DISCUSSION

8. Section 1.925 of the Commission's rules provides that we may grant a waiver if it is shown that (a) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and grant of the requested waiver would be in the public interest; or (b) in light 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.²⁵

9. We find that MatrixSpace has sufficiently demonstrated that it meets the first prong of our waiver standard.²⁶ This request would serve the underlying purpose of our rules as we already permit use of the 24.45-24.65 GHz band for UAS detection as part of a ground-based air traffic control system, thus allowing use of the band for other UAS detection does not conflict with that purpose.²⁷ Indeed, the waiver would further the purpose of the rule by allowing another mode of UAS detection in the band via radiolocation.²⁸ Further, we find that grant of this request is in the public interest. As the Division recognized in the *Echodyne Order*, "UAS detection is an important public safety function, and . . . facilitating the deployment of new, more effective technology to protect critical infrastructure and other sensitive areas furthers the public interest."²⁹ To this end, MatrixSpace states that its Radar can be used for UAS detection in security systems, target tracking systems, and UAS or other drones.³⁰ In addition, we note that all opposition to this request has been withdrawn in light of the updated technical

¹⁸ See MatrixSpace Reply at 2.

¹⁹ *Id.* at 1.

²⁰ MatrixSpace Dec. 2023 Reply at 1-2, 3.

²¹ Motion for Approval to Withdraw Petition to Deny, WT Docket No. 23-216, at 1; 3 (filed Oct. 25, 2023), <https://www.fcc.gov/ecfs/document/10252884003150/1> (T-Mobile Withdrawal).

²² *Id.* at 3.

²³ *Id.* at 3.

²⁴ Echodyne Corp. Comment at 1 (Echodyne Jan. 2024 Comment).

²⁵ 47 CFR § 1.925(b)(3); see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

²⁶ See Request at 6-7.

²⁷ See *Echodyne Order*, 34 FCC Rcd at 4832, para. 7.

²⁸ See *id.*

²⁹ *Id.*

³⁰ Request at 1.

information MatrixSpace submitted in the record.³¹ Therefore, subject to the conditions specified below, we grant a waiver to permit the marketing, licensing, and use of its Radar subject to the resolution of the *Echodyne Rulemaking Petition*.

IV. CONDITIONS

10. Accordingly, we waive the section 2.106 Table of Allocations and sections 87.471 and 87.475 of the Commission's rules to permit operation of the Radar for radiolocation use subject to the resolution of the *Echodyne Rulemaking Petition*³² and to the following conditions:

1. This waiver is granted for a term of five years. If MatrixSpace seeks to further extend the waiver term, such request must be based on a showing that the waiver should remain in effect for a longer period. Any extension request would be evaluated in conjunction with the FAA and the National Telecommunications and Information Administration.
2. The DopplerSpace MS01100 Radar will operate using the characteristics provided in the waiver request and supporting documentation.
3. MatrixSpace must obtain equipment authorization for the DopplerSpace MS01100 Radar.³³ A copy of this *Order* shall be submitted with the equipment authorization application.
4. MatrixSpace's DopplerSpace MS01100 Radar will be licensed only on a site-specific basis, i.e., the transmitter will be licensed for a specific, fixed location, as an Aviation Radionavigation Land station (service code AR, station class code RNV). Applicants must reference this *Order* (by the DA number set forth above). Applications will be coordinated with the FAA in accordance with 47 CFR § 87.475(a). Licenses will be granted for an initial term of five years.
5. Licensees must comply with all applicable part 87 technical and service rules other than the rules limiting operations to radionavigation.
6. Operation will be on a secondary basis to other authorized operations.
7. In the five-year period following the release date of this *Order*, sale of the DopplerSpace MS01100 Radar in the United States to non-Federal users is limited to 15,000 units. Upon request, MatrixSpace will inform Commission staff how many units have been sold.

11. *Conclusion.* We conclude that MatrixSpace has shown good cause for waiver of sections 2.106, 87.471 and 87.475 of the Commission's rules to permit licensing and use of its DopplerSpace MS01100 Radar.

V. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED, pursuant to sections 4(i) and 303(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(i), and section 1.925 of the

³¹ T-Mobile requests that we condition grant of the waiver on MatrixSpace identifying a point of contact to facilitate resolution of interference should it occur. T-Mobile Withdrawal at 3. We note that each operator of the Radar will be licensed by the FCC and the Commission's licensing records in ULS will include a point of contact, which can be reached to facilitate interference resolution. Accordingly, we decline to condition the waiver on the identification of a point of contact specifically for interference resolution under this waiver.

³² That is, licensees ultimately will be subject to the rules adopted in the rulemaking proceeding but will be permitted to operate pursuant to this waiver until a final decision in the rulemaking proceeding takes effect.

³³ See 47 CFR § 87.147.

Commission's rules, 47 CFR § 1.925, that the Request for Waiver filed by MatrixSpace, Inc. on January 17, 2023, IS GRANTED ON THE CONDITIONS SET FORTH ABOVE.

13. This action is taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Roger Noel
Chief, Mobility Division
Wireless Telecommunications Bureau

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

In the Matter of)
)
ECHODYNE CORPORATION) WT Docket No. 17-352
)
Request for Waiver of Part 2 and Part 87 of the)
Commission's Rules)

ORDER

Adopted: June 4, 2024

Released: June 4, 2024

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. This *Order* addresses a request¹ filed by Echodyne Corporation (Echodyne) for an extension of a limited waiver² of the Commission's rules to permit ground-based radiolocation use of its EchoGuard security and surveillance radar. For the reasons set forth below, we grant the request, subject to the specific conditions set forth below, as well as the outcome of Echodyne's pending rulemaking petition that proposes to establish permanent rules for secondary use of the 24.45–24.65 GHz band for radiolocation operations.³

II. BACKGROUND

2. The 24.45–24.65 GHz band is allocated to the Radionavigation Service on a primary basis for federal and non-federal use,⁴ and the Commission's part 87 rules authorize airborne and ground-based use of the band for aeronautical radionavigation.⁵ Radionavigation is radiodetermination⁶ for the purposes of navigation, including obstruction warning. Radiolocation is radiodetermination for purposes other than radionavigation, and it is not presently authorized in the 24.45–24.65 GHz band.⁷

3. Echodyne manufactures low-cost, size, weight, and power radars, and it developed such a radar for aeronautical radionavigation in the 24.45–24.65 GHz band.⁸ That product, called EchoFlight, was designed for airborne detect and avoid (DAA) operations that were within the band's allocation, and upon demand from its customers, Echodyne developed EchoGuard, a ground-based security and

¹ Request by Echodyne Corp. for Extension of Limited Waiver, WT Docket No. 17-352 (filed Feb. 8, 2024), <https://www.fcc.gov/ecfs/document/10209251180686/1> (Request).

² *Echodyne Corporation; Request for Waiver of Part 2 and Part 87 of the Commission's Rules*, WT Docket No. 17-352, Order, 34 FCC Rcd 4830 (WTB-MD 2019) (*Waiver Order*).

³ Petition of Echodyne Corp. for Rulemaking, CG RM-11819 (filed Oct. 24, 2018), <https://www.fcc.gov/ecfs/document/102459526386/1> (Petition).

⁴ See 47 CFR § 2.106. The band also is allocated to the Inter-Satellite Service. *Id.*

⁵ See 47 CFR §§ 87.5, 87.173(b), 87.187(x), 87.475(b)(14).

⁶ Radiodetermination is the determination of the position, velocity, and/or other characteristics of an object, or the obtaining of information relating to these parameters, by means of the propagation properties of radio waves. 47 CFR §§ 2.1, 87.5.

⁷ See 47 CFR §§ 2.1, 87.5.

⁸ See Request at 1-2.

surveillance radar (SSR) capable of radiolocation operations.⁹ Echodyne contends that EchoGuard is “electrically identical to the radar used for aeronautical radionavigation applications,” but ground-based radiolocation is not permitted in the band.¹⁰

4. For this reason, in 2017, Echodyne sought a waiver of the section 2.106 Table of Allocations and of sections 87.471 and 87.475 to permit ground-based use of EchoGuard.¹¹ Echodyne argued then that EchoGuard is easier to deploy than other electronically scanning radar devices because it is thinner, lighter, and less expensive.¹² It further claimed that EchoGuard performed better than other available radar and non-radar technologies, and that there was a dearth of affordable alternatives.¹³ Potential uses of EchoGuard included detection of uncrewed aircraft systems (UAS) at sensitive sites, such as prisons and stadiums, or ground perimeter surveillance at borders and other locations.¹⁴ EchoGuard was to be authorized in the 24.45–24.65 GHz band on a secondary basis only, and Echodyne argued that interference was unlikely because the EchoGuard operates with low power, a narrow beam, and a minimal transmission footprint compared to traditional radars.¹⁵ The Bureau granted Echodyne’s request in June 2019, subject to several conditions.¹⁶

5. In its current request, Echodyne reiterates the arguments that it offered previously, and it submits that EchoGuard has been deployed successfully with no interference complaints.¹⁷ Echodyne again emphasizes the public interest benefits that EchoGuard can support, including protection of infrastructure, stadiums, prisons, and the U.S. border.¹⁸ In light of the pendency of its rulemaking petition, Echodyne requests a five-year extension of its waiver under the same conditions that the Bureau imposed in the *Waiver Order*.¹⁹ The U.S. Department of Homeland Security (DHS) supports Echodyne’s extension request on the grounds that EchoGuard has aided with the detection of small UAS at the borders, that it would be expensive to replace, and that there have been no reports of interference

⁹ See *id.* at 2.

¹⁰ *Id.* at 2.

¹¹ Request by Echodyne Corp. for Waiver of Section 2.106 and Sections 87.471 and 87.475 of the Commission’s Rules, WT Docket No. 17-352, at 1 (filed Oct. 27, 2017) (Initial Request).

¹² See *id.* at 2; Letter from Michael A. Lewis, Senior Engineering Advisor, DLA Piper, LLP, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 17-352, at 1 (filed Feb. 16, 2018).

¹³ See Letter from Grace Koh, Partner, DLA Piper, LLP, Andrea Radosevich, General Counsel, Echodyne Corp., and Michael A. Lewis, Senior Engineering Advisor, DLA Piper, LLP, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 17-352, at 3-4 (filed Oct. 10, 2018).

¹⁴ See Initial Request at 3-4; Petition at 3-4.

¹⁵ See Initial Request at 6-7, 10, Appx. B.

¹⁶ See *Waiver Order*, 34 FCC Rcd at 4832-33, para. 8 (establishing these conditions: (1) the waiver was granted for five years, and Echodyne could request an extension; (2) EchoGuard must operate precisely as indicated in the request; (3) Echodyne would obtain an equipment authorization for EchoGuard; (4) EchoGuard units would be licensed on a site-specific basis and applications would be coordinated with the Federal Aviation Administration (FAA); (5) licensees would comply with the part 87 rules, aside from those confining use of the band to radionavigation; (6) EchoGuard operations would be on a secondary basis; and (7) EchoGuard sales were capped at 15,000 units for the initial five-year waiver period).

¹⁷ See Request at 2-5.

¹⁸ See *id.* at 4.

¹⁹ See *id.* at 5.

associated with its operation;²⁰ the National Telecommunications and Information Administration (NTIA) supports the request for the same reasons.²¹

III. DISCUSSION

6. Section 1.925 of the Commission's rules provides that we may grant a waiver if it is shown that (a) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and grant of the requested waiver would be in the public interest; or (b) in light 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.²²

7. We agree with Echodyne that granting its requested waiver extension would serve the underlying purpose of the rules, and as such conclude that the waiver request meets the first prong of the waiver test.²³ As before, we observe that our rules already permit use of the 24.45–24.65 GHz band for UAS detection as part of a ground-based air traffic control system, so allowing use of the band for other UAS detection does not undermine or conflict with that purpose, and in fact supports it.²⁴ We further agree that UAS detection is an important public safety function and that facilitating the deployment of new, more effective technology to protect critical infrastructure and other sensitive areas furthers the public interest, fulfilling the second prong of the waiver test.²⁵ As noted above, DHS and NTIA support this extension request, and no party objected to it²⁶ or to the original request.²⁷ The Federal Aviation Administration (FAA) and Echodyne together developed the conditions that were first imposed by the *Waiver Order* and are set forth once more in this one.²⁸ Therefore, subject to the conditions specified below, we grant an extension of the waiver to permit the marketing, licensing, and use of the EchoGuard, pending the resolution of Echodyne's rulemaking petition.²⁹

8. Accordingly, we waive the section 2.106 Table of Allocations and sections 87.471 and 87.475 to permit operation of the EchoGuard for radiolocation use subject to the resolution of Echodyne's

²⁰ See U.S. Department of Homeland Security Comments at 1.

²¹ See National Telecommunications and Information Administration Comments at 2.

²² 47 CFR § 1.925(b)(3); see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

²³ See Request at 4.

²⁴ See *id.* at 2 (stating that EchoGuard is “electrically identical” to EchoFlight); see also Initial Request at 2.

²⁵ See Request at 3-4.

²⁶ See *Wireless Telecommunications Bureau Seeks Comment on Echodyne Corporation Request for Waiver to Permit Licensing and Use of Ground-Based 24.45–24.65 GHz Radar*, WT Docket No. 17-352, Public Notice, DA 24-169 (WTB 2024).

²⁷ See *Waiver Order*, 34 FCC Rcd at 4832, para. 7.

²⁸ See Request at 2-3.

²⁹ See, e.g., *American Radio Relay League, Inc.*, WT Docket No. 12-283, Order, 28 FCC Rcd 3228, 3229, para. 3 (WTB-MD 2013) (granting a request for waiver pending the outcome of a petition for rulemaking in part because commenters supported the requested rule change); cf. e.g., *Expert Linears America, LLC*, WT Docket No. 16-243, Order, 31 FCC Rcd 13475, 13476-77, para. 8 (WTB-MD 2016) (denying a request for waiver pending the outcome of a rulemaking proceeding in part because commenters disagreed over the desirability of the requested rule change); *Anchorage Volunteer Examiner Coordinator*, WT Docket No. 11-130, Order, 27 FCC Rcd 404, 405, para. 3 (WTB-MD 2012) (same).

rulemaking petition³⁰ and to the following conditions:³¹

- (1) This waiver extension is granted for a term of five years. If Echodyne seeks to further extend the waiver term, such request must be based on a showing that the waiver should remain in effect for a longer period. Any further extension request would be evaluated in conjunction with the FAA and the National Telecommunications and Information Administration.
- (2) The EchoGuard units will operate using the characteristics provided in the waiver request and supporting documentation.
- (3) EchoGuard units will be licensed only on a site-specific basis, i.e., the transmitter will be licensed for a specific, fixed location, as an Aviation Radionavigation Land station (service code AR, station class code RNV). Applicants must reference this *Order* (by the DA number set forth above). Applications will be coordinated with the FAA in accordance with 47 CFR § 87.475(a). Licenses will be granted for an initial term of five years.
- (4) Licensees must comply with all applicable part 87 technical and service rules other than the rules limiting operations to radionavigation.
- (5) Operation will be on a secondary basis to other authorized operations.
- (6) Sale of EchoGuard in the United States to non-Federal users is limited to 15,000 units. This limit applies to the total units sold since the release date of the previous *Waiver Order*, DA-19-556, together with those sold for the five years following the release date of this *Order*. Upon request, Echodyne will inform Commission staff how many units have been sold.

IV. CONCLUSION

9. We conclude that Echodyne has shown good cause for waiver of sections 2.106, 87.173(b), 87.471, and 87.475 of the Commission's rules to permit licensing and use of its EchoGuard radar, pending the resolution of the associated rulemaking petition.

10. Accordingly, IT IS ORDERED, pursuant to sections 4(i) and 303(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(i), and section 1.925 of the Commission's rules, 47 CFR § 1.925, that the Request for Extension of Limited Waiver filed by Echodyne Corporation on February 8, 2024, IS GRANTED ON THE CONDITIONS SET FORTH ABOVE.

11. This action is taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Roger Noel
Chief, Mobility Division
Wireless Telecommunications Bureau

³⁰ That is, licensees ultimately will be subject to the rules adopted in the rulemaking proceeding but will be permitted to operate pursuant to this waiver until a final decision in the rulemaking proceeding takes effect.

³¹ The *Waiver Order* required that Echodyne obtain equipment authorization for EchoGuard. *Waiver Order*, 34 FCC Rcd at 4833, para. 8. That authorization was later granted on July 30, 2019, under FCC ID 2ANLB-MESASSR00053.



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 24-524

Released: June 4, 2024

**PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES
COMPLIANCE DATE AND INSTRUCTIONS FOR INFORMATION COLLECTION
REQUIREMENT ASSOCIATED WITH IMPROVING 911 RELIABILITY**

**PS Docket Nos. 15-80 and 13-75
ET Docket No. 04-35**

By this Public Notice, the Public Safety and Homeland Security Bureau (Bureau) announces the compliance date and instructions for Covered 911 Service Providers (C911SPs) to notify the Bureau staff when they cease operations. C911SPs are required to annually file a 911 network reliability certification with the Commission.¹ Presently, when the FCC does not receive a certification from a particular C911SP, it expends resources to contact that provider. In some instances, the failure to file is because the C911SP stopped providing service at some point during the prior year. To avoid that wasteful expenditure of Commission resources, in the 2022 *911 Reliability Second R&O*, the Commission adopted a rule requiring C911SPs to notify the Commission within 60 days of the day they cease operations.² The Commission required C911SPs to notify the FCC when they cease operations as of the date 30 days after publication in the *Federal Register* announcing the completion of U.S. Office of Management and Budget (OMB) review.³

On November 15, 2023, OMB approved the requirement to collect the cessation information, and on June 4, 2024, the Office of the Federal Register published a notice announcing OMB approval.⁴ Accordingly, compliance with 47 CFR Section 9.19(d)(4) is required as of July 4, 2024.⁵ Beginning July 4, 2024, covered 911 service providers must notify the Commission no later than 60 days after they completely cease operations. All notifications of cessation of operations should be filed with the Bureau staff via email to 911reliabilitycertification@fcc.gov.

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

For further information, please contact Linda Pinto, Attorney Advisor, Policy and Licensing Division,

¹ 47 CFR § 9.19.

² 47 CFR § 9.19(d)(4) (“Covered 911 service providers that cease operations must notify the FCC by filing a notification under penalty of perjury no later than 60 days after the cessation of service.”); *Amendments to Part 4 of the Commission’s Rules Concerning Disruptions to Communications; Improving 911 Reliability*; PS Docket Nos. 15-80 and 13-75, and ET Docket No. 04-35, Second Report and Order, FCC 22-82 (2022) (*911 Reliability Second R&O*); Federal Communications Commission, *Disruptions to Communications; Improving 911 Reliability*, 88 Fed. Reg. 9756-01 (Feb. 15, 2023).

³ *911 Reliability Second R&O*, 37 FCC Rcd at 13864, para. 34.

⁴ Federal Communications Commission, *Disruptions to Communications; Improving 911 Reliability*, 89 FR 47869, (June 5, 2024).

⁵ *Id.*

Public Safety and Homeland Security Bureau, (202) 418-7490 or via email at linda.pintro@fcc.gov.

Privacy Act Statement

Authority: The Commission is authorized to pursue this collection pursuant to the authority contained in 47 U.S.C. §§ 1, 4(i), 4(j), 4(o), 201(b), 214(d), 218, 251(e)(3), 301, 303(b), 303(g), 303(r), 307, 309(a), 316, 332, 403, 615a-1, and 615c of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i)-(j) & (o), 201(b), 214(d), 218, 251(e)(3), 301, 303(b), 303(g), 303(r), 307, 309(a), 316, 332, 403, 615a-1, and 615c.

Purpose: In 2022, the Commission adopted a new rule requiring covered 911 service providers to file notice with the Commission when they cease operating as a covered 911 service provider. The Commission adopted this measure to ensure that its staff does not expend time and resources to investigate why a covered 911 service provider failed to file its annual 911 reliability certification in a timely manner, when the reason is simply because the provider ceased operations.

Routine Uses: The FCC may release information provided in this form when necessary and appropriate under 5 U.S.C. § 552a(b) of the Privacy Act to: the public in FCC releases, including notices of proposed rulemaking, public notices, orders or other actions, or when required to comply with federal laws or FCC regulations requiring public disclosure of the information contained in our records; to third parties, including individuals and businesses in the communications industry and public safety, FCC vendors and their contractors, and to other federal agencies or state, local, U.S. territorial, and Tribal government entities to administer, support, participate in, or receive information related to, FCC programs and activities; or to ensure compliance with the confidentiality and other rules regarding information sharing in the FCC's programs and activities; to other federal agencies or to other administrative or adjudicative bodies before which the FCC is authorized to appear; to federal, state, or local law enforcement when FCC becomes aware of an indication of a violation or potential violation of a civil or criminal statute, law, regulation, or order; to Federal agencies, non-Federal entities, their employees, and agents for the purpose of detecting and preventing fraud, waste, and abuse in Federal programs; to non-federal personnel, including contractors, grantees, and volunteers who have been engaged to assist the FCC in the performance of a contract service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform their activity; and, to appropriate agencies, entities, and persons when the FCC suspects or has confirmed that there has been a breach of information related to this system. □

A complete list of the routine uses can be found in the system of records notice associated with this collection, FCC-2, Business Contacts and Certifications, posted at <https://www.fcc.gov/managing-director/privacy-transparency/privacy-act-information>.

Disclosure: The information collection is mandatory to obtain or retain benefits.

-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 24-525
Released: June 4, 2024

COMMENTS INVITED ON SECTION 214 APPLICATION(S) TO DISCONTINUE DOMESTIC NON-DOMINANT CARRIER TELECOMMUNICATIONS AND/OR INTERCONNECTED VOIP SERVICES

WC Docket No(s). 24-70

Comments Due: June 19, 2024

Unless otherwise specified, the following procedures and dates apply to the application(s) (the Section 214 Discontinuance Application(s)) listed in the Appendix.

The Wireline Competition Bureau (Bureau), upon initial review, has found the Section 214 Discontinuance Application(s) listed herein to be acceptable for filing and subject to the procedures set forth in Section 63.71 of the Commission's rules.¹ The application(s) request authority, under section 214 of the Communications Act of 1934, as amended,² and section 63.71 of the Commission's rules,³ to discontinue, reduce, or impair certain domestic telecommunications service(s) (Affected Service(s)) in specified geographic areas (Service Area(s)) as applicable and as fully described in each application.

In accordance with section 63.71(f) of the Commission's rules, the Section 214 Discontinuance Application(s) listed in the Appendix will be deemed granted automatically on **July 5, 2024**, the 31st day after the release date of this public notice, unless the Commission notifies any applicant(s) that their grant will not be automatically effective.⁴ We note that the date on which an application for Commission authorization is deemed granted may be different from the date on which applicants are authorized to discontinue, reduce, or impair service ("Authorized Date"). Any applicant whose application has been deemed granted may discontinue, reduce or impair their Affected Service(s) in their Service Area(s) on or after the authorized date(s) specified in the Appendix, in accordance with their filed representations. Accordingly, pursuant to section 63.71(f), and the terms outlined in each application, absent further Commission action, each applicant may discontinue, reduce or impair the Affected Service(s) in the Service Area(s) described in their application on or after the authorized discontinuance date(s) listed in the Appendix for that application. For purposes of computation of time when filing a petition for reconsideration, application for review, or petition for judicial review of the Commission's decision(s), the date of "public notice" shall be the later of the auto grant date stated above in this Public Notice, or

¹ 47 CFR § 63.71.

² 47 U.S.C. § 214.

³ 47 CFR § 63.71.

⁴ See 47 CFR § 63.71(f) (stating, in relevant part, that an application filed by a non-dominant carrier "shall be automatically granted on the 31st day... unless the Commission has notified the applicant that the grant will not be automatically effective.").

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 **June 19, 2024**. Comments should refer to the specific WC Docket No. and Comp. Pol. File No. listed in the Appendix for the particular Section 214 Discontinuance Application that the commenter intends to address. Comments should include specific information about the impact of the proposed discontinuance on the commenter, including any inability to acquire reasonable substitute service. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.⁵ Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs>. Filers should follow the instructions provided on the Web site for submitting comments. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number.

Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit one additional copy for each additional docket or rulemaking number associated with the proceeding in which they choose to file comments. Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail.⁶ All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, D.C. 20554.

Copies of the comments may also be emailed to the Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, using the contact information listed in the Appendix for the appropriate Section 214 Application. In addition, comments should be served upon the Applicant(s).

These proceedings are considered "permit but disclose" proceedings for purposes of the Commission's *ex parte* rules.⁷ Participants should familiarize themselves with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments,

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

⁶ Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, 35 FCC Rcd 2788 (OMD 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

⁷ 47 CFR § 1.1200 *et seq.*

memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b).

People with Disabilities: We ask that requests for accommodations be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530.

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

– FCC –

Appendix

1) Applicant(s): Mitel Cloud Services Inc.

WC Docket No. 24-70, Comp. Pol. File No. 1900

Link – [https://www.fcc.gov/ecfs/search/search-filings/results?q=\(proceedings.name:\(%2224-70*%22\)\)](https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2224-70*%22)))

Affected Service(s) – MiCloud Engage Contact Center service, which includes interconnected VoIP service

Service Area(s) – throughout the United States, including the District of Columbia and Puerto Rico

Authorized Date(s) – on or after July 5, 2024

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

Note: On June 3, 2024, Mitel filed a supplemental letter to indicate that corrected notices were emailed to affected customers on May 31, 2024.

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

In the Matter of	)	
	)	
Rural Health Care Support Mechanism	)	WC Docket No. 02-60
	)	

ORDER

Adopted: June 4, 2024

Released: June 4, 2024

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, pursuant to section 54.600(e) of the Commission's rules,¹ the Wireline Competition Bureau (Bureau) updates the list of rural areas used to determine eligibility in the Rural Health Care (RHC) Program to reflect results of the 2020 decennial United States census. To ease the transition, the Bureau grants a waiver for funding year 2025 to allow health care providers whose status has changed from rural to urban to continue to participate in the RHC Program as if they were rural.

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.² 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.³

3. Eligible health care providers, as defined in the Telecommunications Act of 1996 (1996 Act), are limited to (1) post-secondary educational institutions offering health care instruction, teaching hospitals, and medical schools; (2) community health centers or health centers providing health care to migrants; (3) local health departments or agencies; (4) community mental health centers; (5) not-for-profit hospitals; (6) rural health clinics; (7) skilled nursing facilities; and (8) consortia of HCPs consisting of one or more entities falling into the first seven categories.⁴ In addition, eligible health care providers must be non-profit or public.⁵

4. Pursuant to the Act and the Commission's rules, each individual health care provider site must be located in a rural area to receive support in the Telecom Program.⁶ Similarly, individual

¹ 47 CFR § 54.600(e).

² 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) (*Healthcare Connect Fund Order*).

³ 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) (*Universal Service First Report and Order*).

⁴ 47 U.S.C. § 254(h)(7)(B).

⁵ 47 U.S.C. §§ 254(h)(4), (h)(7)(B).

⁶ See 47 U.S.C. § 254(h)(1)(A) ("A telecommunications carrier shall, upon receiving a bona fide request, provide telecommunications services which are necessary for the provision of health care services in a State, including

(continued....)

applicants in the HCF Program must also be located in a rural area.⁷ A consortium in the HCF Program may include urban health care provider sites but must be comprised of a majority of health care provider sites located in rural areas.⁸

5. The Commission's rules define a "rural area" as an area that is entirely outside of a Core Based Statistical Area; is within a Core Based Statistical Area that does not have any Urban Area with a population of 25,000 or greater; or is in a Core Based Statistical Area that contains an Urban Area with a population of 25,000 or greater, but is within a specific census tract that itself does not contain any part of a Place or Urban Area with a population of greater than 25,000.⁹ The Commission's rules specify that Core Based Statistical Areas, Urban Areas, and Places follow Census Bureau definitions.¹⁰

6. After data from each census becomes available, the Office of Management and Budget updates designations for Core Based Statistical Areas.¹¹ Updates to reflect 2020 Census results are complete.¹² After the release of updated data from the 2010 Census, the Bureau updated rurality

(Continued from previous page)

instruction relating to such services, to any public or nonprofit health care provider that serves persons who reside in rural areas in that State . . .").

⁷ See also 47 CFR § 54.607(a) ("Under the Healthcare Connect Fund, an eligible rural healthcare provider may receive universal service support by applying individually . . .").

⁸ See 47 CFR § 54.607(b) ("An eligible non-rural health care provider site may receive universal service support only as part of a consortium that includes more than 50 percent eligible rural health care provider sites").

⁹ See 47 CFR § 54.600(e). For purposes of prioritizing funding in the event demand exceeds available funding, the Commission subdivides rural areas into an Extremely Rural Tier (areas entirely outside of a Core Based Statistical Area), a Rural Tier (areas within a Core Based Statistical Area that does not have an urban area or urban cluster with a population equal to or greater than 25,000), and a Less Rural Tier (areas within a Core Based Statistical Area with an urban area or urban cluster with a population equal to or greater than 25,000, but where the census tract does not contain any part of an urban area or urban cluster with population equal to or greater than 25,000). 47 CFR § 54.621(b)(2). The Commission's original definition for the RHC Program defined "rural areas" as a "nonmetropolitan county or county equivalent, as defined by [the Office of Management and Budget (OMB)] and identifiable from the most recent MSA list released by OMB, or any census tract or block numbered area, or contiguous group of such tracts or areas, within an [Metropolitan Statistical Area]-listed metropolitan county identified in the most recent Goldsmith Modification published by [the U.S. Department of Health and Human Services Office for Human Research Protections]." *Universal Service First Report and Order*, 12 FCC Rcd at 9116, para. 649. In 2004, the Commission adopted the current standard for rural areas based on Core Based Statistical Areas for purposes of the RHC Program. *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Second Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 24613, 24619-20, paras. 11-12 (2004) (*2004 Rural Definition Order*). To ease the transition for health care providers losing their rural status under the new definition, the Commission permitted all entities losing their rural status to continue to receive funding as if they were rural for the next three years. See *id.* at 24624, para. 23.

¹⁰ See 47 CFR § 54.600(e); see also United States Census Bureau, *Redefining Areas Following the 2020 Census* (2022), <https://www.census.gov/newsroom/blogs/random-samplings/2022/12/redefining-urban-areas-following-2020-census.html>; United States Census Bureau, *Glossary* (2024), <https://www.census.gov/programs-surveys/geography/about/glossary.html> (defining a Core Based Statistical Area as a county or counties associated with an urban area with a population of at least 10,000; defining an Urban Area as an area with a population threshold of 5,000 or more; defining Place as a locally recognized community that be incorporated or census-designated).

¹¹ See Executive Office of the President, Office of Management and Budget, OMB Bulletin No. 23-01, *Revised Delineations of Metropolitan Statistical Areas, Micropolitan Statistical Areas, and Combined Statistical Areas, and Guidance on Uses of the Delineations of These Areas* (2023), <https://www.whitehouse.gov/wp-content/uploads/2023/07/OMB-Bulletin-23-01.pdf>.

¹² *Id.*

designations to reflect the census changes and issued a waiver to allow sites that were re-designated from rural to urban to continue participating in the RHC Program for a limited period.¹³

III. DISCUSSION

7. Consistent with section 54.600(e) of the Commission's rules, and in accordance with furthering the Commission's goals of increasing telecommunications and broadband access for eligible health care providers, particularly those in rural areas,¹⁴ we direct USAC to update the areas that it designates as rural areas to reflect the 2020 decennial census data, including the most recent Core Based Statistical Area designations, effective in funding year 2025. To ensure a smooth transition, we waive section 5.600(e) of the Commission's rules to permit health care providers that are currently classified as rural but will be re-classified as urban to maintain the benefits of their rural status for funding year 2025 funding requests.¹⁵

8. To effectuate this change, we direct USAC to review all existing eligibility determinations and update the rural status of sites to reflect the new qualifications for "rural areas" using 2020 census data for funding year 2025. We also direct USAC to use results from the 2020 census for all new eligibility determinations made on or after July 1, 2024. We note that this Order does not modify the definition of "rural areas" in the RHC Program, but instead merely implements the existing rule and reminds applicants that the list of qualifying rural areas will be maintained and updated periodically as required by the Commission's rules.

9. On our own motion and consistent with precedent, we grant a limited waiver of section 54.600(e) of the Commission's rules to allow those health care providers that have already received an eligibility determination and whose status will change from rural to urban as a result of this update to continue to participate in the RHC Program as if they were rural for funding year 2025.¹⁶ This waiver will allow health care providers that will lose their rural status time to plan how they will meet their telecommunications and broadband needs in the future. We expect this waiver to apply to less than one percent of health care provider sites.¹⁷

10. The Commission's rules may be waived for good cause shown.¹⁸ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with

¹³ *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 29 FCC Rcd 8609 (2014) (*2014 Rural Areas Update Order*).

¹⁴ See *Healthcare Connect Fund Order*, 27 FCC Rcd at 16695, 16815, paras. 32, 344 (adopting performance goals for both the HCF and Telecom Programs).

¹⁵ In this Order, "urban areas" and "urban health care providers" refer to areas and health care providers outside of rural area as "rural area" is defined in section 54.600(e) of the Commission's rules. See 47 CFR 54.600(e).

¹⁶ See *2014 Rural Areas Update Order*, 29 FCC Rcd 8609 (allowing health care providers that would be re-designated as urban after updates to rurality from the 2010 census to continue to receive funding as if they were rural for the remainder of funding years 2014 and 2015).

¹⁷ Preliminary analysis indicates that less than one percent of the health care providers that recently participated in the RHC Program will change from rural to urban following the updating of the providers designated by USAC as rural participants as directed by this Order. Of the 34,741 health care providers that filed an FCC Form 460 or 465 in funding years 2012-23, approximately 312 would shift from rural to urban after this update, while 485 would shift from urban to rural. See Letter from Mark Sweeney, Vice President, Rural Health Care Division, USAC to Jodie C. Griffin, Chief, and Bryan P. Boyle, Deputy Chief, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, WC Docket No. 02-60 (filed June 3, 2024). We also note that updates to the list of sites USAC designates as rural may change the status of areas that were previously urban to rural. Health care providers in these newly rural areas will be eligible to seek RHC support for funding year 2025, assuming they meet all other requirements of the RHC Program.

¹⁸ 47 CFR § 1.3.

the public interest.¹⁹ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.²⁰ 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.²¹

11. This once-per-decade update to areas identified as rural creates special circumstances justifying our action to ease impacted health care providers' transitions. Many of these sites play an important role in delivering health care and a sudden change in eligibility due to the loss of a health care provider's rural status could have a serious effect on its ability to deliver needed health care services to patients in a given area. Further, easing the transition for formerly rural sites serves the public interest because it provides health care providers currently participating in the RHC Program with sufficient time to determine whether their status as a rural site will change, and to address any implications of this in their business operations. Transitioning health care providers will remain connected as they consider how best to go forward, either on their own or potentially as part of an HCF Program-supported network.²² Thus, this support will help maintain the status quo for many patients and communities that benefit from the telemedicine and telehealth applicants provided by the health care providers participating in the RHC Program.

12. This waiver applies across all aspects of the RHC Program for funding year 2025 requests for support and reimbursement, including to the consortium majority rural requirement and multi-year commitments. HCF Program consortia must be comprised of a majority of rural sites.²³ Sites that have received a funding commitment as part of a consortium in funding year 2025 or earlier and had their status change to urban as a result of today's action will count as rural toward the consortium's majority rural requirement through the end of funding year 2025.²⁴ Participants in the HCF Program may receive a funding commitment for up to three years.²⁵ Health care providers that are treated as urban under this waiver will retain that treatment for the full duration of their multi-year commitment, up to three years, subject to all other requirements for multi-year commitments.²⁶

13. Finally, we direct USAC to conduct outreach to sites that will transition from rural to urban and vice versa, as well as to the lead for consortia with sites that will transition from rural to urban and vice versa. This outreach will ensure that impacted sites will be aware of their change in status and have sufficient time to prepare for future funding requests that reflect their new status. USAC must conduct individual outreach to impacted sites that received a funding commitment since funding year 2021 and also address these changes in outreach materials for a general RHC Program audience.

¹⁹ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

²⁰ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

²¹ *Northeast Cellular*, 897 F.2d at 1166.

²² In the HCF Program, a site whose status changes from rural to urban can still potentially receive RHC support if it is part of a consortium that is majority rural. *Healthcare Connect Fund Order*, 27 FCC Rcd at 16705-07, paras. 59, 61; see also 47 CFR § 54.630(b) ("An eligible non-rural health care provider may receive universal service support only as part of a consortium that includes more than 50 percent eligible rural health care provider sites.").

²³ See 47 CFR § 54.607(b).

²⁴ Because our action to re-classify sites that will change to rural as a result of today's action applies for funding year 2025, those sites will also qualify as rural for funding year 2025.

²⁵ See 47 CFR § 54.620(c).

²⁶ See, e.g., 47 CFR § 54.621(b)(1)(i) (applying prioritization to the second and third year of multi-year commitments when demand exceeds available funding).

IV. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.201(d), and 0.291 of the Commission's rules, 47 CFR §§ 0.91, 0.201(d), and 0.291, this Order IS ADOPTED.

15. IT IS FURTHER ORDERED that, pursuant to sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, section 54.600(e) of the Commission's rules, 47 CFR § 54.600(e), IS WAIVED to the extent described above.

16. IT IS FURTHER ORDERED that, pursuant to the authority contained 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 NE
Washington, DC 20554

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

DA 24-527

Released: June 4, 2024

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES PROCEDURES FOR STATE REQUESTS TO ACTIVATE THE MANDATORY DISASTER RESPONSE INITIATIVE (MDRI)

PS Docket Nos. 21-346 and 15-80; ET Docket No. 04-35

By this Public Notice, the Public Safety and Homeland Security Bureau (Bureau) announces procedures for states to request that the Bureau activate the Mandatory Disaster Response Initiative (MDRI).

Background: Facilities-based mobile wireless providers were required to comply with the Commission's MDRI rules by May 1, 2024.¹ "The rules will help reduce wireless phone outages for the public and support faster service restoration after hurricanes, wildfires, and other disasters."² To this end, the rules require facilities-based mobile wireless providers to: (1) provide roaming to one another when a provider's network is down, where technically feasible;³ (2) establish mutual aid arrangements to share physical assets and to consult with one another during and after emergencies;⁴ (3) take reasonable measures to enhance municipal preparedness and restoration; (4) take reasonable measures to increase consumer readiness and preparation; and (5) take reasonable measures to improve public awareness and stakeholder communications on service and restoration status.⁵ Facilities-based mobile wireless providers operating in a certain geographic area in the aftermath of a disaster must submit reports to the

¹ *Resilient Networks; Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications; New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, PS Docket Nos. 21-346 and 15-80 and ET Docket No. 04-35, Order on Reconsideration, FCC 23-71, at 1, para. 1 (Sept. 15, 2023) (*Order on Reconsideration*); *Public Safety and Homeland Security Bureau Announces Compliance Date and PRA Approval for Resilient Networks Mandatory Disaster Response Initiative (MDRI)*, PS Docket Nos. 21-346 and 15-80 and ET Docket No. 04-35, Public Notice, DA 24-339, at 1 (PSHSB Apr. 8, 2024).

² Federal Communications Commission, *Wireless Network Resiliency During Disasters* (Apr. 8, 2024), <https://www.fcc.gov/wireless-network-resiliency-during-disasters>.

³ See 47 CFR § 4.17(a)(3)(i). Under the MDRI, these roaming under disaster agreements (RuDs) may be invoked where: "[a] requesting provider's network has become inoperable and the requesting provider has taken all appropriate steps to attempt to restore its own network;" and "[t]he provider receiving the request (home provider) has determined that roaming is technically feasible and will not adversely affect service to the home provider's own subscribers, provided that existing roaming arrangements and call processing methods do not already achieve these objectives and that any new arrangements are limited in duration and contingent on the requesting provider taking all possible steps to restore service on its own network as quickly as possible." 47 CFR § 4.17(a)(3)(i)(A), (B). Facilities-based mobile wireless providers must have performed a complete first round of testing of their roaming capabilities by May 1, 2024. See *id.* § 4.17(b).

⁴ See 47 CFR § 4.17(a)(3)(ii). Mutual aid arrangements entail providing aid upon request to those facilities-based mobile wireless providers during emergencies, "where such agreements address the sharing of physical assets and commit to engaging in necessary consultation where feasible during and after disasters, provided that the provider supplying the aid has reasonably first managed its own network needs." 47 CFR § 4.17(a)(3)(ii).

⁵ 47 CFR § 4.17(a)(3)(i)-(v); see also Federal Communications Commission, *Wireless Network Resiliency During Disasters* (Apr. 8, 2024), <https://www.fcc.gov/wireless-network-resiliency-during-disasters>.

Commission detailing the timing, duration, and effectiveness of their implementation of the MDRI's provisions within 60 days of the Bureau's issuance of a Public Notice announcing that such reports must be filed.⁶

MDRI Activation Criteria: The MDRI may be activated when any one of the following three conditions applies: (1) any entity authorized to declare Emergency Support Function 2 (ESF-2) activates ESF-2 for a particular emergency or disaster;⁷ (2) the Commission activates the Disaster Information Reporting System (DIRS); or (3) the Chief of the Commission's Public Safety and Homeland Security Bureau issues a Public Notice activating the MDRI in response to a state request to do so, where the state has also either activated its State Emergency Operations Center (EOC), activated mutual aid, or proclaimed a local state of emergency.⁸ The *2022 Resilient Networks Report and Order* delegated authority to the Bureau to issue a Public Notice effectuating the MDRI under these circumstances and to prescribe any mechanisms for receiving such a request.⁹

State Requests to Activate the MDRI: We establish the following procedures for state requests to be submitted to the Bureau to activate the MDRI. We have created an MDRI e-mail box at MDRI@fcc.gov to receive and review state requests to activate the MDRI pursuant to section 4.17(a)(3). State requests to invoke the MDRI in response to an emergency or disaster must be submitted via email to this MDRI@fcc.gov mailbox. In their requests, states will need to demonstrate that they have activated their State Emergency Operations Center, activated mutual aid, or proclaimed a local state of emergency. State requests should also include a description of the event triggering the state emergency, a description of the specific geographic area(s) for which the MDRI activation is requested including, if possible, the specific counties, and a point of contact with email and cell phone information. The Bureau will announce grant of a state request to activate the MDRI by releasing a Public Notice stating the counties of interest for which the MDRI activation applies.¹⁰

For further information, please contact Jeanne Stockman, Attorney Advisor, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau at (202) 418-7830 or via email at Jeanne.Stockman@fcc.gov.

– FCC –

⁶ See 47 CFR § 4.17(c).

⁷ We note that an entity that is authorized to do so may activate ESF-2 for a particular incident, emergency, or disaster.

⁸ 47 CFR § 4.17(a)(1)-(3).

⁹ *Resilient Networks; Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications; New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, PS Docket Nos. 21-346 and 15-80 and ET Docket No. 04-35, Report and Order and Further Notice of Proposed Rulemaking, 37 FCC Rcd 8059, 8071, para. 36 (2022) (*Order*).

¹⁰ See, e.g., *Federal Communications Commission Announces the Activation of the Disaster Information Reporting System for Communications Impacted by Hurricane Lee*, Public Notice, DA 23-855, at 1 (PSHSB Sept. 15, 2023).



PUBLIC NOTICE

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

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

DA No. 24-528

Report No. TEL-02368

Thursday June 6, 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-ASG-20240425-00070	E	123.Net, LLC
Assignment		
Grant of Authority		Date of Action: 05/31/2024

Current Licensee: 123.Net, Inc.

FROM: 123.Net, Inc.

TO: 123.Net, LLC

123.Net, Inc., which holds an international section 214 authorization to provide global resale services (ITC-214-20091022-00454), filed an application for consent to the transfer of control of 123.Net, Inc. to 123.Net Intermediate, LLC (123.Net Intermediate). Pursuant to an April 11, 2024 Membership Purchase Agreement, 123.Net, Inc. will become an indirect subsidiary of GCOF IV 123Net Aggregator, L.P. (GCO Fund IV), which is owned by investment funds ultimately controlled by David J. Grain. Specifically, 123.Net Intermediate will be created as the immediate 100% parent of 123.Net, Inc. 123Net Holdings, LLC (123Net Holdings), a wholly owned subsidiary of GCO Fund IV, will acquire a 65% and controlling interest in 123.Net Intermediate. Certain of the current owners of 123Net, Inc. will hold the remaining 35% interest in 123.Net Intermediate. As part of the transaction, 123.Net, Inc. will convert from a Michigan corporation to a Delaware limited liability company, 123.Net, LLC.

Upon consummation, 123.Net, LLC will be a wholly owned subsidiary of 123Net Intermediate, a Delaware limited liability company. The direct equity and voting interests in 123.Net Intermediate will be held by 123Net Holdings (65%) and 123Net Carryover Member, Inc. (123Net Carryover) (35%), both Delaware entities. Two U.S. citizens will hold 10% or greater equity and voting interests in 123Net Carryover: Dan Irvin (58.33%) and Ryan Duda (31.67%).

123Net Holdings is a direct wholly owned subsidiary of GCO Fund IV. Two Grain investment entities hold 10% or greater limited partnership interest in GCO Fund IV: Grain Communications Opportunity Fund IV-A, L.P. (GCOF Fund IV-A) (66.6%) and GCOF IV 123Net Blocker, LLC (GCOF IV Blocker) (32.8%). Three entities have a 10% of greater equity interest in GCOF Fund IV-A: California Public Employee's Retirement System (24.5%), the State of Connecticut (18.4%), and the District of Columbia Retirement Board (12.2%). Grain Communications Opportunity Fund IV-C, L.P. (GCOF Fund IV-C) holds a 92.5% equity interest in GCOF IV Blocker. GCOF IV GP, L.P. is the general partner of GCOF Fund IV, GCOF Fund IV-A, GCOF IV Blocker, and GCOF Fund IV-C. GCOF IV Management, L.P. is the manager of GCOF Fund IV-A and GCOF Fund IV-C.

Grain Capital UGP, LLC is the general partner for GCOF IV Management, L.P. and GCOF IV GP, L.P. Grain Capital II, LLC holds 100% of the limited partnership interests in Grain Capital Group UGP, LLC and GCOF IV GP, L.P. Grain Capital, LLC is the sole member of Grain Capital II, LLC and holds a 99.9% interest in Grain Management, LLC. David Grain, a U.S. citizen, is the sole member of Grain Capital, LLC. All of the Grain entities are organized in Delaware.

According to the Applicants, no other individuals or entities will hold a 10% or greater equity or voting interest in 123.Net Intermediate or 123.Net, LLC.

This authorization is without prejudice to the Commission's action in any other related pending proceedings.

ITC-T/C-20240119-00011	E	IPC Systems, Inc.
Transfer of Control		
Grant of Authority		Date of Action: 06/04/2024

Current Licensee: IPC Systems, Inc.

FROM: CCP II Finco, LLC

TO: Pike Street, LLC

On January 19, 2024, IPC Systems, Inc. (IPC Systems), a Delaware corporation that holds an international section 214 authorization for global facilities-based and resale service (ITC-214-20010817-00425), filed a notification of the pro forma transfer control of IPC Systems from CCP II Finco, LLC (CCP II Finco) to Pike Street, LLC (Pike Street), effective December 21, 2023. IPC Systems is an indirect wholly owned subsidiary of IPC Parent Holdings LLC (IPC Parent), a Delaware limited liability company. Prior to the transaction, Hummingbird Circle, LLC (Hummingbird Circle) held a controlling 60% equity and voting interests in IPC Parent, and CCP II Finco held the remaining 40% equity and voting interests in IPC Parent. Hummingbird Circle, a Delaware limited liability company, is controlled by certain funds and accounts managed by Strategic Value Partners, LLC (SVP), a Connecticut limited liability company. Pike Street, a Delaware limited liability company, is a special purpose acquisition vehicle controlled by SVP.

Pike Street acquired all of the interests in IPC Parent held by CCP II Finco. After consummation, Hummingbird continues to hold 60% equity and voting interests in IPC Parent and now Pike Street holds 40% equity and voting interests in IPC Parent. As a result, SVP increased its indirect ownership in IPC Parent and IPC Systems from 60% to 100%.

Strategic Value Special Situations Master Fund V, L.P. (Master Fund V), a Delaware limited partnership, holds 70% equity and voting interests in Pike Street. SVP Special Situations GP V Ltd., a Cayman Islands entity, is the general partner of Master Fund V. According to the Applicants, no other individual or entity holds a 10% or greater interest in Pike Street.

ITC-T/C-20240220-00035 E Goldfield Telephone Co Inc
Transfer of Control
Grant of Authority Date of Action: 05/31/2024

Current Licensee: Goldfield Telephone Co Inc

FROM: Communications 1 Network, Inc.

TO: Winnebago Cooperative Telecom Association

Goldfield Telephone Co Inc. (Goldfield Telephone), an Iowa corporation that holds an international section 214 authorization to provide global resale service (ITC-214-20160727-00194), filed an application for consent to the transfer of control of Goldfield Telephone from Communications 1 Network, Inc. (Comm 1) to Winnebago Cooperative Telecom Association (WCTA) and Webster-Calhoun Cooperative Telephone Association (WebCal). Goldfield Telephone is a wholly owned subsidiary of Goldfield Holdings, LLC, which in turn is wholly owned by Comm 1, all Iowa entities.

Pursuant to a purchase agreement, WCTA and WebCal will acquire joint control of Comm 1 and Goldfield Telephone. As a result of the transaction, WCTA Wireless, Inc., a wholly owned subsidiary of WCTA, and Webster-Calhoun Communications L.C., a wholly owned subsidiary of WebCal, will each hold a 50% ownership interest in Comm 1, all Iowa entities. WCTA and WebCal are both Iowa telephone cooperatives in which no individual or entity holds a 10% or greater direct or indirect ownership interest.

This authorization is without prejudice to the Commission's action in any other related pending proceedings.

ITC-T/C-20240220-00036 E Goldfield Communications Service Corp.
Transfer of Control
Grant of Authority Date of Action: 05/31/2024

Current Licensee: Goldfield Communications Service Corp.

FROM: Communications 1 Network, Inc.

TO: Winnebago Cooperative Telecom Association

Goldfield Communications Services Corp. (Goldfield Communications), an Iowa corporation that holds an international section 214 authorization to provide global resale service (ITC-214-19970811-00481), filed an application for consent to the transfer of control of Goldfield Communications from Communications 1 Network, Inc. (Comm 1) to Winnebago Cooperative Telecom Association (WCTA) and Webster-Calhoun Cooperative Telephone Association (WebCal). Goldfield Communications is a wholly owned subsidiary of Goldfield Holdings, LLC, which in turn is wholly owned by Comm 1, all Iowa entities.

Pursuant to a purchase agreement, WCTA and WebCal will acquire joint control of Comm 1 and Goldfield Communications. As a result of the transaction, WCTA Wireless, Inc., a wholly owned subsidiary of WCTA, and Webster-Calhoun Communications L.C., a wholly owned subsidiary of WebCal, will each hold a 50% ownership interest in Comm 1, all Iowa entities. WCTA and WebCal are both Iowa telephone cooperatives in which no individual or entity holds a 10% or greater direct or indirect ownership interest.

This authorization is without prejudice to the Commission's action in any other related pending proceedings.

ITC-T/C-20240220-00037 E Goldfield Access Network, L.C.
Transfer of Control
Grant of Authority Date of Action: 05/31/2024

Current Licensee: Goldfield Access Network, L.C.

FROM: Communications 1 Network, Inc.

TO: Winnebago Cooperative Telecom Association

Goldfield Access Network, L.C. (Goldfield Access Network), an Iowa corporation that holds an international section 214 authorization to provide global resale service (ITC-214-20160727-00195), filed an application for consent to the transfer of control of Goldfield Access Network from Communications 1 Network, Inc. (Comm 1) to Winnebago Cooperative Telecom Association (WCTA) and Webster-Calhoun Cooperative Telephone Association (WebCal). Goldfield Access Network is a wholly owned subsidiary of Goldfield Holdings, LLC, which in turn is wholly owned by Comm 1, all Iowa entities.

Pursuant to a purchase agreement, WCTA and WebCal will acquire joint control of Comm 1 and Goldfield Access Network. As a result of the transaction, WCTA Wireless, Inc., a wholly owned subsidiary of WCTA, and Webster-Calhoun Communications L.C., a wholly owned subsidiary of WebCal, will each hold a 50% ownership interest in Comm 1, all Iowa entities. WCTA and WebCal are both Iowa telephone cooperatives in which no individual or entity holds a 10% or greater direct or indirect ownership interest.

This authorization is without prejudice to the Commission's action in any other related pending proceedings.

ITC-T/C-20240412-00063 E

Sarver Corporation

Transfer of Control

Grant of Authority

Date of Action: 05/31/2024

Current Licensee: Sarver Corporation

FROM: David Sarver

TO: Starlion Distribution, LLC

Sarver Corporation (Sarver Corp.), a California corporation that holds an international section 214 authorization to provide global facilities-based and resale service (ITC-214-20221026-00127), filed an application for consent to the unauthorized transfer of control of Sarver Corp. from David Sarver to Starlion Electronics Distribution, LLC (Starlion). Prior to the transaction, David Sarver was the sole owner of Sarver Corp. On June 16, 2023, without prior Commission consent, Starlion acquired an 80% and controlling interest in Sarver Corp. Starlion, an Ohio limited liability company, is wholly owned by Sara Nijem, a U.S. citizen. According to the Applicants, the remaining 20% ownership interests in Sarver Corp. are held by individuals, none of whom holds a 10% or greater interest.

Sarver Corp. filed a request for Special Temporary Authority (ITC-STA-20240424-00067) related to this application, which was granted on May 9, 2024.

Grant of this Application is without prejudice to any enforcement action by the Commission for non-compliance with the Communications Act of 1934, as amended, or the Commission's rules.

This authorization is without prejudice to the Commission's action in any other related pending proceedings.

INFORMATIVE

ITC-214-20130823-00221

TDS BROADBAND LLC

By letter filed June 4, 2024, TDS BROADBAND LLC notified the Commission that the following wholly-owned subsidiary may provide international telecommunications service under its international section 214 authorization, pursuant to section 63.21(h) of the Commission's rules, 47 CFR 63.21(h): TDS Broadband Service LLC.

ITC-214-20240215-00034

Whoop Connect Inc.

Whoop Connect Inc. notified the Commission of the withdrawal of its international section 214 application on May 22, 2024.

SURRENDER

ITC-214-20080415-00179

Global Force Telecom LLC

Global Force Telecom LLC notified the Commission of the surrender of its international section 214 authorization.

CONDITIONS APPLICABLE TO INTERNATIONAL SECTION 214 AUTHORIZATIONS

(1) These authorizations are subject to the Exclusion List for International Section 214 Authorizations, which identifies restrictions on providing service to particular countries or using particular facilities. The most recent Exclusion List is at the end of this Public Notice. The list applies to all U.S. international carriers, including those that have previously received global or limited global section 214 authority, whether by Public Notice or specific written order. Carriers are advised that the attached Exclusion List is subject to amendment at any time pursuant to the procedures set forth in Streamlining the International Section 214 Authorization Process and Tariff Requirements, IB Docket No. 95-118, 11 FCC Rcd 12884 (1996), para. 18. A copy of the current Exclusion List is maintained in the FCC Reference Information Center and is available at <https://www.fcc.gov/exclusion-list-international-section-214-authorizations>. It is also attached to each Public Notice that grants international Section 214 authority.

(2) The export of telecommunications services and related payments to countries that are subject to economic sanctions may be restricted. For information concerning current restrictions, call the Office of Foreign Assets Control, U.S. Department of the Treasury, (202) 622-2520.

(3) Carriers shall comply with the requirements of Section 63.11 of the Commission's rules, which requires notification by, and in certain circumstances prior notification by, U.S. carriers acquiring an affiliation with foreign carriers. A carrier that acquires an affiliation with a foreign carrier will be subject to possible reclassification as a dominant carrier on an affiliated route pursuant to the provisions of section 63.10 of the rules.

(4) A carrier may provide switched services over its authorized resold private lines in the circumstances specified in section 63.23(d) of the rules, 47 CFR § 63.23(d).

(5) Carriers shall comply with the "No Special Concessions" rule, section 63.14, 47 CFR § 63.14.

(6) Carriers regulated as dominant for the provision of a particular communications service on a particular route for any reason other than a foreign carrier affiliation under section 63.10 of the rules shall file tariffs pursuant to Section 203 of the Communications Act, as amended, 47 U.S.C. § 203, and Part 61 of the Commission's Rules, 47 CFR Part 61. Carriers shall not otherwise file tariffs except as permitted by section 61.19 of the rules, 47 C.F.R. § 61.19. Except as specified in section 20.15 with respect to commercial mobile radio service providers, carriers regulated as non-dominant, as defined in section 61.3, and providing detariffed international services pursuant to section 61.19, must comply with all applicable public disclosure and maintenance of information requirements in sections 42.10 and 42.11.

(7) International facilities-based service providers must file and maintain a list of U.S.-international routes on which they have direct termination arrangements with a foreign carrier. 47 CFR § 63.22(h). A new international facilities-based service provider or one without existing direct termination arrangements must file its list within thirty (30) days of entering into a direct termination arrangement(s) with a foreign carrier(s). Thereafter, international facilities-based service providers must update their lists within thirty (30) days after adding a termination arrangement for a new foreign destination or discontinuing an arrangement with a previously listed destination. See Process For The Filing Of Routes On Which International Service Providers Have Direct Termination Arrangements With A Foreign Carrier, ITC-MSC-20181015-00182, Public Notice, 33 FCC Rcd 10008 (IB 2018).

(8) Any U.S. Carrier that owned or leased bare capacity on a submarine cable between the United States and any foreign point must file a Circuit Capacity Report to provide information about the submarine cable capacity it holds. 47 CFR § 43.82(a)(2). See <https://www.fcc.gov/circuit-capacity-data-us-international-submarine-cables>.

(9) Carriers should consult section 63.19 of the rules when contemplating a discontinuance, reduction or impairment of service.

(10) If any carrier is reselling service obtained pursuant to a contract with another carrier, the services obtained by contract shall be made generally available by the underlying carrier to similarly situated customers at the same terms, conditions and rates. 47 U.S.C. § 203.

(11) To the extent the applicant is, or is affiliated with, an incumbent independent local exchange carrier, as those terms are defined in section 64.1902 of the rules, it shall provide the authorized services in compliance with the requirements of section 64.1903.

(12) Except as otherwise ordered by the Commission, a carrier authorized here to provide facilities-based service that (i) is classified as dominant under section 63.10 of the rules for the provision of such service on a particular route and (ii) is

affiliated with a carrier that collects settlement payments for terminating U.S. international switched traffic at the foreign end of that route may not provide facilities-based switched service on that route unless the current rates the affiliate charges U.S. international carriers to terminate traffic are at or below the Commission's relevant benchmark adopted in International Settlement Rates, IB Docket No. 96-261, Report and Order, 12 FCC Rcd 19806 (1997). See also Report and Order on Reconsideration and Order Lifting Stay in IB Docket No. 96-261, FCC 99-124 (rel. June 11, 1999). For the purposes of this rule, "affiliated" and "foreign carrier" are defined in section 63.09.

(13) Carriers shall comply with the Communications Assistance for Law Enforcement Act (CALEA), see 47 CFR §§ 1.20000 et seq.

(14) Every carrier must designate an agent for service in the District of Columbia. see 47 U.S.C. § 413, 47 CFR §§ 1.47(h), 64.1195.

(15) Each carrier shall notify the Commission of any change in its contact information. Such notification shall be filed in the file number(s) for the international section 214 authorization(s) through the International Communications Filing System (ICFS).

Exclusion List for International Section 214 Authorizations

The following is a list of countries and facilities not covered by grant of global section 214 authority under section 63.18(e)(1) of the Commission's Rules, 47 CFR § 63.18(e)(1). Carriers desiring to serve countries or use facilities listed as excluded hereon shall file a separate section 214 application pursuant to section 63.18(e)(3) of the Commission's Rules. See 47 CFR § 63.22(c).

Countries:

None.

Facilities:

Any non-U.S.-licensed space station that has not received Commission approval to operate in the U.S. market pursuant to the procedures adopted in the Commission's DISCO II Order, IB Docket No. 96-111, Report and Order, FCC 97-399, 12 FCC Rcd 24094, 24107-72 paragraphs 30-182 (1997) (DISCO II Order). Information regarding non-U.S.-licensed space stations approved to operate in the U.S. market pursuant to the Commission's DISCO II procedures is maintained at <https://www.fcc.gov/approved-space-station-list>.

This list is subject to change by the Commission when the public interest requires. The most current version of the list is maintained at <https://www.fcc.gov/exclusion-list-international-section-214-authorizations>.

For additional information, contact the Office of International Affairs, Telecommunications and Analysis Division at (202) 418-1480.



PUBLIC NOTICE

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

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

DA No. 24-529

Report No. SCL-00464

Thursday June 6, 2024

Actions Taken Under Cable Landing License Act

Section 1.767(a) Cable Landing Licenses, Modifications, and Assignments or Transfers of Control of Interests in Cable Landing Licenses (47 CFR § 1.767(a))

By the Chief, Telecommunications and Analysis Division, Office of International Affairs:

Pursuant to an Act relating to the landing and operation of submarine cables in the United States, 47 U.S.C. §§ 34-39 (Cable Landing License Act), Executive Order No. 10530, Exec. Ord. No. 10530 reprinted as amended in 3 U.S.C. § 301, and section 1.767 of the Commission's rules, 47 CFR § 1.767, the following applications ARE GRANTED. These grants of authority are taken under section 0.261 of the Commission's rules. 47 CFR § 0.261. Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules may be filed within thirty (30) days of the date of this public notice. 47 CFR §§ 1.106, 1.115.

These applications have been coordinated with the Department of State and other Executive Branch agencies pursuant to section 1.767(b) of the Commission's rules and consistent with procedures established with the Department of State. 47 CFR § 1.767(b); see Review of Commission Consideration of Applications under the Cable Landing License Act, IB Docket No. 00-106, Report and Order, 16 FCC Rcd 22167, 22192-93, paras. 51-52 (2001) (Submarine Cable Landing License Report and Order); Commission Announces Department of State's Revised Procedures for its Consideration of Submarine Cable Landing License Applications, IB Docket No. 16-155, Public Notice, DA 22-435 (rel. Apr. 19, 2022).

This public notice serves as each cable landing licensee's Cable Landing License, or modification thereto, pursuant to the Cable Landing License Act and sections 1.767 and 1.768 of the Commission's rules. 47 CFR §§ 1.767, 1.768. Cable landing licensees should review the terms and conditions of their licenses. Failure to comply with these terms and conditions or relevant Commission rules and policies could result in fines or forfeitures.

SCL-T/C-20221020-00031 E PC Landing Corp.

Transfer of Control

Grant of Authority

Date of Action: 06/04/2024

Current Licensee: PC Landing Corp.

FROM: Nippon Telegraph and Telephone Corporation

TO: Nippon Telegraph and Telephone Corporation

On October 20, 2022, PC Landing Corp. (PC Landing), a Delaware corporation that is the licensee for the Pacific Crossing cable system (PC-1) (SCL-LIC-19980807-00010, SCL-MOD-20020807-00086), filed a notification of the pro forma transfer of control of PC Landing, effective October 1, 2022. Prior to the transaction, PC Landing was a direct wholly owned subsidiary of NTT America, Inc., a Delaware corporation, which was an indirect wholly owned subsidiary of NTT, Inc., a Japan entity, which in turn was a direct wholly owned subsidiary of Nippon Telegraph and Telephone Corporation (NTT Corp.) a Japan entity. NTT, Inc. also held a 54.2% equity and voting interest in NTT DATA Corporation (NTT DATA Corp.), a Japan entity.

Following a multi-step corporate reorganization, NTT Corp. now holds a majority and controlling indirect interest in PC Landing through NTT DATA Corp. First, NTT Inc. transferred its 54.2% interest in NTT DATA Corp. to NTT Corp. Then NTT DATA Corp. acquired a direct 55% equity and voting interest in NTT, Inc. with NTT Corp. retaining a 45% equity and voting interest in NTT, Inc. Finally, NTT, Inc. changed its name to NTT DATA, Inc. As a result, NTT Corp. now holds an indirect majority and controlling interest in PC Landing through NTT DATA Corp.

SCL-T/C-20221024-00033 E NTT Ltd Japan Corporation
Transfer of Control
Grant of Authority Date of Action: 06/05/2024

Current Licensee: NTT Ltd Japan Corporation
FROM: Nippon Telegraph and Telephone Corporation
TO: Nippon Telegraph and Telephone Corporation

On October 24, 2022, NTT Ltd Japan Corporation (NTT LJ), a Japan entity that is a joint licensee on JUPITER Submarine Cable System (SCL-LIC-20180517-00012) and the Trans-Pacific Express Submarine Cable System (SCL-LIC-20070222-00002, SCL-MOD-20080714-00012), filed a notification of the pro forma transfer of control of NTT LJ, effective October 1, 2022. Prior to the transaction, NTT LJ was a direct wholly owned subsidiary of NTT Ltd., a United Kingdom entity, which was a direct wholly owned subsidiary of NTT, Inc., a Japan entity, which in turn was a direct wholly owned subsidiary of Nippon Telegraph and Telephone Corporation (NTT Corp.) a Japan entity. NTT, Inc. also held a 54.2% equity and voting interest in NTT DATA Corporation (NTT DATA Corp.), a Japan entity.

Following a multi-step corporate reorganization, NTT Corp. now holds a majority and controlling indirect interest in NTT LJ through NTT DATA Corp. First, NTT Inc. transferred its 54.2% interest in NTT DATA Corp. to NTT Corp. Then NTT DATA Corp. acquired a direct 55% equity and voting interest in NTT, Inc. with NTT Corp. retaining a 45% equity and voting interest in NTT, Inc. Finally, NTT, Inc. changed its name to NTT DATA, Inc. As a result, NTT Corp. now holds an indirect majority and controlling interest in NTT LJ through NTT DATA Corp.

SCL-T/C-20221024-00038 P NTT America, Inc.
Transfer of Control
Grant of Authority Date of Action: 06/05/2024

Current Licensee: NTT America, Inc.
FROM: Nippon Telegraph and Telephone Corporation
TO: Nippon Telegraph and Telephone Corporation

On October 24, 2022, NTT America, Inc (NTT America), a Delaware corporation that is a joint licensee on JUPITER Submarine Cable System (SCL-LIC-20180517-00012), filed a notification of the pro forma transfer of control of NTT LJ, effective October 1, 2022. Prior to the transaction, NTT America was a direct wholly owned subsidiary of NTT Ltd., a United Kingdom entity, which was an direct wholly owned subsidiary of NTT, Inc., a Japan entity, which in turn was a direct wholly owned subsidiary of Nippon Telegraph and Telephone Corporation (NTT Corp.) a Japan entity. NTT, Inc. also held a 54.2% equity and voting interest in NTT DATA Corporation (NTT DATA Corp.), a Japan entity.

Following a multi-step corporate reorganization, NTT Corp. now holds a majority and controlling indirect interest in NTT America through NTT DATA Corp. First, NTT Inc. transferred its 54.2% interest in NTT DATA Corp. to NTT Corp. Then NTT DATA Corp. acquired a direct 55% equity and voting interest in NTT, Inc. with NTT Corp. retaining a 45% equity and voting interest in NTT, Inc. Finally, NTT, Inc. changed its name to NTT DATA, Inc. As a result, NTT Corp. now holds an indirect majority and controlling interest in NTT America through NTT DATA Corp.

INFORMATIVE

SCL-LIC-20080603-00011 Cedar Cable Ltd.

By letter dated May 24, 2024, MCI International LLC and Cedar Cable Ltd. notified the Commission that the parties retired the CB-1 cable system on May 18, 2024.

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

In the Matter of	)	
	)	
Amendment of section 73.202(b)	)	MB Docket No. 24-83
Table of Allotments,	)	
FM Broadcast Stations.	)	
(Mattoon, Illinois)	)	

REPORT AND ORDER

Adopted: June 6, 2024

Released: June 6, 2024

By the Assistant Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Audio Division has before it the *Notice of Proposed Rule Making*¹ proposing to amend the Table of FM Allotments, section 73.202(b) of the Commission's rules (Rules),² by downgrading the vacant Channel 245B class to Channel 245B1 at Mattoon, Illinois. No comments or counterproposals were filed in this proceeding. For the reasons discussed below, we substitute Channel 245B1 for vacant Channel 245B at Mattoon, Illinois.

II. BACKGROUND

2. The Audio Division, on its own motion, proposed the substitution of Channel 245B1 for vacant Channel 245B at Mattoon, Illinois due to short-spacing conflicts.³ The *Notice* stated that a staff engineering analysis determined that vacant Channel 245B is short-spaced to Station WHMS-FM by ten kilometers and that there are no other Class B channels available at Mattoon.⁴ The minimum distance spacing requirement of section 73.207(b) of the Rules is 74 kilometers.⁵

III. DISCUSSION

3. Accordingly, we substitute Channel 245B1 for vacant Channel 245B at Mattoon, Illinois to resolve the distance spacing conflict with Station WHMS-FM and maintain a second local FM service under Priority (4).⁶ A staff engineering analysis determines that Channel 245B1 can be allotted to

¹ *Mattoon, Illinois*, Notice of Proposed Rule Making, DA 24-278, rel. March 20, 2024 (MB 2024), 2024 WL 1236497 ("Notice"); see also 89 FR 21477 (published March 28, 2024).

² 47 CFR § 73.202(b).

³ Channel 245B at Mattoon is considered a vacant allotment resulting from the cancellation of the license for Station DWLBH-FM. See *Notice of License Expiration for Stations WLBH(AM) and WLBH-FM, Mattoon, IL to Mr. James R. Livesay II, from Albert Shuldiner, Chief, Audio Division*, Letter Order, Ref. 1800B3-VM (MB April 9, 2018); see also, *BROADCAST ACTIONS*, Report No. 49214, Public Notice (MB April 13, 2018).

⁴ Station WHMS-FM is licensed on Channel 248B, Champaign, Illinois. See FCC Application File No. BLH-19911022KB.

⁵ 47 CFR § 73.207(b).

⁶ See *Revision of FM Assignment Policies and Procedures*, BC Docket No. 80-130, Second Report and Order, 90 FCC 2d 88 (1982). The FM allotment priorities are: (1) First fulltime aural service, (2) Second fulltime aural service, (3) First local service and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3).

Mattoon, Illinois consistent with the minimum distance separation requirements of section 73.207(b) of the Rules, with a site restriction of 12.2 kilometers (7.6 miles) southeast of the community.⁷ The reference coordinates are 39-23-17 NL and 88-17-21 WL.

4. *Paperwork Reduction and Regulatory Flexibility.* The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980, as amended,⁸ do not apply to a rulemaking proceeding to amend the Table of FM Allotments, section 73.202(b) of the Rules.⁹ This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995.¹⁰ 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 2002.¹¹

IV. ORDERING CLAUSES

5. IT IS ORDERED that, pursuant to authority found in 47 U.S.C. sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c)(1), 303(g), (r), and 307(b) and sections 0.61, 0.204(b), and 0.283 of the Rules, 47 CFR §§ 0.61, 0.204(b), and 0.283, July 22, 2024, the Table of FM Allotments, 47 CFR § 73.202(b), IS AMENDED, with respect to the community listed below, to read as follows:

<u>Community</u>	<u>Channel No.</u>
Mattoon, Illinois	245B1

6. The window period for filing applications for Channel 245B1 at Mattoon, Illinois will not be opened at this time. Instead, the issue of opening this allotment for filing will be addressed by the Commission in a subsequent order.

7. IT IS FURTHER ORDERED, That the Commission will send a copy of this *Report and Order* in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact Rolanda F. Smith, Media Bureau, (202) 418-2054.

FEDERAL COMMUNICATIONS COMMISSION

Nazifa Sawez
Assistant Chief, Audio Division
Media Bureau

⁷ 47 CFR § 73.207(b).

⁸ 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).

⁹ 47 CFR § 73.202(b).

¹⁰ 44 U.S.C. §§ 3501-3520.

¹¹ 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 24-531
Released: June 6, 2024

FCC ANNOUNCES JUNE 26, 2024 MEETING OF THE CONSUMER ADVISORY COMMITTEE

By this Public Notice,¹ the Federal Communications Commission (FCC) announces the next meeting of the Consumer Advisory Committee (CAC) to be held on Wednesday, June 26, 2024, at 11:00 a.m. ET. The CAC meeting will be held remotely, with video and audio coverage at: www.fcc.gov/live.

At this meeting, CAC members are expected to (i) discuss current and emerging challenges and opportunities in the area of artificial intelligence (AI); (ii) receive updates from the working groups; and (iii) address any other topics relevant to the CAC's work. The meeting agenda will be available at <https://www.fcc.gov/consumer-advisory-committee> and may be modified at the discretion of the CAC Co-Chairs and Designated Federal Officer (DFO).

The CAC meeting is open to the public. During the meeting, members of the public may submit questions and comments to the CAC via email: livequestions@fcc.gov. These comments or questions may be addressed during the public comment period.

Open captioning and sign language interpreting will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requesters of such accommodations may contact the Consumer and Governmental Affairs Bureau at fcc504@fcc.gov, or (202) 418-0530. Such requests should include a detailed description of the accommodation needed and how the requester can be contacted. Requests should be made as early as possible.

For general information about the CAC, visit <https://www.fcc.gov/consumer-advisory-committee>. For specific questions about the CAC, contact Cara Grayer, Designated Federal Officer, CAC@fcc.gov, or (202) 418-2960.

– FCC –

¹ This Public Notice is released consistent with the Federal Advisory Committee Act, 5 U.S.C. § 1001 *et seq.*



PUBLIC NOTICE

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

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

DA No. 24-532

Friday June 7, 2024

Report No. SAT-01827

Satellite Licensing Division and Satellite Programs and Policy Division Information

Actions Taken

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

SAT-AMD-20240524-00111	E	S3185	Space Sciences & Engineering LLC
Amendment			
Grant of Authority			Effective Date: 06/05/2024

Nature of Service: Earth Exploration Satellite Service, Other

See ICFS File No. SAT-LOA-20240205-00023 for a description of the action taken.

SAT-LOA-20240205-00023	E	S3185	Space Sciences & Engineering LLC
Launch and Operating Authority			
Grant of Authority			Effective Date: 06/05/2024

Nature of Service: Earth Exploration Satellite Service, Other

On June 5, 2024, the Satellite Programs and Policy Division granted, with conditions, authority to Space Sciences & Engineering LLC (PlanetiQ) to deploy and operate one satellite, GNOMES-5, in low-Earth, non-geostationary orbit. The satellite will be deployed to an altitude of 590 kilometers (+/- 25 kilometers) and inclination of 97.6 degrees (+/- 0.5 degrees). PlanetiQ will provide Earth exploration-satellite service and conduct telemetry, tracking, and command (TT&C) using the following frequency bands: 8025-8400 MHz (space-to-Earth) and 2025-2110 MHz (Earth-to-space). This application was processed pursuant to the small satellite licensing procedures in section 25.122 of the Commission's rules, 47 CFR § 25.122.

SAT-LOA-20240311-00052	E	S3189	Aethero Space Inc
Launch and Operating Authority			
Grant of Authority			Effective Date: 05/31/2024

Nature of Service: Earth Exploration Satellite Service, Other

On May 31, 2024, the Satellite Programs and Policy Division granted, with conditions, authority to Aethero Space Inc. to deploy and operate one satellite, Deimos, in low-Earth, non-geostationary orbit. The satellite will be deployed at an altitude of 510 kilometers (+/- 15 kilometers) and at an inclination of 97.4 degrees (+/- 0.5 degrees) in sun-synchronous orbit. Aethero will provide Earth exploration-satellite service and conduct telemetry, tracking, and command (TT&C) using the following frequency bands: 400.15-401 MHz (space-to-Earth) and 401-402 MHz (Earth-to-space). This application was processed pursuant to the small satellite licensing procedures in section 25.122 of the Commission's rules, 47 CFR § 25.122.

SAT-STA-20240517-00106	E S3092	Astranis Projects USA LLC	
Special Temporary Authority			
Grant of Authority			Effective Date: 06/04/2024

On June 4, 2024, the Satellite Programs and Policy Division granted, with conditions, special temporary authority to Astranis Projects USA LLC, for a period of 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 using the 19701-19703 MHz and 19704-19706 MHz (space-to-Earth), and 28351-28353 MHz and 28354-28356 MHz (Earth-to-space) frequency bands.

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

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

In the Matter of	)	
	)	
City of New Bedford, Massachusetts	)	File No. 0010694508
	)	
Request for Waiver of Sections 90.305(a) and	)	
90.307(d) of the Commission's Rules	)	

ORDER

Adopted: June 7, 2024

Released: June 7, 2024

By the Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. On September 14, 2023, the City of New Bedford, Massachusetts (New Bedford, or the City) filed a modification application for Station WRTX821, which operates in the 470-512 MHz band (T-Band), accompanied by a request for waiver¹ of sections 90.305(a) and 90.307(d) of the Commission's rules.² For the reasons below, we grant the requested waiver as conditioned herein.

II. BACKGROUND

2. New Bedford operates a public safety private land mobile radio (PLMR) system under call sign WRTX821 using spectrum in the TV Channel 14 band (470-476 MHz) and TV Channel 16 band (482-488 MHz).³ New Bedford seeks a waiver of section 90.305(a) to add TV Channel 16 band frequencies to its base station at the New Bedford Hotel, which is also located 0.154 miles outside the 50-mile (80 kilometers) radius area around Boston, Massachusetts in which fixed stations are normally authorized under the rules.⁴ The City has a prior waiver of section 90.305(a) to operate on TV Channel 14 band frequencies at this site.⁵

3. Additionally, due to the proposed addition of TV Channel 16 spectrum to the New Bedford Hotel site, the City seeks a waiver of section 90.307(d) for this site to operate less than 145 kilometers from adjacent channel TV Station WPXQ-TV, TV Channel 17, Newport, Rhode Island.⁶ New

¹ See File No. 0010694508 (filed Sept. 14, 2023), attached Request for Waiver (Fifty-Mile Waiver Request); attached Waiver – Expedited Action Requested, Involving TV Protection in the 470-512 MHz Band (TV Spacing Waiver Request).

² 47 CFR §§ 90.305(a), 90.307(d) (respectively stating that the transmitter site(s) for base stations shall be located not more than 80 kilometers (50 miles) of the geographic centers of the urbanized areas listed in 47 CFR § 90.303; and the minimum distance between a land mobile base station which has associated mobile units and a protected adjacent channel television station is 145 kilometers (90 miles)).

³ File No. 0010694508; call sign WRTX821.

⁴ File No. 0010694508; Fifty-Mile Waiver Request at 1. See also 47 CFR § 90.305(a).

⁵ See *City of New Bedford, Massachusetts*, Order, DA 23-396 (PSHSB PLD May 11, 2023) (*2023 Waiver Order*).

⁶ TV Spacing Waiver Request at 1. The New Bedford Hotel site is located 73.2 kilometers (45.5 miles) from Station WPXQ-TV.

Bedford has an existing waiver of section 90.307(d) allowing its other Channel 16 base stations to operate less than 145 kilometers Station WPXQ-TV.⁷

4. On April 5, 2024, the Public Safety and Homeland Security Bureau (Bureau) issued a public notice⁸ seeking comment on the application and waiver request. We received no comments or reply comments.

III. DISCUSSION

5. To obtain a waiver, a petitioner must demonstrate either that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.⁹ An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.¹⁰

6. The City states that it “is in dire need of improved coverage and building penetration in its historical downtown business district.”¹¹ The City contends that “the prime sites that can provide that coverage are all located greater than 50 miles of the geographic center of Boston.”¹² The City states that “[t]he distance that the New Bedford Hotel site exceeds the 50-mile limit of Section 90.305(a) is already considered *de minimus* [sic] by the Commission.”¹³ The City asserts that a waiver grant is in the public interest and would “provide enhanced public safety radio services to the citizens and visitors in greater downtown New Bedford.”¹⁴

7. We find that the City satisfies the first prong of the waiver standard, in that it has shown that the underlying purpose of section 90.305(a) would not be frustrated by grant of a waiver in the present case. In 2001, the Commission stated that sections 90.305(a) and (b)¹⁵ “create[e] a circular area with a radius of 80 miles (80-mile area) within which PLMR stations may operate without interference from television stations.”¹⁶ The Commission stated that waiver requests that do not involve extension of the 80-mile limit are more likely to receive favorable treatment than requests involving extension of the limit, and that such operation would not adversely impact television stations because television stations

⁷ See call sign WRTX821, special conditions.

⁸ See *Public Safety And Homeland Security Bureau Seeks Comment on Requests for Waiver Filed by the City of New Bedford, Massachusetts for T-Band Base Station*, Public Notice, DA 24-330 (PSHSB rel. Apr. 5, 2024).

⁹ 47 CFR § 1.925(b)(3)(i-ii).

¹⁰ *WAIT Radio v. FCC*, 413 F.2d 1153, 1157 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (1973), *cert. denied*, 409 U.S. 1027 (1972) (citing *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)); *Birach Broad. Corp.*, Memorandum Opinion and Order, 18 FCC Rcd 1414, 1415 (2003).

¹¹ Fifty-Mile Waiver Request at 1.

¹² *Id.*

¹³ *Id.* citing 2023 Waiver Order.

¹⁴ Fifty-Mile Waiver Request at 1.

¹⁵ 47 CFR § 90.305(b) (“Mobile units shall be operated within 48 km. (30 mi.) of their associated base station or stations.”).

¹⁶ See *Goosetown Enterprises, Inc.*, Memorandum Opinion and Order, 16 FCC Rcd 12792, 12795, para. 9 (2001) (*Goosetown MO&O*) citing 47 CFR § 90.305(a)-(b).

are already required to protect land mobile stations operating within that area.¹⁷ Here, the proposed station location extension 0.154 miles beyond the 50-mile limit is *de minimis*.¹⁸ Because the City's base station and mobile area of operation are located within 80 miles of Boston, and, therefore, would likely not interfere with TV stations entitled to protection, we find that the underlying purpose of section 90.305(a) would not be served by application of the rule in this instance. Moreover, we have waived section 90.305(a) previously under similar circumstances.¹⁹

8. Finally, the City has shown that a waiver is in the public interest by improving the City's radio coverage for first responders, allowing continued use of a spectrally-efficient shared radio system, and maintaining interoperability with other T-Band public safety agencies in the greater Boston metropolitan area. Accordingly, we grant the City's Fifty-Mile Waiver Request.

9. Regarding the TV Spacing Waiver Request, we have independently reviewed the City's engineering analysis and agree with its conclusions. The generally accepted protection criterion for a contour analysis between a PLMR station and an adjacent channel TV station is zero dB at the TV station's Grade B contour.²⁰ Based on the non-overlap of the City's 64 dBu interfering contour with Station WPXQ-TV's 64 dBu Grade B service contour, we agree that the City would provide the requisite zero dB protection to the TV station.²¹ Moreover, New Bedford's existing base stations have operated on TV Channel 16 while short-spaced to Station WPXQ-TV with no reported interference issues. We conditionally grant the TV Spacing Waiver Request with a requirement that the City's operation at location this site is secondary to all full-power and other primary television stations, and it must eliminate any interference caused by its facilities to Station WPXQ-TV's viewers.

IV. CONCLUSION

10. Based on the information before us, we conclude that the City has demonstrated the criteria set forth under the waiver standard, and that grant of its requests for waiver of Commission rules to enable them to modify their shared public safety radio system as proposed is warranted. We therefore grant the requests for waiver, subject to the following condition:

A conditional waiver of section 90.305(a) for location 7 is granted for operation in the TV Channel 16 band (482-488 MHz). A conditional waiver of section 90.307(d) is granted for location 7 to be located less than 145 kilometers from Station WPXQ-TV. Operation at location 7 is secondary to all current and future full-power TV stations. In particular, the licensee must accept any interference from Station WPXQ-TV, and it must eliminate any interference caused by its facilities at location 7 to viewers located within Station WPXQ-TV's noise-limited service contour (NLSC), 41 dBu F(50,90). By Order DA 24-533 released on June 7, 2024.

¹⁷ *Goosetown MO&O* at 16 FCC Rcd 12797, para. 13; *see also* 47 CFR § 73.623(e) (requiring digital television stations to be located at least 250 kilometers (155 miles) from the geographic center of a co-channel land mobile allocation and 176 kilometers (110 miles) from the geographic center of an adjacent land mobile allocation), § 74.709 (requiring low power television (LPTV) stations to protect co-channel or first adjacent channel land mobile operations located within a contour radiating 130 kilometers (80 miles) from the geographic center in question).

¹⁸ *See 2023 Waiver Order* at 3, para. 7.

¹⁹ *See, e.g., New Brunswick Parking Authority of New Brunswick, New Jersey*, Order, 23 FCC Rcd 6865 (PSHSB 2008) (granting a waiver of section 90.305(a) for a base station located three miles beyond the 50-mile limit from Philadelphia, Pennsylvania); *County of Monmouth, New Jersey*, Order, 25 FCC Rcd 7176, 7182-83 para. 17 (PSHSB PD 2010) (granting a waiver of section 90.305(a) because all operations would be contained within 80 miles of Philadelphia, Pennsylvania, consistent with the *Goosetown MO&O*).

²⁰ *See Private Land Mobile Operations in the 470-512 MHz Band*, Public Notice No. 20291 (rel. Oct. 22, 1991) at 1.

²¹ TV Spacing Waiver Request at 7.

V. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Sections 1, 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), and 303(r), and section 1.925 of the Commission's rules, 47 CFR § 1.925, the September 14, 2023 Request for Waiver and the September 14, 2023 Request Waiver – Expedited Action Requested, filed by the City of New Bedford, Massachusetts, ARE GRANTED as conditioned herein.

12. **IT IS FURTHER ORDERED**, that the application, File No. 0010694508, SHALL BE PROCESSED in accordance with this Order and the Commission's rules.

13. This action is taken under delegated authority pursuant to Sections 0.191(f) and 0.392 of the Commission's rules, 47 CFR §§ 0.191(f) and 0.392.

FEDERAL COMMUNICATIONS COMMISSION

John A. Evanoff
Chief, Policy and Licensing Division
Public Safety and Homeland Security Bureau



Federal Communications Commission
Washington, D.C. 20554

June 7, 2024

DA 24-534
In Reply Refer to:
1800B3-RDM
Released: June 7, 2024

Lake Powell Community Radio
c/o Nina Binns
PO Box 2058
Page, AZ 86040
nina@hostbilly.com

In re: Lake Powell Community Radio
New LPFM, Page, Arizona
Facility ID No. 788396
Application File No. 0000232352

Informal Objection

Dear Applicant:

We have before us the above-referenced application (Application) for a construction permit for a new low power FM (LPFM) station at Page, Arizona (Station), filed by Lake Powell Community Radio (Lake Powell). We also have before us an informal objection to the Application, filed by Albert Adam David (David) on March 28, 2024 (Objection).¹ For the reasons set forth below, we grant the Objection and dismiss the Application.

Background. Lake Powell filed the Application on December 14, 2023, during the 2023 LPFM filing window.² In the Application, Lake Powell certifies that it is eligible for an LPFM authorization because it is a nonprofit educational institution.³ Lake Powell also certifies that it is a nonprofit entity, with both its headquarters and 75% of its board members residing within 20 miles of the proposed site for its transmitting antenna,⁴ and certifies “yes” as to whether it proposes a public safety radio service and has jurisdiction within the service area of the proposed LPFM station.⁵

In support of these certifications, Lake Powell submits a single exhibit which states, in its entirety, “With this new LPFM radio station, Lake Powell Community Radio will serve Page, AZ, parts of Lake Powell, and Lechee, AZ (a Navajo Nation Tribal Chapter). Lake Powell Community Radio will

¹ Pleading File No. 0000242529. Lake Powell has not filed an opposition to the Objection.

² *Media Bureau Announces Filing Procedures and Requirements for November 1 – November 8, 2023, Low Power FM Filing Window*, Public Notice, DA 23-642 (MB July 31, 2023) (*Procedures Public Notice*). Based on a request from LPFM advocates, the Bureau subsequently delayed the window until December 6, 2023. *Media Bureau Announces Revised Dates for LPFM New Station Application Filing Window*, Public Notice, DA 23-984 (MB Oct. 17, 2023). The Bureau subsequently extended the close of the window until December 15, 2023. *Media Bureau Announces Extension of LPFM New Station Application Filing Window*, Public Notice, DA 23-1150 (MB Dec. 11, 2023).

³ Application, Legal Certifications Section, Eligibility Certifications questions.

⁴ Because the proposed site for its transmitting antenna is located outside a top 50 urban market, either Lake Powell’s headquarters must be within 20 miles of the site, or, alternatively, 75% of Lake Powell’s board members must reside within 20 miles of the site. 47 CFR § 73.853(b)(1) and (2).

⁵ Application at Legal Certifications Section, Community-Based Criteria questions.

provide a voice for community members and will provide local information as needed. Lake Powell Community Radio was established on October 24, 2023.”⁶

In the Objection, David contends that Lake Powell has failed to provide a required explanatory exhibit with its Application demonstrating that it is either a nonprofit educational organization, Tribe or Tribal Organization, or public safety radio service.⁷ David argues that because Lake Powell has failed to submit documentation demonstrating that it is a recognized nonprofit educational institution, its application must be dismissed.⁸ David further asserts that the application must be dismissed because (1) Lake Powell has provided only a post office box address for its organization and sole member, which fails to demonstrate that the applicant fulfills “community based criteria requirements,”⁹ and (2) Lake Powell certified “yes” that it “proposes a public safety radio service and has jurisdiction within the service area of the proposed LPFM station,” but provides no documentation in support of this certification.¹⁰

Discussion. Pursuant to section 309(d) of the Communications Act of 1934, as amended (Act),¹¹ an informal objection 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.¹² David has met this burden.

An LPFM applicant must meet basic eligibility requirements,¹³ 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).¹⁴ Each applicant must also qualify as local.¹⁵ We find that Lake Powell fails to demonstrate eligibility as (1) a nonprofit educational organization and (2) a non-government entity proposing to provide a noncommercial public safety radio service. We also find that Lake Powell fails to qualify as local.

Nonprofit Educational Organization Applicant: Eligibility Requirements. Each applicant claiming eligibility as a nonprofit educational organization must certify it is a noncommercial educational institution, corporation, foundation, association, or entity that is recognized under state law at the time its application is submitted.¹⁶ Each applicant must also submit an explanatory exhibit in connection with its

⁶ Application at Attach. “Educational Program.pdf” (Educational Program Attachment).

⁷ See Objection at 1 (citing *Procedures Public Notice* at 6-7).

⁸ See Objection at 1-2.

⁹ See *id.* at 2.

¹⁰ See *id.*

¹¹ 47 U.S.C. § 309(d).

¹² See, e.g., *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986).

¹³ See 47 CFR § 73.853.

¹⁴ See Instructions for LPFM Application, Legal Certifications Section, Eligibility Certifications questions. See also LPFM Application, Legal Certifications Section, Eligibility Certifications questions.

¹⁵ See 47 CFR § 73.853(b).

¹⁶ See *id.*; 47 U.S.C. § 397(6)(A); *Procedures Public Notice* at 5-6; *Applications for Review of Decisions Regarding Six Applications for New Low Power FM Stations*, Memorandum Opinion and Order, 28 FCC Rcd 13390, 13397-98, para. 22 (2013) (*Six Applications*).

application.¹⁷ An LPFM applicant's status as a valid nonprofit organization at the time it files its application is fundamental to our determination of the applicant's qualifications to hold an LPFM authorization.¹⁸ Applicants who fail to meet these requirements are subject to dismissal.¹⁹

Lake Powell certifies that it is a nonprofit educational institution or organization,²⁰ but neglects to provide any evidence, as required, demonstrating that it is recognized as a nonprofit educational institution or organization in any state. The Educational Program Attachment Lake Powell provides with its Application fails to demonstrate Lake Powell's status as a valid nonprofit educational organization recognized under state law.²¹ Moreover, a search of the Arizona Corporation Commission's entity database shows no registered entity named "Lake Powell Community Radio" or any similar name.²² Accordingly, because Lake Powell has not demonstrated that it was incorporated, or organized in a form recognized by Arizona state law, on December 14, 2023, when it submitted its Application, we find Lake Powell ineligible to hold an LPFM license as a nonprofit educational organization.

Public Safety Radio Service Applicant: Eligibility Requirements. In the LPFM context, the Commission uses the definition of "public safety radio services" set forth in section 309(j)(2)(A) of the Communications Act of 1934, as amended (Act).²³ That section defines "public safety radio services" as "including private internal radio services used by State and local governments and non-government entities and including emergency road services provided by not-for-profit organizations, that—(i) are used to protect the safety of life, health, or property; and (ii) are not made commercially available to the public."²⁴

The Commission has explained that the phrase "public safety radio services" encompasses three categories of services: (1) traditional public safety services such as police, fire, and emergency medical services, (2) private internal radio services designated for noncommercial use by entities such as utilities, railroads, transit systems, and others that provide essential services to the public at large and that need reliable internal communications in order to prevent or respond to disasters or crises affecting their service to the public, and (3) private internal radio services used by not-for-profit organizations providing emergency road services.²⁵ In the Application, Lake Powell certifies that it "proposes a public safety radio service," but fails to explain how its proposed public safety radio service complies with any of the

¹⁷ See LPFM Application, Legal Certifications Section, Eligibility Certifications questions. See also *Procedures Public Notice* at 6 (nonprofit educational organizations "also must submit complete copies of the documents establishing their nonprofit status, such as corporate charters or articles of incorporation.").

¹⁸ *Six Applications*, 28 FCC Rcd at 13395-96, para. 14.

¹⁹ See *Procedures Public Notice* at 6.

²⁰ See Application at Legal Certifications Section, Eligibility Certifications questions.

²¹ See Educational Program Attachment.

²² Arizona Corporation Commission, eCorp Database Search, <https://ecorp.azcc.gov/EntitySearch/Index> (last visited May 28, 2024).

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

²⁴ 47 U.S.C. § 309(j)(2)(A).

²⁵ *Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended*, Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 99-87, 15 FCC Rcd 22709, 22716, para. 16, 22740, para. 64, 22743, para. 71 (2000). See also H.R. Conf. Rep. No. 105-217, 105th Cong., 1st Sess., at 572 (1997).

three categories. In fact, the Educational Program Attachment does not reference any public safety radio services. Accordingly, we find Lake Powell ineligible to hold an LPFM authorization as a non-government entity that will provide a public safety radio service.

Local Organization Requirement. Lake Powell also fails to satisfy the LPFM localism requirements.²⁶ In the case of a public safety radio service applicant, the Commission considers an organization to be “local” if it “has jurisdiction within the service area of the proposed LPFM station.”²⁷ Lake Powell certified “yes” to this localism question in its Application,²⁸ but fails to offer any evidence that it has jurisdiction within the service area of its proposed station.²⁹

To qualify as local as a nonprofit educational organization applicant, the LPFM applicant must either (1) be physically headquartered or have a campus within 10 miles, for applicants in the top 50 urban markets, or 20 miles, for applicants outside of the top 50 urban markets, of the transmitting antenna site proposed in its application; or (2) have 75% of its board members residing within 10 miles, for applicants in the top 50 urban markets, or 20 miles, for applicants outside of the top 50 urban markets, of the transmitting antenna site proposed in its application.³⁰

Lake Powell certifies in its Application that both its physical headquarters and 75% of its board members reside within 20 miles of the proposed transmitting antenna site.³¹ However, Lake Powell lists a post office box as the sole address for both its headquarters and sole member’s residence.³² A post office box cannot serve as the address of an applicant’s physical headquarters, campus, or board member residence.³³ Accordingly, Lake Powell cannot meet the requirements of either sections 73.853(b)(1) or 73.853(b)(2) of the Rules to establish that it is a local entity. For these additional reasons, Lake Powell is also ineligible to hold an LPFM license.³⁴

²⁶ See 47 CFR § 73.853(b).

²⁷ 47 CFR § 73.853(b)(3).

²⁸ See Application at Legal Certifications Section, Community-Based Criteria questions.

²⁹ See, e.g., *Portsonic Communications, LLC*, Letter Order, DA 24-252 (MB Mar. 14, 2024) (dismissing application filed by applicant that certified that it was eligible as a public safety entity where applicant failed to show it had jurisdiction in the service area of the proposed station).

³⁰ 47 CFR § 73.853(b)(1)-(2). See also *LPFM Report and Order*, 15 FCC Rcd at 2220-21, para. 33 (localism requirement may be met by relying on either headquarters or board member residences).

³¹ See Application at Legal Certifications Section, Community-Based Criteria questions.

³² See Application at Applicant Information Section, Applicant Name, Type, and Contact Information question; *Id.* at Parties to the Application Section.

³³ In the analogous noncommercial educational FM context, the Commission has held that “a local headquarters or residence must be a primary place of business or primary residence and not, for example, a post office box, lawyer’s office, branch office, or vacation home, which would not provide sufficient contact between the station’s decision and policy makers and the area to be served.” See *Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Report and Order, 15 FCC Rcd 7386, 7410, para. 54 (2000). See also *Reexamination of the Comparative Standards and Procedures for Licensing Noncommercial Educational Broadcast Stations and Low Power FM Stations*, Notice of Proposed Rulemaking, 34 FCC Rcd 851, 858, n.56 (2019).

³⁴ We note that, in general, a dismissed applicant has one opportunity to file a minor curative amendment to its application and petition for reconsideration, requesting reinstatement of the application *nunc pro tunc*. Any amendment and petition must be filed within 30 days of the dismissal, propose only minor changes, and comply with all relevant rules. See *Procedures Notice* at 12.

Conclusion/Actions. For the reasons set forth above, IT IS ORDERED that the Informal Objection filed by Albert Adam David on March 28, 2024 (Pleading File No. 0000242529), IS GRANTED.

IT IS FURTHER ORDERED that the application for a construction permit for a new LPFM station at Page, Arizona, filed by Lake Powell Community Radio on December 11, 2023 (Application File No. 0000232352) IS DISMISSED.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau



Federal Communications Commission
Washington, D.C. 20554

June 7, 2024

DA 24-535

In Reply Refer to:

1800B3-SDW

Released: June 7, 2024

EMC Squared Communications, Inc.
c/o Mary Sheree Vallier
P.O. Box 5828
Hitchcock, TX 77563
maugustus890@gmail.com

Albert Adam David
2632 Kenilworth Ave.
Berwyn, IL 60402
albert.a.david@hotmail.com

In re: **EMC Squared Communications, Inc.**
New LPFM, La Marque, Texas
Facility Id No. 786019
Application File No. 0000233125

Dear Applicant and Objector:

We have before us the application (Application) filed by EMC Squared Communications, Inc. (EMC) for a construction permit for a new low power FM (LPFM) station in La Marque, Texas.¹ We also have before us an informal objection (Objection) to the Application, filed by Albert Adam David (David) on February 7, 2024.² For the reasons set forth below, we grant the Objection and dismiss the Application.³

Background. EMC filed the Application during the 2023 LPFM Filing Window.⁴ In the Application, EMC certifies that it is a “[s]tate or local government or non-government entity that proposes a noncommercial public safety radio service to protect the safety of life, health or property” and that “[i]t proposes a public safety radio service and has jurisdiction within the service area of the proposed LPFM

¹ Application File No. 0000233125 (filed Dec. 15, 2023).

² Pleading File No. 0000238530. EMC did not file an opposition to the Objection.

³ See 47 CFR § 73.853. See also 47 CFR § 73.3566(a).

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

station.”⁵ EMC explains that it is a “recently formed [] non-profit corporation,”⁶ and that its purpose is to “serve the residents of La Marque, Texas by providing a dynamic and inclusive platform that fosters education, spirituality, civic engagement, community awareness and entertainment.”⁷ Additionally, EMC provides an overview of its proposed public safety programming, which includes emergency alerts and notifications, community training and awareness, health and wellness information, public service announcements, emergency preparedness information, neighborhood watch updates, and weather monitoring.⁸ EMC states that it will “establish strong partnerships with local law enforcement, fire departments, and emergency services.”⁹

In the Objection, David alleges that the Application should be dismissed because: 1) EMC failed to provide documents that demonstrate its nonprofit status, and 2) EMC is proposing a public safety radio service but has not shown that it has jurisdiction in the area it proposes to serve.¹⁰

Discussion. Pursuant to section 309(d) of the Communications Act of 1934, as amended (Act),¹¹ 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.¹²

The Commission restricts the types of entities that may hold LPFM authorizations and the types of service those entities may provide.¹³ Among the entities eligible to hold LPFM authorizations are “[s]tate and local governments and non-government entities that will provide noncommercial public safety radio services.”¹⁴ The Commission also requires that entities receiving LPFM authorizations be local and based in the community their proposed LPFM stations will serve.¹⁵ For the reasons set forth below, we find that EMC fails to meet the essential requirements for public radio service applicants.

⁵ Application, Legal Certifications Section, Eligibility Certifications questions and Community-Based Criteria questions.

⁶ Application at Attach. “Narrative with exhibits.pdf”.

⁷ *Id.* at Attach. “LPFM LA Marque Mission Statement and its Purpose.pdf” (Eligibility Attachment).

⁸ *Id.*

⁹ *Id.*

¹⁰ Objection at 1-2. The Objection also alleges that: 1) EMC has failed to demonstrate that the “programming it proposes to offer are not commercially available to the public,” and 2) the Application violates the Commission’s signature rule, 47 CFR § 73.3513(a). Because we dismiss the Application for the reasons set forth herein, we need not address these remaining allegations.

¹¹ 47 U.S.C. § 309(d).

¹² 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).

¹³ 47 CFR § 73.853(a).

¹⁴ *Id.* § 73.853(a)(2). The other eligible entities and services are (1) nonprofit educational organizations that will use their LPFM stations to advance an educational program, and (2) Tribal Applicants that will provide noncommercial radio services. *Id.* § 73.853(a)(1), (3).

¹⁵ *Id.* § 73.853(b).

Public Safety Radio Service Applicant: Eligibility Requirements. EMC is ineligible to hold an LPFM license because it fails to demonstrate its non-profit status. Applicants, such as EMC, that claim to be non-government entities providing public safety radio services must be not-for-profit organizations,¹⁶ and must submit complete copies of the documents establishing their nonprofit status, such as corporate charters or articles of incorporation.¹⁷ Applicants that fail to provide the required materials to support their basic eligibility qualifications are subject to dismissal.¹⁸ Here, although EMC states that it is a recently formed nonprofit corporation, it does not provide any documentation to substantiate its claim. Moreover, a search of the Texas Comptroller of Public Accounts entity database shows no registered entity named “EMC Squared Communications”.¹⁹ Thus, the Application fails to demonstrate compliance with section 73.853 of the Commission’s rules and must be dismissed.

Local Jurisdiction Requirement. We also find that EMC is also ineligible to hold an LPFM authorization because it has not demonstrated that it qualifies as local. In the case of a public safety radio service applicant, the Commission considers the entity to be “local” if it “has jurisdiction within the service area of the proposed LPFM station.”²⁰ While EMC certifies in the Application that it is a local entity, EMC offers no evidence that it has *jurisdiction* to provide public safety services within the proposed LPFM station’s service area. Instead, EMC asserts that it plans “to establish strong partnerships with local law enforcement, fire departments, and emergency services”.²¹ EMC, however, nowhere demonstrates that it has jurisdiction in the service area of the proposed LPFM station or that it has been authorized by any of the traditional public safety organizations that do hold jurisdiction in its service area. Absent such a showing, EMC has failed to show that it is eligible to hold an LPFM authorization as a public safety entity.²² Accordingly, this serves as a separate and independent basis to dismiss the Application.

Conclusion/Actions. For the reasons set forth above, **IT IS ORDERED** that the Informal Objection filed by Albert Adam David, on February 7, 2024 (Pleading File No. 0000238530), **IS GRANTED**.

¹⁶ *Procedures Public Notice* at 7, n.33; *Creation of Low Power Radio Service*, Report and Order, MM Docket No. 99-25, 15 FCC Red 2205, 2215, para. 23 (2000) (*LPFM Report and Order*) (stating that “public safety radio services used by state or local governments or *not-for-profit organizations*, as defined in 47 U.S.C. § 309(j)(2)(A), will be eligible for LPFM licenses”) (emphasis added).

¹⁷ *Procedures Public Notice* at 7.

¹⁸ *Id.* at 6. See *Portsonic Communications, LLC*, Letter Order, DA 24-252 (MB Mar. 14, 2024) (*Portsonic*) (dismissing application filed by a non-governmental entity proposing to provide public safety radio services because, *inter alia*, the applicant was a for-profit entity).

¹⁹ Texas Comptroller of Public Accounts, Taxable Entity Search Results, <https://mycpa.cpa.state.tx.us/coa/coaSearchBtn> (last visited June 3, 2024).

²⁰ 47 CFR § 73.853(b)(3).

²¹ Eligibility Attachment.

²² See *Portsonic* at 4 (dismissing application filed by applicant that certified that it was eligible as a public safety entity where applicant failed to show it had jurisdiction in the service area of the proposed station).

IT IS FURTHER ORDERED, that the application for a new LPFM station filed by EMC Squared Communications, Inc. (Application File No. 0000233125) **IS DISMISSED** pursuant to section 73.3566(a) of the Commission's Rules.²³

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

²³ 47 CFR § 73.3566(a).



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-536

Released: June 7, 2024

WIRELINE COMPETITION BUREAU CONFIRMS NO NEW TEXTING FORMATS FOR TEXT-TO-988

WC Docket No. 18-336

The Wireline Competition Bureau (Bureau), in accordance with the *Text-to-988 Second Report and Order*, provides notice that the 988 Suicide & Crisis Lifeline (Lifeline) will continue to receive and respond to short message service (SMS) messages¹ and that no new texting formats have been implemented or requested at this time.

In the *Text-to-988 Second Report and Order*, the Commission directed the Bureau to consult with the Department of Health and Human Services' Substance Abuse and Mental Health Services Administration (SAMHSA) and the Department of Veterans Affairs (VA) on whether they have implemented, or seek to implement, any new texting formats to 988, to ensure that our texting requirements keep pace with their need to provide critical, life-saving counseling over text messages.² The Bureau must also issue an annual public notice that either announces that no new texting formats are required or seeks comment on implementation parameters for covered text providers to transmit any additional text message formats to 988.³ Although no new texting formats have been implemented or requested by our federal partners at this time, the Bureau will continue to coordinate with SAMHSA and the VA over the next year so we may be able to facilitate any enhancements to this life-saving resource.

For further information, please contact Merry Wulff at Merry.Wulff@fcc.gov.

- FCC -

¹ See *Implementation of the National Suicide Hotline Improvement Act of 2018*, WC Docket No. 18-336, Second Report and Order, 36 FCC Rcd 16901, 16916-17, para. 25 & n.108 (2021) (*Text-to-988 Second Report and Order*); see also 47 CFR § 64.1600(m) ("The term 'short message service' or SMS refers to a wireless messaging service that enables users to send and receive short text messages, typically 160 characters or fewer, to or from mobile phones and can support a host of applications.").

² *Text-to-988 Second Report and Order*, 16916, para. 25. Additional texting formats could include multimedia message service (MMS), which "refers to a wireless messaging service that is an extension of the SMS protocol and can deliver a variety of media, and enables users to send pictures, videos, and attachments over wireless messaging channels." See 47 CFR § 64.1600(k).

³ *Text-to-988 Second Report and Order*, 16916-17, para. 25 & n.108 (requiring the Bureau to issue the aforementioned public notice on or before June 30, 2023 and no less frequently than annually thereafter). Pursuant to the *Text-to-988 Second Report and Order*, the Bureau issued a public notice in June 2023, announcing that the 988 Lifeline would continue to receive and respond to SMS messages and that no new texting formats had been implemented or requested at that time. *Wireline Competition Bureau Confirms No New Texting Formats for Text-to-988*, WC Docket No. 18-336, Public Notice, DA 23-496 (WCB June 9, 2023).



PUBLIC NOTICE

Federal Communications Commission
45 L St., N.E.
Washington, D.C. 20002

News media information 202-418-0500
Internet: <http://www.fcc.gov>

REPORT NO: 0512

SPECIAL RELIEF AND SHOW CAUSE PETITIONS

June 7, 2024

Portions of this Public Notice have been produced by the Media Bureau's computer-based Data Management systems.

This Public Notice is intended to list only special relief requests, petitions for order to show cause and related petitions for reconsideration or applications for review. CSR (cable special relief) petitions and CSC (cable show cause) petitions refer to cable-related matters pursuant to Part 76. The newly-designated BSR (broadcast special relief) petitions refer to certain non-application-related broadcast matters pursuant to Part 73.

Parties seeking special relief pursuant to Part 76 are advised that such requests must be initiated through the special relief provisions of Section 76.7 of the Rules. Many of these filings are subject to the pleading cycle rules set forth in Section 76.7, while others have their own pleading cycle relative to the particular rule involved. For BSR petitions filed pursuant to Part 73, the pleading cycle will be the same as that mandated by Section 76.7 unless stated otherwise.

Petitions for reconsideration and applications for review are listed for informational purposes only. The applicable pleading cycles for these types of petitions are found in Sections 1.106 and 1.115 of the Commission's rules, respectively.

Please Note that files containing these petitions can no longer be reviewed in the Commissions Reference Information Center. Anyone may search for petitions electronically filed via the Commission's Electronic Comment Filing System (ECFS) by using MB Docket No. 12-1 in the proceeding number field. Once the Media Bureau has issued a Special Relief and Show Cause Petition Public Notice, interested parties can find the petition at issue by using the newly assigned docket number or the CSR or CSC number. Enter the CSR or CSC number into the Bureau Identification Number field in ECFS.

The letter code following a CSR Number refers to the particular subject of the petition. Those currently in use are: A – ADI/DMA; M – must carry; E – effective competition; C – retransmission consent; P – program access; R – rate regulation; F – rate freeze; L – commercial leased access; Z – technical; S – significantly viewed; N – nonduplication/syndicated exclusivity/sports deletion; D – small system definition; O – OTARD; and X – cross ownership. If no letter appears after the CSR number, the petition is considered to be in the miscellaneous category. CSC and BSR petitions do not have letter code designations. It is requested that all responses or statements refer to the CSR file number or docket number assigned to the petition.

June 7, 2024

SPECIAL RELIEF AND SHOW CAUSE PETITIONS

REPORT NO: 0512

<u>Docket No.</u>	<u>CSR Number</u>	<u>Petitioner</u>	<u>Respondent</u>	<u>Special Relief Request Communities</u>
24-166	CSR-9017-A	Titus County, Texas	KLTV KETK-TV KFXK-TV KYTX	Titus County, Texas

-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 24-538
Released: June 11, 2024

OFFICE OF ENGINEERING AND TECHNOLOGY SEEKS ADDITIONAL COMMENT ON ON-BOARD UNIT POWER LIMITS FOR C-V2X OPERATIONS

ET Docket No. 19-138

Comments Due: July 5, 2024

By this Public Notice, the Office of Engineering and Technology invites supplemental comment in the Commission's proceeding titled *Use of the 5.850-5.925 GHz Band*¹ to address issues raised by a commenter regarding the use of geofencing to allow for higher power limits in devices operating in certain areas while ensuring that their power is sufficiently limited in locations near specified federal radiolocation service sites. Specifically, the National Telecommunications and Information Administration (NTIA) recently filed a letter in this proceeding making recommendations addressing "three specific areas related to the protection of federal radiolocation systems: (1) general provisions for C-V2X [cellular vehicle-to-everything] technical and service rules; (2) C-V2X roadside unit (RSU) equivalent isotropically-radiated power (EIRP) limits; and (3) EIRP limits for C-V2X on-board units (OBUs)."² The NTIA suggestions regarding EIRP limits for C-V2X OBUs present a proposal to allow for higher power limits in devices equipped with geofencing than in devices not so equipped. We specifically request comment on this proposal. Comments in response to this request should reference this public notice and be filed in ET Docket No. 19-138.

The Commission, in the *First Report and Order*, adopted provisions requiring Intelligent Transportation Systems (ITS) operators to move Dedicated Short-Range Communications (DSRC) operations out of the lower 45 megahertz of the 5.850-5.925 GHz band (5.9 GHz band) and the transition of those operations to C-V2X technology.³ At the same time, in the *FNPRM*, the Commission sought comment on numerous proposals aimed at finalizing the technical parameters for C-V2X operations.⁴

¹ See *Use of the 5.850-5.925 GHz Band*, ET Docket No. 19-138, First Report and Order (*First Report and Order*), Further Notice of Proposed Rulemaking (*FNPRM*), and Order of Proposed Modification, 35 FCC Rcd 13440 (2020), corrected by Erratum (OET, rel. Dec. 11, 2020) and Second Erratum, 36 FCC Rcd 1444 (OET 2021), *aff'd*, *Intelligent Transportation Society of America v. FCC*, 45 F.4th 406 (D.C. Cir. 2022), *recon. denied*, Order on Reconsideration, FCC 24-32 (rel. Mar. 18, 2024).

² Letter from Charles Cooper, Associate Administrator, Office of Spectrum Management, NTIA, to Ronald T. Repasi, Chief, Office of Engineering and Technology and Joel Taubenblatt, Chief, Wireless Telecommunications Bureau, FCC, ET Docket No. 19-138, at 1 (filed June 7, 2024) (NTIA Letter). An RSU is a C-V2X transceiver that is mounted along a road or pedestrian passageway. An RSU may also be mounted on a vehicle or be hand carried, but it may only operate when the vehicle or hand-carried unit is stationary. RSUs broadcast data to or exchange data with other RSUs and OBUs. An OBU is a C-V2X transceiver that is normally mounted in or on a vehicle, or which in some instances may be a portable unit. An OBU can be operational while a vehicle or person is either mobile or stationary. The OBUs receive and transmit on one or more radio frequency (RF) channels.

³ *First Report and Order*, 35 FCC Rcd at 13483-85, paras. 107-110.

⁴ *FNPRM*, 35 FCC Rcd at 13500-08, paras. 146-168.

With regard to OBU device power limits, the Commission proposed to limit C-V2X OBUs' output power to no more than 20 dBm and EIRP to no more than 23 dBm.⁵

NTIA's recommendations focus on ensuring that the power levels of C-V2X operations are limited as necessary to protect federal radiolocation services.⁶ Under current Commission rules, the federal radiolocation service site locations for which protection is sought⁷ are specified in 47 CFR § 90.371(b), and the DSRC RSU facilities within certain radii relative to these locations ("coordination zones") must be coordinated with the NTIA prior to authorization.⁸ The existing rules addressing power limits for both RSUs and OBUs are agnostic regarding operations relative to the coordination zones.⁹

Among other things, in its recent letter, NTIA suggests that the Commission adopt power requirements for OBUs to ensure federal radiolocation service sites are protected within the coordination zones, including optionally incorporating geofencing that would enable OBUs to operate at variable levels depending on location.¹⁰ "Geofencing" is used to create a virtual boundary around a physical location by enabling a radiofrequency device using a geolocation capability to determine whether its geographic coordinates are within a defined geographic area.¹¹ As proposed by NTIA, an OBU could incorporate a geolocation capability to respond to the appropriate areas around federal radiolocation sites—currently enumerated in 47 CFR § 90.371(b)—by dynamically reducing power when entering any of those areas. NTIA suggests that such OBUs would be able to operate without such power restrictions in areas outside

⁵ *Id.* at 13503-05, paras. 157-161. In its comments on a request for waiver filed by numerous parties, NTIA supported a maximum 33 dBm OBU EIRP limit for the C-V2X operations in the 5.905-5.925 GHz band. However, to adequately protect the primary federal radiolocation services operating in the 5.9 GHz band during the period in which devices are operating under a waiver, NTIA requested that C-V2X OBUs be limited to 27 dBm EIRP within ± 5 degrees in elevation from the horizontal plane. *See Requests for Waiver of 5.9 GHz Band Rules to Permit Initial Deployment of Cellular Vehicle-to-Everything*, ET Docket No. 19-138, DA 23-343 (rel. Apr. 24, 2023) (*Joint Waiver Order*); 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 Apr. 14, 2023). The granted waivers limited OBU operations and power reduction conditions to the 5.905-5.925 GHz band, as requested by NTIA. *See Joint Waiver Order* at 8.

⁶ *See* NTIA Letter at 2.

⁷ The Commission's current rules provide that DSRC RSUs operating in the band 5.850-5.925 GHz shall not receive protection from Government Radiolocation services in operation prior to the establishment of the DSRC stations. While DSRC RSUs do not receive protection from federal radiolocation services, the federal radiolocation service and the non-federal DSRC service have co-primary status in the 5.9 GHz band. *See* 47 CFR § 90.371(b).

⁸ 47 CFR § 90.371.

⁹ The current rules provide that licensees shall transmit only the EIRP needed to communicate with an OBU within the communications zone and must take steps to limit the RSU signal within the zone to the maximum extent practicable. *See* 47 CFR § 90.377(a); 47 CFR § 95.3167.

¹⁰ OBUs operate on a "license by rule" basis without a specific Commission authorization. *See* 47 CFR part 95, subpart L. As such, it is not feasible to establish a process for coordinating individual OBU users with respect to the protected sites.

¹¹ *See* <https://www.nsc.org/newsroom/nsc-releases-research-on-location-geofencing-tech> (last visited May 28, 2024). The Commission has required white space devices and 6 GHz unlicensed U-NII devices to incorporate geographic awareness (i.e., a geolocation capability) and use a database to avoid operating within areas where the potential for causing harmful interference would exist. For example, white space devices are required to incorporate a geolocation capability and check a white space database for a list of available channels before they can operate. *See* 47 CFR § 15.711. Similarly, 6 GHz standard power U-NII devices are required to incorporate a geolocation capability and consult an automated frequency coordination database prior to operating to avoid causing interference to fixed service incumbents. *See* 47 CFR § 15.407(k)(9).

the coordination zones, provided that they are programmed with information about these sites—geographic coordinates and a predetermined radius—ensuring that they operate with reduced EIRP levels within the relevant areas. NTIA suggests that OBU devices not incorporating a geolocation capability be required to comply with the more restrictive EIRP limits.

Accordingly, considering the need to protect the federal radiolocation service through the optional use of geofencing techniques, NTIA suggests the following EIRP power spectral density (PSD) limits for C-V2X OBUs operating without a geofencing capability at all locations, and those that incorporate a geofencing capability when operating inside of a coordination zone:

- 10 megahertz channel (5.895-5.905 GHz): 23 dBm/10 MHz EIRP;¹²
- 10 megahertz channel (5.905-5.915 GHz): 33 dBm/10 MHz EIRP, reduced to 27 dBm within ± 5 degrees of horizontal;
- 10 megahertz channel (5.915-5.925 GHz): 33 dBm/10 MHz EIRP, reduced to 27 dBm within ± 5 degrees of horizontal;
- 20 megahertz channel (5.895-5.915 GHz): 23 dBm/20 MHz EIRP;
- 20 megahertz channel (5.905-5.925 GHz): 33 dBm/20 MHz EIRP, reduced to 27 dBm within ± 5 degrees of horizontal; and
- 30 megahertz channel (5.895-5.925 GHz): 23 dBm/30 MHz EIRP.

NTIA suggests the following EIRP PSD limits for C-V2X OBUs that incorporate a geofencing capability when operating outside of a coordination zone:

- 10 megahertz channel (5.895-5.905 GHz): 33 dBm/10 MHz EIRP;
- 10 megahertz channel (5.905-5.915 GHz): 33 dBm/10 MHz EIRP;
- 10 megahertz channel (5.915-5.925 GHz): 33 dBm/10 MHz EIRP;
- 20 megahertz channel (5.895-5.915 GHz): 33 dBm/20 MHz EIRP;
- 20 megahertz channel (5.905-5.925 GHz): 33 dBm/20 MHz EIRP;
- 30 megahertz channel (5.895-5.925 GHz): 33 dBm/30 MHz EIRP.

NTIA also suggests that manufacturers implementing a geofencing capability would need to specifically demonstrate and certify compliance of the capability within the FCC's equipment certification process specified in part 2 of the Commission's rules.¹³ NTIA also suggests that responsible parties should provide a mechanism to update the OBUs with new information within a reasonable timeframe if geofencing locations and parameters are subsequently modified.¹⁴

Through this Public Notice, we seek comment on NTIA's recommendations that the Commission modify its part 95 rules to adopt power limit rules for C-V2X OBUs that include provisions for the optional use of geofencing techniques. Given that using geofencing would be an option and not required, we seek comment on the likelihood of manufacturers incorporating such a capability. What performance gains would be expected for C-V2X devices and the ITS overall when a geolocation capability is used as compared to if it is not? Are NTIA's recommendations regarding the power limits for C-V2X devices inside and outside the coordination areas appropriate? Would NTIA's recommendations provide benefits

¹² The Frequency Dependent Rejection (FDR) in the lower 10 megahertz channel is less than the FDR in the upper 10 megahertz channel. This results in a requirement to limit EIRP to a lower level when operating on the lower 10 megahertz channel. For more details, see National Telecommunications and Information Administration (NTIA) Technical Report 21-551, *Compatibility of Federal Systems Operating in the 5850-5925 MHz Band with Intelligent Transportation Systems and Unlicensed National Information Infrastructure Devices* (October 2020), available at <https://its.ntia.gov/umbraco/surface/download/publication?reportNumber=TR-21-551.pdf>.

¹³ See NTIA Letter at 4.

¹⁴ See *id.*

for C-V2X devices and ITS as compared to the Commission's C-V2X OBU rules originally proposed in this proceeding?¹⁵ What would be the relative complexity for adding a geolocation capability and the associated logic necessary for the OBU to adjust its power when in a coordination zone compared to devices without such capability? Would there be increased costs? If so, what would be the expected cost increase? What is the likelihood that manufacturers would incorporate a geofencing capability into their devices given any increased device complexity, additional compliance requirements, and increased cost? Conversely, would the proposed limits have a detrimental effect on operations or compliance? What methods could be used to update deployed OBUs to reflect revised geofencing locations and parameters?

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.¹⁶ We invite parties to file supplemental comments on the IRFA in light of this request to refresh the record.

Paperwork Reduction Act Analysis. This document does not contain any new or modified information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. Thus, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. § 3506(c)(4).

Ex Parte Rules. This proceeding has been designated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.¹⁷ 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, 1.149, interested parties may file comments in ET Docket No. 19-138 on or before the date indicated on the first page of this document and should reference this public notice. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

¹⁵ See *supra* footnote 5 and accompanying text.

¹⁶ See *FNPRM*, 35 FCC Rcd at 13554-62 (Appendix E).

¹⁷ See *id.* at 13517, para. 197; 47 CFR § 1.1200 *et seq.*

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <https://apps.fcc.gov/ecfs/>
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
 - Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by First-Class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted between 8:00 a.m. and 4:00 p.m. at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
 - Commercial overnight deliveries (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - U.S. Postal Service First-Class, Express, and Priority mail must be addressed to Secretary, Federal Communications Commission, 45 L St. NE, Washington, DC 20554.

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

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>.

Office of Engineering and Technology contact: Brian Butler at 202-418-2702 or by email at Brian.Butler@FCC.gov.

By the Chief, Office of Engineering and Technology

-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 24-539
Released: June 7, 2024

COMMENTS INVITED ON SECTION 214 APPLICATION(S) TO DISCONTINUE DOMESTIC NON-DOMINANT CARRIER TELECOMMUNICATIONS AND/OR INTERCONNECTED VOIP SERVICES

WC Docket No(s). 24-158

Comments Due: June 24, 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 **July 8, 2024**, the 31st day after the release date of this public notice, unless the Commission notifies any applicant(s) that their grant will not be automatically effective.⁴ We note that the date on which an application for Commission authorization is deemed granted may be different from the date on which applicants are authorized to discontinue, reduce, or impair service ("Authorized Date"). Any applicant whose application has been deemed granted may discontinue, reduce or impair their Affected Service(s) in their Service Area(s) on or after the authorized date(s) specified in the Appendix, in accordance with their filed representations. Accordingly, pursuant to section 63.71(f), and the terms outlined in each application, absent further Commission action, each applicant may discontinue, reduce or impair the Affected Service(s) in the Service Area(s) described in their application on or after the authorized discontinuance date(s) listed in the Appendix for that application. For purposes of computation of time when filing a petition for reconsideration, application for review, or petition for judicial review of the Commission's decision(s), the date of "public notice" shall be the later of the auto grant date stated above in this Public Notice, or

¹ 47 CFR § 63.71.

² 47 U.S.C. § 214.

³ 47 CFR § 63.71.

⁴ See 47 CFR § 63.71(f) (stating, in relevant part, that an application filed by a non-dominant carrier "shall be automatically granted on the 31st day... unless the Commission has notified the applicant that the grant will not be automatically effective.").

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 **June 24, 2024**.⁵ Comments should refer to the specific WC Docket No. and Comp. Pol. File No. listed in the Appendix for the particular Section 214 Discontinuance Application that the commenter intends to address. Comments should include specific information about the impact of the proposed discontinuance on the commenter, including any inability to acquire reasonable substitute service. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.⁶ Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs>. Filers should follow the instructions provided on the Web site for submitting comments. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number.

Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit one additional copy for each additional docket or rulemaking number associated with the proceeding in which they choose to file comments. Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail.⁷ All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, D.C. 20554.

Copies of the comments may also be emailed to the Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, using the contact information listed in the Appendix for the appropriate Section 214 Application. In addition, comments should be served upon the Applicant(s).

These proceedings are considered "permit but disclose" proceedings for purposes of the Commission's *ex parte* rules.⁸ Participants should familiarize themselves with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations

⁵ Comments are normally due 15 days after the Commission releases public notice of the proposed discontinuance. 47 CFR § 63.71(a). For purposes of computation of time, if the comment deadline falls on a weekend or officially recognized Federal legal holiday, however, comments will be due on the next business day. See 47 CFR § 1.4(e) and (j).

⁶ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

⁷ Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, 35 FCC Rcd 2788 (OMD 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

⁸ 47 CFR § 1.1200 *et seq.*

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): TDS Metrocom, LLC (TDS)

WC Docket No. 24-158, Comp. Pol. File No. 1914

Link – [https://www.fcc.gov/ecfs/search/search-filings/results?q=\(proceedings.name:\(%2224-158*%22\)\)https://www.fcc.gov/ecfs/search/search-filings/results?q=\(proceedings.name:\(%2224-46*%22\)\)](https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2224-158*%22))https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2224-46*%22)))

Affected Service(s) – Interconnected VoIP Service

Service Area(s) – in the Turtle Back Mountain Resort area in Elephant Butte, New Mexico

Authorized Date(s) – on or after July 9, 2024

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

Note: On May 28, 2024, TDS filed a supplemental letter to clarify details regarding the Affected Service(s) and to indicate that corrected notices were mailed to affected customers on May 24, 2024.



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-540

Released: June 7, 2024

WIRELINE COMPETITION BUREAU REMINDS SECURE AND TRUSTED COMMUNICATIONS NETWORKS REIMBURSEMENT PROGRAM RECIPIENTS OF THEIR JULY 8, 2024 STATUS UPDATE FILING OBLIGATION

WC Docket No. 18-89

The Wireline Competition Bureau (Bureau) reminds Recipients¹ in the Secure and Trusted Communications Networks Reimbursement Program (Reimbursement Program) of their obligation to file status updates with the Federal Communications Commission every 90 days, beginning on the date on which the Bureau approved Recipients' applications, until the obligation to file expires.² All Recipients were required to file the last status update on April 8, 2024.³ Accordingly, all Recipients must file their next status update on July 8, 2024.⁴ For additional information about Reimbursement Program filing requirements, please refer to the *Initial Status Update PN*.⁵

Recipients will submit status updates through the online portal, <https://fccprod.servicenowservices.com/scrp> (Supply Chain Reimbursement Program Online Portal) by

¹ The Secure and Trusted Communications Networks Act of 2019, as amended, defines "recipient" as "any provider of advanced communications service the application of which for a reimbursement under the [Reimbursement] Program has been approved by the Commission, regardless of whether the provider has received reimbursement funds." Secure and Trusted Communications Act of 2019, Pub. L. No. 116-124, 134 Stat. 158, § 9(11) (2019) (codified as amended at 47 U.S.C. § 1608(11)), as amended by Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, § 901, 134 Stat. 1182 (2021); *see also* 47 CFR § 1.50001(h) ("The term 'Reimbursement Program recipient' or 'recipient' means an eligible advanced communications service provider that has requested via application and been approved for funding in the Reimbursement Program, regardless of whether the provider has received reimbursement funds.").

² 47 CFR § 1.50004(k) (requiring Reimbursement Program recipients to "file a status update with the Commission 90 days after the date on which the Wireline Competition Bureau approves the recipient's application for reimbursement and every 90 days thereafter, until the recipient has filed the final certification").

³ *See Wireline Competition Bureau Reminds Secure and Trusted Communications Networks Reimbursement Program Recipients of their April 8, 2024 Status Update Filing Obligation*, WC Docket No. 18-89, Public Notice, DA 24-226 (WCB Mar. 8 2024) (*March 2024 Status Update PN*). The *March 2024 Status Update PN* and other Reimbursement Program releases are available on the Commission's website via <https://www.fcc.gov/supplychain/reimbursement>.

⁴ Because 90 days after April 8, 2024—July 7, 2024—falls on a Sunday, the deadline to file the next status update is July 8, 2024. *See* 47 CFR § 1.4(e)(1), (j) (describing the computation of Commission deadlines that would fall on a holiday, and defining "holiday" to include weekend days).

⁵ *See Wireline Competition Bureau Reminds Secure and Trusted Communications Networks Reimbursement Program Recipients of their Status Update Filing Obligation*, WC Docket No. 18-89, Public Notice, DA 22-967 (WCB Sept. 16, 2022) (*Initial Status Update PN*).

completing FCC Form 5640 Part K: Status Updates. Requests for confidential treatment must be submitted by filing a written request electronically in WC Docket No. 18-89 in the Commission's Electronic Comment Filing System (ECFS), <https://www.fcc.gov/ecfs>.

Additional Information and Resources. Recipients with questions may contact the Fund Administrator Help Desk by email at SCRPFundAdmin@fcc.gov or by calling (202) 418-7540 from 9:00 AM ET to 5:00 PM ET, Monday through Friday, except for Federal holidays. General information and Commission documents regarding the Reimbursement Program are available on the Reimbursement Program webpage, <https://www.fcc.gov/supplychain/reimbursement>.

-FCC-



PUBLIC NOTICE

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

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

DA 24-541
Released: June 7, 2024

**DOMESTIC SECTION 214 APPLICATION FILED FOR
THE ACQUISITION OF CERTAIN ASSETS OF SOUTHWEST ARKANSAS
TELECOMMUNICATIONS AND TECHNOLOGY, INC., D/B/A FOUR STATES FIBER
BY SOUTH CENTRAL CONNECT, LLC**

NON-STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 24-92

Comments Due: June 21, 2024
Reply Comment Due: June 28, 2024

By this Public Notice, the Wireline Competition Bureau seeks comment from interested parties on an application filed by Southwest Arkansas Telecommunications and Technology, Inc. d/b/a Four States Fiber (SATT) and South Central Connect, LLC (South Central Connect) (collectively, Applicants), pursuant to section 214 of the Communications Act of 1934, as amended, and sections 63.03-04 of the Commission's rules,¹ requesting consent for the transfer of certain assets of SATT to South Central Connect.²

SATT, an Arkansas corporation, is a designated Eligible Telecommunications Carrier (ETC) that provides interconnected VoIP-based voice and high-speed broadband services in portions of Arkansas, Oklahoma, and Texas.³ On February 14, 2022, the Commission authorized SATT to receive \$47,605,335.30 in Rural Digital Opportunity Fund (RDOF) support in Arkansas, which included the Census Block Group (Assigned CGB) that Applicants now seek authority to transfer,⁴

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

² Joint Application Domestic Section 214 Authorization For the Consent to Assign Certain Assets of Southwest Arkansas Telecommunications And Technology, Inc., D/B/A Four States Fiber to South Central Connect, LLC, WC Docket No. 24-92 (filed on Mar. 25, 2024) (Application). Applicants filed supplements to the Application on April 18, 2024 and May 29, 2024. Letter from Todd B. Lantor, Counsel for South Central Connect, LLC to Marlene H. Dortch, Secretary, FCC, WC Docket No. 24-92 (filed Apr. 18, 2024) (Apr. 18 Supplement); Letter from Todd B. Lantor, Counsel for South Central Connect, LLC to Marlene H. Dortch, Secretary, FCC, WC Docket No. 24-92 (filed May 29, 2024) (May 29 Supplement). Any action on this application is without prejudice to other pending applications before the Commission.

³ Application at 2.

as well as additional RDOF funding in Louisiana and Oklahoma.⁵ SATT is a wholly-owned subsidiary of Southwest Arkansas Electric Cooperative Corporation, a rural electric cooperative that is owned by its members.⁶

South Central Connect, an Arkansas limited liability company, is a designated ETC that provides high-speed, fiber-optic Internet and voice service in south central Arkansas.⁷ South Central Connect is a wholly-owned subsidiary of South Central Arkansas Electric Cooperative, Inc., a rural electric cooperative that is owned by its members.⁸ On April 15, 2021, the Commission authorized South Central Connect to receive \$20,040,966.40 in RDOF funding in Arkansas.⁹ South Central Connect also receives Connect America Fund Phase II funding in Arkansas.¹⁰

Pursuant to the terms of the Asset Purchase Agreement and Plan of Merger, SATT will, upon grant of the Application by the Commission, transfer the RDOF obligations and all related past and future RDOF funding associated with the Assigned CBG to South Central Connect.¹¹ Specifically, SATT will transfer the RDOF support and related buildout and service obligations associated with the Assigned CBG.¹² Applicants state that, post-consummation, South Central Connect will undertake deployment of the RDOF-supported network and integrate such activities and operations into its own ongoing operations and RDOF deployment.¹³

Applicants assert that the proposed transaction is consistent with the public interest, convenience, and necessity.¹⁴ Because the proposed transaction would involve the assumption of Universal Service Fund high-cost obligations, we accept the Application for non-streamlined

⁴ See Application at 1 (identifying the CBG to be transferred as Census Block Group No. 050979532003); see also May 29, 2024 Supplement (acknowledging the obligation to serve 453 locations within all eligible census blocks in this CBG).

⁵ See *Rural Digital Opportunity Fund Support Authorized for 2,576 Winning Bids*, AU Docket Nos. 23-34, 17-182, WCB Docket Nos. 19-126, 10-90, Public Notice, 37 FCC Rcd 1617, Attach. A (Authorized Long-Form Applicants and Winning Bids) (2022).

⁶ Application at 2.

⁷ *Id.* at 3.

⁸ *Id.*

⁹ See *Rural Digital Opportunity Fund Support Authorized for 1,345 Winning Bids*, AU Docket Nos. 23-34, 17-182, WCB Docket Nos. 19-126, 10-90, Public Notice, 37 FCC Rcd 4897, Attach. A (Authorized Long-Form Applicants and Winning Bids) (2022). The Arkansas Public Service Commission granted a petition filed by South Central Connect to expand its ETC designation to include, *inter alia*, portions of the Assigned CBG where it would be eligible to receive RDOF and Lifeline support upon approval of this transaction. See Petition of South Central Connect, LLC for Expanded Designation Area as a High-Cost and/or Low-Income Eligible Telecommunications Carrier, Order, Arkansas PSC Docket No. 24-009-U (Apr. 29, 2024).

¹⁰ April 18 Supplement at 3.

¹¹ Application at 4.

¹² *Id.* at 1, 4.

¹³ *Id.* at 4; *id.* at 13 (Certification of Colby C. Wells, Chief Executive Officer (Mar. 25, 2024)) (certifying that, upon consummation of the proposed transfer, South Central Connect will use all RDOF support associated with CBG No. 050979532003 as well as all other RDOF support that South Central Connect has been separately authorized to receive, in accordance with applicable FCC rules).

¹⁴ *Id.* at 5.

processing in order to sufficiently analyze whether the proposed transaction would serve the public interest.¹⁵

Domestic Section 214 Application Filed for the Assignment of Certain Assets of Southwest Arkansas Telecommunications and Technology, Inc., D/B/A Four States Fiber to South Central Connect, LLC, WC Docket No. 24-92 (filed Mar. 25, 2024).

GENERAL INFORMATION

The application identified herein has been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies.

Interested parties may file comments **on or before June 21, 2024**, and reply comments **on or before June 28, 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.¹⁶ 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) Myrva Charles, Competition Policy Division, Wireline Competition Bureau, myrva.charles@fcc.gov;
- 2) Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, dennis.johnson@fcc.gov;
- 3) David Krech, Office of Internal Affairs, david.krech@fcc.gov; and
- 4) Jim Bird, Office of General Counsel, jim.bird@fcc.gov.

¹⁵ See 47 CFR § 63.03(c)(1)(v).

¹⁶ Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (OS 2020).

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.¹⁷ A party or interested person seeking to raise a new issue after the pleading cycle has closed must show good cause why it was not possible for it to have raised the issue previously. Submissions after the pleading cycle has closed that seek to raise new issues based on new facts or newly discovered facts should be filed within 15 days after such facts are discovered. Absent such a showing of good cause, any issues not timely raised may be disregarded by the Commission.

For further information, please contact Dennis Johnson at (202) 418-0809.

-FCC-

¹⁷ See 47 CFR § 1.45(c).

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

In the Matter of	)	
	)	
Spire Global, Inc.	)	ICFS File Nos.: SAT-LOA-20151123-00078;
	)	SAT-MOD-20200603-00065; SAT-AMD-
Application for Modification of License	)	20180102-00001; SAT-AMD-20161114-
	)	00107
	)	
	)	Call Sign: S2946
Petition for Declaratory Ruling to Access the U.S.	)	ICFS File Nos.: SAT-PDR-20190321-00018;
Market for Spire's Low-Earth Orbit, Non-	)	SAT-MPL-20200618-00078
Geostationary Orbit MINAS Constellation	)	
	)	Call Sign: S3045

ORDER AND DECLARATORY RULING

Adopted: June 7, 2024

Released: June 7, 2024

By the Chief, Satellite Programs and Policy Division, Space Bureau:

I. INTRODUCTION

1. In this Order and Declaratory Ruling, we grant the request of Spire Global, Inc. (Spire)¹ to modify its non-geostationary satellite orbit (NGSO) space station license and grant of market access grant to include operations in the non-voice, non-geostationary (NVNG) mobile-satellite service (MSS) in the 399.9-400.05 MHz (Earth-to-space) band. This grant is subject to the conditions and other requirements specified herein. Spire provides global maritime monitoring data, meteorological monitoring, and Earth-imaging services.² Grant of these requests furthers the Commission's mandate to

¹ For Spire's U.S. licensed LEMUR satellites, *see Policy Branch Information, Applications Accepted for Filing*, Public Notice, Report No. SAT-01491, ICFS File No. SAT-MOD-20200603-00065 (Aug. 21, 2020) (Spire Modification Application). *See Policy Branch Information, Satellite Space Applications Actions Taken*, Public Notice, DA 17-673, Report No. SAT01253, ICFS File No. SAT-AMD-20161114-00107 (Spire Amendment 1). *See Policy Branch Information, Satellite Space Applications Actions Taken*, Public Notice, DA 18-1235, Report No. SAT01363, ICFS File No. SAT-AMD-20180102-00001 (Spire Amendment 2). Spire's original application was previously granted in part, *see* ICFS File No. SAT-LOA-20151123-00078 (Spire Application), and then the portion of the request that had been granted was modified by ICFS File No. SAT-MOD-20200603-00065. *See Policy Branch Information, Applications Accepted for Filing*, Public Notice, Report No. SAT-01130 (Jan. 22, 2016); *Policy Branch Information, Applications Accepted for Filing*, Public Notice, Report No. SAT-01491 (Aug. 21, 2020). For Spire's Luxembourg-licensed MINAS satellites, *see* ICFS File No. SAT-PDR-20190321-00018 (Spire Petition). Spire's grant of market access for MINAS satellites was subsequently modified by the Commission in connection with ICFS File No. SAT-MPL-20200618-00078. Except for the 399.9-400.05 MHz grant for Spire's LEMUR and MINAS satellites discussed herein, action is deferred on the remaining outstanding requests from Spire.

² *See* Spire Application, Narrative at 4.

“make available, so far as possible, to all the people of the United States ... rapid, efficient, Nation-wide, and world-wide communication services.”³

2. We also address the request of Space Exploration Technologies Corp. (SpaceX), filed in an *ex parte* letter, that the Commission impose certain conditions on a related license modification requested by Spire.⁴ Spire has also expressed that it will make further requests to update its authorization,⁵ and that will present an opportunity to address additional matters relevant to Spire’s operations, including further modification of license and market access conditions, as necessary.

II. BACKGROUND

1. *U.S.-Licensed LEMUR Satellites.* On November 23, 2015, Spire filed an application for authority to construct, deploy, and operate a non-geostationary orbit satellite system known as its LEMUR system.⁶ On November 14, 2016, Spire amended its application to, among other things, request use of the 399.9-400.05 MHz (Earth-to-space) frequency band.⁷ Spire’s constellation operates in low-Earth orbit (LEO) with inclinations ranging from equatorial to polar sun-synchronous (98 degrees).⁸ In its application, Spire requests a waiver “to the extent necessary” of certain Commission rules, including rules governing the Commission’s processing round procedures⁹ and disclosure requirements.¹⁰ Spire’s application was placed on public notice on January 22, 2016.¹¹ Spire’s subsequent amendments were placed on public notice on December 23, 2016,¹² and June 29, 2018.¹³ On March 18, 2016, the International Bureau, Satellite Division granted in part authority to Spire to construct, launch, and operate

³ 47 U.S.C. § 151.

⁴ See Letter from David Goldman, Director of Satellite Policy, SpaceX, to Marlene H. Dortch, Secretary, FCC at 1 (dated Jan. 17, 2023) (SpaceX Letter). This letter was filed following the conclusion of the public notice period. Therefore we classify the letter, and SpaceX’s subsequent response letter as informal objections pursuant to section 25.154(b) of the Commission’s rules. 47 CFR § 25.154(b).

⁵ See, e.g., Spire Modification, Letter from Jodi A. Goldberg, Counsel to Spire Global, Inc. to Marlene H. Dortch, Secretary, FCC (filed Mar. 31, 2024).

⁶ See Spire Application.

⁷ See Spire Amendment 1, Narrative at 5.

⁸ At the time it filed its request for authorization to operate in the 399.9-400.05 MHz frequency band, Spire had successfully launched 11 LEMUR satellites. See Spire Amendment 2, ICFS File No. SAT-AMD-20180102-00001, Annual Report (June 25, 2020).

⁹ 47 CFR §§ 25.156 and 25.157.

¹⁰ 47 CFR § 25.114(c).

¹¹ *Satellite Policy Branch Information, Satellite Space Applications Accepted for Filing*, Public Notice, DA 18-1235 (Jan. 22, 2016).

¹² *Satellite Policy Branch Information, Satellite Space Applications Accepted for Filing*, Public Notice, 32 FCC Rcd 5579 (Dec. 23, 2016).

¹³ *Satellite Policy Branch Information, Satellite Space Applications Accepted for Filing*, Public Notice, DA 18-1235 (June 29, 2018). Spire provided additional details describing the ground segment that will communicate with the Spire constellation in the 399.9-400.05 MHz band. See Spire Feb. 22, 2023 Letter.

twenty of the initial 175 LEMUR satellites requested.¹⁴ The Satellite Division authorized additional satellites and other modifications to Spire's LEMUR system grant over the next several years.¹⁵

2. On July 30, 2018, Hiber Inc. filed a comment requesting the Commission reject Spire's request for authorization to operate in the 399.9-400.05 MHz frequency band.¹⁶

3. *Luxembourg-Licensed MINAS Satellites.* On March 21, 2019, Spire filed a Petition for Declaratory Ruling seeking access to the U.S. market for Luxembourg-licensed satellites known as its MINAS satellites, including a request to operate in the 399.9-400.05 MHz (Earth-to-space) band.¹⁷ Spire sought U.S. market access for up to 872 NGSO low-Earth orbit MINAS satellites in the aggregate, with the number of simultaneously operational LEMUR-2 and MINAS satellites not exceeding 175 in total. Spire's petition was placed on public notice and no comments were filed in response.¹⁸ On October 7, 2019, Spire was granted U.S. market access for its MINAS satellites in certain frequency bands, but action was deferred on Spire's request for U.S. market access in the 399.9-400.05 MHz band.¹⁹

4. On April 10, 2023, the International Bureau, Satellite Division granted in part Spire's request to operate in the 399.9-400.05 MHz band specifically with four Luxembourg-licensed MINAS satellites,²⁰ limited to communications with authorized Myriota Pty Ltd. U.S. earth stations.²¹ On August 16, 2023, the Space Bureau, Satellite Programs and Policy Division modified Spire's grant of U.S. market

¹⁴ See *Policy Branch Information, Satellite Space Applications Actions Taken*, Public Notice, DA No. 16-314, Report No. SAT-01145 (ICFS File No. SAT-LOA-20151123-00078) (Mar. 18, 2016).

¹⁵ See also *Policy Branch Information, Satellite Space Applications Actions Taken*, Public Notice, DA No. 16-688, Report No. SAT-01168 (ICFS File No. SAT-LOA-20151123-00078) (Jun. 16, 2016); *Policy Branch Information, Satellite Space Applications Actions Taken*, Public Notice, DA No. 16-1211, Report No. SAT-01195 (ICFS File No. SAT-LOA-20151123-00078) (Oct. 14, 2016); *Policy Branch Information, Satellite Space Applications Actions Taken*, Public Notice, DA No. 17-358, Report No. SAT-01231 (ICFS File No. SAT-AMD-20161114-00107) (Apr. 7, 2017); *Policy Branch Information, Satellite Space Applications Actions Taken*, Public Notice, DA No. 17-490, Report No. SAT-01239 (ICFS File No. SAT-AMD-20161114-00107) (May 18, 2017). See *Policy Branch Information, Satellite Space Applications Actions Taken*, Public Notice, DA No. 18-1235, Report No. SAT-01363 (ICFS File No. SAT-LOA-20151123-00078) (Nov. 29, 2018). See *Policy Branch Information, Satellite Space Applications Actions Taken*, Public Notice, DA No. 20-1320, Report No. SAT-01510 (ICFS File No. SAT-MOD-20200603-00065) (Oct. 30, 2020). See also *Policy Branch Information, Satellite Space Applications Actions Taken*, Public Notice, DA No. 22-107, Report No. SAT01608 (ICFS File No. SAT-MOD-20200603-00065) (May 14, 2021); *Policy Branch Information, Satellite Space Applications Actions Taken*, Public Notice, DA No. 22-107, Report No. SAT-01608 (ICFS File No. SAT-MOD-20200603-00065) (Jan. 31, 2022); *Policy Branch Information, Satellite Space Applications Actions Taken*, Public Notice, DA No. 22-1176, Report No. SAT-01680 (ICFS File No. SAT-MOD-20200603-00065) (Nov. 9, 2022); *Policy Branch Information, Satellite Space Applications Actions Taken*, Public Notice, DA No. 23-52, Report No. SAT-01695 (ICFS File No. SAT-MOD-20200603-00065) (Jan. 31, 2022).

¹⁶ Spire Amendment 2, Comments of Hiber Global filed Jul. 30, 2018 in SAT-AMD-20180102-000018 (Hiber Comments).

¹⁷ See Spire Petition.

¹⁸ *Satellite Policy Branch, Space Station Applications Accepted for Filing*, Public Notice, DA 19-1046, at 1-2 (May 17, 2019).

¹⁹ See *Policy Branch Information, Satellite Space Applications Actions Taken*, Public Notice, DA No. 19-1046, Report No. SAT-01422 (ICFS File No. SAT-PDR-20190321-00018) (Oct. 7, 2019).

²⁰ See ICFS File No. SAT-MPL-20200618-00078. Spire's request for market access for additional satellites using these frequency bands was deferred at that time.

²¹ Spire was also authorized to operate with these Myriota earth stations in the 400.15-401 MHz (Earth-to-space) band.

access to include operations with U.S. earth stations for satellite command operations using the 400.02-400.05 MHz (Earth-to-space) frequency band.²²

III. DISCUSSION

5. *Processing Round.* On August 15, 2019, the International Bureau, Satellite Division released a public notice accepting for filing Myriota Pty. Ltd.'s petition seeking U.S. market access for its NVNG MSS system using the 399.9-400.05 MHz and 400.15-401 MHz bands.²³ In the notice, the Bureau also initiated an NGSO processing round for NVNG MSS systems in these bands.²⁴ The notice stated that previously filed and pending applications for operations in these bands would be included in the processing round, including Spire's applications.²⁵ Three of the applicants in the processing round have been granted market access.²⁶ Spire requested to operate command uplinks in a portion of the 399.9-400.05 MHz band,²⁷ and clarified that its request encompassed operations in the MSS throughout the 399.9-400.05 MHz band.²⁸ Since then, two other companies have filed applications requesting to operate in the 399.9-400.05 MHz band. One of the applications was subsequently amended to remove the 399.9-

²² *Satellite Policy Branch, Space Station Applications Action Taken*, Public Notice, DA 23-720, Report No. SAT-01751 (Aug. 16, 2023) (August 2023 Spire MINAS Grant). See Letter from Boyd Johnson, Chief Legal Officer, Spire Global, Inc. to Marlene H. Dortch, Secretary, FCC (filed Jan. 19, 2023) (Jan. 19, 2024 Letter).

²³ *Satellite Policy Branch Information, Myriota Pty. Ltd. Petition Accepted for Filing, ICFS File No. SAT-PDR-20190328-00020, Cut-Off Established for Additional NVNG MSS Applications or Petitions for Operations in the 399.9-400.05 MHz and 400.15-401 MHz Bands*, Public Notice, DA 19-779 (Aug. 15, 2019) (*Processing Round Public Notice*). We refer to this processing round as the "400 MHz Band Processing Round."

²⁴ *Id.*

²⁵ *Id.* In addition to Spire and Myriota, the public notice stated that Hiber Inc. was included in the processing round. See *id.* Kinéis filed an application in response to the public notice. See Kinéis, *Petition for Declaratory Ruling Requesting Access to the U.S. Market for a Non-Voice, Non-Geostationary Satellite Network*, ICFS File No. SAT-PDR-20191011-00113, Narrative at 7-8, Technical Annex at 3. The 400 MHz Band Processing Round also includes Astro Digital, see ICFS File No. SAT-LOA-20170508-00071, which was subject to a separate accepted for filing public notice that did not initiate a processing round.

²⁶ Kinéis was granted access to the U.S. market using frequencies of the NVNG MSS and earth exploration-satellite service (EESS) through a constellation of up to 25 small, low-Earth orbit (LEO) satellites authorized by France. *Kinéis Petition for Declaratory Ruling to Access the U.S. Market Using a Low-Earth Orbit Satellite System*, ICFS File No. SAT-PDR-20191011-00113, 21 FCC Rcd 16888 (2021) (Kinéis Grant). Hiber's application was granted on May 6, 2020. *Petition for Declaratory Ruling to Access U.S. Market Using the Hiberband Low-Earth Orbit System*, Order and Declaratory Ruling, 35 FCC Rcd 4619 (IB 2020). Hiber, however, subsequently surrendered its market access grant. See Letter from Bruce Henoch, General Counsel, Hiber Inc., to Marlene H. Dortch, Secretary, FCC (filed Sept. 24, 2021) (Hiber Surrender Letter). Myriota's application was granted on May 29, 2020. See Myriota, Pty. Ltd., ICFS File No. SAT-PDR-20190328-00020, DA 20-571 (granted May 29, 2020) (Myriota Grant).

²⁷ See, e.g., ICFS File No. SAT-AMD-20180102-00001, Exhibit A at 7; ICFS File No. SAT-PDR-20190321-00018, Exhibit A at 6.

²⁸ See, e.g., Letter from Michelle A. McClure, Regulatory and Legislative Affairs Counsel, Spire Global Inc., to Marlene H. Dortch, Secretary, FCC, ICFS File Nos. SAT-LOA-20151123-00078, SAT-AMD-20161114-00107 & SAT-AMD-20180102-00001 (Sept. 3, 2020); Letter from Boyd Johnson, Chief Legal Officer, Spire Global Inc., to Marlene H. Dortch, Secretary, FCC, ICFS File Nos. SAT-LOA-20151123-00078, SAT-AMD-20161114-00107 & SAT-PDR-20190321-00018 (Dec. 12, 2022). See Letter from Boyd Johnson, Chief Legal Officer, Spire Global Inc., to Marlene H. Dortch, Secretary, FCC, ICFS File Nos. SAT-LOA-20151123-00078, SAT-AMD-20161114-00107 & SAT-PDR-20190321-00018 (Feb. 22, 2023); Letter from Boyd Johnson, Chief Legal Officer, Spire Global, Inc. to Marlene H. Dortch, Secretary, FCC (filed Jan. 19, 2023).

400.05 MHz band²⁹ and the other application has not been accepted as part of a processing round.³⁰ Given that Spire's request to operate in the 399.9-400.05 MHz band was included as part of the original public notice opening the processing round,³¹ we conclude that Spire's request may be considered alongside others in the same 400 MHz processing round.³²

6. After review of each of the applications in the processing round and any pleadings filed in response to the applications, the Commission will grant the application if it finds the applicant is legally, technically, and otherwise qualified, and that grant of the application will serve the public interest.³³ Also, except for NGSO FSS systems as provided by section 25.157(b)(2), if there is not enough spectrum to accommodate all qualified applicants, the Commission will divide the spectrum equally among the applicants, with a pre-set band splitting mechanism to assign spectrum among operators.³⁴ Each licensee or grantee of U.S. market access will be allowed to choose its specific band assignment before it launches its first satellite.³⁵ Licensees and grantees may also negotiate alternative agreements to redistribute bandwidth after authorizations have been issued.³⁶ The purpose of the processing round procedure is to prevent one applicant from unreasonably precluding additional entry by other operators in the requested frequency band.³⁷

7. After review of the record, we conclude that granting Spire's request for license and U.S. market access in the MSS in the 399.9-400.05 MHz band would serve the public interest, subject to the requirements and conditions specified herein. Below we address the various considerations and

²⁹ Fleet Space Technologies (Fleet Space) originally requested authority to provide NVNG MSS in the United States with four low-Earth orbit, non-U.S.-licensed small satellites using the 399.9–400.05 MHz, 400.15–401 MHz, and 2020–2025 MHz bands. ICFS File No. SAT-PDR-20220805-00077.

³⁰ See Space Quest, ICFS File Nos. SAT-LOA-20210503-00058; SAT-AMD-20211223-00203.

³¹ We note that absent Spire's request for MSS, its request for the 399.9-400.05 MHz band would not typically be processed under the Commission's modified processing round procedures, which generally include "NGSO-like" systems that have satellites communicating with earth stations with omni-directional antennas, or systems in which, absent processing round procedures, "the first qualified applicant could request authority to operate in so much of the orbit-spectrum resource that additional market entry would be precluded." See *Amendment of the Commission's Space Station Licensing Rules and Policies and Mitigation of Orbital Debris*, IB Dockets Nos. 02-34 and 02-54; FCC 03-102, First Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 10760, 10766, 10773-4, at paras. 5 and 22 (2003) (*Space Station Reform Order*). In our August 2023 Spire MINAS grant, we waived the processing round procedures for Spire's telecommand uplink at 400.02-400.05 MHz band. See ICFS File No. SAT-MPL-20200618-00078.

³² As an administrative matter, we also take action on ICFS file numbers related to Spire's LEMUR and MINAS system in addition to those listed in the *Processing Round Public Notice*.

³³ 47 CFR §§ 25.156 and 25.157.

³⁴ See *Amendment of the Commission's Space Station Licensing Rules and Policies*, IB Docket No. 02-34, First Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 10760, 10783, para. 48 (2003) (*Space Station Reform Order*). "NGSO-like" is a term used in the Commission's rules to describe systems which are either (1) NGSO satellite systems or (2) GSO mobile satellite service (MSS) satellite systems that communicate with earth stations using nondirectional antennas. See 47 CFR § 25.157(a).

³⁵ 47 CFR § 25.157(f).

³⁶ *Space Station Reform Order*, 18 FCC Rcd at 10781, para. 45.

³⁷ See *Update to Parts 2 and 25 Concerning Non-Geostationary, Fixed-Satellite Service Systems and Related Matters*, IB Docket No. 16-408, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 7809, 7829, para. 61 (2017) ("The purpose of the recent processing rounds was to establish a sharing environment among NGSO systems, to provide a measure of certainty in lieu of adopting an open-ended requirement to accommodate all future applicants.").

conditions for license to operate in specific frequency bands as well as coordination with Federal operations and other satellite operations. We also address Spire's waiver requests.

A. Spectrum Requested

8. *Operations in the 399.9-400.05 MHz Band.* Spire proposes to use the 399.9-400.05 MHz band for NVNG MSS,³⁸ and conduct high-power telecommand operations in the 400.02-400.05 MHz portion of the band.³⁹ Spire's proposed use is consistent with the U.S. Table of Frequency Allocations, which allocates the band to the MSS on a primary basis for both Federal and non-Federal use. MSS use of the band is limited to the NVNG MSS.⁴⁰

9. The International Telecommunication Union Radio Regulations (ITU R.R.) include a maximum equivalent isotropically radiated power (e.i.r.p.) of any emission of MSS Earth stations for this band.⁴¹ For Spire's command uplink operations in the 400.02-400.05 MHz, we further note that footnote No. 5.260B of the ITU Radio Regulations states: "In the frequency band 400.02-400.05 MHz, the provisions of No. 5.260A are not applicable for telecommand uplinks within the mobile-satellite service."⁴² We further note that operations have been coordinated with the National Telecommunications and Information Administration.

10. ORBCOMM License Corp. (ORBCOMM) is authorized to operate in the adjacent 400.15-401 MHz frequency band.⁴³ Spire states interference with ORBCOMM's operations is unlikely due to the distance between ORBCOMM and Spire's earth stations.⁴⁴ Spire must ensure that its operations in the 399.9-400.05 MHz band do not result in interference to ORBCOMM's adjacent band operations.

B. Coordination with NVNG MSS systems

11. Section 25.142(b)(3), which addresses NVNG MSS systems, requires Spire to demonstrate that its satellite system will not cause unacceptable interference to authorized NVNG MSS systems in the frequency bands where Spire proposes to operate. Under this rule, applicants for authority to operate NVNG MSS systems are "encouraged to coordinate their proposed frequency usage... and [a]ll affected applicants, permittees, and licensees shall, at the direction of the Commission, cooperate fully and make every reasonable effort to resolve technical problems and conflicts that may inhibit effective

³⁸ See Grant stamp dated October 7, 2019, in ICFS File No. SAT-PDR-20190321-00018. See also Grant stamp dated November 29, 2018, in ICFS File No. SAT-LOA-20151123-00078.

³⁹ See Spire Amendment 1, Letter from Michelle A. McClure, Regulatory and Legislative Affairs Counsel, Spire Global, Inc. to Marlene H. Dortch, Secretary, FCC (filed Sept. 3, 2020).

⁴⁰ 47 CFR § 2.106, footnote US320. Federal use of NVNG MSS is pursuant to frequency assignment policies of the National Telecommunications and Information Administration (NTIA).

⁴¹ ITU-R Radio Regulations, footnote 5.260A (WRC-19).

⁴² See WRC-19 Final Acts at pp. 16 and 250, Nos. 5.260A, 5.260B and Resolution 99 (Rev. WRC-19), <https://www.itu.int/pub/R-ACT-WRC/en>. In its comments, Hiber expresses concern about interference to Data Collection Systems (DCS) arising from Spire's command links in the 400.02-400.05 MHz band, citing to documents prepared in advance of the WRC-19. See Hiber Comments. The WRC-19 concluded with adoption of the ITU R.R. provisions described herein, which are applicable to Spire's operations. Therefore, we find that the concern expressed in Hiber's comment has been superseded by further developments at the ITU.

⁴³ ORBCOMM License Corp., ICFS File No. SAT-MOD-20111021-00207 (granted in part, dismissed in part) (May 5, 2016).

⁴⁴ See Spire Amendment 1 at 20-21.

and efficient use of the radio spectrum...”.⁴⁵ As noted, Myriota⁴⁶ and Kinéis⁴⁷ have both been granted market access in the 399.9-400.05 MHz frequency bands.⁴⁸ In this context, Spire states it has listed multiple uplinks “to increase the flexibility it has to coordinate spectrum use with existing users and to operate in accordance with both the ITU and domestic ... tables of frequency allocations.”⁴⁹

12. The applicants in this processing round represent that they are capable of sharing with current and future licensees in these bands.⁵⁰ Consequently, we encourage the parties to reach an agreement regarding shared use of the bands for their NVNG MSS systems. Upon grant of an earth station license or licenses, Spire may commence operations in the 399.9-400.05 MHz frequency band under the conditions set forth in this authorization and grant.⁵¹ Spire also must coordinate with other entities in the processing round licensed or granted U.S. market access for this spectrum.⁵²

C. Orbital Debris Mitigation and Related Matters

13. On January 17, 2023, SpaceX filed a letter requesting that certain conditions that have been imposed on SpaceX’s license to construct, deploy, and operate up to 7,500 satellites in its Second Generation (Gen2) constellation also be imposed on several pending non-geostationary satellite applications and petitions, including the instant Spire Application and Petition.⁵³ In support of its request, SpaceX cites concerns raised by the National Aeronautics and Space Administration (NASA) and the National Science Foundation (NSF) in its own licensing proceeding, as well as “space sustainability

⁴⁵ See 47 CFR § 25.142(b)(3).

⁴⁶ See *Myriota Grant*. Myriota has filed an application seeking modification to its grant of market access. See ICFS File No. SAT-MPL-20231018-00254.

⁴⁷ See *Kinéis Grant*.

⁴⁸ Astro Digital's application was granted in part and deferred in part. Astro Digital, ICFS File Nos. SAT-LOA-2017050800071 (grant stamped Aug. 1, 2018 and further granted on April 12, 2018, and Aug. 1, 2018) and SAT-MOD-20210319-00036 (grant stamped May 28, 2021). Within the frequency ranges included in the processing round, Astro Digital was authorized to use a telemetry carrier (space-to-Earth) centered at 400.5 MHz (center frequency). Astro Digital subsequently withdrew its pending application. See Letter to Marlene H. Dortch, Secretary FCC from Tony Lin, Counsel to Astro Digital US, Inc. (Dec. 24, 2022).

⁴⁹ Spire Amendment 1, Narrative at 2; Spire Petition, Narrative at 15-16.

⁵⁰ Myriota Pty Ltd., ICFS File No. SAT-PDR-20190328-00020, Narrative at 10 (Myriota’s system “has the flexibility and spectral efficiency to operate harmoniously with other NVNG systems in this band”); Kinéis, ICFS File No. SAT-PDR-20191011-00113, Narrative at 12 (“The Kinéis system also has the flexibility and spectral efficiency to operate harmoniously with other NVNG MSS systems in this band, both those previously licensed and those with applications pending.”).

⁵¹ See Ordering Clauses at paras. 24 and 25.

⁵² Hiber further argues that Spire has not coordinated with Hiber’s Data Collection Services under Hiber’s Dutch filings with the ITU. Hiber Comments at 3. As noted above, Hiber has surrendered its grant.

⁵³ See SpaceX Letter at 1; see also *Space Exploration Holdings, LLC, Request for Orbital Deployment and Operating Authority for the SpaceX Gen2 NGSO Satellite System*, Order and Authorization, FCC 22-91 (2022) (SpaceX Gen2 Order). The SpaceX Letter requests that the FCC impose the following license conditions: (1) file semi-annual reports on collision avoidance maneuvers and satellite disposal, including any difficulties or failures related thereto; (2) apply an object-years metric for assessing disposal failures that accounts for both the number of failed satellites and their entire passive decay time; (3) communicate and collaborate with NASA to promote space safety and sustainability; (4) take all possible steps to assess and mitigate collision risk after receiving a conjunction warning from the 19th Space Defense Squadron or other source; and (5) coordinate with NSF to reach a mutually acceptable agreement to mitigate the impact of its satellites on optical ground-based astronomy, with associated annual reporting requirements). *Id.*

requirements” from its 7,500 satellite license. SpaceX argues, among other things, that concerns expressed by NASA in connection with the Commission’s orbital debris proceeding suggest that any constellation of 25 or more satellites should be subject to additional debris mitigation requirements.⁵⁴ SpaceX filed a further consolidated response directed to several of the NGSO applicants on March 31, 2023.⁵⁵

14. Spire previously submitted a description of its orbital debris mitigation plan covering its LEMUR and MINAS satellites.⁵⁶ With respect to SpaceX’s letter, we decline to adopt additional conditions in connection with this grant, which addresses only operations in an additional frequency band. However, we expect to address the merits of SpaceX’s filing in connection with further modification requested involving Spire’s satellite system, including its U.S.-licensed or Luxembourg-licensed satellites.⁵⁷

15. Specifically, we note that this Order does not grant authorization for additional satellites beyond the total number previously granted.⁵⁸ As noted in prior grants of Spire’s applications, the information provided by Spire supports a finding that a license and market access for some portion of the requested number of satellites is in the public interest, but it does not resolve all material questions of fact concerning whether the continued deployment of the full constellation over the 15-year license term would involve debris mitigation plans sufficient to support a finding that the full deployment is in the public interest. Moreover, the grandfathering period for the Commission’s five year rule regarding satellite post-mission disposal will conclude this September.⁵⁹ Accordingly, prior to deploying additional satellites after September 29, 2024, Spire must supplement the information provided in its orbital debris mitigation plan and must obtain FCC approval of the supplemented orbital debris mitigation plan.⁶⁰ In particular, the supplement should clarify and expand the information provided regarding the collision risk for its systems at all altitudes requested, based on launches completed and planned, as well as information on how Spire will comply with the rule adopted by the Commission requiring a five-year post-mission disposal timeframe,⁶¹ specification of how many satellites Spire currently has in orbit and how many satellites are operational for purposes of collision avoidance, or have failed at altitudes above 350 km over the course of Spire’s license term thus far for the LEMUR satellites, and taking into account both

⁵⁴ SpaceX Letter at 2.

⁵⁵ See Letter from David Goldman, Senior Director of Satellite Policy, to Marlene H. Dortch, Secretary, FCC at 2 (filed Mar. 31, 2023) (SpaceX Omnibus Response).

⁵⁶ See Spire Amendment 2, Orbital Debris Assessment Report.

⁵⁷ As noted, Spire plans to seek approval for further updates to the Spire constellation following this grant. See ICFS File Nos. SAT-LOA-20151123-00078, SAT-AMD-20161114-00107, and SAT-PDR-20190321-00018, Letter from Jodi A. Goldberg, Counsel to Spire Global, Inc. to Marlene H. Dortch, Secretary, FCC (filed Mar. 31, 2024).

⁵⁸ See Grant stamps dated Oct. 7, 2019, Oct. 30, 2020, May 14, 2021, Jan. 1, 2022, Nov. 9, 2022, and Apr. 4, 2023, in ICFS File Nos. SAT-PDR-20190321-00018 and SAT-MPL-20200618-00078.

⁵⁹ See *Space Innovation, Mitigation of Orbital Debris in the New Space Age*, IB Docket Nos. 22-271, 18-313, Second Report and Order, 37 FCC Rcd 11818, 11827 para. 22 (2022).

⁶⁰ This supersedes conditions on prior Spire grants regarding updates to Spire’s orbital debris mitigation plans.

⁶¹ See *Space Innovation, Mitigation of Orbital Debris in the New Space Age*, Second Report and Order at 37 FCC Rcd 11818, 11827, para. 22.

Spire's LEMUR and MINAS satellites,⁶² as well as any Luxembourg-licensed satellites operating as part of its system for which Spire has not sought market access.

16. We also note that the Commission continues to update its orbital debris mitigation rules as part of its *Space Innovation* docket.⁶³ Spire's LEMUR and MINAS systems will be subject to any applicable rules and policies adopted in this proceeding.

D. Waiver Requests⁶⁴

17. *Processing Round Waiver.* In connection with its broader set of operations, Spire requests a waiver of sections 25.156 and 25.157 of the Commission's rules, which provide for the processing of applications for NGSO-like satellites under a modified processing round framework.⁶⁵ Although Spire was previously granted waiver of processing round procedures for its operations in other bands, such as for EESS, we do not grant waiver of processing round procedures for this band.⁶⁶ Given that Spire's request is to operate throughout the 399.9-400.05 MHz band,⁶⁷ including for the provision of MSS, we conclude that there is no basis for exemption of Spire's MSS operations from the 400 MHz processing round, and therefore we deny Spire's waiver request.

18. *Command Uplink Waiver.* In the August 2023 grant authorizing operations in the 400.02-400.05 MHz band, we granted on our own motion a waiver of the U.S. Table of Frequency Allocations to authorize space operations (command) in the band with U.S. earth stations. Since pursuant to this grant, Spire is authorized to conduct MSS operations in the same band, and therefore will be conducting TT&C in an authorized service band, we conclude that a waiver of the Table of Frequency Allocations is no longer necessary.⁶⁸

19. *Form 312 - Schedule S Waiver.* As required by the Commission's rules, Spire submitted a Form 312 - Schedule S for its application, which requires certain technical information in a prescribed format.⁶⁹ Spire's request for a waiver of Section 25.114(c) of the Commission's rules, 47 CFR § 25.114(c), to the extent described in its application with respect to certain information to be provided in the Schedule S, has previously been granted for this constellation.⁷⁰ We find that it is appropriate to continue to grant such waiver on the same basis —because the information Spire provided in its Narrative in this instance is sufficient to fulfill the relevant informational requirements.

⁶² The submission should also account for any satellites which Spire operates as part of its LEMUR system but which have been authorized pursuant to a separate U.S. license. See ICFS File Nos. SAT-LOA-20230924-00232; SAT-AMD-20231220-00321, Call Sign S3182.

⁶³ See *Mitigation of Orbital Debris in the New Space Age*, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 4156 (2020); see also *Space Innovation, Mitigation of Orbital Debris in the New Space Age*, Second Report and Order, 37 FCC Rcd at 11818, 11827 para. 22.

⁶⁴ Spire additionally requested other waivers as part of its original application, but here we address only those applicable to the requested operations in the 399.9-400.05 MHz band.

⁶⁵ Spire Application, Narrative at 22-23; Spire Petition, Narrative at 13-14.

⁶⁶ It is also not clear whether Spire intended to request waiver of the processing round procedures for proposed MSS operations in this band.

⁶⁷ See Spire Modification, Feb. 22, 2023 Letter.

⁶⁸ See, e.g., 47 CFR § 25.202(g)(1) (rule regarding TT&C operations in assigned bands).

⁶⁹ 47 CFR § 2.114(c).

⁷⁰ See ICFS File Nos. SAT-LOA-20151123-00078; SAT-AMD-20180102-00001 (granted in part, denied in part Nov. 29, 2018) at condition 26.

E. Other Matters

20. In addition to complying with the applicable general provisions of Part 25, the Commission adopted specific rules governing NVNG MSS systems. Spire's authorization and grant of U.S. market access is subject to compliance with these rules, set forth in section 25.142,⁷¹ and is so conditioned herein. These rules include compliance with the emission limitations set forth in section 25.202(f).⁷²

21. With respect to milestone and bond obligations,⁷³ in prior grants for the LEMUR and MINAS systems, the International Bureau, Satellite Division found that Spire had met the milestone obligations associated with its original LEMUR grant, and concluded that with respect to the continued operations of Spire's system, the authorization would be null and void if, at any time during the license term, there are no Spire satellites operating.⁷⁴ With respect to the additional frequencies authorized in this grant we find that, similar to the other systems authorized in the 400 MHz processing round, it is appropriate to set forth milestone obligations specific to operations authorized through this processing round. Accordingly, we impose milestones on Spire's operations, including both the LEMUR and MINAS satellites in accordance with our milestone rule for NGSO systems. However, since Spire's constellation has already been deployed in part, in connection with this requirement, and no later than thirty days following grant, Spire must specify the number of already-deployed LEMUR and MINAS satellites that have the capability to operate in the MSS in the 399.9-400.05 MHz band, if any, and these satellites can be considered as part of Spire's system in meeting the 50 percent, six year milestone.

IV. ORDERING CLAUSES

22. Accordingly, IT IS ORDERED that Spire's request for license to operate with its LEMUR satellite system in the 399.9-400.05 MHz frequency band, among other requests, is GRANTED IN PART and DEFERRED IN PART pursuant to section 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. § 303(r), and section 25.261 of the Commission's Rules, 47 CFR § 25.261.

23. IT IS FURTHER ORDERED that Spire's Petition for Declaratory ruling to access the U.S. market using the 399.9-400.05 MHz frequency band for its MINAS system, among other requests, is GRANTED IN PART AND DEFERRED IN PART, pursuant to section 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. § 303(r), and sections 0.51, 0.261, 25.137(c), (e), and (f) of the Federal Communication Commission's rules, 47 CFR §§ 0.51, 0.261, 25.137(c), (e), (f).

24. IT IS FURTHER ORDERED that operations of Spire's U.S. licensed LEMUR satellites are subject to the following conditions. The following are also the conditions under which Spire's Luxembourg-licensed satellites may communicate with U.S. earth stations:⁷⁵

- a. Except for the addition of operations in the NVNG MSS in the 399.9-400.05 MHz band as specified herein, or as otherwise superseded by conditions in this authorization, operations of Spire's LEMUR and MINAS systems are subject to the

⁷¹ 47 CFR § 25.142.

⁷² 47 CFR §§ 25.142(a)(2), (a)(3).

⁷³ 47 CFR §§ 25.164 and 25.165.

⁷⁴ See, e.g., *Policy Branch Information, Satellite Space Applications Actions Taken*, Public Notice, DA No.18-1235, Report No. SAT-01363 (ICFS File No. SAT- LOA-20151123-00078) (Nov. 29, 2018).

⁷⁵ Conditions g. and h. were part of the grant to Spire for operations in the 400.02-400.05 MHz band for telecommand with its MINAS satellites. See August 2023 Spire MINAS Grant. In connection with this grant, we apply these conditions to its LEMUR satellites as well.

terms and conditions of prior grants in ICFS File Nos. SAT-LOA-20151123-00078; SAT-AMD- SAT-MOD-20200603-00065, SAT-AMD-20180102-00001; SAT-AMD-20161114-00107, SAT-PDR-20190321-00018, and SAT-MPL-20200618-00078.

- b. Spire may not provide voice services, 47 CFR § 25.142(b)(1).
- c. Spire must comply with all existing and future space station coordination agreements reached between Luxembourg and other administrations. In the absence of a coordination agreement, such communications must comply with applicable provisions of the ITU Radio Regulations.
- d. If a division of spectrum occurs, Spire must comply with the requirements of section 25.157 for band selection and notification, 47 CFR § 25.157.
- e. In the absence of a coordination agreement among the operators of systems in the 400 MHz Processing Round that have been licensed or granted access to the United States market (Kinéis and Myriota), the available spectrum will be divided equally among these systems.
- f. Spire must comply with ITU Radio Regulation 5.260A regarding the maximum e.i.r.p. of any emission of MSS Earth stations in the 399.9-400.05 MHz band.
- g. Spire's operations in the United States using the 400.02-400.05 MHz band will be limited to communications with individually identified earth stations that have been coordinated with federal users of the band.
- h. For any Spire Global, Inc satellite deployed into orbit from the International Space Station (ISS), Spire Global is required to coordinate post-deployment radio frequency (RF) communication constraints with the National Aeronautics and Space Administration (NASA) (HQ-SatCoord@mail.nasa.gov) at least 60 days prior to launch. Spire Global shall constrain RF operations to comply with conditions and limitations defined by NASA.
- i. Prior to deploying additional satellites in either its U.S.-licensed LEMUR or Luxembourg-licensed MINAS systems after September 29, 2024,⁷⁶ Spire must supplement the information provided in its orbital debris mitigation plan and must obtain FCC approval of the supplemented orbital debris mitigation plan.

25. IT IS FURTHER ORDERED that Spire's request for a waiver of sections 25.156 and 25.157 is DENIED, 47 CFR §§ 25.156 and 25.157.

26. IT IS FURTHER ORDERED that this authorization and any earth station licenses granted in the future are subject to modification to bring them into conformance with any applicable rules and policies adopted by the Commission in the future, including in connection with IB Docket No.18-313. *See, e.g., Mitigation of Orbital Debris in the New Space Age*, Report and Order and Further Notice of Proposed Rulemaking, FCC 20-54 (rel. April 24, 2020).

⁷⁶ This condition addresses those Luxembourg-licensed satellites that operate with U.S. earth stations pursuant to Spire's grant of market access. However, as specified in this Order, information submitted in support of this modification should include information regarding additional Luxembourg-licensed satellites operating as part of Spire's overall system.

27. IT IS FURTHER ORDERED that Spire's request for waiver of certain filing requirements in the Form 312 - Schedule S is GRANTED, 47 CFR § 25.114(c).

28. IT IS FURTHER ORDERED that this authorization IS SUBJECT to the following requirements:

- a. Spire must post a surety bond in satisfaction of 47 CFR §§ 25.165(a)(1) & (b) no later than **July 7, 2024** and thereafter maintain on file a surety bond requiring payment in the event of a default in an amount, at minimum, determined according to the formula set forth in 47 CFR § 25.156(a)(1); and
- b. Spire must launch 50 percent of the maximum number of proposed space stations capable of operating in the 399.9-400.05 MHz band, place them in the assigned orbits, and operate them in accordance with this grant no later than **June 7, 2030**, and must launch the remaining space stations necessary to complete its authorized service constellation, place them in their assigned orbits, and operate them in accordance with the grant no later than **June 7, 2033**. 47 CFR § 25.164(b).
- c. Failure to post and maintain a surety bond will render this authorization null and void automatically, without further Commission action. Failure to meet the milestone requirements of 47 CFR § 25.164(b) may result in Spire's authorization being reduced to the number of satellites in use at the milestone date. Failure to comply with the milestone requirements of 47 CFR § 25.164(b) will also result in forfeiture of Spire's surety bond. By **June 22, 2030**, Spire must either demonstrate compliance with this milestone requirement or notify the Commission in writing that the requirement was not met. 47 CFR § 25.164(f).

29. IT IS FURTHER ORDERED that Spire is afforded 30 days from the date of release of this Order to decline this grant as conditioned. Failure to respond within that period will constitute formal acceptance of the authorization as conditioned.

FEDERAL COMMUNICATIONS COMMISSION

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

In the Matter of)
)
Telephone Number Portability) CC Docket No. 95-116
)

Released: June 7, 2024

2. On May 31, 2024, the Governor of the State of Hawaii issued a proclamation determining that an imminent threat or danger of an emergency or disaster is occurring in the State of Hawaii relating to the announcement by an incumbent local exchange carrier, Sandwich Isles, that it plans to abruptly terminate communications services on the Hawaiian Home Lands.¹ Sandwich Isles' termination action would result in the immediate loss of telephone and Internet services for up to 1,500 households across the state, including households in remote communities where such services are critical and limited alternatives may exist. The Governor determined, among other things, that any termination of telephone and/or Internet services will impair the ability of all affected communities to access critical services, including emergency medical, police, and fire services, and that loss of such services will jeopardize the resources, economic life, public health, safety, and welfare of all affected communities.² This imminent threat or danger persists as Sandwich Isles informed its customers by email on June 5, 2024, without

² Proclamation at 1.

securing mandatory Federal Communications Commission (Commission) discontinuance authorizations,³ that service will be terminated on June 8, 2024.⁴

3. The Department of Hawaiian Homelands is currently urging “any beneficiaries who receive service from [Sandwich Isles] to immediately switch their service to another provider to avoid interruption of their phone and/or internet service.”⁵ The Bureau has become aware that Sandwich Isles is unreasonably impeding this process by blocking current Sandwich Isles customers’ ability to port their current Sandwich Isles telephone numbers to their new service providers. The Bureau issues this Emergency Order to facilitate a rapid and orderly process of Sandwich Isles’ customers switching their service and their current telephone numbers to a new service provider of their choice.

4. The Commission is responsible for the administration of telephone numbers, pursuant to section 251(e)(1) of the Communications Act of 1934, as amended (Act),⁶ and has long recognized the importance of consumers being able to keep their telephone numbers when they switch telephone service providers.⁷ The Act obligates all local exchange carriers to provide local number portability.⁸ In light of these requirements, and the emergency situation occurring in Hawaii, the Bureau expects current Sandwich Isles customers to continue to be interested in immediately porting their telephone numbers to a new service provider through the existing local number portability (LNP) process. The LNP process involves two pertinent stages—an intercarrier stage in which the new service provider from which the customer seeks to receive service places a local service request (LSR) with the current service provider (which, in this case, would be Sandwich Isles), ultimately resulting in a firm order confirmation (FOC), and a subsequent stage in which the LNP request is actually processed through the Number Portability Administration Center (NPAC). The NPAC is operated by the Local Number Portability Administrator (LNPA), currently iconectiv.⁹ These process steps require the current service provider to take cooperative actions to permit the port to be processed. The Bureau has learned that Sandwich Isles is at least in some instances blocking the LSR step of the process and is aware of further unreasonable steps Sandwich Isles may be able to take to block an LNP order in the NPAC.

5. We find that the combination of the immediately impending termination of service by Sandwich Isles and the significantly detrimental consequences to Hawaiian Home Lands residents of losing service presents extraordinary circumstances providing good cause for a temporary waiver of all

³ See 47 CFR § 63.71. The Bureau has referred Sandwich Isles’ violation of section 214(a) of the Act and the Commission’s discontinuance rules implementing that section of the Act to the Enforcement Bureau.

⁴ Letter from Sandwich Isles Communications, Inc. to Sandwich Isles Customer (dated June 5, 2024), attached to this Order.

⁵ Press Release, Department of Hawaiian Home Lands, DHHL Urges Customers of Sandwich Isles Communications to Immediately Switch Phone and Internet Service Providers (May 24, 2024), <https://dhhl.hawaii.gov/2024/05/24/dhhl-urges-customers-of-sandwich-isles-communications-to-immediately-switch-phone-and-internet-service-providers/>.

⁶ 47 U.S.C. § 251(e)(1).

⁷ See, e.g., *Telephone Number Portability*, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8367, para. 28 (1996); *Telephone Number Portability*, CC Docket No. 95-116, Second Report and Order, 12 FCC Rcd 12281, 12284-85, para. 4 (1997) (stating that the Act defines “number portability” as, citing 47 U.S.C. § 153(37), “the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another,” and that it is essential to meaningful competition).

⁸ 47 U.S.C. § 251(b)(2). See generally 47 CFR §§ 52.21 *et seq.*

⁹ For a more detailed description of these steps using then-applicable maximum intervals, see *Telephone Number Portability*, CC Docket No. 95-116, Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 18515, 18516-17, para. 4 (2004). For current maximum intervals, see 47 CFR § 52.35.

necessary Commission rules and related number porting processes flowing therefrom. With this Order, we intend to remove unnecessary or improper barriers preventing Hawaiian Home Lands residents from receiving service from the telecommunications or Voice over Internet Protocol (VoIP) service provider of their choice while keeping their current telephone number, as they are entitled to do under the Act and Commission rules. Our action today will expedite the processing of LNP requests in light of the threat of service termination from these residents' current service provider, Sandwich Isles.¹⁰ Accordingly, the Bureau finds good cause to waive any Commission rule or other Commission requirement that would prevent a service provider (eligible to receive ported telephone numbers) to which a current Sandwich Isles customer seeks to port its telephone number away from Sandwich Isles, from entering LNP orders into the NPAC without having first placed an LSR with Sandwich Isles or having received a FOC from Sandwich Isles. Further, we waive any Commission rule or other Commission requirement preventing the LNPA from immediately (without pausing for any waiting period) processing LNP orders for ports away from Sandwich Isles regardless of any objection from or other obstacle that Sandwich Isles may attempt to create. The LNPA is directed to take any and all steps reasonably necessary to effectuate the immediate processing of any LNP requests from current Sandwich Isles customers and to work expeditiously with any new service provider attempting to port Sandwich Isles customers' telephone numbers to such providers.¹¹ These waivers and directives are limited to the emergency circumstances surrounding service termination by Sandwich Isles as described herein, and will expire six months from the release of this Order unless otherwise extended.

6. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 251(b)(2), and 251(e) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 251(b)(2), 251(e), and sections 0.291 and 1.3 of the Commission's rules, 47 CFR §§ 0.291, 1.3, that the local number portability rules in part 52 are waived to the extent described herein.

FEDERAL COMMUNICATIONS COMMISSION

Trent Harkrader
Chief
Wireline Competition Bureau

¹⁰ Generally, the Commission's rules may be waived for "good cause shown." 47 CFR § 1.3; *see also* *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert denied, 409 U.S. 1027 (1972). The Commission may exercise its discretion to waive a rule where (a) the particular facts make strict compliance inconsistent with the public interest, (b) special circumstances warrant a deviation from the general rule, and (c) such deviation will serve the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). We note that the Bureau has waived LNP-related requirements in other emergency situations. *See, e.g., Telephone Number Portability; Numbering Resource Optimization*, WC Docket Nos. 95-116, 99-200, Order, 32 FCC Rcd 6723 (2017).

¹¹ *See Telcordia Technologies, Inc. Petition to Reform Amendment 57 and to Order a Competitive Bidding Process for Number Portability Administration et al.*, Order, 31 FCC Rcd 8406, 8423-24, paras. 44-46 (2016).

[EXTERNAL] Fw: PLEASE READ: Sandwich Isles services to end June 8, 2024

Wed 6/5/2024 9:36 PM

To:

----- Forwarded message -----

From: <Info@sandwichisles.com>

Date: On Wed, Jun 5, 2024 at 9:19 PM

Subject: Fw: PLEASE READ: Sandwich Isles services to end June 8, 2024

To: <Info@sandwichisles.com>

Cc:



June 5, 2024

Aloha Sandwich Isles Customer,

We regret to inform you that effective Saturday, June 8, 2024, Sandwich Isles Communications (SIC) will be disconnecting all telephone and internet services.

SIC continued to provide services this week in the hopes that the Governor's proclamation and the order filed by the Public Utilities Commission (PUC) would lead to a solution. We have made multiple attempts to contact the Governor's office, we responded in writing to the PUC order and to the Federal Communications Commission (FCC), and we have continued our efforts to contact the Department of Hawaiian Home Lands (DHHL) in hopes to work with these government agencies to come to a solution that would allow us to continue to provide service. All of our attempts to ensure continuity of services have fallen on deaf ears. We have exhausted all of our financial resources and are faced with finding funds to continue service this week.

It is the DHHL's kuleana to ensure you have service. Thirty years ago, they asked SIC to do that. SIC did and now DHHL has decided they want someone else to provide you service. We have offered to help in a seamless transition plan, however, due to zero communication from DHHL and their lack of support of SIC, we simply cannot afford to continue to provide you with service.

On behalf of our entire company, Mahalo for your continued support over the years.

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

In the Matter of	)	
	)	
Safeguarding and Securing the Open Internet	)	WC Docket No. 23-320
	)	
Restoring Internet Freedom	)	WC Docket No. 17-108
	)	

ORDER DENYING STAY PETITION

Adopted: June 7, 2024

Released: June 7, 2024

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. On May 31, 2024, USTelecom – The Broadband Association, NCTA – The Internet & Television Association, CTIA – The Wireless Association, the Wireless Internet Service Providers Association, ACA Connects – America’s Communications Association, the Florida Internet & Television Association, MCTA – The Missouri Internet & Television Association, the Ohio Cable Telecommunications Association, the Ohio Telecom Association, and the Texas Cable Association (together, Petitioners) filed a petition for the Federal Communications Commission (Commission) to stay the *Declaratory Ruling, Order, Report and Order, and Order on Reconsideration (2024 Open Internet Order or Order)* in the above-captioned proceedings pending judicial review.¹ For the reasons discussed below, we deny Petitioners’ stay request.

II. BACKGROUND

2. The Commission’s *2024 Open Internet Order* classifies broadband Internet access service (BIAS) as a telecommunications service under Title II of the Communications Act of 1934 (the Act), finding that such classification represents the best reading of the text of the Act, accords with Commission and court precedent, and is justified under the Commission’s longstanding authority to classify services subject to its jurisdiction.² As the *Order* explains, this classification decision is

¹ *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 24-52 (rel. May 7, 2024) (*2024 Open Internet Order*); see Joint Petition for Stay of USTelecom – The Broadband Association, NCTA – The Internet & Television Association, CTIA – The Wireless Association, Wireless Internet Service Providers Association, ACA Connects – America’s Communications Association, Florida Internet & Television Association, MCTA – The Missouri Internet & Television Association, Ohio Cable Telecommunications Association, Ohio Telecom Association, and Texas Cable Association, WC Docket Nos. 23-320 and 17-108 (filed May 31, 2024) (Industry Stay Petition).

² See *2024 Open Internet Order* at para. 25. In adopting this classification, the Commission’s action is consistent with the framework previously adopted in 2015 and upheld in full by the D.C. Circuit, see *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601, 5603 (2015) (*2015 Open Internet Order*), aff’d *U.S. Telecom Ass’n v. FCC*, 825 F.3d 674 (D.C. Cir. 2016), reh’g denied, 855 F.3d 381 (D.C. Cir. 2017), cert. denied, *Berninger v. FCC*, 139 S. Ct. 453 (2018) (*USTA*), but subsequently abandoned in 2018, see *Restoring Internet Freedom*, Declaratory Ruling, Report and Order, and Order, 33 FCC Rcd 311 (2018), aff’d in part and remanded in part, *Mozilla Corp. v. FCC*, 940 F.3d 1 (D.C. Cir.

(continued....)

supported by the Commission’s statutory obligations and policy objectives as the expert agency for communications services, including the need to safeguard the open Internet, defend national security, promote cybersecurity, advance public safety, monitor network resiliency and reliability, protect consumer privacy and data security, support consumer access to BIAS, and improve disability access.³ The *Order* also reinstates the classification of mobile BIAS as a commercial mobile service.⁴ The *Order* establishes broad, tailored forbearance under section 10 of the Act—including no rate regulation, no tariffing, no unbundling of last-mile facilities, and no cost-accounting rules—in the Commission’s application of Title II to BIAS providers, while maintaining certain authority to account for the changing national security landscape, which together ensure that the regulatory environment protects consumers and achieves other important public interest responsibilities while not unnecessarily stifling investment and innovation.⁵ The *Order* reestablishes a national regulatory approach to protect the open Internet by restoring straightforward, clear rules that prohibit BIAS providers from engaging in blocking, throttling, or paid or affiliated prioritization arrangements.⁶ It also reinstates a general conduct standard that prohibits unreasonable interference or unreasonable disadvantage to consumers or edge providers, as well as enhancements to the transparency rule and a multi-faceted enforcement framework comprised of advisory opinions, enforcement advisories, Commission-initiated investigations, and informal and formal complaints.⁷ The *Order* partially grants and otherwise dismisses as moot several petitions for reconsideration filed in response to the *RIF Remand Order*. The Commission adopted the *Order* on April 25, 2024. A summary of the *Order* was published in the Federal Register on May 22, 2024; it will go into effect (in relevant part) on July 22, 2024.⁸

3. On May 31, 2024, Petitioners filed a petition requesting that the Commission stay the effectiveness of the *Order* pending judicial review. Petitioners principally argue that they are likely to prevail on the merits that the *Order* is unlawful under both the major-questions doctrine and ordinary principles of statutory interpretation.⁹ Petitioners also claim that the *Order* will impose significant, unrecoverable costs once it goes into effect.¹⁰ They assert that the balance of the harms and the public interest support a stay because “[t]he record does not suggest that the rules imposed by the Order are necessary to address significant present or near-term harms to the public,” and that “the public would benefit from stability in the regulatory treatment of the broadband industry pending final determination of the Order’s legality.”¹¹ Petitioners “request that the Commission rule on this stay petition by June 7, 2024, to give [them] time to seek a stay in the court of appeals, if necessary, and to give the court of appeals time to adjudicate the stay before the Order takes effect.”¹²

(Continued from previous page) —————

2019), *on remand*, 35 FCC Rcd 12328 (2020) (*RIF Remand Order*), *pet. for review pending*, No. 21-1016 (D.C. Cir. filed Jan. 14, 2021).

³ See *2024 Open Internet Order* at para. 27.

⁴ See *id.* at para. 214.

⁵ See *id.* at para. 6.

⁶ See *id.* at para. 443.

⁷ See *id.* at paras. 443, 581.

⁸ See *Safeguarding and Securing the Open Internet; Restoring Internet Freedom*, 89 Fed. Reg. 45404 (May 22, 2024).

⁹ Industry Stay Petition at 2.

¹⁰ *Id.* at 2.

¹¹ *Id.* at 2-3.

¹² *Id.* at 1.

III. DISCUSSION

4. To qualify for the extraordinary remedy of a stay, a petitioner must show that (1) it is likely to prevail on the merits; (2) it will suffer irreparable harm absent the grant of preliminary relief; (3) other interested parties will not be harmed if the stay is granted; and (4) the public interest would favor grant of the stay.¹³ A stay is an “intrusion into the ordinary processes of administration and judicial review,” . . . and accordingly “is not a matter of right, even if irreparable injury might otherwise result” to the movant.¹⁴ The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion.¹⁵ Petitioners have failed to meet that burden.

A. Petitioners Have Not Shown They Are Likely to Prevail on the Merits

5. To show likelihood of success on the merits, a petitioner must make a “strong showing” that they are likely to succeed;¹⁶ a “mere possibility of relief” is insufficient.¹⁷ As the D.C. Circuit has recognized, “[w]ithout such a substantial indication of probable success, there would be no justification for . . . intrusion into the ordinary processes of administration and judicial review.”¹⁸ Petitioners principally assert that they will prevail on the merits because the Commission’s classification of BIAS as a Title II telecommunications service is a major question and because, they contend, the Commission lacks clear congressional authorization for its reclassification.¹⁹ But in support of these arguments, Petitioners merely repeat arguments that were already addressed in the *Order* without refuting the *Order*’s conclusions.

6. To begin with, Petitioners jump to challenging the Commission’s classification decision under the major-questions doctrine without addressing the *Order*’s lengthy explanation for why the Commission’s understanding of broadband Internet access service as a “telecommunications service,” not an “information service,” reflects the best reading of the text, structure, and context of those statutory terms.²⁰ Because the *Order* simply follows the best reading of the statute, the major-questions doctrine should not “come[] into play in this context at all.”²¹

7. For the reasons the Commission described in the *Order*, Petitioners’ arguments for why the Commission’s classification decision should be analyzed under the major-questions doctrine are not persuasive.²² In arguing that Title II classification “would ‘bring about an enormous and transformative expansion’ in the Commission’s ‘regulatory authority,’”²³ Petitioners ignore that “BIAS providers have previously been regulated under Title II,” including from 2015 to 2018, as well as the scope of

¹³ See *LightSquared Technical Working Group Report*, Order Denying Motion for Stay, IB Docket No. 11-109, 36 FCC Rcd 1262, 1266, para. 8 (2021) (*Ligado Stay Denial Order*) (citing *Nken v. Holder*, 556 U.S. 418, 425-26 (2009)).

¹⁴ *Nken*, 556 U.S. at 427 (internal citations omitted).

¹⁵ *Ligado Stay Denial Order*, 36 FCC Rcd at 1266, para. 8.

¹⁶ *Nken*, 556 U.S. at 426 (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)).

¹⁷ *Nken*, 556 U.S. at 434 (internal citations omitted).

¹⁸ *VA Petroleum Jobbers Ass’n v. Federal Power Comm’n*, 259 F.2d 921, 925 (D.C. Cir. 1958) (*VA Petroleum Jobbers*).

¹⁹ Industry Stay Petition at 6.

²⁰ See 2024 *Open Internet Order* at Section III.B.

²¹ *Id.* at para. 253; see also *id.* at paras. 252-264 (explaining further why the major-questions doctrine is not implicated here).

²² See *id.* at paras. 257-64.

²³ Industry Stay Petition at 6 (quoting *Utility Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014)).

forbearance adopted in the *Order*.²⁴ Likewise, Petitioners' characterization of the economic and political significance of the Commission's action as "staggering" is exaggerated because they make general statements about the economic value of the broadband industry, the importance of the Internet, and political debates about Commission authority, rather than specific claims about the effect of the *Order*.²⁵ Petitioners also repeat previous arguments regarding the Commission's post-1996 Act treatment of "Internet access services"²⁶ without addressing the *Order*'s extensive discussion of Commission and court precedent that contradicts that argument.²⁷ Finally, Petitioners' claim that the *Order* "strays into areas well outside the Commission's 'comparative expertise'"²⁸ because it takes account of national security considerations while ignoring not only that "the proper regulatory classification of broadband falls squarely within the Commission's wheelhouse,"²⁹ but also that the Commission has "statutory responsibilities to safeguard national security and law enforcement," as courts have repeatedly recognized.³⁰

8. Even if a court were to analyze the *Order* under the major-questions doctrine, moreover, the Commission explained why its authority to classify and regulate broadband is, nonetheless, sufficiently clear.³¹ As the *Order* shows, the Commission has a long history of classifying broadband services and those classification decisions have been consistently upheld in court.³² Petitioners fail to refute the *Order*'s explanations, and they do not make a compelling case that BIAS is best classified as an information service.³³ Contrary to Petitioners' contention,³⁴ the Commission's forbearance action does not undermine its classification decision. As the *Order* explains, "broad forbearance where justified by the statutory criteria . . . is entirely compatible with the overall legal framework Congress enacted in the 1996 Act,"³⁵ and Title II classification with a highly similar forbearance framework has already been once upheld as a valid exercise of authority by the D.C. Circuit.³⁶ Likewise, the *Order*'s treatment of mobile BIAS also does not support Petitioners' claim that BIAS is best classified as an information service.³⁷ That argument relies on the contention that mobile BIAS is not interconnected with the "public switched

²⁴ See 2024 *Open Internet Order* at paras. 18, 257, 384.

²⁵ See Industry Stay Petition at 7 (citing *Biden v. Nebraska*, 143 S. Ct. 2355, 2373 (2023) and several of Petitioners' comments in the record); 2024 *Open Internet Order* at para. 257.

²⁶ Industry Stay Petition at 7.

²⁷ See 2024 *Open Internet Order* at Section III.C; see also *id.* at paras. 255, 259 (explaining further why Petitioners' invocation of the major-questions doctrine on this basis is unpersuasive).

²⁸ Industry Stay Petition at 7.

²⁹ 2024 *Open Internet Order* at para. 260; see *id.* at paras. 238-242, 261.

³⁰ 2024 *Open Internet Order* at para. 31 & n.73; see, e.g., *Huawei Techs. USA, Inc. v. FCC*, 2 F.4th 421, 439-40, 443 (5th Cir. 2021); *Hikvision USA, Inc. v. FCC*, 97 F.4th 938, 948 (D.C. Cir. 2024); *Pac. Networks Corp. v. FCC*, 77 F.4th 1160, 1164 (D.C. Cir. 2023).

³¹ See 2024 *Open Internet Order* at para. 264; see also *id.* at Section III.B.

³² See 2024 *Open Internet Order* at Section III.C.2 (showing that the Commission's broadband service classification decisions have been upheld in *National Cable & Telecommunications Ass'n et al. v. Brand X Internet Services*, 545 U.S. 967 (2005), *USTA*, 825 F.3d 674, and *Mozilla Corp. v. FCC*, 940 F.3d 1 (D.C. Cir. 2019)); see also *id.* at para. 18.

³³ See Industry Stay Petition at 8-9.

³⁴ Industry Stay Petition at 9.

³⁵ 2024 *Open Internet Order* at para. 319.

³⁶ See *id.* at para. 18.

³⁷ Industry Stay Petition at 9.

network,”³⁸ ignoring that the Commission has the authority to define that term, as it did in the *Order*, to reflect the current technological landscape.³⁹ Finally, Petitioners’ argument that “other statutes enacted around the time of the 1996 Act demonstrate that Congress viewed Internet access service as an information service” fails to grapple with the Commission’s contrary determination in the *Order*.⁴⁰

9. Petitioners thus have failed to establish that their challenges to the *Order* are likely to succeed on the merits.

B. Petitioners Have Failed to Show They Will Suffer Irreparable Harm

10. Petitioners likewise fail to demonstrate that they would suffer imminent and irreparable harm without a stay. To establish irreparable harm, a petitioner must show that it will suffer injury that is “‘both certain and great,’ ‘actual and not theoretical,’ ‘beyond remediation,’ and ‘of such *imminence* that there is a clear and present need for equitable relief to prevent irreparable harm.’”⁴¹ In doing so, the petitioner must present actual evidence to “substantiate [its] claim” of injury.⁴² “‘Bare allegations of what is likely to occur are of no value’ under this factor, because we ‘must decide whether the harm will *in fact* occur.’”⁴³ Petitioners have not met their burden to make and substantiate these showings.

11. Petitioners allege that they will be harmed if the *Order* is allowed to take effect while litigation is pending. But Petitioners offer only conclusory assertions that their members “will be forced to delay or forgo valuable new services, incur prohibitive compliance costs, and pay more to obtain capital,”⁴⁴ without any concrete evidence to substantiate that claim, let alone evidence showing that such harm is certain and great, actual and not theoretical, beyond remediation, and—of particular importance—imminent. Indeed, they do not identify in a specific and concrete way any present or imminent practices they will be forced to cease when the *Order* takes effect. Absent such evidence, Petitioners’ claims are entirely speculative and conclusory. Likewise, though Petitioners include a perfunctory assertion that great and irreparable harm is evident from the period when they were subject to the substantially similar framework in the *2015 Open Internet Order*,⁴⁵ they fail to present any cogent evidence that such harm occurred. On the contrary, the *Order* addressed and debunked claims that the *2015 Open Internet Order* harmed BIAS providers or the Internet ecosystem.⁴⁶

12. Petitioners’ prognostications about irreparable harm are also undermined by other factual realities. For instance, although Petitioners assert that their members will forgo some (unspecified) value-creating offerings because the general conduct rule’s case-by-case adjudication is vague,⁴⁷ they fail to acknowledge that the current regulatory regime likewise subjects them to case-by-case scrutiny under the antitrust and consumer protection oversight of the Federal Trade Commission, Department of Justice, and

³⁸ Industry Stay Petition at 9.

³⁹ See *2024 Open Internet Order* at paras. 216-24.

⁴⁰ Industry Stay Petition at 10; see *2024 Open Internet Order* at paras. 248-49.

⁴¹ *Mexichem Specialty Resins, Inc. v. EPA*, 787 F.3d 544, 555 (D.C. Cir. 2015) (quoting *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006)); see *Ligado Stay Denial Order*, 36 FCC Rcd at 1267, para. 10.

⁴² *Wis. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985).

⁴³ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Order, CC Docket No. 96-98, 11 FCC Rcd 11754, 11757, para. 8 (1996) (quoting *Wis. Gas*, 758 F.2d at 674).

⁴⁴ Industry Stay Petition at 10.

⁴⁵ Industry Stay Petition at 10.

⁴⁶ See *2024 Open Internet Order* at Sections III.H and V.H.

⁴⁷ Industry Stay Petition at 11.

state attorneys general,⁴⁸ or that they are already subject to similar obligations under state net-neutrality laws.⁴⁹ BIAS providers also were subject to the Commission’s case-by-case oversight during the periods that the *2010 Open Internet Order* and *2015 Open Internet Order* were in effect,⁵⁰ yet—as noted above—they have not shown that those periods proved disruptive. Petitioners’ argument also discounts that, to the extent that an entity is able to demonstrate a positive use case and the costs associated with a ban on such practices, the Commission may waive its rule prohibiting paid or affiliated prioritization.⁵¹

13. For similar reasons, we are not persuaded that Petitioners’ members will incur “compliance costs that are qualitatively and quantitatively different from those associated with typical regulation.”⁵² The regulatory regime adopted in the *Order* is not atypical. Beyond the fact that a number of telecommunications carriers have been subject to Title II of the Act, BIAS providers have been largely subject to standards consistent with the bright-line conduct rules adopted in the *Order* since 2005 and have twice been subject to oversight akin to the general conduct rule and the type of enforcement framework adopted in the *Order*.⁵³ Furthermore, the Commission expressed its predictive judgment that any “compliance costs are likely to be small and are outweighed by the benefits of reclassification that have been identified in [its] analysis,” explained the basis for this view, and noted its intent to assess incremental compliance costs, if any, as a part of any new rules that it might adopt.⁵⁴ Finally, as the *Order* notes, its broad forbearance from Title II provisions will mitigate costs and burdens on BIAS providers.⁵⁵

14. Nor are we persuaded that a stay is warranted due to “higher capital costs.”⁵⁶ To the extent petitioners contend that “the threat of future regulation” will “make it harder for the industry to raise capital,”⁵⁷ grant of a temporary stay pending review would provide them with no relief, as the possibility of the *Order* being upheld and the rules taking effect will persist through the completion of judicial review. And insofar as petitioners are concerned with possible future actions *not* taken in this *Order*, such concerns are wholly speculative, and any future actions would first have to undergo an appropriate administrative process and be subject to judicial review.⁵⁸

⁴⁸ See *2024 Open Internet Order* at paras. 23, 487-89, 640.

⁴⁹ See, e.g., *ACA Connects v. Bonta*, 24 F.4th 1233 (9th Cir. 2022) (upholding California’s state net-neutrality law).

⁵⁰ Under the *2010 Open Internet Order*, all fixed BIAS providers were subject to a case-by-case prohibition on “unreasonable discrimination.” See *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Notice of Proposed Rulemaking, 29 FCC Rcd 5561, 5600-01 paras. 113-14 & n.236 (2014) (demonstrating that the prohibition against unreasonable discrimination was in effect for two years from its implementation until the D.C. Circuit’s holding in the *Verizon* decision).

⁵¹ See *2024 Open Internet Order* at paras. 502-10 (adopting a rule prohibiting paid or affiliated prioritization but noting that the Commission “may waive the ban . . . if the petitioner demonstrates that the practice would provide some significant public interest benefit and would not harm the open nature of the Internet”); *id.* at para. 644 (“[W]hile we recognize that there may also be positive use cases of paid prioritization and some costs associated with a ban on such practices, we find that such positive use cases may be addressed through the waiver rule we adopt.”).

⁵² Industry Stay Petition at 12.

⁵³ See *2024 Open Internet Order* at Section II.

⁵⁴ See *id.* at paras. 638-40.

⁵⁵ See *id.* at para. 641.

⁵⁶ Industry Stay Petition at 13.

⁵⁷ Industry Stay Petition at 13.

⁵⁸ Cf. *2024 Open Internet Order* at para. 641 (observing in response to speculation about “regulatory creep” that “any changes to this framework or future rules the Commission considers adopting under the Title II framework (continued....)

15. For the foregoing reasons, we conclude that the Petitioners have failed to demonstrate any imminent, actual irreparable harm resulting from the *Order*.

C. Petitioners Have Not Shown that A Stay Is In the Public Interest and Would Not Harm Other Parties

16. Staying the *Order* is not in the public interest, as a stay would inhibit or delay the Commission's ability to fulfill policy obligations and objectives necessary to protect consumers.

17. Petitioners' primary argument that granting a stay would benefit the public interest is that "[p]ausing the *Order* would ensure that ISPs continue to invest in network improvement and offer innovative new programs that benefit consumers, rather than divert those efforts toward compliance or forgo such offerings altogether."⁵⁹ But that contention rests on Petitioners' unsubstantiated claims that BIAS providers will in fact be deterred from executing their (unspecified) investment and development plans and that allowing the *Order* to take effect will cause them to incur compliance costs.

18. By contrast, granting a stay would be contrary to the public interest because it would delay and otherwise inhibit the Commission's ability to protect consumers. A stay would stall the application of rules designed to ensure that all consumers across the country receive the same open Internet protections. A stay would also deprive consumers of privacy protections under section 222 of the Act and would deprive broadband-only providers of important statutory protections under sections 224, 253, and 332 of the Act for pole attachments and other infrastructure essential for reliable, timely, and affordable deployment of broadband service.⁶⁰ Additionally, a stay would risk hindering the Commission's ability to pursue other policy obligations and objectives that will benefit consumers, particularly those related to national security and public safety.⁶¹ These and other efforts may need to be shelved or modified if the requested stay were granted.

19. Petitioners also suggest that the Commission should grant a stay to maintain the status quo on the basis that this will provide stability pending judicial review.⁶² But absent the required showings both of likelihood of success and of irreparable harm, bare appeals to preservation of the status quo are not sufficient ground for granting a stay, or else all agency regulatory action would qualify for such extraordinary relief.⁶³ Petitioners also have not shown that allowing the *Order* to go into effect will actually destabilize the status quo. As the *Order* explains, "in the period since Congress enacted the 1996 Act, the Commission's treatment of broadband service has wavered between Title II and Title I and

(Continued from previous page) _____

would be subject to notice and comment and an analysis of the record, including any purported costs, prior to adoption").

⁵⁹ Industry Stay Petition at 13.

⁶⁰ See 2024 *Open Internet Order* at paras. 68, 70-82.

⁶¹ See *id.* at paras. 30-66, 451-63. For instance, the Commission recently adopted a Notice of Proposed Rulemaking that proposes provisions applicable to BIAS providers designed to improve the security of the Border Gateway Protocol routing. See *Reporting on Border Gateway Protocol Risk Mitigation Progress; Secure Internet Routing*, PS Docket Nos. 24-146 and 22-90, Notice of Proposed Rulemaking, FCC 24-62, at para. 3 (rel. June 7, 2024). The Commission is also considering whether BIAS providers should be required to report in the Network Outage Reporting System (NORS) and Disaster Information Reporting System (DIRS), which may be particularly important as the country enters hurricane season. See *Resilient Networks; Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications; New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, PS Docket Nos. 21-346 and 15-80; ET Docket No. 04-35, Second Report and Order and Second Further Notice of Proposed Rulemaking, FCC 24-5, at para. 5 (rel. Jan. 26, 2024).

⁶² See Industry Stay Petition at 5, 13-14.

⁶³ Cf. *Ligado Stay Denial Order*, 36 FCC Rcd at 1271 para. 18 ("[W]ithout such a substantial indication of probable success, there would be no justification for . . . intrusion into the ordinary processes of administration and judicial review." (quoting *VA Petroleum Jobbers*, 259 F.2d at 925)).

remained unsettled.”⁶⁴ And “even during much of the Title I era, the Commission repeatedly sought to enforce policies that closely resemble the open Internet rules” the *Order* adopts.⁶⁵ Petitioners gesture at new potential initiatives without providing detail about what they are and how the *Order* could contravene those initiatives. Thus, allowing the *Order* to go into effect pending litigation will not destabilize the status quo; it is consistent with the status quo.

20. Because a stay stands to hinder the Commission from fulfilling its policy goals and responsibilities, a stay would also harm other parties.⁶⁶ Petitioners argue that consumers would not be harmed by a stay because, they say, they currently do not block, throttle, or discriminate among lawful content (even though, in the same filing, they argue the *Order* would hinder unspecified future initiatives they wish to take apparently in violation of the rules).⁶⁷ But the *Order* described at length how its decisions advanced various important policies that serve the public interest.⁶⁸ To highlight some examples, if the open Internet rules do not go into effect, consumers will be harmed if they purchase services from a BIAS provider that does not in fact already follow the full scope of the open Internet rules, and such conduct may also cause harm to edge providers. Petitioners also altogether ignore other harms to parties outside the scope of the open Internet rules. For instance, consumers will be harmed by the delay in receiving the Commission’s affirmative privacy protections, and broadband-only providers will be harmed by the delay in restoration of their pole attachment rights and deployment protections.

21. For all these reasons, we find that Petitioners have not shown that a stay is in the public interest and would not harm other parties.

IV. ORDERING CLAUSES

22. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 4(i), 4(j), 5, 201, 202, and 303(r) and of the Communications Act of 1934, as amended, and the authority contained in section 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151, 154(i)-(j), 155, 201, 202, 303(r), 1302, and the authority delegated pursuant to sections 0.91 and 0.291 of the Commission’s rules, 47 C.F.R. §§ 0.91, 0.291, this Order Denying Stay Petition in WC Docket Nos. 23-320 and 17-108 IS ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau

⁶⁴ 2024 *Open Internet Order* at para. 255. Evidence of ongoing uncertainty is apparent, for example, from the unresolved nature of the *RIF* proceeding, as the *RIF Remand Order* has been subject to petitions for review that remain pending before the D.C. Circuit and had also been subject to unresolved petitions for reconsideration until their resolution in the *Order*. *Id.* at para. 685.

⁶⁵ *Id.* at para. 255.

⁶⁶ See *Nken*, 556 U.S. at 435 (“[T]he traditional stay inquiry calls for assessing the harm to the opposing party and weighing the public interest. These factors merge when the Government is the opposing party.”).

⁶⁷ Industry Stay Petition at 11, 14.

⁶⁸ See, e.g., 2024 *Open Internet Order* at Sections III.A and V.A.

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

In the Matter of	)	
	)	
Access to Video Conferencing	)	CG Docket No. 23-161
	)	
Implementation of Sections 716 and 717 of the	)	CG Docket No. 10-213
Communications Act of 1934, as Enacted by the	)	
Twenty-First Century Communications and Video	)	
Accessibility Act of 2010	)	
	)	
Telecommunications Relay Services and Speech-	)	CG Docket No. 03-123
to-Speech Services for Individuals with Hearing	)	
and Speech Disabilities	)	
	)	
Petition of Sorenson Communications, LLC, for	)	
Limited Waiver of the Privacy Screen Rule	)	

ORDER

Adopted: June 10, 2024

Released: June 10, 2024

By the Chief, Consumer and Governmental Affairs Bureau:

1. The Consumer and Governmental Affairs Bureau (CGB or Bureau), on its own motion, extends the existing limited waiver of the Video Relay Service (VRS) privacy screen rule until December 31, 2024, or the effective date of Commission action modifying the rule, if earlier.¹ The Commission initially granted a temporary, limited waiver of the privacy screen rule for one year in an order accompanying the *2023 Video Conferencing Notice*, thereby allowing VRS users and communications assistants (CAs) on video conferences to turn off their videos when not actively participating in the call, subject to certain conditions.² We now extend the existing waiver to ensure that VRS users and CAs in video conferences calls continue to have the same opportunity as other participants to turn their cameras off when not speaking, pending the Commission's consideration of proposed modifications to the privacy screen rule.³

2. *Background.* A visual privacy screen is a feature that prevents one party on the video leg

¹ See *Access to Video Conferencing et al.*, CG Docket No. 23-161 et al., Report and Order, Notice of Proposed Rulemaking, and Order, FCC 23-50, para. 113 (June 12, 2023) (*2023 Video Conferencing Notice* or *Privacy Screen Waiver Order*) (waiving 47 CFR § 64.604(a)(6)(2023), now 47 CFR § 64.604(d)(5)). The privacy screen rule was renumbered in the *2023 VRS Improvements Order*. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Report and Order and Order, FCC 23-116, App. B, para. 2 (Dec. 20, 2023) (*2023 VRS Improvements Order*).

² VRS is a form of telecommunications relay service (TRS) “that allows people with hearing or speech disabilities who use sign language to communicate with voice telephone users through video equipment. The video link allows the CA to view and interpret the party’s signed conversation and relay the conversation back and forth with a voice caller.” 47 CFR § 64.601(a)(51).

³ See *2023 Video Conferencing Notice*, paras. 87-89. The waiver is currently scheduled to expire on June 11, 2024, or the effective date of Commission action modifying the rule, if earlier. *Privacy Screen Waiver Order*, para. 118.

of a VRS call from viewing the other party.⁴ The privacy screen rule prohibits a VRS CA from enabling a visual privacy screen or similar feature during a VRS call and requires a CA to disconnect a VRS call if the caller or called party enables a privacy screen or similar feature for more than five minutes or is otherwise unresponsive for more than five minutes.⁵

3. In June 2023, the Commission proposed to amend the privacy screen rule in the context of video conferencing, recognizing that there are many reasons why a participant in a video conference may turn off the camera while still being engaged in the video conference.⁶ Pending action on its proposal, the Commission also granted a limited waiver of the privacy screen rule for all VRS providers.⁷ Seeking to “allow VRS providers flexibility to begin providing VRS integrated with video conferencing service without unduly disrupting current video conferencing practices,”⁸ the Commission reasoned that, to enable functionally equivalent participation in this “essential means of communication,”⁹ VRS users should have the same opportunity (and responsibility when asked) as hearing individuals to participate in a call with their cameras turned off.¹⁰ In addition, the Commission found that, absent a waiver, “the privacy screen rule would substantially restrict the ability of VRS providers to explore promising technologies for the provision of such integrated VRS.”¹¹

4. *Waiver Standard.* A Commission rule may be waived for “good cause shown.”¹² In particular, a waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.¹³ In addition, we may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁴ Good cause for a waiver may be found if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.¹⁵

5. *Discussion.* The Bureau finds that there are special circumstances establishing good cause for an extension of the expiration date of this waiver, to avoid an undesirable lapse in the

⁴ 47 CFR § 64.601(a)(53).

⁵ *Id.* § 64.604(d)(5). The stated purpose of the rule, adopted in 2011 as one of numerous anti-fraud measures, is to help prevent “illicit schemes that result in calls ‘running’ without any communication between the parties for the sole purpose of fraudulently billing the Fund.” *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 5545, 5567, para. 40 (2011) (*2011 VRS Call Practices Order*).

⁶ *2023 Video Conferencing Notice*, paras. 87-89 (proposing to allow VRS CAs to continue providing relay services integrated with a multi-party video conference when the VRS user who requested service has turned off his or her video connection for more than five minutes, as long as at least one other party is continuing to speak and the VRS user is still connected to the video conference).

⁷ *Privacy Screen Waiver Order*, para. 116; *see also* Petition of Sorenson Communications, LLC for a Limited Waiver of the Privacy Screen Rule for Piloting VRS Integration with Video Conferencing Services, CG Docket Nos. 03-123 and 10-51 (filed Dec. 19, 2022) (Sorenson Petition), <https://www.fcc.gov/ecfs/document/12190888126091/1> (requesting such a waiver).

⁸ *Privacy Screen Waiver Order*, para. 113.

⁹ *Id.*, para. 117.

¹⁰ *See id.*, para. 116.

¹¹ *Id.*, para. 117.

¹² 47 CFR § 1.3.

¹³ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁴ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166.

¹⁵ *Northeast Cellular*, 897 F.2d at 1166.

application of this waiver to VRS users and providers.¹⁶ Allowing the current waiver to expire before the effective date of a potential rule change would needlessly impose a burden on VRS users and CAs when the Commission has determined that a limited waiver of this rule to allow functionally equivalent participation in video conferencing calls is in the public interest. Therefore, we extend this waiver, on our own motion, until the date specified above.

6. This extended waiver is granted subject to the same conditions imposed by the Commission in the initial grant. Specifically, a VRS provider relying on this waiver:

- Shall identify in its monthly compensation requests every video conference call in which VRS is provided on an integrated basis;
- Shall provide the TRS Fund administrator with all information reasonably requested to determine TRS Fund payments and the compensability of such video conference calls;
- Shall prominently display a notice to its VRS consumers connecting to video conferencing services on an integrated basis, which shall remain in place until termination of this waiver, stating that:
 - The application used to connect VRS to video conferencing services is in development and its features and functions may change as development continues;
 - At this time, this application allows connections with only [name applicable IVCS providers] and not all video conferencing services; and,
 - Consumers should contact a [name of VRS provider] representative at EMAIL/NUMBER if they cannot connect to a [name applicable IVCS provider] video conference with the application or if the application fails during a [name applicable IVCS provider] video conference after an initial connection.¹⁷

7. *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.

8. *Additional Information.* For additional information on this proceeding, contact William Wallace, Disability Rights Office, Consumer and Governmental Affairs Bureau, at 202-418-2716, or William.Wallace@fcc.gov.

9. Accordingly, IT IS ORDERED that, pursuant to sections 1, 2, 4(i), 4(j), and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), and 225, the foregoing ORDER IS ADOPTED.

10. IT IS FURTHER ORDERED that, pursuant to sections 1, 2, 4(i), 4(j), and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), and 225, and section 1.3 of the Commission's Rules, 47 CFR § 1.3, the restrictions on use of privacy screens in section 64.604(d)(5) of the Commission's rules, 47 CFR § 64.604(d)(5), with VRS on video conferencing calls are TEMPORARILY WAIVED to the extent set forth in the *Privacy Screen Waiver Order*, until December 31, 2024, or the effective date of Commission action amending this provision, whichever is earlier.

11. IT IS FURTHER ORDERED that, pursuant to sections 1.4(b) and 1.103(a) of the Commission's rules, 47 CFR §§ 1.4(b) and 1.103(a), the ORDER SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

¹⁶ See *Privacy Screen Waiver Order*, para. 117.

¹⁷ See *id.*, para. 119.

Alejandro Roark, Chief
Consumer and Governmental Affairs Bureau

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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
	)	

ERRATUM

Released: June 4, 2024

By the Chief, Wireline Competition Bureau:

On February 9, 2023, the Wireline Competition Bureau released an *Order*, DA 23-117,¹ in the above captioned proceeding. This Erratum corrects footnotes “1 - 3” in the Attachment of the *Order* to read as follows:

“¹AMG’s adjusted eligible location total for SAC 349039 includes offering service to 10,820 locations meeting the Above Baseline performance tier (Above Baseline) requirements and 2,658 locations meeting the Baseline performance tier (Baseline) requirements.

²AMG’s adjusted eligible location total for SAC 359146 includes offering service to 7,765 locations meeting the Above Baseline requirements and 3,392 locations meeting the Baseline requirements.

³AMG’s adjusted eligible location total for SAC 419044 includes offering service to 8,170 locations meeting the Above Baseline requirements and 1,433 locations meeting the Baseline requirements.”

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau

¹ 38 FCC Rcd 1135 (2023).



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 24-547
June 10, 2024

**FCC ANNOUNCES COMMENCEMENT OF THE COMMUNICATIONS SECURITY,
RELIABILITY, AND INTEROPERABILITY COUNCIL IX,
ITS CO-CHAIRS, MEMBERS AND TASKS,
AND SOLICITS NOMINATIONS FOR ITS WORKING GROUPS**

By this Public Notice, the Federal Communications Commission (FCC or Commission), consistent with the Federal Advisory Committee Act (FACA),¹ announces that the charter commenced for the ninth Communications Security, Reliability, and Interoperability Council (CSRIC IX or Council) on March 26, 2024. CSRIC IX's charter will run for a period of two (2) years, with the first meeting to be held on June 28, 2024. By this Public Notice, Chairwoman Jessica Rosenworcel also announces her appointment of Billy Bob Brown Jr. of the Cybersecurity and Infrastructure Security Agency and Todd Piett of Motorola to serve as the Council's Co-chairs, and the following to serve as Council Members:

1. Brandon L. Abley, Chief Technology Officer
NENA: The 9-1-1 Association
2. Rob Alderfer, Vice President, Technology Policy
Charter Communications
3. Mark D. Annas, Emergency Services Administrator
City of Riverside Office Of Emergency Management, CA
4. Praveen Atreya, Vice President, Technology Development & Planning
Verizon
5. Mike Barnes, Product Security Officer
Mavenir Systems, Inc.
6. Richard Barron, Principal Engineer
The MITRE Corporation
7. Alexandra Blasgen, Senior Manager of Technology & Standards
Consumer Technology Association
8. Jeff Bratcher, Deputy Executive Director
FirstNet Authority
9. Wade Buckner, (Fire Chief, City of Southside, AL) Board Member
International Association of Fire Chiefs
10. Douglas S. Campbell, Director, Public Safety Communications Center 911
Metropolitan Washington Airports Authority
11. Brian Daly, Assistant Vice President
AT&T
12. Stephen Devine, Chief Technology Officer
APCO International

¹ 5 U.S.C. § 10

13. Andrew L. Drozd, President & Principal Scientist
ANDRO Computational Solutions, LLC
14. Luiz Eduardo, Chief Technology Officer, Security
Hewlett-Packard Enterprise
15. Paul Eisler, Vice President, Cybersecurity
USTelecom – The Broadband Association
16. Bob Everson, Senior Director, Provider Mobility
Cisco Systems, Inc
17. Craig Fugate, Board Trustee
America's Public Television Stations
18. Michael Gerber, Program Lead of Wireless Emergency Alerts & Alerting Technologies
National Weather Service
19. Ben Goldsmith, Chief Technologist
U.S. Department of Justice
20. Vijay Gurbani, Chief Data Scientist
Vail Systems, Inc
21. Natnael Habtesion, Senior Vice President & Chief Security Officer
Lumen
22. Stephen Hayes, Vice President, Standards & Industry Initiatives
Ericsson
23. Michael Hayes, Information Technology Officer, Greater Harris County 9-1-1
Texas 9-1-1 Alliance
24. Jason Hogg, General Manager, Azure for Operators
Microsoft
25. Puneet Jain, Senior Principal Engineer & Senior Director of Technical Standards
Intel Corporation
26. Ankur Kapoor, Senior Vice President, Network Strategy & Evolution
T-Mobile
27. George Kelemen, Executive Director
Industry Council for Emergency Response Technologies
28. Yong Kim, Vice President, Strategy & Research
VeriSign, Inc.
29. Lauren Kravetz, Vice President, Government Affairs
Intrado Life & Safety, Inc
30. Jason Livingood, Vice President, Technology Policy, Product & Standards
Comcast
31. Tim May, Senior Advisor
National Telecommunications & Information Administration
32. Martin McGrath, Principal Standardization Leader
Nokia
33. Susan Miller, President & Chief Executive Officer
ATIS
34. Leah M. Missildine, President
National Association of State 911 Administrators
35. Douglas Montgomery, Manager of Internet Technologies Research
National Institute of Standards and Technology

36. Brian Murray, Deputy Coordinator, Homeland Security & Emergency Management
Harris County Office of Homeland Security & Emergency Management, TX
37. Jared Owen, (Cybersecurity Analyst, Highline Services LLC) Member
NTCA – The Rural Broadband Association
38. Michael Regan, Vice President, Business Performance
Telecommunications Industry Association
39. Travis Reutter, (Senior Director, Security & Infrastructure, Metronet) Member
ACA Connects
40. Travis Russell, Head, Cybersecurity Office
Oracle Communications
41. Narothum Saxena, Vice President, Technology, Strategy, & Architecture
UScellular
42. Tim Schram, (Commissioner, Nebraska Public Service Commission) Member
National Association of Regulatory Utility Commissioners
43. Peter Scott, Director, Public Safety
Public Broadcasting Service
44. Sean Scott, Chief Technology Officer
SecuLore
45. Ashley Strickland, Director
Tipton County Emergency Communications District, TN
46. Brian Tegtmeier, Coordinator of National 911 Program
National Highway Traffic Safety Administration
47. Rikin Thakker, Chief Technology Officer & Senior Vice President
NCTA – The Internet & Television Association
48. Steve Watkins, Assistant Vice President, Strategic Technology Policy
Cox Communications, Inc.
49. George Woodward, (President & Chief Executive Officer, Trilogy Networks) Board Member
Rural Wireless Association, Inc.
50. Henry Young, Senior Director, Policy
BSA | The Software Alliance

CSRIC IX's purpose is to provide advice and recommendations to the Commission to promote the security, reliability, and resiliency of the Nation's communications systems. By this Public Notice, the Commission also announces the tasks assigned to CSRIC IX by Chairwoman Rosenworcel and seeks applications for membership to these working groups:

Working Group 1: Harnessing Artificial Intelligence/Machine Learning to Ensure the Security, Reliability, and Integrity of the Nation's Communications Networks

Working Group 2: Ensuring Consumer Access to 911 on All Available Networks as Technology Evolves

Working Group 3: Preparing for 6G Security and Reliability

A full description of each Working Group's task is available on the [CSRIC IX webpage](#). Selected applicants will join the Working Groups alongside CSRIC IX members to ensure that the Working Groups represent a range of interests and have the requisite technical expertise to address the assigned tasks.

In seeking nominations for CSRIC IX's Working Groups, Chairwoman Rosenworcel will look to include in the Council's Working Group membership a broad variety of stakeholders, including representation from the FCC's federal government partners with similar interests.

All organizational or individual members appointed to the Council, or its Working Groups, are subject to an ethics review by the Commission's Office of General Counsel. Some applicants possessing expertise or perspectives of interest to the Council, and who have been appointed to serve on the Council or its Working Groups, in an individual capacity (and not as the representative of a nonprofit organization, corporation, or other entity) are deemed to be Special Government Employees (SGEs). Such individuals are ineligible to serve if they are federally registered lobbyists. SGEs are subject to a variety of restrictions under the conflict of interest statutes, 18 U.S.C. § 203 *et seq.*, and the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR Part 2635. SGEs must file confidential employee financial disclosure reports prior to beginning their service and annually thereafter. SGEs will also be subject to ethics restrictions in section 4(b) of the Communications Act, 47 U.S.C. § 154(b), and in the Commission's rules, 47 CFR Part 19 and 5 CFR Parts 3901 and 3902.

All members will have an initial and continuing obligation to disclose any interests in, or connections to, persons or entities that are, or will be, regulated by or have interests before the Commission and shall promptly report to the Council's Designated Federal Officer (DFO) any changes in representation during their tenure on the Council. Council members will not be compensated for their service.

Nominations for membership to CSRIC IX's Working Groups should be submitted to the FCC no later than July 10, 2024. Procedures for submitting nominations are set forth below, and applications should be sent by email to CSRIC@fcc.gov.

MISSION

The purpose of the Council is to provide recommendations to the FCC regarding ways the FCC can strive for security, reliability, and interoperability of the nation's communications systems. CSRIC IX's recommendations will focus on a range of public safety- and homeland security-related communications matters, including: (1) the security and reliability of communications systems and infrastructure; (2) 911, E911, and NG911; (3) emergency alerting; (4) Artificial Intelligence/Machine Learning; and (5) national security/emergency preparedness communications, including law enforcement access to communications. CSRIC IX will be organized under, and will operate in accordance with, the provisions of FACA. As authorized by FACA, the Council is authorized to facilitate its work through informal subcommittees, or other subgroups of the Council, which shall report their activities and recommendations to the Council as a whole.

WHO MAY APPLY FOR MEMBERSHIP

The Commission seeks applications from representatives of various sectors of the communications industry, representatives of state and local government agencies and organizations, and representatives of consumers and community organizations that wish to be considered for membership on CSRIC IX's Working Groups. Working Group members will be selected to balance the expertise and viewpoints that are necessary to effectively address the issues to be considered by the Council. The Commission is particularly interested in receiving nominations and expressions of interest from individuals and organizations in the following categories:

- State, tribal, territorial and/or local government agencies and organizations with expertise in communications, public safety, emergency management and/or homeland security matters;

- Federal government agencies with expertise in communications, public safety, emergency management and/or homeland security matters;
- Communications service providers and/or industry organizations representing communications service providers (to include representation by different types of communications provider interests, e.g., wireless, wireless, satellite, broadcast radio, and television, and by including representation by smaller and rural providers);
- Developers of software applications and operating systems for mobile and desktop computing devices;
- Developers of mobile devices;
- Developers of new technologies, including artificial intelligence and machine learning;
- Organizations and other entities representing users of communications systems, such as organizations representing the business, finance, energy, education, health care, and similar sectors;
- Consumer or community organizations, such as those representing people with disabilities, the elderly, those living in rural areas, and those representing populations that speak, as their primary language, languages other than English; and
- Qualified representatives of other stakeholders and interested parties with relevant expertise regarding the subject matter.

OBLIGATIONS OF WORKING GROUP MEMBERS AND MEETINGS

Working Group members will serve at the discretion of Chairwoman Rosenworcel of the FCC. Working Group members should be willing to commit to a two-year term of service from the date of the re-charter of the Committee. The time commitment for participation in a Working Group may be substantial. However, Working Group meetings may be conducted informally, using suitable technology to facilitate the meetings, subject to oversight by the DFO of CSRIC IX.

Meetings of the full Council shall be open to the public and timely notice of each meeting shall be published in the Federal Register and shall be further publicized through other appropriate vehicles. All such meetings will be fully accessible to individuals with disabilities.

APPLICATION PROCEDURE, DEADLINE, AND MEMBER APPOINTMENTS

Organizational Applicants

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

- Name, title, and organization of the nominee and a description of the organization, sector or other interest the nominee will represent;
- Nominee’s mailing address, e-mail address, and telephone number;
- A statement summarizing the nominee’s qualifications and reasons why the nominee should be appointed to the working group;
- A current resume of the nominee; and
- A statement describing the organization the nominee will represent as well as the benefit of having the organization represented on a CSRIC IX Working Group.

For applicants seeking to represent an organization or company, the applicant’s nomination to the Council must be accompanied by confirmation on the following two (2) issues:

1. The nomination must be confirmed by a written statement of an authorized person (*e.g.*, organization or company official) that such organization or company supports the application

of the nominee to represent it on the Council. The nominating official must possess the executive authority or hold a sufficiently high-level position within the organization or company to select a representative whose actions will be legally binding on the organization or company. For example, this confirmation may be in the following format:

“I am [insert official’s name], the [insert official’s title] at the [insert name of organization - *e.g.*, company, government entity, trade association, *etc.*], with responsibilities for [concise description of position]. My organization supports [insert proposed member’s name], who is currently [an employee of/consultant/attorney to the company], to serve as our representative on the Commission’s Communications Security, Reliability, and Interoperability Council IX, Working Group [number].”

2. For applicants seeking to represent an entity that is, or who are themselves, a party to an FCC contract or subcontract or providing services for the benefit of the FCC under contract or subcontract, the application must include the following: 1) a general description of the contract/agreement; 2) a description of the product/services that the applicant provides pursuant to the contract/agreement; 3) a list of all parties to the contract/agreement; 4) the name of the Commission contracting officer (if known); and 5) a certification of the applicant that the applicant has provided written notice to the contracting officer and the FCC Manager, Contracts and Purchasing Center, that the applicant or representative nominee, as applicable, has applied for membership on the Commission’s Communications Security, Reliability, and Interoperability Council.

In addition, organizational nominees are required to disclose whether they represent clients before the Commission or represent clients in matters that may come before the Council, other than representing the organizational applicant that has nominated them for service on the Council. Each nominee shall provide with the application all details of any such representation.

Individual Applicants

Applications from individual applicants who would serve as SGEs, as defined above, should include the following:

- Name and title of the applicant; current mailing address, email address, and telephone number;
- A statement summarizing the applicant’s qualifications and reasons why the applicant should be appointed to a CSRIC IX Working Group. The statement shall include the individual’s specific knowledge or expertise that is relevant to the work;
- A current resume of the applicant;
- A statement that the individual applicant is not a registered federal lobbyist (as noted above, financial and other additional disclosures may also apply to individual applicants);
- An acknowledgement that the individual will not be entitled to receive reimbursement of travel expenses or payment of honoraria or other compensation from the Commission;
- A statement that the applicant does not have a contractual or other financial agreement (including as a subcontractor) with the Commission; and
- A statement that the applicant does not have clients with matters before the Commission or matters that may come before the Council.

Please note this *Public Notice* is not intended to be the exclusive method by which the Commission will solicit nominations to identify qualified candidates; however, all candidates for membership on CSRIC IX Working Groups will be subject to the same evaluation criteria.

All nominations, including the requisite statements listed above, should be submitted by e-mail to CSRIC@fcc.gov, and should be received by the Commission as soon as possible, but no later than July 10, 2024.

ACCESSIBLE FORMATS

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

More information about CSRIC can be found at <https://www.fcc.gov/about-fcc/advisory-committees/communications-security-reliability-and-interoperability-council>. You may also contact Suzon Cameron, DFO, CSRIC IX, at (202) 418-1916, Kurian Jacob, Deputy DFO, CSRIC IX, at (202) 418-2040, or Logan Bennett, Deputy DFO, CSRIC IX, at (202) 418-7790, or via the CSRIC e-mail account at CSRIC@fcc.gov.

-FCC-



Federal Communications Commission
Washington, D.C. 20554

June 11, 2024

DA 24-549
In Reply Refer to:
1800B3-HOD
Released June 11, 2024

Texas Mennonite Conference
c/o Marsha Besser
3824 W. Waco Drive
Waco, TX 76710
(sent by electronic email to TexasMennonite@gmail.com)

In re: **Texas Mennonite Conference**
New LPFM Station, Waco, TX
Facility ID No. 788292
Application File No. 232256

Dear Applicant:

We have before us an application (Application) filed by Texas Mennonite Conference (TMC) for a construction permit for a new low power FM (LPFM) station at Waco, Texas (Station).¹ For the reasons set forth below, we dismiss the Application.

An LPFM applicant must have reasonable assurance that its specified site will be available for the construction and operation of its proposed facilities at the time it files its application.² The Commission's reasonable assurance requirement is satisfied "when an applicant has contacted the property owner or owner's agent and has obtained reasonable assurance in good faith that the proposed site will be available for the intended purpose."³

Based upon the record before us, we find that TMC did not have reasonable assurance of the availability of the Station's proposed antenna site when it filed the Application. In the Application, TMC proposes to locate the Station's antenna on a pole on top of the building located at 3824 W. Waco Drive,

¹ Application File No. 232256 (filed Dec. 11, 2023) (Application). TMC amended the Application on February 20, 2024.

² See *William F. Wallace and Anne K. Wallace*, Memorandum Opinion and Order, 49 FCC 2d 1424, 1427, paras. 6-7 (1974) (*Wallace*); *South Florida Broad. Co.*, Memorandum Opinion and Order, 99 FCC 2d 840, 842, para. 3 (1984).

³ See *Amendment of Sections 73.3572 and 73.3573 Relating to Processing of FM and TV Broadcast Applications*, Report and Order, 58 Rad. Reg. 2d (P & F) 776, para. 22 (1985) ("Commission requirements will be satisfied when an applicant has contacted the property owner or owner's agent and has obtained reasonable assurance in good faith that the proposed site will be available for the intended purpose"). See also *Elijah Broad. Corp.*, Memorandum Opinion and Order, 5 FCC Rcd 5350, 5351, para. 10 (1990) (noting there must be "[s]ome clear indication from the landowner that he is amenable to entering into a future arrangement with the applicant for use of the property as its transmitter site, on terms to be negotiated . . ."); *Wallace*, 49 FCC 2d at 1427, para. 6 (1974) ("Some indication from the property owner that he is favorably disposed to making an arrangement is necessary.").

Waco, Texas 76710.⁴ TMC certifies that it obtained reasonable assurance of the availability of the Station's proposed antenna site from the "Tower Owner," who TMC identifies as Joe Izen.⁵ However, the property records for McClennan County, Texas—the County in which the Station's proposed antenna site is located—show that the property has been owned by Karen Cooley since April 27, 2012.⁶

We find that, because TMC did not communicate with the owner of the Station's proposed antenna site, TMC did not have reasonable assurance of the availability of the Station's proposed antenna site when it filed the Application. This site availability defect is non-curable.⁷ Accordingly, **IT IS ORDERED** that the application for a new low power FM station at Waco, Texas (Application File No. 232256) **IS DISMISSED WITH PREJUDICE**.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

⁴ As originally filed and as amended, the Application specifies an antenna site located at 31° 31' 55.0" North, 097° 09' 58.0" West (NAD83). Application at Antenna Location Data, Coordinates (NAD83). The coordinates correspond to the building located at 3824 W. Waco Drive, Waco, Texas, 76710. As amended, the Application indicates the antenna structure will involve a "Building with POLE/ANTENNA on top." *Id.*

⁵ *Id.* at Technical Certifications, Reasonable Site Assurance.

⁶ See McClennan County Appraisal District, Property Search (Property ID No. 167109), Property Deed History, <https://esearch.mclennanacad.org/Property/View/167109?year=2024&ownerId=413310> (last visited June 11, 2024) (showing a deed filed on April 27, 2012, from Izen & Associates PC to Karen L. Cooley).

⁷ See *Able Radio Corp.*, Letter Order, 26 FCC Rcd 16161, 16163 (MB 2011); *Radio Delaware, Inc.*, Memorandum Opinion and Order, 4 FCC Rcd 8630, 8631, paras. 9-11 (Rev. Bd. 1989).



Federal Communications Commission
Washington, D.C. 20554

June 11, 2024

DA 24-550
In Reply Refer to:
1800B3-HOD
Released June 11, 2024

God's Property Mennonite Fellowship Church
c/o Ryan Simmons
673 W College Street
Canton, TX 75103
(sent by electronic email to godspropertycanton@gmail.com)

City of Canton, Texas
c/o Brown & Hofmeister, L.L.P.
740 East Campbell Road, Suite 800
Richardson, TX 75081
(sent by electronic email to dritter@bhlaw.net)

In re: **God's Property Mennonite Fellowship Church, Inc.**
New LPFM Station, Canton, TX
Facility ID No. 788325
Application File No. 232284

Informal Objection

Dear Applicant and Objector:

We have before us an application (Application) filed by God's Property Mennonite Fellowship Church, Inc. (GPMFC) for a construction permit for a new low power FM (LPFM) station at Canton, Texas (Station).¹ Also before us are an Informal Objection (Objection) filed on February 28, 2024, by the City of Canton, Texas (City) and related pleadings.² For the reasons set forth below, we grant the Objection, and dismiss the Application.

Background. GPMFC filed the Application, during an LPFM filing window opened by the Commission in December 2023. GPMFC proposed to locate the Station's antenna on an antenna tower

¹ Application File No. 232284 (filed Dec. 11, 2023) (Application). GPMFC amended the Application on March 26, 2024. See Application File No. 232284 (as amended March 26, 2024) (Amended Application).

² Pleading File No. 239978 (Objection). On February 28, 2024, God's Property Mennonite Church (GPMC) filed an Opposition to the Objection (GPMFC Opposition). Pleading File No. 240006. The City replied to the Opposition on February 29, 2024 (Reply). Pleading File No. 240090. Subsequently, on March 10, 2024, the Texas Mennonite Conference (TMC)—which counts Applicant as a member—filed an Opposition. Pleading File No. 240633 (TMC Opposition).

located at 673 W College Street, Canton, Texas 75103 (Property).³ GPMFC indicated that it had obtained reasonable assurance of the availability of the Station’s proposed antenna site from the tower owner, which GPMFC listed as Houston Mennonite Fellowship Church (HMFC).⁴

The City then filed the Objection. Therein, the City asserts that GPMFC did not have reasonable assurance of the availability of the Station’s proposed antenna site.⁵ In support of its assertion the City notes that GPMFC did not contact Arise Church of Canton (Arise), the owner of the Property, and that an injunction prevents anyone from occupying or using the Property.⁶

GPMFC opposed the Objection, arguing it is moot and procedurally defective.⁷ GPMFC disputes the City’s allegation that it lacks reasonable assurance. GPMFC asserts that God’s Property Ministries (GPM)—not Arise—owns the Station’s proposed antenna site,⁸ and states that it has “been promised reasonable site assurance.”⁹ Finally, GPMFC addresses the injunction discussed by the City, arguing that “the current occupancy status of a church building is not a relevant factor, under FCC rules, for consideration in the qualification for or granting of a construction permit to building an LPFM radio station.”¹⁰

³ According to the Application, the tower was located at 32° 33’ 18.0” North, 095°52’ 32.09 West (NAD83). Application at Antenna Location Data, Coordinates (NAD 83).

⁴ *Id.* at Technical Certifications, Reasonable Site Assurance.

⁵ Objection at 2. The Objection also alleges that statements and certifications made by GPMFC in the Application were incorrect, and that Barney Joe Donalson may be an undisclosed real-party-in-interest to the Application. *Id.* at 2-4. Because we find that GPMFC lacked reasonable assurance of the availability of Station’s proposed antenna site and dismiss the Application, we do not consider these allegations herein.

⁶ *Id.* at 2.

⁷ GPMFC Opposition at 1. The GPMFC Opposition is written on letterhead for GPMC rather than GPMFC, and is listed in the Commission’s Licensing and Management System (LMS) as filed by GPMC. Both the letterhead and LMS indicate that GPMC has an address of 673 W. College, a phone number of 281.301.5565 and an email of godspertycantont@gmail.com. This is the same contact information given for GPMFC in the Application (and the Amended Application). See Application at Applicant Information; Amended Application at Applicant Information. Additionally, the GPMFC Opposition is signed by John Robbins, who the Amended Application lists as a director of GPMFC. See Amended Application at Parties to the Application. Given these facts, we conclude that GPMC is another name used by GPMFC.

⁸ GPMFC Opposition at 2. According to GPMFC, GPM—an entity owned by Barney Joe Donalson, Bishop, TMC—purchased the property out of foreclosure. *Id.* at 2. GPMFC attaches a copy of a Deed In Lieu of Foreclosure that was filed and recorded in the Official Public Records of Van Zandt County, Texas, on October 30, 2023. *Id.* at Attachs. In that deed, HMFC purports to deed “all of the land improvements located at 673 West College” to Quest Trust Company. GPMFC also attaches a copy of a Texas General Warranty Deed that was filed and recorded in the Official Public Records of Van Zandt County, Texas, on January 24, 2024. *Id.* In this deed, Quest Trust Company purports to transfer “all of the real property and improvements lying, being and situated at 673 West College Street” to GPM.

⁹ *Id.* at 2.

¹⁰ *Id.*

The City replied, disputing GPMFC's claims that the Objection is moot and procedurally defective.¹¹ The City also repeats its argument that GPMFC did not demonstrate that it has reasonable assurance of the availability of the Station's proposed antenna site.¹²

Texas Mennonite Conference (TMC)—which is an applicant for a new LPFM station at Waco, Texas—then filed a pleading intended to respond to allegations the City made about it and its Bishop, Barney Joe Donalson.¹³ Like GPMFC, TMC asserts that GPM purchased the Property out of foreclosure on January 2, 2024, and that GPM gave GPMFC “reasonable assurance they can place an antenna and other radio equipment on the property.”¹⁴

On March 26, 2024, GPMFC amended the Application. Among other things, GPMFC specified a new antenna location and antenna data,¹⁵ explaining that the City had objected to its proposed use of an existing tower at the Property and thus it now proposes to mount the Station's antenna “at the top of a 50-year-old pine tree.”¹⁶ GPMFC also amended the Application to reflect changes to its board of directors,¹⁷ and changed its reasonable site assurance certification to indicate that assurance had been provided by Richard Grega, an authorized representative of the tower owner.

Discussion. Procedural Issues. We reject GPMFC's argument that the Objection should be dismissed as moot. GPMFC argues the Objection is moot because we “already granted the subject application.”¹⁸ However, GPMFC ignores the fact that we rescinded that grant.¹⁹ Because we returned the Application to pending status, the Objection is not moot.

We also reject GPMFC's argument that the Objection is procedurally defective because it was late-filed, and was not served on GPMFC.²⁰ GPMFC cites to section 25.154 of the Commission's rules.²¹

¹¹ Reply at 1-2.

¹² *Id.* at 2. The City also notes that the GPMFC Opposition was filed by GPMC, and was signed by John Robbins as a board member of God's Property Mennonite, and argues it is unclear if the Opposition was filed by GPMFC or another entity. *Id.* As discussed *supra* note 7, the evidence indicates that the GPMFC Opposition was filed by GPMFC.

¹³ TMC Opposition at 1-2. TMC refers to GPMFC by a number of different names: GPMFC, God's Property Mennonite and God's Property Mennonite Fellowship. *See id.* at 1, 2.

¹⁴ *Id.* at 2. TMC also argues that the City lacks standing. *Id.* at 2. Since standing is not necessary to file an informal objection, we do not consider this argument further here. *See, e.g., Chapin Enters., LLC*, Memorandum Opinion and Order, 29 FCC Rcd 4250, 4252, para. 7 (2014); *Michael Radio Co., LLC*, Letter Order, DA 24-10 (MB Jan. 4, 2024).

¹⁵ Amended Application at Antenna Location Data, Coordinates (NAD83). The amendment specifies geographic coordinates of 32° 33' 18.16" North, 095° 52' 21.1" West (NAD83).

¹⁶ *Id.* at Attach. (Amendment Attachment – Letter to Bradshaw) (Amendment Attachment). Like the GPMFC Opposition, the Amendment Attachment is written on letterhead for GPMC, not GPMFC. As discussed *supra* note 7, we conclude that GPMC and GPMFC are one and the same.

¹⁷ According to GPMFC, its leadership changes every 90 days. *See* Amendment Attachment. As of April 1, 2024, GPMFC's board members were Richard Grega, Cheryl Besser, Vince Dudik, and John Robbins.

¹⁸ GPMFC Opposition at 1.

¹⁹ *Actions*, Public Notice, Report No. PN-2-240216-01, at 4 (MB Feb. 16, 2024).

²⁰ GPMFC Opposition at 1.

²¹ *Id.*, citing 47 CFR § 25.154.

However, that section concerns pleadings opposing applications for authorizations to provide common carrier satellite communications services, not broadcast services. The rule governing informal objections to broadcast applications is section 73.3587.²² The only requirements applicable to informal objections are those set forth in section 73.3587 of the Rules. That section requires that informal objections be made in writing, signed, and submitted prior to any action by the Commission on the challenged application.²³ The Objection satisfies each of these requirements.

Reasonable Site Assurance. An LPFM applicant must have reasonable assurance that its specified site will be available for the construction and operation of its proposed facilities at the time it files its application.²⁴ While the Commission affords some latitude regarding reasonable assurance, there must, at a minimum, be a “meeting of the minds resulting in some firm understanding as to the site’s availability.”²⁵ A mere possibility that the site will be available is not sufficient.²⁶ Instead, there must be “[s]ome clear indication from the landowner that he is amenable to entering into a future arrangement with the applicant for use of the property as its transmitter site, on terms to be negotiated”²⁷

Based upon the record before us, we find that GPMFC had not obtained reasonable assurance of the availability of the Station’s proposed antenna site when it filed the Application. In the Application, GPMFC stated that it obtained reasonable assurance from HMFC, which GPMFC identified as the tower owner.²⁸ HMFC—operating under its former name New Beginnings Fellowship Church of Houston, Texas—did purchase the Property in 2017,²⁹ and a tower structure apparently is located on that property.³⁰ However, the property records for Van Zandt County, Texas—the County in which the Property is

²² 47 CFR § 73.3587.

²³ It does not require that an informal objection be served on an applicant. *See Windy City Broad., LLC*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 37 FCC Rcd 3541, 3543, para. 8 (MB 2022) (informal objections need not be served on licensee or licensee’s counsel). Moreover, the Objection was timely because it was filed before FCC action on the Application. *Compare Center for Int’l Media Action*, Letter Order, 33 FCC Rcd 5394, 5395, n.10 and accompanying text (MB 2018).

²⁴ *See William F. Wallace and Anne K. Wallace*, Memorandum Opinion and Order, 49 FCC 2d 1424, 1427, paras. 6–7 (1974) (*Wallace*); *South Florida Broad. Co.*, Memorandum Opinion and Order, 99 FCC 2d 840, 842, para. 3 (1984) (*South Florida*).

²⁵ *NCE MX Group 337A*, Letter Order, 26 FCC Rcd 6020, 6024 (MB 2011).

²⁶ *Wallace*, 49 FCC 2d at 1427, para. 6.

²⁷ *Elijah Broad. Corp.*, Memorandum Opinion and Order, 5 FCC Rcd 5350, 5351, para. 10 (1990). *See also Amendment of Sections 73.3572 and 73.3573 Relating to Processing of FM and TV Broadcast Applications*, Report and Order, 58 Rad. Reg. 2d (P & F) 776, para. 22 (1985) (“Commission requirements will be satisfied when an applicant has contacted the property owner or owner’s agent and has obtained reasonable assurance in good faith that the proposed site will be available for the intended purpose”); *Wallace*, 49 FCC 2d at 1427, para. 6 (1974) (“Some indication from the property owner that he is favorably disposed to making an arrangement is necessary.”).

²⁸ Application at Technical Certifications, Reasonable Site Assurance.

²⁹ Van Zandt County records indicate that Arise still owns the property. *See* Appraisal District, Property Search (Property ID No. R000000243), Property Deed History, <https://esearch.vzcad.org/Property/View/R000000243?year=2024&ownerId=GMNI20220423092022577> (last visited June 11, 2024).

³⁰ Objection at 4 (referencing tower located at Property).

located—show that Arise acquired the Property in 2020.³¹ Accordingly, GPMFC should have obtained reasonable assurance from Arise, not HMFC.

We further find that the Station’s proposed antenna site was not available for the construction and operation of the Station at the time GPMFC filed the Application. The record indicates that the Property is subject to a Stipulated Permanent Injunction and Final Judgment (Injunction) issued by the District Court of Van Zandt County, Texas (District Court) on July 26, 2020.³² The Injunction prohibits all occupancy, use, and maintenance of the Property—which is defined to include both the land and the structure located at the Property—until violations of city ordinances, and health and safety regulations have been addressed and remedied.³³ The City states that the Injunction “remains in effect,”³⁴ and GPMFC has not disputed this.³⁵ Given the Injunction has been in place since July 26, 2020, we find that, at the time GPMFC filed the Application, no entity could have provided reasonable assurance that the Property was legally available for construction and operation of an LPM station.³⁶

We acknowledge that the District Court of Van Zandt County, Texas could lift the injunction if the violations noted therein are addressed and remedied. However, we do not believe that the Property can be considered legally available until the injunction has been lifted. We consider the situation here to be akin to those involving express conditions placed on an applicant’s access to the site, which were not met or were unlikely to be met. As the Commission has explained, an applicant cannot “glossily claim” that it has reasonable assurance of site availability in such circumstances.³⁷ While here it is the District

³¹ *Id.* Even if, as GPMFC asserts in the Amendment Attachment, GPM now owns the Property and has provided reasonable assurance to GPMFC, this would not alter our finding that GPMFC lacked reasonable assurance at the time it filed the Application. Further, because GPMFC lacked reasonable assurance when it filed the Application, it cannot amend the Application to cure the defect. See *Christopher Falletti*, Memorandum Opinion and Order, 30 FCC Rcd 827, 828-29, paras. 5-7 (2015) (explaining the Commission’s historical fatal defect approach to site availability for an applicant’s initial transmitter site). Finally, we note that, according to GPMFC, GPM is a sole proprietorship owned by Barney Joe Donalson. GPMFC Opposition at 2. Thus, it is unclear how Richard Grega—who is listed in the Amended Application as having provided reasonable assurance—could have done so. Amended Application at Technical Certifications, Reasonable Site Assurance.

³² GPMFC Opposition at Exh. B.

³³ *Id.* at Exh. B, pp. 5-6. The Injunction goes so far as to require the owner of the Property to “prevent anyone from entering or using” the Property. *Id.* at Exh. B, pp. 6-7.

³⁴ Objection at 2.

³⁵ GPMFC does argue that “the current occupancy status of a church building” is not a relevant factor. GPMFC Opposition at 2. However, that argument ignores the fact that the injunction prevents use of both the land and structures located at the Property.

³⁶ See *Pinckneyville, Illinois*, Report and Order, 47 FCC 2d 887, 890, para. 7 (1974) (discussing the issue of site availability as involving whether a specific site is “legally available”).

³⁷ *South Florida*, 99 FCC 2d at 846, para. 8 (Rev. Bd. 1984) (“[W]here the site owner expressly conditions access to the site and those conditions are not met or unlikely to be met, it cannot be glossily claimed that one has ‘reasonable access’ of the site nonetheless.”). See also *Logos Broad. Corp.*, Letter Order, 23 FCC Rcd 10202, 10206-10207 (MB 2008), citing *Cuban-American Ltd.*, Decision, 2 FCC Rcd 3264, 3266, para. 13 (Rev. Bd. 1987) (where a site owner establishes conditions precedent to negotiating a lease, the applicant cannot ignore the conditions and still claim reasonable assurance); *Lee Optical and Associated Cos. Retirement and Pension Fund Trust*, Decision, 2 FCC Rcd 5480, 5486, para. 24 (Rev. Bd. 1987) (finding applicant’s reasonable assurance claim “evaporate[d] totally” because applicant was required to obtain “the consent of the proposed antenna site’s exclusive rooftop lessee” and did not either sublease from the lessee or obtain a contract waiver from the lessee); *Chicagoland TV Co.*, Memorandum Opinion and Order, 5 FCC 2d 154, 155-156, para. 4 (Rev. Bd. 1966) (designating site availability

Court—rather than a site owner—imposing the conditions, that does not change the fact that no one can access the Property until the conditions set forth in the Injunction have been satisfied. Put another way, there was (and is) only a possibility that the site will be available to GPMFC. It is well established that “a mere possibility that the site will be available is not sufficient” to establish reasonable assurance of site availability.³⁸

In sum, we find that GPMFC did not have reasonable assurance of the availability of the Station’s proposed antenna site when it filed the Application. This site availability defect is non-curable.³⁹ Thus, we will dismiss the Application without an opportunity to amend.⁴⁰

Conclusion/Actions. For the reasons set forth above, **IT IS ORDERED** that the informal objection filed by the City of Canton, Texas on February 28, 2024, **IS GRANTED**, and the application for a new low power FM station at Canton, Texas (Application File No. 232284) **IS DISMISSED WITH PREJUDICE**.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

issue where availability of proposed antenna site was “conditioned upon” completion of another building, the current occupant of the proposed antenna site’s move to that other building; and Commission approval of the relocation of the current occupant to that building); *Springfield Telecasting Co.*, Memorandum Opinion and Order, 45 FCC 1710, para. 7 (Rev. Bd. 1964) (designating site availability issue and noting letter from site owner’s agent indicating studio and transmitter site were available “subject to conditions including prior sale, satisfactory agreement and conclusion of arrangements within 12 months”).

³⁸ See, e.g., *Wallace*, 49 FCC 2d at 1427, para. 6. See also *Family Broad., Inc.*, Decision, 11 FCC Rcd 3052, 3053-54, para. 12 (Rev. Bd. 1996) (where tower owner’s agent requests formal written proposal from applicant, and does not “say yes or . . . no,” “permission to use the site was not unambiguously given.”); *El Camino Broad. Corp.*, Memorandum Opinion and Order, 12 FCC 2d 25, 26, para. 5 (Rev. Bd. 1968) (“[T]he mere fact that the property owner has indicated that he would discuss the possibility of a lease at some future date does not . . . provide . . . assurance. . .”).

³⁹ See *Able Radio Corp.*, Letter Order, 26 FCC Rcd 16161, 16163 (MB 2011); *Radio Delaware, Inc.*, Memorandum Opinion and Order, 4 FCC Rcd 8630, 8631, paras. 9-11 (Rev. Bd. 1989).

⁴⁰ *Id.*



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-551

Released: June 11, 2024

WIRELESS TELECOMMUNICATIONS BUREAU APPROVES BRISTOL BAY CELLULAR PARTNERSHIP'S, TELALASKA CELLULAR'S, AND WINDY CITY CELLULAR'S REVISED PERFORMANCE PLANS PURSUANT TO THE ALASKA PLAN

WC Docket No. 16-271

By this Public Notice, the Wireless Telecommunications Bureau (WTB) approves the revised performance plans of Bristol Bay Cellular Partnership (BBCP), TelAlaska Cellular, Inc. (TelAlaska), and Windy City Cellular (WCC), filed pursuant to the terms provided by the *Alaska Plan Order*.¹ The approved performance plans are included in the attached Appendix A.

The *Alaska Plan Order* requires eligible service providers participating in the Alaska Plan to submit for WTB approval individual performance plans with their service commitments.² WTB approved wireless service providers' initial performance plans in 2016.³ However, WTB "may require the filing of revised commitments at other times if justified by developments that occur after the approval of the initial performance commitments."⁴

Based on claims that BBCP,⁵ TelAlaska,⁶ and WCC⁷ made pursuant to their respective participation in the Secure and Trusted Communications Networks Reimbursement Program about

¹ *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 10139 (2016) (*Alaska Plan Order*).

² See 47 CFR § 54.317(f); *Alaska Plan Order*, 31 FCC Rcd at 10160, para. 67.

³ *Wireless Telecommunications Bureau Approves Performance Plans of the Eight Wireless Providers That Elected to Participate in the Alaska Plan*, Public Notice, 31 FCC Rcd 13317, Appx. A, Approved Performance Commitments (WTB 2016) (*Wireless Commitments Public Notice*) (approving BBCP's, WCC's, and six other mobile providers' initial performance plans); see also *Wireless Telecommunications Bureau Approves GCI's Revised Performance Plan Pursuant to the Alaska Plan Order*, WC Docket No. 16-271, Public Notice, 35 FCC Rcd 9539, 9539-41, Appx. (WTB 2020) (*GCI's Second Revised Performance Plan*) (accepting GCI's current performance plan); *Wireless Commitments Public Notice*, 31 FCC Rcd at 13321, Appx. A (providing CVW's current performance plan).

⁴ 47 CFR § 54.317(f).

⁵ See BBCP Supply Chain Replacement Plan Narrative via SCRP Portal (Jan. 14, 2022).

⁶ See TelAlaska Supply Chain Replacement Plan Narrative via SCRP Portal (Jan. 14, 2022).

⁷ See WCC Supply Chain Replacement Plan Narrative via SCRP Portal (Jan. 14, 2022).

improvements to their network,⁸ WTB contacted BBCP,⁹ TelAlaska,¹⁰ and WCC¹¹ about filing revised commitments to address these developments. In response, the three mobile-service providers filed revised performance plans.

BBCP's revised performance plan commits to provide a minimum of 10/2 Mbps to 5454 Alaskans—which is an expansion of coverage of commitments over the 4530 Alaskans it initially committed to cover with LTE¹²—and it also commits to covering an additional 1277 Alaskans with 25/15 Mbps 4G LTE.¹³ This is an improvement from the initial performance plan.

TelAlaska's revised performance plan improves the service offered for the majority of the Alaskans that it commits to cover. Specifically, it commits to upgrade many of its 2G and 3G areas to 4G LTE, and in the Nome, Alaska area, it commits to upgrade to 4G LTE at a minimum of 10/1 Mbps.¹⁴

WCC's revised performance plan improves the service offered from 2G at 200/200 kbps¹⁵ to 4G LTE at a minimum of 5/1 Mbps speeds where people live on Adak Island, Alaska.¹⁶ Although WCC's revised performance plan reduces its coverage commitment for the five- and ten-year mark, it reflects a vast improvement in technology and minimum expected download/upload speeds.¹⁷ We find the reduced population coverage commitments to be reasonable, given the substantial reduction of population on

⁸ 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, 37 FCC Rcd 8590 (2022); *id.* at 8594 (announcing allocation to BBCP); *id.* at 8603 (announcing allocation to WCC), https://docs.fcc.gov/public/attachments/DA-22-774A1_Rcd.pdf; see also 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. §§ 1601–09); *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, 14285, para. 2 (2020); *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, Appx. A (July 13, 2021).

⁹ Email from Matthew Warner, Attorney Advisor, WTB, to Earl Hubb, BBCP (Aug. 19, 2022 15:05 ET); Email from Matthew Warner, Attorney Advisor, WTB, to Earl Hubb, BBCP (Jan. 12, 2023 13:40 ET).

¹⁰ Email from Matthew Warner, Attorney Advisor, WTB, to Dave Goggins, TelAlaska (Aug. 19, 2022 15:01 ET); Email from Matthew Warner, Attorney Advisor, WTB, to John Walter, TelAlaska (Apr. 18, 2024 17:46 ET).

¹¹ Email from Matthew Warner, Attorney Advisor, WTB to Andilea Weaver, Vice President and COO, WCC (Sept. 14, 2022 13:23 ET).

¹² *Wireless Commitments Public Notice*, 31 FCC Rcd at 13320, Appx. A.

¹³ Letter from Earl Hubb, BBCP, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-271 (filed Mar. 31, 2023), Attach. (BBCP March 2023 Performance Proposal); Letter from Garnet Hanly, Chief, CIPD, FCC, to Earl Hubb, BBCP, at 6-9 (filed Aug. 3, 2023); Email from Steven Chernoff, Counsel for BBCP, to AK Plan (Sept. 6, 2023 9:50 ET); Email from Steven Chernoff, Counsel for BBCP, to AK Plan (Nov. 3, 2023 17:53 ET); Email from Steven Chernoff, Counsel for BBCP, to Matthew Warner, Attorney Advisor, WTB (Dec. 8, 2023 9:08 ET).

¹⁴ Email from John R. Walter, EVP, General Counsel and Secretary, Fastwyre Broadband, to Matthew Warner, Attorney Advisor, WTB (May 29, 2024 13:53 ET).

¹⁵ *Wireless Commitments Public Notice*, 31 FCC Rcd at 13323, Appx. A.

¹⁶ Email from Larry Mayes, President/CEO, Adak Telephone Utility, to AK Plan, FCC (Feb. 21, 2024 13:43 ET), Attach. (WCC Updated Performance Plan).

¹⁷ *Compare Windy City Cellular Revised Performance Plan*, Appx. A, *infra*, with *Wireless Commitments Public Notice*, 31 FCC Rcd at 13323, Appx. A.

Adak Island since the inception of the Alaska Plan.¹⁸ WCC's proposed coverage reductions have been caused by structural and other changes that occurred during the upgrade from 3G UMTS to 4G LTE,¹⁹ and WCC notes that none of these reductions in coverage affect where people actually reside or have business locations on Adak Island.²⁰ Because WCC will not be reducing any coverage in areas where people currently reside,²¹ and because it has committed to offer superior service than in its initial performance plan, we find the revised commitment to be in the public interest, and we accept the revised performance plan as an improvement for Alaskans on Adak Island.²²

The attached revised performance plans are improvements to the initial performance plans that will benefit Alaskans, are responsive to WTB's requests, and are hereby accepted as these providers' operative performance plans for the Alaska Plan.

Additional Information. For additional information on this proceeding, contact ak.plan@fcc.gov.

- FCC -

¹⁸ Staff analysis indicates that there has been a substantial reduction in population on Adak Island since 2010. The population of Adak Island in the 2020 decennial census was 171, compared to 326 in 2010, or a decline of nearly 50 percent. See Census, Adak City, Alaska, https://data.census.gov/profile/Adak_city,_Alaska?g=160XX00US0200065. Analysis of WCC's coverage from December 31, 2021 showed that it was covering 289 people of the 325 it committed to serve. Further analysis indicates that the uncovered portion does not have any broadband serviceable locations.

¹⁹ See Letter from Larry D. Mayes, President and CEO, Adak Eagle Enterprises, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-271, Quarterly Report (Feb. 1, 2024) (WCC Feb. 2024 Quarterly Report) ("WCC uses two sites to provide mobile wireless coverage on Adak Island. One of these sites required a new tower at a new location with lower antenna centerlines that is unable to overcome certain terrain obstructions in WCC's required service area. WCC's network redesign, along with the change in technology and propagation characteristics, results in a reduced overall coverage footprint . . ."); Email from Larry D. Mayes, President and CEO, Adak Eagle Enterprises, to AK Plan (Apr. 4, 2024 5:52 ET) ("There are differences between the new 4G LTE network and the legacy 3G UMTS network that it is replacing. While everything possible was done to match the service area coverage of the 3G network, the final implementation of the 4G network required some different equipment locations and lower antenna centerlines that result in a predicted reduction in coverage overlap with the AK Population-Distribution Model. Additionally, the change from UMTS to LTE is expected to result in some reduction in area coverage due to power spectral density changes and the 4G LTE technology propagation modeling. It is important to recognize that testing of the new 4G network shows that there is no reduction in service coverage to the existing, real-world population on Adak Island. One hundred percent of the inhabited residential and business locations and primary roadways remain covered under the revised 4G LTE network design. All of the areas that remain unserved have been verified to be uninhabitable and vacant.").

²⁰ WCC Feb. 2024 Quarterly Report ("It is important to note that testing of the new 4G LTE networks shows that there is not reduction in service coverage to the current, actual population on Adak Island. One hundred percent of the inhabited residential and business locations and primary roadways remain covered under the revised 4G LTE network design. All of the areas that will remain unserved have been verified to be uninhabitable and vacant.").

²¹ WCC is covering all areas of the Alaska Population Distribution Model on Adak Island, except for one portion in the southern part of Adak Island. In that portion, there are no broadband serviceable locations, suggesting people do not live or work in the uncovered area.

²² Compare *Wireless Commitments Public Notice*, 31 FCC Rcd, Appx. A at 13323 (publicizing WCC's commitment to provide 200/200 kbps GSM mobile service to 325 people, based on 2010 census data, at the 5- and 10-year mark); with WCC Updated Performance Plan (offering to cover 289 people with 3G at 500/500 kbps at the 5-year mark and 239 people with 4G LTE at 5/1 Mbps).

Appendix A: BBCP, TelAlaska, and WCC Revised Performance Plans

Bristol Bay Cellular Partnership

Bristol Bay Cellular Partnership - Revised Performance Plan w/ Alternative 10 Year Milestone (November 3, 2023)

Order Day General Partnership Revised Performance Plan w/ Alternative 10 Year Milestones (November 3, 2015)														
Note 1			Note 2			Note 3			Note 4					
Middle Mile Facility	Population 2010 Census	Spectrum Codes (477 Code)	Population Served 12/31/15	% Base Population Served 12/31/15	Technology of Transmission (477 Code)	Minimum Expected Download/Upload Speeds	5 Year Base Population Served	5 Year % Total Population Served	Technology of Transmission (477 Code)	Minimum Expected Download/Upload Speeds	10 Year Base Population Served	10 Year % Total Population Served	Technology of Transmission (477 Code)	Minimum Expected Download/Upload Speeds
Satellite											5454	100%	83	10 Mbps/ 2Mbps
Microwave	4530	91	4530		86	N/A	4530	100%	83	4 Mbps/ 1 Mbps	177	100%	83	25 Mbps/ 15 Mbps
Fiber											1100	100%	83	25 Mbps/ 15 Mbps

Note 1: Population per 2010 Census in service area. Excludes population served by AT&T and/or Verizon at 4G LTE using their infrastructure.

Note 2: Percentage of population able to be served at benchmark speeds as of 12/31/2015

Note 3: Year 1 is 2017

Note 4: The increase in base population served is due to Bristol Bay's plan to build fiber to serve Port Heiden, which is 50 miles south of Bristol Bay's southernmost boundary.

Note 4: BBCP will increase base population by expanding network coverage to communities adjacent to current serving areas and will utilize LEO and microwave for middle mile transport. The intent is to provide 4G LTE service to underserved communities as well as improving our service offering by expanding coverage. Initial BBCP expansion plan includes Bristol Bay Alaska regional communities of Port Heiden, Manakotak, Togiak and Twin Hills.

TelAlaska Cellular

Note 1	Note 2				TelAlaska Cellular, Inc. - Alaska Plan Commitments						Note 3			
Middle Mile	Population 2010 Census	Spectrum Codes (477 Code)	Population Served 12/31/14	% Base Population Served 12/31/14	Technology of Transmission (477 Code)	Minimum Expected Download/ Upload Speeds	5 Year Base Population Served 2022	5 Year % Total Population Served 2022	Technology of Transmission (477 Code)	Minimum Expected Download/ Upload Speeds	10 Year Base Population Served 2027	10 Year % Total Population Served 2027	Technology of Transmission (477 Code)	Minimum Expected Download/ Upload Speeds
Satellite	15198	91	11702	77%	86	256Kbps/ 256Kbps	6079	40%	86	256Kbps/ 256Kbps	1663	11%	86	256Kbps/ 256Kbps
		91	2888	19%	80	1.0Mbps/ 128 Kbps	4863	32%	80	1.0Mbps/ 128 Kbps	0	0%	80	1.0Mbps/ 128 Kbps
		91					1.0Mbps/ 128 Kbps	3800	25%	83	1.0Mbps/ 128 Kbps	9937	65%	83
Fiber											3598	24%	83	10.0Mbps/1.0 Mbps
			14590				14742				15198			

Note 1: Nome is the only location where TCI currently has a commercially viable opportunity to provide fiber middle mile. The remaining areas remain under review but are not currently affordable.

Note 2: All population figures are based on 2010 census data. The 2020 census data provides for a 4.4% drop in population by comparison.

Note 3: The estimates proposed are based on anticipated upgrades under the SCRP, but are subject to contingency based on underfunding, construction risk, reimbursement risk and cost overruns.

Windy City Cellular

WINDY CITY CELLULAR ALASKA PLAN

Note 1			Note 2		Note 3		Note 4		Note 5		Note 6		Note 7	
Middle Mile	Population (2010 Census)	Spectrum Codes (477 Code)	Population Served (12/31/2015)	% Base Population Served (12/31/2015)	Technology of Transmission (477 Code)	Minimum Expected Upload/Download Speeds	5-Year Base Population Served	5-Year % Total Population Served	Technology of Transmission (477 Code)	Minimum Expected Upload/Download Speeds	10-Year Base Population Served	10-Year % Total Population Served	Technology of Transmission (477 Code)	Minimum Expected Upload/Download Speeds
Satellite	326	91	326	100%	86	200k/200k	289	89%	86	500k/500k	239	73%	83	5/1Mbps

Note 1: Population per 2010 Census in service area. Excludes population served by AT&T and/or Verizon at 4G LTE using their infrastructure.

Note 2: Percentage of population served at benchmark speeds as of 12/31/2015

Note 3: Year 1 is 2017.

Appendix B:
Technology Codes for Alaska Plan Performance Plans

Technology Code	Description
80	Terrestrial Mobile Wireless – WCDMA/UMTS/HSPA
81	Terrestrial Mobile Wireless – HSPA+
82	Terrestrial Mobile Wireless – EVDO/EVDO Rev A
83	Terrestrial Mobile Wireless – LTE
84	Terrestrial Mobile Wireless – WiMAX
85	Terrestrial Mobile Wireless – CDMA
86	Terrestrial Mobile Wireless – GSM
87	Terrestrial Mobile Wireless – Analog
88	Terrestrial Mobile Wireless – Other

*5G-NR should be listed at “5G”



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 24-552

Released: June 12, 2024

COMMISSIONER GOMEZ TO HOST A LISTENING SESSION CONCERNING INCARCERATED PEOPLE'S COMMUNICATIONS SERVICES IN PHOENIX, ARIZONA

WC Docket Nos. 23-62 and 12-375

On June 18, 2024, Federal Communications Commission Commissioner Anna M. Gomez will host a listening session in Phoenix, Arizona, to hear from formerly incarcerated people and their loved ones about their experiences using incarcerated people's communications services (IPCS). Participants will provide first-hand accounts of the critical importance of affordable communications services to incarcerated people, as the Commission works to implement the Martha Wright-Reed Just and Reasonable Communications Act of 2022 (Martha Wright-Reed Act). The purpose of this listening session is to obtain additional public comment regarding the Commission's ongoing efforts to ensure just and reasonable rates and charges for IPCS consumers.

The listening session will take place from **10:30 a.m. to 12:00 p.m. Mountain Standard Time at the Arizona State University Sandra Day O'Connor College of Law, 111 E Taylor St., Phoenix, Arizona 85004**. The program agenda will include opening remarks from Commissioner Gomez followed by a discussion with current and former IPCS consumers, providing the Commission with their first-hand accounts. A transcript of the listening session will be incorporated into the record of the above-captioned dockets.

On January 5, 2023, the President signed into law the Martha Wright-Reed Act, reflecting the efforts by multiple individuals and committed stakeholders over a number of years to comprehensively address the persistent problem of unreasonably high rates and charges incarcerated people and their families pay for communications services. Among other things, the Martha Wright-Reed Act expands the definition of payphone service in correctional institutions to encompass audio or video advanced communications services, regardless of the technology used, and requires the Commission to ensure that rates and charges for such services are just and reasonable. It also requires the Commission to adopt regulations necessary to implement the Martha Wright-Reed Act not earlier than 18 months and not later than 24 months after the date of its enactment. On March 16, 2023, the Commission adopted a Notice of Proposed Rulemaking and Order, which began the process of implementing the Martha Wright-Reed Act. Stakeholders have filed comments and reply comments in response to the Commission's Notice of Proposed Rulemaking. This listening session will complement and supplement the extensive record developed in response to that Notice.

Reasonable accommodations for people with disabilities are available upon request. Requests for accommodations should be submitted via e-mail to fcc504@fcc.gov or by calling

the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice). Such requests should include a detailed description of the accommodation needed. In addition, please include a way for the Commission to contact the requester if more information is needed to fulfill the request. Last minute requests will be accepted but may not be possible to accommodate.

Additional information about the Commission's efforts in connection with IPCS can be found at: <https://www.fcc.gov/general/ics-data-collections>. To contact or request a meeting with Commission staff working on the Commission's IPCS proceeding, please contact Ahuva Battams at ahuva.battams@fcc.gov or at (202) 418-1565.

-FCC-



PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-554

Released: June 11, 2024

FCC ANNOUNCES MEETING OF THE NORTH AMERICAN NUMBERING COUNCIL

WC Docket No. 23-1

This Public Notice serves as notice that, consistent with the Federal Advisory Committee Act,¹ the Federal Communications Commission (FCC or Commission) announces a meeting of the North American Numbering Council (NANC). The meeting will be held on **December 12, 2024 at 2:00 pm ET**, in person in the Commission Meeting Room of the Federal Communications Commission, 45 L Street, N.E., Washington, D.C. and via the Internet at <http://www.fcc.gov/live>.

At the meeting, the NANC will consider and vote on reports and recommendations from the following Working Groups:

- The Call Authentication Trust Anchor Working Group regarding foreign-originated calls, the use of indirectly obtained numbers, and the use of numbers supplied on a trial basis by interconnected VoIP providers that obtain direct access to numbers;
- The Numbering Administration Oversight Working Group regarding number use and resale, and number reclamation, by interconnected VoIP providers that obtain direct access to numbers; and
- The Internet of Things Numbering Usage Working Group regarding the use of North American Numbering Plan numbers for the routing and addressing of Internet of Things communications.

The agenda may be modified at the discretion of the NANC Chairwoman and the Designated Federal Officer.

While the meetings are open to the public, the FCC headquarters building is not open access, and all guests must check in with and be screened by FCC security at the main entrance on L Street. Attendees will not be required to have an appointment but must otherwise comply with protocols outlined at: <https://www.fcc.gov/visit>. Additionally, the meetings will be available to the public via live feed from the FCC's web page at <http://www.fcc.gov/live>. Open captioning will be provided online for these events. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via e-mail to fcc504@fcc.gov or by calling the Consumer & Governmental Affairs Bureau at (202) 418-0530. Such requests should include a detailed description of the accommodation needed. In addition, please include a way for the FCC to contact the requester if more information is needed to fill the request. Please allow at least five days' advance notice for accommodation requests; last minute requests will be accepted but may not be possible to accommodate.

¹ See 5 U.S.C. Ch. 10.

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

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

–FCC –

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

In the Matter of	)	
	)	
TouchTone Communications, Inc.	)	File No.: EB-IHD-20-00030633
	)	NAL/Acct. No.: 202432080019
	)	FRN: 0007587645

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: May 20, 2024

Released: May 22, 2024

By the Commission:

I. INTRODUCTION

1. Under the rules and orders of the Federal Communications Commission (Commission or FCC), interstate telecommunications service providers and certain telecommunications providers (collectively, Service Providers) are periodically required to file accurate information in Annual and Quarterly Telecommunications Reporting Worksheets (Worksheets) with the Universal Service Administrative Company (USAC) in furtherance of the Commission's universal service and other federal payment requirements implemented under the Communications Act of 1934, as amended (Act). USAC and the administrator of the Telecommunications Relay Service (TRS) Fund,¹ among others, rely on information filed in the Worksheets to determine, fairly and accurately, each service provider's payment responsibilities for the Universal Service Fund (USF) and other federal funding requirements.

2. In this Notice of Apparent Liability for Forfeiture (NAL), we propose a penalty of \$3,175,209 against TouchTone Communications, Inc. (TouchTone or Company) for apparently violating sections 225 and 254(d) of the Act, and sections 52.17(b), 52.32(b), 54.706(a), 54.711(a), and 64.604(c)(5)(iii)(A) of the Commission's rules by apparently willfully and repeatedly failing: to file its Annual Worksheet in a timely manner with USAC in 2023; to pay 13 invoices for USF contributions in a timely manner or in full; and to pay two TRS Fund contributions in 2023 in a timely manner or in full.

II. BACKGROUND

A. Legal Framework

1. Universal Service Fund Contribution Requirements

3. The Act codifies Congress's historical commitment to promoting universal service to ensure that consumers in all regions of the nation have access to affordable, quality telecommunications services. In particular, section 254(d) of the Act requires, among other things, that "[e]very telecommunications carrier [providing] interstate telecommunications services . . . contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to present and advance universal service."² In implementing this Congressional mandate, the Commission directed all telecommunications carriers providing interstate telecommunications services to contribute to the USF based on their interstate and international end-user telecommunications revenues.³ Under section 254(d) of the Act, the Commission also requires certain other providers of interstate

¹ Rolka Loube, LLC (Rolka Loube) is the current TRS fund administrator.

² 47 U.S.C. § 254(d).

³ 47 CFR § 54.706(a)-(b).

telecommunications to contribute to the USF.⁴ Service Providers that fail to pay timely and fully their share of contributions to the USF face significant consequences because such actions undermine the Congressional mandates embodied in section 254 of the Act,⁵ deprive the USF of the monies necessary to carry out important regulatory objectives,⁶ and give delinquent contributors an economic advantage relative to competitors who make USF contributions on time and in full.⁷ Accordingly, the Commission “has repeatedly observed that compliance with its payment requirements is of paramount importance, and [it] is dedicated to taking the action needed to ensure compliance.”⁸

4. The Commission has established specific procedures to administer the USF. Each Service Provider, with certain exceptions, is required to contribute to the USF, file annually an FCC Form 499-A (Annual Worksheet),⁹ and file quarterly an FCC Form 499-Q (Quarterly Worksheet).¹⁰ USAC, as the Commission’s administrator of the USF, uses the revenue projections submitted in the Quarterly Worksheets to determine and invoice each service provider’s monthly universal service contribution obligation.¹¹ To ensure that the information submitted to USAC by Service Providers is complete, timely, and accurate, the Commission’s rules grant USAC the authority to verify the information contained in Annual and Quarterly Worksheets. Filers are required to maintain records and documentation to justify the information reported in the Worksheets, including the methodology used to determine revenue projections, for a period of three years, and to provide it to the Commission or USAC upon request.¹² USAC must apply the American rule of accounting (American Rule) to determine when USF

⁴ See 47 U.S.C. § 254(d) (“Any other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires.”); 47 CFR § 54.706(a).

⁵ *Telseven, LLC*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 6636, 6637, para. 2 (2012) (*Telseven NAL*), *forfeiture issued*, Forfeiture Order, 31 FCC Rcd 1629 (2016) (*Telseven Forfeiture Order*).

⁶ We have repeatedly noted that the universal service support requirements cannot be fully effective if the USF is only partially funded due to delinquent Service Providers that deprive the USF of necessary funding. See *Globcom, Inc. d/b/a Globcom Global Commc’ns*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 19893, 19896, para. 6 (2003) (*Globcom NAL*), Order of Forfeiture, 21 FCC Rcd 4710 (2006) (*Globcom Forfeiture Order*); *ConQuest Operator Servs. Corp.*, Order of Forfeiture, 14 FCC Rcd 12518, 12518, para. 1 (1999) (*ConQuest Forfeiture Order*).

⁷ *PayG LLC d/b/a Skyswitch*, Notice of Apparent Liability for Forfeiture, FCC 23-43, 2023 FCC Lexis 1629, at *13-14 (2023) (“Delinquent [S]ervice [P]roviders obtain an unfair competitive advantage over [S]ervice [P]roviders that comply with the reporting provisions of the Commission’s rules, and fully pay USF, TRS Fund, LNP, North American Numbering Plan (NANP), and federal regulatory fee assessments required under the Commission’s rules.”) (*PayG 2023 NAL*); *Compass Global, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 6125, 6135-36, para. 21 (2008) (*Compass Global NAL*) (explaining that service provider “nonpayment of universal service contributions undermines the efficiency and effectiveness of the universal service support mechanisms. Moreover, delinquent carriers may obtain a competitive advantage over carriers complying with the Act and our rules.”); *Conquest Forfeiture Order*, at 12518-19, para. 1 (stating that “delinquent carriers deprive the universal service support mechanisms of the funds necessary to carry out the goals of this important statutory program.” Such carriers “enjoy a competitive advantage” over those who comply, and the Commission will not permit Service Providers “to shirk their responsibilities in an attempt to gain an advantage over their law-abiding competitors”).

⁸ *Forfeiture Methodology for Violations of Rules Governing Payment to Certain Fed. Programs*, Memorandum Opinion and Order, FCC 23-42, 2023 WL 3749704, at *2, para. 7 (2023).

⁹ See 47 CFR § 54.711; *Telseven NAL*, 27 FCC Rcd at 6637, para. 2. Within 30 days of beginning to provide service, new Service Providers must register with the Commission by obtaining an FCC registration number (FRN) from CORES and obtaining a Filer ID from USAC’s E-File system. E.g., *Wireline Competition Bureau Releases the 2023 Telecomms. Reporting Worksheet Instructions and Accompanying Instructions*, Public Notice, 37 FCC Rcd 12124, 12147 (WCB 2022) (*2023 Annual Worksheet Instructions*).

¹⁰ See 47 CFR § 54.711; *Telseven NAL*, 27 FCC Rcd at 6637, para. 2.

¹¹ E.g., *2023 Annual Worksheet Instructions*, 37 FCC Rcd at 12136-37.

¹² See 47 CFR § 54.711(a).

contributions are fully paid.¹³ Under the American Rule, a payment is applied first to outstanding penalty and administrative cost charges, next to accrued interest, and third to outstanding principal, and “[i]n applying the payment to outstanding principal, [USAC] shall apply such payment to the contributor’s oldest past due amounts first.”¹⁴

5. The monthly USF contributions that were invoiced based on projected revenues reported in a service provider’s Quarterly Worksheets are then subject to an annual true-up based on actual revenues reported in the service provider’s Annual Worksheet.¹⁵ The Commission’s rules require that the information contained in the Worksheets be truthful and that the USF payments be accurate.¹⁶ Failure to provide all necessary information and contributions threatens the integrity and viability of the universal service mandate.¹⁷ The Commission has repeatedly warned carriers that attempts to evade these important responsibilities will result in enforcement action against them.¹⁸

2. Telecommunications Relay Service Fund Contribution Requirements

6. Section 225(b)(1) of the Act, which codifies Title IV of the Americans with Disabilities Act of 1990, directs the Commission to “ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.”¹⁹ To that end, the Commission established the TRS Fund to reimburse TRS providers for the costs of providing interstate TRS.²⁰ The Commission

¹³ See *id.* § 54.713(e); *Comprehensive Review of the Universal Serv. Fund Mgmt., Admin., and Oversight*, Report and Order, 22 FCC Rcd 16372, 16381, para. 16 (2007) (“Our actions today will also help clarify, for statute of limitations purposes, the amount of time a contributor’s debt is outstanding”) (2007 USF Order).

¹⁴ 47 CFR § 54.713(e). USF assessments that have been delinquent for more than 90 days can be transferred to the United States Department of the Treasury (Treasury Department) for collection. See Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (codified in part at 31 U.S.C. §§ 3711, 3716, 3717, 3720B) (DCIA); 47 CFR § 1.1917. A service provider remains obligated to pay fully all unpaid assessments whether an administrator or a collection agent, both of which are acting on behalf of the Commission, is collecting USF, TRS Fund, LNP, NANP, or federal regulatory fee debt, and thus in either case, the payment violation continues until the debt is fully paid and a service provider remains subject to enforcement action. See, e.g., *PayG 2023 NAL*, *supra* note 7, at *13-14, para. 29 & n.119.

¹⁵ See *Federal-State Joint Board on Universal Service*, Report and Order and Order on Reconsideration, 16 FCC Rcd 5748, 5752-53, para. 12 (2001) (2001 USF Order); 47 CFR § 54.711.

¹⁶ 47 CFR §§ 54.711(a), 54.713. An officer of a company completing an Annual Worksheet must certify, in part, as follows: “I have examined the foregoing report and, to the best of my knowledge, information and belief, all statements of fact contained in this Worksheet are true and that said Worksheet is an accurate statement of the affairs of the above-named company for the previous calendar year.” See, e.g., 2023 FCC Form 499-A, Line 606. While the Commission requires revisions to Worksheets when errors are discovered, the requirement does not affect the separate requirement to submit accurate information in the first instance to the best of the filer’s knowledge, information, and belief. See, e.g., *2023 Annual Worksheet Instructions*, 2022 WL 10379829, at *11; 2023 FCC Form 499-A, Line 606.

¹⁷ *Globcom Forfeiture Order*, *supra* note 6, at 4711, para. 2 & n.4.

¹⁸ See 47 CFR § 54.713(c); *America’s Tele-Network Corp.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 20903, 20906, para. 8 (2000); *Matrix Telecom, Inc.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 13544, 13546, para. 7 (2000). Consequences also extend beyond enforcement. The Commission’s “red light” rule requires that action be withheld on any application or other request for benefits made by an entity that is delinquent in debts owed to the Commission and dismissal of such applications or requests if the delinquent debt is not resolved. See 47 CFR § 1.1910(b)(2); see, e.g., *Matter of Universal Serv. Contribution Methodology Petition for Waiver by Metocean Telematics, Ltd.*, Order, 2023 WL 4635081, at *2, para. 5 (WCB 2023).

¹⁹ 47 U.S.C. § 225(b)(1).

²⁰ See *Telecommunications Relay Services and the Americans with Disabilities Act of 1990*, Third Report and Order, 8 FCC Rcd 5300, 5301, para. 7 (1993).

implemented TRS capability rules to enable persons with hearing and speech disabilities to communicate by telephone with voice-telephone users.²¹ Such services provide telephone access to a significant number of Americans, who without it might not be able to make calls to or receive calls from voice-telephone users.²² Pursuant to section 64.604(c)(5)(iii)(A) of the Commission's rules, certain Service Providers²³ must contribute to the TRS Fund based on their end-user revenues.²⁴ Under the Commission's rules, the TRS Fund administrator, Rolka Loube, uses Annual Worksheet filings to determine each service provider's annual or monthly TRS Fund contribution amounts.²⁵ The TRS Fund depends on Service Providers' timely payment of contributions.²⁶ Service Providers that violate the TRS Fund contribution requirements undermine the Commission's TRS requirements and could obtain an unfair advantage over competitors who comply with the statutory and regulatory requirements.²⁷

B. Factual Background

7. TouchTone is a privately held business corporation that was organized in the state of Delaware on January 30, 2002, and began providing telecommunications services in September 2002.²⁸ TouchTone provides a variety of communications services, including "TDM and SIP trunking, local and long distance calling services, Direct Inward Dialing services, and Interconnected VoIP services."²⁹ TouchTone provides these services on both a common carrier and private carriage basis by contract.³⁰ The Company also provides local and long distance toll services pursuant to international section 214 authority.³¹

8. On November 6, 2019, USAC referred TouchTone to the Enforcement Bureau (Bureau) for investigation of issues in connection with its 2010, 2018, and 2019 Annual Worksheets.³² On February 19, 2020, the Bureau issued a Letter of Inquiry (LOI) to TouchTone concerning the Company's compliance with the filing and contribution requirements outlined above, among other things. TouchTone provided its response to the LOI on May 19, 2020. On December 5, 2023, seeking updated information on the

²¹ See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, 15 FCC Rcd 5140, 5143-45, paras. 5-9 (2000).

²² *Id.*

²³ Every carrier providing interstate or intrastate telecommunications services (including interconnected VoIP Service Providers pursuant to 47 CFR § 64.601(b)) and every provider of non-interconnected VoIP service must contribute to the TRS Fund. See 47 CFR § 64.604(c)(5)(iii)(A).

²⁴ *Id.* Under the Commission's rules, Service Providers must contribute at least \$25 per year, and Service Providers whose annual contributions are less than \$1,200 must pay the entire amount at the beginning of the contribution period. Otherwise, if their account is in good standing, Service Providers are permitted to divide their contributions into 12 equal monthly payments. *Id.* § 64.604(c)(5)(iii)(B).

²⁵ *Id.* Rolka Loube Saltzer Associates, LLC (RLSA) replaced the National Exchange Carrier Association as the TRS Fund administrator effective July 1, 2011. See *Interstate Telecommunications Relay Service (TRS) Fund Administrator Transition*, Public Notice, 26 FCC Rcd. 8436 (2011). RLSA is now known as Rolka Loube, LLC. See <https://rolkaloube.com/programs/federal-itr/> (last visited Apr. 22, 2024).

²⁶ *Globcom NAL*, *supra* note 6, at 19904, para. 28.

²⁷ *PayG 2023 NAL*, *supra* note 7, at *13, para. 7; *Globcom NAL*, *supra* note 6, at 19904, para. 28.

²⁸ Letter from Hank Kelly, Counsel for TouchTone Communications, Inc., Kelley, Drye & Warren, LLP, to Patrick McGrath, Chief, Investigations and Hearings Division, FCC Enforcement Bureau, at 4, 10, Responses to Inquiries 1, 20 (Feb. 5, 2024) (on file in EB-IHD-20-00030633) (Supplemental LOI Response).

²⁹ *Id.* at Response to Inquiry 5.

³⁰ *Id.* at Response to Inquiry 21.

³¹ See *International Authorizations Granted*, 17 FCC Rcd 18318 (Sept. 26, 2002) (announcing that the Commission granted TouchTone its authorization under file number ITC-214-20020903-00426 on Sept. 20, 2002).

³² See E-Mail from Michelle Calhoun, Associate General Counsel, USAC, to Pamela Gallant, Assistant Bureau Chief, FCC Enforcement Bureau (Nov. 6, 2019 11:18 EDT) (on file in EB-IHD-20-00030633).

foregoing, the Bureau issued a Supplemental LOI to TouchTone, and TouchTone filed its response on February 5, 2024.³³

1. Failure to Submit Timely USF Worksheets

9. In 2023, Annual Worksheets were due by April 3, and Quarterly Worksheets were due on February 1, May 1, August 1, and November 1.³⁴ TouchTone has been required to file Annual and Quarterly Worksheets since 2003, and has generally done so without issue.³⁵ Although TouchTone claims in its Supplemental LOI Response that it filed each of its Annual and Quarterly Worksheets by their respective deadlines for the past three years,³⁶ USAC's E-File demonstrates that TouchTone failed to submit its 2023 Annual Worksheet when it was due on April 3, 2023.³⁷ Instead, TouchTone submitted its Annual Worksheet over one month late on May 9, 2023.³⁸

2. Failure to Pay USF Contributions Fully and on Time

10. USAC's data reflects that TouchTone has an extensive history of failing to pay its USF contributions fully, going back over a decade.³⁹ For purposes of the instant NAL, USAC reported that between April 1, 2023, and April 18, 2024, TouchTone paid 13 invoices late.⁴⁰ The documentation TouchTone produced in its Supplemental LOI Response corroborates USAC's data.⁴¹ TouchTone's largest amount of delinquent debt occurred on May 16, 2023, when it had six delinquent invoices with a balance due of \$1,775,209.⁴²

11. By applying the American Rule to TouchTone's USF account data,⁴³ USAC identified the following USF payment violations:

- The invoice issued to TouchTone on September 15, 2022 (\$264,814.53, due on October 14, 2022) was not satisfied by the Company's payments until April 6, 2023;
- The invoice issued to TouchTone on October 14, 2022 (\$269,018.31, due on

³³ See Supplemental LOI Response. In exchange for an extension of time in which to respond to the LOI, TouchTone agreed to extend the statute of limitations period for an additional 60 days. See Tolling Agreement (Dec. 28, 2023) (on file in EB-IHD-20-00030633).

³⁴ 2023 Annual Worksheet Instructions, *supra* note 9, Attach. B, Tbl. 3.

³⁵ See Universal Service Admin. Co., *E-File*, <https://efile.universalservice.org/EFileContributor/CompanyForms/SearchCompanyForms?filerId=823676&&sortBy=allforms> (last visited Apr. 22, 2024).

³⁶ See Supplemental LOI Response at 13, Response to Request 22.

³⁷ Universal Service Admin. Co., *E-File*, <https://efile.universalservice.org/EFileContributor/CompanyForms/SearchCompanyForms?filerId=823676&&sortBy=allforms> (last visited Apr. 22, 2024).

³⁸ *Id.*

³⁹ See USAC Invoice History for TouchTone Communications, Inc. (Nov. 16, 2023) (on file in EB-IHD-20-00030633).

⁴⁰ Letter from Frank Theobald, Director of Contributor Operations, Universal Services Admin. Co., to David Janas, Special Counsel, Investigations and Hearings Division, FCC Enforcement Bureau at 2 (April 18, 2024) (on file in EB-IHD-20-00030633) (USAC Letter).

⁴¹ See Supplemental LOI Response at Response to Inquiry 26.

⁴² USAC Letter at 2.

⁴³ See 47 CFR § 54.713(e); 2007 USF Order, *supra* note 12, at 16381, para. 16. Given the one-year statute of limitations to issue an NAL, 47 U.S.C. § 503(b)(6)(B), USAC limited its analysis to assess USF payment violations that began approximately one year before USAC's initial analysis. USAC ultimately analyzed TouchTone's account data for the period beginning April 1, 2023, and ending on April 15, 2024.

November 15, 2022) was not satisfied by the Company's payments until May 11, 2023;

- The invoice issued to TouchTone on November 15, 2022 (\$269,018.31 due on December 15, 2022) was not satisfied by the Company's payments until May 26, 2023;
- The invoice issued to TouchTone on December 15, 2022 (\$269,018.31 due on January 13, 2023) was not satisfied by the Company's payments until June 20, 2023;
- The invoice issued to TouchTone on January 13, 2023 (\$327,868.63 due on February 15, 2023) was not satisfied by the Company's payments until July 26, 2023;
- The invoice issued to TouchTone on February 15, 2023 (\$327,868.63 due on March 15, 2023) was not satisfied by the Company's payments until August 17, 2023;
- The invoice issued to TouchTone on March 15, 2023 (\$327,868.63 due on April 14, 2023) was not satisfied by the Company's payments until September 13, 2023; and
- The invoice issued to TouchTone on April 14, 2023 (\$285,032.31 due on May 15, 2023) was not satisfied by the Company's payments until October 5, 2023.
- The invoice issued to the Touchtone on May 15, 2023 (\$285,032.31 due on June 15, 2023) was not satisfied by the Company's payments until October 24, 2023.
- The invoice issued to the Touchtone on June 15, 2023 (\$285,032.31 due on July 14, 2023) was not satisfied by the Company's payments until November 22, 2023.
- The invoice issued to the Touchtone on July 14, 2023 (\$330,923.07 due on August 15, 2023) was not satisfied by the Company's payments until December 21, 2023.
- The invoice issued to the Touchtone on August 15, 2023 (\$327,909.68 due on September 15, 2023) was not satisfied by the Company's payments until January 25, 2024.
- The invoice issued to the Touchtone on September 15, 2023 (\$327,909.68 due on October 13, 2023) was not satisfied by the Company's payments until March 5, 2024.⁴⁴

12. Thus, between April 1, 2023, and April 18, 2024, TouchTone paid 13 invoices late.⁴⁵

3. Failures to Pay TRS Fund Contributions Fully and on Time

13. The TRS Fund administrator, Rolka Loube, informed Bureau staff that USAC provided TouchTone's 2022 499-A on April 13, 2022.⁴⁶ Based on TouchTone's reported revenues, it owed a total obligation of \$355,902.96, which Rolka Loube billed in 12 installments of \$29,658.58 over the course of the 2022-2023 contributions period.⁴⁷ TouchTone paid a total of 10 installments on time during the 2022-2023 contributions period but failed to pay 2 invoices timely as follows: (1) the invoice issued to TouchTone on December 16, 2022 (\$29,658.58 due on January 15, 2023) was not paid until March 1,

⁴⁴ USAC Letter at 2.

⁴⁵ *Id.*

⁴⁶ See E-Mail from Theresa Conway, Senior Program Analyst, Rolka Loube, to David Janas, Special Counsel, Investigations and Hearings Division, FCC Enforcement Bureau at 1 (Dec. 5, 2023 10:56 EDT) (on file in EB-IHD-20-00030633) (Rolka Loube E-Mail).

⁴⁷ See *id.* The TRS Fund Administrator uses a July 1 through June 30 billing year, and subject carriers must make TRS contributions on a monthly or annual basis. *PTT Phone Cards, Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 11531, 11536, para. 13 (2014).

2023; and (2) the invoice issued to TouchTone on January 20, 2023 (\$29,658.58 due on February 19, 2023) was not paid until March 28, 2023.⁴⁸

III. DISCUSSION

14. We find that TouchTone apparently willfully and repeatedly violated sections 254(d) and 255(b)(1) of the Act, and sections 52.17(b), 52.32(b), 54.706(a), 54.711(a), and 64.604(c)(5)(iii)(A) of the Commission's rules and orders, by failing to file its 2023 Annual Worksheet by the filing deadline and by failing to pay contributions to the USF and TRS Fund in a timely manner.⁴⁹ The Company's conduct undermines the Commission's ability to administer critical funds for the benefit of the public.

A. TouchTone Apparently Violated Commission Rules and Orders by Failing to File Its Annual Worksheet by the Filing Deadlines

15. Based on the evidence developed through the Bureau's investigation, we find that the Company apparently violation sections 52.17(b), 52.32(b), 54.711(a), and 64.604(c)(5)(iii)(B) of the Commission's rules and orders by willfully failing to file or to file on time the Company's Annual Worksheet due on April 3, 2023.⁵⁰ Service Providers, such as TouchTone, must file Annual Worksheets by April 1 of each year and Quarterly Worksheets by February 1, May, August 1, and November 1 of each year.⁵¹ When a Service Provider fails to file accurate Annual Worksheets in a timely manner, the Service Provider can fail to fully pay its share of cost recovery obligations to the USF and TRS Fund. TouchTone ultimately submitted its Annual Worksheet on May 9, 2023.⁵²

16. We find that the Company apparently violated sections 52.17(b), 52.32(b), 54.711(a), and 64.604(c)(5)(iii)(B) of the Commission's rules by willfully failing to file its Annual Worksheet by its due date. Notably, this filing violation occurred even though the Company had been under Commission investigation since February 2020 regarding the Company's compliance with the very same requirements.

B. TouchTone Apparently Violated the Act and Commission Rules by Repeatedly Failing to Pay USF Contributions Fully and on Time

17. In addition to the Company's failure to file its Annual Worksheet by its due date, we also find that the Company apparently willfully and repeatedly violated section 254(d) of the Act and section 54.706(a) of the Commission's rules by failing to pay its USF contributions on time and in full.⁵³ Under section 54.706(a) of the Commission's rules, "[e]ntities [providing] interstate telecommunications to the public . . . for a fee . . . must contribute to the universal service support mechanisms."⁵⁴

18. All Service Providers must pay their contributions to the USF in a timely manner and in full.⁵⁵ A Service Provider that does not comply with the USF payment requirements frustrates the

⁴⁸ Rolka Loube E-Mail.

⁴⁹ 47 U.S.C. § 254(d); 47 CFR §§ 52.17(b), 52.32(b), 54.706(a), 54.711(a), 64.604(c)(5)(iii)(A).

⁵⁰ 47 CFR §§ 52.17(b), 52.32(b), 54.711(a), 64.604(c)(5)(iii)(B).

⁵¹ See 47 CFR §§ 52.17(b), 52.32(b), 54.711(a), and 64.604(c)(5)(iii)(B); see *2023 Annual Worksheet Instructions*.

⁵² See USAC Letter, *supra* note 40, at 2; Universal Service Administrative Company, *E-File*, <https://efile.universalservice.org/EFileContributor/CompanyForms/SearchCompanyForms?filerId=823676&&sortBy=allforms> (last visited Apr. 22, 2024). The statute of limitations for this violation is subject to the parties' Tolling Agreement. See *supra* note 33.

⁵³ 47 U.S.C. § 254(d); 47 CFR § 54.706(a).

⁵⁴ 47 CFR § 54.706(a).

⁵⁵ See, e.g., 47 CFR §§ 54.706, 54.713; *Telseven NAL*, *supra* note 5, at 6638-39, para 6.; *Kajeet, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 26 FCC Rcd 16684, 16686-87, para. 6 (2011) (*Kajeet NAL*), *consent decree adopted*, Order, 30 FCC Rcd 10608 (2015); *NTS Commc'ns, Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 5137, 5139, para. 4 (2010) (*NTS NAL*), *consent decree adopted*, Order, 28 FCC Rcd 16515 (2013).

Commission's congressional mandate to ensure that contributions are made on an equitable and non-discriminatory basis.⁵⁶ USAC observed that TouchTone made late payments in 13 instances between April 1, 2023, and April 18, 2024.⁵⁷

19. Service Providers must pay their USF contributions in full by each monthly deadline.⁵⁸ Each month that a service provider fails to make the required USF contribution in full and on time constitutes a separate violation of the Commission's contribution requirements.⁵⁹ Each failure to pay a USF contribution is a continuing violation, which begins the day a service provider does not fully pay an owed contribution by the payment deadline, and continues until the service provider has fully paid the amount owed.⁶⁰ The Act and the Commission's rules establish that the requirement to pay USF contributions imposes a continuing obligation to pay after a service provider did not make required contributions by payment deadlines.⁶¹ USAC applies the American Rule of accounting⁶² to delinquent Service Providers' USF accounts to determine the number of unpaid monthly USF contributions within a year of an NAL.⁶³ By applying the American Rule of accounting to TouchTone's USF account data, USAC determined that the Company paid 13 invoices late between April 1, 2023, and April 18, 2024.⁶⁴

⁵⁶ See *Pacific Data Systems*, Notice of Apparent Liability, DA 23-68, 2023 WL 1067981, at *2, para. 4 (EB Jan. 25, 2023) ("A [S]ervice [P]rovider shirking its Worksheet filing obligations therefore frustrates Congress's policy objective to ensure the equitable and non-discriminatory distribution of universal service costs among all [S]ervice [P]roviders.").

⁵⁷ USAC Letter, *supra* note 40, at 1-2.

⁵⁸ E.g., *Globcom NAL*, *supra* note 6, at 19900, para. 16. USF payments are due on the 15th of each month. If the 15th falls on a weekend or holiday, payments are due on the preceding business day. Universal Serv. Admin. Co., *How to Pay*, <https://www.usac.org/service-providers/making-payments/how-to-pay/> (last visited Apr. 22, 2024). The Act and the Commission's rules do not require an invoice from USAC to establish a payment obligation for the USF. See, e.g., *PayG 2023 NAL*, *supra* note 7, at *13-14, para. 28; *Telseven NAL*, *supra* note 5, at 6639, para. 6 & n.26 (citing 47 U.S.C. § 254(d); 47 CFR § 54.706(b)); *Kajeet NAL*, at 16686, para. 6 n.22; *NTS NAL*, at 5139, para. 4 n.12.

⁵⁹ *ADMA Telecom, Inc.*, Notice of Apparent Liability, 24 FCC Rcd 838, 847, para. 20 (2009) (*ADMA NAL*); *Globcom NAL*, *supra* note 6, at 19900, para. 16.

⁶⁰ E.g., *PayG 2023 NAL*, 2023 FCC Lexis at *13-14, para. 29; *Telseven NAL*, 27 FCC Rcd at 6644, para. 15, 6647, para. 23; *Telrite Corp.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 7231, 7243, para. 27 (2008) (*Telrite NAL*). USF assessments that have been delinquent for more than 90 days can be transferred to the United States Department of the Treasury (Treasury Department) for collection under the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996) (DCIA), codified in part at 31 U.S.C. §§ 3711, 3716, 3717, 3720B. See 47 CFR § 1.1917; USAC, *Late Payments, DCIA, Red Light*, <https://www.usac.org/service-providers/making-payments/late-payments-dcia-red-light/> (last visited Apr. 22, 2024). A service provider remains obligated to pay fully all unpaid assessments whether an administrator or a collection agent is collecting USF or TRS debt, and thus in either case, the payment violation continues until the debt is fully paid.

⁶¹ The Act and the Commission's rules establish that the obligation to pay USF contributions does not end until the contributor fully pays all assessments required under the Commission's rules. See 47 U.S.C. § 254(d) (Service Providers "shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service") (emphasis added); 47 CFR § 54.713(b) (providing that in addition to having a continuing obligation to pay delinquent USF payments, a USF contributor is also obligated to pay interest, penalties and other charges "until all charges and costs are paid in full") (emphasis added); *id.* at § 54.706(a) (Service Providers "must contribute to the universal service support mechanisms") (emphasis added).

⁶² See 47 CFR § 54.713(e) (providing that payments for USF assessments "shall apply . . . to the contributor's oldest past due amounts first").

⁶³ See, e.g., *PayG 2023 NAL*, *supra* note 7, at *61-62, para. 44; *Telseven NAL*, *supra* note 5, at 6647, paras. 23-24; *Kajeet NAL*, *supra* note 55, at 16694-95, paras. 21-22.; *NTS NAL*, *supra* note 55, at 5142, paras. 12-13.

⁶⁴ USAC Letter, *supra* note 40, at 1-2.

20. Because these USF payment violations were continuing in nature, the following invoices were not satisfied until the dates provided: (1) the invoice issued on September 15, 2022, was not satisfied until April 6, 2023; (2) the invoice issued on October 14, 2022, was not satisfied until May 11, 2023; (3) the invoice issued on November 15, 2022, was not satisfied until May 26, 2023; (4) the invoice issued on December 15, 2022, was not satisfied until June 20, 2023; (5) the invoice issued on January 13, 2023, was not satisfied until July 26, 2023; (6) the invoice issued on February 15, 2023, was not satisfied until August 17, 2023; (7) the invoice issued on March 15, 2023, was not satisfied until September 13, 2023; (8) the invoice issued on April 14, 2023, was not satisfied until October 5, 2023; (9) the invoice issued on May 15, 2023, was not satisfied until October 24, 2023; (10) the invoice issued on June 15, 2023, was not satisfied until November 22, 2023; (11) the invoice issued on July 14, 2023, was not satisfied until December 21, 2023; (12) the invoice issued on August 15, 2023, was not satisfied until January 25, 2024; and (13) the invoice issued on September 15, 2023, was not satisfied until March 5, 2024.⁶⁵ Thus, we find that TouchTone failed to pay its USF contributions in full and on time on 13 separate instances, and that TouchTone apparently willfully and repeatedly violated section 254(d) of the Act and section 54.706(a) of the Commission's rules.⁶⁶

C. TouchTone Apparently Violated Commission Rules by Failing to Pay Timely TRS Fund Contributions

21. TouchTone apparently willfully and repeatedly violated section 64.604(c)(5)(iii)(A) of the Commission's rules by failing to contribute to the TRS Fund in a timely manner and in full.⁶⁷ Under section 64.604(c)(5)(iii)(A) of the Commission's rules, Service Providers such as TouchTone must contribute to the TRS Fund based on their end-user revenues.⁶⁸ TouchTone's contribution for the 2022-2023 contributions period was divided into 12 equal monthly payments.⁶⁹ TouchTone failed to pay two of its monthly invoices, which were due January 15, 2023, and February 19, 2023, until March 1, 2023, and March 28, 2023, respectively.⁷⁰

22. Failures to pay TRS Fund contributions fully and on time are continuing violations, which begin the day a service provider does not fully pay an owed contribution by the payment deadline and continue until the service provider has fully paid the amount owed.⁷¹ The Commission's rules establish that the requirement to pay TRS Fund contributions imposes a continuing obligation to pay after a service provider did not make required contributions by payment deadlines.⁷²

23. The TRS Fund administrator, Rolka Loube, informed the Bureau's staff that in 2023, TouchTone repeatedly paid TRS contributions late. We consider TouchTone's failures to pay its TRS Fund contributions fully and on time to be continuing violations that began on January 15 and February 19, 2023,

⁶⁵ *Id.* The statute of limitations for these violations is subject to the parties' Tolling Agreement. *See supra* note 33.

⁶⁶ 47 U.S.C. § 254(d); 47 CFR § 54.706(a).

⁶⁷ 47 CFR § 64.604(c)(5)(iii)(A).

⁶⁸ *Id.*

⁶⁹ *See* Rolka Loube E-Mail, *supra* note 46.

⁷⁰ *See id.*

⁷¹ *See, e.g., Telrite NAL, supra* note 60, at 7243, para. 27, 7244-45, para. 32; *ADMA NAL, supra* note 59, at 854, para. 33.

⁷² The Commission's rules establish that the requirement to pay TRS Fund contributions does not end until the contributor pays fully all assessments required under the Commission's rules. *See* 47 CFR § 64.604(c)(5)(iii)(A) (Service Providers "shall contribute to the TRS Fund") (emphasis added), *id.* § 64.604(c)(5)(iii)(B) ("Each subject contributor that has revenues subject to contribution *must* contribute at least \$25 per year. [If] annual contributions total less than \$1,200 [the contributor] *must* pay the entire contribution at the beginning of the contribution period [and if] contributions total \$1,200 or more [the contributor] may divide their contributions into equal monthly payments.") (emphasis added).

and continued until March 1 and March 28, 2023, respectively, when the Company fully paid its TRS Fund contributions for the above invoices.⁷³ Thus, we find that TouchTone apparently willfully and repeatedly failed to pay its TRS contributions in 2023 in a timely manner.

III. PROPOSED FORFEITURE

24. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against any entity that “willfully or repeatedly fail[s] to comply with any of the provisions of [the Act] or of any rule, regulation, or order issued by the Commission[.]”⁷⁴ Here, section 503(b)(2)(B) of the Act authorizes us to assess a forfeiture against TouchTone of up to \$244,958 for each day of a continuing violation, up to a statutory maximum of \$2,449,575 for a single act or failure to act.⁷⁵ In exercising our forfeiture authority, we must consider the “nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”⁷⁶ In addition, the Commission has established forfeiture guidelines that establish base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.⁷⁷ The forfeiture guidelines listed in section 1.80 of the Commission’s rules specifically “are intended as a guide for frequently recurring violations” and not “a complete or exhaustive list of violations.”⁷⁸

25. The Commission may adopt upward or downward adjustments to forfeitures when appropriate.⁷⁹ Under section 1.80 of the Commission’s rules, we may adjust a forfeiture upward for egregious misconduct, ability to pay and relative disincentive, an intentional violation, substantial harm, prior violations of Commission requirements, substantial economic gain, or repeated or continuous violations.⁸⁰ We may adjust a forfeiture downward for a minor violation, good faith or voluntary disclosure, a history of overall compliance, or an inability to pay.⁸¹

26. Section 503(b)(6)(B) of the Act provides that no forfeiture penalty shall be imposed if “the violation charged occurred more than one year prior to the date of issuance of the required notice or notice of apparent liability.”⁸² In this case we propose forfeitures for the Company’s apparent violations stemming from its failures to: (1) file its Annual Worksheet on April 3, 2023; (2) pay in a full and timely manner its USF assessments due on October 14, 2022, November 15, 2022, December 15, 2022, January

⁷³ See Rolka Loube E-mail, *supra* note 46. The statute of limitations for these violations is subject to the parties’ Tolling Agreement. See *supra* note 33.

⁷⁴ 47 U.S.C. § 503(b).

⁷⁵ See *id.* § 503(b)(2)(B); 47 CFR § 1.80(b)(12); see also *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).

⁷⁶ 47 U.S.C. § 503(b)(2)(E).

⁷⁷ 47 CFR § 1.80(b)(11), Note 2 to paragraph (b)(11); *Comm’n’s Forfeiture Policy Statement & Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17116-17, para. 27 (1997) (*1997 Forfeiture Guidelines*), *recon. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

⁷⁸ *1997 Forfeiture Guidelines* at 17109-10, para. 53 (citing 47 U.S.C. § 503(b)(2)(E)).

⁷⁹ See *id.* at 17110, para. 53 (citing 47 U.S.C. § 503(b)(2)(E)).

⁸⁰ 47 CFR § 1.80(b)(11), Tbl. 3 to Para. (b)(11). See also *1997 Forfeiture Guidelines*, 12 FCC Rcd at 17098-99, para. 22 (noting that “[a]lthough we have adopted the base forfeiture amounts as guidelines to provide a measure of predictability to the forfeiture process, we retain our discretion to depart from the guidelines and issue forfeitures on a case-by-case basis, under our general forfeiture authority contained in Section 503 of the Act”).

⁸¹ 47 CFR § 1.80(b)(11), Tbl. 3 to Para. (b)(11).

⁸² 47 U.S.C. § 503(b)(6)(B).

13, 2023, February 15, 2023, March 15, 2023, April 14, 2023, May 15, 2023, June 15, 2023, July 14, 2023, August 15, 2023, September 15, 2023, and October 13, 2023; and (3) pay in a full and timely manner its TRS Fund assessments due on January 15, 2023, and February 19, 2023. As discussed above, the Act and the Commission's rules issued pursuant to the Act establish that the requirements to pay USF and TRS Fund assessments impose continuing obligations to pay until the amounts owed are satisfied.⁸³ Because the obligations to pay delinquencies for these cost recovery obligations continue until the obligations are satisfied, the statute of limitations did not begin to run until the delinquencies are paid.⁸⁴

A. Proposed Forfeiture for Apparent Failure to File Worksheet By the Filing Deadline

27. Section 1.80 of the Commission's rules provides for a base forfeiture of \$3,000 for failure to file required forms or information.⁸⁵ Given the importance of the Worksheet filing requirements, however, the Commission has consistently applied an upward adjustment and proposed a forfeiture of \$50,000 for each failure of a service provider to file Worksheets.⁸⁶ We therefore propose a \$50,000 forfeiture for TouchTone's failure to file its Annual Worksheet on April 3, 2023.

B. Proposed Forfeiture for Apparent Failure to Comply with USF Payment Obligations

28. In assessing a forfeiture amount, we consider the nature, extent, and gravity of the failure to comply with the USF payment requirements to be very serious.⁸⁷ We consider universal service nonpayment to be a serious threat to a key goal of Congress and one of the Commission's primary responsibilities.⁸⁸ Failing to "pay Congressionally-mandated USF contributions strikes at the core of the Commission's mission to promote access to affordable, quality telecommunications services for all Americans."⁸⁹ Such misconduct deprives the universal service programs of critical funding.⁹⁰ Failure to make USF contributions is therefore an egregious offense.⁹¹ It not only deprives the USF of resources necessary to preserve and advance universal service, but it also bestows on delinquent entities an unfair

⁸³ See *supra* notes 60, 61, 71, 72 and accompanying text.

⁸⁴ See, e.g., *Earle v. District of Columbia*, 707 F.3d 299, 307 (D.C. Cir. 2012) (noting when "the text of the pertinent law imposes a continuing obligation to act . . . 'a party can continue to violate it until that obligation is satisfied and the statute of limitations will not begin to run until it does'" (quoting *AKM LLC v Secretary of Labor*, 675 F.3d 752, 763 (D.C. Cir. 2012) (Garland, J. concurring)); *Yukon-Kuskokwim Health Corp. v. U.S.*, 444 F. Supp. 3d 215, 220-21 (D.D.C. 2020) (finding defendants ignored deadline to act for over 25 years, did not fulfill their obligation, and pertinent code imposed a "'continuing obligation to act' on Defendants such that they 'continue to violate it until that obligation is satisfied'"); *Appalachian Voices v. McCarthy*, 989 F. Supp. 2d 30, 45 (D.D.C. 2013) (concluding that pertinent law "imposes 'a continuing obligation to act'" and defendant "continue[s] to violate it until that obligation is satisfied").

⁸⁵ 47 CFR § 1.80(b)(11), Tbl. 1 to Para. (b)(11).

⁸⁶ E.g., *PTT Phone Cards, Inc.*, Forfeiture Order, 30 FCC Rcd 14701, 14707, para. 19 (2015) (*PTT Forfeiture Order*); *ADMA Telecom, Inc.*, Forfeiture Order, 26 FCC Rcd 4152, 4155, 4162, paras. 9, 28 (2011) (*ADMA Forfeiture Order*); *Globcom Forfeiture Order*, *supra* note 6, at 4720-21, 4727, paras. 26-28, 31, 45. The Commission has applied a further upward adjustment to the forfeiture amount when Worksheet filing violations were repeated, and assessed a \$100,000 forfeiture for each failure to file a Worksheet. See, e.g., *Westel, Inc.*, Notice of Apparent Liability for Forfeiture and Order, FCC 23-55, 2023 WL 4682651, at *11 (July 20, 2023); *Pacific Data Sys.*, Notice of Apparent Liability for Forfeiture, DA 23-68, 2023 WL 1067981, at *5 (EB Jan. 25, 2023).

⁸⁷ See 47 U.S.C. § 503(b)(2)(E).

⁸⁸ *Compass Global NAL*, *supra* note 7, at 6136, para. 21.

⁸⁹ *Local Phone Servs., Inc.*, Order of Forfeiture, 23 FCC Rcd 8952, 8952-53, para. 2 (2008).

⁹⁰ *Id.*

⁹¹ See, e.g., *PayG 2023 NAL*, *supra* note 7, at *60-61, para. 43; *Telseven NAL*, *supra* note 5, at 6646-47, para. 23; *Kajeet NAL*, *supra* note 55, at 16694, para. 21; *ADMA Forfeiture Order* at 4157, para. 15; *Telrite NAL*, *supra* note 60, at 7241-42, para. 24.

competitive advantage by shifting to compliant contributors the economic costs and burdens associated with universal service.⁹² TouchTone has repeatedly failed to pay, in a full and timely manner, its contributions to the USF, ultimately reaching an outstanding delinquency of \$1,775,209 to the nearest dollar.⁹³ We have also considered the degree of the Company's culpability.⁹⁴ The Company is highly culpable for repeatedly not paying or underpaying its USF contributions for many years, particularly when it was aware of the Commission's investigation into these violations since early 2020.⁹⁵ We thus find that TouchTone's misconduct was egregious, and resulted in substantial harm to the Commission's USF cost recovery requirements under the Act.⁹⁶ Moreover, TouchTone's repeated and continuous violations resulted in a substantial economic gain to the Company, as for months it withheld up to \$1,775,209 from the USF.⁹⁷

29. Historically, the Commission has assessed a base forfeiture of \$20,000 for each month in which a contributor failed to pay a required USF contribution, and \$10,000 for each month in which a contributor failed to pay a required USF contribution in full.⁹⁸ In addition, the Commission has previously added to base forfeitures an upward adjustment of 50 percent of the delinquent contributor's USF delinquency to account for the degree of harm to the USF.⁹⁹

30. In the *PayG 2023 NAL*, however, we determined that an increase in forfeitures for payment violations was necessary in order to provide an effective deterrent.¹⁰⁰ Based on the evolution of forfeitures over time, the need for increased deterrence, the importance of the USF, and the facts and circumstances of PayG's violations in that case, we found it appropriate to increase the base forfeiture to \$100,000 for each failure of a company to pay a USF contribution in a full and timely manner.¹⁰¹ In addition, we imposed an upward adjustment of 100 percent of PayG's highest USF delinquency amount to account for the degree of harm to the USF.¹⁰² We conclude that TouchTone's conduct, as described herein, warrants continued application of these increased forfeitures.

31. We therefore propose a \$100,000 base forfeiture for each of the 13 USF payment violations that occurred within the last year, which provides for a total base forfeiture of \$1,300,000.¹⁰³ We also apply

⁹² *PayG 2023 NAL*, *supra* note 7, at *13, para. 7; *Telseven NAL*, *supra* note 9, at 6646-47, para. 23. *See also Compass Global NAL*, *supra* note 7, at 6138, para. 30 ("Nonpayment of universal service contributions is an egregious offense that bestows on delinquent carriers an unfair competitive advantage by shifting to compliant carriers the economic costs and burdens associated with universal service. A carrier's failure to make required universal service contributions hampers realization of Congress' policy objective in section 254(d) of the Act to ensure the equitable and non-discriminatory distribution of universal service costs among all telecommunications providers.").

⁹³ *See* USAC Letter, *supra* note 40, at 2.

⁹⁴ *See* 47 U.S.C. § 503(b)(2)(E).

⁹⁵ *See* Letter from Jeffrey Gee, Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to Giuseppe Bio, President, TouchTone Communications, Inc. (Feb. 19, 2020).

⁹⁶ *See* 47 CFR § 1.80(b)(11), Tbl. 3 to Para. (b)(11).

⁹⁷ *See id.*

⁹⁸ *Telseven NAL*, *supra* note 5, at 6647, paras. 23-24; *Kajeet NAL*, *supra* note 55, at 16694-95, paras. 21-22; *NTS NAL*, *supra* note 55, at 5142, paras. 12-13.

⁹⁹ *Id.*

¹⁰⁰ *PayG 2023 NAL*, *supra* note 7, at *65, para. 46.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ Applying the American Rule of Accounting, *see* 47 CFR § 54.713(e), TouchTone failed to pay on time USF contributions that were due on: (1) October 14, 2022; (2) November 15, 2022; (3) December 15, 2022; (4) January 13, 2023; (5) February 15, 2023; (6) March 15, 2023; (7) April 14, 2023; (8) May 15, 2023; (9) June 15, 2023; (10) (continued...)

an upward adjustment of 100 percent of TouchTone's highest USF delinquency amount that occurred as a result of the Company's payment violations, which was \$1,775,209 to the nearest dollar.¹⁰⁴ We therefore propose a total forfeiture of \$3,075,209 (\$1,300,000 base forfeiture + \$1,775,209 upward adjustment) for TouchTone's failure to pay 13 USF contributions by the payment deadlines.

C. Proposed Forfeiture for Apparent Failure to Comply with TRS Fund Payment Obligations

32. The TRS Fund depends on Service Providers' timely payment of contributions.¹⁰⁵ Those that violate the contribution requirements undermine the TRS Fund and may obtain an unfair advantage over their competitors who do comply with the relevant rules.¹⁰⁶ TouchTone has a long history of consistently paying its TRS Fund contributions one to two months late, including every single payment due in the 2021-2022 plan year.¹⁰⁷ Most recently, TouchTone failed to pay two TRS Fund payments in a timely manner, despite being aware that it was the subject of the Commission's investigation for this very conduct. Thus, we find that TouchTone's misconduct was egregious and resulted in substantial harm to the Commission's TRS Fund cost recovery requirements.¹⁰⁸

33. In the *PayG 2023 NAL*, as with USF payment violations, we determined that forfeitures for TRS Fund payment violations needed to increase in order to provide an effective deterrent.¹⁰⁹ We increased the base forfeiture to \$50,000 for each year in which a company failed to pay or pay fully a required TRS Fund contribution, and imposed an upward adjustment of 100 percent of the company's TRS Fund delinquency to account for the degree of harm to the TRS Fund.¹¹⁰

34. We therefore propose a \$50,000 base forfeiture for TouchTone's 2023 TRS Fund payment violations. Because TouchTone does not have a current outstanding balance with Rolka Loube, the two invoices at issue were paid less than two months late, and TouchTone's recent payment history with Rolka Loube reflects more regular timely payments,¹¹¹ we elect not to impose an upward adjustment for the instant violations. We therefore propose a total forfeiture of \$50,000 for TouchTone's failure to pay TRS Fund contributions by the payment deadlines.

July 14, 2023; (11) August 15, 2023; (12) September 15, 2023; and (13) October 13, 2023. *See* USAC Letter, *supra* note 40, at 1-2. TouchTone did not pay these invoices until, respectively: (1) April 6, 2023; (2) May 11, 2023; (3) May 26, 2023; (4) June 20, 2023; (5) July 26, 2023; (6) August 17, 2023; (7) September 13, 2023; (8) October 5, 2023; (9) October 24, 2023; (10) November 22, 2023; (11) December 21, 2023; (12) January 25, 2024; and (13) March 5, 2024. *Id.*

¹⁰⁴ *See id.*

¹⁰⁵ *Globcom NAL*, *supra* note 6, at 19904, para. 28.

¹⁰⁶ *Id.*

¹⁰⁷ *See* Rolka Loube E-mail, *supra* note 46.

¹⁰⁸ *See* 47 CFR § 1.80(b)(11), Tbl. 3 to Para. (b)(11).

¹⁰⁹ *PayG 2023 NAL*, *supra* note 7, at *71, para. 52.

¹¹⁰ *Id.*; *see also* 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80; 1997 *Forfeiture Guidelines*, 12 FCC Rcd at 17098-99, para. 22.

¹¹¹ *See* Rolka Loube E-Mail, *supra* note 46; *see also* E-Mail from Theresa Conway, Senior Program Analyst, Rolka Loube, to Ryan Mitchell, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau (Mar. 14, 2024 10:40 EDT).

D. Total Proposed Forfeiture

35. After applying the *Forfeiture Policy Statement*, section 1.80 of the Commission's rules, and the statutory factors, we propose a total forfeiture of \$3,175,209, for which TouchTone is apparently liable.¹¹²

IV. CONCLUSION

36. We have determined that TouchTone apparently willfully and repeatedly violated section 254(d) of the Act and sections 52.17(b), 52.32(b), 54.706(a), 54.711(a), and 64.604(c)(5)(iii)(A) of the Commission's Rules by failing to file Worksheets and pay its USF and TRS Fund contributions fully and on time. Accordingly, TouchTone is apparently liable for a forfeiture of \$3,175,209.

V. ORDERING CLAUSES

37. 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, TouchTone Communications, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of three million one hundred seventy-five thousand two hundred nine dollars (\$3,175,209) for willful and repeated violations of section 254(d) of the Act, 47 U.S.C. § 254(d), and sections 52.17(b), 52.32(b), 54.706(a), 54.711(a), and 64.604(c)(5)(iii)(A) of the Commission's rules, 47 CFR §§ 52.17(b), 52.32(b), 54.706(a), 54.711(a), 64.604(c)(5)(iii)(A).

38. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules,¹¹³ within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, TouchTone Communications, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 41 below.

39. In order for TouchTone Communications, Inc. to pay the proposed forfeiture, TouchTone Communications, Inc. shall notify 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 David Janas at David.Janas@fcc.gov of its intent to pay, whereupon an invoice will be posted in the Commission's Registration System (CORES) at <https://apps.fcc.gov/core/userLogin.do>. Upon payment, TouchTone Communications, Inc. 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, and David Janas at David.Janas@fcc.gov on the date said payment is made. Payment of the forfeiture must be made by credit card using CORES at <https://apps.fcc.gov/core/userLogin.do>, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:¹¹⁴

- 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

¹¹² 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.

¹¹³ 47 CFR § 1.80.

¹¹⁴ 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 159¹¹⁵ or printed CORES form¹¹⁶ 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).¹¹⁷ 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.

40. 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. 20554.¹¹⁸ 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.

41. 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.¹¹⁹ The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554, ATTN: Enforcement Bureau – Investigations and Hearings Division, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to Patrick.McGrath@fcc.gov,

¹¹⁵ FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

¹¹⁶ 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>.

¹¹⁷ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

¹¹⁸ See 47 CFR § 1.1914.

¹¹⁹ *Id.* §§ 1.16, 1.80(g)(3).

Kalun.Lee@fcc.gov, Georgina.Feigen@fcc.gov, Ryan.Mitchell@fcc.gov, David.Janas@fcc.gov, and EnforcementBureauIHD@fcc.gov.

42. 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.¹²⁰ 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.¹²¹

43. **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 Giuseppe Bio, President, TouchTone Communications, Inc., 3 Wing Drive, Suite 103, Cedar Knolls, NJ 07927, and to Henry Kelly, Esq., Kelley, Drye & Warren, LLP, 333 West Wacker Drive, 26th Floor, Chicago, IL 60606.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹²⁰ 47 U.S.C. § 503(b)(2)(E).

¹²¹ See, e.g., *Ocean Adrian Hinson, Surry County, North Carolina*, Forfeiture Order, 34 FCC Rcd 7619, 7621, para. 9 & n.21 (2019); *Vearl Pennington and Michael Williamson*, Forfeiture Order, 34 FCC Rcd 770, paras. 18-21 (2019); *Fabrice Polynice, Harold Sido and Veronise Sido, North Miami, Florida*, Forfeiture Order, 33 FCC Rcd 6852, 6860-62, paras. 21-25 (2018); *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018); *Purple Communications, Inc.*, Forfeiture Order, 30 FCC Rcd 14892, 14903-04, paras. 32-33 (2015); *TV Max, Inc., et al.*, Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014).

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

In the Matter of

Telco Experts, LLC

)
)
)
)
)

File No.: EB-IHD-23-00035755

NAL/Acct. No.: 202432080018

FRN: 0017381609

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: May 20, 2024**Released: May 22, 2024**

By the Commission:

I. INTRODUCTION

1. Under the Communications Act of 1934, as amended (Act) and the rules and orders of the Federal Communications Commission (Commission or FCC), telecommunications carriers providing interstate telecommunications services and certain interstate telecommunications providers (collectively, Service Providers) are required to file Telecommunications Reporting Worksheets (Worksheets) with the Universal Service Administrative Company (USAC) in furtherance of the Commission's universal service and other federal payment requirements implemented under the Act. The Commission has directed USAC, pursuant to Commission oversight and guidance, to administer the collection and disbursement of the Universal Service Fund (USF). USAC relies on the accuracy of information in Worksheets to determine the Service Providers' USF contribution obligations. The Commission also relies on accurate Worksheets to ensure Service Providers are fully assessed for the Telecommunications Relay Service (TRS) Fund, Local Number Portability (LNP), North American Numbering Plan (NANP), and federal regulatory fee contribution requirements.

2. In this Notice of Apparent Liability for Forfeiture (NAL), we propose a forfeiture penalty of \$400,000 against Telco Experts, LLC (Telco or Company) for its failure to cooperate with Worksheet documentation requirements and its failure to file accurate Worksheets in apparent violation of sections 251(e)(2) and 254(d) of the Act, and orders issued pursuant to section 254(d) of the Act,¹ and sections 1.1154, 52.17, 52.32, 54.706, 54.711, 64.604 of the Commission's rules.²

II. BACKGROUND**A. Legal Background****1. FCC Requirements to File Accurate Worksheets When Due**

3. The Act codifies Congress's long-standing commitment to promoting universal service to ensure that consumers in all regions of the nation have access to affordable, quality telecommunications services. In particular, section 254(d) of the Act requires, among other things, that "[e]very telecommunications carrier [providing] interstate telecommunications services . . . contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established

¹ See, e.g., *Wireline Competition Bureau Releases the 2023 Telecommunications Reporting Worksheets and Accompanying Instructions*, Public Notice, 37 FCC Rcd 12124 (WCB 2022) (*2023 Annual Worksheet Instructions*); *Wireline Competition Bureau Releases the 2022 Telecommunications Reporting Worksheets and Accompanying Instructions*, Public Notice, 36 FCC Rcd 14176 (WCB 2021) (*2022 Annual Worksheet Instructions*); *Wireline Competition Bureau Releases the 2021 Telecommunications Reporting Worksheets and Accompanying Instructions*, Public Notice, 35 FCC Rcd 13671 (WCB 2020) (*2021 Annual Worksheet Instructions*).

² 47 U.S.C. §§ 251(e)(2), 254(d); 47 CFR §§ 1.1154, 52.17, 52.32, 54.706, 54.711, 64.604.

by the Commission to preserve and advance universal service.”³ In implementing this Congressional mandate, the Commission directed all telecommunications carriers providing interstate telecommunications services to contribute to the USF based on their interstate and international end-user telecommunications revenues.⁴ The Commission also requires certain providers of interstate telecommunications to contribute to the USF.⁵

4. The Commission has established specific procedures to administer the USF. Each Service Provider, with certain exceptions, is required to contribute to the USF, file annually an FCC Form 499-A (Annual Worksheet),⁶ and file quarterly an FCC Form 499-Q (Quarterly Worksheet).⁷ USAC, as the Commission’s administrator of the USF, uses the revenue projections submitted in the Quarterly Worksheets to determine and invoice each Service Provider’s monthly universal service contribution obligation.⁸ Monthly USF contributions that were invoiced based on projected revenues reported in a Service Provider’s Quarterly Worksheets are then subject to an annual true-up based on actual revenues reported in the Service Provider’s Annual Worksheet.⁹ Each Service Provider’s Annual Worksheet for 2020 through 2022 revenues were respectively due by April 1 of 2021 through 2023.¹⁰ The Commission’s rules require that Service Providers report accurate information in the Annual Worksheets.¹¹ The Commission’s rules also explicitly warn Service Providers that the failure to file

³ 47 U.S.C. § 254(d).

⁴ 47 CFR § 54.706(b).

⁵ *Id.* § 54.706(a) (“Entities that provide interstate telecommunications to the public, or to such classes of users as to be effectively available to the public, for a fee will be considered telecommunications carriers providing interstate telecommunications services and must contribute to the universal service support mechanisms.”). Telco is a reseller of telecommunications services and has been providing interstate services since 2009. See Response to Letter of Inquiry, from Leon Nowalsky, Nowalsky & Gothard, Counsel to Telco Experts, LLC, to Patrick McGrath, Chief, Investigations & Hearings Division, FCC Enforcement Bureau at 9, Response to Inquiry 20 (Jan. 17, 2024) (on file in EB-IHD-23-00035755) (LOI Response); see also *Domestic Section 214 Application Filed For The Transfer Of Control Of Telco Experts, LLC To Redwood Services Group, LLC*, Public Notice, 35 FCC Rcd 11263, n.2 (WCB Oct. 6, 2020) (*Transfer of Control Public Notice*) (describing Telco as a reseller of telecommunications services in multiple states); Telco Experts, *Meet the Team*, <https://telcoexperts.com/meet-the-team/> (last visited April 22, 2024) (stating “Telco Experts is a voice and data telecommunications provider as well as a full-service consulting firm . . .”).

⁶ See 47 CFR § 54.711; *Telseven, LLC*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 6636, 6637, para. 2 (2012) (*Telseven NAL*), Forfeiture Order, 31 FCC Rcd 1629 (2016) (*Telseven Forfeiture Order*). Within 30 days of beginning to provide service, new Service Providers must register with the Commission by obtaining an FCC registration number (FRN) from the Commission Registration System (CORES) and obtaining a FCC Form 499 Filer ID Number (FCC Filer ID Number) from USAC’s E-File system. E.g., *2023 Annual Worksheet Instructions*, *supra* note 1, 37 FCC Rcd at 12147.

⁷ See 47 CFR § 54.711; *Telseven NAL*, 27 FCC Rcd at 6637, para. 2.

⁸ E.g., *2023 Annual Worksheet Instructions*, *supra* note 1, at 12184.

⁹ See *Federal-State Joint Board on Universal Service*, Report and Order and Order on Reconsideration, 16 FCC Rcd 5748, 5752-53, para. 12 (2001); 47 CFR § 54.711.

¹⁰ See *2023 Annual Worksheet Instructions*, *supra* note 1, at 12148; *2022 Annual Worksheet Instructions*, *supra* note 1, 36 FCC Rcd at 14200; *2021 Annual Worksheet Instructions*, *supra* note 1, at 13693 (WCB 2020) (*2021 Annual Worksheet Instructions*); Quarterly Worksheet filings are due on February 1, May 1, August 1, and November 1 of each year. See, e.g., *2023 Annual Worksheet Instructions*, *supra* note 1, at 12148. Since April 1, 2023 fell on a Saturday, the Annual Worksheet was then due on Monday, April 3, 2023. See also *2023 Annual Worksheet Instructions*, *supra* note 1, at 12148, n. 32 (“In 2023, April 1 is a Saturday. Accordingly, in 2023, FCC Forms 499-A, as well as any accompanying traffic studies or filer certifications, will be due on Monday, April 3, 2023.”).

¹¹ 47 CFR §§ 54.711(a), 54.713. An officer of a company completing an Annual Worksheet must certify, in part, as follows: “I have examined the foregoing report and, to the best of my knowledge, information and belief, all

(continued...)

timely and accurate Worksheets or submit timely USF payments potentially subjects them to enforcement action.¹²

5. To ensure that the information submitted to USAC by Service Providers is complete, timely, and accurate, the Commission's rules grant USAC the authority to verify any information contained in Annual and Quarterly Worksheets.¹³ Filers are required to maintain records and documentation to justify the information reported in the Worksheets, including the methodology used to determine revenue projections, for a period of three years, and to provide it to the Commission or USAC upon request.¹⁴ The recordkeeping requirement is necessary to verify that contributors report correct information in the Worksheets.¹⁵ The Commission and USAC can review records and documentation underlying revenue reported in a Service Provider's Worksheets to determine whether the contributor is properly reporting revenues, and thus contributing its fair share to the costs of the universal service program and other cost recovery requirements implemented under the Act.

6. Section 225 of the Act, which codifies Title IV of the Americans with Disabilities Act of 1990, directs the Commission to "ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States."¹⁶ To that end, the Commission established the TRS Fund to reimburse TRS providers for the costs of providing interstate TRS.¹⁷ The Commission implemented TRS capability rules to enable persons with hearing and speech disabilities to communicate by telephone with voice-telephone users.¹⁸ Such services provide telephone access to a significant number of Americans who without it might not be able to make calls to or receive calls from voice-telephone users.¹⁹ Pursuant to section 64.604(c)(5)(iii)(A) of the Commission's rules, certain Service Providers²⁰ must contribute to

statements of fact contained in this Worksheet are true and that said Worksheet is an accurate statement of the affairs of the above-named company for the previous calendar year." *E.g.*, 2023 FCC Form 499-A, Line 606. While the Commission requires revisions to Worksheets when errors are discovered, *see 2023 Annual Worksheet Instructions*, *supra* note 1, at 12148-49, the requirement does not affect the separate requirement to submit accurate information in the first instance to the best of the filer's knowledge, information and belief. *See* 2023 FCC Form 499-A, Line 606.

¹² 47 CFR § 54.713.

¹³ *See id.* § 54.707 (providing that USAC has the authority to audit contributors reporting data to USAC); *see also id.* § 54.711(a).

¹⁴ *Id.* § 54.711(a). Additionally, under section 54.706(e) of the Commission's rules, any entity required to contribute to the USF shall retain, for at least five years from the date of the contribution, all records that may be required to demonstrate to auditors that the contributions made were in compliance with the universal service Commission's rules. These records include without limitation the following: financial statements and supporting documentation; accounting records; historical customer records; general ledgers; and any other relevant documentation. *Id.* § 54.706(e).

¹⁵ *Federal-State Board on Universal Service*, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 25791, para. 34 (2002).

¹⁶ 47 U.S.C. § 225(b)(1).

¹⁷ *See Telecommunications Relay Servs. & the Ams. with Disabilities Act of 1990*, Third Report and Order, 8 FCC Rcd 5300, 5301, para. 7 (1993).

¹⁸ *See Telecommunications Relay Servs. and Speech-to-Speech Servs. for Individuals with Hearing and Speech Disabilities*, Report and Order, 15 FCC Rcd 5140, 5143, para. 5 (2000).

¹⁹ *Id.*

²⁰ Every carrier providing interstate or intrastate telecommunications services (including interconnected VoIP Service Providers pursuant to 47 CFR § 64.601(b)) and every provider of non-interconnected VoIP service must contribute to the TRS Fund. 47 CFR § 64.604(c)(5)(iii)(A).

the TRS Fund based on their interstate end-user revenues.²¹ Under the Commission's rules, the TRS Fund administrator, Rolka Loube Associates, LLC (Rolka Loube), uses Annual Worksheet filings to determine each Service Provider's annual or monthly TRS Fund contribution amounts.²²

7. Section 251(e)(1) of the Act directs the Commission to oversee the administration of telecommunications numbering to ensure the availability of telephone numbers on an equitable basis.²³ Section 251(e)(2) of the Act requires that "[t]he cost of establishing telecommunications numbering administration arrangements and numbering portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission."²⁴ In carrying out these statutory directives, the Commission adopted sections 52.17 and 52.32 of the Commission's rules,²⁵ which require Service Providers²⁶ to contribute to the costs of numbering administration and LNP on the basis of their end-user telecommunications revenues.²⁷ The NANP administrator's billing and collection agent, Welch LLP (Welch),²⁸ and the LNP administrator, iconectiv, LLC (iconectiv),²⁹ use Annual Worksheet filings to

²¹ *Id.* Under the Commission's rules, Service Providers must contribute at least \$25 per year, and Service Providers whose annual contributions are less than \$1,200 must pay the entire amount at the beginning of the contribution period. Otherwise, if their account is in good standing, Service Providers are permitted to divide their contributions into 12 equal monthly payments. *See id.* § 64.604(c)(5)(iii)(B).

²² *Id.* Rolka Loube replaced the National Exchange Carrier Association as the TRS Fund administrator effective July 1, 2011. *See Interstate Telecommun. Relay Serv. (TRS) Fund Adm'r Transition*, Public Notice, 26 FCC Rcd 8436 (2011).

²³ 47 U.S.C. § 251(e)(1).

²⁴ *Id.* § 251(e)(2). "Number Portability" means "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another." *Id.* § 153(37). The inability of customers to retain their telephone numbers when changing local Service Providers would hamper the development of local competition. *Telephone Number Portability*, Third Report and Order, 13 FCC Rcd 11701, 11702, para. 3 (1998), *aff'd*, Memorandum Opinion and Order on Reconsideration and Order on Application for Review, 17 FCC Rcd 2578 (2002).

²⁵ 47 CFR §§ 52.17, 52.32.

²⁶ All telecommunications carriers and interconnected VoIP providers in the United States shall contribute to meet the costs of establishing numbering administration and LNP. *See id.* §§ 52.17, 52.32.

²⁷ *See id.* § 52.17(a) ("Contributions to support numbering administration shall be the product of the contributors' end-user telecommunications revenues for the prior calendar year and a contribution factor determined annually [with] such contributions to be no less than twenty-five dollars (\$25)."); *id.* § 52.32(a) (Service Providers that have no intrastate, interstate, or international end-user telecommunications revenues derived from providing telecommunications service in areas a regional database serves must pay \$100 contributions for LNP, and if Service Providers derive intrastate, interstate, or international end-user telecommunications revenues in areas a regional database serves, the Service Providers must pay a charge that recovers the remaining shared costs of long-term number portability attributable to each Service Provider on a proportional basis).

²⁸ In 2004, the Commission selected Welch & Company, LLP as the billing and collection agent for the NANP. New Release, Fed. Comm'n's Comm'n, Federal Communications Commission Selects Welch & Co., LLP as the Next North American Numbering Plan Billing & Collection Agent (WCB Apr. 12, 2004), <https://www.fcc.gov/document/federal-communications-commission-selects-welch-company-llp-next>. In 2007, the billing and collection agent changed its name to Welch LLP. *See* Welch LLP, <https://welchllp.com> (last visited April 22, 2024); Ottawa Business Journal, *Welch LLP celebrates 100th anniversary in Ottawa* (Feb. 8, 2018), <https://obj.ca/welch-llp-celebrates-100th-anniversary-in-ottawa>.

²⁹ *See Third Local Number Portability Administrator Selection Process*, DA 24-104, 2024 WL 488170, at *4 (WCB Feb. 6, 2024) (extending the North American Numbering Council (NANC) contract with iconectiv to serve as the LNP administrator until May 2031).

determine Service Providers' required payments for covering, respectively, the costs of NANP and LNP administration.³⁰

8. The Act directs the Commission to “assess and collect regulatory fees to recover the costs of carrying out” the functions of the Commission,³¹ including “enforcement activities, policy and rulemaking activities, user information services, and international activities.”³² Consistent with this directive, the Commission has implemented rules for annual regulatory fees for entities regulated by the Commission.³³ Service Providers³⁴ must pay federal regulatory fees annually based on interstate and international end-user revenues as reported in Annual Worksheets.³⁵

2. FCC Requirements to Maintain Documentation Supporting Worksheets and to Provide Documentation to USAC or the FCC Upon Request

9. The Commission, through USAC, must be able to verify that each Service Provider is fully compliant with the Commission's Worksheet reporting requirements, thus the Commission's rules also establish the ability of USAC and the FCC to review documents that support the accuracy of information reported in Worksheets.³⁶ In order to further the goals of truthfulness and accuracy, section 54.711(a) of the Commission's rules provides that USAC has the authority to verify any information contained in Annual and Quarterly Worksheets.³⁷ Filers are required to maintain records and documentation to justify the information reported in the Worksheets, including the methodology used to determine revenue projections, for a period of three years and to provide it to the Commission or USAC upon request.³⁸

10. If a Service Provider underreports its revenues in its Worksheets, and then exacerbates the problem by not complying with USAC's attempts to verify the reported revenues through supporting documentation, the Service Provider could prevent administrators from fully invoicing the Service Provider for its USF, TRS Fund, LNP, NANP, and federal regulatory fee payment obligations.³⁹ A Service Provider's failure to comply with the Worksheet reporting and documentation functions can impede the very purpose for which Congress enacted section 254(d)—to ensure that every required contributor to the USF “contribute[s], on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.”⁴⁰ The effects on the administration of the TRS Fund, LNP, NANP and on the Commission's assessment of federal regulatory fees are similar. Indeed, a Service Provider that impedes the Commission and USAC from verifying the revenue information submitted in Worksheets can evade its

³⁰ 47 CFR §§ 52.17(b), 52.32(b).

³¹ 47 U.S.C. § 159(a); *see also id.* § 156(a).

³² 2023 *Annual Worksheet Instructions*, *supra* note 1, at 12140.

³³ *See* 47 CFR §§ 1.1152–1.1156, 1.1157(b).

³⁴ *See* Federal Communications Commission, *Regulatory Fees*, <https://www.fcc.gov/licensing-databases/fees/regulatory-fees> (identifying Commission licensees and other regulated entities that must pay federal regulatory fees) (last visited April 22, 2024).

³⁵ *See* 47 CFR § 1.1154.

³⁶ *See id.* § 54.711(a).

³⁷ *See id.*

³⁸ *See id.*

³⁹ *See id.* § 54.711(a); *Telseven NAL*, *supra* note 6, at 6643–44, 6646–48, paras. 15, 23–25, *Telseven Forfeiture Order*, *supra* note 6, at 1636, para. 20; *Telrite Corp.*, Notice of Apparent Liability for Forfeiture and Order, 23 FCC Rcd 7231, 7241–42, para. 24 (2008), *consent decree adopted*, Order, 27 FCC Rcd 4110 (2012).

⁴⁰ 47 U.S.C. § 254(d).

federal obligations to contribute fully toward the vital programs linked to the reporting rules.⁴¹ As a consequence of this evasion, other Service Providers carry an unfair burden of funding the USF and the other federal regulatory requirements arising under the Act.⁴² Delinquent Service Providers obtain an unfair competitive advantage over Service Providers that comply with the reporting provisions, and fully pay USF, TRS Fund, LNP, NANP, and federal regulatory fee assessments on time, as required under the Commission's rules.⁴³

B. Factual Background

11. Telco is a limited liability corporation that was organized in the State of Delaware on August 9, 2007.⁴⁴ The Company is a reseller of telecommunications services and provides interconnected Voice over Internet Protocol (VoIP) service in multiple states.⁴⁵ Telco provides “a comprehensive suite of enterprise grade data solutions for modern business. The suite of products offered by Telco includes Disaster Recovery, NOC services, Internet services, and consulting services.”⁴⁶ The Company is headquartered in New York, New York,⁴⁷ and began providing interstate services in 2009.⁴⁸ In 2010, Telco was granted an international 214 authority to provide resale services in accordance with section 63.18(e)(2) of the Commission's rules.⁴⁹

⁴¹ See, e.g., *Telseven NAL*, *supra* note 6, at 6638-39, para. 6; *Globalcom, Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 3479, 3484, para. 12 (2010) (*Globalcom NAL*), *consent decree adopted*, Order, 29 FCC Rcd 2593 (2014); *Local Phone Services, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 9974, 9977-78, para. 9 (2006) (*LPSI NAL*), *forfeiture issued*, Order of Forfeiture, 23 FCC Rcd 8952 (2008).

⁴² See *Telseven NAL*, *supra* note 6, at 6638-39, para. 6; *Globalcom NAL*, 25 FCC Rcd at 3484, para. 12; *LPSI NAL*, 21 FCC Rcd at 9977-78, para. 9.

⁴³ See *Telseven NAL*, *supra* note 6, at 6638-39, para. 6; *Globalcom NAL*, 25 FCC Rcd at 3484, para. 12; *LPSI NAL*, 21 FCC Rcd at 9977-78, para. 9.

⁴⁴ LOI Response, *supra* note 5, at 1, Response to Inquiry 1.

⁴⁵ Telco provides resold long distance, toll, and local exchange in the District of Columbia and the following 24 states: Alabama, Arizona, California, Connecticut, Delaware, Florida, Illinois, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Texas, Virginia, and West Virginia. LOI Response, *supra* note 5, at 9, Response to Inquiry 21; see also *Transfer of Control Public Notice*, *supra* note 5 (describing Telco as a reseller of telecommunications services in multiple states).

⁴⁶ LOI Response, *supra* note 5, at 2, Response to Inquiry 5.

⁴⁷ LOI Response, *supra* note 5, at 3, Response to Inquiry 7.

⁴⁸ LOI Response, *supra* note 5, at 9, Response to Inquiry 20.

⁴⁹ *International Authorizations Granted*, Public Notice, 25 FCC Rcd 80 (IB Jan. 7, 2010); 47 CFR § 63.18(e)(2). In July 2021, Evergreen Services Group (Evergreen) acquired Telco through its wholly owned subsidiary, Redwood Services Group, LLC (Redwood). LOI Response, *supra* note 5, at 1, Response to Inquiry 1. Telco's international 214 authority was transferred to Redwood when Redwood acquired all outstanding membership interests in Telco and Telco became a wholly owned subsidiary of Redwood. See *Transfer of Control Public Notice*, *supra* note 5. Telco accepted Redwood's offer to sell in late 2020, and the transaction was approved by both the FCC and State Regulatory Authorities in July 2021. LOI response at 2, Response to Inquiry 2(d). As a result of this transaction, Telco became a wholly owned subsidiary of Redwood and an indirect subsidiary of Evergreen. LOI Response, *supra* note 5, at 1, Response to Inquiry 1. Both Evergreen and Redwood are holding companies. LOI Response at 5, Response to Inquiry 14.

12. Telco first filed an Annual Worksheet on January 31, 2008.⁵⁰ Between January 2008 and March 2022, Telco appeared to comply with its Worksheet filing requirements.⁵¹ Between March 28, 2022 to March 29, 2024, USAC repeatedly tried to verify the accuracy of data reported in Telco's Annual Worksheet filings for 2022 and 2023.⁵² In particular, USAC repeatedly directed the Company to explain the large decreases in the amount of total non-telecommunications revenues and provide sufficient supporting documentation to support the Annual Worksheets.⁵³ The Company repeatedly failed to respond or submitted non-responsive documents, unsubstantiated claims, or late responses, thereby repeatedly preventing USAC from verifying the accuracy of the Annual Worksheet filings over the course of a nearly two year period.⁵⁴ To date, Telco has not provided USAC the documentation needed to complete the verification process for the Annual Worksheets for 2022 and 2023.⁵⁵

1. Failures to Provide Documentation Supporting the 2022 Annual Worksheet

13. On March 28, 2022, Telco filed its 2022 Annual Worksheet. USAC reviewed the 2022 Annual Worksheet and, after comparing it to the Company's 2021 Annual Worksheet, found a potential issue with Line 418.3 on the 2022 Annual Worksheet.⁵⁶ USAC noticed a large decrease in the percentage and/or amount of total revenue reported as non-telecommunications revenue on line 418.3 as compared to the amount reported the previous year.⁵⁷ USAC emailed Telco on March 28, 2022, and directed Telco to explain the difference in the amount of non-telecommunications revenue reported.⁵⁸ USAC also directed the Company to provide supporting documentation, including audited financial statements for that year, a spreadsheet detailing the annual gross billed revenues per product offered by the Company and documenting which line said revenues are reported on in the Annual Worksheet, and copies of customer invoices for the top five customers of telecommunications/interconnected VoIP reported as end users on the Annual Worksheet.⁵⁹ The response deadline was April 4, 2022, but the Company failed to respond by the deadline.⁶⁰ This was its *first* failure to comply with a response deadline between March 28, 2022 to March 29, 2024.

14. On April 22, 2022, USAC emailed Telco and notified the Company that it had not provided sufficient and/or verifiable information to support the revenues reported on the filer's 2022 Annual Worksheet.⁶¹ USAC set a deadline of May 22, 2022 for Telco to respond, and Telco again failed to do so.⁶² This was the Company's *second* failure to comply with a response deadline between March 28, 2022 to March 29, 2024. On June 3, 2022, USAC notified Telco that it had not provided the requested documentation and the Company's 2022 Annual Worksheet was now under "Final USAC

⁵⁰ Letter from Fred Theobald, Director of Contributor Operations, Universal Service Administrative Company, to Jeffrey Brown, Attorney Advisor, Investigations & Hearings Division, FCC Enforcement Bureau (Apr. 24, 2024) (on file in EB-IHD-23-00035755) (USAC Letter).

⁵¹ USAC Letter at 1.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

Review” to determine if Telco was in compliance with the FCC rules and Annual Worksheet instructions, and to determine next enforcement actions.⁶³

15. On July 15, 2022, USAC gave Telco notice by email that because the Company had failed to provide documentation supporting the information reported on the 2022 Annual Worksheet, the Company was no longer in compliance with 47 CFR § 54.711(a), 47 CFR § 54.706(e), and the Annual Worksheet instructions.⁶⁴ Telco was also given notice by email that the Company was now considered a Non-Compliant filer by USAC and could be referred to the FCC Enforcement Bureau (Bureau).⁶⁵ Telco did not respond to any of USAC’s requests regarding its 2022 Annual Worksheet.⁶⁶

2. Failures to Provide Documentation Supporting the 2023 Annual Worksheet

16. On March 27, 2023, Telco filed its 2023 Annual Worksheet.⁶⁷ On March 28, 2023 USAC sent an email to Telco identifying issues with the Company’s 2023 Annual Worksheet.⁶⁸ Specifically, the reported telecommunications revenue was categorized as ordinary long distance, despite the fact that, Telco’s website indicates that the Company sells interconnected VoIP.⁶⁹ Accordingly, USAC informed Telco that its 2023 Annual Worksheet was filled out incorrectly and needs to be revised.⁷⁰ USAC also requested supporting documentation, including audited financial statements, a spreadsheet to reconcile reporting total gross billed revenues with mapping of annual revenues to the Annual Worksheet, and a written explanation explaining any differences between the revenues reported on the Annual Worksheet and the submitted financial statements.⁷¹ Telco was directed to respond within one week of the email, a deadline of April 4, 2023, but the Company failed to comply.⁷² This was Telco’s *third* failure to comply with a response deadline between March 28, 2022 to March 29, 2024.

17. On April 12, 2023, USAC informed Telco in an email that it had not provided sufficient and/or verifiable information to support the data contained in the 2023 Annual Worksheet.⁷³ USAC directed Telco to provide any additional supporting responses, documentation, explanations and/or Officer-Certified Form revisions by May 12, 2023.⁷⁴ USAC warned that, if it did not receive the additional information, True-Up Credits related to the 2023 Annual Worksheet would be reversed and/or withheld from processing.⁷⁵ USAC also cautioned that it was important to resolve the outstanding issue in order to avoid a referral to the Bureau.⁷⁶ Despite these warnings from USAC, Telco did not respond by

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.* USAC also notified Telco by email that the 2022 Annual Worksheet would remain as “Issue Response Required” until further notice and any True-Up Credits associated with the 2022 Annual Worksheet would not be processed or reversed. *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.* at 2.

⁶⁸ *Id.*

⁶⁹ *Id.*; see also Telco Experts, *Hosted Communications Solutions*, <https://telcoexperts.com/hosted-communication-solutions/> (last visited April 22, 2024) (advertising Telco Experts Cloud Voice, Telco’s hosted phone solution).

⁷⁰ USAC Letter, *supra* note 50, at 2.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

the May 12, 2023 deadline.⁷⁷ This was Telco's *fourth* failure to comply with a response deadline between March 28, 2022 to March 29, 2024.

18. On May 31, 2023, USAC notified Telco via email that the Company's 2023 Annual Worksheet was under Final USAC Review to determine if the file is in compliance with the FCC rules and Annual Worksheet instructions, and to determine possible next enforcement actions.⁷⁸ On July 6, 2023, USAC notified Telco again via email that the Company had failed to provide sufficient information to support the 2023 Annual Worksheet and informed the Company that it was not in compliance with the Commission's reporting and documentation requirements.⁷⁹ Telco did not respond to any of USAC's requests regarding its 2023 Annual Worksheet.⁸⁰

3. Failures to File Accurate Annual Worksheets

19. USAC raised issues with the Company's 2022 and 2023 Annual Worksheets at the time of their respective filing.⁸¹ Both the 2022 and 2023 Annual Worksheets have remained in non-compliant status since the date of their filing.⁸² In August 2023, USAC referred Telco to the Bureau to investigate the repeated failures to comply with USAC directives to provide supporting documentation for both the 2022 and 2023 Annual Worksheets.⁸³ On November 16, 2023, the Bureau issued a Letter of Inquiry (LOI) concerning the Company's compliance with requirements arising under the Act and the Commission's rules.⁸⁴ On December 12, 2023, Telco requested a 30-day extension of time to submit the Company's LOI response.⁸⁵ The Bureau granted the extension request, and the Company was given a new deadline of January 17, 2024, to submit the response to the LOI.⁸⁶ On January 17, 2024, Telco submitted its response to the LOI.⁸⁷

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*; see also *supra* paras. 13 and 16.

⁸² USAC Letter, *supra* note 50, at 2.

⁸³ *Id.*

⁸⁴ See Letter of Inquiry from Patrick McGrath, Chief, Investigations & Hearings Division, FCC Enforcement Bureau, to Jake Chernansky, Chief Executive Officer, Telco Experts, LLC (Nov. 16, 2023) (on file in EB-IHD-23-00035755).

⁸⁵ E-mail from James Falvey, Counsel to Telco Experts, LLC, to Jeffrey Brown, Attorney Advisor, Investigations & Hearings Division, FCC Enforcement Bureau (Dec. 12, 2023, 15:42 EDT) (on file in EB-IHD-23-00035755).

⁸⁶ On December 19, 2023, the Bureau agreed to grant the 30-day extension request. The Bureau and the Company also entered into an agreement to toll applicable statutes of limitations for 60 days. See Tolling Agreement executed by Patrick M. McGrath, Chief, Investigations & Hearings Division, FCC Enforcement Bureau, and Jake Chernansky, Chief Executive Officer, Telco Experts, LLC (Dec. 18, 2023) (on file in EB-IHD-23-00035755) (Tolling Agreement).

⁸⁷ LOI Response, *supra* note 5. The Company submitted a supplement to its LOI response on February 15, 2024. The supplemental response consisted of a revised answer to Inquiry 39, stating that the company did charge customers to recover assessments for NANP administration obligations in 2022. Supplemental Response to Letter of Inquiry, from Leon Nowalsky, Nowalsky & Gothard, Counsel to Telco Experts, LLC, to Patrick McGrath, Chief, Investigations & Hearings Division, FCC Enforcement Bureau (Feb. 15, 2024) (on file in EB-IHD-23-00035755).

20. In response to the Bureau's LOI, the Company provided documentation that enabled USAC to analyze the accuracy of the Company's 2021, 2022, and 2023 Annual Worksheets.⁸⁸ USAC determined Telco had incorrectly reported all of their revenue on one line in all three Annual Worksheets, inaccurately reporting that the Company only provided interconnected VoIP.⁸⁹ USAC was able to determine this was inaccurate by reviewing the customer invoices included with the Company's LOI Response, which confirmed the Company has other revenue sources in addition to interconnected VoIP.⁹⁰ Telco also provides CLEC, local, IXC Resale, and long distance telecommunications.⁹¹ By reporting all of its revenue on just one line as interconnected VoIP revenue, the Company failed to report accurately in the Annual Worksheets for 2021, 2022, and 2023 all of the services the Company offers and the corresponding revenue per service offered.⁹² Thus, USAC concluded that the 2021, 2022, and 2023 Annual Worksheets were all inaccurate.⁹³

21. On December 6, 2023, the Company filed a revised 2023 Annual Worksheet with USAC and submitted a written description of the Company's 2022 revenues, including a profit and loss statement.⁹⁴ The Company claimed the profit and loss statement conformed to the 2023 Annual Worksheet with the only difference being that the revenue in Line 414.1 needed to be moved to Line 404.5.⁹⁵ However, the profit and loss statement reported all telecom revenue as "4000 Recurring VoIP," despite the Company offering both interconnected VoIP and switched Telecommunications services.⁹⁶ Telco also informed USAC that the Company's financials are not audited.⁹⁷ On December 7, 2023, the Company provided a 2022 tax return, and upon review, USAC determined that the 2022 tax return was a consolidated tax return that included revenue from other companies in addition to Telco.⁹⁸ USAC determined that the consolidated tax return did not support the profit and loss statement the Company had submitted on December 7, 2023.⁹⁹ As a result, the revised 2023 Annual Worksheet was not accepted and has since remained in Non-Compliant status with USAC.¹⁰⁰

22. On March 8, 2024, USAC notified Telco that, based upon USAC's review of the Company's LOI Response, USAC had determined that the 2021, 2022, and 2023 Annual Worksheets

⁸⁸ See LOI Response, *supra* note 5. Telco filed its 2021 Annual Worksheet on March 31, 2021. USAC Letter, *supra* note 50, at 2. At the time the 2021 Annual Worksheet was filed, USAC did not raise any issues with the Company regarding the filing. *Id.*

⁸⁹ USAC Letter, *supra* note 50, at 2.

⁹⁰ USAC's detailed analysis of the records, including customer invoices, showed that Telco's revenue is not limited to interconnected VoIP. See USAC Letter, *supra* note 50, at 2-3. The Company also provides, *inter alia*, CLEC, local, IXC Resale, and long distance telecommunications. *Id.* at 3. This information should have been reflected in the profit and loss statement provided and in the Annual Worksheets for 2021, 2022, and 2023. *Id.*

⁹¹ Specifically, the Company stated in its LOI response that it is "a non-facility-based reseller of local and IXC services and relies on access to telephone numbers through its wholesale provider of local services," but also listed several different types of telecommunications sold, including, but not limited to, CLEC, Local, IXC Reseller, long distance, and interconnected VoIP. See LOI Response, *supra* note 5, at 6 and 9, Response to Inquiries 17 and 21.

⁹² USAC Letter, *supra* note 50, at 2-3.

⁹³ *Id.* at 3.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

were inaccurate.¹⁰¹ First, the revenues reported on each Annual Worksheet do not match the revenues listed in the documentation provided with the LOI response.¹⁰² Second, the invoices produced by the Company showed that the Company provides both interconnected VoIP and switched Telecommunications services, but this was not correctly reflected in the Annual Worksheets.¹⁰³ Third, the documentation provided did not include enough detail for USAC to determine revenue revisions and the profit and loss statements produced by the Company only included a single line item outlining interconnected VoIP revenue despite the invoices showing that the Company provides switched telecommunications in addition to interconnected VoIP services.¹⁰⁴ On March 8, 2024, USAC directed Telco to revise all three Annual Worksheets by March 29, 2024, and to provide a sales report detailing the different telecommunication services sold in order for USAC to validate the revisions.¹⁰⁵ Telco failed to respond by the March 29, 2024 deadline.¹⁰⁶ This was Telco's *fifth* failure to comply with a response deadline between March 28, 2022 to March 29, 2024.

III. DISCUSSION

A. Telco Apparently Violated Commission Rules by Failing to Provide USAC Documentation Supporting the Company's Annual Worksheets

23. Based on evidence developed through the Bureau's investigation, the Company apparently willfully and repeatedly violated section 54.711(a) of the Commission's rules by failing to comply with USAC's directives to provide documentation supporting the accuracy of Telco's Annual Worksheet filings for 2022 and 2023.¹⁰⁷ Specifically, Telco failed to comply with five deadlines to provide USAC with timely, complete, and relevant documentation to support revenues reported in the Company's Annual Worksheet filings, as follows: (a) 2022 Annual Worksheet by April 4 and May 22, 2022; and (b) 2023 Annual Worksheet by April 4 and May 12, 2023; and (c) 2021, 2022, and 2023 Annual Worksheets by March 29, 2024.¹⁰⁸

24. Service Providers that file Worksheets are required to maintain documentation to support the information reported in the Worksheets and provide it to the Commission or USAC upon request.¹⁰⁹ The obligation is clearly stated in the Commission's rules and orders, is reiterated in the instructions to the Worksheets, and has been the subject of prior enforcement actions.¹¹⁰ A Service Provider must timely

¹⁰¹ *Id.*

¹⁰² *Id.*; see also LOI response, *supra* note 5.

¹⁰³ USAC Letter, *supra* note 50, at 3.

¹⁰⁴ *Id.*

¹⁰⁵ USAC directed Telco to revise the Annual Worksheets to correct revenues and telecom services reported on all three Worksheets. *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ 47 CFR § 54.711(a).

¹⁰⁸ As discussed below, three of these five failures to submit supporting documentation by USAC's deadlines on April 4 and May 12, 2023, and March 29, 2024, occurred within the statute of limitations. See 47 U.S.C. § 503(b)(6); Tolling Agreement, *supra* note 86.

¹⁰⁹ See 47 CFR § 54.711(a) ("Contributors shall maintain records and documentation to justify information reported in the Telecommunications Reporting Worksheet, including the methodology used to determine projections, for three years and shall provide such records and documentation to the Commission or the Administrator upon request."); *id.* § 54.706(e) ("Any entity required to contribute to the federal universal service support mechanisms shall retain, for at least five years from the date of the contribution, all records that may be required to demonstrate to auditors that the contributions made were in compliance with the Commission's universal service rules.").

¹¹⁰ See, e.g., 47 CFR § 54.711(a); *Enhanced Communications Group, LLC*, Notice of Apparent Liability for Forfeiture, FCC 23-54, 2023 WL 4587311, at *13, para. 38 (July 14, 2023) (*Enhanced NAL*); *RevTel*

(continued...)

respond to each directive by USAC to provide documentation supporting information reported in a Worksheet.¹¹¹ Service Providers have an obligation to respond in a timely, full, and accurate manner in every instance, regardless of the number of times USAC must follow up to obtain or clarify a response.¹¹² As described more fully above, providers that fail to comply with this obligation frustrate various congressional and FCC policies.¹¹³ We consider each individual failure to respond fully and accurately by a deadline to be a separate violation of section 54.711(a) of the Commission's rules.¹¹⁴

25. In this instance, to verify the accuracy of the Company's Annual Worksheet filings for 2022 and 2023, USAC directed the Company to provide supporting documentation. As to the 2022 Annual Worksheet, USAC directed the Company to provide documentation that explained the discrepancy between the total revenues reported on the Annual Worksheet compared to the financial statements submitted by the Company.¹¹⁵ As to the 2023 Annual Worksheet, USAC directed the Company to revise the Worksheet as it improperly categorized a service and to provide supporting documentation for its revenues.¹¹⁶ USAC's documentation directives were consistent with the Commission's rules.¹¹⁷ Yet, the Company continuously failed to comply with USAC's directives.

26. In its LOI response, Telco admits that the Company did not submit complete or timely responses to any of USAC's directives.¹¹⁸ Telco claims that the Company's responses to USAC were not submitted fully and timely due to the acquisition of Telco by Redwood Services Group, LLC.¹¹⁹ The Company claimed that the transaction made it difficult to break out the Telco "business segment" from the overall Evergreen Services Group business within the one week deadline set by USAC.¹²⁰ However,

Communications, LLC, Notice of Apparent Liability for Forfeiture, DA-23-423, 2023 WL 3685841, at *5, para. 18 (May 19, 2023) (*RevTel NAL*); *PayG, LLC*, Notice of Apparent Liability for Forfeiture, 37 FCC Rcd 11021, 11026-27 para. 38 (2022) (*PayG NAL*) (forfeiture paid); *Correct Solutions, LLC*, Notice of Apparent Liability for Forfeiture, 37 FC Rcd 4468, 4479, para. 27 (EB 2022) (*Correct Solutions NAL*); *2022 Annual Worksheet Instructions*, *supra* note 1, at 14201-02; *US South Commc'ns, Inc.*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 12668, 12676, para. 22 (EB 2020) (*US South NAL*) (forfeiture paid); *Compu-Phone Voice & Data, Inc.*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 6573, 6583, para. 23 (EB 2020) (*Compu-Phone NAL*) (forfeiture paid); *Blue Casa Tel., LLC*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 6333, 6344, para. 25 (EB 2020) (*Blue Casa NAL*) (forfeiture paid).

¹¹¹ *Enhanced NAL* at *14, para. 39 (2023); *RevTel NAL* at *6, para. 19.

¹¹² *Enhanced NAL*, at *14, para. 39; *RevTel NAL*, at *6, para. 19.

¹¹³ *See supra* para. 10.

¹¹⁴ *E.g.*, *Enhanced NAL* at *14, para. 39; *RevTel NAL* at *6, para. 19 (May 19, 2023); *PayG NAL*, at 11030, para. 22; *Correct Solutions NAL*, at 4474-75, para. 16; *US South NAL*, at 12674, para. 14.

¹¹⁵ *See* USAC Letter, *supra* note 50, at 1.

¹¹⁶ *See id.* at 2.

¹¹⁷ *See* 47 CFR §§ 54.706(e), 54.707, 54.711(a).

¹¹⁸ LOI Inquiry 49 asked Telco to state the basis for the Company's failure to respond fully and timely to USAC correspondence concerning the Company's 2022 and 2023 FCC Form 499-A filings, including but not limited to USAC correspondence to the Company on March 28, 2022, April 22, 2022, March 28, 2023, and April 12, 2023. Telco's response stated that the responses were not submitted fully and timely. LOI Response, *supra* note 5, at 19, Response to Inquiry 49.

¹¹⁹ LOI Response, *supra* note 5, at 19, Response to Inquiry 49.

¹²⁰ Telco is not specific about which of the Company's five failures to respond it is referring to in the LOI Response. *See* LOI Response, *supra* note 5, at 19, Response to Inquiry 49. USAC directed Telco on March 28, 2022 to respond regarding issues with the 2022 Annual Worksheet within a week, a deadline of April 4, 2022. USAC next directed Telco on April 22, 2022 to respond by May 22, 2022, providing the Company with an entire month to respond. Telco failed to do so. A year later, USAC directed the Company to respond with documentation

(continued...)

as acknowledged by the Company, this transaction was announced in late 2020 and consummated in July, 2021.¹²¹ The Company's failures to provide requested supporting documentation to support the 2022 and 2023 Annual Worksheets occurred after the transaction was consummated in July of 2021.¹²² Given that the transaction was consummated almost a year prior to USAC's earliest documentation request (i.e., March 28, 2022 directive to respond by April 4, 2022), there was more than sufficient time for Telco to have accurate financial documentation that separated Telco's telecommunications-related revenue from other business revenue, and from the revenue of its new parent company. The obligation to maintain accurate and current records and documentation is not excused simply because a contributor is acquired by another company. Contributors, like Telco, have an obligation to maintain records and documentation to justify all information reported in the Company's Annual Worksheet.¹²³ Telco cannot unilaterally decide to ignore documentation requests from USAC. Further, at no time after receiving USAC's request for information did the Company request a reasonable extension of time to respond to USAC's requests.¹²⁴ Rather, the Company simply chose to not respond to USAC's documentation directives.¹²⁵

27. Telco has still not provided to USAC the documentation necessary to verify the revenues Telco reported in the Company's Annual Worksheets for 2022 and 2023. By precluding USAC from verifying the Company's revenues, Telco has also prevented the FCC from determining whether Telco has fully paid its obligations under the Commission's rules for USF, TRS, LNP, NANP, and federal regulatory fee cost recovery requirements.¹²⁶ The Commission reserves the right to take further enforcement action against Telco for any violations of payment requirements arising under the Act and pursuant to the Commission's rules or orders.¹²⁷

28. We find that the Company apparently willfully and repeatedly violated section 54.711(a) of the Commission's rules by failing to comply with USAC's directives to provide documentation supporting the accuracy of the Company's Annual Worksheets. Specifically, Telco failed to submit timely and complete responses to USAC in response to directives with five separate due dates over an approximately two year period between March 28, 2022 to March 29, 2024.¹²⁸ Telco failed to submit documentation requested by USAC for the (a) 2022 Annual Worksheet by April 4 and May 22, 2022; (b) 2023 Annual Worksheet by April 4 and May 12, 2023; and (c) 2021, 2022, and 2023 Annual Worksheets by March 29, 2024.¹²⁹

supporting the 2023 Annual Worksheet within one week, a deadline of April 4, 2023. On April 12, 2023, USAC directed Telco to respond by May 12, 2023, which Telco also failed to do. *See* USAC Letter, *supra* note 50, at 1-2.

¹²¹ LOI Response, *supra* note 5, at 19, Response to Inquiry 49.

¹²² *See* USAC Letter, *supra* note 50.

¹²³ Contributors shall maintain records and documentation to justify information reported in the Telecommunications Reporting Worksheet, including the methodology used to determine projections, for three years and shall provide such records and documentation to the Commission or the Administrator upon request. 47 CFR §§ 54.711(a).

¹²⁴ *See* USAC Letter, *supra* note 50.

¹²⁵ *Id.*

¹²⁶ *See* 47 U.S.C. §§ 251(e)(2), 254(d); 47 CFR §§ 1.1154, 1.1157(b)(1), 52.17(a), 54.706(a), 64.604(c)(5)(iii)(A); *see also Blue Casa Tel., LLC*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 6333 (EB 2020) (stating that "[t]he failure of a Service Provider to maintain, and provide to the Commission and USAC upon request, records and documentation supporting its Worksheets thwarts the Commission's ability to verify reported revenue, which could result in a smaller base of USF contributions revenues than would otherwise have been reported.").

¹²⁷ The Commission also reserves the right to direct the payment of any delinquent amounts owed plus interest. *See* 47 CFR § 54.713.

¹²⁸ *See* USAC Letter, *supra* note 50.

¹²⁹ *See id.*

B. Telco Apparently Violated a Commission Rule by Repeatedly Filing Inaccurate Annual Worksheets

29. Based on the evidence developed through the Bureau's investigation, we find that Telco apparently willfully and repeatedly violated sections 52.17(b), 52.32(b), 54.711(a) and 64.604(c)(5)(iii)(B) of the Commission's rules and Commission orders by filing inaccurate Annual Worksheet filings for 2021 through 2023.¹³⁰ The Act directs the Commission to establish, administer, and maintain programs to promote universal service, TRS, LNP and effective numbering administration more generally, among other mandates.¹³¹ To help accomplish these goals, the Commission has established the USF, the TRS Fund, and cost recovery requirements for LNP and NANP. As Congress directed,¹³² the Commission funds these programs through assessments on Service Providers. To gather the data necessary to calculate the assessments, the Commission requires Service Providers to file Annual Worksheets reporting the providers' revenues from various types of services during the preceding calendar year.¹³³ The administrators of the USF, TRS, LNP, and NANP rely upon the accuracy of reported data to calculate accurately any necessary contributions.¹³⁴ The Commission also uses the Annual Worksheet data to calculate and assess annual regulatory fees in accordance with the Act.¹³⁵

30. In response to the Bureau's November 11, 2023 LOI, the Company provided documentation that enabled USAC to assess the accuracy of the Company's 2021, 2022, and 2023 Annual Worksheets.¹³⁶ Telco, in the LOI Response, stated that it had filed its Annual Worksheets with information it believed to be accurate.¹³⁷ However, after reviewing the Company's Annual Worksheet filings for 2021, 2022, and 2023, USAC reported to the Bureau that it now believed the Company's filings for all three years were inaccurate.¹³⁸ USAC had previously reviewed the 2021 Annual Worksheet at the time of filing, but did not raise any issues with the Worksheet at the time.¹³⁹ However, the new documentation included in the Company's LOI Response revealed inaccuracies with the filing that had been repeated on the 2022 Annual Worksheet.¹⁴⁰ Upon review of the customer invoices provided with the Company's LOI Response, USAC determined that Telco sold more than just VoIP and that other revenue in addition to VoIP revenue should have been reported in the Annual Worksheet filings.¹⁴¹ Thus, USAC, in its role as the Commission's

¹³⁰ See 47 CFR §§ 52.17(b), 52.32(b), 54.711(a), 64.604(c)(5)(iii)(B); *2023 Annual Worksheet Instructions*, *supra* note 1, at 12148; *2022 Annual Worksheet Instructions*, *supra* note 1, at 14200; *2021 Annual Worksheet Instructions*, *supra* note 1, at 13693.

¹³¹ See 47 U.S.C. §§ 225(b)(1)–(2), 251(b)(2), (e), 254(a)(2).

¹³² See *id.* §§ 225(d)(3), 251(e)(2), 254(d).

¹³³ See 47 CFR §§ 52.17(b), 52.32(b), 54.711(a), 64.604(c)(5)(iii)(B).

¹³⁴ Although some providers might not need to contribute to each fund and cost recovery mechanism, all Service Providers must file Annual Worksheets. See, e.g., *2022 Annual Worksheet Instructions*, *supra* note 1, 36 FCC Rcd at 14191-92.

¹³⁵ See 47 CFR § 1.1154; see also 47 U.S.C. § 159(a) (authorizing the Commission to collect annual regulatory fees to recover the costs of carrying out the functions of the Commission); *id.* § 156(a).

¹³⁶ See USAC Letter, *supra* note 50, at 2.

¹³⁷ LOI Response, *supra* note 5, at 10, Response to Inquiry 24.

¹³⁸ USAC Letter, *supra* note 50, at 3.

¹³⁹ USAC Letter, *supra* note 50, at 3.

¹⁴⁰ The profit and loss statements provided by Telco in the LOI Response reported all telecom revenue as “4000 Recurring VoIP,” however the revenues reported on the 2021 and 2022 Annual Worksheets do not include VoIP revenue. USAC Letter, *supra* note 50, at 3.

¹⁴¹ Telco incorrectly reported all of their revenue on one line on their Annual Worksheet filings despite the Company selling both VoIP and switched telecom according to the customer invoices the Company provided in the LOI Response. USAC Letter, *supra* note 50, at 3; see also LOI Response, *supra* note 5.

administer of the USF, reported to the Bureau that USAC believed the Company's Annual Worksheets for 2021, 2022, and 2023 were all inaccurate. We therefore conclude that Telco apparently willfully and repeatedly violated sections 1.1154, 52.17(b), 52.32(b), 54.711(a), and 64.604(c)(5)(iii)(B) of the Commission's rules and Commission orders by failing to file accurate Annual Worksheets for 2021, 2022, and 2023, including the revised filing for 2023 submitted on December 6, 2023.¹⁴²

IV. PROPOSED FORFEITURE

31. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against any entity that "willfully or repeatedly fail[s] to comply with any of the provisions of [the Act] or of any rule, regulation, or order issued by the Commission[.]"¹⁴³ 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.¹⁴⁴ 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,¹⁴⁵ and the Commission has so interpreted the term in the section 503(b) context.¹⁴⁶ Here, section 503(b)(2)(B) of the Act authorizes us to assess a forfeiture against Telco of up to \$244,958 for each violation or each day of a continuing violation, up to a statutory maximum of \$2,449,575 for a single act or failure to act.¹⁴⁷ In exercising our forfeiture authority, we must consider the "nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."¹⁴⁸ In addition, the Commission has established forfeiture guidelines that establish base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.¹⁴⁹ The forfeiture guidelines listed in section 1.80 of the Commission's rules specifically "are intended as a guide for frequently recurring violations" and not "a complete or exhaustive list of violations."¹⁵⁰

32. The Commission may adopt upward or downward adjustments to forfeitures when appropriate.¹⁵¹ Under section 1.80 of the Commission's rules, we may adjust a forfeiture upward for

¹⁴² See 47 U.S.C. §§ 1.1154, 52.17(b), 52.32(b), 54.711(a), 64.604(c)(5)(iii)(B); *2023 Annual Worksheet Instructions*, *supra* note 1, at 12148; *2022 Annual Worksheet Instructions*, *supra* note 1, at 14200; *2021 Annual Worksheet Instructions*, *supra* note 1, at 13693.

¹⁴³ 47 U.S.C. § 503(b).

¹⁴⁴ 47 U.S.C. § 312(f)(1).

¹⁴⁵ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) ("This provision [inserted in section 312] defines the terms 'willful' and 'repeated' for purposes of section 312, and for any other relevant section of the act (e.g., section 503) . . . As defined[,] . . . 'willful' means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. 'Repeated' means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be 'continuous' would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in sections 312 and 503, and are consistent with the Commission's application of those terms . . .").

¹⁴⁶ See, e.g., *Southern Cal. Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

¹⁴⁷ See 47 U.S.C. § 503(b)(2)(B); 47 CFR § 1.80(b)(2). See *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA-23-1198, 2023 WL 8889597 (EB Dec. 22, 2023); *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).

¹⁴⁸ 47 U.S.C. § 503(b)(2)(E).

¹⁴⁹ 47 CFR § 1.80(b)(11), Tbl. 3 to Para. (b)(11).

¹⁵⁰ See *Commission's Forfeiture Policy Statement & Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17109-10, para. 53 (1997) (citing 47 U.S.C. § 503(b)(2)(E)) (*1997 Forfeiture Guidelines Order*), *recon. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

¹⁵¹ See *1997 Forfeiture Guidelines Order*, 12 FCC Rcd at 17110, para. 53 (citing 47 U.S.C. § 503(b)(2)(E)).

egregious misconduct, ability to pay and relative disincentive, an intentional violation, substantial harm, prior violations of Commission requirements, substantial economic gain, or repeated or continuous violations.¹⁵² We may adjust a forfeiture downward for a minor violation, good faith or voluntary disclosure, a history of overall compliance, or an inability to pay.¹⁵³

33. Section 503(b)(6)(B) of the Act provides that no forfeiture penalty shall be imposed if “the violation charged occurred more than 1 year prior to the date of issuance of the required notice or notice of apparent liability.”¹⁵⁴ In this case, we propose forfeitures for the Company’s apparent failures (a) to submit timely and complete responses to USAC’s directives to provide supporting documentation by the April 4, May 12, 2023, and March 29, 2024 response deadlines, and (b) to file an accurate 2023 Annual Worksheet, including a revised version filed by the Company on December 6, 2023.¹⁵⁵

A. Failure to Cooperate with USAC Verification Directives

34. As the Commission observed in another USF enforcement action,¹⁵⁶ “the size and scope of the universal service and [other federal regulatory] programs impose a monumental burden on the Commission [and] USAC . . . to verify that each and every carrier has complied with the revenue reporting requirements. By necessity, the Commission and the other entities must rely on carriers’ compliance with our rules.”¹⁵⁷ To assist the Commission and USAC in this endeavor, the Commission’s document retention and production rules were adopted to ensure the accuracy of each Worksheet and thus ensure compliance with the Commission’s contributions requirements.¹⁵⁸ The Commission has previously imposed a \$50,000 base forfeiture for each instance in which a Service Provider failed under section 54.711(a) of the Commission’s rules to maintain documentation that supports revenues reported in Worksheets, and provide it to USAC upon request.¹⁵⁹ Based on the nature and extent of the Company’s misconduct, we propose a \$100,000 forfeiture against the Company for each of its three failures to submit timely and complete responses to USAC’s directives by the April 4, 2023; May 12, 2023; and March 29, 2024 response deadlines.

35. In assessing a forfeiture amount, we consider the nature, extent and gravity of the failure to comply with USAC’s verification functions to be very serious.¹⁶⁰ USAC’s verification of Worksheets through supporting documentation, and USAC’s ability to audit a Service Provider that files Worksheets,

¹⁵² 47 CFR § 1.80(b)(10), Tbl. 3 to Para. (b)(10). *See also 1997 Forfeiture Guidelines Order*, 12 FCC Rcd at 17098-99, para. 22 (noting that “[a]lthough we have adopted the base forfeiture amounts as guidelines to provide a measure of predictability to the forfeiture process, we retain our discretion to depart from the guidelines and issue forfeitures on a case-by-case basis, under our general forfeiture authority contained in Section 503 of the Act”).

¹⁵³ 47 CFR § 1.80(b)(11), Tbl. 3 to Para. (b)(11).

¹⁵⁴ 47 U.S.C. § 503(b)(6)(B).

¹⁵⁵ Telco and the Commission agreed to toll the one-year statute of limitations for 60 days. *See Tolling Agreement*, *supra* note 86. The statute of limitations for the earliest of these apparent violations, which occurred on April 4, 2023, therefore expires on May 31, 2023.

¹⁵⁶ *Globcom, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893 (2003) (*Globcom NAL*), *forfeiture issued*, Order of Forfeiture, 21 FCC Rcd 4710 (2006) (*Globcom Forfeiture Order*).

¹⁵⁷ *Globcom NAL*, at 19904, para. 30.

¹⁵⁸ *See Federal-State Board on Universal Serv.*, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 24971, para. 34 & n.99 (2002) (noting that “persons willfully making false statements in the Worksheets can be punished by fine or imprisonment under title 18 of the United States Code, and citing 18 U.S.C. § 1001).

¹⁵⁹ *See Enhanced NAL*, *supra* note 110, at *17, para 50; *see also RevTel NAL*, *supra* note 110, at *7, para. 25; *PayG NAL*, *supra* note 110, at 11026, para. 37; *US South NAL*, *supra* note 110, at 12676, para. 22; *Compu-Phone NAL*, *supra* note 110, at 6583, para. 23; *Blue Casa NAL*, *supra* note 110, at 6344, para. 25.

¹⁶⁰ *See* 47 U.S.C. § 503(b)(2)(E).

are vital components of ensuring the integrity of the USF. We have also considered the degree of the Company's culpability.¹⁶¹ Contributors have an important obligation to comply with USAC verification functions, and the Company is thus highly culpable for the consistent failures to respond to USAC verification directives, which were repeated in this case over multiple years. We find that Telco's failures to comply with documentation directives by the April 4, 2023; May 12, 2023; and March 29, 2024 deadlines stipulated by USAC constitute egregious misconduct.

36. Section 1.80 of the Commission's rules provides for an upward adjustment to forfeiture amounts for prior violations of any FCC requirements and for repeated or continuous violations.¹⁶² As the Commission has previously stated, given the accumulating record of non-compliance with section 54.711(a) of the Commission's rules, Service Providers contemplating failures to comply with the requirements of the rule have been on notice that we are prepared to continue to impose higher upward adjustments in future enforcement actions for prior violations and for repeated or continuous violations.¹⁶³ Although the Commission has recently issued several enforcement actions specifically involving Service Providers' failures to comply with the Worksheet documentation requirements under section 54.711(a) of the Commission's rules,¹⁶⁴ Telco nonetheless repeatedly violated the documentation requirements and prevented USAC from verifying the accuracy of their Worksheets for nearly two years.¹⁶⁵ In this case, consistent with recent enforcement actions, we therefore apply an upward adjustment to \$100,000, or 100 percent of the proposed base forfeiture, because of the repeated nature of the Company's apparent violations.¹⁶⁶

37. Thus, we propose a forfeiture of \$300,000 against the Company, which includes a \$150,000 base forfeiture for Telco's three failures to comply with USAC's documentation directives by the April 4, 2023; May 12, 2023; and March 29, 2024 deadlines established by USAC, and an upward adjustment of \$150,000 for the repeated failures to comply with USAC's directives, including five separate failures to respond to USAC directives, between April 4, 2022 and March 29, 2024.

B. Failure to File Accurate Worksheets

38. Section 1.80 of the Commission's rules lists a base forfeiture of \$3,000 for the failure to file required forms or information.¹⁶⁷ Given the importance of the Worksheet filing requirements, the Commission has consistently applied an upward adjustment and proposed a forfeiture of \$50,000 for each failure of a Service Provider to file timely or accurate Worksheets.¹⁶⁸ However, Service Providers failing to comply with these requirements have been provided notice that the Commission could impose

¹⁶¹ See *id.*

¹⁶² 47 CFR § 1.80(b)(10), Tbl. 3 to Para. (b)(10).

¹⁶³ E.g., Conquest Operator Servs. Corp., Order of Forfeiture, 14 FCC Rcd 12518, 12528, para. 20 (1999) (forfeiture paid).

¹⁶⁴ See *PayG, NAL*, *supra* note 110, at 11026-27 para. 38 (2022); see also *Correct Solutions NAL*, *supra* note 110, at 4479, para. 27; *2022 Annual Worksheet Instructions*, *supra* note 1, at 14201-02; *US South NAL*, *supra* note 110, at 12676, para. 22; *Compu-Phone NAL*, *supra* note 110, at 6583, para. 23; *Blue Casa NAL*, *supra* note 110, at 6344, para. 25.

¹⁶⁵ See USAC Letter, *supra* note 50.

¹⁶⁶ See *Enhanced NAL*, *supra* note 110, at *17, para 52 (imposing a 100% upward adjustment for repeated violations of USAC documentation and verification directives); see also *PayG NAL*, *supra* note 110, at *12, para. 38; *Correct Solutions NAL*, *supra* note 110, at *8, para. 26 (providing notice of future upward adjustments of 100 percent or more of the \$50,000 base forfeiture for repeated or continuous violations of section 54.711(a) of the Commission's rules).

¹⁶⁷ 47 CFR § 1.80(b)(10), Tbl. 1 to Para. (b)(10).

¹⁶⁸ E.g., *PTT Phone Cards, Inc.*, Forfeiture Order, 30 FCC Rcd 14701, 14707, para. 19 (2015); *ADMA Telecom, Inc.*, Forfeiture Order, 26 FCC Rcd 4152, 4155, 4162, paras. 9, 28 (2011); *Globcom Forfeiture Order*, *supra* note 156, at 4720-21, 4727, paras. 26-28, 31, 45.

substantially higher upward adjustments for prior violations and for repeated or continuous violations.¹⁶⁹ Enforcement actions for the failure to file timely or accurate Worksheets can include upward adjustments up to the statutory maximum forfeiture authorized under section 503(b)(2) of the Act.¹⁷⁰ In this case, consistent with recent enforcement actions, we propose a forfeiture of \$100,000 against the Company for its willful failure to file an accurate Annual Worksheet on December 6, 2023.¹⁷¹

39. As previously noted, in assessing a forfeiture amount, we consider the nature, extent, and gravity of the failure to comply with the Worksheet filing requirements to be very serious.¹⁷² The administrators of the USF, TRS Fund, LNP, NANP, and federal regulatory fees rely on the data reported in Worksheets to determine accurate amounts that Service Providers owe for these important funding mechanisms arising under the Act.¹⁷³ Telco's failures to file accurate Annual Worksheets each year for 2021 through 2023 impacted the administration of these funding mechanisms. We have also considered the degree of the Company's culpability.¹⁷⁴ The Company has an important obligation to file accurate Worksheets by each annual filing deadline, and Telco repeatedly failed to comply for three years. The Company is thus highly culpable for the repeated filing failures. We therefore propose a forfeiture of \$100,000 for the Company's failures to file an accurate 2023 Annual Worksheet.

C. Total Proposed Forfeiture

40. Therefore, after applying the *Forfeiture Policy Statement*, section 1.80 of the Commission's rules, and the relevant statutory factors, we propose a total forfeiture of \$400,000, for which Telco is apparently liable.¹⁷⁵

V. CONCLUSION

41. We have determined that Telco apparently willfully and repeatedly violated sections 251(e)(2) and 254(d) of the Act,¹⁷⁶ sections 1.1154, 52.17(b), 52.32(b), 54.711(a), 64.604(c)(5)(iii)(B) of the Commission's rules,¹⁷⁷ and Commission orders issued pursuant to section 254(d) of the Act,¹⁷⁸ by failing to respond to USAC documentation directives and to file accurate Annual Worksheets. As such,

¹⁶⁹ In the *Enhanced NAL*, the Company was assessed a forfeiture of \$100,000 per violation for each inaccurate Annual Worksheet filing violation found. *Enhanced NAL*, *supra* note 110, at *18, para 55 (proposing a forfeiture of \$600,000 for the Company's repeated failures to file six accurate Annual Worksheets, and providing notice that Enforcement actions for the failure to file timely or accurate Worksheets can include upward adjustments up to the statutory maximum forfeiture). The \$100,000 forfeiture per violation incorporated a higher upward adjustment than previously assessed, but prior cases that had assessed \$50,000 forfeitures per violation included notice that the Commission was prepared to impose substantially higher upward adjustments in future enforcement actions for prior violations and for repeated or continuous violations. See *PayG NAL*, *supra* note 110, at *13, para. 41 (providing notice of upward adjustments as high as the statutory maximum forfeiture for prior violations and for repeated or continuous violations).

¹⁷⁰ See 47 U.S.C. § 503(b)(2); *Enhanced NAL*, *supra* note 110, at *18, para 55; *PayG NAL*, *supra* note 110, at *13, para. 41.

¹⁷¹ Telco originally filed its 2023 Annual Worksheet on March 27, 2023, and later filed a revised 2023 Annual Worksheet on December 6, 2023. USAC Letter, *supra* note 50, at 2-3; see also *Enhanced NAL*, *supra* note 110, at *18, para 55; *PayG NAL*, *supra* note 110, at *13, para. 41; *Correct Solutions NAL*, *supra* note 110, at *8, para. 26.

¹⁷² See *supra* para. 35; 47 U.S.C. § 503(b)(2)(E).

¹⁷³ See 47 CFR §§ 1.1154, 52.17, 52.32, 54.711, 64.604(c)(5)(iii).

¹⁷⁴ See 47 U.S.C. §§ 254(d), 503(b)(2)(E).

¹⁷⁵ See 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(10), Tbl. 3 to Paragraph (b)(10).

¹⁷⁶ 47 U.S.C. §§ 251(e)(2), 254(d).

¹⁷⁷ 47 CFR §§ 1.1154, 52.17(b), 52.32(b), 54.711(a), 64.604(c)(5)(iii)(B).

¹⁷⁸ See *2023 Annual Worksheet Instructions*, *supra* note 1; *2022 Annual Worksheet Instructions*, *supra* note 1; *2021 Annual Worksheet Instructions*, *supra* note 1.

Telco is apparently liable for a forfeiture of \$400,000.¹⁷⁹

VI. ORDERING CLAUSES

42. 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, Telco Experts, LLC is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of four hundred thousand dollars (\$400,000) for willful and repeated violations of sections 251(e)(2) and 254(d) of the Act, 47 U.S.C. §§ 251(e)(2), 254(d), sections 1.1154, 52.17(b), 52.32(b), 54.711(a), 64.604(c)(5)(iii)(B) of the Commission's rules, 47 CFR §§ 1.1154, 52.17(b), 52.32(b), 54.711(a), 64.604(c)(5)(iii)(B), and Commission orders issued pursuant to section 254(d) of the Act, 47 U.S.C. § 254(d).¹⁸⁰

43. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules,¹⁸¹ within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Telco Experts, LLC **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 46 below.

44. In order for Telco Experts, LLC to pay the proposed forfeiture, Communications Technologies, Inc. shall notify Patrick.McGrath@fcc.gov, Kalun.Lee@fcc.gov, Georgina.Feigen@fcc.gov, David.Janas@fcc.gov, Jeffrey.Brown@fcc.gov, and EnforcementBureauLHD@fcc.gov of its intent to pay, whereupon an invoice will be posted in the Commission's Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. Upon payment, Communications Technologies, Inc. shall send electronic notification of payment to Patrick McGrath, Kalun Lee, Georgina Feigen, David Janas and Jeffrey Brown, Enforcement Bureau, Federal Communications Commission, at Patrick.McGrath@fcc.gov, Kalun.Lee@fcc.gov, Georgina.Feigen@fcc.gov, David.Janas@fcc.gov, Jeffrey.Brown@fcc.gov on the date said payment is made. Payment of the forfeiture must be made by credit card using CORES at <https://apps.fcc.gov/cores/userLogin.do>, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:¹⁸²

- 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 159¹⁸³ or printed CORES form¹⁸⁴ 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

¹⁷⁹ 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.

¹⁸⁰ See 2023 Annual Worksheet Instructions, *supra* note 1.; 2022 Annual Worksheet Instructions, *supra* note 1; 2021 Annual Worksheet Instructions, *supra* note 1.

¹⁸¹ 47 CFR § 1.80.

¹⁸² For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6).

¹⁸³ FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

¹⁸⁴ Information completed using the Commission's Registration System (CORES) does not require the submission of an FCC Form 159. CORES is accessible at <https://apps.fcc.gov/cores/userLogin.do>.

number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).¹⁸⁵ 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.

45. 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. 20554.¹⁸⁶ 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.

46. 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.¹⁸⁷ The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554, ATTN: Enforcement Bureau – Investigations & Hearings Division, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to Patrick McGrath, Kalun Lee, Georgina Feigen, David Janas and Pam Slipakoff, at Patrick.McGrath@fcc.gov, Kalun.Lee@fcc.gov, Georgina.Feigen@fcc.gov, David.Janas@fcc.gov, Jeffrey.Brown@fcc.gov, and EnforcementBureauIHD@fcc.gov.

47. 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.¹⁸⁸ 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

¹⁸⁵ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

¹⁸⁶ See 47 CFR § 1.1914.

¹⁸⁷ *Id.* §§ 1.16, 1.80(g)(3).

¹⁸⁸ 47 U.S.C. § 503(b)(2)(E).

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.¹⁸⁹

48. **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 Jake Chernansky, Chief Executive Officer, Telco Experts, LLC, 64 Beaver St., #135, New York, NY 10004 and to Leon Nowalsky, Esq., Nowalsky & Gothard, 1420 Veterans Memorial Boulevard, Metairie, LA 70005.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁸⁹ See, e.g., *Ocean Adrian Hinson, Surry County, North Carolina*, Forfeiture Order, 34 FCC Rcd 7619, 7621, para. 9 & n.21 (2019); *Vearl Pennington and Michael Williamson*, Forfeiture Order, 34 FCC Rcd 770, paras. 18-21 (2019); *Fabrice Polynice, Harold Sido and Veronise Sido, North Miami, Florida*, Forfeiture Order, 33 FCC Rcd 6852, 6860-62, paras. 21-25 (2018); *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018); *Purple Communications, Inc.*, Forfeiture Order, 30 FCC Rcd 14892, 14903-04, paras. 32-33 (2015); *TV Max, Inc., et al.*, Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014).

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

In the Matter of	)	
	)	
FM Translator Station K245DC,	)	Application File No. 0000130544
Carson City, NV	)	Facility ID No. 202050

MEMORANDUM OPINION AND ORDER

Adopted: May 21, 2024

Released: May 21, 2024

By the Commission:

I. INTRODUCTION

1. We have before us an Application for Review (AFR) filed on December 28, 2022, by Americom Limited Partnership (Americom), licensee of FM translator station K245DC, Carson City, Nevada (Translator).¹ Americom seeks review of a November 23, 2022, Media Bureau (Bureau) staff decision (*Staff Decision*) that denied Americom's request for a waiver (Waiver Request) of section 74.1201(g) of the Commission's rules (FM Translator Siting Rule)² and dismissed its application (Application)³ to permit the Translator to increase power from 40 watts to 250 watts.⁴ We find no error in the *Staff Decision* and, for the reasons set forth below, we deny the AFR.

II. BACKGROUND

2. The Translator is a cross-service station that rebroadcasts commonly-owned KBZZ(AM), Sparks, Nevada as its primary station. On January 5, 2021, Americom filed the Application and Waiver Request, which sought waiver of the FM Translator Siting Rule in order to permit the Translator to increase power from 40 watts to 250 watts. In support of the Waiver Request, Americom stated that the proposed operation would allow the Translator to better serve what it claims is KBZZ(AM)'s "core market" as defined by Nielsen's Radio Market Report and which includes Reno, Sparks, and Carson City, Nevada (the "Nielsen Reno Market").⁵ Americom claimed that due to the shape and size of the Nielsen Reno Market, and intervening terrain between the cities of Reno, Sparks, and Carson City, Nevada, there is low conductivity and diminished reception for KBZZ(AM) in Carson City.⁶ Americom further stated that KBZZ(AM)'s nighttime signal is severely diminished in Carson City thus further affecting reception within the Nielsen Reno Market.⁷ Americom contended that grant of the waiver would offer flexibility to

¹ Application for Review, Pleading File No. 0000205994.

² 47 CFR § 74.1201(g). This rule provides that the coverage contour of an FM translator rebroadcasting an AM station as its primary station must be contained within the greater of either the 2 mV/m daytime contour of the AM station or a 25-mile (40 km) radius centered at the AM transmitter site.

³ Application File No. 0000130544.

⁴ Letter from James D. Bradshaw, Senior Deputy Chief, Audio Division, Media Bureau, FCC to Americom Limited Partnership (Nov. 23, 2022) (on file in Application File No. 0000130544). *Actions*, Public Notice, Report No. PN-2-221128-01, 2022 WL 17335963 (Nov. 28, 2022) (denying Americom's Waiver Request and dismissing Application).

⁵ Application, Attach., "K245DC Waiver Request Attachment (00173728xC33F1).pdf." at 2-3.

⁶ *Id.* at 3.

⁷ *Id.*

serve the Nielsen Reno Market and advance the public interest by increasing the number of listeners served by KBZZ(AM), ““while not extending its signal beyond [KBZZ(AM)’s] core service area.””⁸

3. The *Staff Decision* denied the Waiver Request and dismissed the Application, finding that the Waiver Request had not displayed special circumstances that warranted deviation from the FM Translator Siting Rule.⁹ Specifically, the *Staff Decision* found that neither the irregular size and shape of the Nielsen Reno Market nor the signal degradation due to terrain obstruction, were unusual circumstances sufficient to justify grant of a waiver.¹⁰ In addition, the *Staff Decision* concluded that the public interest is best served when the Commission’s rules (Rules) are applied in a fair and consistent manner.¹¹

4. In the AFR, Americom contends that the *Staff Decision* dismissed the Waiver Request “without consideration of essential facts,” and therefore, failed to undertake the “hard look” analysis required by *WAIT Radio v. FCC*.¹² Americom further claims that the *Staff Decision* is inconsistent with the “plain language, context and spirit” of the AM revitalization efforts in the *Second AMR Report and Order*,¹³ which, it states, relaxed the requirements of the FM Translator Siting Rule in order to allow AM stations increased flexibility to better serve their “core markets.”¹⁴ Specifically, Americom claims that the Staff Decision erred by strictly applying a “primary service area” test to define KBZZ(AM)’s core market, and argues that the Commission’s decision in the Second AMR Report and Order not to implement a 40-mile limitation on an FM translator’s 1 mV/m contour supports its contention.¹⁵ The AFR claims that granting the Waiver Request is in the public interest because it would improve service to a substantial populace in KBZZ(AM)’s core service area.¹⁶

III. DISCUSSION

5. We deny the AFR because it fails to show any error in the Bureau’s analysis of Commission precedent or established policy.¹⁷ We have carefully reviewed the record before us and are

⁸ *Id.* at 2 (quoting *Revitalization of the AM Radio Service*, Second Report and Order, 32 FCC Rcd 1724, 1726 (2017)) (*Second AMR Report and Order*), recon. denied, 33 FCC Rcd 5082 (2018)).

⁹ *Staff Decision* at 2-3.

¹⁰ *Id.*

¹¹ *Id.*

¹² AFR at 4-5 (citing *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969) (*WAIT Radio*)).

¹³ *Id.* (citing *Second AMR Report and Order*).

¹⁴ *Id.*

¹⁵ *Id.* at 8.

¹⁶ *Id.* at 5.

¹⁷ See 47 CFR § 1.115(b)(2). In examining Applications for Review, the Commission will consider whether an action taken on delegated authority: (1) conflicts with statute, regulation, case precedent, or established Commission policy; (2) involves a question of law or policy which has not previously been resolved by the Commission; (3) involves application of a precedent or policy which should be overturned or revised; or (4) involves an erroneous finding as to an important or material question of fact. Among other claims, the AFR briefly asserts that the matter involves a question of law or policy which has not previously been resolved by the Commission. AFR at 5 (“To Americom’s knowledge, the precise questions of law and policy raised by the [Waiver Request] have ‘not been previously resolved by the Commission.’”). Because the AFR fails to present any substantiating arguments to support this assertion, we dismiss this claim on procedural grounds. See 47 CFR § 1.115(b)(2) (providing that the party seeking review must “specify, with particularity . . . the factor(s) which warrant Commission consideration of the questions presented”); *WGBH Educational Foundation*, Memorandum Opinion and Order, 30 FCC Rcd 7703, 7704, para. 3 n.7 (2015) (explaining that the party seeking review shall set forth fully its arguments and all underlying relevant facts “with particularity” in the Application for Review). On alternative and independent grounds, we reject this claim on the merits. To the extent the allegedly “new” question of law is defining an AM

(continued....)

unpersuaded by Americom's arguments that the Bureau (1) acted inconsistently with the *Second AMR Report and Order*; (2) failed to give the allegations in the Waiver Request a "hard look"; or (3) acted inconsistently with the public interest. Accordingly, we uphold the staff decision for the reasons below.

6. In the *2009 Translator Order*, as part of the Commission's AM revitalization efforts, the Commission authorized the use of an FM translator station to rebroadcast the signal of a primary AM station on an FM frequency within the AM station's current coverage area.¹⁸ Therein, the Commission established the FM Translator Siting Rule which, at that time, stated that the coverage contour of an FM translator rebroadcasting an AM station as its primary station must be contained within the *lesser* of the AM station's daytime 2 mV/m contour or a 25-mile radius centered at the AM transmitter.¹⁹ The Commission's decision was "intended to serve the limited purpose of allowing AM stations to fill in service voids, and not to expand service, even on a *de minimis* basis."²⁰

7. In the *Second AMR Report and Order*, the Commission amended the FM Translator Siting Rule to provide that a cross service FM translator's coverage contour must be contained within the *greater*, rather than the *lesser* of those areas.²¹ The Commission modified the rule to address the concerns of AM stations that claimed they were disadvantaged by the previous FM Translator Siting Rule. Those AM stations noted they were "employing directional signals with deep signal nulls, resulting in a 2 mV/m contour extending only a short distance from the transmitter site," or the limitations "made it difficult for AM stations having transmitters located at some distance from their communities of license, due to land costs, to locate translators nearer to those communities to facilitate service to their listening audiences."²² The Commission's decision in the *Second AMR Report and Order* highlighted, however, that its intention in relaxing the FM Translator Siting Rule was to provide "flexibility to an AM station using a cross-service translator to serve its core market while not extending its signal beyond the station's core service area."²³ The Commission stated its intention that the use of FM translators shall be fill-in and not result in extensions of service.²⁴ The Commission underscored that "the 2 mV/m contour in all cases constitutes

(Continued from previous page)

station's "core market," we find that question has been previously resolved by the Commission in determining that an AM station's "primary service area" is, in all cases, its 2 mV/m contour. *Second AMR Report and Order*, 32 FCC Rcd at 1726. To the extent that Americom believes that the Bureau lacked authority to decide its Waiver Request because the Commission has not previously considered the exact arguments or circumstances Americom presented (i.e., waiver of the FM Translator Siting Rule based upon its particular circumstances), we also reject this contention. See 47 CFR § 0.283 (providing the Bureau with delegated authority to perform all functions described in 47 CFR § 0.61, including waiver requests). In any event, this argument is moot in light of our affirmation of the Bureau's decision in this *Memorandum Opinion and Order*. See *Murray Energy Corp. v. FERC*, 629 F.3d 231, 236 (D.C. Cir. 2011) (agency's ratification of staff decision resolved any potential problems with staff's exercise of delegated authority); *PMCM TV, LLC v. RCN Telecom Services, LLC*, *Memorandum Opinion and Order*, 32 FCC Rcd 7200, 7217, para. 26 (2017), *petitions for review denied*, *PMCM, LLC v. FCC*, Nos. 17-1209 & 1210 (D.C. Cir. June 20, 2018).

¹⁸ *Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Report and Order, 24 FCC Rcd 9642 (2009) (*2009 Translator Order*).

¹⁹ *Id.* at 9642, para. 1.

²⁰ *Id.* at 9658, para. 38.

²¹ *Second AMR Report and Order*, 32 FCC Rcd at 1726-27, para. 4.

²² *Id.* at 1724-25, para. 2.

²³ *Id.* at 1726-27, para. 4.

²⁴ *Id.* See also *Updating Broad. Radio Tech. Rules*, Report and Order, 37 FCC Rcd. 2497, 2502, para. 14 (2022) (amending the definition of "AM fill-in area" set out in 47 CFR § 74.1201(j) to conform to the requirement in 47 CFR § 74.1201(g) that the "coverage contour of an FM translator rebroadcasting an AM radio broadcast station as its primary station must be contained within the greater of either the 2 mV/m daytime contour of the AM station or a 25-mile (40 km) radius centered at the AM transmitter site.").

an AM station's primary service area,"²⁵ and emphasized that the inclusion of the 2 mV/m contour as one of the limits to translator coverage "ensure[s] that the use of FM translators will not result in . . . extensions of service."²⁶ Thus, the Commission's decision to relax the FM Translator Siting Rule in the *Second AMR Report and Order* was grounded in its consideration that FM translators should not be utilized to expand the coverage of the AM primary station.

8. Based on this backdrop, we affirm the Bureau's denial of the waiver request. As an initial matter, even assuming as Americom claims that the "plain language, context and spirit" of the *Second AMR Report and Order* supports grant of the Application to allow the Translator to better serve the Nielsen Reno Market,²⁷ the text of the rule at issue (47 CFR § 74.1201(g)) controls over any alleged conflict with the "plain language, context and spirit" of the *Second AMR Report and Order*.²⁸ Section 74.1201(g) provides that the coverage contour of an FM translator rebroadcasting an AM station must be contained within the greater of either the 2 mV/m daytime contour of the AM station or a 25-mile radius centered at the AM transmitter site.²⁹ Here, Americom proposed a Translator that exceeded both of those limitations: the coverage contour of its proposed translator would extend beyond KBZZ(AM)'s 2 mV/m contour and would also extend 42 miles from KBZZ(AM)'s transmitter site. Accordingly, Americom's proposal failed to comply with the text of the rule despite Americom's claims about the "plain language, context and spirit" of the *Second AMR Report and Order*.

9. In any event, despite Americom's claim, the "plain language, context and spirit" of the *Second AMR Report and Order* does not support grant of the Application or Americom's Waiver Request. The Waiver Request defines KBZZ(AM)'s "core market" as encompassing all areas within the Nielsen Reno Market, and seeks waiver of the FM Translator Siting Rule in order to extend the Translator's coverage contour 42 miles from KBZZ(AM)'s transmitter site and beyond KBZZ(AM)'s 2 mV/m contour. We find that the Waiver Request's proposed operation is in direct conflict with the *Second AMR Report and Order* and that it was properly denied by the Bureau. In the *Second AMR Report and Order*, the Commission did not reference the Nielsen Market Report or otherwise suggest that translators could be placed to provide service throughout a market as defined by Nielsen. To the contrary, the *Second AMR Report and Order* states that an AM station's 2 mV/m contour in all cases constitutes an AM station's "primary service area,"³⁰ and that the inclusion of that contour as one of the limits to translator coverage serves to prevent extensions of service.³¹ We are unpersuaded by Americom's claim that the Commission's decision in the *Second AMR Report and Order* not to implement a 40-mile limitation on an FM translator's 1 mV/m contour was an indication of its intention to allow flexibility for situations like those mentioned in the Waiver Request. The Commission expressed that the 40-mile limitation was unduly restrictive and chose not to include it in the amended rule.³² The Commission explained that it reached this decision based on cases where substantial covered populations lie within an AM station's 2

²⁵ *Second AMR Report and Order*, 32 FCC Rcd at 1726-27, para. 4.

²⁶ *Id.*

²⁷ AFR at 4-5.

²⁸ See, e.g., *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Third Order on Reconsideration and Sixth Memorandum Opinion and Order and Fourth Memorandum Opinion and Order and Second Further Notice of Proposed Rulemaking and Declaratory Ruling, 23 FCC Rcd 5992, 6010, para. 39 (2008) ("[I]n cases where the text of the rules is inconsistent with the text of an Order, the text of the rule controls.").

²⁹ 47 CFR § 74.1201(g).

³⁰ *Second AMR Report and Order*, 32 FCC Rcd at 1726-27, para. 4.

³¹ *Id.*

³² *Id.*

mV/m daytime contour, yet are located more than 40 miles away from the station's transmitter.³³ In other words, the Commission decision not to adopt a 40-mile limitation while at the same time retaining a 2 mV/m contour limitation is fully consistent with the Commission's decision that the 2 mV/m contour is an AM station's primary service area.

10. We also reject Americom's assertion that the staff failed to give the issues raised in the Waiver Request the "hard look" required by *WAIT Radio*. The *Staff Decision* considered the justifications proffered by Americom, including the large size of the Nielsen Reno Market, and the intervening terrain and diminished nighttime signal between Sparks and Carson City, Nevada, and concluded that Americom had failed to establish special circumstances justifying its Waiver Request and that Americom's proposal would not serve the public interest.³⁴ We find that the Bureau gave the Waiver Request a "hard look," and we affirm its decision.³⁵

11. First, as the *Staff Decision* noted, a waiver request must demonstrate what special circumstances are present that warrant deviation from the general rule.³⁶ We affirm the conclusion in the *Staff Decision* that terrain obstruction and desire to expand a service area are not special circumstances warranting a waiver of the FM Translator Siting Rule.³⁷ Indeed, many stations could similarly claim the need for such a waiver based on concerns about terrain obstruction and a desire to expand service area. Second, we affirm the conclusion in the *Staff Decision* that the benefits of Americom increasing its service area beyond the parameters set forth in the FM Translator Siting Rule do not outweigh the public interest benefits of applying that rule in a fair and consistent manner.³⁸ Americom claims that the public interest would be better served by grant of the Waiver Request because it would result in service to unserved areas without expanding beyond KBZZ(AM)'s core Nielsen Reno Market and without "harmful interference to any third party."³⁹ We disagree. The Bureau highlighted the Commission's longstanding policy that it will grant waivers to depart from its core allocation rules, in particular, "only in the most compelling circumstances."⁴⁰ We concur with the Bureau's position that Americom's goal to cover the Nielsen Reno Market is inadequate grounds to justify granting the Waiver Request. This is particularly true considering the explicit directive in the *Second AMR Report and Order* that an AM Station's primary service area is defined by its 2mV/m contour, and this should be recognized as a constraint on service expansion.⁴¹ We agree with the Bureau that the public interest benefits as a whole are best served when the FM Translator Siting Rule is applied in a fair and consistent manner. Adhering to the FM Translator Siting Rule provides the benefits of administrative efficiency, predictability and minimization of disputes over compliance issues, including interference complaints.⁴² Additionally, we note that the Commission

³³ *Id.* at 1725, para. 3.

³⁴ *Staff Decision* at 2 (citing *Network IP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008) (waiver is appropriate only if both (1) special circumstances warrant a deviation from the general rule; and (2) such deviation better serves the public interest)).

³⁵ *Wait Radio v. FCC*, 418 F.2d at 1156-57 & n.9 ("[T]he agency is not required to author an essay for the disposition of each application. It suffices, in the usual case, that we can discern the 'why and wherefore.'").

³⁶ *Staff Decision* at 2. See *Network IP*, 548 F.3d at 127; *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

³⁷ *Staff Decision* at 2-3.

³⁸ *Staff Decision* at 2 ("The public interest benefits as a whole are best served when the Rules are applied in a fair and consistent manner.").

³⁹ AFR at 6.

⁴⁰ *Staff Decision* at 2 & n.8 (citations omitted).

⁴¹ *Second AMR Report and Order*, 32 FCC Rcd at 1726-27, para. 4.

⁴² *2009 Translator Order*, 24 FCC Rcd at 9658.

has previously held that particular terrain is not a basis for justifying a waiver of our spacing rules, and we likewise find that the allegedly unique terrain of the Nielsen Reno Market is not grounds for a waiver of the FM Translator Siting Rule.⁴³

12. Upon careful review of the AFR and the entire record, we conclude that Americom has failed to demonstrate that the Bureau erred. The Bureau properly decided the matters raised, and we uphold its decision. Accordingly, for the aforementioned reasons, we deny the AFR and affirm the *Staff Decision*.

IV. ORDERING CLAUSE

13. For the foregoing reasons, **IT IS ORDERED** that, pursuant to section 1.115 of the Commission's rules, the Application for Review filed by Americom Limited Partnership on December 28, 2022 (Pleading File No. 0000205994), **IS DENIED**.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁴³ *Clear Creek Radio, Inc.*, Memorandum Opinion and Order, 29 FCC Rcd 4367 (2014) (rejecting request for waiver of spacing rules on the basis that mountainous terrain would prevent stations from causing interference).

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

In the Matter of	)	
	)	
Promoting the Integrity and Security of	)	ET Docket No. 24-136
Telecommunications Certification Bodies,	)	
Measurement Facilities, and the Equipment	)	
Authorization Program	)	

NOTICE OF PROPOSED RULEMAKING

Adopted: May 23, 2024

Released: May 24, 2024

Comment Date: [60] days after Federal Register Publication

Reply Comment Date: [90] days after Federal Register Publication

By the Commission: Chairwoman Rosenworcel and Commissioners Carr, Starks, and Gomez issuing separate statements.

TABLE OF CONTENTS

Heading	Paragraph #
I. INTRODUCTION	1
II. BACKGROUND	3
A. Telecommunications Certification Bodies and Test Labs	5
B. Recent Commission Actions	18
III. DISCUSSION	22
A. Prohibiting Recognition of TCBs and Test Labs in which Entities Identified on the Covered List have Direct or Indirect Ownership or Control	23
B. Prohibiting Recognition of TCBs and Test Labs in which Other Entities that Raise National Security Concerns have Direct or Indirect Ownership or Control	26
C. Ownership, Control, or Influence by Entities that Pose an Unacceptable Risk to National Security	35
D. Rule Revisions concerning TCBs and Test Labs	42
1. Telecommunications Certification Bodies	42
2. Measurement Facilities (Test Labs)	51
IV. PROCEDURAL MATTERS	63
V. ORDERING CLAUSES	71
APPENDIX A	
APPENDIX B	

I. INTRODUCTION

1. From 5G networks and Wi-Fi routers to baby monitors and fitness trackers, a wide array of radio-frequency (RF) devices are ubiquitous in Americans' daily lives and across our economy. The FCC's equipment authorization program is tasked with ensuring that all of these devices available to American businesses and consumers comply with our rules regarding, among other things, interference, radio-frequency (RF) emissions, and hearing aid compatibility. To ensure the efficient and effective review of tens of thousands of equipment authorizations annually, the Commission delegates certain

important responsibilities to telecommunications certification bodies (TCBs) and measurement facilities (test labs) with regard to implementing our equipment authorization program. Now, as part of ongoing efforts to promote national security and protect our nation's communications equipment supply chain, the Commission has placed significant new national security related responsibilities on TCBs and test labs. By establishing new equipment authorization program rules that prohibit authorization of communications equipment that has been determined to pose an unacceptable risk to the national security of the United States or the security and safety of United States persons,¹ these entities now must help ensure that such prohibited equipment is kept out of our nation's supply chain. Further, these entities are entrusted with receiving and maintaining sensitive and proprietary information regarding communications equipment. In light of these new and ongoing responsibilities and the persistent and evolving threats posed by untrustworthy actors seeking, among other things, to compromise our networks and supply chains, today we seek to strengthen our requirements for and oversight of TCBs and test labs by proposing new rules that would help ensure the integrity of these entities for purposes of our equipment authorization program, better protect national security, and advance the Commission's comprehensive strategy to build a more secure and resilient communications supply chain. It is vital that we ensure that these entities are not subject to influence or control by foreign adversaries or other untrustworthy actors that pose a risk to national security.

2. Specifically, we propose to prohibit from recognition by the FCC and participation in our equipment authorization program, any TCB or test lab in which an entity identified on the Covered List has direct or indirect ownership or control, and prohibit reliance on or use of, for purposes of equipment authorization, any TCB or test lab that is directly or indirectly owned or controlled by any entity on the Covered List or by any third party in which an entity identified on the Covered List has any direct or indirect ownership or control. Considering our national security concerns about entities identified on the Covered List, we also direct the Office of Engineering and Technology (OET) to take swift action to suspend the recognition of any TCB or test lab directly or indirectly owned or controlled by entities identified on the Covered List, thereby preventing such entities from using their owned or controlled labs to undermine our current prohibition on Covered Equipment.² Next, we seek comment on prohibiting recognition of any TCB or test lab directly or indirectly owned or controlled by a foreign adversary or any other entity that has been found to pose a risk to national security. To that end, and consistent with Commission action in other recent national security proceedings,³ we seek comment on whether and how the Commission should consider national security determinations made in other Executive Branch agency lists in establishing eligibility qualifications for FCC recognition of a TCB or a test lab in our equipment

¹ *Protecting Against National Security Threats to the Communications Supply Chain through the Equipment Authorization Program; Protecting Against National Security Threats to the Communications Supply Chain through the Competitive Bidding Program*, ET Docket No. 21-232 and EA Docket No. 21-233, Report and Order and Further Notice of Proposed Rulemaking, 37 FCC Rcd 13493 (2022) (*EA Security R&O* and *EA Security FNPRM*, respectively).

² We note that OET has recently taken action to deny the renewal of a lab – Global Compliance and Testing Center of Huawei Technologies – apparently owned by an entity identified on the Covered List, by issuing a letter asking that they show cause as to why they should be allowed to obtain FCC re-recognition. See Letter to Global Compliance and Testing Center of Huawei Technologies, https://www.fcc.gov/sites/default/files/Global_Compliance-signed.pdf (sent April 22, 2024). We fully expect that OET will, in this interim period of this suspension, pending final rules requiring more transparency from TCBs, test labs, and entities on the Covered List, work diligently with our federal partners to take action against such entities for which there is evidence to support a reasonable conclusion that such entity is owned or controlled by an entity identified on the Covered List, while still allowing such entities an opportunity to show cause and seek review.

³ See *Review of International Section 214 Authorizations to Assess Evolving National Security, Law Enforcement, Foreign Policy, and Trade Policy Risks, Amendment of the Schedule for Application Fees Set Forth in Sections 1.1102 through 1.1109 of the Commission's Rules*, IB Docket No. 23-119 and MD Docket No. 23-134, 38 FCC Rcd 4346 (2023) (*Evolving Risks Order and NPRM*); *In the Matter of Cybersecurity Labeling for Internet of Things*, PS Docket No. 23-239, Report and Order, (FCC 24-26), __ FCC Rcd __ (adopted Mar. 14, 2024) (*Cybersecurity IoT Labeling R&O*).

authorization program.⁴ In addition, we propose that the prohibition would be triggered by direct or indirect ownership or control of 10% or more and, to help ensure that we have the information to enforce this requirement, TCBs and test labs would be required to report direct or indirect equity and/or voting interest of 5% or greater by any entity. Further, to implement the proposed national security prohibition, to ensure the integrity of the equipment authorization program and the impartiality of the TCBs and test labs within it, we propose to collect additional ownership and control information from TCBs and test labs. We also seek comment on other revisions concerning TCBs and test labs as we seek to address these issues.

II. BACKGROUND

3. The Commission's equipment authorization program, codified in the Commission's part 2 rules, plays a critical role in enabling the Commission to carry out its responsibilities under the Communications Act. Under Section 302 of the Communications Act, the Commission is authorized to make reasonable regulations governing the interference potential of equipment that emit radiofrequency (RF) energy and that can cause harmful interference to radio communications,⁵ which are implemented through the equipment authorization program. In addition, the equipment authorization program helps ensure that communications equipment comply with certain other policy objectives – which include protecting the communications networks and supply chain from equipment that poses an unacceptable risk to national security.⁶

4. Communications equipment must comply with the requirements under part 2 before they can be marketed in or imported to the United States.⁷ Under section 302(e),⁸ the Commission has delegated certain important responsibilities to TCBs and test labs with regard to implementing our equipment authorization program.

⁴ Throughout this item, we use the term “eligibility” generally to mean FCC recognition or reliance upon the results produced by the relevant entity.

⁵ 47 U.S.C. § 302a. Section 302(b) states that “[n]o person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this section.”

⁶ See *Protecting Against National Security Threats to the Communications Supply Chain through the Equipment Authorization Program*; *Protecting Against National Security Threats to the Communications Supply Chain through the Competitive Bidding Program*, ET Docket No. 21-232 and EA Docket No. 21-233, Notice of Proposed Rulemaking, and Order and Further Notice of Proposed Rulemaking, 36 FCC Rcd 10578, 10589-90, para. 23 (in addition to minimizing harmful interference of devices, the equipment authorization program ensures that devices comply with other policy objectives, such as human RF exposure limits and hearing aid compatibility of mobile handsets, and the Anti-Drug Abuse Act of 1988); *EA Security R&O*, 37 FCC Rcd 13493 (adopting rules prohibiting authorization of equipment that poses an unacceptable risk to national security).

⁷ See 47 CFR part 2 subpart I, §§ 2.801 *et seq.* (Marketing of Radio Frequency Devices); part 2 subpart J, §§ 2.901 *et seq.* (Equipment Authorization Procedures); part 2 subpart K, §§ 2.1201 *et seq.* (Importation of Devices Capable of Causing Harmful Interference). Under Section 302 of the Act, the Commission is authorized to make reasonable regulations governing the interference potential of devices that emit radiofrequency (RF) energy and that can cause harmful interference to radio communications. 47 U.S.C. § 302a. Section 302(b) states that “[n]o person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this section.” The purpose of the equipment authorization rules is to promote efficient use of the radio spectrum, to ensure that the RF communications equipment comply with all applicable Commission rules (including both technical and applicable policy requirements), and to carry out various responsibilities associated with certain treaties and international regulations. 47 CFR § 2.901. The Office of Engineering and Technology (OET) administers day-to-day operation of the equipment authorization program. See 47 CFR § 0.241(b). OET's Laboratory Division maintains a webpage devoted to the equipment authorization program. See the FCC's, Equipment Authorization Approval Guide, <https://www.fcc.gov/engineering-technology/laboratory-division/general/equipment-authorization>.

⁸ 47 U.S.C. § 302a(e).

A. Telecommunications Certification Bodies and Test Labs

5. *Telecommunications Certification Bodies (TCBs)*. The Commission's rules specify the qualification criteria for TCBs and assign TCBs responsibility for issuing equipment certifications under Commission direction and oversight.⁹ In authorizing the use of TCBs, the Commission sought to speed the process for bringing new technologies to market while also adopting an oversight framework to ensure that the TCBs act impartially and consistent with their responsibilities.¹⁰ The creation and use of TCBs in the equipment authorization process allowed the Commission to implement Mutual Recognition Agreements (MRAs) with the European Union, the Asia-Pacific Economic Cooperation, and other foreign trade partners.¹¹

6. TCBs are responsible for reviewing and evaluating applications for equipment certification for compliance with the Commission's applicable requirements (including technical compliance testing and other requirements) and determining whether to grant or to dismiss the application based on whether

⁹ *Amendment of Parts 0, 1, 2, and 15 of the Commission's Rules regarding Authorization of Radiofrequency Equipment*, ET Docket No. 13-44, Report and Order, 29 FCC Rcd 16335 (2014) (*2014 EA R&O*); *see id.* at 16340-41, paras. 9-10 (requiring that TCBs be solely responsible for grant of certification applications and noting the Commission's "continued the successful migration of additional responsibilities to TCBs while maintaining [FCC] control over critical elements of the process"). In this decision, the Commission revised several rules applicable to TCBs, including §§ 2.960, 2.962, and 2.964. *See generally* 2014 EA R&O. *See also* 1998 Biennial Regulatory Review – Amendment of Parts 2, 25 and 68 of the Commission's Rules to Further Streamline the Equipment Authorization Process for Radio Frequency Equipment, *Modify the Equipment Authorization Process for Telephone Terminal Equipment, Implement Mutual Recognition Agreements and Begin Implementation of the Global Mobile Personal Communications by Satellite (GMPCS) Arrangements*, GEN Docket No. 98-68, Report and Order, 13 FCC Rcd 24687 (1998) (*1998 TCB Order*). We note that while TCBs are authorized for purposes of certification of equipment, certain equipment may be authorized pursuant to the Supplier's Declaration of Conformity (SDoC) procedures. *See, e.g., EA Security R&O*, 37 FCC Rcd at 13506, para. 26 (discussing certification and SDoC as the two processes for equipment authorization); 47 CFR §§ 2.907 ("Certification"); 2.906 ("Supplier's Declaration of Conformity").

¹⁰ *See generally* 2014 EA R&O, 29 FCC Rcd 16335.

¹¹ *See* 1998 TCB Order, 13 FCC Rcd 24687, __, para. 10 (1998). MRAs are government-to-government trade facilitating measures aimed at a global approach to conformity assessment, providing a framework for all member economies (countries) to follow. In each of these agreements, participating countries agree to accept test results and/or product approvals (e.g., certifications) performed by the conformity assessment bodies of the other country. *See, e.g.,* <https://www.fcc.gov/general/equipment-authorization-mutual-recognition-agreements>; KDB publication 901874, <https://apps.fcc.gov/oetcf/kdb/forms/FTSSearchResultPage.cfm?switch=P&id=203873>. In the United States, MRAs as a general matter are negotiated through the U.S. Trade Representative. The Commission participates in eight MRAs concerning TCBs – Asia-Pacific Economic Cooperation (APEC) Telecom MRA; Intra-American Telecommunications Committee of the Organization of American States MRA; European Union MRA; European Free Trade Association (EFTA) MRA; Japan MRA; Israel MRA; Mexico MRA; and United Kingdom MRA. *See* KDB 901874, "Mutual Recognition Agreements," found at <https://www.fcc.gov/general/equipment-authorization-mutual-recognition-agreements>. *See* Asia-Pacific Economic Cooperation (APEC) Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment, May 8, 1998 (*APEC MRA*); Agreement on Mutual Recognition Between the United States of America and the European Community, May 18, 1998, KAV 5464 (*EU MRA*); Agreement on Mutual Recognition Between the United States of America and the EEA EFTA States, Oct. 17, 2005 (*EFTA MRA*); The Inter-American Telecommunication Mutual Recognition Agreement for Conformity Assessment of Telecommunications Equipment, Oct. 29, 1999 (*CITEL MRA*); Agreement on Mutual Recognition of Results of Conformity Assessment Procedures, with Annex, U.S.-Jap., Feb. 16, 2007 (*Japan MRA*); Mutual Recognition Agreement Between The Government of The United States of America And the Government of the State of Israel for Conformity Assessment of Telecommunications Equipment, U.S.-Isr., Oct. 15, 2012 (*Israel MRA*); Mutual Recognition Agreement for Conformity Assessment of Telecommunications Equipment, with Appendices and Annexes, U.S.-Mex., May 26, 2011, TIAS 11-610 (*Mexico MRA*); Agreement on Mutual Recognition, U.S.-U.K., Feb. 14, 2019 (*U.K. MRA*). Pursuant to five of these MRAs (APEC, EU, EFTA, Japan, and UK), TCBs have been recognized.

it is in accord with Commission requirements.¹² TCBs must meet all the appropriate specifications in the ISO/IEC 17065 standard,¹³ which include requirements to ensure that TCBs carry out their responsibilities in a “competent, consistent, and impartial manner.”¹⁴ Commission rules also impose certain obligations on each TCB to perform post-market surveillance, based on “type testing a certain number of samples of the total number of product types” that the TCB has certified.¹⁵

7. To carry out their prescribed equipment certification responsibilities, under current rules TCBs must be accredited based on determinations made by a Commission-recognized accreditation body¹⁶ and recognized by the Commission before they are authorized to evaluate applications for equipment authorization.¹⁷ Under Commission rules, TCBs must be located in the United States or in countries that have entered into applicable Mutual Recognition Agreements (MRAs) with the United States.¹⁸

8. For TCBs located outside of the United States, designation is authorized in accordance with the terms of an effective bilateral or multilateral MRA to which the United States is a party.¹⁹ Pursuant to each MRA, participating countries agree to accept the equipment authorizations performed by the TCB-equivalent conformity assessment body of the other country.²⁰ There are 15 FCC-recognized Designating Authorities in MRA-partnered countries.²¹ These Designating Authorities are governmental organizations associated with MRA-partnered economies.²² Currently there are 40 FCC-recognized

¹² See generally 47 CFR §§ 2.915, 2.960(a) (the TCB shall review the application to determine compliance with the Commission’s requirements), 2.962(f) (“Scope of responsibility”). The TCB program – including the TCBs’ roles and responsibilities – are discussed in KDB 641163 (2023). See [Telecommunication Certification Body – Roles and Responsibilities – KDB Publication 641163](#). If the Commission publishes a “Pre-approval Guidance List” identifying categories of equipment or types of testing for which a TCB must request guidance, then the TCB must request such guidance before approving equipment on the list. 47 CFR § 2.964(a).

¹³ See, e.g., 47 CFR § 2.962(c)(1).

¹⁴ ISO/IEC 17065 at v (“Introduction”). See also *id.*, sections 4.2.2, 5.1.1, and 5.2; Annex A (“Impartiality”).

¹⁵ 47 CFR § 2.962(g)(1). TCBs may request samples of equipment directly from the grantee. *Id.* § 2.962(g)(4).

¹⁶ 47 CFR § 2.962(c) (requiring that TCBs meet all the requisite requirements of ISO/IEC 17065). Section 2.962(c)(6) requires that the FCC “provide[] public notice of specific methods that will be used to accredit TCBs, consistent with these qualification criteria.” 47 CFR § 2.962(c)(6). KDB 641163 (“TCB Roles and Responsibilities”) <https://apps.fcc.gov/oetcf/kdb/forms/FTSSearchResultPage.cfm?switch=P&id=44683> and KDB 668797 (“TCB Program Technical Assessment”), found at <https://apps.fcc.gov/oetcf/kdb/forms/FTSSearchResultPage.cfm?switch=P&id=59239>.

¹⁷ See 47 CFR § 2.960(a) (the Commission may recognize TCBs that have been accredited and designated in the United States or outside the United States provided that the TCB is designated in accordance with the terms of an effective bilateral or multilateral MRA); 47 CFR § 2.962(e). See also KDB 901874, “Mutual Recognition Agreements,” <https://www.fcc.gov/general/equipment-authorization-mutual-recognition-agreements>, at 5-6 (discussing general FCC requirements for recognition of TCBs).

¹⁸ TCBs located in the United States must be accredited by TCB accreditation bodies designated by the National Institute of Standards and Technology (NIST) based on ISO/IEC 17065.

¹⁹ 47 CFR § 2.960(c). An equipment authorizing body in an MRA partner economy may authorize equipment to U.S. requirements only if that economy permits bodies in the United States to authorize equipment to its requirements. *Id.*

²⁰ See generally *id.* The MRAs do not attempt to harmonize the respective regulatory requirements or technical standards. *Id.*

²¹ See https://apps.fcc.gov/oetcf/tcb/reports/accreditor_report.cfm.

²² As of March 26, 2024, the FCC recognizes TCB designations by Designating Authorities from outside the United States in the following countries (under different MRAs) – Austria, Canada, the Czech Republic, Germany, Denmark, Spain, France, Hong Kong, Ireland, Italy, Japan, Netherlands, Sweden, Singapore, and United Kingdom. See https://apps.fcc.gov/oetcf/tcb/reports/accreditor_report.cfm. Ten of these countries are within the European (continued....)

TCBs,²³ the majority of which are located in the United States and the rest are located in nine MRA-partnered countries.²⁴

9. Finally, the Commission will withdraw recognition of a TCB if the TCB's designation or accreditation is withdrawn, the Commission determines that there is "just cause," or the TCB requests that it no longer hold a recognition.²⁵ Our rules also set forth specific procedures, including notification requirements, that the Commission will follow if the Commission intends to withdraw its recognition of a TCB.²⁶

10. *Test labs.* Test labs ensure that subject equipment complies with the Commission's applicable technical rules²⁷ to minimize the risk of harmful interference, promote efficient use of spectrum, and advance other policy goals, such as ensuring hearing aid compatibility and controlling the environmental effects of RF radiation.²⁸ The role and responsibilities of test labs specifically concern the development of technical reports on testing equipment for which authorization is sought for compliance with the Commission's applicable technical requirements.²⁹ Applicants for equipment certification provide the testing data to a TCB to show compliance with the FCC requirements.

11. For all granted applications, the TCBs must send to the FCC any test lab data and other information relied upon by the TCB.³⁰ This information is made publicly available on the FCC website upon grant of the equipment authorization. Under our rules, test labs do not have any role or

Community. Hong Kong is a member state in the APEC MRA, which was agreed upon by the APEC Ministers in 1998.

²³ The Commission's website provides a searchable database of all currently recognized TCBs. 47 CFR § 2.962(e)(5). See <https://apps.fcc.gov/oetcf/tcb/reports/TCBSearch.cfm>. With respect to our obligations toward those TCBs designated pursuant to an MRA, each and every such agreement preserves the rights of, and provides specific procedures for, the United States to contest the competency of, and withdraw recognition of, an exporting party's TCB. See *EU MRA* arts. 7-9; *APEC MRA* art 8; *CITEL MRA* art. 8; *Israel MRA* art. 9; *Japan MRA* art. 8; *Mexico MRA* art. 8; *EFTA MRA* arts. 8-9; *U.K. MRA* art. 7.

²⁴ Most TCBs are located in the United States (21), and the others (19) are located in nine different countries: Austria (1), Canada (4), Germany (5), Hong Kong (1), Netherlands (1), Singapore (1), Spain (2), Sweden (1), and United Kingdom (3).

²⁵ 47 CFR § 2.962(e) (the Commission will withdraw its recognition of a TCB "if the Commission determines there is just cause for withdrawing the recognition").

²⁶ 47 CFR § 2.962(e)(2)-(4).

²⁷ 47 CFR § 2.911(e) (submission of technical data to the TCB is one of several application requirements set forth in section 2.911).

²⁸ See, e.g., *Amendment of Parts 0, 1, 2, and 15 of the Commission's Rules regarding Authorization of Radiofrequency Equipment*, ET Docket No. 13-44, Notice of Proposed Rulemaking, 28 FCC Rcd 1606, 1614, para. 11 (2013). The Commission's hearing aid compatibility rules promote equal access to communications services for individuals with hearing loss, and ensure the availability of wireless handsets that are compatible with hearing aids and cochlear implants. See, e.g., *Improvements to Benchmarks and Related Requirements Governing Hearing Aid-Compatible Mobile Handsets*, WT Docket No. 15-285, Report and Order, 31 FCC Rcd 9336 (2016). The Commission's rules establish RF radiation exposure limits for devices as part of the equipment certification process for mobile and portable devices. See 47 CFR §§ 1.1307(b), 1.1310, 2.1091, 2.1093. See also 47 CFR § 74.795, which specifies the operating requirements that are part of the equipment certification process for digital low power TV and TV translator transmitters, and 47 CFR § 15.117(h), which specifies the operating requirements that are part of the equipment Verification procedure for DTV broadcast receivers.

²⁹ See 47 CFR §§ 2.947-2.949 for applicable rules concerning test labs, including their roles and responsibilities, the necessary accreditation (and periodic re-evaluation) of test labs by a Commission-recognized accrediting body, and the Commission recognition of accredited test labs.

³⁰ 47 CFR § 2.962(f)(8). Applicants may, under certain circumstances, apply for confidential treatment of application data. See KDB 726920, available at <https://apps.fcc.gov/oetcf/kdb/forms/FTSSearchResultPage.cfm?switch=P&id=41731>.

responsibility for making any certification decision on whether the equipment would be in compliance, nor do they have any role with respect to any other certification determination, including on whether the equipment constitutes “covered” equipment; all certification activities (evaluation, review, and decisional determinations) are reserved for TCBs.³¹

12. Under Commission rules, testing for equipment certification can only be performed by a test lab that has been accredited by an FCC-recognized accreditation body and recognized by the Commission.³² Applicable rules require that these test labs be accredited based on ISO/IEC 17025.³³ Our rules require that entities wishing to become a recognized laboratory accreditation body must submit a written request to the Chief of OET and submit evidence concerning their credentials and qualifications to perform accreditation of laboratories that test equipment to Commission requirements, consistent with the technical requirements set forth under section 2.948(e).³⁴ Applicants must successfully complete and submit a peer review.³⁵ Under the ISO/IEC 17011 standard, accreditation body applicants must meet specified impartiality, management, and accreditation requirements, and otherwise meet accreditation body responsibilities.³⁶ OET publishes its findings and maintains a webpage on FCC-recognized accreditation bodies.³⁷

13. We note, however, that Commission rules do not currently require accreditation and FCC recognition of test labs that are relied upon as part of the Supplier’s Declaration of Conformity (SDoC) process for obtaining an equipment authorization.³⁸ In 2017, the Commission revised its rules to no longer require testing by accredited and FCC-recognized test labs for equipment with a reduced potential to cause harmful interference authorized in the SDoC process. The SDoC process applies, generally, to equipment that does not contain a radio transmitter and contains only digital circuitry—such as computer peripherals, microwave ovens, ISM equipment, switching power supplies, LED light bulbs, radio receivers, and TV interface devices.³⁹

³¹ See 47 CFR §§ 2.915, 2.960(a) (the TCB shall review the application to determine compliance with the Commission’s requirements), 2.962(f) (“Scope of responsibility”).

³² 47 CFR § 2.948(a).

³³ 47 CFR §§ 2.948(a), (e); ISO/IEC 17025:2017(E) (“General requirements for the competence of testing and calibration laboratories”) (ISO/IEC 17025); see 47 CFR § 2.910(d). See *2014 EA R&O*, 29 FCC Rcd at 16354-55, para. 45 (requiring that all laboratories that perform certification testing be accredited to ISO/IEC 17025 and revising sections 2.948(a) and (e) accordingly). In this decision, the Commission eliminated the long-standing option for test labs located in countries that do not have an MRA with the United States to be recognized by the FCC by filing a separate request (with submissions) under section 2.948 to obtain an OET approval. The Commission sought to ensure that test labs are accredited to the same applicable standards under ISO/IEC 17025. *Id.* at 16354-55, paras. 45-47.

³⁴ 47 CFR § 2.949(a)-(b). See *2014 EA R&O*, 29 FCC Rcd at 16356-58, paras. 50-53.

³⁵ 47 CFR § 2.949(b)(1) (applicants shall provide evidence of their credentials and qualifications to perform accreditation of test labs, which includes “[s]uccessful completion of an ISO/IEC 17011 [] peer review”). See ISO/IEC 17011 (“Conformity Assessment – General requirements for accreditation bodies accrediting conformity assessment bodies”), ISO/IEC 17011:2004(E) (ISO/IEC 17011. Requirements contained in ISO/IEC 17011 are used to support peer evaluation mechanisms created at regional and international levels. Highly qualified and experienced experts conduct review to provide confidence that accreditation bodies around the world operate to the same standards.

³⁶ See generally ISO/IEC 17011.

³⁷ *Id.* at 2-4. See <https://apps.fcc.gov/oetcf/mra/reports/AccreditingBodyReport.cfm>.

³⁸ See *Supplier’s Declaration of Conformity Guidance*, 896810 D01 SDoC v02 (OET Dec. 20, 2019), <https://apps.fcc.gov/oetcf/kdb/forms/FTSSearchResultPage.cfm?id=203240&switch=P>.

³⁹ *Amendment of Parts 0, 1, 2, and 15 of the Commission’s Rules regarding Authorization of Radiofrequency Equipment*, ET Docket No. 15-170, Report and Order, 32 FCC Rcd 8746, 8749-51, paras. 4, 7-8 (2017) (noting generally that equipment authorized under the SDoC process have reduced potential to cause harmful interference, (continued....))

14. The Commission recognizes four accreditation bodies in the U.S. that can designate test labs that operate in the United States.⁴⁰ As for accreditation of test labs outside of the United States in countries that have entered into an MRA, section 2.948(f)(1) provides that test lab accreditation will be acceptable if the accredited laboratory has been designated by a foreign designating authority and recognized by the Commission under the terms of an MRA.⁴¹ Currently there are 24 such FCC-recognized test lab accreditation bodies outside the United States, located in 23 different MRA-partnered countries.⁴²

15. The Commission has a separate rule provision concerning the accreditation bodies that are permitted to accredit test labs in countries that do not have an MRA with the United States. If the test lab is located in a country that does not have an MRA with the United States, then the test lab must be accredited by an organization recognized by the Commission to perform accreditations in non-MRA countries.⁴³ Currently, the Commission has recognized three such accrediting bodies.⁴⁴ In response to requests from industry for clarifying the process by which test labs are accredited in non-MRA countries, the Commission in 2016 directed OET to provide clearer guidance on accreditation of test labs in non-MRA-partnered countries.⁴⁵ Current rules do not preclude an accreditation body that is not in an MRA-

the Commission concluded that accredited and FCC-recognized test labs were not needed for purposes of ensuring compliance with RF rules designed to prevent harmful interference).

⁴⁰ American Association for Laboratory Accreditation (A2LA), National Voluntary Laboratory Accreditation Program (NVLAP), ANSI National Accreditation Board (ANAB), and Perry Johnson Laboratory Accreditation Inc. (PJLA).

⁴¹ 47 CFR § 2.948(f)(1). As noted above, the FCC participates in eight MRAs. A recognized designating authority in any of the participating economies can assess and designate a competent testing lab to the FCC and request FCC recognition. The designation process requires the designating authority submit information establishing the capabilities of the test lab.

⁴² We note that the Test Lab Accrediting Bodies in MRA countries outside of the United States generally are governmental agencies. <https://apps.fcc.gov/oetcf/mra/reports/AccreditingBodyReport.cfm> In its recognition of these accreditation bodies, the FCC specifies for each accreditation body the countries in which the test labs can be accredited for operation. For instance, IANZ of New Zealand is recognized to only designate test labs in New Zealand but A2LA in the US is recognized to designate test labs in China, India, Philippines, Thailand, and the U.S.

⁴³ 47 CFR § 2.948(f)(2). Since July 6, 2017, the Commission has recognized four test lab accrediting bodies that potentially may accredit test labs in non-MRA-partnered countries. These are all based in the United States – American Association for Laboratory Accreditation, National Voluntary Laboratory Accreditation Program, ANSI National Accreditation Board, and Perry Johnson Laboratory Accreditation, Inc.

⁴⁴ These accrediting bodies (all of which also can accredit test labs in the United States) are the American Association for Laboratory Accreditation (which can accredit test labs in China, India, Philippines, Thailand); the National Voluntary Laboratory Accreditation Program (which can accredit test labs in China, India, Indonesia, Philippines, Russian Federation, Switzerland, Thailand, Ukraine); and the ANSI National Accreditation Board (which can accredit test labs in China, India, Indonesia, Philippines, Russian Federation, Switzerland, Thailand, Ukraine, and United States). See <https://apps.fcc.gov/oetcf/mra/reports/AccreditingBodyReport.cfm>. We note that to date only U.S.-based accreditation bodies have applied for FCC recognition for the authority to accredit test labs in countries that are not within any MRA-partnered economies.

⁴⁵ See KDB 974614 (“Accredited Testing Laboratory Roles and Responsibilities D02”) (last updated March 2, 2018), <https://apps.fcc.gov/oetcf/kdb/forms/FTSSearchResultPage.cfm?switch=P&id=44684>. Commission rules do not foreclose the possibility that an accreditation body in an MRA-partnered economy could be recognized by the Commission to accredit test labs in non-MRA-partnered countries. See *Amendment of Parts 0, 1, 2, and 15 of the Commission’s Rules regarding Authorization of Radiofrequency Equipment*, ET Docket No. 13-44, Memorandum Opinion and Order on Reconsideration, 31 FCC Rcd 7426, 7427-28, 7429-30, paras. 5, 10-12 (directing OET to publish guidance on the form and substance that such submissions should take) (2016 EA MO&O). In 2014, the Commission required that all test labs be accredited under ISO/IEC 17025. This removed the previous process that had permitted test labs in countries not located in MRA-partnered countries to file separate submissions and obtain approval to test equipment. See 2014 EA R&O, 29 FCC Rcd at 16354-55, para. 45 (requiring that all laboratories that perform certification testing be accredited to ISO/IEC 17025 and revising sections 2.948(a) and (e)

(continued....)

partnered country from submitting a request to be recognized, but, to date, no accreditation body outside of an MRA-partnered economy has submitted a request for FCC recognition.

16. Under the Commission rules, if a test lab has been accredited for the appropriate scope for the types of equipment that it will test, then it “shall be deemed competent to test and submit test data for equipment subject to certification.”⁴⁶ Test labs must be reassessed at least every two years.⁴⁷ Under current procedures, if the accreditation body re-assesses the test lab and concludes that it continues to meet the requirements set forth under ISO/IEC 17025, the accreditation body will update the expiration date for the test lab’s accreditation in the FCC’s Equipment Authorization Electronic System (EAS) for a period of up to two years. While the Commission’s rules currently provide procedures for FCC recognition of test lab accreditation bodies,⁴⁸ our rules do not currently include specific Commission rules or procedures for withdrawing recognition of a test lab accreditation body.

17. The Commission maintains a list of FCC-recognized accredited test labs on its website, which currently lists nearly 640 test labs.⁴⁹ Currently, MRA-partnered economies have the most FCC-recognized test labs,⁵⁰ while there are also many test labs in countries in economies that have not entered an MRA with the United States.⁵¹

B. Recent Commission Actions

18. *The EA Security R&O and FNPRM.* On November 11, 2022, the Commission adopted the *EA Security Report and Order, Order, and Further Notice of Proposed Rulemaking*.⁵² Specifically, the Commission established several new rules to prohibit authorization of communications equipment identified on the Commission’s Covered List (“covered” equipment) developed pursuant to the Secure Networks Act.⁵³ The Covered List identifies certain types of communications equipment produced by particular entities – currently, Huawei, ZTE, Hytera, Hikvision, and Dahua (and their respective subsidiaries and affiliates), as well as certain services provided by particular entities. This list is derived from specific determinations made by enumerated sources, including certain Executive Branch agencies and Congress, under the Secure Network Act, that certain equipment poses an unacceptable risk to

accordingly). The Commission sought to ensure that all test labs are accredited to the same applicable standards under ISO/IEC 17025. *Id.* at 16354-55, paras. 45-47.

⁴⁶ 47 CFR § 2.948(e).

⁴⁷ See 47 CFR § 2.948(e) (requiring that accreditation bodies reassess test labs at least every two years).

⁴⁸ 47 CFR § 2.949.

⁴⁹ 47 CFR § 2.948(c). <https://apps.fcc.gov/oetcf/eas/reports/TestFirmSearch.cfm>. As of March 25, 2024, there were 639 FCC-recognized test labs.

⁵⁰ As of March 26, 2024, countries with many FCC-recognized test labs include, the United States (121), Taiwan (114), Japan (60), South Korea (40), Germany (20), United Kingdom (18), and Canada (15).

⁵¹ For instance, as of March 26, 2024, there are 170 FCC-recognized test labs that are located in China.

⁵² See *EA Security R&O and EA Security FNPRM*, 37 FCC Rcd 13493. That proceeding commenced in June 2021. See *Protecting Against National Security Threats to the Communications Supply Chain through the Equipment Authorization Program; Protecting Against National Security Threats to the Communications Supply Chain through the Competitive Bidding Program*, ET Docket No. 21-232 & EA Docket No. 21-233, Notice of Proposed Rulemaking and Notice of Inquiry, 36 FCC Rcd 10578 (2021).

⁵³ See generally *EA Security R&O*, 37 FCC Rcd at 13509-98, paras. 32-263. Pursuant to sections 2(a) and (d) of the Secure and Trusted Communications Networks Act of 2019, and sections 1.50002 and 1.50003 of the Commission’s rules, the Federal Communications Commission’s Public Safety and Homeland Security Bureau (PSHSB) publishes a list of communications equipment and services that have been determined by one of the sources specified in that statute to pose an unacceptable risk to the national security of the United States or the security and safety of United States persons (“covered” equipment). Secure and Trusted Communications Networks Act of 2019, Pub. L. No. 116-124, 133 Stat. 158 (2020) (codified as amended at 47 U.S.C. §§ 1601-1609 (Secure Networks Act); 47 CFR §§ 1.50002, 1.50003.

national security.⁵⁴ *The EA Security R&O* revised part 2 of the Commission’s rules concerning equipment authorization requirements and processes.⁵⁵ To help implement the prohibition on authorization of any “covered” equipment, applicants seeking equipment authorization are required to make certain attestations (in the form of certifications) about the equipment for which they seek authorization. These include attesting that the equipment is not prohibited from receiving authorization and whether the applicant is an entity identified on the Covered List as an entity producing “covered” communications equipment.⁵⁶ TCBs, pursuant to their responsibilities as part of the Commission’s equipment authorization program, review the applications and must ensure that only applications that meet all of the Commission’s applicable technical and non-technical requirements are ultimately granted, and that none of these grants are for prohibited equipment.⁵⁷

19. In affirming in the *EA Security R&O* its authority to prohibit authorization of communications equipment that had been placed on the Covered List, the Commission also noted that it has broad statutory authority, predating the Secure Networks Act and the Secure Equipment Act, under sections 302 and 303(e) of the Communications Act and other statutory provisions, to take into account national security concerns when promoting the public interest.⁵⁸

20. *Other Recent Commission Actions.* Since adoption of the *EA Security R&O, Order, and FNPRM* in November 2022, the Commission has taken several additional steps to address evolving national security concerns to protect the security of America’s critical communications networks and supply chains. In April 2023, in the *Evolving Risks Order and NPRM*, the Commission took additional steps to protect the nation’s telecommunications infrastructure from threats in an evolving national security and law enforcement landscape by proposing comprehensive changes to the Commission’s rules that allow carriers to provide international telecommunications service pursuant to section 214 of the

⁵⁴ These enumerated sources specifically include particular Executive Branch bodies with appropriate national security expertise – including the Department of Homeland Security (DHS), the Department of Defense (DOD), the Office of the Director of National Intelligence (ODNI), the National Security Agency (NSA), the Federal Bureau of Investigation (FBI), and the Department of Commerce – as well as Congress (under section 889(f)(3) of the National Defense Authorization Act of 2019)). See Secure Networks Act, sections 2(c)(1)-(2), (4); section 9(2).

⁵⁵ TCBs now have the additional responsibility to carefully review equipment applications and to ensure, when certifying equipment for compliance with Commission rules, that no “covered” equipment is authorized. See, e.g., *EA Security R&O*, 37 FCC Rcd at 13531-33, paras. 45-50 (requiring that any equipment produced by entities identified on the Covered List can only be authorized under the Commission’s certification procedures, requiring that all applications for equipment authorization must be reviewed by TCBs to ensure that no “covered” equipment is authorized); *id.* at 13567-78, paras. 189-215 (providing significant Commission guidance on implementing the prohibition on authorizing “covered” equipment; TCBs have the responsibility for reviewing the applications for equipment certification, including the applicant attestations, and implementing this prohibition).

⁵⁶ *EA Security R&O*, 37 FCC Rcd at 13516-18, paras. 52-55 (requiring applicants to submit certain attestations concerning their equipment).

⁵⁷ See, e.g., *EA Security R&O*, 37 FCC Rcd at 13514-16, 13518, paras. 48, 50, 52, 55; see also, e.g., 47 CFR § 2.962(e).

⁵⁸ *EA Report and Order*, 37 FCC Rcd at 13511-12, paras. 38-43. Among other things, the Commission noted that section 302 provides additional authority to make reasonable regulations governing RF devices, “consistent with the public interest, convenience, and necessity,” thus giving the Commission broad authority to implement other statutory responsibilities, including consideration of the national defense and the promotion of safety of life and property, citing section 1 of the Act. Furthermore, it noted that section 303(e) gives the Commission authority to “[r]egulate the kind of apparatus to be used with respect to its external effects,” and the Communications Assistance for Law Enforcement Act (CALEA) gives the Commission authority to prescribe rules necessary to protect networks from equipment that raises national security threats. See *id.* at 13511-12, para. 40-41. In the *EA Security FNPRM*, the Commission sought comment on several issues that could help ensure effective implementation of the prohibition on authorization of “covered” equipment. See generally *EA Security FNPRM*, 37 FCC Rcd at 13599-602, paras. 267-332.

Communications Act.⁵⁹ The Commission proposed, among other things, to adopt a renewal framework or, in the alternative, a formalized periodic review process for all international section 214 authorization holders.⁶⁰ The Commission stated that, in view of the evolving national security and law enforcement concerns identified in its recent proceedings revoking the section 214 authorizations of certain providers controlled by the Chinese government,⁶¹ it believes that a formalized system of periodically reassessing international section 214 authorizations would better ensure that international section 214 authorizations, once granted, continue to serve the public interest.⁶² In the *Evolving Risks Order*, the Commission required all international section 214 authorization holders to respond to a one-time collection to update the Commission's records regarding their foreign ownership, noting that "the information will assist the Commission in developing a timely and effective process for prioritizing the review of international section 214 authorizations that are most likely to raise national security, law enforcement, foreign policy, and/or trade policy concerns."⁶³ In the *Evolving Risks NPRM*, the Commission proposed, among other things, to prioritize the renewal applications or any periodic review filings and deadlines based on, for example, "reportable foreign ownership, including any reportable foreign interest holder that is a citizen of a foreign adversary country," as defined in the Commerce Department's rule, 15 CFR § 7.4.⁶⁴ The

⁵⁹ See generally *Review of International Section 214 Authorizations to Assess Evolving National Security, Law Enforcement, Foreign Policy, and Trade Policy Risks, Amendment of the Schedule for Application Fees Set Forth in Sections 1.1102 through 1.1109 of the Commission's Rules*, IB Docket No. 23-119 and MD Docket No. 23-134, 38 FCC Rcd 4346, para. 1 (2023) (*Evolving Risks Order and NPRM*). Section 214(a) of the Act prohibits any carrier from constructing, acquiring, or operating any line, and from engaging in transmission through any such line, without first obtaining a certificate from the Commission "that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such . . . line" 47 U.S.C. § 214(a); see *Reform of Rules and Policies on Foreign Carrier Entry Into the U.S. Telecommunications Market*, IB Docket No. 12-299, Report and Order, 29 FCC Rcd 4256, para. 2, n.2 (2014) (*2014 Foreign Carrier Entry Order*) ("Any party seeking to provide common carrier telecommunications services between the United States, its territories or possessions, and a foreign point must request authority by application pursuant to section 214(a) of the Act, 47 U.S.C. § 214(a), and section 63.18 of the Commission's rules, 47 C.F.R. § 63.18.").

⁶⁰ *Evolving Risks Order and NPRM*, 38 FCC Rcd at 4346, 4369, paras. 1, 41.

⁶¹ *Id.* at 4358, para. 15. In the context of section 214 authorizations, the Commission has also taken several additional steps to promote national security and law enforcement. In the November 2021 *China Telecom Americas Order on Revocation and Termination*, the February 2022 *China Unicom Americas Order on Revocation*, and March 2022 *Pacific Networks/ComNet Order on Revocation and Termination*, the Commission revoked, and in certain cases terminated for failure to satisfy certain conditions, certain carriers' section 214 authority based on recommendations and comments from interested Executive Branch agencies regarding evolving national security and law enforcement concerns. *China Telecom (Americas) Corporation*, GN Docket No. 20-109, File Nos. ITC-214-20010613-00346, ITC-214-20020716-00371, ITC-T/C-20070725-00285, Order on Revocation and Termination, 36 FCC Rcd 15966 (2021) (*China Telecom Americas Order on Revocation and Termination*), *aff'd*, *China Telecom (Ams.) Corp. v. FCC*, 57 F.4th 256 (D.C. Cir. 2022); *China Unicom (Americas) Operations Limited*, GN Docket No. 20-110, File Nos. ITC-214-20020728-00361, ITC-214-20020724-00427, Order on Revocation, 37 FCC Rcd 1480 (2022) (*China Unicom Americas Order on Revocation*), *argued* No. 22-70029 (9th Cir. Feb. 15, 2023); *Pacific Networks Corp. and ComNet (USA) LLC*, GN Docket No. 20-111, File Nos. ITC-214-20090105-00006, ITC-214-20090424-00199, Order on Revocation and Termination, 37 FCC Rcd 4220 (2022) (*Pacific Networks/ComNet Order on Revocation and Termination*), *aff'd*, *Pacific Networks Corp. v. FCC*, 77 F.4th 1160 (D.C. Cir. 2023).

⁶² *Evolving Risks Order and NPRM*, 38 FCC Rcd at 4358, para. 15.

⁶³ *Id.* at 4359, para. 16.

⁶⁴ *Id.* at 4375-76, para. 63; see *id.* at 4361, para. 20 (stating "[a] 'foreign adversary' country is defined in the Department of Commerce's rule, 15 CFR § 7.4.": 15 CFR § 7.4 ("Determination of foreign adversaries") (identifying The People's Republic of China, including the Hong Kong Special Administrative Region (China), Republic of Cuba (Cuba), Islamic Republic of Iran (Iran), Democratic People's Republic of Korea (North Korea), Russian Federation (Russia), and Venezuelan politician Nicolás Maduro (Maduro Regime)). The Commission further proposed, among other things, to require applicants for international section 214 authority and modification, assignment, transfer of control, and renewal of international section 214 authority to certify that they will not

(continued....)

Commission also sought comment on whether to revise its ownership reporting threshold, currently set at 10% or greater direct and indirect equity and/or voting interests, to 5%, noting that the current 10% threshold may not capture all of the foreign interests that may present national security, law enforcement foreign policy, and/or trade policy concerns in today's national security and law enforcement environment.⁶⁵ The Commission also proposed, among other things, to require applicants to certify in their application whether or not they use equipment or services identified in the Commission's Covered List.⁶⁶ The Commission stated that it intends to continue to collaborate with the relevant Executive Branch agencies and refer matters to the Executive Branch agencies where warranted.⁶⁷

21. On March 14, 2024, the Commission adopted the *Cybersecurity IoT Labeling R&O* to strengthen the nation's cybersecurity protections by adopting a voluntary cybersecurity labeling program for wireless Internet of Things (IoT) products.⁶⁸ Through this IoT Labeling Program, the Commission will provide consumers with an FCC IoT label that includes the U.S. government certification mark (referred to as the Cyber Trust Mark) that provides assurances that an IoT product that bears the FCC IoT Label meets certain minimum cybersecurity standards and strengthens the chain of connected IoT products in their own homes and as part of a larger national IoT ecosystem.⁶⁹ The Order established a new administrative framework and regulatory structure to implement this voluntary program, with the Commission having program oversight while delegating certain responsibilities to new Cybersecurity Labeling Administrators and FCC-recognized testing labs (e.g., Cybersecurity Testing Labs) to evaluate whether particular IoT devices and products meet the prescribed criteria for obtaining the Cyber Trust Mark.⁷⁰ Among other things, the Commission also determined that entities that are owned, controlled by, or affiliated with "foreign adversaries," as defined by the Department of Commerce, should be ineligible for purposes of the Commission's voluntary IoT Labeling Program.⁷¹ The Commission also generally prohibited entities that produce equipment on the Covered List, as well as entities named on the DOD's list of Chinese military companies or the Department of Commerce's Entity List, from any participation in the IoT Labeling Program.⁷² Also, we specifically prohibited any of these entities from serving as a Cybersecurity Label Administrator or serving as an FCC-recognized test lab for testing products for

purchase and/or use equipment made by entities (and their subsidiaries and affiliates) on the "Covered List" as a condition of the potential grant of the application. *Evolving Risks Order and NPRM*, 38 FCC Rcd at 4405-06, para. 125.

⁶⁵ *Id.*; see generally *id.* at 4392-96, paras. 89-97; *id.* at 4392, para. 89. See also *id.* at 4395, para. 95 (noting a 5% reporting threshold is consistent with information that the Committee on Foreign Investment in the United States (CFIUS) requires that parties to a voluntary notice filed with respect to transactions that they review); *id.* at 4394-95, para. 94 (noting that a 5% reporting threshold also is consistent with information that U.S. companies and their shareholders must provide to the Security and Exchange Commission).

⁶⁶ *Id.* at 4350, para. 4; see generally *id.* at 4405-06, paras. 124-26.

⁶⁷ *Id.* at 4362-63, para. 24.

⁶⁸ See *In the Matter of Cybersecurity Labeling for Internet of Things*, PS Docket No. 23-239, Report and Order, (FCC 24-26), __ FCC Rcd __ (adopted Mar. 14, 2024) (*Cybersecurity IoT Labeling R&O*).

⁶⁹ *Id.* at para. 1.

⁷⁰ See *id.* at paras. 40-80.

⁷¹ See *id.* at para. 61 (agreeing with commenters that the Commission should establish rules that are not subject to undue influence by foreign adversaries and noting that it would be problematic to rely on determinations made by such entities).

⁷² See *id.* at paras. 33, 60-61, 74. See DOD National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, § 1260H, 134 Stat. 3388, 3580 (2021). The list can be found at <https://media.defense.gov/2024/Jan/31/2003384819/-1/-1/0/1260H-LIST.PDF> (viewed January 31, 2024); Bureau of Industry and Security, U.S. Department of Commerce, Supplement No. 4 to Part 744 – Entity List (2023), <https://www.bis.doc.gov/index.php/documents/regulations-docs/2326-supplement-no-4-to-part-744-entity-list-4/file> [https://perma.cc/STW5-B8GW].

compliance with forthcoming cybersecurity technical standards.⁷³ The Commission concluded that these lists represent the determination of relevant Federal agencies that entities on these lists may pose a national security threat within their respective areas, and that it is not in the public interest to permit these entities to provide assurance to the public that their products meet the new cybersecurity standards for obtaining a Cyber Trust Mark.⁷⁴

III. DISCUSSION

22. In this NPRM, we propose and seek comment on potential revisions to the Commission's rules designed to promote the integrity of our equipment authorization program and ensure that it serves the Commission's goals in protecting our communications equipment supply chain from entities posing unacceptable national security concerns. First, we propose to prohibit from—recognition by the FCC and participation in our equipment authorization program, any TCB or test lab in which an entity identified on the Covered List (i.e., any named entity or any of its subsidiaries or affiliates) has direct or indirect ownership or control. Second, we seek comment on the extent to which the Commission should impose eligibility restrictions for TCBs and test labs based on lists developed by Executive Branch agencies that reflect expert determinations about entities that pose national security risks. Third, we propose and seek comment on collecting various ownership information from TCBs and test labs to strengthen our oversight and implement any affiliation prohibitions that may be adopted. Fourth, we seek comment on other aspects associated with implementation of our proposals as well as other considerations to strengthen our oversight of TCBs and test labs. These include clarification of current rules and applicable standards⁷⁵ to ensure the impartiality and integrity of TCBs.

A. Prohibiting Recognition of TCBs and Test Labs in which Entities Identified on the Covered List have Direct or Indirect Ownership or Control

23. In 2022 in the *EA Security R&O* the Commission adopted rules to prohibit authorization of certain equipment produced by entities named on the Covered List and adopted supply chain protections that include new informational requirements that seek to ensure that these untrustworthy entities do not adversely influence certification of equipment that poses unacceptable national security risks.⁷⁶ The Covered List is derived from specific determinations made by certain enumerated sources (particular Executive Branch agencies with national security expertise and Congress⁷⁷) under the Secure Networks Act that certain equipment poses an unacceptable risk to national security. Congress has also made determinations in the Secure Networks Act that certain of these entities and their equipment pose an unacceptable risk to national security. In the future, Executive Branch agencies may add to the Covered List. Even before the Secure Networks Act, we designated Huawei and ZTE (along with their parents, affiliates, and subsidiaries) as “covered companies” that pose a unique threat to the security and integrity

⁷³ See *In the Matter of Cybersecurity Labeling for Internet of Things*, PS Docket No. 23-239, Report and Order, FCC 24-26 (adopted Mar. 14, 2024) (*Cybersecurity IoT Labeling R&O*). Cybersecurity Label Administrator helps manage the program and certifies applications for compliance with Commission requirements for obtaining a Cyber Trust Mark.

⁷⁴ See, e.g., *Cybersecurity IoT Labeling R&O* at para. 60.

⁷⁵ See, e.g., ISO/IEC 17065.

⁷⁶ See generally *EA Security R&O*, 37 FCC Rcd 13493; see, e.g., 47 CFR §§ 2.903(b) (requiring that each entity named on the Covered List provide information on their subsidiaries and affiliates that produce “covered” equipment); 2.911(d)(5) (requiring applicants to submit particular information related to “covered” equipment).

⁷⁷ The Covered List is based on specific determinations made by sources enumerated under the Secure Networks Act – including the Department of Homeland Security (DHS), the Department of Defense (DOD), the Office of the Director of National Intelligence (ODNI), the National Security Agency (NSA), the Federal Bureau of Investigation (FBI) and the Department of Commerce – as well as Congress (under section 889(f)(3) of the National Defense Authorization Act of 2019)). See Secure Networks Act, sections 2(c)(1)-(2), (4); section 9(2).

of our nation's communications networks and supply chains because of their close ties to the Chinese government and military, and the security flaws in their equipment.⁷⁸

24. In light of these determinations from expert Executive Branch agencies and Congress about the serious national security risks posed by entities with equipment on the Covered List, we tentatively conclude that the Commission should not recognize or permit reliance on TCBs, test labs, or their accrediting bodies, or permit them to have any role in our equipment authorization program, if they have sufficiently close ties with Covered List entities.⁷⁹ Accordingly, we propose to restrict the eligibility of entities that may serve as TCBs or test labs based on, at a minimum, the Covered List. Specifically, we propose to prohibit from recognition by the Commission and participation in our equipment authorization program, any TCB or test lab in which an entity identified on the Covered List (i.e., any named entity or any of its subsidiaries or affiliates) has direct or indirect ownership or control. Our proposed prohibition would preclude the use of such TCBs and test labs, as part of any equipment authorization-related reliance or testing, not only with regard to certification of equipment, but also authorization of equipment pursuant to SDoC procedures.⁸⁰ We seek comment on this proposal.

25. Further, in the interest of national security, and out of an abundance of caution, we find that it is imperative that we not allow entities identified on our Covered List to use test labs they own or control to circumvent or otherwise undermine our prohibition on authorization of equipment identified on the Covered List or undermine the integrity of our supply chain. To that end, we note that OET has taken action to deny the re-recognition of a test lab apparently owned by an entity on the Covered List – Global Compliance and Testing Center of Huawei Technologies – while allowing this test lab to provide additional information on whether it is owned or controlled by Huawei Technologies Company or any other entity on the Covered List, and to show cause why it should be allowed re-recognition.⁸¹ Accordingly, we direct OET to suspend, pending the outcome of this proceeding, recognition of any TCB or test lab for which there is sufficient evidence to conclude such TCB or test lab is owned or controlled by an entity identified on the Covered List,⁸² while allowing such TCB or test lab thirty days from the date of such suspension to certify, and provide supporting documentation, that no entity identified on the Covered List holds a 10% or more direct or indirect ownership interest or controlling interest in the TCB or test lab. We believe this action is necessary to protect against additional national security risks to our equipment authorization program and supply chain, including protecting existing manufacturers from unknowing reliance on untrustworthy entities, pending the implementation of the additional ownership disclosures and transparency requirements we propose herein. Any burden on existing recognized TCBs or test labs should be minimal, as only those entities for whom OET has reason to question their ownership or control by an entity or entities identified on the Covered List will be impacted, and those TCBs or test labs will be given an opportunity to show cause why their FCC recognition should not be revoked for just cause. As we weigh the importance of our national security against these minimal

⁷⁸ *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Report and Order, Further Notice of Proposed Rulemaking, and Order, 34 FCC Rcd 11423, 11439-41, paras. 43-46 (2019) (*Supply Chain 1st R&O*) (initially designating Huawei and ZTE as “covered” companies that posed “a unique threat” to the security and integrity of the nation’s communications supply chains); *PSHSB Huawei Designation Order*, 35 FCC Rcd 6604; *PSHSB ZTE Designation Order*, 35 FCC Rcd 663; *Huawei Designation Order*, 35 FCC Rcd 14435.

⁷⁹ We note that this action also would be consistent with actions taken in the *EA Security R&O*, in which the Commission has precluded entities identified on the Covered List from obtaining SDoC authorization, requiring that any equipment produced by these entities file requests for authorization under our equipment certification procedures. See *EA Security R&O*, 37 FCC Rcd at 13526-27, paras. 78-79.

⁸⁰ As we noted above, under current rules the Commission does not require that only accredited and FCC-recognized test labs can be relied upon in the SDoC process with regard to ensuring technical compliance. See *supra* paragraph 13.

⁸¹ Letter from Hermes, Jihad, Electronics Engineer, Laboratory Division, FCC Office of Engineering and Technology, to Global Compliance and Testing Center of Huawei Tec (April 22, 2024).

⁸² See *EA Security R&O* at paras. 183-184 (defining affiliate and subsidiary in terms of ownership and control).

measures to prevent entities on the Covered List from owning or controlling FCC-recognized TCBs or test labs, we find that the compelling interest outweighs any burden imposed by such temporary suspension.

B. Prohibiting Recognition of TCBs and Test Labs in which Other Entities that Raise National Security Concerns have Direct or Indirect Ownership or Control

26. We also seek comment on whether there are other types of direct or indirect ownership or control, or other types of influences beyond the Covered List determinations that potentially could adversely affect a TCB's or test lab's trustworthiness, or otherwise undermine the public's confidence. In recognition that TCBs and test labs have access to proprietary, sometimes sensitive information about suppliers and their devices, we seek comment on whether, and to what extent, the Commission should apply other lists developed by Executive Branch agencies that reflect expert determinations about entities that pose national security concerns.

27. The Covered List is only one source that identifies entities that raise national security concerns that potentially affect the communications equipment supply chain. Several Executive Branch agencies with particular national security responsibilities, and based upon specific statutory authorities, have recently developed or updated lists that identify entities, technologies, or services that they have determined raise national security concerns.⁸³

28. For example, the Department of Commerce maintains a list of "foreign adversary" countries⁸⁴ that identifies any foreign government or foreign non-government person that the Secretary of Commerce has determined to have engaged in a "long-term pattern or serious instances of conduct significantly adverse to the national security interest of the United States or security and safety of United States persons."⁸⁵ The Department of Commerce's list of foreign adversaries currently includes several foreign governments and foreign non-government persons, including China (including Hong Kong), Cuba, Iran, and Russia.⁸⁶ As discussed above, the Commission has recently relied in part on this foreign adversary

⁸³ These include two agencies – the Commerce Department and DOD – that also are authorized to make Covered List determinations about equipment that services that pose an unacceptable risk to national security. *See* Secure Networks Act, sections 2(c)(1)-(2), (4); section 9(2).

⁸⁴ 15 CFR § 7.4 ("Determination of foreign adversaries"). Section 7.4 was promulgated pursuant to Executive Order 13873 of May 15, 2019, "Securing the Information and Communications Technology and Services Supply Chain." *See* Executive Order 13873, of May 15, 2019, Securing the Information and Communications Technology and Services Supply Chain, 84 Fed. Reg. 22689 (May 15, 2019) (Executive Order 13873). Executive Order 13873 was issued pursuant to the President's authority under the International Emergency Economic Powers Act, the National Emergencies Act, and § 301 of Title 3 of United States Code. 50 U.S.C. § 1701 *et seq.* (authorizing the President to regulate commerce after declaring a national emergency in response to an unusual and extraordinary threat to the U.S. which has its source in whole or in part outside the U.S.); 50 U.S.C. §§ 1601-1651 (empowering the President to activate certain powers during a national emergency and imposing the procedural requirements when invoking those powers); 3 U.S.C. § 301 (delegation of functions). The list was first issued in an Interim Final Rule by the Department of Commerce, on January 19, 2021. Department of Commerce, Securing the Information and Communications Technology and Services Supply Chain, Interim Final Rule, 86 Fed. Reg. 4909-01 (Jan. 19, 2021) (Interim Final Rule). Section 7.4(b) states further that the Secretary's determination of foreign adversaries is solely for the purposes of Executive Order 13873, this rule, and any subsequent rule promulgated pursuant to the Executive Order. 15 CFR § 7.4(b). The Executive Order, in turn, names the Commission as well as the U.S. Trade Representative and others as consultative agencies in implementing the Order. Executive Order 13873, 84 Fed. Reg. at 22869 (Section 1).

⁸⁵ 15 CFR § 7.2. A "foreign adversary" country is defined in the Department of Commerce's rule, 15 CFR § 7.4, 218 and includes China (including Hong Kong), Cuba, Iran, North Korea, Russia, and Maduro Regime.

⁸⁶ 15 CFR § 7.4 (identifying The People's Republic of China, including the Hong Kong Special Administrative Region (China), Republic of Cuba (Cuba), Islamic Republic of Iran (Iran), Democratic People's Republic of Korea (North Korea), Russian Federation (Russia), and Venezuelan politician Nicolás Maduro (Maduro Regime)). The foreign adversaries identified in the current list have not changed since publication of the interim final rule in 2021. Interim Final Rule, 86 Fed. Reg. at 4911. Section 7.4(d) provides that the Secretary of Commerce will periodically
(continued....)

list (as well as the Covered List) in both the *Evolving Risks Order and NPRM* and the *Cybersecurity IoT Labeling R&O* when making proposals and taking particular actions, respectively, that serve to promote the Commission's national security goals in those proceedings.⁸⁷

29. DOD, pursuant to section 1260H of the NDAA of 2021, has identified each entity that the Secretary of Defense has determined is a "Chinese military company" that is "operating directly or indirectly in the United States" and is "engaged in providing commercial services, manufacturing, producing, or exporting."⁸⁸ This DOD list (1260H List) currently includes 73 entities, including three of the five equipment manufacturers listed on the Covered List.⁸⁹ Beginning in 2026, pursuant to other statutes, the DOD is prohibited from procurement from companies identified on the 1260H list.⁹⁰

30. Meanwhile, the Department of Commerce's Entity List identifies entities that are reasonably believed to be involved in, or to pose a significant risk of being or becoming involved in, activities contrary to U.S. national security or foreign policy interests.⁹¹ Among other things, the Entity List seeks

review this list in consultation with appropriate agency heads and may add to, subtract from, supplement, or otherwise amend the list. 15 CFR § 7.4(d).

⁸⁷ See discussion in paragraphs 20-21, above; see *Evolving Risks Order and NPRM*, at 4375-76, para. 63; *Cybersecurity IoT Labeling R&O*, __ FCC Rcd at __, para. 60.

⁸⁸ National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, § 1260H, 134 Stat. 3388, 3580 (2021). "Chinese military company" means an entity (not including natural persons) that (1) is "directly or indirectly owned, controlled, or beneficially owned by, or in an official or unofficial capacity acting as an agent of or on behalf of, the People's Liberation Army or any other organization subordinate to the Central Military Commission of the Chinese Communist Party" or (2) "identified as a military-civil fusion contributor to the Chinese defense industrial base." *Id.* at 1260H(d)(1). Available at <https://media.defense.gov/2024/Jan/31/2003384819/-1/-1/0/1260H-LIST.PDF>. Section 1260H does not on its own impose prohibitions on these companies.

⁸⁹ U.S. Department of Defense, DoD Releases List of People's Republic of China (PRC) Military Companies in Accord with Section 1260H of the National Defense Authorization Act for Fiscal Year 2022, <https://www.defense.gov/News/Releases/Release/Article/3661985/dod-releases-list-of-peoples-republic-of-china-prc-military-companies-in-accord/> (last visited Feb 9, 2024). The actual list can be found at <https://media.defense.gov/2024/Jan/31/2003384819/-1/-1/0/1260H-LIST.PDF> (January 31, 2024).

⁹⁰ National Defense Authorization Act for Fiscal Year 2024, Pub. L. No. 118-31, § 805 (2023) (prohibiting DOD from entering into a contract for the procurement of goods and services from an entity on the 1260H list or contracting for goods and services that include goods or services produced or developed by an entity on the 1260H list or any entity subject to the control of an entity on the 1260H list). *Id.* § 805. The prohibitions do not extend to purchases of goods, services, or technology that connect goods or services to third party services or to components, which are items supplied to the federal government as part of an end item or of another component. *Id.*

⁹¹ 15 CFR § 744.16. The End-User Review Committee (ERC), which is comprised of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, determines the entities to be added to or removed from the list. The Bureau of Industry and Security (BIS) is the entity that administers the Entity List for Commerce. See Bureau of Industry and Security, U.S. Department of Commerce, Supplement No. 4 to Part 744 – Entity List (2023), <https://www.bis.doc.gov/index.php/documents/regulations-docs/2326-supplement-no-4-to-part-744-entity-list-4/file> [https://perma.cc/STW5-B8GW]. Inclusion on the Entity List subjects the entity to certain license requirements for the export, reexport, and/or transfer of specified items. Consistent with Executive Order 13873, the Secretary of Commerce may prohibit or restrict certain transactions that involve information and communications technology and services designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of foreign adversaries. 15 CFR § 7.1 *et seq.*; see Executive Order 13873. The Secretary of Commerce has determined the following (a) The Secretary has determined that the following foreign governments or foreign non-government persons are foreign adversaries: the People's Republic of China, including the Hong Kong Special Administrative Region (China), Republic of Cuba (Cuba), Islamic Republic of Iran (Iran), Democratic People's Republic of Korea (North Korea), Russian Federation (Russia), and Venezuelan politician Nicolás Maduro (Maduro Regime).. The Secretary of Commerce's determination of foreign adversaries is based on multiple sources including: (1) the "National Security Strategy of the United States," (2) "[t]he Director of National Intelligence's 2016-2019 Worldwide Threat Assessments of the U.S. Intelligence Community; (3) "[t]he 2018 National Cyber Strategy of the United States of America," and (4)

(continued....)

to ensure that sensitive technologies do not fall into the hands of known threats.⁹² As discussed above, in its *Cybersecurity IoT Labeling R&O* the Commission prohibited entities named on DOD's 1260H List or the Department of Commerce's Entity List (as well as entities producing equipment on the Covered List) from any participation in the Commission's IoT Labeling Program.⁹³

31. Further, there are various other Executive Branch agency lists that address national security concerns in addition to those above. For instance, the Commerce Department also publishes a Military End User List, which identifies foreign parties that pursuant to the Export Administration Regulations (EAR) are prohibited from receiving particular items, including certain telecommunications equipment and software, unless the exporter secures a license.⁹⁴ These parties have been determined by the U.S. Government to be "military end users,"⁹⁵ and represent an unacceptable risk of use in or diversion to a "military end use" or "military end user" in China, Russia, or Venezuela.⁹⁶ The Department of Treasury's Office of Foreign Assets Control, in coordination with the Department of State and DOD, administers various sanctions programs, including the Non-Specially Designated Nationals Chinese Military-Industrial Complex Companies List (CMIC List),⁹⁷ which identifies individuals and companies as operating or having operated in the defense or surveillance technology sector of the People's Republic of China and from which U.S. persons are generally prohibited from purchasing or selling publicly traded securities.⁹⁸ In section 5949 of the NDAA for FY 2023, Congress prohibited executive agencies from

"[r]eports and assessments from the U.S. Intelligence Community, the U.S. Departments of Justice, State and Homeland Security, and other relevant sources. 15 CFR § 7.4(c). The Secretary of Commerce "will periodically review this list in consultation with appropriate agency heads and may add to, subtract from, supplement, or otherwise amend this list." 15 CFR § 7.4(d).

⁹² 15 CFR § 744.16.

⁹³ See discussion in paragraph 21, above; see *Cybersecurity IoT Labeling R&O*, __ FCC Rcd at __, para. 60.

⁹⁴ These restrictions are described in Supplement No. 2 of Part 744 of the Export Administration Regulations (EAR). See Supplement No. 7 to Part 744 of the EAR, 15 C.F.R. pt. 744, Supp. No. 7 (2024), <https://www.bis.doc.gov/index.php/documents/regulations-docs/2714-supplement-no-7-to-part-744-military-end-user-meu-list/file>. The MEU List can be found at <https://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern/1770>.

⁹⁵ 15 USC 744.21(g), available at <https://www.bis.doc.gov/index.php/documents/regulations-docs/2343-part-744-control-policy-end-user-and-end-use-based-2/file>.

⁹⁶ See *id.*

⁹⁷ U.S. Department of the Treasury, Office of Foreign Assets Control, Consolidated Sanctions List (Non-SDN Lists), available at Available at: <https://www.treasury.gov/ofac/downloads/ccmc/nscmiclist.pdf> (last visited Feb 9, 2024); see 15 CFR part 586. To date, there currently are 68 entities on the CMIC List. See generally <https://ofac.treasury.gov/consolidated-sanctions-list-non-sdn-lists> (last visited March 26, 2024). See Office of Foreign Assets Control, Notice of OFAC Sanctions Actions, 86 Fed. Reg. 30677, 30678-83 (Jun. 9, 2021) (adding 59 entities); Office of Foreign Assets Control, Notice of OFAC Actions, 86 Fed. Reg. 73842, 73843 (Dec. 28, 2021) (adding 1 entity); Office of Foreign Assets Control, Notice of OFAC Sanctions Actions, 86 Fed. Reg. 72680, 72681 (Dec. 22, 2021) (adding 8 entities).

⁹⁸ See Exec. Order No. 14,032, 86 Fed. Reg. 32,953 (2021) (addressing threat from securities investments financing certain Chinese companies); Exec. Order No. 13,959, 85 Fed. Reg. 75,140 (2020) (addressing threat from securities investments financing communist Chinese military companies); 50 U.S.C. §§ 1701-1706 (2023) (Int'l Emergency Economic Powers Act); 50 U.S.C. §§ 1601-1651 (2023) (National Emergencies Act); 31 C.F.R. pt. 586 (2024) (Chinese Military-Industrial Complex Sanctions Regulations); 88 Fed. Reg. 60,889 (2023) (Publication of Chinese Military-Industrial Complex Sanctions Regulations Web General Licenses 1, 1A, 1B, and 2); 87 Fed. Reg. 8735 (2022) (Chinese Military-Industrial Complex Sanctions Regulations); U.S. Department of Treasury, Office of Foreign Assets Control, Publication of Chinese Military-Industrial Complex Sanctions-related Frequently Asked Questions (June 1, 2022); U.S. Department of Treasury, Office of Foreign Assets Control, Issuance of Chinese Military-Industrial Complex Sanctions Regulations; Amendment of the Weapons of Mass Destruction Proliferators Sanctions Regulations (Feb. 15, 2022); U.S. Department of Treasury, Office of Foreign Assets Control, Non-SDN Chinese Military-Industrial Complex Companies (NS-CMIC) List Updates; Administrative Updates to the SDN, (continued....)

procuring, obtaining, or contracting with entities to obtain any electronic parts, products, or services that include “covered semiconductor chips” produced by three Chinese companies (and their subsidiaries or affiliates).⁹⁹ The legislation authorizes DOD and the Commerce Department to designate other “covered products or services” if they determine them to be owned, controlled by, or connected to the government of a foreign country of concern, including China, Russia, North Korea, and Iran.¹⁰⁰

32. We seek comment on whether, and if so, the extent to which, we should rely upon any of the various lists developed by the Executive Branch agencies that involve particular determinations relating to national security as a source to identify entities that raise national security concerns warranting a prohibition on participation in our equipment authorization program. While each list is designed to support specific prohibitions or agency objectives, the national security objectives common throughout each may warrant that the Commission take a cautious approach, especially with respect to those products for which relevant Federal agencies have expressed other security concerns. Are any such lists particularly suitable, or ill-fitting, for the equipment authorization context? We also seek comment on whether the Commission should consider any other Executive Branch agency lists to rely upon as a source to identify entities that raise national security concerns and to restrict participation of those entities in our equipment authorization program. What other lists or sources of information should the Commission consider?

33. We note that the Commission has a longstanding policy of according deference to the Executive Branch agencies’ expertise in identifying risks to national security and law enforcement interests. With regard to each of these lists, to the extent that commenters recommend consideration of any of these lists with regard to eligibility for recognition of a TCB or test lab, we ask that commenters explain why such eligibility should be restricted based on the list, as well as any other considerations the Commission should take into account in implementing such a restriction. We invite comment on any other issues concerning consideration of any of these lists of Executive Branch determinations.

34. Further, we seek comment on other determinations on which we should rely to prohibit participation in our equipment authorization program. Specifically, should any “foreign entity of concern” as defined by the CHIPS Act be prohibited from participation?¹⁰¹ What about entities subject to exploitation, influence, or control by the government of a foreign adversary, such as foreign adversary state-owned enterprises, including their U.S.-based subsidiaries, or entities that conduct research, development, testing, and evaluation in support of the military or intelligence apparatus of a foreign adversary (i.e. defense contractors)? What about entities with ownership interests by municipal, state, or other governmental entities within a foreign adversarial country? Are there any other determinations reflecting national security risks and/or practices contrary to U.S. interests, such as entities with documented evidence of human rights abuses, forced labor, and similar practices, including entities who

Consolidated, NS-CMIC, and SSI Lists (various dates). In a fact sheet, OFAC stated that it “expects to use its discretion to target, in particular, persons whose operations include or support, or have included or supported, (1) surveillance of persons by Chinese technology companies that occurs outside of the PRC; or (2) the development, marketing, sale, or export of Chinese surveillance technology that is, was, or can be used for surveillance of religious or ethnic minorities or to otherwise facilitate repression or serious human rights abuse.” See FAQ 900: <https://home.treasury.gov/policy-issues/financial-sanctions/faqs/900>.

⁹⁹ National Defense Authorization Act for Fiscal Year 2023, Pub. L. No. 117–263, § 5949, 136 Stat. 2257, 2645 (2023). Specifically, this prohibition applies to any “covered semiconductor products or services” that are produced by Semiconductor Manufacturing International Corporation (SMIC), ChangXin Memory Technologies, Yangtze Memory Technologies Corp, or any subsidiary or affiliate of those entities. NDAA for FY 2023 § 5949(j)(3)(a), (b).

¹⁰⁰ NDAA for FY 2023 at § 5949(b)(2). Notably, this law provides that the Commission is not required to designate “covered semiconductor and services” to its Covered List. Specifically, under the Rule of Construction set forth in Section 5949, the Commission is not required to “designate covered semiconductor products or services to its Covered Communications Equipment or Services List maintained under [] the [Secure Networks Act] of 2019.” *Id.* at § 5949(a)(2)(A)(4).

¹⁰¹ CHIPS Act of 2022, Sec. 10162, Pub. L. 117-167, 136 Stat. 1366, 1635 (2022).

meet the criteria established by the Uyghur Forced Labor Prevention Act?¹⁰² Are there any other determinations we should consider that would indicate the untrustworthiness of an entity in terms of our equipment authorization program?

C. Ownership, Control, or Influence by Entities that Pose an Unacceptable Risk to National Security

35. To further protect the nation's telecommunications infrastructure and communications equipment supply chain from threats in an evolving national security landscape and to ensure the integrity of the equipment authorization program, we propose and seek comment on collecting various ownership and control information from TCBs and test labs.

36. We note that, outside the context of the equipment authorization program, the Commission and other government agencies have routinely adopted rules to identify direct or indirect ownership or control of entities by third parties in order to address national security, competition, or other concerns. The Commission in many cases has required regulated entities to disclose information regarding related parties, whether those other parties control the entity, or have an ownership interest in it, or have some other relationship with the entity that is relevant to the public interest. For example, applicants seeking a new FCC satellite license, a modification of a satellite license, or the assignment or transfer of a satellite license, must disclose certain information both about foreign ownership and corporate ownership.¹⁰³ The Commission's rules also require the disclosure of ownership information and corporate ownership information that would assist the Commission's public interest review of applications for international section 214 authority.¹⁰⁴ We note that in the recent *Evolving Risks Order and NPRM*, the Commission sought comment on revising its ownership reporting threshold, currently set at 10% or greater direct and indirect equity and/or voting interests, to 5%, noting that the current 10% threshold may not capture all of the foreign interests that may present national security, law enforcement foreign policy, and/or trade policy concerns in today's national security and law enforcement environment.¹⁰⁵ With respect to wireless licenses, there are a number of rules requiring applicants and/or licensees to disclose certain information on ownership and control.¹⁰⁶ Similarly, with respect to radio and local television licenses, the

¹⁰² See generally Pub. L. 117-78, 135 Stat. 1525 (2021).

¹⁰³ For example, FCC Form 312 asks each applicant for a satellite license to disclose, inter alia, whether the applicant is: (1) a foreign government or representative of a foreign government, (2) an alien or representative of an alien, (3) a corporation organized under the laws of a foreign government, (4) a corporation of which more than 20% of its capital stock is owned of record or voted by aliens or by a foreign government or by a foreign corporation, or (5) a corporation directly or indirectly controlled by another corporation of which more than 25% of the capital stock is owned by aliens, a foreign government, or a foreign corporation. And if the applicant is a corporation, Form 312 further asks it to submit the names, address, and citizenship of stockholders holding 10% or more of the applicant's voting stock. See Form 312, questions 29-34 and 40. Form 312 also asks questions intended to inform the Commission of the character of the applicant. For example, it asks whether the applicant or any party to the application has had any FCC authorization or license revoked or whether it has had any application denied, and it further asks whether the applicant or any party to the application or any party directly or indirectly controlling the applicant has even been convicted of a felony by and state or federal court. See *id.*, at questions 36 and 37. See generally 47 USC 310; 47 CFR §§ 1.2112; 25.114.

¹⁰⁴ See *Evolving Risks Order and NPRM*, 38 FCC Rcd at 4354, 4392-93, paras. 8, 89, 92.

¹⁰⁵ *Id.* at 4392, para. 89; see generally *id.* at 4392-96, paras. 90-97. See also *id.* at 4395, para. 95 (noting a 5% reporting threshold is consistent with information that the Committee on Foreign Investment in the United States (CFIUS) requires that parties to a voluntary notice filed with respect to transactions that they review); *id.* at 4394-95, para. 94 (noting that a 5% reporting threshold also is consistent with information that that U.S. companies and their shareholders must provide to the Security and Exchange Commission).

¹⁰⁶ See, e.g., FCC Form 601 (requesting information for applicants seeking wireless licenses other than personal radio); FCC Form 602 (requesting information of spectrum auction winners); FCC Form 603 (requesting information of parties seeking transfers or assignments of wireless licenses); and FCC Form 608 (requesting information of applicants seeking approvals to lease wireless licenses); see generally 47 CFR §§ 1.2112(a), 1.2114; see also 47 CFR §§ 1.9020, 9030, and 9035 (regarding spectrum leases). These disclosures help the Commission to
(continued....)

Commission's media ownership rules require extensive disclosure of information.¹⁰⁷ The Commission likewise requires that entities seeking small business bidding credits in Commission spectrum license auctions have attributed to them revenues of parties with controlling interests in the entity, as well as other entities that those parties control and other entities within its own control.¹⁰⁸ In addition, such entities will have the revenues of parties with an interest in their spectrum licenses beyond a specified threshold attributed to them as well, to assure that those other parties are not using the entities as a conduit for spectrum access obtained with a bidding credit.¹⁰⁹ In order to enforce these ownership rules, the Commission requires applicants for such licenses to supply certain information.¹¹⁰

37. Additionally, we note that other Executive Branch agencies also require entities to supply information on ownership and control so that the agencies can carry out their statutory responsibilities. For example, in the *2021 Standard Questions Order*, the Commission adopted a set of standardized national security and law enforcement questions (Standard Questions) that certain applicants and petitioners with reportable foreign ownership will be required to answer as part of the Executive Branch review process of their applications and petitions.¹¹¹ With respect to such applications or petitions that the Commission accepts for filing and refers to the relevant Executive Branch agencies for their review of any national security, law enforcement, and other concerns related to the foreign ownership, as part of the Commission's public interest review of the application or petition, the applicants and petitioners will be required to provide to the Committee information regarding all entities that hold or will hold an ownership interest of five percent or more in the applicant or petitioner in question.¹¹² The Commission has noted that this information is important to the Committee's review of applications and petitions referred by the Commission for national security and law enforcement concerns¹¹³ and will assist the Committee's determination whether to recommend to the Commission that grant of the application or petition is consistent with U.S. national security and law enforcement interests. Similarly, the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR) requires certain companies to file premerger notifications with the Federal Trade Commission and the Antitrust Division of the Department of Justice.¹¹⁴ Companies required to submit a HSR pre-merger notification must supply certain information,

assure compliance with applicable rules and statutes generally, as well as restrictions on foreign ownership. See 47 USC 310(a) and (b); see also FCC Form 605 (specialized applications not necessarily covered by 47 CFR 1.2112 still requiring certification that the applicant is not a foreign government or a representative thereof).

¹⁰⁷ See FCC Forms 323 and 323-E, Instructions, regarding ownership information, citing 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 12,559 (1999), recon. granted in part, 16 FCC Rcd 1097 (2000); and Corporate Ownership Reporting and Disclosure by Broadcast Licensees, MM Docket No. 83-46, Report and Order, 97 FCC 2d 997 (1984), recon. granted in part, 58 RR 2d 604 (1985), further modified on recon., 61 RR 2d 739 (1986); Promoting Diversification of Ownership in the Broadcasting Services, MB Docket No. 07-294, Second Report and Order, and Order on Reconsideration, 31 FCC Rcd 398, 422-24, paras. 47-50 (2016). See also 2018 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, MB Docket No. 18-349, FCC 23-117 (adopted Dec. 22, 2023) (describing and summarizing some of the Commission's media ownership rules).

¹⁰⁸ See 47 CFR § 1.2112(b)(1)(iv).

¹⁰⁹ See 47 CFR 1.2112(b)(1)(iii), requiring disclosure of information used to assess compliance with 47 CFR § 1.2110(c)(2)(ii)(J), requiring attribution of revenues based on agreements for spectrum access.

¹¹⁰ See 47 CFR 1.2110(c)(2)(ii)(J); see also FCC Forms 175 (application to participate in competitive bidding); 609-T, 611-T (filings regarding post-auction status).

¹¹¹ See *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket No. 16-155, Second Report and Order, 36 FCC Rcd 14848, 14849, para. 1 (2021) (*2021 Standard Questions Order*).

¹¹² See *id.* at 14855-56, para. 14.

¹¹³ See *id.* at 14856-57, paras. 16-17.

¹¹⁴ 15 U.S.C. § 18a.

including, *inter alia*, information on subsidiaries of the filing entity and minority shareholders of the filing entity and its ultimate parent entity.¹¹⁵

38. *TCB and test lab ownership and control reporting requirements.* In order to more effectively protect our equipment authorization program from the direction or influence of untrustworthy entities and ensure the integrity of the program, we propose to require any entity seeking to become an FCC-recognized TCB or test lab to submit to the Commission sufficient information for the Commission to determine the TCB's or test lab's ownership and control, consistent with any threshold determinations we may adopt, as proposed in this proceeding.

39. We believe that collection of certain general ownership and control information places the Commission in the best position to evaluate any ownership interest concerns that potentially may be raised regarding an entity's impartiality or trustworthiness, particularly with regard to potential influence by entities that raise national security concerns. Further, we also believe that such ownership information could be relevant to establishing appropriate "qualifications and standards" under section 302(e) regarding private entities to which the Commission has delegated and entrusted certain responsibilities as part of its equipment authorization program. The Commission has broad authority under section 302, when delegating certification responsibilities to private organizations such as TCBs and test labs, to "establish such qualifications and standards as it deems appropriate" for certification and testing activities.¹¹⁶ In particular, such data can be instructive in efforts to bolster the integrity of the equipment authorization program, such as ensuring that TCBs are complying with applicable impartiality requirements and rules targeted at ensuring they are not owned or controlled by a manufacturer whose equipment they must examine.¹¹⁷

40. We propose that each TCB or test lab be required to report direct or indirect equity and/or voting interest in the TCB or test lab of 5% or greater. In other similar information collections, the Commission has agreed with Executive Branch determinations that a 5% threshold is appropriate because in some instances less-than-ten percent foreign ownership interest—or a collection of such interests—may pose a national security or law enforcement risk.¹¹⁸ We seek comment on this proposal. Alternatively, we seek comment on other levels and on whether we should raise or lower the ownership threshold for purposes of disclosure. If we were to require submission of any such ownership information, how should such information be collected (e.g., what particular information in what kind of submissions) and how frequently should this information be reported to the Commission? Should there be a distinction between foreign private ownership vs. foreign governmental ownership? We also seek comment on evolving

¹¹⁵ 16 CFR pt 801 and 803; see also Antitrust Improvements Act Notification and Report for Certain Mergers and Acquisitions Instructions (available at https://www.ftc.gov/system/files/ftc_gov/pdf/HSRFormInstructions02.27.23.pdf).

¹¹⁶ 47 U.S.C. § 302a(e)(3).

¹¹⁷ Pursuant to the provisions of the ISO/IEC 17065 standard, TCBs must meet numerous requirements, including ensuring impartiality; having an appropriate organizational structure and management; ensuring the competence of its personnel; establishing effective processes for application review, evaluation, and certification; and maintenance of records. See generally ISO/IEC 17065. For instance, regarding impartiality, the standard provides that the certification body, here the TCB, "shall be responsible for the impartiality of its certification activities, and shall not allow commercial, financial or other pressures to compromise impartiality." ISO/IEC 17065, section 4.2.2. TCBs must structure and manage their certification activities so as to safeguard impartiality. See, e.g., *id.* sections 5.1.1, 5.2, Annex A.2 ("Impartiality").

¹¹⁸ See 2021 Standard Questions Order, 36 FCC Rcd at 14856, para. 16; see *id.* at 14855-57, paras. 14-17. The Commission further noted, "[t]he Committee staff adds that when ownership is widely held, five percent can be a significant interest and is consistent with requirements imposed by other agencies such as the Securities and Exchange Commission, which requires disclosure beyond that threshold." *Id.* at 14856, para. 16. In the *Evolving Risks Order and NPRM*, the Commission is seeking comment, in consideration of an evolving national security and law enforcement landscape, on revising the ownership reporting threshold, currently set at 10% or greater direct and indirect equity and/or voting interests, to 5%. *Evolving Risks Order and NPRM*, 38 FCC Rcd at 4349, para. 4; see generally *id.* at 4392-96, paras. 89-97.

ownership and how to ensure that the Commission is timely informed of changes in ownership of TCBs and test labs. Should additional reporting requirements apply to changes in ownership? If so, what thresholds of change should trigger such reporting? We seek comment on relevant aspects to the information that should be collected.

41. Further, to implement the proposed prohibition of Covered List entities discussed above and align the prohibition with our equipment authorization program rules regarding prohibited equipment,¹¹⁹ we propose to prohibit from recognition by the FCC and participation in our equipment authorization program any TCB or test lab in which an entity identified on the Covered List controls or holds a 10% or more direct or indirect ownership interest. We seek comment on this proposal. We also invite comment on any other threshold interest level that commenters may believe appropriate, and request that they provide support for their views. We make this proposal while noting that, in the *EA Security R&O*, the Commission prohibited authorization of equipment produced by “affiliates” of entities named on the Covered List and defined an “affiliate” as “an entity that (directly or indirectly) own or controls, is owned or controlled by, or is under common ownership or control with another entity,”¹²⁰ and defined the term ‘own’ in this context as to “have, possess, or otherwise control an equity interest (or the equivalent thereof) of more than 10 percent.”¹²¹ We therefore propose to revise the term “own” in this context to reflect ten percent or more, rather than more than 10 percent. We seek comment on this proposal. We further propose to require that TCBs and test labs that are currently recognized by the FCC must: (1) no later than 30 days after the effective date of any final rules adopted in this proceeding, certify that no entity identified on the Covered List or otherwise specified in our final rules has direct or indirect ownership or control of the relevant TCB or test lab, and (2) no later than 90 days after the effective date of any final rules adopted in this proceeding identify any entity (including the ultimate parent of such entities) that holds such ownership or control interest as our final rules require, currently proposed as 5% or more ownership, as discussed above. We propose to adopt the definition of “ultimate parent entity” used in the rules governing pre-merger notifications under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, which defines the ultimate parent entity as “an entity which is not controlled by any other entity.”¹²² We seek comment on this proposal. In keeping with this proposal, we also propose to clarify the requirement that every entity specifically named on the Covered List must provide to the Commission, pursuant to § 2.903(b), information regarding all of its subsidiaries and affiliates, not merely those that produce “covered” equipment. Further, we propose that, if a relevant TCB or test lab does not so certify, or provides a false or inaccurate certification, we would suspend the recognition of any such TCB or test lab and commence action to withdraw FCC recognition under applicable withdrawal procedures, as discussed further below. We seek any additional comment on these proposals and their implementation.

D. Rule Revisions concerning TCBs and Test Labs

1. Telecommunications Certification Bodies

42. As discussed above, we propose to prohibit from recognition by the FCC and participation in our equipment authorization program, any TCB or test lab in which an entity identified on the Covered List controls or holds a 10% or more direct or indirect ownership interest and seek comment on a similar prohibition with regard to other entities that raise national security concerns. We also propose to collect certain ownership information from TCBs and test labs. In this section, we propose and seek comment on additional issues regarding implementation of our proposed prohibition as well as any other revisions we

¹¹⁹ See 47 CFR § 2.903 (“Prohibition on authorization of equipment on the Covered List”).

¹²⁰ 47 CFR § 2.903(c).

¹²¹ *Id.*

¹²² 15 CFR § 801.1. The rules further define entity as “any natural person, corporation, company, partnership, joint venture, association, joint-stock company, trust, estate of a deceased natural person, foundation, fund, institution, society, union, or club, whether incorporated or not, wherever located and of whatever citizenship, or any receiver, trustee in bankruptcy or similar official or any liquidating agent for any of the foregoing, in his or her capacity as such; or any joint venture or other corporation which has not been formed but the acquisition of the voting securities or other interest in which, if already formed, would require notification under the act and these rules.” *Id.*

may adopt in this rulemaking.

43. *Post-market surveillance.* We invite comment on whether the Commission should revise the post-market surveillance rules, policies, or guidance to expressly require such surveillance of granted authorizations, not only with respect to compliance with technical and attestation requirements, but also regarding compliance relating to the prohibition on authorization of “covered” equipment. We seek comment on reasonable practices TCBs could implement to identify erroneous authorizations of “covered” equipment. Are there best practices or analogous legal frameworks that could be leveraged here? Should we change the post-market surveillance requirements to require that TCBs review certification grants by other TCBs? Should we require that any post-market surveillance testing be done only by FCC-recognized labs in the United States and/or MRA countries?¹²³ What other measures should we take to strengthen the integrity of the post-market surveillance process to ensure that prohibited equipment has not been erroneously authorized? We also invite comment on any other revisions that the Commission should consider in light of any revisions that the Commission adopts in this proceeding.

44. *TCB accrediting bodies.* In order for a TCB that is recognized by the FCC to remain so recognized, the TCB’s accreditation body must perform an assessment at least every two years to determine that the TCB remains competent to perform the work for the scopes for which it has been recognized.¹²⁴ Upon successful completion of the re-assessment by the accreditation body, the information is sent to the TCB’s designating authority, which then updates this continued accreditation in the FCC’s EAS database. Neither the ISO/IEC standards nor Commission rules include any specific restrictions on the ownership or control of an accreditation body. MRAs generally focus on the capability of accreditation bodies, and do not include specific provisions or restrictions on ownership other than impartiality.

45. We seek comment on potential revisions concerning the Commission’s rules and procedures for recognition and re-recognition of TCB accrediting bodies in light of any revisions that we may adopt in this proceeding. What revisions are needed, if any, to ensure that the accreditation body’s assessment of entities seeking to become TCBs includes a review of the TCB’s ownership and compliance with any requirements the Commission may adopt in this proceeding?

46. *Accreditation and reassessment of TCBs.* We seek comment on whether the Commission should clarify or revise its rules or procedures concerning the accreditation of TCBs to ensure that the TCBs can meet their responsibilities. We seek comment on what particular steps or procedures in the accreditation process could be implemented to examine how TCBs are structured, owned, or managed to safeguard impartiality and otherwise ensure that commercial, financial, or other pressures do not compromise impartiality on certification activities concerning prohibited equipment authorization.¹²⁵ Under our rules, each TCB must be reassessed for continued accreditation at least every two years.¹²⁶ If we were to decide to revise any rules or procedures to address impartiality or untrustworthiness concerns along the lines indicated above, we similarly propose to require any reassessment for continued accreditation to take those issues into account. Accordingly, we seek comment on the potential clarifications or revisions to the process for the periodic reassessment of TCBs for continued recognition by the Commission. Should, for instance, the Commission provide additional clarity on the reassessment process for submitting the request for reassessment or the review by the accrediting body? Are there other requirements that the Commission should adopt consistent with the issues raised above and our goals in

¹²³ We note that limiting post-market surveillance testing to regulator-recognized labs in-country and/or in MRA countries is consistent with the approach taken by other regulators. *See, e.g., Recognition of Certification Bodies*, C. Gaz. SMSE-011-21 (Can.) (noting that a Canadian Certification Body (CB) can use, for post-market surveillance testing, its in-house laboratory or another ISCED-recognized laboratory located in an MRA economy with which the CB has a valid contractual arrangement).

¹²⁴ 47 CFR § 2.962(c)(7).

¹²⁵ ISO/IEC 17065, sections 4.2.2, 5.1.1, and 5.2. *See also id.*, Annex A (“Impartiality”).

¹²⁶ 47 CFR § 2.962(c)(7).

this proceeding?

47. We also seek comment on whether any clarifications or revision of rules or procedures, either for a new accreditation or a continued accreditation, may implicate or affect U.S. international agreements such as MRAs concerning TCBs and TCB accreditation. Finally, to the extent any commenter proposes further clarification or revisions, we ask that they address any implications under the existing MRAs and whether and how to implement any suggested changes.

48. *FCC recognition of TCBs.* Considering the proposals and approaches we discuss above, we seek comment on whether the Commission should consider potential revisions to the rules or processes by which the Commission recognizes a TCB following its initial accreditation, and/or the process by which accreditation is subsequently extended on a periodic basis, including any further review the FCC would do to continue to recognize an accredited TCB.¹²⁷ Under our current rules, the Commission will recognize as a TCB any organization in the United States that meets the qualification criteria and is accredited and designated by NIST or NIST's recognized accreditor.¹²⁸ Additionally, the Commission will recognize as a TCB any organization outside the United States that meets the qualification criteria and is designated pursuant to the applicable bilateral or multilateral MRA.¹²⁹ We seek comment on whether we should consider making any clarifications or changes to the FCC recognition process to better ensure that TCBs have the capacity and procedures to meet their obligations under Commission rules, including any requirements we adopt in this proceeding. We invite comment on the Commission's rules and procedures regarding recognition of TCBs as qualified for authorizing equipment. Are there any changes that should be considered, either to the rules or procedures concerning the FCC's initial recognition of a TCB, or its continued recognition following any periodic reassessment or reaccreditation of TCBs? To the extent that commenters suggest any changes to the rules or procedures, we ask that they address any implications for MRAs applicable to equipment certification.

49. *Withdrawal of FCC recognition.* In addition, we seek comment on the Commission's rules and policies regarding withdrawal of FCC recognition of a TCB. Under our rules the Commission will withdraw recognition of a TCB if its designation or accreditation is withdrawn, if the Commission determines that there is "just cause" for withdrawing the recognition, or if the TCB requests that it no longer be designated or recognized.¹³⁰

50. We invite comment on the procedures by which the Commission would withdraw recognition of a TCB. Our rules require that the Commission notify a TCB in writing when it has concerns or evidence that the TCB is not certifying equipment in accordance with the Commission rules and policies, and request that the TCB explain and correct any deficiencies. The rules also provide particular procedures for withdrawal, including notification requirements such as providing TCBs at least 60 days to respond.¹³¹ To the extent the TCB was designated and recognized pursuant to an MRA, the Commission must consult with the U.S. Trade Representative, as necessary, concerning any disputes involving the Telecommunications Trade Act of 1988.¹³² In light of our proposals and issues raised above, we invite comment on whether the Commission should consider clarifications or revisions to our rules or policies, including the current notification requirements and procedures, and if so whether and to what extent such changes would affect the MRAs.

2. Measurement Facilities (Test Labs)

51. In this section, we propose and seek comment on additional issues regarding implementation

¹²⁷ See 47 CFR §§ 2.960, 2.962.

¹²⁸ 47 CFR § 2.962(e)(1)(i).

¹²⁹ 47 CFR § 2.962(e)(1)(ii).

¹³⁰ 47 CFR § 2.962(e)(2).

¹³¹ 47 CFR § 2.962(e)(2).

¹³² See 19 U.S.C. 3106(a)(1)(B).

of our proposed prohibition, as well as any other revisions we may adopt in this rulemaking, concerning test labs.

52. *Transparency.* With the existing transparency requirements and public availability requirements regarding any test lab data and information that TCBs rely upon, are there additional transparency requirements that would be necessary or appropriate in light of the proposal above? We ask that commenters recommending any particular changes address the implications of such changes for existing Commission rules and policies, including the consistency of such changes with ISO/IEC 17025, as well as any potential MRA-related implications.

53. *Test lab accrediting bodies.* We also invite comment on whether additional clarifications or modifications to the current processes regarding the accreditation of test labs are appropriate in light of our proposals and discussion above and our goals in this proceeding. We ask that commenters discuss what changes may be needed with regard to the accreditation body's expertise were the Commission to adopt its proposals to preclude the accreditation of any test labs associated with entities identified on the Covered List, as well as what changes may be needed in the event that the Commission concludes that other indicia about test labs affect their eligibility. Commenters should address the specific reasons for making changes that are not already addressed by Commission rules and policies. Finally, we ask that commenters address any other implications of their suggestions, including the extent to which MRAs may be affected.

54. Also, in light of evolving national security risks, such as those that may be reflected in the Commerce Department's "foreign adversaries" list, we propose to preclude accreditation bodies associated with any such foreign adversary and seek comment. How would such association be determined? We also seek comment on whether test lab accreditation bodies should be located only in the United States or other MRA-partnered countries.

55. *Accreditation of test labs.* We also seek comment on the responsibilities and procedures by which FCC-recognized accreditation bodies conduct their assessment of prospective test labs and determine whether to accredit particular test labs. Should the Commission clarify its recognition requirements with regard to any of the ISO/IEC 17025 standards into its rules and procedures to ensure that the accreditation process for test labs is sufficiently robust to ensure that the requirements that labs be competent and impartial, are managed to safeguard impartiality, and generate valid test results, and that effective procedures are in place include ensuring that labs meet the ownership and control requirements adopted in this proceeding?

56. We also request comment on whether any of these Commission rules or policies concerning reassessment of test lab accreditation every two years should be clarified or revised in order to help ensure that untrustworthy labs are not recognized and do not be continued to be recognized by the Commission. We note that if we were to adopt clarifications of any ISO/IEC 17025 principles (e.g., on personnel, training, or effective management) to ensure that test labs conduct testing in a competent and impartial manner, we propose to require that the accreditation bodies reassess test labs under the new requirements or procedures. Should OET establish additional specific procedures for reassessment and FCC re-recognition of test labs? We seek comment on other potential revisions of our procedures for reassessment of test labs every two years, as well as potential revisions of our procedures for recognition and revocation of recognition. We also seek comment on any MRA-related issues/concerns that could arise from adoption of any of these possible rule revisions.

57. Finally, we seek comment on whether, in light of evolving national security concerns, the Commission should revisit its rules and procedures for recognizing test labs with regard to some or all of the countries in economies that do not have an MRA with the United States.¹³³ For instance, should the Commission no longer recognize any test lab that is located within a "foreign adversary" country that does not have an MRA with the United States? To date, the Commission has recognized three

¹³³ The Commission revised its policies with regard to accreditation of test labs in non-MRA economies in 2016. 2016 EA MO&O, 31 FCC Rcd 7426 (2016).

accreditation bodies, all located in the United States, to designate test labs that are located in non-MRA countries. Under our current rules, these bodies accredit test labs based on ISO/IEC 17025, the same standard by which test labs located in the United States and other MRA-partnered countries are accredited.¹³⁴ The Commission has recognized numerous test labs located in economies that do not have an MRA with the United States. We also note that a number of these test labs also are owned and controlled by TCBs, which must be located in economies that have entered into MRAs with the United States.

58. *FCC recognition.* We seek comment on revisions to our rules concerning eligibility restrictions on entities that will be recognized by the Commission as a test lab in our equipment authorization program. We invite comment on whether any other clarifications or revisions to these Commission rules, policies, or guidance would be appropriate. For example, we seek comment on any necessary clarifications or revisions to the Commission's process for its initial recognition of test labs and to continued Commission recognition following any re-accreditation that occurs on a periodic basis at least every 2 years. We also invite comment on whether the Commission should adopt a more formal FCC review process before initially recognizing a test lab or continued recognition of test labs, and, if so, ask that commenters provide any suggestions they may have as to what such new procedures should look like. We also seek comment on any MRA-related issues or concerns that may arise from any changes to the current TCB recognition process.

59. *Withdrawal of recognition.* We propose and seek comment on clarifying or modifying the steps that the Commission should take when it determines whether to withdraw recognition of a test lab if the Commission were to adopt changes regarding the type of entities that it will recognize as test labs, or continue to recognize, under the equipment authorization program.

60. To the extent that the Commission ultimately adopts any of the proposals discussed above (e.g., making test labs associated with entities identified on the Covered List ineligible) or takes other actions to restrict eligibility on entities (e.g., based on other ownership interests or controlling issues that the Commission may prohibit), we propose that the Commission withdraw recognition of any test lab that cannot meet the revised requirements for an FCC-recognized test lab. We seek comment on this proposal, and on the procedures that the Commission should employ with regard to withdrawing continued recognition of such test labs.

61. As with our discussion of TCBs above, we also believe that repeated failure of a test lab to provide accurate test results, or a test lab's lack candor with regard to interactions with the Commission, would constitute sufficient basis for withdrawal of recognition, and propose that were such circumstances to be presented, the Commission would move forward with withdrawing any existing FCC recognition of such a test lab. We seek comment on this proposal. We also invite comment on other bases that would merit the Commission proceeding with withdrawing recognition of any existing test lab.

62. *Use of accredited, FCC-recognized test labs in SDoC process.* As we discussed above, our current rules on authorization of equipment through the SDoC process do not require that any requisite testing of equipment be conducted by an accredited, FCC-recognized test lab.¹³⁵ As we seek to ensure the integrity of our equipment authorization program, including ensuring test labs in which entities identified on the Covered List have certain direct or indirect ownership interests or control do not participate in our equipment authorization program, we seek comment on whether the Commission also should require that all equipment authorized pursuant to the SDoC process be tested by accredited and FCC-recognized test labs. Such action could serve to further promote the integrity of the program in precluding untrustworthy test labs from participation and our national security goals addressed in this proceeding. We seek

¹³⁴ 2016 EA MO&O, 31 FCC Rcd at 7429, para. 10.

¹³⁵ As noted, in 2017 the Commission revised its rules to no longer require testing by accredited and FCC-recognized test labs for equipment authorized in the SDoC process. *Amendment of Parts 0, 1, 2, and 15 of the Commission's Rules regarding Authorization of Radiofrequency Equipment*, ET Docket No. 15-170, Report and Order, 32 FCC Rcd 8746, 8749-51, paras. 4, 7-8 (2017).

comment on this approach.

63. *Other issues.* Finally, to the extent not specifically asked above, we ask that commenters address whether and, if so, how any of our proposals herein might affect existing MRAs and/or necessitate further action regarding existing or potential MRAs. Commenters should address any legal authority issues that may arise and the extent to which MRAs or other trade policies may be affected by these proposals.

IV. PROCEDURAL MATTERS

64. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),¹³⁶ 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.”¹³⁷ Accordingly, we have prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the possible/potential impact of the rule and policy changes contained in this *Notice*. The IRFA is found in Appendix B. The Commission invites the general public, in particular small businesses, to comment on the IRFA. Comments must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines for comments indicated on the first page of this document.

65. *Paperwork Reduction Act.* This document contains proposed new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law No. 104-13. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on any information collection requirements contained in this document. 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.”

66. *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>.

67. *OPEN Government Data Act.* The OPEN Government Data Act,¹³⁸ requires agencies to make “public data assets” available under an open license and as “open Government data assets,” *i.e.*, in machine-readable, open format, unencumbered by use restrictions other than intellectual property rights, and based on an open standard that is maintained by a standards organization.¹³⁹ This requirement is to be implemented “in accordance with guidance by the Director” of the OMB.¹⁴⁰ The term “public data asset” means “a data asset, or part thereof, maintained by the Federal Government that has been, or may be, released to the public, including any data asset, or part thereof, subject to disclosure under [the Freedom of Information Act (FOIA)].”¹⁴¹ A “data asset” is “a collection of data elements or data sets that may be

¹³⁶ 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).

¹³⁷ 5 U.S.C. § 605(b).

¹³⁸ Congress enacted the OPEN Government Data Act as Title II of the Foundations for Evidence-Based Policymaking Act of 2018, Pub. L. No. 115-435 (2019), §§ 201-202.

¹³⁹ 44 U.S.C. §§ 3502(20), (22) (definitions of “open Government data asset” and “public data asset”), 3506(b)(6)(B) (public availability).

¹⁴⁰ OMB has not yet issued final guidance.

¹⁴¹ 44 U.S.C. § 3502(22).

grouped together,”¹⁴² and “data” is “recorded information, regardless of form or the media on which the data is recorded.”¹⁴³

68. *Ex Parte Rules – Permit but Disclose.* This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.¹⁴⁴ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

69. *Comment Period and Filing Procedures.* Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. All filings must refer to ET Docket 24-136.

- Electronic filers: Comments may be filed electronically using the Internet by accessing the Commission’s Electronic Comment Filing System (ECFS): <https://www.fcc.gov/ecfs>. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).
- 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

¹⁴² 44 U.S.C. § 3502(17).

¹⁴³ 44 U.S.C. § 3502(16).

¹⁴⁴ *Id.* §§ 1.1200 *et seq.*

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>.

70. *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).

71. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be publicly available online via ECFS. When the FCC Headquarters reopens to the public, these documents will also be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

72. *Further Information.* For further information, contact Jamie Coleman of the Office of Engineering and Technology, at 202-418-2705 or Jamie.Coleman@fcc.gov.

V. ORDERING CLAUSES

73. Accordingly, IT IS ORDERED, pursuant to the authority found in sections 1, 4(i), 229, 301, 302, 303, 309, 312, 403, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 229, 301, 302a, 303, 309, 312, 403, and 503, section 105 of the Communications Assistance for Law Enforcement Act, 47 U.S.C. § 1004; the Secure and Trusted Communications Networks Act of 2019, 47 U.S.C. §§ 1601-1609; and the Secure Equipment Act of 2021, Pub. L. 117-55, 135 Stat. 423, 47 U.S.C. § 1601 note, that this Notice of Proposed Rulemaking IS HEREBY ADOPTED.

74. IT IS FURTHER ORDERED that the Commission's Office of the Secretary, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Proposed Rules

Part 2 — FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336 unless otherwise noted.

2. Revise § 2.903 paragraph (b)(1) and the definition of “Affiliate” in paragraph (c) to read as follows:

§ 2.903 Prohibition on authorization of equipment on the Covered List.

* * * * *

(b) Each entity named on the Covered List, as established pursuant to § 1.50002 of this chapter, must provide to the Commission the following information: the full name, mailing address or physical address (if different from mailing address), e-mail address, and telephone number of each of that named entity’s associated entities (e.g., subsidiaries or affiliates).

(1) Each entity named on the Covered List must provide the information described in paragraph (b) of this section no later than [30 DAYS AFTER PUBLICATION OF FINAL RULES IN THE FEDERAL REGISTER];

(1) Each entity named on the Covered List must provide the information described in paragraph (b) of this section no later than [30 DAYS AFTER PUBLICATION OF FINAL RULES IN THE FEDERAL REGISTER];

(2) Each entity named on the Covered List must provide the information described in [paragraph \(b\)](#) of this section no later than 30 days after the effective date of each updated Covered List; and

(3) Each entity named on the Covered List must notify the Commission of any changes to the information described in [paragraph \(b\)](#) of this section no later than 30 days after such change occurs.

(c) For purposes of implementing this subpart with regard to the prohibition on authorization of communications equipment on the Covered List, the following definitions apply:

Affiliate. The term “affiliate” means an entity that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another entity; for purposes of this paragraph, the term ‘own’ means to have, possess, or otherwise control an equity or voting interest (or the equivalent thereof) of 10 percent or more.

* * *

* * * * *

3. Revise § 2.938 paragraph (b)(1)(ii) to read as follows:

§ 2.938 Retention of Records

* * * * *

(b) * * *

(1) * * *

(ii) State the name of the test laboratory, company, or individual performing the testing. The Commission may request additional information regarding the test site, the test equipment, or the qualifications of the company or individual performing the tests, including documentation identifying any entity that holds a 5% or greater direct or indirect equity or voting interest in the test laboratory, company, or individual performing the testing;

* * * * *

4. Revise § 2.948 paragraph (b)(1) by adding paragraphs (viii) and (ix); redesignating paragraph (c)(9) as paragraph (c)(10); and adding new paragraphs (c)(9), (g), and (h) to read as follows:

§ 2.948 Measurement facilities.

* * * * *

(b) * * *

(1) * * *

(viii) Certification from each measurement facility that no entity identified on the Covered List has, possesses, or otherwise controls an equity or voting interest of 10% or more in the measurement facility; and

(ix) Documentation identifying any entity that holds a 5% or greater direct or indirect equity or voting interest in the measurement facility.

* * * * *

(c) The Commission will maintain a list of accredited laboratories that it has recognized. The Commission will make publicly available a list of those laboratories that have indicated a willingness to perform testing for the general public. Inclusion of a facility on the Commission's list does not constitute Commission endorsement of that facility. In order to be included on this list, the accrediting organization (or Designating Authority in the case of foreign laboratories) must submit the information listed below to the Commission's laboratory:

* * * * *

(9) Each recognized laboratory must certify to the Commission, no later than [30 DAYS AFTER THE EFFECTIVE DATE OF A FINAL RULE], and no later than 30 days after any relevant change in the required information takes effect, that no entity identified on the Covered List has, possesses, or otherwise controls an equity or voting interest of 10% or more in the laboratory;

(10) Other information as requested by the Commission.

* * * * *

(g) No equipment will be authorized under either the certification procedure or the Supplier's Declaration of Conformity if such authorization is reliant upon testing performed at a laboratory or measurement facility in which any entity identified on the Covered List, as established pursuant to [§ 1.50002 of this chapter](#), has, possesses, or otherwise controls an equity or voting interest of 10% or more.

(h) Regardless of accreditation, the Commission will not recognize any test lab:

- (1) In which any entity identified on the Covered List, as established pursuant to [§ 1.50002 of this chapter](#), has, possesses, or otherwise controls an equity or voting interest of 10% or more;
- (2) That fails to provide, or provides a false or inaccurate, certification as required in paragraph (c)(9) of this section; or
- (3) That repeatedly fails to provide accurate test results or lacks candor with regard to interactions with the Commission.

4. Amend § 2.949 by adding paragraph (c) as follows:

§ 2.949 Recognition of laboratory accreditation bodies.

* * * * *

(c) The Commission will not recognize a laboratory accreditation body that has any affiliation with a foreign adversary as designated by the U.S. Department of Commerce at 15 CFR § 7.4.

5. Amend § 2.960 by adding paragraph (d) as follows:

§ 2.960 Recognition of Telecommunication Certification Bodies (TCBs).

* * * * *

(d) The Commission will not recognize any TCB for which any entity identified on the Covered List, as established pursuant to [§ 1.50002 of this chapter](#), has, possesses, or otherwise controls an equity or voting interest of 10% or more.

6. Amend § 2.962 by revising paragraph (2) and adding paragraphs (6) through (9) as follows:

§ 2.962 Requirements for Telecommunication Certification Bodies.

(e) *Recognition of a TCB.*

* * * * *

(2) The Commission will notify a TCB in writing of its intention to withdraw or limit the scope of the TCB's recognition and provide at least 60 days for the TCB to respond. In the case of a TCB designated and recognized pursuant to an bilateral or multilateral mutual recognition agreement or arrangement (MRA), the Commission shall consult with the Office of the United States Trade Representative (USTR), as necessary, concerning any disputes arising under an MRA for compliance with the Telecommunications Trade Act of 1988 (Section 1371–1382 of the Omnibus Trade and Competitiveness Act of 1988).

- (i) The Commission will withdraw its recognition of a TCB if:
- (A) The TCB's designation or accreditation is withdrawn, if the Commission determines there is just cause for withdrawing the recognition;
 - (B) The TCB requests that it no longer hold its designation or recognition;
 - (C) The TCB fails to provide the certification required in paragraph (8); or
 - (D) The TCB fails to fulfill its obligations to the Commission to ensure that no authorization is granted for any equipment that is produced by any entity identified on the Covered List, established pursuant to § 1.50002 of this chapter.
- (ii) The Commission will limit the scope of equipment that can be certified by a TCB if its accreditor limits the scope of its accreditation or if the Commission determines there is good cause to do so.
- (iii) The Commission will notify a TCB in writing of its intention to withdraw or limit the scope of the TCB's recognition and provide at least 60 days for the TCB to respond. In the case of a TCB designated and recognized pursuant to an bilateral or multilateral mutual recognition agreement or arrangement (MRA), the Commission shall consult with the Office of the United States Trade Representative (USTR), as necessary, concerning any disputes arising under an MRA for compliance with the Telecommunications Trade Act of 1988 (Section 1371–1382 of the Omnibus Trade and Competitiveness Act of 1988).

* * * * *

- (6) The Commission will not recognize as a TCB any organization in which any entity identified on the Covered List, as established pursuant to [§ 1.50002 of this chapter](#), has, possesses, or otherwise controls an equity or voting interest of 10% or more.
- (7) A TCB must have an organizational and management structure in place, including personnel with specific training and expertise, to verify that no authorization is granted for any equipment that is produced by any entity identified on the Covered List, established pursuant to § 1.50002 of this chapter.
- (8) Each recognized TCB must certify to the Commission, no later than [30 DAYS AFTER THE EFFECTIVE DATE OF A FINAL RULE], and no later than 30 days after any relevant change in the required information takes effect that no entity identified on the Covered List has, possesses, or otherwise controls an equity or voting interest of 10% or more of the TCB.
- (9) Each recognized TCB must provide to the Commission, no later than [90 DAYS AFTER THE EFFECTIVE DATE OF A FINAL RULE], and no later than 30 days after any relevant change in the required information takes effect, documentation identifying any entity that holds a 5% or greater direct or indirect equity or voting interest in the TCB.

* * * * *

APPENDIX B**Initial Regulatory Flexibility Analysis**

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Federal Communications Commission (Commission) has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the Notice of Proposed Rulemaking (NPRM). As required by the Regulatory Flexibility Act of 1980, as amended (RFA),² the Federal Communications Commission (Commission) has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the Notice of Proposed Rulemaking (NPRM). 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 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).³ In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.⁴

A. Need for, and Objectives of, the Proposed Rules

2. In the NPRM, pursuant to section 302(e) of the Communications Act,⁵ we seek further comment on several matters, proposed rules, and potential revisions to our rules to address issues that pose a threat to national security and may affect the ability of small entities to implement the prohibition on the use of Covered Equipment on our nation's communications networks and equipment supply chains. Specifically, we consider restrictions affecting telecommunications certification bodies (TCBs) and measurement facilities (test labs) as part of our equipment authorization program based on entities identified on our Covered List. In the NPRM, we seek comment on revisions to our TCB and test labs rules to further support the Commission's goals by considering adoption of new eligibility requirements, ensuring the impartiality, effectiveness, and trustworthiness of those third party entities to which the Commission is delegating significant responsibilities regarding equipment that potentially raises national security concerns. Lastly, we seek comment on revisions to part 2 of the Commission's rules which address how we recognize a TCB or test lab following its initial accreditation, and the process by which accreditation is extended, withdrawal of recognition of a TCB or test lab for "just cause," and procedures concerning TCBs and test labs in the equipment authorization process.

B. Legal Basis

3. The proposed action is authorized pursuant to sections 4(i), 301, 302, 303, 309, 312, 403, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 301, 302a, 303, 309, 312, 403, and 503.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of, the number of small entities that may be affected by the proposed rules, if adopted.⁶ The RFA generally

¹ 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² 5 U.S.C. § 603. 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).

³ *Id.* § 603(a).

⁴ *Id.*

⁵ 47 U.S.C. § 302a(e).

⁶ 5 U.S.C. § 603(b)(3).

defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁷ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁸ A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.⁹

5. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein.¹⁰ 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.¹¹ These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.¹²

6. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹³ The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.¹⁴ Nationwide, for tax year 2022, there 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.¹⁵

7. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special

⁷ *Id.* § 601(6).

⁸ *See id.* § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

⁹ 15 U.S.C. § 632.

¹⁰ 5 U.S.C. § 601(3)-(6).

¹¹ *See* SBA, Office of Advocacy, “What’s New With Small Business?,” <https://advocacy.sba.gov/wp-content/uploads/2023/03/Whats-New-Infographic-March-2023-508c.pdf> (Mar. 2023).

¹² *Id.*

¹³ 5 U.S.C. § 601(4).

¹⁴ The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. *See* Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), “Who must file,” <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

¹⁵ *See* Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2022 with revenue less than or equal to \$50,000 for Region 1-Northeast Area (71,897), Region 2-Mid-Atlantic and Great Lakes Areas (197,296), and Region 3-Gulf Coast and Pacific Coast Areas (260,447) that includes the continental U.S., Alaska, and Hawaii. This data includes information for Puerto Rico (469).

districts, with a population of less than fifty thousand.”¹⁶ U.S. Census Bureau data from the 2022 Census of Governments¹⁷ indicate there were 90,837 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.¹⁸ Of this number, there were 36,845 general purpose governments (county,¹⁹ municipal, and town or township²⁰) with populations of less than 50,000 and 11,879 special purpose governments (independent school districts²¹) with enrollment populations of less than 50,000.²² Accordingly, based on the 2022 U.S. Census of Governments data, we estimate that at least 48,724 entities fall into the category of “small governmental jurisdictions.”²³

8. *Satellite Telecommunications.* This industry comprises firms “primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”²⁴ 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.²⁵ U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year.²⁶ Of this number, 242 firms had revenue of less than

¹⁶ 5 U.S.C. § 601(5).

¹⁷ 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Census of Governments, <https://www.census.gov/programs-surveys/economic-census/year/2022/about.html>.

¹⁸ See U.S. Census Bureau, 2022 Census of Governments – Organization Table 2. Local Governments by Type and State: 2022 [CG2200ORG02], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). See also tbl.2. CG2200ORG02 Table Notes_Local Governments by Type and State_2022.

¹⁹ See *id.* at tbl.5. County Governments by Population-Size Group and State: 2022 [CG2200ORG05], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 2,097 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

²⁰ See *id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2022 [CG2200ORG06], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 18,693 municipal and 16,055 town and township governments with populations less than 50,000.

²¹ See *id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2022 [CG2200ORG10], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 11,879 independent school districts with enrollment populations less than 50,000. See also tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2022 [CG2200ORG04], CG2200ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2022.

²² While the special purpose governments category also includes local special district governments, the 2022 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

²³ This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,845) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (11,879), from the 2022 Census of Governments - Organizations tbls. 5, 6 & 10.

²⁴ See U.S. Census Bureau, 2017 NAICS Definition, “517410 Satellite Telecommunications,” <https://www.census.gov/naics/?input=517410&year=2017&details=517410>.

²⁵ See 13 CFR § 121.201, NAICS Code 517410.

²⁶ 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>.

\$25 million.²⁷ 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.²⁸ Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees.²⁹ Consequently, using the SBA's small business size standard, a little more than half of these providers can be considered small entities.

9. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.³⁰ 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.³¹ 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.³² The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.³³ U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.³⁴ Of those firms, 1,039 had revenue of less than \$25 million.³⁵ Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

10. *Fixed Satellite Small Transmit/Receive Earth Stations.* Neither the SBA nor the Commission have developed a small business size standard specifically applicable to Fixed Satellite Small Transmit/Receive Earth Stations. Satellite Telecommunications³⁶ is the closest industry with an SBA small business size standard. The SBA size standard for this industry classifies a business as small if it has \$38.5 million or less in annual receipts.³⁷ For this industry, U.S. Census Bureau data for 2017 show that there was a total of 275 firms that operated for the entire year.³⁸ Of this total, 242 firms had

²⁷ *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.

²⁸ 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>.

²⁹ *Id.*

³⁰ See U.S. Census Bureau, *2017 NAICS Definition*, "517919 All Other Telecommunications," <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

³¹ *Id.*

³² *Id.*

³³ See 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

³⁴ 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>.

³⁵ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. 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.

³⁶ See U.S. Census Bureau, *2017 NAICS Definition*, "517410 Satellite Telecommunications," <https://www.census.gov/naics/?input=517410&year=2017&details=517410>.

³⁷ See 13 CFR § 121.201, NAICS Code 517410.

³⁸ 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>.

revenue of less than \$25 million.³⁹ 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.⁴⁰ Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees.⁴¹ Consequently, using the SBA's small business size standard, a little more than half of these providers can be considered small entities.

11. *Mobile Satellite Earth Stations.* Neither the SBA nor the Commission have developed a small business size standard specifically applicable to Mobile Satellite Earth Stations. Satellite Telecommunications⁴² is the closest industry with a SBA small business size standard. The SBA small business size standard classifies a business with \$38.5 million or less in annual receipts as small.⁴³ For this industry, U.S. Census Bureau data for 2017 show that there were 275 firms that operated for the entire year.⁴⁴ Of this number, 242 firms had revenue of less than \$25 million.⁴⁵ Thus, for this industry under the SBA size standard, the Commission estimates that the majority of Mobile Satellite Earth Station licensees are small entities. Additionally, based on Commission data as of February 1, 2024, there were 16 Mobile Satellite Earth Stations licensees.⁴⁶ The Commission does not request nor collect annual revenue information, and is therefore unable to estimate the number of mobile satellite earth stations that would be classified as a small business under the SBA size standard.

12. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.⁴⁷ 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.⁴⁸ The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.⁴⁹ U.S. Census Bureau data for 2017 show that there were 2,893 firms in this

³⁹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. 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.

⁴⁰ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁴¹ *Id.*

⁴² See U.S. Census Bureau, 2017 NAICS Definition, "517410 Satellite Telecommunications," <https://www.census.gov/naics/?input=517410&year=2017&details=517410>.

⁴³ See 13 CFR § 121.201, NAICS Code 517410.

⁴⁴ 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>.

⁴⁵ *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.

⁴⁶ Based on a FCC Space Bureau, International Communication Filing System (ICFS), Advanced Search on February 1, 2024, <https://licensing.fcc.gov/cgi-bin/ws.exe/prod/ib/forms/reports/swr030b.htm?set=>. Search Terms used - Nature of Application Service = SES - Satellite Earth Station; Application Type = All; Class of Station = MES – Mobile Earth Station; and under "Filing Status" = Current.

⁴⁷ 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>.

⁴⁸ *Id.*

⁴⁹ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

industry that operated for the entire year.⁵⁰ Of that number, 2,837 firms employed fewer than 250 employees.⁵¹ 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.⁵² Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees.⁵³ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

13. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks.⁵⁴ 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.⁵⁵ By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.⁵⁶ Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.⁵⁷

14. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁵⁸ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁵⁹ Of this number, 2,964 firms operated with fewer than 250 employees.⁶⁰ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were engaged in the provision of fixed local services.⁶¹ Of these providers, the Commission estimates that 4,146

⁵⁰ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.:* 2017, Table ID: EC1700SIZEEMPFIIRM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIIRM&hidePreview=false>.

⁵¹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁵² Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁵³ *Id.*

⁵⁴ See U.S. Census Bureau, *2017 NAICS Definition*, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ 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.

⁵⁸ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁵⁹ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.:* 2017, Table ID: EC1700SIZEEMPFIIRM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIIRM&hidePreview=false>.

⁶⁰ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁶¹ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), (continued....)

providers have 1,500 or fewer employees.⁶² Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

15. *Facilities-Based Carriers (International Telecom Services)*. Facilities-based providers of international telecommunications services fall into the larger category of interexchange carriers. Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. Wired Telecommunications Carriers⁶³ is the closest industry with a SBA small business size standard.⁶⁴ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁶⁵ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁶⁶ Of this number, 2,964 firms operated with fewer than 250 employees.⁶⁷ 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.⁶⁸ Of these providers, the Commission estimates that 109 providers have 1,500 or fewer employees.⁶⁹ 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.

16. *Private Land Mobile Radio Licensees*. Private land mobile radio (PLMR) systems serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. Companies of all sizes operating in all U.S. business categories use these radios. Wireless Telecommunications Carriers (*except Satellite*)⁷⁰ which encompasses business entities engaged in *radiotelephone communications*, is the closest industry with an SBA small business size standard applicable to these services. The SBA small size standard for this industry classifies a business as small if it has 1,500 or fewer employees.⁷¹ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.⁷² Of this number, 2,837 firms employed fewer than 250

<https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>. <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>

⁶² *Id.*

⁶³ See U.S. Census Bureau, *2017 NAICS Definition*, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁶⁴ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁶⁵ *Id.*

⁶⁶ 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>.

⁶⁷ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁶⁸ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁶⁹ *Id.*

⁷⁰ See U.S. Census Bureau, *2017 NAICS Definition*, "517312 Wireless Telecommunications Carriers (*except Satellite*)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

⁷¹ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

⁷² See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

employees.⁷³ Thus, under the SBA size standard, the Commission estimates licensees in this industry can be considered small.

17. Based on Commission data as of December 14, 2021, there are approximately 387,370 active PLMR licenses.⁷⁴ Active PLMR licenses include 3,577 licenses in the 4.9 GHz band;⁷⁵ 19,011 licenses in the 800 MHz band;⁷⁶ and 2,716 licenses in the 900 MHz band.⁷⁷ Since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard. Nevertheless, the Commission believes that a substantial number of PLMR licensees are small entities.

18. *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.⁷⁸ 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.⁷⁹ The SBA small business size standard for this industry classifies businesses having 1,250 employees or less as small.⁸⁰ U.S. Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year.⁸¹ Of this number, 624 firms had fewer than 250

⁷³ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁷⁴ Based on a FCC Universal Licensing System search on December 14, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = GB, GE, GF, GI, GJ, GO, GP, GU, IG, IQ, PA, PW, QM, QQ, RS, SG, SL, SP, SY, YB, YE, YF, YG, YI, YJ, YO, YP, YU, YW; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

⁷⁵ Based on a FCC Universal Licensing System search on December 14, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = PA; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

⁷⁶ Based on a FCC Universal Licensing System search on December 14, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = GB, GE, GF, GJ, GM, GO, GP, YB, YE, YF, YJ, YM, YO, YP, YX; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

⁷⁷ Based on a FCC Universal Licensing System search on December 14, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp>. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = GI, GR, GU, YD, YS, YU; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

⁷⁸ 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>.

⁷⁹ *Id.*

⁸⁰ See 13 CFR § 121.201, NAICS Code 334220.

⁸¹ 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&hidePrevie w=false>. https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/31SG2/naics~334220

employees.⁸² Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

19. *Auxiliary, Special Broadcast and Other Program Distribution Services.* This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). Neither the SBA nor the Commission have developed a small business size standard applicable to broadcast auxiliary licensees. The closest applicable industries with a SBA small business size standard fall within two industries - Radio Stations⁸³ and Television Broadcasting.⁸⁴ The SBA small business size standard for Radio Stations classifies firms having \$41.5 million or less in annual receipts as small.⁸⁵ U.S. Census Bureau data for 2017 show that 2,963 firms operated in this industry during that year.⁸⁶ Of that number, 1,879 firms operated with revenue of less than \$25 million per year.⁸⁷ For Television Broadcasting, the SBA small business size standard also classifies firms having \$41.5 million or less in annual receipts as small.⁸⁸ U.S. Census Bureau data for 2017 show that 744 firms in this industry operated for the entire year.⁸⁹ Of that number, 657 firms had revenue of less than \$25 million per year.⁹⁰ Accordingly, based on the U.S. Census Bureau data for Radio Stations and Television Broadcasting, the Commission estimates that the majority of Auxiliary, Special Broadcast and Other Program Distribution Services firms are small under the SBA size standard.

20. *Radio Frequency Equipment Manufacturers (RF Manufacturers).* There are several analogous industries with an SBA small business size standard that are applicable to RF Manufacturers. These industries are Fixed Microwave Services, Other Communications Equipment Manufacturing, Radio

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 See U.S. Census Bureau, *2017 NAICS Definition, "515112 Radio Stations,"* <https://www.census.gov/naics/?input=515112&year=2017&details=515112>.

⁸⁴ See U.S. Census Bureau, *2017 NAICS Definition, "515120 Television Broadcasting,"* <https://www.census.gov/naics/?input=515120&year=2017&details=515120>.

⁸⁵ See 13 CFR § 121.201, NAICS Code 515112 (as of 10/1/22 NAICS Code 516110).

⁸⁶ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 515112, <https://data.census.gov/cedsci/table?y=2017&n=515112&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePrevious=false>. We note that the US Census Bureau withheld publication of the number of firms that operated for the entire year.

⁸⁷ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in the individual categories for less than \$100,000, and \$100,000 to \$249,999 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in these categories). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

⁸⁸ See 13 CFR § 121.201, NAICS Code 515120 (as of 10/1/22 NAICS Code 516120).

⁸⁹ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 515120, <https://data.census.gov/cedsci/table?y=2017&n=515120&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePrevious=false>.

⁹⁰ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

and Television Broadcasting and Wireless Communications Equipment Manufacturing. A description of these industries and the SBA small business size standards are detailed below.

21. *Fixed Microwave Services.* Fixed microwave services include common carrier,⁹¹ private-operational fixed,⁹² and broadcast auxiliary radio services.⁹³ They also include the Upper Microwave Flexible Use Service (UMFUS),⁹⁴ Millimeter Wave Service (70/80/90 GHz),⁹⁵ Local Multipoint Distribution Service (LMDS),⁹⁶ the Digital Electronic Message Service (DEMS),⁹⁷ 24 GHz Service,⁹⁸ Multiple Address Systems (MAS),⁹⁹ and Multichannel Video Distribution and Data Service (MVDDS),¹⁰⁰ where in some bands licensees can choose between common carrier and non-common carrier status.¹⁰¹ Wireless Telecommunications Carriers (*except* Satellite)¹⁰² is the closest industry with an SBA small business size standard applicable to these services. The SBA small size standard for this industry classifies a business as small if it has 1,500 or fewer employees.¹⁰³ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.¹⁰⁴ Of this number, 2,837 firms employed fewer than 250 employees.¹⁰⁵ Thus, under the SBA size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

22. 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

⁹¹ See 47 CFR part 101, subparts C and I.

⁹² See *id.* subparts C and H.

⁹³ Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's Rules. See 47 CFR part 74. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

⁹⁴ See 47 CFR part 30.

⁹⁵ See 47 CFR part 101, subpart Q.

⁹⁶ See *id.* subpart L.

⁹⁷ See *id.* subpart G.

⁹⁸ See *id.*

⁹⁹ See *id.* subpart O.

¹⁰⁰ See *id.* subpart P.

¹⁰¹ See 47 CFR §§ 101.533, 101.1017.

¹⁰² See U.S. Census Bureau, 2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (*except* Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

¹⁰³ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹⁰⁴ See U.S. Census Bureau, 2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFI, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePrevie w=false>.

¹⁰⁵ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

identified in part 101 of the Commission's rules for the specific fixed microwave services frequency bands.¹⁰⁶

23. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

24. *Other Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment).¹⁰⁷ Examples of such manufacturing include fire detection and alarm systems manufacturing, Intercom systems and equipment manufacturing, and signals (e.g., highway, pedestrian, railway, traffic) manufacturing.¹⁰⁸ The SBA small business size standard for this industry classifies firms having 750 or fewer employees as small.¹⁰⁹ For this industry, U.S. Census Bureau data for 2017 shows that 321 firms operated for the entire year.¹¹⁰ Of that number, 310 firms operated with fewer than 250 employees.¹¹¹ Based on this data, we conclude that the majority of Other Communications Equipment Manufacturers are small.

25. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment.¹¹² Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.¹¹³ The SBA small business size standard for this industry classifies firms having 1,250 employees or less as small.¹¹⁴ U.S. Census Bureau data for 2017 show that there were 656 firms in

¹⁰⁶ See 47 CFR §§ 101.538(a)(1)-(3), 101.1112(b)-(d), 101.1319(a)(1)-(2), and 101.1429(a)(1)-(3).

¹⁰⁷ See U.S. Census Bureau, 2017 NAICS Definitions, "334290 Other Communications Equipment Manufacturing," <https://www.census.gov/naics/?input=334290&year=2017&details=334290>.

¹⁰⁸ *Id.*

¹⁰⁹ See 13 CFR 121.201, NAICS Code 334290.

¹¹⁰ See U.S. Census Bureau, 2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFI, NAICS Code 334290, <https://data.census.gov/cedsci/table?y=2017&n=334290&tid=EC1700SIZEEMPFI&hidePreview=false>.

¹¹¹ *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.

¹¹² See U.S. Census Bureau, 2017 NAICS Definition, "334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing," <https://www.census.gov/naics/?input=334220&year=2017&details=334220>.

¹¹³ *Id.*

¹¹⁴ See 13 CFR § 121.201, NAICS Code 334220.

this industry that operated for the entire year.¹¹⁵ Of this number, 624 had fewer than 250 employees.¹¹⁶ Based on this data, we conclude that a majority of manufacturers in this industry are small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

26. If adopted, the proposed rules set forth in the NPRM would likely impose new or additional reporting or recordkeeping or other compliance obligations on small entities. However, we seek further comment on any steps that could be taken to minimize significant economic impact to small businesses. Further, the proposals made in the NPRM may require additional provisions to the way the equipment authorization program operates under part 2 of the Commission's rules.

27. To promote the overall integrity of the equipment authorization program, we seek a number of potential revisions including adoption of new eligibility requirements to ensure trustworthiness of third party entities, periodic reassessment, and a possible ownership information collection requirement. Although the responsibilities of TCBs and test labs are different, these third party entities are required to meet certain broad principles set forth in the various ISO/IEC standards when performing their respective roles. We propose adopting eligibility restrictions on TCBs and test labs with regard to recognition or reliance based on associations of the TCB or test lab with entities identified on the Covered List. We seek comment as to whether there are other types of direct or indirect ownership or controlling interests, or other types of influences, that could adversely affect the TCB or test lab in carrying out its responsibilities.

28. In addition, TCBs are responsible for reviewing and evaluating applications for equipment certification for compliance with the Commission's applicable requirements and determining whether to grant or dismiss the application based on whether it is in accord with Commission requirements. Therefore, we find it necessary and appropriate to seek comment to ensure that, in accordance with ISO/IEC 17065 standard and Commission rules, TCBs do not grant certification for any equipment on the Covered List. Commission rules require that all requests for equipment certification must be submitted to TCBs in writing and must contain all of the information necessary for the TCB to process the request, including any required applicant attestations and testing results about or for the equipment for which authorization is sought. TCBs must comply with the Commission's rules and must be located in the United States or in countries that have entered into applicable Mutual Recognition Agreements (MRAs) with the United States. In addition, the Commission is considering possible steps for TCBs to provide certain general information about ownership.

29. We are also considering revisions to the process for the periodic reassessment of TCBs for continued recognition by the Commission. We currently require TCBs to be reassessed for continued accreditation at least every two years. However, we are open to potential clarifications on the procedures to the process that should be reflected in the rules or any Knowledge Database (KDB) to ensure that the TCB does not grant authorization of "covered" equipment.

30. The Commission has recognized 24 test lab accreditation bodies outside of the United States within its MRA with the USA. To ensure the Commission is in a better position to identify test labs that could pose such a national security risk now or in the future, we're considering collecting general ownership information on test labs. The reporting could consist of direct or indirect equity or voting

¹¹⁵ 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>.

¹¹⁶ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

interests of at least 5%, or of greater than 5%. Alternatively, the reporting could require that test labs report other thresholds of ownership interest and affiliation. We seek comment as to the most effective approach that would provide the least amount of burden for small entities attempting to comply with the proposed rules, if adopted. Considering the Commission's Covered List may evolve over time, it is vital this information is received but currently unknown of its frequency and the necessity of the distinction between private vs. governmental ownership. Nevertheless, we are considering a reasonable transition period and further questions concerning TCBs and test labs to ensure that our rules, policies, and procedures will advance our goal and protect the nation's communications supply chain from equipment that may pose a risk to national security. This may require reporting or third-party recordkeeping.

31. At this time, the record does not include a detailed cost/benefit analysis that would allow us to quantify the costs of compliance for small entities, including whether it would be necessary for small entities to hire professionals in order for them to comply with the proposed rules, should they be adopted. The Commission invites comment on the costs and burdens of the proposals in the NPRM and expects the information received in comments including, where requested, cost and benefit analyses, to help the Commission identify and evaluate relevant compliance matters for small entities, including compliance costs and other burdens that may result if the proposals and associated requirements discussed in the *Second FNPRM* are adopted.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

32. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”¹¹⁷

33. In the NPRM, the Commission proposes to take steps and considers alternatives concerning how to minimize significant economic burdens to small entities as a result of the proposed rules, should they be adopted. For example, the Commission is proposing a requirement that TCBs have an organizational and management structure in place that ensures the TCB conducts the necessary level of review and scrutiny so as to prevent authorization of any “covered” equipment. In doing so, we consider what information and requirements would be appropriate for the TCB to provide, such as general ownership information, the name of the person responsible for determining whether equipment is “covered” equipment, as well as a statement providing a rationale for determining that the particular equipment that the TCB is authorizing is not “covered” equipment. Additional information could be required of the TCBs depending on information subsequently added to the record in response to the NPRM. Such information would allow the Commission to consider alternative approaches that take into account the limited budgetary and personnel resources experienced by small TCBs, such as simplified reporting mechanisms or providing small entities with a more manageable timeframe in which they could comply. We encourage comment from small entities that can provide us with information detailing what, if any, economic burdens they would face in order to comply with the proposed rules, if adopted.

34. In this proceeding, the Commission seeks comment on various steps it could take to balance its objective of fine tuning its equipment authorization program for TCBs and test labs without creating significant economic burdens to small entities. We believe that taking the approach of amending our part 2 rules to narrow the equipment authorization process will achieve the Commission's national security goals in a cost-effective manner and seek further comment from third party entities and other interested parties on the best method to ensure the reliability of TCBs and test labs, and execute the

¹¹⁷ 5 U.S.C. § 603(c)(1)-(4).

prohibition on authorizing Covered List equipment under our part 2 equipment authorization rules.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

35. None.

**STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *Promoting the Integrity and Security of Telecommunications Certification Bodies, Measurement Facilities, and the Equipment Authorization Program*, ET Docket No. 24-136, Notice of Proposed Rulemaking (May 23, 2024).

Our wireless future is about connecting everything. It is about opening up possibilities for connectivity that we cannot even fully imagine today. By exponentially increasing the connections between people and things around us, wireless technologies are set to become an input in everything we do—improving agriculture, education, healthcare, energy, transportation, and more.

At the Federal Communications Commission, we have a front row seat. Every day we get to see how these innovations are changing our world. We also see how important it is that every one of these connections is secure.

For decades, the FCC equipment authorization program has been a vital part of ensuring the safety of radiofrequency devices in the United States. In fact, we process more than 30,000 new device authorizations every year, resulting in millions of new wireless products. That's a lot of Wi-Fi routers, sensors, smartphones, and baby monitors. We check them, and other devices that connect using our airwaves, to make sure that they do so safely, without harmful interference, and in a manner that complies with our rules.

To keep this process moving along, the FCC has authorized the use of Telecommunications Certification Bodies, or TCBs. That means innovators bring their new devices to test labs that produce technical reports assessing their products. Then they take those reports to TCBs. The TCBs, in turn, evaluate this information and determine if the new devices comply with FCC rules. If they do, the TCB can certify the device under the equipment authorization program.

This process has worked well. But as the number of wireless connections around us multiply and the importance of the security of those connections matters more than ever before, this system needs an update. That is what we propose here today.

This action is part of a broader effort at this agency to make network security a priority. For the first time in history, we have revoked the authorization of Chinese state-affiliated carriers that have been identified as a national security threat. We have built a first-of-its-kind program to remove insecure foreign equipment from our nation's communications networks. We have revamped our policies for assessing the security of proposed undersea cables for the first time in twenty years. We are proposing new measures to address the insecurities in Border Gateway Protocol, which can be used by malicious foreign actors to hijack internet traffic. On top of that, we now publish and update a Covered List of communications equipment and services that pose an unacceptable risk to national security. We exclude this equipment from our universal service programs. We also prevent its processing in our equipment authorization program.

With these efforts in the background, in this rulemaking we do three key things to update our security policies and practices with respect to TCBs and test labs. First, we propose to prohibit all entities on the Covered List from owning or controlling TCBs or test labs. As part of this effort, we have already suspended the approval of a test lab operated by Huawei and flagged for our national security colleagues other labs with possible ties to the government of the People's Republic of China. Second, we seek comment on prohibiting the recognition of TCBs and test labs owned or controlled by a foreign adversary or any other entity that has been found to pose a risk by national security agencies. Third, to implement these changes we propose to collect information on the ownership and control of TCBs and test labs.

The pace at which we are seeing new technologies that depend on wireless connections helped spur this effort. But so did a recommendation from Commissioner Carr, who rightfully and thoughtfully suggested that our practices needed an update. I want to thank him for his close collaboration. Our equipment authorization program will be more secure because of it.

Thank you also to my other colleagues and to the staff who worked on this rulemaking, including Reza Biazaran, Jamie Coleman, David Duarte, Paul Murray, Siobahn Philemon, Ron Repasi, Dana Shaffer, Ross Slutsky, Jim Szeliga, George Tannahill, and Krista Witanowski from the Office of Engineering and Technology; Justin Cain, Michael Connolly, David Furth, Jessica Hynosky, Debra Jordan, Zenji Nakazawa, Sonja Rodriguez, and Jim Schlichting from the Public Safety and Homeland Security Bureau; Saurbh Chhabra, Lloyd Coward, Susan Mort, and Roger Noel from the Wireless Telecommunications Bureau; Shannon Lipp and Jeremy Marcus from the Enforcement Bureau; Patrick Brogan, Rachel Kazen, Cher Li, Ken Lynch, Catherine Mataves, Mark Montano, Erik Salovaara, Michelle Schaefer, Donald Stockdale, Patrick Sun, and Emily Talaga from the Office of Economics and Analytics; Edward Carlson, Jared Carlson, Denise Coca, Kathleen Collins, Olga Madruga-Forti, Nese Guendelsberger, Francis Gutierrez, Gabrielle Kim, David Krech, Ethan Lucarelli, Brandon Moss, and Thomas Sullivan from the Office of International Affairs; Michael Gussow and Joy Ragsdale from the Office of Communications Business Opportunities; and Marlene Dortch and Katura Jackson from the Office of the Secretary.

**STATEMENT OF
COMMISSIONER BRENDAN CARR**

Re: *Promoting the Integrity and Security of Telecommunications Certification Bodies, Measurement Facilities, and the Equipment Authorization Program*, ET Docket No. 24-136, Notice of Proposed Rulemaking (May 23, 2024).

Starting with the last Administration, the United States has worked in a bipartisan manner to reorient our nation's approach to the serious threats posed by foreign adversaries. In particular, a broad cross section of lawmakers and government officials alike have been working to address the enormous risks posed by the Communist Party of China (CCP). At this point, the CCP has a well-documented record of leveraging its control over aligned companies and using them to advance the CCP's goals—from surveillance to corporate espionage and IP theft. We've seen this in spades in the telecommunications technology sectors in particular.

The FCC has played an important role in our government-wide initiative to address these types of threats. Former FCC Chairman Pai and Chairwoman Rosenworcel each deserve recognition for their work on this front. As a country, we've now taken significant actions across the entire network stack: from the device layer, to the carrier layer, to the application layer with recent action on TikTok. The FCC extends those efforts today by looking at the system the FCC relies on as part of its process for reviewing and approving electronics for use in the U.S.

To put all of this work into context—the FCC first took action at the equipment level back in 2019 by prohibiting federal USF funds from flowing towards Huawei and ZTE gear based on the clear national security risks posed by those entities.

Next, we took action at the carrier level in 2019 by moving to revoke the international Section 214 licenses of risky carriers like China Mobile, China Telecom and others with deep ties back to the CCP. At that time, I said it was time for a top to bottom review of every carrier that may be beholden to the CCP. I am pleased that those efforts have borne fruit in the FCC's subsequent bipartisan decisions to revoke additional Section 214 authorizations.

Then, after drawing attention to the “Huawei Loophole,” which allowed Huawei and ZTE to continue receiving FCC approval for equipment and inserting their gear into our networks, provided that USF dollars were not used, we took action that prohibits those entities on our Covered List from receiving FCC equipment approval.

Most recently, Congress took perhaps the most significant action to date by enacting legislation requiring TikTok to break up with the CCP.

While each of those individual decisions worked to address a specific threat, collectively, they show that America has the resolve to stand up to the CCP's aggression.

Now, we propose to take another important step forward in securing our communications networks. This proposal, which I have been pleased to work on alongside Chairwoman Rosenworcel, will ensure that the test labs and certification bodies (TCBs) that review electronic devices for compliance with the FCC's equipment authorization rules are trustworthy actors that the FCC can rely on. Despite their relatively low public profile, these entities play an important role in evaluating whether electronic devices that emit radio frequencies (RF) operate effectively and meet other FCC requirements before they can be certified for use in the U.S. This covers a broad swath of consumer electronics from IoT devices, smartphones, fitness trackers, and baby monitors to network equipment like routers and base stations.

Historically, the FCC's eligibility criteria for test labs and TCBs has looked to impartiality and technical competence, rather than focusing on factors that are relevant to national security concerns. But the need for this type of review has increased in recent years. Indeed, in 2022, the FCC adopted rules that barred entities on the FCC's Covered List from having their devices approved for use in the U.S. due to national security risks. And we have expressed concern about white labeling devices—meaning, that

someone slaps a new name on Huawei gear in an effort to sneak it through the equipment authorization process.

So to complement our efforts on this front, the FCC's proposal today will ensure that the TCBs and test labs that review equipment for use in the U.S. and compliance with FCC rules are themselves trustworthy actors.

Our concerns are well-founded. After identifying a test lab in Guangdong, China affiliated with Huawei, the FCC rejected a request to renew the lab's authorization on April 30th. Correctly so. But a further review of the FCC's list of approved test labs¹¹⁸ reveals other entities with deep and concerning ties back to the CCP. The list includes entities that are affiliated with Chinese state-owned-enterprises; entities that appear to play a role in supporting the CCP's People's Liberation Army; as well as some PRC government agencies themselves. FCC records indicate those labs have processed thousands of applications for U.S.-bound devices over the last several years. It is possible that other FCC-authorized TCBs and test labs may be affiliated with foreign adversary governments or entities determined by the U.S. government to pose an unacceptable security risk.

Our initiative is based on time-tested precedent, too. The FCC has long limited foreign control of U.S. licensees in other contexts. Furthermore, the FCC proposes to rely on official security determinations that the U.S. government has made, including the Department of Commerce's Entity List and the Defense Department's List of Chinese Military Companies (1260H List). We also explore regulations that could better align our rules governing TCBs and test labs with the Secure Equipment Act's provisions, which prohibit the authorization of covered equipment. So for my part, I am grateful to the Chairwoman for moving this proposal forward. It has my strong support.

Finally, I would like to thank the many staff from the Office of Engineering and Technology and the Public Safety and Homeland Security Bureau for their thorough work on this item. I'm grateful for all of their hard work and collaboration on this initiative.

¹¹⁸ A full list of test labs that are currently accredited by the FCC can be found here: <https://apps.fcc.gov/oetcf/eas/reports/TestFirmSearch.cfm>

**STATEMENT OF
COMMISSIONER GEOFFREY STARKS**

Re: *Promoting the Integrity and Security of Telecommunications Certification Bodies, Measurement Facilities, and the Equipment Authorization Program*, ET Docket No. 24-136, Notice of Proposed Rulemaking (May 23, 2024).

Electronic devices, or in FCC parlance, Radio Frequency (RF) devices -- from cell phones to computers, baby monitors, garage openers, and televisions -- are an integral part of our daily lives. Before these devices reach where we live, work and play, our rules require RF devices to be properly authorized. These rules ensure that RF devices operate effectively without causing harmful interference and otherwise comply with our FCC requirements.

Over the last several years we have undertaken significant efforts to protect the security of our communications networks and devices. We updated our equipment authorization rules to prohibit authorization of communications equipment identified on our Covered List. By stopping equipment identified as a threat to the United States from entering our markets we decreased the risk that it can be used against us.

Today, I'm glad to support our proposal to update our rules governing Telecommunications Certification Bodies (TCBs) and test labs to further protect Americans and ensure that our equipment authorization processes are not undermined by the very entities that help us to enforce them.

TCBs and test labs play a critical role in approving tens of thousands of equipment authorizations every year, and they are located all over the world. TCBs and test labs help ensure that equipment we approve complies with our rules and regulations and that any prohibited equipment is kept out of our nation's supply chain. They are an important line of defense against improper and insecure equipment. To that end, TCBs and test labs acting on our behalf must also be trustworthy, impartial, and free from influence. Their ability to do so may be compromised if they are associated with any untrustworthy entity or adversarial state that seeks to compromise our networks or communications supply chain.

Notably, this proposal is consistent with our recent efforts to create the Cyber Trust Mark. There, we actually highlighted the importance of test labs to ensure that IoT devices receiving the mark are not compromised. As the record develops, I am open and eager to review any comments on how these proposed changes may affect the overall ecosystem for devices, including with regard to the Mutual Recognition Agreements we have negotiated throughout the world aimed at creating a standardized global approach to conformity assessments.

I thank the fantastic FCC staff for their hard work on this important proceeding. This item has my strong support.

**STATEMENT OF
COMMISSIONER ANNA M. GOMEZ**

Re: *Promoting the Integrity and Security of Telecommunications Certification Bodies, Measurement Facilities, and the Equipment Authorization Program*, Docket No. 24-136, Notice of Proposed Rulemaking (May 23, 2024).

The fast pace of creativity and innovation in wireless technology demands that we put in place the right approval system to support this technology reaching consumers. The wireless devices that are common in your life were reviewed in one of the nearly 640 FCC-recognized accredited test labs around the world and certified by one of the 40 FCC-recognized telecommunications certification bodies. □ □ □

In this age of wireless proliferation, we must also remain vigilant of technology and actors infiltrating our wireless infrastructure to cause harm. The Commission's equipment authorization program rules already prohibit authorization of equipment that has been determined to pose an unacceptable risk to national security and our safety. □ With today's NPRM we seek to strengthen our oversight of the test labs and telecommunications certifications bodies that review and certify the wireless equipment that flows into the stream of commerce in our nation. □

Today, we begin the important and necessary steps to ensure that our equipment authorization program to support rapid and flexible wireless innovation is not subject to influence or control by actors that pose a risk to our security. □ This is an important NPRM and I look forward to the record developing. Thank you for the Office of Engineering and Technology for this important work. □

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

In the Matter of	)	
	)	File No.: EB-TCD-24-00036094
Steve Kramer	)	NAL/Acct. No.: 202432170005
	)	FRN: 0035440791
	)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: May 23, 2024

Released: May 24, 2024

By the Commission: Chairwoman Rosenworcel and Commissioners Starks and Gomez issuing separate statements.

I. INTRODUCTION

1. We propose a penalty of \$6,000,000 against Steve Kramer (Kramer) for perpetrating an illegal robocall campaign targeting potential New Hampshire voters two days before the state's 2024 Democratic Presidential Primary Election (Primary Election) in apparent violation of the Truth in Caller ID Act of 2009, which is codified at section 227(e) of the Communications Act of 1934, as amended (Communications Act), and section 64.1604 of our rules.¹ Kramer's illegal robocalls carried a deepfake² generative artificial intelligence (AI) voice message that imitated U.S. President Joseph R. Biden, Jr.'s voice and encouraged potential voters not to vote in the upcoming Primary Election (Deepfake Message). The caller identification (caller ID) information was inaccurate and misleading as the calls transmitted the telephone number associated with a prominent New Hampshire political operative (NHPO); in reality, Kramer—without the knowledge or consent of the individual identified in the caller ID—was responsible for the spoofed robocalls.

2. Following an extensive investigation by the Federal Communications Commission's (Commission or FCC) Enforcement Bureau (Bureau), we find that Kramer knowingly caused thousands of illegal prerecorded voice robocalls to be transmitted using misleading and inaccurate caller ID information with the intent to defraud and cause harm in apparent violation of the Truth in Caller ID Act and the Commission's implementing regulation, for which we propose a forfeiture penalty of \$6,000,000.

II. BACKGROUND

A. Legal Framework

3. Congress recognized that consumers have embraced caller ID as a vital part of voice telephone service, using it to help them decide whether to answer the phone.³ Caller ID is only valuable, however, if it is accurate.⁴ To protect consumers, Congress passed the Truth in Caller ID Act which

¹ 47 U.S.C. § 227(e); 47 CFR § 64.1604.

² "Deepfake" is defined as "an image or recording that has been convincingly altered and manipulated to misrepresent someone as doing or saying something that was not actually done or said." *Deepfake*, Merriam-Webster (last updated Mar. 21, 2024), <https://www.merriam-webster.com/dictionary/deepfake>.

³ See 156 Cong. Rec. H2522, H2523 (2010) (remarks of Rep. Stearns) ("Millions of Americans use caller ID to secure greater privacy for their families.").

⁴ 156 Cong. Rec. H2522, H2524 (2010) (remarks of Rep. Engel) ("Now, if you see a caller ID and you see it has a phone number, most people think that it's ironclad that that's the actual phone number that's calling them when in (continued....)

makes it “unlawful for any person . . . to cause any caller identification service to knowingly transmit misleading or inaccurate caller identification information with the intent to defraud, cause harm, or wrongfully obtain anything of value”⁵—a practice known as “spoofing.”⁶

4. On February 8, 2024, the Commission confirmed that the Telephone Consumer Protection Act’s restrictions on the making of calls using an “artificial or prerecorded voice” *already* encompasses current AI technologies that generate artificial human voices.⁷ In doing so, the Commission observed that uses of voice cloning “can uniquely harm consumers and those whose voice is cloned. Voice cloning can convince a called party that a trusted person, or someone they care about such as a family member, wants or needs them to take some action that they would not otherwise take.”⁸ While a Truth in Caller ID violation is not dependent on the content of the call, calls transmitting voice-cloned messages and inaccurate or misleading caller ID may further demonstrate a caller’s intent to defraud, cause harm, or wrongfully obtain something of value.

B. Factual Background

5. On January 21, 2024, two days before the New Hampshire Primary Election, thousands of potential voters received robocalls that included the following prerecorded and artificial voice Deepfake Message—all but the last sentence of which was spoken in a voice that was artificially created to sound like President Biden:⁹

This coming Tuesday is the New Hampshire Presidential Preference Primary. Republicans have been trying to push nonpartisan and Democratic voters to participate in their primary. What a bunch of malarkey. We know the value of voting Democratic when our votes count. It’s important that you save your vote for the November election. We’ll need your help in electing Democrats up and down the ticket. Voting this Tuesday only enables the Republicans in their quest to elect

truth it’s not.”); 155 Cong. Rec. S170-02, S173 (2009) (remarks of Sen. Nelson) (“Consumers expect caller I.D. to be accurate because it helps them decide whether to answer a phone call and trust the person on the other end of the line.”).

⁵ 47 U.S.C. § 227(e)(1).

⁶ *Caller ID Spoofing*, Fed. Comm’n’s Comm’n, <https://www.fcc.gov/spoofing> (last updated Mar. 7, 2022) (“Caller ID spoofing is when a caller deliberately falsifies the information transmitted to your caller ID display to disguise their identity.”).

⁷ *Implications of Artificial Intelligence Technologies on Protecting Consumers from Unwanted Robocalls and Robotexts*, CG Docket No. 23-362, Declaratory Ruling, FCC 24-17, 2024 WL 519167, at *2 (Feb. 8, 2024); *see also* 47 U.S.C. § 227(b)(1)(A)-(B).

⁸ *Id.*, para. 6.

⁹ Numerous news outlets have concluded that the recorded voice resembled the voice of President Biden. *See, e.g.*, Alex Seitz-Wald and Mike Memoli, *Fake Joe Biden robocall tells New Hampshire Democrats not to vote Tuesday*, NBC News (Jan. 22, 2024, Updated 11:45 AM EST), <https://www.nbcnews.com/politics/2024-election/fake-joe-biden-robocall-tells-new-hampshire-democrats-not-vote-tuesday-rcna134984> (“The call, an apparent imitation or digital manipulation of the president’s voice . . .”); Jacob Rosen, *Fake Biden robocall encourages voters to skip New Hampshire Democratic primary*, CBS News (Jan. 22, 2024, Updated Jan. 23, 2024 9:17 AM EST), <https://www.cbsnews.com/news/fake-biden-robocall-new-hampshire-primary/> (“A fake robocall impersonating President Biden . . .”); Sasha Pezenik and Brittany Shepherd, *Fake Biden robocall urges New Hampshire voters to skip their primary*, ABC News (Jan. 22, 2024, 8:08 PM), <https://abcnews.go.com/Politics/fake-biden-robocallurges-new-hampshire-voters-skip/story?id=106580926> (“A robocall appearing to impersonate the voice of President Joe Biden . . .”); Em Steck and Andrew Kaczynski, *Fake Joe Biden robocall urges New Hampshire voters not to vote in Tuesday’s Democratic primary*, CNN (Jan. 22, 2024, Updated 5:44 PM EST), <https://www.cnn.com/2024/01/22/politics/fake-joe-biden-robocall/index.html> (“A robocall that appears to be an AI voice resembling President Joe Biden . . .”).

Donald Trump again. Your vote makes a difference in November, not this Tuesday. If you would like to be removed from future calls, please press two now. Call {[]} to be removed from future calls.¹⁰

6. The caller ID information, which matched the number identified in the Deepfake Message, indicated that the calls came from phone number {[]} (Spoofed Number), which is subscribed to by the spouse of the NHPO, a former New Hampshire Democratic Party chair and treasurer of a Political Action Committee (PAC) that led an effort to encourage New Hampshire Democrats to write-in President Biden's name in the state's Primary Election.¹¹ However, neither the NHPO nor their spouse were in any way involved in making the calls.¹² Indeed, the Deepfake Message was directly counter to the very purpose of the NHPO's efforts with regards to the Primary Election: the NHPO's PAC encouraged voters to write-in Biden's name in the Primary Election, whereas the Deepfake Message encouraged voters to not vote at all.¹³

7. The Bureau launched an investigation into the calls in coordination with the New Hampshire Attorney General, the bipartisan Anti-Robocall Multistate Litigation Task Force (Task Force),¹⁴ the U.S. Department of Justice, and USTelecom's Industry Traceback Group (ITG).¹⁵ The investigation determined that Lingo Telecom, LLC (Lingo) was the originating provider for a number of

¹⁰ See Subpoena Response of Steve Kramer (Mar. 20, 2024) (on file in EB-TCD-24-00036094) (Kramer Subpoena Response) at email from {[]} of Voice Broadcasting to Kramer (Jan. 21, 2024 at 2:34 PM) (attaching Deepfake Message audio file); Subpoena Response of Life Corp. (Feb. 7, 2024) (on file in EB-TCD-24-00036094) (Life Subpoena Response) at Response to Request for Information (RFI) No. 1 (confirming thousands of calls made on January 21, 2024 to recipients carrying the Deepfake Message); see also YouMail Threat Actor Profile for YPS-6194 (Mar. 19, 2024) (on file in EB-TCD-24-00036094). Material set off by double brackets {[]} is confidential and is redacted from the public version of this document.

¹¹ Life Subpoena Response at Response to RFI No. 2 (confirming the Spoofed Number used with the calls); Email from NHPO to Brendan O'Donnell, Office of the New Hampshire Attorney General (Jan. 22, 2024 at 9:11 AM) (on file in EB-TCD-24-00036094) (NHPO Complaint) (stating that the Spoofed Number is "my personal cell phone number," but that the caller ID "showed my [spouse's] name" because their name is "the name under which both our cell phones are billed through US Cellular."); Lisa Kashinsky & Holly Otterbein, *Dems launch pro-Biden super PAC in New Hampshire, give Dean Phillips the cold shoulder*, Politico (Dec. 2, 2023), <https://www.politico.com/news/2023/12/02/biden-super-pac-new-hampshire-dean-phillips-00129750> ("On Friday, longtime New Hampshire democratic operative . . . confirmed to Politico that [they are] helping launch a super PAC [(Granite for America)] to encourage voters to write in Biden in the primary" and the NHPO is the "former chair of the New Hampshire Democratic Party").

¹² NHPO Complaint ("I have not authorized these calls . . . [My spouse] has not authorized these calls.").

¹³ See Lisa Kashinsky & Holly Otterbein, *Dems launch pro-Biden super PAC in New Hampshire, give Dean Phillips the cold shoulder*, Politico (Dec. 2, 2023), <https://www.politico.com/news/2023/12/02/biden-super-pac-new-hampshire-dean-phillips-00129750>.

¹⁴ "The Anti-Robocall Multistate Litigation Task Force is a 51-member collective of state Attorneys General, led by the Attorneys General of Indiana, North Carolina, and Ohio, which is focused on actively investigating and pursuing enforcement actions against various entities in the robocall ecosystem that are identified as being responsible for significant volumes of illegal and fraudulent robocall traffic routed into and across the country." Letter from Tracy Nayer, Special Deputy Attorney General, Consumer Protection Division, N.C. Dep't of Justice, to Talal Khalid, CEO, Telcast Network LLC, at n.1 (Nov. 3, 2023), <https://ncdoj.gov/wp-content/uploads/2023/11/State-AG-Task-Force-NOTICE-Letter-to-TELCAST.pdf>.

¹⁵ The ITG is the registered industry consortium selected pursuant to the TRACED Act to conduct tracebacks. See *Implementing Section 13(d) of the Pallone-Thune Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act)*, EB Docket No. 20-22, Report and Order, DA 23-719, 2023 WL 5358422, at *1, para. 1 (EB Aug. 18, 2023).

these calls, i.e., the first provider in the call path.¹⁶ Lingo identified Life Corp. (Life) as the party that transmitted the calls to Lingo.¹⁷ In turn, Life identified that Voice Broadcasting Corp. (Voice Broadcasting) “use[d] Life’s services and equipment to transmit” the calls via Life to originating providers.¹⁸ Voice Broadcasting is an entity that offers to “call a targeted list of your prospects and play your message to them” and in “which Life shares common ownership and control.”¹⁹ Voice Broadcasting transmitted the calls at the request of its client, Steve Kramer.²⁰

8. Kramer is a longtime political consultant who claims to have worked on campaigns in 38 different states and handled campaigns for 59 members of Congress.²¹ He has been described as having “decades of experience working on federal, state and local campaigns[.]”²² In his own words, Kramer is “someone who is knowledgeable about everything that’s going on [in politics].”²³

9. Email and text correspondence obtained from the parties involved reveals Kramer’s orchestration of the illegal robocall campaign that ultimately affected thousands of potential New Hampshire Primary Election voters. In the lead up to the New Hampshire Primary Election, Kramer approached an acquaintance (Individual-1) familiar with AI technology about creating the Deepfake Message.²⁴ On Saturday, January 20, 2024, Kramer provided Individual-1 with a call script:²⁵

New Hampshire auto call

This coming Tuesday is the New Hampshire Presidential preference primary.
(2 second pause for effect)

Republicans have been trying to push non-partisan and democratic voters to participate in their primary. What a bunch of Mularkey!! We know the value of voting Democrat ...when our votes count.

It’s important that you save your vote for the November election. We’ll need your help in electing Democrats up and down the ticket.

Voting this Tuesday only enables the Republicans in their quest to elect Donald Trump again. Your vote makes a difference in November, not this Tuesday.
(2 second pause)
If you would like to be removed from future calls, please press 2 now

¹⁶ See ITG Subpoena Response (Jan. 31, 2024) (on file in EB-TCD-24-00036094).

¹⁷ *Id.*

¹⁸ Life Subpoena Response, *supra* note 10, at Response to RFI No. 1.

¹⁹ Voice Broadcasting, <https://voicebroadcasting.com/default/> (last visited Mar. 26, 2024); Life Subpoena Response, *supra* note 10, at n.3.

²⁰ Life Subpoena Response, *supra* note 10, at Response to RFI No. 3.

²¹ 77 WABC, Frank Morano Interviews & More, *Steve Kramer* (Feb. 28, 2024) <https://www.listennotes.com/podcasts/frank-morano/steve-kramer-02-28-24-FgzNh3017wB/> (recording on file in EB-TCD-24-00036094) (Morano Podcast) at 11:49.

²² Holly Ramer, *Political consultant behind fake Biden robocalls says he was trying to highlight a need for AI rules*, The Associated Press (Feb. 26, 2024), <https://apnews.com/article/ai-robocall-biden-new-hampshire-primary-2024-f94aa2d7f835ccc3cc254a90cd481a99>.

²³ Morano Podcast at 12:38.

²⁴ Joint Law Enforcement Interview with Steve Kramer (Feb. 29, 2024) (involving the FCC and New Hampshire Attorney General’s Office) (recording on file in EB-TCD-24-00036094) (Kramer Interview) at 1:01:39 (Interviewer: “When did you ask [Individual-1] to do the Biden robocall, do you know?” Kramer: “Three days before I sent it out, maybe two days.”).

²⁵ Kramer Subpoena Response, *supra* note 10, at email from Kramer to [Individual-1] (Jan. 20, 2024 at 8:57 AM) (“Attached script. We are launching around 6pm on Sunday, however I’d like to send finished product to my tech today to set up.”).

Kramer claims he wrote the script himself, and specifically incorporated the word “malarkey,” which—according to Kramer—is President Biden’s “signature catchphrase” and “gets people’s attention.”²⁶ Individual-1 then used software available through a website operated by Eleven Labs Inc. (Eleven Labs) to create the Deepfake Message in accordance with the script Kramer provided;²⁷ later that same day, Individual-1 emailed two variations of the Deepfake Message to Kramer.²⁸ Also on January 20, Kramer’s father paid Individual-1 \$150 for the Deepfake Message on Kramer’s behalf.²⁹ President Biden was neither involved in creating the Deepfake Message, nor did he authorize the Deepfake Message.³⁰

10. Kramer needed a caller ID number to pair with the Deepfake Message. He ultimately selected a number associated with the NHPO, which was a carefully calculated decision.³¹ Kramer knew he wanted a New Hampshire area code because as he later explained, if you are a resident of New Hampshire “when you see someone from New Hampshire calling you, you’re more likely to pick up.”³² He also specifically wanted to use the telephone number of someone associated with the President Biden

²⁶ Kramer Interview at 48:17 (Interviewer: “The statement that you used for the robocalls here in New Hampshire two days before the primary – who created that statement?” Kramer: “I did it.”); *id.* at 49:24 (Kramer: “The Biden voice using ‘malarkey’ as his signature catchphrase gets people’s attention.”); *see also* Ben Guarino, *Joe Biden loves the word ‘malarkey.’ But nobody knows where it came from*, The Washington Post (July 28, 2016), <https://www.washingtonpost.com/news/morning-mix/wp/2016/07/28/joe-biden-loves-the-word-malarkey-but-nobody-knows-where-it-came-from/>.

²⁷ Vijay Balasubramanian, *Pindrop Reveals TTS Engine Behind Biden AI Robocall*, Pindrop, <https://www.pindrop.com/blog/pindrop-reveals-tts-engine-behind-biden-ai-robocall> (last visited Mar. 22, 2024) (concluding that Eleven Labs Inc.’s text-to-speech engine generated the Deepfake Message); Alex Seitz-Wald, *A New Orleans magician says a Democratic operative paid him to make the fake Biden robocall*, NBC News (Feb. 23, 2024), <https://www.nbcnews.com/politics/2024-election/biden-robocall-new-hampshire-strategist-rena139760> (“Eleven Labs [used] . . . to create the Biden robocall.”).

²⁸ Kramer Subpoena Response, *supra* note 10, at email from [Individual-1] to Kramer (Jan. 20, 2024 at 10:13 AM) (attaching two variations of the Deepfake Message); Kramer Interview at 1:04:02 (Kramer: “This kid [Individual-1] seemed like he knew what he was doing and he could do it fast. And he did. And I would say that after I shot him the original script, he sent me one copy, and then maybe another copy a few minutes later, that he had worked on as far as the Biden voice.”).

²⁹ Subpoena Response of Individual-1 (Mar. 20, 2024) (on file in EB-TCD-24-00036094) (Individual-1 Subpoena Response) at Screenshot_20240222_143959 Venmo (showing two payments from Kramer’s father totaling \$150.00); Kramer Interview at 58:11 (Kramer: “[Individual-1 is] a street magician. So when I paid him \$150 in order to be able to create this call, I wanted to pay him a fair amount, what I thought would be a fair amount.”); *id.* at 18:07 (“Some of my canvassers don’t have bank accounts, so [Kramer’s father is] the one that keeps track of the Venmos we send out, or CashApp, or different other entities.”).

³⁰ Kramer Interview, *supra* note 24, at 1:07:57 (“The artificial intelligence script that I put in there for that call never went through the president.”); *Watch: White House holds briefing amid reports of AI-generated robocalls impersonating Biden in New Hampshire*, PBS News Hour (Jan. 22, 2024, Updated 3:51 PM EST), <https://www.pbs.org/newshour/politics/watch-live-white-house-holds-daily-briefing-as-biden-and-harris-focus-on-reproductive-rights> (“White House press secretary Karine Jean-Pierre confirmed Monday that the call ‘was indeed fake and not recorded by the president.’”).

³¹ *See* Kramer Interview, *supra* note 24, at 1:33:29 (Interviewer: “And did I hear you correctly – you provided Voice Broadcasting with the opt-out phone number that belonged to the former New Hampshire DNC Chairman?” Kramer: “Correct. That was a deliberate move by me[.]”).

³² *Id.* at 1:52:13 (Kramer: “I wanted to use someone in-state, in New Hampshire, because when you see someone from New Hampshire calling you, you’re more likely to pick up, which was my intent.”).

write-in campaign.³³ Kramer reviewed records pertaining to the NHPO's super PAC available on the Federal Election Commission website, and found the NHPO's name and number.³⁴

11. Meanwhile, on Friday, January 19, 2024, Kramer solicited Voice Broadcasting to procure "a Sunday night robo[call], probably 25k [calls] range."³⁵ On Saturday, January 20, Kramer emailed Voice Broadcasting a list of names and numbers for the "robo-call tomorrow,"³⁶ which Kramer later explained was a list of potential New Hampshire voters likely to vote for a Democrat in the Primary Election.³⁷ Kramer's instructions to Voice Broadcasting were specific: "Call[s] should go out at 6:15pm EST Sunday. Run to answer machines and live pickup . . . we should be able to finish by 8:45pm."³⁸ About a half-hour later, Kramer sent another email to Voice Broadcasting with the Deepfake Message "for Sunday night."³⁹ On Sunday, January 21, Kramer instructed Voice Broadcasting to "use [the Spoofed Number] as the caller ID number" for the calls.⁴⁰ With Kramer's permission, Voice Broadcasting added a sentence to the end of the Deepfake Message that instructed potential voters to "call [the Spoofed Number] to be removed from future calls."⁴¹ By 7:12 p.m. on the night of Sunday, January 21, Voice Broadcasting—"using Life's services and equipment"—had initiated 9,581 calls carrying the Deepfake Message to potential New Hampshire voters using the Spoofed Number as the caller ID number.⁴²

12. On Sunday, January 21, 2024, at about 6:17 p.m., the NHPO received a call from a man who had just received a "political call" from what appeared to be the NHPO's phone number.⁴³ The NHPO explained to the caller that they had not called him and the NHPO "shrugged it off."⁴⁴ By approximately 8:00 p.m., while out to dinner, the NHPO received ten more calls from unfamiliar numbers.⁴⁵ The NHPO returned one of the calls and reached a woman who explained she received a call

³³ *Id.* at 1:52:33 (Interviewer: "How did you decide to use [NHPO's] number out of all of the 603 New Hampshire numbers?" Kramer: "Well, like I discussed before, I looked up on the FEC filings for that particular write-in campaign. [They were] listed as treasurer."); *id.* at 31:43 (Interviewer: "Kramer, you keep referring to the former chair. What's the former chair's name?" Kramer: "Good question. I can't remember. [They are] well-publicized in the news, I really don't know [their] name. [They were] running the Biden write-in campaign."); *id.* at 1:54:52 (Kramer: "I don't do anything by accident, at least I try not to. So again, the person [NHPO] was chosen because of [their] contacts within the media, certainly in New Hampshire and probably in other places as well[.]").

³⁴ *Id.* at 32:35 (Interviewer: "How did you get [NHPO's] phone number?" Kramer: "I looked on the FEC filing for that committee and [they] came up as the treasurer."); *id.* at 1:52:37 (Kramer: "I looked up on the FEC filings for that particular write-in campaign. [They were] listed as treasurer.").

³⁵ Life Subpoena Response, *supra* note 10, at LIFE-03-0008.

³⁶ *Id.* at LIFE-03-0022 (attaching a file titled "New Hampshire DEM FEB 2020 Presidential voters").

³⁷ Kramer Interview, *supra* note 24, at 26:30 (Kramer: "I sent [the call] out to 5,000 people who were registered Democrats who had voted before, so more likely Democrats to vote.").

³⁸ Life Subpoena Response, *supra* note 10, at LIFE-03-0022.

³⁹ *Id.* at LIFE-03-0023.

⁴⁰ *Id.* at LIFE-03-0024.

⁴¹ See *id.* at Response to RFI No. 1.

⁴² *Id.* at Response to RFI Nos. 1-2 (confirming that Voice Broadcasting "initiated 9,581 calls on January 21, 2024, using Life's services and equipment with [the Spoofed Number] as the caller identification number"); *id.* at LIFE-03-0013 (showing last call placed at 7:12 p.m.).

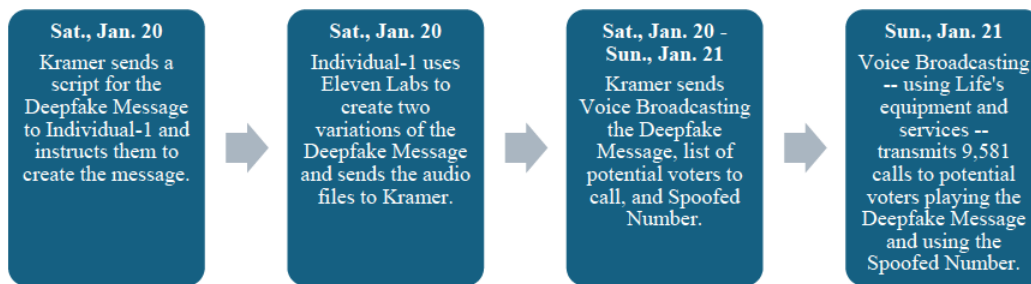
⁴³ NHPO Complaint, *supra* note 11.

⁴⁴ *Id.*

⁴⁵ *Id.*

from President Biden, and the caller ID showed the NHPO's spouse's name.⁴⁶ The woman stated that the message said to call the Spoofed Number to have her name removed from the list, and she asked the NHPO to have her name removed from the list.⁴⁷ The NHPO realized that they had to "leave dinner, go home, and try to fix this."⁴⁸ They then "spent the rest of the evening and all of the following day . . . focused on correcting the misinformation for as many people as [they] could through Election Day, January 23."⁴⁹ On Monday morning, January 22, the NHPO contacted the New Hampshire Attorney General's Office, reported the calls, and warned of an effort at voter suppression and election interference.⁵⁰ The NHPO "was and remain[s] deeply concerned about [their] phone number and name being connected with this deepfake call that tried to prevent people from voting."⁵¹

13. The flow chart below depicts the timeline of key events discussed above:



14. The news media began covering the calls almost immediately. On the morning of Monday, January 22, 2024, Kramer texted Individual-1 a link to an article covering the robocalls and wrote "[s]hhhhhhh."⁵² Individual-1 reacted with disbelief.⁵³ Later, Kramer told Individual-1 over the phone that because the call was 'spoofed' [] it could not be traced back."⁵⁴ Despite the ensuing news frenzy, Kramer remained silent for weeks about the Deepfake Message he had instigated.

C. Originating Service Provider Told to Cease and Desist

15. Following traceback information provided by the ITG, on February 6, 2024, the Bureau sent Lingo a cease-and-desist letter demanding that Lingo stop originating unlawful robocall traffic on its network.⁵⁵ Concurrently with the letter, the Bureau issued a public notice to all U.S.-based voice service providers informing them that if Lingo failed to effectively mitigate illegal robocall traffic within 48 hours of the notice then other service providers could block all calls or cease to accept any traffic from

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Decl. of NHPO at para. 14, *League of Women Voters of New Hampshire et al. v. Kramer*, No. 1:24-cv-73 (D.N.H. filed Apr. 18, 2024), ECF No. 46-2 (Decl. of NHPO).

⁴⁹ *Id.* at para 15.

⁵⁰ NHPO Complaint, *supra* note 11.

⁵¹ Decl. of NHPO at para. 16.

⁵² Individual-1 Subpoena Response, *supra* note 29, at text message from Kramer to Individual-1 (Jan. 22, 2024 at 10:28 AM).

⁵³ *Id.*

⁵⁴ Decl. of Individual-1 at para. 15, *League of Women Voters of New Hampshire et al. v. Kramer*, No. 1:24-cv-73 (D.N.H. filed Apr. 18, 2024), ECF No. 46-8.

⁵⁵ Letter from Loyaan A. Egal, Chief, FCC Enforcement Bureau, to Alex Valencia, Chief Compliance Officer, Lingo Telecom LLC, 2024 WL 488250 (Feb. 6, 2024), <https://docs.fcc.gov/public/attachments/DOC-400264A1.pdf>.

Lingo without liability under the Communications Act or the FCC's rules.⁵⁶ On the same day, both the New Hampshire State Attorney General's Office and the Task Force demanded that Life cease and desist from, respectively, violating New Hampshire election law and transmitting suspected illegal robocall traffic.⁵⁷

16. On February 23, 2024, Individual-1 publicly disclosed creating the Deepfake Message at Kramer's request, and that Kramer had asked Individual-1 to delete their email communications reflecting Kramer's involvement.⁵⁸ Three days later, Kramer publicly accepted responsibility for the calls.⁵⁹ He later stated, "I believe in my actions and I did them deliberately," and that he had no intention of "apologiz[ing] to the people who feel disenfranchised or in some way that democracy has been disrupted."⁶⁰ Kramer claimed the calls were not made on behalf of any other person or entity.⁶¹

III. DISCUSSION

17. Kramer's activities apparently violated the Truth in Caller ID Act, which makes it unlawful to "cause any caller identification service to knowingly transmit misleading or inaccurate caller identification information with the intent to defraud, cause harm, or wrongfully obtain anything of value."⁶² The Commission's implementing regulation at section 64.1604 of its rules states that this prohibition applies to a person or entity who knowingly causes, "directly, or indirectly," "any caller

⁵⁶ *Robocall Enforcement Notice to All U.S.-Based Voice Service Providers*, Public Notice, DA 24-102, 2024 WL 488244 (Feb. 6, 2024), <https://docs.fcc.gov/public/attachments/DA-24-102A1.pdf>.

⁵⁷ Press Release, N.H. Dep't of Justice, Voter Suppression AI Robocall Investigation Update (Feb. 6, 2024), <https://www.doj.nh.gov/news/2024/20240206-voter-robocall-update.html> (NH Investigation Update) ("Today, the Election Law Unit is issuing a cease-and-desist order to Life Corporation[.]"); Letter from Tracy Nayer, Special Deputy Attorney General, Consumer Prot. Div., N.C. Dep't of Justice, to Walter Monk, Founding Owner Life Corporation, *et al.*, (Feb. 6, 2024), <https://ncdoj.gov/wp-content/uploads/2024/02/State-AG-Task-Force-NOTICE-Letter-to-LIFE-CORP-Feb.-2024-1.pdf>.

⁵⁸ Alex Seitz-Wald, *A New Orleans magician says a Democratic operative paid him to make the fake Biden robocall*, NBC News (Feb. 23, 2024), <https://www.nbcnews.com/politics/2024-election/biden-robocall-new-hampshire-strategist-rcna139760>.

⁵⁹ *See id.* ("Steve Kramer initially did not respond to multiple requests for comment."); Marcia Kramer, *Steve Kramer explains why he used AI to impersonate President Biden in New Hampshire*, CBS News (Feb. 26, 2024), <https://www.cbsnews.com/newyork/news/steve-kramer-explains-why-he-used-ai-to-impersonate-president-biden-in-new-hampshire/> ("A political consultant who represents several New York politicians admits he's the man behind the fake robocall telling President Joe Biden's supporters not to vote in New Hampshire.").

⁶⁰ Kramer Interview, *supra* note 24, at 2:17:37 (Kramer: "I believe in my actions and I did them deliberately. And I don't care about what other people think."); *id.* at 1:11:25 (Kramer: "And I'm not going to apologize to the people who might have gotten that call, I think that sometimes that's the way it is."); Morano Podcast, *supra* note 21, at 19:34 (Kramer: "The people who feel disenfranchised, or in some way that democracy has been disrupted, if I didn't do this, this regulations, these regulations would have never changed. And in the same way someone who can get through airport security and then is actually working for a security agency in order to be able to show the flaws.").

⁶¹ Kramer Interview, *supra* note 24, at 1:59:22 (Interviewer: "So, to close the loop on this, it was your idea to use this number, and you didn't communicate with anyone else about this part of the strategy behind the calls?" Kramer: "Correct."); Morano Podcast, *supra* note 21, at 25:10 (Kramer: "Dean Phillips' campaign had no idea I was doing this. I had a different contract with them to get them on the ballot in New York and in Pennsylvania and we did both. They had no knowledge."); *id.* at 25:22 (Kramer: "The company that I used in order to be able to send out these calls . . . [t]hey had no knowledge of it."); *id.* at 25:33 (Kramer: "The person who created [the recording], [Individual-1], had no knowledge of how I was going to use it.").

⁶² 47 U.S.C. § 227(e)(1).

identification service to transmit or display misleading or inaccurate caller identification information” with the intent specified in the statute.⁶³

18. As discussed in more detail below, Kramer apparently knowingly used misleading or inaccurate caller ID information with the intent to defraud and cause harm:

Knowingly: Kramer very specifically selected the Spoofed Number for the calls, with full knowledge it was associated with the NHPO.⁶⁴ Kramer then explicitly directed Voice Broadcasting to place 9,581 calls using the Spoofed Number as the caller ID.⁶⁵

Misleading or Inaccurate: As a result of Kramer’s actions, the caller ID transmitted with the calls was both inaccurate and misleading because the number was associated with the NHPO and their spouse, neither of whom were the actual source of the calls.⁶⁶

Intent to Defraud: Kramer intended to fraudulently deprive voters of their right to cast a ballot in the New Hampshire Primary Election by making false representations of material facts, including by conveying misleading voter eligibility information, using an imitation of President Biden’s voice to deliver that information, and indicating that the call was associated with a local political leader.

Intent to Cause Harm: Kramer intended to cause harm to potential voters and the election process by fueling a false narrative giving potential voters fake information in order to convince them to forgo their right to vote in an election. He also intended to cause harm to the NHPO by subjecting them to a stream of pointless callbacks from confused call recipients.

19. As discussed in more detail below, we propose a forfeiture in the amount of \$6,000,000. We calculate the proposed forfeiture by assessing a base forfeiture of \$1,000 per each apparently unlawful call. We then apply an upward adjustment of 100% to the proposed amount to reflect the egregiousness, nature, circumstances, extent, and gravity of the violations for which Kramer is apparently culpable. As we have in other mass-spoofing cases, we analyze and verify a portion of the apparently unlawfully spoofed calls and apply the proposed forfeiture amount to those verified calls. In this case, the Bureau verified a subset of 3,000 apparently unlawful spoofed calls.

A. Kramer Knowingly Caused the Transmission of Inaccurate and Misleading Caller ID Information

20. Kramer knowingly caused the calls at issue by directing—in detail—Voice Broadcasting to transmit spoofed calls.⁶⁷ Kramer provided Voice Broadcasting with the date and time to make the calls, the list of voters to call, the recording of the message to be played, and the spoofed caller ID number to transmit with the calls.⁶⁸ Kramer instructed Voice Broadcasting to play the recording when

⁶³ 47 CFR § 64.1604(a).

⁶⁴ See *supra* para. 10.

⁶⁵ See *supra* para. 11.

⁶⁶ See *supra* paras. 10, 11.

⁶⁷ See generally *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 et al.*, CG Docket No. 02-278, WC Docket No. 07-135, Declaratory Ruling and Order, 30 FCC Rcd 7962, 790, para. 30 (2015) (stating that the Commission looks at “the totality of the facts and circumstances” to determine who is responsible for making a call for purposes of the TCPA and that a person can be liable for making a call even if he doesn’t physically place the call, if he is “so involved in placing the as to be deemed to have initiated it” and further noting that one of the factors that can be considered is “the extent to which a person willfully enables fraudulent spoofing of telephone numbers”).

⁶⁸ See *supra* para. 11.

either a person answered the call or when the person's voicemail was activated.⁶⁹ Ultimately, Voice Broadcasting transmitted 9,581 calls through Life pursuant to Kramer's instructions.⁷⁰

21. The caller ID number Kramer instructed Voice Broadcasting to use was both inaccurate and misleading, which Kramer not only knew, but planned for and intended. The caller ID information was inaccurate because it did not reflect a number associated with the party causing the calls, i.e., Kramer, but instead was the NHPO's cell phone number.⁷¹ The caller ID information was also misleading because it reflected a New Hampshire area code.⁷² Indeed, Kramer specifically wanted a New Hampshire number because "when you see someone from New Hampshire calling you, you're more likely to pick up, which was my intent."⁷³ Kramer further misled call recipients by using the telephone number associated with a prominent member of the New Hampshire Democratic Party who was not connected to the calls.⁷⁴ He selected a number associated with the NHPO because of their connection to the campaign to write-in President Biden's name in the Primary Election.⁷⁵ All of these carefully calculated decisions demonstrate Kramer knowingly caused the calls to be made with inaccurate and misleading caller ID information.

B. Kramer Intended to Defraud and Cause Harm

22. Under the Truth in Caller ID Act, "intent" encompasses a broad scope of objectives, namely, an intent to defraud, cause harm, or wrongfully obtain something of value.⁷⁶ Here, the evidence reflects that Kramer acted with intent to defraud and cause harm.

1. Kramer Intended to Defraud Potential Voters

23. The elements of common law fraud are: (1) a false representation; (2) in reference to a material fact; (3) made with knowledge of its falsity; (4) with the intent to deceive; and (5) an action that is taken in reliance upon the representation.⁷⁷ The fifth element—an action taken in reliance upon the representation—is not necessary to establish an intent to defraud voters under the Truth in Caller ID

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *See supra* para. 10.

⁷² Kramer Interview, *supra* note 24, at 1:52:16.

⁷³ *Id.* at 1:52:16.

⁷⁴ NHPO Complaint, *supra* note 11 ("I have nothing to do with the calls purporting to be from President Biden. I have not authorized these calls.").

⁷⁵ *See supra* para. 10.

⁷⁶ 47 U.S.C. § 227(e)(1).

⁷⁷ *See Pence v. United States*, 316 U.S. 332, 338 (1942); *Hercules & Co. v. Shama Rest. Corp.*, 613 A.2d 916, 923 (D.C. 1992); *see also Marini v. Adamo*, 995 F. Supp. 2d 155, 199-200 (E.D.N.Y. 2014) (citing *Chanavil v. Gulatti*, 169 F.3d 168, 171 (2d Cir. 1999)); *M & D Cycles, Inc. v. Am. Honda Motor Co.*, 208 F. Supp. 2d 115, 120 (D.N.H. 2002) ("To establish fraud, a plaintiff must prove that the defendant intentionally made a representation with knowledge of its falsity or with conscious indifference to its truth with the intention to cause another to rely on it. . . . In addition, the plaintiff must prove that he justifiably relied on the misrepresentation, to his detriment."), *aff'd*, 70 F. App'x 592 (1st Cir. 2003).

Act.⁷⁸ A violation of the Truth in Caller ID Act based on an intent to defraud requires only a showing of the first four elements to establish the necessary intent, not a successful result.⁷⁹

24. *False Representations of Material Facts.* Kramer's calls conveyed several false representations of material facts. First, the Deepfake Message falsely conveyed the fact that President Biden recorded the message, which he did not; the voice was an AI-generated recording mimicking the president's voice.⁸⁰ A message seemingly appearing to come from the president of the United States is likely to carry great weight.⁸¹ Second, the Deepfake Message falsely conveyed that a voter could not vote in the Primary Election *and* the November presidential election: "We know the value of voting Democratic when our votes count. It's important that you save your vote for the November election."⁸² A misrepresentation that deceptively tells a potential voter that the president of the United States is telling them to refrain from voting in an election in order to "save" their vote for a later election is a false representation of material facts, and here poses potentially "devastating effects on the democratic election process."⁸³ Third, the calls transmitted the Spoofed Number as the caller ID and the Deepfake Message further instructed listeners that they could call the Spoofed Number to be removed from future calls, which of course was not the case.⁸⁴ Use of a New Hampshire area code and number associated with a prominent New Hampshire Democrat added significant legitimacy to the false Deepfake Message.⁸⁵ Failure to provide an accurate name and number of the caller prevented call recipients from opting out of receiving future calls and removed an important privacy protection, and thus this omission is material.⁸⁶

25. *Knowledge of Falsity.* Kramer was well aware that each of these misrepresentations was false because he himself carefully designed each one in order to create a specific outcome—detering potential voters from voting. He knew the message was not created by President Biden; he instructed Individual-1 to create an AI-generated deepfake message in accordance with a script he wrote himself.⁸⁷ He knew that voters need not refrain from voting in the New Hampshire Primary Election in order to "save" their vote for November; Kramer is a long-time political consultant well-versed in basic voting

⁷⁸ See *Sumco Panama SA, Sumco Panama USA, Virtual Telecom Kft, Virtual Telecom Inc., Davis Telecom Inc., Geist Telecom LLC, Fugle Telecom LLC, Tech Direct LLC, Mobi Telecom LLC, And Posting Express Inc.*, Forfeiture Order, FCC 23-64, 2023 WL 5013646, at *3, para. 11 (Aug. 3, 2023) ("While reliance on the misrepresentation is required under common law, only a showing of intent to defraud rather than actual reliance and harm is required under the Truth in Caller ID Act.") (quotations omitted); *John C. Spiller; Jakob A. Mears; Rising Eagle Capital Group LLC; JSquared Telecom LLC; Only Web Leads LLC; Rising Phoenix Group; Rising Phoenix Holdings; RPG Leads; and Rising Eagle Capital Group - Cayman*, Forfeiture Order, 36 FCC Rcd 6225, 6235, para. 20 (2021) (*Rising Eagle Forfeiture Order*) (same).

⁷⁹ See *Rising Eagle Forfeiture Order*, 36 FCC Rcd at 6235, para. 20.

⁸⁰ See *supra* paras. 5, 9.

⁸¹ Kramer Interview, *supra* note 24, at 26:30 (Kramer: "I sent [the call] out to 5,000 people who were registered Democrats who had voted before, so more likely Democrats to vote.").

⁸² See *supra* para. 5.

⁸³ See NH Investigation Update, *supra* note 57; *McCutcheon v. Fed. Election Comm'n*, 572 U.S. 185, 191 (2014) ("There is no right more basic in our democracy than the right to participate in electing our political leaders."); *Reynolds v. Sims*, 377 U.S. 533, 555 (1964) ("The right to vote freely for the candidate of one's choice is of the essence of a democratic society[.]").

⁸⁴ See *supra* paras. 5, 11.

⁸⁵ See *supra* paras. 5, 11.

⁸⁶ See 47 CFR § 64.1200(b)(1)-(3) (requiring artificial or prerecorded voice messages state the identity of the caller, telephone number of the caller, and when left on answering machines to include "a toll free number that enables the called person to call back at a later time").

⁸⁷ See *supra* para. 9.

principles.⁸⁸ Lastly, he knew that calling the Spoofed Number would not remove voters from the calling list; the NHPO was not associated with the robocalling campaign in any way and thus had no ability to remove voters from Kramer’s list.⁸⁹

26. *Intent to Deceive.* Kramer made all of these misrepresentations with the intent to deceive voters. He wanted voters to believe that they were hearing from President Biden, as evidenced by his (a) instructions to Individual-1 to use AI to make the message sound like President Biden and (b) incorporation of Biden’s catchphrase term, “malarkey,” into the script.⁹⁰ Kramer wanted voters to believe that voting in the Primary Election meant they could not vote in November, as evidenced by the language of the script instructing voters to “save” their vote.⁹¹ That Kramer wanted voters to believe the calls came from someone with a New Hampshire area code and specifically from the NHPO, a prominent figure in the super PAC that was leading President Biden’s write-in campaign in New Hampshire—instead of himself—is evidenced by his use of a number associated with the NHPO, and by his inclusion of that number in the Deepfake Message itself as the number to call to be removed from future calls.⁹² Kramer admitted his belief was that voters felt “duped” by his efforts.⁹³

2. Kramer Intended to Cause Harm to Potential Voters by Depriving Them of Their Vote in the Primary Election and the NHPO by Subjecting Them to a Stream of Unsettling and Unwarranted Callbacks

27. Kramer intended to harm potential voters by giving them false information in order to convince them to forgo their right to vote in an election.⁹⁴ Kramer himself acknowledged—without regret—that people may have felt “disenfranchised” or that “democracy has been disrupted” as a result of his calls.⁹⁵ Kramer’s calls not only harmed potential voters but also interfered with the Primary Election and potentially could have interfered with the November 2024 General Election. Interfering with an election undermines public trust in the electoral process that is the foundation of our democracy.⁹⁶

28. Kramer also intended to harm the NHPO by using the Spoofed Number as the caller ID for the calls and explicitly instructing recipients to call the Spoofed Number to avoid future calls.⁹⁷ We

⁸⁸ See *supra* para. 8.

⁸⁹ See *supra* para. 10.

⁹⁰ See *supra* para. 9.

⁹¹ See *supra* para. 5.

⁹² See *supra* paras. 5, 10-11.

⁹³ Marissa Tansino, *Man says he was behind AI robocalls impersonating Joe Biden before New Hampshire Primary*, WMUR-9 Manchester (Feb. 28, 2024), <https://www.wmur.com/article/joe-biden-ai-robocall-new-hampshire-steve-kramer/60005189> (Kramer: “Now there’s real impact and it’s going to keep happening, so that we have real regulations that protect those same people who thought they were duped[.]”).

⁹⁴ See *supra* para. 24.

⁹⁵ Morano Podcast, *supra* note 21, at 19:34 (Kramer: “The people who feel disenfranchised or in some way that democracy has been disrupted, if I didn’t do this, these regulations, these regulations would have never changed. And in the same way someone who can get through airport security and then is actually working for a security agency in order to be able to show the flaws? You know this in a similar way, not exactly the same but in a similar way allows an innocuous happening to be seen by everybody. You know Thomas Jefferson used to say, you do a thing act as the whole world is watching. And they were. And everyone was watching on that Monday and Tuesday of the primary.”); see also Kramer Interview, *supra* note 24, at 2:17:37 (Kramer: “I believe in my actions and I did them deliberately.”).

⁹⁶ See NH Investigation Update, *supra* note 57 (quoting New Hampshire Attorney General Formella: “Ensuring public confidence in the electoral process is vital. AI-generated recordings used to deceive voters have the potential to have devastating effects on the democratic election process.”).

⁹⁷ See *supra* paras. 5, 10.

have long recognized that receiving unsolicited “call backs” as a result of having one’s number spoofed is a “harm” under the Truth in Caller ID Act.⁹⁸ The NHPO received a stream of such calls as a result of Kramer using the Spoofed Number.⁹⁹ Indeed, Kramer admits he specifically anticipated that potential voters would futilely attempt to return calls to the NHPO,¹⁰⁰ subjecting the NHPO to annoyance and intruding on their privacy.

3. Kramer Used Generative AI Technology and Spoofing to Perpetrate Election Interference

29. Kramer’s actions convey his intent to utilize dishonest and deceptive tactics to disrupt the New Hampshire Primary Election. He wanted to send a message to voters telling them not to vote. Kramer no doubt understood that any phone message using his own number and his own voice would be a pointless exercise. But he knew that a lot of people—potentially thousands in New Hampshire—would care what the president of the United States has to say; and he knew New Hampshire Primary Election voters would pay attention to a phone call from the NHPO, who was a well-known figure.¹⁰¹ He also knew that he did not want to get caught for any of the deceptions he sought to undertake.

30. Generative AI technology and spoofing made it possible for Kramer to achieve these harmful objectives. He engaged the help of an acquaintance—Individual-1—who he knew to be familiar with AI technology.¹⁰² Kramer gave Individual-1 specific instructions on cloning President Biden’s voice, including instructing Individual-1 to use the word “malarkey” in the script Kramer drafted, which he knew to be the president’s preferred nomenclature.¹⁰³

31. Not surprisingly, Kramer likely realized that faking the president’s voice but using his own phone number to send the message to voters would not achieve the disruptive effects in the election that he intended. So in addition to misleading potential voters about the message, he also chose to mislead them about who was calling them, using a number associated with the NHPO.¹⁰⁴ The use of AI technology can be beneficial. However, the manner in which Kramer used it was detrimental to the free exercise of the right to vote in a democracy. The use of spoofing technology can be detrimental as well.¹⁰⁵ The combination of these technologies in a single scheme to interfere with an election can be potent. In addition to interfering with the freedom to vote, Kramer caused havoc for the NHPO, whose private number was made known to thousands of call recipients. The NHPO was implicated in egregious misconduct in which they had absolutely no involvement.¹⁰⁶ The NHPO was subjected to phone calls throughout the evening of January 21, while the NHPO was at dinner with their spouse, with comments

⁹⁸ See *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Notice of Apparent Liability for Forfeiture, 32 FCC Rcd 5418, 5424, para. 18 (“‘Neighbor spoofing’ also harms the true subscriber of the spoofed number when affected consumers redial the spoofed number.”).

⁹⁹ See *supra* para. 12.

¹⁰⁰ See Kramer Interview, *supra* note 24 at 1:57:15 (Kramer: “Usually [the number] is generic in nature, and if we do the campaign number, I ask them to put a line that isn’t going to get tied up, because you are going to get a response. Every time you put out an automated call, everybody likes automated calls. So sometimes they like to complain.”); *id.* at 28:03 (Kramer: “I put that number because I knew [NHPO] would blow it up.”).

¹⁰¹ See *id.* at 1:16:55 (Kramer explaining use of an AI-generated voice of a known politician causes a “tremendous jump” in poll responsiveness).

¹⁰² See *supra* para. 9.

¹⁰³ See *id.*

¹⁰⁴ See *supra* para. 10.

¹⁰⁵ See *supra* para. 4.

¹⁰⁶ See *supra* para. 10.

and questions concerning a matter the NHPO knew nothing about.¹⁰⁷ Kramer sought to disrupt the New Hampshire Primary Election and knowingly violated the NHPO's privacy.

C. Proposed Forfeiture

32. The Commission proposes a \$6,000,000 forfeiture against Kramer. The base forfeiture appropriate for the apparent Truth in Caller ID Act violations here is \$1,000 per call, which we increase by 100% in light of the circumstances present, and multiply by a verified subset of calls to yield a total forfeiture of \$6,000,000.

33. The Commission may “proceed expeditiously . . . and, where appropriate, assess a forfeiture penalty against, any person or entity engaged in prohibited caller ID spoofing without first issuing a citation.”¹⁰⁸ The Commission's rules authorize a forfeiture of up to \$14,067 for each spoofing violation.¹⁰⁹ Unlike forfeitures assessed under section 503(b)(1)(B) of the Communications Act, “the Truth in Caller ID Act does not require ‘willful’ or ‘repeated’ violations to justify imposition of a penalty”¹¹⁰—though the apparent violations at issue here would easily meet that standard. Thus, the Commission is not required to demonstrate the “conscious and deliberate commission or omission of such act” or that such act happened more than once or for more than one day to propose a forfeiture for apparently unlawful spoofing.¹¹¹

34. In exercising its forfeiture authority, the Commission considers the “nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”¹¹² The Commission may adjust a base forfeiture upward or downward based on various criteria.¹¹³ Among other criteria, the Commission may apply an upward adjustment for violations that are intentional, involve egregious misconduct, or cause substantial harm.¹¹⁴

1. We Propose a Base Forfeiture of \$1,000 Per Apparently Unlawful Spoofed Robocall

35. The Commission has utilized a base forfeiture of \$1,000 per unlawful spoofed robocall in past mass-spoofing enforcement actions.¹¹⁵ The Commission has applied the \$1,000 amount in prior

¹⁰⁷ *Supra* para 12.

¹⁰⁸ *Rules and Regulations Implementing the Truth in Caller ID Act of 2009*, WC Docket No. 11-39, Report and Order, 26 FCC Rcd 9114, 9132, para. 47 (2011) (*Truth in Caller ID Order*); *see also* 47 U.S.C. § 227(e)(5)(A)(ii) (“Paragraph (5) of section 503(b) of this title shall not apply in the case of a violation of this subsection.”). The Truth in Caller ID Act requires that the Commission provide the notice required under section 503(b)(3) (notice and an opportunity for a hearing before the Commission or an administrative law judge) or section 503(b)(4) of the Communications Act (Notice of Apparent Liability) before assessing a forfeiture for unlawful spoofing. 47 U.S.C. § 227(e)(5)(A)(iii). This Notice of Apparent Liability provides the required notice under section 503(b)(4) of the Communications Act.

¹⁰⁹ 47 CFR § 1.80(b)(4); *see Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA-22-1356, 2022 WL 18023008 (EB Dec. 23, 2023); *see also Annual Adjustment of Civil Monetary Penalties to Reflect Inflation*, 89 Fed. Reg. 2148 (Jan. 12, 2024) (setting January 15, 2024 as the effective date for the increases).

¹¹⁰ *Truth in Caller ID Order*, 26 FCC Rcd at 9133, para. 48; *see also* 47 CFR § 1.80(a)(4).

¹¹¹ 47 U.S.C. § 312(f)(1)-(2) (defining “willful” and “repeated”).

¹¹² *Id.* § 503(b)(2)(E); *see also* 47 CFR § 1.80(b)(11).

¹¹³ *See* 47 CFR § 1.80(b)(11) tbl. 3.

¹¹⁴ *See id.*

¹¹⁵ *See e.g., Scott Rhodes a.k.a. Scott David Rhodes, Scott D. Rhodes, Scott Platek, Scott P. Platek*, Forfeiture Order, 36 FCC Rcd 705, 728, para. 54 (2021) (*Rhodes Forfeiture Order*); *Rising Eagle Forfeiture Order*, 36 FCC Rcd at 62576-57, para. 59 (same).

cases on the basis that the aggregate forfeiture would serve the dual goals of punishment and deterrence, and that higher amounts would be unlikely to achieve a more effective result.¹¹⁶ We believe that rationale applies to this case as well and thus propose a base forfeiture amount of \$1,000 per apparent violation.

2. Kramer's Intentional, Egregious, and Harmful Actions Warrant a 100% Upward Adjustment

36. The Commission considers specific upward and downward adjustment criteria which may increase or decrease the base forfeiture, including—among other criteria—whether the violation was minor, whether the violation involves egregious misconduct, whether the violation was intentional, and whether the violation caused substantial harm.¹¹⁷ Based on the balancing of the criteria that are applicable here, we find that the circumstances warrant a 100% upward adjustment from the base penalty. We base this finding on our assessment that Kramer's apparent violations caused substantial harm, were intentional, and constituted egregious misconduct.

37. *Substantial Harm.* Kramer's apparently illegal robocalls—nearly 10,000 of them—caused harm in multiple ways to multiple people. The Deepfake Message aimed to deceive potential voters about who was calling them and convince them to not exercise their right to vote.¹¹⁸ The calls further risked degrading the general public's faith in elections. Kramer's actions also harmed the NHPO, who received a slew of calls to their personal cell phone from individuals seeking to be removed from future calls.¹¹⁹ This factor weighs in favor of an upward adjustment.

38. *Intentional Misconduct.* Kramer does not deny that he designed and executed this scheme with purpose.¹²⁰ He wrote the script used to create the Deepfake Message.¹²¹ He carefully selected the Spoofed Number knowing it was associated with the NHPO.¹²² He provided detailed instructions to Voice Broadcasting to launch the campaign,¹²³ which as he explained in his own words, "I don't do anything by accident."¹²⁴ This factor weighs in favor of an upward adjustment.

39. *Egregious Misconduct.* Kramer sent thousands of potential voters a prerecorded AI-generated voice message that imitated the voice of the president of the United States.¹²⁵ The message he scripted told people not to vote in the New Hampshire primary.¹²⁶ And he did so under the cover of the phone number of an unknowing and unconsenting local political leader.¹²⁷ Further, he acted without

¹¹⁶ See e.g., *John C. Spiller; Jakob A. Mears; Rising Eagle Capital Group LLC; JSquared Telecom LLC; Only Web Leads LLC; Rising Phoenix Group; Rising Phoenix Holdings; RPG Leads; and Rising Eagle Capital Group – Cayman*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 5948, 5963, para. 38 (2020).

¹¹⁷ See 47 CFR § 1.80(b)(11) tbl. 3; see also *The Comm'n's Forfeiture Policy Statement & Amend. of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, CI Docket No. 95-6, Report and Order, 12 FCC Rcd 17087, 17100-01, para. 27 (1997).

¹¹⁸ See *supra* paras. 5, 24.

¹¹⁹ See *supra* para. 12.

¹²⁰ See *supra* para. 16.

¹²¹ See *supra* para. 9.

¹²² See *supra* para. 10.

¹²³ See *supra* para. 11.

¹²⁴ See Kramer Interview, *supra* note 24, at 1:54:53; see also *id.* at 2:17:37 (Kramer: "I believe in my actions and I did them deliberately.").

¹²⁵ See *supra* para. 5.

¹²⁶ *Id.*

¹²⁷ See *supra* paras. 10, 11-12.

remorse, publicly claiming that his actions were justified to pursue his own agenda.¹²⁸ The egregiousness of this conduct—interfering with an election—undermines public trust in the electoral process. This factor weighs in favor of an upward adjustment.

40. *Justice.* Lastly, in assessing a forfeiture, the Commission may consider “such other matters as justice may require.”¹²⁹ Kramer’s misuse of AI technology to disseminate false information through an illegal robocall campaign warrants an increased penalty as a matter of justice. Kramer misused AI technology to clone the voice of the president to deceive voters and interfere with an election. This conduct erodes the public’s trust in our communication networks and democracy itself, and warrants a substantial penalty.

3. We Apply the Adjusted Base Forfeiture Amount to a Subset of Apparently Unlawful Spoofed Calls

41. Lastly, as has been the case in prior spoofing enforcement actions,¹³⁰ we apply the base forfeiture to a subset of calls which the Commission verified to be apparently unlawful. The reasons for doing so, rather than proposing a forfeiture based on the total number of apparently spoofed calls, are pragmatic. First, in some cases, depending on the specific spoofing scheme, it can be time-consuming to analyze every apparently spoofed call. Second, in large spoofing schemes, we find that applying a base forfeiture amount (with any applicable upward or downward adjustment) to a subset of verified calls results in a proposed forfeiture that achieves the dual goals of penalizing wrongful conduct and preventing it from recurring. Each case is unique, and we must use our discretion in proposing an appropriate penalty to meet the specific circumstances.

42. The Bureau reviewed a sample of 3,000 of the 9,581 robocalls for violations of the Truth in Caller ID Act.¹³¹ The Bureau verified that the Spoofed Number was used for each of the 3,000 calls.¹³²

43. In sum, we increase the base forfeiture of \$1,000 by 100% to yield a \$2,000 per-call adjusted base penalty. We multiply that by the subset of 3,000 verified calls to yield a total proposed forfeiture of \$6,000,000.

IV. CONCLUSION

44. Kramer is responsible for knowingly causing thousands of calls that used misleading and inaccurate caller ID information with the intent to defraud and cause harm in apparent violation of section 227(e) of the Communications Act of 1934, as amended, and section 64.1604 of the Commission’s rules. As such, Kramer is apparently liable for a forfeiture of \$6,000,000.

V. ORDERING CLAUSES

45. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Communications Act, 47 U.S.C. § 503(b), and section 1.80 of the Commission’s rules, 47 CFR § 1.80,¹³³ Steve Kramer is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of six

¹²⁸ See *supra* para. 16.

¹²⁹ 47 USC § 503(b)(2)(E); see also 47 CFR § 1.80(b)(11).

¹³⁰ See e.g., *Rhodes Forfeiture Order*, 36 FCC Rcd at 728, para. 54 (multiplying the base forfeiture amount by the number of verified spoofed calls to reach a total proposed base forfeiture); *Rising Eagle Forfeiture Order*, 36 FCC Rcd at 6256-57, para. 59 (same).

¹³¹ See Verified Call Detail Records (on file in EB-TCD-24-00036094); Decl. of B. Labbor, FCC Enforcement Bureau (May 1, 2024) (on file in EB-TCD-24-00036094) (Labbor Decl.) (explaining how the calls were verified).

¹³² Labbor Decl.

¹³³ 47 CFR § 1.80.

million dollars (\$6,000,00) for violations of section 227(e) of the Communications Act¹³⁴ and section 64.1604¹³⁵ of the Commission's rules.

46. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules,¹³⁶ 47 CFR § 1.80, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Steve Kramer **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 49 below.

47. Steve Kramer shall send electronic notification of payment to Lisa Ford, Enforcement Bureau, Federal Communications Commission, at lisa.ford@fcc.gov on the date said payment is made. Payment of the forfeiture must be made by credit 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:

- 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 159¹³⁷ or printed CORES form¹³⁸ 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)¹³⁹ 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

¹³⁴ 47 U.S.C. § 227(e).

¹³⁵ 47 CFR § 64.1604.

¹³⁶ *Id.* § 1.80.

¹³⁷ FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

¹³⁸ 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>.

¹³⁹ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6).

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.

48. 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. 20554.¹⁴⁰ 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.

49. 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.¹⁴¹ The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554, ATTN: Enforcement Bureau – Telecommunications Consumers Division, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to Raul Rojo at raul.rojo@fcc.gov.

50. 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.¹⁴² 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.¹⁴³

¹⁴⁰ See 47 CFR § 1.1914.

¹⁴¹ *Id.* §§ 1.16, 1.80(g)(3).

¹⁴² 47 U.S.C. § 503(b)(2)(E).

¹⁴³ 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); *Best Insurance Contracts, Inc., and Philip Roesel, dba Wilmington Insurance Quotes*, Forfeiture Order, 33 FCC Rcd 9204, 9218-19, para. 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).

51. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and a copy of the Verified Call Detail Records shall be sent by first class mail and certified mail, return receipt requested, to Steve Kramer at {[]}.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

**STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *In the Matter of Steve Kramer*, File No.: EB-TCD-24-00036094, Notice of Apparent Liability for Forfeiture (May 23, 2024)

Last year in Nigeria, a clip manipulated with Artificial Intelligence spread far and wide. It showed a presidential candidate scheming to rig ballots. In Slovakia, people across the country heard a manipulated audio clip of an opposition candidate supporting both election fraud and an effort to raise the price of beer.

But there is no need to travel to far-off lands to see how AI can sow confusion. Because this year in the United States a fraudulent campaign targeted voters in New Hampshire. It used AI-generated voice cloning to mimic an unauthorized message from President Biden, two days before the primary election in the state. This is unnerving. Because when a caller sounds like a politician you know, a celebrity you like, or a family member who is familiar, any one of us could be tricked into believing something that is not true with calls using AI technology. It is exactly how the bad actors behind these junk calls with manipulated voices want you react.

So when we saw this happen here, on our shores, we acted fast. The Federal Communications Commission issued a Declaratory Ruling that made clear that “artificial or prerecorded voice” robocalls using AI voice cloning technology violate the Telephone Consumer Protection Act. We partnered in this effort with State Attorneys General, including the New Hampshire Attorney General, who is one of 49 State Attorneys General who have signed on to a Memorandum of Understanding to work with this agency on junk robocalls. This ruling matters. Because it gives our state colleagues the right to go after bad actors behind these calls and seek damages under the law. Then we worked with carriers to trace those responsible for this calling campaign. When we found the carrier behind it, we immediately sent a cease and desist letter and notified all other carriers to go ahead and stop carrying this traffic.

Today, we tie up our investigation into these New Hampshire calls with two separate actions.

First, we hold Steve Kramer responsible for the scam calls he set up to defraud voters using call spoofing technology that violates the Truth in Caller ID Act. This fine is \$6,000,000.

Second, we hold Lingo Telecom, the carrier that put these scam calls on the line, responsible for failing to follow our call authentication policies. This fine is \$2,000,000.

But this is only a start. Because we know AI technologies that make it cheap and easy to flood our networks with fake stuff are being used in so many ways here and abroad. It is especially chilling to see them used in elections. That is why yesterday I shared with my colleagues a proposal to require election advertisements in the United States to simply disclose if they use AI technology. I think as these tools become more accessible, every one of us has a right to know.

Back to the enforcement actions before us. They are the result of fast work and valuable partnerships. A special thank you goes to New Hampshire Attorney General John Formella and his staff for assistance with this investigation.

I also want to thank the agency staff for their work, including Loyaan Egal, Jermaine Haynes, Peter Hyun, Balki Labbor, Ryan McDonald, Rakesh Patel, Raul Rojo, Daniel Stepanicich, Kristi Thompson, and Jane van Benten from the Enforcement Bureau; Erik Beith, Elizabeth Drogula, Jonathan Lechter, and Zachary Ross from the Wireline Competition Bureau; Jerusha Burnett and Kristi Thornton from the Consumer and Governmental Affairs Bureau; Richard Mallen, Erika Olsen, Joel Rabinowitz, and Derek Yeo from the Office of General Counsel; and Ed Cureg and Kenneth Lynch from the Office of Economics and Analytics

**STATEMENT OF
COMMISSIONER GEOFFREY STARKS**

Re: *In the Matter of Steve Kramer*, File No. EB-TCD-24-00036094, Notice of Apparent Liability for Forfeiture (May 23, 2024)

This January, two days before the New Hampshire primary election, Steve Kramer orchestrated an illegal robocall campaign. He targeted thousands of voters. And his message was among the most anti-democratic things a person can push in our society: don't vote. But who would listen Steve Kramer? So he used the voice of the President of the United States, deployed from the phone number of a New Hampshire political operative. All it took was the help of an acquaintance, publicly available software technology, and \$150. With that, Kramer generated a deepfake recording of the President telling eligible voters to stay at home on election day.

But that wasn't enough to get this dangerous message to thousands of people. For years, we have been building safeguards into our telephone networks, to block illegal calls before they reach your phone. But Lingo Telecom, LLC, the company that originated many of the calls at issue, did not follow those legally-required safeguards. It passed on Kramer's call, associated with spoofed caller ID information, with the highest level of attestation available under STIR/SHAKEN – an "A-level" attestation. It verified a relationship between the spoofed number and the party that transmitted the calls to Lingo that did not exist, and that it should have known did not exist. That smoothed the way for those calls to make their way to thousands of voters across the state.

Today's Notices of Apparent Liability detail each of these steps – and I emphasize them – to show that it is the *combination* of these events that can have the most devastating effects. Had Kramer not been able to duplicate President Biden's voice so easily, this may have had less impact.¹ Voice cloning is a significant threat to the trust and integrity of our phone systems. This is why, days after Kramer's actions, the FCC swiftly (and unanimously, I might add) issued a declaratory ruling making clear that calls using voice cloning technologies fall under the requirements – and penalties – of the Telephone Consumer Protection Act.² And had Lingo not rubber stamped so many of these calls, it could have limited the consequences of Kramer's scheme. This is why the FCC requires all voice service providers to implement STIR/SHAKEN, and to use know-your-customer protocols to verify that the party transmitting the call has the authority to use the caller ID they designate.

And this is why, today, we use the authority granted to us by Congress in the Truth in Caller ID Act and the TRACED Act to propose forfeitures against both sides of this equation.

I want to thank the staff of the Enforcement Bureau for their prompt and dedicated investigation into this critical case. As always with robocall cases, the collaboration of our state, federal, and industry partners was key. The Bureau conducted this investigation in coordination with the New Hampshire Attorney General's Office, the bipartisan Anti-Robocall Multistate Litigation Task Force, the Department of Justice, and the Industry Traceback Group. I extend my thanks to each of those bodies. And finally, I want to recognize the Chairwoman for her leadership and efforts in building these collaborative relationships, which have proven critical to our enforcement of the law and our protection of American consumers and voters.

¹ That is not to say it would have no impact; we have previously seen illegal robocalls used for voter suppression. See *John M. Burkman, Jacob Alexander Wohl, J.M. Burman & Associates*, Forfeiture Order, 38 FCC Rcd 5529 (2023) (FCC's assessment of \$5,134,000 forfeiture order against perpetrators of 2020 robocall voter suppression scheme for violations of the TCPA).

² *Implications of Artificial Intelligence Technologies on Protecting Consumers from Unwanted Robocalls and Robotexts*, CG Docket No. 23-362, Declaratory Ruling, FCC 24-17 (2024).

**STATEMENT OF
COMMISSIONER ANNA M. GOMEZ**

Re: *In the Matter of Steve Kramer*, File No.: EB-TCD-24-00036094, Notice of Apparent Liability for Forfeiture (May 23, 2024)

Today, the Commission adopted a Notice of Apparent Liability for Forfeiture to address an action that harmed consumers.

We find that Mr. Steve Kramer apparently acted with the intent to defraud New Hampshire voters by misleading them about their voting rights. Kramer sent thousands of spoofed robocalls containing a message, created with Artificial Intelligence (AI), imitating President Biden's voice and instructing listeners to refrain from voting in the New Hampshire primary election.

This is significant. The apparent actions of Kramer not only harmed New Hampshire voters, but compromised trust in democracy itself.

In February of this year, we adopted a Declaratory Ruling confirming that the Telephone Consumer Protection Act's prohibition on using "artificial or prerecorded voice" to make robocalls includes AI technologies that generate human voices.

The action at issue today exemplifies AI technology being harnessed for harm. The consequences for consumers and the threat to our democratic processes warrant a strong response. That is why this proposed penalty is so important, as the Commission must do what is within our power to deter scams manipulating AI to prey on consumers and to threaten our democratic processes.

Thank you for the Enforcement Bureau and all staff at the FCC that contributed to this proposed enforcement action.

**DECLARACIÓN DE LA COMISIONADA
ANNA M. GOMEZ**

Re: *In the Matter of Steve Kramer*, File No.: EB-TCD-24-00036094, Notice of Apparent Liability for Forfeiture (May 23, 2024)

La Comisión propone hoy confiscaciones por actividades que perjudican a los consumidores.

Hemos detectado que el señor Steve Kramer actuó aparentemente con la intención de defraudar a los electores de New Hampshire, engañándolos en relación con su derecho a voto. Kramer transmitió miles de llamadas automáticas usando una voz idéntica a la del Presidente Biden, generada con inteligencia artificial, instruyendo a los electores para que no acudieran a votar en las elecciones primarias.

También hallamos que Lingo Telecom, mediante su aparentemente laxa aplicación de los requisitos de protección al consumidor establecidos por la FCC, permitió que se llevara a cabo la maniobra, aparentemente fraudulenta, del señor Kramer.

Todo esto es relevante. Las aparentes acciones de Kramer no sólo perjudican a los electores de New Hampshire, sino que también afectan la confianza en la democracia. Las aparentes acciones de Lingo no lograron identificar adecuadamente las llamadas automáticas falsificadas.

En febrero de este año, adoptamos una resolución declaratoria confirmando que la prohibición de utilizar “voz artificial o pregrabada” para realizar llamadas automáticas también incluye a tecnologías de inteligencia artificial que imitan voces humanas. Las actividades en cuestión hoy ejemplifican el uso de la tecnología de inteligencia artificial para causar daño. Las consecuencias para los consumidores, y la amenaza que estas actividades representan para nuestros procesos democráticos, justifican una respuesta contundente.

Por eso las sanciones propuestas son tan importantes, ya que la Comisión debe hacer todo lo que esté a su alcance para desalentar a los estafadores que manipulan la inteligencia artificial con el propósito de aprovecharse de los consumidores, amenazando nuestros procesos democráticos.

Agradecemos a la oficina de aplicación de normas (Enforcement Bureau) y a todo el personal de la FCC que ha contribuido en la elaboración de esta propuesta de aplicación de normas.

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

In the Matter of	)	
	)	File No.: EB-TCD-24-00036425
Lingo Telecom, LLC	)	NAL/Acct. No.: 202432170004
	)	FRN: 0035440734
	)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: May 23, 2024**Released: May 28, 2024**

By the Commission: Chairwoman Rosenworcel and Commissioners Starks and Gomez issuing separate statements; Commissioners Carr and Simington concurring and issuing separate statements.

I. INTRODUCTION

1. Following an investigation by the Federal Communications Commission’s (Commission or FCC) Enforcement Bureau (Bureau), we propose a penalty of \$2,000,000 against Lingo Telecom, LLC (Lingo or Company) for applying incorrect Secure Telephone Identity Revisited and Signature-based Handling of Asserted information using toKENs (STIR/SHAKEN) attestations in apparent violation of section 64.6301(a) of the Commission’s rules.¹ Specifically, Lingo, in a failure to utilize reasonable “Know Your Customer” (KYC) protocols, applied incorrect STIR/SHAKEN attestations to spoofed robocalls carrying a deepfake² generative artificial intelligence (AI) voice message purporting to be from the president of the United States (Deepfake Message) that targeted New Hampshire primary election voters two days before the state’s 2024 Democratic Presidential Primary Election (Primary Election). The Deepfake Message told primary election voters not to vote in the upcoming Primary Election.

2. The STIR/SHAKEN framework allows for the authentication and verification of caller identification (ID) information and is a vital tool designed to give consumers more confidence that caller ID information is accurate. The last two decades have seen a proliferation in the misuse of spoofing technology by malicious actors as a means of evading liability for illegal robocalls and other abusive communications. Accordingly, restoring the reliability of caller ID information is a top consumer protection priority for the Federal Communications Commission (Commission or FCC). In recent years, the Commission has undertaken multiple proceedings to ensure rapid adoption of the technology required to bring STIR/SHAKEN to telecommunications networks across the country.³ The framework uses three

¹ 47 CFR § 64.6301(a).

² “Deepfake” is defined as “an image or recording that has been convincingly altered and manipulated to misrepresent someone as doing or saying something that was not actually done or said.” *Deepfake*, Merriam-Webster (last updated Mar. 21, 2024), <https://www.merriam-webster.com/dictionary/deepfake>.

³ See, e.g., *Call Authentication Trust Anchor, Implementation of TRACED Act Section 6(a) – Knowledge of Customers by Entities with Access to Numbering Resources*, WC Docket Nos. 17-97 and 20-67, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 3241 (2020) (*First Call Authentication Order*); *Call Authentication Trust Anchor*, WC Docket No. 17-97, Second Report and Order, 36 FCC Rcd 1859 (2020) (*Second Call Authentication Order*); *Advanced Methods to Target and Eliminate Unlawful Robocalls, Call Authentication Trust Anchor*, CG Docket No. 17-59, WC Docket No. 17-97, Sixth Report and Order, Fifth Report and Order, Order on Reconsideration, Order, Seventh Further Notice of Proposed Rulemaking, Fifth Further Notice of Proposed Rulemaking, 37 FCC Rcd 6865 (2022) (*Gateway Provider Order*); *Call Authentication Trust Anchor*, WC Docket No. 17-97, Sixth Report and Order and Further Notice of Proposed Rulemaking, 38 FCC Rcd 2573 (2023) (*Sixth Call Authentication Order*).

attestation levels that indicate the level of the signing provider's validation of the caller ID information. False or incorrect attestations undermine years of regulatory and industry efforts to enable caller ID authentication, and diminish the integrity of the STIR/SHAKEN framework. The Commission mandates that providers like Lingo fully implement STIR/SHAKEN and adhere to the technical standards therein.⁴

3. Two days before the Primary Election, illegal spoofed and malicious robocalls carrying a deepfake audio recording of President Biden's voice told the state's voters not to vote in the upcoming primary. These calls, carrying the deepfake generative AI-produced cloned voice of the president of the United States, were made at the behest of a political consultant named Steve Kramer (Kramer), who engaged Voice Broadcasting Corp., which used the services and equipment of Life Corp. (Life) to transmit the calls. Life, in turn, used Lingo to originate the traffic onto the public switched telephone network (PSTN). Lingo, in apparent violation of the Commission's rules, sent 2,000 calls through its network to potential New Hampshire voters, falsely authenticating spoofed traffic with the highest level of attestation permitted under the STIR/SHAKEN rules. This false "A-level" attestation, in turn, harmed the public by making it less likely that these spoofed, deepfake calls would be blocked or flagged as suspicious by terminating voice service providers and reducing consumers' trust in their voice service providers and the nation's communications network.

II. BACKGROUND

A. Legal Framework

4. The Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act) and the Commission's implementing rules required voice providers to implement the STIR/SHAKEN authentication framework on their Internet protocol (IP) networks by June 30, 2021,⁵ subject to certain exceptions.⁶ The STIR/SHAKEN framework⁷ helps protect consumers from illegal spoofed calls⁸ by enabling authenticated caller ID information to travel securely with the call itself through the entire call path.⁹ The framework consists of two components: (1) the technical process of authenticating and verifying caller ID information; and (2) the certificate governance process that maintains trust in caller ID authentication information that accompanies a call.¹⁰ The first component relies on public key cryptography to transmit information securely that a service provider knows about the caller and its relationship to the phone number it is using for the call, including an attestation level for the

⁴ See, e.g., *First Call Authentication Order*, 35 FCC Rcd at 3257-59, paras. 32-36; see also *Gateway Provider Report and Order*, 37 FCC Rcd at 6887-88, para. 53 (requirements for gateway providers), *Sixth Call Authentication Order*, 38 FCC Rcd at 2585, para. 21 (requirements for non-gateway intermediate providers).

⁵ See Pub. L. No. 116-105, § 4, 133 Stat. 3274, 3276 (2019) (TRACED Act), 47 CFR § 64.6301(a) (requiring STIR/SHAKEN implementation by voice service providers).

⁶ See 47 CFR §§ 64.6304, 64.6306.

⁷ The STIR/SHAKEN framework is a set of technical standards and protocols that enable providers to authenticate and verify caller ID information transmitted with Session Initiation Protocol (SIP) calls. A working group of the Internet Engineering Task Force (IETF) called the Secure Telephony Identity Revisited (STIR) developed several protocols for authenticating caller ID information. The Alliance for Telecommunications Industry Solutions (ATIS), in conjunction with the SIP Forum, produced the Signature-based Handling of Asserted information using toKENs (SHAKEN) specification, which standardizes how the protocols produced by STIR are implemented across the industry using digital certificates. *Call Authentication Trust Anchor*, WC Docket No. 17-97, Second Report and Order, 36 FCC Rcd 1859, 1862-3, para. 7 (2020) (*Second Call Authentication Order*).

⁸ See 47 U.S.C. § 227(e) (prohibiting the transmission of inaccurate or misleading caller identification information with the intent to defraud, cause harm, or wrongfully obtain anything of value); 47 CFR § 64.1604 (same).

⁹ *Call Authentication Trust Anchor*, WC Docket No. 17-97, Sixth Report and Order and Further Notice of Proposed Rulemaking, FCC 23-18, 38 FCC Rcd 2573, 2575, para. 4 (2023) (*Sixth Call Authentication Order*).

¹⁰ *Second Call Authentication Order*, 36 FCC Rcd at 1862-63, para. 7.

call (addressed in more detail below).¹¹ This encrypted information is contained within a unique part of the Session Initiation Protocol (SIP) message known as the “Identity” header field.¹² After the service provider authenticates this caller ID information for a particular call and adds this attestation information, the Identity header travels along with the call from the authenticating service provider, through any intermediate providers, to the terminating voice service provider.¹³ When the terminating voice service provider receives the call with the Identity header attached, it can decrypt it, verify the caller ID information, and then use that information (including the attestation level), along with other information, to protect its subscribers from unwanted and illegal calls.¹⁴ The second component of the STIR/SHAKEN framework relies on digital certificates issued to a provider through a neutral governance system to maintain trust and accountability among providers; a digital certificate indicates that: (i) the authenticating service provider is who it claims to be; (ii) the service provider is authorized to authenticate the caller ID information; and (iii) the provider’s claims about the caller ID information it is authenticating can thus be trusted.¹⁵ This system is overseen by a Governance Authority—currently an entity called the Secure Telephone Identity Governance Authority (STI-GA)—which establishes the policies and procedures regarding how providers may acquire and maintain certificates.¹⁶

5. Section 64.6301(a) of the Commission’s rules requires that “not later than June 30, 2021, a voice service provider shall fully implement the STIR/SHAKEN authentication framework in its internet Protocol networks.”¹⁷ Related to this obligation,

[A] voice service provider shall:

- (1) Authenticate and verify caller identification information for all SIP calls that exclusively transit its own network;
- (2) Authenticate caller identification information for all SIP calls it originates and that it will exchange with another voice service provider or intermediate provider and, to the extent technically feasible, transmit that call with authenticated caller identification information to the next voice service provider or intermediate provider in the call path; and
- (3) Verify caller identification information for all SIP calls it receives from another voice service provider or intermediate provider which it will terminate and for which the caller identification information has been authenticated.¹⁸

The Commission’s rules define the term “STIR/SHAKEN authentication framework” to mean the “secure telephone identity revisited and signature-based handling of asserted information using tokens

¹¹ See *id.* at 1863, paras. 8, 10.

¹² See *id.* at 1863, para. 8. SIP is a signaling protocol used in IP telephony calls. See *id.* at 1862, para. 6, n.16.

¹³ See *Sixth Call Authentication Order*, 38 FCC Rcd at 2576, para. 5.

¹⁴ See *id.*

¹⁵ See *Call Authentication Trust Anchor, Implementation of TRACED Act Section 6(a) – Knowledge of Customers by Entities with Access to Numbering Resources*, WC Docket Nos. 17-97 and 20-67, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 3241, 3246, para. 9 (2020) (*First Call Authentication Order*); see also *Sixth Call Authentication Order*, 38 FCC Rcd at 2576, para. 6.

¹⁶ See *Second Call Authentication Order*, *supra* note 7, at 1864, para. 11; see also Secure Telephone Identity Governance Authority (STI-GA), STI Governance Authority, <https://sti-ga.atis.org> (last visited Apr. 19, 2024).

¹⁷ 47 CFR § 64.6301(a). In accordance with section 4, of the TRACED Act, the FCC rules permitted various extensions and exceptions, see *id.* §§ 64.6304, 64.6306, but none of these are relevant to Lingo.

¹⁸ See *id.* § 64.6301(a).

*standards.*¹⁹ The “standards” are three technical standards developed jointly by the Internet Engineering Task Force (IETF) and the Alliance for Telecommunications Industry Solutions (ATIS) for implementation of STIR/SHAKEN, which are identified in the Commission’s *First Call Authentication Order*: ATIS-1000074, ATIS-1000080, and ATIS-1000084.²⁰ For voice service providers, “[c]ompliance with the most current versions of these three standards as of March 31, 2020, including any errata as of that date or earlier, represents the *minimum requirement to satisfy our rules.*”²¹

6. Of particular relevance to this Notice of Apparent Liability for Forfeiture, ATIS-1000074 describes the three attestation levels that a provider can apply to a call.²² An “A” attestation or “Full Attestation” means that the signing provider: (1) “is responsible for the origination of the call onto the IP-based service provider voice network;” (2) “has a direct authenticated relationship with the customer and can identify the customer;” and (3) “has established a verified association with the telephone number used for the call.”²³ A “B” attestation or “Partial Attestation” means that the provider can meet the first two criteria of the A-level attestation but the provider “has NOT established a verified association with the telephone number being used for the call.”²⁴ Finally, a “C” attestation or “Gateway Attestation” means that the signing provider “has no relationship with the originator of the call (e.g., international gateways).”²⁵ Thus, the attestation level assigned by a voice service provider signifies “what it knows about the identity of the calling party,” and thus how much trust downstream providers can ascribe to the caller ID number.²⁶

7. STIR/SHAKEN is a “key component” in the Commission’s fight to protect consumers from the scourge of robocalls.²⁷ “The STIR/SHAKEN caller ID authentication framework protects consumers from illegally spoofed robocalls by enabling authenticated caller ID information to securely travel with the call itself throughout the entire call path.”²⁸ When providers do not do their part in

¹⁹ *Id.* § 64.6300(m) (emphasis added); *see also* TRACED Act § 4(a)(1) (defining “STIR/SHAKEN authentication framework” to mean “the [STIR/SHAKEN] standards proposed by the information and communications technology industry”).

²⁰ *See First Call Authentication Order*, 35 FCC Rcd at 3258-59, para. 36; *see also* Alliance for Telecommunications Industry Solutions, Signature-based Handling of Asserted information using toKENs (SHAKEN), ATIS-1000074-E19E (2019), (ATIS-1000074); Errata to Signature-based Handling of Asserted information using toKENs (SHAKEN): Governance Model and Certificate Management, ATIS-1000080-E19 (2019) (ATIS-1000080); Errata to Technical Report on Operational and Management Considerations for SHAKEN STI Certification Authorities and Policy Administrators, ATIS-1000084-E19 (2019) (ATIS-1000084).

²¹ *First Call Authentication Order*, *supra* note 15, 35 FCC Rcd at 3258-59, para. 36; *see also Sixth Call Authentication Order*, *supra* note 9, at 2585, para. 21 (stating that voice service providers, gateway providers, and intermediate providers that received unauthenticated calls directly from originating providers are “obligated to comply with, *at a minimum*, the version of the STIR/SHAKEN standards ATIS-1000074, ATIS-1000080, and ATIS-1000084 and all of the documents referenced therein in effect at the time of their respective compliance deadlines, including any errata as of those dates or earlier”) (emphasis in original). A gateway provider is a U.S.-based intermediate provider that receives a call directly from a foreign provider and transmits it to another U.S.-based provider, thus serving as a gateway onto the public switched telephone network for calls originating outside the United States. *See* 47 CFR § 64.6300(d).

²² ATIS-1000074 § 5.2.3 at 9-10.

²³ *Id.* at 9.

²⁴ *Id.*

²⁵ *Id.* at 10.

²⁶ *Second Call Authentication Order*, *supra* note 7, at 1863, para. 10.

²⁷ *Call Authentication Trust Anchor*, WC Docket No. 17-97, Sixth Report and Order and Further Notice of Proposed Rulemaking, 38 FCC Rcd 2573, 2574, at para. 2 (2023).

²⁸ *Id.* at 2575, para. 4.

properly authenticating a call and verifying the use of a telephone number, the framework breaks down and consumers are left exposed without protection to malign actors who will exploit the vulnerability.

B. Factual Background

8. Lingo is a voice service provider headquartered in Southfield, Michigan, with operations in Dallas, Texas; Atmore, Alabama; and Macon, Georgia.²⁹ Lingo's parent company, Lingo Management, LLC (Lingo Management), describes itself as a provider of "IP-based Cloud voice and data [services] along with other unified communications technologies to small-to-medium sized businesses and consumers."³⁰ Lingo formerly conducted business as Matrix Telecom, LLC (Matrix).³¹ Matrix certified that it had implemented STIR/SHAKEN throughout its network in the FCC's Robocall Mitigation Database (RMD) on June 30, 2021.³² Matrix changed its listed business name in the RMD to "Lingo Telecom, LLC" on January 11, 2023. Lingo also holds an international section 214 authorization.³³

9. On January 21, 2024, two days before the Primary Election, potential voters received 9,581 calls³⁴—3,978 originated by Lingo³⁵—carrying the following prerecorded and generative AI Deepfake Message—all but the last sentence of which was spoken in a fake voice that was used to create the impression that President Biden created the message:³⁶

²⁹ See Meet Lingo, Lingo, <https://www.lingo.com/meet-lingo/> (last visited on Mar. 15, 2024). In its April 2023 filing in the FCC Form 499 database, Lingo lists nine "other trade names" (Bullseye Telecom, Inc.; Trinsic Communications; Excel Telecommunications; Clear Choice Communications; VarTec Telecom; Impact Telecom; Startec; Americatel; and Lingo). See Lingo Telecom, LLC, FCC Form 499A, 802572 (Apr. 3, 2023), <https://apps.fcc.gov/cgb/form499/499detail.cfm?FilerNum=802572>. A February 26, 2024 filing in the RMD by its parent company, Lingo Management, LLC, identified seven d/b/a names for Lingo Telecom, LLC (Lingo, Impact Telecom, Excel Telecommunications, Trinsic, Vartec Telecom, Americatel, and Startec). See Lingo Management, LLC Robocalling Mitigation Plan v2.2024, at Appx. A (on file in EB-TCD-24-00036425). An April 9, 2024 filing by Lingo Management revised its robocall mitigation plan to list eight d/b/a names for Lingo (adding "Bullseye" to the previously listed seven names). See Lingo Management, LLC Robocalling Mitigation Plan v4.2024, at Appx. A (Lingo Management April 2024 Robocalling Mitigation Plan), https://fccprod.servicenowservices.com/?id=1&form&table=x_g_fmc_rmd_robocall_mitigation_database&sys_id=5008f0e287644a101dda87f9cebb3581&view=sp ("Download PDF") (last viewed Apr. 15, 2024).

³⁰ Lingo Management April 2024 Robocalling Mitigation Plan at 2.

³¹ See *id.* at Appx. A; Matrix Telecom, LLC, Certificate of Amendment, 802357352, Tex. Sec'y of State (Oct. 13, 2021) (changing name to Lingo Telecom, LLC).

³² See Lingo Telecom, LLC Robocall Mitigation Database certification, Fed. Commc'ns Comm'n (June 30, 2021) (Lingo 2021 RMD Certification) (on file in EB-TCD-24-00036425). Lingo deleted its RMD certification on February 26, 2024. See Lingo Telecom, LLC Robocall Mitigation Database certification, Fed. Commc'ns Comm'n (Feb. 26, 2024) (on file in EB-TCD-24-00036425). On that same date, Lingo Management filed a certification in the RMD.

³³ Lingo Telecom, LLC, International Section 214 Authorization, ITC-214-19900713-00004 (Dec. 12, 1990).

³⁴ Subpoena Response of Life Corp. (Feb. 7, 2024) (on file in EB-TCD-24-00036425) (Life Subpoena Response), at Response to Request for Information (RFI) No. 1.

³⁵ Lingo Subpoena Response, at Lingo 05-000202 (Mar. 27, 2024) (Call Detail Records) (on file at EB-TCD-24-00036425).

³⁶ Numerous news outlets have concluded that the recorded voice resembled the voice of President Biden. See, e.g., Alex Seitz-Wald and Mike Memoli, *Fake Joe Biden robocall tells New Hampshire Democrats not to vote Tuesday*, NBC News (Jan. 22, 2024, Updated 11:45 AM EST), <https://www.nbcnews.com/politics/2024-election/fake-joe-biden-robocall-tells-new-hampshire-democrats-not-vote-tuesday-rcna134984> ("The call, an apparent imitation or digital manipulation of the president's voice . . ."); Jacob Rosen, *Fake Biden robocall encourages voters to skip*

(continued...)

This coming Tuesday is the New Hampshire Presidential Preference Primary. Republicans have been trying to push nonpartisan and democratic voters to participate in their primary. What a bunch of malarkey. We know the value of voting Democratic when our votes count. It's important that you save your vote for the November election. We'll need your help in electing Democrats up and down the ticket. Voting this Tuesday only enables the Republicans in their quest to elect Donald Trump again. Your vote makes a difference in November, not this Tuesday. If you would like to be removed from future calls, please press two now. Call {{ }} to be removed from future calls.³⁷

10. The caller ID information indicated that the calls came from the phone number of a New Hampshire Political Operative (NHPO) (for which their spouse is the subscriber). NHPO is a former New Hampshire Democratic Party chair and treasurer of a super Political Action Committee (PAC) that led an effort to encourage New Hampshire Democrats to write in President Biden's name in the state's Primary Election.³⁸ However, neither NHPO nor their spouse were in any way involved in making the calls, or authorized the number to be used in connection with the calls.³⁹ Indeed, the Deepfake Message was directly counter to the very purpose of NHPO's efforts with regards to the Primary Election; NHPO's PAC encouraged voters to write in President Biden's name in the Primary Election, but the Deepfake Message told potential voters not to vote at all.⁴⁰

11. The Bureau conducted an investigation into these robocalls in coordination with the New Hampshire Attorney General, the bipartisan Anti-Robocall Multistate Litigation Task Force (Task

New Hampshire Democratic primary, CBS News (Jan. 23, 2024, Updated Jan. 23, 2024 9:17 AM EST), <https://www.cbsnews.com/news/fake-biden-robocall-new-hampshire-primary/> ("A fake robocall impersonating President Biden . . ."); Sasha Pezenik and Brittany Shepherd, *Fake Biden robocall urges New Hampshire voters to skip their primary*, ABC News (Jan. 22, 2024, 8:08 PM), <https://abcnews.go.com/Politics/fake-biden-robocallurges-new-hampshire-voters-skip-story?id=106580926> ("A robocall appearing to impersonate the voice of President Joe Biden . . ."); Em Steck and Andrew Kaczynski, *Fake Joe Biden robocall urges New Hampshire voters not to vote in Tuesday's Democratic primary*, CNN (Jan. 22, 2024, Updated 5:44 PM EST), <https://www.cnn.com/2024/01/22/politics/fake-joe-biden-robocall/index.html> ("A robocall that appears to be an AI voice resembling President Joe Biden . . .").

³⁷ See Subpoena Response of Steve Kramer (Mar. 20, 2024) (on file in EB-TCD-24-00036425) (Kramer Subpoena Response), at email from Voice Broadcasting to Kramer (Jan. 28, 2024 at 2:34 PM); see also Life Subpoena Response (Feb. 7, 2024) (on file in EB-TCD-24-00036425) (Life Subpoena Response), at Response to Request for Information (RFI) No. 1, LIFE-03-0023, LIFE-03-0024. Material set off by double brackets {{ }} is confidential and is redacted from the public version of this document.

³⁸ Life Subpoena Response, at Response to RFI No. 2 (Feb. 7, 2024) (on file in EB-TCD-24-00036425) (Life Subpoena Response); Complaint by [NHPO] to the Office of the New Hampshire Attorney General (Jan. 22, 2024) (on file in EB-TCD-24-00036094) (NHPO Complaint); Lisa Kashinsky & Holly Otterbein, *Dems launch pro-Biden super PAC in New Hampshire, give Dean Phillips the cold shoulder*, Politico (Dec. 2, 2023), <https://www.politico.com/news/2023/12/02/biden-super-pac-new-hampshire-dean-phillips-00129750> ("On Friday, longtime New Hampshire democratic operative [NHPO] confirmed to Politico that [they are] helping launch a super PAC [(Granite for America)] to encourage voters to write in Biden in the primary.").

³⁹ NHPO Complaint.

⁴⁰ See Lisa Kashinsky & Holly Otterbein, *Dems launch pro-Biden super PAC in New Hampshire, give Dean Phillips the cold shoulder*, Politico (Dec. 2, 2023), <https://www.politico.com/news/2023/12/02/biden-super-pac-new-hampshire-dean-phillips-00129750>.

Force),⁴¹ the U.S. Department of Justice, and USTelecom’s Industry Traceback Group (ITG).⁴² The investigation determined that Lingo was the originating provider for a number of these calls, i.e., the first provider in the call path.⁴³ Lingo identified Life as the party that transmitted the calls to Lingo.⁴⁴ In turn, Life identified that Voice Broadcasting Corp. (Voice Broadcasting) “use[d] Life’s services and equipment to transmit” the calls to an originating provider.⁴⁵ Voice Broadcasting is an entity that offers to “call a targeted list of your prospects and play your message to them” and “which Life shares common ownership and control.”⁴⁶ Voice Broadcasting reportedly transmitted the calls on behalf of its client, Kramer,⁴⁷ who is a “longtime political consultant”⁴⁸ and has admitted that he was responsible for the calls.⁴⁹

12. On February 6, 2024, the Bureau sent Lingo a cease-and-desist letter (CDL) demanding that Lingo stop originating unlawful robocall traffic on its network.⁵⁰ Concurrent with this letter, the Bureau issued a public notice to all U.S.-based voice service providers informing them that if Lingo failed to effectively mitigate illegal robocall traffic (including robocalls that use deepfakes) within 48 hours of the notice, then the service providers could block all calls or cease to accept any traffic from Lingo without liability under the Communications Act of 1934, as amended, or the FCC’s rules.⁵¹

⁴¹ Letter from Tracy Nayer, Special Deputy Attorney General, Consumer Protection Division, N.C. Dep’t of Just., to Talal Khalid, CEO, Telcast Network LLC, at n.1 (Nov. 3, 2023), <https://ncdoj.gov/wp-content/uploads/2023/11/State-AG-Task-Force-NOTICE-Letter-to-TELCAST.pdf> (“The Anti-Robocall Multistate Litigation Task Force is a 51-member collective of state Attorneys General, led by the Attorneys General of Indiana, North Carolina, and Ohio, which is focused on actively investigating and pursuing enforcement actions against various entities in the robocall ecosystem that are identified as being responsible for significant volumes of illegal and fraudulent robocall traffic routed into and across the country.”).

⁴² The ITG is the registered industry consortium selected pursuant to the TRACED Act to conduct tracebacks. *See Implementing Section 13(d) of the Pallone-Thune Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act)*, EB Docket No. 20-22, Report and Order, DA 23-719, 2023 WL 5358422, at *1, para. 1 (EB Aug. 18, 2023).

⁴³ *See* ITG Subpoena Response (Jan. 31, 2024) (on file in EB-TCD-24-00036425) (ITG Subpoena Response).

⁴⁴ *See id.*

⁴⁵ Life Subpoena Response, *supra* note 38, at Responses to RFI Nos. 1-2, n.3.

⁴⁶ Voice Broadcasting, <https://voicebroadcasting.com/default/> (last visited Mar. 26, 2024); Life Subpoena Response, *supra* note 38, at 1-2 n.3.

⁴⁷ Life Subpoena Response, *supra* note 38, at Response to RFI No. 3.

⁴⁸ City & State New York, *The 2021 50 Over 50* (Jan. 25, 2021), <https://www.cityandstateny.com/power-lists/2021/01/the-2021-50-over-50-11-50/175249/>; Joint Law Enforcement Interview with Steve Kramer (Feb. 29, 2024) (involving the FCC, DOJ, and New Hampshire Attorney General’s Office) (recording on file in EB-TCD-24-00036425) (Kramer Interview), at 7:10 (Kramer: “I am a political consultant. I have been working in politics since I was six. I have been getting paid in politics since I was 12.”).

⁴⁹ *See* Kramer Interview, at 2:17:37 (Kramer: “I believe in my actions and I did them deliberately. And I don’t care what other people think.”); *id.* at 1:11:21 (Kramer: “And I’m not going to apologize to the people who might have gotten that call, because I think that sometimes that’s the way it is. If they’re offended by that, they probably have more motivation to vote.”).

⁵⁰ Letter from Loyaan A. Egal, Chief, FCC Enforcement Bureau, to Alex Valencia, Chief Compliance Officer, Lingo Telecom, LLC, 2024 WL 488250 (Feb. 6, 2024).

⁵¹ *FCC Enforcement Bureau Notifies All U.S.-Based Providers of Rules Permitting Them to Block Robocalls Transmitting from Lingo Telecom, LLC*, Public Notice, DA 24-102, 2024 WL 488244 (EB Feb. 6, 2024).

13. On February 7, 2024,⁵² and February 20, 2024, Lingo responded to the CDL.⁵³ In its February 20, 2024 response, Lingo explained the measures it was taking to mitigate robocalls and admitted that the “switch through which Life’s calls were routed *inadvertently* signed [Life’s calls] with an A-level attestation.”⁵⁴ Without providing further details, Lingo said that it was “implementing remediation measures” to address the issue.⁵⁵

14. On March 13, 2024, the Bureau subpoenaed Lingo for additional information about the calls and the Company’s STIR/SHAKEN attestation practices.⁵⁶ Lingo responded on March 27, 2024.⁵⁷ Lingo produced evidence showing that it transmitted 3,978 calls from Life on January 21, 2024.⁵⁸ Lingo signed all of these calls with A-level attestations.⁵⁹

15. In its response to the Bureau’s subpoena, Lingo provided conflicting information. Instead of characterizing its A-level attestations as an “inadvertent” switch-related issue,⁶⁰ Lingo claimed it had “verified the ownership of the phone number { [redacted] } through a contractual relationship with Life.”⁶¹ Specifically, Lingo explained that its policy “allowed for its customers to receive an A-level attestation for traffic associated with . . . non-Lingo provisioned telephone numbers if the customer certified that it ‘will identify its customer and has a verified association with the telephone number used for the call.’”⁶² Lingo pointed to a one-page, check-the-box “STIR/SHAKEN Attestation” form drafted by Lingo and dated July 2, 2021 (Life STIR/SHAKEN Compliance Form) in which Life attested to Matrix (now Lingo), d/b/a Impact Telecom, that “[Life] is *eligible* for Attestation A/Full for traffic associated with . . . non-Impact Telecom provisioned telephone numbers and certifies that it will identify its customer and has a verified association with the telephone number used for the call.”⁶³ Based solely on the Life STIR/SHAKEN Compliance Form, Lingo provided A-level attestations for all calls from

⁵² Letter from Kevin Rupy, Wiley Rein LLP, to Kristi Thompson, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, at 4 (Feb. 6, 2024) (on file at EB-TCD-24-00036425) (Lingo 48-Hour Response).

⁵³ Letter from Kevin Rupy, Wiley Rein LLP, to Kristi Thompson, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, at 4 (Feb. 20, 2024) (on file at EB-TCD-24-00036425) (Lingo 14-Day Response).

⁵⁴ *Id.* at 4 (emphasis added).

⁵⁵ *Id.*

⁵⁶ Subpoena to Lingo Telecom, LLC (Mar. 13, 2024) (EB-TCD-24-00036425) (Lingo Subpoena).

⁵⁷ Lingo Subpoena Response, at FCC Subpoena Response (Mar. 27, 2024) (on file at EB-TCD-24-00036425) (Lingo Narrative Response).

⁵⁸ Lingo Subpoena Response, at Lingo 05-000202 (on file at EB-TCD-24-00036425) (Mar. 27, 2024) (Call Detail Records).

⁵⁹ Lingo Narrative Response at 8. Shortly before release of this Notice of Apparent Liability for Forfeiture, Lingo identified that it was actually responsible for applying A-level attestations to a total of 13,235 calls from Life using { [redacted] } as the caller ID. Lingo Subpoena Response (May 15, 2024) (on file at EB-TCD-24-00036425), at Response to RFI No. 1. The Bureau has not had the opportunity to evaluate the veracity of this disclosure due to the late-in-time production; accordingly the Commission does not consider this volume of calls in its proposed forfeiture calculation.

⁶⁰ Lingo Narrative Response at 8; Lingo 14 Day Response, *supra* note 53.

⁶¹ *See* Lingo Narrative Response, *supra* note 57, at 3.

⁶² *Id.*

⁶³ Lingo Subpoena Response, at Lingo 02-000013 (EB-TCD-24-00036425) (Mar. 27, 2024) (Life STIR/SHAKEN Compliance Form); Lingo Narrative Response, *supra* note 57, at 4.

Life—including the 3,978 calls at issue in this Notice of Apparent Liability for Forfeiture.⁶⁴ The Bureau verified 2,000 of these calls.⁶⁵

III. DISCUSSION

16. We find that Lingo apparently willfully and repeatedly violated section 64.6301(a) of the Commission’s rules, which requires voice service providers to “fully implement the STIR/SHAKEN authentication framework in [their] internet Protocol networks.”⁶⁶ STIR/SHAKEN is a critical component of the Commission’s efforts to mitigate illegal robocalls as it helps inform providers and consumers alike about the reliability of the displayed caller ID information.⁶⁷ The framework’s effectiveness, however, depends on meaningful implementation by providers.⁶⁸ To comply with the STIR/SHAKEN framework, an originating voice service provider applies an attestation level to each call depending on its relationship with the customer and the number used as caller ID information.⁶⁹ The highest level, an “A-level attestation,” means that the originating provider can identify the customer and has determined that the customer is authorized to use the telephone number displayed as the caller ID.⁷⁰ Lingo applied an A-level attestation to at least 2,000 verified calls from Life that used spoofed caller ID information with the NHPO’s phone number. Other than obtaining a blanket self-attestation from Life in 2021, which did not establish that Life was authorized to use the NHPO’s telephone number, Lingo did not take any steps to verify that Life was authorized to use the NHPO’s number as the displayed number; in fact, Lingo’s customer was not authorized to use the number. Applying reasonable KYC protocols could have potentially limited the consequences of Kramer’s scheme to interfere with the Primary Election through the harmful concoction of the misuse of generative AI technology and spoofing. There is also an inconsistency in Lingo’s statements to the Bureau. In its February 20, 2024 response to the Bureau’s CDL, Lingo stated that the “switch through which Life’s calls were routed *inadvertently* signed [Life’s calls] with an A-level attestation.”⁷¹ It remains unclear which of Lingo’s explanations—switch failure or its “verified ownership of the phone number” is accurate. Regardless, we find that Lingo apparently violated section 64.6301(a) of our rules. We propose a \$1,000 fine for each of the verified calls Lingo transmitted with incorrect STIR/SHAKEN attestations for a total proposed forfeiture of \$2,000,000.

A. Lingo Apparently Violated Section 64.6301(a) Requiring Implementation of the STIR/SHAKEN Framework

1. Lingo Was Required To Implement STIR/SHAKEN Fully

17. The Commission’s rules require voice service providers to implement STIR/SHAKEN fully unless subject to an extension or exemption.⁷² A voice service provider is any provider of “voice

⁶⁴ Lingo Narrative Response, *supra* note 57, at 4.

⁶⁵ Verified Call Detail Records (on file at EB-TCD-24-00036425) (Verified Call Detail Records); *see also* Decl. of B. Labbor, FCC Enforcement Bureau (May 1, 2024) (on file in EB-TCD-24-00036425) (Labbor Decl.) (explaining how the calls were verified).

⁶⁶ 47 CFR § 64.6301(a).

⁶⁷ *Sixth Call Authentication Order*, *supra* note 9, at 2574, para. 2.

⁶⁸ *Id.*

⁶⁹ *See* ATIS-1000074, *supra* note 20, at 9.

⁷⁰ *Id.*

⁷¹ Letter from Kevin Rupy, Wiley Rein LLP, to Kristi Thompson, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, at 4 (Feb. 20, 2024) (on file at EB-TCD-24-00036425) (Lingo 14-Day Response).

⁷² 47 CFR §§ 64.6301(a), 64.6304, 64.6306. The Commission has expanded certain STIR/SHAKEN obligations to gateway providers and intermediate providers. *See 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

(continued...)

service,” i.e., “any service that is interconnected with the public switched telephone network and that furnishes voice communications to an end user using resources from the North American Numbering Plan”⁷³ Lingo is a voice service provider and has certified in the RMD that it is a voice service provider.⁷⁴ On June 30, 2021, Lingo certified that it had fully implemented STIR/SHAKEN across its entire network.⁷⁵

18. Lingo was the originating voice service provider for the robocalls at issue in this Notice of Apparent Liability and was required to have fully implemented STIR/SHAKEN at the time of the Primary Election-related calls. The ITG identified Lingo as the originator for 3,978 of these calls.⁷⁶ Lingo does not dispute that it was the originating provider of the calls.⁷⁷ Nor does Lingo claim that it was subject to any extensions or exemptions to the June 30, 2021 STIR/SHAKEN implementation deadline.⁷⁸ In fact, Lingo certified to the Commission that it was in compliance with STIR/SHAKEN as of June 30, 2021.⁷⁹ Thus, section 64.6301(a) applied to Lingo at the time of the apparent violations, and it was required to comply with the STIR/SHAKEN requirements for the calls at issue.

2. Lingo Incorrectly Applied A-Level STIR/SHAKEN Attestations to 2,000 Calls in Apparent Violation of Section 64.6301(a)

19. The Commission has stated that for purposes of compliance with the STIR/SHAKEN framework, “it would be sufficient to adhere to the three ATIS standards that are the foundation of STIR/SHAKEN—ATIS-1000074, ATIS-1000080, and ATIS-1000084—and all documents referenced therein.”⁸⁰ ATIS-1000074 describes the attestation levels that a provider can apply to a call.⁸¹ The highest attestation, an A-level attestation, means that the signing provider: (1) “is responsible for the origination of the call onto the IP-based service provider voice network;” (2) “has a direct authenticated relationship with the customer and can identify the customer;” and (3) “has established a verified association with the telephone number used for the call.”⁸² Lingo signed Life’s spoofed traffic with an A-level attestation without having “established a verified association with the telephone number” used in the calls.⁸³ ATIS-1000074 provides examples of how a provider can verify the customer’s association with the caller ID number:

- The number was assigned to this customer by the signing service provider.

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, 6886-87, para. 51 (2022) (*Gateway Provider Order*) (requiring gateway providers to authenticate calls carrying a U.S. number in the caller ID field); *Sixth Call Authentication Order*, *supra* note 9, at 2580-81, para. 15 (requiring intermediate providers to authenticate unauthenticated calls).

⁷³ 47 CFR § 64.6300(o); *see also First Call Authentication Order*, *supra* note 15, at 3259, para. 37.

⁷⁴ *See* Lingo 2021 RMD Certification, *supra* note 32.

⁷⁵ *See id.*

⁷⁶ ITG Subpoena Response, *supra* note 43.

⁷⁷ *See* Lingo Narrative Response, *supra* note 57 at 5.

⁷⁸ *See generally id.*

⁷⁹ Lingo 2021 RMD Certification, *supra* note 32.

⁸⁰ *First Call Authentication Order*, *supra* note 15, at 3258, para. 36.

⁸¹ ATIS-1000074, *supra* note 20, at 9-10.

⁸² *Id.* at 9.

⁸³ *See id.*

- This number is one of a range of numbers assigned to an enterprise or wholesale customer.
- The signing service provider has ascertained that the customer is authorized to use a number (e.g., by business agreement or evidence the customer has access to use the number). This includes numbers assigned by another service provider.
- The number is not permanently assigned to an individual customer, but the signing provider can track the use of the number by a customer for certain calls or during a certain timeframe.⁸⁴

20. Lingo claims broadly and generally that “Life’s 2021 certification as to its association with the telephone numbers used by Life and its business was sufficient to establish a verified association with those numbers.”⁸⁵ This claim is inconsistent with reasonable KYC principles that would have supported the assertion that Lingo verified Life’s association with the NHPO’s telephone number, as there is no evidence of Lingo having done that. With regard to the NHPO’s telephone number, Lingo asserts that it “verified the ownership of the phone number {[]} through a contractual relationship with Life.”⁸⁶ Yet, Life had no association with the NHPO’s telephone number; nor did Lingo’s contractual relationship with Life establish that Life had a verified association with the NHPO’s number.

21. While ATIS-1000074 contemplates multiple methods to verify numbers,⁸⁷ we find Lingo’s arrangement to be deficient. STIR/SHAKEN attestations are premised on the ability of originating providers to vouch for the origination information of a call.⁸⁸ An A-level attestation is the highest attestation possible—indicating that the provider can identify the customer and has “established a verified association” between the customer and the number used as caller ID.⁸⁹ The Commission finds that a provider may not satisfy this obligation with a generic, blanket, check-the-box “agreement” that shifts the entire responsibility for compliance on to the customer. In this case, Lingo’s blanket, single-page agreement is insufficient to establish that Life had a “verified association” with the NHPO’s telephone number.⁹⁰ The “agreement” did not provide, and Lingo did not otherwise have, any evidentiary basis to determine any association with the number. Lingo abdicated its verification responsibility by punting the duty to its customer with absolutely no credible basis to believe its customer was taking any steps to make the necessary verification. Moreover, it does not appear that Lingo had any practices to verify the reliability of Life’s STIR/SHAKEN Compliance Form or to review the form periodically.⁹¹ Lingo did not verify an association between its customer, Life, and the NHPO’s telephone number to justify applying A-level attestations to the calls from Life using {[]} as the caller ID.

22. Lingo’s application of A-level attestations was improper because Lingo failed to comply with ATIS-1000074. The STI-GA has defined an “improper attestation” as “any Attestation level set that

⁸⁴ *Id.*

⁸⁵ Lingo Narrative Response, *supra* note 57, at 6; *see also* Life STIR/SHAKEN Compliance Form, *supra* note 63.

⁸⁶ Lingo Narrative Response, *supra* note 57, at 3.

⁸⁷ *See* ATIS-1000074, *supra* note 20, at 9 (providing examples).

⁸⁸ *See id.* (“The ‘attest’ claim allows the originating service provider that is populating an Identity header to clearly indicate the information it can vouch for regarding the origination of the call.”).

⁸⁹ *Id.*

⁹⁰ *See id.* (listing various evidentiary based verification methods).

⁹¹ As a mitigation measure in response to the calls at issue in this Notice of Apparent Liability, Lingo will apparently conduct quarterly STIR/SHAKEN attestation reviews. Lingo Narrative Response, *supra* note 57, at 6.

does not conform with the industry standards set in ATIS-1000074.”⁹² The STI-GA further states that “Improper Attestations Include: An A-level attestation on an illegally spoofed call.”⁹³ Lingo did not have an evidentiary basis to determine that Life “ha[d] established a verified association with the telephone number used for the [spoofed] call[s];”⁹⁴ therefore, Lingo applied the A-level attestations contrary to the standard set forth in ATIS-1000074. Lingo’s failure to comply with ATIS-1000074 constitutes a failure to “fully implement the STIR/SHAKEN authentication framework in its internet Protocol networks”⁹⁵ for the 2,000 calls that it originated from Life. Therefore, we conclude that Lingo apparently violated section 64.6301(a) of our rules.

23. Lingo’s improper attestation exposes its glaringly deficient KYC practices. It is incumbent on all voice service providers to “take affirmative, effective measures to prevent new and renewing customers from using its network to originate illegal calls, including knowing its customers and exercising due diligence.”⁹⁶ Lingo accepted at face value that Life “has a verified association with the telephone number used for the call” without taking a single step to verify that statement was accurate in relation to the instant calls.⁹⁷ Indeed, it was not accurate in relation to the instant calls; neither Life nor its client had a verified association with the spoofed number.⁹⁸ Had Lingo implemented KYC principles—in compliance with its obligations—it would have likely discovered the hoax and prevented the consequences that followed, including the dissemination of false information in connection with the New Hampshire Primary Election, and intrusion on the NHPO’s life and privacy.

24. The facts here underscore the ease with which a party can misuse AI to the detriment of thousands of people, our communications networks, and our free democratic elections. Providers must be diligent in protecting their networks from transmitting illegal robocalls. This is more true than ever in light of the ease of access to and potency of AI. The consequences of failure are dire.

B. Proposed Forfeiture

25. Section 503(b) of the Communications Act authorizes the Commission to impose a forfeiture penalty against any entity that “willfully or repeatedly fail[s] to comply with any of the provisions of [the Communications Act] or of any rule, regulation, or order issued by the Commission[.]”⁹⁹ Here, section 503(b)(2)(D) of the Communications Act, as implemented in section 1.80 of the Commission’s rules, authorizes the Commission to assess a forfeiture up to \$24,496 for each violation.¹⁰⁰ In exercising our forfeiture authority, we must consider the “nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”¹⁰¹ In addition, the Commission has established forfeiture guidelines; they establish base penalties for certain violations and identify

⁹² Secure Telephone Identify Governance Authority, Improper Attestation, <https://sti-ga.atis.org/wp-content/uploads/2023/05/Improper-Attestation-Final.pdf>.

⁹³ *Id.*

⁹⁴ ATIS-1000074, *supra* note 20, at 9.

⁹⁵ 47 CFR § 64.6301(a).

⁹⁶ *Id.* § 64.1200(n)(4).

⁹⁷ Lingo Narrative Response, *supra* note 57, at 3; *see also* Life STIR/SHAKEN Compliance Form, *supra* note 63.

⁹⁸ *See supra* para. 10.

⁹⁹ 47 U.S.C. § 503(b).

¹⁰⁰ *See id.* § 503(b)(2)(D); 47 CFR § 1.80(b)(10); *Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA-22-1356, 2022 WL 18023008 (EB Dec. 23, 2023); *see also Annual Adjustment of Civil Monetary Penalties to Reflect Inflation*, 89 Fed. Reg. 2148 (Jan. 12, 2024) (setting January 15, 2024 as the effective date for the increases).

¹⁰¹ 47 U.S.C. § 503(b)(2)(E).

criteria that we consider when determining the appropriate penalty in any given case.¹⁰² Under these guidelines, we may adjust a forfeiture upward for violations that are egregious, intentional, or repeated, or that cause substantial harm or generate substantial economic gain for the violator.¹⁰³ Furthermore, we do not need to first issue a citation because Lingo held a Robocall Mitigation Database certification and an international section 214 authorization.¹⁰⁴

1. We Propose a Base Forfeiture of \$1,000 Per Incorrectly Attested Call

26. Neither the Commission's forfeiture guidelines nor its case law establishes a base forfeiture for violations of section 64.6301(a). Thus, we look to the base forfeitures established or issued in analogous cases for guidance. The STIR/SHAKEN framework was created to address illegal caller ID spoofing.¹⁰⁵ An A-level attestation signifies to downstream providers that the displayed caller ID information can be trusted as accurate.¹⁰⁶ This attestation data is a key metric that facilitates analytics and blocking efforts by downstream providers.¹⁰⁷ The incorrect application of an A-level attestation to a spoofed call therefore perpetuates the harm caused by illegal caller ID spoofing.¹⁰⁸ The Commission has applied a \$1,000 base forfeiture for illegal spoofing.¹⁰⁹ Because of the connection between the problem, illegal spoofing, and a key solution to that problem—STIR/SHAKEN attestations—we find it appropriate to use spoofing enforcement cases as a benchmark. Accordingly, we establish a \$1,000 base forfeiture for violations of section 64.6301(a) involving incorrect applications of STIR/SHAKEN attestations. Furthermore, we apply this base forfeiture on a per call basis as we do in our illegal spoofing cases.¹¹⁰ STIR/SHAKEN attestations are applied to each call, and each incorrect attestation is a failure to comply with ATIS-1000074 and our rules.

27. After reviewing the section 503 adjustment factors,¹¹¹ we decline to either upwardly or downwardly adjust the base forfeiture. However, we provide notice that the facts in this case highlight how the lack of reasonable KYC controls can greatly increase the risks associated with the misuse of generative AI technology and spoofing, and we will consider upward adjustments on a case-by-case basis.

¹⁰² 47 CFR § 1.80(b)(11), Note 2 to paragraph (b)(11).

¹⁰³ *Id.*

¹⁰⁴ Lingo 2021 RMD Certification, *supra* note 32; Lingo Telecom, LLC, International 214 Authorization, ITC-214-19900713-00004 (Dec. 12, 1990); *cf.* 47 U.S.C. § 504(b)(5) (“No forfeiture liability shall be determined under this subsection against any person, if such person does not hold a license, permit, certificate, or other authorization issued by the Commission . . . [unless] such person is sent a citation of the violation charged . . .”).

¹⁰⁵ See *Sixth Call Authentication Order*, *supra* note 9, 38 FCC Rcd at 2575, para. 4; *First Call Authentication Order*, *supra* note 15, at 3244, para. 5.

¹⁰⁶ See ATIS-1000074, *supra* note 20, at 9.

¹⁰⁷ See *Second Call Authentication Order*, *supra* note 7, at 1864, para. 10.

¹⁰⁸ See *First Call Authentication Order*, *supra* note 15, at 3252-53, para. 25 (describing the benefit of the STIR/SHAKEN framework); *Rules and Regulations Implementing the Truth in Caller ID Act of 2009*, WC Docket No. 11-39, Report and Order, 26 FCC Rcd 9114, 9118, para. 10 (2011) (*Caller ID Order*) (discussing harms caused by spoofing).

¹⁰⁹ See, e.g., *John C. Spiller*; *Jakob A. Mears*; *Rising Eagle Capital Group LLC*; *JSquared Telecom LLC*; *Only Web Leads LLC*; *Rising Phoenix Group*; *Rising Phoenix Holdings*; *RPG Leads*; and *Rising Eagle Capital Group – Cayman*, Forfeiture Order, 36 FCC Rcd 6225, 6257, para. 59 (2021) (*Rising Eagle Forfeiture Order*); Scott Rhodes a.k.a. Scott David Rhodes, Scott D. Rhodes, Scott Platek, Scott P. Platek, Forfeiture Order, 36 FCC Rcd 705, 728, para. 54 (2020) (*Rhodes Forfeiture Order*).

¹¹⁰ *Rising Eagle Forfeiture Order*, 36 FCC Rcd at 6257, para. 59; *Rhodes Forfeiture Order*, 36 FCC Rcd at 728, para. 54.

¹¹¹ 47 U.S.C. § 503(b)(2)(E).

2. We Multiply the Base Forfeiture Amount by the Number of Verified Violations

28. We adopt the approach that we have taken in our spoofing enforcement actions¹¹² and apply the base forfeiture to a subset of calls, which the Bureau verified to be spoofed with the NHPO's telephone number and contained incorrect A-level STIR/SHAKEN attestations. We find it prudent to employ the same methodological approach of applying the base forfeiture to a subset of verified calls. We have found that applying a base forfeiture amount (with any applicable upward or downward adjustment) to a subset of verified calls results in a proposed forfeiture that achieves the dual goals of penalizing wrongful conduct and preventing it from recurring.¹¹³ Each case is unique, and we must use our discretion in proposing an appropriate penalty to meet the specific circumstances.¹¹⁴ In this case, the Bureau verified a total of 2,000 apparently spoofed robocalls with incorrect STIR/SHAKEN attestations.¹¹⁵ Applying the base forfeiture by the total number of verified calls yields a total proposed forfeiture of \$2,000,000 for which Lingo is apparently liable.¹¹⁶

IV. CONCLUSION

29. We have determined that Lingo apparently willfully and repeatedly violated section 64.6301(a) of the Commission's rules by incorrectly applying A-level attestations to spoofed calls and therefore failing to implement fully the STIR/SHAKEN framework. As such, Lingo is apparently liable for a forfeiture penalty of \$2,000,000.

V. ORDERING CLAUSES

30. 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, Lingo Telecom, LLC is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of two million dollars (\$2,000,000) for willful and repeated violations of section 64.6301(a) of the Commission's rules, 47 CFR § 64.6301(a), and the Commission's *First Call Authentication Order*.¹¹⁷

31. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules,¹¹⁸ within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Lingo Telecom, LLC **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 34 below.

32. In order for Lingo Telecom, LLC to pay the proposed forfeiture, Lingo Telecom, LLC shall notify Lisa Ford at lisa.ford@fcc.gov of its intent to pay, whereupon an invoice will be posted in the Commission's Registration System (CORES) at <https://apps.fcc.gov/core/userLogin.do>. Upon payment, Lingo Telecom, LLC shall send electronic notification of payment to Lisa Ford, Enforcement Bureau,

¹¹² See *Rising Eagle Forfeiture Order*, 36 FCC Rcd at 6257, para. 59; *Rhodes Forfeiture Order*, 36 FCC Rcd at 728, para. 54.

¹¹³ *Philip Roesel, dba Wilmington Insurance Quotes, and Best Insurance Contracts, Inc.*, Forfeiture Order, 33 FCC Rcd 9204, 9226, para. 58 (2018) (*Roesel Forfeiture Order*).

¹¹⁴ See *RKO General, Inc. v. FCC*, 670 F.2d 215, 237 (D.C. Cir. 1981) (citing *Leflore Broad. Co. v. FCC*, 636 F.2d 454, 463 (D.C. Cir. 1980) ("We have made it clear in earlier cases that 'the choice of remedies and sanctions is a matter wherein the Commission has broad discretion.'")).

¹¹⁵ Verified Call Detail Records (on file at EB-TCD-24-00036425).

¹¹⁶ 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.

¹¹⁷ *First Call Authentication Order*, *supra* note 15, at 3241.

¹¹⁸ 47 CFR § 1.80.

Federal Communications Commission, at lisa.ford@fcc.gov on the date said payment is made. Payment of the forfeiture must be made by 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:¹¹⁹

- 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 159¹²⁰ or printed CORES form¹²¹ 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).¹²² For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- 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.

33. 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. 20554.¹²³ 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.

34. 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.¹²⁴ The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554, ATTN: Enforcement Bureau – Telecommunications Consumers Division, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to Daniel Stepanicich at daniel.stepanicich@fcc.gov.

¹¹⁹ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6).

¹²⁰ FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

¹²¹ 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>.

¹²² Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

¹²³ See 47 CFR § 1.1914.

¹²⁴ *Id.* §§ 1.16, 1.80(g)(3).

35. 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.¹²⁵ 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.¹²⁶

36. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and the Verified Call Detail Records shall be sent by first class mail and certified mail, return receipt requested, to Alex Valencia, Chief Compliance Officer, Lingo Telecom, LLC d/b/a Americatel, Bullseye, Clear Choice Communications, Excel Telecommunications, Impact Telecom, Lingo, Lingo Communications, Matrix Business Technologies, Matrix Telecom, LLC, Startec Global Communications, Trinsic Communications, Vartec Telecom, 25925 Telegraph Road, Suite 210, Southfield, MI 48033 and to Kevin G. Rupy and Thomas M. Johnson, Jr., Counsel for Lingo Telecom, LLC, Wiley Rein LLP, 2050 M St. NW, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹²⁵ 47 U.S.C. § 503(b)(2)(E).

¹²⁶ 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 Lingo Telecom, LLC*, File No.: EB-TCD-24-00036425, Notice of Apparent Liability for Forfeiture (May 23, 2024)

Last year in Nigeria, a clip manipulated with Artificial Intelligence spread far and wide. It showed a presidential candidate scheming to rig ballots. In Slovakia, people across the country heard a manipulated audio clip of an opposition candidate supporting both election fraud and an effort to raise the price of beer.

But there is no need to travel to far-off lands to see how AI can sow confusion. Because this year in the United States a fraudulent campaign targeted voters in New Hampshire. It used AI-generated voice cloning to mimic an unauthorized message from President Biden, two days before the primary election in the state. This is unnerving. Because when a caller sounds like a politician you know, a celebrity you like, or a family member who is familiar, any one of us could be tricked into believing something that is not true with calls using AI technology. It is exactly how the bad actors behind these junk calls with manipulated voices want you react.

So when we saw this happen here, on our shores, we acted fast. The Federal Communications Commission issued a Declaratory Ruling that made clear that “artificial or prerecorded voice” robocalls using AI voice cloning technology violate the Telephone Consumer Protection Act. We partnered in this effort with State Attorneys General, including the New Hampshire Attorney General, who is one of 49 State Attorneys General who have signed on to a Memorandum of Understanding to work with this agency on junk robocalls. This ruling matters. Because it gives our state colleagues the right to go after bad actors behind these calls and seek damages under the law. Then we worked with carriers to trace those responsible for this calling campaign. When we found the carrier behind it, we immediately sent a cease and desist letter and notified all other carriers to go ahead and stop carrying this traffic.

Today, we tie up our investigation into these New Hampshire calls with two separate actions.

First, we hold Steve Kramer responsible for the scam calls he set up to defraud voters using call spoofing technology that violates the Truth in Caller ID Act. This fine is \$6,000,000.

Second, we hold Lingo Telecom, the carrier that put these scam calls on the line, responsible for failing to follow our call authentication policies. This fine is \$2,000,000.

But this is only a start. Because we know AI technologies that make it cheap and easy to flood our networks with fake stuff are being used in so many ways here and abroad. It is especially chilling to see them used in elections. That is why yesterday I shared with my colleagues a proposal to require election advertisements in the United States to simply disclose if they use AI technology. I think as these tools become more accessible, every one of us has a right to know.

Back to the enforcement actions before us. They are the result of fast work and valuable partnerships. A special thank you goes to New Hampshire Attorney General John Formella and his staff for assistance with this investigation.

I also want to thank the agency staff for their work, including Loyaan Egal, Jermaine Haynes, Peter Hyun, Balki Labbor, Ryan McDonald, Rakesh Patel, Raul Rojo, Daniel Stepanicich, Kristi Thompson, and Jane van Benten from the Enforcement Bureau; Erik Beith, Elizabeth Drogula, Jonathan Lechter, and Zachary Ross from the Wireline Competition Bureau; Jerusha Burnett and Kristi Thornton from the Consumer and Governmental Affairs Bureau; Richard Mallen, Erika Olsen, Joel Rabinowitz, and Derek Yeo from the Office of General Counsel; and Ed Cureg and Kenneth Lynch from the Office of Economics and Analytics.

**CONCURRING STATEMENT OF
COMMISSIONER BRENDAN CARR**

Re: *In the Matter of Lingo Telecom, LLC*, File No.: EB-TCD-24-00036425, Notice of Apparent Liability for Forfeiture (May 23, 2024)

I agree that the FCC needs to continue its efforts to crack down on illegal robocalls. They are an unquestionable scourge—not only an annoyance to so many Americans, but also a way for bad actors to perpetuate fraud.

In this case, it is apparent that the person who orchestrated this robocall scheme violated the FCC’s rules. And I have voted to approve that Notice of Apparent Liability. With respect to the voice service provider that the caller used to originate the calls in question, the FCC alleges here that the provider failed to implement STIR/SHAKEN. The FCC’s argument is not that the provider took no steps to implement the STIR/SHAKEN framework. Rather, the NAL alleges that the steps the voice service provider took to implement the framework failed to apply the correction attestation level.

Although these allegations will require careful review, I will also be focused on ensuring that the FCC does not undertake “rulemaking through enforcement” by creating new, substantive obligations that go beyond the standards set forth in our existing rules. We need to be careful that we do not undermine reasonable reliance on prior FCC decisions and spring enforcement on parties seeking to comply in good faith. With that said, NALs are not final decisions on the merits. I will keep an open mind as the FCC reviews the record in this proceeding.

**STATEMENT OF
COMMISSIONER GEOFFREY STARKS**

Re: *In the Matter of Lingo Telecom, LLC*, File No.: EB-TCD-24-00036425, Notice of Apparent Liability for Forfeiture (May 23, 2024)

This January, two days before the New Hampshire primary election, Steve Kramer orchestrated an illegal robocall campaign. He targeted thousands of voters. And his message was among the most anti-democratic things a person can push in our society: don't vote. But who would listen Steve Kramer? So he used the voice of the President of the United States, deployed from the phone number of a New Hampshire political operative. All it took was the help of an acquaintance, publicly available software technology, and \$150. With that, Kramer generated a deepfake recording of the President telling eligible voters to stay at home on election day.

But that wasn't enough to get this dangerous message to thousands of people. For years, we have been building safeguards into our telephone networks, to block illegal calls before they reach your phone. But Lingo Telecom, LLC, the company that originated many of the calls at issue, did not follow those legally-required safeguards. It passed on Kramer's call, associated with spoofed caller ID information, with the highest level of attestation available under STIR/SHAKEN – an "A-level" attestation. It verified a relationship between the spoofed number and the party that transmitted the calls to Lingo that did not exist, and that it should have known did not exist. That smoothed the way for those calls to make their way to thousands of voters across the state.

Today's Notices of Apparent Liability detail each of these steps – and I emphasize them – to show that it is the *combination* of these events that can have the most devastating effects. Had Kramer not been able to duplicate President Biden's voice so easily, this may have had less impact.¹ Voice cloning is a significant threat to the trust and integrity of our phone systems. This is why, days after Kramer's actions, the FCC swiftly (and unanimously, I might add) issued a declaratory ruling making clear that calls using voice cloning technologies fall under the requirements – and penalties – of the Telephone Consumer Protection Act.² And had Lingo not rubber stamped so many of these calls, it could have limited the consequences of Kramer's scheme. This is why the FCC requires all voice service providers to implement STIR/SHAKEN, and to use know-your-customer protocols to verify that the party transmitting the call has the authority to use the caller ID they designate.

And this is why, today, we use the authority granted to us by Congress in the Truth in Caller ID Act and the TRACED Act to propose forfeitures against both sides of this equation.

I want to thank the staff of the Enforcement Bureau for their prompt and dedicated investigation into this critical case. As always with robocall cases, the collaboration of our state, federal, and industry partners was key. The Bureau conducted this investigation in coordination with the New Hampshire Attorney General's Office, the bipartisan Anti-Robocall Multistate Litigation Task Force, the Department of Justice, and the Industry Traceback Group. I extend my thanks to each of those bodies. And finally, I want to recognize the Chairwoman for her leadership and efforts in building these collaborative relationships, which have proven critical to our enforcement of the law and our protection of American consumers and voters.

¹ That is not to say it would have no impact; we have previously seen illegal robocalls used for voter suppression. See *John M. Burkman, Jacob Alexander Wohl, J.M. Burman & Associates*, Forfeiture Order, 38 FCC Rcd 5529 (2023) (FCC's assessment of \$5,134,000 forfeiture order against perpetrators of 2020 robocall voter suppression scheme for violations of the TCPA).

² *Implications of Artificial Intelligence Technologies on Protecting Consumers from Unwanted Robocalls and Robotexts*, CG Docket No. 23-362, Declaratory Ruling, FCC 24-17 (2024).

**STATEMENT OF
COMMISSIONER NATHAN SIMINGTON**

Re: *In the Matter of Lingo Telecom, LLC*, File No. EB-TCD-24-00036425, Notice of Apparent Liability for Forfeiture (May 23, 2024)

This matter touches on the hot-button issue of deepfakes in elections, but fundamentally it's about FCC oversight of STIR/SHAKEN. The TRACED Act, now five years old, phased in STIR/SHAKEN requirements over time in an attempt to protect Americans from robocalls by making call authentication more reliable. In this matter, call authentication and caller ID were undeniably spoofed. So, why a statement at all, and why not a straightforward approval?

Let's recap the facts. Lingo transmitted deepfaked robocalls with spoofed caller IDs across the telephone network. Lingo was provided with these calls by Life Corp. and Voice Broadcasting Corp., which were engaged by Kramer. Lingo signed these calls with A-level attestations, indicating that Lingo took responsibility for originating the call onto the voice network; that Lingo has a direct authenticated relationship with the customer, and could identify the customer; and had established a verified association with the telephone number used for the call. I'm going to focus on the third prong. The spoofed caller ID showed that the call came from a prominent New Hampshire Democratic Party member, and no one disputes that Life Corp. had no right to use that caller ID.

Lingo states in its defense that it relied on Life Corp.'s contractual statements about numbers and permissions in what the Enforcement Bureau notes was a one-page form with no diligence backing it up. This might not be the most sympathetic defense, but it isn't an unreasonable one, because the FCC has never required a higher standard. This is why the FCC has to have recourse to vague statements like "reasonable KYC [know your customer] protocols," and needs to make a novel finding that a "generic, blanket, check-the-box 'agreement,'" is insufficient, in order to find liability. All voice providers nationwide are surely taking note of the FCC's actions today, but it's not actually clear what their obligations now are. Must they immediately implement KYC and, if so, to what standard? If their current client contracts are inadequate, must they require that all clients sign new ones and, if so, what should the new contracts say? If they fail to do so, ought they to expect to be fined \$1,000 per call?

These are completely open questions because the FCC has never engaged in a rulemaking on this matter, delegating it instead to an industry group and to industry standards. The problem for our action today is that Lingo probably complied with industry standards. We might deplore the laxity of these standards, but Lingo might well respond that they were in line with actions that had been repeatedly blessed by the FCC. And today, by using an enforcement mechanism to declare new standards (however vague,) we are engaged in a back-door rulemaking through enforcement.

I decline to say that the FCC can never do this, because some situations are so urgent or egregious that we have to have the option. But every time we do, the next step should be to start a rulemaking immediately, and the step after that should be to ask how we allowed the situation to devolve such that we needed to use what ought to be an emergency power. As such, I concur with the majority while noting that the FCC must immediately act to establish clear standards within which the industry can operate.

**STATEMENT OF
COMMISSIONER ANNA M. GOMEZ**

Re: *In the Matter of Lingo Telecom, LLC*, File No.: EB-TCD-24-00036425, Notice of Apparent Liability for Forfeiture (May 23, 2024)

Today, the Commission adopted a Notice of Apparent Liability for Forfeiture to address an action that harmed consumers.

We find that Lingo Telecom, LLC, apparently applied incorrect Secure Telephone Identity Revisited and Signature-based Handling of Asserted Information using toKENs (STIR/SHAKEN) attestations to spoofed robocalls. Steve Kramer apparently acted with the intent to defraud New Hampshire voters by sending thousands of spoofed robocalls containing a message, created with Artificial Intelligence (AI), imitating President Biden's voice and instructing listeners to refrain from voting in the New Hampshire primary election. Through its apparently lax observation of STIR/SHAKEN and our consumer protection requirements, Lingo permitted Kramer's apparently fraudulent scheme to take place.

This is significant. Lingo apparently failed to adequately identify spoofed robocalls that harmed New Hampshire voters. In February of this year, we adopted a Declaratory Ruling confirming that the Telephone Consumer Protection Act's prohibition on using "artificial or prerecorded voice" to make robocalls includes AI technologies that generate human voices.

The action at issue today exemplifies AI technology being harnessed for harm. The consequences for consumers and the threat to our democratic processes warrant a strong response. That is why this proposed penalty is so important, as the Commission must do what is within our power to deter scams manipulating AI to prey on consumers and to threaten our democratic processes.

Thank you for the Enforcement Bureau and all staff at the FCC that contributed to this proposed enforcement action.

**DECLARACIÓN DE LA COMISIONADA
ANNA M. GOMEZ**

Re: *In the Matter of Lingo Telecom, LLC*, File No.: EB-TCD-24-00036425, Notice of Apparent Liability for Forfeiture (May 23, 2024)

La Comisión propone hoy confiscaciones por actividades que perjudican a los consumidores.

Hemos detectado que el señor Steve Kramer actuó aparentemente con la intención de defraudar a los electores de New Hampshire, engañándolos en relación con su derecho a voto. Kramer transmitió miles de llamadas automáticas usando una voz idéntica a la del Presidente Biden, generada con inteligencia artificial, instruyendo a los electores para que no acudieran a votar en las elecciones primarias.

También hallamos que Lingo Telecom, mediante su aparentemente laxa aplicación de los requisitos de protección al consumidor establecidos por la FCC, permitió que se llevara a cabo la maniobra, aparentemente fraudulenta, del señor Kramer.

Todo esto es relevante. Las aparentes acciones de Kramer no sólo perjudican a los electores de New Hampshire, sino que también afectan la confianza en la democracia. Las aparentes acciones de Lingo no lograron identificar adecuadamente las llamadas automáticas falsificadas.

En febrero de este año, adoptamos una resolución declaratoria confirmando que la prohibición de utilizar “voz artificial o pregrabada” para realizar llamadas automáticas también incluye a tecnologías de inteligencia artificial que imitan voces humanas. Las actividades en cuestión hoy ejemplifican el uso de la tecnología de inteligencia artificial para causar daño. Las consecuencias para los consumidores, y la amenaza que estas actividades representan para nuestros procesos democráticos, justifican una respuesta contundente.

Por eso las sanciones propuestas son tan importantes, ya que la Comisión debe hacer todo lo que esté a su alcance para desalentar a los estafadores que manipulan la inteligencia artificial con el propósito de aprovecharse de los consumidores, amenazando nuestros procesos democráticos.

Agradecemos a la oficina de aplicación de normas (Enforcement Bureau) y a todo el personal de la FCC que ha contribuido en la elaboración de esta propuesta de aplicación de normas.

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

In the Matter of	)	
	)	
Sponsorship Identification Requirements for	)	MB Docket No. 20-299
Foreign Government-Provided Programming	)	
	)	

SECOND REPORT AND ORDER

Adopted: May 31, 2024

Released: June 10, 2024

By the Commission: Chairwoman Rosenworcel issuing a statement; Commissioner Carr dissenting in part and issuing a statement; Commissioner Simington dissenting and issuing a statement.

TABLE OF CONTENTS

Heading	Paragraph #
I. INTRODUCTION	1
II. BACKGROUND	4
III. DISCUSSION	13
A. Obtaining Information from Lessees	14
1. Licensees Must Comply with One of Two Approaches	17
2. Leases Renewed Within A One-Year Period	26
3. Lack of Adequate Response from Lessee	28
4. Recordkeeping Requirement	29
5. Legal Authority	31
B. Application of Foreign Sponsorship Identification Requirements to Different Types of Programming	41
1. Advertisements for Commercial Goods and Services	42
2. Political Candidate Advertisements; Issue Advertisements; Paid Public Service Announcements	46
3. Programming on Noncommercial and Educational Stations	51
4. Religious and Locally Produced and/or Locally Distributed Programming	52
5. Programming on Stations with Section 325(c) Permits	61
C. Existing Leases	65
D. Digital Equity and Inclusion	66
IV. PROCEDURAL MATTERS	68
V. ORDERING CLAUSES	71
Appendix A – Final Rules	
Appendix B – Final Regulatory Flexibility Act Analysis	
Appendix C – Approved Template for Licensee Certification	
Appendix D – Approved Template for Lessee Certification	

I. INTRODUCTION

1. This Second Report and Order (*Second R&O*) takes steps to ensure clear and reasonable foreign sponsorship identification rules. In April 2021, the Commission issued a Report and Order (*First R&O*) adopting a requirement that radio and television stations broadcast clear disclosures for programming that is provided by a foreign governmental entity and set forth the procedures for exercising

reasonable diligence to determine whether such a disclosure is needed.¹ The Commission took this action in response to reports that U.S. broadcast stations were transmitting undisclosed foreign governmental programming, against the backdrop of over ninety years of sponsorship identification regulations that ensure the public is informed when airtime has been purchased on broadcast stations in an effort to persuade audiences.²

2. In this *Second R&O*, we address a ruling by the U.S. Court of Appeals for the District of Columbia Circuit that vacated one of the foreign sponsorship identification requirements established in the *First R&O*.³ We replace the vacated verification requirement with an approach that avoids the investigatory obligation on the part of licensees that was at issue in *NAB v. FCC*. The new approach provides licensees with two options for demonstrating that they have met their duty of inquiry in seeking to obtain the information needed to determine whether the programming being provided by a lessee is sponsored by a foreign governmental entity. Our adopted approach addresses concerns about burdens and complexity raised by commenters in response to the Second Notice of Proposed Rulemaking (*Second NPRM*).⁴

3. Furthermore, in this order, we clarify that our foreign sponsorship identification rules do not apply to sales of advertising for commercial goods and services to the extent such programming falls within the exemption contained in section 73.1212(f) of our general sponsorship identification rules.⁵ In addition, we find that our foreign sponsorship identification rules will not apply to political candidate advertisements, but will apply to issue advertisements and paid public service announcements (“paid PSAs”). We also confirm that our rule changes do not alter our finding in the *First R&O* that

¹ *Sponsorship Identification Requirements for Foreign Government-Provided Programming*, Report and Order, 36 FCC Rcd 7702 (2021) (*First R&O*). The *First R&O* defined the term “foreign governmental entity” include those entities or individuals that would trigger a disclosure pursuant to the foreign sponsorship identification rules. *Id.* at 7708-13, paras. 14-23. This *Second R&O* retains the same definition of “foreign governmental entity” as that established in the *First R&O*. See *infra* note 11 (providing the definition of the term “foreign governmental entity” as it appears in section 73.1212(j)(2) of our rules).

² See, e.g., *First R&O*, 36 FCC Rcd at 7702-03, para. 1, n.1 (describing reports of undisclosed foreign government programming being transmitted over U.S. radio stations). See also *Sponsorship Identification Requirements for Foreign Government-Provided Programming*, Notice of Proposed Rulemaking, 35 FCC Rcd 12099-105, paras. 1-11 (2020) (*First NPRM*) (describing the evolution of the statutory sponsorship identification requirements in section 317 of the Act and the Commission’s implementing regulations); Beijing’s Global Media Influence 2022, *Freedom House*, <https://freedomhouse.org/country/united-states/beijings-global-media-influence/2022> (noting the role that broadcast media plays in Chinese foreign media strategy); Homeland Threat Assessment 2024, Office of Intelligence and Analysis, U.S. Department of Homeland Security at 6, https://www.dhs.gov/sites/default/files/2023-09/23_0913_ia_23-333-ia_u_homeland-threat-assessment-2024_508C_V6_13Sep23.pdf (noting that Russia likely will continue to use traditional media, in addition to other media, “to amplify pro-Kremlin narratives and conduct influence activities within the United States”). We note that the Commission’s foreign sponsorship identification rules are leading to the filing of disclosures and, thus, providing greater transparency about the source of foreign government-provided programming. See, e.g., the KICU-TV disclosures in the Commission’s online public inspection files, <https://publicfiles.fcc.gov/tv-profile/KICU-TV/Foreign%20Government-Provided%20Programming%20Disclosures/b49ff051-115a-56e5-dc89-26bc7a359925>, and the WKTb-CD disclosure in the Commission’s online public inspection files, <https://publicfiles.fcc.gov/tv-profile/WKTb-CD/Foreign%20Government-Provided%20Programming%20Disclosures/eec0ba4b-2571-d333-72de-8fd961d05872>.

³ See *National Association of Broadcasters, et al., v. FCC*, 39 F.4th 817, 820 (D.C. Cir. 2022) (*NAB v. FCC*). The ruling did not affect the remainder of the foreign sponsorship identification requirements adopted in the *First R&O*.

⁴ *Sponsorship Identification Requirements for Foreign Government-Provided Programming*, MB Docket No. 20-299, Second Notice of Proposed Rulemaking, 37 FCC Rcd 12004 (2022) (*Second NPRM*).

⁵ See 47 CFR § 73.1212(f); see also Petition for Clarification, MB Docket No. 20-299 (filed July 19, 2021) at 2-5 (seeking clarification that “the new foreign sponsorship ID rules do not apply when a station sells time to advertisers in the normal course of business, no matter the length of the advertisement”).

noncommercial and educational broadcast stations (NCEs) are not likely to fall within the ambit of the foreign sponsorship identification rules.⁶ We decline to create an exemption from the rules for religious programming and locally produced and/or distributed programming. We also conclude that, when a lessee and licensee enter into recurring leases for the same programming, the licensee will be required to exercise its reasonable diligence obligations under the rule only once per year with respect to that particular lessee and that particular programming. With respect to the rule changes adopted today, we grandfather lease agreements already in effect at the time of the required compliance date for these newly-adopted modifications, determining that such leases will need to come into compliance either at the time of renewal or when the parties to the agreement enter into a new lease. Finally, we clarify the obligations of section 325(c) permittees under the foreign sponsorship identification rules.

II. BACKGROUND

4. Section 317 of the Communications Act and the Commission's implementing regulations under section 73.1212 have long required broadcast licensees to inform their audiences when programming is being aired in exchange for payment or compensation to the station.⁷ While section 310(a) of the Act prohibits foreign governments and their representatives from holding a broadcast license, there is no limitation on their ability to enter into a contract with the licensee of a station to air programming of their choosing, or even to lease the entire capacity of a radio or television station.⁸ In the *First R&O*, the Commission amended the then existing sponsorship identification rules by adding a requirement that licensees disclose the identity of any foreign governmental entities that lease time on their stations.⁹ The disclosure requirements apply to leased programming because the record in the underlying proceeding identified leased airtime as the primary means by which foreign governmental entities are accessing U.S. airwaves to persuade the American public without adequately disclosing the true sponsor.¹⁰ The *First R&O* defined "foreign governmental entity" using existing definitions, statutes, and regulations.¹¹ The foreign sponsorship identification rules apply in two circumstances. First, a

⁶ See *First R&O*, 36 FCC Rcd at 7716, para. 29.

⁷ 47 U.S.C. § 317; 47 CFR § 73.1212. Section 317(a)(1) requires disclosure when a licensee receives "money, service or other valuable consideration" to air programming. 47 U.S.C. § 317(a)(1); see 47 CFR § 73.1212(a). Consistent with section 317(a)(2), the Commission also requires disclosure when political programming or programming involving discussion of a controversial issue is furnished without monetary compensation as an inducement to air the programming. See 47 U.S.C. § 317(a)(2); 47 CFR § 73.1212(d).

⁸ 47 U.S.C. § 310(a).

⁹ See *First R&O*, 36 FCC Rcd at 7713, para. 24 (stating that the Commission "will require a specific disclosure at the time of broadcast if material aired pursuant to the lease of time on the station has been sponsored, paid for, or, in the case of political program or any program involving the discussion of a controversial issue, if it has been furnished for free as an inducement to air by a foreign governmental entity"); see also *id.* at 7707-31, 7733-34, 7739-41, paras. 12-61, 66-68, Appx. A (establishing new rule sections 73.1212(j) and (k)).

¹⁰ *Id.* at 7703-04, 7713-17, paras. 3, 24-31.

¹¹ Pursuant to section 73.1212(j)(2), the term "foreign governmental entity" "shall include governments of foreign countries, foreign political parties, agents of foreign principals, and United States-based foreign media outlets." 47 CFR § 73.1212(j)(2). Subsections 73.1212(j)(2)(i)-(iv) of our rules state:

- (i) The term "government of a foreign country" has the meaning given such term in the Foreign Agents Registration Act of 1938 (FARA) (22 U.S.C. § 611(e));
 - (ii) The term "foreign political party" has the meaning given such term in the FARA (22 U.S.C. § 611(f));
 - (iii) The term "agent of a foreign principal" has the meaning given such term in the FARA (22 U.S.C. § 611(c)), and who is registered as such with the Department of Justice, and whose "foreign principal" is a "government of a foreign country," a "foreign political party," or directly or indirectly operated, supervised, directed, owned, controlled, financed, or subsidized by a
- (continued....)

prescribed disclosure is required when a foreign governmental entity has sponsored, paid for, or furnished programming that is aired on a radio or television station pursuant to a lease agreement.¹² Second, if a foreign governmental entity provides the programming for free, or for nominal compensation, as an inducement to air the programming, the prescribed disclosure is required if the programming is political or involves discussion of a controversial issue.¹³

5. The foreign sponsorship identification rules neither prevent nor restrict the broadcast of foreign government-provided programming, but rather, are intended solely to inform audiences about the source of any such programming so that they may be more informed and savvy consumers of the material.¹⁴ As the Commission stated in the *First R&O*, “[t]he principle that the public has a right to know the identity of those that solicit their support is a fundamental and long-standing tenet of broadcasting.”¹⁵

6. Section 317(c) of the Act requires licensees to exercise “reasonable diligence to obtain,” from their employees and persons with whom they deal directly, information to enable the licensees to make the required sponsorship identification announcement.¹⁶ To satisfy this reasonable diligence standard with regard to foreign sponsorship identification, the current rules require a licensee to take each of the following actions, both when entering into a new lease agreement and renewing a lease agreement:

- (1) Inform the lessee of the foreign sponsorship disclosure requirement.
- (2) Ask the lessee whether it falls into any of the categories that would qualify it as a “foreign governmental entity.”
- (3) Ask the lessee whether it knows if any individual/entity further back in the chain of producing/distributing the programming to be aired qualifies as a foreign governmental entity and has provided some type of inducement to air the programming.
- (4) Memorialize the above-listed inquiries and retain such memorialization in its records for the remainder of the license term or for one year, whichever is longer.¹⁷

(Continued from previous page)

“government of a foreign country” or a “foreign political party” as defined in subsection 73.1212(j)(i) and (ii), and that is acting in its capacity as an agent of such “foreign principal;” and

- (iv) The term “United States-based foreign media outlet” has the meaning given such term in section 722(a) of the Communications Act of 1934 (47 U.S.C. § 624(a)).

¹² See 47 CFR § 73.1212(j)(1)(i) (requiring that foreign government-provided programming furnished consistent with section 73.1212(a) include the following disclosure: “The [following/preceding] programming was [sponsored, paid for, or furnished], either in whole or in part, by [name of foreign governmental entity] on behalf of [name of foreign country].”).

¹³ See 47 CFR § 73.1212(j)(1)(i) (requiring the prescribed disclosure for foreign government-provided programming furnished consistent with section 73.1212(d)).

¹⁴ See *First R&O*, 36 FCC Rcd at 7703, para. 2 (stating that the foreign sponsorship identification rules “seek to eliminate any potential ambiguity to the viewer or listener regarding the source of programming provided from foreign governmental entities”); see also 47 CFR § 73.1212(j)-(k).

¹⁵ *First R&O*, 36 FCC Rcd at 7704-05, para. 5; see also *First NPRM*, 35 FCC Rcd at 12100-05, paras. 4-11 (recounting the history of the requirement that broadcasters identify the source of paid programming, which stretches back to the Radio Act of 1927, Pub. L. No. 69-632, 44 Stat. 1162, 1170 § 19 (repealed 1934)).

¹⁶ 47 U.S.C. § 317(c).

¹⁷ See 47 CFR § 73.1212(j)(3); *First R&O*, 36 FCC Rcd at 7719-26, paras. 35-45 (describing licensee’s reasonable diligence requirements). The Commission initially adopted an additional requirement that, as discussed in further detail below, has been vacated by the U.S. Court of Appeals for the District of Columbia Circuit. *NAB v. FCC*, 39 F.4th at 820.

These requirements apply regardless of whether the programming is provided pursuant to a lease agreement for consideration under section 317(a)(1) or is provided for free or for nominal compensation under section 317(a)(2) and contains political programming or programming involving a controversial issue.¹⁸ The rules also apply to any programming broadcast pursuant to a section 325(c) permit.¹⁹

7. While the reasonable diligence requirements of section 317(c) apply to licensees, section 507 of the Act imposes an obligation on those involved in the production and/or distribution of program matter for broadcast to communicate any information known to them about any money, service or other valuable consideration that any person has paid or agreed to pay for the inclusion of any matter as part of a program.²⁰ In the *First R&O*, the Commission concluded that, consistent with section 507, “it is incumbent on a lessee to convey to the licensee its knowledge of any payment or consideration provided by, or unpaid programming received as an inducement from, an entity or individual that triggers the foreign sponsorship identification rules.”²¹ The disclosure obligation extends beyond the lessee itself to any person connected with the production, preparation, or supply of the programming.²²

8. On July 19, 2021, the ABC Television Affiliates Association, CBS Television Network Affiliates Association, FBC Television Affiliates Association, and NBC Television Affiliates (collectively, the Affiliates) filed a Petition for Clarification.²³ The Affiliates assert that the exemption in the *First R&O* of “traditional, short-form advertising” from the foreign sponsorship identification rules creates confusion because the term has no established meaning in the broadcast industry.²⁴ In their petition, the Affiliates argue that the Commission should clarify that the foreign sponsorship identification rules do not apply when a licensee “sells time to advertisers in the normal course of business, no matter the length of the advertisement.”²⁵

9. On August 13, 2021, the National Association of Broadcasters (NAB), the Multicultural Media, Telecom and Internet Council (MMTC), and the National Association of Black Owned Broadcasters (NABOB) (collectively, Petitioners) filed a Petition for Review of the *First R&O* with the D.C. Circuit.²⁶ Petitioners challenged the Commission’s authority to impose one of the reasonable diligence requirements contained in the *First R&O*. Specifically, in addition to the four reasonable diligence requirements listed above, the *First R&O* had required licensees to confirm the lessee’s status, at the time of entering into a lease agreement and at renewal, by consulting the Department of Justice’s (DOJ) Foreign Agent Registration Act (FARA) website and the Commission’s semi-annual U.S.-based

¹⁸ See 47 U.S.C. § 317(a)(1), (2); *First R&O*, 36 FCC Rcd at 7719-20, para. 35. The Commission found that a broadcast station’s multicast streams also are subject to the foreign sponsorship identification rules. *First R&O*, 36 FCC Rcd at 7730, para. 56.

¹⁹ *First R&O*, 36 FCC Rcd at 7733-34, paras. 66-68.

²⁰ 47 U.S.C. § 508(b)-(c); see also *First R&O*, 36 FCC Rcd at 7726-27, paras. 46-47.

²¹ *First R&O*, 36 FCC Rcd at 7726, para. 46; see also *id.* at 7719, para. 34 (finding that section 507 applies to political programming and programming involving the discussion of a controversial issue provided by a foreign governmental entity for free, or for a nominal charge, as an inducement to air the programming).

²² *First R&O*, 36 FCC Rcd at 7726-27, para. 47.

²³ See Petition for Clarification, MB Docket No. 20-299 (filed July 19, 2021).

²⁴ *Id.* at 3-4.

²⁵ *Id.* at 2; see also Meredith Corporation Comments at 1-3 (filed Sept. 2, 2021) (supporting the Petition for Clarification); Affiliates Comments at 2 (filed Sept. 2, 2021).

²⁶ Petition for Review, National Association of Broadcasters, Multicultural Media, Telecom and Internet Council, and National Association of Black Owned Broadcasters v. FCC, No. 21-1171 (D.C. Cir. filed Aug. 13, 2021).

foreign media outlets reports.²⁷ On July 12, 2022, the D.C. Circuit vacated this verification requirement, holding that it exceeded the Commission's authority under section 317(c).²⁸ The D.C. Circuit stated that section 317(c) imposes on licensees only "a duty of inquiry, not a duty of investigation."²⁹ The court left in place the remaining four requirements needed to satisfy the statutory reasonable diligence standard.

10. On October 6, 2022, the Commission released the *Second NPRM*, containing proposals to address the gap left by the D.C. Circuit's vacatur of the verification requirement contained in the foreign sponsorship identification rules.³⁰ The *Second NPRM* proposed two alternatives to replace the vacated requirement that licensees independently confirm the lessee's status. Under the first proposal, each licensee had to certify that it had informed its lessee of the foreign sponsorship identification rules and obtained, or sought to obtain, a certification from its lessee stating whether the lessee is or is not a "foreign governmental entity."³¹ In turn, the lessee would submit a certification in response to the licensee's request.³² To minimize compliance burdens, the Commission proposed that licensees and lessees use standardized certification language, as set forth in the *Second NPRM*.³³ Consistent with the existing requirement that licensees upload into their online public inspection files (OPIFs) their lease agreements, the Commission tentatively concluded that licensees should upload both their own and their lessees' completed certifications into their OPIFs, along with the associated lease agreements.³⁴

11. The *Second NPRM* also contained a second proposal based on an approach raised during oral argument in *NAB v. FCC* as a possible alternative to the rule provision it ultimately vacated.³⁵ Under this proposal, in lieu of the licensee independently confirming the lessee's status by checking the DOJ's FARA website, or the Commission's U.S.-based foreign media outlet reports site, the licensee would ask the lessee to provide screenshots showing the results of the lessee's search for its name on these sites.³⁶ In addition, the *Second NPRM* also sought comment on the need to apply the proposals contained therein to section 325(c) permit holders.³⁷ Finally, it provided another opportunity for comment on the Affiliates' Petition for Clarification regarding the treatment of advertisements.³⁸

²⁷ *First R&O*, 36 FCC Rcd at 7719-20, 7722-26, paras. 35, 40-45. Verification was not required if the lessee had already disclosed that it fell into one of the covered categories and/or that there was a separate need for a disclosure because an individual/entity further back in the chain of producing/transmitting the programming fell into one of the covered categories and had provided some form of service, consideration, or, in the case of political programming the programming itself, as an inducement to broadcast the programming. *Id.* at 7720, para. 35.

²⁸ *NAB v. FCC*, 39 F.4th at 820. To conform with the court's vacatur, we will delete the verification requirement from section 73.1212(j)(3). *See* Appx. A.

²⁹ *NAB v. FCC*, 39 F.4th at 820 (stating that "[s]ection 317(c) 'is satisfied by appropriate inquiries made by the station to the party that pays it for the broadcast'" (quoting *Loveday v. FCC*, 707 F.2d 1443, 1449 (D.C. Cir. 1983))). The court did not reach Petitioners' other arguments that the verification requirement violated the First Amendment and the Administrative Procedure Act (APA). *Id.*

³⁰ *Second NPRM*, 37 FCC Rcd at 12005, para. 4.

³¹ *Id.* at 12010, para. 14.

³² *Id.*

³³ *Id.* at 12012-15, paras. 21-24.

³⁴ *Id.* at 12011-12, paras. 17-18.

³⁵ *Id.* at 12018, para. 31.

³⁶ *Id.*

³⁷ *Id.* at 12015-16, paras. 25-27.

³⁸ *Id.* at 12018-19, para. 32.

12. In response to the *Second NPRM*, commenters filed four comments³⁹ and eight reply comments.⁴⁰ While all commenters support the goal of foreign sponsorship disclosure, the commenters assert that the proposed requirements would be unduly burdensome and question the Commission's authority to impose them.

III. DISCUSSION

13. Below we first determine that licensees must pursue one of two approaches to address the gap left by the D.C. Circuit's vacatur of the independent verification requirement. We then address questions raised in the record about the application of the foreign sponsorship identification rules to different types of broadcast programming. We then explain when licensees must comply with the requirements we adopt in the instant order and grandfather lease agreements already in existence at the time of the compliance date of the new rules for the duration of the lease term, determining that existing leases will have to comply with the new rules at the time of renewal or when the parties enter into a new agreement, whichever is earlier. We clarify that our foreign sponsorship identification rules will not apply to sales of advertising for commercial goods and services to the extent that such programming would not otherwise be subject to the general sponsorship disclosure rules, as set forth in section 73.1212(f) of our rules.⁴¹ We also find that the foreign sponsorship identification rules will not apply to political candidate advertisements. We do, however, determine that the foreign sponsorship identification rules will apply to issue advertisements and paid PSAs. We find that it is inconsistent with our goal of disclosing the source of foreign government-provided programming, and in some instances the First Amendment, to exclude from the ambit of our rules locally produced and/or locally distributed programming and religious programming. We also describe how the requirements laid out in this order will apply to section 325(c) permit holders. Lastly, we find that our actions today will not inhibit diverse entrants from participating in the broadcast media marketplace.

A. Obtaining Information from Lessees

14. We determine below to give broadcast licensees greater flexibility than proposed in the *Second NPRM* with respect to how they must seek to obtain from lessees the information needed to determine whether a foreign sponsorship disclosure is needed. Specifically, a licensee may choose between one of two options to comply with the rule. Neither of these two options imposes an investigatory duty upon licensees or holds them "responsible for the truth of the information they obtain."⁴² Under the first option, both the licensee and the lessee must complete a written certification

³⁹ The parties that filed comments are: America's Public Television Stations, National Public Radio, Inc., and the Public Broadcasting Service (Public Broadcasters); National Association of Broadcasters and The Multicultural Media, Telecom & Internet Council (NAB/MMTC); Gray Television Licensee, LLC (Gray TV); and ABC Television Affiliates Association, CBS Television Network Affiliates Association, FBC Television Affiliates Association, and NBC Television Affiliates (Affiliates).

⁴⁰ The parties that filed reply comments are: American Broadcasting Companies, Inc., Fox Corporation, NBCUniversal Media, LLC, and Paramount Global (Networks); Affiliates; The E.W. Scripps Company (Scripps); Alpha Media USA LLC, Brazos Valley Communications, Ltd., Brazos Communications West, LLC, California Oregon Broadcasting, Inc., CNZ Communications, LLC, Cumulus Media, Entravision Communications Corporation, Estrella Media Inc., Latina Broadcasters of Daytona Beach, LLC, Nexstar Media Group, Inc., Red Apple Media, Inc., Salem Media Group, Inc., Victory Television Network, Inc., and Woodward Communications, Inc. (Alpha Media et al.); Audacy, Inc. and Beasley Media Group, Inc. (Audacy/Beasley); CMG Media Corporation (CMG); Coalition of Religious Programmers (Religious Programmers); and National Religious Broadcasters (Religious Broadcasters). Because TechFreedom, a nonprofit think tank, filed reply comments after the deadline for replies, we will treat its filing as an ex parte filing.

⁴¹ See 47 CFR § 73.1212(f); see also Petition for Clarification at 2-5 (seeking clarification that "the new foreign sponsorship ID rules do not apply when a station sells time to advertisers in the normal course of business, no matter the length of the advertisement").

⁴² See *NAB v. FCC*, 39 F.4th at 820.

either using the standardized certification language contained in Appendices C and D of this order or using their own language, as long as the certifications written in their own language contain the inquiries set out in section 73.1212(j)(3), pursuant to the *First R&O*.⁴³ Under the second option, the licensee must ask the lessee to provide screenshots showing the search results generated by the lessee's search for its own name on two federal government websites (similar to the idea raised during oral argument before the D.C. Circuit in *NAB v. FCC*). In all other respects, under this second option, the licensee must follow the other requirements contained in the existing foreign sponsorship identification rules.⁴⁴

15. Given the concerns raised in the record about the burdens associated with the proposals in the *Second NPRM* to replace the independent verification requirement, the requirements adopted in the instant order offer licensees more flexibility by giving them a choice of approaches and by allowing them to devise their own certification language. Moreover, we reduce compliance burdens and make the new requirements easier to implement by offering simple certification templates. We also allow a licensee to inquire about a lessee's foreign governmental entity status only once a year when the lessee and programming are the same (e.g., weekly broadcasts of church services from the same church), assuming there is no change in the lessee's status and the lessee has not become aware of any change in the individuals/entities further back in the programming's production/distribution chain that would trigger the need for a foreign sponsorship disclosure.

16. We decline to adopt several proposals to address concerns raised in the record about compliance costs and burdens. Although proposed in the *Second NPRM*, we conclude, in response to commenter concerns, that a licensee need not notify the Media Bureau when a lessee fails to respond to the licensee's queries. No commenter supported such a requirement. Although the *Second NPRM* proposed requiring licensees to retain certifications and screenshots in the licensees' OPIFs that are hosted by the Commission, we decline to adopt this proposal. Licensees may either file these records in their OPIFs or their internal files. Finally, we emphasize that if a lessee fails to respond, or fails to respond adequately, to the licensee's request for a certification or screenshots, the licensee is not prohibited from airing the program. Nevertheless, if a question arises later about whether a disclosure was needed, the licensee must be able to demonstrate, in the event of a fact-specific inquiry by the Commission, that it exercised reasonable diligence in seeking the information. As explained below, the requirements we adopt today are within our statutory authority and are consistent with the D.C. Circuit's ruling in *NAB v. FCC*.

1. Licensees Must Comply with One of Two Approaches

17. We will require licensees to comply with either one of the two approaches described below. Although licensees must choose one of these approaches, they need not choose the same approach for each lease or renewal agreement, even when the same lessee is involved. Compliance with one of these two approaches must be at the time of entering into any new lease agreement or renewing an existing lease agreement, unless the once-a-year exception described below applies.⁴⁵

⁴³ 47 CFR § 73.1212(j)(3).

⁴⁴ Consistent with the existing foreign sponsorship identification rules, the licensee must inform the lessee about the foreign sponsorship disclosure requirement, inquire whether the lessee is either a "government of a foreign country" or a "foreign political party," and inquire about the lessee's knowledge of anyone further back in the chain of producing/distributing the programming who qualifies as a "foreign governmental entity" and may have provided an inducement to air the programming such as to trigger the need for a foreign sponsorship disclosure. See 47 CFR § 73.1212(j)(i)-(iii). Finally, also consistent with the existing foreign sponsorship identification rules, the licensee must memorialize those inquiries in some manner. We note, however, that the existing "memorialization" requirement has been moved from section 73.1212(j)(3)(v) of our rules to revised section 73.1212(j)(3)(iv), which replaces the vacated section 73.1212(j)(3)(iv). See Appx. A.

⁴⁵ NAB asks that we consider an approach akin to the Commission's advertising nondiscrimination requirement. Letter from Erin Dozier, Senior Vice President and Deputy General Counsel, NAB, to Marlene H. Dortch,

(continued....)

18. *Certification Option.* One option available to licensees is the use of certifications, as described below. We find that the certification option fills the gap left by the D.C. Circuit’s vacatur of licensee’s requirement to conduct an independent check, by helping to ensure the credibility of the sponsorship information provided by the lessee in response to the licensee’s inquiries.⁴⁶ For those who would prefer not to pursue the screenshot option discussed below, the certification approach has the benefit of providing an alternative means of verification. Moreover, certifications have the value of reminding lessees of the foreign sponsorship identification rules and ensuring that they provide above board sponsorship information to broadcasters.

19. In response to commenter concerns, we have streamlined significantly the certification proposal contained in the *Second NPRM*. Under our adopted certification option, both a licensee and a lessee must complete a certification reflecting the communications and inquiries required under the existing rules.⁴⁷ However, unlike our proposal in the *Second NPRM*, which would have required prescribed certification language, licensees and lessees will have the option either to use the streamlined standardized certification language set forth in Appendices C and D or to use language created by the parties. In response to commenters’ concerns about the complexity of the certification language proposed in the *Second NPRM*,⁴⁸ we have simplified the standardized certifications substantially. Rather than the

(Continued from previous page)

Secretary, FCC, MB Docket No. 20-299, at 1 (filed June 14, 2023). Every eight years, broadcasters must certify in their license renewal applications that their advertising sales contracts contain nondiscrimination clauses. *Promoting Diversification of Ownership in the Broadcasting Services, et al.*, MB Docket No. 07-294 et al., Report and Order, 23 FCC Rcd 5922, 5941-42, paras. 49-50 (2008). We reject the suggestion to apply a similar approach here by requiring certifications of compliance with the foreign sponsorship identification rules only at the time of a licensee’s renewal application. We find that permitting a certification of compliance every eight years would make it too difficult for the Commission to assess a licensee’s reasonable diligence in a particular case where a question arises regarding whether a disclosure was required. Moreover, we believe that requiring certification or screenshot documentation for every lease agreement will highlight to both licensees and lessees the importance of this requirement.

⁴⁶ See NAB/MMTC Comments at 20 (asserting that it is “unclear how using FCC-specified language in certifications, obtaining revised certifications, or placing them in stations’ online public inspection files would fill any alleged gap in the rules resulting from the D.C. Circuit’s decision or would make the FCC’s rules more effective in identifying foreign governmental propaganda”).

⁴⁷ Licensees often include in their lease agreements terms and conditions requiring compliance with Commission rules and requirements. See, e.g., Time Brokerage Agreement between Salem Communications Holding Corporation and the programmer Healthy by Nature for the lease of airtime on station KDIZ-AM in Golden Valley, Minnesota, as of August 23, 2022, <https://publicfiles.fcc.gov/am-profile/KDIZ/Time%20Brokerage%20Agreements/62568b0a-2f57-f3ef-d54a-4e020398362c> (KDIZ-AM Agreement) (stipulating that the lessee’s programming “shall meet in all material respects” the requirements of the Communications Act and of all applicable Commission rules, regulations, and policies). *Id.* at 2-3. Moreover, the KDIZ-AM Agreement specifically addresses the foreign sponsorship identification rules and provides that “[t]he broadcast of any programming provided or sponsored by a ‘foreign governmental entity’ as defined in 47 C.F.R. Section 73.1212(j) is prohibited unless approved in advance by the Station’s General Manager and accompanied by the announcement required by 47 C.F.R. Section 73.1212(j), and unless Programmer timely provides Licensee the documentation required by 47 C.F.R. Sections 73.1212(j)(6) and 73.7326(e)(19) for the Station’s online public inspection file folder marked ‘Foreign Government-Provided Programming Disclosures.’” *Id.* at 3. Further, the agreement includes certification language that closely tracks the obligations imposed by the Commission in the *First R&O*. *Id.* at 6-8, 14-15.

⁴⁸ Commenters argue that the Commission’s proposed certification language would be too complex and legalistic for most station employees and programming lessees to understand. See NAB/MMTC Comments at 43-44 (arguing that the numerous statutory and regulatory references contained within the proposed certification language require “a level of legal understanding and analysis that . . . non-lawyers reading certifications do not have and should not reasonably be expected to perform”); Audacy/Beasley Reply at 3-5 (asserting that the proposed certification language is unclear and not even understandable); Religious Broadcasters Reply at 2 (positing that “the complex
(continued....)

two and a half page certifications proposed in the *Second NPRM*, we have now developed one-page templates for the licensee and lessee certifications, based on a straightforward and familiar “check box” format. While the templates do include citations to the legal sources defining the various categories of foreign governmental entities, we anticipate that most licensee and lessee employees will be able to complete the forms quickly and readily, based upon their existing knowledge and understanding. We emphasize that the lessee is being asked to sign a certification regarding *its own status*. The lessee should already know if it is a registered FARA agent, or is listed as a U.S.-based foreign media outlet on the Commission’s website, because these registrations/listings are self-reported.⁴⁹ Similarly, a lessee should already know if it is a government of a foreign country or a foreign political party. With regard to those further back in the chain of producing and/or distributing the programming, the lessee is being asked only about its actual knowledge at the time it signs the certification. We emphasize that it is highly unlikely that either licensee or lessee should have to engage in any type of research to respond to the queries contained in the certifications. We also note that these are the same inquiries the Commission adopted in the *First R&O*, only formatted now as a certification.

20. If licensees and lessees prefer not to use the Commission’s templates, they may use their own certification language, provided that language addresses the points listed in section 73.1212(j)(3)(i)-(iii) of our current rules.⁵⁰ Several commenters expressed concerns that licensees already have developed their own certifications based on the existing foreign sponsorship identification rules and that revising these certifications would be costly.⁵¹ We are persuaded that self-generated certifications can fulfill our certification requirements provided these certifications contain the information and inquiries currently required by the foreign sponsorship identification rules. Specifically, a licensee’s certification should confirm that the licensee:

- (1) informed the lessee of the foreign sponsorship disclosure requirement;
- (2) asked the lessee whether it falls into any of the categories that would qualify it as a “foreign governmental entity;”
- (3) asked the lessee whether it knows if any individual/entity further back in the chain of producing and/or distributing the programming to be aired qualifies as a foreign governmental entity and has provided some type of inducement to air the programming;
- (4) sought a written certification in response from the lessee; and
- (5) obtained the necessary information for a disclosure if one is required.

A lessee’s certification should convey the information needed to determine whether a disclosure is

(Continued from previous page) _____

standardized certification language itself may ultimately deter potential lessees from entering into leasing arrangements”).

⁴⁹ See 22 U.S.C. § 612(a) (providing that “[n]o person shall act as an agent of a foreign principal unless he has filed with the Attorney General a true and complete registration statement and supplements thereto as required . . . unless he is exempt from registration under the provisions of this subchapter”); *see also* 47 U.S.C. § 624 (requiring each U.S.-based foreign media outlet to submit a report to the Commission regarding its relationship with its foreign principal).

⁵⁰ 47 CFR § 73.1212(j)(3)(i)-(iii).

⁵¹ See Religious Broadcasters Reply at 2 (arguing that if the Commission requires standardized certification language, then station owners “will have wasted time and resources that have already been spent developing certification language and must expend staff time in explaining the new FCC rules to lessees and obtaining updated certification[s]”); CMG Reply at 3-4 (positing that the cost of a second round of compliance would be significant and without benefit after “CMG staff spent hundreds of hours under the current rules identifying agreements and collecting certifications”); NAB/MMTC Comments at 19-23 (stating that the proposed rule changes would impose substantial and unnecessary burdens on stations and lessees within a short time frame and claiming that existing online systems, such as Wide Orbit, used by some broadcasters for certifications, would need to be redesigned).

required and the information needed for a broadcast disclosure if one is required.⁵²

21. Regardless of whether the Commission's templates or a licensee's and lessee's own certifications are used, both the licensee's and lessee's certifications must be dated and signed by an employee or other representative of the entity who can attest to the fact that these actions were taken.⁵³ Because these certification requirements encapsulate the extant information and inquiry requirements adopted in the *First R&O*,⁵⁴ it is unlikely that any preexisting certification language that licensees have employed will require much revision, if any.

22. *Screenshot Option.* As an alternative to the certification option, licensees may choose to ask their lessees for screenshots of lessees' search results of two federal government websites. This option essentially replaces the verification requirement that the D.C. Circuit vacated, with the key difference being that the lessee conducts the searches instead of the licensee. The D.C. Circuit determined that it was beyond the scope of section 317(c) to require a licensee to independently verify a lessee's statement that the lessee was not listed in the DOJ's FARA database as a FARA agent or in the Commission's U.S.-based foreign media outlet reports. Consequently, consistent with the hypothetical raised during oral argument before the D.C. Circuit in *NAB v. FCC*, we now determine that licensees may ask their lessees to perform those searches and provide screenshots of the search results.⁵⁵ Hence, instead of asking the lessee to provide a responsive certification regarding its status, a licensee exercising this option would ask, consistent with our current foreign sponsorship identification rules, whether the lessee is a registered FARA agent or is listed in the Commission's U.S.-based foreign media outlet report. If the lessee responds "no," the licensee would then ask the lessee to provide screenshots showing the results of lessee's searches of both of these websites.⁵⁶ As discussed below, licensees choosing this option must still comply with all other aspects of the current rule, as they have been required to do since the compliance date of the *First R&O*.⁵⁷ Moreover, consistent with the *First R&O*, we encourage licensees to include in their lease agreements a requirement for lessees to provide notice of any change in status so as to trigger the need for a foreign sponsorship disclosure.

23. Some commenters have objected to the screenshot approach based on erroneous assumptions about what such a search requires. NAB's claim that the accuracy of the search results "depends on using search terms with exact names, abbreviations, or acronyms" and that lessees "would have to train themselves to navigate the FARA databases" suggests the FARA searches are intricate

⁵² See 47 CFR § 73.1212(j)(1) (stating what information needs to be in a foreign sponsorship disclosure).

⁵³ Moreover, irrespective of whether a licensee chooses to use our template certification language or their own language, as stated in the *First R&O*, we "strongly encourage licensees to include a provision in their lease agreements requiring the lessee to notify the licensee about any change in the lessee's status such as to trigger our foreign sponsorship identification rules." *First R&O*, 36 FCC Rcd at 7702, para. 44.

⁵⁴ See *id.* at 7719-20, paras. 35-36; see also 47 CFR § 73.1212(j)(3)(i)-(iii).

⁵⁵ Oral Argument in *NAB v. FCC*, beginning at 7:05, 24:07, [https://www.cadc.uscourts.gov/recordings/recordings2021.nsf/BBAF4A6ABFCFB734852588220055C0EF/\\$file/21-1171.mp3](https://www.cadc.uscourts.gov/recordings/recordings2021.nsf/BBAF4A6ABFCFB734852588220055C0EF/$file/21-1171.mp3). Specifically, the court asked NAB's counsel whether, rather than requiring a licensee to verify a lessee's status by checking the DOJ FARA and Commission websites, the Commission could accomplish its goal by requiring a lessee that states it is not a "foreign governmental entity" to provide a screenshot of the relevant FARA page showing that its name is not listed there. *Id.* In response, NAB's counsel stated "Absolutely. They could have imposed that kind of obligation on lessees" *Id.*

⁵⁶ See <https://www.fcc.gov/united-states-based-foreign-media-outlets>, which identifies the outlets that filed with the Commission in response to the National Defense Authorization Act for Fiscal Year 2019 (NDAA). The NDAA requires U.S.-based foreign media outlets to submit reports every six months to the Commission regarding the outlets' relations to their foreign principals.

⁵⁷ See *supra* note 44.

explorations.⁵⁸ On the contrary, the FARA searches are simple name searches, initiated by merely entering a name in a search box. As with the requirement that the D.C. Circuit vacated, if the name search does not generate any results, “no further search is needed.”⁵⁹

24. Moreover, we emphasize that lessees are looking for their *own names*. A lessee is not doing a FARA database search to *learn* whether it is registered, such as to necessitate experimenting with different iterations of its name. A lessee, or someone within lessee’s organization, would know whether it is a FARA registrant, or U.S.-based foreign media outlet. As such, the lessee will only be providing screenshots if, in response to licensee’s queries, the lessee states that it is neither a FARA agent nor a U.S.-based foreign media outlet. In short, the name search only entails confirming that the lessee’s status is neither a FARA registrant or a U.S.-based foreign media outlet.⁶⁰

25. Similarly, NAB’s claims about the U.S.-based foreign media outlet reports – i.e., that “[i]t would be Kafkaesque to require thousands of lessees each to make copies of Commission reports and send them to each of their station lessors for every single lease and lease renewal to prove their absence from the report, when no such listed entities exist” – distort what actually is required to demonstrate compliance.⁶¹ Our website lists the names of all the entities that have reported as U.S.-based foreign media outlets, and all that is required is a screenshot of this list to show whether the lessee’s name appears on the list at the time of the licensee’s required inquiries. No searches or copying of multiple Commission reports are required, as the list appears on our U.S.-based foreign media outlet webpage.⁶²

2. Leases Renewed Within A One-Year Period

26. In response to several commenters’ request that we clarify the scope of the term “lease,”⁶³ we affirm our position in the *First R&O* that the term applies to any agreement, written or not, where a licensee grants to another party the right to program on its station in exchange for some form of consideration.⁶⁴ The term applies irrespective of the terms or duration of the agreement, and regardless of whether the parties label or view the agreement as a time brokerage agreement, a local marketing agreement, or something else.⁶⁵ Therefore, an agreement is not excluded from our definition of “lease”

⁵⁸ See NAB/MMTC Comments at 13.

⁵⁹ *First R&O*, 36 FCC Rcd at 7722, para. 41. If the name search does generate results, the broadcaster’s duty is to “exercise reasonable diligence” to ascertain whether the lessee is subject to a disclosure requirement – precisely what the statute requires. 47 CFR § 73.1212(j)(3); 47 U.S.C. § 317(c).

⁶⁰ We recognize that the FARA database has different search fields. The FARA website provides for an “Active Registrants” search link, and we recommend that lessees use this link because our rules only cover those FARA agents who are currently registered on the DOJ FARA site. See 47 CFR § 73.1212(j)(2)(iii); see also <https://efile.fara.gov/ords/fara/f?p=1381:17:1606120366722>. As the search features on the FARA website are designed to assist in determining who is registered as a FARA agent, we assume that the website will continue to maintain a search field akin to the “Active Registrants” field we identify here. We appreciate NAB/MMTC’s comment that the appearance of one’s name as a registered agent in the FARA website is not determinative of whether the lessee is acting in its capacity as a FARA agent when leasing time on a licensee’s station, but we believe it is reasonable to presume a lessee that is registered would be able to explain whether it is acting in its capacity as an agent with regard to the transaction at hand. See NAB/MMTC Comments at 12.

⁶¹ NAB/MMTC Comments at 13.

⁶² Lessees need only go to the following link at the time of entering into a lease agreement or at renewal and take one photo: <https://www.fcc.gov/united-states-based-foreign-media-outlets>.

⁶³ See, e.g., NAB/MMTC Comments at 33-43, Gray TV Comments at 10-13; Networks Reply at 3-6; Scripps Reply at 4-6; Alpha Media et al. Reply at 6-10; CMG Reply at 2-3; Audacy/Beasley Reply at 7.

⁶⁴ *First R&O*, 36 FCC Rcd at 7715-16, paras. 27-28; see also 47 U.S.C. § 317(a).

⁶⁵ As the Commission stated in the *First R&O*:

(continued....)

for purposes of the foreign sponsorship identification rules merely because it is an informal, short term, and/or week-to-week type of agreement. We address below the rules' applicability to certain types of programming, but we clarify that applicability of the rules is not determined by the "title, terms, or duration" of an agreement.⁶⁶

27. Nevertheless, in response to commenter concerns about frequently having to repeat the certification/screenshot process for short term leases,⁶⁷ we conclude that, where a licensee and the same lessee enter into recurring leases for the same programming over a one year period, the licensee need only exercise its reasonable diligence obligations, including the certification or screenshot process, once per year. This modification of the proposals contained in the *Second NPRM* addresses concerns raised in the record about the burdens associated with the production of multiple certifications/screenshots over a limited period of time when the lease concerns both the same lessee and same programming.⁶⁸

3. Lack of Adequate Response from Lessee

28. We have decided not to adopt the notification requirement proposed in the *Second NPRM* that proposed to require licensees to notify the Media Bureau about a lessee's failure to respond.⁶⁹ No commenters supported a notification requirement, and some raised concerns about such a requirement placing licensees in an enforcement-type role.⁷⁰ We appreciate the concerns raised by commenters.

(Continued from previous page)

[T]he disclosure requirements we adopt today apply to leasing agreements, regardless of what those agreements are called, how they are styled, and whether they are reduced to writing. We recognize that leasing agreements within the broadcast industry may be known by different designations. The terms time brokerage agreement (TBA) and local marketing agreement (LMA) are used interchangeably to describe contractual arrangements whereby a party other than the licensee, i.e., a brokering party, programs time on a broadcast station, oftentimes also selling the advertising during such time and retaining the proceeds. Such leasing agreements may be for either discrete blocks of time (for example, two hours every day from 4 PM to 6 PM) or for the complete broadcast capacity of the station (i.e., 24 hours a day, seven days a week). The agreements can be for the duration of a single day or for a term of years. Regardless of the title, terms, or duration of such an agreement, the purpose of such a contractual agreement is to give one party — the brokering party or programmer — the right and obligation to program the station licensed to the other party — the licensee or broadcaster. In this manner, the programmer is able to program a radio or television station that it does not own or hold the license to operate.

First R&O, 36 FCC Rcd at 7715, para. 27 (citations omitted).

⁶⁶ *Id.* See Section III.B. for a discussion of the types of programming to which the rules apply.

⁶⁷ See NAB/MMTC Comments at 22, 37, 44 (highlighting the short duration, minimal remuneration, and financial constraints associated with most agreements between licensees and religious programmers, or local programmers); see also Religious Programmers Reply at 11-13 (asserting that, given the week-to-week lease arrangements that religious programmers often enter into due to financial constraints, their programming will be at a competitive disadvantage relative to commercial paid-programming); Gray TV Comments at 12-13 (noting that "Gray [TV]'s arrangements with religious programmers are typically confirmed on a weekly basis . . .").

⁶⁸ An example of what we mean by "same lessee" and "same programming" in this context would be House of Worship X leasing time for the live broadcast of its weekly religious service, every Sunday from 11:00 am till 12:00 pm. While the specific broadcasts would differ week to week, the lessee would continue to be House of Worship X and the program would be its live religious service broadcast. By contrast, if House of Worship X decides to use its regular time slot to provide something other than its weekly religious service – e.g., a panel discussion with various civic leaders – that would be considered different programming that would not fall within the one year exemption, and, thus, would require licensee and lessee to engage in the reasonable diligence requirements laid out in the Commission's rules.

⁶⁹ *Second NPRM*, 37 FCC Rcd at 12010-11, para. 16.

⁷⁰ See Audacy/Beasley Reply at 3-4 (arguing that broadcasters have no statutory duty to serve as "enforcers or informants" that would justify a requirement that they notify the Media Bureau if a lessee fails to certify as to its status as a foreign governmental entity).

Moreover, we also recognize that there may be instances when, despite a licensee's efforts to comply with the foreign sponsorship identification rules, a lessee may fail to respond, or may fail to respond adequately, to a licensee's queries or request for a certification/screenshots. Thus, if a licensee does not obtain a response, or obtains an inadequate response, from the lessee to its reasonable diligence inquiries, it may continue to air the lessee's programming and will not be required to report such non-responses to the Commission. If, however, it is determined at a later date that the programming should have included a foreign sponsorship disclosure, the Commission may conduct a fact-specific inquiry to determine whether the licensee met its obligation under section 317(c) to "exercise reasonable diligence to obtain" the necessary information, such as by not making further inquiry of the lessee.⁷¹

4. Recordkeeping Requirement

29. We find that licensees must retain all of their certifications and screenshots for the length of the license term or one year, whichever is longer, pursuant to the record retention requirement contained in subsection 73.1212(j)(3)(v) of our rules. As noted above, under the screenshot approach, licensees must still comply with the pre-existing requirement to inform lessees of the foreign sponsorship identification rules, pursuant to subsection 73.1212(j)(3)(i), and make the inquiries contained in subsections 73.1212(j)(3)(ii)-(iii) of the rules. Also, consistent with the pre-existing rules, under the screenshot approach a licensee must still memorialize in some way its compliance with subsections 73.1212(j)(i)-(iii).⁷²

30. Although the *Second NPRM* proposed that licensees should retain the certifications and screenshots in their OPIFs, based on commenter concerns,⁷³ we are persuaded that licensees should have greater flexibility regarding the manner in which these documents are stored. Licensees must already upload their lease agreements into their OPIFs,⁷⁴ along with records of any foreign sponsorship identification disclosures.⁷⁵ As a result, the public already has a mechanism to determine which programs are provided by foreign governmental entities. Thus, we find it is reasonable to respond to commenter concerns by providing more flexibility regarding retention of the certifications and screenshots than initially proposed. Hence, licensees must retain their certifications and/or screenshots, along with documentation of inquiries that accompany the screenshots, but may elect to do so in either their own OPIFs⁷⁶ or in their internal files, provided that licensees make such documents available to the Commission promptly upon request. Consistent with the tentative conclusion in the *Second NPRM*, we find that a recordkeeping requirement is necessary to provide "an efficient and transparent means of verifying compliance" with our certification and screenshot requirements.⁷⁷ Given our decision that

⁷¹ See, e.g., *Loveday*, 707 F.2d at 1459 (providing that further inquiry might be required when "a challenger makes so strong a circumstantial case that someone other than the named sponsor is the real sponsor").

⁷² See *supra* note 44.

⁷³ See NAB/MMTC Comments at 19-20, 45-47 (providing objections to the proposed OPIF recordkeeping requirement); Gray TV Comments at 9 (arguing that an OPIF recordkeeping requirement would increase compliance costs and burdens for broadcasters); TechFreedom Reply at 6-8 (claiming that an OPIF recordkeeping requirement would be "an unmitigated disaster"); Letter from Rick Kaplan, Chief Legal Officer and Executive Vice President, Legal and Regulatory Affairs, NAB, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 20-299, at 1 (filed Mar. 14, 2024); Letter from Rick Kaplan, Chief Legal Officer and Executive Vice President, Legal and Regulatory Affairs, NAB, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 20-299, at 1 (filed Mar. 22, 2024) (*NAB Mar. 22, 2024 Ex Parte*).

⁷⁴ 47 CFR § 73.3526(e).

⁷⁵ 47 CFR §§ 73.1212(j)(7), 73.3526(e)(19).

⁷⁶ We note here that the OPIF system, although hosted by the Commission, is maintained by broadcast stations. See Media Bureau, FCC, *The Public and Broadcasting* 28 (2021).

⁷⁷ *Second NPRM*, 37 FCC Rcd at 12011, para. 17.

documentation need not be placed in the OPIF, we do not further address arguments against uploading the certifications and screenshots into the OPIF.⁷⁸

5. Legal Authority

31. We find that the regulations we adopt today are consistent with the Act and the court’s decision in *NAB v. FCC*. We also decline to address challenges by commenters to the existing rules not under review in this *Second NPRM*. Commenters’ challenges to our authority fall into two categories. First, a number of commenters seek to reopen issues already decided in the *First R&O* under the guise of challenging our authority to implement the proposals at issue in the *Second NPRM*. As discussed in more detail below, the Commission previously established in the *First R&O* that licensees must inform their lessees about the foreign sponsorship identification rules and inquire about the status of lessees and those further back in the chain of production and distribution of programming. These issues were not the subject of the *Second NPRM*. Second, commenters also challenge the Commission’s authority to adopt the specific proposals contained in the *Second NPRM*. Below, we first decline to address challenges to those issues previously settled in the *First R&O* before addressing challenges to our authority to establish the requirements established in the instant order.

32. *Challenges to Previously Settled Issues in the First R&O.* More than two years after the Commission adopted the foreign sponsorship identification rules, and after themselves challenging a portion of those rules in court, NAB/MMTC now dispute various requirements that are fundamental to the foreign sponsorship identification rules that the Commission established in the *First R&O*. For example, NAB/MMTC contest the requirement that licensees must inform their lessees of the foreign sponsorship identification rules—a rule established in the *First R&O*.⁷⁹ Similarly, NAB/MMTC now challenge the previously established requirement that a licensee inquire of its lessee whether it has knowledge of anyone further back in the chain of producing/distributing the programming who qualifies as a foreign governmental entity and has provided some type of inducement to air the programming.⁸⁰

⁷⁸ See NAB/MMTC Comments at 45-47 (arguing that an OPIF filing requirement for all certifications serves neither the goals of the foreign sponsorship rules nor the public file rules); Gray TV Comments at 9-10 (contending that an OPIF filing requirement for all certifications would fail “to advance—and indeed directly interfere[] with—the goals underlying either the FSID rules and the public file rules”); Networks Reply at 9 (predicting that the OPIF filing requirement for all certifications would create “unintended circumstances that do not effectively advance [the Commission’s] goals”). While we disagree with commenters’ assertions that retaining the certifications/screenshots does not comport with the goals of the OPIF, which is to keep all relevant broadcaster documents in one easily accessible location and available to the public, we have chosen to modify our proposal here to provide greater flexibility to broadcasters under these unique circumstances.

⁷⁹ NAB/MMTC assert that “broadcasters do not have any duty to inform lessees of regulatory requirements . . . [.]” and, thus, they urge the Commission to “strike the requirements placing upon the broadcaster the duties of ‘[i]nforming the lessee of the foreign sponsorship disclosure requirement in section (j) above.’” NAB/MMTC Comments at 8; *but see First NPRM*, 35 FCC Rcd at 12124, para. 49 (asking “[w]hat else might the licensee do to ensure that the brokering party and those from whom this entity receives programming are aware of the disclosure obligation?”); *First R&O*, 36 FCC Rcd at 7720-21, para. 38 (stating that as “a threshold matter, we expect the licensee to convey clearly to the prospective lessee that there is a Commission disclosure requirement regarding foreign government-provided programming”); 47 CFR § 73.1212(j)(3)(i) (stating that the licensee must inform the lessee about the foreign sponsorship disclosure requirement).

⁸⁰ See NAB/MMTC Comments at 7 (claiming that “the *proposed* rules would require licensees to inquire whether the lessee is aware of any individual/entity further back in the chain of production or distribution of the programming that may qualify as a foreign governmental entity and has provided compensation . . .”) (emphasis added). These are not, however, newly “proposed” rules, as this inquiry requirement was proposed in the *First NPRM* and codified in the *First R&O*. See *First NPRM*, 35 FCC Rcd at 12125, para. 49 (asking whether “it is reasonable to require that the licensee will inquire whether the brokering party and *any entity from whom the brokering party receives programming* qualifies as a ‘foreign governmental entity’”) (emphasis added); *First R&O*, 36 FCC Rcd at 7719, 7721, paras. 35, 39; 47 CFR § 73.1212(j)(3)(iii) (establishing the requirement that a licensee should inquire of its lessee whether the lessee knows if anyone involved in the production or distribution of the
(continued....)

The Commission sought comment on these requirements in the *First NPRM* and adopted them in the *First R&O* without reopening them in the *Second NPRM*, in which we made clear that we only intended to address the issues vacated by the Court. We decline to revisit additional issues here with respect to the existing rules.⁸¹ If NAB/MMTC wished to challenge such authority, they had the opportunity to do so in the earlier administrative proceeding and in the *NAB v. FCC* litigation, and should have done so then.

33. The *Second NPRM* never suggested that the issues NAB/MMTC seeks to reopen were under consideration in the instant proceeding. If anything, the *Second NPRM* spoke of the obligations to inform and make inquiries as established requirements.⁸² The questions posed in the *Second NPRM* regarding the Commission's authority concerned the authority to establish the requirements proposed in *that* NPRM and no other.⁸³ Nothing in the *Second NPRM* suggested that the Commission intended to re-evaluate a licensee's duty to inform its lessee of the foreign sponsorship identification rules and make certain inquiries of the lessee.

34. *Compliance with Section 317 of the Act.* We conclude that we have ample authority to implement the certification and screenshot requirements established in this order based on section 317 of the Act. The certification and screenshot options described above fit squarely within the *NAB v. FCC* court's determination that section 317(c) "imposes a duty of inquiry, not a duty of investigation."⁸⁴ Licensees' certifications consist of nothing more than a reduction to written form of those inquiry requirements established in the *First R&O* and codified at section 73.1212(j)(3).⁸⁵ These inquiries are directed to the lessee and concern lessee's *own status* and its knowledge of those further back in the chain of producing/distributing the programming.⁸⁶ The screenshot alternative laid out in this order retains in place all the previously established requirements, except for the vacated verification requirement. The

(Continued from previous page)

programming that will be aired pursuant to the lease, or a sub-lease, qualifies as a foreign governmental entity and has provided some type of inducement to air the programming). Similarly, at this late juncture, NAB/MMTC also contest the previously established requirement that lessees must inform their licensees about their knowledge of *any* payments (or other valuable consideration) associated with the programming such as to trigger a disclosure under the foreign sponsorship identification rules. *See* NAB/MMTC Comments at 8 (stating that "[a]lthough NAB and MMTC did not initially closely examine the FCC's view that it had the power to regulate lessee disclosures, more careful statutory analysis reveals that the Commission lacks such power"). *But see First NPRM*, 35 FCC Red at 12125, para. 51 (stating that "consistent with the statute, we believe that it is incumbent on brokers to disclose to the licensee their knowledge of any payment provided by, or unpaid programming received as an inducement from, one of the entities or individuals that trigger the sponsorship identification requirement laid out in this NPRM"); *First R&O*, 36 FCC Red at 7726, para. 46 (stating that "we adopt the tentative conclusion contained in the NPRM that . . . impose a duty on the broker/lessee to inform the licensee to the extent it is aware of any payments . . . associated with the programming such as to trigger a disclosure").

⁸¹ *See Second NPRM*, 37 FCC Red at 12009, para. 12 (noting that with the *Second NPRM* the Commission sought to strengthen the foreign sponsorship identification rules due to the gap left by the D.C. Circuit's vacatur).

⁸² *See id.* (stating that "the foreign sponsorship identification rules require licensees to notify their lessees of the disclosure requirement pertaining to foreign government-provided programming at the time of entering into a lease agreement or at renewal of such an agreement" and that "the licensee must inquire whether the lessee is a foreign governmental entity and if the lessee is aware of any individual/entity further back in the chain of production or distribution of the programming . . .").

⁸³ *See, e.g., id.* at 12016-17, para. 28 (commencing at section titled "Proposed Certification Requirement Is Consistent with the Act and *NAB v. FCC*," in which the Commission provides an analysis and its tentative conclusion regarding its authority to impose a certification requirement).

⁸⁴ *NAB v. FCC*, 39 F.4th at 820.

⁸⁵ 47 CFR § 73.1212(j)(3).

⁸⁶ This requirement is consistent with NAB/MMTC's own statement that "the disclosure duties are narrowly limited to information that the supplier knows or that has been disclosed to it." NAB/MMTC Comments at 10.

only difference being that previously, if the lessee stated it was not a U.S.-based foreign media outlet, or a FARA agent, the licensee had to verify this answer by reviewing the DOJ's FARA database and the Commission's U.S.-based foreign media outlet report. In lieu of this, the licensee will now ask the lessee for screenshots depicting its search results of the DOJ's FARA database and the Commission's U.S.-based foreign media outlet report.

35. NAB/MMTC argues that licensees only have a duty to inquire.⁸⁷ Our rules require only that a licensee inquire of the lessee (i.e., the program's sponsor); they do not make licensees "responsible for the truth of the information they obtain" from lessees by imposing independent investigatory or other obligations.⁸⁸ With regard to a licensee's certification option, we are merely requiring that the inquiry be in written form. And, consistent with the court's determination that the statute is narrowly drawn, the requirements adopted in the instant order allow licensees to carry leased programming even in the absence of actually *obtaining* foreign sponsorship information from the lessee. However, in such situations, if a question arises later about whether a disclosure was needed, the licensee must be able to demonstrate, in the event of a fact-specific inquiry by the Commission, that it exercised reasonable diligence in seeking the information. The rules we are adopting here will help identify the types of effort necessary for licensees' to demonstrate reasonable diligence in carrying out their "duty of inquiry." Hence, we determine that section 317 gives us ample authority to require licensees to ask their lessees for certifications or screenshots in order to determine whether a foreign sponsorship disclosure is needed.⁸⁹

36. We disagree with NAB/MMTC's view that section 317(b), when read in the context of the entirety of sections 317 and 507, as well as the legislative history associated with the passage of these provisions, suggests that section 317(b) should be read as a brake on the licensee's duty to make inquiries pursuant to section 317(c).⁹⁰ Unlike section 317(c), which imposes an obligation upon licensees to exercise reasonable diligence to obtain information, section 317(b) imposes an obligation on the station to air an appropriate disclosure if it receives a report that payments were made to employees, or persons involved in the production or preparation of the program, in regard to material included in the programming to be broadcast by the station.⁹¹ We do not interpret section 317(b) to be a limit on the inquiries the licensee must make pursuant to section 317(c). Moreover, NAB/MMTC's interpretation would contravene our mandate under section 317(e) "to carry out" the statute's provisions.⁹²

37. *Compliance with Administrative Procedure Act (APA).* We have clearly and consistently articulated that licensees' responsibilities as trustees of the nation's airwaves include sponsorship identification based on the fundamental "principle that the public has the right to know whether the

⁸⁷ See *id.* at 6. We note that NAB/MMTC's assertion contradicts its own statement two sentences later that "[t]he Commission may prescribe what counts as reasonable diligence to obtain information, but may not require that information or certifications actually be obtained from a lessee." *Id.*; see also Letter from Rick Kaplan, Chief Legal Officer and Executive Vice President, Legal and Regulatory Affairs, NAB, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 20-299, at 1-2 (filed Mar. 7, 2024) (arguing that the Commission lacks statutory authority to require broadcasters to obtain anything, including certifications, from lessees). Our new regulations do not mandate that a licensee obtain a certification from its lessee, but do require a licensee to ask its lessee for certifications/screenshots as a way of responding to the licensee's inquiries.

⁸⁸ *NAB v. FCC*, 39 F.4th at 820 (emphasis added).

⁸⁹ NAB/MMTC argues that the Commission also lacks the power to impose certification or screenshot requirements on lessees. NAB/MMTC Comments at 8-14. But the revised rule imposes no requirements on lessees. Rather, it requires licensees to request a certification or screenshots from lessees.

⁹⁰ See *id.* at 7 (asserting that "[a] broadcaster only has a duty to make an announcement if it receives a report 'required by Section 508 of this title'").

⁹¹ 47 U.S.C. § 317(b).

⁹² 47 U.S.C. § 317(e).

broadcast material has been paid for and by whom.”⁹³ NAB/MMTC asserts that the proposed rules violate the APA, arguing that we have “failed to show a rational connection between facts on the ground and the policies . . . proposed.”⁹⁴ NAB/MMTC claims we have only identified “a tiny number of instances” of “foreign government sponsored programming[,]” and one of the “station[s] cited in the [First R&O] . . . as airing foreign propaganda is in fact no longer doing so.”⁹⁵ These assertions miss the point that almost by definition when foreign governmental sponsorship is *undisclosed*, neither we nor the American public will know about it. Moreover, federal agencies have authority for “precautionary or prophylactic responses to perceived risks” based on documented abuses.⁹⁶ Furthermore, foreign governments are *continuing* to disseminate programming over U.S. broadcast media and, thus, there is a continued need for ensuring that we have robust foreign sponsorship identification rules.⁹⁷ Hence, it is reasonable for us to conclude that the reports of foreign government attempts to disseminate programming via broadcast television and radio call for targeted action to ensure audiences are aware when a foreign government or its representatives are seeking to persuade the American public. Regardless of the number of reported instances of undisclosed foreign government-provided programming, Congress⁹⁸ and the Commission have consistently expressed their strong interest in the identification of foreign government sponsored programming on the airwaves.⁹⁹

38. In response to commenters’ concerns that the rules proposed in the *Second NPRM* would be overly burdensome for broadcasters, we emphasize how limited our action is in this order.¹⁰⁰ We are replacing the vacated name search requirement with a certification requirement and an alternative screenshot approach, which is essentially the name search requirement in a form that comports with the statute as interpreted by the D.C. Circuit in *NAB v. FCC*. We also note that we have significantly modified our initial proposals with regard to these new rules. For example, NAB/MMTC criticizes what

⁹³ Advertising Council Request for Declaratory Ruling or Waiver Concerning Sponsorship Identification Rules, Order, 17 FCC Rcd 22616, 22620, para. 15 (2002) (citations omitted).

⁹⁴ NAB/MMTC Comments at 32-33 (objecting to the Commission’s “further sweeping mandates” regarding the program leasing process and required certifications from licensees and lessees).

⁹⁵ *Id.* Using similar reasoning in support of its argument that all commercial advertising and faith-based programming should be exempted, NAB/MMTC asserts that the rules, as applied to these programming types, are arbitrary and capricious in contravention of the APA. *Id.* at 34-35, 39-40. Other commenters make similar APA-related arguments. See Gray TV Comments at 5-7 (arguing that the Commission has failed to identify facts “demonstrating that enhanced requirements are needed to address an actual regulatory problem”); Alpha Media et al. Reply at 5-6 (arguing that without further evidence of a regulatory problem, the *Second NPRM* proposals to the foreign sponsorship identification rules would “run afoul of the [APA’s] reasoned decision-making requirements”).

⁹⁶ See *Chamber of Commerce of U.S. v. SEC*, 412 F.3d 133, 141 (D.C. Cir. 2005) (quoting *Certified Color Mfrs. Ass’n v. Mathews*, 543 F.2d 284, 296 (D.C. Cir. 1976)).

⁹⁷ See *supra* note 2.

⁹⁸ See, e.g., Press Release, Congresswoman Anna G. Eshoo, Rep. Eshoo Applauds FCC Foreign Sponsorship Identification Rules (Mar. 15, 2022), <https://eshoo.house.gov/media/press-releases/rep-eshoo-applauds-fcc-foreign-sponsorship-identification-rules>.

⁹⁹ See *First NPRM*, 35 FCC Rcd at 12100-05, paras. 4-11 (highlighting the long history of Congress’ and the Commission’s involvement in establishing rules for sponsorship identification on broadcast programming); see also *FCC Warns About Broadcast of Controversial Foreign Matter Without Indicating Foreign Sponsorship*, Public Notice, 40 FCC 136 (1962) (articulating that the “[A]ct further places an obligation on Commission licensees to exercise reasonable diligence to obtain, from those with whom they deal directly in connection with any program, information to enable them to make the required announcement”).

¹⁰⁰ See, e.g., NAB/MMTC Comments at 32-33 (arguing that the proposals under the *Second NPRM* would create unnecessary burdens for broadcasters, including the revision of existing leasing processes and uploading of certifications in their public files). NAB/MMTC also argue that the existing rule is unduly burdensome. *Id.* at 14-19. We decline to address arguments related to the existing rules. See *supra* paras. 32-33.

it describes as “lengthy certifications containing [Commission]-specified language.”¹⁰¹ As discussed above, the standardized certification language appended to this order has been reduced significantly and now provides a simple check-box format. Additionally, application of the Commission’s standardized certification language is now one of two options available to licensees. Similarly, in response to commenter objections about uploading certifications and other documentation to their OPIFs,¹⁰² we have decided to permit licensees to instead maintain this documentation in their private files if they choose.

39. Moreover, in response to commenter concerns about having to repeat the certification or screenshot requirements on a weekly basis for religious programmers, many of whom may not have the resources to enter into long-term leases,¹⁰³ we have modified the frequency with which the certification/screenshot process must be conducted for such leases.¹⁰⁴ Similarly, concerns about uploading documents associated with short term leases to the OPIFs have been addressed by permitting licensees to retain their certifications/screenshots in their internal files.¹⁰⁵ With regard to NAB/MMTC’s argument that new requirements “would further complicate (i.e., burden) existing business relationships,” we have grandfathered existing leases until they are either up for renewal or the parties enter into a new lease.¹⁰⁶ Finally, we decided not to adopt the *Second NPRM*’s proposal to have licensee’s report to us when lessees have failed to respond to licensee requests for certifications/screenshots.

40. Thus, we have tailored our reasonable diligence requirements appropriately to accomplish our goal of ensuring the accurate detection and disclosure of foreign government-provided programming while also mitigating the burden of compliance on broadcasters. Transparency regarding the source of broadcast programming, particularly foreign government-provided programming, gives broadcast audiences the information they need to fully appreciate the programming. Moreover, an expectation of transparency regarding the source of programming also enhances audience trust in broadcast programming overall—unlike other media, broadcast audiences can feel confident that either their programming is provided by their local licensee, or the source of other programming is being disclosed. Our careful tailoring in the instant order executes a balanced approach, minimizing the overall burden of compliance on broadcasters while concurrently supporting the objectives of accurate detection and disclosure, so as to ensure that the American broadcast audience is informed about the source of its programming.

B. Application of Foreign Sponsorship Identification Requirements to Different Types of Programming

41. Below, we clarify that our foreign sponsorship identification requirements will not apply to advertising for commercial products or services to the extent such advertising falls within the exemption established in section 73.1212(f) of our rules.¹⁰⁷ We also clarify that the foreign sponsorship identification rules will not apply to political candidate advertisements. We do, however, determine that the foreign sponsorship identification rules will apply to issue advertisements and paid PSAs. In addition, we confirm that the rule changes contained in the instant order do not alter our finding in the *First R&O* that the foreign sponsorship identification rules should not apply to noncommercial and educational

¹⁰¹ NAB/MMTC Comments at 32.

¹⁰² *Id.* at 19-20, 45-47; Gray TV Comments at 9-10.

¹⁰³ Gray TV Comments at 12-13.

¹⁰⁴ *See supra* para. 27.

¹⁰⁵ Gray TV Comments at 12-13. We emphasize that independent of our foreign sponsorship identification rules, licensees have a separate obligation, pursuant to section 73.3526(e)(14) of our rules, to file *all* of their leases in their OPIF.

¹⁰⁶ NAB/MMTC Comments at 23. *See infra* Section III.C.

¹⁰⁷ 47 CFR § 73.1212(f).

broadcast stations (NCEs).¹⁰⁸ We decline to create an exemption from our foreign sponsorship identification rules for religious programming and locally produced and/or distributed programming. We also address the application of our rules to section 325(c) permit holders.

1. Advertisements for Commercial Goods and Services

42. We clarify here that the Commission's long-standing sponsorship identification requirements for advertising for commercial products or services, as currently set out in section 73.1212(f) of our rules, also apply in the context of foreign sponsorship identification.¹⁰⁹ We recognize that the use of the term "traditional, short-form advertising" in the *First R&O*¹¹⁰ has inadvertently created unnecessary confusion about the application of the foreign sponsorship identification rules.¹¹¹ While the intention behind using the term may have been to provide greater clarity, due to the resulting confusion, we reverse the Commission's previous decision to use that term and rely instead on the well-established exemption from sponsorship disclosure contained in section 73.1212(f) of our rules.

43. Section 73.1212(f) states that:

"In the case of broadcast matter advertising commercial products or services, an announcement stating the sponsor's corporate or trade name, or the name of the sponsor's product, when it is clear that the mention of the name of the product constitutes a sponsorship identification, shall be deemed sufficient for the purpose of this section and only one such announcement need be made at any time during the course of the broadcast."

44. If broadcast matter for a commercial product or service meets the requirements for a disclosure exemption under section 73.1212(f), the licensee need not make the inquiries contained in section 73.1212(j) of our rules, nor is the licensee required to air the disclosure set forth in section 73.1212(j)(1)(i). For an advertisement to fall under the commercial exemption provisions of 73.1212(f), it must include the sponsor's corporate or trade name, or the name of the sponsor's product, when it is clear that the mention of the name of the product constitutes a sponsorship identification.¹¹² By clarifying

¹⁰⁸ *First R&O*, 36 FCC Rcd at 7716, para. 29.

¹⁰⁹ See Alpha Media et al. Reply at 7 (noting that the existing sponsorship identification rules at section 73.1212(f) already require a clear indication of the sponsor of any advertisement); see also Petition for Clarification at 5 ("For now, it is enough that the Commission clarify that traditional broadcast advertisements of any length are subject to the basic disclosure requirements Section 73.1212 [sic] but not the enhanced requirements of the new rules."). We dismiss the Petition for Clarification as moot because we have addressed the issues raised in that petition in this *Second R&O*.

¹¹⁰ *First R&O*, 36 FCC Rcd at 7715-16, para. 28.

¹¹¹ See Audacy/Beasley Reply at 7 (claiming that the term "traditional short-form advertising" is vague and uncertain); Petition for Clarification at 2 ("The Affiliates Associations are concerned, however, about possible interpretations of the term 'traditional short-form advertising,' which is not defined in the *Report and Order*, and therefore seek clarity regarding the coverage of the rules. Specifically, the Affiliates Associations are concerned that the term 'traditional short-form advertising' could be read narrowly, leaving various common forms of broadcast advertising subject to the new rules."); Letter from Rick Kaplan, Chief Legal Officer and Executive Vice President, Legal and Regulatory Affairs, NAB, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 20-299, at 4-5 (filed Mar. 11, 2024) (NAB Mar. 11, 2024 *Ex Parte*) (arguing that use of the term "traditional short-form advertising" would lead to problems); Letter from Rick Kaplan, Chief Legal Officer and Executive Vice President, Legal and Regulatory Affairs, NAB, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 20-299, at 5 n.13 (filed Mar. 21, 2024) (NAB Mar. 21, 2024 *Ex Parte*) (arguing that the term "traditional, short-form" advertising caused confusion among broadcasters); see also Letter from Rick Kaplan, Chief Legal Officer and Executive Vice President, Legal and Regulatory Affairs, NAB, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 20-299, at 2 (filed Mar. 3, 2023) (seeking an exclusion for advertisements for commercial products or services).

¹¹² 47 CFR § 73.1212(f).

that our foreign sponsorship identification rules do not trump the pre-existing sponsorship identification rules for advertising for commercial products or services, we address the concerns raised by commenters about the terminology used in the *First R&O* with regard to advertising.¹¹³

45. The *Second NPRM* sought comment on whether to establish a “safe harbor” for advertisements of a certain length.¹¹⁴ Based on the record, we find that it is better not to place any minimum or maximum time limit on the broadcast matter that is subject to the exemption established in section 73.1212(f) of our rules. Rather, we are persuaded to follow long-standing Commission precedent that distinguishes programming that is entitled to the disclosure exemption provided by section 73.1212(f).¹¹⁵ We believe that this clarification should address the questions that arose in response to our use of the term “short-form advertising” in the *First R&O*.¹¹⁶ With this additional clarification about the applicability of section 73.1212(f), we believe that we have addressed the concerns raised in the record about the length of various advertisements.

2. Political Candidate Advertisements; Issue Advertisements; Paid Public Service Announcements

46. In addition to the commercial products and services exemption discussed above, we exempt from the foreign sponsorship identification requirements the purchase of broadcast time by or on behalf of legally qualified candidates or their authorized committees pursuant to section 315 of the Act (“political candidate advertisements”).¹¹⁷ The *Second NPRM* sought comment on the scope of the

¹¹³ See NAB/MMTC Comments at 34; Gray TV Comments at 11-12; Affiliates Comments at 4; Audacy/Beasley Reply at 7; CMG Reply at 2-3; Scripps Reply at 4-5; Networks Reply at 6.

¹¹⁴ *Second NPRM*, 37 FCC Rcd at 12018-19, para. 32.

¹¹⁵ In determining whether it is appropriate for a licensee to rely on the section 73.1212(f) exemption from broadcast sponsorship identification in particular instances, the paramount concern is ensuring that the presentation does not, in the absence of such identifications, create viewer or listener ambiguity or confusion as to whether the item is sponsored, or by whom. See *Sinclair Broadcast Group, Inc.*, Notice of Apparent Liability for Forfeiture, 32 FCC Rcd 10853, 10865-68, paras. 28-35 and n.84 (2017) (where the Commission considered and rejected applying a downward adjustment to the proposed forfeitures for 79 30-minute long-form programs sponsored by Huntsman Cancer Institute, which included incomplete sponsorship announcements that did not sufficiently identify Huntsman as the sponsor), *resolved by settlement*, Consent Decree, 35 FCC Rcd 5877 (2020). In *Sinclair Broadcast Group, Inc.*, the Commission rejected the licensee’s argument that identifications were unnecessary due to the section 73.1212(f) exemption, citing the case’s factual background as even more problematic than an earlier precedent where reliance on the 73.1212(f) identification exemption was also unsuccessfully sought by a broadcaster, noting that “[i]n contrast [to *Jacor*], Sinclair’s long-form programs were not merely 60 seconds long, but 30 minutes long, and could not be considered ‘clear’ commercials as Sinclair itself claimed they were part of a [cancer educational awareness campaign].” *Sinclair Broadcast Group, Inc.*, 32 FCC Rcd at 10867, para. 35 n.84. See also *Jacor Broadcasting of Colorado, Inc.*, Memorandum Opinion and Order and Forfeiture Order, 12 FCC Rcd 9969, 9969-70, paras. 2-3 (1997) (rejecting the licensee’s argument that the section 73.1212(f) exemption applied, and affirming the Mass Media Bureau’s finding that, in an advertisement promoting the commercial services and attractions of a tourist town, the area services and attractions were “not obviously intertwined in the public mind” with the actual sponsor, the Chamber of Commerce, so as to obviate listener confusion as to the sponsor’s identity).

¹¹⁶ See Affiliates Comments at 1-2 (noting that while the Commission clarified that the foreign sponsorship identification rules do not apply to “traditional, short-form advertising,” such a category is not defined by the Commission’s rules); NAB/MMTC Comments at 34 (noting that the inclusion of qualifiers “traditional” and “short-form” in reference to advertising has created substantial confusion among broadcasters).

¹¹⁷ Political candidate advertisements, as used herein, refers to “uses” of broadcast stations by legally qualified candidates and are governed primarily by section 315 of the Act, which subjects such uses to specific disclosure requirements. Section 315(b)(2)(C) requires that a television advertisement from a legally qualified candidate include, at the end, a clearly identifiable photographic or similar image of the candidate, and a clearly readable printed statement, identifying the candidate and stating that the candidate has approved the broadcast and that the candidate’s authorized committee paid for the broadcast. Section 315(b)(2)(D) requires that a radio advertisement

(continued....)

advertising exemption adopted in the *First R&O*,¹¹⁸ and several parties in response have asked whether advertisements paid by or on behalf of legally qualified candidates or their authorized committees would be subject to the requirements of the foreign sponsorship identification rules.¹¹⁹ We recognize that there are statutory restrictions as well as Federal Election Commission rules prohibiting contributions to federal, state, and local candidates by “foreign nationals,” a term that is defined to include certain of the entities covered by our foreign sponsorship identification rules, specifically a “government of a foreign country” and a “foreign political party.”¹²⁰ Because of these restrictions, the likelihood that political candidate advertisements would require disclosures under the foreign sponsorship identification rules is greatly limited. Accordingly, we are persuaded to exempt political candidate advertisements from the foreign sponsorship identification requirements.

47. However, issue advertisements and paid PSAs will be subject to the foreign sponsorship identification rules. For purposes of these rules, and consistent with the Act and the Commission’s rules, we clarify that issue advertisements are defined as any paid political matter or matter involving the discussion of a controversial issue of public importance, regardless of the length of the programming.¹²¹ As noted above, we have specifically exempted advertisements made by or on behalf of legally qualified candidates for public office or their authorized committees, and as such they will not be considered issue advertisements. Our exemption from the foreign sponsorship identification rules for political candidate advertisements is based largely on the fact that foreign nationals are prohibited from making contributions to political candidates. Moreover, section 315 of the Act provides a level of transparency regarding the source of funding for political candidate advertising that is not available with issue advertising and paid PSAs because section 315 requires political candidates themselves to state that their authorized committee has paid for the advertisement and that the candidate approves the advertisement.¹²² While NAB notes that foreign nationals also are prohibited from funding certain types of issue advertisements related to elections,¹²³ our definition of issue advertisements for purposes of these rules is broader in scope than the advertisements that NAB references in that our definition encompasses issue advertisements unrelated to elections. Therefore, we cannot be as assured of foreign noninvolvement with respect to issue advertisements. Rather than adopt a definition that attempts to parse the different types of issue

(Continued from previous page) _____

from a legally qualified candidate include, at the end, a personal audio statement by the candidate that identifies the candidate and the office the candidate is seeking, and indicates that the candidate has approved the broadcast. *See* 47 U.S.C. § 315(b)(2)(C) and (D).

¹¹⁸ *Second NPRM*, 37 FCC Rcd at 12018-19, para. 32.

¹¹⁹ *See* NAB Mar. 11, 2024 *Ex Parte* at 5 and NAB Mar. 21, 2024 *Ex Parte* at 5 (arguing that political advertising in the form of candidate and/or issue advertisements, and paid public service announcements, should not be considered leases); Letter from Rick Kaplan, Chief Legal Officer and Executive Vice President, Legal and Regulatory Affairs, NAB, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 20-299, at 1 (filed Mar. 22, 2024) (arguing that the Commission should exempt all advertisements from the foreign sponsorship identification rules in order to not inadvertently include political advertisements within the scope of the definition of “leases”).

¹²⁰ *See* Federal Election Commission, 11 C.F.R. § 110.20(b) (prohibiting foreign nationals from directly or indirectly contributing or donating to any federal, state or local election) and 11 C.F.R. § 110.20(c) (prohibiting foreign nationals from contributing or donating to a political committee of a political party); Department of Justice, 52 U.S.C. § 30121(a) (prohibiting foreign nationals from contributing or donating to federal, state or local elections).

¹²¹ *See* 47 U.S.C. § 317(a)(2); 47 CFR § 73.1212(e).

¹²² *See supra* note 117.

¹²³ Letter from Rick Kaplan, Chief Legal Officer and Executive Vice President, Legal and Regulatory Affairs, NAB, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 20-299, at 3-4 n.14 (filed May 17, 2024) (NAB May 17, 2024 *Legal Authority Ex Parte*) (citing Federal Election Commission, *Foreign Nationals*, <https://www.fec.gov/help-candidates-and-committees/foreign-nationals/>; 52 U.S.C. § 30121; 11 CFR § 110.20).

advertisements, and to ensure maximum transparency for viewers and listeners, we will apply the foreign sponsorship identification rules to all issue advertisements and paid PSAs.

48. We reject NAB's argument that the rules should not cover paid PSAs and issue advertising because the "entire scope of this proceeding is, and has always been, about leases, and not advertisements."¹²⁴ As reflected in the *First R&O*, our definition of "lease" for purposes of the foreign sponsorship disclosure requirements includes "any agreement in which a licensee makes a discrete block of broadcast time on its station available to be programmed by another party in return for some form of compensation."¹²⁵ This definition is sufficiently broad to cover issue advertising and paid PSAs within the scope of the rules. This is a point that regulated entities well understood, as reflected in the filing of a Petition for Clarification.¹²⁶ Certainly, paid PSAs and issue advertising could be used by foreign governmental entities to access U.S. airwaves to persuade the American public. Thus, ensuring that audiences are accurately informed when foreign governmental entities sponsor issue advertisements and paid PSAs is equally important as it is in the case of other types of paid programming. Indeed, section 317 of the Act recognizes the heightened concern about the source of issue advertisements, providing that the Commission shall not be precluded from requiring that an appropriate announcement shall be made at the time of the broadcast of any political program or program involving the discussion of any controversial issue for which any material was furnished as an inducement to the broadcast of such program.¹²⁷ As such, it follows that such advertising should also be vetted for the possible inclusion of material provided by a foreign governmental entity.¹²⁸

¹²⁴ See Letter from Erin Dozier, Senior Vice President & Deputy General Counsel, Legal and Regulatory Affairs, NAB, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 20-299, at 1 (filed May 6, 2024) (NAB May 6, 2024 *Ex Parte*); Letter from Erin Dozier, Senior Vice President & Deputy General Counsel, Legal and Regulatory Affairs, NAB, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 20-299, at 1-2 (filed May 10, 2024).

¹²⁵ *First R&O*, 36 FCC Red at 7715, para. 28.

¹²⁶ See Petition for Clarification at 5 (stating that "[f]or now, it is enough that the Commission clarify that traditional broadcast advertisements of any length are subject to the basic disclosure requirements [of] Section 73.1212 but not the enhanced requirements of the new rules"); *but see* Letter from Timothy Nelson, Brooks Pierce, Counsel for ABC Television Affiliates Association and NBC Television Affiliates, and on behalf of Jason Rademacher, Counsel for FBC Television Affiliates Association and CBS Television Network Affiliates, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 20-299, at 1-3 (filed May 13, 2024) (arguing that the Commission's application of the foreign sponsorship identification rules to issue advertisements and PSAs would not be a foreseeable outcome of the clarification sought in the petition); Letter from Julia Ambrose, Brooks Pierce, Counsel for ABC Television Affiliates Association and NBC Television Affiliates, and on behalf of Jason Rademacher, Counsel for FBC Television Affiliates Association and CBS Television Network Affiliates, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 20-299, at 1 (filed May 20, 2024) (Affiliates May 20, 2024 *Ex Parte*) (objecting to the idea that the Petition for Clarification could serve as a basis for applying the rules to various types of advertising, such as PSAs); Letter from Julia Ambrose, Brooks Pierce, Counsel for ABC Television Affiliates Association and NBC Television Affiliates, and on behalf of Jason Rademacher, Counsel for FBC Television Affiliates Association and CBS Television Network Affiliates, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 20-299, at 1 (filed May 21, 2024) (Affiliates May 21, 2024 *Ex Parte*) (echoing the concerns of the Affiliates May 20, 2024 *Ex Parte*).

¹²⁷ 47 U.S.C. § 317(a)(2).

¹²⁸ In this regard, we note that NAB states that stations currently rely on standardized forms developed by NAB for their political broadcasting agreements. See NAB May 6, 2024 *Ex Parte* at 2, n.5 (citing to NAB's "Political Broadcast Agreement Form for Non-Candidate/Issue Advertisements"). The existence of these forms, and presumably broadcasters' familiarity with when to use them, should simplify the process of complying with the certification option contained in this order. The standardized form could easily be modified to insert the required inquiries, or broadcasters could append certifications or a request for screenshots, as necessary. Contrary to NAB's assertions, there is no conflict between the diligence standards applied in this order with regard to the certifications and what NAB states is the diligence standard in the political broadcasting context. See *id.* at 4 (asking how "the conflicting diligence standards for political advertising and foreign sponsorship identification [would] work

(continued....)

49. Our decision to make the foreign sponsorship identification rules applicable to issue advertisements and paid PSAs falls within the scope of this proceeding.¹²⁹ In the *Second NPRM*, we sought comment on “what criteria the Commission might adopt to distinguish between advertising and programming arrangements for the lease of airtime in a way that does not jeopardize the Commission’s goals in this proceeding.”¹³⁰ Additionally, we sought, and received, comment on whether there are “key characteristics that could assist in distinguishing advertising spots from a lease of airtime on a station”¹³¹ In considering the key characteristics for political candidate advertisements, we determine that the risk of influence by a “government of a foreign country” and a “foreign political party” is minimal. Therefore, such advertisements will be exempt from the foreign sponsorship identification rules. In contrast, as noted above, issue advertisements and paid PSAs do not share those same characteristics. Issue advertisements and paid PSAs cover a wide range of subject matter and are purchased by a wide range of sponsors. As such, there is a risk that contributions to such programming might have been made by foreign governmental entities.

50. Broadcasters allege that applying the rules to issue advertisements and paid PSAs will result in costly burdens that will discourage political advertisers from using traditional media by, among other things, slowing down transaction times for advertisements that rely on quick turnaround times, requiring that signatures be obtained, and necessitating training for advertising sales staff.¹³² We note that this order alleviates a number of the proposed requirements contained in the *Second NPRM*, which broadcasters cite to as examples of burdens that would adversely impact them in the context of issue advertisements and paid PSAs. For example, this order significantly simplifies and shortens the Commission’s standardized certification templates, while also allowing broadcasters to use their own certification language should they choose to do so.¹³³ Based on concerns raised in the record, the certification requirement contained in this order does not require licensees to obtain “signed certifications” as was proposed in the *Second NPRM*, but rather states that if a licensee does not obtain a response, or obtains an inadequate response to its reasonable diligence inquiries, it may continue to air the programming.¹³⁴ To the extent that broadcasters are concerned about whether obtaining signed certifications might delay their ability to meet their current OPIF filing requirements under the political advertising rules, we note that, unlike the proposal in the *Second NPRM*, this order allows broadcasters to

(Continued from previous page) —————
together”). Similar to what NAB states occurs in the political advertising context, this order does not require broadcasters to “obtain” anything, rather only to make the appropriate inquiries. *See id.*; *see also supra* para. 28.

¹²⁹ *See* NAB May 6, 2024 *Ex Parte* at 5 (asserting that addressing the issue of political advertising, which NAB has raised in multiple *ex partes* in this proceeding, is somehow beyond the scope of this proceeding).

¹³⁰ *Second NPRM*, 37 FCC Rcd at 12018-19, para. 32.

¹³¹ *Id.*

¹³² *See, e.g.*, Letter from Rick Kaplan, Chief Legal Officer and Executive Vice President, Legal and Regulatory Affairs, NAB, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 20-299, at 2-6 (filed May 17, 2024) (NAB May 17, 2024 *Burdens Ex Parte*); Letter from Jason Rademacher, Cooley, Counsel for FBC Television Affiliates Association and CBS Television Network Affiliates, and on behalf of Timothy Nelson and Julia Ambrose, Counsel for ABC Television Affiliates Association and NBC Television Affiliates, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 20-299, at 1-2 (filed May 16, 2024); Affiliates May 20, 2024 *Ex Parte* at 1-2; Affiliates May 21, 2024 *Ex Parte* at 1-2.

¹³³ *See* NAB May 17, 2024 *Burdens Ex Parte* at 4 (stating that appending the certification contained in the *Second NPRM* “would triple the number of words on the [PB-19] form”).

¹³⁴ *See supra* para. 26; *see also* NAB May 17, 2024 *Burdens Ex Parte* at 3-4 (stating that requiring broadcasters to “obtain signed certifications from advertisers” would be a “major and unprecedented change” and noting that the PB-19 is frequently not signed).

file their foreign sponsorship identification documentation in their own records.¹³⁵ To the extent that broadcasters wish to keep all such documentation in their OPIFs, they need only supplement their OPIF file after receiving the certifications or screenshots. We find that the modifications made in this order to the proposals contained in the *Second NPRM* address many of the concerns identified by broadcasters regarding the application of the foreign sponsorship identification rules to issue advertisements and paid PSAs. In fact, the foreign sponsorship identification requirements contained in this order are very similar to what NAB itself has suggested should be the requirement. NAB states: “To the extent any such rule is justified, the Commission should simply require broadcasters to add to their standard inquiry the question whether the person who paid for or furnished the leased programming (or, in the case of any political program or any program involving the discussion of a controversial issue, furnished the programming or materials at no or nominal charge as an inducement to the broadcast of such program) is a foreign governmental entity, and, if so, from what country.”¹³⁶ The Commission’s model certification template for lessees to complete, attached as Appendix D, contains only three questions. The first question asks the lessee to tick off in check-box format whether it is a “foreign governmental entity.” The second question asks the lessee if it was provided any inducement to air the programming, and the third asks the lessee to provide the information needed for the broadcaster to air the required disclosure. Based on the above, we conclude that the benefits of applying the foreign sponsorship identification rules to issue advertisements and paid PSAs outweigh the burdens associated with complying with the rules.

3. Programming on Noncommercial and Educational Stations

51. We confirm that this *Second R&O* does not alter our prior finding that the foreign sponsorship identification rules should not apply to NCEs. Public Broadcasters ask us to confirm this position.¹³⁷ As Public Broadcasters state, the Commission prohibits NCEs from receiving compensation in exchange for broadcasting programs (i.e., leased programming).¹³⁸ Because the foreign sponsorship identification rules apply only to leased programming, we concluded in the *First R&O* that any NCEs in compliance with the prohibition “should not fall within the ambit of the foreign sponsorship identification requirements.”¹³⁹ The *First R&O* explained that, “given limitations on the ability of NCE stations to engage in leasing arrangements, we expect that NCE stations will rarely, if ever, face the need to address our foreign sponsorship disclosure rules.”¹⁴⁰ We confirm that none of the rule modifications we adopt today in this *Second R&O* has any effect on our previous conclusion.

4. Religious and Locally Produced and/or Locally Distributed Programming

52. We decline to adopt commenters’ request to create exemptions from the new foreign sponsorship identification rule requirements for certain types of programming.¹⁴¹ NAB/MMTC and other commenters argue that we should narrow the definition of “lease” by granting exemptions for certain categories of programming, specifically religious programming and locally produced and/or locally

¹³⁵ See NAB May 17, 2024 Burdens *Ex Parte* at 4 (stating that, because a broadcaster has only one business day to place information about an advertising order in its OPIF, any delay associated with getting the foreign sponsorship identification certification might delay compliance with political advertising rules).

¹³⁶ See NAB May 17, 2024 Legal Authority *Ex Parte* at 9.

¹³⁷ See Public Broadcasters Comments at 2-3 (expressing concern that NCEs could be swept up by the rules accidentally simply by using innocuous content, such as stock video footage or audio from a foreign tourism board).

¹³⁸ See *id.* at 2; see also 47 CFR § 73.621(d) (providing that a “noncommercial educational television station may broadcast programs produced by or at the expense of, or furnished by persons other than the licensee, if no other consideration than the furnishing of the program and the costs incidental to its production and broadcast are received by the licensee”); 47 CFR § 73.503(c) (providing a parallel rule for noncommercial educational radio stations).

¹³⁹ *First R&O*, 36 FCC Rcd at 7716, para. 29, n.87.

¹⁴⁰ *Id.* at 7716, para. 29.

¹⁴¹ We decline to revisit the existing rule requirements for the reasons set forth above. See *supra* paras. 32-33.

distributed programming.¹⁴² We find that creating the requested exemption for religious programming would not be content-neutral. Additionally, the mere fact that programming is locally produced and/or locally distributed does not signify that the programming lacks material provided by a foreign governmental entity, such that there should be a blanket carveout for locally produced and/or distributed programming from the new foreign sponsorship identification rule requirements.

53. We recognize that religious programming and locally produced and/or locally distributed programming play a vital role in supporting local communities.¹⁴³ Just as important as having access to such programming is knowing the true source of the programming. Commenters make two arguments in favor of their requested exemptions. First, they assert that these exemptions are justified because, based on their inquiries to date, they have not found any foreign governmental entities sponsoring religious programming or locally produced and/or locally distributed programming.¹⁴⁴ Second, commenters claim that our new foreign sponsorship identification rule requirements are so burdensome that, ultimately, they will lead to a reduction in religious and locally produced and/or locally distributed programming.¹⁴⁵

54. With regard to the first argument, we emphasize that “a wave of foreign propaganda on radio and television stations”¹⁴⁶ is not a prerequisite to Commission action, and “[a]n agency need not suffer the flood before building the levee.”¹⁴⁷ Furthermore, providing a consistent set of rules for all leased programming streamlines the process of compliance for licensees and closes the door to any attempt to exploit loopholes that might arise from these exemptions.¹⁴⁸

¹⁴² NAB/MMTC Comments at 38-41; Gray TV Comments at 12; Affiliates Reply at 2-3, 4; Scripps Reply at 5; Alpha Media et al. Reply at 6-7; Audacy/Beasley Reply at 7; CMG Reply at 3; Religious Programmers Reply at 3, 16; Religious Broadcasters Reply at 1-2, 4; NAB Mar. 11, 2024 *Ex Parte* at 1-4.

¹⁴³ See NAB/MMTC Comments at 36 (highlighting the value of locally based programming); Gray TV Comments at 12 (noting how programming featuring local houses of worship provides an important public service to viewers); Alpha Media et al. Reply at 8 (recognizing the value of programming featuring local houses of worship); Religious Programmers Reply at Exh. 1 (providing the declaration of a pastor who attests to the strong ties between the broadcast of his church’s programming and the local community).

¹⁴⁴ NAB/MMTC Comments at 39-40; Gray TV Comments at 12; Scripps Reply at 5-6; Alpha Media et al. Reply at 8; Audacy/Beasley Reply at 7; see also Letter from Bishop L. Spenser Smith, The Impact Nation Fellowship Church, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 20-299, at 1 (filed Feb. 2, 2023) (Smith *Ex Parte*); Letter from Gloria Cooks, Music Ministries, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 20-299, at 1-2 (filed Jan. 30, 2023) (Cooks *Ex Parte*).

¹⁴⁵ See, e.g., NAB/MMTC Comments at 22, 37, 44 (highlighting the short duration, minimal remuneration, and financial constraints associated with most agreements between licensees and religious programmers, or local programmers); CMG Reply at 3 (contending that the rules will further add to administrative costs associated with local programming and thus will reduce offerings of local programming); Religious Broadcasters Reply at 2 (arguing that the rules will make it more difficult for religious programmers to find broadcasting platforms); Religious Programmers Reply at 11-13 (asserting that, given the week-to-week lease arrangements that religious programmers often enter into due to financial constraints, their programming will be at a competitive disadvantage relative to commercial paid-programming); Smith *Ex Parte* at 1-2; Cooks *Ex Parte* at 1-2.

¹⁴⁶ Brief for the United States at 36, *NAB v. FCC*, 39 F.4th 817 (D.C. Cir. 2022) (No. 21-1171), <https://www.fcc.gov/document/brief-fed-respts-nab-v-fcc> (quoting Petitioners’ Opening Brief 43).

¹⁴⁷ *Stilwell v. Off. Of Thrift Supervision*, 569 F.3d 514, 519 (D.C. Cir. 2009).

¹⁴⁸ Scripps and NAB/MMTC contend there is a lack of foreign government-provided “propaganda” on religious or locally produced and distributed programming. Scripps Reply at 5-6; NAB/MMTC Comments at 39. However, this argument misses the aim of our rules. The foreign sponsorship identification rules are intended to notify the public when the source of the programming is a foreign governmental entity. Therefore, as a general principle of law, the content of the broadcast matter for purposes of these rules is irrelevant, and the issue of “propaganda” bears no weight.

55. On the issue of burdens, as described above, the new rule requirements are limited in scope, and we have modified significantly the proposals contained in the *Second NPRM* to address many of the burden concerns noted by commenters. Contrary to NAB/MMTC and Gray TV's assertions, the requirements adopted in this order do not seek to favor or disfavor any particular type of programming.¹⁴⁹ Our rules do not prohibit any form of programming, but do seek to ensure that broadcast audiences are aware of the source of foreign government-provided programming.¹⁵⁰

56. The Religious Programmers contend that our new rule requirements will make it more expensive for licensees to air religious and locally produced and/or distributed programming. Citing *Washington Post v. McManus*,¹⁵¹ the Religious Programmers assert that our new rule requirements equate to "putting a thumb on the scale against a particular type of speech in the competitive market . . ." ¹⁵² in violation of the First Amendment. We find the *McManus* case to be inapposite because that case involved the singling out of "one particular topic of speech" based on its content,¹⁵³ which is not presented by the rules we adopt here.¹⁵⁴

57. In a similar vein, Religious Broadcasters contend that our new rule requirements violate religious programmers' rights to freedom of speech under the Supreme Court's 2018 decision in *National Institute of Family and Life Advocates (NIFLA) v. Becerra*.¹⁵⁵ In that case, the Supreme Court held that to protect the petitioners' rights to freedom of speech, disclosure requirements must not be unduly burdensome, remedy a harm that is purely hypothetical, or extend more broadly than reasonably

¹⁴⁹ See NAB/MMTC Comments at 25 (arguing that "[b]eyond chilling speech, the existing and proposed rules also burden religious exercise under the First Amendment"); Gray TV Comments at 8 (arguing that the certification requirements "could also cause broadcasters to forego relationships with suppliers of programming that they view as delivering highly valuable content to viewers—including religious programming []—in favor of programming that they view as less responsive to viewer needs or that can be obtained more easily from sophisticated parties that are familiar with the FSID rules").

¹⁵⁰ NAB/MMTC also asserts in the context of arguing for an exemption for religious programming that our foreign sponsorship identification rules, as applied to religious programming, violate the PRA. NAB/MMTC Comments at 40, n.76. According to NAB/MMTC, because "there is no evidence that religious programming leases may contain foreign propaganda," the information collections associated with the foreign sponsorship identification rules do not meet the PRA standard of being "necessary for the proper performance of the functions of the Commission." *Id.* We have determined, however, that our new rule requirements should be applied to all broadcast licensees, to fulfill our existing statutory duty to inquire about the source of programming, which contains no exemption for religious programming lessees or any other designation. We also have determined that the new rules are a minimal extension of the long-standing sponsorship identification rules and in no way burden broadcasters' choice of leased programming or chill editorial discretion in favor of more sophisticated programmers. The Office of Management and Budget (OMB) will consider the new rule requirements under the PRA standards, including whether the information collection requirements are "necessary for the proper performance of the functions of the [Commission], including whether the information shall have practical utility . . .," see 44 U.S.C. § 3508, separately in the PRA review process. Moreover, we note that our current foreign sponsorship identification rules received OMB approval pursuant to the PRA.

¹⁵¹ *Washington Post v. McManus*, 944 F.3d 506 (4th Cir. 2019).

¹⁵² See Religious Programmers Reply at 13-14 (citing *McManus*).

¹⁵³ *McManus*, 944 F.3d at 513.

¹⁵⁴ In fact, the adoption of commenters' approach *would make* our rules content-based, by only applying the rules to non-religious programming. In addition, the *McManus* court distinguished newspapers from broadcasters, noting that the "broadcast industry has always held a distinctive place in First Amendment law on the ground that '[b]roadcast frequencies are a scarce resource [that] must be portioned out among applicants.'" *McManus*, 944 F.3d at 519 (quoting *FCC v. League of Women Voters of Cal.*, 468 U.S. 364, 377 (1984)).

¹⁵⁵ See Religious Broadcasters Reply at 3 (citing *National Institute of Family and Life Advocates v. Becerra*, 138 S.Ct. 2361, 2367 (2018) (*NIFLA v. Becerra*)).

necessary.¹⁵⁶ We find this case, imposing a medical disclosure requirement, to be inapposite. We find that Religious Broadcasters' comparison to *Becerra* is substantively misplaced because the type of disclosure we require is wholly content-neutral. The *Becerra* case involved a content-based disclosure requirement, which was found to be an impermissible regulation of speech because the required disclosures in that case altered the content of petitioners' speech by requiring them to post information contrary to the messages they wished to convey.¹⁵⁷ By contrast, our new requirements do not alter the content of the programming, nor do they prohibit or limit the ability of the licensee or lessee to air the programming or to convey whatever message is intended. The public has a legitimate interest in knowing the source of programming that is furnished by a foreign governmental entity, and broadcasters have demonstrated for years their capability of airing similar disclosures for programming sponsored by U.S. lessees. As described below, public awareness of the source of broadcast programming is a long-recognized compelling government interest, and the modifications we have made in response to commenter concerns ensure that our rules are narrowly tailored.¹⁵⁸

58. The new foreign sponsorship identification rule requirements we adopt today comport with the strictures of the First Amendment of the U.S. Constitution. The rules at issue here are content-neutral—they apply to broadcast programming provided by any foreign governmental entity, regardless of whether the entity's interests are directly at odds with the United States.¹⁵⁹ Accordingly, with respect to broadcasters, the disclosure requirements in question are subject to review under "heightened rational basis," the less rigorous standard applied to content-neutral restrictions on that medium, and thus, as explained below, will be upheld if reasonably tailored to satisfy a substantial government interest.¹⁶⁰

¹⁵⁶ *NIFLA v. Becerra*, 138 S.Ct. at 2377.

¹⁵⁷ *Id.* at 2378.

¹⁵⁸ Religious Broadcasters also contend that our new rule requirements contravene the strictures of the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb3(a), which prohibits federal agencies from substantially burdening "a person's exercise of religion even if the burden results from a rule of general applicability, except" when the government action "is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest." See Religious Broadcasters Reply at 3 (quoting 42 U.S.C. § 2000bb *et seq.*). As described above, the principle that the public has a right to know the identity of those that solicit their support is a long-standing tenet of broadcast regulation, and the rules we adopt today are merely an extension of the sponsorship identification rules that have been in place for decades.

¹⁵⁹ See *Turner Broad. Sys. Inc. v. FCC*, 512 U.S. 622, 658 (1994) (speaker-based laws are suspect "when they reflect the Government's preference for the substance of what the favored speakers have to say [or aversion to what the disfavored speakers have to say]"). We disagree with NAB's assertion that our differentiation between political candidate advertisements and issue advertisements is a content-based distinction that violates the First Amendment. See NAB May 6, 2024 *Ex Parte* at 5 (arguing that "any attempt to delineate between 'candidate' ads and 'issue' ads would violate the First Amendment as a content-based restriction on speech"). Contrary to NAB's assertion, we distinguish between political candidate advertisements and issue advertisements/paid PSAs not based on their content but instead based on the different regulatory regimes applicable to these different advertisements. See *supra* para. 46 (explaining that federal law limits contributions by foreign nationals in connection with political candidate advertisements and that political candidate advertisements are subject to existing statutory on-air disclosure requirements set forth in section 315 of the Act).

¹⁶⁰ *Ruggiero v. FCC*, 317 F.3d 239, 247 (D.C. Cir. 2003) (en banc) (explaining that this standard represents a middle ground "between . . . minimal scrutiny . . . and . . . intermediate scrutiny . . ."). Even if the regulations here were found to be content based, they would be subject to the lesser standard of intermediate scrutiny. See *League of Women Voters*, 468 U.S. at 380-81 (invalidating under the First Amendment a statute forbidding any non-commercial educational station that receives a grant from the Corporation for Public Broadcasting to "engage in editorializing"). While a content-based regulation of speech is typically subject to strict scrutiny, the Supreme Court has described First Amendment review of broadcast regulation as "less rigorous" than in other contexts based on the spectrum scarcity rationale. See *Turner*, 512 U.S. at 637 (citing *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 388-89 (1969); see also *League of Women Voters*, 468 U.S. at 377 ("our cases have taught that, given spectrum scarcity, those who are granted a license to broadcast must serve in a sense as fiduciaries for the public by presenting (continued....)

Even assuming that intermediate scrutiny applies, we conclude that our new rules satisfy review under this standard. As set forth below, we determine that the government's interest in ensuring that audiences are accurately informed when foreign governmental entities sponsor broadcast programming is substantial and the rules are both "reasonably tailored" to further that interest.

59. The Commission's application of section 317 for over eighty years, as well as Congress's 1960 amendments thereto, demonstrate a strong interest in requiring accurate sponsorship identification.¹⁶¹ Complete and accurate disclosure regarding the source of programming is critical to allowing audiences to determine the reliability and credibility of the information they receive.¹⁶² We consider such transparency to be a critical part of broadcasters' public interest obligation to use the airwaves with which they are entrusted to benefit their local communities. Rather than abridging broadcasters' freedom of speech rights, we find that disclosure of sponsorship promotes First Amendment and Communications Act goals by enhancing viewers' ability to assess the substance and value of foreign government-provided programming, thus promoting an informed public and improving the quality of public discourse.¹⁶³ Our new requirements further the government's interest by ensuring that licensees have met their duty of inquiry and thereby will ensure accurate sponsorship identification.

60. In the instant order, we have also modified the proposals contained in the *Second NPRM* to address concerns raised in the record.¹⁶⁴ We have simplified the proposed certification requirement, by providing a shorter model certification template that follows a familiar check-box approach and by allowing licensees to use their own certifications, as long as those certifications include the information and queries laid out in the *First R&O*. In addition, licensees may choose whether to use either the certification or screenshot approach. Moreover, as noted above, in response to commenter concerns about having to frequently repeat the reasonable diligence process for short term leases, in those situations where a licensee and the same lessee enter into recurring leases for the same programming over a one year period, we will require the licensee to only exercise its reasonable diligence obligations, including the certification/screenshot process, once per year. We believe the new foreign sponsorship identification rule requirements that we adopt today will be evaluated under, and will fully withstand, the scrutiny applied to content-neutral restrictions on broadcasters. Notably, our rules do not ban any type of speech but merely require a procedure for documenting reasonable diligence inquiries in support of the factual disclosure of the source of certain of programming. Given this content-neutral function, the existing

(Continued from previous page) —————

'those views and voices which are representative of [their] community and which would otherwise, by necessity, be barred from the airwaves') (quoting *Red Lion*, 395 U.S. at 389). Some judges have, however, questioned the validity of the scarcity doctrine as justification for less rigorous First Amendment scrutiny of content-based regulation of broadcasters. Cf. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 532-535 (2009) (Thomas, J., concurring) (questioning the validity of *Red Lion*).

¹⁶¹ *First R&O*, 36 FCC Rcd at 7703, para. 3 (stating the Commission properly balances "considerations of the First Amendment with the need for consumers to be sufficiently informed as to the origin of material broadcast on stations licensed on their behalf in the public interest").

¹⁶² *First NPRM*, 35 FCC Rcd at 12127-29, paras. 55-57.

¹⁶³ *Id.* We note that Congress has recognized the critical importance of accuracy and transparency with regard to foreign government-provided programming in a number of contexts, including by its recent action extending the national security concerns underlying FARA to require the Commission to provide annual reports on U.S.-based foreign media outlets, defined by reference to FARA's foreign agent definitions, airing programming in the United States. See 47 U.S.C. § 624. Further, as explained in the *First NPRM*, foreign governments increasingly are making use of U.S. airwaves to promote their policies and viewpoints to the American public, thereby making the government's interest in accuracy and transparency regarding broadcast of foreign government-provided programming even more compelling. *First NPRM*, 35 FCC Rcd at 12128, para. 56.

¹⁶⁴ For example, in response to commenter concerns, the requirements imposed in this order do not require licensees to upload their certifications/screenshots to their OPIFs and the frequency with which certifications/screenshots must be obtained have also been modified for short-term leases. See *supra* paras. 27, 30.

tailoring, and our strong objective of accurate detection and disclosure of foreign government-provided programming, our rules comply with the First Amendment as they are reasonably tailored to satisfy substantial government interests.¹⁶⁵ And even if a court were to apply intermediate scrutiny, as opposed to heightened rational basis, we believe that our revised rules still would withstand such a stricter form of judicial review. The Commission has repeatedly stated the importance of promulgating rules that are substantially related to the agency's objective of ensuring that audiences are informed about the source of programming provided by foreign governmental entities.¹⁶⁶ Ultimately, regardless of whether rational heightened basis or intermediate scrutiny is applied, we conclude that our new foreign sponsorship identification rule requirements satisfy the First Amendment.

5. Programming on Stations with Section 325(c) Permits

61. As explained in the *Second NPRM*, “a section 325(c) permit is required when an entity produces programming in the United States but, rather than broadcasting the programming from a U.S.-licensed station, transmits or delivers the programming from a U.S. studio to a non-U.S. licensed station in a foreign country for broadcast by the foreign station into the United States.”¹⁶⁷ In the *First R&O*, we added paragraph (k) to section 73.1212, which makes section 325(c) permittees subject to foreign sponsorship identification requirements.¹⁶⁸ In the *Second NPRM*, we explained that given the nature of the section 325(c) permits, pursuant to section 73.1212(k) of our rules, the foreign sponsorship identification disclosure requirements apply to any programming permitted to be delivered to foreign broadcast stations under an authorization pursuant to section 325(c) of the Act if the material has been: (i) sponsored by a foreign governmental entity; (ii) paid for by a foreign governmental entity; (iii) furnished for free by a foreign governmental entity to the section 325(c) permit holder as an inducement to air the material on the foreign station; or (iv) provided by the section 325(c) permit holder to the foreign station where the section 325(c) permit holder is a foreign governmental entity.¹⁶⁹ Where the section 325(c) permit holder itself is a foreign governmental entity, the disclosure requirements apply to all programming provided by the permit holder to a foreign station.¹⁷⁰

62. In the *Second NPRM*, we noted that applying foreign sponsorship identification disclosures to programs permitted to be delivered to foreign broadcast stations under an authorization pursuant to section 325(c) of the Act aims to level the playing field between programming aired by non-U.S. and U.S. broadcasters in the same geographic area within the United States and to eliminate any

¹⁶⁵ See, e.g., *Sorrell v. IMS Health*, 564 U.S. 552, 563-64 (2011). Our foreign sponsorship identification rules do not act as a ban on any type of programming nor prohibit participation in public discussion; rather, the rules merely require a factual statement regarding the sponsor of the programming. See *Virginia Pharmacy Bd v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 771 (1976) (defining “content-neutral” speech regulations as “those that are justified without reference to the content of the regulated speech”).

¹⁶⁶ See *First R&O*, 36 FCC Rcd at 7734-35, para. 69 (stating that the Commission has a “compelling” interest in ensuring broadcast audiences are informed about programming sponsored by foreign governmental entities and that the adopted reasonable diligence requirements are narrowly tailored and the least restrictive means of accomplishing that interest); see also *First NPRM*, 35 FCC Rcd at 12127, para. 55 (arguing that the adopted requirements would satisfy any level of scrutiny under the First Amendment).

¹⁶⁷ *Second NPRM*, 37 FCC Rcd at 12015, para. 25; see also 47 U.S.C. § 325(c). Section 325(c) of the Act states: “No person shall be permitted to locate, use, or maintain a radio broadcast studio or other place or apparatus from which or whereby sound waves are converted into electrical energy, or mechanical or physical reproduction of sound waves produced, and caused to be transmitted or delivered to a radio station in a foreign country for the purpose of being broadcast from any radio station there having a power output of sufficient intensity and/or being so located geographically that its emissions may be received consistently in the United States, without first obtaining a permit from the Commission upon proper application therefor.”

¹⁶⁸ *First R&O*, 36 FCC Rcd at 7733-34, 7740, paras. 66-68, Appx. A.

¹⁶⁹ *Second NPRM*, 37 FCC Rcd at 12015, para. 25; 47 CFR § 73.1212(k).

¹⁷⁰ *Second NPRM*, 37 FCC Rcd at 12015, para. 25.

potential loophole in our regulatory framework with respect to the identification of foreign government-provided programming that may result from this proceeding.¹⁷¹

63. In the *Second NPRM*, we further stated that the foreign sponsorship identification rules apply to all programming provided by a section 325(c) permit holder to a foreign broadcast station, regardless of whether the programming is provided as part of a lease agreement or through some other arrangement.¹⁷² As we explained, “[i]n the context of section 325(c) permits, leasing of airtime is not a relevant prerequisite for application of the foreign sponsorship identification rules because section 325(c) permit holders’ foreign broadcast arrangements can be struck in various ways, not just through the leasing of airtime, under the laws of foreign countries.”¹⁷³ We further explained that in this context, “our rules ensure that no material provided by a permit holder that is a foreign governmental entity is broadcast into the United States through the use of section 325(c) permits without the appropriate disclosures.”¹⁷⁴ To provide greater clarity regarding the application of these disclosure requirements in the context of programming subject to a section 325(c) permit, we proposed to modify section 73.1212(k) and sought comment on these proposed changes and clarifications.¹⁷⁵ We also sought comment on the need to apply the reasonable diligence requirements proposed in the *Second NPRM* to section 325(c) permit holders given that they presumably have direct knowledge of whether they are a foreign governmental entity.¹⁷⁶ We noted that, regardless, “even if a permit holder is not itself a foreign governmental entity, the disclosure requirements apply to any part of its programming that is sponsored, paid for, or furnished for free by a foreign governmental entity either directly to the permit holder or to an entity farther back in the content production chain.”¹⁷⁷ To address such situations, we sought comment on that section 325(c) permit holders should be required to exercise reasonable diligence to determine when a disclosure is needed. In addition, we sought comment on whether section 325(c) permit holders should be required to place the certifications that were proposed in the *Second NPRM*, or other due diligence documentation, in the International Bureau Filing System (IBFS) and if so, for how long.¹⁷⁸

64. We received no comments in response to the *Second NPRM* regarding the programming on stations with 325(c) permits. Accordingly, we will adopt the proposed changes and clarifications proposed in the *Second NPRM*. We reconfirm that it is the responsibility of the section 325(c) permit holder to ensure that the foreign station broadcasts the disclosure where required along with the programming provided by the permit holder. We remind section 325(c) permit holders that they are obligated to place copies of any disclosures made, along with required related information as described in section 73.1212(k), in the publicly available International Communications Filing System (ICFS).

C. Existing Leases

65. Any lease agreements that are entered into, or that are renewed, on or after the effective date of the revisions to section 73.1212(j)(3) adopted in this *Second R&O* must comply with those requirements. Commenters ask that we grandfather all lease agreements already in place at the time that the new rules go into effect.¹⁷⁹ NAB/MMTC states that any “lessee that has already certified it is not a

¹⁷¹ *Id.* at para. 26. See also *First NPRM*, 35 FCC Rcd at 12126, para. 53.

¹⁷² *Second NPRM*, 37 FCC Rcd at 12016, para. 26.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.* at 12016, para. 27.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ NAB/MMTC Comments at 23, n.34; Gray TV Comments at 7-8; CMG Reply at 4.

foreign governmental entity should not have to do so again unless or until it enters a new lease.”¹⁸⁰ We agree with NAB/MMTC and have determined that the rule modifications we adopt today will apply only to new leases and renewals of existing leases entered into on or after the effective date for these rule modifications. We therefore decline to adopt our proposal in the *Second NPRM* to apply the modified rule to existing lease agreements with a six-month grace period for compliance.¹⁸¹

D. Digital Equity and Inclusion

66. The Commission maintains a continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality. As such, in the *Second NPRM* we sought comment on whether any of the proposals discussed therein might promote or inhibit advances in diversity, equity, inclusion, and accessibility.¹⁸² While not specifically responding to our request for comment on Digital Equity and Inclusion, NAB/MMTC argues that a certification requirement has the effect of discouraging diverse entrants by burdening LMAs and TBAs.¹⁸³ Given the revisions to the proposed rules we adopt herein in order to resolve claimed burdens, we find that our actions today will not inhibit diverse entrants from participating in the broadcast media marketplace.

67. This *Second R&O* furthers our ongoing commitment to advance digital equity by simplifying our compliance procedures, which will minimize any possibility that the foreign sponsorship identification rules will discourage the participation of small programmers, including minority-owned programmers, as some commenters have asserted. Further, this order adopts regulations that are content-neutral and that apply to all broadcasters and lessees equally, and will not inhibit advances in diversity, equity, inclusion, and accessibility.

IV. PROCEDURAL MATTERS

68. *Regulatory Flexibility Act.* As required by the Regulatory Flexibility Act of 1980 (RFA), as amended,¹⁸⁴ an Initial Regulatory Flexibility Certification was incorporated into the *Second NPRM*. Pursuant to the RFA,¹⁸⁵ the Commission’s Final Regulatory Flexibility Certification relating to this *Second R&O* is attached as Appendix B.

69. *Paperwork Reduction Act.* This *Second R&O* may contain new or revised information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. §§ 3501-3520) (PRA). All such new or modified information collection requirements will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on any new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. In this present document, we have assessed the effects of the certification and screenshot requirement on licensees, and we find that the modifications in this order impose a minimal, justifiable burden on small entities.

¹⁸⁰ NAB/MMTC Comments at 23, n.34.

¹⁸¹ *See Second NPRM*, 37 FCC Rcd at 12012, para. 20.

¹⁸² *Id.* at 12019, para. 33.

¹⁸³ *See* NAB/MMTC Comments at 41-43.

¹⁸⁴ *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREA was enacted as Title II of the Contract with America Advancement Act of 1996.

¹⁸⁵ *See* 5 U.S.C. § 604.

70. *Congressional Review Act.* The Commission has determined, and Administrator of the Office of Information and Regulatory Affairs, OMB, concurs, that this rule is “non-major” under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this *Second R&O* to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

V. ORDERING CLAUSES

71. Accordingly, **IT IS ORDERED** that, pursuant to the authority contained in sections 1, 2, 4(i), 4(j), 303(r), 307, 317, and 325(c) of the Communications Act, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 303(r), 307, 317, and 325(c) this *Second R&O* **IS ADOPTED**.

72. **IT IS FURTHER ORDERED** that the Petition for Clarification filed by ABC Television Affiliates Association, CBS Television Network Affiliates Association, FBC Television Affiliates Association, and NBC Television Affiliates **IS DISMISSED AS MOOT**.

73. **IT IS FURTHER ORDERED** that this *Second R&O* **SHALL BE EFFECTIVE** 30 days after publication in the Federal Register, except that the revisions to section 73.1212(j)(3) of the Commission’s rules, 47 CFR § 73.1212(j)(3), which may contain new or modified information collection requirements, will not be required until the Office of Management and Budget completes review of any information collection requirements that the Media Bureau determines is required under the Paperwork Reduction Act. The Commission further directs the Media Bureau to announce the effective date for the revisions to section 73.1212(j)(3) by subsequent Public Notice.

74. **IT IS FURTHER ORDERED** that the Commission’s Office of the Secretary, Reference Information Center, **SHALL SEND** a copy of this *Second R&O*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

75. **IT IS FURTHER ORDERED** that Office of the Managing Director, Performance Program Management, **SHALL SEND** a copy of this *Second R&O* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Final Rules

PART 73 – RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

2. Delayed indefinitely, amend § 73.1212 by revising the introductory text of paragraph (j)(3), paragraph (j)(3)(iv), and paragraph (j)(3)(v) to read as follows:

§ 73.1212 Sponsorship identification; list retention; related requirements.

* * * * *

(j) * * *

(3) The licensee of each broadcast station shall exercise reasonable diligence to ascertain whether the foreign sponsorship disclosure requirements in paragraph (j)(1) of this section apply at the time of the lease agreement and at any renewal thereof, or apply within a one-year period if the lessee and the programming remain unchanged, including:

* * * * *

(iv) Memorializing that the licensee has complied with the requirements in paragraphs (j)(3)(i) through (iii) of this section and has sought to obtain a response from the lessee with the information needed to determine if a disclosure is necessary, and if one is necessary, the information needed to make the disclosure, either:

(A) by executing a written certification attesting to the licensee's compliance and by seeking a written certification from the lessee; or

(B) by complying with the information requirement contained in paragraph (j)(3)(i) of this section and by asking the lessee to provide screenshots of its searches of the Department of Justice's FARA website and the Commission's semi-annual U.S.-based foreign media outlets reports, in the event that lessee has stated it is neither a FARA agent nor a U.S.-based foreign media outlet, and asking lessee to provide other information needed to make such a determination (i.e., asking lessee whether it falls into the categories listed in paragraphs (j)(2)(i) and (j)(2)(ii) of this section that are not covered by the request for screenshots), and by making a record of the licensee's compliance efforts; and

(v) Retaining the documentation in the licensee's records for the remainder of the then-current license term or one year, whichever is longer, so as to respond to any future Commission inquiry.

* * * * *

3. Effective 30 days after publication in the Federal Register, amend § 73.1212 by adding paragraph (j)(8) and by revising paragraph (k) to read as follows:

* * * * *

(j) * * *

(8) The requirements contained in paragraph (j) of this section shall not apply to “uses” of broadcast stations by legally qualified candidates pursuant to 47 U.S.C. § 315.

(k) Where any material delivered to foreign broadcast stations under an authorization pursuant to section 325(c) of the Communications Act (47 U.S.C. § 325(c)) has been sponsored by a foreign governmental entity; paid for by a foreign governmental entity; furnished for free by a foreign governmental entity to the section 325(c) permit holder as an inducement to air the material on the foreign station; or provided by the section 325(c) permit holder to the foreign station where the section 325(c) permit holder is a foreign governmental entity, the material must include, at the time of broadcast, the following disclosure, in conformance with the terms of paragraphs (j)(4) through (6): “The [following/preceding] programming was [sponsored, paid for, or furnished], either in whole or in part, by [name of foreign governmental entity] on behalf of [name of foreign country].” A section 325(c) permit holder shall ensure that the foreign station will broadcast the disclosures along with the material and shall place copies of the disclosures required along with the name of the program to which the disclosures were appended in the International Communications Electronic Filing System (ICFS) under the relevant ICFS section 325(c) permit file. The filing must state the date and time the program aired. In the case of repeat airings of the program, those additional dates and times should also be included. Where an aural announcement was made, its contents must be reduced to writing and placed in the ICFS in the same manner. The section 325(c) permit holder shall exercise reasonable diligence to ascertain whether the foreign sponsorship disclosure requirements of paragraphs (j)(1) and (j)(4) through (6) apply to any material delivered to a foreign broadcast station, including obtaining from its employees, and from other persons with whom it deals directly in connection with any matter for broadcast, and in the same manner prescribed for broadcast stations in paragraph (j)(3), information to enable the permit holder to include the announcement required by this section; memorializing its conduct of such reasonable diligence; and retaining such documentation in its records for either the remainder of the then-current permit term or one year, whichever is longer, so as to respond to any future Commission inquiry. The term “foreign governmental entity” shall have the meaning set forth in paragraph (j)(2).

APPENDIX B

Final Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Second Notice of Proposed Rulemaking (*Second NPRM*), released in October 2022.² The Federal Communications Commission (Commission) sought written public comment on the proposals in the *Second NPRM*, including comment on the IRFA. The Commission received no comments addressing the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³

A. Need for, and Objectives of, the Report and Order

2. On April 22, 2021, the Commission released a Report and Order (*First R&O*) adopting a requirement that radio and television broadcast station licensees transmit clear disclosures for programming that is provided by a foreign governmental entity. The *First R&O* also established procedures that licensees must follow to determine whether such a disclosure is required.⁴ The Commission promulgated these foreign sponsorship identification rules in response to reports of undisclosed foreign government programming being transmitted by U.S. broadcast stations.⁵ The Commission's rules established a definition of "foreign governmental entity" based on existing definitions, statutes, and regulations.⁶ The Commission's requirements apply to leased programming because the record in the underlying proceeding identified leased airtime as the primary means by which foreign governmental entities are accessing U.S. airwaves to persuade the American public without adequately disclosing the true sponsor. The Commission promulgated the foreign sponsorship identification rules based on a fundamental and long-standing tenet of broadcast regulation; namely, that the public has a right to know the identity of those soliciting their support.

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 Sponsorship Identification Requirements for Foreign Government-Provided Programming, MB Docket No. 20-299, Second Notice of Proposed Rulemaking, 37 FCC Rcd 12004 (2022) (Second NPRM).

³ See 5 U.S.C. § 604.

⁴ Sponsorship Identification Requirements for Foreign Government-Provided Programming, Report and Order, 36 FCC Rcd 7702 (2021) (First R&O).

⁵ See e.g., *id.* at 7702-03, para. 1 and n.1.

⁶ Pursuant to section 73.1212(j)(2), the term "foreign governmental entity" "shall include governments of foreign countries, foreign political parties, agents of foreign principals, and United States-based foreign media outlets." 47 CFR § 73.1212(j)(2). Subsections 73.1212(j)(2)(i)-(iv) of our rules, in turn, state:

(i) The term "government of a foreign country" has the meaning given such term in the Foreign Agents Registration Act of 1938 (22 U.S.C. § 611(e));

(ii) The term "foreign political party" has the meaning given such term in the Foreign Agents Registration Act of 1938 (22 U.S.C. § 611(f));

(iii) The term "agent of a foreign principal" has the meaning given such term in the Foreign Agents Registration Act of 1938 (22 U.S.C. § 611(c)), and who is registered as such with the Department of Justice, and whose "foreign principal" is a "government of a foreign country," a "foreign political party," or directly or indirectly operated, supervised, directed, owned, controlled, financed, or subsidized by a "government of a foreign country" or a "foreign political party" as defined in paragraphs (j)(2)(i) and (ii) of this section, and that is acting in its capacity as an agent of such "foreign principal";

(iv) The term "United States-based foreign media outlet" has the meaning given such term in section 722(a) of the Communications Act of 1934 (47 U.S.C. § 624(a)).

3. On July 19, 2021, the ABC Television Affiliates Association, CBS Television Network Affiliates Association, FBC Television Affiliates Association, and NBC Television Affiliates (collectively, the “Affiliates”) filed a Petition for Clarification.⁷ The Affiliates assert that the exemption in the *First R&O* of “traditional, short-form advertising” from the foreign sponsorship identification rules creates confusion because the term has no established meaning in the broadcast industry.⁸

4. On August 13, 2021, the National Association of Broadcasters (NAB) and two public interest groups (collectively, the “Petitioners”) filed a Petition for Review of the Commission’s *First R&O* with the U.S. Court of Appeals for the District of Columbia Circuit challenging the Commission’s authority to impose one of the reasonable diligence requirements contained in the *First R&O*.⁹ Specifically, the *First R&O* required a licensee to confirm whether its lessee is a “foreign governmental entity,” at the time of entering into a lease agreement and at renewal, by consulting the Department of Justice’s (DOJ) Foreign Agent Registration Act (FARA) website and the Commission’s semi-annual U.S.-based foreign media outlets reports.¹⁰

5. On July 12, 2022, the D.C. Circuit vacated this verification requirement, holding that it exceeded the Commission’s authority under section 317(c) of the Communications Act.¹¹ The court left in place the remaining four requirements needed to satisfy the statutory reasonable diligence standard. Pursuant to these requirements, a broadcast licensee must at the time of entering into a new lease agreement, or at renewal:

- (1) Inform the lessee of the foreign sponsorship disclosure requirement.
- (2) Ask the lessee whether it falls into any of the categories that would qualify it as a “foreign governmental entity.”
- (3) Ask the lessee whether it knows if any individual/entity further back in the chain of producing/distributing the programming to be aired qualifies as a foreign governmental entity and has provided some type of inducement to air the programming.
- (4) Memorialize the above-listed inquiries and retain such memorialization in its records for the remainder of the license term or for one year, whichever is longer.¹²

6. On October 6, 2022, the Commission released its *Second NPRM*, which contained proposals to address the gap left in the foreign sponsorship identification rules by the D.C. Circuit’s vacatur of the independent verification requirement. In addition, the *Second NPRM* gave interested parties the opportunity to comment on the pending Petition for Clarification “regarding the applicability

⁷ See Petition for Clarification, MB Docket No. 20-299 (filed July 19, 2021) (Petition for Clarification).

⁸ *Id.* at 2. See Meredith Corporation Comments at 3 (filed Sept. 2, 2021) (supporting the Petition for Clarification); see also Affiliates Comments at 2 (filed Sept. 2, 2021) (supporting the Petition for Clarification).

⁹ Petition for Review, the National Association of Broadcasters, the Multicultural Media, Telecom and Internet Council, and the National Association of Black Owned Broadcasters v. FCC, No. 21-1171 (D.C. Cir. filed Aug. 13, 2021).

¹⁰ *First R&O*, 36 FCC Rcd at 7719-20, 7722-26, paras. 35, 40-45. Verification was not required if the lessee had already disclosed that it fell into one of the covered categories and/or that there was a separate need for a disclosure because an individual/entity further back in the chain of producing/transmitting the programming fell into one of the covered categories and had provided some form of service, consideration, or, in the case of political programming the programming itself, as an inducement to broadcast the programming. *Id.* at 7722, para. 40.

¹¹ *National Association of Broadcasters, et al., v. FCC*, 39 F.4th 817, 820 (D.C. Cir. 2022) (*NAB v. FCC*). To conform with the court’s vacatur, we will delete the verification requirement from section 73.1212(j)(3). See Appx. A.

¹² See 47 CFR § 73.1212(j)(3); *First R&O*, 36 FCC Rcd at 7719-26, paras. 35-45 (describing all of a licensee’s reasonable diligence requirements).

of the foreign sponsorship identification rules to advertisements sold by local broadcast stations” and the application of the *Second NPRM*’s proposals to section 325(c) permit holders.¹³

7. The *Second R&O* replaces the vacated verification requirement with an approach that allows a licensee to choose between one of two options to comply with its statutory “reasonable diligence” requirement.¹⁴ Although licensees must choose one of these approaches, they need not choose the same approach for each lease or renewal agreement, even when the same lessee is involved. Compliance with one of these two approaches must be at the time of entering into any new lease agreement or renewing an existing lease agreement, unless the once-a-year exception described below applies. Under the first option, both the licensee and the lessee must complete a written certification either using the standardized certification language contained in Appendices C and D of the *Second R&O* or using their own language, as long as the certifications written in their own language contain the information and inquiry requirements set out in subsections 73.1212(j)(3)(i)-(iii) of the Commission’s rules, pursuant to the *First R&O*.¹⁵

8. Under the second option, instead of asking the lessee to provide a responsive certification regarding its status, a licensee exercising this option would ask, consistent with the Commission’s current foreign sponsorship identification rules, whether the lessee is a registered FARA agent, or is listed in the Commission’s U.S.-based foreign media outlet report. If the lessee responds “no,” the licensee would then ask the lessee to provide screenshots showing the results of lessee’s searches of both of these websites.¹⁶ Licensees choosing this option must still comply with all other aspects of the current rule, as they have been required to do since the compliance date of the *First R&O*. Specifically, consistent with the existing foreign sponsorship identification rules, the licensee must inform the lessee about the foreign sponsorship disclosure requirement; inquire whether the lessee is either a “government of a foreign country” or a “foreign political party[;]” and inquire about the lessee’s knowledge of anyone further back in the chain of producing/distributing the programming who qualifies as a “foreign governmental entity” and may have provided an inducement to air the programming such as to trigger the need for a foreign sponsorship disclosure.¹⁷ Finally, also consistent with the existing foreign sponsorship identification rules, the licensee must memorialize those inquiries in some manner.¹⁸

9. Although proposed in the *Second NPRM*, in response to commenter concerns, the *Second R&O* determines that a licensee need not notify the Commission’s Media Bureau when a lessee fails to respond to the licensee’s queries. If, however, it is determined at a later date that the programming should have included a foreign sponsorship disclosure, the Commission may conduct a fact-specific inquiry to determine whether the licensee met its obligation under section 317(c) to “exercise reasonable diligence to obtain” the necessary information, such as by not making further inquiry of the lessee. Further, although the *Second NPRM* proposed requiring licensees to retain the certifications and screenshots in the licensees’ own online public inspection file (OPIF), the *Second R&O* gives licensees more flexibility in deciding where to retain these records. Pursuant to the *Second R&O*, licensees may either file these

¹³ *Second NPRM*, 37 FCC Rcd at 12015-16, paras. 25-27.

¹⁴ Section 317(c) of the Communications Act requires licensees to exercise “reasonable diligence to obtain,” from their employees and persons with whom they deal directly, information to enable the licensees to make the required sponsorship identification announcement. 47 U.S.C. § 317(c).

¹⁵ 47 CFR § 73.1212(j)(3)(i)-(iii).

¹⁶ See <https://www.fcc.gov/united-states-based-foreign-media-outlets>, which identifies the outlets that filed with the Commission in response to the National Defense Authorization Act for Fiscal Year 2019 (NDAA). The NDAA requires U.S.-based foreign media outlets to submit reports every six months to the Commission regarding the outlets’ relations to their foreign principals.

¹⁷ See 47 CFR § 73.1212(j)(3)(i)-(iii).

¹⁸ See 47 CFR § 73.1212(j)(3)(v).

records in their OPIF or retain these records in their internal files, as long as the documents are made available to the Commission promptly upon request. Licensees must retain all of their certifications and screenshots, along with a memorialization of inquiries accompanying the screenshots for the length of the license term or one year, whichever is longer.

10. In response to commenter concerns about frequently having to repeat the certification/screenshot process for short term leases, the *Second R&O* concludes that, where a licensee and the same lessee enter into recurring leases for the same programming over a one year period, the licensee need only exercise its reasonable diligence obligations, including the certification or screenshot process, once per year. This modification of the proposals contained in the *Second NPRM* addresses concerns raised in the record about the burdens associated with the production of multiple certifications/screenshots over a limited period of time when the lease concerns both the same lessee and same programming.¹⁹

11. The *Second R&O* reconfirms the finding from the *First R&O* that the foreign sponsorship identification rules should not apply to noncommercial and educational stations (NCEs). The *Second R&O* also clarifies that the foreign sponsorship identification requirements will not apply to advertising for commercial products or services to the extent such advertising falls within the exemption established in section 73.1212(f) of the Commission's rules.²⁰ The *Second R&O* also clarifies that the foreign sponsorship identification rules will not apply to political candidate advertisements. The *Second R&O*, however, determines that the foreign sponsorship identification rules will apply to issue advertisements and paid PSAs. The *Second R&O* declines to adopt commenters' request to create exemptions from the foreign sponsorship identification rules for religious programming and locally produced and/or locally distributed programming. The *Second R&O* finds that creating an exemption for religious programming would not be content-neutral. Additionally, the *Second R&O* determines that the mere fact that programming is locally produced and/or locally distributed does not signify that the programming lacks material provided by a foreign governmental entity, such that there should be a blanket carveout for locally produced and/or distributed programming from the foreign sponsorship identification rules.

12. The requirements adopted in both the *First R&O* and *Second R&O* will also apply to section 325(c) permit holders. However, because section 325(c) permit holders do not have OPIFs, they will file their foreign sponsorship disclosures in the publicly available International Communications Filing System (ICFS).

¹⁹ The *Second R&O* provides an example of what is meant by "same lessee" and "same programming" in this context. An example of what is meant by "same lessee" and "same programming" in this context would be House of Worship X leasing time for the live broadcast of its weekly religious service, every Sunday from 11:00 am till 12:00 pm. While the specific broadcasts would differ week to week, the lessee would continue to be House of Worship X and the program would be its live religious service broadcast. By contrast, if House of Worship X decides to use its regular time slot to provide something other than its weekly religious service – e.g., a panel discussion with various civic leaders – that would be considered different programming that would not fall within the one year exemption, and, thus, would require licensee and lessee to engage in the reasonable diligence requirements laid out in the Commission's rules.

²⁰ Section 73.1212(f) states that:

"In the case of broadcast matter advertising commercial products or services, an announcement stating the sponsor's corporate or trade name, or the name of the sponsor's product, when it is clear that the mention of the name of the product constitutes a sponsorship identification, shall be deemed sufficient for the purpose of this section and only one such announcement need be made at any time during the course of the broadcast."

47 CFR § 73.1212(f).

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

13. There were no comments filed that specifically addressed the proposed rules and policies presented in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

14. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.²¹ The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

15. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.²² The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”²³ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act (SBA).²⁴ 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.²⁵ Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

16. *Television Broadcasting.* This industry is comprised of “establishments primarily engaged in broadcasting images together with sound.”²⁶ These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.²⁷ 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.²⁸ 2017 U.S. Census Bureau data indicate that 744 firms in this industry operated for the entire year.²⁹ Of that number, 657 firms had revenue of less than \$25,000,000.³⁰ Based on this data we

²¹ 5 U.S.C. § 604(a)(3).

²² *Id.* § 604(a)(4).

²³ *Id.* § 601(6).

²⁴ *Id.* § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

²⁵ See 15 U.S.C. § 632.

²⁶ See U.S. Census Bureau, 2017 NAICS Definition, “515120 Television Broadcasting,” <https://www.census.gov/naics/?input=515120&year=2017&details=515120>.

²⁷ *Id.*

²⁸ 13 CFR § 121.201, NAICS Code 515120 (as of 10/1/22 NAICS Code 516120).

²⁹ 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,

(continued....)

estimate that the majority of television broadcasters are small entities under the SBA small business size standard.

17. As of September 30, 2023, there were 1,377 licensed commercial television stations.³¹ 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 NCE television stations, 380 Class A TV stations, 1,889 LPTV stations and 3,127 TV translator stations.³² 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.

18. *Radio Broadcasting.* This industry is comprised of "establishments primarily engaged in broadcasting aural programs by radio to the public."³³ Programming may originate in their own studio, from an affiliated network, or from external sources.³⁴ The SBA small business size standard for this industry classifies firms having \$41.5 million or less in annual receipts as small.³⁵ U.S. Census Bureau data for 2017 show that 2,963 firms operated in this industry during that year.³⁶ Of this number, 1,879 firms operated with revenue of less than \$25 million per year.³⁷ Based on this data and the SBA's small business size standard, we estimate a majority of such entities are small entities.

19. The Commission estimates that as of September 30, 2023, there were 4,452 licensed commercial AM radio stations and 6,670 licensed commercial FM radio stations, for a combined total of

(Continued from previous page) _____

<https://data.census.gov/cedsci/table?y=2017&n=515120&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

³⁰ *Id.* The available U.S. Census Bureau data do 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.

³¹ *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>.

³² *Id.*

³³ See U.S. Census Bureau, *2017 NAICS Definition*, "515112 Radio Stations," <https://www.census.gov/naics/?input=515112&year=2017&details=515112>.

³⁴ *Id.*

³⁵ See 13 CFR § 121.201, NAICS Code 515112 (as of 10/1/22 NAICS Code 516110).

³⁶ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 515112, <https://data.census.gov/cedsci/table?y=2017&n=515112&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>. We note that the US Census Bureau withheld publication of the number of firms that operated for the entire year.

³⁷ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in the individual categories for less than \$100,000, and \$100,000 to \$249,999 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in these categories). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

11,122 commercial radio stations.³⁸ Of this total, 11,120 stations (or 99.98 %) had revenues of \$41.5 million or less in 2022, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Database (BIA) on October 4, 2023, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates that as of September 30, 2023, there were 4,263 licensed NCE FM radio stations, 1,978 low power FM (LPFM) stations, and 8,928 FM translators and boosters.³⁹ The Commission however does not compile, and otherwise does not have access to financial information for these radio stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of radio station licensees, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

20. We note, however, that in assessing whether a business concern qualifies as "small" under the above definition, business (control) affiliations must be included.⁴⁰ Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of "small business" requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio or television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which the rules may apply does not exclude any radio or television station from the definition of a small business on this basis and is therefore possibly over-inclusive. An additional element of the definition of "small business" is that the entity must be independently owned and operated. Because it is difficult to assess these criteria in the context of media entities, the estimate of small businesses to which the rules may apply does not exclude any radio or television station from the definition of a small business on this basis and similarly may be over-inclusive.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

21. The *Second R&O* gives licensees the choice between one of two options to comply with their statutory "reasonable diligence" requirement.⁴¹ Although licensees must choose one of these approaches, they need not choose the same approach for each lease or renewal agreement, even when the same lessee is involved. Compliance with one of these two approaches must be at the time of entering into any new lease agreement or renewing an existing lease agreement, unless the once-a-year exception described below applies. Under the first option, both the licensee and the lessee must complete a written certification either using the standardized certification language contained in Appendices C and D of the *Second R&O* or using their own language, as long as the certifications written in their own language contain the information and inquiry requirements set out in subsections 73.1212(j)(3)(i)-(iii) of the Commission's rules, pursuant to the *First R&O*.⁴² Specifically, a licensee's certification should:

- (1) inform the lessee of the foreign sponsorship disclosure requirement;
- (2) ask the lessee whether it falls into any of the categories that would qualify it as a "foreign governmental entity;"

³⁸ *October 2023 Broadcast Station Totals PN*, <https://docs.fcc.gov/public/attachments/DA-23-921A1.pdf>.

³⁹ *Id.*

⁴⁰ "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both." 13 CFR § 21.103(a)(1).

⁴¹ Section 317(c) of the Communications Act requires licensees to exercise "reasonable diligence to obtain," from their employees and persons with whom they deal directly, information to enable the licensees to make the required sponsorship identification announcement. 47 U.S.C. § 317(c).

⁴² 47 CFR § 73.1212(j)(3).

(3) ask the lessee whether it knows if any individual/entity further back in the chain of producing and/or distributing the programming to be aired qualifies as a foreign governmental entity and has provided some type of inducement to air the programming;

(4) seek a written certification in response from the lessee; and

(5) obtain the necessary information for a disclosure if one is required.

22. A lessee's certification should convey the information needed to determine whether a disclosure is required and the information needed for a broadcast disclosure if one is required.⁴³

23. Regardless of whether the Commission's templates or a licensee's and lessee's own certifications are used, both the licensee's and lessee's certifications must be dated and signed by an employee or other representative of the entity who can attest to the fact that these actions were taken.

24. Under the second option, instead of asking the lessee to provide a responsive certification regarding its status, a licensee exercising this option would ask, consistent with the Commission's current foreign sponsorship identification rules, whether the lessee is a registered FARA agent or is listed in the Commission's U.S.-based foreign media outlet report. If the lessee responds "no," the licensee would then ask the lessee to provide screenshots showing the results of lessee's searches for its own name on both of these websites.⁴⁴ The FARA website provides for an "Active Registrants" search link, and the *Second R&O* recommends that lessees use this link because the Commission's rules only cover those FARA agents who are currently registered on the DOJ FARA site.⁴⁵ In response to concerns raised in the record about having to input "exact names" into the search feature, the *Second R&O* emphasizes that lessees are looking for their *own names*. A lessee is not doing a FARA database search to *learn* whether it is registered such as to necessitate experimenting with different iterations of its name. A lessee, or someone within lessee's organization, would know whether it is a FARA registrant, or U.S.-based foreign media outlet. As such, the lessee will only be providing screenshots if, in response to licensee's queries, the lessee states that it is neither a FARA agent nor a U.S.-based foreign media outlet.

25. With regard to searches of the Commission's U.S.-based foreign media outlet site, the Commission's website lists the names of all the entities that have reported as U.S.-based foreign media outlets, and all that is required is a screenshot of this list to show whether the lessee's name appears on the list at the time of the licensee's required inquiries. Licensees choosing this option must still comply with all other aspects of the current rule, as they have been required to do since the compliance date of the *First R&O*. Specifically, consistent with the existing foreign sponsorship identification rules, the licensee must inform the lessee about the foreign sponsorship disclosure requirement; inquire whether the lessee is either a "government of a foreign country" or a "foreign political party[;]" and inquire about the lessee's knowledge of anyone further back in the chain of producing/distributing the programming who qualifies as a "foreign governmental entity" and may have provided an inducement to air the programming such as

⁴³ See 47 CFR § 73.1212(j)(1) (stating what information needs to be in a foreign sponsorship disclosure).

⁴⁴ See <https://www.fcc.gov/united-states-based-foreign-media-outlets>, which identifies the outlets that filed with the Commission in response to the National Defense Authorization Act for Fiscal Year 2019 (NDAA). The NDAA requires U.S.-based foreign media outlets to submit reports every six months to the Commission regarding the outlets' relations to their foreign principals.

⁴⁵ See 47 CFR § 73.1212(j)(2)(iii); see also <https://efile.fara.gov/ords/fara/f?p=1381:17:1606120366722>. As the search features on the FARA website are designed to assist in determining who is registered as a FARA agent, the *Second R&O* assumes that the website will continue to maintain a search field akin to the "Active Registrants" field we identify here. The *Second R&O* recognizes that the appearance of one's name as a registered agent in the FARA website is not determinative of whether the lessee is acting in its capacity as a FARA agent when leasing time on a licensee's station, but finds it is reasonable to presume a lessee that is registered would be able to explain whether it is acting in its capacity as an agent with regard to the transaction at hand.

to trigger the need for a foreign sponsorship disclosure.⁴⁶ Moreover, consistent with the certification option, a licensee should also ask the lessee to update it if there has been a change in the lessee's status or the status of anyone further back in the chain of producing/distributing the programming so as to trigger the need for a foreign sponsorship disclosure. Finally, also consistent with the existing foreign sponsorship identification rules, the licensee must memorialize those inquiries in some manner.⁴⁷

26. Although proposed in the *Second NPRM*, in response to commenter concerns, the *Second R&O* determines that a licensee need not notify the Commission's Media Bureau when a lessee fails to respond to the licensee's queries. If, however, it is determined at a later date that the programming should have included a foreign sponsorship disclosure, the Commission may conduct a fact-specific inquiry to determine whether the licensee met its obligation under section 317(c) of the Communications Act to "exercise reasonable diligence to obtain" the necessary information, such as by not making further inquiry of the lessee. Further, although the *Second NPRM* proposed requiring licensees to retain the certifications and screenshots in the licensees' own OPIF, the *Second R&O* gives licensees more flexibility in deciding where to retain these records. Pursuant to the *Second R&O*, licensees may either file these records in their OPIF or retain these records in their internal files, as long as the documents are made available to the Commission promptly upon request. Licensees must retain all of their certifications and screenshots, along with memorialization of inquiries accompanying the screenshots for the length of the license term or one year, whichever is longer.

27. In response to commenter concerns about frequently having to repeat the certification/screenshot process for short term leases, the *Second R&O* concludes that, where a licensee and the same lessee enter into recurring leases for the same programming over a one year period, the licensee need only exercise its reasonable diligence obligations, including the certification or screenshot process, once per year. This modification of the proposals contained in the *Second NPRM* addresses concerns raised in the record about the burdens associated with the production of multiple certifications/screenshots over a limited period of time when the lease concerns both the same lessee and lease.⁴⁸

28. The *Second R&O* reconfirms the finding from the *First R&O* that the foreign sponsorship identification rules should not apply to NCEs. The *Second R&O* also clarifies that the foreign sponsorship identification requirements will not apply to advertising for commercial products or services to the extent such advertising falls within the exemption established in section 73.1212(f) of the Commission's rules.⁴⁹ The *Second R&O* declines to adopt commenters' request to create exemptions

⁴⁶ See 47 CFR § 73.1212(j)(3)(i)-(iii).

⁴⁷ See Appx. A.

⁴⁸ The *Second R&O* provides an example of what is meant by "same lessee" and "same programming" in this context. An example of what is meant by "same lessee" and "same programming" in this context would be House of Worship X leasing time for the live broadcast of its weekly religious service, every Sunday from 11:00 am till 12:00 pm. While the specific broadcasts would differ week to week, the lessee would continue to be House of Worship X and the program would be its live religious service broadcast. By contrast, if House of Worship X decides to use its regular time slot to provide something other than its weekly religious service – e.g., a panel discussion with various civic leaders – that would be considered different programming that would not fall within the one year exemption, and, thus, would require licensee and lessee to engage in the reasonable diligence requirements laid out in the Commission's rules.

⁴⁹ Section 73.1212(f) states that:

"In the case of broadcast matter advertising commercial products or services, an announcement stating the sponsor's corporate or trade name, or the name of the sponsor's product, when it is clear that the mention of the name of the product constitutes a sponsorship identification, shall be deemed sufficient for the purpose of this section and only one such announcement need be made at any time during the course of the broadcast."

47 CFR § 73.1212(f).

from the foreign sponsorship identification rules for religious programming and locally produced and/or locally distributed programming. The *Second R&O* finds that creating an exemption for religious programming would not be content-neutral. Additionally, the *Second R&O* determines that the mere fact that programming is locally produced and/or locally distributed does not signify that the programming lacks material provided by a foreign governmental entity, such that there should be a blanket carveout for locally produced and/or distributed programming from the foreign sponsorship identification rules.

29. The requirements adopted in both the *First R&O* and *Second R&O* will also apply to section 325(c) permit holders. However, because section 325(c) permit holders do not have OPIFs, they will file their foreign sponsorship disclosures in the publicly available International Communications Filing System (ICFS).

30. Any lease agreements that are entered into, or that are renewed, on or after the date that the Media Bureau publishes in the Federal Register an announcement that the Office of Management and Budget (OMB) has completed any review required under the Paperwork Reduction Act of the rule modifications contained in the *Second R&O* must comply with the requirements laid out in the *Second R&O*. Based on commenter concerns about having to redo work associated with existing leases that comply with the current foreign sponsorship identification rules, the Commission determines that the rule modifications contained in the *Second R&O* will apply only to new leases and renewals of existing leases entered into on or after the required compliance date for those rule modifications. The *Second R&O* directs the Commission's Media Bureau to announce the compliance date for the new rules via public notice and to revise section 73.1212 of the rules accordingly.

F. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

31. The RFA requires an agency to provide, “a description of the steps the agency has taken to minimize the significant economic impact on small entities . . . including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected[.]”⁵⁰

32. The *Second R&O* carefully considers the concerns raised by commenters, a number of which may represent, or themselves be, small entities. In response to commenter concerns about burdens, the *Second R&O* gives licensees greater flexibility than initially proposed in the *Second NPRM* to determine how best to comply with the inquiry memorialization requirement. In response to commenter concerns that the standardized certification language proposed in the *Second NPRM* was too lengthy, complex, and full of legalese, the *Second R&O* greatly reduces the length and complexity of the standardized language and now employs a simple check-box approach.⁵¹ The *Second R&O* allows licensees to use their own certification language in response to comments expressing concerns about licensees that already have developed their own certifications based on the existing foreign sponsorship identification rules and for whom revising these certifications would be costly. The inquiries that must be contained in the self-generated certifications align with the requirements contained in the *First R&O* and, thus, previous certifications that are consistent with that order may not need to be modified. Finally, the *Second R&O* also offers a licensee the option to not use certifications at all, but to instead seek from its lessee screenshots of the lessee's search of two federal websites to demonstrate whether the lessee's name appears on the sites, as well as requiring the licensee to memorialize some additional queries, pursuant to the *First R&O*, made to a lessee.

33. The *Second NPRM* proposed that licensees should retain all certifications in their OPIFs.

⁵⁰ 5 U.S.C. § 604(a)(6).

⁵¹ *Second NPRM*, 37 FCC Rcd at 12012-15, paras. 21-24. The new standardized language, which significantly varies in both its length and complexity from the language proposed in the *Second NPRM*, comprises two pages of questions in a straightforward check-box format.

However, in response to commenter concerns about this requirement,⁵² the *Second R&O* merely requires licensees to retain copies of certifications and screenshots in their personal files, with the option of uploading the documentation into their OPIF if they choose. The certification and screenshot requirements adopted in the *Second R&O* apply only to new leases and renewals of existing leases entered into on or after the required compliance date for the rule modifications.⁵³ In response to commenter concerns about having to redo work associated with existing leases that comply with the current foreign sponsorship identification rules, the *Second R&O* determines that the rule modifications contained in the *Second R&O* will apply only to new leases and renewals of existing leases entered into on or after the required compliance date for those rule modifications. In response to some commenters' concerns regarding the unique economic challenges of applying the rules to short-term recurring leases,⁵⁴ the *Second R&O* concludes that, where a licensee and the same lessee enter into recurring leases for the same programming over a one year period, the licensee need only exercise its reasonable diligence obligations, including the certification or screenshot process, once per year. In light of concerns raised in the record regarding the proposal that licensees report to the Commission instances in which lessees fail to respond to licensee queries,⁵⁵ the *Second R&O* determines that the licensee need not notify the Media Bureau about a licensee's failure to respond and may still choose air the programming.⁵⁶

G. Report to Congress

34. The Commission will send a copy of the *Second R&O*, including this FRFA, in a report to Congress pursuant to the Congressional Review Act.⁵⁷ In addition, the Commission will send a copy of the *Second R&O*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Second R&O* and FRFA (or summaries thereof) will also be published in the *Federal Register*.⁵⁸

⁵² See NAB/MMTC Comments at 15, 19-20, 45-47 (providing objections to the proposed OPIF recordkeeping requirement); Gray TV Comments at 9 (arguing that an OPIF recordkeeping requirement would increase compliance costs and burdens for broadcasters); TechFreedom Reply at 6-8 (claiming that an OPIF recordkeeping requirement would be "an unmitigated disaster").

⁵³ For all new agreements and renewals, the *Second R&O* requires licensees and lessees to comply with the established requirements immediately upon publication in the Federal Register of an announcement by the Media Bureau that OMB has completed any required review under the PRA.

⁵⁴ See Gray TV Comments at 12-13 (stating that its arrangements with religious programmers in particular are typically confirmed on a weekly basis, in part because such programmers do not have financial resources to purchase blocks of time under long-term contracts, and that it is burdensome to complete the verification process on a weekly basis).

⁵⁵ See Audacy/Beasley Reply at 3-4 (arguing that broadcasters have no statutory duty to serve as "enforcers or informants" that would justify a requirement that they notify the Media Bureau if a lessee fails to certify as to its status as a foreign governmental entity).

⁵⁶ The *Second R&O* recognizes that there may be instances when, despite a licensee's efforts to comply with the foreign sponsorship identification rules, a lessee may refuse to respond to a licensee's queries or request for a certification/screenshots.

⁵⁷ 5 U.S.C. § 801(a)(1)(A).

⁵⁸ See *id.* § 604(b).

APPENDIX C

Approved Template for Licensee Certification

Name of Licensee: _____
 Name of Lessee: _____
 Name of Program: _____
 Nature of Lease: New _____ Renewal: _____

_____ Licensee informed Lessee that FCC regulations require that a disclosure accompany programming that is sponsored, paid for, or furnished by a foreign governmental entity.

_____ Licensee asked Lessee whether Lessee is a foreign governmental entity. A foreign governmental entity can be a foreign government, a foreign political party, an agent of a foreign principal, or a U.S.-based foreign media outlet.¹

_____ Licensee asked Lessee whether it knows if any individual/entity in the chain of producing or distributing the programming is a foreign governmental entity and has provided some type of inducement to air the programming.²

_____ Licensee sought from Lessee a written response certifying Lessee's answers. Lessee did _____ did not _____ provide a written certification.

_____ If applicable, Licensee obtained from Lessee the information needed to add the following disclosure to Lessee's programming: "The [following/preceding] programming was [sponsored, paid for, or furnished], either in whole or in part, by [name of foreign governmental entity] on behalf of [name of foreign country]."

On behalf of Licensee, I certify that the above statements are accurate.

Name and Position	Signature	Date

¹ See 47 CFR § 73.1212(j). If more information is needed regarding the definition of a foreign governmental entity, see the FCC's rules at 47 CFR § 73.1212(j)(2)(i)-(iv), which provide that:

(i) The term "government of a foreign country" has the meaning given such term in the Foreign Agents Registration Act of 1938 (FARA), 22 U.S.C. § 611(e);

(ii) The term "foreign political party" has the meaning given such term in the Foreign Agents Registration Act of 1938 (FARA), 22 U.S.C. § 611(f);

(iii) The term "agent of a foreign principal" has the meaning given such term in the Foreign Agents Registration Act of 1938 (22 U.S.C. § 611(c)), and who is registered as such with the Department of Justice, and whose "foreign principal" is a "government of a foreign country," a "foreign political party," or directly or indirectly operated, supervised, directed, owned, controlled, financed, or subsidized by a "government of a foreign country" or a "foreign political party" as defined in subsection 73.1212(j)(2)(i) and (ii), and that is acting in its capacity as an agent of such "foreign principal;" and

(iv) The term "United States-based foreign media outlet" has the meaning given such term in Section 722(a) of the Communications Act of 1934 (47 U.S.C. § 624(a)).

² If the programming is political in nature, or involves the discussion of a controversial issue, the FCC disclosure requirements apply even if no compensation or payment, other than the programming itself, was provided as an inducement to air the program.

APPENDIX D

Approved Template for Lessee Certification

Name of Licensee: _____
 Name of Lessee: _____
 Name of Program: _____
 Nature of Lease: New _____ Renewal: _____

1. Lessee is a foreign governmental entity. A foreign governmental entity can be a foreign government, a foreign political party, an agent of a foreign principal, or a U.S.-based foreign media outlet¹ Yes: _____ No: _____
 If Yes, Lessee is an entity of the country of _____.
2. Lessee knows of an individual/entity in the chain of producing or distributing the programming that is a foreign governmental entity and has provided some type of inducement to air the programming.² Yes: _____ No: _____
 If Yes, the name of the individual/entity is _____.
 If Yes, the name of the country is _____.
3. If applicable, Lessee has provided Licensee with the information needed to append the following disclosure to lessee's programming, consistent with the FCC's rules at 47 CFR § 73.1212(j)(1)(i):
 "The [following/preceding] programming was [sponsored, paid for, or furnished], either in whole or in part, by [name of foreign governmental entity] on behalf of [name of foreign country]."

On behalf of Lessee, I certify that the above statements are accurate.

 Name and Position

 Signature

 Date

¹ See 47 CFR § 73.1212(j). If more information is needed regarding the definition of a foreign governmental entity, see the FCC's rules at 47 CFR § 73.1212(j)(2)(i)-(iv), which provide that:

(i) The term "government of a foreign country" has the meaning given such term in the Foreign Agents Registration Act of 1938 (FARA), 22 U.S.C. § 611(e);

(ii) The term "foreign political party" has the meaning given such term in the Foreign Agents Registration Act of 1938 (FARA), 22 U.S.C. § 611(f);

(iii) The term "agent of a foreign principal" has the meaning given such term in the Foreign Agents Registration Act of 1938 (22 U.S.C. § 611(c)), and who is registered as such with the Department of Justice, and whose "foreign principal" is a "government of a foreign country," a "foreign political party," or directly or indirectly operated, supervised, directed, owned, controlled, financed, or subsidized by a "government of a foreign country" or a "foreign political party" as defined in subsection 73.1212(j)(2)(i) and (ii), and that is acting in its capacity as an agent of such "foreign principal;" and

(iv) The term "United States-based foreign media outlet" has the meaning given such term in Section 722(a) of the Communications Act of 1934 (47 U.S.C. § 624(a)).

² If the programming is political in nature, or involves the discussion of a controversial issue, the FCC disclosure requirements apply even if no compensation or payment, other than the programming itself, was provided as an inducement to air the program.

**STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *Sponsorship Identification Requirements for Foreign Government-Provided Programming*,
Second Report and Order, MB Docket No. 20-299.

The principle that the public has a right to know the identity of those who use the public airwaves is a long-standing tenet of broadcasting. Today we clarify our rules for broadcasters by establishing a process to inform consumers when what they hear or see over the air has been provided by a foreign government. Our action today is about supporting transparency and democratic values. For instance, if a foreign government (like the Chinese government) pays to broadcast programming or campaign advertising, a disclosure is required at the time it is aired (simply saying it is from the Chinese government). As listeners, viewers, and citizens this is something we are entitled to know.

**STATEMENT OF
COMMISSIONER BRENDAN CARR, DISSENTING IN PART**

Re: *Sponsorship Identification Requirements for Foreign Government-Provided Programming*, Second Report and Order, MB Docket No. 20-299.

In 2021, the FCC unanimously adopted rules for broadcast television stations to identify and disclose “leases” of airtime sponsored by foreign governments.¹ The 2021 rules contained an exception for “short-form advertisements,” which were deemed to fall outside the meaning of “lease.” On appeal, the D.C. Circuit vacated a separate portion of the 2021 rules that required broadcasters to affirmatively investigate potential foreign sponsors.² Today’s Order fixes that defect—lawfully so, in my view. If the Order were limited to correcting this narrow issue on remand, I would have supported it in full.

But this Order goes further. It changes the 2021 definition of “lease” by eliminating the “short-form advertisement” exception. The Order now requires broadcasters to comply with the foreign sponsorship rule for all third-party use of airtime, with two key exceptions: (1) political candidate advertisements; and (2) advertisements that meet the commercial exemption provisions in section 73.1212(f) of our rules.

In my view, the FCC did not provide fair notice that it might redefine “lease” in this fundamental way. After the 2021 rules were adopted, broadcast interests filed a petition seeking clarification on the meaning of “short-form advertisement.”³ The petition asked for a clearer and less burdensome definition, not for the FCC to eliminate the exception altogether. A single paragraph in the *Second NPRM* seeks comment on this petition.⁴ As that paragraph makes clear, the FCC did not contemplate eliminating the “short-form advertisement” carveout. And to my knowledge, no party in this proceeding asked the FCC to do so. Adopting rule changes nobody could have reasonably anticipated is a textbook example of unfair surprise.

This was avoidable. If the FCC wanted to consider rule changes that were not teed up in the *Second NPRM*, it could have shored up the record through a Further Notice or a supplemental Public Notice. The FCC did not do so here. So, while this Order fixes one legal infirmity highlighted at the D.C. Circuit, it creates new problems that may require us to revisit our foreign sponsorship rules in a future proceeding following another appeal. I approve in part and dissent in part.

¹ *Sponsorship Identification Requirements for Foreign Government-Provided Programming*, Report and Order, 36 FCC Rcd 7702 (2021).

² *NAB v. FCC*, 39 F.4th 817 (D.C. Cir. 2022).

³ See Petition for Clarification, MB Docket No. 20-299 (filed July 19, 2021).

⁴ *Sponsorship Identification Requirements for Foreign Government-Provided Programming*, Second Notice of Proposed Rulemaking, 37 FCC Rcd 12004, para. 32 (2022).

**STATEMENT OF
COMMISSIONER NATHAN SIMINGTON, DISSENTING**

Re: *Sponsorship Identification Requirements for Foreign Government-Provided Programming*,
Second Report and Order, MB Docket No. 20-299.

Letting Americans know when a foreign government has leased time on American airwaves is a good thing. That's why I voted to approve the Commission's first cut at these rules back in 2021. In the implementing Report and Order, we indicated that:

“In describing a lease of time, however, we do not mean to suggest that traditional, short-form advertising time constitutes a lease of airtime for [the purposes of foreign sponsorship identification].”

Ha-ha. Just kidding. Apparently, according to today's decision: not only *yes*, we *did* mean that traditional, short-form advertising constitutes a “lease of airtime” for these purposes, but regulatees *knew that we meant that they did* when they asked us to clarify the bounds of the exemption. (By now, “clarify” is the Commission's euphemism for doing whatever it wants, precedent be damned.) This is, of course, news to the regulatees, who maybe recently drew inspiration in their understanding of whether the Commission considers short-form advertising the same as a lease of airtime from the Second NPRM in this proceeding, in which we sought comment:

“. . . on whether experience with these rules has provided licensees or others with additional insight regarding the issues raised in the Petition and specifically what criteria the Commission might adopt to *distinguish between advertising and programming arrangements for the lease of airtime* in a way that does not jeopardize the Commission's goals in this proceeding.” (Emphasis mine.)

What did we mean by this? I do not know. Maybe no one does. I *do* know that spontaneous self-reversal is an Administrative Procedure Act violation, though. We have nowhere noticed that, by the terms “lease of airtime” and “short-form advertising” we meant the *exact opposite* of what we said in 2021 *and* 2022.

But, not to worry, regulatees, because though yes, lease of airtime *does* include short-form advertising, you can seek shelter under the rocksteady safe harbors the Commission has invented in the last few weeks. And what are those?

First: any ad for a commercial good or service, provided that the ad is constructed in such a way as to satisfy the Commission's definition for a commercial advertisement. (Incidentally: though a “lease of airtime” is definitionally *not* short-form advertising and we have prior acknowledged as much, why does the Commission not now consider it important for Americans to know whether, for instance, the PRC has purchased broadcast advertising on behalf of TikTok? A head scratcher! To be clear, I am not here *endorsing* the idea that commercial advertisements on *any* platform should *ever* require foreign sponsorship identification, I am merely acknowledging that the rules we enunciate today fail even to meet our own half-baked policy justifications.)

Second: any ad purchased by a legally qualified candidate for office or their authorized committees (so-called “political candidate advertisements”). Notably, part of our justification for this carveout—besides, presumably, the fact that a fair few of them have taken a constitutional oath of office or have bled in service to our country which may render the question of whether their ad was furnished by a foreign agent insulting—is that:

“We recognize that there are statutory restrictions as well as Federal Election Commission rules prohibiting contributions to federal, state, and local candidates by “foreign nationals,” a term that is defined to include certain of the entities covered by our foreign sponsorship identification rules, specifically a “government of a foreign country” and a “foreign political party.” Because of these restrictions, the likelihood that political candidate advertisements would require disclosures under the foreign sponsorship identification rules is greatly limited. Accordingly, we are persuaded to exempt political candidate advertisements from the foreign sponsorship identification requirements.”

Okay. Well, as the Commission discovered when crafting this safe harbor, those same FEC prohibitions pertain to a category of issue advertisements *mentioning* candidates for office called “electioneering communications.” Will *those* ads enjoy a safe harbor for identical reasons? No! But don’t worry, it’s a distinction *with* a difference, we swear:

“While NAB notes that foreign nationals also are prohibited from funding certain types of issue advertisements related to elections, our definition of issue advertisements for purposes of these rules is broader in scope than the advertisements that NAB references in that our definition encompasses issue advertisements unrelated to elections. Therefore, we cannot be as assured of foreign noninvolvement with respect to issue advertisements. Rather than adopt a definition that attempts to parse the different types of issue advertisements, and to ensure maximum transparency for viewers and listeners, we will apply the foreign sponsorship identification rules to all issue advertisements and paid PSAs.”

This is senseless. To ensure maximum transparency for viewers and listeners, we *are* requiring foreign sponsorship identification for a subset of issue ads *already covered by the same FEC rules* prohibiting foreign sponsorship that we deemed justification to exclude candidate ads from foreign sponsorship identification? Huh? I am astonished that an already discursive item, we could not draw one further distinction, if only to create justificatory consistency *within the same item*. I gather that consistency is the sort of thing a reviewing court might look upon favorably—especially in a proceeding where we’ve already been successfully appealed—but hey, what do I know?

I thought, and still think, we should require foreign sponsorship identification to leases of air time. Since this item now has practically nothing to do with that, I dissent.

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

In the Matter of	)	
	)	
Reporting on Border Gateway Protocol Risk	)	PS Docket No. 24-146
Mitigation Progress	)	
	)	
Secure Internet Routing	)	PS Docket No. 22-90

NOTICE OF PROPOSED RULEMAKING

Adopted: June 6, 2024

Released: June 7, 2024

Comment Date: (30 days after date of publication in the Federal Register)

Reply Comment Date: (45 days after date of publication in the Federal Register)

By the Commission: Chairwoman Rosenworcel and Commissioner Starks issuing separate statements.

TABLE OF CONTENTS

Heading	Paragraph #
I. INTRODUCTION.....	1
II. BACKGROUND.....	5
A. Border Gateway Protocol and the Development of RPKI-Based Origin Validation.....	13
B. FCC Efforts to Promote Secure Inter-Domain Routing.....	20
C. Other Federal Efforts to Promote Secure Internet Routing.....	28
D. Industry Efforts to Address Vulnerabilities	32
III. DISCUSSION.....	34
A. BGP Routing Security Risk Management Plans.....	37
1. Initial BGP Plans	39
a. Creating and Maintaining Route Origin Authorizations.....	42
(i) Cases Where the Service Provider Controls the ASNs and IP Address	
Prefix(es)	43
(ii) Cases Where the Service Provider Does Not Control the IP Address	
Prefix(es)	47
b. Route Origin Validation Filtering.....	49
2. Subsequent BGP Plans	54
3. BGP Plan Issues for Service Providers Other Than the Largest Providers.....	57
B. BGP Routing Security Information – Quarterly Reports.....	60
C. Confidential Treatment of BGP Plans and FOIA	66
D. Other Issues.....	67
1. Possible Conditions on Service Provider Contracts	67
2. Possible ROV and ROA Requirements for Service Providers.....	76
3. Outreach and Education	78

4. ARIN Processes.....	81
5. Beyond RPKI Origin Validation – Further Efforts to Secure Internet Routing.....	82
E. Benefits and Costs.....	83
1. Benefits.....	84
2. Costs.....	87
F. Legal Authority.....	99
G. Promoting Digital Equity.....	105
IV. PROCEDURAL MATTERS.....	106
V. ORDERING CLAUSES.....	115
APPENDIX A	
APPENDIX B	

I. INTRODUCTION

1. The Internet is inextricably interwoven into the fabric of modern life, facilitating our daily activities, from work, education, and healthcare, to commerce, community, communication, and free expression.¹ Disruptions of communications can easily have significant cascading effects on other critical infrastructure sectors that rely on communications.²

2. Today, we take important next steps in addressing vulnerabilities threatening the security and integrity of the Border Gateway Protocol (BGP), which is central to the Internet’s global routing system. BGP is the routing protocol used to exchange reachability information amongst independently managed networks on the Internet. BGP’s initial design, which remains widely deployed today, did not include security features to ensure trust in the information that it is used to exchange. Although there have been multiple efforts by a variety of stakeholders over the past twenty years to address BGP security issues, more needs to be done, and the Commission has an essential role in ensuring further concrete progress.

3. Specifically, in this *Notice of Proposed Rulemaking (Notice)* we propose a number of steps applicable to providers of broadband Internet access service (BIAS) (service providers) designed to improve the security of BGP routing.³ Specifically, we are proposing that all such providers prepare and update confidential Border Gateway Protocol security risk management plans (BGP Plans or Plans) at least once a year. A BGP Plan would describe and attest to the specific efforts the service provider has made, and plans to undertake, to secure its BGP routing architecture using Resource Public Key Infrastructure (RPKI) as well as other methods at its disposal (e.g., peer-locking). The BGP Plans would include, among other things, a service provider’s plans for Route Origin Authorization (ROA) registration and maintenance for its route originations and the status of and plans for its deployment of Route Origin Validation (ROV).⁴ We propose to require a select number of the largest, most significant service providers to file their BGP Plans with the Commission, with the plans of the remaining service providers

¹ *Safeguarding and Securing the Open Internet*, WC Docket No. 23-320, Declaratory Ruling, Order, Report and Order, and Order on Reconsideration, paras. 1, 26 (2024) (*2024 Open Internet Order*).

² U.S. Government Accountability Office, Critical Infrastructure Protection: CISA [the Cybersecurity and Infrastructure Security Agency] Should Assess the Effectiveness of its Actions to Support the Communications Sector at 1 (2021), <https://www.gao.gov/assets/d22/104462.pdf> [https://perma.cc/F5VK-GA8Q] (explaining how the Communications sector is integral to the U.S. economy and vital to national security since it underlies the operations of businesses, public safety organizations, and government).

³ *2024 Open Internet Order* at paras. 28, 125-26. We also seek comment on whether there are additional service providers that use BGP to route Internet traffic that should be included within the scope of that definition.

⁴ Réseaux IP Européens (RIPE) Network Coordination Centre, *Managing ROAs*, <https://www.ripe.net/manage-ips-and-asns/resource-management/rpki/resource-certification-roa-management/> [https://perma.cc/9ED5-ARFX] (last visited Apr. 29, 2024) (delineating the three informational elements contained in a ROA and describing it as “a cryptographically signed object that states which Autonomous System (AS) is authorised to originate a certain prefix.”).

available to Commission staff upon request. In addition to the BGP Plan proposals, we propose quarterly reporting of selected data by service providers that would help us measure progress in RPKI deployment and assess whether additional measures may be needed. Finally, we seek comment on proposals to address cases where the service providers are not in a position today to take the foundational step of registering ROAs for the implementation of RPKI.

4. These proposals are part of ongoing multi-stakeholder efforts to address secure Internet routing issues. The National Cybersecurity Strategy, for instance, highlights the critical nature of securing the technical foundation of the Internet and expressly identifies addressing BGP vulnerabilities as among the most urgent of pervasive concerns today.⁵ To further that objective, Initiative 4.1.5 of the National Cybersecurity Strategy Implementation Plan tasks the Office of the National Cyber Director (ONCD), working with key stakeholders and other Federal Government entities, to develop a roadmap to increase adoption of secure Internet routing techniques, including those that address BGP security concerns.⁶ In addition, this *Notice* recognizes the importance of increased outreach and education about the security risks inherent to BGP, and of the role that the American Registry for Internet Numbers (ARIN), the U.S.-based Regional Internet Registry (RIR)⁷ and its processes play in the deployment of RPKI-enabled improvements to BGP security, and seeks comment on possible additional steps that can be taken to facilitate deployment of RPKI-based routing security.

II. BACKGROUND

5. In our Secure Internet Routing Notice of Inquiry (*Secure Internet Routing NOI*), the Commission outlined how various services that the public relies on are enabled by the Internet.⁸ More recently, the Commission further emphasized the importance of the Internet, explaining that the Internet serves as a platform for competition, free expression, and innovation, while also driving economic growth.⁹ As was underscored during the COVID-19 Pandemic, though the trend had been clear before, the Internet is integral to our daily activities, from work, education, and healthcare, to commerce, community, communication, and free expression.¹⁰ The Internet therefore now constitutes a key part of the national cyber infrastructure, enabling connectivity for use by both the public as well as operators of critical infrastructural services, including banking, the electrical power grid, fuel pipelines, and water processing plants.¹¹ Internet use has become even more prevalent since the COVID-19 Pandemic. In a Pew Research poll, 58% of participating adults described Internet access as essential.¹²

⁵ Executive Office of the President, National Cybersecurity Strategy at 23-24 (2023), <https://www.whitehouse.gov/wp-content/uploads/2023/03/National-Cybersecurity-Strategy-2023.pdf> [https://perma.cc/QQV7-XCGB] (*Biden NCS*).

⁶ Executive Office of the President, National Cybersecurity Strategy Implementation Plan, version 2, at 45 (May 2024), <https://www.whitehouse.gov/wp-content/uploads/2024/05/NCSIP-Version-2-FINAL-May-2024.pdf> [https://perma.cc/CLQ2-GGHB] (*Biden NCSIP v.2*) (describing the title of Initiative 4.1.5 as “Collaborate with key stakeholders to drive secure Internet routing”).

⁷ Number Resource Organization (NRO), *Regional Internet Registries* (Feb. 27, 2024), <https://www.nro.net/about/rirs/> [https://perma.cc/XP2H-BRQ5].

⁸ *Secure Internet Routing*, PS Docket No. 22-90, Notice of Inquiry, 37 FCC Rcd 3471, 3471-72 para. 1 (2022) (*Secure Internet Routing NOI*).

⁹ *2024 Open Internet Order* at paras. 1, 26.

¹⁰ *Id.*

¹¹ Department of Homeland Security, A Guide to Critical Infrastructure and Key Resources Protection at the State, Regional, Local, Tribal, and Territorial Level at 43 (2008), https://www.dhs.gov/xlibrary/assets/nipp_srltlt_guide.pdf [https://perma.cc/8CD8-D4RV].

¹² Pew Research Center, *The Internet and the Pandemic* (Sept. 1, 2021), <https://www.pewresearch.org/internet/2021/09/01/the-internet-and-the-pandemic/> [https://perma.cc/JB78-TH4J].

6. The Internet consists of “tens of thousands” of interconnected, independently administered and managed constituent networks.¹³ Each such independently administered network is termed an Autonomous System (AS)¹⁴ and achieves and maintains interconnection by using the Internet’s sole global inter-domain routing protocol, the Border Gateway Protocol (BGP). As highlighted in the *Secure Internet Routing NOI*, BGP is a central component of the Internet, allowing the exchange of reachability information amongst the independently managed constituent networks.¹⁵ BGP is so vital to the Internet that it has been referred to as “the ‘glue’ that enables the modern Internet.”¹⁶

7. Despite being essential to the Internet, BGP does not have adequate built-in security measures, as its operational debut about 30 years ago featured mostly academic and research organizations. The contingency that significant threat vectors might become prevalent in Internet contexts was not widely anticipated at the time. As noted by federal agencies commenting in response to the *Secure Internet Routing NOI*, when the key portions of the design of BGP were finalized about three decades ago the need for such security was not anticipated.¹⁷ The Internet today is very different, “due to the subsequent increase in the Internet’s complexity and scale, with the rise of cybercrime, government cyber-conflict and other threats.”¹⁸

8. Because the Internet has taken on an increasingly central role in everyday life, the vulnerabilities posed by this shortfall have begun to pose tremendous infrastructural risks. Many of the independently administered ASes interconnected by BGP are essential to the daily functioning of our critical infrastructure.¹⁹ Due to the Internet’s pervasiveness, the security of BGP is not only critical to public safety but is also critical to national security.²⁰

9. BGP vulnerabilities can lead to actors in the distributed routing system of the Internet either intentionally or accidentally disrupting the flow of Internet traffic. This can cause interruption or cessation of access to services that the public or critical infrastructure sectors rely on, and/or misdirect communications and allow interception and blackholing, inspection, or manipulation of data.²¹ Vulnerabilities in BGP allow for routing incidents to occur, which can impact both large sections of the Internet routing system, as well as the networks BGP connects.²² Such routing security incidents can

¹³ See Broadband Internet Technical Advisory Group (BITAG), Security of the Internet’s Routing Infrastructure at 3, 6 (2022), https://www.bitag.org/documents/BITAG_Routing_Security.pdf [https://perma.cc/PPD6-WD6L] (*BITAG Report*).

¹⁴ Cloudflare, *What is an autonomous system?*, <https://www.cloudflare.com/learning/network-layer/what-is-an-autonomous-system/> (last visited Apr. 3, 2024) (*What is an autonomous system?*); *BITAG Report* at 6.

¹⁵ *Secure Internet Routing NOI*, 37 FCC Rcd at 3471-72, para. 2.

¹⁶ National Institute of Standards and Technology (NIST), *Technical Details*, (Mar. 9, 2023), <https://www.nist.gov/programs-projects/robust-inter-domain-routing/technical-details> [https://perma.cc/67KQ-FR74].

¹⁷ CISA Comments at 1 (explaining how the original infrastructure of the Internet was built on mutual trust); see U.S. Department of Justice and U.S. Department of Defense (DOJ/DOD) Comments at 2 (explaining how “BGP was not designed to include security measures.”).

¹⁸ *BITAG Report* at 3.

¹⁹ *BGP NOI*, 17 FCC Rcd at 3471, para. 5.

²⁰ CISA Comments at 1.

²¹ *BITAG Report* at 8-9.

²² Organisation for Economic Cooperation and Development (OECD), *Routing Security: BGP Incidents, Mitigation Techniques and Policy Actions* at 3 (2022), <https://www.oecd-ilibrary.org/docserver/40be69c8-en.pdf?expires=1710269922&id=id&accname=guest&checksum=7ED2936E74CB5A7B046B3EC2EFE8035F> [https://perma.cc/Q3HU-89JW] (*OECD Report*).

have serious implications for the traffic transiting networks.²³ As noted in the *Secure Internet Routing NOI*, some of the more commonplace incidents include BGP “hijacks.”²⁴

10. Numerous examples exist that highlight how routing incidents affect communications. Facebook’s five-hour global outage in October 2021 was caused in part by a failure of its BGP routing which removed routes to its authoritative Domain Name System servers and resulted in more than 1.2 trillion person-minutes of service unavailability.²⁵ To its users, it was as if Facebook, and its other services such as Messenger and Instagram, disappeared from the Internet. Another example occurred in 2019, when an Internet Service Provider (ISP) in Pennsylvania—DQE Communications—started to announce routes for Cloudflare, Amazon, and Linode because of a technical error by one of its network administrators.²⁶ This error caused destinations served by these networks to become unreachable from some parts of the Internet. As another example, in 2020 there was a BGP hijack by a network ostensibly controlled by Rostelecom, which prompted significant service disruptions to entities across the globe. According to the analysis from the Mutually Agreed Norms for Routing Security (MANRS), the incident could have been prevented if Rascom—a directly connected peer to Rostelecom—had implemented strict RPKI ROV filtering to ensure misoriginated routes did not propagate.²⁷ This incident began when Rostelecom misoriginated routes to several CDNs. Rascom, if it were using RPKI ROV, could have rejected these routes and not propagated them, thus curtailing the attack. An additional incident was reported in an article from 2018, after China Telecom had misdirected U.S. Internet traffic—for two and a half years—to one of China Telecom’s networks.²⁸ This misdirection of U.S. routes occurred because an autonomous system on the China Telecom backbone “incorrectly handled routing announcements for AS703, an [AS] belonging to Verizon.”²⁹ Although it is unknown whether the misdirection occurred deliberately or accidentally, it is the vulnerabilities inherent in BGP that allowed for the misdirection to happen.³⁰

11. There have also been clear, deliberately caused routing incidents. In one example an adversary employed a BGP hijack against a cryptocurrency service to effect theft.³¹ In another incident,

²³ *OECD Report* at 11.

²⁴ *Secure Internet Routing NOI*, 37 FCC Rcd at 3471-72, para. 2; *Id.* at 3473, para. 5 (“Causing Internet traffic to depart from its most efficient path is termed ‘BGP hijacking.’”); see also *BITAG Report* at 38; *OECD Report* at 11 (A BGP hijack occurs when a network announces reachability to an IP prefix, or multiple IP prefixes, which is invalid (i.e., to which the network does not have a valid route (or “reachability”))).

²⁵ Akamai, *What Is Authoritative DNS?*, <https://www.akamai.com/glossary/what-is-authoritative-dns> [https://perma.cc/8GGT-3TLF] (last visited May 1, 2024); *OECD Report* at 3.

²⁶ Kieren McCarthy, *BGP super-blunder: How Verizon today sparked a 'cascading catastrophic failure' that knackered Cloudflare, Amazon, etc* (June 24, 2019), https://www.theregister.com/2019/06/24/verizon_bgp_misconfiguration_cloudflare/ [https://perma.cc/KE4C-2FBG].

²⁷ Aftab Siddiqui, *Not just another BGP Hijack* (Apr. 6, 2020), <https://manrs.org/2020/04/not-just-another-bgp-hijack/> [https://perma.cc/LGH6-PWW7]. See Hurricane Electric, *BGP Toolkit*, <https://bgp.he.net/AS20764> [https://perma.cc/63UH-Z3A9] (last visited May 14, 2024) (showing connected peers for an autonomous system number belonging to Rascom).

²⁸ Eric Preizkalns, *China Telecom Misdirected US Net Traffic Through China* (Nov. 12, 2018), <https://commsrisk.com/china-telecom-misdirected-net-traffic-through-china/> [https://perma.cc/98NY-A3P9].

²⁹ *Id.*

³⁰ *Id.*

³¹ NIST, NIST SP 800-30, Guide for Conducting Risk Assessments at B-1 (2012), <https://nvlpubs.nist.gov/nistpubs/Legacy/SP/nistspecialpublication800-30r1.pdf> [https://perma.cc/MMK4-2VLH] (defining an adversary as an “[i]ndividual, group, organization, or government that conducts or has the intent to conduct detrimental activities”); Doug Madory, *What can be learned from recent BGP hijacks targeting*

(continued....)

Russian network operators are suspected of having exploited BGP's vulnerability to redirect a BGP routing incident, disrupting financial services on the eve of Russia's invasion of Ukraine in February 2022.³² In 2020, a Russian digital services provider diverted Internet traffic from Google, Facebook, Akamai, Cloudflare, and Amazon through Russia that resulted in the routed data not reaching the intended recipient.³³ The threat of Internet traffic disruption, interception, and blackholing due to deliberate adversarial manipulation of BGP is undeniable.

12. For all these reasons, finding and implementing remedies to the vulnerabilities in BGP continues to grow more pressing. Ensuring that adequate countermeasures are implemented to offset BGP vulnerabilities has become a pressing matter for the U.S. Government. Other agencies of the Federal Government have recognized the need for the Federal Communications Commission (FCC or the Commission), as the telecommunications regulator, to play a critical role in this context.³⁴

A. Border Gateway Protocol and the Development of RPKI-Based Origin Validation

13. Networks interconnected by BGP, termed BGP Autonomous Systems (ASs), are referred to by the Autonomous System Numbers (ASNs)³⁵ assigned by the Regional Internet Registry (RIR) that oversees Internet number resource allocation and related coordination in that network's geographical area.³⁶ An AS may include one or multiple separate networks, collectively all under the technical administration of a single entity. For BGP purposes, a network path is denoted as a string of ASNs termed an AS Path. The AS Path is one of the "BGP path attributes" or control variables used in signaling destination reachability that influences how each BGP speaker selects routes to that specific destination. For more information, please refer to Appendix A, which provides additional background on inter-domain routing.³⁷ As designed, BGP provides no intrinsic means by which to verify either the originator of a route or the rest of the AS Path in that route, either of which can be manipulated for use as attack vectors instrumental in BGP hijacks.³⁸ This lack of origin and path validation creates routing vulnerabilities, posing threats to public safety and security by potentially exposing U.S. citizens' personally identifiable information and enabling theft, extortion, and state-level espionage, in addition to disrupting potentially critical communications.³⁹ Network operators must take steps to counter these

cryptocurrency services? (Sept. 22, 2022), <https://www.kentik.com/blog/bgp-hijacks-targeting-cryptocurrency-services/> [https://perma.cc/6DBB-7L8W].

³² The term "network operator" can refer to enterprise networks or service providers. See Matthew Wilder, *The Business Case for IPv6: Internet vs. Intranets* (Feb. 6, 2023), <https://www.arin.net/blog/2023/02/06/ipv6-lets-grow-business-case-pt1/> [https://perma.cc/UD9E-YGQF] (explaining how network operators that are service providers, such as ISPs, may take different steps to deploy IPv6, compared to other types of network operators, such as enterprise networks).

³³ Angelique Medina, *Why Rostelecom's Route Hijack Highlights the Need for BGP Security* (Apr. 2, 2020), <https://www.thousandeyes.com/blog/rostelecom-route-hijack-highlights-bgp-security> [https://perma.cc/3B9H-3387].

³⁴ DOJ/DOD Comments at 1; CISA Comments at 1.

³⁵ Each of the interconnected constituent networks that comprise the Internet are referred to as an Autonomous System (AS) and are uniquely identified by a numeric Autonomous System Number (ASN). *BITAG Report* at 6.

³⁶ Number Resource Organization (NRO), *Regional Internet Registries* (Feb. 27, 2024) <https://www.nro.net/about/rirs/> [https://perma.cc/XP2H-BRQ5]; *What is an autonomous system?*.

³⁷ Deep Medhi & Karthik Ramasamy, *Network Routing: Algorithms, Protocols, and Architectures* (2d ed. 2017) (provides further background information on inter-domain routing).

³⁸ T. Manderson, K. Sriram & R. White, *Use Cases and Interpretations of Resource Public Key Infrastructure (RPKI) Objects for Issuers and Relying Parties* (2013), <https://www.rfc-editor.org/info/rfc6907> [https://perma.cc/3JUZ-D8M3].

³⁹ NIST, NIST SP 1800-14, *Protecting the Integrity of Internet Routing: Border Gateway Protocol (BGP) Route Origin Validation* at 6 (2019), <https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.1800-14.pdf> [https://perma.cc/M6YA-U2BD].

threats to secure traffic originating from, or destined to, their networks. However, the pervasiveness of the Internet, together with the autonomous administration of its many constituent networks, constrains the solutions possible to address these issues.⁴⁰

14. To improve the degree to which communications infrastructures can be protected from the vulnerabilities discussed above, both origin validation and path validation are necessary. We focus in this *Notice* on techniques for origin validation, and particularly on RPKI-based origin validation, standardization of which began more than ten years ago.

15. Origin validation consists of verifying that a network is authorized to originate a route advertisement containing a specific Internet protocol (IP) prefix and is a necessary step to securing Internet routing.⁴¹ A previous attempt to verify the veracity of route originations resulted in the Internet Route Registry system, which although it has been in use since 1995, is known to have substantial inaccuracies.⁴² A much more effective approach for securing origin integrity is enabled by the RPKI, which originated in papers dating from 2000. The RPKI includes cryptographic attestations that facilitate higher trust in route origination and other routing information and was standardized in 2012.⁴³

16. The RPKI enables cryptographically verifiable associations between specific IP address blocks or ASNs and the holders of those Internet number resources.⁴⁴ This enables the holders of Internet number resources to attest (via a chain of verifiable digital signatures) to which ASN should originate their IP address prefixes.⁴⁵ The Internet Assigned Numbers Association defines the “holder” of Internet number resources as an organization that has been allocated a block of IP addresses from their RIR.⁴⁶ For the purposes of this *Notice*, however, the “holder” of Internet number resources refers to an entity that: (1) is assigned IP address space by ARIN, or (2) has its own legacy number resources that were originally issued to it by an Internet Registry prior to the inception of ARIN, or (3) is a client of a service provider

⁴⁰ It would be difficult, if not impossible to alter the fundamentals of BGP protocol design. According to leading Internet technical experts, including staff from NIST, who participated in the SIDR Working Group of the Internet Engineering Task Force (IETF), and peers across industry, securing BGP operation and achieving resilient inter-domain connectivity must rely on a series of retrofits with no, or minimal changes to the protocol itself. See S. Murphy et al., *Retrofitting security into Internet infrastructure protocols*, 1 Proceedings DARPA Information Survivability Conference and Exposition, 3-17 (2000); see also P. Papadimitratos & Z. J. Haas, *Securing the Internet routing infrastructure*, 40 IEEE Communications Magazine 10, 60-68 (2002).

⁴¹ An IP prefix is a contiguous set of IP addresses. See NIST, NIST Spec. Pub. 800-189, Resilient Interdomain Traffic Exchange: BGP Security and DDoS Mitigation, at 12-13 (2019), <https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-189.pdf> [https://perma.cc/VR8X-YAGR] (NIST SP 800-189).

⁴² Asia Pacific Network Regional Information Centre, *The Internet Routing Registry (IRR)*, <https://www.apnic.net/manage-ip/apnic-services/routing-registry/> [https://perma.cc/W34H-KYG5] (last visited Apr. 26, 2024); Ben Du et al., IR Regularities in the Internet Routing Registry (Oct., 24, 2023), <https://doi.org/10.1145/3618257.3624843> [https://perma.cc/YY2Z-5L6J].

⁴³ S. Kent, An Infrastructure Supporting Secure Internet Routing (2006), https://doi.org/10.1007/11774716_10; M. Lepinski & S. Kent, An Infrastructure to Support Secure Internet Routing (2012), <https://www.rfc-editor.org/info/rfc6480> [https://perma.cc/9CE3-4CKH].

⁴⁴ See American Registry for Internet Numbers (ARIN), *Resource Certification (RPKI)*, <https://www.arin.net/resources/manage/rpki/> [https://perma.cc/RDJ5-CK6Q] (last visited Apr. 15, 2024); RIPE NCC, *What is RPKI?*, <https://www.ripe.net/manage-ips-and-asns/resource-management/rpki/what-is-rpki/> [https://perma.cc/4RW9-8U3Z] (last visited Apr. 15, 2024) (*Resource Certification (RPKI)*).

⁴⁵ *Resource Certification (RPKI)*.

⁴⁶ See Internet Assigned Numbers Authority (IANA), *Number Resources*, <https://www.iana.org/numbers> [https://perma.cc/T6YF-F764] (last visited Apr. 15, 2024); RIPE NCC, *RIPE NCC Services to Legacy Internet Resource Holders*, <https://www.ripe.net/manage-ips-and-asns/legacy-resources/ripe-ncc-services-to-legacy-internet-resource-holders/> [https://perma.cc/2AE2-JZHK] (last visited Apr. 15, 2024).

that has transferred IP prefixes to the client via contract.⁴⁷ In this last case, we understand that the holder of the address space has been changed from the provider to its client.

17. To take advantage of the routing security features enabled by the RPKI, entities participating in BGP routing need to register and maintain ROAs that correspond to the routes they originate, creating mappings between the associated IP prefixes and the originating ASNs. For a holder of IP address prefixes to authorize an ASN to originate a route to a set of IP prefixes it holds, it must first obtain a resource certificate from its issuing RIR that associates those IP prefixes with itself.⁴⁸ A resource holder will create signed ROAs after receiving a resource certificate from its RIR and generating the corresponding end-entity certificate.⁴⁹ Creating and maintaining accurate ROAs to authorize originated routes is the first step towards implementing origin validation using the RPKI.⁵⁰

18. The other step necessary to implement RPKI-based origin validation is for an essential set of service providers to perform ROV filtering using the ROA repositories in order to validate the routes they accept.⁵¹ Using ROV to validate the origin authenticity of a received route allows the service provider to filter routes found to be invalid.⁵² The RPKI components, and the systems that utilize them, if implemented adhering to fundamental security practices, offer promising avenues to address BGP security vulnerabilities.⁵³

19. The extent to which route originations are covered by ROAs, in addition to the accuracy of the ROAs themselves, determines the usefulness of ROV in subsequently filtering invalid routes, which in turn determines the effectiveness of RPKI-derived techniques as measures to improve routing security.⁵⁴ Sufficient coverage of originated routes with accurate and up-to-date ROAs is a prerequisite for network operators to realize the benefits from ROV filtering.⁵⁵ The subsequent filtering via ROV is critical to preventing BGP routing incidents, as demonstrated by the BGP hijack of an AS controlled by Rostelecom described above.

B. FCC Efforts to Promote Secure Inter-Domain Routing

20. For more than a decade, the Commission has actively promoted improvements to the cybersecurity of networks, including those designed to counteract BGP vulnerabilities. For example, the

⁴⁷ “Address space” colloquially refers to the collective IP addresses controlled by an ISP. See, e.g., Leslie Noble, *ARIN Reaches Final /8 of IPv4 Address Space* (Apr. 24, 2014), <https://www.arin.net/vault/blog/2014/04/24/arin-reaches-final-8-ipv4-address-space/> [<https://perma.cc/AN9V-BLEE>] (describing the provision of “address space” by ARIN).

⁴⁸ See *Resource Certification (RPKI)*.

⁴⁹ M. Lepinski & S. Kent, RFC 6480 - An Infrastructure to Support Secure Internet Routing at 6-7 (2012), <https://www.rfc-editor.org/rfc/pdf/rfc6480.txt.pdf> [<https://perma.cc/MFJ9-39Q5>].

⁵⁰ See *OECD Report* at 24.

⁵¹ Advanced Computing Systems Association (USENIX) Security Symposium, Tomas Hlavacek et al., *Keep Your Friends Close, but Your Routers Closer: Insights into RPKI Validation in the Internet*, 4841-58 (2023) (“The burden of protecting the global routing architecture primarily lies on large ISPs and Tier-1 providers. ROV implementation in Tier-1 providers greatly benefits Internet security as it limits the spread of hijacks to a localized scope.”); Doug Madory & Job Snijders, *Exploring the Latest RPKI ROV Adoption Numbers* (May 24, 2023), <https://www.kentik.com/blog/exploring-the-latest-rpki-rov-adoption-numbers/> [<https://perma.cc/HWJ8-4BEB>] (“If an AS doesn’t reject RPKI-invalid routes, but its transit providers do, it is almost like they do, too. Unless, of course, the invalid routes are arriving over a peering connection, circumventing transit.”).

⁵² See *NIST 800-189* at 12-13.

⁵³ Donika Mirdita et al., *The CURE To Vulnerabilities in RPKI Validation*, Network and Distributed System Security (NDSS) Symposium 2024 (2024).

⁵⁴ See *OECD Report* at 24.

⁵⁵ *Id.* at 24.

Commission chartered Communications Security, Reliability, and Interoperability Councils (CSRICs)—federal advisory committees comprised of stakeholders from the telecommunications industry as well as special advisors from other relevant sectors—to address issues associated with the security of communications systems.⁵⁶ CSRICs III and VI, in particular, addressed issues and risks associated with BGP, which included recommendations and best common practice standards to mitigate these risks.⁵⁷

21. The CSRIC III working group active in the 2011-2013 period produced a report which outlined then-current best practices implemented by network operators, and recommended further actions to build on these.⁵⁸ This report recommended that network operators ensure that their Internet routing registry entries are accurate, complete, and up-to-date, and that network operators use the RPKI as a standards-based approach for providing cryptographically secure databases of Internet resources and routing authorizations.⁵⁹ The CSRIC III report made four recommendations related to RPKI-based origin validation: (1) maintain accurate records about number resource holders; (2) undergo cautious, staged deployment of RPKI origin validation; (3) undertake efforts to mitigate risks inherent in RPKI; and (4) suggestions for improving BGP security metrics and measurements.⁶⁰ As follow up to the CSRIC III report, the FCC sought comment on the implementation and effectiveness of the recommendations and alternatives that stakeholders have developed since the time of the CSRIC’s original work to address those challenges.⁶¹

22. CSRIC VI built on the CSRIC III recommendations, and developed additional guidance suggesting that network operators support MANRS and Internet Engineering Task Force (IETF) Best Common Practice Standards.⁶² MANRS recommendations identify four focus areas to improve routing security: (1) filtering to ensure accuracy of BGP route announcements; (2) anti-spoofing to enable source IP address validation for at least single-homed stub customer networks, their end users and supporting infrastructure; (3) coordination to ensure maintenance of accurate and current contact information in RIRs and associated databases (PeeringDB); and (4) global validation of routing information, which involves network operators publishing their data so others can validate it.⁶³ The CSRIC VI working group’s final report more generally recommended further studies as new best practices are developed and industry implements existing security measures (e.g., RPKI).⁶⁴

⁵⁶ Federal Communications Commission (FCC), *Communications Security, Reliability, and Interoperability Council*, <https://www.fcc.gov/about-fcc/advisory-committees/communications-security-reliability-and-interoperability-council-0> [https://perma.cc/YRD7-3DHJ] (last visited Mar. 22, 2024).

⁵⁷ See Communications Security, Reliability, and Interoperability Council (CSRIC) III, *Secure BGP Deployment*, Final Report at 3 (2013), https://transition.fcc.gov/bureaus/pshs/advisory/csr3/CSRIC_III_WG6_Report_March_%202013.pdf [https://perma.cc/RB4D-J9FJ] (*CSRIC III Report*); see also CSRIC VI, *Report on Best Practices and Recommendations to Mitigate Security Risks to Current IP-based Protocols*, Final Report at 3-7 (2019), https://www.fcc.gov/sites/default/files/csr6wg3_finalreport_030819.pdf [https://perma.cc/S6MF-MRLP] (*CSRIC VI Report*).

⁵⁸ *CSRIC III Report* at 3.

⁵⁹ *Id.* at 4-5.

⁶⁰ *Id.* at 16-26.

⁶¹ *FCC’s Public Safety and Homeland Security Bureau Requests Comment on Implementation of CSRIC III Cybersecurity Best Practices*, Public Notice, 29 FCC Rcd 9217, 9217-18 (PSSB 2014).

⁶² *CSRIC VI Report* at 4-15, 6-20.

⁶³ *Id.* at 4-15 and 4-16.

⁶⁴ *Id.* at 20.

23. The FCC followed up in 2022 on the risks inherent to BGP, as well as countermeasures, with the release of the *Secure Internet Routing NOI*.⁶⁵ The *Secure Internet Routing NOI* sought comment on steps the Commission should consider taking to help protect and strengthen the nation's communications networks and other critical infrastructure from vulnerabilities intrinsic to BGP.⁶⁶ In particular, the *Secure Internet Routing NOI* sought comment on the security measures recommended by CSRIC III and VI (e.g., RPKI, MANRS, and applicable IETF Best Common Practice standards), and the extent to which network operators have implemented available BGP security recommendations developed by industry.⁶⁷

24. A significant number of commenters on the *Secure Internet Routing NOI* strongly cautioned the Commission against implementing prescriptive measures regarding Internet routing security.⁶⁸ Some commenters agreed, however, that the Commission can still take "important steps" to promote routing security, such as working with our federal "government partners . . . to encourage a wider adoption of BGP tools and solutions that will enhance ecosystem security and address and mitigate vulnerabilities and potential exploits."⁶⁹ Some of those government agencies, while noting their own roles in protecting national security in a variety of industry sectors, advocated for the Commission to take regulatory action to address the vulnerabilities that affect BGP.⁷⁰ For example, the Department of Defense (DOD) and the Department of Justice (DOJ) specifically commented that "existing routing security measures, like [RPKI], can help mitigate the risk[s]" inherent in BGP, and suggested that additional transparency measures may be appropriate and necessary, such as a "requirement to report peering and interconnection partners and to monitor and periodically audit traffic routing to ensure traffic is not being misrouted over untrusted networks."⁷¹ DOD and DOJ further highlighted the national security concerns regarding BGP vulnerabilities, commenting that such vulnerabilities "put U.S.-person data and communications (including government communications) at risk of theft, espionage, and sabotage by foreign adversaries, both directly and through third parties."⁷² Indeed, those agencies

⁶⁵ *Secure Internet Routing NOI*, 37 FCC Rcd 3471.

⁶⁶ *Id.*

⁶⁷ *Id.*; FCC's *Public Safety and Homeland Security Bureau Requests Comment on Implementation of CSRIC III Cybersecurity Best Practices*, Public Notice, 29 FCC Rcd 9217 (2014).

⁶⁸ See, e.g., Internet Society Reply at 2 ("While there are proactive actions the [USG] can take to improve routing security, like many other commenters we caution the Commission against prescriptive routing security mandates which could have serious unintended consequences."); Verizon Comments at 4 ("[T]he Commission should avoid imposing prescriptive approaches to routing security."); CTIA Comments at 29 ("Rather than promoting security, prescriptive mandates could lead to companies to focus on compliance and distract from the important work of developing consensus standards.").

⁶⁹ See, e.g., NCTA Comments at 6 ("[W]hile the Commission should avoid taking a prescriptive approach to BGP, there are important steps that it could take to promote and enhance routing security. . . ."); Comcast Comments at 11 ("[T]he Commission should leverage its expert agency role to promote federal policies that encourage and facilitate the development and deployment of BGP security solutions more broadly."); USTelecom Comments at 10 ("[B]y leveraging its convening authorities to bring relevant voices to the table, the Commission can help the U.S. [G]overnment, its allies and partners, and key private sector stakeholders to meaningfully advance BGP security and lay a working foundation for the many other cybersecurity challenges that lie ahead.").

⁷⁰ See DOJ/DOD Comments at 9-10; *id.* at 10 ("Consistent, technically informed, yet flexible rules provide the most effective framework for addressing security needs while providing the predictability required for private industry to make long-term investment decisions."); CISA Comments at 1 ("[B]ecause the BGP risk is systemic, no one entity or group of entities is responsible for its overall security. Similarly, no single entity reaps the benefits from unilaterally improving BGP security, making it difficult to organize private activities to solve the problem. Therefore, CISA recommends that the FCC investigate and consider methods to drive down this risk by utilizing all of its statutory authorities.").

⁷¹ DOJ/DOD Comments at 5.

⁷² *Id.* at 3.

advocated “that the [Commission] should comprehensively tackle these [BGP] vulnerabilities with industry-wide solutions using a combination of technical security standards and transparency measures[.]”⁷³

25. After the comment cycle on the *NOI* closed, the Commission changed the *ex parte* status of this proceeding from “permit-but-disclose” to “exempt” in order to “facilitate the free exchange of exploratory ideas among the staff of [f]ederal agencies and interested stakeholders working toward the important goal of promoting secure Internet routing.”⁷⁴ This change allowed for more detailed FCC staff engagement with stakeholders to improve BGP security.⁷⁵ As part of these continuing efforts, in the summer of 2023, the FCC held a public workshop to further identify and discuss existing and potential safeguards to address BGP routing security issues.⁷⁶ At that public workshop, industry stakeholders and representatives from other U.S. Government agencies discussed the vulnerabilities inherent to BGP, actions taken to improve BGP security, and the potential for future actions to address the vulnerabilities.⁷⁷ Workshop participants emphasized the risk that adversaries—including state-level adversaries—pose, which may result in espionage, sabotage, or interference of communication networks in the United States.⁷⁸ The RPKI and the avenues it affords to assist in better inter-domain routing security, including ROA and ROV were discussed as current tools available to reduce the risks posed by BGP vulnerabilities.⁷⁹ Industry stakeholders—both large and small—highlighted the efforts they have undertaken to incorporate these RPKI-facilitated measures into their routing security architectures.⁸⁰ The workshop examined the viability of emerging BGP security advancements such as Autonomous System

⁷³ *Id.* at 1.

⁷⁴ *PSHSB Changes Ex Parte Status for Secure Internet Routing Proceeding*, PS Docket No. 22-90, Public Notice, 38 FCC Rcd 2506 (PSHSB 2023).

⁷⁵ *Id.*; see Letter from David Clark, Senior Research Scientist, Massachusetts Institute of Technology, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 22-90, at 1 (filed July 18, 2023); see also 47 CFR § 1.1200(a).

⁷⁶ *Public Safety and Homeland Security Bureau to Host Public Workshop on Border Gateway Protocol Security on July 31, 2023*, PS Docket No. 22-90, Public Notice (PSHSB 2023) (*BGP Workshop Public Notice*).

⁷⁷ *FCC Chairwoman Rosenworcel & CISA Director Easterly to Headline Border Gateway Protocol Security Workshop*, PS Docket No. 22-90, Advisory (PSHSB 2023); see *Border Gateway Protocol Security Workshop*, at 42:57 (July 31, 2023), <https://www.fcc.gov/news-events/events/2023/07/bgp-security-workshop> [<https://perma.cc/E79M-ZENX>] (*BGP Workshop*) (ONCD speaking about NSCIP Initiative 4.1.5); *BGP Workshop*, at 70:00 (AT&T speaking about its experience and process for addressing BGP vulnerabilities); *BGP Workshop*, at 76:00 (Verizon speaking about its experience and process for addressing BGP vulnerabilities).

⁷⁸ *Chairwoman Rosenworcel Opening Remarks at Border Gateway Protocol Security Workshop*, PS Docket No. 22-90, Speech (PSHSB 2023); see also FCC, *The Most Important Part of the Internet You’ve Probably Never Heard Of* (Aug. 2, 2023), <https://www.fcc.gov/news-events/notes/2023/08/02/most-important-part-internet-youve-probably-never-heard> [<https://perma.cc/DCF4-B7M9>]; *BGP Workshop*, at 08:35 (CISA Director Jen Easterly speaking about threats to national security due to BGP vulnerabilities).

⁷⁹ NIST, BGP Security Level Set Problem Spacing and Emerging Solutions at 8-9 (2023), <https://www.fcc.gov/sites/default/files/NIST%20BGP%20Level%20Set-Problem%20Space-Emerging%20Solutions%20-%20FCC%20BGP%20Wrkshp073123.pdf> [<https://perma.cc/L43T-WTP8>] (*NIST BGP Level Set*).

⁸⁰ Fredrik Korsbäck, How AWS is helping to secure internet routing at 3 (2023), <https://www.fcc.gov/sites/default/files/AWS%20and%20Secure%20Internet%20Routing%20-%20FCC%20BGP%20Wrkshp073123.pdf> [<https://perma.cc/GK5R-3MCT>]; see also Anees Shaikh, BGP routing security: Cloud/Content providers at 3 (2023), <https://www.fcc.gov/sites/default/files/Google%20CSP%20Routing%20Security%20-FCC%20BGP%20Wrkshp073123.pdf> [<https://perma.cc/2ZLX-APAP>].

Provider Authorizations (ASPA) to address path validation and other approaches to lessen the risks currently inherent in interdomain routing.⁸¹

26. The workshop provided industry leaders and the federal agencies a forum to share their expertise, concerns, and encourage the continued deployment of RPKI and ROAs. Participants of the workshop raised various concerns regarding the process of implementing RPKI-based routing security measures, including the operational challenges.⁸² Notably, participants also highlighted an important issue regarding the customers of service providers to whom the service provider has transferred IP address prefixes. That is, in some cases a customer to whom IP address prefix(es) has been transferred from a service provider may be the only one that can register ROAs for that address space.

27. From these engagements, Commission staff gained valuable insight into the variety of approaches to, and the general industry progress in, deploying routing security measures which make use of RPKI.⁸³ The insights gained from these engagements have substantially informed the proposals contained in this *Notice*. This continued engagement also has encouraged other routing security efforts by industry and by other federal agencies actively engaged on secure Internet routing issues, including CISA, DOJ, National Telecommunications and Information Administration (NTIA), and the National Institute of Standards and Technology (NIST).⁸⁴

C. Other Federal Efforts to Promote Secure Internet Routing

28. The Commission is working in concert with multiple other federal efforts that are addressing the vulnerabilities in BGP. Of greatest prominence today is Initiative 4.1.5, Secure Internet Routing, in the plan for implementing the President's National Cybersecurity Strategy. Initiative 4.1.5 in version two of President Biden's National Cybersecurity Strategy Implementation Plan (NCSIP v.2) tasks ONCD, which advises the President on cybersecurity policy and strategy, to collaborate with stakeholders and appropriate United States Government (USG) entities to create a roadmap for adopting "secure Internet routing techniques and technology."⁸⁵ The National Cybersecurity Strategy sets forth six encompassing pillars designed to create a safer and more resilient interconnected world, and explicitly addresses the need for securing the technical foundation of the Internet as part of that effort.⁸⁶ To meet this objective, the National Cybersecurity Strategy recommended exploring approaches and options to address BGP routing security concerns.⁸⁷ Namely, Initiative 4.1.5 in the NCSIP v.2 envisions five goals for its roadmap to increase the adoption of Internet routing techniques and technology: (i) identify security challenges; (ii) explore approaches to address concerns associated with Internet routing and BGP security; (iii) identify and inform the development of best practices; (iv) identify needed research and

⁸¹ See *NIST BGP Level Set* at 22.

⁸² See *BGP Workshop*, at 86:11.

⁸³ See Andrew Gallo, *Community Takeaways From FCC Routing Security Workshop* (Sept. 21, 2023), <https://internet2.edu/community-takeaways-from-fcc-routing-security-workshop/> [https://perma.cc/NHA2-98LQ]; see also CableLabs, *Cybersecurity Framework Profile for Internet Routing* at 5 (2024), https://insidecybersecurity.com/sites/insidecybersecurity.com/files/documents/2024/jan/cs2024_0014.pdf [https://perma.cc/Q5FT-W7T3].

⁸⁴ See NIST, *CSF 2.0 Implementation Examples* at 23 (2024), <https://www.nist.gov/system/files/documents/2024/02/21/CSF%202.0%20Implementation%20Examples.pdf> [https://perma.cc/UE2E-GXY8] (providing BGP monitoring as an example for the Continuous Monitoring (DE.CM) category); see also Memorandum from Majority Staff, House Committee on Energy and Commerce, to Members, Subcommittee on Communications and Technology at 6-7 (Jan. 9, 2024) (detailing how members of the Subcommittee on Communications and Technology were hearing testimony regarding cybersecurity issues including BGP on Jan. 11, 2024).

⁸⁵ *Biden NCSIP v.2* at 45.

⁸⁶ *Biden NCS* at 1, 23-24.

⁸⁷ *Id.* at 1, 23-24.

development; and (v) identify barriers to adoption and alternate mitigation approaches.⁸⁸ Initiative 4.1.6 in the NCSIP v.2, in turn, focuses on promoting the adoption of such secure Internet routing techniques and technology by using the metrics and milestones identified in the roadmap developed under Initiative 4.1.5.⁸⁹ Contributing to the work on these initiatives are many other federal agencies, including NTIA, NIST, CISA, DOJ, the National Security Agency, the Office of Science and Technology Policy, and the Office of Management and Budget.⁹⁰

29. Securing the technical foundation of the Internet remains a key strategic objective in President Biden’s National Cybersecurity Strategy, which specifically identifies the vulnerabilities in BGP as one of the “most urgent” and “pervasive concerns” needing to be addressed.⁹¹ To address BGP’s vulnerabilities and reach a more secure Internet ecosystem, the Strategy envisions “close collaboration between public and private sectors.”⁹² For example, the Strategy directs that: “The Federal Government will lead by ensuring that its networks have implemented these and other security measures while partnering with stakeholders to develop and drive adoption of solutions” as well as measures “to mitigate the most urgent of these pervasive concerns such as Border Gateway Protocol vulnerabilities.”⁹³ As the National Cyber Director recently stated, by the end of 2024 ONCD expects “over 50% of the Federal advertised IP space to be covered by Registration Service Agreements, paving the way to establish ROAs for Federal networks.”⁹⁴ It is the joint effort, between the USG and the holders of Internet number resources working independently but also in concert with each other, that will help us reach a more secure Internet routing system.

30. NIST is one of the U.S. federal entities with which the FCC is working closely. The NIST Internet Technology Research Group, part of its Communications Technology Lab, was funded by the U.S. Federal Government to work on research and standardization efforts to improve the security of Internet routing and other infrastructural protocols such as Domain Name System Security Extensions. In 2019, NIST published Special Publication 800-189 (NIST SP 800-189) recommending the use of RPKI, BGP origin validation (BGP-OV), and prefix filtering for securing the interdomain routing control traffic.⁹⁵ In particular, NIST SP 800-189 provided recommendations to ISPs associated with obtaining RPKI certificates, managing subordinate certificate authorities, registering ROAs in the global RPKI for announcement, and how to manage prefixes.⁹⁶ NIST SP 800-189 also provided recommendations for

⁸⁸ *Biden NCSIP v.2* at 45.

⁸⁹ *Id.* at 46.

⁹⁰ *See id.* at 45-46 (noting that, in the context of these two initiatives, the Office of Science and Technology Policy is a contributing entity only to initiative 4.1.5, and the Office of Management and Budget is similarly a contributing entity only to initiative 4.1.6).

⁹¹ *Biden NCS* at 24.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ ONCD, Briefing Room, Remarks: National Cyber Director Coker Remarks for the President’s National Security Telecommunications Advisory Committee (May 23, 2024), <https://www.whitehouse.gov/oncd/briefing-room/2024/05/23/remarks-national-cyber-director-coker-remarks-for-the-presidents-national-security-telecommunications-advisory-committee-meeting/> [https://perma.cc/54LM-5SY4]. Under ARIN policies, a “Registration Service Agreement” is a “contractual [sic] agreement between ARIN and the resource holder” concerning the number resources that are allocated or assigned to it by ARIN. ARIN, *Number Resource Policy Manual* at 6 (Sept. 13, 2023), <https://www.arin.net/participate/policy/nrpm/nrpm.pdf> [https://perma.cc/E36V-PV2N] (*ARIN Manual*).

⁹⁵ *NIST SP 800-189* at 4, 12, 22.

⁹⁶ *Id.* at 11, 14, 15.

addressing various routing hijacks, such as securing against DoS attacks and reflection/amplification attacks, among others.⁹⁷

31. NIST's Robust Inter-Domain Routing program works with industry, contributes in the IETF standardization process, and fosters the development and deployment of technologies to improve the security of BGP routing.⁹⁸ Further, the program includes the publicly accessible NIST RPKI Monitor tool, which measures the global deployment of RPKI.⁹⁹ The program also includes a list of accessible presentations, standards specifications, standards contributions, and panel sessions where NIST team members have participated.¹⁰⁰

D. Industry Efforts to Address Vulnerabilities

32. The FCC's interest in BGP security is shared with, and was preceded by, significant efforts in many quarters. Leading academics have been active in this sphere since the early part of this century.¹⁰¹ Industry stakeholders, such as the Internet Society, an advocacy organization whose members are comprised of companies and non-profits, have emphasized the case for improving routing security and the essential nature of the RPKI to this effort.¹⁰² The Internet Society launched and supports the initiative entitled MANRS, which is an industry-endorsed organization that is active in the effort to secure global routing, and whose set of best practices was recommended by CSRIC VI.¹⁰³ MANRS provides guidance for various entities that allow the Internet to function, including guidance on steps that network operators such as ISPs can take to secure routing.¹⁰⁴ These include taking measures, variously classified by ISOC/MANRS as "compulsory" or "recommended" to prevent propagation of incorrect routing information, facilitating global operational communication and coordination, and facilitating routing information on a global scale.¹⁰⁵ MANRS also operates an observatory for monitoring routing incidents, providing visibility into a variety of routing security statistics such as mis-originations and route leaks.¹⁰⁶ On the same site, MANRS further provides views on the extent of deployment of RPKI-based measures and the recommended MANRS actions.¹⁰⁷

⁹⁷ *Id.* at 7-8.

⁹⁸ NIST, *Robust Inter-Domain Routing Technical Details*, <https://www.nist.gov/programs-projects/robust-inter-domain-routing/technical-details> [https://perma.cc/P7VG-QYNU] (last visited Apr. 10, 2024) (*Robust Inter-Domain Routing Technical Details*).

⁹⁹ NIST, *NIST RPKI Monitor* (Apr. 10, 2024), <https://rpk-monitor.antd.nist.gov>.

¹⁰⁰ *Robust Inter-Domain Routing Technical Details*.

¹⁰¹ See, e.g., Stephen Kent, Charles Lynn & Karen Seo, Secure border gateway protocol (S-BGP), 18 IEEE Journal on Selected Areas in Communications 4582-92 (2000).

¹⁰² Mutually Agreed Norms for Routing Security (MANRS), *RPKI Week*, <https://manrs.org/resources/events/rpki-week/> [https://perma.cc/5EJX-5STK] (last visited Apr. 29, 2024); MANRS, *Routing Security Summit 2023*, <https://manrs.org/event/routing-security-summit-2023/> [https://perma.cc/7Y4G-SVLF] (last visited Apr. 29, 2024).

¹⁰³ Internet Society, *Organization Members*, <https://www.internetsociety.org/about-internet-society/organization-members/> [https://perma.cc/682B-X6F6] (last visited Mar. 26, 2024); Internet Society, *Securing Global Routing*, <https://www.internetsociety.org/action-plan/securing-global-routing/> [https://perma.cc/2GQ3-JJ48] (last visited Mar. 26, 2024).

¹⁰⁴ MANRS, *MANRS for Network Operators*, <https://manrs.org/netops/> [https://perma.cc/4RYC-88SD] (last visited Mar. 26, 2024).

¹⁰⁵ MANRS, *Actions*, <https://manrs.org/netops/actions/> [https://perma.cc/CXS7-7TQE] (last visited Mar. 26, 2024).

¹⁰⁶ MANRS Observatory, *Overview*, <https://observatory.manrs.org/#/overview> [https://perma.cc/VW3L-XNGW] (last visited Mar. 26, 2024).

¹⁰⁷ *Id.*

33. The IETF is the principal standards development organization in the Internet arena, having been active since 1986.¹⁰⁸ In keeping with its role and history, it developed the first industry-driven standards to address security vulnerabilities in BGP in its Secure Inter-Domain Routing (SIDR) working group.¹⁰⁹ With the basic standards definition work in the SIDR WG deemed concluded, further standards work on the operational aspects of this subject matter continues in the IETF SIDR Operations (SIDROPS) working group.¹¹⁰ In its Request For Comments (RFC) 6811, the IETF outlined the procedures for route origin validation using the RPKI distributed database.¹¹¹ RFC 8205 defines the BGPsec Protocol, where an extension to BGP provides security for the path of an AS by providing the AS with a BGP UPDATE message.¹¹² Most recently, IETF published a draft RFC, which is a work-in-progress detailing the use of ASPA objects in RPKI to verify BGP attributes of advertised routes, where the ASPA objects are cryptographically signed registrations of customer-to-provider relationships.¹¹³

III. DISCUSSION

34. Today, we are seeking comment on several proposals targeted towards improving the security of Internet routing, in particular of BGP, which, as detailed above includes key vulnerabilities capable of impacting this nation's critical infrastructure. We intend these proposals to apply to providers of broadband Internet access service on a mass market retail basis (BIAS), based primarily on our authority under Title II of the Communications Act.¹¹⁴ Our proposals take into account our understanding of the current state of industry participation in RPKI-based approaches to routing security, including the deployment of ROV, from our active and continuing engagement on these issues with industry stakeholders and other government agencies. In short, there is an apparent wide disparity in the percentage of originated routes covered by ROAs and limited or incomplete support for ROV. Further action is urgently required.

35. As of May 2024, only 38% of U.S. networks allow for the validation of their routing information by registering and maintaining ROAs in the RPKI.¹¹⁵ That figure is derived from data found in Cloudflare's Radar, and it is confirmed by data in the MANRS Observatory.¹¹⁶ The MANRS

¹⁰⁸ IETF, *Introduction to the IETF*, <https://www.ietf.org/about/introduction/> [https://perma.cc/YZ2Q-J4VE] (last visited Mar. 26, 2024).

¹⁰⁹ IETF Secure Interdomain Routing Operations (SIDR) working group, *Final Charter for Working Group*, <https://datatracker.ietf.org/wg/sidr/about/> [https://perma.cc/QCU7-QJMQ] (last visited Apr. 29, 2024) (*SIDR Working Group*).

¹¹⁰ *Id.*

¹¹¹ IETF, RFC 6811 - BGP Prefix Origin Validation at 3 (2013), <https://www.rfc-editor.org/rfc/pdf/rfc6811.txt.pdf> [https://perma.cc/48M7-QRKA].

¹¹² IETF, RFC 8205 - BGPsec Protocol Specification at 4 (2017), <https://www.rfc-editor.org/rfc/pdf/rfc8205.txt.pdf> [https://perma.cc/S67P-U8GC].

¹¹³ IETF, BGP AS_PATH Verification Based on Autonomous System Provider Authorization (ASPA) Objects at 3 (2024), <https://datatracker.ietf.org/doc/pdf/draft-ietf-sidrops-aspa-verification-17> [https://perma.cc/QX8B-BB7B] (*BGP AS_PATH Verification*).

¹¹⁴ 2024 *Open Internet Order* at paras. 28, 125-26. We also seek comment on whether there are additional service providers that use BGP to route Internet traffic that should be included within the scope of this proceeding.

¹¹⁵ *Cloudflare Radar*, <https://radar.cloudflare.com/routing/us> (last visited May 31, 2024) (showing that 38% of U.S.-based networks are "RPKI Valid").

¹¹⁶ MANRS provides a "readiness score" that describes the level that selected networks conform to MANRS, including whether the network helps validate their routing information by storing it in the RPKI. See *MANRS Observatory*, <https://observatory.manrs.org/#/history> [https://perma.cc/BJ93-52HG] (last visited Apr. 14, 2024) (filtering results by country and showing additional information regarding MANRS' measurements and scores in the information icons next to "MANRS Readiness" and "Routing Information (RPKI)"). *NIST RPKI Monitor*, <https://rpki-monitor.antd.nist.gov/> (last visited Apr. 14, 2024).

Observatory provides trend data for the maintenance of routing information in the RPKI by the networks participating in MANRS.¹¹⁷ There are other measurement tools publicly available online that reveal similar data, such as NIST's RPKI Monitor.¹¹⁸ Looking at an earlier date, as of December 2024, 36% of traffic originating from non-U.S. Federal Government networks was covered by a valid ROA, but less than 1% of traffic originating from U.S. Federal Government networks was covered by a valid ROA.¹¹⁹ Thus, we observe that the use of RPKI services across the Internet has continued to increase over the past several years through service providers seeking to secure their BGP architectures.¹²⁰ Despite the increasing deployment of RPKI-based security measures by some service providers in the United States, service providers that participate in BGP routing will need to make additional progress to reduce exposure to the types of communications attacks described and the ensuing risks.

36. Thus, consistent with comments filed by DOD, DOJ, and CISA in response to the *Secure Internet Routing NOI*, we are proposing reporting obligations on service providers intended to help assess, prioritize, and maintain plans for utilizing the RPKI architecture to further BGP operational security.¹²¹ As the agency with regulatory authority in this area, we intend to continue our close collaboration with other federal agencies which have been actively considering similar secure Internet routing issues through National Cybersecurity Strategy initiatives.¹²² We seek comment on how the deployment of RPKI and other solutions may promote accountability through collaboration among key Internet stakeholders, such as private, government, regulated, and unregulated entities, and between the United States and our global partners. Our proposals are largely focused on the preparation and filing of BGP Routing Security Risk Management Plans, but we do seek comment on certain additional measures that we believe hold promise for facilitating the implementation of RPKI-based routing security.¹²³

A. BGP Routing Security Risk Management Plans

37. We propose to require service providers to prepare and maintain BGP Routing Security Risk Management Plans (BGP Plans) describing and attesting to the specific efforts they have made, and further plan to undertake, to create and maintain ROAs in the RPKI. We expect that requiring service providers to prepare plans on how they have and will institute RPKI, a solution developed through an open standards setting process, can promote participation in the standards setting process. The Commission continues to strongly support open standards setting processes, and that is also a core goal of strategic objective 4.1 of the National Cybersecurity Strategy.¹²⁴ We seek comment on the impact that our reporting proposals may have on this goal.

¹¹⁷ MANRS Observatory provides historical data collected over a one-year time span. *MANRS Observatory*, <https://observatory.manrs.org/#/history> [https://perma.cc/BJ93-52HG] (last visited Apr. 14, 2024).

¹¹⁸ *Id.*; NIST RPKI Monitor, <https://rpki-monitor.antd.nist.gov/> (last visited May 31, 2024); see also *Cloudflare Radar*, <https://radar.cloudflare.com/routing> (last visited Apr. 14, 2024); Hurricane Electric, *BGP Toolkit*, <https://bgp.he.net/> [https://perma.cc/7WRR-MN4D] (last visited Apr. 14, 2024); *APNIC Labs Measurements and Data*, <https://labs.apnic.net/measurements/> [https://perma.cc/XS4K-QZ4R] (last visited Apr. 14, 2024).

¹¹⁹ Letter from John Morris, Principal, U.S. Internet Pol'y & Advoc., Internet Society, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 23-320 et al., Attach. at 3-4 (filed Apr. 17, 2024).

¹²⁰ See, e.g., *MANRS Observatory*, <https://observatory.manrs.org/#/history> [https://perma.cc/BJ93-52HG] (last visited Apr. 14, 2024) (showing increasing use of RPKI services since March 2022 among the networks that participate in MANRS).

¹²¹ See *supra* para. 24; see also *infra* Sections III.A-C.

¹²² See *infra* para. 109.

¹²³ We here open a new docket focused on the main proposals in this *Notice* (PS Docket No. 24-146), but the *Secure Internet Routing* docket (PS Docket No. 22-90) remains open as well.

¹²⁴ *Biden NCS* at 24.

38. Under our proposals, BGP Plans can be risk-based performance plans, but would have to describe and attest to the extent to which the service provider conducts ROV filtering at the interconnection points between the service provider and its peers and clients, as well as describe any other methods at their disposal.¹²⁵ These plans are to be updated on an annual basis. The following subsections discuss which service providers would be required to confidentially file their BGP Plans with the Commission, in addition to discussing the details that we propose should be included in all BGP Plans, whether filed with the Commission or not.¹²⁶ Should the Commission promote risk-based solutions among service providers?

1. Initial BGP Plans

39. We propose to require certain large service providers to file initial BGP Plans with the Commission. In particular, we propose to impose this filing requirement on all Tier 1 service providers as well as the other most significant service providers, which would currently include: AT&T, Inc.; Altice USA; Charter Communications; Comcast Corporation; Cox Communications, Inc.; Lumen Technologies, Inc.; T-Mobile USA, Inc.; Telephone & Data Systems (including US Cellular); and Verizon Communications, Inc.¹²⁷ These significant providers are likely to originate routes covering a large proportion of the IP address space in the United States and will play critical roles ensuring effective implementation of ROV filtering. The initial BGP plans prepared by service providers other than those suggested above would not need to be filed with the Commission but should be made available to FCC staff upon request. We propose, but seek comment on, a requirement that BGP Plans submitted to the Commission should be attested by a corporate officer at each service provider.

40. We seek comment on whether we should require the filing of BGP Plans by a different set of service providers than those identified above. If so, commenters should explain the reasons for, and factors involved with, reaching that determination, and the feasibility of using particular metrics. For instance, should only the most significant service providers based on number of clients, or number of public peers, need to file? Or, should we choose based on other criteria, such as several of the following: the size of the address space under their control (through legacy ownership or assigned by ARIN), the number of customers, or the number of originated routes?

41. We do not propose in this *Notice* to set specific industry-wide substantive requirements with industry-wide deadlines. BGP Plans are intended to establish a mechanism by which the

¹²⁵ Other methods include, for example, TCP-AO and peer-locking. IETF, RFC 5925 - The TCP Authentication Option at 4-5 (2010), <https://datatracker.ietf.org/doc/html/rfc5925> [https://perma.cc/RJM9-M68J]; Job Snijders, *Practical everyday BGP filtering with AS-PATH filters: Peer Locking*, North American Network Operators' Group, https://archive.nanog.org/sites/default/files/Snijders_Everyday_Practical_Bgp.pdf [https://perma.cc/6DPV-TDEJ] (last visited Apr. 15, 2024).

¹²⁶ *Infra* Sections III.A.1-3.

¹²⁷ We define "Tier 1" service providers as those that are able to reach all Internet end-points solely through peering relationships. *E.g.*, William B. Norton, *The Evolution of the U.S. Internet Peering Ecosystem*, North American Network Operators' Group 1, 2 (Nov. 19, 2003) <https://archive.nanog.org/meetings/nanog31/presentations/norton.pdf> [https://perma.cc/XT6U-UEFV] (defining "Tier 1 ISP" as "an ISP that has access to the entire Regional Internet routing table solely through Peering relationships. Regional Tier 1 ISPs are at the top of the hierarchy and don't have to pay transit fees . . . All other ISPs operating in the region are required to purchase transit from one or more of the Regional Tier 1 ISPs"). A "Tier 2" service provider is an ISP "that purchases (and therefore resells) transit within an Internet Region." *Id.* A Tier 2 model is "similar to the Tier 1 model but includes one (or more) 'Upstream' transit connections." *Id.* A Tier 3 service provider is one that "strictly purchases Internet transit" and is "primarily engaged in delivering Internet access to end customers." *See, e.g.*, CISCO Thousand Eyes, *Learning Center ISP Tiers*, <https://www.thousandeyes.com/learning/techtorials/isp-tiers> [https://perma.cc/A6EA-DVJT] (last visited May 23, 2024). In other words, Tier 3 providers "provide the 'on-ramp' or local access to the Internet for end customers, through cable, DSL, fiber or wireless access networks. *Id.* They 'utilize and pay higher-tier [service providers] for access to the rest of the Internet.'" *Id.*

Commission, working in coordination with other federal agencies, can assess a service provider's actions to prioritize routing security through use of the RPKI architecture, measure its progress over time to evaluate the reasonableness of its BGP routing security risk management plan, and verify its commitments to following it. In addition, the development of BGP Plans by all service providers would be important for securing BGP operations in the near term because it would require service providers to consider the benefits of creating and maintaining ROAs and conducting ROV filtering.¹²⁸ We recognize that service providers often have different network architectures and different technologies, partly as a reflection of the types of customers and services offered, and that these differences may have affected the speed with which they have deployed RPKI and may affect their plans going forward. We seek comment on whether our proposals address these issues and promote the implementation of routing security among U.S. service providers. The specific BGP Plan requirements concerning ROAs and ROV are discussed *seriatim*. We seek comment generally on whether it would be helpful for the Public Safety and Homeland Security Bureau (PSHSB) to develop a standardized template for preparing BGP Plans. We also seek comment on how service providers should respond if mandatory elements of a BGP Plan do not apply to their particular circumstances.

a. Creating and Maintaining Route Origin Authorizations

42. Registering and maintaining updated ROAs with the appropriate Internet registry is a critical and necessary step for securing BGP operation in the near term. At present, only the holders of specific IP address prefixes can register ROAs for originated routes that pertain to those prefixes.¹²⁹ As a result, a service provider is able to directly register and manage ROAs only when it controls the IP address prefix(es) in question.¹³⁰ An effective path forward must therefore take into account the difference in the service provider's route origination control over the IP prefix(es) assigned to it by ARIN. The information we would require service providers to submit would depend on the various categories of IP address prefixes for which a service provider can be the route originator. In the subsections below, we discuss the different cases that we have observed in which the service provider either does or does not control the IP address prefix(es) assigned or allocated to it and route originations for the same.¹³¹ We anticipate that most service providers will be originating routes for prefixes drawn from all these cases. We would evaluate RPKI deployment in each set of circumstances differently depending on what type of control the service provider has over route originations to various IP address prefix(es).

(i) Cases Where the Service Provider Controls the ASNs and IP Address Prefix(es)

43. We first consider where a service provider has full authority to register ROAs because it controls the associated IP address prefix(es). ROAs are registered with the responsible regional registry,

¹²⁸ We are not proposing the rigid regulatory mandates feared by some. Letter from John Morris, Principal, U.S. Internet Pol'y & Advoc., Internet Society, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 23-320 et al., Attach. at 2 (filed Apr. 17, 2024). Rather, our preferred approach is to establish a framework that provides for a more informed and effective multistakeholder consideration of BGP security issues by government and industry stakeholders – one that enables a constructive path for timely addressing issues identified as hindering the deployment of the mature RPKI architecture.

¹²⁹ See *Resource Certification (RPKI)* (describing how resource holders use the RPKI architecture to attest to which ASNs should originate their IP address prefixes).

¹³⁰ *OECD Report* (citing Martin J. Levy, *RPKI – The required cryptographic upgrade to BGP routing* (Sept. 19, 2018), <https://blog.cloudflare.com/rpki/> [https://perma.cc/JKT8-HHGK]). See *Route Origin Authorizations (ROAs)*, https://www.arin.net/resources/manage/rpki/roa_request/ [https://perma.cc/86MZ-UGCV] (last visited Apr. 15, 2024). We use the term “control” colloquially. For purposes of this *Notice*, an entity controls the IP address prefix(es) when it is the only entity originating routes for it.

¹³¹ The observations we note are derived from our Public Workshop and continued engagement with stakeholders.

which is ARIN for the United States and North America.¹³² ARIN assigns ASNs and IP address prefixes to the Local Internet Registries (LIRs).¹³³ As set out in the ARIN Manual, LIRs are “generally ISPs whose customers are primarily end users and possibly other ISPs.”¹³⁴ The ISP might in turn designate a subset of the IP address space it holds to be used by its customers, but in the current ARIN operational convention only the original ISP can register ROAs even for reallocated address space.¹³⁵

44. For these cases, we propose that BGP Plans would be required to include a detailed description of the service provider’s process for assessing and prioritizing the creation and maintenance of ROAs which cover the routes originating from their networks. We contemplate that general statements that a service provider is following a risk-based approach would not be sufficient to satisfy the requirement for a detailed description. Rather, we believe there should be sufficient reporting to understand whether each service provider is taking meaningful action to assess its risk posture and that it prioritizes implementing protections accordingly. The BGP Plan would incorporate and explain in detail factors affecting the service provider’s ability to register and maintain ROAs for its IP address prefix(es). We seek comment on whether a BGP Plan should include specific goals for the service provider pertaining to ROA registrations as well as estimated timetables for attaining those goals. We seek comment on what criteria providers should include in their BGP Plans for measuring progress in deployment of BGP origin validation, as well as what specific details should be provided to describe the service provider’s plans for creating and maintaining ROAs going forward. We seek comment as well on whether there are alternatives to ROAs or to specific ROA registration goals that would ensure continued progress in the implementation of RPKI, and if so, what they would be. We propose that the initial BGP Plans that are to be filed with the Commission should be filed no later than 90 days after the effective date of the requirement.

45. We seek comment on the criteria by which we should evaluate the relevance of individual BGP Plans filed with, or reviewed by, the Commission. We recognize, for instance, that different service providers are in substantially different positions regarding the extent to which they control the ASN and the IP address prefixes that they originate. We also understand that some service providers have fewer in-house resources available than others. We recognize as well that the processes for creating ROAs for legacy number resources originally issued to the service provider by an Internet Registry prior to the creation of ARIN may raise additional issues, and we seek comment on how our proposals may address those issues. Finally, we anticipate receiving detailed explanations if a service provider contends that “multi-homing,” traffic engineering, or some other factor significantly reduces its ability to increase and maintain ROA coverage for IP prefixes they control.¹³⁶ Regarding multi-homing, are there measures that would facilitate coordinating all necessary ROAs for all the ASNs that may originate routes to the same prefix? What are factors that might inhibit such coordination? If at least one ROA registration of the IP

¹³² ARIN, <https://www.arin.net/> [https://perma.cc/7MSG-UMRJ] (last visited Apr. 15, 2024) (“ARIN is a nonprofit member-based organization that administers IP addresses & ASNs in support of the operation and growth of the Internet.”).

¹³³ *ARIN Manual* at 6 (“A Local Internet Registry (LIR) is an [Internet Registry] that primarily assigns IP addresses to the users of the network services that it provides.”).

¹³⁴ *ARIN Manual* at 6.

¹³⁵ An IP address space is a collection of one or more IP prefixes. See Xiaoqiao Meng et al., *IPv4 Address Allocation and the BGP Routing Table Evolution*, 35 Computer Communication Reviews 1, 71-72 (2005), <https://escholarship.org/uc/item/8b46d4w4> [https://perma.cc/5GH4-45F2] (explaining how an IP prefix may represent an IP address block as allocated, a fragment of an allocated address block, or an aggregation of multiple allocated address blocks).

¹³⁶ The term “multi-homing” refers to those cases where clients may use more than one upstream provider in order to ensure resiliency in connectivity to the Internet. See Ivan Novikov, *Decoding the Term: Deciphering the Significance of Multi-Homing?* (Nov. 17, 2023), <https://securityboulevard.com/2023/11/what-is-multi-homing/> [https://perma.cc/5MNT-93YG] (detailing how ISPs use multi-homing to connect to multiple upstream providers, to ensure that their customers have uninterrupted access to the internet, even if one of the connections fails).

prefix is valid, is that sufficient to protect the IP prefix even if there are other invalid registrations for that prefix?

46. To help ensure that we are accurately measuring and tracking the status of ROA registrations, we seek comment regarding the metrics offered by several publicly available tools. The NIST RPKI Monitor is one example of these tools, but there are others available, too.¹³⁷ We seek comment on the relative merits of such publicly available tools that track the status of ROA registrations covering route originations, including their utility in measuring providers' execution of their individual BGP Plans. Which, if any, are perceived to be more accurate or comprehensive than others? Should the FCC select one tool, based on comments submitted, to use to track ROA coverage? Or, should the FCC use a subset of public monitoring tools and cross-reference among them to track and analyze ROA coverage?

(ii) Cases Where the Service Provider Does Not Control the IP Address Prefix(es)

47. We next consider the information we propose to require in an initial BGP Plan in cases where we understand that service providers are unable to register a ROA because that service provider does not control the IP address prefix(es) in question. This apparently can happen in three instances: (1) A service provider can contractually reassign one or more IP address prefixes to downstream providers or other client customers, who are then the entities able to register ROAs for those prefixes.¹³⁸ (2) A party may obtain its own IP prefix directly from ARIN and use the service provider as its upstream provider. (3) A party may obtain its own ASN and IP prefix directly from ARIN and contract with the service provider to propagate the route. In those cases, we understand that the entity which controls the associated IP address prefix(es) in the RIR (ARIN), would have to register ROAs for those prefixes. In order to implement RPKI-based improvements to BGP security architectures successfully and to create a healthy ecosystem, it is essential that every entity that controls IP address prefixes effects all necessary coordination to register the associated ROAs.

48. For these cases, we propose to require that a service provider's initial BGP Plan describe the status of the ROA registrations for routes they originate within these three cases. We propose that the BGP Plan explain the reason(s) why the service provider is unable to register particular sets of IP prefixes. The Plan should also describe in detail the service provider's efforts and plans for facilitating the ROA registrations for the IP prefixes that have been transferred and not under its control. Among other issues, we believe that BGP Plans would need to describe the steps that the service provider takes to identify and address cases in which customers or clients with their own IP prefixes are multi-homed and the frequency it encounters multi-homing.¹³⁹ In multi-homing situations where it is the responsibility of the customer or client to create and register, rather than the service provider, the chances for errors in ROA registration may be greater, potentially resulting in the customer's traffic becoming blackholed through a given provider.¹⁴⁰ We understand that in many cases, the service provider will have direct

¹³⁷ NIST RPKI Monitor, <https://rpki-monitor.antd.nist.gov> (last visited Apr. 18, 2024); see also RIPE Labs, BGPalerter, <https://github.com/nttgin/BGPalerter> [<https://perma.cc/ENJ6-KLXE>] (last visited Apr. 15, 2024); Cloudflare Radar, <https://radar.cloudflare.com/routing> (last visited Apr. 14, 2024); Hurricane Electric, BGP Toolkit, <https://bgp.he.net/> [<https://perma.cc/7WRR-MN4D>] (last visited Apr. 15, 2024).

¹³⁸ ARIN Manual at 6 (defining the "reallocation" and "reassignment" of Internet number resources). A "reallocation" occurs when "IP addresses [are] delegated to an organization by an upstream provider for the purpose of subsequent distribution by the recipient organization to other parties." *Id.* A "reassignment" occurs when "IP addresses [are] sub-delegated to an organization by an upstream provider for the exclusive use of the recipient organization." *Id.*

¹³⁹ *Supra* para. 45.

¹⁴⁰ "Blackholing" occurs when an ISP drops traffic addressed to a targeted IP address or range of addresses by redirecting it to a null route. Imperva, *Blackholing*, <https://www.imperva.com/learn/ddos/blackholing/>

(continued....)

contractual relationships with the holder of the IP address prefixes and will be, or can be, made aware of the ROA registration status of those prefixes with ARIN.¹⁴¹ Although the service provider itself is not able at this time to register ROAs in these circumstances, we are seeking comment on the steps that service providers can or should do to help secure ROAs for the IP address space held by downstream clients.¹⁴²

b. Route Origin Validation Filtering

49. The implementation of ROV is necessary to determine whether received route advertisements are legitimate when checked against ROAs in the RPKI repositories.¹⁴³ ROV is the step in origin validation predicated on the existence of ROAs, and is the key action that facilitates detection of invalid or unknown route originations that indicate a prefix is being incorrectly advertised, either maliciously or accidentally, by a service provider or enterprise network. For the RPKI to be effective, most if not all service providers will need either to conduct ROV filtering in their interconnections with other service providers, or to have contractual commitments with third parties to have routes propagated to them subject to ROV filtering.¹⁴⁴ Moreover, to fully realize the origin validation benefits of the RPKI, some service providers may need to perform ROV filtering in interconnections with their clients. In this way, the service provider examines incoming BGP routing announcements from its peers in addition to its clients. In cases where a service provider is downstream from a more widely accessed provider (e.g., stub networks), there could be great benefits from the downstream provider relying on the ROV filtering performed by its upstream provider.

50. We propose that the BGP Plan of a Tier 1 service provider should describe the extent to which it has implemented ROV filtering at its interconnection points with its peers as well as its customers, and to what extent ROV has been disabled or not deployed within its network. We also propose that BGP Plans describe, to the extent applicable, any contractual requirements a service provider may have for upstream third-parties to provide ROV filtering for incoming routes.¹⁴⁵ We seek comment on whether this information would be required of all BGP Plans, whether filed with the Commission or made available upon request. We believe that this information is likely to be most relevant for Tier 3 service providers who do not have peering relationships and solely rely on contracts with other upstream service providers. We seek comment on the use of this information to monitor the effective deployment of ROV.

51. We also seek comment on two proposals regarding the implementation of ROV filtering that potentially may affect the ROV information that needs to be included in certain providers' BGP Plans. We seek comment, first, on whether it would be sufficient if a corporate officer or other responsible official at a Tier 1 service provider attests that it supports ROV for all directly connected peers with settlement-free access as well as their directly connected clients, including other service

[<https://perma.cc/CG8N-HMYV>] (last visited Apr. 15, 2024). Although blackholing is a technique used to mitigate effects from a DDoS attack, it can also occur as a result from both intentional and accidental routing incidents. *See id.*

¹⁴¹ Issues regarding service provider contracts are discussed in detail below. *Infra* Section III.D.1.

¹⁴² *See infra* Section III.D.1.

¹⁴³ Carlos Rodrigues & Vasilis Giotsas, *Helping build a safer Internet by measuring BGP RPKI Route Origin Validation* (Dec. 16, 2022), <https://blog.cloudflare.com/rpki-updates-data> [<https://perma.cc/X99Z-D7PL>].

¹⁴⁴ Symposium, Tomas Hlavacek et al., *Keep Your Friends Close, but Your Routeservers Closer: Insights into RPKI Validation in the Internet*, Advanced Computing Systems Association (USENIX) Security Symposium, 4841-58 (2023), <https://www.usenix.org/system/files/usenixsecurity23-hlavacek.pdf> [<https://perma.cc/LPD6-R6V4>] (“The burden of protecting the global routing architecture primarily lies on large ISPs and Tier-1 providers. ROV implementation in Tier-1 providers greatly benefits Internet security as it limits the spread of hijacks to a localized scope.”).

¹⁴⁵ *Infra* Section III.D.1.

providers. We seek comment, second, on whether it would be sufficient if such official within a Tier 2 service provider attests that it is implementing ROV filtering in peering relationships with other Tier 2 providers, and have contractual relationships with Tier 1 providers that require Tier 1 providers to perform ROV filtering on traffic being terminated to the Tier 2 provider. We seek comment as to whether there are circumstances where Tier 2 service providers need not provide ROV support for clients that participate in BGP routing. We also seek comment on the extent to which, if we adopt such proposals, ROV information needs to be included in a provider's BGP Plan.

52. We recognize that there are no publicly available resources that allow comprehensive third-party measurement and validation regarding the extent that service providers conduct ROV filtering. Third-party measurement methodologies involve some degree of sampling and estimation and come with varying strengths and weaknesses. For example, APNIC, Cloudflare, and Virginia Tech (RoVISTA), are examples of entities which have developed methodologies using various sampling techniques to assess the degree of ROV filtering prevalent, and which make the resulting assessments public.¹⁴⁶ We propose to monitor a limited set of respected consensus methodologies to determine whether the set, as a whole, shows consistent trends and patterns. We seek comment on whether there are particular approaches or sources that we should monitor for determining the extent to which an essential set of service providers is performing ROV filtering and executing on its BGP Plan.¹⁴⁷

53. We note that there are several publicly available, open-source software packages that validate BGP routing information based on information stored in the RPKI.¹⁴⁸ We seek comment on the maturity of the open-source software used in route validation, the degree to which these are currently deployed by service providers, the extent to which such deployments verify that secure software design principles including testing for trustworthy operation have been utilized, and the extent to which such software receives continued support by contributors. We seek comment on the inclusion of deployment decisions in the BGP Plan, to include mitigation plans in cases where the public domain software is no longer supported or available. We also seek comment on other validators not listed by ARIN.

2. Subsequent BGP Plans

54. We propose that subsequent BGP Plans do not need to be filed with the Commission by large service providers that file an attestation that they have registered and maintained ROAs covering at least 90% of originated routes for IP address prefixes under their control. In other words, after the initial filings, large service providers that continue to have at least 90% of the originated IP address prefixes that they control covered by ROAs would not need to submit information about their process and future plans for assessing and prioritizing the creation and maintenance of ROAs in the RPKI, nor of their plans to conduct ROV filtering. Such a service provider, however, would be obligated to make its BGP Plan available to the Commission upon request from its staff. We anticipate that we may establish specific goals and deadlines for ROA registration in the future if progress is deemed insufficient after collaboration with federal interagency partners.¹⁴⁹

55. We seek comment as to whether the 90% ROA coverage metric is a reasonable standard for determining when the large service providers identified above should no longer be required to file BGP Plans after the filing of their initial plans. Commenters disagreeing with use of that standard should

¹⁴⁶ APNIC Labs Measurements and Data, <https://stats.labs.apnic.net/rpki> [https://perma.cc/X8LP-2HPM] (last visited Apr. 15, 2024); Cloudflare, *Is BGP Safe Yet?*, <https://isbgpsafeyet.com/> [https://perma.cc/AQC8-FJU2] (last visited Apr. 15, 2024); Virginia Tech, *RoVista*, <https://rovista.netsecurelab.org/> [https://perma.cc/QQ79-VHR7] (last visited Apr. 15, 2024).

¹⁴⁷ Consistent with the Commission's expressed construction of the proposals contained in this *Notice*, *supra* para. 36 n.123, monitoring is intended to facilitate informed and effective multistakeholder collaboration, not a regulatory mandate.

¹⁴⁸ Resource Certification (RPKI) (last visited Apr. 15, 2024) (describing how to obtain and install an RPKI Validator).

¹⁴⁹ *Infra* para. 77.

propose an alternative standard, along with reasons why the alternative better serves the overall purposes of this proceeding.

56. We also seek comment on the content that needs to be included in the BGP Plans prepared after the initial Plans. We anticipate that subsequent Plans would largely consist of updates to the initial Plans, so that the burden of preparing such Plans would be significantly less than preparing the initial Plans. We seek comment on that conclusion and on what information should be included in subsequent Plans. We seek comment on when the requirement to prepare subsequent BGP Plans annually should sunset, such as in five years. Would the information included in these plans become less important as the RPKI is extensively deployed? To that end, we seek comment on the frequency with which the Commission should revisit the form and content of BGP Plans.

3. BGP Plan Issues for Service Providers Other Than the Largest Providers

57. As discussed above, we are proposing to require service providers other than the largest providers as defined in this *Notice* to prepare their BGP Plans generally in accordance with the same provisions.¹⁵⁰ Such service providers would not have to file their BGP Plans with the Commission but would still need to make them available to the Commission upon receiving a request from its staff. We believe that the development of a BGP Plan—even if never requested by the Commission—would be important for securing BGP in the near term because it would require service providers to consider the benefits of creating and maintaining ROAs and conducting ROV filtering.¹⁵¹ We also think that those provisions generally take into account the different circumstances of various service providers.

58. Nevertheless, we also seek comment here on whether the information that these service providers would need to include in their BGP Plans should differ from the information required in the BGP Plans filed by the large service providers. If so, what information would not be needed, and why? In addition, to what extent should the required information change if they have maintained the 90% ROA threshold described above during the previous year?

59. We seek comment as well on whether to adopt significantly limited requirements for Tier 3 service providers – that is, those service providers that do not have peering relationships with any other providers and connect to the Internet only through upstream transit providers. What information should be included in the BGP Plans prepared by such Tier 3 service providers? For instance, would it be sufficient for their BGP plans to attest to all of the Org_ID information used in ARIN's WHOIS entries and to their ROA registration of their IP prefix(es), as well as to whether they have default BGP route(s) to their upstream provider(s) that all implement ROV on their traffic?¹⁵²

B. BGP Routing Security Information – Quarterly Reports

60. In addition to the preparation of BGP plans, we propose to require a set of the largest service providers as defined in this *Notice* to file specific data on a quarterly basis, which would be made publicly available by provider. We anticipate that such quarterly filings would allow the Commission to measure progress in ROA registration and maintenance and assess the reasonableness of the service provider's BGP Plan (not only on an industry-wide basis but also by individual and types of service providers). Tier 1 service providers would need to file the quarterly data described in the paragraph below, which would show the extent to which the service provider has maintained that coverage.¹⁵³ We

¹⁵⁰ *Supra* Section III.A.1.

¹⁵¹ See *OECD Report* at 24 (“The usefulness of ROV filtering depends on the number of prefix holders that have created ROAs, and the accuracy of the ROAs themselves.”).

¹⁵² WHOIS is a distributed database populated by the RIRs (e.g., ARIN) whenever an organization receives an allocation of IP addresses from a RIR. See Leslie Nobile, *ARIN's Whois: What Data is Public Information and How Can it be Accessed?* (June 9, 2021), <https://www.arin.net/blog/2021/06/09/arins-whois-what-data-is-public-information-and-how-can-it-be-accessed/> [https://perma.cc/K2AD-2427].

¹⁵³ *Infra* para. 61.

propose that the first quarterly report be filed 30 days after the necessary steps are concluded to allow the relevant rule to take effect, and not from the date of publication of the adopted rule in the Federal Register.

61. We propose to include, and seek comment on including, the following information in quarterly reports concerning both ARIN allocated resources (i.e., ASN and IP prefix) and legacy number resources originally issued to the service provider by an Internet Registry prior to the creation of ARIN: (i) List of all Registry Org. IDs for all AS and address allocations to the service provider (obtained from WHOIS); (ii) list of all ASNs held by service provider; (iii) list of ASNs held by service provider that it uses to originate routes; (iv) list of address holdings that have been reassigned or reallocated;¹⁵⁴ (v) list of IP prefixes in originated routes that are covered by ROAs (grouped by originating AS number); and (vi) list of IP prefixes in originated routes that are not covered by a ROA (grouped by originating ASN). We seek comment as well on obtaining ROV-related data, including the extent to which ROV filtering is performed by the Tier 1 service provider for both directly connected peers with settlement-free access as well as their directly connected clients, including other service providers. We anticipate that much of the information requested would not vary by quarter, but that certain key data points related to ROA registrations could be tracked on a quarterly basis and would promote the Commission's ability to assess RPKI trends. We seek comment as well on whether it would be helpful for PSHSB to develop a standardized template for quarterly data reporting.

62. As noted above, there may be special challenges in the cases of ROAs for routes pertaining to networks that are multi-homed, and so the prevalence of such routes may well be relevant in assessing the security of the BGP routing system.¹⁵⁵ To what extent are service providers aware of multi-homing scenarios for the routes they originate, and can they enumerate and report on these use cases? Are there other sources of information on these cases? We believe that quarterly reporting is necessary, at least initially, to measure on a reasonably timely basis the evolution of RPKI-derived routing security, and to determine whether additional steps are needed—whether regulatory or otherwise—to encourage continued progress. We also believe that the data proposed for collection should be readily available within the individual service providers. In addition, once collected, it should not be burdensome to be updated on a quarterly basis. For instance, ARIN repositories are updated every five minutes, and the NIST RPKI Monitor updates its analyses every six hours to reflect the corresponding route collector updates.¹⁵⁶ We seek comment as to whether the reporting obligations in this context should be reduced if a service provider files with the Commission an attestation that—as specified above with regard to subsequent BGP Plans—it has achieved and maintained ROAs covering at least 90% of originated routes in IP address prefixes that it controls.¹⁵⁷ In those cases, would semi-annual or annual reporting be sufficient for monitoring that service provider's progress toward full RPKI implementation? Would any data reporting be necessary? We seek comment on this approach.

63. In addition, this proposed direct reporting by service providers provides data, even though in the public domain, that is difficult, if not impossible, to reliably aggregate from publicly available sources. For instance, many service providers, especially the most widely accessed service

¹⁵⁴ ARIN, *Reporting Reassignments*, <https://www.arin.net/resources/registry/reassignments/> [https://perma.cc/QL43-UGCT] (describing allocations, assignments, reallocations, and reassignments) (last visited Apr. 15, 2024).

¹⁵⁵ *Supra* paras. 45, 48.

¹⁵⁶ *Resource Public Key Infrastructure (RPKI) FAQs & Best Practices*, <https://www.arin.net/resources/manage/rpki/faq/#if-i-create-a-new-roa-when-will-it-be-published> [https://perma.cc/XE82-RKVP] (last visited Apr. 26, 2024); NIST RPKI Monitor 2.0, *Methodology and User's Guide*, <https://rpki-monitor.antd.nist.gov/Methodology> (last updated Apr. 26, 2024).

¹⁵⁷ *Supra* para. 54. See, e.g., Letter from Traci Biswese, Vice President & Associate General Counsel, The Internet & Television Association (NCTA), to Marlene Dortch, Secretary, FCC, PS Docket Nos. 22-90, 24-146, (filed May 28, 2024).

providers, possess resources obtained from ARIN, including ASNs and IP address prefixes, under a wide variety of different Org IDs that are subject to change at any time. In addition, each publicly available measurement tool may have its own set of approaches and assumptions. We believe that direct reporting by a service provider of the requested information would not be burdensome because that information should be readily available to it. Reporting that information would help ensure that Commission staff and the service providers are considering BGP progress from the same set of facts. We seek comment on these observations.

64. We further seek comment on the utility of requiring non-public information related to the above, including the following: (i) number of invalid routes received from peers and customers; (ii) proportion of invalid routes received relative to the total routes received per peer and customer; (iii) number of routes filtered in cases where the service provider itself implements RPKI-ROV; (iv) number of observed instances, if any, where RPKI-ROV processes were shown to incorrectly deem routes invalid due to inaccurate ROAs or other reasons; and (v) number of origin hijack instances pertinent to routes for service providers' address space that were (a) detected and (b) undetected during the reporting period.

65. *Service Providers Other Than the Largest Providers.* We propose that service providers other than the largest providers as defined in this *Notice* do not need to file quarterly data reports, and we have proposed significantly limited data reporting requirements to be included in their annual BGP Plans.

C. Confidential Treatment of BGP Plans and FOIA

66. We propose to treat the BGP Plans as confidential under our rules; we tentatively conclude that such Plans will contain highly confidential and competitively sensitive business information that the companies would not publicly reveal, and may also contain trade secrets.¹⁵⁸ We seek comment on this conclusion, and on whether there are any other BGP routing security submissions that we might require that should be treated as confidential.¹⁵⁹ We note that, pursuant to section 0.461(d)(3) of our rules, when the Commission receives a request under the Freedom of Information Act (FOIA) for inspection of records that are presumed confidential or have been submitted with a request for confidential treatment, the custodian of the records shall provide a copy of the request to the submitter of the information, who will be given 10 calendar days to submit a detailed written statement specifying the grounds for any objection to disclosure.¹⁶⁰ If the submitter fails to respond, it will be considered to have no objection to disclosure.¹⁶¹ We seek comment on whether this notice process is routinely necessary for filings with the Commission of BGP Plan reports or of any other submissions we conclude should be treated as presumptively confidential. In particular, should staff have discretion, upon consideration of all the circumstances, whether to initiate the notice process for any such reports or to deny such requests, other than from governmental entities that may be granted confidential access in connection with their official functions, outright? Is there any appreciable possibility, given the competitive sensitivity of the information contained in such reports and its potential misuse to cause network harm, that a submitter might not treat this information as confidential and object to its disclosure? If not, what is the benefit of routinely undertaking the notice process? Are there particular considerations, for example, the type of information requested within the reports or the stated public interest purpose for the request, that may militate in favor of disclosure after notice to the submitter? Are there objective criteria, such as the age of the reports, under which confirmation of the submitter's continued confidential treatment of the

¹⁵⁸ See 47 CFR § 0.459(a)(3), (d).

¹⁵⁹ As stated above, however, we propose to make the quarterly reports filed by the largest providers publicly available. *Supra* para. 60.

¹⁶⁰ 47 CFR § 0.461(d)(3).

¹⁶¹ *Id.*

information and justification of its objection to disclosure should always be required?¹⁶² Are there any legal limitations on our ability to withhold the reports under Exemption 4 of the FOIA without confirming the submitter's objection to a specific information request?¹⁶³ We invite comment on these and any other questions relating to our affording confidential treatment to any such reports.

D. Other Issues

1. Possible Conditions on Service Provider Contracts

67. Based on our continuous engagement with industry and government stakeholders on BGP issues, we understand that a substantial portion of IP address prefixes issued by ARIN for the United States are prefixes for which service providers cannot register ROAs. As detailed above, these prefixes include circumstances in which the service provider has contractually reassigned IP prefixes received from ARIN to downstream providers or other client customers and therefore no longer controls the IP prefix for purposes of ROA registration. These cases also include circumstances in which the client customer has obtained the IP prefix (and possibly an ASN) directly from ARIN and therefore is the party able to register a ROA for those prefixes. In all these circumstances, we understand, the service provider has a contractual relationship with the holder of the IP address prefixes who is able to register ROAs with ARIN.

68. Given the substantial presence of these situations in the United States, it is critical to develop an overall strategy to address secure Internet routing issues and implement solutions that facilitate more widespread registration of ROAs for these prefixes—the foundational step necessary to enable RPKI-based BGP security measures towards securing the nation's communications from adversaries seeking to exploit BGP's inherent vulnerabilities, and thereby promote public safety and protect against serious national security threats. We propose above that BGP Plans address in detail the steps that a service provider is taking to address these issues. We continue to recognize as well the continuing importance of outreach and education efforts. However, we are concerned that these steps may not be enough.

¹⁶² See, e.g., *Biles v. Dep't of Health and Human Services*, 931 F.Supp.2d 211, 225-27 (D.D.C. 2013) (rejecting claim of confidentiality, under formerly applicable competitive harm standard, in part because staleness of information rendered it of little value to submitters).

¹⁶³ See 5 U.S.C. § 552(b)(4) (exempting from mandatory disclosure trade secrets and commercial or financial information obtained from a person and privileged or confidential); see also *Food Marketing Institute v. Argus Leader Media*, 588 U.S. 427, 434 (2019) (finding confidential treatment of information was established based on uncontested evidence of industry practice); U.S. Dep't of Justice, Office of Information Policy, *Exemption 4 After the Supreme Court's Ruling in Food Marketing Institute v. Argus Leader Media*, <https://www.justice.gov/oip/exemption-4-after-supreme-courts-ruling-food-marketing-institute-v-argus-leader-media> [<https://perma.cc/KX8C-428V>] (advising that agency may determine information is treated as confidential based on its own knowledge of industry practice and nature of the records as well as on specific information from the submitter); Executive Order 12600, Predisclosure Notification Procedures for Confidential Commercial Information, 52 Fed. Reg. 23781 (June 23, 1987) (directing agencies to promulgate procedures to notify submitters of records containing confidential commercial information when those records are requested under the FOIA if the agency determines it may be required to disclose the records). The courts are divided as to whether, and the extent to which, the FOIA requires a showing of foreseeable harm other than the loss of confidentiality itself to support the withholding of information under Exemption 4. See 5 U.S.C. § 552(a)(8)(A)(i) (agency shall withhold information only if the agency reasonably foresees that disclosure would harm an interest protected by an exemption or disclosure is prohibited by law); compare, e.g., *Seife v. U.S. Food and Drug Administration*, 43 F.4th 231, 240-42 (2d Cir. 2022) (requiring harm to the submitter's commercial or financial interests) with *American Small Business League v. U.S. Dep't. of Defense*, 411 F.Supp.3d 824, 835-36 (N.D. Cal. 2019) (finding loss of confidentiality to constitute sufficient harm). To the extent something more than the loss of confidentiality is required, does the nature of the information in a BGP-related reports, including its competitive sensitivity and its implications for network security, support a *per se* finding of harm from its disclosure?

69. For instance, from our continuing stakeholder engagement, we understand that service providers believe that they are not in a position to insist in these situations that client customers register ROAs for these IP address prefixes. Unlike some Internet participants that have successfully adopted policies that require ROA registration for interconnection, service providers believe that they are not in a position to adopt similar policies and practices because client customers are likely to have alternative options for their upstream service provider who would not insist that the IP address holder take the additional step of registering ROAs.

70. Because the benefits that the RPKI-based approach to a more secure BGP can contribute to national security are so great, we must consider all possible tools and options at our disposal in order to address these potential collective action issues. We therefore are seeking comment on the additional proposals below, which we believe to be in line with the whole-of-government approach to “develop and drive adoption of solutions that will improve the security of the Internet ecosystem and support research to understand and address reasons for slow adoption.”¹⁶⁴

71. In particular, we seek comment on possible conditions that the Commission should require service providers to place on current and future contracts. There are three separate cases to consider in this context: (i) where the IP address prefix was originally held by the service provider holding the ASN, who then reallocated/reassigned the prefix to a client; (ii) where the IP address was obtained directly from ARIN by the client; and (iii) where the service provider is propagating routes where the client has obtained both the ASN and the IP address prefixes that are to be originated.

72. We seek comment in such cases on the possibility of the following conditions to address cases where the service provider does not hold the IP address prefix in a route without a corresponding ROA: (i) prohibiting entry into new contracts unless those contracts contain plans for registering ROAs for the originated routes; (ii) requiring service providers to insist on ROA registrations by existing clients with IP prefixes it has transferred to them, or to “take back” any IP prefixes it has leased to clients; and (iii) requiring service providers, at the time of contract renewal (or after a set period, such as two years), to insist on having a plan for ROA registration from their client. We are, at the same time, mindful of our goal in this proceeding to avoid substantive BGP implementation obligations enforced by the Commission in favor of a reporting regime.¹⁶⁵

73. Again, we seek to address any potential for collective action issues under these circumstances. Would a service provider or its customer be likely to encounter any disincentives for the registration of ROAs, particularly if, in the absence of any conditions, other service providers are free not to do so? We seek comment on the likelihood that a service provider might lose customers if it wanted to require ROA registration (and/or ROV filtering) to be implemented by their peering or downstream neighbor. Assuming that a peering or downstream service provider (e.g., Tier 3 provider) might well choose a different transit provider to connect their customers to the Internet if the alternate transit provider did not require the downstream service provider to register and maintain accurate ROA objects pertaining to its IP address prefixes, to what extent can providers of transit or other interconnectivity services incorporate mandatory language into the corresponding contractual agreements?

74. To address these potential collective action barriers to widespread ROA registration, we seek comment on requiring that providers’ contracts in these cases to provide for the registration of ROAs for the relevant IP address prefixes. For instance, as identified above, we seek comment on requiring service providers not to enter into new contracts to route traffic unless ROAs are registered for the

¹⁶⁴ *Biden NCSIP v.2* at 46; *see also Biden NCS Exec. Summary* (“This strategy recognizes that robust collaboration, particularly between the public and private sectors, is essential to securing cyberspace.”); *Biden NCS* at 23-24 (“We can build a more secure . . . digital ecosystem through strategic investments and coordinated, collaborative action. . . . However, public and private investments in cybersecurity have long trailed the threats and challenges we face. . . . We must take steps to mitigate the most urgent of these pervasive concerns such as [BGP] vulnerabilities[.]”).

¹⁶⁵ *See supra* para. 41.

relevant IP address prefixes. Should such contracts also require the holder of the IP prefix to maintain the active ROAs? We also seek comment on requiring service providers to mandate that clients with whom they have a direct contractual relationship to register their IP prefixes with ARIN. If a client refuses to register assigned prefixes, could a service provider “take back” unregistered IP address prefixes it has leased to others so as to enable the service provider to register ROAs for those prefixes? We recognize possible disruptions in certain cases that may outweigh the benefits, and so seek comment on imposing certain requirements at the time of contract renewal. In order to judge the potential benefits and costs of any such requirements, we seek comment on whether general industry standards exist for setting the term of any such contracts. We also recognize that any such requirement would depend on the provisions and terms of the existing contracts, as well as when their contracts are set to renew. We further seek comment on the percentage of client contracts that extend beyond two years of the publication of this proceeding. For instance, if a substantial percentage of contracts are five years or longer, should the Commission consider imposing requirements no later than a set time period, such as two years from the effective date of the adoption of rules.

75. In summary, we seek comment about the benefits and drawbacks of considering these and any other regulatory approaches to encourage the creation and maintenance of ROAs in the RPKI through contractual requirements between service providers and their customers, and the provisioners of Internet resources.

2. Possible ROV and ROA Requirements for Service Providers

76. We have sought comment above on whether the ROV implementation content of the BGP Plans of Tier 1 and Tier 2 service providers should differ depending on whether they are able to attest to certain ROV implementation.¹⁶⁶ We here seek comment on proposals to require certain levels of implementation of ROV by Tier 1 and Tier 2 service providers. In particular, we seek comment on whether Tier 1 service providers should be required to achieve the ROV deployment described above within one year of the effective date of such a requirement, and whether Tier 2 service providers should be required to achieve the ROV deployment described above within two years of the effective date. As described above, ROV implementation is a critical piece of successful RPKI implementation, and we believe that those target dates are reasonable given the current state of ROV deployment. We seek comment on whether ROV implementation requirements would be consistent with the Commission’s expressed construction of the proposals contained in this *Notice* to establish a framework for multistakeholder collaboration instead of a rigid regulatory mandate.

77. In the sections above we propose that the largest service providers prepare and file BGP Plans that address the service providers’ plans for registering and maintaining ROAs in the RPKI.¹⁶⁷ Here, we seek comment on whether the Commission should establish goals and timelines for the largest service providers to register ROAs covering the routes they originate. If so, how should the Commission determine reasonably achievable goals and timelines for service providers? What factors should we consider in making those determinations? Should we set goals and timelines on an individualized basis for the largest providers dependent on the service provider’s individual circumstances? To what extent should the registration of certain ROAs in the RPKI be prioritized, and what should be the basis for identifying those ROAs and defining reasonable prioritization? Can we set meaningful goals and/or timelines on a standardized basis for those providers or for all service providers subject to this *Notice*? Is there a floor below which ROA registration levels should raise particular concern regarding whether ROAs registrations are being timely deployed? If so, commenters should provide specific suggestions, along with justifications.

¹⁶⁶ *Supra* para. 51.

¹⁶⁷ *Supra* Section III.A.

3. Outreach and Education

78. We see a clear need for additional education efforts by the service providers, various stakeholder groups, ARIN, and governmental entities. As described below, we believe that a number of holders of IP address prefix(es) do not fully appreciate the importance of registering ROAs for their IP address prefix(es) to help protect those critical resources from being compromised in the Internet routing system, with potentially disastrous consequences described in the examples above. Education about the substantial benefits of registering ROAs is a necessity. To what extent can or should large service providers as defined in this *Notice* take steps to support ROA registration by other, downstream providers? We also think it is important to increase the options for holders of IP prefixes to register ROAs for those prefixes.

79. We seek comment in this context on steps we should consider to facilitate the creation and maintenance of ROAs in the RPKI. There are resources available to help entities of all sizes. For example, the RIRs provide guidance to help populate RPKI, including the registration and maintenance of ROAs.¹⁶⁸ We seek comment on the extent to which such implementation guidance and resources help service providers of all sizes create and maintain ROAs over the IP address(es) that they originate from their networks. Are there any aspects that would be better served or supported by a government-led educational campaign seeking to drive awareness of the issue and facilitate increases in the proportions of ROAs to route originations in the RPKI repositories? If so, would the inclusion of our federal partners, for example, CISA, NIST, and ONCD in such a campaign, facilitate driving both awareness of the seriousness of the issue, as well as provide educational support for the process involved with accurately registering and actively maintaining ROAs in the RPKI infrastructure? What would the metric for “success” be for such an educational campaign? Should we request volunteers to join workshops to encourage and facilitate the creation and maintenance of ROAs? Additionally, how should we treat those cases where a downstream service provider holds its own or reassigned IP address space?

80. We separately seek comment on the extent to which a government-led educational campaign could facilitate service providers increasing their level of ROV filtering on their own networks. Should we consider the relative size of the service provider in addition to the Tier category to which it might be considered to belong? Should such a campaign educate on both ROV filtering and ROA object registration and maintenance, or should they target them as separate campaigns? What would a metric for “success” be for such an educational campaign? Should we request volunteers to join workshops to encourage and facilitate the use of ROV filtering on certain parts of the networks they control?

4. ARIN Processes

81. ARIN is the RIR serving the United States and other countries within its coverage area.¹⁶⁹ It maintains a RPKI repository publication point, offers hosted RPKI services, and is the source from which would-be resource holders/network operators/service providers within the United States obtain Internet number resources, such as ASNs and IP addresses. ARIN is also the entity that enables U.S. service providers to register, update, and publish ROAs. Beyond providing additional educational materials, conducting workshops, and outreach, ARIN has at least two initiatives that could facilitate the uptake of RPKI-based routing security measures: (i) ARIN had referred for community consultation a question from one of its members, that was filed in the form of a ticket, asking if reassigned address space holders can register their prefixes with ROAs, and thus take advantage of the benefits of RPKI origin

¹⁶⁸ *Resource Certification (RPKI)*; RIPE Labs, *Tools and Resources*, <https://www.ripe.net/manage-ips-and-asns/resource-management/rpki/tools-and-resources/> [https://perma.cc/5GKR-EP4H] (last visited Apr. 15, 2024); APNIC, *RPKI*, <https://www.apnic.net/community/security/resource-certification/> [https://perma.cc/CG8P-EWVZ] (last visited Apr. 15, 2024).

¹⁶⁹ ARIN, *Our Region*, <https://www.arin.net/about/welcome/region/> [https://perma.cc/WH22-UJ8Z] (last visited May 3, 2024).

validation; and (ii) ARIN is considering changes in its ROA creation processes to flag instances where attempted ROA registrations raise the possibility of misconfigurations.¹⁷⁰

5. Beyond RPKI Origin Validation – Further Efforts to Secure Internet Routing

82. Although the regulations proposed with this *Notice* focus on securing route origination, we seek comment on techniques and architecture towards path validation as well. Path validation ensures the integrity and authenticity of the AS Path attribute.¹⁷¹ The only standard designed to address issues with path validation and plausibility is BGPsec.¹⁷² Implementing this is challenging due to the intensive cryptographic operations involved. A less complete guarantee on path security is offered by a work-in-progress effort from the IETF, known as autonomous system provider authorization (ASPA).¹⁷³ This effort is designed to detect invalid BGP AS_PATHs by registering ASPA objects in the RPKI containing verifiable, attested information as to probable ASNs in the path. In addition, the ASPA approach accommodates incremental deployment, and “provides benefits to early adopters in the context of limited deployment.” These methods, however, are still undergoing discussion among the academic and standards community and are not ready for implementation.¹⁷⁴ Although this *Notice* focuses on issues with origin validation and the techniques currently available to address them, achieving a truly secure routing system will involve steps beyond deploying RPKI-based origin validation. We do not propose at this time to require service providers to implement measures or disclose efforts regarding path validation, but we note that their implementation is expected to be a critical, future step that service providers would need to take to secure their routing systems. We seek comment on the maturity of this work-in-progress and any anticipated timeline in which ASPA can be deployed after it has been standardized.

E. Benefits and Costs

83. We seek information on the potential benefits and costs of our proposals. We estimate our proposals would result in billions of dollars of benefits through various channels, which exceeds our upper bound estimate of annual costs of \$30.8 million. Below, we present estimates of these benefits and costs and seek comment on these costs and benefits, as well as the proposed data sources and methodology.

1. Benefits

84. As stated earlier, adversaries can exploit BGP security vulnerabilities that can lead to substantial public harms.¹⁷⁵ In addition to criminal activity, poor BGP security can lead to threats to national security or damage to critical infrastructure. Thus, improving the security of BGP would have substantial benefits from reducing the rate of such incidents.

85. *Implementing BGP Routing Security Risk Management Plans and BGP Routing Security Quarterly Reports.* While we believe that it is impossible to quantify the precise dollar value of improvements to the public’s safety, life, and health, as a general matter, we nonetheless believe that very

¹⁷⁰ ARIN, *ACSP Suggestion 2023.8: Allow Customers with reallocated resources to create ROAs* (June 27, 2023), <https://www.arin.net/participate/community/acsp/suggestions/2023/2023-08/> [https://perma.cc/2XKU-PA26]; ARIN, *Results of Consultation on RPKI/BGP Intelligence* (Mar. 11, 2024), <https://www.arin.net/announcements/20240311/> [https://perma.cc/4C7Z-A6QH].

¹⁷¹ NIST SP 800-189 at 22, 23.

¹⁷² SIDR Working Group; see also *BGP AS_PATH Verification*; see also *OECD Report* at 21, 29.

¹⁷³ SIDR Working Group; *BGP AS_PATH Verification*.

¹⁷⁴ See, e.g., *OECD Report* at 21 (“However, [BGPsec and ASPA] are still under discussion and not ready for implementation.”).

¹⁷⁵ See *supra* paras. 7-12.

substantial public safety benefits will result from the BGP Routing Security Risk Management Plans and BGP Routing Security Quarterly Reports we propose today.¹⁷⁶ By implementing BGP Plans and submitting quarterly data reports, service providers will be better able to ensure that Internet traffic routed through their networks is secure and will not be subject to unlawful interference, thus preserving public trust and better protecting national security and public safety. As a consequence, we anticipate that the rule changes we propose today will yield substantial secure routing benefits.

86. Independent of that analysis and as presented in the *2022 Alerting Security NPRM*, “the Commission has previously found that ‘a foreign adversary’s access to American communications networks could result in hostile actions to disrupt and surveil our communications networks, impacting our nation’s economy generally and online commerce specifically, and result in the breach of confidential data.’”¹⁷⁷ Our annual national gross domestic product was nearly \$23 trillion in 2021, adjusting for inflation.¹⁷⁸ Accordingly, if extending the requirement to create and implement BGP Plans and BGP Routing Security Quarterly Reports plan to additional providers prevents even an additional 0.005% disruption to our economy, we believe the cyber risk management plan certification requirement we adopt today would generate \$1.15 billion in annual benefits. Likewise, the digital economy accounted for \$3.31 trillion of our economy in 2020, and so we believe preventing a disruption of even 0.05% would produce annual benefits of \$1.66 billion.¹⁷⁹ As a check on our analysis, consider the impact of existing malicious cyber activity on the U.S. economy: \$57 billion to \$109 billion in 2016.¹⁸⁰ Given the incentives and documented actions of hostile nation-state actors, reducing this activity (or preventing an expansion of such damage) by even 1% would produce annual benefits of \$0.57 billion to \$1.09 billion. Given this analysis, we believe the benefits of our rule to the American economy, commerce, and consumers is likely to be substantial. Does this analysis apply, or does it need to be modified or replaced to be more relevant to the proposals contemplated here? We seek comment on this analysis and ask commenters to be specific by providing data to illustrate the benefits our proposed rules would have to national security, public safety, and the economy.

2. Costs

87. We estimate an upper bound of \$30.8 million in annual costs for our proposed requirements. These costs would come from developing and filing BGP routing security management plans (\$16 million), filing BGP routing security reports (\$2,000), quarterly filing requirements (\$74 thousand), and from new registrations that may result from possible Tier 1 service provider ROV support requirements and required conditions on service provider contracts (\$14.7 million).

¹⁷⁶ Cf. *Resilient Networks*, Report and Order, PS Docket 21-346, 37 FCC Rcd 8059, 8075, para. 46 (2022) (*Resilient Networks Order*) (“[I]t would be impossible to quantify the precise financial value of these health and safety benefits[.]”).

¹⁷⁷ *Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System, et al.*, PS Docket No. 22-329, Notice of Proposed Rulemaking, 37 FCC Rcd 12932, 12947, para. 31 (2022); see also *China Telecom (Americas) Corporation Order on Revocation and Termination*, Docket No. 20-109, Order, 36 FCC Rcd 15966, 16019-20, para. 81 (2021).

¹⁷⁸ See Press Release, Bureau of Economic Analysis, U.S. Department of Commerce, Gross Domestic Product (Third Estimate), Corporate Profits (Revised Estimate), and GDP by Industry, First Quarter 2022 (June 29, 2022), https://www.bea.gov/sites/default/files/2022-06/gdp1q22_3rd.pdf [https://perma.cc/ZKV2-V3NP].

¹⁷⁹ See Tina Highfill & Christopher Surfield, Bureau of Economic Analysis, U.S. Department of Commerce, *New and Revised Statistics of the U.S. Digital Economy, 2005-2020* (May 2022), <https://www.bea.gov/system/files/2022-05/New%20and%20Revised%20Statistics%20of%20the%20U.S.%20Digital%20Economy%202005-2020.pdf> [https://perma.cc/6JXT-323U].

¹⁸⁰ See The Council of Economic Advisers, *The Cost of Malicious Cyber Activity to the U.S. Economy* at 36 (Feb. 2018), <https://trumpwhitehouse.archives.gov/wp-content/uploads/2018/02/The-Cost-of-Malicious-Cyber-Activity-to-the-U.S.-Economy.pdf> [https://perma.cc/TVZ5-T3KE].

88. *BGP Routing Security Risk Management Plans.* We propose the service providers must maintain and possibly file an Annual BGP Routing Security Risk Management Plan. The largest providers, which include all Tier 1 providers and some additional large providers of interest, must file their plans with Commission initially.¹⁸¹ They must then file plans annually if they cannot attest that they have registered and maintained ROAs covering at least 90% of originated routes for IP address prefixes under their control.

89. We estimate an annual upper bound cost for the BGP Routing Security Risk Management Plans to be \$16 million. We have no firm estimate of how many service providers maintain plans currently, so as an overestimate, we estimate 80% of firms would develop and maintain plans that otherwise would not. Based on Form 477 data, we estimate there are 2,209 service providers.¹⁸² We estimate that creating and maintaining a plan would entail 100 work hours from a technical manager, whom we estimate are compensated at \$90.16/hour.¹⁸³ Our upper bound annual BGP routing security risk management plan development and maintenance cost is then \$15,933,075 ($=80\% \times 2,209$ service providers $\times 100$ hours $\times \$90.16/\text{hour}$) which we round to \$16 million to avoid a false impression of precision. Costs in subsequent years would be lower than the first year because they would only include maintenance, and not plan development. Therefore, we use the cost of the first year as an upper bound for subsequent years as well.

90. We estimate an upper bound of a risk management plan filing cost of \$2,000. Only the largest service providers, with customers in the millions or high hundreds of thousands, would need to file. Consulting Form 477 subscriber numbers, internal staff calculations suggest that 20 is a reasonable estimate for the number of large providers.¹⁸⁴ However, as stated above, nine service providers are currently in this category that requires filing.¹⁸⁵ We estimate filing plans would take a general manager 1 work hour, and, again, we estimate that this general manager is compensated at \$90.16/hour.¹⁸⁶ In subsequent years, not every service provider must file, so as an upper bound on cost for a typical year we use the cost of the first year. The upper of bound of this filing cost is then \$811.44 ($= 9$ service providers $\times 1$ hour $\times \$90.16/\text{hour}$) which we round to \$1,000.

91. We seek comment on the assumptions underlying these cost estimates, especially the number of service providers affected, the work hours involved and the appropriateness of the assumed

¹⁸¹ *Supra* para. 39. This category currently includes: AT&T, Inc.; Altice USA; Charter Communications; Comcast Corporation; Cox Communications, Inc.; Lumen Technologies, Inc.; T-Mobile USA, Inc.; Telephone & Data Systems (including US Cellular); and Verizon Communications, Inc.

¹⁸² See FCC, *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> [<https://perma.cc/REJ6-C3R5>] (*Broadband Data Collection*).

¹⁸³ We assume similar cybersecurity plans would take 100 work hours. We estimate total compensation for technical managers as \$92.16/hour $= \$62.18/\text{hour} \times 145\%$. See Bureau of Labor Statistics, *Occupational Employment and Wages, May 2023, 11-1021 General and Operations Managers* (Apr. 3, 2024), <https://www.bls.gov/oes/current/oes111021.htm> (*General and Operation Managers Mean Hourly Wage*) (mean hourly wage is \$62.18 for occupation code 11-1021 General and Operations Managers). According to the Bureau of Labor Statistics, as of September 2023, civilian wages and salaries averaged \$30.35/hour and benefits averaged \$13.58/hour. Total compensation therefore averaged $\$30.35 + \$13.58 = \$43.93$. See Press Release, Bureau of Labor Statistics, *Employer Costs for Employee Compensation – September 2023* (Dec. 15, 2023), <https://www.bls.gov/news.release/pdf/eccec.pdf> (*Compensation Benefit Mark-up*). Using these figures, benefits constitute a markup of $\$13.58/\$30.35 = 45\%$. We therefore markup wages by 45% to account for benefits.

¹⁸⁴ See *Broadband Data Collection*.

¹⁸⁵ *Supra* para. 39.

¹⁸⁶ We assume filing incident reports would take 1 work hour. See *General and Operation Managers Mean Hourly Wage*; see also *Compensation Benefit Mark-up*.

compensation. We also seek any information on the identities of the service providers that should be considered large, and whether 9 is a reasonable number of service providers to be required to file.

92. *BGP Routing Security Information – Quarterly Reports.* We propose the largest service providers would need to file quarterly reports on BGP routing security. We believe these filing and development costs are analogous to the filing costs for the risk management plans, so we elect to use the same methodology for these costs, adjusting for the quarterly rate of submission and the fact the quarterly report would likely take less time to create than full plans. We decrease the assumed work hours for developing each report to 40 from 100, but keep filing time and the hourly compensation the same.¹⁸⁷ We therefore estimate an annual upper bound cost of these quarterly filings to be \$295,724.80 (= 4 reports/year × 20 service providers × (40 hours of report development + 1 hour of filing) × \$90.16/hour), which we round to \$296 thousand. We seek comment on the assumptions underlying these cost estimates, especially the number of service providers affected, the work hours involved and the appropriateness of the assumed compensation.

93. *Conditions on Service Provider Contracts and Possible ROV and ROA Requirements.* We estimate an upper bound of \$14.7 million of annual cost from potential conditions on service provider contracts and ROV and ROA requirements for Tier 1 and Tier 2. Ideally, if these measures are successful, all non-registered IP addresses would become registered. Complete registration is an overestimate of the true effect, especially since ROV and ROA requirements would be for Tier 1 and Tier 2 providers only, but we will assume this to form an upper bound on costs associated with registration. To achieve this, we assume non-compliant service providers and network service providers must implement RPKI architecture which is a costly endeavor.

94. FCC staff estimates indicate that a total population of 2,209 service providers would fall under the purview of a potential order.¹⁸⁸ Costs of implementation and current compliance with RPKI would vary based on the size of the subscriber base of each ISP and service provider, so we approximate by separating the service providers, for our analytic purposes, into large, medium and small service providers. Consistent with the rest of our analysis we assume 20 large service providers, and we assume there are approximately 30 medium service providers which corresponds to hundreds of thousands of subscribers.¹⁸⁹ The remaining 2,159 service providers we designate as small. Based on internal staff analysis of the required labor and material costs, we approximate the per-service provider cost of larger service providers to be \$314,380, of medium service providers to be \$65,752, and small service providers to be \$22,588.¹⁹⁰ We believe that most large providers already have RPKI architecture, so we approximate that only 30% of large providers would implement RPKI architecture. Medium service providers likely have less compliance so we assume 50% of medium service providers would have to

¹⁸⁷ See *General and Operation Managers Mean Hourly Wage and Compensation Benefit Mark-up*.

¹⁸⁸ See *Broadband Data Collection*.

¹⁸⁹ *Id.*

¹⁹⁰ To approximate labor costs, we assume the wage of a senior network engineer, which we approximate through the hourly wage of Computer Network Architect at the 75th percentile of the wage distribution, \$78.88/hour. See Bureau of Labor Statistics, *Occupational Employment and Wages, May 2023, 15-1241 Computer Network Architects* (Apr. 3, 2024), <https://www.bls.gov/oes/current/oes151241.htm>. We estimate total compensations as \$114.38/hour by multiplying \$78.88/hour by 145% to account for benefits. See *Compensation Benefit Mark-up*. Larger service providers require more work hours to complete RPKI implementation, so staff assumes a large network would take 1000 work hours, a medium network would require 400 work hours and a small network would require 180 work hours. Likewise large service providers would require more specialized equipment and software licenses to handle large amounts traffic and therefore incur much more material costs. A small service providers needs only a server and open source tools for the small amount of traffic it has. We therefore estimate a large service provider would incur \$200,000 in material costs, a medium service provider \$20,000, and a small service provider \$2,000. Taken together, a large, medium and small service provider would have total costs of \$314,380 (= (1000 work hour × \$114.38 /hour) + \$200,000), \$65,752 (= (400 work hour × \$114.38 /hour) + \$20,000) and \$22,588 (= (180 work hour × \$114.38 /hour) + \$2,000), respectively.

implement. The vast majority of small providers do not own their own ASNs, so would likely not need to comply with RPKI infrastructure. We therefore assume 5% of small providers would have to comply, which is likely an overestimate. Taking these numbers together, we estimate that service provider costs would total \$5,310,978 $(= (20 \text{ large service providers} \times \$314,380 \times 30\%) + (30 \text{ medium service providers} \times \$65,752 \times 50\%) + (2,159 \text{ small service providers} \times \$22,588 \times 5\%))$, which we round to \$5.3 million to avoid a false impression of precision.

95. Given that the FCC lacks a dedicated information collection on network service providers, we have a less definite breakdown of the number of affected services. Many larger service providers are also large network service providers so we have already counted them, and most small service providers would not have ASNs so would not need to comply. To approximate the number of network service providers, we then use the number of medium service providers, but we assume 100% non-compliance, which likely overestimates the number of medium network service providers in non-compliance but accounts for the non-compliant large network service providers and small network service providers. To further ensure that our cost estimate is an overestimate, we assume the compliance cost of large service providers is \$314,380. Thus we estimate an upper bound of total network service provider cost to be \$9,431,400 $(= 30 \text{ service providers} \times \$314,380)$, which we round to \$9.4 million to avoid a false impression of precision.

96. Under the tentative assumption that the possible contract conditions cause no change in traffic patterns, we believe that there are no additional costs. While additional contract terms would potentially change transaction terms between service providers and the IP address holders, any loss from a party would be cancelled out by its transfer to another party. The other possible costs would be from changes in traffic patterns, in either through which service providers they are routed or changes in the total amount of traffic. If these new terms caused parties to shift business away from their ideal contracting partner, that could lead to a loss in efficiency. We tentatively assume that possible contract conditions would be universal to all contracts, and so would impact each potential pair of transacting server providers equally. Further, we do not expect any less total traffic, as the Commission estimates that demand for Internet service from IP address holders is more or less inelastic, as traffic demand is largely in the hands Internet users. We seek comment on the reasonableness of assuming no further change in traffic, especially whether contract conditions would have disparate impacts on different service providers and network service providers.

97. Combining the total service provider (\$5.3 million) and network service provider costs (\$9.4 million), we estimate the upper bounds of total cost from possible changes to contract conditions to be \$14.7 million. This cost would be spread over several years as current firms come into compliance gradually. We anticipate modest entry of new service providers after the initial ramp-up in compliance, so costs incurred by firms that do not currently exist would be modest. We also anticipate that maintenance costs likely would be nominal in comparison to the costs of the original ramp-up. We therefore use the \$14.7 million as an upper bound of annual costs.

98. We seek comment on these estimates of possible changes to service provider contract conditions. Is our characterization of how costs would be incurred and who would incur them reasonable? Are our estimates of the levels of costs for different service providers reasonable? Is our assumption that most small providers would not build their own solutions reasonable? Are our assumptions that traffic would not change reasonable?

F. Legal Authority

99. We find the Commission has authority to adopt the proposed BGP measures. We base this finding on a number of different statutory provisions, including the Commission's obligation to consider the public interest in our regulation of common carriers under Title II, and of radio communications under Title III.¹⁹¹ As discussed most recently in the *2024 Open Internet Order*, such

¹⁹¹ 47 U.S.C. §§ 151, 201-202, 301.

public interest analysis incorporates the core statutory purposes for the creation of the Commission—the national defense and the promotion of the safety of life and property.¹⁹²

100. Title II of the Communications Act of 1934, as amended (Act) grants the Commission authority to consider the national defense as it considers whether practices of common carriers are unjust, unreasonable, or unreasonably discriminatory.¹⁹³ With the reclassification of BIAS as a telecommunications service, the providers of such services are subject to Title II under the terms of the *2024 Open Internet Order*.¹⁹⁴ Under Title II of the Act, the Commission is obligated to ensure that “[a]ll charges, practices, classifications, and regulations” in connection with common carrier services must be “just and reasonable.”¹⁹⁵ Furthermore, section 201 authorizes the Commission to prescribe rules and regulations necessary in the public interest to carry out the provisions of the Act.¹⁹⁶ In this context, the proposed requirements for RPKI implementation aim to guarantee secure and reliable telecommunications services in the form of secure Internet routing and cybersecurity.¹⁹⁷

101. The Commission’s Title III authority allows it to impose license conditions related to BGP Plans and BGP Routing Security Quarterly Reports and disclosures on wireless licenses. Title III empowers the Commission to establish conditions, terms, and requirements for wireless licensees, including providers of commercial mobile service, which we tentatively conclude covers regulations that promote the security and reliability of wireless networks.¹⁹⁸ Of particular relevance, section 303(b) directs the Commission, consistent with the public interest, to “[p]rescribe the nature of the service to be rendered by each class of licensed stations and each station within any class.”¹⁹⁹ By requiring secure routing reporting around RPKI, we propose to enable the Commission’s ongoing review of threats over wireless networks and disruption to the nation’s alerting systems, which in turn would contribute to greater reliability and effectiveness going forward.

102. Further, section 706 of the Telecommunications Act of 1996 may provide additional support for the secure routing safeguards we propose today.²⁰⁰ Section 706 of the 1996 Act requires the Commission to inquire whether “advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.”²⁰¹ Section 706 defines “advanced telecommunications

¹⁹² See 47 U.S.C. § 151; *2024 Open Internet Order* at paras. 342, 431.

¹⁹³ *2024 Open Internet Order* at para. 29 (“Upon today’s reclassification of BIAS as a Title II telecommunications service, we rely on our authority in sections 201 and 202 of the Act, along with the related enforcement authorities of sections 206, 207, 208, 209, 216, and 217, for the open Internet rules we adopt today to address practices that are unjust, unreasonable, or unreasonably discriminatory.”); see also para. 25 (“Reclassification will enhance the Commission’s ability to ensure Internet openness, defend national security, promote cybersecurity, safeguard public safety, monitor network resiliency and reliability, protect consumer privacy and data security, support consumer access to BIAS, and improve disability access.”).

¹⁹⁴ *2024 Open Internet Order* at paras. 28-29.

¹⁹⁵ 47 U.S.C. § 201(b); see also 47 U.S.C. § 202.

¹⁹⁶ 47 U.S.C. § 201.

¹⁹⁷ See CSRIC III, Working Group 6 - Secure BGP Deployment Final Report at 20 (2013), http://www.pewinternet.org/files/old-media/Files/Reports/2013/PIP_SocialMediaUsers.pdf, https://transition.fcc.gov/bureaus/pshs/advisory/csric3/CSRIC_III_WG6_Report_March_%202013.pdf [<https://perma.cc/HJZ3-TSJP>] (explaining that widespread RPKI implementation could make the Internet routing system more secure by providing accurate information about which ASes are authorized to originate routes for each IP prefix).

¹⁹⁸ See, e.g., 47 U.S.C. §§ 303, 307, 309, 316.

¹⁹⁹ 47 U.S.C. § 303(b).

²⁰⁰ 47 U.S.C. § 1302.

²⁰¹ 47 U.S.C. § 1302(b).

capability” as including “high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.”²⁰² Section 706, while worded in terms of encouraging the deployment of ‘advanced telecommunications capability,’ has long been understood to encompass the goal of encouraging broadband Internet access, and our proposed measures, which are designed to promote more secure Internet routing, should also encourage that objective. Additionally, section 706 directs the Commission to remove barriers to infrastructure investment.²⁰³ We believe that our proposed measures would facilitate infrastructure investment by promoting secure and reliable Internet infrastructure, thereby facilitating the widespread availability of advanced telecommunications capability to all Americans.

103. Additionally, we tentatively conclude that the Communications for Law Enforcement Act (CALEA) also grants authority to the Commission to secure Internet routing. Section 105 of CALEA provides that “[a] telecommunications carrier shall ensure that any interception of communications or access to call-identifying information effected within its switching premises can be activated only in accordance with a court order or other lawful authorization and with the affirmative intervention of an individual officer or employee of the carrier acting in accordance with regulations prescribed by the Commission.”²⁰⁴ The Commission has explained that this provision requires telecommunications carriers to secure their networks against unauthorized interception of communications.²⁰⁵ We tentatively conclude that CALEA authorizes the Commission to impose RPKI security requirements on facilities-based service providers because doing so would help prevent the unlawful interception of communications. A router’s advertisement of intentionally incorrect routing information can cause an unauthorized interception of communications that, we tentatively conclude, CALEA section 105 requires carriers to prevent. The objective of preventing illegal interception is in harmony with what the Commission is trying to achieve in this proceeding and, more broadly, reflects an intent by Congress that the Commission maintain an active role in adopting and enforcing safeguards that protect the security of communications networks where the public interest so requires. We seek comment on whether CALEA gives the Commission authority to require RPKI measures as part of its duty to “prescribe such rules as are necessary to implement the requirements of [CALEA].”²⁰⁶

104. We seek comment on these observations and any other views on potential sources of authority for our proposed Internet routing safeguards.

G. Promoting Digital Equity

105. The Commission, as part of its continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations, and invites comment on any benefits (if any) that may be associated with the proposals and issues discussed herein.²⁰⁷ Specifically, we seek

²⁰² 47 U.S.C. § 1302(d)(1).

²⁰³ 47 U.S.C. § 1302(a).

²⁰⁴ 47 U.S.C. § 1004. The U.S. Court of Appeals for D.C. Circuit has upheld the Commission’s decision that CALEA applies to facilities-based broadband Internet access service providers. *American Council on Educ. v. FCC*, 451 F.3d 226 (D.C. Cir. 2006) (affirming *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, ET Docket No. 04-295, RM-10865, First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 14989 (2005)).

²⁰⁵ See *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, Report and Order, Further Notice of Proposed Rulemaking, and Order, 34 FCC Rcd 11423, 11436-37, paras. 35-37.

²⁰⁶ 47 U.S.C. § 229(a).

²⁰⁷ Section 1 of the Communications Act of 1934 as amended provides that the FCC “regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to
(continued....)

comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well as the scope of the Commission's relevant legal authority.

IV. PROCEDURAL MATTERS

106. *Paperwork Reduction Act.* This document contains proposed new and modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.²⁰⁸

107. *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>.

108. *Ex Parte Rules.* This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules, with a limited exception described in the following paragraph.²⁰⁹ 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.

109. In order to facilitate the free exchange of exploratory ideas among the staff of the federal agencies working toward the critical goal of promoting secure Internet routing, and in light of the secure Internet routing Initiatives as part of the National Cybersecurity Strategy, we find the public interest

all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex." 47 U.S.C. § 151. The term "equity" is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. *See* Exec. Order No. 13985, 86 Fed. Reg. 7009, Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (Jan. 20, 2021).

²⁰⁸ *See* 44 U.S.C. § 3506(c)(4).

²⁰⁹ 47 CFR §§ 1.1200, 1.1206.

requires a limited modification of the *ex parte* status in this proceeding.²¹⁰ Communications between the Commission staff and staff of the Federal Government entities with a formal role in these Internet security matters, i.e., ONCD, CISA, DOJ, Office of the Director of National Intelligence, NIST, and NTIA shall be exempt from the rules requiring disclosure in permit-but-disclose proceedings and exempt from the prohibitions during the Sunshine Agenda period.²¹¹ To be clear, while the Commission recognizes that consultation with these entities is critically important, the Commission will rely in its decision-making only on facts and arguments that are placed in the public record for this proceeding. To this end, the enumerated Federal Government entities, like all interested parties, should submit in the public record of this proceeding comments, reply comments, and other presentations presenting those facts and arguments they wish the Commission to rely on in its decision-making process.²¹²

110. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”²¹³ Accordingly, the Commission has prepared an Initial Regulatory Flexibility Analysis concerning the possible impact of the rule and policy changes contained in this *Notice of Proposed Rulemaking*. The IRFA is set forth in Appendix B. Written public comments are requested on the IRFA. Comments must be filed by the deadlines for comments on the Notice indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA.

111. *Confidentiality.* We recognize that some comments could contain information that the submitter believes should not be made available to the general public because of commercial or national security reasons. Parties may request that such information be kept confidential, identifying the specific information sought to be kept confidential, providing the reasons for the request, and otherwise following the procedures set forth in section 0.459 of our rules.²¹⁴ If a party requests confidential treatment of a comment, it must file an original and one copy of the confidential version of the comment on paper, following the procedures below, and a public version of the filing that omits only the confidential information and is otherwise identical to the confidential version, using either the electronic filing or the filing-by-paper procedures below.²¹⁵ The redacted document must be machine-readable whenever technically possible.²¹⁶ If the document to be filed electronically contains confidential metadata or is otherwise protected from disclosure by a legal privilege (e.g., attorney-client privilege), such metadata may be removed from the document before the filer submits it electronically.²¹⁷

112. *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

²¹⁰ 47 CFR § 1.1200(a) (“Where the public interest so requires in a particular proceeding, the Commission and its staff retain the discretion to modify the applicable *ex parte* rules by order, letter, or public notice.”); *see also Biden NCSIP v.2* at 45-46 (Initiatives 4.1.5 and 4.1.6); *Biden NCS* at 23-24.

²¹¹ *See generally* 47 CFR §§ 1.1206, 1.1203.

²¹² If the presentation made by staff of one of the federal agencies enumerated above is of “substantial significance and clearly intended to affect the ultimate decision,” the Commission will rely on such presented information in its decision-making process only if it coordinates in advance with the agency involved to ensure that such agency retains control over the timing and extent of any disclosure that may impact that agency’s jurisdictional responsibilities. *See* 47 CFR § 1.1206(b)(3).

²¹³ *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).

²¹⁴ 47 CFR § 0.459.

²¹⁵ 47 CFR § 1.1206(b)(2)(ii).

²¹⁶ *Id.*

²¹⁷ *Id.*

comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.²¹⁸
- 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.

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

114. *Additional Information.* For further information regarding the Notice, please contact George Donato, Associate Division Chief, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, (202) 418-0729, or by email to george.donato@fcc.gov; or James Zigouris, Attorney-Advisor, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, (202) 418-0697, or by email to james.zigouris@fcc.gov; or Bradley Rosen, Attorney-Advisor, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, (202) 418-0226, or by email to bradley.rosen@fcc.gov.

²¹⁸ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

V. ORDERING CLAUSES

115. Accordingly, IT IS ORDERED that pursuant to sections 1, 2, 3, 4, 10, 201, 202, 208, 209, 214, 216, 217, 218, 219, 220(a), 229, 251, 254, 255, 256, 301, 303, 307, 332, and 333, of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 153, 154(i)-(j), 160, 201, 202, 208, 209, 214, 216, 217, 218, 219, 220(a), 229, 251, 254, 255, 256, 301, 303, 307, 332, and 333, that this *Notice of Proposed Rulemaking* IS hereby ADOPTED.

116. IT IS FURTHER ORDERED that the Commission's Office of the Secretary, SHALL SEND a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Technical Appendix: Additional Background on Inter-Domain Routing

1. Information traverses the Internet in the data fields of Internet protocol (IP) packets. Each version of IP (of which there are currently two established standards, IPv4 and IPv6) specifies the most fundamental formats and semantics of Internet data transfer. Every IP packet includes a source and destination address, to indicate the source and destination of that IP packet, representing the corresponding endpoints. These networked endpoints may communicate through a medium access layer mechanism if the communicating endpoints are on a local area/non-routed network. Alternatively, when the networked endpoints are on separate networks, the endpoints communicate via IP routers that compile reachability data using routing protocols. In any sizable collection of networked endpoints, for reasons of resilient design and network management, individual Local Area Network segments are connected by IP routers that support one or more routing protocols.

2. Routing protocols implement the signaling mechanisms that exchange reachability information between or within independent networks, as to destinations available and the network paths by which to reach them. There are specialized categories of routing protocols for signaling, depending on whether the routing protocols are deployed within independent networks (Interior Gateway Protocols or IGP) or between independently managed networks (External Gateway Protocols or EGP). Each category of routing protocol has different performance characteristics and functional optimizations. Of the two major candidate protocols, Inter Domain Routing Protocol and the Border Gateway Protocol (BGP), that were considered for use as EGPs, BGP emerged as the ubiquitous deployment choice. As mentioned earlier, the Internet consists of approximately 70,000 independently administered and managed networks at the time of writing.¹ These networks use BGP to signal reachability information to reflect both technical priorities and business objectives, in terms of permitting a choice of the next hop of the path to carry their external traffic. In this way, BGP is termed as a “path vector” routing protocol.² However, since BGP also supports business priorities by allowing path selection, BGP is also said to support policy-based routing.³

3. The networks interconnected by BGP are termed BGP Autonomous Systems (ASes) and are referred to by their Autonomous System Numbers (ASNs).⁴ An AS may include one or multiple separate networks, collectively all under the technical administration of a single entity. For BGP purposes, a network path is denoted as a string of ASNs termed an AS Path. The AS Path is one of the “BGP path attributes” or control variables used in signaling BGP reachability that influences how each BGP speaker selects routes to a specific destination. Originally, the AS Path was intended to reflect the initial ASN originating an advertisement for a prefix, as well as the succession of ASes traversed by a BGP update (the basic BGP message carrying signaling information).⁵ However, no means were provided to verify whether this attribute was correct or false in any way. Deliberations on how best to

¹ See *supra* para. 6.

² Cisco Press, *It's Time to Hang Up on Robocalls for Good* (Jan. 1, 2018), <https://www.ciscopress.com/articles/article.asp?p=2756480> [https://perma.cc/AW2S-3NH4].

³ Juniper Networks, *Understanding BGP Path Selection* (Dec. 12, 2023), <https://www.juniper.net/documentation/us/en/software/junos/vpn-12/bgp/topics/concept/routing-protocols-address-representation.html> [https://perma.cc/J7HV-T8TJ] (*Understanding BGP Path Selection*).

⁴ Cloudflare, *What is an autonomous system?*, <https://www.cloudflare.com/learning/network-layer/what-is-an-autonomous-system/> (last visited Apr. 3, 2024).

⁵ *Understanding BGP Path Selection*.

address this type of risk and others have occurred since at least 1997.⁶ As these and other references cited note, there are additional vulnerabilities that go beyond the ones described in this section.

4. A BGP route can be defined as a destination prefix associated with a string of BGP Path attributes. Attributes provide the semantics that affect how the BGP logic in each BGP speaker processes the routes it receives from other BGP speakers. The BGP hijacks referred to in this item deal with incidents associated with manipulating the AS Path attribute, including distorting or falsifying the Origin AS, or the originated route specificity. Some of the relatively more well-known routing incidents have involved these attack vectors.⁷

5. Internet addressing conventions have implications for BGP routing, since BGP routers advertise the reachability of destination addresses to which they can find a path. Reachability information exchange occurs by exchanging BGP protocol data units or packets that contain the necessary information using the formats and semantics specified in BGP standard documents.⁸ To allow BGP routing to scale, Internet Service Providers (ISPs) are required to aggregate the IP address space in the route advertisements they originate into a compacted contiguous block that forms the “network prefix.” Doing so reduces the number of route table entries needed to cover the full scope of available Internet destinations, thus diminishing the size of the routing table in those routers central to routing topology in the so-called “default-free zone.” Since memory and route look up speeds both affect router operation, this form of aggregation allows the number of addressable endpoints to grow and the Internet to scale while still retaining acceptable performance in the routers that carry the most comprehensive sets of routes, in effect constituting a connectivity core for the Internet. However, a route that is more specific than one that is aggregated is preferred by the BGP state machine, so announcing this will preferentially attract traffic relative to a route advertising an aggregate. This attack vector is somewhat distinct from AS PATH manipulation and has been used in prior BGP hijack incidents as well.⁹

6. Details of the concepts introduced above are further explained in several accessible reference works, including the primer entitled “Security of the Internet’s Routing Infrastructure,” issued by the Broadband Internet Technical Advisory Group (BITAG).¹⁰ For more information beyond the summary descriptions in this section, readers are referred to the text on “Network Routing” in the Morgan Kaufman series in Networking or, for simplified review, the BITAG document as well as the OECD publication on routing security.¹¹

⁶ See B. R. Smith and J. J. Garcia-Luna-Aceves, *Securing the Border Gateway Routing Protocol*, Proceedings of GLOBECOM’96. 1996 IEEE Global Telecommunications Conference at 81-85 (1996); see also IETF, RFC 4272 - BGP Security Vulnerabilities Analysis at 6 (2006), <https://www.rfc-editor.org/rfc/rfc4272> [https://perma.cc/MS2L-ZL4U] and IETF, RFC 7132 - Threat Model for BGP Path Security at 2 (2014), <https://www.rfc-editor.org/rfc/rfc7132> [https://perma.cc/R82K-QZE7].

⁷ Doug Madory, *A Brief History of the Internet’s Biggest BGP Incidents* (June 6, 2023), <https://www.kentik.com/blog/a-brief-history-of-the-internets-biggest-bgp-incidents/> [https://perma.cc/68HA-GT57] (*A Brief History*).

⁸ Juniper Networks, *Supported Standards for BGP* (Jan. 22, 2024), <https://www.juniper.net/documentation/us/en/software/junos/standards/bgp/topics/concept/bgp.html> [https://perma.cc/AVR8-T6GA].

⁹ *A Brief History*.

¹⁰ BITAG, *Security of the Internet’s Routing Infrastructure* at 6-8 (2022), https://www.bitag.org/documents/BITAG_Routing_Security.pdf [https://perma.cc/PPD6-WD6L].

¹¹ Deep Medhi & Karthik Ramasamy, *Network Routing: Algorithms, Protocols, and Architectures* (2d ed. 2017).

APPENDIX B

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Federal Communications Commission (Commission) has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the Notice of Proposed Rulemaking (*Notice*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments specified on the first page of the *Notice*. The Commission will send a copy of the *Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the *Notice* and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rules

2. In the *Notice*, the Commission proposes measures for securing Internet routing to improve public safety in view of vulnerabilities that threaten the security and integrity of the Border Gateway Protocol (BGP). BGP is a routing protocol which is central to the Internet's global routing system because it allows the exchange of information amongst independently managed networks on the Internet. During this exchange of information, packets of data are routed along advertised paths provided by these independent networks to reach their intended destination. However, routing incidents can occur which result in the data not arriving at the intended destination because of misdirection, interception, and/or manipulation caused by the actions of a bad actor. These routing incidents—whether intentional or accidental—can affect the functioning and quality of service of the Internet because they can disrupt the flow of Internet traffic.

3. The proposals in the *Notice* are part of ongoing multi-stakeholder efforts to address secure Internet routing issues. President Biden's National Cybersecurity Strategy, which highlights the critical nature of securing the technical foundation of the Internet, expressly identifies addressing BGP vulnerabilities as one of the most urgent actions necessary to further this objective.⁴ Significantly, Initiative 4.1.5 of the National Cybersecurity Strategy Implementation Plan tasks the Office of the National Cyber Director (ONCD), working with key stakeholders and other Federal Government entities, to develop a roadmap to increase adoption of secure Internet routing techniques, including those that address BGP security concerns.⁵

4. In the *Notice*, the Commission seeks comment on proposed measures to address BGP vulnerabilities which would be applicable to providers of broadband Internet access service (BIAS), including comments on the proposed measures for Route Origin Validation (ROV). These measures include requiring providers of BIAS on a mass market retail basis (service providers) to prepare and annually file confidential BGP Routing Security Risk Management Plans (BGP Plans) describing and attesting to the specific efforts they have made, and plan to undertake, to secure their Internet routing

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 Executive Office of the President, National Cybersecurity Strategy at 23-24 (2023), <https://www.whitehouse.gov/wp-content/uploads/2023/03/National-Cybersecurity-Strategy-2023.pdf> [https://perma.cc/QQV7-XCGB].

⁵ Executive Office of the President, National Cybersecurity Strategy Implementation Plan, version 2, at 45 (May 2024), <https://www.whitehouse.gov/wp-content/uploads/2024/05/NCSIP-Version-2-FINAL-May-2024.pdf> [https://perma.cc/CLQ2-GGHB] (describing the title of Initiative 4.1.5 as “Collaborate with key stakeholders to drive secure Internet routing”).

architecture using Resource Public Key Infrastructure (RPKI), and to include information on Route Origin Authorization (ROA) registrations and maintenance for their route originations, and their Route Origin Validation (ROV) status and deployment plans. The proposed measures also include only requiring certain identified providers that are able to reach all Internet endpoints solely through peering relationships and other significant providers to file BGP Plans with the Commission while all other providers would be required to maintain and make their plans available upon Commission request. Similarly, quarterly filings of specific data would only be required by the identified providers that are able to reach all Internet endpoints solely through peering relationships and other significant providers.

5. Building on this proposed RPKI measure, the Commission also seeks comment on what, if anything, service providers can or should do to help secure ROA for the IP address space held by downstream or peering entities. Finally, we invite comments on whether we should require measures for securing a route's pathway as well, and we seek comment on which techniques and architecture should be proposed to secure the route's pathway. Additionally, recognizing the importance of increased outreach and education about the security risks of BGP, and of the role that the American Registry for Internet Numbers (ARIN) (the Regional Internet Registry) and its processes play in the deployment of more secure RPKI routing, the Commission seeks comment on the steps we should take participate in those efforts.

B. Legal Basis

6. The proposed action is authorized pursuant to sections 1, 2, 3, 4, 10, 201, 202, 208, 209, 214, 216, 217, 218, 219, 220(a), 229, 251, 254, 255, 256, 301, 303, 307, 332, and 333, of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 153, 154(i)-(j), 160, 201, 202, 208, 209, 214, 216, 217, 218, 219, 220(a), 229, 251, 254, 255, 256, 301, 303, 307, 332, and 333.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

7. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted.⁶ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁷ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁸ A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.⁹

8. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein.¹⁰ First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA Office of Advocacy, in general a small business is an

⁶ 5 U.S.C. § 603(b)(3).

⁷ 5 U.S.C. § 601(6).

⁸ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

⁹ 15 U.S.C. § 632.

¹⁰ See 5 U.S.C. § 601(3)-(6).

independent business having fewer than 500 employees.¹¹ These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.¹²

9. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹³ The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.¹⁴ Nationwide, for tax year 2022, there 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.¹⁵

10. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”¹⁶ U.S. Census Bureau data from the 2022 Census of Governments¹⁷ indicate there were 90,837 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number, there were 36,845 general purpose governments (county, municipal, and town or township) with populations of less than 50,000 and 11,879 special purpose governments (independent school districts) with enrollment

¹¹ See SBA, Office of Advocacy, “What’s New With Small Business?,” <https://advocacy.sba.gov/wp-content/uploads/2023/03/Whats-New-Infographic-March-2023-508c.pdf> [https://perma.cc/GU3M-SR5C] (Mar. 2023).

¹² *Id.*

¹³ 5 U.S.C. § 601(4).

¹⁴ The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), “Who must file,” <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard> [https://perma.cc/3RU5-KYCQ]. 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.

¹⁵ See Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf> [https://perma.cc/6MZZ-77EA]. 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 United States, Alaska, and Hawaii. This data includes information for Puerto Rico (469).

¹⁶ 5 U.S.C. § 601(5).

¹⁷ 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> [https://perma.cc/L5UY-5B4T]. 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> [https://perma.cc/6RSS-NLJJ]. 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.

populations of less than 50,000.¹⁸ 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.”¹⁹

1. Internet Access Service Providers

11. *Wired Broadband Internet Access Service Providers (Wired ISPs).*²⁰ Providers of wired broadband Internet access service include various types of providers except dial-up Internet access providers. Wireline service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the Internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission’s rules.²¹ Wired broadband Internet services fall in the Wired Telecommunications Carriers industry.²² The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small.²³ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.²⁴ Of this number, 2,964 firms operated with fewer than 250 employees.²⁵

12. Additionally, according to Commission data on Internet access services as of June 30, 2019, nationwide there were approximately 2,747 providers of connections over 200 kbps in at least one

¹⁸ See *id.* at tbl.5. County Governments by Population-Size Group and State: 2022 [CG2200ORG05], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html> [https://perma.cc/MXG8-STBD]. There were 2,097 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments. 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> [https://perma.cc/7P8P-CA38]. There were 18,693 municipal and 16,055 town and township governments with populations less than 50,000. On special purpose governments, 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> [https://perma.cc/3JKC-TZTL]. 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. 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.

¹⁹ 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.

²⁰ Formerly included in the scope of the Internet Service Providers (Broadband), Wired Telecommunications Carriers, and All Other Telecommunications small entity industry descriptions.

²¹ See 47 CFR § 1.7001(a)(1).

²² See U.S. Census Bureau, 2017 NAICS Definition, “517311 Wired Telecommunications Carriers,” <https://www.census.gov/naics/?input=517311&year=2017&details=517311> [https://perma.cc/Q8BL-HPWQ].

²³ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

²⁴ See U.S. Census Bureau, 2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePrevie w=false> [https://perma.cc/EQ9E-2GDC].

²⁵ *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.

direction using various wireline technologies.²⁶ The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, in light of the general data on fixed technology service providers in the Commission's 2022 *Communications Marketplace Report*,²⁷ we believe that the majority of wireline Internet access service providers can be considered small entities.

13. *Wireless Broadband Internet Access Service Providers (Wireless ISPs or WISPs)*.²⁸ Providers of wireless broadband Internet access service include fixed and mobile wireless providers. The Commission defines a WISP as "[a] company that provides end users with wireless access to the Internet[.]"²⁹ Wireless service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the Internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules.³⁰ Neither the SBA nor the Commission have developed a size standard specifically applicable to WISPs. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite).³¹ The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.³² U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.³³ Of that number, 2,837 firms employed fewer than 250 employees.³⁴

14. Additionally, according to Commission data on Internet access services as of June 30, 2019, nationwide there were approximately 1,237 fixed wireless and 70 mobile wireless providers of connections over 200 kbps in at least one direction.³⁵ The Commission does not collect data on the

²⁶ See Federal Communications Commission (FCC), Internet Access Services: Status as of June 30, 2019 at 27, Fig. 30 (*IAS Status 2019*), Industry Analysis Division, Office of Economics & Analytics (March 2022). The report can be accessed at <https://www.fcc.gov/economics-analytics/industry-analysis-division/iad-data-statistical-reports> [<https://perma.cc/H2K9-JFTH>]. The technologies used by providers include aDSL, sDSL, Other Wireline, Cable Modem, and FTTP). Other wireline includes: all copper-wire based technologies other than xDSL (such as Ethernet over copper, T-1/DS-1, and T3/DS-1), as well as power line technologies which are included in this category to maintain the confidentiality of the providers.

²⁷ See *Communications Marketplace Report*, GN Docket No. 22-203, 2022 WL 18110553 at 10, paras. 26-27, Figs. II.A.5-7 (2022) (2022 *Communications Marketplace Report*).

²⁸ Formerly included in the scope of the Internet Service Providers (Broadband), Wireless Telecommunications Carriers (except Satellite), and All Other Telecommunications small entity industry descriptions.

²⁹ Federal Communications Commission, Internet Access Services: Status as of June 30, 2019 at 27, Fig. 30 (*IAS Status 2019*), Industry Analysis Division, Office of Economics & Analytics (March 2022). The report can be accessed at <https://www.fcc.gov/economics-analytics/industry-analysis-division/iad-data-statistical-reports> [<https://perma.cc/7PHN-MFBJ>].

³⁰ See 47 CFR § 1.7001(a)(1).

³¹ See U.S. Census Bureau, 2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312> [<https://perma.cc/CSP2-R9UL>].

³² See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

³³ See U.S. Census Bureau, 2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFI, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false> [<https://perma.cc/6NSJ-8VH2>].

³⁴ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

³⁵ See *IAS Status 2019*, Fig. 30.

number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, based on data in the Commission's 2022 Communications *Marketplace Report* on the small number of large mobile wireless nationwide and regional facilities-based providers, the dozens of small regional facilities-based providers and the number of wireless mobile virtual network providers in general, as well as on terrestrial fixed wireless broadband providers in general,³⁶ we believe that the majority of wireless Internet access service providers can be considered small entities.

15. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum encompasses services in the 1850-1910 and 1930-1990 MHz bands.³⁷ The closest industry with an SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (except Satellite).³⁸ The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.³⁹ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.⁴⁰ Of this number, 2,837 firms employed fewer than 250 employees.⁴¹ Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

16. Based on Commission data as of November 2021, there were approximately 5,060 active licenses in the Broadband PCS service.⁴² The Commission's small business size standards with respect to Broadband PCS involve eligibility for bidding credits and installment payments in the auction of licenses for these services. In auctions for these licenses, the Commission defined "small business" as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$40 million for the preceding three years, and a "very small business" as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding \$15 million for the preceding three years.⁴³ Winning bidders claiming small business credits won Broadband PCS licenses in C, D, E, and F Blocks.⁴⁴

17. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or

³⁶ See 2022 Communications *Marketplace Report*, 2022 WL 18110553 at 27, paras. 64-68; at 8, para. 22.

³⁷ See 47 CFR § 24.200.

³⁸ 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> [https://perma.cc/CSP2-R9UL].

³⁹ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

⁴⁰ See U.S. Census Bureau, 2017 Economic Census of the United States, *Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIIRM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIIRM&hidePreview=false> [https://perma.cc/6NSJ-8VH2].

⁴¹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁴² Based on a FCC Universal Licensing System search on November 16, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp> [https://perma.cc/V5TL-Y49J]. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = CW; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

⁴³ See 47 CFR § 24.720(b).

⁴⁴ See FCC, Office of Economics and Analytics, Auctions, Auctions 4, 5, 10, 11, 22, 35, 58, 71 and 78, <https://www.fcc.gov/auctions> [https://perma.cc/NKF7-QACP].

transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

18. *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,"⁴⁵ 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)).⁴⁶ Wireless cable operators that use spectrum in the BRS 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.⁴⁷

19. In light of the use of wireless frequencies by BRS and EBS services, the closest industry with an SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (*except Satellite*).⁴⁸ The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.⁴⁹ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.⁵⁰ Of this number, 2,837 firms employed fewer than 250 employees.⁵¹ Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

20. According to Commission data as of December 2021, there were approximately 5,869 active BRS and EBS licenses.⁵² 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

⁴⁵ The use of the term "wireless cable" does not imply that it constitutes cable television for statutory or regulatory purposes.

⁴⁶ 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 Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, Report and Order, 10 FCC Rcd 9589, 9593, para. 7 (1995).

⁴⁷ 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.

⁴⁸ 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> [https://perma.cc/CSP2-R9UL].

⁴⁹ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

⁵⁰ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIIRM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIIRM&hidePreview=false> [https://perma.cc/6NSJ-8VH2].

⁵¹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁵² Based on a FCC Universal Licensing System search on December 10, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp> [https://perma.cc/HB73-LJ4S]. 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.

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 that 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 that 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.⁵³ Of the ten winning bidders for BRS licenses, two bidders claiming the small business status won four licenses, one bidder claiming the very small business status won three licenses, and two bidders claiming entrepreneur status won six licenses.⁵⁴ One of the winning bidders claiming a small business status classification in the BRS license auction has an active license as of December 2021.⁵⁵

21. 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.⁵⁶ 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. *Internet Service Providers (Non-Broadband)*. Internet access service providers using client-supplied telecommunications connections (e.g., dial-up ISPs) as well as VoIP service providers using client-supplied telecommunications connections fall in the industry classification of All Other Telecommunications.⁵⁷ The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.⁵⁸ For this industry, U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.⁵⁹ Of those firms, 1,039

⁵³ See 47 CFR § 27.1218(a).

⁵⁴ 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>.

⁵⁵ Based on a FCC Universal Licensing System search on December 10, 2021, <https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp> [https://perma.cc/UY4Z-VQWF]. 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.

⁵⁶ See 47 CFR § 27.1219(a).

⁵⁷ See U.S. Census Bureau, *2017 NAICS Definition*, "517919 All Other Telecommunications," <https://www.census.gov/naics/?input=517919&year=2017&details=517919> [https://perma.cc/8B6T-HM23].

⁵⁸ See 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

⁵⁹ 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=EC1700SIZEREVFIRM&hidePreview=false> [https://perma.cc/9VTR-6M5S].

had revenue of less than \$25 million.⁶⁰ Consequently, under the SBA size standard a majority of firms in this industry can be considered small.

2. Satellite Service Providers

23. *Satellite Telecommunications.* This industry comprises firms “primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”⁶¹ 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.⁶² U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year.⁶³ Of this number, 242 firms had revenue of less than \$25 million.⁶⁴ 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.⁶⁵ Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees.⁶⁶ Consequently, using the SBA’s small business size standard, a little more than half of these providers can be considered small entities.

24. *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.⁶⁷ 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.⁶⁸ Providers of Internet services (e.g. dial-up ISPs) or VoIP services, via client-supplied telecommunications connections are also included in this industry.⁶⁹ The SBA small business size

⁶⁰ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see U.S. Census Bureau, *Glossary*, https://www.census.gov/glossary/#term_ReceiptsRevenueServices [https://perma.cc/TT8V-EAU3] (last visited May 14, 2024).

⁶¹ See U.S. Census Bureau, *2017 NAICS Definition*, “517410 Satellite Telecommunications,” <https://www.census.gov/naics/?input=517410&year=2017&details=517410> [https://perma.cc/SN5Z-37PH].

⁶² See 13 CFR § 121.201, NAICS Code 517410.

⁶³ 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> [https://perma.cc/Q9KY-TTU4].

⁶⁴ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see U.S. Census Bureau, *Glossary*, https://www.census.gov/glossary/#term_ReceiptsRevenueServices [https://perma.cc/K9YE-NAK7] (last visited May 14, 2024).

⁶⁵ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf> [https://perma.cc/TQE5-G5D9].

⁶⁶ *Id.*

⁶⁷ See U.S. Census Bureau, *2017 NAICS Definition*, “517919 All Other Telecommunications,” <https://www.census.gov/naics/?input=517919&year=2017&details=517919> [https://perma.cc/8B6T-HM23].

⁶⁸ *Id.*

⁶⁹ *Id.*

standard for this industry classifies firms with annual receipts of \$35 million or less as small.⁷⁰ U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.⁷¹ Of those firms, 1,039 had revenue of less than \$25 million.⁷² Based on this data, the Commission estimates that the majority of “All Other Telecommunications” firms can be considered small.

3. Other Providers

25. *All Other Information Services.* This industry comprises establishments primarily engaged in providing other information services (except news syndicates, libraries, archives, Internet publishing and broadcasting, and Web search portals).⁷³ The SBA small business size standard for this industry classifies firms with annual receipts of \$30 million or less as small.⁷⁴ U.S. Census Bureau data for 2017 show that there were 704 firms in this industry that operated for the entire year.⁷⁵ Of those firms, 556 had revenue of less than \$25 million.⁷⁶ Consequently, we estimate that the majority of firms in this industry are small entities.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

26. The proposed measures for service providers outlined in this *Notice* are to increase public safety by addressing vulnerabilities in Internet routing. The Commission expects the proposed measures in the *Notice*, if adopted, will may impose new reporting, recordkeeping, notice or other compliance requirements on small entities that act as service providers to provide Internet service and/or Internet access. These requirements may include application or other conformance reporting, licensing, certification and/or other reporting obligations.

27. Small and other service providers that provide service on a mass market retail basis would be required to prepare and update confidential BGP Plans at least once per year. The BGP Plan reporting requirement would require ISPs to describe and attest to the specific efforts they have made, and plan to undertake, to secure their Internet routing architecture using RPKI as well as other methods at

⁷⁰ See 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

⁷¹ 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> [https://perma.cc/9VTR-6M5S].

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. 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://perma.cc/3DNF-PRCS].

⁷³ See U.S. Census Bureau, *2017 NAICS Definition, “519190 All Other Information Services,”* <https://www.census.gov/naics/?input=519190&year=2017&details=519190> [https://perma.cc/PC6F-RMAY].

⁷⁴ See 13 CFR § 121.201, NAICS Code 519190 (as of 10/1/22, NAICS Codes 519290).

⁷⁵ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 519190, <https://data.census.gov/cedsci/table?y=2017&n=519190&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false> [https://perma.cc/9TGC-4QRJ].

⁷⁶ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue of less than \$100,000 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in this category). Therefore, the number of firms revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see U.S. Census Bureau, *Glossary*, https://www.census.gov/glossary/#term_ReceiptsRevenueServices [https://perma.cc/989D-RULH] (last visited May 14, 2024).

their disposal (e.g., peer-locking). The BGP Plan would also require ISPs to include, among other things, the ISPs' plans for ROA registrations and maintenance for their route originations, and the status of and plans for their deployment of ROV. The Commission's proposed filing requirements include requiring a select number of the largest ISPs to file their BGP Plans with the Commission annually, while small and other remaining service providers would only be required to maintain and make their BGP Plans available to Commission staff upon request. The Commission also proposes to require larger ISPs to file quarterly reports containing select data points to measure progress in RPKI deployment and assess whether reporting on additional measures may be needed.

28. The proposals in the *Notice* build upon other actions the Commission has taken to protect and secure public safety. The Commission notes that the proposals being made in this *Notice* may require additional analysis and mitigation activities by small and other ISPs to satisfy certain technical criteria or standards for the ability to address Internet routing vulnerabilities. At this time, the Commission is not in a position to determine whether the proposals that may be adopted for ISPs would require small entities to hire professionals in order to comply and cannot quantify the cost of compliance with the potential requirements and obligations that may result in this proceeding. Among other things considered, we inquire about the options for the Commission to address the costs of adopting the proposed measures for ROV. We seek comment on these issues and anticipate that the information we receive in comments will address these matters and any broader cost issues for small entities that may be affected by the proposed measures.

29. We expect that the comments we receive will help the Commission identify and evaluate relevant matters for small entities before adopting final rules for securing Internet routing, including any compliance costs and burdens that may result from the proposals and other matters discussed in the *Notice*.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

30. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”⁷⁷

31. The proposals in the *Notice* to secure Internet routing build on the work of the Communications Security, Reliability, and Interoperability Councils (CSRICs), federal advisory committees made up of telecommunications industry stakeholders as well as special advisors from other relevant sectors to address issues associated with the security of communications systems, and particularly on the work products of CSRIC III and CSRIC VI, for securing Internet routing. Using the work of CSRIC III and CSRIC VI as a foundation has the potential to minimize the economic impact on small entities for several reasons. First, CSRIC III took into account existing best practices for securing Internet routing.⁷⁸ Next, CSRIC VI recommended best practices established by the Mutually Agreed Norms for Routing Security (MANRS) and the Internet Engineering Task Force (IETF).⁷⁹ The

⁷⁷ 5 U.S.C. § 603(c).

⁷⁸ See CSRIC III, Secure BGP Deployment, Final Report at 11-12 (2013), https://transition.fcc.gov/bureaus/pshs/advisory/csr3/CSRIC_III_WG6_Report_March_%202013.pdf [<https://perma.cc/RB4D-J9FJ>].

⁷⁹ CSRIC VI, Report on Best Practices and Recommendations to Mitigate Security Risks to Current IP-based Protocols, Final Report at 4-15, 6-20 (2019), https://www.fcc.gov/sites/default/files/csr6wg3_finalreport_030819.pdf [<https://perma.cc/S6MF-MRLP>].

Commission believes building on these widely accepted measures would only require minimal adjustments for small and other ISPs to comply with the proposals for securing Internet routing in the *Notice* and would provide a level of consistency among ISPs which all play a part in routing Internet traffic.

32. The Commission recognizes that smaller service providers may have relatively fewer in-house resources available than larger Tier 1 providers to secure Internet routing, and therefore has taken specific steps to minimize the obligations bore by small providers. For example, the Commission does not propose a one-size fits all approach to address BGP vulnerabilities with a set of industry-wide requirements and deadlines. The flexible approach the Commission proposes still expects smaller providers to meet requirements to secure Internet routing, however, as an alternative to the proposed requirement that ISPs file BGP Plans with the Commission, as mentioned above, the Commission proposes that smaller service providers prepare, update, and maintain BGP Plans, and make such plans available within 48 hours of a Commission request. The Commission also proposes significantly limited data reporting requirements in the BGP Plans for small providers and proposes that only larger carriers as defined in the Notice be required to file quarterly data reports.

33. In the *Notice*, the Commission considers and seeks comment on various measures for validating route origin during Internet routing including ROV filtering. We include a requirement that all BGP Plans describe the contractual requirements the service provider has for upstream third parties to provide ROV filtering for their Internet traffic. Tier 3 service providers who are typically small providers, and do not have peering relationships and only rely on upstream contracts with other service providers, would not need to file this information with the Commission but alternatively would be required to have the information available upon Commission request. Additionally, small providers that are classified as Tier 2 providers and have peering relationships with other Tier 2 providers, or contractual relationships with Tier 1 providers, would benefit from the Commission's proposal to allow Tier 2 providers two years to implement the requirement to support ROV for both directly connected peers with settlement-free access as well as their directly connected clients, including other service providers, rather than the one year implementation deadline for required for Tier 1 providers.

34. The Commission expects to consider the economic impact and alternatives more fully for small entities following the review of comments filed in response to the *Notice*. Having input from interested parties will allow the Commission to better evaluate options and alternatives to minimize any significant economic impact on small entities that may result from implementing the proposed measures discussed in the *Notice*. The Commission's evaluation of this information will shape the final alternatives it considers to minimize any significant economic impact that may occur on small entities, the final conclusions it reaches and any final rules it promulgates in this proceeding.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

35. None.

**STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *Reporting on Border Gateway Protocol Risk Mitigation Progress*, PS Docket No. 24-146; *Secure Internet Routing*, PS Docket No. 22-90, Notice of Proposed Rulemaking (June 6, 2024).

A few months ago I hosted a conversation with Vint Cerf, one half of the team that developed the protocol that allows computers to talk to one another. For this he is often described as the “Father of the Internet.” We had a joyous back-and-forth about the origins and open architecture of the internet. So I asked him to reflect for a moment. What was it that he wished he had known back then when it all started? He responded without skipping a beat. He told me he wished he had known that the internet would need more security.

Amen. We have come to rely on the internet for nearly everything in our lives. Ensuring that internet traffic is secure is essential.

That is where Border Gateway Protocol comes in. BGP manages how packets of data get transmitted between networks. It is central to the global routing system of the internet because it is the protocol that allows independently managed networks to send traffic to one another.

That means we all rely on BGP. Every one of us, every day. That is true if you are running a small business and using connections to engage with customers and suppliers, banking online, having a telemedicine session with a healthcare provider, helping the kids with their digital age schoolwork, staying in touch with family, or keeping up to date on the news. BGP is in the background, helping connect our critical infrastructure, support emergency services, keep the financial sector running, shore up manufacturing, and more.

You might be surprised to learn that something so critical in the modern economy has pretty humble origins. This history is why BGP is sometimes called the “three napkin protocol.” As the story goes, back in 1989, the internet, then a novelty for computer scientists like Vint Cerf, was expanding—fast. But the internet’s basic protocols at the time could not handle this growth. So on their lunch break from an Internet Engineering Task Force meeting in Austin, Texas, a pair of engineers sketched out the ideas for BGP on three ketchup-stained paper napkins. What was meant to be a short-term solution developed on the sidelines of an internet engineering conference is still with us today.

While BGP has allowed network operators to grow and evolve the modern internet, it was not designed with explicit security features to ensure trust in exchanged information. That means bad actors can use this protocol to maliciously misdirect and exploit internet traffic. I want to thank the Cybersecurity and Infrastructure Security Agency at the Department of Homeland Security for working with my office and jointly holding a BGP public forum to discuss this problem. I also want to thank the Department of Defense and Department of Justice for publicly disclosing in our record that China Telecom used BGP vulnerabilities to misroute United States internet traffic on at least six occasions. These “BGP hijacks” can expose personal information, enable theft, extortion, and state-level espionage. They can also disrupt sensitive transactions that require security, like those in the financial sector.

For all of these reasons, today we begin a rulemaking to help make our internet routing more secure. We propose that all providers of broadband internet access service prepare and update confidential BGP security risk management plans. These plans would describe and attest to their efforts to follow existing best practices with respect to Route Origin Authorizations and Route Origin Validation using the Resource Public Key Infrastructure. In addition, we propose quarterly reporting for the largest providers to ensure we are making progress addressing this well-known vulnerability.

Thank you to my colleagues for working with me on this essential issue for network security. Thank you also to the staff behind this rulemaking, including Debra Jordan, Jim Schlichting, Nicole McGinnis, Austin Randazzo, Kenneth Carlberg, Sonja Rodriguez, Maureen Bizhko, James Wiley, Drew Morin, George Donato, Padma Krishnaswamy, Jim Zigouris, Bradley Rosen, Leah Calvo, and Haille Laws from the Public Safety and Homeland Security Bureau; Adam Copeland, Elizabeth Drogula, and

Callie Coker from the Wireline Competition Bureau; Emily Talaga, Cher Li, Susan Lee, and Patrick Sun from the Office of Economics and Analytics; Tom Tran, Kamran Etemad, Jennifer Salhus, Saurbh Chhabra, Justin Park, and Barbara Esbin from the Wireless Telecommunications Bureau; Ryan McDonald and Victoria Randazzo from the Enforcement Bureau; Michele Ellison, Erika Olsen, Douglas Klein, William Huber, Jeffrey Steinberg, Anjali Singh, Chin Yoo, Wade Lindsay, Joel Rabinovitz, and Keith McCrickard from the Office of General Counsel; and Joy Ragsdale and Chana Wilkerson from the Office of Communications Business Opportunities.

**STATEMENT OF
COMMISSIONER GEOFFREY STARKS**

Re: *Reporting on Border Gateway Protocol Risk Mitigation Progress*, Notice of Proposed Rulemaking, PS Docket No. 24-146; *Secure Internet Routing*, PS Docket No. 22-90.

Border Gateway Protocol is the mechanism that enables our Internet service providers (ISPs) to route traffic throughout the variety of networks that, when combined, make up the Internet. I've been focused on this since 2022, when I sat down with a group of the largest ISPs in America to discuss the challenges surrounding Internet routing. So, trust me when I tell you that it is vitally important that BGP is secure and we get it right.

As with most of the underlying protocols that make the Internet work, it was unfortunately not designed with security in mind. Accidental or malicious actions that send erroneous routing traffic information can make networks unavailable, or worse, can be used to redirect traffic to allow for cyberattacks, data theft, or espionage. For example, in 2008, YouTube was rendered inaccessible for much of the world after Pakistan attempted to block access to it within its borders by modifying YouTube's BGP routes. Russia took advantage of BGP vulnerabilities to limit access to Twitter as part of its invasion of Ukraine. And China Telecom misdirected 15% of the world's Internet traffic, and routed domestic United States Internet traffic through China, by hijacking BGP.

The good news is experts have developed tools and strategies to enhance BGP security. A group of ISPs working together at the Mutually Agreed Norms for Routing Security, or "MANRS," created one such tool, Routing Public Key Infrastructure (RPKI), which is a public database of authenticated BGP routes and the gold standard of protecting Internet routing.

That's where our *Notice* comes in. In proposing that ISPs providing broadband Internet access service create BGP security risk management plans, ISPs that otherwise have not yet begun the process to deploy BGP mitigations will do so. In proposing to measure RPKI deployment, we will help inform both the private and public sectors about what more needs to be done to secure our networks. Our actions are part of a multi-pronged approach throughout the government. It is also consistent with Initiative 4.1.5 of the National Cybersecurity Strategy Implementation Plan, which tasks the Office of the National Cyber Director, along with stakeholders and government agencies, to develop a roadmap to increase adoption of secure Internet routing techniques including BGP security.

I thank the Chairwoman for her ongoing leadership in securing Internet routing, and for accepting my edits to make sure we ask questions about how our efforts can promote accountability among stakeholders, support the development of open standards setting solutions, such as RPKI, understand how network architecture plays into BGP security and RPKI deployment, and ensure that our efforts promote risk-based routing security among ISPs.

I look forward to continuing to engage with stakeholders and following the record closely. Protecting routing security will require an all-hands-on-deck approach from all stakeholders. Thank you to the Commission staff working on this complicated proceeding. I approve.

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

In the Matter of)
)
Schools and Libraries Cybersecurity Pilot Program) WC Docket No. 23-234
)

REPORT AND ORDER

Adopted: June 6, 2024

Released: June 11, 2024

By the Commission: Chairwoman Rosenworcel and Commissioner Starks issuing separate statements.
Commissioners Carr and Simington dissenting.

TABLE OF CONTENTS

I. INTRODUCTION	1
II. BACKGROUND	5
III. DISCUSSION	14
A. Pilot Timeframe and Overall Cap	15
B. Pilot Participant Budgets	22
C. Eligibility of Pilot Participants	32
D. Eligible Services and Equipment/Security Measures	36
1. Eligible Services and Equipment	36
2. Ineligible Services and Equipment	52
E. FCC Form 484 Application and Pilot Participation Selection Processes	58
F. Competitive Bidding, Requests for Services, and Invoicing and Reimbursement Processes	78
1. Competitive Bidding Requirements	79
2. Requests for Services and Equipment Process	83
3. Invoicing and Reimbursement Process	86
G. USAC's Role as the Administrator of the Pilot Program	88
H. Pilot Program Integrity Protections	90
1. Document Retention and Production Requirements	91
2. Gift Rule	93
3. Certifications	94
4. Audits	97
5. Suspension and Debarment	98
I. Performance Goals and Data Reporting	101
J. Appeals of USAC Decisions and Waiver Requests	113
K. Legal Authority	114
L. The Children's Internet Protection Act	122
M. Delegations of Authority to the Bureau and the Office of Managing Director	123
IV. PROCEDURAL MATTERS	127
V. ORDERING CLAUSES	133
APPENDIX A – FINAL RULES	
APPENDIX B – CYBERSECURITY PILOT PROGRAM ELIGIBLE SERVICES LIST	
APPENDIX C – <i>CYBERSECURITY NPRM</i> COMMENTERS AND REPLY COMMENTERS	
APPENDIX D – FINAL REGULATORY FLEXIBILITY ANALYSIS	

I. INTRODUCTION

1. As broadband connectivity and Internet access have become essential for K-12 students and adults alike, the security and safety of that access has likewise become paramount. Whether for online learning, job searching, or connecting with peers and the community, high-speed broadband is critical to educational, professional, and personal success in the modern world. Although broadband connectivity and Internet access can simplify and enhance the education and daily lives of K-12 students, school staff, and library patrons, they can also be used by malicious actors to steal personal information, compromise online accounts, and cause online personal harm or embarrassment. In response to the growing importance of cybersecurity to broadband connectivity and Internet access for K-12 schools and libraries, and in light of the increase in cyberattacks to disrupt or disable these critical networks, the Federal Communications Commission (Commission or FCC) adopts a three-year pilot program within the Universal Service Fund (USF or Fund) to provide up to \$200 million to support cybersecurity services and equipment for eligible schools and libraries.

2. The Schools and Libraries Cybersecurity Pilot Program (Pilot or Pilot Program) is a critical next step to evaluate whether, and to what extent, the Commission should leverage the USF to support the cybersecurity needs of schools and libraries. By proceeding via a short-term Pilot Program, the Commission can gather key data on the types of cybersecurity services and equipment that K-12 schools and libraries need to protect their broadband networks and securely connect students, school staff, and library patrons to advanced communications that are integral to education. The Pilot Program will evaluate whether supporting cybersecurity services and equipment with universal service funds advances the key universal service principles of providing quality Internet and broadband services to K-12 schools and libraries at just, reasonable, and affordable rates; and ensuring schools' and libraries' access to advanced telecommunications. Importantly, the Pilot Program will also enable the Commission to better estimate the costs of supporting cybersecurity services and equipment via the USF, which will help inform future decisions on how to best utilize the USF to support the connectivity and network security needs of K-12 schools and libraries. Data and information collected through this Pilot Program may also aid in the considerations of broader efforts across the government to help schools and libraries address their cybersecurity concerns. In this regard, we note that other federal partners, including the Department of Homeland Security's (DHS) Cybersecurity and Infrastructure Security Agency (CISA) and the U.S. Department of Education (Education Department), have jurisdiction and deep expertise on cybersecurity matters, and we expect continued interagency coordination will enable us to leverage their knowledge and resources to explore how the Commission can contribute to addressing the cybersecurity needs of K-12 schools and libraries.

3. Eligible schools and libraries will be able to request and receive support through the Pilot Program to purchase a wide range of qualifying cybersecurity services and equipment that best suit their particular needs. To ensure that we are able to select a large number of participants for the Pilot Program, we adopt per-student and per-library budgets, subject to a minimum funding floor, as well as an overall funding cap. Additionally, we expect to select a diverse cross-section of schools, libraries, and consortia to participate in the Pilot Program, with a focus on selecting applicants with the greatest need. By selecting a participant pool that reflects large, small, urban, rural, and Tribal schools and libraries, we expect to gain a better understanding about the cybersecurity needs of a wide range of schools and libraries.

4. In adopting this Pilot Program, we are also mindful of the E-Rate program's longstanding goal of promoting connectivity, as well as our obligation to be a mindful and prudent steward of the Commission's limited universal service funds. To that end, we must balance our actions in this proceeding against competing priorities, bearing in mind that the universal service funds are obtained through assessments collected from telecommunications carriers that are typically passed on to and paid for by U.S. consumers. We acknowledge that, as a limited-term Pilot Program, only a subset of K-12 schools and libraries will likely be selected and receive support to defray their cybersecurity-related costs. And, with a \$200 million budget, the Pilot Program will not be able to fund all of the cybersecurity-related needs of the selected Pilot participants. We note that the estimated costs for all types of

cybersecurity services may exceed the funding available for this Pilot Program, and we further note that the Pilot participants will not receive 100% reimbursement, as they will be required to pay their non-discount share of the costs of the eligible services and equipment. Within this framework, we find that the Pilot Program will serve a vital role in informing the Commission, and the broader federal government, as to the most pressing cybersecurity needs of K-12 schools and libraries, and the associated costs, which will enable the Commission and other stakeholders to best address these needs on a long-term basis.

II. BACKGROUND

5. The ongoing proliferation of innovative digital learning technologies, and the need to connect students, school staff, and library patrons to information, jobs, and life-long learning have led to a steady rise in the demand for bandwidth in schools and libraries.¹ However, the shift to modern connectivity has brought with it increased cybersecurity threats and attacks, particularly for K-12 schools and libraries.² Recent information shows that such schools and libraries are vulnerable to increased cybersecurity threats and attacks, often leading to the disruption of school and library operations, loss of learning, reductions in available bandwidth, significant monetary losses, and the leaking and theft of students', school staff members', and library patrons' personal information and confidential data.³ K-12

¹ FCC, *E-Rate: Universal Service Program for Schools and Libraries* (Sept. 15, 2021), <https://www.fcc.gov/consumers/guides/universal-service-program-schools-and-libraries-e-rate>; see also U.S. Department of Education, Office of Educational Technology, K-12 Digital Infrastructure Brief: Adequate and Future Proof (2023), https://tech.ed.gov/files/2023/08/FINAL_Adequate_FutureProof.pdf (Education Department Adequate and Future Proof Brief) (“The future will keep coming, and with it will be greater demands for bandwidth, devices, and digital learning resources.”).

² See, e.g., U.S. Government Accountability Office, Critical Infrastructure Protection—Additional Federal Coordination is Needed to Enhance K-12 Cybersecurity at 3-4, 12-16, & n.8 (2022), <https://www.gao.gov/assets/gao-23-105480.pdf> (GAO K-12 Cybersecurity Report) (discussing detailed research regarding downtime for schools that were victims of ransomware attacks, how lack of financial resources can contribute to a school being targeted for a cyberattack, distributed denial-of-service (DDoS) and cyberattacks that disrupted student learning and resulted in school closures, and ransomware attacks that resulted in the release of sensitive personal data for more than 500,000 students and school staff members and resulted in significant ransomware payments); see also Joe Warminsky, DC-Area School System Says Data of 100,000 People Affected in Ransomware Attack (Feb. 20, 2024), <https://therecord.media/md-school-system-says-people-affected-ransomware> (noting that the same ransomware attack that breached the personal information of 100,000 people, including the individuals' names, financial account information, and social security numbers, also resulted in a network outage for the Maryland district, which serves about 130,000 students).

³ See CISA, *Cyber Threats to K-12 Remote Learning Education*, <https://www.cisa.gov/stopransomware/cyber-threats-k-12-remote-learning-education> (last visited June 6, 2024) (discussing the rise in cyber threats and attacks against K-12 educational entities and describing some of the more onerous actions employed by malicious actors); GAO, *As Cyberattacks Increase on K-12 Schools, Here is What's Being Done* (Dec. 1, 2022), <https://www.gao.gov/blog/cyberattacks-increase-k-12-schools-here-whats-being-done> (noting that the scale and number of cyberattacks against K-12 educational entities increased during COVID-19 and providing examples of how schools are being attacked); K12 Security Information eXchange, *The K-12 Cyber Incident Map*, <https://www.k12six.org/map> (last visited June 6, 2024) (categorizing the 1,619 cyberattacks that occurred between 2016 and 2022 by type of attack using an interactive map); Career Charge, *Top 5 K-12 Cybersecurity Threats Schools are Facing* (Jan. 17, 2023), <https://corporatetraining.usf.edu/blog/top-5-k-12-cybersecurity-threats-schools-are-facing> (explaining that according to the 2019 State of Malware report, education is consistently among the top 10 industries targeted by attackers because schools are data-rich environments, lack IT funding for their infrastructure, provide few cybersecurity professional development opportunities for school staff, and are comprised of students who are tech savvy but lack good cyber hygiene practices); Center for Internet Services, *New MS-ISAC Report Details Cybersecurity Challenges of K-12 Schools* (Nov. 14, 2022), <https://www.cisecurity.org/about-us/media/press-release/new-ms-isac-report-details-cybersecurity-challenges-of-k-12-schools> (stating that 29% of K-12 Multi-State Information Sharing and Analysis Center (MS-ISAC) member organizations reported being victims of a cyber incident in the 2021-2022 school year); Will Caverly, *Ransomware Attacks at Libraries: How They* (continued....)

schools and libraries will continue to be prime targets for malicious actors, primarily because they are data-rich environments that tend to lack resources and advanced cybersecurity protections.⁴

6. *Cybersecurity Act of 2021 and Actions by Federal Partners to Address K-12 Cybersecurity Concerns.* In October 2021, the President signed into law the K-12 Cybersecurity Act of 2021 (Cybersecurity Act), which directed CISA to conduct a study of K-12 cybersecurity risks.⁵ In particular, the Cybersecurity Act directed CISA to evaluate and report on the specific cybersecurity risks that were impacting K-12 educational institutions; the cybersecurity challenges that K-12 educational institutions were facing; cybersecurity challenges related to remote learning; and the most accessible ways to communicate cybersecurity recommendations and tools.⁶ CISA published its report in January 2023,⁷ recommending that K-12 schools invest in the most impactful security measures;⁸ recognize and actively address resource constraints;⁹ and focus on collaboration and information-sharing by joining groups like the Multi-State Information Sharing and Analysis Center (MS-ISAC)¹⁰ and K-12 Security

(Continued from previous page)

Happen, What to Do (May 10, 2021), <https://publiclibrariesonline.org/2021/05/ransomware-attacks-at-libraries-how-they-happen-what-to-do/> (describing a ransomware attack at the Northampton Public Library that resulted in a two-week closure while the library's IT firm sorted out the malware problems); Kevin Regan, Cyber Risks No Longer Science-Fiction for Libraries (July 19, 2021), <https://www.insurancejournal.com/magazines/mag-features/2021/07/19/623028.htm> (explaining that the names and addresses stored by libraries may be all attackers need to invade patrons' privacy, and pose a threat to their finances and identity).

⁴ Frederick Hess, The Top Target for Ransomware? It's Now K-12 Schools (Sept. 20, 2023), <https://www.forbes.com/sites/frederickhess/2023/09/20/the-top-target-for-ransomware-its-now-k-12-schools/?sh=594b9b8a563f> (discussing the increase of cybersecurity threats and attacks on schools and characterizing them as “number one on the cybercrime hit list”); Center for Internet Security, *New MS-ISAC Report Details the Cybersecurity Challenges of K-12 Schools* (Nov. 14, 2022), <https://www.prnewswire.com/news-releases/new-ms-isac-report-details-cybersecurity-challenges-of-k-12-schools-301675262.html> (predicting that “cyber threat actors are highly likely to target K-12 school districts in the remainder of the 2022-2023 school year”); Will Caverly, *Ransomware Attacks at Libraries: How They Happen, What to Do* (May 10, 2021), <https://publiclibrariesonline.org/2021/05/ransomware-attacks-at-libraries-how-they-happen-what-to-do/> (noting that “malicious hacking attacks of institutions are on the rise, particularly after the onset of the COVID-19 pandemic” and “[c]orporations, including nonprofits like public libraries, face greater dangers from these attacks”).

⁵ K-12 Cybersecurity Act, 2021, H.R. 17-122, Pub. L. No. 117-47, 117th Cong., (2021) (enacted), available at <https://www.govinfo.gov/content/pkg/BILLS-117s1917enr/pdf/BILLS-117s1917enr.pdf>.

⁶ *Id.* at § 3(b)(A)-(D).

⁷ See generally Press Release, CISA, CISA Releases Protecting Our Future: Partnering to Safeguard K-12 Organizations from Cybersecurity Threats (Jan. 24, 2023), <https://www.cisa.gov/news-events/alerts/2023/01/24/cisa-releases-protecting-our-future-partnering-safeguard-k-12>; CISA, Protecting Our Future: Partnering to Safeguard K-12 Organizations from Cybersecurity Threats at 12-18 (2023), https://www.cisa.gov/sites/default/files/2023-01/K-12report_FINAL_V2_508c_0.pdf (CISA K-12 Cybersecurity Report).

⁸ CISA K-12 Cybersecurity Report at 1, 3, 12-14. Specifically, the Report recommended that “[i]n an environment of limited resources, [K-12] leaders should leverage security investments to focus on the most impactful steps. K-12 entities should begin with a small number of prioritized investments: deploying multi-factor authentication (MFA), mitigating known exploited vulnerabilities, implementing and testing backups, regularly exercising an incident response plan, and implementing a strong cybersecurity training program. K-12 entities should then progress to fully adopting CISA’s Cybersecurity Performance Goals (CPGs) and mature to building an enterprise cybersecurity plan aligned around the NIST Cybersecurity Framework (CSF).” CISA K-12 Cybersecurity Report at 3.

⁹ By, for example, leveraging federal, state, and local grant programs; utilizing free or low-cost services; and requiring technology providers to enable strong security controls at no additional charge. *Id.* at 3, 12, 16-17.

¹⁰ Per the GAO, “MS-ISAC is an independent, nonprofit organization that DHS designated in 2010 as the cybersecurity ISAC for state, local, tribal, and territorial governments. It provides services and information sharing (continued....)

Information Exchange (K12 SIX),¹¹ and building long-term relationships with CISA and the Federal Bureau of Investigation (FBI) regional security personnel.¹² Contemporaneously with the report, CISA also released an online toolkit that delved further into the three recommendations, linking each recommendation with key actions and related free or low-cost tools and resources to help K-12 school entities take actions to immediately reduce their cybersecurity risks and mitigate possibilities of cyberattacks.¹³

7. While CISA's work was underway, the U.S. Government Accountability Office (GAO) was asked by Congress "to (1) determine what is known about the cost impact of cyber incidents on school districts and (2) determine the extent to which key federal agencies coordinate with other federal and nonfederal entities to help K-12 schools combat cyber threats."¹⁴ In October 2022, GAO published its report, which found that additional federal coordination was needed to enhance K-12 school cybersecurity posture,¹⁵ and recommended that the Secretary of Education establish a collaborative mechanism to coordinate cybersecurity efforts among federal agencies and with the K-12 school community; develop metrics to obtain feedback to measure the effectiveness of the Education Department's cybersecurity products and services for school districts; and coordinate with federal and nonfederal stakeholders to determine how best to help school districts overcome the identified challenges and consider the identified opportunities for addressing cyber threats, as appropriate.¹⁶ Although the GAO report did not recommend any action by the Commission, it discussed the E-Rate program generally, described interviews with FCC officials about the funding of basic firewall services, and named the FCC as a key federal agency that supports the education subsector.¹⁷ More recently, the Education Department released three K-12 Digital Infrastructure Briefs,¹⁸ one of which it co-authored with CISA,¹⁹

(Continued from previous page)

to enhance state, local, tribal, and territorial governments' ability to prevent, protect against, respond to, and recover from cyberattacks and compromises." GAO K-12 Cybersecurity Report at 8, n.19.

¹¹ Per the GAO, "K12 SIX is a national nonprofit information-sharing organization that assists its members from the K-12 community in protecting from cybersecurity threats." GAO K-12 Cybersecurity Report at 2, n.7.

¹² CISA K-12 Cybersecurity Report at 3, 12, 18. Specifically, the CISA report recommended "[i]nformation sharing and collaboration with peers and partners . . . to build awareness and sustain resilience. K-12 entities should participate in an information sharing forum such as [MS-ISAC] and/or K12 SIX and establish a relationship with CISA and FBI field personnel." *Id.* at 3.

¹³ See generally CISA, *Online Toolkit: Partnering to Safeguard K-12 Organizations from Cybersecurity Threats*, <https://www.cisa.gov/online-toolkit-partnering-safeguard-k-12-organizations-cybersecurity-threats> (last visited June 6, 2024) (organizing the toolkit by recommendation, with each recommendation containing a description, applicable actions, and additional resources). CISA derived the toolkit from its broader list of cybersecurity performance goals. *Id.*

¹⁴ See GAO K-12 Cybersecurity Report at 1-2.

¹⁵ See generally GAO K-12 Cybersecurity Report.

¹⁶ GAO K-12 Cybersecurity Report at 32. GAO did not direct any recommendations to the FCC.

¹⁷ *Id.* at 7-8, 20-21, 28-30, 38, 40, 42-43. The report also notes that in fall 2021 there were in discussions between CISA and the FCC about creating a portfolio of CISA cybersecurity resources that the FCC could direct school districts to use to address their cybersecurity risks and in July 2022 the FCC initiated coordination with the Education Department, the FBI, and other independent and executive branch regulators regarding the E-Rate program. *Id.* at 20. FCC officials also noted that "the cost of covering advanced cybersecurity services for school districts would likely exceed the funding allocations for the [E-Rate] program" noting that a report from the Consortium for School Networking "found it would cost the E-Rate program \$2.389 billion annually to fund all K-12 schools with funding for advanced security services." *Id.* at 20. However, the E-Rate program also currently funds over \$3 billion for connectivity services to and within eligible schools and libraries, which is the primary purpose of the program. *Id.*

¹⁸ See Education Department Adequate and Future Proof Brief, https://tech.ed.gov/files/2023/08/FINAL_Adequate_FutureProof.pdf; U.S. Department of Education, Office of (continued....)

to provide K-12 school districts across the country with a starting place to understand the importance of securing their digital infrastructure and the immediate steps they can take to keep their networks and systems safe from cyber threats. In March 2024, the Education Department, in coordination with CISA, launched the Government Coordinating Council (GCC) for the Education Facilities Subsector and appointed the Commission as an ex-officio member.²⁰

8. *The E-Rate Program.* The E-Rate program was authorized by Congress as part of the Telecommunications Act of 1996 (1996 Act), and created by the Commission in 1997 to provide connectivity to and within schools and libraries.²¹ Through the E-Rate program, eligible schools, libraries, and consortia (comprised of eligible schools and libraries) may request universal service discounts for eligible services and equipment, such as telecommunications services, Internet access, and internal connections.²² The Commission can designate services eligible for E-Rate support as part of its authority to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and nonprofit elementary and secondary classrooms and libraries.²³

9. The E-Rate program currently allows reimbursement for some cybersecurity services. The program funds basic firewall service²⁴ as a category one service but only if the firewall service is provided as part of the vendor's Internet access service.²⁵ In addition, the E-Rate program funds separately-priced basic firewall services and components as a category two service, subject to the applicants' five-year category two budget.²⁶ Based on funding year (FY) 2023 data, the E-Rate program

(Continued from previous page)

Educational Technology, K-12 Digital Infrastructure Brief: Privacy Enhancing, Interoperable, and Useful (2023), https://tech.ed.gov/files/2023/08/FINAL_Privacy_Interop_Useful.pdf. See also Press Release, U.S. Department of Education, U.S. Department of Education Announces Key K-12 Cybersecurity Resilience Efforts (Aug. 7, 2023), <https://www.ed.gov/news/press-releases/departments-of-education-announces-k-12-cybersecurity-resilience-efforts>.

¹⁹ See U.S. Department of Education, Office of Educational Technology & CISA, K-12 Digital Infrastructure Brief: Defensible and Resilient (2023), https://tech.ed.gov/files/2023/08/DOEd-Report_20230804_-508c.pdf.

²⁰ See Press Release, U.S. Department of Education, U.S. Department of Education Launches Government Coordinating Council to Strengthen Cybersecurity in Schools (Mar. 28, 2024), <https://www.ed.gov/news/press-releases/us-department-education-launches-government-coordinating-council-strengthen-cybersecurity-schools>. Along with several other federal agencies, the Commission is an ex-officio member of the GCC.

²¹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified at 47 U.S.C. § 151 *et seq.*).

²² 47 U.S.C. § 254(c)(1), (c)(3), (h)(1)(B), (h)(2)(A). Congress charged the Commission with establishing competitively neutral rules to enhance access to advanced telecommunications and information services for all public and nonprofit elementary and secondary classrooms and libraries, and also provided the Commission with the authority to designate "additional" services eligible for universal service support for schools and libraries. 47 U.S.C. § 254(c)(3), (h)(2)(A).

²³ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9008-15, paras. 436-49 (1997) (*Universal Service First Report and Order*); see also 47 U.S.C. § 254(h)(2)(A).

²⁴ In the E-Rate program, "firewall" is currently defined as a "hardware and software combination that sits at the boundary between an organization's network and the outside world, and protects the network against unauthorized access or intrusions." Universal Service Administrative Company (USAC), *Schools and Libraries (E-Rate) Program Eligible Services List (ESL) Glossary*, <https://www.usac.org/wp-content/uploads/e-rate/documents/ESL-Glossary.pdf> (last visited June 6, 2024).

²⁵ See, e.g., *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Order, DA 22-1313, 37 FCC Rcd 14615, 14625 (WCB Dec. 14, 2022) (*FY 2023 ESL Order*). Category one services include services and equipment needed to support broadband connectivity to schools and libraries. *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870, 8898-8900, paras. 77-78 (2014) (*First 2014 E-Rate Order*).

funded over \$179 million in category one requests for data transmission and Internet access services that included basic firewall services, and over \$16.5 million in category two requests for basic firewall services and components.²⁷

10. The Commission, however, has previously declined to expand E-Rate support for additional cybersecurity services and equipment.²⁸ For example, in the 2010 *Schools and Libraries Sixth Report and Order*, the Commission declined to extend basic firewall services to include anti-virus and anti-spam software, and intrusion protection and prevention devices that prevent unauthorized access to a school's or library's network.²⁹ In doing so, the Commission explained that it "must balance the benefits of such protections with the cost of augmenting [the] list of supported services" and "[a]lthough [the Commission] agree[s] that protection from unauthorized access is a legitimate concern, the funds available to support the E-Rate program are constrained."³⁰ Thus, on balance, the Commission found at the time that "the limited E-Rate funds should not be used to support these services."³¹ Next, in the *First 2014 E-Rate Order* the Commission declined to designate network security services, such as intrusion protection, intrusion detection, and malware protection as eligible for category two support to ensure that such support was targeted efficiently to equipment necessary for broadband connectivity.³² And in the *2019 Category Two Budget Order*, the Commission again declined E-Rate stakeholder requests to make

(Continued from previous page)

²⁶ See, e.g., *FY 2023 ESL Order*, 37 FCC Rcd at 14622. Category two services include services and equipment needed to support broadband connectivity *within* schools and libraries. *First 2014 E-Rate Order*, 29 FCC Rcd at 8898-8899 (designating the services needed to support broadband connectivity *to* schools and libraries as "category one" services and those needed for broadband connectivity *within* schools and libraries as "category two" services).

²⁷ See Letter from Tom Nesbitt, Director of Program Management, E-Rate/ECF Analytics, Appeals, Customer Service, & Risk/Audits, USAC, to Trent B. Harkrader, Chief, FCC Wireline Competition Bureau at Attach. (Apr. 15, 2024), <https://www.fcc.gov/ecfs/search/search-filings/filing/104150165207077>.

²⁸ See, e.g., *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for Our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Sixth Report and Order, 25 FCC Rcd 18762, 18808-18809, para. 105, n.317 (2010) (*Schools and Libraries Sixth Report and Order*) (providing list of the commenters that requested the Commission expand the eligibility of basic firewall services to include other services and devices necessary to protect their broadband networks).

²⁹ See, *id.*, para. 105.

³⁰ See, e.g., *id.*

³¹ See, e.g., *id.* The Commission reviews several factors when considering adding services to the ESL. Generally, under the Commission's implementation of the statute for the E-Rate program, the Commission considers whether the service serves an educational purpose. See 47 U.S.C. § 254(h)(1)(B); see also *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18805, para. 99. Additionally, the Commission considers whether the service is primarily or significantly used to facilitate connectivity. See *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18805, para. 99; 47 U.S.C. § 254(h)(2)(A). And, due to the program's limited funds, the Commission must balance the benefits of particular services with the costs of adding them to the list of supported services. See *id.* Section 254(h)(2)(A) of the Communications Act of 1934, as amended, authorizes the Commission to designate services eligible for E-Rate support as part of its authority to enhance, to the extent technologically feasible and economically reasonable, access to advanced telecommunications and information services. 47 U.S.C. § 254(h)(2)(A). Thus, the E-Rate program is not able to fund every service that potentially serves an educational purpose, and for that reason the Commission evaluates the potential impact of funding a particular service on the E-Rate program and the USF when considering whether to add new services to the eligible services list. See *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18805, para. 99.

³² *First 2014 E-Rate Order*, 29 FCC Rcd at 8917-18, paras. 120-21 (removing VPNs and all other services under "Data Protection" other than basic firewalls and uninterruptible power supply/battery backup from the FY 2015 Eligible Services List to refocus E-Rate support on the internal connections necessary for deploying local and wide area networks); see also *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Order, 30 FCC Rcd 9923, 9929, para. 18 (WCB 2015) (*Funding Year 2016 ESL Order*) (declining to expand eligibility of basic firewall services or to add additional network security services to the FY 2016 E-Rate ESL).

advanced firewalls and services eligible as part of the category two budget proceeding.³³

11. *COVID-19 and Cybersecurity Petitions, Eligible Services List Filings, and Public Notice.* During the coronavirus (COVID-19) pandemic, several E-Rate stakeholders requested that the Commission reconsider the eligibility of advanced firewall and network security services. For example, Cisco Systems, Inc. (Cisco) submitted a petition for waiver asking the Commission to raise applicants' category two budgets by 10% and allow category two funding to be used for advanced network security services during the COVID-19 pandemic (i.e., for FYs 2020 and 2021).³⁴ On February 8, 2021, the Commission received a petition for declaratory ruling and petition for rulemaking from a group of E-Rate program stakeholders³⁵ requesting that the definition of "firewall" be modified to include all firewall and related features (e.g., next-generation firewall protection, endpoint protection, and advanced security), and that the definition of broadband be updated to include cybersecurity.³⁶ The petitioners also asked the Commission to increase the current category two budgets to include additional funding for advanced firewall and other network security services.³⁷ As part of the FY 2023 ESL proceeding, many E-Rate stakeholders requested that the Commission reconsider its earlier eligibility decisions and clarify that advanced or next-generation firewalls and services, as well as other network security services, are eligible for E-Rate support.³⁸ On November 15, 2022, the Commission also received a proposal from Funds For Learning, LLC (FFL) for the Commission to establish a three-year pilot program to fund advanced

³³ See *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order, 34 FCC Rcd 11219, 11236-37, para. 46 & n.123 (2019) (*2019 Category Two Budget Order*) (relying on the *First 2014 E-Rate Order* and explaining that it was focusing "category two funding on the internal connections that are truly necessary to deliver high-speed broadband to students and library patrons via local area networks and wireless local area networks").

³⁴ Petition of Cisco Systems, Inc. for Waiver, WC Docket No. 13-184, at 1-2, 6 (filed Aug. 20, 2020), <https://www.fcc.gov/ecfs/search/search-filings/filing/10820400607480>. The Commission did not grant Cisco's Petition for Waiver. Rather, it sought comment on the underlying issues raised in the petition. See *infra* para. 12.

³⁵ The E-Rate stakeholders included the Consortium for School Networking (CoSN), Alliance for Excellence in Education, State Educational Technology Directors Association (SETDA), Council of the Great City Schools (Council GCS), State E-Rate Coordinators' Alliance (SECA), and Schools, Health & Libraries Broadband Coalition (SHLB Coalition).

³⁶ Petition of CoSN et al. for Declaratory Relief and Rulemaking Allowing Additional Use of E-Rate Funds for K-12 Cybersecurity, WC Docket No. 13-184, at 2 (filed Feb. 8, 2021) (CoSN 2021 Petition). CoSN, along with Funds For Learning, LLC (FFL), provided a study and the costs associated with adding advanced firewall and other network security services to the E-Rate program and estimated that it would cost the program about \$2.389 billion annually to fund these advanced firewall and other network security services for all K-12 schools. *Id.* at 14, Attach. at 4.

³⁷ *Id.* at 13.

³⁸ See *Wireline Competition Bureau Seeks Comment on Requests to Allow the Use of E-Rate Funds for Advanced or Next-Generation Firewalls and Other Network Security Services*, WC Docket No. 13-184, Public Notice, DA 22-1315, 2022 WL 17886490, at *7, Appendix A (WCB Dec. 14, 2022) (*December 2022 Public Notice*). During that proceeding, AASA, The School Superintendents Association (AASA) along with 19 other national educational organizations, requested that the Commission take a measured approach in deciding whether to expand the eligibility of advanced firewalls and services, as well as other cybersecurity services. These stakeholders urged the Commission to work collaboratively with other federal agencies to "determine the products and services that are available and effective in responding to and preventing cyberattacks[;] . . . schools should not be driving the response to cyberattacks, nor should E-Rate, the only federal funding stream supporting connectivity in schools, be repurposed/redirected for this important effort." See Letter from AASA, The School Superintendents Association, et al., to Jessica Rosenworcel, Chairwoman, Brendan Carr, Geoffrey Starks, and Nathan Simington, Commissioners, FCC, CC Docket No. 02-6, at 1 (filed Sept. 23, 2022), <https://www.fcc.gov/ecfs/document/10923187101919/1> ("E-Rate alone cannot defray the costs of technology and training necessary to secure school and library networks and data.").

firewalls and services as a category two service.³⁹ FFL also proposed that a funding cap of at least \$60 million to \$120 million be used for each of the three years.⁴⁰ FFL further proposed that in the event demand exceeds available funds, the pilot funding be prioritized to the applicants with the highest discount rates, and that the Commission deny funding for the remaining applicants with lower discount rates when the capped pilot funds are exhausted.⁴¹

12. In response to the cybersecurity petitions, FY 2023 ESL filings, and the proposed FFL pilot cybersecurity program, and in light of the increasing number of cybersecurity threats targeting K-12 schools, the Wireline Competition Bureau (Bureau) issued a Public Notice on December 14, 2022. In the Public Notice, the Bureau sought comment on a variety of topics, including the definition of advanced or next-generation firewalls and services, the specific cybersecurity services and equipment the E-Rate program should fund as advanced or next-generation firewalls and services, the appropriate categorization of the firewalls and services, the Commission's legal authority to extend E-Rate eligibility to the firewalls and services, and the impact that funding the firewalls and services may have on the E-Rate program's longstanding goal of supporting connectivity.⁴²

13. Based on the record developed in response to that Public Notice, on November 13, 2023, the Commission released a Notice of Proposed Rulemaking (*Cybersecurity NPRM*), which proposed and sought comment on establishing the Pilot we adopt today.⁴³ In particular, the *Cybersecurity NPRM* considered whether expanding universal service support to protect schools and libraries from cybersecurity threats and attacks could advance the key universal service principles of providing quality Internet access and broadband services to eligible schools and libraries at just, reasonable, and affordable rates and ensure schools' and libraries' access to advanced telecommunications services.⁴⁴ It also sought comment on a variety of topics related to the Pilot Program, including the Pilot application requirements and processes, eligibility considerations for Pilot participants,⁴⁵ the eligible services and equipment to be funded by the Pilot, the data reporting requirements associated with the Pilot, and the Commission's legal authority to conduct the Pilot and expand E-Rate program support to include cybersecurity services and equipment.⁴⁶ Comments were due on January 29, 2024, and replies were due on February 27, 2024. The Commission received approximately 70 filings from a wide array of interested parties, nearly all of whom supported the Pilot Program.

³⁹ See, e.g., Letter from John D. Harrington, Chief Executive Officer, Funds For Learning, LLC to Jessica Rosenworcel, Chairwoman, Brendan Carr, Geoffrey Starks, Nathan Simington, Commissioners, FCC, CC Docket No. 02-6, WC Docket No. 13-184 (filed Nov. 15, 2022), <https://www.fcc.gov/ecfs/document/111630719929/1> (FFL Nov. 15 *Ex Parte* Letter); Letter from John D. Harrington, Chief Executive Officer, Funds For Learning, LLC to Marlene H. Dortch, Secretary, FCC, CC Docket No. 02-6, WC Docket No. 13-184 (filed Nov. 21, 2022), <https://www.fcc.gov/ecfs/document/1122304899639/1> (FFL Nov. 21 *Ex Parte* Letter); Letter from John D. Harrington, Chief Executive Officer, Funds For Learning, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 02-6, WC Docket No. 13-184 (filed Nov. 23, 2022), <https://www.fcc.gov/ecfs/document/112325067454/1> (FFL Nov. 23 *Ex Parte* Letter) (collectively, FFL *Ex Parte* Letters).

⁴⁰ FFL Nov. 23 *Ex Parte* Letter at 1.

⁴¹ *Id.* at 2-3.

⁴² See generally *December 2022 Public Notice*.

⁴³ *Schools and Libraries Cybersecurity Pilot Program*, WC Docket No. 23-234, Notice of Proposed Rulemaking, FCC 23-92, 2023 WL 8605080 (Nov. 13, 2023) (*Cybersecurity NPRM*).

⁴⁴ *Cybersecurity NPRM*, 2023 WL 8605080 at *1, para. 2.

⁴⁵ For purposes of the Pilot Program, we refer to "participants" as those entities selected to be included in the Pilot Program. We use the term "applicants" to refer to the entire pool of entities that apply for the Pilot. In this regard, the nomenclature for the Pilot Program will differ slightly from the E-Rate program, which traditionally refers to schools and libraries collectively as "applicants."

⁴⁶ See generally *Cybersecurity NPRM*.

III. DISCUSSION

14. In this Report and Order, we establish a three-year Pilot Program to evaluate whether supporting cybersecurity services and equipment with universal service support could advance the key universal service principles of providing quality Internet access and broadband services to K-12 schools and libraries at just, reasonable, and affordable rates; and ensuring schools' and libraries' access to advanced telecommunications as provided by Congress in the 1996 Act.⁴⁷ Specifically, we first adopt a three-year Pilot timeframe and \$200 million cap to support cybersecurity services and equipment, including advanced firewalls, for eligible schools and libraries, and consortia of eligible schools and libraries, using the Connected Care Pilot Program as a model.⁴⁸ Second, we establish per-student and per-library budgets to specify the amount of funding that Pilot participants can receive and ensure funding can be widely disbursed. Next, we confirm that all eligible schools and libraries, including those that do not currently participate in the E-Rate program, are eligible to apply to participate in the Pilot Program. We then adopt a Pilot eligible services list that specifies the cybersecurity services and equipment that will be eligible for Pilot funding, and an application process that mirrors the E-Rate program and through which we can select a broad pool of participants. In addition, we establish Pilot Program rules and procedures for all phases of the Pilot, including competitive bidding, requesting funding, and invoicing/reimbursement. These Pilot rules and procedures draw on our experience administering the E-Rate and ECF programs and will promote efficient program administration and reduce burdens on Pilot participants. We also appoint an Administrator of the Pilot and adopt program integrity protections, including document retention and production, gift, certification, audit, and suspension and debarment rules, consistent with our responsibility to be a careful steward of the limited USF dollars. We then adopt Pilot performance goals and data reporting requirements to help us assess the costs and benefits of using the limited universal service funds to support the cybersecurity needs of K-12 schools and libraries, and establish appeal and waiver request rules to provide recourse for parties aggrieved by decisions of the Pilot Program Administrator. Lastly, we conclude that the Commission has legal authority to establish a Pilot Program that provides USF support for cybersecurity services and equipment to eligible schools and libraries and that the requirements of the Children's Internet Protection Act (CIPA) are triggered by the purchase of eligible services or equipment through the Pilot.

A. Pilot Timeframe and Overall Cap

15. *Pilot Program Timeframe.* We first adopt a Pilot Program duration of three years. In the *Cybersecurity NPRM*, we sought comment on our proposed three-year term for the Pilot Program.⁴⁹ We sought comment specifically to understand whether (i) the proposed length of the program would be sufficient to provide the Commission with data to evaluate how effective the Pilot funding is in protecting K-12 schools and libraries, and their broadband networks and data, from cybersecurity threats and attacks; (ii) if it would be feasible to shorten the Pilot without compromising the integrity of the data collected; and (iii) if we should provide additional time for participants to prepare for the Pilot or for the Commission to evaluate the data at the conclusion of the Pilot.⁵⁰

⁴⁷ See, e.g., *Promoting Telehealth for Low-Income Consumers; COVID-19 Telehealth Program*, WC Docket Nos. 18-213, 20-89, Report and Order, 35 FCC Rcd 3366, 3375, para. 13 (2020) (*Connected Care Pilot Order*) (stating that the Connected Care Pilot Program would evaluate "whether and how the USF can help defray health care providers' costs of providing connected care services, particularly to low-income Americans and veterans").

⁴⁸ *Id.* at 3384-85, para. 38 (making available \$100 million over a three-year funding period through a pilot program separate from the budgets of existing universal service programs).

⁴⁹ *Cybersecurity NPRM*, 2023 WL 8605080 at *12, para. 28.

⁵⁰ *Id.*

16. While several commenters support the proposed Pilot duration of three years,⁵¹ many advocated for a shortened Pilot duration of either one year or eighteen months.⁵² Commenters supporting a shorter Pilot timeframe offered four main reasons for doing so. First, commenters argued that a three-year Pilot would render the data collected on cybersecurity services and equipment used to combat cybersecurity threats and attacks obsolete by the conclusion of the Pilot Program.⁵³ Second, commenters advocated that a shorter program would allow the Commission to evaluate Pilot data in time to align with the next E-Rate category two budget cycle (FY 2026 through FY 2030).⁵⁴ Third, commenters argued for a shorter duration on the grounds that applicants who were not selected to participate in the Pilot would be required to wait over three years to potentially receive funding to combat cybersecurity threats and attacks.⁵⁵ Finally, commenters recommended a shorter Pilot term or, alternatively, a higher cap, in order to increase the number and diversity of participants.⁵⁶

17. A three-year Pilot Program will give us the time to evaluate whether universal service support should be used to fund cybersecurity services and equipment on a permanent basis and we adopt a program duration of three years for the Pilot. In establishing the Connected Care Pilot Program, the Commission concluded that a three-year pilot program was “reasonable and [would] allow the Commission to obtain sufficient, meaningful data from the selected pilot projects” and we find the same reasoning applies here.⁵⁷ As a responsible steward of the limited USF, we are obliged to carefully evaluate any actions that would expand demands on the Fund. This is particularly important where, as here, we are exploring whether to make funding available to support services and equipment not previously covered, and where other resources may be available. Given record estimates regarding what

⁵¹ Cybersecurity Coalition and Information Technology Industry Council Comments at 2 (Cybersecurity Coalition/ITI) (“The Coalition and IT are broadly supportive of the proposed three-year pilot program within the Universal Service Fund (USF) to provide up to \$200 million to support cybersecurity and advanced firewall services for eligible schools and libraries.”); *see also* Illinois Office of Broadband Comments at 6 (IOB) (“IOB agrees that the . . . Pilot program should not exceed three years. That period will provide an ample opportunity for the Commission to gather a meaningful amount of data on the effectiveness of participants’ chosen approaches to cybersecurity.”); National Educational Organizations Reply at 3 (EdGroup); CTIA Reply at 10.

⁵² *See, e.g.*, ActZero Comments at 6 (“Instead of a three-year duration, the Commission should conduct the pilot program for one year. Allowing three months for the application and selection process and an additional three months to review data after the pilot concludes would allow the Commission to determine the best path forward within 18 months.”); *see also* CoSN, American Library Association (ALA), SEDTA, SHLB Coalition et al. February 1 *Ex Parte* Letter at 2 (CoSN et al. February 1 *Ex Parte* Letter); Wisconsin Department of Public Instruction Reply at 2 (WI DPI); ALA Comments at 4; Local Education Agencies February 27, 2024 *Ex Parte* Letter at 1; Clear Creek Amana CSD Express Comments (Clear Creek).

⁵³ FFL Comments at 6; FFL Reply at 2-3; The Friday Institute for Education Innovation Comments at 2 (Friday Institute).

⁵⁴ Access, ALA, CoSN, SHLB Coalition et al. *Ex Parte* Letter, WC Docket No. 13-184, at 1-2 (rec. Aug. 7, 2023) (CoSN et al. August 7 *Ex Parte* Letter); Fortinet Inc. Reply at 2 (Fortinet).

⁵⁵ The Quilt Reply at 1 (Quilt); ALA Reply at 2; Council GCS at 3-4; Michigan Statewide Educational Network Comments at 3 (MISEN).

⁵⁶ Quilt Reply at 3-4 (“The Quilt agrees with NCTA – The Internet & Television Association (NCTA) that ‘the Commission needs to have a sufficient sample of participants in order to create meaningful data about the Pilot Program’s impact [but that] \$200 million may not be enough to enable a wide cross-section of schools and libraries to participate and purchase the needed cybersecurity equipment and services for their networks.’ Whether the Commission makes more funding available in the pilot, we note that concentrating funding in a one-year pilot period instead of three-years would make more funding available per participant per year.”); *see also* Fortinet Reply at 1-2, n.7; ActZero Comments at 1; Dallas Independent School District (Dallas ISD) Comments at 3; Association of California School Administrators and the California School Boards Association Reply at 3-4 (ASCA-CSBA Federal Partnership).

⁵⁷ *See, e.g.*, *Connected Care Pilot Order*, 35 FCC Rcd at 3389-90, para. 46.

it could cost to fund a complete suite of cybersecurity services and equipment, we think it is imperative to carefully consider the potential benefits—and burdens—before deciding whether to move forward with such funding on a wider scale or permanent basis. We believe that a three-year term will enable us to gather the necessary information.

18. We recognize there is a tradeoff between learning more from the Pilot and moving quickly to potentially expand support to protect K-12 schools' and libraries' broadband networks and data from cybersecurity threats and attacks. While some commenters suggested setting a one-year to eighteen-month term, in part to align with the next category two budget cycle, we decline to do so. A shorter term would hamper the Commission's ability to evaluate the use of universal service funds to fund cybersecurity equipment and services, particularly given the expected lead time for schools and libraries to implement a cybersecurity solution and unknowns around the evolving threat of potential cybersecurity attacks.⁵⁸ Moreover, we note that it would be challenging to align the conclusion of the Pilot with the next category two budget cycle in any event, given the time needed to evaluate lessons learned from the Pilot and the proceedings needed to implement any permanent funding stream for cybersecurity services and equipment. Additionally, we disagree with commenters that a three-year term would render any potential solutions or analysis obsolete. Given the flexibility we provide to Pilot participants to select and modify the cybersecurity services and equipment they choose over the three-year period, we expect that participants will be able to quickly adapt to changes in cybersecurity threats or attacks, or the availability of new cybersecurity solutions. Additionally, given the reporting requirements we adopt herein, we expect to keep pace with lessons learned from the Pilot as data is provided which, in turn, will help facilitate our analysis and determination of next steps. Finally, we disagree with commenters who suggest we shorten the Pilot term or allocate additional funding in order to fund a greater or wider array of participants. As discussed below, we believe the \$200 million cap will allow us to provide sufficient support to a wide cross-section of Pilot participants; thus, the benefits to retaining the proposed three-year time frame are greater than the benefits of a shorter duration.

19. *Pilot Program Cap.* We also adopt a Pilot Program funding cap of \$200 million over three years for the Pilot Program.⁵⁹ In the *Cybersecurity NPRM*, we sought comment on whether (i) a cap of \$200 million would be sufficient to obtain meaningful data about how this funding would help to protect schools' and libraries' broadband networks and data and improve their ability to address K-12 cyber risks; (ii) if a lower cap would be sufficient for these purposes (e.g., \$100 million); and (iii) how the total Pilot Program cap should be distributed over the three-year funding period in a way that accounts for participants' spending needs while ensuring predictable funding over the three-year term.⁶⁰

20. Several commenters agree that the proposed \$200 million funding cap is sufficient to fund a wide range of Pilot participants over a three-year period.⁶¹ Others suggested a higher amount in order to provide funding to a larger number of Pilot participants.⁶² Having reviewed the record in its entirety, we adopt the proposed \$200 million funding cap for the Pilot Program. For our goal of obtaining meaningful information on how this Pilot could help protect schools' and libraries' broadband networks and data, and improve their ability to address K-12 schools' and libraries' cybersecurity risks, as

⁵⁸ See, e.g., Dallas ISD Comments at 2 (asserting that a shorter time frame would accommodate a wider sample of participants and would provide sufficient data for the Commission to conduct its analysis).

⁵⁹ *Cybersecurity NPRM*, 2023 WL 8605080 at *12, para. 29.

⁶⁰ *Id.*

⁶¹ Cybersecurity Coalition/ITI Comments at 2 ("The Coalition and IT[I] are broadly supportive of the proposed three-year pilot program within the Universal Service Fund (USF) to provide up to \$200 million to support cybersecurity and advanced firewall services for eligible schools and libraries."); see also IOB Comments at 7; ALA Reply at 2-3.

⁶² See, e.g., MISEN Comments at 5; EdGroup Reply at 4.

discussed later in this Report and Order, we believe the proposed cap of \$200 million over three years will be sufficient.

21. To provide funding for the Pilot, and to minimize the impact on the contribution factor, we will assign unused E-Rate funds from prior funding years to cover the full \$200 million cap. In 2023, the Bureau found that unused funds from prior funding years were available for use in funding year 2023 and directed the USF Administrator, the Universal Service Administrative Company (USAC), to fully fund year 2023 demand, and to reserve an additional \$190 million of carry forward funds for future use.⁶³ Similarly, in 2024, the Bureau directed USAC to reserve \$10 million of the available \$500 million of carry forward funds for future use.⁶⁴ With this Report and Order, we assign that \$200 million of carry forward funding to offset the collection requirements for the Pilot, thereby reducing any potential increase on the contribution factor. In the *Cybersecurity NPRM*, we sought comment on other approaches that could be used to fund the Pilot, aside from directing USAC to separately collect the needed funds.⁶⁵ No commenter addressed these approaches. Making use of carry forward funding in this way is consistent with our responsibility to be a careful steward of the USF, while at the same time allowing the Commission to respond to the need for additional cybersecurity funding for K-12 schools and libraries. This approach is consistent with how the E-Rate and other USF programs are administered.⁶⁶

B. Pilot Participant Budgets

22. We next adopt fixed per-student and per-library budgets to determine the amount of funding that participants may receive during the Pilot. In the *Cybersecurity NPRM*, we sought comment on how to evaluate funding requests⁶⁷ and whether to establish a maximum amount of funding that an individual participant could receive.⁶⁸ Among other things, we sought comment on whether providing a larger amount of funding to a smaller number of participants, or a smaller amount of funding to a greater number of participants, would best enable us to assess the use of the USF for cybersecurity services and equipment.⁶⁹ In particular, we sought comment on whether we should establish a per-student budget, with a corresponding budget for libraries, as well as the data sources and cost information that would be appropriate to use in evaluating funding requests.⁷⁰ Additionally, we sought comment on whether we should require Pilot participants to contribute a portion of the eligible costs of cybersecurity services and equipment in order to receive funding.⁷¹ We further proposed to apply a participant's category two discount rate to calculate the non-discounted share of costs for the Pilot Program, but also sought comment on requiring participants to instead contribute a fixed percentage of the costs of the cybersecurity services and equipment purchased.⁷² Finally, we sought comment on whether a participant

⁶³ *Wireline Competition Bureau Directs USAC to Fully Fund Eligible Category One and Category Two E-Rate Requests*, CC Docket No. 02-6, Public Notice, DA 23-425 (WCB 2023).

⁶⁴ *Wireline Competition Bureau Directs USAC to Fully Fund Eligible Category One and Category Two E-Rate Requests*, CC Docket No. 02-6, Public Notice, DA 24-457 (WCB 2024).

⁶⁵ *Cybersecurity NPRM*, 2023 WL 8605080 at *12, para. 30.

⁶⁶ See 47 CFR § 54.709(b) (specifying the treatment of carry forward funds).

⁶⁷ *Cybersecurity NPRM*, 2023 WL 8605080 at *13, para. 32.

⁶⁸ *Id.*, para. 31.

⁶⁹ *Id.*, para. 32.

⁷⁰ *Id.*, para. 31.

⁷¹ *Id.*

⁷² *Id.*

should receive its funding commitment in equal installments, or whether there may be reasons why a Pilot participant may need access to a greater amount earlier during the three-year term.⁷³

23. A 2021 cost study submitted jointly by FFL, the Consortium for School Networking (CoSN), and others estimated it would cost approximately \$13.60 per student annually to support advanced or next-generation firewall services, \$16.20 per student annually to support endpoint security and protection, and \$14.50 per student annually to support additional, advanced cybersecurity services and equipment.⁷⁴ Rubrik, Inc. (Rubrik), in its comments, stated it would be reasonable to establish a funding maximum for individual entities of \$1 million to \$2 million.⁷⁵ Based on our review of the cost estimates submitted by commenters, and consistent with our goal to provide funding to a wide variety of participants, as discussed later in this Report and Order, we adopt fixed budgets to determine the amount of funding that a Pilot participant can receive.⁷⁶ While these budgets, including associated maximums and floors, are specified in terms of annualized dollar amounts,⁷⁷ participants' expenses are capped based on the full three-year duration of the Pilot and not on an annual basis. Thus, Pilot participants may request reimbursement for expenses as they are incurred even if it means that the amount of funding disbursed to a participant in a given year of the program exceeds their annual budget, so long as the total amount disbursed to a participant over the three-year term does not exceed three times that annual budget. In establishing these budgets, which account for the estimated costs of different types of advanced cybersecurity solutions, we expect to provide a meaningful benefit to a substantial number of schools, libraries, and consortia. In implementing this approach, we decline to award support based on a percentage of a participant's category one or category two budget, as suggested by some commenters.⁷⁸ We find that a more tailored approach, grounded in the estimated cost of implementing specific types of cybersecurity solutions, would best achieve our goals in a targeted and cost-effective manner. Furthermore, we note that because we do not limit Pilot participation to current E-Rate applicants, it would be difficult to implement an approach based on category one or category two budgets. When implementing these budgets, we will categorize Pilot applicants and consider their funding needs in combination with their applicant type, as discussed in greater detail below.

24. *Schools and School Districts.* Schools and school districts will be eligible to receive up to \$13.60 per student, annually, on a pre-discount basis, to purchase eligible cybersecurity services and equipment over the three-year Pilot duration.⁷⁹ We find that a pre-discount annual budget of \$13.60 per

⁷³ *Cybersecurity NPRM*, 2023 WL 8605080 at *12, para. 29.

⁷⁴ CoSN 2021 Petition, Attach. at 14 (CoSN et al. 2021 E-Rate Cybersecurity Cost Estimate); *see also supra* note 36.

⁷⁵ Rubrik, Inc. Comments at 3 (Rubrik).

⁷⁶ *See, e.g., Connected Care Pilot Order*, 35 FCC Rcd at 3388-89, para. 43 (observing that there are "significant advantages to providing a set support amount that requires participants to contribute a portion of the eligible costs, including being administratively simple, predictable, and equitable, as well as incentivizing participants to choose the most cost-effective services and equipment and refrain from purchasing a higher level of service or equipment than needed").

⁷⁷ *See, e.g., 47 CFR § 54.2001(b).*

⁷⁸ Crown Castle Fiber LLC Comments at 4 (Crown Castle) (suggesting that the Pilot Program's support be limited to "33% of the Internet Access service for the largest circuit of each applicant, excluding Wide Area Networking, MPLS, and site-to-site connectivity"); FFL Comments at 17 (asserting that "[c]yber security should also be funded by a certain overall percentage based on the overall funding available in a given 5 year [E-Rate] funding window").

⁷⁹ Because school and school district budgets are calculated on a per-student basis, and because the budget covers the three-year Pilot Program duration, we will use a participant's student count in the first year of the Pilot Program as the applicable student count for the entirety of the Pilot. Participants will not update their student counts in subsequent years. For participants that do not currently participate in E-Rate, and therefore may not have a student count on file with USAC, USAC will determine the participant's student count and discount rate based on information provided during the eligibility review of the new participant. All Pilot participants who are not

(continued....)

student strikes an appropriate balance between supporting the various types of cybersecurity services and equipment needed to protect school networks and data, and our desire to provide funding to as many schools and school districts as possible in the limited-term Pilot Program. Additionally, we note that this per-student annual budget is sufficient to support the majority of the total annual costs related to any one of the three types of security measures FFL and CoSN identified in their cost estimate,⁸⁰ and is also consistent with the Commission's analysis in the *First 2014 E-Rate Order* that established per-student budgets for category two equipment and services.⁸¹

25. We recognize that for many schools a pre-discount annual budget of \$13.60 will not, by itself, be sufficient to fund all of the school's cybersecurity needs to achieve a fully mature cybersecurity posture, as doing so would typically require a school to implement multiple categories of technical solutions, often in a specific priority order.⁸² Given the limited Pilot funding available, our approach instead ensures that each participating school will receive funding to prioritize implementation of solutions within one major technological category requested by commenters,⁸³ enabling the school to make meaningful progress toward its own cybersecurity goals and providing flexibility for schools with differing cybersecurity strengths and vulnerabilities.⁸⁴ We find that this approach ensures that each participant can make meaningful, incremental progress towards its own cybersecurity goals, and best positions the Commission to assess the benefits that accrue from funding individual cybersecurity solutions, consistent with a core objective of the Pilot. We also find that this approach represents a strategic and cost-effective way to spend the limited Pilot funds in the context of considering future changes to the E-Rate program, as it creates incentives for each school to select the most impactful incremental solutions available to it in view of the school's specific cybersecurity vulnerabilities and strengths.⁸⁵

26. Schools and school districts selected for the Pilot Program will be eligible to receive, at a minimum, \$15,000 in annual support, on a pre-discount basis, over the three-year Pilot duration. We establish this funding floor to ensure that even the smallest schools and school districts can receive support sufficient to purchase a variety of cybersecurity services and equipment. We set the annual funding floor at \$15,000, pre-discount, because it aligns with the annual cost estimate submitted by FFL and CoSN, which found that the approximate per-site annual cost for advanced firewalls is \$15,994.⁸⁶

(Continued from previous page) —————

currently participating in the E-Rate program will have their eligibility verified by USAC as part of the FCC Form 484 review process.

⁸⁰ CoSN et al. 2021 E-Rate Cybersecurity Cost Estimate at 14. The cost estimate provides that the three categories of cybersecurity protections, next-generation or advanced firewall services, endpoint protection services, and advanced+ security services are “layered,” in that they “build upon one another.” *Id.* at 3. For the purposes of the Pilot, however, we seek to study each of these categories independently, along with the other categories included in Cybersecurity Pilot Eligible Services List at Appendix B, to better ascertain the incremental value each category of cybersecurity protections could bring in securing E-Rate-funded broadband networks and data.

⁸¹ See, e.g., *First 2014 E-Rate Order*, 29 FCC Rcd at 8904, 8216, paras. 91, 118.

⁸² See CoSN et al. 2021 E-Rate Cybersecurity Cost Estimate at 3.

⁸³ Namely, next-generation/advanced firewall services, endpoint protection services, and advanced+ security services. See *supra* para. 23 (citing CoSN et al. 2021 E-Rate Cybersecurity Cost Estimate at 14).

⁸⁴ CoSN et al. 2021 E-Rate Cybersecurity Cost Estimate at 15 (recommending that K-12 entities develop a “cybersecurity plan[]” tailored to [their] “technology and risk environment” that defines a “target maturity state” and implements a “maturation path”).

⁸⁵ See CISA K-12 Cybersecurity Report at 13 (noting that “[c]ybersecurity is not one size fits all” as “[s]chools and their districts have distinct strengths and weaknesses and a wide range of needs” even as there are some common actions that “every K-12 organization can take to significantly reduce the risk of a damaging intrusion”).

⁸⁶ CoSN et al. 2021 E-Rate Cybersecurity Cost Estimate at 15.

We note that a pre-discount \$13.60 per-student budget equates to approximately 1,100 students in a school or school district receiving \$15,000 in support. As a result, schools and school districts with 1,100 students or fewer will be eligible to receive the pre-discount \$15,000 annual funding floor. We also establish an annual budget maximum of \$1.5 million, pre-discount, which equates to approximately 110,000 students, using the pre-discount \$13.60 per-student budget. As a result, schools and school districts with more than 1,100 students, and up to approximately 110,000 students, will calculate their budget using the pre-discount \$13.60 per-student multiplier. Schools and school districts with more than 110,000 students will be subject to the annual budget maximum of \$1.5 million, over the three-year Pilot duration. We find that a \$1.5 million annual maximum reflects the greater purchasing power of larger schools, school districts, and consortia, and the associated reduction in the cost-per-student amount, as discussed in further detail below.⁸⁷ Additionally, we establish the annual budget maximum to best ensure that Pilot funds are able to support cybersecurity services and equipment for as many participants as possible, and also to ensure that a disproportionate amount of funding is not awarded to any one participant.

27. *Libraries and Library Systems.* Rather than adopt a per-user budget, as we have for schools and school districts, or a budget based on library square footage as we do for category two E-Rate funding requests, we adopt a budget that provides a set amount of funding per library to purchase cybersecurity services and equipment. In particular, we establish a pre-discount annual budget of \$15,000 per library up to 11 libraries/sites, consistent with our analysis above regarding the per-site funding amount needed to support advanced firewalls. Library systems with more than 11 libraries/sites will be eligible for support up to \$175,000 annually, pre-discount, which approximately reflects the cost of providing advanced firewalls to an entity with between 10 and 24 locations.⁸⁸ We believe using a per-site methodology and funding caps for calculating library budgets is more appropriate than using library square footage, as we do for E-Rate category two funding requests, because costs for cybersecurity services and equipment do not scale with square footage in the same way as they do for building internal Wi-Fi networks. We also find that the pre-discount budgets established for libraries and library systems are generally consistent with how funding is allocated in the E-Rate program to cover the majority of the cost of supported services and equipment, and strike a balance between funding a baseline amount needed to procure cybersecurity services and equipment, and ensuring that the Pilot Program is able to support as many participants as possible.

28. *Consortia.* Consortia participants comprised of eligible schools and libraries will be eligible to receive funding based on student count (using the annual pre-discount \$13.60 per student multiplier and \$1.5 million, pre-discount, annual cap) and the number of library sites (using the pre-discount \$15,000 per library annual budget up to 11 libraries/sites and the \$175,000, pre-discount, annual cap). Consortia that are solely comprised of schools will be subject to the pre-discount annual \$1.5 million budget maximum applicable to schools. Consortia that are solely comprised of libraries will be subject to the pre-discount \$175,000 annual budget maximum for library systems. Consortia comprised of both eligible schools and libraries will be subject to the pre-discount \$1.5 million annual budget maximum applicable to schools. We find these budget maximums are an important mechanism to ensure that Pilot funding is widely disbursed. We will also require each consortium to select a consortium leader.⁸⁹

⁸⁷ *Id.* (finding that the annual cost of advanced firewall for a school district with 50+ sites is approximately \$1.2 million); *see also, e.g.,* Cisco Systems, Inc. Comments at 13 (noting economies of scale for district-wide or statewide purchases) (Cisco); Cybersecurity Coalition/ITI Comments at 6 (highlighting cost benefits that are driven by scale).

⁸⁸ CoSN et. al 2021 E-Rate Cybersecurity Cost Estimate at 15.

⁸⁹ *See* 47 CFR § 54.2002(c)(1) (as codified in Appendix A) (codifying the requirement to select a consortium leader). The requirement for consortia to select a leader is consistent with the similar requirement in the E-Rate (continued....)

29. *Non-discount Share of Costs.* We will require participants to contribute a portion of the costs of the cybersecurity services and equipment they seek to purchase with Pilot Program support, similar to the non-discount share that E-Rate applicants are required to contribute to the cost of their eligible services and equipment.⁹⁰ We agree with the Dallas Independent School District (Dallas ISD) that requiring participants to contribute some portion of the costs of eligible services and equipment, as we have in E-Rate, will be “successful in aligning the interests of applicants to minimizing waste, fraud, and abuse.”⁹¹ In the *Cybersecurity NPRM*, we proposed using a participant’s category two discount rate to determine the portion of costs a participant will be required to contribute.⁹² We establish today, instead, that participants will use their category one discount rate to determine the non-discount share of costs. Thus, participants with the students with the greatest need will be eligible for support for 90 percent of their costs, and will be required to contribute 10 percent of the cost of eligible cybersecurity services and equipment purchased with Pilot funds. By using the category one discount rate, the program’s neediest schools and libraries will have greater flexibility in selecting eligible services and equipment, thus supporting our goal to evaluate the benefits of supporting advanced firewalls and cybersecurity services using the USF. Furthermore, the category one discount rate is appropriate, as Pilot funds will be used to enhance the protection of the broadband networks, including those funded from the E-Rate program’s category one. We find that this approach is preferable to establishing a uniform contribution percentage like the one adopted for the Connected Care Pilot Program⁹³ because it equitably accounts for the relative need of the participant. Moreover, most, if not all, Pilot applicants and participants—including large state or regional consortia—are already familiar with the use of discount rates in the E-Rate program.⁹⁴

30. *Disbursement of Support.* We will permit Pilot participants to request reimbursement as expenses are incurred, even if it means that a greater amount of funding is disbursed earlier in the three-year Pilot term than is specified by our annual budgets, so long as the overall disbursement to a participant over the course of the three-year Pilot term does not exceed three times the annual budget.⁹⁵ In doing so, we acknowledge that some participants may face greater up-front costs for the services and equipment needed to implement their cybersecurity plans, whereas others may have ongoing recurring

(Continued from previous page) _____
program. See USAC, *Consortia*, <https://www.usac.org/e-rate/applicant-process/before-you-begin/consortia/> (last visited June 6, 2024).

⁹⁰ See 47 CFR § 54.523.

⁹¹ Dallas ISD Comments at 3.

⁹² *Cybersecurity NPRM*, 2023 WL 8605080 at *13, para. 31.

⁹³ See, e.g., IOB Comments at 8; see also *Connected Care Pilot Order*, 35 FCC Rcd at 3388-89, para. 87 (establishing a uniform 85 percent discount rate for the Connected Care Pilot Program).

⁹⁴ As in the E-Rate program, discount rates for the Pilot Program will be determined on the basis of the percentage of student enrollment that is eligible for a free or reduced price lunch under the National School Lunch Program. Libraries and consortia calculate a discount rate on the basis of the percentage of student enrollment that is eligible for the National School Lunch Program in the public school district in which they are located. See 47 CFR § 54.2007 (establishing discount methodology for the Pilot); see also 47 CFR § 54.505 (establishing discount methodology for the E-Rate program). These discount rate calculations will also apply for Pilot participants that do not currently participate in the E-Rate program. All Pilot participants who do not currently participate in the E-Rate program will have their eligibility verified during the FCC Form 484 review process. The discount rate for those participants will be determined as part of the eligibility review.

⁹⁵ See *supra* para. 23; see Letter from Kristen Corra et al., Policy Counsel, SHLB Coalition, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 23-234, at 2-3 (filed May 31, 2024) (requesting clarifications to specification of the Pilot program’s budget caps) (SHLB Coalition et. al. May 31, 2024 *Ex Parte* Letter).

costs,⁹⁶ or some combination of both. We agree with Cisco that we should not adopt a “static”⁹⁷ funding approach, as well as with Palo Alto Networks, Inc. (Palo Alto Networks) that a flexible approach would “ensure a stronger runway for the deployment and configuration of eligible solutions and products under the Pilot.”⁹⁸ However, we decline to adopt the recommendation of Advanced Technology Academic Research Center Cybersecurity Higher Education and Workforce Development Working Group (ATARC) that we abandon our traditional reimbursement structure to provide “seed” money at the outset of the Pilot.⁹⁹ The reimbursement process we adopt here is consistent with the reimbursement processes used in the E-Rate and other universal service programs¹⁰⁰ and, combined with the requirement that Pilot participants contribute some amount of their own money towards the cost of eligible services and equipment, serves as an important backstop for safeguarding the integrity of the Pilot Program. Moreover, while we are mindful of the importance of establishing a predictable cap that minimizes the contribution burden on consumers, we expect that the limited nature of the Pilot cap relative to the overall size of the Fund, as well as our planned use of the reserved \$200 million in carry forward funding,¹⁰¹ will minimize any burden to the overall Fund for any given quarter.

31. *Pilot Benefits will Exceed Costs.* We expect the benefits of the Pilot Program to exceed the costs. As a threshold matter, we note that program participation by applicants, participants, and service providers is voluntary, and we expect that Pilot participants will carefully weigh the benefits, costs, and burdens of participation to ensure that the benefits outweigh their costs. The Pilot will also enable us to evaluate the estimated economic benefits of using universal service support for cybersecurity services and equipment, compared to its cost to the Fund. In this regard, we note that, according to the FBI’s Internet Crime Complaint Center, the U.S. population, including U.S. territory residents, incurred an estimated \$10.9 billion in losses from cybercrime in 2023.¹⁰² Based on a 2023 U.S. population of 335 million, this equates to a per-capita loss of about \$32.50 per person from cybercrime.¹⁰³ The Pilot Program caps support at a pre-discount, annual level of \$13.60 per student for most schools and school districts. If the Pilot can reduce the annual monetary cost of cyberattacks on participating K-12 schools by at least 42 percent, the expected economic benefits of increased cybersecurity would exceed the per-student funding costs.¹⁰⁴ We expect that there may be additional benefits that cannot be easily quantified,

⁹⁶ See Center for Internet Security Comments at 9 (CIS) (noting that “[m]any of today’s cybersecurity solutions are now licensed by a yearly subscription” with ongoing, recurring costs); Cisco Comments at 13; Zscaler, Inc. Reply at 2 (Zscaler).

⁹⁷ Cisco Comments at 13.

⁹⁸ Palo Alto Networks, Inc. Comments at 2 (Palo Alto Networks).

⁹⁹ ATARC Cybersecurity Higher Education and Workforce Development Working Group Reply at 1 (ATARC); see also EdGroup Reply at 3.

¹⁰⁰ See, e.g., *Connected Care Pilot Order*, 35 FCC Rcd at 3387-88, para. 42 (stating that “requests for funding may vary year to year and therefore we will not require that Pilot Program funding be distributed evenly”).

¹⁰¹ See *supra* para. 21.

¹⁰² See FBI, FBI Internet Crime Report 2023, at 25 (2023), https://www.ic3.gov/Media/PDF/AnnualReport/2023_IC3Report.pdf. An estimated \$10,924,447,718 of losses due to cybercrimes was reported in 2023. This is a 22 percent increase from losses reported in 2022.

¹⁰³ See Press Release, U.S. Census, US Population Trends Return to Pre-Pandemic Norms as More States Gain Population (Dec. 19, 2023), <https://www.census.gov/newsroom/press-releases/2023/population-trends-return-to-pre-pandemic-norms.html> (reporting a U.S. population of 334,914,895 in December 2023).

¹⁰⁴ $\$13.60 / (\$10,924,447,718 / 334,914,895) = \$13.60 / \$32.62 = 41.7\%$. This assumes the per-student cost of cyberattacks is equivalent to the per-capita cost across the United States. However, it is likely that the per-student cost is higher than the U.S. per-capita average because schools are frequent and growing targets of cyberattacks. If so, then our estimates are a floor on the potential benefits of the Pilot Program to K-12 students.

such as a reduction in learning downtime caused by cyberattacks,¹⁰⁵ reputational benefits from increased trust in school and library systems, increased digital and cybersecurity literacy among students and school staff, and the safeguarding of intellectual property.¹⁰⁶ Despite these benefits, we are also concerned about the overall cost to the Fund if we were to provide cybersecurity funding to all E-Rate participants, which CoSN estimates could cost the Fund \$2.389 billion annually.¹⁰⁷ This limited Pilot Program will therefore enable the Commission to evaluate the benefits of using universal service funding to fund cybersecurity services and equipment against the costs before deciding whether to support it on a permanent basis.

C. Eligibility of Pilot Participants

32. We next make eligibility for participation in the Pilot Program open to all eligible schools and libraries,¹⁰⁸ including those that do not currently participate in the E-Rate program. In the *Cybersecurity NPRM*, we sought comment on the types of entities that should be eligible to participate in the Pilot Program.¹⁰⁹ We observed that a wide array of entities participate in the E-Rate program, and sought comment on how to ensure that the Pilot likewise has a diverse participant pool.¹¹⁰ Specifically, we asked whether: (i) eligibility should be limited to schools and libraries currently participating in the E-Rate program; (ii) eligibility should be expanded to include schools and libraries that do not currently participate in the E-Rate program; or (iii) eligibility should include any entity that qualifies for funding through the E-Rate program.¹¹¹ We proposed to adopt the same definitions for schools and libraries as used in the E-Rate program, when determining the eligibility of Pilot participants.¹¹²

¹⁰⁵ GAO K-12 Cybersecurity Report at 2. For example, the annual monetary cost of ransomware attacks does not include the downtime while the school district negotiates, lost instruction time, the cost of recovering lost data despite paying the ransom, the anxiety inflicted, and the harm to the general population's trust in schools. Attackers can publish sensitive data to retaliate for nonpayment of a ransom to scare future victims. Levin estimates that criminals, in retaliation for unpaid ransoms, exposed the personal information of at least 560,000 current students and 56,000 staff in 2020, and likely former students and staff. Levin, Douglas A., *The State of K-12 Cybersecurity: 2020 Year in Review* at 6, 9 (2021), <https://k12cybersecure.com/wp-content/uploads/2021/03/StateofK12Cybersecurity-2020.pdf> (2020 Levin Report).

¹⁰⁶ The Pilot Program encourages participants to access tools and trainings to improve cybersecurity awareness among students and staff. For example, CISA provides free Federal Virtual Training Environment (Fed-VTE) online cybersecurity training to public K-12 school staff, and the National Initiative for Cybersecurity Careers and Studies provides classroom curricula and formal training for teachers to implement good cyber practices. *See* CISA, *Federal Virtual Training Environment (FedVTE)* (Apr. 18, 2024), <https://niccs.cisa.gov/education-training/federal-virtual-training-environment-fedvte>; CISA, *Cybersecurity Training for Teachers* (Apr. 19, 2024), <https://niccs.cisa.gov/education-training/cybersecurity-teachers>. The National Institute of Standards and Technology (NIST) also has training resources available on its website. NIST, *Free and Low Cost Online Cybersecurity Learning Content*, (May 17, 2024), <https://www.nist.gov/itl/applied-cybersecurity/nice/resources/online-learning-content>. We further note that in the Pilot Eligible Services List at Appendix B, cybersecurity training for students, school staff, and library patrons is not an eligible service and thus, Pilot participants are strongly encouraged to use the free and low-cost cybersecurity training resources that are readily available to supplement the other cybersecurity equipment and services that are eligible through the Pilot.

¹⁰⁷ CoSN 2021 Petition at 14.

¹⁰⁸ 47 CFR § 54.2000 (defining elementary school, secondary school, library, and library consortium, for purposes of the Pilot); *id.* § 54.2002 (defining eligible recipients of Pilot Program support).

¹⁰⁹ *Cybersecurity NPRM*, 2023 WL 8605080 at *13, para. 34.

¹¹⁰ *Id.*

¹¹¹ *Id.* The Commission also sought comment on whether applicants should be selected based on their existing cybersecurity posture, including cyber readiness and resources, commitment to undertake cyber readiness activities, and past history of cyberattacks. *Id.* at *13-14, paras. 34-36. As discussed *infra* at para. 66, we decline to do so and focus instead on selecting participants by weighing objective considerations, such as discount rate, school size, and urban/rural status.

33. Commenters generally supported leveraging the E-Rate program rules to determine the types of entities that should be eligible to participate in the Pilot Program, with at least a few encouraging the Commission to limit eligibility to existing E-Rate applicants.¹¹³ For example, NCTA – The Internet & Television Association (NCTA) argued that limiting eligibility to existing E-Rate participants was appropriate “since [Pilot] cybersecurity services will be integrated with the connectivity being purchased pursuant to the E-Rate program.”¹¹⁴ Several commenters urged the Commission to make consortia eligible, consistent with the E-Rate program.¹¹⁵ These commenters noted that consortia “can provide valuable services at scale,”¹¹⁶ which would allow the Commission to “stretch the limited proposed Pilot funding and increase the impact to more students and schools.”¹¹⁷ Others suggested that we expand eligibility to include local and other government entities¹¹⁸ and Educational Service Agencies (ESAs).¹¹⁹

34. We have determined that we will permit all eligible schools and libraries, including those that do not currently participate in the E-Rate program, to apply to participate in the Pilot.¹²⁰ We adopt the definitions of elementary school, secondary school, library, and library consortium contained in Appendix A of this Report and Order, which mirror the definitions that we use for the E-Rate program.¹²¹ In taking these steps, we decline to adopt suggestions from commenters that we limit Pilot eligibility to only those schools and libraries that currently participate in the E-Rate program.¹²² We observe that all

(Continued from previous page)

¹¹² See *Cybersecurity NPRM*, 2023 WL 8605080 at Appendix A (proposing to adopt the E-Rate definitions for elementary school, secondary school, library, and library consortium). The proposed definitions for these terms at section 54.2000 are the same definitions adopted and codified at section 54.500. See 47 CFR §§ 54.500, 54.2000.

¹¹³ NCTA Comments at 5; Palo Alto Network Comments at 1; Lumen Technologies, Inc. Reply at 6 (Lumen).

¹¹⁴ *Id.*

¹¹⁵ K-12 Security Information Exchange Comments at 6 (K12 SIX); MISEN Comments at 11; Allendale Public Schools Reply at 2 (Allendale), Wayne RESA Reply at 2.

¹¹⁶ K12 SIX Comments at 6.

¹¹⁷ MISEN Comments at 11.

¹¹⁸ See The City of New York Office of Technology and Innovation Reply at 2 (City of NY OTI) (“When listing eligible recipients in Section 54.2002, no allowance is made for local government entities that provide cyber security services for schools and libraries, centrally. The City believes that government entities that provide cyber security services to schools and libraries should be included in the list of eligible recipients. In many instances, these entities are the sole providers of cyber security services to schools and libraries. Precluding their eligibility would put schools and libraries in the position of having to implement separate technologies, with which they are unfamiliar with (*increasing* the risk of misconfigurations) or declining to take advantage of the grant.”) (emphasis added); IOB Comments at 9.

¹¹⁹ City of NY OTI Reply at 2. Federal law defines an ESA as a “regional public multiservice agency authorized by state statute to develop, manage, and provide services or programs to local educational agencies.” The E-Rate rules do not specifically define or address ESAs. To determine whether an ESA is eligible to receive E-Rate support, USAC must verify that the ESA provides elementary or secondary education as determined under state law (whether the entity provides elementary or secondary education to its student population and whether the ESA facility is eligible for support because elementary or secondary education, as defined in state law, is provided at that facility). USAC asks state and territory officials to describe the programs served by ESAs and whether ESAs operate facilities that they either own or lease that contain classrooms. The officials are also asked to provide legal support for the information they supply to USAC and to certify the accuracy of their determinations. The results from these reviews are included in the Eligibility Table for Educational Service Agencies and can be found at <https://www.usac.org/e-rate/applicant-process/before-you-begin/educational-service-agencies/>.

¹²⁰ As discussed above, selected Pilot participants that do not currently participate in the E-Rate program will have their eligibility verified, and their discount rate calculated, during the FCC Form 484 review process. See *supra* paras. 24, 29.

¹²¹ See *supra* note 112.

schools and libraries currently face increased cybersecurity threats and attacks regardless of whether they receive E-Rate funding and opening the Pilot Program to all eligible schools and libraries will allow us to gather data from the widest range of eligible participants. While we appreciate the concern raised by NCTA and others that the Pilot should focus on protecting E-Rate-funded networks, we believe that, on balance, opening the Pilot Program to a wider pool of participants would best ensure that we have sufficient data to evaluate the impact of universal service support on the purchase of cybersecurity services and equipment both now and in the future. Given the large percentage of eligible schools that participate in the E-Rate program, we anticipate that the overwhelming majority of Pilot participants will also be E-Rate participants.

35. Consistent with our E-Rate rules, we further clarify that we will also permit eligible schools and libraries that apply as a consortium to participate in the Pilot Program. We agree with commenters that consortia have buying power that can help bring down costs¹²³ and that including consortia in the Pilot would allow larger, better-resourced schools and libraries to partner with smaller, less technically savvy participants. Given the limited funding for the Pilot Program and our objective to select as many participants as possible, we will allow a school or library to apply and participate only once in the Pilot Program, either individually or as part of a consortium.¹²⁴ We decline to extend eligibility to local and other governmental entities, including ESAs, or other entities that are not an eligible school or library as defined in section 54.2000 of the Commission's rules adopted today.¹²⁵ However, non-eligible entities, including local, state, and Tribal governmental entities, and other not-for-profit organizations may serve as a consortium leader for a consortium participant in the Pilot, but as in the Rural Health Care, E-Rate, and Connected Care Pilot programs, will be ineligible to receive Pilot benefits, discounts, and funding, and therefore must pass through the benefits, discounts, and support to the eligible school and library consortium members.¹²⁶ While we recognize that local governmental entities may provide economies of scale or cybersecurity expertise that would benefit schools and libraries, the E-Rate and Rural Health Care programs direct USF support to schools, libraries, and health care providers, pursuant to sections 254(c)(3) and 254(h) of the Communications Act of 1934, as amended (the Act).¹²⁷ As our legal authority for the Pilot stems from the same source,¹²⁸ we decline to expand Pilot eligibility to include governmental and other entities that would be ineligible under the E-

(Continued from previous page)

¹²² Palo Alto Networks Comments at 1; NCTA Comments at 5.

¹²³ See, e.g., Allendale Reply at 2.

¹²⁴ SHLB Coalition et. al. May 31, 2024 *Ex Parte* Letter at 6 (seeking clarification as to whether a site may apply individually if it participates in a consortium and there is no overlap in equipment and/or services).

¹²⁵ We clarify that to the extent that an ESA meets the eligibility requirements set forth in our rules, it will be eligible to participate in and receive Pilot support. See, e.g., USAC, *Eligibility Table for Educational Service Agencies (ESAs)*, <https://www.usac.org/wp-content/uploads/e-rate/documents/Tools/ESA-Eligibility-Table.pdf> (last visited June 6, 2024) (providing information on whether an ESA is eligible for E-Rate support as determined by state law).

¹²⁶ See, e.g., 47 CFR § 54.609 (providing that an ineligible entity that serves as the Consortium Leader must pass on the full value of any discounts, funding, or other program benefits secured to the consortium members that are eligible); 47 CFR § 54.500 (noting that consortia can include public sector (governmental) entities but such entities are not eligible for support); *Connected Care Pilot Order*, 35 FCC Rcd at 3411-12, para. 75 & n.198 (adopting 47 CFR § 54.609 in the Connected Care Pilot Program). However, such entities can serve as the consortium leader. See USAC, *Consortia*, <https://www.usac.org/e-rate/applicant-process/before-you-begin/consortia/> (last visited June 6, 2024) (noting that the consortium leader can be one of the E-Rate eligible entities, or an outside entity, such as the organization that established the consortium). See also 47 CFR § 54.2002(c)(1) (explaining who can serve as a consortium leader and restricting Pilot support to the eligible school and library consortium members).

¹²⁷ See 47 U.S.C. §§ 254(c)(3); 254(h)(1)-(2).

¹²⁸ See *infra* section III.K.

Rate or Rural Health Care programs; however, we recognize the expertise and value of these entities by allowing them to serve as ineligible consortium leaders that pass through the benefits, discounts, and support from the Pilot Program to their eligible school and library consortium members. We direct the Bureau and USAC to provide additional training and guidance on creating a Pilot consortium and serving as a consortium leader in the Pilot. We also direct the Bureau and USAC to establish measures to prevent eligible schools and libraries from receiving duplicative Pilot support as individual Pilot participants and as Pilot consortium members.

D. Eligible Services and Equipment/Security Measures

1. Eligible Services and Equipment

36. We adopt a Pilot Eligible Services List (P-ESL) which specifies eligible cybersecurity services and equipment for the Pilot.¹²⁹ In the *Cybersecurity NPRM*, we sought comment on the “equipment and services . . . that should be made eligible to participants in the Pilot” and on whether we should specify eligible services and equipment using “general criteria” or a “list of specific technologies.”¹³⁰ Based on the record, we adopt a flexible approach for the P-ESL as we deem services and/or equipment eligible if they “constitute a protection designed to improve or enhance the cybersecurity of a K-12 school, library, or consortia.”¹³¹ At the same time, we provide applicants with specificity and clarity in practical terms in the P-ESL, as it enumerates as eligible, in a non-limiting manner, four general categories of technology raised by commenters as effective in combatting cyber threats, namely, (i) advanced/next-generation firewalls; (ii) endpoint protection; (iii) identity protection and authentication; and (iv) monitoring, detection, and response. Moreover, for each of these categories, we provide a non-exhaustive list of examples of eligible services and equipment in the P-ESL. Through the list of examples, we confirm that the wide range of services and equipment we had proposed for inclusion in the *Cybersecurity NPRM*, or that commenters had otherwise requested, are eligible.¹³² We designate the eligible services and equipment for the duration of the Pilot through the P-ESL. We also delegate authority to the Bureau, as needed, to clarify and make technical changes to the P-ESL consistent with the standards we establish today, to promote efficient program administration and account for technological evolution.

37. We agree with commenters who opine that Pilot participants should have flexibility to determine which solutions best serve their needs by basing eligibility on broader considerations, rather than a specific and potentially rigid set of pre-authorized components.¹³³ Our approach is consistent with Rubrik’s view that we “provide general guidance for applicants, but not lock them into specific technology products.”¹³⁴ Our approach also includes as eligible the advanced or next-generation firewalls, endpoint security and protection, and other advanced security services and equipment identified by E-Rate stakeholders, including FFL and CoSN.¹³⁵ At the same time, by enumerating four non-limiting

¹²⁹ See Appendix B.

¹³⁰ *Cybersecurity NPRM*, 2023 WL 8605080 at *16, para. 40.

¹³¹ Eligible equipment and services must meet a number of additional criteria to be reimbursable expenses (e.g., cost effectiveness).

¹³² We clarify, for example, that this includes cybersecurity services provided by CISA and NIST provided they qualify as eligible services and equipment subject to the exclusions discussed in section III.D.2 below. See, e.g., Tim Roemer/Global Market Innovators Comments at 1 (GMI).

¹³³ ActZero Comments at 7; Cybersecurity Coalition/ITI Comments at 3-4; NCTA Comments at 4; Rubrik Comments at 3; Electronic Privacy Information Center Reply at 2 (EPIC); MISEN Comments at 3.

¹³⁴ Rubrik Comments at 3.

¹³⁵ See CoSN et al. 2021 E-Rate Cybersecurity Cost Estimate at 9-10 (advocating for the eligibility of Intrusion Prevention/Intrusion Detection (IPS/IDS), Virtual Private Network (VPN), DDoS, Network Access Control (NAC),
(continued....)

categories of eligible technology, we find that our approach also meets the recommendations of commenters that we “establish general categories of eligible offerings”¹³⁶ without “specify[ing] the precise technologies or solutions that must be relied upon”¹³⁷ and allow “[p]ilot participants to select any product and/or services that fall into any of the eligible categories.”¹³⁸ Our approach also ensures that most, if not all, of the cybersecurity services and equipment needed to implement recommendations from the CISA K-12 Cybersecurity Report, the Education Department K-12 Digital Infrastructure Briefs, and other federal resources and guides are eligible while still allowing Pilot participants significant flexibility to determine the extent to which any of these specific measures would be most cost-effective for them to implement. While we decline to make these or other federal recommendations the sole basis for determining eligibility for the purposes of today’s Pilot,¹³⁹ we strongly encourage all participants to consider these federal recommendations, particularly those that can be implemented at little or no cost, as part of their assessment of which services and equipment to request to be funded through the Pilot. We direct the Bureau to identify these federal recommendations, and we direct the Bureau and USAC to facilitate access to these recommendations by including information related to them on relevant program websites and in training materials that each entity makes available to Pilot participants. We further direct the Bureau and USAC to periodically update the information provided on their respective websites and in the training materials to reflect relevant updates to the recommendations that may issue during the duration of the Pilot.

38. We find that specifying eligibility based on broader considerations is appropriate in the context of a Pilot that aims to study the effectiveness of a wide variety of technological solutions. We further find that our approach, in which we decline to attempt to exhaustively list every possible technological category or eligible service or piece of equipment within a category, is reasonable and reflects the rapidly-changing nature of the technical solutions available to address cybersecurity threats and attacks. Our approach also ensures that services or equipment are not deemed ineligible merely because the service provider or equipment-maker uses a label or term to describe it that is not specifically enumerated in the P-ESL. To provide participants with further flexibility, and in view of a lack of consensus around the terminology used to describe similar cyber solutions,¹⁴⁰ we make eligible both the specific services and equipment identified in the P-ESL, as well as ones that have “substantially similar features or their equivalents.”¹⁴¹ We also make eligible security updates and patches,¹⁴² which will help

(Continued from previous page) —————

anti-virus, anti-malware, anti-spam, Domain Name System (DNS) security, blocking and filtering, cloud application protection and MFA). Each of these tools/services are eligible as specified in the P-ESL. *See* Appendix B.

¹³⁶ NCTA Comments at 4; MISEN Comments at 8.

¹³⁷ NCTA Comments at 4.

¹³⁸ MISEN Comments at 8.

¹³⁹ *See Cybersecurity NPRM*, 2023 WL 8605080 at *17, para. 41 (seeking comment on whether we should “determine eligible measures based on the recommendations from the CISA K-12 Cybersecurity Report, the [Education Department] K-12 Digital Infrastructure Briefs, and/or other federal partner resources and guides”).

¹⁴⁰ *See, e.g.,* CoSN et al. 2021 E-Rate Cybersecurity Cost Estimate at 8 (noting that the functionality included within various types of cybersecurity solutions, namely, next-generation firewalls, endpoint protection and advanced+ security, “can be difficult to identify because of overlapping functionality between security services, particularly when different security platforms from different vendors are involved”).

¹⁴¹ *See* Appendix B at 1. We direct the Bureau to make determinations, as necessary, on whether specific services or equipment have “substantially similar features or [are] their equivalents.” In doing so, we expect that the Bureau, in consultation with USAC, will use all of the customary tools at its disposal (i.e., that are used in E-Rate to verify eligibility), including instructing USAC to issue follow-up information requests to participants to obtain additional technical information when making eligibility determinations for the Pilot Program. *See, e.g.,* Letter from Debra Kriete, Chairperson, SECA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 23-234, at 5-6 (filed May 29, 2024) (SECA May 29, 2024 *Ex Parte* Letter) (asking the Commission to allow applicants and service providers to seek clarifications in advance of the Pilot about which products and services have substantially similar features or

(continued....)

to ensure that participants are protected even as threat vectors evolve over the course of the Pilot. We find that this will help to ensure that the services and equipment funded through the Pilot do not reach their end of useful life prematurely, thus avoiding waste in the Pilot Program. Finally, consistent with the flexible approach we adopt today, we clarify that applicants are permitted to seek funding for multi-year licenses for eligible recurring services that are longer than three years, however, only services delivered within the Pilot Program period can be reimbursed using Pilot funds.¹⁴³ Similarly, the costs of eligible services that will be incurred during the Pilot Program period are eligible, subject to compliance with procurement requirements and limitations on duplicative funding, even if prior years' costs were paid with another funding source.¹⁴⁴

39. We further find our approach strikes a reasonable balance between specifying basic limits on the scope of eligible services and equipment, which reflects the limited funding available for the Pilot and the need to safeguard Pilot funds from being used on components unrelated to Pilot objectives, while providing participants with clarity and significant flexibility to address their unique cybersecurity threat profiles, which they are ultimately in the best position to assess.¹⁴⁵ Moreover, our enumeration of four key categories of technology, and specific services and equipment within each area, ensures that USAC will be positioned to expediently conduct program integrity and service reviews and quickly issue funding decisions for the eligible Pilot Program services and equipment.

40. We clarify that our inclusion of a given technological category, equipment, or service in the P-ESL and/or any subsequent determination by the Bureau that a specific piece of equipment or service is eligible in the Pilot Program,¹⁴⁶ is not an endorsement by the Commission, the Bureau, or USAC that the equipment or service is sufficiently cost- or technologically-effective for its intended purpose (e.g., in preventing a breach, a loss of data, or other harm). Rather, we expect participants to select equipment and services from among those that are eligible based on their own assessments of cost-effectiveness in addressing their specific needs. Accordingly, a participant may not rely on eligibility determinations made by the Commission or the Bureau in the Pilot as a defense or safe harbor should it experience a cyber incident, including a breach, a data loss, or other harm. Moreover, we clarify that the services and equipment listed in today's P-ESL are eligible only when they are used on or as a part of a participant's school or library broadband network that directly furthers its educational mission. We find this clarification appropriate to ensure that we can satisfy the statutory purpose of the E-Rate program, as well as our goal of measuring the costs associated with cybersecurity services and equipment, as discussed later in this Report and Order.¹⁴⁷ We also decline to limit eligible services and equipment for the Pilot to those that are used on E-Rate-funded broadband networks only. We find this step reasonable given that Pilot participants are not limited solely to current applicants in the E-Rate program.

a. Advanced and Next-Generation Firewalls

41. In the *Cybersecurity NPRM*, we sought comment on whether to make advanced and next-

(Continued from previous page) _____
equivalents and will qualify for Pilot funding). Due to the limited nature of the Pilot and the ability of participants to request clarification, we decline to adopt the more onerous process proposed by SECA. *See id.*

¹⁴² *Id.* at 1-2; Cisco Comments at 13.

¹⁴³ SECA May 29, 2024 *Ex Parte* Letter at 7 (seeking funding for multi-year licenses that extend beyond the three-year Pilot as long as the request for funding meets the applicant's pre-discount budget).

¹⁴⁴ *Id.* *See also* 47 CFR §§ 54.2005 (competitive bidding requirements); 54.2006(a)(2)(x) (duplicative funding certification).

¹⁴⁵ *See, e.g.,* MISEN Comments at 8-9.

¹⁴⁶ *See supra* note 141.

¹⁴⁷ *See infra* at para. 99 (discussing the three main goals).

generation firewalls eligible for the Pilot and, if so, how to define the scope of these terms.¹⁴⁸ We adopt this proposal to enable Pilot participants to protect their networks from outside cyber attackers by blocking malicious or unnecessary network traffic.¹⁴⁹ For purposes of the Pilot, we define an “advanced” or “next-generation” firewall as “equipment, services, or a combination of equipment and services that limits access between networks, excluding basic firewall services and components that are currently funded through the E-Rate program.”¹⁵⁰ This definition is reflected in the P-ESL.¹⁵¹

42. We agree with the vast majority of commenters that advanced or next-generation firewalls are a logical starting point and an important tool to include in the Pilot as we study the potential use of universal service funding to protect eligible schools and libraries from cybersecurity threats and attacks.¹⁵² We also agree that making these tools eligible in the Pilot will provide the Commission with a stronger understanding of the technical benefits and cost implications of potentially funding these tools in the broader E-Rate program.¹⁵³ While no commenter directly opposed the view that advanced and next-generation firewalls could meaningfully improve security postures, a few commenters opined that the associated funding could be used more effectively in other ways, including to fund training of “staff and end-users.”¹⁵⁴ We disagree with these commenters and find that funding advanced and next-generation firewalls is justified in light of the Commission’s previous findings establishing the value of these technologies,¹⁵⁵ and we find it reasonable to extend Pilot funding to these tools rather than to fund, e.g., training more broadly than described further below or the less-vetted alternatives raised by commenters. We further find that the funding of specific advanced firewall technologies will provide more quantifiable and tractable benefits compared with funding broad cybersecurity training programs, based on undetermined materials and methods.

¹⁴⁸ *Cybersecurity NPRM*, 2023 WL 8605080 at *17, para. 42.

¹⁴⁹ See, e.g., CISA, *Understanding Firewalls for Home and Small Office Use* (Feb. 23, 2023), <https://www.cisa.gov/news-events/news/understanding-firewalls-home-and-small-office-use>.

¹⁵⁰ See Appendix B at 1; see also, e.g., CoSN, ALA, SHLB Coalition, SETDA, Council GCS et al. Comments at 9-10 (CoSN et al. January 29 Comments). Excluded from our definition of “advanced” or “next-generation” firewall, and thus from eligibility in the Pilot, are basic firewalls provided as part of the vendor’s Internet service, which are funded in E-Rate as a category one service, and separately-priced basic firewalls, which are funded in E-Rate as a category two service. See, e.g., *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Order, DA 21-1602, 2021 WL 6063032, at *7, 9 (WCB Dec. 17, 2021) (*FY 2022 ESL Order*). “Advanced” and “next-generation” firewalls, as used throughout this Report and Order, refer to equipment and services that are not currently eligible for E-Rate support and thus are distinct from the “basic firewall” equipment and services that are currently eligible for support in the E-Rate program. See *supra* para. 9; see also *Universal Service First Report and Order*, 12 FCC Rcd at 9008-15, paras. 436-49; 47 U.S.C. § 254(h)(2)(A).

¹⁵¹ See Appendix B at 1.

¹⁵² See, e.g., ActZero Comments at 2-3; Cisco Comments at 7-9, 15; Clark County School District (CCSD) Comments at 1; CoSN et al. February 1 *Ex Parte* Letter at 1-2; Fortinet Reply at 2; FFL Comments at 11-12; Cybersecurity Coalition/ITI Comments at 5; Juniper Networks Comments at 2 (JN); Learning Technology Center of Illinois Reply at 1-2 (LTC); Local Education Agencies February 27, 2024 *Ex Parte* Letter at 1; MISEN Comments at 8-10; Palo Alto Networks Comments at 4; Vector Resources Inc. dba Vector USA Reply at 3 (Vector).

¹⁵³ *Id.*

¹⁵⁴ See, e.g., Clear Creek Express Comments (advocating for a “reduc[tion]” in the “funding of advanced or next [generation] firewalls and [a] diver[sion] [of] that funding to user awareness and staff training” instead); Apptegy, Inc. Comments at 3 (Apptegy) (opining that it would be more “impactful” to use Pilot funds for, among other things, “establish[ing] a cybersecure culture”).

¹⁵⁵ The Commission has previously declined to fund advanced firewalls, even while finding that these technologies would address “legitimate concern[s],” on the basis that E-Rate program funding is constrained. See, e.g., *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18762, 18808-09, para. 105; see also *2019 Category Two Budget Order*, 34 FCC Rcd at 11237, para. 46.

43. However, we do agree that funding some level of training will help to ensure that the Pilot-funded equipment and services are used effectively and for maximum benefit. Accordingly, we make training eligible on terms similar to those in E-Rate, namely, when the training is included “as a part of installation services but only if it is basic instruction on the use of eligible equipment, directly associated with equipment installation, and is part of the contract or agreement for the equipment” and if it “occur[s] coincidentally or within a reasonable time after installation.”¹⁵⁶ We find that this approach balances the need to ensure that applicants have access to training that will enable them to effectively oversee, utilize, and supervise the use of the Pilot-funded equipment and services and prevent the limited Pilot funds from being disproportionately used for cybersecurity awareness training for staff and end-users,¹⁵⁷ thereby, limiting the number of technical solutions that can be implemented and evaluated during the course of the Pilot. However, in contrast to the E-Rate program, we do not require that the training be provided “[o]n-site” to be eligible.¹⁵⁸ We find it appropriate to fund off-site training as much of the equipment and services identified in the P-ESL are likely to be supplied or otherwise provided to a participant remotely. As explained above, we note that there are numerous free cybersecurity training resources already available through our federal government partners.¹⁵⁹ We also expect, based on our years of experience directing USAC’s administration of the E-Rate program, that vendors are likely to include basic training at no additional cost as part of their sale of the eligible equipment and services.¹⁶⁰

44. We also clarify that for the purposes of the Pilot Program eligibility rules that “advanced” and “next-generation” firewalls exclude services and/or equipment that are eligible in the E-Rate program. Participants are therefore required to cost allocate components or features that are eligible in E-Rate (e.g., basic firewall components and features) when seeking reimbursement for their eligible equipment and services in the Pilot. Our approach reflects a definition of the term “firewall” endorsed by the National Institute of Standards and Technology (NIST)¹⁶¹ with a carve out for services and equipment that are already funded through the E-Rate program. We find it is appropriate to adopt a broad definition as this is consistent with our objective to determine the technological benefits and monetary costs associated with a wide and diverse range of tools for addressing cybersecurity threats and attacks. At the same time, we find it reasonable to exclude from our definition basic firewall services and equipment that are currently funded through the E-Rate program. We find that this approach ensures that Pilot funds are spent efficiently, i.e., only on services and equipment not already funded through other USF programs, and that this approach will thus maximize the amount of data and information collected on cybersecurity tools during the Pilot. We further find that our approach provides sufficient clarity to Pilot participants, and flexibility to request funding for advanced firewalls as they may continue to evolve over the course of the Pilot, while avoiding difficulties associated with attempting to exhaustively enumerate all relevant technological features.¹⁶² To further address commenter views, and as reflected in the P-ESL, we confirm

¹⁵⁶ *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Order, DA 23-1171, 2023 WL 8803733 at *13 (WCB Dec. 15, 2023) (*FY 2024 ESL Order*).

¹⁵⁷ We also note that managed cybersecurity services are eligible. *See, e.g.*, Appendix B at 3 (making eligible “Managed detection & response (MDR)” and “Managed Service Providers”).

¹⁵⁸ *Id.*

¹⁵⁹ We note, for example, that CISA offers training on a variety of topics on its website. *See* CISA, *Training*, <https://www.cisa.gov/resources-tools/training> (last visited June 6, 2024). NIST also has free training materials available at <https://www.nist.gov/itl/applied-cybersecurity/nice/resources/online-learning-content> (last visited June 6, 2024). *See also supra* note 106.

¹⁶⁰ Training need not be specifically mentioned during the competitive bidding process, but must be provided in compliance with these limitations, in order to be eligible for reimbursement. *See* SECA May 29, 2024 *Ex Parte* Letter at 7 (seeking clarification that training does not have to be separately mentioned or bid on the Pilot FCC Form 470 in order to be eligible).

¹⁶¹ NIST, *Glossary*, <https://csrc.nist.gov/glossary/term/firewall> (last visited June 6, 2024) (defining a firewall as “[a] gateway that limits access between networks in accordance with local security policy” in definition 1).

that most, if not all, of the relevant features that commenters endorse as “advanced” and “next-generation” firewall features, including intrusion detection and prevention, application-level inspection, anti-malware and anti-virus protection, VPN, Domain Name System (DNS) security, distributed denial-of-service (DDoS) protections, and content filtering technologies, are eligible for the Pilot.¹⁶³

45. We decline to adopt the proposal of some commenters, made in this proceeding and in response to the Bureau’s recent Public Notices related to the scope of the Funding Year 2024 E-Rate ESL,¹⁶⁴ that we immediately make advanced and/or next-generation firewalls eligible in the E-Rate program, even as we continue to study the benefits and costs of other services and equipment through the proposed Pilot.¹⁶⁵ Making advanced and/or next-generation firewalls immediately eligible in the E-Rate program would run directly counter to our proposed purpose of the Pilot Program to, among other things, “measur[e] the costs associated with . . . advanced firewall services, and the amount of funding needed to adequately meet the demand for these services if extended to all E-Rate participants.”¹⁶⁶ As similarly noted by the National Education Organizations (EdGroup), an aim of the Pilot is to further “demonstrate the need for and costs of cybersecurity measures such as advanced firewalls, and to gauge how districts would respond to available federal funding.”¹⁶⁷ We find it reasonable, and consistent with our obligation to be a careful steward of the limited USF funds, to first study the costs and benefits of advanced and/or next-generation firewalls in the Pilot, before making any determination on whether and how to potentially make these services and equipment eligible through the E-Rate program.

b. Endpoint Protection

46. Next, we make endpoint protection, including anti-virus, anti-malware, and anti-ransomware, services and equipment eligible in the Pilot so that participants can protect their networks from potential vulnerabilities introduced by desktops, laptops, mobile devices, and other end-user devices that connect to their networks.¹⁶⁸ For the purposes of the Pilot, we define endpoint protection as “equipment, services, or a combination of equipment and services that implements safeguards to protect school- and library-owned end-user devices, including desktops, laptops, and mobile devices, against cybersecurity threats and attacks.”¹⁶⁹ This definition is reflected in the P-ESL.¹⁷⁰

47. We agree with the many commenters who argue for the inclusion of the specific endpoint

(Continued from previous page) _____

¹⁶² See, e.g., IOB Comments at 10.

¹⁶³ Cybersecurity Coalition/ITI Comments at 5.

¹⁶⁴ See *Wireline Competition Bureau Seeks Comment on Proposed Eligible Services List for the E-Rate Program*, WC Docket No. 13-184, Public Notice, DA 23-819, 2023 WL 5969324 (WCB 2023); see also *Wireline Competition Bureau Seeks Additional Comment on Adding Wi-Fi on School Buses to Proposed Eligible Services List for the E-Rate Program*, WC Docket No. 13-184, Public Notice, DA 23-1011, 2023 WL 8586498 (WCB 2023).

¹⁶⁵ See, e.g., Council GCS Comments at 2; SHLB Coalition, ALA, CoSN, et al. *Ex Parte* Letter, WC Docket No. 13-184, at 3 (rec. July 3, 2023) (SHLB Coalition et al. July 3 *Ex Parte* Letter); ALA Reply at 3; FFL Reply at 2; LTC Reply at 1-2; Local Education Agencies February 27, 2024 *Ex Parte* Letter at 1; MISEN Comments at 7; WI DPI Reply at 2; Cybersecurity Coalition/ITI Comments, WC Docket No. 13-184, at 5-7 (rec. Oct. 25, 2023); Tyler Moore Comments, WC Docket No. 13-184, at 1 (rec. Oct. 26, 2023); see also *FY 2024 ESL Order*, 2023 WL 8803733 at *5 (declining to address commenter requests that the Bureau add advanced and/or next-generation firewalls to the FY 2024 ESL and identifying the instant proceeding as addressing related subject matter).

¹⁶⁶ *Cybersecurity NPRM*, 2023 WL 8605080 at *8, para. 19.

¹⁶⁷ EdGroup Reply at 3.

¹⁶⁸ See, e.g., NIST, *Glossary*, https://csrc.nist.gov/glossary/term/endpoint_protection_platform (last visited June 6, 2024) (NIST Endpoint Protection Platform).

¹⁶⁹ See Appendix B at 1-2.

¹⁷⁰ *Id.*

technologies that we make eligible today.¹⁷¹ We also agree with commenters that providing funding for endpoint protection should be a priority in investigating ways to improve a school's or library's network security.¹⁷² We find that our approach is justified as school and library networks continue to evolve to include an ever increasing number of endpoint devices, including desktops, laptops, and mobile devices that serve as points of vulnerability.¹⁷³ Moreover, we find that this approach provides funding to address the Center for Internet Security's (CIS) observations that a large percentage of cyberattacks involve ransomware, malware, web application hacking, insider and privilege misuse, and target intrusions.¹⁷⁴ No commenter objects to the Pilot funding endpoint protection. We further find that our definition of endpoint protection is reasonable as it largely reflects a definition endorsed by NIST, but allows for tools to be software- or non-software-based and emphasizes that, to be eligible, tools must defend against cyberattacks.¹⁷⁵

c. Identity Protection and Authentication

48. We also make identity protection and authentication tools eligible in the Pilot so that participants can prevent malicious actors from accessing and compromising their networks under the guise of being legitimate users.¹⁷⁶ Such tools may include DNS/DNS-layer security, content blocking and filtering/URL filtering, multi-factor authentication (MFA)/phishing-resistant MFA, single sign-on (SSO), and event logging. For the purposes of the Pilot, we define identity protection and authentication as “equipment, services, or a combination of equipment and services that implements safeguards to protect a user's network identity from theft or misuse and/or provide assurance about the network identity of an entity interacting with a system.”¹⁷⁷ This definition is reflected in the P-ESL.¹⁷⁸

49. We agree with the large number of commenters who argue for the inclusion of the specific identity protection and authentication technologies that we make eligible today.¹⁷⁹ We also agree

¹⁷¹ See, e.g., Alliance for Digital Innovation Comments at 2 (ADI); CIS Comments at 3-4 (insider and privilege misuse, target intrusions, web application hacking); Cisco Comments at 8-9 (anti-virus, SSL inspections); CrowdStrike Comments at 1-3 (extended detection and response (XDR)); Crown Castle Comments at 3-4 (anti-ransomware); Cybersecurity Coalition/ITI Comments at 5 (anti-spam); Microsoft Corporation *Ex Parte* Letter, WC Docket No. 13-184, at 11 (rec. Aug. 2, 2023) (Microsoft August 2 *Ex Parte* Letter) (privileged Access Management); MISEN Comments at 8-10 (anti-malware).

¹⁷² ADI Comments at 2; CIS Comments at 10; Cisco Comments at 9; Cybersecurity Coalition/ITI Comments at 4; SHLB Coalition et al. July 3 *Ex Parte* Letter at 2, 4.

¹⁷³ See, e.g., ADI Comments at 2.

¹⁷⁴ CIS Comments at 3.

¹⁷⁵ See NIST Endpoint Protection Platform (defining an “endpoint protection platform” as “[s]afeguards implemented through software to protect end-user machines such as workstations and laptops against attack (e.g., antivirus, antispyware, antiadware, personal firewalls, host-based intrusion detection and prevention systems, etc.)”).

¹⁷⁶ See CISA and National Security Agency (NSA), *Identity and Access Management Recommended Best Practices Guide for Administrators*, at 2-3 (Mar. 21, 2023), https://media.defense.gov/2023/Mar/21/2003183448/-1/-1/0/ESF%20IDENTITY%20AND%20ACCESS%20MANAGEMENT%20RECOMMENDED%20BEST%20PRACTICES%20FOR%20ADMINISTRATORS%20PP-23-0248_508C.PDF.

¹⁷⁷ See Appendix B at 2-3.

¹⁷⁸ *Id.*

¹⁷⁹ See, e.g., MISEN Comments at 8-10 (active countermeasure tools, intrusion detection systems (IDS), web content controls); Cisco Comments at 7-8, 10-11 (cloud application protection); ADI Comments at 3 (credential stuffing); Council GCS Comments at 3 (content blocking and filtering/URL filtering); Friday Institute Comments at 7 (content caching systems and service); NCTA Comments at 3-4 (customer portal services); ADI Comments at 3 (digital identity tools); Cisco Comments at 8-10 (DDOS protection and DNS/DNS-layer security, email and web security); ADI Comments at 3 (identity governance & technologies, logging practices); Crown Castle Comments at 4 (network access control); MISEN Comments at 8-10 (offsite/immutable back-ups); Cisco Comments at 9

(continued....)

with commenters that deploying these tools will better ensure that unauthorized users will be unable to gain network access, unable to cause network damage if they do gain access, and/or provide an early warning to schools and libraries of unusual or anomalous behavior that could signal the presence of near and future cyber threats or attacks while they can still be effectively remediated.¹⁸⁰ No commenter objects to the Pilot funding identity protection and authentication technologies. Moreover, we find that our definition of identity protection and authentication is reasonable as it largely reflects a definition of “identity authentication” endorsed by NIST, and also clarifies that protection involves protection from theft or misuse.¹⁸¹

d. Monitoring, Detection, and Response

50. We further make network monitoring, detection, and response, including the use of security operations centers (SOCs) for managed cybersecurity services, eligible in the Pilot so that participants can promptly and reliably detect and neutralize malicious activities that would otherwise compromise their networks.¹⁸² For purposes of the Pilot, we define monitoring, detection, and response as “equipment, services, or a combination of equipment and services that monitor and/or detect threats to a network and that take responsive action to remediate or otherwise address those threats.”¹⁸³ This definition is reflected in the P-ESL.¹⁸⁴

51. We agree with the large number of commenters who argue for the inclusion of the specific monitoring, detection, and response technologies that we make eligible today.¹⁸⁵ We also agree with commenters who advocate for the inclusion of these services and equipment as an important approach to remediating cybersecurity threats and attacks, particularly given the limited resources of

(Continued from previous page)

(MFA/phishing-resistant MFA); Microsoft August 2 *Ex Parte* Letter at 11 (MFA); Friday Institute Comments at 6-7 (patching); ADI Comments at 3 (password spraying, privileged identity management); JN Comments at 4 (products with TPM chips); JN Comments at 2 (Secure Access Service Edge (SASE)); K12 SIX Comments at 2 (secure-by-design equipment and services); MISEN Comments at 8-10 (security information and event management (SIEM)); Cisco Comments at 8-9 (security updates); Friday Institute Comments at 6 (single sign-on (SSO)); JN Comments at 4 (trusted platform module (TPM)); Robert Frisby Express Comments (wireless access controllers); Zscaler Reply at 2 (zero trust architecture).

¹⁸⁰ ADI Comments at 3; CrowdStrike Comments at 3; Cybersecurity Coalition/ITI Comments at 4; MISEN Comments at 8-10.

¹⁸¹ NIST, *Glossary*, https://csrc.nist.gov/glossary/term/identity_authentication (last visited June 6, 2024) (defining “identity authentication” as “[t]he process of providing assurance about the identity of an entity interacting with a system”).

¹⁸² See generally CISA, *CISA Red Team Shares Key Findings to Improve Monitoring and Hardening of Networks* (Feb. 28, 2023), https://www.cisa.gov/sites/default/files/2023-03/aa23-059a-cisa_red_team_shares_key_findings_to_improve_monitoring_and_hardening_of_networks_1.pdf.

¹⁸³ See Appendix B at 3.

¹⁸⁴ *Id.*

¹⁸⁵ See, e.g., ADI Comments at 2 (bug bounty solutions & services); ActZero Comments at 3 (compliance assessment, dark web scanning); MISEN Comments at 8-10 (data loss prevention, internal/external vulnerability scanning, network/device monitoring & response, network traffic analysis, Network Detection Response (NDR), penetration testing); MISEN Comments at 12 (MDR); Vector Reply at 1 (Managed Service Providers); ActZero Comments at 3 (maturity models); CIS Comments at 10 (Security Operations Centers (SOCs)); Microsoft August 2 *Ex Parte* Letter at 10 (SOCs); ActZero Comments at 3 (SOCs); Crown Castle Comments at 4 (threat hunting/updates and threat intelligence); Cybersecurity Coalition/ITI Comments at 4-5 (vulnerability management); Microsoft August 2 *Ex Parte* Letter at 11 (vulnerability management); see generally Letter from Amit Elazari, OpenPolicy, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 23-234 (filed June 2, 2024) (advanced attack surface management and asset management solutions).

schools/libraries to hire or retain staff or other personnel to conduct these activities themselves.¹⁸⁶ No commenter objects to the funding of network monitoring, detection, and response solutions.

2. Ineligible Services and Equipment

52. We impose a number of limitations on eligibility to ensure the efficient and appropriate use of the limited Pilot funds, and to avoid duplicative funding, protect against waste, fraud, and abuse, and stretch the limited support available through the Pilot. First, as noted above, we make ineligible for the Pilot funding any services, equipment, or associated cost that is already eligible through the E-Rate program.¹⁸⁷ We similarly make ineligible for Pilot funding any service, equipment, or associated cost for which an applicant has already received full reimbursement, or plans to apply for full reimbursement, through any other USF or federal, state, Tribal, or local government program through which reimbursement is sought.¹⁸⁸ Participants may, however, use Pilot funding to support Pilot-eligible services and equipment that participants were previously paying for themselves, subject to our competitive bidding rules, as this will allow the Commission to evaluate the efficacy of using universal service funding to support cybersecurity services and equipment, while potentially freeing up funding for participants to use for other needs. We find that limiting eligibility in this manner ensures that the Commission maximizes the use of the limited Pilot funding by eliminating the provision of redundant or duplicative support for the same cybersecurity services and equipment funded through other sources. It will also maximize the data and information the Commission is able to collect on new services and equipment not already funded through E-Rate or other programs, thus efficiently using Pilot resources to best inform any potential Commission action based on the Pilot data. As is customary in E-Rate, we require Pilot participants to perform a cost allocation to remove from their funding requests costs associated with ineligible components or functions of an otherwise eligible equipment or service.¹⁸⁹

53. In the *Cybersecurity NPRM*, we proposed to limit eligibility to “equipment that is network-based (i.e., that excludes end-user devices, including, for example, tablets, smartphones, and laptops) and services that are network-based and/or locally installed on end-user devices, where the devices are owned or leased by the school or library,” and to equipment and services that are “designed to identify and/or remediate threats that could otherwise directly impair or disrupt a school’s or library’s network, including to threats from users accessing the network remotely.”¹⁹⁰ We adopt this proposal in the P-ESL with a clarification that “network-based” services include those that are cloud-based and server-based. In doing so, we address concerns raised by some commenters¹⁹¹ by confirming that the term “network-based” solutions includes both cloud and server-based solutions. We find this clarification appropriate since both servers and cloud architectures are used in conjunction with a network.

¹⁸⁶ Cisco Comments at 9-11; Cybersecurity Coalition/ITI Comments at 4; Friday Institute Comments at 9; GMI Comments at 1; Vector Reply at 1.

¹⁸⁷ See generally *FY 2024 ESL Order* (identifying services, equipment, and associated costs that are eligible in the E-Rate program).

¹⁸⁸ These restrictions on duplicative funding share similarities to those in the Connected Care Pilot Program. See, e.g., *Connected Care Pilot Order*, 35 FCC Rcd at 3399, para. 60 (declining to provide recipients with funding for data connections for which they are already receiving funding, or are eligible to receive funding, through other federal programs).

¹⁸⁹ See, e.g., USAC, Cost Allocations for Services, <https://www.usac.org/e-rate/applicant-process/before-you-begin/eligible-services-overview/cost-allocations-for-services/> (last visited June 6, 2024) (summarizing cost allocation processes in the context of E-Rate).

¹⁹⁰ *Cybersecurity NPRM*, 2023 WL 8605080 at *18, para. 43.

¹⁹¹ Lumen Reply at 5 (requesting that we clarify that network-based services include cloud-based solutions); CCSD Comments at 2 (requesting that we make eligible cloud-based and server-based solutions); NCTA Comments at 4 (requesting that we make eligible cloud-based solutions).

54. In taking this action, we disagree with the view expressed by Clark County School District (CCSD) that limiting eligibility in the way we had proposed would “not go far enough in protecting end-users.”¹⁹² Contrary to CCSD’s views, our considerations for eligibility specifically encompass “end-user devices, where the devices are owned or leased by the school or library.”¹⁹³ We also disagree with CTIA’s view that eligibility should extend to end-user devices not owned or leased by the school or library since “leaving even one device exposed compromises an entire network.”¹⁹⁴ While we are sympathetic to this view on a technical level, we find it administratively and financially impractical to expand eligibility to an even larger (and unknowable) number of additional devices that students, school staff, and library patrons may seek to connect to their networks over the duration of the Pilot Program. For purposes of the Pilot, we therefore prioritize protection for (i.e., limit eligibility to) devices that are the most essential to a school’s or library’s educational mission and likely to be used to convey traffic on the networks of these participants. Our overall approach further addresses CTIA’s concerns by making a wide range of network-based protections available to monitor, detect, and remediate potential threats introduced by an end-user device that does not qualify for funding under Pilot Program rules.¹⁹⁵ Practically speaking, schools and libraries cannot as easily limit access to their networks by their leased and owned devices while still fulfilling their core educational mission. We thus find that our approach strikes a reasonable balance between affording protections to the devices most essential and likely to be used on a school’s or library’s network, reducing threats that may be posed by non-funded devices (e.g., through our decision to make eligible network-level protection technologies) and effectively deploying the limited amount of Pilot funding to provide benefits to a diverse range of schools and libraries. Accordingly, for these reasons and those previously provided in the *Cybersecurity NPRM*,¹⁹⁶ we adopt our proposal as clarified above.

55. To further protect the Pilot’s limited funds, we restrict eligibility in a number of ways. We deem ineligible (i) staff salaries and labor costs for a participant’s personnel and (ii) beneficiary and consulting services that are not related to the installation and configuration of the eligible equipment and services. This mirrors restrictions in the E-Rate program that have proven to be effective in conserving the limited USF funds.¹⁹⁷ We expect that this action will provide similar benefits in the context of the Pilot. We similarly deem ineligible insurance costs and any costs associated with responding to specific ransom demands. We find that these restrictions are necessary to ensure that the limited Pilot funding is used for the evaluation of specific technologies, i.e., eligible cybersecurity services and equipment, so that we can gain maximum insight into the technical effectiveness of those offerings. We find it reasonable to exclude these enumerated uses from the Pilot, which has even more limited funding available as compared to the E-Rate program.

56. In the *Cybersecurity NPRM*, we sought comment on “whether we should place restrictions on the manner or timing of a Pilot participant’s purchase of security measures,” including whether “funding [should] be limited to a participant’s one-time purchase of security measures or [if it]

¹⁹² CCSD Comments at 1.

¹⁹³ *Cybersecurity NPRM*, 2023 WL 8605080 at *18, para. 43.

¹⁹⁴ CTIA Reply at 8-9 (citing CCSD Comments at 2); *see also* Northwestern Consolidated School District of Shelby County Express Comment at 1.

¹⁹⁵ *See generally* Appendix B.

¹⁹⁶ *Cybersecurity NPRM*, 2023 WL 8605080 at *18, para. 43 (reasoning that our proposed approach would be justified as it would permit Pilot participants to “cost-effectively procure remotely-located equipment and services,” be “consistent with the way that many modern security services are increasingly offered,” strike a “reasonable balance between protecting [Pilot participants’] networks with the need to limit the scope of protections given the limited Pilot funding available,” and “reflect[] the reality that schools and libraries often already restrict the permissions available to third-party-owned devices that connect to their networks”).

¹⁹⁷ *FY 2024 ESL Order*, 2023 WL 8803733 at *8-9.

should . . . cover the on-going, recurring costs that a Pilot participant may incur, for example, in the form of continual service contracts or recurring updates to the procured security measures.”¹⁹⁸ We received only a few comments in response with commenters suggesting that any such restrictions should be minimally burdensome and avoid unnecessarily interfering with participants’ attempts to obtain funding support.¹⁹⁹ Accordingly, we confirm that Pilot participants may request reimbursement for one-time purchases, as well as the recurring costs of eligible security measures. As discussed above,²⁰⁰ Pilot participants will be permitted to request reimbursement as expenses are incurred, whether for one-time or recurring expenses, subject to the limitations regarding participants’ budgets²⁰¹ as well as funding commitments.²⁰²

57. *Supply Chain Restrictions.* In the *Cybersecurity NPRM*, we proposed to apply the Secure and Trusted Communications Networks Act of 2019 to Pilot participants by prohibiting these participants from using any funding obtained through the program to purchase, rent, lease, or otherwise obtain any of the services or equipment on the Commission’s Covered List or to maintain any of the services or equipment on the Covered List that was previously purchased, rented, leased, or otherwise obtained.²⁰³ We also sought comment on whether “there are any other restrictions or requirements that we should place on recipients of Pilot funds based on the Secure [and Trusted Communications] Networks Act and/or other . . . concerns related to supply chain security.”²⁰⁴ We adopt our proposal to bar Pilot participants from using Pilot funding in ways prohibited by the Secure and Trusted Communications Networks Act and/or the Commission’s rules, including sections 54.9 and 54.10 of the Commission’s rules, that implement the Secure and Trusted Communications Networks Act.²⁰⁵ Accordingly, Pilot participants are prohibited by section 54.9 of the Commission’s rules from using funding made available through the Pilot to “purchase, obtain, maintain, improve, modify, or otherwise support any equipment or services produced or provided by any company posing a national security threat to the integrity of communications networks or the communications supply chain,”²⁰⁶ including Huawei Technologies Company and ZTE Corporation, and their parents, affiliates, and subsidiaries.²⁰⁷ Pilot participants are also prohibited by section 54.10 of the Commission’s rules from using Pilot funding to “[p]urchase, rent,

¹⁹⁸ *Cybersecurity NPRM*, 2023 WL 8605080 at *16, para. 40. See also discussion *supra* at para. 30.

¹⁹⁹ Cisco Comments at 13; Dallas ISD Comments at 4.

²⁰⁰ See *supra* para. 30.

²⁰¹ See *supra* paras. 24-28.

²⁰² See *infra* para. 85.

²⁰³ *Cybersecurity NPRM*, 2023 WL 8605080 at *23, para. 60 (citing the Secure and Trusted Communications Networks Act of 2019, Pub. L. No. 116-124, 134 Stat. 158 (2020) (codified as amended at 47 U.S.C. §§ 1601–1609) (Secure and Trusted Communications Networks Act)). The Covered List is published and available here: <https://www.fcc.gov/supplychain/coveredlist> (last accessed June 6, 2024).

²⁰⁴ *Cybersecurity NPRM*, 2023 WL 8605080 at *23, para. 60.

²⁰⁵ The Commission has previously found that “the prohibitions in sections 54.9 and 54.10 of the Commission’s rules are consistent with, and fully implement, section 3(a) of the Secure Networks Act.” *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Second Report and Order, 36 FCC Rcd 14284, 14326-27, para. 96 (2020).

²⁰⁶ See 47 CFR § 54.9.

²⁰⁷ On June 30, 2020, the Commission’s Public Safety and Homeland Security Bureau (PSHSB) issued final designations of Huawei and ZTE as covered companies within the meaning of Commission rule 54.9. See 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) (*Huawei Designation Order*); *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) (*ZTE Designation Order*).

lease, or otherwise obtain any . . . communications equipment or service” or “[m]aintain any . . . communications equipment or service previously purchased, rented, leased, or otherwise obtained” that is included on the Commission’s Covered List.²⁰⁸ We note that the entities, services, and equipment designated under these rules may evolve over time as the Commission’s Public Safety and Homeland Security Bureau (PSHSB) revises its designations of covered companies and/or issues updates to the Covered List.²⁰⁹ It is the responsibility of Pilot participants to ensure they remain in compliance with the Secure and Trusted Communications Networks Act, and the Commission’s related rules, if such revisions are made. We find that these actions will effectively ensure that potential risks and vulnerabilities in Pilot participants’ communications networks are addressed in the manner intended and directed by Congress in the Secure and Trusted Communications Networks Act. Cisco generally supports this approach,²¹⁰ and no commenter opposes it.

E. FCC Form 484 Application and Pilot Participation Selection Processes

58. *Application Process for Pilot Program.* In this section of the Order, we adopt application and selection processes for the Pilot Program patterned after the Connected Care Pilot Program, adopt several of the application, selection, and administrative proposals from the *Cybersecurity NPRM*, and designate USAC to be the Administrator of the Pilot Program. In the *Cybersecurity NPRM*, we proposed to structure the Pilot Program in a manner similar to the Connected Care Pilot Program.²¹¹ In particular, we proposed that schools, libraries, and consortia would apply to be Pilot participants and that those entities selected to participate in the Pilot would be eligible to apply for funding for eligible cybersecurity services and equipment.²¹² We also proposed that Pilot participants would receive a funding commitment and, after receipt of the commitment, would be eligible to receive cybersecurity services and equipment and submit requests for reimbursement for Pilot funding.²¹³ We further proposed that USAC be appointed the Administrator of the Pilot Program.²¹⁴ Two commenters specifically expressed support for our proposal to structure the Pilot in a manner similar to the Connected Care Pilot Program.²¹⁵ Only one commenter, the American Library Association (ALA), addressed our proposal that USAC be appointed the Administrator of the Pilot Program, agreeing that the application process and other aspects of the Pilot Program should be administered by USAC.²¹⁶

59. We also proposed in the *Cybersecurity NPRM* that entities interested in participating in the Pilot be required to submit a Schools and Libraries Cybersecurity Pilot Program Application (FCC Form 484) describing their proposed use of Pilot funds, including, but not limited to, the following information: (i) identification and contact information; (ii) cybersecurity posture and risk management practices; (iii) information on unauthorized access and cybersecurity incidents; (iv) the specific types of cybersecurity services and equipment to be purchased with Pilot funds; and (iv) how the entities plan to

²⁰⁸ See 47 CFR § 54.10.

²⁰⁹ See, e.g., 47 CFR § 54.9 (specifying that the PSHSB may make determinations that another company or companies pose a national security threat and may reverse its prior designations in certain circumstances); 47 CFR § 1.50002 (specifying that the PSHSB “shall . . . update the Covered List” based on prescribed criteria).

²¹⁰ Cisco Comments at 17.

²¹¹ *Cybersecurity NPRM*, 2023 WL 8605080 at *10, paras. 25-26; see generally *Connected Care Pilot Order*.

²¹² *Cybersecurity NPRM*, 2023 WL 8605080 at *10, para. 26.

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ IOB Comments at 6 (“IOB generally supports the Commission’s proposal to structure the Pilot program similarly to the recent rural healthcare Connected Care Pilot Program”); CoSN et al. January 29 Comments at 13 (“We support the Commission’s plan to model the cybersecurity pilot after the successful Connected Care Pilot.”).

²¹⁶ ALA Comments at 4 (“[W]e . . . also agree that this process and other aspects of the Pilot Program should be administered by USAC.”).

collect data and track their cybersecurity progress if selected as a Pilot participant.²¹⁷ While there was minimal opposition to the collection of general information,²¹⁸ the majority of commenters recommended against the collection of applicant-specific cybersecurity information. For example, some commenters recommended that the Commission refrain from seeking information about previous cyber threats, attacks, or incidents as part of the FCC Form 484 application.²¹⁹ Still others recommended that applicants not be required to provide details regarding their cybersecurity postures, network environments, or current protection measures (or lack thereof).²²⁰ Several commenters recommended that the FCC Form 484 application process be minimally burdensome,²²¹ and a few commenters recommended that it align with E-Rate tools and concepts that are familiar to E-Rate applicants wherever possible.²²²

60. Finally, we proposed in the *Cybersecurity NPRM* that applicants and participants submit their FCC Form 484 applications via an online platform designed and operated by USAC and inquired as to confidentiality or security concerns.²²³ We also asked how the Commission could best leverage its prior experience in other USF and Congressionally-appropriated programs and sought comment on lessons learned.²²⁴ For administrative efficiency, we further proposed that the Bureau select Pilot participants in consultation with the Office of Economics and Analytics (OEA), PSHSB, and the Office of

²¹⁷ *Cybersecurity NPRM*, 2023 WL 8605080 at *11, *20, paras. 27, 49.

²¹⁸ See, e.g., Crown Castle Comments at 3 (supporting the Commission’s proposed data collection and reporting requirements); Dallas ISD Comments at 4 (agreeing that applicants should be required to articulate their proposed pilot plan). But see State E-Rate Coordinators’ Alliance Reply at 2, 4-7 (SECA) (expressing concern that applicants may not be able to describe how they plan to use Pilot Program funds and recommending that “information regarding financial aspects of the proposed project” be omitted from the application).

²¹⁹ See, e.g., ActZero Comments at 5 (“Program design and eligibility criteria should not be overly proscriptive or based on historical events.”); ADI Comments at 3-4 (recommending that the Commission refrain from seeking information about previous cybersecurity threats or incidents as part of the application); ALA Comments at 4 (urging the Commission not to seek detailed cybersecurity information and noting that “some applicants may be reluctant to publicly disclose their security breaches”); LTC Reply at 2-3 (warning that publicly sharing information about prior offenses could open the door to future cybersecurity threats); Palo Alto Networks Comments at 2-3 (opining that disclosing details of existing vulnerabilities and incidents of unauthorized access could pose confidentiality and security concerns for applicants).

²²⁰ See, e.g., Cybersecurity Coalition/ITI Comments at 2-3 (recommending that the collection of detailed cybersecurity information be voluntary); Dallas ISD Comments at 4 (asserting that the provision of detailed cybersecurity information should not be required without an assurance of confidentiality from potential malicious actors); Palo Alto Networks Comments at 2-3 (urging that the Commission not disclose specific information about cybersecurity incidents); Zscaler Reply at 2 (recommending that any reporting requirements be “actionable, secure, and not onerous”).

²²¹ Access, ALA, CoSN, SHLB Coalition et al. December 13 *Ex Parte* Letter at 1-2 (stating that the application should not be overly burdensome) (CoSN et al. December 13 *Ex Parte* Letter); ATARC Reply at 2 (advocating for a simplified application process); City of NY OTI Reply at 2 (concurring that that streamlining the application process is crucial); LTC Reply at 3 (noting that asking for excessive amounts of data from K-12 schools and libraries could be burdensome and a barrier to participation in the Pilot); Palo Alto Networks Comments at 3 (recommending that the Commission make the application process “as manageable as possible”); Rubrik Comments at 1 (asserting that the Commission should make the application process as easy as possible for K-12 schools and libraries); SECA Reply at 2 (describing the amount of information requested for submission on the proposed FCC Form 484 as “arduous”).

²²² See, e.g., Lumen Reply at 6 (agreeing that the Pilot should generally mirror existing E-Rate Program rules, forms, and processes); NCTA Comments at 5 (agreeing that the Pilot Program should, for the most part, mirror the existing E-Rate rules); see also CoSN et al. August 7 *Ex Parte* Letter (recommending that the application process align whenever possible with tools and concepts familiar to E-rate applicants).

²²³ *Cybersecurity NPRM*, 2023 WL 8605080 at *11, para. 27.

²²⁴ *Id.*

the Managing Director (OMD), as needed.²²⁵ We also proposed to delegate to the Bureau the authority to implement the proposed Pilot and direct USAC's administration of the program consistent with the Commission's rules and oversight.²²⁶ No commenter addressed the submission of the FCC Form 484 applications using an online platform designed and operated by USAC, though some expressed concerns about the confidentiality and security of cybersecurity data provided as part of the application process.²²⁷ Comments related to past experience and lessons learned focused on the requests for reimbursement and invoicing processes,²²⁸ are discussed later in this Report and Order. Many commenters supported the Commission's legal authority to conduct the Pilot Program,²²⁹ but did not address Bureau review of Pilot Program applications in consultation with OEA, PSHSB, and OMD, or the delegation of authority to the Bureau to implement the Pilot or direct USAC's administration of the Pilot.

61. Based on the record, we adopt several of the proposals from the *Cybersecurity NPRM*. Specifically, we adopt the application, selection, and administrative proposals discussed in detail below, and we designate USAC to be the Administrator of the Pilot. In doing so, we are mindful of the concerns expressed by commenters about the scope of information to be included in the FCC Form 484 application and agree that the initial application process would benefit from a decrease in the amount of cybersecurity-sensitive school and library data requested.²³⁰ To that end, and as discussed in greater detail below, the FCC Form 484 application will be split into two parts. The first part will collect a more general level of cybersecurity information about the applicant and its proposed Pilot project, and will use pre-populated data where possible, as well as a number of "yes/no" questions and questions with a predetermined set of responses (i.e., multiselect questions with predefined answers). The second part will collect more detailed cybersecurity data and Pilot project information, but only from those who are selected as Pilot participants.²³¹ As discussed further below, we will treat all cybersecurity-related information requested and provided in the FCC Form 484 as presumptively confidential, and will not

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ See, e.g., CIS Comments at 5; City of NY OTI Reply at 2; Dallas ISD Comments at 4; Palo Alto Networks Comments at 2-3; Friday Institute Comments at 8; WI DPI Reply at 2-3.

²²⁸ See, e.g., Dallas ISD Comments at 4 ("As with the application evaluation process and lessons learned from ECF, requests for reimbursement or invoices submitted appropriately to the Administrator should likewise be processed in a timely, predictable, and reliable manner.").

²²⁹ See *infra* para. 115.

²³⁰ We recognize that FCC Form 484 applications could contain sensitive information. As such, the USAC cybersecurity platform that applicants, and participants once selected for the Pilot, will use to submit their FCC Form 484 applications will be a closed system that can only be accessed by the applicant or participant, or persons designated by the applicant or participant, USAC, and the FCC. Applicants and participants will not be able to view each other's FCC Form 484 applications and the FCC Form 484 data will not be made available to the public. However, the other Pilot form data, FCC Forms 470, 471, and 472/474 data, may be publicly available as federal funding is being provided to the Pilot participants, and the public data may include the name of the Pilot participant, services and equipment requested, names of service providers, and the amount of Pilot funding committed and disbursed.

²³¹ To clarify, the FCC Form 484 itself will not change from the proposed form circulated as part of the Commission's initial information collection submission to the Office of Management and Budget, nor will it increase the burden time for applicants or participants. Rather, this approach will streamline the initial application process, allowing for the submission of an increased number of applications from a more diverse array of applicants and will restrict the collection of particularly sensitive cybersecurity data to only those who are selected as Pilot participants.

make it routinely available for public inspection.²³²

62. To be considered for the Pilot, an applicant must complete and submit part one of the FCC Form 484 application describing its proposed Pilot project and providing information to facilitate the evaluation and eventual selection of high-quality projects for inclusion in the Pilot.²³³ Specifically, the applicant must explain how its proposed project meets the considerations outlined below. In addition, the applicant must present a clear strategy for addressing the cybersecurity needs of its K-12 school(s) and/or library(ies) pursuant to its proposed Pilot project, and clearly articulate how the project will accomplish the applicant's cybersecurity objectives. We anticipate that successful applicants will be able to demonstrate that they have a viable strategic plan for providing eligible cybersecurity services and equipment directly to the school(s) and/or library(ies) included in their proposed Pilot projects. Further, we expect applications to be tailored to the unique circumstances of each applicant. USAC and/or the Bureau may disqualify from consideration for the Pilot those applications that provide a bare minimum of information or are generic or template in nature.

63. *Part One Application Information.* For the first part of the FCC Form 484 application, we direct the Bureau and USAC to collect a general level of cybersecurity information from schools, libraries, and consortia that apply to participate in the Pilot Program. At a minimum, applications to participate in the Pilot Program must contain the following required information:

- Names, entity numbers, FCC registration numbers, employer identification numbers, addresses, and telephone numbers for all schools, libraries, and consortium members that will participate in the proposed Pilot project, including the identity of the consortium leader for any proposals involving consortia.
- Contact information for the individual(s) who will be responsible for the management and operation of the proposed Pilot project (name, title or position, telephone number, mailing address, and email address).
- Applicant number(s) and type(s) (e.g., school; school district; library; library system; consortia; Tribal school or library (and Tribal affiliation)), if applicable; and current E-Rate participation status and discount percentage, if applicable.²³⁴
- A broad description of the proposed Pilot project, including, but not limited to, a description of the applicant's goals and objectives for the proposed Pilot project, a description of how Pilot funding will be used for the proposed project, and the cybersecurity risks the proposed Pilot project will prevent or address.
- The cybersecurity equipment and services the applicant plans to request as part of its

²³² See 47 CFR § 0.457(d)(2); see also *infra* para. 75. Note that material submitted is still subject to the Commission's rules governing requests for inspection of records not routinely available for public inspection. See 47 CFR § 0.461.

²³³ See *Cybersecurity NPRM*, 2023 WL 8605080 at *20, para. 49. In order to facilitate the application review process, and pursuant to the Paperwork Reduction Act of 1995 (PRA), the Commission sought OMB approval for a Schools and Libraries Cybersecurity Pilot Program Application Form concurrent with the release of the *Cybersecurity NPRM* for applicants to use when submitting their proposed Pilot projects to the Commission. Although the original comment periods for the application form have passed, as part of the information collection process, parties will have another opportunity to comment on the form. *Notice of Office of Management and Budget Action*, OMB Control No. 3060-1323, Comment on Proposed Rule (requesting resubmission of information collection when proposed rule is finalized, which will result in an additional 30-day comment period).

²³⁴ Note that there is no need for an applicant to indicate its urban or rural status, as that information will be auto-populated by USAC based on U.S. Census Bureau data that is also used in the E-Rate program for this determination.

proposed project, the ability of the project to be self-sustaining once established, and whether the applicant has a cybersecurity officer or other senior-level staff member designated to be the cybersecurity officer for its Pilot project.

- Whether the applicant has previous experience implementing cybersecurity protections or measures (answered on a yes/no basis), how many years of prior experience the applicant has (answered by choosing from a preset menu of time ranges (e.g., 1 to 3 years)), whether the applicant has experienced a cybersecurity incident within a year of the date of its application (answered on a yes/no basis), and information about the applicant's participation or planned participation in cybersecurity collaboration and/or information-sharing groups.
- Whether the applicant has implemented, or begun implementing, any Education Department or CISA best practices recommendations (answered on a yes/no basis), a description of any Education Department or CISA free or low-cost cybersecurity resources that an applicant currently utilizes or plans to utilize, or an explanation of what is preventing an applicant from utilizing these available resources.
- An estimate of the total costs for the proposed Pilot project, information about how the applicant will cover the non-discount share of costs for the Pilot-eligible services, and information about other cybersecurity funding the applicant receives, or expects to receive, from other federal, state, local, or Tribal programs or sources.
- Whether any of the ineligible services and equipment the applicant will purchase with its own resources to support the eligible cybersecurity equipment and services it plans to purchase with Pilot funding will have any ancillary capabilities that will allow it to capture data on cybersecurity threats and attacks, any free or low-cost cybersecurity resources that the applicant will require service providers to include in their bids, and whether the applicant will require its selected service provider(s) to capture and measure cost-effectiveness and cyber awareness/readiness data.
- A description of the applicant's proposed metrics for the Pilot project, how they align with the applicant's cybersecurity goals, how those metrics will be collected, and whether the applicant is prepared to share and report its cybersecurity metrics as part of the Pilot Program.

To facilitate the inclusion of a diverse set of Pilot projects and to target Pilot funds to the populations most in need of cybersecurity support, particularly those with minimal or no cybersecurity protections today, we anticipate selecting projects from, and providing funding to, a combination of large and small and urban and rural schools, libraries, and consortia,²³⁵ with an emphasis on funding proposed Pilot projects that include low-income²³⁶ and Tribal applicants.²³⁷ Similarly, and addressing concerns

(Continued from previous page)

²³⁵ We note that applications will be evaluated as a whole with an eye to selecting diverse projects, and that an applicant's answer to any individual question on the first part of the FCC Form 484 will not necessarily be dispositive of its eligibility for the Pilot Program. *See, e.g.,* SHLB Coalition et al. May 31, 2024 *Ex Parte Letter* at 6.

²³⁶ *See* 47 CFR § 54.2007. For purposes of the Pilot Program, an applicant is considered "low-income" based on its discount percentage which, in turn, is determined by indicators of poverty and urban/rural designation. *Id.* The discounts available to applicants selected to participate Pilot range from 20 percent to 90 percent of the pre-discount price for all eligible services and equipment provided by eligible providers, with 90 percent discounts representing the neediest applicants. *Id.*, § 54.2007(b).

²³⁷ *See id.*, § 54.2000 (explaining that an entity is "Tribal" if it is a school operated by or receiving funding from the Bureau of Indian Education (BIE), or if it is a school or library operated by any Tribe, Band, Nation, or other organized group or community, including any Alaska native village, regional corporation, or village corporation (as (continued....))

expressed by ActZero, we encourage participation in the Pilot by a broad range of service providers and note that the rules and requirements we adopt here do not discourage new companies from participating.²³⁸ Nor do we require service providers to have preexisting service provider identification numbers (SPIN) before submitting cybersecurity bids or previous E-Rate experience before participating in the Pilot.²³⁹

64. When an applicant submits part one of its FCC Form 484 application, it will be required to certify, among other things, that it is authorized to submit the application and is responsible for the data being submitted; the data being submitted is true, accurate, and complete; if selected for the Pilot, it will comply with all rules and orders governing the program, including the competitive bidding rules and the requirement to pay the non-discount share of costs for Pilot-eligible services and equipment from eligible sources; all requested Pilot-funded eligible services and equipment will be used for their intended purposes; the schools, libraries, and consortia listed in the FCC Form 484 application are not already receiving, and do not expect to receive, other funding for the same cybersecurity services and equipment for which Pilot funding is being sought; it may be audited pursuant to its Pilot Program application and will retain any and all records related to its application for 10 years; and, if audited, it will produce those records at the request of the appropriate officials.²⁴⁰ The applicant must also certify that it understands that failure to comply with the Pilot Program rules and order(s) may result in the denial of funding, cancellation of funding commitments, and/or the recoupment of past funding disbursements.²⁴¹ We emphasize that we are committed to protecting the integrity of the Pilot and ensuring that USF funds disbursed through the Pilot are used for eligible and appropriate purposes. In the event of a violation of Pilot Program rules or requirements, the Commission reserves the right to take appropriate actions, including, but not limited to, seeking recovery of funds or further enforcement action. Applicants who participate in the Pilot Program must also comply with all applicable federal and state laws, including sections 502 and 503(b) of the Act, Title 18 of the United States Code, and the federal False Claims Act.²⁴²

65. While we understand the desire by some commenters to keep the initial application as streamlined as possible,²⁴³ in order to evaluate the proposed Pilot projects and select well-defined and sustainable projects, it is incumbent on us to require certain information at the application stage. Thus, we disagree with commenters who say that applicants will need to possess a prohibitive amount of knowledge during the application stage and will not be able to describe how they propose to use Pilot

defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. § 1601 *et seq.*) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians).

²³⁸ ActZero Comments at 7.

²³⁹ *Id.* We will require new service providers participating in the Pilot to submit a Service Provider and Billed Entity Identification Number and General Contract Information Form (FCC Form 498) to obtain a service provider identification number (SPIN) in order to provide the requested services/equipment and receive reimbursement.

²⁴⁰ See 47 CFR § 54.2004(c)(2).

²⁴¹ *Id.*

²⁴² See 47 CFR § 54.2004(c)(2)(i)(A) (requiring an applicant to certify acknowledgement that any false statement on its application or on other documents it submits as part of the Pilot Program can be punished by fine or forfeiture under the Act (47 U.S.C. §§ 502, 503(b)), or fine or imprisonment under Title 18 of the United States Code (18 U.S.C. § 1001), or can lead to liability under the federal False Claims Act (31 U.S.C. §§ 3729–3733)) and 47 CFR § 54.2004(c)(2)(i)(C) (requiring an applicant to certify awareness that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject it to criminal, civil, or administrative penalties for fraud, false statements, false claims, or otherwise pursuant to U.S. Code Title 18, §§ 1001, 286–287 and 1341, and Title 31, §§ 3729–3730 and 3801–3812).

²⁴³ See *supra* para. 59, note 221.

Program funds until *after* they have been selected as Pilot participants.²⁴⁴ Although an applicant may not know the precise cybersecurity services and equipment it would seek to fund with Pilot funding, it is unlikely that an applicant would apply to participate in the program without having some general cybersecurity goals or plans for using the funding, if selected as a participant. Additionally, this Report and Order contains a list of Pilot-eligible services and equipment that will aid applicants as they begin formulating their proposed Pilot projects in advance of the opening of the FCC Form 484 application window.²⁴⁵ Applicants, therefore, should do their best to provide the requested information in the application, including information on estimated costs related to their proposed cybersecurity project.

66. *Selection Process for Pilot Program.* To select Pilot participants, we direct the Bureau and USAC to use limited prerequisites and a broad and objective set of evaluation factors with an emphasis on funding low-income and Tribal entities, consistent with the E-Rate and Connected Care Pilot programs.²⁴⁶ In the *Cybersecurity NPRM*, we sought comment on how to evaluate and prioritize Pilot applications. In particular, we sought comment on what prerequisites, if any, the Commission should adopt to select participants.²⁴⁷ For example, we asked whether the adoption of free and low-cost cybersecurity tools and resources should be required for an applicant to be selected as a Pilot participant; Pilot participants should be required to correct known security flaws and conduct routine back-ups; Pilot participants should be required to join cybersecurity information-sharing groups, such as MS-ISAC or K12 SIX; Pilot participants should be required to implement, or demonstrate their plans to implement, recommended best practices from organizations like the Education Department, CISA, and NIST; and Pilot participants should be required to take steps to improve their cybersecurity posture by designating an officer or senior staff member to be responsible for cybersecurity implementation, updates, and oversight.²⁴⁸ The Commission received mixed reactions to its proposed use of prerequisites to select Pilot participants. At least one commenter thought the Commission should not utilize prerequisites to determine Pilot participation.²⁴⁹ Commenters were split on the proposal to require the adoption of free and low-cost cybersecurity tools and resources for an applicant to be selected as a Pilot participant.²⁵⁰ No commenter spoke directly to whether Pilot participants should be required to correct known security flaws or conduct routine back-ups as part of the Pilot Program, though a small number of commenters discussed whether Pilot funding should be targeted to allow schools and libraries to implement some or all of the

²⁴⁴ See, e.g., SECA Reply at 2, 4-7.

²⁴⁵ See *supra* para. 36 and *infra* Appendix B (discussing and adopting a Pilot Program ESL).

²⁴⁶ See 47 CFR § 54.505(c) (setting discount rates based on the entity's level of poverty and location in an urban or rural area); *Connected Care Pilot Order*, 35 FCC Rcd at 3405-3408, para. 68 (seeking information on “whether the health care provider is located in a rural area, on Tribal lands, or is associated with a Tribe” and “whether the health care provider will primarily serve veterans or low-income patients” to facilitate selection of a diverse set of pilot projects).

²⁴⁷ *Cybersecurity NPRM*, 2023 WL 8605080 at *15, para. 37.

²⁴⁸ *Id.*

²⁴⁹ Palo Alto Networks Comments at 2 (asserting that “a lack of cybersecurity education, training, and risk management practices should not immediately disqualify K-12 organizations from participating” in the Pilot).

²⁵⁰ Compare CCSD Comments at 1 (“Requiring applicants to show they are leveraging free and low-cost tools is burdensome and such tools do not sufficiently protect an applicant’s network.”); CIS Comments at 4, 8 (stating that “[t]he FCC should not require implementation of specific free and low-cost tools for participant eligibility for Pilot funding”); Council GCS Comments at 4 (explaining that many urban districts are already implementing several low-cost and high-leverage cybersecurity strategies and requiring implementation or use of specific free and low-cost tools could eliminate under-resourced districts from the pool of applicants) with CTIA Reply at 9 (supporting mandating that K-12 schools and libraries that participate in the Pilot fully leverage the free and low-cost K-12 cybersecurity resources provided by CISA and the Education Department); SECA Reply at 5 (recommending that the Commission specify that using the free vulnerability assessment offered by CISA is sufficient for meeting the application prerequisite requirement).

items contained in the CISA list of highest priority steps.²⁵¹ Some commenters thought requiring Pilot participants to join cybersecurity information-sharing groups was too onerous,²⁵² while others found such a requirement beneficial.²⁵³ Some commenters supported the requirement for Pilot participants to implement, or demonstrate plans to implement, recommended best practices from organizations like the Education Department, CISA, and NIST or recommended using the best practices to evaluate Pilot Program success,²⁵⁴ though at least one commenter expressed reservations about the Commission doing so.²⁵⁵ The State E-Rate Coordinators Alliance (SECA) proposed that the Commission “specify that completion or submission of an application for the free vulnerability assessment offered by CISA . . . [be] sufficient for meeting the assessment prerequisite as part of the Form 484 application process.”²⁵⁶ Clear Creek Amana CSD (Clear Creek), however, cautioned against relying on federal resources outside of a limited incident response plan following the NIST frameworks.²⁵⁷ A few commenters supported the proposal that a school, library, or consortium should have implemented or begun implementing a cybersecurity framework or program to participate in the Pilot.²⁵⁸ However, others called for selection based on a holistic view of an applicant’s cybersecurity expertise and risk.²⁵⁹ CIS stated that designating an officer or senior staff member to be responsible for cybersecurity implementation, updates, and oversight was an important step towards cyber maturity that should be achievable by Pilot participants.²⁶⁰ The Alliance for Digital Innovation (ADI) similarly recommended that the Commission make leadership commitment a requirement to participate in the Pilot Program, noting that “[s]enior leadership commitment plays a pivotal role in prioritizing cybersecurity within organizations.”²⁶¹

67. We also asked questions about reliance on objective versus subjective factors and how such factors should be used to select Pilot participants. In terms of objective factors, we asked whether the selection of Pilot participants should be based on E-Rate category two discount rate levels, location

²⁵¹ See, e.g., CIS Comments at 3; IOB Comments at 5.

²⁵² See, e.g., Cybersecurity Coalition/ITI Comments at 3 (expressing reservations about requiring applicants to join existing information sharing and collaboration groups but finding it appropriate for the Commission to encourage applicants to voluntarily participate in such groups and establish a relationship with CISA and FBI field personnel); EdGroup Reply at 4 (asserting that schools and libraries should not be required to make use of federal government tools and resources, as suggested by the *Cybersecurity NPRM*, because many schools and libraries have already implemented their own cybersecurity strategies).

²⁵³ See, e.g., CIS Comments at 8 (requiring Pilot participants to seek no-cost MS-ISAC membership is appropriate because it can expose them to a community of their peers and experts in the cybersecurity industry that can assist them); K12 SIX Comments at 3 (stating that the Pilot should incentivize the sharing of threat intelligence, including by requiring membership in information sharing and collaboration groups).

²⁵⁴ See, e.g., CIS Comments at 8; CoSN et al. January 29 Comments at 15.

²⁵⁵ IOB Comments at 5 (expressing concern regarding the “proposal to devote scarce Pilot program funds to advance the cybersecurity priorities of other government agencies such as CISA, [the Education Department], and NIST”).

²⁵⁶ SECA Reply at 5 (referencing the free vulnerability assessment offered by CISA at <https://www.cisa.gov/cyber-hygiene-services> but specifying that the requirement should not extend to the implementation of specific free and low-cost tools).

²⁵⁷ Clear Creek Express Comments.

²⁵⁸ See, e.g., Apttegy Comments at 2 (urging the Commission to align the Pilot as much as possible with CISA’s CPGs and recommendations); CIS Comments at 4-5 (recommending the Commission require Pilot participants to assess themselves before the Pilot and annually against a recognized cybersecurity framework).

²⁵⁹ See, e.g., ADI Comments at 3-4; Coalition/ITI Comments at 3; Zscaler Reply at 2.

²⁶⁰ CIS Comments at 8; *accord* Zscaler Reply at 3 (underscoring the importance of leadership commitment to cybersecurity because it is “essential for prioritizing cybersecurity initiatives, allocating resources, and fostering a culture of security within educational institutions”).

²⁶¹ ADI Comments at 4-5.

(e.g., urban vs. rural), and/or participant size (i.e., small vs. large).²⁶² We also sought comment on whether certain of those factors are more or less important than others from a Pilot selection standpoint and requested the underlying rationale for such determinations.²⁶³ Commenters generally agreed that the Pilot should prioritize the neediest applicants or those applicants that qualify for the highest discount percentages in the E-Rate program.²⁶⁴ Commenters overwhelmingly supported the Commission's proposal to incorporate a diverse array of applicants in the Pilot, including both urban and rural and large and small participants.²⁶⁵ Many commenters advocated for the preferential selection of consortia and statewide, regional, and local government applications, noting that such applications allow schools and libraries to stretch their cybersecurity dollars and extend cybersecurity protections to a larger pool of recipients.²⁶⁶ Similarly, other commenters encouraged the Commission to enable school districts to work across district and community boundaries to participate in the Pilot Program.²⁶⁷

68. For subjective Pilot selection factors, we inquired as to whether the Pilot Program would benefit from including schools and libraries with advanced cybersecurity expertise only or whether cybersecurity expertise should not factor into Pilot participant selection at all.²⁶⁸ Relatedly, we also sought comment on how the Commission could ensure that schools and libraries that lack funding, expertise, or are otherwise under-resourced could meaningfully participate in the Pilot.²⁶⁹ We asked commenters to address whether Pilot participants should be required to demonstrate that they have started

²⁶² *Cybersecurity NPRM*, 2023 WL 8605080 at *13, para. 34.

²⁶³ *Id.*

²⁶⁴ *See, e.g.*, CoSN, ALA, Council GCS, SECA, SETDA, SHLB Coalition et al. January 10 *Ex Parte* Letter at 2 (CoSN et al. January 10 *Ex Parte* Letter); Council GCS Comments at 3-4; Crown Castle Comments at 4; Dallas ISD Comments at 3; EdGroup Reply at 5.

²⁶⁵ *See, e.g.*, ALA Comments at 5; ALA Reply at 2-3; ASCA-CSBA Federal Partnership Reply at 3-4; CoSN et al. January 29 Comments at 14; EPIC Reply at 4; EdGroup Reply at 5-6; NTCA Comments at 1; Palo Alto Networks Comments at 2; WI DPI Reply at 3.

²⁶⁶ *See, e.g.*, ALA Reply at 1-2 (suggesting that the Commission “consider offering some type of priority status for consortium applications that include smaller libraries and schools”); Allendale Reply at 2 (highlighting the buying power of regional and statewide collaboratives); CCSD Comments at 1 (suggesting rewarding collaborative efforts that benefit the greatest number of applicants and end users); Cybersecurity Coalition/ITI Comments at 6 (suggesting that to maximize the Pilot budget, the Commission consider a preference for applications that aggregate the needs of multiple schools and libraries); E-Rate Central on behalf of the New York State E-Rate Coordinator Comments at 2 (urging the Commission and USAC to encourage larger and better resourced Pilot applicants to incorporate smaller less technically savvy entities in their consortium applications) (E-Rate Central); K12 SIX Comments at 5-6 (asserting that the Pilot should “incentivize and encourage consortia applications that can provide valuable services at scale across regions and states”); MISEN Comments at 3 (“Consortia entities should be specifically identified as eligible Pilot program applicants.”) and 11 (explaining that allowing consortia to participate in the Pilot will stretch the limited funding and increase the impact for more students and schools); Microsoft Comments at 3 (“One way to incentivize approaches that optimize cyber-hygiene while minimizing waste and inefficiency would be to prioritize funding for state-wide deployment efforts.”); Wayne RESA Reply at 2 (supporting eligibility for consortia applicants because they can help drive down costs and provide support for layers of needed protections); WI DPI Reply at 3 (agreeing that the Commission and USAC should encourage larger and more resourceful pilot applicants to incorporate smaller and less technically savvy entities into consortium applications).

²⁶⁷ *See, e.g.*, ACSA-CSBA Federal Partnership Reply at 4; City of NY OTI Reply at 2; MISEN Comments at 3 (“Shared resources should be incentivized in Pilot program participants. Applicants should be encouraged to be creative in launching partnerships with other agencies and groups for the benefit of the greater good.”); Microsoft Comments at 3; Questar Comments at 1.

²⁶⁸ *Cybersecurity NPRM*, 2023 WL 8605080 at *13, para. 34.

²⁶⁹ *Id.*

to take actions to improve their cybersecurity posture.²⁷⁰ Conversely, we also asked commenters whether a school or library should be required to provide a certification or other confirmation that, absent participation in the Pilot, it does not have the resources to start implementing CISA's K-12 cybersecurity recommendations.²⁷¹ Commenters generally agreed that the Pilot would most benefit from including participants with a mix of cybersecurity expertise and varying cybersecurity postures.²⁷² With respect to how to ensure that under-resourced schools and libraries are able to meaningfully participate in the Pilot, commenters suggested that the FCC and USAC conduct early and detailed Pilot Program outreach,²⁷³ including providing technical and other assistance to those applicants who are likely to need it most.²⁷⁴ No commenters addressed the proposal that a school or library be required to provide a certification or other confirmation that it does not have the resources to start implementing the CISA K-12 cybersecurity recommendations absent selection for the Pilot. CTIA recommended that applicants be required to disclose funding from non-Pilot sources and explain how Pilot Program funding would complement, but not duplicate, the applicant's existing cybersecurity tools and support.²⁷⁵

69. Along these same lines, we also asked whether participation in the Pilot should be limited to those schools and libraries that have faced or are facing particular types of cybersecurity threats or attacks.²⁷⁶ In particular, we sought comment on the types of cybersecurity threats and attacks encountered by schools and libraries and how they should be evaluated, if at all, when selecting Pilot participants²⁷⁷ and similarly, whether an applicant's previous history of cybersecurity threats or attacks should be taken into consideration as part of the Pilot Program selection process.²⁷⁸ We also asked what role, if any, cybersecurity risk, geographic or socioeconomic factors, staffing constraints or financial need, or technical challenges should play in Pilot participant selection.²⁷⁹ Commenters urged the Commission to forgo reliance on whether an applicant has faced or is facing a particular type of cybersecurity threat or attack, an applicant's previous history with cybersecurity threats or attacks, or the frequency with which

²⁷⁰ *Id.*

²⁷¹ *Id.*

²⁷² See, e.g., CIS Comments at 6 (stating that the Pilot should not be limited to institutions that have suffered cyberattacks); Palo Alto Networks Comments at 2 (stating that current cybersecurity posture should not be an initial decision factor in the application process); SECA Reply at 3 (stating that schools and libraries may not be sophisticated enough to have a current cybersecurity plan); WI DPI Reply at 3 (limiting the Pilot to only applicants with advanced cybersecurity will narrow the pool and will not be representative of all E-rate applicants).

²⁷³ See, e.g., ALA Comments at 5-6 ("A critical issue in this regard is that assistance from USAC must start early in the application process, well before the actual application filing deadline. Some may argue that such outreach compromises a desire to maintain a more 'hands-off' objective process to select participants. But we say that for under-resourced applicants it is more important to get the right applicants and to do what is needed to ensure this, vs. a more independent selection process.").

²⁷⁴ See, e.g., ACSA-CSBA Federal Partnership Reply at 4-5 (urging the Commission to direct USAC to provide technical assistance in advance of the application period); ALA Comments at 5 (stating that without considerable support from USAC, the Commission will likely get a smaller number of applications from small libraries or will get applications of lower quality when compared to larger libraries); City of NY OTI Reply at 2 (recommending the provision of "readily accessible support resources to assist with the application process"); WI DPI Reply at 3 (agreeing with ALA that the Commission should require USAC to provide direct, hands-on support for smaller applicants).

²⁷⁵ CTIA Reply at 10.

²⁷⁶ *Cybersecurity NPRM*, 2023 WL 8605080 at *14, para. 35.

²⁷⁷ *Id.*

²⁷⁸ *Id.*, para. 36.

²⁷⁹ *Id.*

an applicant has experienced a cybersecurity incident as drivers of Pilot participant selection.²⁸⁰ Commenters were generally supportive of selecting and prioritizing applicants who face geographic, socioeconomic, financial, and other challenges, or who serve low-income and under-resourced populations.²⁸¹

70. We agree with commenters who support using a broad and objective set of evaluation factors to select Pilot Program participants. After reviewing the record, we conclude that the Pilot Program goals will best be served by directing funding to: (1) the neediest eligible schools, libraries, and consortia who will benefit most from cybersecurity funding (i.e., those at the highest discount rate percentages); (2) as many eligible schools, libraries, and consortia as possible; (3) those schools, libraries, and consortia that include Tribal entities; and (4) a mix of large and small and urban and rural, schools, libraries, and consortia. Selecting Pilot participants in this manner is consistent with our standard practice in E-Rate of prioritizing funding for the most resource-constrained schools, libraries, and consortia and is logical to apply here. It also achieves our goal of ensuring that the Pilot contains a diverse cross-section of applicants with differing cybersecurity postures and experiences. We direct the Bureau to weigh these considerations during the Pilot application review and participant selection processes.

71. We have considered commenters' suggestions regarding the potential application factors and have determined that the considerations outlined above will provide us with meaningful information with which we can select Pilot projects and participants. We acknowledge that commenters suggested we weigh other considerations, but we believe that the considerations listed above best enable us to select high-quality projects that will meet Pilot goals and target Pilot funding to the schools and libraries with the greatest need. Further, each of these considerations play an important part in helping us better understand the relationship of certain cybersecurity services and equipment to the overall cybersecurity health and posture of entities in varying contexts and with varying levels of cybersecurity expertise.

72. We direct the Bureau and USAC to review the applications and select Pilot projects and participants based on applicants' responses, weighing the considerations listed above,²⁸² in combination with the applicants' category one discount rates.²⁸³ In selecting Pilot projects and participants, limited initial screening prerequisites should be employed, but the Bureau and USAC may exclude applications

²⁸⁰ See, e.g., ActZero Comments at 5; ADI Comments at 4; CIS Comments at 6-7; CrowdStrike Comments at 5; Cybersecurity Coalition/ITI Comments at 3; Dallas ISD Comments at 4; LTC Reply at 3; Palo Alto Networks Comments at 2; Rubrik Comments at 3; WI DPI Reply at 3; Zscaler Reply at 2.

²⁸¹ ACSA-CSBA Federal Partnership Reply at 4-5 (encouraging the Commission to provide technical assistance to help under-resourced school districts participate in the Pilot and expressing concern that Pilot funding may disproportionately be awarded to applicants with greater resources); ALA Comments at 5 (encouraging the Commission to assist schools in smaller, rural communities); CoSN et al. December 13 *Ex Parte* Letter at 2 (encouraging the Commission to prioritize high-need schools and libraries consistent with E-Rate but also ensure that applicants of all sizes are eligible to participate Pilot); CoSN et al. January 29 Comments at 14 (encouraging the Commission to prioritize the inclusion of the highest need schools and libraries consistent with E-Rate and select a higher amount of the most impoverished applicants that request to participate in the Pilot); EdGroup Reply at 5 (encouraging the Commission to prioritize the highest need schools and libraries consistent with E-Rate by oversampling high financial need schools and libraries within each of the Pilot's target demographics); Rochester Institute of Technology (RIT) *Ex Parte* Letter at 3 (explaining that "many districts with budget constraints often are forced to hire teachers who are also required to take on part-time IT administrator roles" and "[w]ith only 24 hours in a day, it is challenging for them to do both roles well"); Quilt Reply at 2 (explaining that "while K-12 has the experience and expertise available to implement cybersecurity protections, the human, technological, and financial resources needed to do so are currently spread too thin").

²⁸² See *supra* para. 63.

²⁸³ See *supra* para. 29.

that are incomplete or do not meet Pilot Program eligibility standards.²⁸⁴ The Bureau and USAC should also work to ensure that, to the extent feasible and based on qualified applications, Pilot Program funding is not heavily concentrated in any particular state or region, and instead is distributed widely throughout the United States, including the District of Columbia and the U.S. territories, with an emphasis on funding proposed Pilot projects that include low-income and Tribal applicants.²⁸⁵ We decline to require Pilot applicants or participants to join information-sharing organizations like MS-ISAC, though we highly encourage all applicants or participants to do so.²⁸⁶ In choosing participants for the Pilot, the Bureau and USAC should also consider the cost of the proposed Pilot project compared to the total Pilot Program cap. This does not mean that proposed Pilot projects should be evaluated based on their total project budgets, but, rather, the Bureau and USAC should seek to select an array of Pilot projects with varying costs that can all be funded within the Pilot Program's cap. In addition, the Bureau and USAC should seek to select an array of Pilot participants with differing levels of exposure to cybersecurity threats and attacks, and ensuring that the selected Pilot participants include schools and libraries that currently have limited cybersecurity protections.²⁸⁷ Although applicants' responses will be considered consistent with the considerations listed above when evaluating proposed Pilot projects, the considerations are not determinative of whether a Pilot project will be selected because we recognize that each proposed Pilot project will have its own unique strengths and potential challenges. Our goal is to ensure the selection of proposed Pilot projects that present a well-defined plan for meeting the cybersecurity needs of specific schools, libraries, or consortia, with a particular emphasis on resource-challenged and Tribal applicants and the three Pilot Program goals discussed in greater detail later in this Report and Order.

73. *Prioritization.* In the event that the number of FCC Form 484 applications received exceeds the number of projects that can be funded through the Pilot, we direct the Bureau and USAC to prioritize the selection of Pilot participants by considering their funding needs in combination with the funding needs of the same type(s) of applicants.²⁸⁸ As previously discussed, under the rules for the Pilot, eligible schools and libraries may receive discounts ranging from 20 percent to 90 percent of the pre-discount price of eligible services and equipment, based on indicators of need.²⁸⁹ Schools and libraries in areas with higher percentages of students eligible for free or reduced-price lunch through the National School Lunch Program (or a federally approved alternative mechanism) qualify for higher discounts for eligible services than those with lower levels of eligibility for such programs.²⁹⁰ Our priority rules for the Pilot provide that funds shall be allocated first to requests for support at the 90 percent discount rate.²⁹¹

(Continued from previous page)

²⁸⁴ See *Cybersecurity NPRM*, 2023 WL 8605080 at *1, *8-10, *13, *15, *19, *22, paras. 2, 19-24, 34, 37-38, 47, 56; see also 47 CFR § 54.2002 (Eligible Recipients). Other prerequisites that the Bureau may employ during initial screening are whether an applicant indicates a willingness to follow Pilot Program rules and procedures (including Pilot reporting requirements) or will be unable to pay for Pilot-ineligible items or its share of the cost of Pilot-eligible items.

²⁸⁵ See, e.g., CoSN et al. January 29 Comments at 14 (“Additionally, the Commission should seek to ensure the group of pilot participants reflect diverse characteristics, such as being located throughout the country, in rural and urban areas, and range in size from small to large organizations.”).

²⁸⁶ See, e.g., CIS Comments at 8 (“The FCC should require Pilot participants to seek no-cost MS-ISAC membership as it can expose schools and libraries to a burgeoning community of their peers and experts in the cybersecurity industry that would assist in improving their cybersecurity maturity and expose them to no and low-cost solutions that are available to them.”).

²⁸⁷ We will not eliminate proposed Pilot projects based on an applicant's cybersecurity maturity or posture, but, rather, we will consider an applicant's cybersecurity maturity and posture, including whether the applicant has successfully developed or otherwise implemented a cybersecurity and/or incident response plan, to select a variety of Pilot projects.

²⁸⁸ See *supra* para. 23.

²⁸⁹ See 47 CFR § 54.2007.

²⁹⁰ See 47 CFR § 54.2007(b)(1)-(2), (c); see also 47 CFR § 54.505(b)(1)-(2), (c).

To the extent funds remain after discounts are awarded to entities eligible for a 90 percent discount, the rules Pilot rules provide that the Administrator shall continue to allocate funds for discounts to participants at each descending single discount percentage.²⁹² The Pilot rules also provide that if sufficient funds do not exist to grant all requests within a single discount percentage, the Administrator shall allocate the remaining support on a pro rata basis over that single discount percentage level.²⁹³ Funding for libraries will be prioritized based on the percentage of free and reduced lunch eligible students in the school district that is used to calculate the library's discount rate.²⁹⁴ Funding for individual schools that are not affiliated financially or operationally with a school district, such as private or charter schools that apply individually, will be prioritized based on each school's individual free and reduced student lunch eligible population.²⁹⁵ For those schools and libraries selected as Pilot participants that do not participate in the E-Rate program, their discount rate will be calculated based on indicators of need as outlined above and their funding prioritized consistent with the prioritization rules for the Pilot described in this paragraph.²⁹⁶ This prioritization gives applicants serving the highest poverty populations first access to funds while allowing us to fund within a discount band even where funding is not sufficient to reach all participants in the band.²⁹⁷ This system of prioritization is also consistent with Fortinet's recommendation that "the Commission . . . consider a tiered prioritization scheme for Pilot support requests"²⁹⁸ and the recommendations of commenters that those schools, libraries, and consortia with a higher discount rate receive funding ahead of those who are entitled to a lower discount rate.²⁹⁹

74. *Part Two Application Information.* For the second part of the FCC Form 484 application, we direct the Bureau and USAC to collect more detailed cybersecurity information from applicants who are selected to participate in the Pilot Program. As previously noted, we have bifurcated the application into two parts, seeking a general level of cybersecurity information from applicants and leaving the more detailed cybersecurity reporting for the selected Pilot participants. This has the benefit of limiting the amount of sensitive cybersecurity information that will be provided by applicants at the application stage and will reduce the initial application burden. We require Pilot participants to provide such information to help establish a baseline that will enable us to effectuate the Performance Goals and Data Reporting discussed in section III.I. Applicants should be aware, that, if selected to participate in the Pilot Program, they will be required to provide the following additional (or substantially similar) cybersecurity information, as applicable, and may be removed from the Pilot Program if they refuse or fail to do so:

- Information about correcting known security flaws and conducting routine backups,³⁰⁰

²⁹¹ See 47 CFR § 54.2001(d).

²⁹² *Id.*

²⁹³ *Id.*

²⁹⁴ See 47 CFR § 54.2007(b)(2); see also 47 CFR § 54.505(b)(2).

²⁹⁵ See 47 CFR § 54.2007(b)(1); 47 CFR § 54.505(b)(1).

²⁹⁶ 47 CFR § 54.2001(d).

²⁹⁷ We disagree with MISEN that consideration of "other factors, such as the level of impact an[] application will have" is warranted for the Pilot Program. Letter from Merri Lynn Colligan, Director of MISEN, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 23-234, at 3 (filed May 30, 2024) (MISEN May 30, 2024 *Ex Parte* Letter). As a responsible steward of the limited universal service funds, and consistent with broad record support for prioritizing support for the neediest applicants, we make consortia eligible to apply for and participate in the Pilot Program and prioritize applicants according to their varying levels of need as reflected by their calculated discount rates.

²⁹⁸ Fortinet Reply at 5.

²⁹⁹ See *supra* para. 67.

³⁰⁰ *Cybersecurity NPRM*, 2023 WL 8605080 at *15, para. 37.

developing and exercising a cyber incident response plan,³⁰¹ and any cybersecurity changes or advancements the participant plans to make outside of the Pilot-funded services and equipment.³⁰²

- A description of the Pilot participant’s current cybersecurity posture, including how the school or library is currently managing and addressing its current cybersecurity risks through prevention and mitigation tactics.³⁰³
- Information about a participant’s planned use(s) for other federal, state, or local cybersecurity funding (i.e., funding obtained outside of the Pilot).³⁰⁴
- Information about a participant’s history of cybersecurity threats and attacks within a year of the date of its application; the date range of the incident; a description of the unauthorized access; a description of the impact to the K-12 school or library; a description of the vulnerabilities exploited and the techniques used to access the system; and identifying information for each actor responsible for the incident, if known.³⁰⁵
- A description of the specific Education Department or CISA cybersecurity best practices recommendations that the participant has implemented or begun to implement.³⁰⁶
- Information about a participant’s current cybersecurity training policies and procedures, such as the frequency with which a participant trains its school and library staff and, separately, information about student cyber training sessions, and participation rates.³⁰⁷
- Information about any non-monetary or other challenges a participant may be facing in developing a more robust cybersecurity posture.³⁰⁸

75. *Instructions for Filing Applications.* As previously discussed, in order to facilitate the application process, we plan to provide an application titled “Schools and Libraries Cybersecurity Pilot Program Application” (FCC Form 484) that applicants must use when submitting their project proposals to the Commission. Applicants will be required to complete each section of the first part of the application and make the required certifications. The applications for the Pilot Program must be submitted through the Pilot portal on USAC’s website during the announced FCC Form 484 application filing window discussed below. We direct the Bureau to issue a Public Notice subsequent to the release of this Report and Order that specifies the effective date of the Pilot Program rules and the filing window dates for submitting Pilot applications.³⁰⁹ The Public Notice must also include details on how to submit an application using the Pilot portal on USAC’s website. In response to concerns about the security and confidentiality of cybersecurity information provided as part of the Pilot, as stated previously, we are only requiring more general information at the application stage of the Pilot. The more detailed, cybersecurity-

³⁰¹ *Id.* at *9, para. 22.

³⁰² *Id.* at *10, para. 24.

³⁰³ *Id.* at *11, para. 27.

³⁰⁴ *Id.* at *15, para. 38.

³⁰⁵ *Id.* at *9, *11, *14, paras. 21, 27, 36.

³⁰⁶ *Id.* at *13, *15, paras. 34, 37-38.

³⁰⁷ *Id.* at *9, para. 21.

³⁰⁸ *Id.* at *14-15, paras. 36, 38.

³⁰⁹ The Bureau should ensure that the deadlines for Pilot Program applicants and participants incorporate time for training and preparation, and take into account resource limitations due to school breaks. *See, e.g.,* SECA May 29, 2024 *Ex Parte* Letter at 3-4 (providing a proposed filing schedule and encouraging the Commission to ensure that the Pilot Program deadlines occur after the 2024-2025 school year begins).

related information will only be provided by Pilot participants.³¹⁰ As noted above, some commenters have expressed concerns that this type of information is sensitive and could be used by malicious cybersecurity actors for nefarious purposes. We agree and find that the cybersecurity-related information that is being requested and provided in the FCC Form 484 constitutes sensitive business information and includes trade secrets. Accordingly, we will treat it as presumptively confidential under our rules and will withhold it from public inspection.³¹¹ We further note that FCC Form 484 data will be protected by security protections built into USAC's Pilot portal.³¹²

76. *Instructions for Establishing Application Schedule and Reviewing Applications.* We delegate to the Bureau the authority to establish an application schedule consistent with the direction provided in this Report and Order; review Pilot FCC Form 484 applications; and select Pilot projects and participants, doing so in an efficient and expedited manner. We further direct the Bureau to consult with OEA, PSHSB, OMD, and the Office of General Counsel (OGC), as needed, regarding the review of Pilot applications and selection of participants.³¹³ After selecting the Pilot participants, we direct the Bureau to announce its selections through a Public Notice that will provide further detail about the Pilot Program requirements, including providing additional information and instruction regarding Pilot requirements for submitting the second part of the Form 484 application, competitive bidding, submitting requests for funding, and invoicing, as well as the Pilot-specific data and metrics reporting requirements discussed herein and the format for those reporting and metrics requirements.³¹⁴

77. *Establishing an Application Filing Window.* To facilitate an efficient and equitable application review process, we direct the Bureau to establish an application filing window, after which it will review applications from all eligible applicants by weighing the considerations discussed above. Establishing a single filing window was well received by those commenters who addressed the proposal³¹⁵ and opening a single window will allow the Bureau to review all applications before making selections. We expect that adopting a single FCC Form 484 application filing window and proceeding in this manner will assist with our goal of selecting a diverse cross-section of Pilot participants with a particular focus on the under-resourced applicants who are most in need of cybersecurity funding. To further assist under-resourced applicants, we direct the Bureau and USAC to offer dedicated training and office hours for applicants and participants who are less experienced with cybersecurity services and equipment, or with the E-Rate and ECF program forms and processes.

³¹⁰ A participant's failure to submit the more detailed, cybersecurity-related information required by the second part of the FCC Form 484 application will lead to removal from the Pilot.

³¹¹ See 47 CFR § 0.457(d).

³¹² See *supra* para. 61, note 230.

³¹³ See, e.g., Dallas ISD Comments at 4 (recommending that the Commission "design the application and select evaluators with a strong competency in cybersecurity").

³¹⁴ Generally speaking, the rules for this Pilot Program will become effective 30 days from publication in the Federal Register. However, certain rules contain information collection requirements that will not be effective until approved by the Office of Management and Budget (OMB). We direct the Bureau to announce the effective date of those rules upon approval by OMB. We also direct the Bureau to provide an explanation of the selection process when announcing participant selections and to explain why certain applicants were selected and others were not. The Bureau should ensure that any deadlines announced take into account any school or library resource limitations due to school breaks and the timing of E-Rate program filing windows. See, e.g., SECA May 29, 2024 *Ex Parte* Letter at 3-4 (encouraging the Commission to ensure that the Pilot Program deadlines occur after the 2024-2025 school year begins and reminding the Commission that "[d]uring the summer recess period when school is not in session, school personnel may not be working or otherwise available to work on pilot forms"). We expect the Public Notice to include information about what additional communications participants should expect regarding the review processes for the second part of the FCC Form 484. See SECA May 29, 2024 *Ex Parte* Letter at 4 (seeking clarification on the Bureau's review process for the second part of the FCC Form 484).

³¹⁵ See, e.g., CoSN et al. August 7 *Ex Parte* Letter at 1; Fortinet Reply at 3.

F. Competitive Bidding, Requests for Services, and Invoicing and Reimbursement Processes

78. We next adopt competitive bidding processes and rules for the Pilot Program that mirror the E-Rate program to ensure that the limited Pilot funds are used for the most cost-effective eligible services and equipment; the integrity of the Pilot Program is protected; and potential waste, fraud, and abuse is prevented. We direct the Bureau and USAC to model the Pilot Program requests for services, invoicing, and reimbursement processes and forms on existing E-Rate and ECF program processes and forms to the extent possible for the Pilot Program, consistent with record support.³¹⁶ In particular, we expect the Bureau and USAC to leverage the following FCC forms for the Pilot that will mirror existing E-Rate and ECF forms: (1) FCC Form 470 (Description of Services Requested and Certification Form); (2) FCC Form 471 (Description of Services Ordered and Certification Form); (3) FCC Form 472 (Billed Entity Applicant Reimbursement (BEAR) Form); and (4) FCC Form 474 (Service Provider Invoice (SPI) Form).³¹⁷ We require Pilot participants and service providers to make certain certifications on Pilot Program forms to protect the integrity of the Pilot.³¹⁸ We also require them to submit invoices with their reimbursement requests that support the amounts requested and approved in their Pilot FCC Form 471 applications. By modeling the Pilot processes and forms on existing E-Rate and ECF processes and forms, we expect to save Pilot participants time needed to familiarize themselves with the new forms and reduce administrative cost and burden.

1. Competitive Bidding Requirements

79. As in the E-Rate program, we adopt competitive bidding processes and rules for the Pilot Program to ensure that the limited Pilot funds are used for the most cost-effective eligible services and equipment, and to protect the integrity of the Pilot. Competitive bidding is a cornerstone of several USF programs, including the E-Rate and Connected Care Pilot programs, and is critical to ensuring that applicants obtain the most cost-effective offering available.³¹⁹ Currently, under the E-Rate program rules, to obtain support an applicant must first conduct a competitive bidding process and comply with the Commission's competitive bidding rules.³²⁰ Applicants begin the competitive bidding process by filing a completed E-Rate FCC Form 470 with USAC.³²¹ USAC, in turn, posts the form on its website for potential competing service providers to review and submit bids.³²² An applicant must wait at least 28

³¹⁶ See, e.g., IOB Comments at 5-6 (advocating for a certification approach in the application process that is similar to how E-Rate certifications are currently handled); Lumen Reply at 6 (agreeing that "the Cybersecurity Pilot should generally mirror the existing E-Rate Program rules, forms, and processes"); NCTA Comments at 5 (agreeing with the Commission's proposal that the Pilot Program should, for the most part, mirror the existing E-Rate rules); see also CoSN et al. August 7 *Ex Parte* Letter at 2 ("The application process must . . . align whenever possible with tools and concepts that are familiar to E-rate applicants.").

³¹⁷ Although the Pilot Program will leverage the FCC forms from the E-Rate and ECF programs, the Pilot forms will have their own distinct prefixes or identifiers to distinguish them from the E-Rate and ECF forms.

³¹⁸ See, e.g., 47 CFR §§ 54.2005(c)(2)(i)-(xiii), 54.2006(a)(2)(i)-(xvi), 54.2008(a)(1)(i)-(xiii), 54.2008(a)(2)(i)-(xiii).

³¹⁹ See *Universal Service First Report and Order*, 12 FCC Rcd at 9029, para. 480; see also *Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District*, CC Docket No. 02-6, Order, 18 FCC Rcd 26407, 26417, para. 22 (2003) (explaining that competitive bidding for services eligible for discount is a cornerstone of the E-rate program); *Connected Care Pilot Order*, 35 FCC Rcd at 3411, para. 75 (adopting competitive bidding requirements for the Connected Care Pilot Program); see also *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Report and Order, 34 FCC Rcd 7335, 7410, para. 161 (2019) (*2019 RHC Report and Order*) (codifying the requirement for "fair and open" competitive bidding processes in the Rural Health Care Program).

³²⁰ 47 CFR § 54.503.

³²¹ *Id.*

³²² *Id.* § 54.503(c).

days from the date on which its E-Rate FCC Form 470 is posted on USAC's website before entering into a signed contract or other legally binding agreement with a service provider and submitting an E-Rate FCC Form 471 to seek funding for selected services and equipment.³²³ The E-Rate FCC Form 470 must specify and provide a description of the eligible services and equipment requested with sufficient detail to enable potential service providers to submit responsive bids.³²⁴

80. In the *Cybersecurity NPRM*, we proposed a competitive bidding process and rules for Pilot participants that mirror the existing E-Rate competitive bidding process and rules.³²⁵ Because of the structural similarities between the E-Rate program and the Pilot, the proven effectiveness of the E-Rate processes and rules, and the reduced compliance burden for Pilot participants who are already familiar with existing E-Rate requirements, we conclude that our proposal is reasonable and we adopt it here. To begin, we adopt a Pilot FCC Form 470, modeled after the E-Rate form, that Pilot participants will use to describe their desired Pilot-eligible services and equipment and initiate the competitive bidding process.³²⁶ Likewise, we adopt competitive bidding requirements modeled on section 54.503 of the Commission's rules, with which Pilot participants must comply to ensure they conduct an open and fair competitive bidding process.³²⁷ This includes, among other things, the requirement that a Pilot participant must wait at least 28 days from the date the Pilot FCC Form 470 is posted on USAC's website before entering into a legally binding agreement or contract with a service provider and must submit a Pilot FCC Form 471 to seek funding for Pilot-eligible services and equipment.³²⁸ It also includes the requirement that before entering into an agreement or contract with a service provider(s), a Pilot participant carefully consider all bids submitted and select the most cost-effective service offering with price as the primary (i.e., most heavily-weighted) factor in the vendor selection process.³²⁹ Finally, it includes a restriction on the receipt of gifts³³⁰ and a requirement that the competitive bidding process be conducted in a fair and open manner (i.e., all potential service providers have access to the same information and are treated in the same manner throughout the entire competitive bidding process).³³¹

81. Because the competitive bidding process is essential to ensuring that Pilot participants obtain the most cost-effective eligible services and equipment, protecting program integrity, and preventing potential waste, fraud, and abuse in the Pilot, we decline CCSD's recommendation that applicants with existing contracts for cybersecurity solutions be allowed to request Pilot Program funding

³²³ *Id.* §§ 54.503(c)(4), 54.504(a). The rule states that USAC must send confirmation of the posting to the entity requesting service, which includes the date after which the requestor may sign a contract with its chosen provider(s), and that the entity must wait at least four weeks from the date on which its description of services is posted before making commitments with the selected providers of services. *Id.* § 54.503(c)(4). USAC's website calls this the "28-Day Waiting Period" and reminds applicants that state or local procurement regulations may require a longer waiting period or impose additional requirements. See USAC, *28-Day Waiting Period*, <https://www.usac.org/e-rate/applicant-process/competitive-bidding/28-day-waiting-period/> (last visited June 6, 2024).

³²⁴ 47 CFR § 54.503(c)(1)(i)-(ii).

³²⁵ *Cybersecurity NPRM*, 2023 WL 8605080 at *19, para. 47 and n.123.

³²⁶ Consistent with the E-Rate program rules, Pilot participants are not required to issue a Request for Proposals unless mandated by state or local procurement laws. See SECA May 29, 2024 *Ex Parte* Letter at 7.

³²⁷ See 47 CFR § 54.2005.

³²⁸ Compare 47 CFR § 54.2005(c)(4) with 47 CFR § 54.503(c)(4).

³²⁹ Compare 47 CFR § 54.2005(c)(2)(viii) with 47 CFR § 54.503(c)(2)(ii)(B). As explained by E-Rate program rule 54.511, "[i]n determining which service offering is the most cost-effective, entities may consider relevant factors other than the pre-discount prices submitted by providers, but price should be the primary factor considered." 47 CFR § 54.511(a).

³³⁰ Compare 47 CFR § 54.2005(d) with 47 CFR § 54.503(d).

³³¹ Compare 47 CFR § 54.2005(a) with 47 CFR § 54.503(a).

to cover the cost of those contracts and be exempt from any competitive bidding requirements.³³² Likewise, we decline to provide an exemption to competitive bidding for costs that Pilot participants may be currently cost-allocating in E-Rate funding requests for advanced firewall services.³³³ Similarly, because an open and fair competitive bidding process hinges on all bidders being on equal footing, we also decline E-Rate Central's proposal that applicants be allowed to conduct their competitive bidding processes before submitting their FCC Form 484 applications and be permitted to work alongside their selected service providers to develop their proposed Pilot projects.³³⁴ Finally, to enable participants to select the services and equipment that best meets their needs, we clarify, as SECA requests, that participants are permitted to require that the services or equipment to be purchased are interoperable with and/or compatible with existing services and equipment that have already been purchased.³³⁵

82. We do, however, establish a limited exemption to competitive bidding for Pilot participants who may be eligible to purchase services and equipment from master services agreements (MSAs) or their equivalent. Specifically, Pilot participants will not be required to seek competitive bids when seeking support for services and equipment purchased from MSAs negotiated by federal, state, Tribal, or local governmental entities on behalf of such Pilot participants, if such MSAs were awarded pursuant to the E-Rate Form 470 process, as well as applicable federal, state, Tribal, or local competitive bidding requirements.³³⁶ We agree with SECA that these MSAs or state master contracts are "efficient contract vehicles" and reflect "cost-effective solutions for different components and different manufacturers."³³⁷ Pilot participants will be required to use the mini-bid process if required by the relevant MSA or state master contract.³³⁸ We find that this exemption, which was similarly included in the Connected Care Pilot Program,³³⁹ will enable Pilot participants to benefit from competitively bid state master contracts and MSAs, and in so doing, will streamline the competitive bidding process and minimize the burden on Pilot participants.

2. Requests for Services and Equipment Process

83. As proposed in the *Cybersecurity NPRM*, we adopt the Pilot FCC Form 471, modeled after the E-Rate FCC Form 471, for Pilot participants and their service provider(s).³⁴⁰ In the E-Rate

(Continued from previous page)

³³² CCSD Comments at 1.

³³³ See SECA May 29, 2024 *Ex Parte* Letter at 2 (asking the Commission to allow a limited competitive bidding exemption to permit Pilot participants that bid a firewall that includes advanced/next generation features in the E-Rate FY 2024 procurement process to rely on their E-Rate firewall procurement and contract signed for FY 2024 when seeking Pilot funding for those advanced/next generation features); see also MISEN May 30, 2024 *Ex Parte* Letter at 2-3 (asking the Commission to allow Pilot participants to rely on recently procured FY 2024 contracts). We decline to adopt this exemption, as the cost-allocated components have not been subject to the E-Rate competitive bidding rules.

³³⁴ E-Rate Central Comments at 2-3.

³³⁵ See SECA May 29, 2024 *Ex Parte* Letter at 6. In doing so, however, and consistent with the competitive bidding requirements in E-Rate, Pilot participants may not include a particular manufacturer's name, brand, product, or service in a Pilot FCC Form 470 or RFP unless they also use the words "or equivalent" in such a description. See generally *Request for Review of a Decision of the Universal Service Administrator by Queen of Peace High School*, CC Docket No. 02-6, 26 FCC Rcd. 16466 (WCB Dec. 7, 2011) (concluding that allowing E-Rate applicants to reference specific vendors in their Forms 470 or RFPs "poses a risk to the competitive bidding process").

³³⁶ See 47 CFR § 54.2005(f).

³³⁷ SECA May 29, 2024 *Ex Parte* Letter at 2; see also MISEN May 30, 2024 *Ex Parte* Letter, at 2 (requesting an exemption for "master contracts which were posted, reviewed and approved during the FY2024 E-Rate cycle").

³³⁸ See USAC, *State Master Contracts*, <https://www.usac.org/e-rate/applicant-process/selecting-service-providers/state-master-contracts/> (last visited June 6, 2024) (describing the mini-bid evaluation process).

³³⁹ See, e.g., *Connected Care Pilot Order*, 35 FCC Rcd at 341-13, para. 76.

program, applicants file an FCC Form 471 to request discounts on eligible services and equipment for the upcoming funding year.³⁴¹ The E-Rate FCC Form 471 requires detailed descriptions of the services and equipment requested, including the costs of and service dates for the services and equipment; the selected service provider(s); and certifications regarding compliance with program rules.³⁴² Applicants must wait until the Allowable Contract Date (ACD), which is 28 days after the E-Rate FCC Form 470 is certified and submitted to USAC, to certify and submit their E-Rate FCC Forms 471.³⁴³ Once an applicant certifies and submits its E-Rate FCC Form 471, USAC issues a Receipt Acknowledgment Letter (RAL) to both the applicant and its selected service provider(s).³⁴⁴ Following the issuance of the RAL, and after USAC conducts its program integrity assurance (PIA) review process, USAC issues a Funding Commitment Decision Letter (FCDL) to both the applicant and the selected service provider(s), at which point they may begin to invoice after the receipt or delivery of the requested eligible services and/or equipment.³⁴⁵

84. Similar to the E-Rate program, Pilot participants must file a Pilot FCC Form 471 to request discounts on eligible services and equipment.³⁴⁶ As with the E-Rate form, the Pilot FCC Form 471 will include information on the recipients of services and equipment and the selected service provider(s); detailed descriptions of the services and equipment requested, including their costs and service dates; and certifications regarding compliance with Pilot rules.³⁴⁷ Pilot participants will be required to wait until the ACD to certify and submit the Pilot FCC Form 471.³⁴⁸ Once a Pilot participant certifies and submits the Pilot FCC Form 471, USAC will provide the Pilot participant an opportunity to correct any errors on the form, through a RAL or similar process, after which USAC will issue an FCDL. Pilot participants will submit Pilot FCC Form(s) 471 to cover the full Pilot project, and will be allowed to submit service and equipment substitution change requests, if needed, during the three-year Pilot.

85. We direct the Bureau and USAC to announce and open a Pilot FCC Form 471 application filing window to speed the availability of funds to the selected Pilot participants.³⁴⁹ During this application filing window, selected Pilot participants may submit their Pilot FCC Form(s) 471 to request eligible equipment and services that are needed to implement their Pilot project through the online system implemented by USAC.³⁵⁰ As we are adopting forms, processes, and procedures that are used in the E-

³⁴⁰ *Cybersecurity NPRM*, 2023 WL 8605080 at *20, para. 49.

³⁴¹ *See generally* 47 CFR § 54.504. Applicants also file an FCC Form 471 for the ECF program. *See generally* 47 CFR § 54.1710.

³⁴² 47 CFR § 54.504; *see also* E-Rate FCC Form 471, Description of Services Ordered and Certification Form.

³⁴³ 47 CFR § 54.503(c)(4); *see also* USAC, *FCC Form 471 Filing*, <https://www.usac.org/e-rate/applicant-process/applying-for-discounts/fcc-form-471-filing/> (last visited June 6, 2024) (explaining that an applicant may not certify the FCC Form 471 before the ACD, which is 28 days after its FCC Form 470 is submitted and certified).

³⁴⁴ *See* USAC, *FCC Form 471 Filing*, <https://www.usac.org/e-rate/applicant-process/applying-for-discounts/fcc-form-471-filing/> (last visited June 6, 2024) (explaining that after the FCC Form 471 has been certified, USAC issues a RAL to both the applicant and the selected service provider(s)).

³⁴⁵ *See id.* (explaining that after USAC has reviewed the funding request(s) included in the FCC Form 471 and issued the RAL, it issues an FCDL to both the applicant and the selected service provider(s)).

³⁴⁶ *See generally* 47 CFR § 54.2006.

³⁴⁷ *Id.*

³⁴⁸ *Id.*, §§ 54.2005(c)(4); 54.2006(a)(2)(viii).

³⁴⁹ USAC announces a specific filing window each year for E-rate Forms 471. *See* USAC, *FCC Form 471 Filing*, <https://www.usac.org/e-rate/applicant-process/applying-for-discounts/fcc-form-471-filing/> (last visited June 6, 2024).

³⁵⁰ *Id.*, § 54.2006(d).

Rate and ECF programs, we expect that this application filing window process will be familiar to most of the selected Pilot participants. Pilot participants will have a three-year period from the date of their FCDL to receive and implement the services and equipment funded through the Pilot.³⁵¹ Pilot participants will be required to report on the progress of their Pilot projects and how the Pilot funding is being used to improve their cybersecurity postures throughout the three-year term, consistent with the annual reporting requirements discussed later in this Report and Order.³⁵² We further expect that using a Pilot FCC Form 471 application filing window will allow USAC to quickly size demand, review applications, and issue funding decisions, thereby allowing the flow of funding more quickly to Pilot participants. In the event that demand does not exceed available funds, we delegate authority to the Bureau to direct USAC to open additional Pilot FCC Form 471 application filing windows and to commit additional funding up to each Pilot participant's allotted budget. No Pilot participant will be allowed to request or receive more funding than what is calculated based on the per-Pilot participant budget rule.³⁵³

3. Invoicing and Reimbursement Process

86. *Invoicing.* Consistent with the E-Rate program, and pursuant to the *Second Report and Order*,³⁵⁴ we permit both Pilot participants and service providers to submit requests for reimbursement using the Pilot FCC Forms 472 and 474, respectively.³⁵⁵ We agree with those commenters who explain that allowing both participant and service provider invoicing options is the most efficient and direct way to provide funding to eligible schools and libraries.³⁵⁶ We conclude that, on balance, allowing both invoicing options for the submission of Pilot reimbursement requests is an efficient and effective way to ensure that participants are actually able to purchase Pilot-eligible services and equipment, and aligns most closely with the E-Rate program, which commenters support.³⁵⁷ Consistent with E-Rate program rules, Pilot participants must be permitted to select the method of invoicing.³⁵⁸ For administrative simplicity, Pilot participants must also specify on their Pilot FCC Form(s) 471 whether the participant or the service provider will be conducting the invoicing for each funding request.³⁵⁹ As part of the reimbursement process, Pilot participants and service providers must provide the required certifications, along with any necessary documentation to support their requests.³⁶⁰ Requests for reimbursement must be

³⁵¹ *Id.*, § 54.2001(c).

³⁵² See 47 CFR § 54.2004(e); see also *infra* paras. 107-111 (discussing the Pilot data reporting requirements).

³⁵³ *Id.*, § 54.2001(b).

³⁵⁴ *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9217-18, paras. 44-47 (2003) (*Second Report and Order*) (finding that providing applicants with the right to choose the payment method is consistent with section 254 of the Act and could prevent cash flow problems associated with requiring schools and libraries to pay in full).

³⁵⁵ See 47 CFR § 54.514(c) (specifying that the applicant must be permitted to choose the invoicing method); see also *id.*, § 54.1711 (discussing the BEAR and SPI invoicing requirements in the ECF program).

³⁵⁶ See, e.g., ActZero Comments at 7-8 (stating that the invoicing method should be determined between Pilot participants and their service providers); Lumen Reply at 6-7 (advocating the flexibility for schools and libraries to select the BEAR process instead of requiring service providers to submit invoices).

³⁵⁷ See, e.g., Lumen Reply at 6 (agreeing that the Pilot should generally mirror existing E-Rate Program rules, forms, and processes); NCTA Comments at 5 (agreeing that the Pilot Program should, for the most part, mirror the existing E-Rate rules).

³⁵⁸ See, e.g., 47 CFR § 54.514(c); see also *Second Report and Order*, 18 FCC Rcd at 9217-18.

³⁵⁹ Unlike in the ECF program, the Pilot participant will not need to first obtain the consent of the service provider to use the service provider invoicing (SPI) method. See *Establishing Emergency Connectivity Fund to Close the Homework Gap*, WC Docket No. 21-93, Report and Order, 36 FCC Rcd 8696, 8742, para. 95 (2021) (*Emergency Connectivity Fund Report and Order*).

³⁶⁰ 47 CFR § 54.2008.

submitted to USAC within 90 days after the last date to receive service, and Pilot participants or service providers may request a one-time extension of the invoicing filing deadline, if the request is timely filed.³⁶¹

87. *Invoicing Documentation.* As in the ECF program, to protect the integrity of the Pilot and protect against potential waste, fraud, and abuse, we require Pilot participants and service providers to submit, along with their reimbursement requests, invoices detailing the items purchased.³⁶² Invoices must support the amounts requested and approved in the Pilot FCC Form 471 application. We disagree with Lumen Technologies, Inc. (Lumen) and NCTA that the submission of invoices with reimbursement requests would limit flexibility for Pilot participants and serves no purposes in this context.³⁶³ Rather, the submission of invoices with the Pilot FCC Forms 472/474 will help expedite the review of those requests and the corresponding disbursement of funds. Moreover, although the Pilot Program is not an emergency program, it is being conducted on an expedited basis, thus necessitating swift and efficient final invoicing decisions. While we will not require Pilot participants and service providers to submit other supporting documentation at the time they submit their Pilot request(s) for reimbursement, pursuant to our certifications and document retention requirements, all participants must certify receipt/delivery of eligible services and equipment and that only eligible services and equipment were invoiced,³⁶⁴ as well as retain and provide upon request by USAC, the Commission (including Commission staff) and its Office of Inspector General (OIG), or any other authorized federal, state, or local agency with jurisdiction over the entity, all records related to their Pilot FCC Forms 470, 471, and 472/474 (including, for example, competitive bidding documentation and contracts) for at least 10 years from the last date of service or delivery of equipment.³⁶⁵

G. USAC's Role as the Administrator of the Pilot Program

88. Consistent with the terms of the Memorandum of Understanding (MOU) between the Commission and USAC,³⁶⁶ and pursuant to the rules adopted today,³⁶⁷ we designate USAC as the Administrator of the Pilot Program. We will use USAC's services to review, process, and approve the Pilot FCC Forms 470, 471, 472, 474, 484, and 488, as well as recommend funding commitments, issue FCDLs, review requests for reimbursement and invoices, and payment of funds, as well as other administration-related duties.³⁶⁸ The one commenter that directly addressed the issue supported using

³⁶¹ *Id.*, § 54.2008(d), (e). We chose a 90 day deadline for requests for reimbursement, as opposed to the 120 day deadline in the E-Rate program, because of the limited nature of the Pilot Program and because Pilot participants may submit their requests at any point during the Pilot. A 90 day deadline will result in quicker reimbursement and more administrative certainty for participants who submit their reimbursement requests near or at the end of the three-year Pilot period, especially given the automatic one-time extension of the invoicing filing deadline provided to all Pilot participants, provided such extensions are timely filed. *Compare id. with* 47 CFR 54.514(a). *But see* SECA May 29, 2024 *Ex Parte* Letter at 6 (asking the Commission to adopt a 120-day deadline for the submission of Pilot invoices).

³⁶² *Id.* § 54.2008(b). *See id.* § 54.1711(b) (requiring detailed invoices in the ECF program).

³⁶³ Lumen Reply at 7; NCTA Comments at 5-6.

³⁶⁴ 47 CFR § 54.2008.

³⁶⁵ *Id.* §§ 54.2009; 54.2010. *See id.* § 54.516(a). We clarify that the 10-year record retention period applies to all documentation accumulated during the Pilot. *See* SHLB Coalition et. al. May 31, 2024 *Ex Parte* Letter.

³⁶⁶ *See generally* Memorandum of Understanding Between the Federal Communications Commission and the Universal Service Administrative Company (Dec. 19, 2018) (FCC/USAC MOU), <https://www.fcc.gov/sites/default/files/usac-mou.pdf>.

³⁶⁷ *See generally* 47 CFR § 54.2011.

³⁶⁸ *Id.*

USAC and its processes for the efficient and effective administration of the Pilot Program,³⁶⁹ and we agree that USAC's experience administering the E-Rate and Connected Care Pilot programs, along with the other federal universal service programs makes it uniquely situated to be the Administrator of the Pilot Program. In designating USAC as the Administrator of the Pilot Program we note that USAC may not make policy, interpret unclear statutes or rules relied upon to implement and administer the Pilot Program, or interpret the intent of Congress.³⁷⁰ In its administration of the Pilot Program, we also direct USAC to comply with, on an ongoing basis, all applicable laws and federal government guidance on privacy and information security standards and requirements such as the Privacy Act,³⁷¹ relevant provisions of the Federal Information Security Modernization Act of 2014,³⁷² NIST publications, and Office of Management and Budget guidance.

89. We notify Pilot participants, including their selected service providers that, similar to the E-Rate program and other USF programs, they shall be subject to audits and other investigations to evaluate their compliance with the statutory and regulatory requirements for the Pilot. USF Program audits have been successful in helping program applicants and participants improve compliance with the Commission's rules and in protecting the funds from waste, fraud, and abuse. We direct USAC to perform such audits pursuant to the Commission's and USAC's respective roles and responsibilities as set forth in the MOU and section 54.2011 of the Commission's rules.³⁷³ We are also mindful of the privacy concerns raised regarding providing personally identifiable information (PII) to Commission or USAC staff about individual students, school staff, or library patrons that may be collected as part of the cybersecurity measures implemented through the Pilot.³⁷⁴ While we do not anticipate that Pilot participants will need to share the PII of students, school staff, or library patrons in connection with their Pilot FCC forms, audits (or related compliance tools), or reporting, we note that the Commission, USAC, and any contractors or vendors will be required to abide by all applicable federal and state privacy laws. We also direct the Commission, USAC, and contractor/vendor staff to take into account the importance of protecting the privacy of students, school staff, and library patrons, to design requests for information from schools and libraries that minimize the need to produce information that might reveal PII, and to work with auditors to accept anonymized or deidentified information in response to requests for information wherever possible. If anonymized or deidentified information regarding the students, school staff, and library patrons is not sufficient for auditors' or investigative purposes, the auditors or investigators may request that the school or library obtain the consent of the parents or guardians, for students, and the consent of the school staff member or library patron to have access to PII or explore other legal options for obtaining PII. We additionally delegate to the Bureau and OMD, in consultation with OGC (and specifically the Senior Agency Official for Privacy) the authority to establish requirements for the Bureau's, USAC's, or any contractor's/vendor's collection, use, processing, maintenance, storage, protection, disclosure, and disposal of PII in connection with any Pilot FCC forms, audit (or other compliance tool), or reporting.

³⁶⁹ See ALA Comments at 4 ("[W]e . . . also agree that this process and other aspects of the Pilot Program should be administered by USAC.").

³⁷⁰ 47 CFR § 54.2011(c).

³⁷¹ 5 U.S.C. § 552a.

³⁷² The Federal Information Security Management Act of 2002 (FISMA), enacted as Title III, E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2946 (Dec. 17, 2002), was subsequently modified by the Federal Information Security Modernization Act of 2014 (Pub. L. No. 113-283, Dec. 18, 2014). As modified, FISMA is codified at 44 U.S.C. §§ 3551 *et seq.*

³⁷³ See generally FCC/USAC MOU; see also 47 CFR § 54.2011(h).

³⁷⁴ See, e.g., CoSN et al. January 29 Comments at 15-16 (urging the Commission to adopt an open data model for the Pilot that enables a variety of parties to independently analyze and use aggregated or anonymized data to support informed decision-making but recommending a layered data management strategy that could include, among other things, removing all PII from applicant's or participant's data).

H. Pilot Program Integrity Protections

90. We take seriously our obligation to be a careful steward of the USF and to protect the integrity of the Pilot Program. We are committed to ensuring the integrity of the Pilot and will pursue instances of waste, fraud, or abuse under our own procedures and in cooperation with the Commission's Office of Inspector General and other law enforcement agencies. The specific procedures we adopt regarding document retention requirements, the prohibition on gifts, certifications, audits, suspension and debarment, and the treatment of eligible services and equipment are modeled after our E-Rate processes and are tools at our disposal to protect the Pilot and ensure the limited program funding is used for its intended purposes to support Pilot Program goals and enable the purchase of Pilot-eligible services and equipment.

1. Document Retention and Production Requirements

91. In the *Cybersecurity NPRM*, we sought comment on whether “document retention requirements” for the Pilot, including those based on modifying rules from the Commission's E-Rate program, would help “protect the program integrity of the Pilot.”³⁷⁵ We adopt this proposal. Specifically we include a new section 54.2010(a) of the Commission's rules, modeled after a corresponding E-Rate rule, that requires Pilot participants to “retain all documents related to their participation in the [Pilot] program sufficient to demonstrate compliance with all program rules for at least 10 years from the last date of service or delivery of equipment” and “maintain asset and inventory records of services and equipment purchased sufficient to verify the actual location of such services and equipment for a period of 10 years after purchase.”³⁷⁶ We also include a new section 54.2010(b) of the Commission's rules, also modeled after a corresponding E-Rate rule, that requires Pilot participants and service providers to “produce such records upon request of any representative (including any auditor) appointed by a state education department, the Administrator, the Commission, its Office of Inspector General, or any local, state, or federal agency with jurisdiction over the entity.”³⁷⁷ This rule requires that Pilot participants must retain documents regarding participation in the Pilot, including asset and inventory records, accumulated during the Pilot, for a period of 10 years.³⁷⁸

92. While commenters generally did not opine on these issues, we find that this new rule, section 54.2010(a), will ensure that participants have sufficient records on hand related to all aspects of their participation in the Pilot to permit entities with jurisdiction over the participant, including USAC and the Commission, to make efficient and reliable determinations of compliance, e.g., as part of any post-audit review or investigation that bears on potential waste, fraud and abuse in the Pilot Program. We find that this new rule, section 54.2010(b), will effectively establish (or confirm) that a Pilot participant must provide documents to external parties with valid jurisdiction when a request is made for the retained documents. We find today's actions are warranted as the Commission, as a careful steward of the USF's limited funds, has a strong interest in ensuring that sufficient documentation is available and can be accessed to permit external parties with jurisdiction to make reliable and efficient determinations of potential waste, fraud and abuse in the Pilot. We also find that today's new rules will meaningfully inform potential Commission short-term action, e.g., through enforcement or other remediation steps if the integrity of the Pilot Program is threatened, and long-term action, that could potentially result in future revision of Commission or USAC processes to better protect the USF and the USF programs. Moreover, we find these rules, including the associated “10 year” retention and production requirements, are likely to be effective in protecting the integrity of the Pilot because they are modeled after existing section 54.516 of the Commission's rules with only clarifying amendments reflective of the structure of the Pilot.

³⁷⁵ *Cybersecurity NPRM*, 2023 WL 8605080 at *21, para. 51.

³⁷⁶ 47 CFR § 54.2010(a); *see also* 47 CFR § 54.516(a).

³⁷⁷ 47 CFR § 54.2010(b); *see also* 47 CFR § 54.516(b).

³⁷⁸ SHLB Coalition et. al. May 31, 2024 *Ex Parte* Letter at 7.

We have found the E-Rate rules to be effective over the course of our many years of experience overseeing USAC's administration of the E-Rate program. As the Commission has previously noted, these rules, including the 10-year document retention and production requirement, appropriately balance the need to have pertinent documentation available for review with corresponding administrative burdens and storage costs borne by E-Rate applicants and service providers.³⁷⁹ We expect similar benefits to accrue in relation to the Pilot.

2. Gift Rule

93. In balancing the longstanding goal of fair and open procurement with the disbursement of USF support for eligible equipment and services, we adopt gift restrictions for the Pilot.³⁸⁰ Consistent with the E-Rate program, we prohibit eligible schools and libraries receiving Pilot Program support, including their employees, officers, representatives, agents, independent contractors, consultants, and individuals who are on the governing boards, from soliciting or accepting any gift or other thing of value from a service provider participating in or seeking to participate in the Pilot.³⁸¹ Similar to the E-Rate program, participating service providers, including their employees, officers, representatives, agents, independent contractors, consultants, and individuals who are on governing boards, are likewise prohibited from offering or providing any gift or other thing of value to eligible entities, including their employees, officers, representatives, agents, independent contractors, consultants, and individuals who are on the governing boards.³⁸²

3. Certifications

94. As an additional measure to protect the integrity of the Pilot, we also require participants to provide several certifications as part of the FCC Form 484 application, competitive bidding, requests for services, and invoicing processes.³⁸³ Similarly, we require their selected service providers to provide certifications related to Pilot invoicing processes. We find, and no commenter disagrees, that the use of certifications are a key compliance mechanism to protect the limited Pilot funds. All certifications must be made subject to the provisions against false statements contained in the Act³⁸⁴ and Title 18 of the United States Code.³⁸⁵

95. *Duplicate Funding Certification.* For the reasons discussed in section D.2, we confirm that we will not provide support for eligible services and equipment, or the portion of eligible services and equipment, that have already been reimbursed with other federal, state, Tribal, or local funding, or are eligible for discounts from E-Rate or another universal service program.³⁸⁶ No commenters opposed adopting this limitation to stretch the Pilot's limited funds. To implement this prohibition on requesting or receiving duplicative funding, we will require Pilot participants and service providers to certify on the FCC Forms 472 or 474 that they are not seeking support or reimbursement for Pilot-eligible services and equipment that have been purchased and reimbursed with other federal, state, Tribal, or local funding, or

³⁷⁹ See *First 2014 E-Rate Order*, 29 FCC Rcd at 8974-75, para. 262 (extending the E-Rate document retention period from five to 10 years).

³⁸⁰ 47 CFR § 54.2005(d); accord NCTA Comments at 5.

³⁸¹ See 47 CFR § 54.2005(d); see also *id.* § 54.503(d).

³⁸² *Id.*

³⁸³ See *Cybersecurity NPRM*, 2023 WL 8605080 at *32-35, *37-39, *42-45, Appendix A (listing proposed certifications for FCC Rules 54.2004-54.2006, and 54.2008).

³⁸⁴ See 47 U.S.C. §§ 502, 503(b).

³⁸⁵ See 18 U.S.C. § 1001.

³⁸⁶ 47 CFR § 54.2006(a)(2)(x); see also *supra* para. 52.

are eligible for discounts from E-Rate or another universal service program.³⁸⁷ We take this action to ensure that the limited Pilot support will be used for its intended purposes and clarify that if the Pilot-eligible services and equipment are fully reimbursed through other sources, participants and service providers should not be seeking funding for them through the Pilot Program.

96. *Additional Certification Requirements.* We also require Pilot participants, when submitting their Pilot FCC Form 470 competitive bidding forms, and Pilot participants and service providers when submitting their FCC Forms 472 and 474 requests for reimbursement (i.e., invoicing forms), respectively, to provide several additional certifications.³⁸⁸ For example, Pilot participants and service providers must certify that they are seeking funding for only Pilot-eligible services and equipment. Pilot participants and service providers should be aware that the certification descriptions referenced in this section are not exhaustive and it is incumbent on them to familiarize themselves with the certifications required by each of the Pilot forms and rules that are applicable to them.³⁸⁹

4. Audits

97. Support provided for cybersecurity services and equipment funded through the Pilot will be subject to audits and reviews consistent with the procedures currently used for the USF programs (e.g., Beneficiary and Contributor Audit Program (BCAP) audits and Payment Integrity Assurance (PIA) reviews), and could be subject to recovery measures should the Commission and/or USAC find a violation of our rules and deem it appropriate. Specifically, applicants, participants, and service providers may be subject to audits and other investigations by USAC and/or Bureaus and Offices of the Commission to evaluate compliance with the rules we adopt today. We consider audits and other review mechanisms in the Pilot program to be important tools in ensuring compliance with our rules and identifying instances of waste, fraud, and abuse.³⁹⁰ Considering the action we take today to create the

(Continued from previous page) —————

³⁸⁷ 47 CFR § 54.2006(a)(2)(x).

³⁸⁸ 47 CFR §§ 54.2005(c)(2) (requiring participants submitting FCC Forms 470 to certify, among other things, their eligibility to participate in the Pilot; the truthfulness, accuracy, and completeness of the information on their application; that any false statements may be punished by fine, forfeiture, or imprisonment and that failure to comply with Pilot Program rules may result in denial, cancellation, or recoupment of support; that the Pilot-funded services and equipment will be used for educational purposes and the participant will not sell, resell, or transfer the services and equipment except as permitted by Pilot rules; that they will consider all bids submitted with price as the primary factor and will select the most cost-effective service offering(s); that they have the resources necessary to effectively use Pilot-funded services and equipment; that they are in compliance with all applicable competitive bidding and procurement requirements; and that they may be audited and will retain all required documentation for a period of at least 10 years); 54.2006(a)(2) (requiring participants and/or service providers submitting FCC Forms 471 to certify, among other things, their eligibility to participate in the Pilot; the truthfulness, accuracy, and completeness of the information they provide; that any false statements may be punished by fine, forfeiture, or imprisonment and that failure to comply with Pilot Program rules may result in denial, cancellation, or recoupment of support; that Pilot Program support will be used consistent with Pilot Program requirements; that the non-discount portion of the costs of Pilot-eligible services and equipment will be paid; that a fair and open competitive bidding process has been conducted that complies with all applicable competitive bidding and procurement requirements; that the Pilot FCC Form 470 was available for at least 28 days before bids were considered and service providers selected; that Pilot Program support is only being sought for eligible services and equipment; that the Pilot-funded services and equipment will not be sold, resold, or transferred except as permitted by Pilot rules; that a service and equipment inventory will be maintained; that they may be audited and will retain all required documentation for a period of at least 10 years; and that they will notify the Administrator if any entity on the FCC Form 471 is criminally convicted or held civilly liable for acts that may subject them to suspension and/or debarment from the universal service support mechanisms).

³⁸⁹ See 47 CFR §§ 54.2004 (Application for Pilot Program Selection and Reporting of Information); 54.2005 (Competitive Bidding Requirements); 54.2006 (Requests for Funding); 54.2008 (Requests for Reimbursement).

³⁹⁰ *First 2014 E-Rate Order*, 29 FCC Rcd at 8974-76, paras. 261-64 (revising the E-Rate program document retention requirements to 10 years after the latter of the last day of the applicable funding year or the service

(continued....)

Pilot Program using universal service funding, we expect that these tools will continue to be paramount to our ability to ensure that these finite funds are used appropriately and consistent with our rules.

5. Suspension and Debarment

98. Consistent with our proposal in the *Cybersecurity NPRM*, we will apply our existing USF suspension and debarment rules to the Pilot.³⁹¹ In addition, to the extent that the Commission adopts updated and final suspension and debarment rules in a separate and pending proceeding, we will apply the updated rules to the Pilot Program.”³⁹²

99. While commenters did not opine on these issues, we find it beneficial to apply our USF suspension and debarment rules, which are applicable to existing USF programs and codified at section 54.8 of our rules, to the Pilot as well.³⁹³ Our decision to make these rules binding on persons, including individuals and entities, involved in the Pilot provides these groups with notice as to the types of behavior that could result in their suspension and debarment (and the suspension and debarment of others), the processes by which suspension and debarment would be determined, and some of the consequences of such action.³⁹⁴ We also find that this action will permit Pilot participants to make better-informed decisions as to the consultants and other persons that they choose to employ or otherwise retain (e.g., based on factors that are identified in our suspension and debarment rules) for work on the Pilot Program, which will protect participants, and the USF, from waste, fraud, and abuse. As the Pilot incorporates administrative processes, forms, and rules from E-Rate and other USF programs, we find it reasonable to apply our existing USF suspension and debarment rules to the Pilot as well. We find that doing so ensures that participants are able to engage a variety of persons with expertise and skills relevant to the USF generally, and Pilot specifically, while also preventing potential bad actors from undermining the Pilot’s goals. Ultimately, we find that our action will support our mission to maintain the Pilot’s integrity and protect it from waste, fraud, and abuse.

100. Similarly, we find it appropriate to apply any new Commission USF suspension and debarment rules that may be finalized during the course of the Pilot to the Pilot as well.³⁹⁵ As discussed above, the Pilot incorporates administrative processes, forms, and rules from E-Rate and other USF programs. We therefore find it reasonable to apply any new suspension and debarment rules developed for those programs to the Pilot as well.

delivery deadline for the funding request and clarifying that applicants and service providers must permit auditors, investigators, USAC, the Commission, or any local, state, or federal agency with jurisdiction over the entity to enter their premises to conduct E-rate compliance audits and inspections); *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order, 19 FCC Rcd. 15808, 15813, 15817-18, 15823-27, paras. 13, 29, 45-50 (2004) (explaining that audits are a tool for the Commission and USAC to ensure E-Rate program integrity and detect and deter waste, fraud, and abuse, and concluding that failure to comply with an authorized audit or other investigation is, in and of itself, a rule violation that may warrant the recovery of universal service support). See also *Cybersecurity NPRM*, 2023 WL 8605080 at *21, para. 51 (seeking comment on program integrity protections that mirror E-Rate program integrity protections, including audits and other methods of review); accord *supra* note 222 (referencing commenter support for aligning Pilot Program rules and processes with E-Rate program rules and processes).

³⁹¹ *Cybersecurity NPRM*, 2023 WL 8605080 at *21, para. 51 (citing 47 CFR § 54.8).

³⁹² *Id.* (citing *Modernizing Suspension and Debarment Rules*, GN Docket No. 19-309, Notice of Proposed Rulemaking, 34 FCC Rcd 11348 (2019)).

³⁹³ See 47 CFR § 54.8 (setting forth the Commission’s rules regarding suspension and debarment).

³⁹⁴ *Id.*

³⁹⁵ *Cybersecurity NPRM*, 2023 WL 8605080 at *21, para. 51 (citing *Modernizing Suspension and Debarment Rules*, GN Docket No. 19-309, Notice of Proposed Rulemaking, 34 FCC Rcd 11348 (2019)).

I. Performance Goals and Data Reporting

101. We adopt three performance goals, discussed in greater detail below, to enable us to evaluate the Pilot Program. We expect that, to the extent that the Pilot Program meets these goals, the results of the Pilot will help us assess the costs and benefits of utilizing universal service funds to support schools' and libraries' cybersecurity needs, as well as how other federal resources could best be leveraged to ensure that these needs are addressed in the most efficient and effective manner.³⁹⁶ We also adopt a periodic reporting requirement designed to allow the Commission evaluate the goals and success of the Pilot Program while, to the extent possible, taking steps to minimize the burden on Pilot participants.

102. In the *Cybersecurity NPRM*, we proposed three performance goals for the Pilot Program. Specifically, we proposed the goals of: (i) improving the security and protection of E-Rate-funded broadband networks and the data on those networks; (ii) measuring the costs associated with cybersecurity services and equipment, and the amount of funding needed to adequately meet the demand for these services if extended to the E-Rate program; and (iii) evaluating how to leverage other federal K-12 cybersecurity tools and resources to help schools and libraries effectively address their cybersecurity needs.³⁹⁷ Additionally, we proposed and sought comment on how we can best measure progress towards these goals, to ensure that the limited Pilot funds are used most impactfully and effectively.³⁹⁸ We also sought comment on how to evaluate the Pilot, including whether participants should submit periodic reports and other assessments and evaluations.³⁹⁹

103. Based on the record, we adopt our three proposed performance goals for the Pilot. We note that commenters broadly supported the three proposed goals, considering them appropriate to allow the Commission to assess the effectiveness and cost of the cybersecurity services and equipment used in the Pilot.⁴⁰⁰

104. *First Performance Goal: Improving the Security and Protection of E-Rate-Funded Broadband Networks and Data.* First, we adopt a goal for the Pilot Program of improving the security and protection of E-Rate-funded broadband networks and data. Funding made available by the Pilot will help participants acquire cybersecurity services and equipment to improve the security of their broadband networks and data. Commenters generally supported this goal.⁴⁰¹ Cisco, for example, deemed the goal consistent with the Commission's "statutory responsibilities to adapt the universal service rules to account

³⁹⁶ See, e.g., *Connected Care Pilot Order*, 35 FCC Rcd at 3415, para. 83 (finding that the Connected Care Pilot Program goals will "help advance the Commission's statutory obligation to promote universal service by providing the Commission with information that will help inform it about how best to allocate limited universal service funding").

³⁹⁷ *Cybersecurity NPRM*, 2023 WL 8605080 at *8, para. 19.

³⁹⁸ *Id.* at *10, para. 23.

³⁹⁹ *Id.* at *10, para. 24.

⁴⁰⁰ See Cisco Comments at 3; Dallas ISD Comments at 3; CTIA Reply at 5. We recognize that the Commission is but one of many federal agencies that play a role in protecting school and library networks and data, which is why our proposed goals focus on evaluating how the Commission can contribute in this area and collaborate with our other federal partners. We therefore disagree with comments by K12 SIX that our proposed goals are "based on common misconceptions about the state of U.S. K-12 cybersecurity" or that the proposed Pilot is "out of step with the documented cybersecurity threats facing the K-12 sector." K12 SIX Comments at 6-9. We agree with K12 SIX's comments that the proposed Pilot alone will not fully address all the cybersecurity-related challenges faced by K-12 schools and libraries, including implementing appropriate governance practices and addressing new technologies, such as artificial intelligence. *Id.* However, we find that our proposed Pilot Program and performance goals are tailored appropriately to determine whether and what cybersecurity services, including advanced firewall services, could effectively be funded through the E-Rate program, which is one of the primary purposes of this limited Pilot Program.

⁴⁰¹ See, e.g., Cisco Comments at 6; IOB Comments at 3; Palo Alto Networks Comments at 1.

for advances in telecommunications and information technology.”⁴⁰² Making funding available for cybersecurity services and equipment will help Pilot participants protect and secure their E-Rate-funded broadband networks and data to mitigate increasing cybersecurity threats. In adopting this goal, we emphasize that we are not only seeking to improve the security and protection of E-Rate-funded Pilot participants, but also to gather information to aid the exploration of improving the security and protection of E-Rate-funded networks going forward. To that end, and as discussed herein, we are not limiting Pilot participation to existing E-Rate participants but will allow all eligible schools, libraries, and consortia to apply for the Pilot. By taking a holistic approach that incorporates all types of eligible schools and libraries, we seek to gather data that will help us evaluate how best to safeguard E-Rate-funded networks now and in the future.

105. *Second Performance Goal: Measuring the costs associated with cybersecurity services and equipment, and the amount of funding needed to adequately meet the demand for these services if extended to all E-Rate participants.* Next, we adopt a goal of measuring the costs and effectiveness of cybersecurity services and equipment. By making a wide range of cybersecurity services and equipment eligible for USF support, the Pilot will enable the Commission to gather data on the associated cost and effectiveness of various cybersecurity solutions. As ALA, in particular, has observed, there are concerns about the cost to the USF of adding any new E-Rate eligible services and equipment, including cybersecurity services and equipment.⁴⁰³ By measuring these costs as part of the Pilot, the Commission will be well-positioned to evaluate the potential challenges to funding these types of services and equipment over the long term. In addition, to measure effectiveness, CIS recommended that we require participants “to assess themselves before the Pilot and annually against a recognized cybersecurity framework and provide their scores as a measurement of success against their individual baseline.”⁴⁰⁴ With such recommendations in mind, we adopt a goal of measuring the costs and effectiveness of cybersecurity services and equipment, gathering data for the Commission to determine whether it is economically feasible to support advanced firewall and other cybersecurity services and equipment with universal service funding. In adopting this goal, we disagree with commenters who suggest that, in collecting data to evaluate the Pilot, our goal should be focused on determining “how to best modernize the E-rate Category 2 to include cybersecurity permanently”⁴⁰⁵ or adopting concurrent changes to our category two rules to permit funding for advanced firewalls and MFA.⁴⁰⁶ Although we hope to learn more about whether and how to best fund cybersecurity services and equipment at the conclusion of the Pilot, we do not prejudge the appropriate mechanism or services and equipment to fund and, instead, look holistically at how universal service funds could be used to meet the K-12 schools’ and libraries’ demand for cybersecurity services and equipment.⁴⁰⁷

⁴⁰² Cisco Comments at 6.

⁴⁰³ ALA Comments at 3 (“We share concerns about the cost to the Universal Service Fund (USF) of adding any E-rate eligible services.”).

⁴⁰⁴ CIS Comments at 2. We note, in response to concerns raised by CrowdStrike, that the requirement that Pilot participants provide initial data, as well as file annual reports, will allow the Commission to measure performance improvements. See CrowdStrike Comments at 5 (stating that it is “unlikely that many K-12 schools and libraries were measuring this information before the beginning of the pilot program” and “the FCC may encounter difficulties measuring performance improvements within pilot participants”).

⁴⁰⁵ CoSN et al. August 7 *Ex Parte* Letter at 2; see also IOB Comments at 3.

⁴⁰⁶ See, e.g., MISEN Comments at 7 (“MISEN believes the Pilot program’s funding will fall short of making any real impact and that the Commission could make current-generation firewalls, related components, and licensing and Multi-Factor Authentication immediately eligible for E-Rate, thereby stretching the pilot funding. The FCC can make eligible advanced firewalls and MFA under current Category 2 budgets, and let applicants make their purchasing decisions. This will bring no additional burden to the Fund.”).

⁴⁰⁷ See discussion *supra* at para. 45 regarding our decision not to make additional services eligible before the conclusion of the Pilot.

106. *Third Performance Goal: Evaluating how to leverage other federal K-12 cybersecurity tools and resources to help schools and libraries effectively address their cybersecurity needs.* Third, we adopt a goal of evaluating how to best leverage other available and low-cost and free federal resources to better equip K-12 schools and libraries to proactively address their cybersecurity risks, though we do not go so far as to require the use of specific federal government tools and resources as initially discussed in the *Cybersecurity NPRM*.⁴⁰⁸ Commenters generally agreed with this goal.⁴⁰⁹ The Friday Institute for Education Innovation (Friday Institute), for example, stated that our federal partners “provide a wealth of best practices and knowledge,” and “[r]elying on their expertise is a prudent approach to shaping the E-rate program’s cybersecurity component.”⁴¹⁰ CTIA emphasized the importance of collaborating with other agencies to pursue and implement shared cybersecurity objectives.⁴¹¹ Commenters emphasize that collaboration with other federal partners is “vital,”⁴¹² with the Cybersecurity Coalition and Information Technology Industry Council (Cybersecurity Coalition/ITI) noting that they are “pleased” that the Pilot is focused on “how to balance [the] ‘complementary work of federal agency partners.’”⁴¹³ We agree with commenters on the importance of leveraging the expertise of our federal, state, and local partners, and adopting this goal for the Pilot Program signals our intent to continue to work collaboratively on shared objectives to streamline our efforts to address schools’ and libraries’ cybersecurity challenges. To this end, we agree with commenters that, where possible, we should align our Pilot with the cybersecurity goals of our federal partners.⁴¹⁴

(Continued from previous page)

⁴⁰⁸ See *Cybersecurity NPRM*, 2023 WL 8605080 at *13, para. 34; see also, e.g., EdGroup Reply at 4 (explaining that the Commission should not require the use of government tools and resources “because many schools and libraries have implemented their own cybersecurity strategies already”); Rubrik Comments at 2 (clarifying that not all of CISA’s programs are offered for free and “it may be overly burdensome to require schools and libraries to implement these tools before applying” to the Pilot). Requiring the use of specific federal tools and resources could pose a barrier to participation for under-resourced districts. See Council GCS Comments at 4 (“In response to the Commission’s question on whether eligibility for the pilot should require that applicants implement recommendations from federal agencies or take advantage of free federal resources, the Council does not recommend conditioning participation on these grounds. As mentioned above, many urban districts are already implementing several low-cost and high-leverage cybersecurity strategies. Requiring evidence of wholesale implementation or use of these resources could potentially eliminate under-resourced districts from the pool of applicants.”).

⁴⁰⁹ See, e.g., CTIA Reply at 9 (“CTIA supports the idea of mandating that ‘participating K-12 schools and libraries fully leverage the free and low-cost K-12 cybersecurity resources provided by our federal partners, the Department of Homeland Security’s (DHS) Cybersecurity and Infrastructure Security Agency (CISA), and the U.S. Department of Education”); Cisco Comments at 8 (“CISA is the federal government’s expert agency for cybersecurity. It is therefore appropriate for the Commission to leverage the CISA K-12 cybersecurity recommendations in determining eligible services for the Pilot Program.”); CIS Comments at 3 (“Funding should be allowed for any cybersecurity protection that improves or enhances the cybersecurity of an organization, such as those contained in the CIS Critical Controls, the [Education Department] or CISA K-12 cybersecurity recommendations, or the CISA Cybersecurity Performance Goals (CPGs).”).

⁴¹⁰ Friday Institute Comments at 9.

⁴¹¹ CTIA Reply at 4 (“As the Commission implements this program, it should continue to coordinate closely with other federal agencies, including . . . CISA . . . and the [Education Department].”).

⁴¹² K12 Tech Talk Podcast Comments at 2 (K12 Tech Talk); K12TechPro Comments at 2.

⁴¹³ Cybersecurity Coalition/ITI Comments at 2. See also Palo Alto Network Comments at 6; MISEN Comments at 12.

⁴¹⁴ Apptegy Comments at 2 (“Apptegy believes that Commission’s Schools and Libraries Cybersecurity Program should be as aligned as possible with the Cybersecurity Infrastructure and Security Agency (CISA) cross-sector cybersecurity performance goals (CPGs) and recommendations.”); CIS Comments at 3 (“Funding should be allowed for any cybersecurity protection that improves or enhances the cybersecurity of an organization, such as those contained in the CIS Critical Controls, the [Education Department] or CISA K-12 cybersecurity recommendations, (continued....)”).

107. *Data reporting requirements for participants.* To measure the Pilot’s success in meeting the aforementioned goals, we adopt initial, annual, and final reporting requirements for participants. In the *Cybersecurity NPRM*, we proposed that Pilot participants submit certain information to apply for the Pilot, a progress report for each year of the Pilot, and a final report at the conclusion of the Pilot.⁴¹⁵ We also proposed that these reports contain information on how Pilot funding was used, any changes or advancements that were made to the school’s or library’s cybersecurity efforts outside of the Pilot-funded services and equipment, the number of cyber incidents that occurred each year of the Pilot Program, and the impact of each cyber incident on the school’s or library’s broadband network and data.⁴¹⁶ We sought comment on these proposals, as well as the best ways for the Commission to evaluate the Pilot and measure progress towards the proposed performance goals.⁴¹⁷

108. Commenters generally agreed with our proposal to establish data reporting requirements.⁴¹⁸ Crown Castle Fiber LLC (Crown Castle) noted the value of data reporting requirements, stating that they provide “valuable insight into the types of new services and equipment that applicants purchase to address their network and data security concerns and the impact of implementing various cybersecurity solutions.”⁴¹⁹ FFL emphasized that the effectiveness of the Pilot Program should be measured by progress made toward the implementation of solutions and tactics known to increase resiliency to attacks, not by the presence or characteristics of cyberattacks or applicant responses during an applicant’s participation in the Pilot.⁴²⁰ CTIA suggested that the reporting requirements use standardized metrics to obtain a common baseline of data across participants to aid in program evaluation.⁴²¹

109. Some commenters provided detailed recommendations about the reporting metrics the Commission should use to gather and report Pilot data. CrowdStrike, for example, stated that one promising evaluation metric is mean time to detection and response, and suggested that the Commission designate a “control group” of similar organizations to assess Pilot success.⁴²² Rubrik proposed a variety of metrics to measure Pilot effectiveness, such as the ability to quickly recover from a cyber event; identify sensitive data on the network where it resides and determine who has access to it; and test cyber recovery functionality to properly plan for a cyber event.⁴²³ The City of New York Office of Technology

or the CISA Cybersecurity Performance Goals (CPGs).”); Cybersecurity Coalition/ITI Comments at 5 (“The Coalition and ITI are also supportive of the Commission allowing participants to use Pilot funds to meet any of the Department of Education or CISA K-12 Cybersecurity recommendations or CISA CPGs to otherwise improve their cybersecurity posture.”); Rubrik Comments at 3 (“Requiring that applications fall within CISA’s K-12 Cybersecurity Report guidance or CISA’s Cybersecurity Performance Goals (CPGs) gives applicants some needed flexibility while also ensuring applications will meet the goals of the pilot.”).

⁴¹⁵ *Cybersecurity NPRM*, 2023 WL 8605080 at *10, paras. 23-24.

⁴¹⁶ *Id.*

⁴¹⁷ *Id.*

⁴¹⁸ See, e.g., CTIA Reply at 2 (“CTIA supports the broad consensus that the Pilot Program should be carefully structured, with clear goals and metrics and associated reporting requirements, to obtain actionable data on whether and how to effectively support cybersecurity going forward.”); Crown Castle Comments at 3 (“To this end, Crown Castle supports the Commission’s proposed data collection and reporting requirements for Pilot Program applicants, including submission of a proposed advanced cybersecurity action plan and ongoing reporting on cybersecurity incidents during the funding period.”).

⁴¹⁹ Crown Castle Comments at 3.

⁴²⁰ FFL Reply at 4.

⁴²¹ CTIA Reply at 6.

⁴²² CrowdStrike Comments at 5.

⁴²³ Rubrik Comments at 2-3.

and Innovation (City of NY OTI) suggested specific metrics that could include “Mean Time to Detect”; “Mean Time to Response”; “False Positive Rate”; “True Positive Rate”; and “Investigation Rate to Incident Containment Rate.”⁴²⁴

110. Based on the record, we adopt the requirement for initial, annual, and final reporting so that Pilot participants evaluate and report on their cybersecurity readiness before they begin participation in, during, and after the Pilot Program⁴²⁵ and we direct the Bureau to add a certification as part of the data collection requirements that will require participants to certify to the accuracy of the information reported and define mechanisms for enforcement. Specifically, after providing an initial baseline assessment using information that includes the reporting requirements for the second part of the application process explained in more detail in section E above,⁴²⁶ Pilot participants will be required to submit annual reports, followed by a final report at the completion of the program. In establishing these periodic reporting requirements, the Commission seeks to balance its need for gathering the data necessary to evaluate the goals and success of the Pilot with commenters’ recommendations that it minimize the burden on Pilot participants to the extent possible.⁴²⁷ We find that tracking and evaluating participants’ cybersecurity progress over the course of the Pilot will be essential in helping us determine whether and how to fund schools’ and libraries’ cybersecurity needs through the E-Rate program or another universal service program on an ongoing basis. As stated below, information contained in initial, annual, and final reports will be presumptively confidential; however, we do plan to use school or library data as a tool to evaluate the Pilot and determine next steps. Additionally, at our discretion, we may create for public release a version of this information that is aggregated, anonymized, or otherwise not subject to protection from disclosure under the Freedom of Information Act. We require Pilot participants to submit each annual report no later than 60 days following the conclusion of each year (i.e., year one and year two) of the Pilot Program, and to submit their final report no later than 60 days following the conclusion of the last year (i.e., year three) of the Pilot Program. To accomplish the goal of periodic reporting by Pilot participants, we delegate to the Bureau the authority to use school and library data to evaluate the Pilot, as well as the authority to create and release a public version of this information, as described above. We also direct the Bureau to release a Public Notice (or multiple Public Notices, as needed) detailing the specific information to be provided by Pilot participants, additional detail regarding the timing for the submission of these reports, and to consider developing a standardized reporting form and publicizing its availability. In developing the required reporting metrics, we direct the Bureau to consult with OEA and relevant federal partners to identify those metrics that will best serve the needs of the Pilot and allow the Commission to evaluate whether and to what extent the Pilot succeeded in meeting the three performance goals discussed above.⁴²⁸ The Bureau should, to the extent practicable, and subject to approval from OMB, make the data reporting requirements available to Pilot participants prior to the availability of the Pilot FCC Form 470 to enable participants to consider whether there is any required information that they

⁴²⁴ City of NY OTI Reply at 1.

⁴²⁵ See also 47 CFR § 54.2004(e) (codifying the Pilot data reporting requirements and adopting measures regarding non-compliance with the rule).

⁴²⁶ See *supra* para. 74.

⁴²⁷ We disagree with commenters that recommend the Commission avoid collecting detailed information because such an approach unnecessarily hampers our ability to effectively evaluate the Pilot. See Friday Institute Comments at 8 (“[W]e advise against the data collection methodology proposed in the NPRM. Requesting schools to disclose potentially sensitive security data, or to quantify attacks and mitigations, may not yield statistically valid or meaningful results. Such data could be misleading and possibly jeopardize school security.”).

⁴²⁸ We do not expect that such metrics should require—or even invite—participants to include the personally identifiable information of students, staff, or library patrons, except to the extent that a point of contact or certifying official is required for such reports. If the Bureau determines there may be a need for such information, we direct it to consult with the OGC—and specifically the Senior Agency Official for Privacy—to ensure appropriate protections are in place for such information.

may need to obtain from their vendor(s) during the competitive bidding process.⁴²⁹

111. Finally, in making these data reporting recommendations, a few commenters expressed concerns about protecting both the sensitive nature of the data and insulating Pilot applicants and participants from malicious cybersecurity actors who would use the data for nefarious purposes.⁴³⁰ We are sensitive to and agree with these concerns and have measures in place to protect the school- and library-specific cybersecurity data we request as part of the Pilot Program.⁴³¹ Specifically, we find that the information provided by Pilot participants in the initial, annual, and final reports required by the Pilot constitutes sensitive business information and the reports may also contain trade secrets. We therefore will treat this information as presumptively confidential under our rules and withhold it from public inspection.⁴³² In addition, and as addressed in more detail above, we have elected to bifurcate the application process, seeking a more general level of cybersecurity information from applicants and leaving the more detailed cybersecurity reporting for Pilot participants.⁴³³ Taken together, we expect that these measures will alleviate commenters' concerns about protecting Pilot applicants' and participants' sensitive information regarding cybersecurity threats and readiness.

112. *Pilot Program reports.* We direct the Bureau, in consultation with OEA, to review the reports submitted by Pilot participants and publish one interim report during the three-year Pilot and a final report after the Pilot has concluded.⁴³⁴ The interim report will, at a minimum, provide a summary of funding commitments and disbursements to-date and provide an update on progress toward the Pilot Program's performance goals. The final report will, at a minimum, provide a summary of funding disbursements, evaluate the Pilot Program's success in meeting each performance goal, and identify lessons learned. Recognizing the sensitivity of the information provided by Pilot applicants and participants, we direct the Bureau to follow procedures for confidential information, including aggregating the information as necessary. We direct the Bureau to publish the interim report no later than 180 days after Pilot participants submit their second (i.e., year two) annual reports and to publish the final report no later than 180 days after Pilot participants submit their final (i.e., year three) reports.

J. Appeals of USAC Decisions and Waiver Requests

113. We provide a path for recourse to parties aggrieved by decisions issued by USAC as a result of, or during, the Pilot. Specifically, we adopt appeal and waiver request rules consistent with those that govern USAC's administration of the USF programs, including the E-Rate program.⁴³⁵ We find these existing processes sufficient to provide a meaningful review of decisions issued by USAC and the Commission regarding the Pilot. However, we make one modification for the Pilot Program appeal and

⁴²⁹ SECA May 29, 2024 *Ex Parte* Letter at 5 (asking the Commission to direct the Bureau to publish data reporting requirements at least 15 days prior to the availability of the Pilot FCC Form 470 so that applicants can consider whether there is any required information they need to obtain from their vendors and include such information in their Pilot FCC Forms 470). As noted above, the *Cybersecurity NPRM* sought comment on the information to be included in the reports from Pilot participants; as such, the Commission need not seek additional comment as it formulates the initial, interim, and final reports. See SECA May 30, 2024 *Ex Parte* Letter at 1 ("Upon further reflection we submit there should be a notice and comment period before the requirements are finalized.").

⁴³⁰ See CIS Comments at 5 (stressing the importance of safeguarding sensitive information provided as part of the Pilot and protecting the anonymity of the filing entity); Friday Institute Comments at 8; WI DPI Reply at 3.

⁴³¹ See *supra* paras. 61 and note 230, 75 and note 311.

⁴³² See 47 CFR § 0.457(d); see also *supra* paras. 61, 75 (discussing confidentiality of information contained in the FCC Form 484).

⁴³³ See *supra* para. 74.

⁴³⁴ SHLB Coalition et. al. May 31, 2024 *Ex Parte* Letter at 8 (asking the Commission to publish interim reports to measure data throughout the Pilot).

⁴³⁵ See 47 CFR § 54.2012; see also 47 CFR §§ 54.719-54.725.

waiver rules and provide a 30-day timeframe to request the review of an action by USAC,⁴³⁶ or to request the review of a decision by USAC or a waiver of the Commission's rules.⁴³⁷ Despite assertions from some commenters that modifying the rules in this manner would limit Pilot participant flexibility and is unnecessary in this context,⁴³⁸ we think this change will benefit Pilot participants (and the program generally) by providing faster timeframes for appeal and waiver decisions and final Pilot funding decisions. Additionally, we find that a 30-day timeframe is appropriate given the limited three-year duration of the Pilot Program.

K. Legal Authority

114. We conclude that the Commission has legal authority to establish a Pilot Program that provides USF support for cybersecurity services and equipment to eligible schools and libraries. As a preliminary matter, in the *Cybersecurity NPRM*, we tentatively concluded that the Commission has sufficient legal authority for funding cybersecurity services and equipment for schools and libraries pursuant to sections 254(c)(1), (c)(3), (h)(1)(B), and (h)(2) of the Act.⁴³⁹ We noted that the Pilot is consistent with Congress's view that the USF represents an evolving level of service, informing potential future actions that the Commission would take to further its obligation to "establish periodically" universal service rules that "tak[e] into account advances in telecommunications and information technologies and services."⁴⁴⁰ Additionally, we noted that the existing record supported the view that the Pilot is "technically feasible and economically reasonable" as required by section 254(h)(2)(A) of the Act.⁴⁴¹ We also noted that the proposed Pilot appeared consistent with section 254(c)(3) of the Act, which grants the Commission authority to "designate additional services for [USF] support . . . for schools [and] libraries," as the Pilot would allow for the designation of additional services that may be used by participating schools and libraries based on USF funding.⁴⁴² In the *Cybersecurity NPRM*, we sought additional comment on such views and on the other sources of legal authority, such as the extent to which the Pilot fulfills the Commission's mandate to make "[q]uality services" available at just, reasonable, and affordable rates,⁴⁴³ and the limits and restrictions that we should place on recipients of Pilot funds to remain within the statutory authority.⁴⁴⁴

115. Commenters generally supported our conclusion that sufficient legal authority exists for the creation of this Pilot Program.⁴⁴⁵ In particular, commenters agreed that universal service is an "evolving level of telecommunications services,"⁴⁴⁶ and noted that the Pilot-supported services and

⁴³⁶ 47 CFR § 54.2012(b).

⁴³⁷ *Id.* Section 54.720 of the rules allows 60 days to request review or a waiver.

⁴³⁸ Lumen Reply at 7; NCTA Comments at 5-6.

⁴³⁹ *Cybersecurity NPRM*, 2023 WL 8605080 at * 21, para. 52.

⁴⁴⁰ *Id.*; 47 U.S.C. § 254(c)(1).

⁴⁴¹ *Cybersecurity NPRM*, 2023 WL 8605080 at *22, para. 54; *see also* 47 U.S.C. § 254(h)(2)(A).

⁴⁴² *Cybersecurity NPRM*, 2023 WL 8605080 at *23, para. 57; *see also* 47 U.S.C. § 254(c)(3).

⁴⁴³ *Cybersecurity NPRM*, 2023 WL 8605080 at *23, para. 58; *see also* 47 U.S.C. § 254(b)(1).

⁴⁴⁴ *Cybersecurity NPRM*, 2023 WL 8605080 at *23, para. 60.

⁴⁴⁵ ACSA-CSBA Federal Partnership Reply at 5 ("The ACSA-CSBA Partnership believes the Commission has clear legal authority through Section 254 of the Telecommunications Act of 1996 to conduct the proposed cybersecurity pilot program."); Cisco Comments at 6 ("[T]he Commission has the requisite legal authority to use universal service funding to support the provision of cybersecurity and advanced firewall services to participating schools and libraries."); CoSN et al. January 29 Comments at 8-9 ("We agree with the Commission's analysis and finding that it has the legal authority for the proposed pilot."); EdGroup Reply at 3 ("We agree with the Commission's analysis that it has the legal authority to move forward with this pilot.").

⁴⁴⁶ 47 U.S.C. § 254(c)(1).

equipment “reflect ongoing advances in schools and libraries broadband networks and services.”⁴⁴⁷ Furthermore, Cisco stated that enhanced cybersecurity services and equipment strengthens and ensures access to and usability of broadband networks, supporting the Act’s mandate that the Commission enhance access to advanced telecommunications and information services for schools and libraries.⁴⁴⁸ Cisco also noted that the scale and number of cybersecurity threats and attacks increased during the pandemic, as schools shifted to heavier reliance on technology services, and “such changed circumstances support consideration of a change in the Commission’s policy with respect to the funding of cybersecurity measures for schools and libraries,” in furtherance of Congress’s mandate “to take into account evolving technologies and to designate additional services to support enhanced connectivity for schools and libraries.”⁴⁴⁹

116. We agree with these assessments, and affirm our conclusion in the *Cybersecurity NPRM* that the Commission has sufficient legal authority to use universal service funds to support cybersecurity services and equipment for eligible schools and libraries, for several reasons. First, we agree that providing support for cybersecurity services and equipment fulfills our mandate under section 254(c)(1) of the Act to periodically refine universal service to take into account advances in technology and services.⁴⁵⁰ As CoSN points out, the Pilot Program will provide support for new services and equipment that reflect advances in school networking technology.⁴⁵¹ By studying how best universal service funds can be used to support E-Rate-funded networks and data, the Pilot enables us to refine universal service in today’s modern educational environment, pursuant to section 254(c)(1) of the Act.

117. Second, we find that Pilot funds will be used for “educational purposes,” pursuant to section 254(h)(1)(B) of the Act.⁴⁵² E-Rate rules require schools and libraries to use eligible services “primarily for educational purposes,” defined for schools as “activities that are integral, immediate, and proximate to the education of students,” and for libraries as “activities that are integral, immediate, and proximate to the provision of library services to library patrons.”⁴⁵³ Pilot funds will help ensure that school and library connections are reliable and not disrupted by cyberattacks, and will further protect the sensitive data often stored on those networks. As such, use of Pilot funds serves an educational purpose, by promoting the education of students, or the provision of library services to library patrons, free from disruption, cyberattack, or theft of sensitive data, pursuant to our mandate under section 254(h)(1)(B) of the Act.

118. Furthermore, we conclude that the use of universal service support for advanced firewalls and other cybersecurity services and equipment for educational purposes fits within the Commission’s authority and direction under section 254(h)(1)(B) of the Act to designate “services that are within the definition of universal service under subsection (c)(3),” which authorizes the Commission to designate non-telecommunications services for support.⁴⁵⁴ In the *First Universal Service Order*, we found that

(Continued from previous page) _____

⁴⁴⁷ CoSN et al. January 29 Comments at 8-9.

⁴⁴⁸ Cisco Comments at 13.

⁴⁴⁹ *Id.* at 14-15.

⁴⁵⁰ 47 U.S.C. § 254(c)(1).

⁴⁵¹ CoSN et al. January 29 Comments at 8-9.

⁴⁵² 47 U.S.C. § 254(h)(1)(B) (providing that E-Rate discounts be applied to services provided to eligible schools and libraries for “educational purposes”).

⁴⁵³ 47 CFR §§ 54.500; 54.504(a)(v); *Second Report and Order*, 18 FCC Rcd at 9208, para. 17.

⁴⁵⁴ *Federal State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9009-11, paras. 437-39 (1997) (*First Universal Service Order*) (concluding that section 254(h)(1)(B) through section 254(c)(3) of the Communications Act authorizes universal service support for telecommunications services and additional services such as information services). Note that this was upheld in *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999). In particular, the Fifth Circuit found that sections 254(c) and (h) of

(continued....)

section 254(h)(1)(B) through section 254(c)(3) of the Communications Act authorizes universal service support for telecommunications services *and* additional services such as information services.⁴⁵⁵ We therefore find that, to the extent any of the advanced firewall or cybersecurity services are not telecommunications services, those services nevertheless can be purchased with universal service support pursuant to section 254(h)(1)(B) of the Act. In addition, section 254(h)(1)(B) through section 254(c)(3) of the Act provides authority to support the advanced firewall and cybersecurity equipment that the Pilot will fund to protect E-Rate-funded networks and data. In the *First Universal Service Order*, the Commission concluded that “we can include ‘the information services,’ e.g., protocol conversion and information storage, that are needed to access the Internet, as well as internal connections, as ‘additional services’ that section 254(h)(1)(B), through section 254(c)(3), authorizes us to support.”⁴⁵⁶ The Commission further distinguished between ineligible types of peripheral equipment (e.g., laptops) and eligible equipment that is necessary to make the services functional.⁴⁵⁷ Therefore, we also find that because advanced firewall and cybersecurity equipment are critical to support the services that will protect E-Rate-funded networks and data, they fall into the latter category and we therefore conclude that the Commission has authority under section 254(h)(1)(B) through section 254(c)(3) of the Act to support the purchase of advanced firewall and cybersecurity equipment for educational purposes.

119. Additionally, the Commission has concluded that, pursuant to sections 4(i) and 254(c)(1), (c)(3), (h)(1)(B), and (h)(2) of the Act, E-Rate-supported services can be provided by both telecommunications carriers and non-telecommunications carriers.⁴⁵⁸ In reaching this conclusion, the Commission determined that section 254(h)(1)(B)’s requirement that discounts for services be provided to “telecommunications carriers” does not “stand as a bar to our authority to allow non-telecommunications providers to provide such services and participate in the E-rate program” under sections 254(h)(2)(A) and 4(i) because limiting the eligibility of such services to only those provided by telecommunications carriers would “unduly limit the flexibility of schools and libraries to select the most cost-effective broadband solutions to meet their needs, which would be inconsistent with our schools and libraries policies.”⁴⁵⁹ Moreover, permitting the provision of such services by both telecommunications and non-telecommunications carriers “enhances access to advanced telecommunications and information services for public and non-profit elementary and secondary school classrooms and libraries.”⁴⁶⁰ Consistent with this authority, we likewise allow Pilot participants to purchase eligible services and

the Communications Act provided authority for various aspects of the E-Rate and Rural Health Care programs, including the conclusion that the Communications Act authorizes universal service support for telecommunications services and additional services such as information services. *Id.*, 183 F.3d at 440-46. The Commission continues to find the Court’s reasoning persuasive on this issue.

⁴⁵⁵ See *First Universal Service Order*, 12 FCC Rcd at 9010-11, para. 439 (stating that the “term used in section 254(h)(1)(B), ‘any of its *services* that are within the definition of universal service under subsection (c)(3),’ cannot be read as a generic reference to the heading of that section. Rather, the varying use of the terms ‘telecommunications services’ and ‘services’ in sections 254(h)(1)(A) and 254(h)(1)(B) suggests that the terms were used consciously to signify different *meanings*. In addition, the mandate in section 254(h)(2)(A) to enhance access to ‘advanced telecommunications and information services,’ particularly when read in conjunction with the legislative history as discussed below, suggests that Congress did not intend to limit the support provided under section 254(h) to telecommunications services.”).

⁴⁵⁶ See *First Universal Service Order*, 12 FCC Rcd at 9010-11, para. 439.

⁴⁵⁷ See also *First Universal Service Order*, 12 FCC Rcd at 9021, para. 459 (holding that equipment such as a router is eligible for support if “necessary to transport information all the way to individual classrooms”).

⁴⁵⁸ See *id.*, 12 FCC Rcd at 9008-15, paras. 436-49, and 9084-90, paras. 589-600; *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18767-68, para. 10.

⁴⁵⁹ See *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18768, para. 11.

⁴⁶⁰ See 47 U.S.C. § 254(h)(2)(A); *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18767-68, paras. 10-11.

equipment from both telecommunications and non-telecommunications providers because it will provide Pilot participants with greater access and flexibility to select the best option at lower costs.

120. Third, and separately, we affirm our authority under section 254(h)(2)(A) of the Act, as the Pilot will enhance access to advanced telecommunications and information services for elementary and secondary school classrooms and libraries.⁴⁶¹ The use of Pilot-supported services to protect school and library broadband networks further enhances school classroom and library access to other advanced telecommunications and information services.⁴⁶² Specifically, we agree with CoSN that “cyberattacks throttle or completely thwart the ability of schools and libraries to use the ‘advanced telecommunications and information services’ promised by the Act.”⁴⁶³ Supporting cybersecurity services through the Pilot will enable and encourage participants to make full use of their connectivity services, with the reassurance that their broadband networks and services, and the information contained in them is protected. We find this to be true even for use of school-owned devices used for educational purposes outside of the school, for example, in a student’s home.⁴⁶⁴ Section 254(h)(2)(A)’s reference to “classrooms” is not prohibitive to the use of E-Rate support for off-premises use. The statute directs the Commission to establish rules to enhance access “for all public and nonprofit elementary and secondary school classrooms . . . and libraries.”⁴⁶⁵ Notably, the text does not say to enhance access to services “at” or “in” school classrooms (or libraries), as would more naturally indicate a tie to a physical location. As such, the statute permits funding of services that enhance access for school classrooms and libraries, even if such services are used off-premises. Accordingly, the Pilot can support the purchase of advanced firewall and cybersecurity services and equipment for use on school-owned devices for educational purposes, even if those devices may be used off-premises.

121. Lastly, we find that the Pilot Program is economically reasonable, and a prudent use of the limited universal service funds. The Commission has previously found expanding the types of cybersecurity services and equipment beyond basic firewall services to be cost-prohibitive to the E-Rate program.⁴⁶⁶ Since then, however, the COVID-19 pandemic changed how K-12 schools and libraries use their broadband networks for educational purposes, and K-12 schools and libraries increasingly find themselves prime targets for cybersecurity threats and attacks by malicious actors who seek to exploit the

⁴⁶¹ See 47 U.S.C. § 254(h)(2)(A).

⁴⁶² *Id.*; see also CoSN et al. January 29 Comments at 8 (stating that without the proposed supported cybersecurity services, schools and libraries will be unable to fully utilize their E-Rate-supported networks because, as of now, cyber and ransomware attacks have already caused numerous schools and libraries to routinely shut down their networks entirely or face costly disruptions that prohibit user access); see also *Cybersecurity NPRM*, 2023 WL 8605080 at *22, para. 54.

⁴⁶³ CoSN et al. January 29 Comments at 9.

⁴⁶⁴ For instance, school-issued devices that are used primarily or even exclusively in a student’s home can be a vector for malicious actors to access or disable a school broadband network, or to compromise sensitive information, as these devices are used by students to remotely access school broadband networks for school-related purposes. See, e.g., Internet2 Reply Comments at 3 (noting that students are “constantly accessing a school’s network remotely from their homes”); IOB Comments at 10 (noting that threats that could impair or disrupt a school or library network could come from users accessing the network remotely). Thus, using Pilot Program funds to protect school-issued devices, even when used off premises, enhance access to advanced telecommunications and information services for school classrooms, by protecting school broadband networks from malicious actors that may try to disrupt school networks remotely.

⁴⁶⁵ 47 U.S.C. § 254(h)(2)(A).

⁴⁶⁶ See, e.g., *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18808-18809, para. 105 (declining to extend basic firewall services because of the limited funds available to support E-Rate); *2019 Category Two Budget Order*, 34 FCC Rcd at 11236-37, para. 46 & n.123 (declining to make additional services eligible to focus funding on internal connections needed to deliver high-speed broadband to students and library patrons via LANs and WLANs).

schools' and libraries' networks and data.⁴⁶⁷ In light of such developments, as well as an increased cap for E-Rate funding, exploring expanding funding for cybersecurity services and equipment beyond basic firewalls is now prudent to determine whether there is more the Commission can do to protect schools' and libraries' E-Rate-funded broadband networks. Furthermore, by conducting a limited Pilot, the Commission can best determine whether it can support these essential services without jeopardizing the ability of the E-Rate program to continue to support the connectivity of school and library broadband networks. Generally, commenters were in favor of increasing funding to support cybersecurity services beyond basic firewalls. For example, CIS recommended that the Commission "allow funding for any cybersecurity protection that improves or enhances the cybersecurity of an organization."⁴⁶⁸ Cisco stated that "enhanced cybersecurity and advanced firewalls are needed for the delivery of reliable and useable broadband connectivity to students and educators" and funding such services is "consistent with the public interest, convenience, and necessity."⁴⁶⁹ As a result, we find funding cybersecurity services and equipment through the Pilot to be a prudent use of the limited USF support and conclude that the Pilot is economically reasonable pursuant to section 254(h)(2)(A) of the Act.

L. The Children's Internet Protection Act

122. We conclude that the requirements of the Children's Internet Protection Act (CIPA) are triggered by the purchase of eligible services or equipment through the Pilot Program. As we have explained in the E-Rate and ECF programs, CIPA applies to the use of school- or library-owned computers, including laptop and tablet computers, if the school or library accepts support for services and equipment that are used for Internet access, Internet services, or internal connections.⁴⁷⁰ As discussed in the *Cybersecurity NPRM*, Congress enacted CIPA to protect children from exposure to harmful material while accessing the Internet from a school or library,⁴⁷¹ and CIPA prohibits certain schools and libraries having computers with Internet access from receiving funding under section 254(h)(1)(B) of the Act unless they comply with specific Internet safety requirements.⁴⁷² Our determination that CIPA is applicable to the Pilot Program is consistent with past Commission decisions in the E-Rate program⁴⁷³

(Continued from previous page) _____

⁴⁶⁷ See *supra* para. 5.

⁴⁶⁸ CIS Comments at 11.

⁴⁶⁹ Cisco Comments at 15.

⁴⁷⁰ See 47 CFR § 54.520; *Emergency Connectivity Fund Report and Order*, 36 FCC Rcd at 8748, para. 111.

⁴⁷¹ See S. Rep. No. 106-141, at 1 (1999), <https://www.congress.gov/106/crpt/srpt141/CRPT-106srpt141.pdf> ("The purpose of the bill is to protect America's children from exposure to obscene material, child pornography, or other material deemed inappropriate for minors while accessing the Internet from a school or library receiving Federal Universal Service assistance for provisions of Internet access, Internet service, or internal connection[s].").

⁴⁷² 47 U.S.C. § 254(h)(5)(A)(i) and 254(h)(6)(A)(i). CIPA requires each covered school and library that receives funding for the provision of Internet access, Internet services, and internal connections to certify that the school or library is: (1) "enforcing a policy of Internet safety that includes the operation of a technology protection measure with respect to any of its computers with Internet access that protects against access [by both adults and minors] through such computers" to visual depictions that are (i) obscene; (ii) child pornography; or, (iii) with respect to use of the computers by minors, harmful to minors; and (2) "enforcing the operation of such technology protection measure during any use of such computers" by minors and adults. 47 U.S.C. §§ 254(h)(5)(B)(i),(ii) and (C)(i),(ii), (h)(6)(B)(i)(ii) and (C)(i)(ii), and (l); 47 CFR §§ 54.520(c)(1)(i), (c)(2)(i).

⁴⁷³ See *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18808-09, para. 105 (retaining support for basic firewalls because they protect against unauthorized access to schools' and libraries' networks); *First 2014 E-Rate Order*, 29 FCC Rcd at 8917-19, paras. 119 (providing internal connections support for firewall services to help deploy [the] LANs/WANs necessary to permit digital learning in schools and libraries throughout the nation); 120-21 (moving firewalls into the list of eligible category two internal connections components necessary to help deploy the LANs/WLANs needed to improve digital learning in schools and libraries); see also *Modernizing the E-Rate Program for Schools and Libraries et al.*, WC Docket No. 13-184 et al., Order, 29 FCC Rcd 13404, 13422 (WCB Oct. 28, 2014) (*FY 2015 ESL Order*) (including as eligible for E-Rate support those internal connections

(continued....)

and E-Rate ESLs which have included both basic firewall services provided as a standard component of a vendor's Internet access service as category one Internet access services, and standalone basic firewall services and components as category two internal connections services.⁴⁷⁴ Because the cybersecurity services and equipment we make eligible under the Pilot Program serve functions equivalent to that of the basic firewall services currently supported by the E-Rate program, we treat them similarly, either as standalone internal connections or as components of Internet access. We therefore conclude that the provision of Pilot support is also governed by sections 254(h)(5)(A)(i) and 254(h)(6)(A)(i) of the Act, and compliance with the CIPA Internet safety requirements is a condition of the receipt of Pilot Program support.⁴⁷⁵ As with the E-Rate and ECF programs, we also conclude that CIPA does not apply where schools or libraries have purchased services to be used only in conjunction with student-, school staff-, or library patron-owned computers.⁴⁷⁶ Also, consistent with the ECF program, we find that a Pilot participant need not complete additional CIPA compliance certifications if it has already certified its CIPA compliance for E-Rate support for the funding year preceding the start of the Pilot (i.e., it has certified its compliance in an E-Rate FCC Form 486 or FCC Form 479).⁴⁷⁷ If a Pilot participant has not previously certified its CIPA compliance in the E-Rate program, it will need to do so to qualify for Pilot Program support or certify that it is taking actions to come into compliance with the CIPA requirements.⁴⁷⁸

components necessary to *help deploy* internal broadband connections (e.g. firewall services and components, racks, uninterruptible power supply/battery back-up)). In reaching this determination, we agree with CCSD that CIPA compliance should be a requirement of the Pilot to facilitate a seamless shift to E-Rate. CCSD Comments at 1-2.

⁴⁷⁴ Early Commission orders and the corresponding E-Rate ESLs made firewalls eligible based on the underlying eligible services and equipment they support. *See, e.g., Universal Service First Report and Order*, 12 FCC Rcd at 9003, 9021, paras. 426, 460 (finding that section 254 of the Act defines the services that are to be supported for schools and libraries in terms of telecommunications, special or additional services, and access to "advanced telecommunications and information services" and concluding that internal connections include "the software file servers need to operate"); *First 2014 E-Rate Order*, 29 FCC Rcd at 8917, para. 120 (retaining E-Rate support for priority two firewalls that had previously been listed under the E-Rate ESL Data Protection entry to ensure more E-Rate support was directed to deploy the LANs/WANs needed to improve digital learning in schools and libraries); *see also* USAC, *FY 1998 ESL*, https://www.usac.org/wp-content/uploads/e-rate/documents/ESL_archive/EligibleServicesList_032898.pdf (last visited June 6, 2024) (making firewalls eligible for E-Rate support as application software "when required for file server operations").

⁴⁷⁵ This includes the adoption and enforcement of an Internet Safety Policy that requires the operation of a technology protection measure. 47 U.S.C. § 254(h)(5)(A)(i), (B), (h)(6)(A)(i), (B); *see also id.* § 254 (l) (setting forth other Internet Safety Policy requirements). By its text, CIPA applies to schools and libraries seeking "services at discount rates under paragraph (1)(B)" except for services other than the provision of Internet access, Internet service, or internal connections. *Id.* §§ 254(h)(5)(A)(i)-(ii), (h)(6)(A)(i)-(ii). The Commission has consistently interpreted these provisions to mean that CIPA "only applies to entities receiving Internet access, Internet service, or internal connections" and excludes schools and libraries receiving only telecommunications services. *See, e.g., Children's Internet Protection Act*, CC Docket No. 96-45, Report and Order, 16 FCC Rcd 8182, 8195-96, para. 28 (2001) (2001 CIPA Order). Schools, but not libraries, must also provide education about appropriate online behavior including cyberbullying. *Schools and Libraries Universal Service Support Mechanism et al.*, CC Docket No. 02-6, Report and Order, 26 FCC Rcd 11819, 11821, para. 5 (2011 CIPA Order).

⁴⁷⁶ *See, e.g., Emergency Connectivity Fund Report and Order*, 36 FCC Rcd at 8749, para. 113 (discussing the applicability of CIPA and concluding that CIPA does not apply to the use of third-party-owned devices). In reaching this conclusion, we agree with EPIC who states that CIPA does not extend to third-party devices that may connect with school- or library-owned broadband networks. EPIC Reply at 6.

⁴⁷⁷ *See* 47 U.S.C. § 254(h)(5)(A)(i), (6)(A)(i) (requiring certifications concerning section 254(h)(5), (h)(6), and (l)). If an E-Rate applicant's existing certification states that CIPA does not apply because the applicant is receiving only telecommunications services, the participant will be required to provide CIPA certifications via the FCC Form 471 to participate and receive support through the Pilot Program.

⁴⁷⁸ 47 CFR § 54.2013 (listing the required CIPA certifications to participate in the Pilot Program).

M. Delegations of Authority to the Bureau and the Office of Managing Director

123. In order to ease program administration, we delegate to the Bureau, consistent with the goals of the Pilot Program, the authority to waive certain program deadlines, clarify any inconsistencies or ambiguities in the Pilot Program rules, adjust Pilot project funding commitments,⁴⁷⁹ or to perform other administrative tasks as may be necessary for the smooth implementation, administration, and operation of the Pilot Program. We also delegate to the Bureau the authority to grant limited extensions of deadlines to Pilot projects, and other authority as may be necessary to ensure a successful Pilot Program.

124. In addition, we delegate financial, information security, and privacy oversight of the Pilot Program to OMD and OGC, and direct OMD and OGC to work in coordination with the Bureau to ensure that all financial, information security, and privacy aspects of the Pilot have adequate internal controls. These duties fall with OMD's current delegated authority to ensure that the Commission operates in accordance with federal financial statutes and guidance.⁴⁸⁰ OMD performs this role with respect to USAC's administration of the Commission's universal service programs⁴⁸¹ and we anticipate that OMD will leverage existing policies and procedures, to the extent practicable and consistent with the Pilot, to ensure the efficient and effective management of the program. Finally, we note OMD is required to consult with the Bureau on any policy matters affecting the Pilot Program, consistent with section 0.91(a) of the Commission's rules.

125. We direct the Bureau to conduct outreach to educate eligible schools and libraries about the Pilot Program, and to coordinate, as necessary, with other federal agencies, and state, local, and Tribal governments. As supported by the record in this proceeding, we also direct USAC to develop and implement a communications strategy, under the oversight of the Bureau, to provide training and information necessary for schools and libraries to successfully participate in the Pilot Program. Outreach, education, and engagement with Pilot Program applicants and, ultimately, selected Pilot participants will be an important tool in ensuring the Pilot Program is successful and meets its goals.

126. We recognize that once implementation of the Pilot Program begins, the Bureau may encounter unforeseen issues or problems with the administration of the program that may need to be resolved.⁴⁸² To promote maximum effectiveness and smooth administration of the Pilot Program, we delegate to Bureau staff the authority to address and resolve such unforeseen administrative issues or problems, provided that doing so is consistent with the decisions we reach here today.

IV. PROCEDURAL MATTERS

127. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended

⁴⁷⁹ The Bureau does not have authority to adjust funding commitments beyond Pilot participants' budgets or make funding commitments beyond the \$200 million Pilot Program cap. SHLB Coalition et. al. May 31, 2024 *Ex Parte* Letter at 8 (asking the Commission to delegate authority to the Bureau to increase the Pilot program cap).

⁴⁸⁰ 47 CFR § 0.11(a)(3)-(4) (stating that the OMD will "[a]ssist the Chair[person] in carrying out the administrative and executive responsibilities" and "[a]dvise the Chair[person] and Commission on management, administrative, and related matters; review and evaluate the programs and procedures of the Commission; initiate action or make recommendations as may be necessary to administer the Communications Act most effectively in the public interest"); 47 CFR § 0.11(a)(8) (stating that OMD's current responsibility is to "[p]lan and manage the administrative affairs of the Commission with respect to the functions of . . . budget and financial management"); 47 CFR § 0.5(e) (requiring Bureau and Office coordination with the OMD on recommendations "that may affect agency compliance with Federal financial management requirements").

⁴⁸¹ See, e.g., FCC/USAC MOU (stating that the Commission is responsible for the effective and efficient management and oversight of the USF, including USF policy decisions, and USAC is responsible for the effective administration of the programs).

⁴⁸² See, e.g., E-Rate Central Comments at 3 (mentioning that the Commission may want to incorporate or apply the outcomes of other cybersecurity proceedings during the course of the Pilot).

(RFA),⁴⁸³ 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.”⁴⁸⁴ Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in this *Report and Order* on small entities. The FRFA is set forth in Appendix D.

128. *Paperwork Reduction Act.* This Report and Order contains new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

129. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is “non-major” under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

130. *OPEN Government Data Act.* The OPEN Government Data Act,⁴⁸⁵ requires agencies to make “public data assets” available under an open license and as “open Government data assets,” *i.e.*, in machine-readable, open format, unencumbered by use restrictions other than intellectual property rights, and based on an open standard that is maintained by a standards organization.⁴⁸⁶ This requirement is to be implemented “in accordance with guidance by the Director” of the Office of Management and Budget (OMB).⁴⁸⁷ The term “public data asset” means “a data asset, or part thereof, maintained by the Federal Government that has been, or may be, released to the public, including any data asset, or part thereof, subject to disclosure under [the Freedom of Information Act (FOIA)].”⁴⁸⁸ A “data asset” is “a collection of data elements or data sets that may be grouped together,”⁴⁸⁹ and “data” is “recorded information, regardless of form or the media on which the data is recorded.”⁴⁹⁰ We delegate authority, including the authority to adopt rules, to the Bureau, in consultation with the agency’s Chief Data and Analytics Officer and after seeking public comment to the extent it deems appropriate, to determine whether any data assets maintained or created by the Commission pursuant to the rules adopted herein are “public data assets” and if so, to determine when and to what extent such information should be made publicly available to the extent the Commission has not done so. In doing so, the Bureau shall take into account the extent to which such data assets should not be made publicly available because they are not subject to disclosure

⁴⁸³ 5 U.S.C. §§ 601–612. The RFA has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

⁴⁸⁴ 5 U.S.C. § 605(b).

⁴⁸⁵ Congress enacted the OPEN Government Data Act as Title II of the Foundations for Evidence-Based Policymaking Act of 2018, Pub. L. No. 115-435 (2019), §§ 201-202.

⁴⁸⁶ 44 U.S.C. §§ 3502(20), (22) (definitions of “open Government data asset” and “public data asset”), 3506(b)(6)(B) (public availability).

⁴⁸⁷ OMB has not yet issued final guidance.

⁴⁸⁸ 44 U.S.C. § 3502(22).

⁴⁸⁹ 44 U.S.C. § 3502(17).

⁴⁹⁰ 44 U.S.C. § 3502(16).

under the FOIA.⁴⁹¹

131. *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).

132. For additional information on this proceeding, contact Kristin Berkland of the Telecommunications Access Policy Division, Wireline Competition Bureau at Kristin.Berkland@fcc.gov or at (202) 418-0677.

V. ORDERING CLAUSES

133. ACCORDINGLY, IT IS ORDERED, that pursuant to the authority contained in sections 1 through 4, 201 through 202, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-202, 254, 303(r), and 403, this Report and Order IS ADOPTED effective thirty (30) days after the publication of this Report and Order in the Federal Register.

134. IT IS FURTHER ORDERED, that pursuant to the authority contained in sections 1 through 4, 201 through 202, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-202, 254, 303(r), and 403, Part 54 of the Commission's rules, 47 CFR Part 54, is AMENDED as set forth in Appendix A, and such rule amendments shall be effective thirty (30) days after the publication of this Report and Order in the Federal Register, except for sections 54.2004, 54.2005, 54.2006, and 54.2008, which contain information collection requirements that are not effective until approved by the Office of Management and Budget. The FCC will publish a document in the Federal Register announcing the effective date for those sections.

135. IT IS FURTHER ORDERED that the Commission's Office of the Secretary SHALL SEND a copy of the Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

136. IT IS FURTHER ORDERED that the Office of the Managing Director, Performance Program Management, SHALL SEND a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁴⁹¹ See, e.g., 5 U.S.C. § 552(b)(4), (6)-(7) (exemptions concerning confidential commercial information, personal privacy, and information compiled for law enforcement purposes, respectively).

APPENDIX A**Final Rules**

For the reasons discussed above, the Federal Communications Commission amends part 54 of Title 47 of the Code of Federal Regulations as follows:

PART 54 – UNIVERSAL SERVICE

1. The authority for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, 1302, 1601-1609, and 1752.

2. Add subpart T, consisting of §§ 54.2000 through 54.2013, to read as follows:

Subpart T -- Schools and Libraries Cybersecurity Pilot Program**§ 54.2000 Terms and Definitions.**

Administrator. The term “Administrator” means the Universal Service Administrative Company.

Applicant. An “applicant” is a school, library, or consortium of schools and/or libraries that applies to participate in the Schools and Libraries Cybersecurity Pilot Program.

Billed Entity. A “billed entity” is the entity that remits payment to service providers for services rendered to eligible schools, libraries, or consortia of eligible schools and libraries.

Commission. The term “Commission” means the Federal Communications Commission.

Connected device. The term “connected device” means a laptop or desktop computer, or a tablet.

Consortium. A “consortium” is any local, Tribal, statewide, regional, or interstate cooperative association of schools and/or libraries eligible for Schools and Libraries Cybersecurity Pilot Program support that seeks competitive bids for eligible services or funding for eligible services on behalf of some or all of its members. A consortium may also include health care providers eligible under subpart G of this part, and public sector (governmental) entities, including, but not limited to, state colleges and state universities, state educational broadcasters, counties, and municipalities, although such entities are not eligible for support.

Cyber incident. An occurrence that actually or potentially results in adverse consequences to an information system or the information that the system processes, stores, or transmits and that may require a response action to mitigate or eliminate the consequences.

Cyber threat. A circumstance or event that has or indicates the potential to exploit vulnerabilities and to adversely impact organizational operations, organizational assets (including information and information systems), individuals, other organizations, or society.

Cyberattack. An attempt to gain unauthorized access to system services, resources, or information, or an attempt to compromise system or information integrity.

Doxing. The act of compiling or publishing personal information about an individual on the Internet, typically with malicious intent.

Educational Purposes. For purposes of this subpart, activities that are integral, immediate, and proximate to the education of students, or in the case of libraries, integral, immediate, and proximate to the provision of library services to library patrons, qualify as “educational purposes.”

Elementary School. An “elementary school” means an elementary school as defined in 20 U.S.C. § 7801(18), a non-profit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under state law.

Library. A “library” includes:

- (1) A public library;
- (2) A public elementary school or secondary school library;
- (3) A Tribal library;
- (4) An academic library;
- (5) A research library, which for the purpose of this section means a library that:
 - (i) Makes publicly available library services and materials suitable for scholarly research and not otherwise available to the public; and
 - (ii) Is not an integral part of an institution of higher education; and
- (6) A private library, but only if the state in which such private library is located determines that the library should be considered a library for the purposes of this definition.

Library consortium. A “library consortium” is any local, statewide, Tribal, regional, or interstate cooperative association of libraries that provides for the systematic and effective coordination of the resources of schools, and public, academic, and special libraries and information centers, for improving services to the clientele of such libraries. For the purposes of these rules, references to library will also refer to library consortium.

National School Lunch Program. The “National School Lunch Program” is a program administered by the U.S. Department of Agriculture and state agencies that provides free or reduced price lunches to economically disadvantaged children. A child whose family income is between 130 percent and 185 percent of applicable family size income levels contained in the nonfarm poverty guidelines prescribed by the Office of Management and Budget is eligible for a reduced price lunch. A child whose family income is 130 percent or less of applicable family size income levels contained in the nonfarm income poverty guidelines prescribed by the Office of Management and Budget is eligible for a free lunch.

Pilot participant. A “Pilot participant” is an eligible school, library, or consortium of eligible schools and/or libraries selected to participate in the Schools and Libraries Cybersecurity Pilot Program.

Pre-discount price. The “pre-discount price” means, in this subpart, the price the service provider agrees to accept as total payment for its eligible services and equipment. This amount is the sum of the amount the service provider expects to receive from the eligible school, library, or consortium, and the amount it expects to receive as reimbursement from the Schools and Libraries Cybersecurity Pilot Program for the discounts provided under this subpart.

Secondary school. A “secondary school” means a secondary school as defined in 20 U.S.C. § 7801(38), a non-profit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under state law except that the term does not include any education beyond grade 12.

Tribal. An entity is “Tribal” if it is a school operated by or receiving funding from the Bureau of Indian Education (BIE), or if it is a school or library operated by any Tribe, Band, Nation, or other organized group or community, including any Alaska native village, regional

corporation, or village corporation (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. § 1601 et seq.) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

§ 54.2001 Cap, Budgets, and Duration.

- (a) *Cap.* The Schools and Libraries Cybersecurity Pilot Program shall have a cap of \$200 million.
- (b) *Pilot Participant Budgets.* Each Pilot participant will be subject to a specific budget. Budgets are specified in terms of annualized dollar amounts, but participants' expenses are capped based on the full three-year duration of the Pilot and participants may seek reimbursement for more than the annual budget for any given Pilot Program year, so long as the total amount disbursed over the three-year term does not exceed three times the applicable annual budget.
 - (1) *Schools.* At a minimum, each eligible school or school district will receive a pre-discount budget of \$15,000 annually. Schools and school districts with 1,100 students or fewer will be eligible to receive the annual pre-discount \$15,000 funding floor. For schools and school districts with more than 1,100 students, the annual budget is calculated using the pre-discount \$13.60 per-student multiplier, subject to an annual pre-discount budget maximum of \$1.5 million.
 - (2) *Libraries.* Each eligible library will receive a pre-discount budget of \$15,000 annually up to 11 libraries/sites. For library systems with more than 11 libraries/sites, the budget will be up to \$175,000 pre-discount annually.
 - (3) *Consortia.* Consortia comprised of eligible schools and libraries will be eligible to receive funding based on student count, using the pre-discount \$13.60 per-student multiplier and \$1.5 million pre-discount funding caps, and the number of library sites, using the pre-discount \$15,000 annual per-library budget and \$175,000 pre-discount funding caps. Consortia solely comprised of eligible schools or comprised of both eligible schools and libraries are subject to the pre-discount annual \$1.5 million budget maximum for schools and school districts. Consortia solely comprised of eligible libraries will be subject to the pre-discount annual \$175,000 budget maximum for library systems.
- (c) *Duration.* The Schools and Libraries Cybersecurity Pilot Program shall make funding available to selected Pilot participants (in accordance with § 54.2004 of this subpart) for three years, to begin when selected Pilot participants are first eligible to receive eligible services and equipment (i.e., from the date of the first funding commitment decision letter).
- (d) *Rules of prioritization.* If total demand for the Schools and Libraries Cybersecurity Pilot Program exceeds the Pilot Program cap of \$200 million, funding will be made available as follows:
 - (1) Schools and libraries eligible for a 90 percent discount shall receive first priority for funds, as determined by the schools and libraries discount matrix in § 54.2007. Funding shall next be made available for schools and libraries eligible for an 80 percent discount, then for a 70 percent discount, and continuing at each descending discount level until there are no funds remaining.

- (2) If funding is not sufficient to support all of the funding requests within a particular discount level, funding will be allocated at that discount level using the percentage of students eligible for the National School Lunch Program. Thus, if there is not enough support to fund all requests at the 90 percent discount level, funding shall be allocated beginning with those applicants with the highest percentage of NSLP eligibility for that discount level, and shall continue at each descending percentage of NSLP until there are no funds remaining.

§ 54.2002 Eligible Recipients.

(a) Schools.

- (1) Only schools meeting the statutory definition of “elementary school” or “secondary school” as defined in § 54.2000, and not excluded under paragraphs (a)(2) or (3) of this section shall be eligible for discounts on supported services under this subpart.
- (2) Schools operating as for-profit businesses shall not be eligible for discounts under this subpart.
- (3) Schools with endowments exceeding \$50,000,000 shall not be eligible for discounts under this subpart.

(b) Libraries.

- (1) Only libraries eligible for assistance from a State library administrative agency under the Library Services and Technology Act (20 U.S.C. § 9122) and not excluded under paragraphs (b)(2) or (3) of this section shall be eligible for discounts under this subpart.
- (2) Except as provided in paragraph (b)(4) of this section, a library’s eligibility for discounts under this subpart shall depend on its funding as an independent entity. Only libraries whose budgets are completely separate from any schools (including, but not limited to, elementary and secondary schools, colleges, and universities) shall be eligible for discounts as libraries under this subpart.
- (3) Libraries operating as for-profit businesses shall not be eligible for discounts under this subpart.
- (4) A Tribal college or university library that serves as a public library by having dedicated library staff, regular hours, and a collection available for public use in its community shall be eligible for discounts under this subpart.

(c) Consortia.

- (1) *Consortium Leader.* Each consortium seeking support under this subpart must identify an entity or organization that will lead the consortium (the “Consortium Leader”). The Consortium Leader may be an eligible school or library participating in the consortium; a state organization; public sector governmental entity, including a Tribal government entity; or a non-profit entity that is ineligible for support under this subpart. Ineligible state organizations, public sector entities, or non-profit entities may serve as Consortium Leaders or provide consulting assistance to consortia only if they do not participate as potential service providers during the competitive bidding process. An ineligible entity that serves as the Consortium Leader must pass through the full value of any discounts, funding, or other program benefits secured to the eligible schools and libraries that are members of the consortium.

- (2) For consortia, discounts under this subpart shall apply only to the portion of eligible services and equipment used by eligible schools and libraries.
- (3) Service providers shall keep and retain records of rates charged to and discounts allowed for eligible schools and libraries on their own or as part of a consortium. Such records shall be available for public inspection.

§ 54.2003 Eligible Services and Equipment.

- (a) *Supported services and equipment.* All supported services and equipment are identified in the Schools and Libraries Cybersecurity Pilot Program Eligible Services List. The services and equipment in this subpart will be supported in addition to all reasonable charges that are incurred by taking such services, such as state and federal taxes. Charges for termination liability, penalty surcharges, and other charges not included in the cost of taking such service shall not be covered by universal service support.
- (b) *Prohibition on resale.* Eligible supported services and equipment shall not be sold, resold, or transferred in consideration of money or any other thing of value, until the conclusion of the Schools and Libraries Cybersecurity Pilot Program, as provided in § 54.2001.

§ 54.2004 Application for Pilot Program Selection and Reporting of Information.

- (a) The Wireline Competition Bureau shall announce the opening of the Pilot Participant Selection Application Window for applicants to submit a Schools and Libraries Pilot Participant Selection Application
- (b) The Wireline Competition Bureau shall announce those eligible applicants who have been selected to participate in the Schools and Libraries Cybersecurity Pilot Program following the close of the Pilot Participant Selection Application Window.
- (c) *Filing the FCC Form 484 to be considered for selection in the Pilot Program.*
 - (1) Schools, libraries, or consortia of eligible schools and libraries to be considered for participation in the Schools and Libraries Cybersecurity Pilot Program shall submit the first part of an FCC Form 484 to the Administrator, via a portal established by the Administrator, that contains, at a minimum, the following information:
 - (i) Name, entity number, FCC registration number, employer identification number, addresses, and telephone number for each school, library, and consortium member that will participate in the proposed Pilot project, including the identity of the lead site for any proposals involving a consortium.
 - (ii) Contact information for the individual(s) who will be responsible for the management and operation of the proposed Pilot project, including name, title or position, telephone number, mailing address, and email address.
 - (iii) Applicant number(s) and entity type(s), including Tribal information, if applicable, and current E-Rate participation status and discount percentage, if applicable.
 - (iv) A broad description of the proposed Pilot project, including a description of the applicant's goals and objectives for the proposed Pilot project, a description of how Pilot funding will be used for the proposed project, and the cybersecurity risks the proposed Pilot project will prevent or address.
 - (v) The cybersecurity equipment and services the applicant plans to request as part of its proposed project, the ability of the project to be self-sustaining once established, and whether the applicant has a cybersecurity officer or

other senior-level staff member designated to be the cybersecurity officer for its Pilot project.

- (vi) Whether the applicant has previous experience implementing cybersecurity protections or measures, how many years of prior experience the applicant has, whether the applicant has experienced a cybersecurity incident within a year of the date of its application, and information about the applicant's participation or planned participation in cybersecurity collaboration and/or information-sharing groups.
 - (vii) Whether the applicant has implemented, or begun implementing, any U.S. Department of Education or Cybersecurity and Infrastructure Security Agency best practices recommendations, a description of any U.S. Department of Education or Cybersecurity and Infrastructure Security Agency free or low-cost cybersecurity resources that an applicant currently utilizes or plans to utilize, or an explanation of what is preventing an applicant from utilizing these available resources.
 - (viii) An estimate of the total costs for the proposed Pilot project, information about how the applicant will cover the non-discount share of costs for the Pilot-eligible services, and information about other cybersecurity funding the applicant receives, or expects to receive, from other federal, state, local, or Tribal programs or sources.
 - (ix) Whether any of the ineligible services and equipment the applicant will purchase with its own resources to support the eligible cybersecurity equipment and services it plans to purchase with Pilot funding will have any ancillary capabilities that will allow it to capture data on cybersecurity threats and attacks, any free or low-cost cybersecurity resources that the applicant will require service providers to include in their bids, and whether the applicant will require its selected service provider(s) to capture and measure cost-effectiveness and cyber awareness/readiness data.
 - (x) A description of the applicant's proposed metrics for the Pilot project, how they align with the applicant's cybersecurity goals, how those metrics will be collected, and whether the applicant is prepared to share and report its cybersecurity metrics as part of the Pilot Program.
- (2) The first part of the FCC Form 484 shall be signed by a person authorized to submit the application to participate in the Schools and Libraries Cybersecurity Pilot Program on behalf of the eligible school, library, or consortium including such entities.
- (i) A person authorized to submit the first part of the FCC Form 484 application on behalf of the entities listed on an FCC Form 484 shall certify under oath that:
 - (A) "I am authorized to submit this application on behalf of the above-named applicant and that based on information known to me or provided to me by employees responsible for the data being submitted, I hereby certify that the data set forth in this form has been examined and is true, accurate, and complete. I acknowledge that any false statement on this application or on any other documents submitted by this applicant can be punished by fine or forfeiture under the Communications Act (47 U.S.C. §§ 502, 503(b)), or fine or imprisonment under Title 18 of the United States

Code (18 U.S.C. § 1001), or can lead to liability under the False Claims Act (31 U.S.C. §§ 3729–3733).”

- (B) “In addition to the foregoing, this applicant is in compliance with the rules and orders governing the Schools and Libraries Cybersecurity Pilot Program, and I acknowledge that failure to be in compliance and remain in compliance with those rules and orders may result in the denial of funding, cancellation of funding commitments, and/or recoupment of past disbursements. I acknowledge that failure to comply with the rules and orders governing the Schools and Libraries Cybersecurity Pilot Program could result in civil or criminal prosecution by law enforcement authorities.”
- (C) “By signing this application, I certify that the information contained in this form is true, complete, and accurate, and the projected expenditures, disbursements, and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil, or administrative penalties for fraud, false statements, false claims, or otherwise. (U.S. Code Title 18, §§ 1001, 286–287, and 1341, and Title 31, §§ 3729–3730 and 3801–3812).”
- (D) The applicant recognizes that it may be audited pursuant to its application, that it will retain for ten years any and all records related to its application, and that, if audited, it shall produce such records at the request of any representative (including any auditor) appointed by a state education department, the Administrator, the Commission and its Office of Inspector General, or any local, state, or federal agency with jurisdiction over the entity.
- (E) “I certify and acknowledge, under penalty of perjury, that if selected, the schools, libraries, and consortia in the application will comply with all applicable Schools and Libraries Cybersecurity Pilot Program rules, requirements, and procedures, including the competitive bidding rules and the requirement to pay the required share of the costs for the supported items from eligible sources.”
- (F) “I certify under penalty of perjury, to the best of my knowledge, that the schools, libraries, and consortia listed in the application are not already receiving or expecting to receive other funding (from any source, federal, state, Tribal, local, private, or other) that will pay for the same equipment and/or services, or the same portion of the equipment and/or services, for which I am seeking funding under the Schools and Libraries Cybersecurity Pilot Program.”
- (G) “I certify under penalty of perjury, to the best of my knowledge, that all requested equipment and services funded by the Schools and Libraries Cybersecurity Pilot Program will be used for their intended purposes.”

(d) *Filing the FCC Form 484 once selected to be in the Pilot Program.*

- (1) Schools, libraries, or consortia of eligible schools and libraries selected for participation in the Schools and Libraries Cybersecurity Pilot Program shall submit to the Administrator, via a portal established by the Administrator, a second part to the FCC Form 484 that contains, at a minimum, the following information, as applicable:

- (i) Information about correcting known security flaws and conducting routine backups, developing and exercising a cyber incident response plan, and any cybersecurity changes or advancements the participant plans to make outside of the Pilot-funded services and equipment.
 - (ii) A description of the participant's current cybersecurity posture, including how the school or library is currently managing and addressing its current cybersecurity risks through prevention and mitigation tactics.
 - (iii) Information about a participant's planned use(s) for other federal, state, or local cybersecurity funding (i.e., funding obtained outside of the Pilot).
 - (iv) Information about a participant's history of cybersecurity threats and attacks within a year of the date of its application; the date range of the incident, a description of the unauthorized access; a description of the impact to the school or library, a description of the vulnerabilities exploited and the techniques used to access the system, and identifying information for each actor responsible for the incident, if known.
 - (v) A description of the specific U.S. Department of Education or Cybersecurity and Infrastructure Security Agency best practices recommendations that the participant has implemented or begun to implement.
 - (vi) Information about a participant's current cybersecurity training policies and procedures, such as the frequency with which a participant trains its school and library staff and, separately, information about student cyber training sessions, and participation rates.
 - (vii) Information about any non-monetary or other challenges a participant may be facing in developing a more robust cybersecurity posture.
- (2) The second part of the FCC Form 484 shall be signed by a person authorized to submit the second part as a participant in the Schools and Libraries Cybersecurity Pilot Program on behalf of the eligible school, library, or consortium including such entities.
- (i) A person authorized to submit the second part of the FCC Form 484 application on behalf of the Pilot participants listed on an FCC Form 484 shall certify under oath that:
 - (A) "I am authorized to submit this application on behalf of the above-named participant and that based on information known to me or provided to me by employees responsible for the data being submitted, I hereby certify that the data set forth in this form has been examined and is true, accurate, and complete. I acknowledge that any false statement on this application or on other documents submitted by this participant can be punished by fine or forfeiture under the Communications Act (47 U.S.C. §§ 502, 503(b)), or fine or imprisonment under Title 18 of the United States Code (18 U.S.C. § 1001), or can lead to liability under the False Claims Act (31 U.S.C. §§ 3729–3733)."
 - (B) "In addition to the foregoing, this participant is in compliance with the rules and orders governing the Schools and Libraries Cybersecurity Pilot Program, and I acknowledge that failure to be in compliance and remain in compliance with those rules and orders may result in the denial of funding, cancellation of funding commitments, and/or recoupment of past disbursements. I

acknowledge that failure to comply with the rules and orders governing the Schools and Libraries Cybersecurity Pilot Program could result in civil or criminal prosecution by law enforcement authorities.”

- (C) “By signing this application, I certify that the information contained in this form is true, complete, and accurate, and the projected expenditures, disbursements, and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil, or administrative penalties for fraud, false statements, false claims, or otherwise. (U.S. Code Title 18, §§ 1001, 286–287, and 1341, and Title 31, §§ 3729–3730 and 3801–3812).”
 - (D) The participant recognizes that it may be audited pursuant to its application, that it will retain for ten years any and all records related to its application, and that, if audited, it shall produce such records at the request of any representative (including any auditor) appointed by a state education department, the Administrator, the Commission and its Office of Inspector General, or any local, state, or federal agency with jurisdiction over the entity.
 - (E) “I certify and acknowledge, under penalty of perjury, that if selected, the schools, libraries, and consortia in the application will comply with all applicable Schools and Libraries Cybersecurity Pilot Program rules, requirements, and procedures, including the competitive bidding rules and the requirement to pay the required share of the costs for the supported items from eligible sources.”
 - (F) “I certify under penalty of perjury, to the best of my knowledge, that the schools, libraries, and consortia listed in the application are not already receiving or expecting to receive other funding (from any source, federal, state, Tribal, local, private, or other) that will pay for the same equipment and/or services, or the same portion of the equipment and/or services, for which I am seeking funding under the Schools and Libraries Cybersecurity Pilot Program.”
 - (G) “I certify under penalty of perjury, to the best of my knowledge, that all requested equipment and services funded by the Schools and Libraries Cybersecurity Pilot Program will be used for their intended purposes.”
- (3) In order for a school, library, or consortia of eligible schools and libraries selected for participation in the Schools and Libraries Cybersecurity Pilot Program to retain its status as a Pilot participant and receive Pilot Program support, it will be required to submit the information required by the second part of the FCC Form 484 in the form specified by the Wireline Competition Bureau.
 - (4) The Wireline Competition Bureau may waive, reduce, modify, or eliminate from the second part of the FCC Form 484, information requirements that prove unnecessary for the sound and efficient administration of the Pilot.
 - (5) Failure to submit the information required by the second part of the FCC Form 484 may result in removal as a participant in the Pilot Program and/or a referral to the Enforcement Bureau.

(e) *Data reporting requirements for participants.*

- (1) In order for a Pilot participant to receive and continue receiving Pilot Program support and retain its status as a Pilot participant, it will be required to submit initial and annual reports, followed by a final report at the completion of the program with the information and in the form specified by the Wireline Competition Bureau.
- (2) Prior to the start of the Pilot Program, the Wireline Competition Bureau shall announce the timing and form of the initial, annual, and final reports that Pilot participants must submit.
- (3) The Wireline Competition Bureau may waive, reduce, modify, or eliminate Pilot participant reporting requirements that prove unnecessary and require additional reporting requirements that the Bureau deems necessary to the sound and efficient administration of the Pilot.
- (4) Failure to submit initial, annual, and final reports may result in a referral to the Enforcement Bureau, a hold on future disbursements, rescission of committed funds, and/or recovery of disbursed funds.

§ 54.2005 Competitive Bidding Requirements.

- (a) All participants in the Schools and Libraries Cybersecurity Pilot Program must conduct a fair and open competitive bidding process, consistent with all requirements set forth in this subpart.

NOTE TO PARAGRAPH (a): The following is an illustrative list of activities or behaviors that would not result in a fair and open competitive bidding process: the participant seeking supported services has a relationship with a service provider that would unfairly influence the outcome of a competition or would furnish the service provider with inside information; someone other than the participant or an authorized representative of the participant prepares, signs, and submits the FCC Form 470 and certification; a service provider representative is listed as the FCC Form 470 contact person and the participant allows that service provider to participate in the competitive bidding process; the service provider prepares the participant's FCC Form 470 or participates in the bid evaluation or vendor selection process in any way; the participant turns over to a service provider the responsibility for ensuring a fair and open competitive bidding process; a participant employee with a role in the service provider selection process also has an ownership interest in the service provider seeking to participate in the competitive bidding process; and the participant's FCC Form 470 does not describe the supported services with sufficient specificity to enable interested service providers to submit responsive bids.

- (b) *Competitive bid requirements.* All participants in the Schools and Libraries Cybersecurity Pilot Program shall seek competitive bids, pursuant to the requirements established in this subpart, for all services and equipment eligible for support under § 54.2003, except as provided in paragraph (f) of this section. These competitive bidding requirements apply in addition to any applicable state, Tribal, and local competitive bidding requirements and are not intended to preempt such state, Tribal, or local requirements.
- (c) *Posting of FCC Form 470.*
- (1) Participants in the Schools and Libraries Cybersecurity Pilot Program shall submit a completed FCC Form 470 to the Administrator to initiate the competitive bidding process. The FCC Form 470 shall include, at a minimum, the following information:
 - (i) A list of specified services and/or equipment for which the school, library, or consortium requests bids;

-
- (ii) Sufficient information to enable bidders to reasonably determine the needs of the applicant;
- (2) The FCC Form 470 shall be signed by a person authorized to request bids for eligible services and equipment for the eligible school, library, or consortium, including such entities, and shall include that person's certification under penalty of perjury that:
- (i) "I am authorized to submit this application on behalf of the above-named participant in the Schools and Libraries Cybersecurity Pilot Program and that based on information known to me or provided to me by employees responsible for the data being submitted, I hereby certify that the data set forth in this form has been examined and is true, accurate, and complete. I acknowledge that any false statement on this application or on other documents submitted by this participant can be punished by fine or forfeiture under the Communications Act (47 U.S.C. §§ 502, 503(b)), or fine or imprisonment under Title 18 of the United States Code (18 U.S.C. § 1001), or can lead to liability under the False Claims Act (31 U.S.C. §§ 3729–3733)."
 - (ii) "In addition to the foregoing, this participant is in compliance with the rules and orders governing the Schools and Libraries Cybersecurity Pilot Program, and I acknowledge that failure to be in compliance and remain in compliance with those rules and orders may result in the denial of funding, cancellation of funding commitments, and/or recoupment of past disbursements. I acknowledge that failure to comply with the rules and orders governing the Schools and Libraries Cybersecurity Pilot Program could result in civil or criminal prosecution by law enforcement authorities."
 - (iii) "By signing this application, I certify that the information contained in this form is true, complete, and accurate. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil, or administrative penalties for fraud, false statements, false claims, or otherwise. (U.S. Code Title 18, §§ 1001, 286–287, and 1341, and Title 31, §§ 3729–3730 and 3801–3812)."
 - (iv) The schools meet the statutory definition of "elementary school" or "secondary school" as defined in § 54.2000, do not operate as for-profit businesses, and do not have endowments exceeding \$50,000,000.
 - (v) Libraries or library consortia eligible for assistance from a State library administrative agency under the Library Services and Technology Act of 1996 do not operate as for-profit businesses and, except for the limited case of Tribal college or university libraries, have budgets that are completely separate from any school (including, but not limited to, elementary and secondary schools, colleges, and universities).
 - (vi) The services and/or equipment that the school, library, or consortium purchases at discounts will not be sold, resold, or transferred in consideration for money or any other thing of value, except as allowed by § 54.2003(b).
 - (vii) The school(s) and/or library(ies) listed on this FCC Form 470 will not accept anything of value, other than services and equipment sought by means of this form, from the service provider, or any representatives or agent thereof, or any consultant in connection with this request for services.

- (viii) All bids submitted for eligible equipment and services will be carefully considered, with price being the primary factor, and the bid selected will be for the most cost-effective service offering consistent with paragraph (e) of this section.
 - (ix) The school, library, or consortium acknowledges that support under the Schools and Libraries Cybersecurity Pilot Program is conditional upon the school(s) and/or library(ies) securing access, separately or through this program, to all of the resources necessary to effectively use the requested equipment and services. The school, library, or consortium recognizes that some of the aforementioned resources are not eligible for support and certifies that it has considered what financial resources should be available to cover these costs.
 - (x) “I will retain required documents for a period of at least 10 years (or whatever retention period is required by the rules in effect at the time of this certification) after the later of the last day of the applicable Pilot Program year or the service delivery deadline for the associated funding request. I also certify that I will retain all documents necessary to demonstrate compliance with the statute (47 U.S.C. § 254) and Commission rules regarding the form for, receipt of, and delivery of equipment and services receiving Schools and Libraries Cybersecurity Pilot Program discounts. I acknowledge that I may be audited pursuant to participation in the Pilot Program.”
 - (xi) “I certify that the equipment and services that the participant purchases at discounts will be used primarily for educational purposes and will not be sold, resold, or transferred in consideration for money or any other thing of value, except as permitted by the Commission’s rules at 47 C.F.R. § 54.2003(b). Additionally, I certify that the entity or entities listed on this form will not accept anything of value or a promise of anything of value, other than services and equipment sought by means of this form, from the service provider, or any representative or agent thereof, or any consultant in connection with this request for services.”
 - (xii) “I acknowledge that support under this Pilot Program is conditional upon the school(s) and/or library(ies) I represent securing access, separately or through this program, to all of the resources necessary to effectively use the requested equipment and services. I recognize that some of the aforementioned resources are not eligible for support. I certify that I have considered what financial resources should be available to cover these costs.”
 - (xiii) “I certify that I have reviewed all applicable Commission, state, Tribal, and local procurement/competitive bidding requirements and that the participant will comply with all applicable requirements.”
- (3) The Administrator shall post each FCC Form 470 that it receives from a participant in the Schools and Libraries Cybersecurity Pilot Program on its Web site designated for this purpose.
- (4) After posting on the Administrator’s Web site an FCC Form 470, the Administrator shall send confirmation of the posting to the participant requesting services and/or equipment. The participant shall then wait at least 28 days from the date on which its description of services and/or equipment is posted on the Administrator’s Web site before making any commitments with the selected providers of services and/or

equipment. The confirmation from the Administrator shall include the date after which the participant may sign a contract with its chosen provider(s).

(d) *Gift Restrictions.*

- (1) Subject to paragraphs (d)(3) and (4) of this section, a participant in the Schools and Libraries Cybersecurity Pilot Program may not directly or indirectly solicit or accept any gift, gratuity, favor, entertainment, loan, or any other thing of value from a service provider participating in or seeking to participate in the Schools and Libraries Cybersecurity Pilot Program. No such service provider shall offer or provide any such gift, gratuity, favor, entertainment, loan, or other thing of value except as otherwise provided herein. Modest refreshments not offered as part of a meal, items with little intrinsic value intended solely for presentation, and items worth \$20 or less, including meals, may be offered or provided, and accepted by any individuals or entities subject to this rule, if the value of these items received by any individual does not exceed \$50 from any one service provider per year. The \$50 amount for any service provider shall be calculated as the aggregate value of all gifts provided during a year by the individuals specified in paragraph (d)(2)(ii) of this section.
- (2) For purposes of this paragraph:
 - (i) The term “participant in the Schools and Libraries Cybersecurity Pilot Program” includes all individuals who are on the governing boards of such entities (such as members of a school committee), and all employees, officers, representatives, agents, consultants, or independent contractors of such entities involved on behalf of such school, library, or consortium with the Schools and Libraries Cybersecurity Pilot Program, including individuals who prepare, approve, sign, or submit applications, or other forms related to the Schools and Libraries Cybersecurity Pilot Program, or who prepare bids, communicate, or work with Schools and Libraries Cybersecurity Pilot Program service providers, Schools and Libraries Cybersecurity Pilot Program consultants, or with the Administrator, as well as any staff of such entities responsible for monitoring compliance with the Schools and Libraries Cybersecurity Pilot Program; and
 - (ii) The term “service provider” includes all individuals who are on the governing boards of such an entity (such as members of the board of directors), and all employees, officers, representatives, agents, consultants, or independent contractors of such entities.
- (3) The restrictions set forth in this paragraph shall not be applicable to the provision of any gift, gratuity, favor, entertainment, loan, or any other thing of value, to the extent given to a family member or a friend working for an eligible school, library, or consortium that includes an eligible school or library, provided that such transactions:
 - (i) Are motivated solely by a personal relationship,
 - (ii) Are not rooted in any service provider business activities or any other business relationship with any such participant in the Schools and Libraries Cybersecurity Pilot Program, and
 - (iii) Are provided using only the donor's personal funds that will not be reimbursed through any employment or business relationship.
- (4) Any service provider may make charitable donations to a participant in the Schools and Libraries Cybersecurity Pilot Program in the support of its programs as long as such contributions are not directly or indirectly related to Schools and Libraries Cybersecurity Pilot Program procurement activities or decisions and are not given by

service providers to circumvent competitive bidding and other Schools and Libraries Cybersecurity Pilot Program rules.

- (e) *Selecting a provider of eligible services and/or equipment.* In selecting a provider of eligible services and equipment, participants in the Schools and Libraries Cybersecurity Pilot Program shall carefully consider all bids submitted and must select the most cost-effective service and equipment offerings. In determining which service and equipment offering is the most cost-effective, entities may consider relevant factors other than the pre-discount prices submitted by providers, but price must be the primary factor considered.
- (f) *Exemption to competitive bidding requirements.* Participants in the Schools and Libraries Cybersecurity Pilot Program are not required to file an FCC Form 470 when seeking support for services and equipment purchased from Master Service Agreements negotiated by federal, state, Tribal, or local governmental entities on behalf of such Pilot participants, if such Master Service Agreements were awarded pursuant to the E-Rate program FCC Form 470 process, as well as applicable federal, state, Tribal, or local competitive bidding requirements.

§ 54.2006 Requests for Funding.

(a) *Filing of the FCC Form 471.*

- (1) A participant in the Schools and Libraries Cybersecurity Pilot Program shall, upon entering into a signed contract or other legally binding agreement for eligible services and/or equipment, submit a completed FCC Form 471 to the Administrator.
- (2) The FCC Form 471 shall be signed by the person authorized to order eligible services or equipment for the participant in the Schools and Libraries Cybersecurity Pilot Program and shall include that person's certification under penalty of perjury that:
 - (i) "I am authorized to submit this application on behalf of the above-named participant and that based on information known to me or provided to me by employees responsible for the data being submitted, I hereby certify that the data set forth in this application has been examined and is true, accurate, and complete. I acknowledge that any false statement on this application or on any other documents submitted by this participant can be punished by fine or forfeiture under the Communications Act (47 U.S.C. §§ 502, 503(b)), or fine or imprisonment under Title 18 of the United States Code (18 U.S.C. § 1001), or can lead to liability under the False Claims Act (31 U.S.C. §§ 3729–3733)."
 - (ii) "In addition to the foregoing, this participant is in compliance with the rules and orders governing the Schools and Libraries Cybersecurity Pilot Program, and I acknowledge that failure to be in compliance and remain in compliance with those rules and orders may result in the denial of funding, cancellation of funding commitments, and/or recoupment of past disbursements. I acknowledge that failure to comply with the rules and orders governing the Schools and Libraries Cybersecurity Pilot Program could result in civil or criminal prosecution by law enforcement authorities."
 - (iii) "By signing this application, I certify that the information contained in this application is true, complete, and accurate, and the projected expenditures, disbursements, and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil, or administrative penalties for fraud, false

statements, false claims, or otherwise. (U.S. Code Title 18, §§ 1001, 286–287, and 1341, and Title 31, §§ 3729–3730 and 3801–3812).”

- (iv) The school meets the statutory definition of “elementary school” or “secondary school” as defined in § 54.2000, does not operate as a for-profit business, and does not have endowments exceeding \$50,000,000.
- (v) The library or library consortia is eligible for assistance from a State library administrative agency under the Library Services and Technology Act, does not operate as a for-profit business and, except for the limited case of Tribal college and university libraries, have budgets that are completely separate from any school (including, but not limited to, elementary and secondary schools, colleges, and universities).
- (vi) The school, library, or consortium listed on the FCC Form 471 application will pay the non-discount portion of the costs of the eligible services and/or equipment to the service provider(s).
- (vii) The school, library, or consortium listed on the FCC Form 471 application has conducted a fair and open competitive bidding process and has complied with all applicable state, Tribal, or local laws regarding procurement of the equipment and services for which support is being sought.
- (viii) An FCC Form 470 was posted and that any related request for proposals (RFP) was made available for at least 28 days before considering all bids received and selecting a service provider. The school, library, or consortium listed on the FCC Form 471 application carefully considered all bids submitted and selected the most-cost-effective bid for services and equipment in accordance with § 54.2005(e), with price being the primary factor considered.
- (ix) The school, library, or consortium listed on the FCC Form 471 application is only seeking support for eligible services and/or equipment.
- (x) The school, library, or consortia is not seeking Schools and Libraries Cybersecurity Pilot Program support or reimbursement for the portion of eligible services and/or equipment that have been purchased and reimbursed in full or in part with other federal, state, Tribal, or local funding, or are eligible for discounts from the schools and libraries universal service support mechanism or another universal service support mechanism.
- (xi) The services and equipment the school, library, or consortium purchases using Schools and Libraries Cybersecurity Pilot Program support will be used primarily for educational purposes and will not be sold, resold, or transferred in consideration for money or any other thing of value, except as allowed by § 54.2003(b).
- (xii) The school, library, or consortium will create and maintain an equipment and service inventory as required by § 54.2010(a).
- (xiii) The school, library, or consortium has complied with all program rules and acknowledges that failure to do so may result in denial of funding and/or recovery of funding.
- (xiv) The school, library, or consortium acknowledges that it may be audited pursuant to its application, that it will retain for ten years any and all records related to its application, and that, if audited, it shall produce such records at the request of any representative (including any auditor) appointed by a state

education department, the Administrator, the Commission and its Office of Inspector General, or any local, state, or federal agency with jurisdiction over the entity.

(xv) No kickbacks, as defined in 41 U.S.C. § 8701, were paid to or received by the participant, including, but not limited to, their employees, officers, representatives, agents, independent contractors, consultants, family members, and individuals who are on the governing boards, from anyone in connection with the Schools and Libraries Cybersecurity Pilot Program or the schools and libraries universal service support mechanism.

(xvi) The school, library, or consortium acknowledges that Commission rules provide that persons who have been convicted of criminal violations or held civilly liable for certain acts arising from their participation in the universal service support mechanisms are subject to suspension and debarment from the program. The school, library, or consortium will institute reasonable measures to be informed, and will notify the Administrator should it be informed or become aware that any of the entities listed on this application, or any person associated in any way with this entity and/or the entities listed on this application, is convicted of a criminal violation or held civilly liable for acts arising from their participation in the universal service support mechanisms.

(b) *Service or Equipment Substitution.*

(1) A request by a Schools and Libraries Cybersecurity Pilot Program participant to substitute a service or piece of equipment for one identified in its FCC Form 471 must be in writing and certified under penalty of perjury by an authorized person.

(2) The Administrator shall approve such written request where:

(i) The service or equipment has the same functionality;

(ii) The substitution does not violate any contract provisions or state, Tribal, or local procurement laws; and

(iii) The Schools and Libraries Cybersecurity Pilot Program participant certifies that the requested change is within the scope of the controlling FCC Form 470.

(3) In the event that a service or equipment substitution results in a change in the pre-discount price for the supported service or equipment, support shall be based on the lower of either the pre-discount price of the service or equipment for which support was originally requested or the pre-discount price of the new, substituted service or equipment after the Administrator has approved a written request for the substitution.

(c) *Mixed eligibility services and equipment.* A request for discounts for services or equipment that includes both eligible and ineligible components must remove the cost of the ineligible components of the service or equipment from the request for funding submitted to the Administrator.

(d) *Application Filing Window.* The Wireline Competition Bureau will announce the opening of the Pilot Participant Selection Application Window for participants to submit FCC Form 471 applications. The filing period shall begin and conclude on dates to be determined by the Wireline Competition Bureau. The Wireline Competition Bureau may implement additional filing periods as it deems necessary.

§ 54.2007 Discounts.

- (a) *Discount mechanism.* Discounts for participants in the Schools and Libraries Cybersecurity Pilot Program shall be set as a percentage discount from the pre-discount price.
- (b) *Discount percentages.* The discounts available to participants in the Schools and Libraries Cybersecurity Pilot Program shall range from 20 percent to 90 percent of the pre-discount price for all eligible services provided by eligible providers. The discounts available shall be determined by indicators of poverty and urban/rurality designation.
 - (1) For schools and school districts, the level of poverty shall be based on the percentage of the student enrollment that is eligible for a free or reduced price lunch under the National School Lunch Program or a federally-approved alternative mechanism. School districts shall divide the total number of students eligible for the National School Lunch Program within the school district by the total number of students within the school district to arrive at a percentage of students eligible. This percentage rate shall then be applied to the discount matrix to set a discount rate for the supported services purchased by all schools within the school district. Independent charter schools, private schools, and other eligible educational facilities should calculate a single discount percentage rate based on the total number of students under the control of the central administrative agency.
 - (2) For libraries and library consortia, the level of poverty shall be based on the percentage of the student enrollment that is eligible for a free or reduced price lunch under the National School Lunch Program or a federally-approved alternative mechanism in the public school district in which they are located and should use that school district's level of poverty to determine their discount rate when applying as a library system or as an individual library outlet within that system. When a library system has branches or outlets in more than one public school district, that library system and all library outlets within that system should use the address of the central outlet or main administrative office to determine which school district the library system is in, and should use that school district's level of poverty to determine its discount rate when applying as a library system or as one or more library outlets. If the library is not in a school district, then its level of poverty shall be based on an average of the percentage of students eligible for the National School Lunch Program in each of the school districts that children living in the library's location attend.
 - (3) The Administrator shall classify schools and libraries as "urban" or "rural" according to the following designations. The Administrator shall designate a school or library as "urban" if the school or library is located in an urbanized area or urban cluster area with a population equal to or greater than 25,000, as determined by the most recent rural-urban classification by the Bureau of the Census. The Administrator shall designate all other schools and libraries as "rural."
 - (4) Participants in the Schools and Libraries Cybersecurity Pilot Program shall calculate discounts on supported services described in § 54.2003 that are shared by two or more of their schools, libraries, or consortia members by calculating an average discount based on the applicable district-wide discounts of all member schools and libraries. School districts, library systems, or other billed entities shall ensure that, for each year in which an eligible school or library is included for purposes of calculating the aggregate discount rate, that eligible school or library shall receive a proportionate share of the shared services for which support is sought. For schools, the discount shall be a simple average of the applicable district-wide percentage for all schools sharing a portion of the shared services. For libraries, the average discount shall be a simple average of the applicable discounts to which the libraries sharing a portion of the shared services are entitled.

- (c) *Discount matrix.* The Administrator shall use the following matrix to set the discount rate to be applied to eligible services purchased by participants in the Schools and Libraries Cybersecurity Pilot Program based on the participant's level of poverty and location in an "urban" or "rural" area.

% of students eligible for National School Lunch Program	Discount Level	
	Urban Discount	Rural Discount
< 1	20	25
1-19	40	50
20-34	50	60
35-49	60	70
50-74	80	80
75-100	90	90

- (d) *Payment for the non-discount portion of supported services and equipment.* A participant in the Schools and Libraries Cybersecurity Pilot Program must pay the non-discount portion of costs for the services or equipment purchased with universal service discounts, and may not receive rebates for services or equipment purchased with universal service discounts. For the purpose of this rule, the provision, by the provider of a supported service or equipment, of free services or equipment unrelated to the supported service or equipment constitutes a rebate of the non-discount portion of the costs for the supported services and equipment.

§ 54.2008 Requests for Reimbursement.

- (a) *Submission of request for reimbursement (FCC Form 472 or FCC Form 474).* Consistent with the invoicing selection made by the Pilot participant, reimbursement for the costs associated with eligible services and equipment shall be provided directly to the participant, or its service provider(s), seeking reimbursement from the Schools and Libraries Cybersecurity Pilot Program upon submission and approval of a completed FCC Form 472 (Billed Entity Applicant Reimbursement Form) or a completed FCC Form 474 (Service Provider Invoice) to the Administrator.
- (1) The FCC Form 472 shall be signed by the person authorized to submit requests for reimbursement for the eligible school, library, or consortium and shall include that person's certification under penalty of perjury that:
- (i) "I am authorized to submit this request for reimbursement on behalf of the above-named school, library, or consortium and that based on information known to me or provided to me by employees responsible for the data being submitted, I hereby certify that the data set forth in this request for reimbursement has been examined and is true, accurate, and complete. I acknowledge that any false statement on this request for reimbursement or on other documents submitted by this school, library, or consortium can be punished by fine or forfeiture under the Communications Act (47 U.S.C. §§ 502, 503(b)), or fine or imprisonment under Title 18 of the United States Code (18 U.S.C. § 1001), or can lead to liability under the False Claims Act (31 U.S.C. §§ 3729–3733)."

- (ii) “In addition to the foregoing, the school, library, or consortium is in compliance with the rules and orders governing the Schools and Libraries Cybersecurity Pilot Program, and I acknowledge that failure to be in compliance and remain in compliance with those rules and orders may result in the denial of funding, cancellation of funding commitments, and/or recoupment of past disbursements. I acknowledge that failure to comply with the rules and orders governing the Schools and Libraries Cybersecurity Pilot Program could result in civil or criminal prosecution by law enforcement authorities.”
- (iii) “By signing this request for reimbursement, I certify that the information contained in this request for reimbursement is true, complete, and accurate, and the expenditures, disbursements, and cash receipts are for the purposes and objectives set forth in the terms and conditions of the federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil, or administrative penalties for fraud, false statements, false claims, or otherwise. (U.S. Code Title 18, sections §§ 1001, 286–287, and 1341, and Title 31, §§ 3729–3730 and 3801–3812).”
- (iv) The funds sought in the request for reimbursement are for eligible services and/or equipment that were purchased in accordance with the Schools and Libraries Cybersecurity Pilot Program rules and requirements in this subpart and received by the school, library, or consortium. The equipment and/or services being requested for reimbursement were determined to be eligible and approved by the Administrator.
- (v) The non-discounted share of costs amount(s) were billed by the Service Provider and paid in full by the Billed Entity Applicant on behalf of the eligible schools, libraries, and consortia of those entities.
- (vi) The school, library, or consortium is not seeking Schools and Libraries Cybersecurity Pilot Program reimbursement for the portion of eligible services and/or equipment that have been purchased and reimbursed in full or in part with other federal, state, Tribal, or local funding or are eligible for discounts from the schools and libraries universal service support mechanism or other universal service support mechanisms.
- (vii) The school, library, or consortium acknowledges that it must submit invoices detailing the items purchased and received along with the submission of its request for reimbursement as required by § 54.2008(b).
- (viii) The equipment and/or services the school, library, or consortium purchased will not be sold, resold, or transferred in consideration for money or any other thing of value, except as allowed by § 54.2003(b).
- (ix) The school, library, or consortium acknowledges that it may be subject to an audit, inspection, or investigation pursuant to its request for reimbursement, that it will retain for ten years any and all records related to its request for reimbursement, and will make such records and equipment purchased with Schools and Libraries Cybersecurity Pilot Program reimbursement available at the request of any representative (including any auditor) appointed by a state education department, the Administrator, the Commission and its Office of Inspector General, or any local, state, or federal agency with jurisdiction over the entity.

- (x) No kickbacks, as defined in 41 U.S.C. § 8701, were paid to or received by the participant, including, but not limited to, their employees, officers, representatives, agents, independent contractors, consultants, family members, and individuals who are on the governing boards, from anyone in connection with the Schools and Libraries Cybersecurity Pilot Program or the schools and libraries universal service support mechanism.
 - (xi) The school, library, or consortium acknowledges that Commission rules provide that persons who have been convicted of criminal violations or held civilly liable for certain acts arising from their participation in the universal service support mechanisms are subject to suspension and debarment from the program. The school, library, or consortium will institute reasonable measures to be informed, and will notify the Administrator should it be informed or become aware that any of the entities listed on this application, or any person associated in any way with this entity and/or the entities listed on this application, is convicted of a criminal violation or held civilly liable for acts arising from their participation in the universal service support mechanisms.
 - (xii) No universal service support has been or will be used to purchase, obtain, maintain, improve, modify, or otherwise support any equipment or services produced or provided by any company designated by the Commission as posing a national security threat to the integrity of communications networks or the communications supply chain since the effective date of the designations.
 - (xiii) No federal subsidy made available through a program administered by the Commission that provides funds to be used for the capital expenditures necessary for the provision of advanced communications services has been or will be used to purchase, rent, lease, or otherwise obtain, any covered communications equipment or service, or maintain, any covered communications equipment or service, or maintain any covered communications equipment or service previously purchased, rented, leased, or otherwise obtained, as required by § 54.10.
- (2) The FCC Form 474 shall be signed by the person authorized to submit requests for reimbursement for the service provider and shall include that person's certification under penalty of perjury that:
- (i) "I am authorized to submit this request for reimbursement on behalf of the above-named Service Provider and that based on information known to me or provided to me by employees responsible for the data being submitted, I hereby certify that the data set forth in this request for reimbursement has been examined and is true, accurate, and complete. I acknowledge that any false statement on this request for reimbursement or on other documents submitted by this Service Provider can be punished by fine or forfeiture under the Communications Act (47 U.S.C. §§ 502, 503(b)), or fine or imprisonment under Title 18 of the United States Code (18 U.S.C. § 1001), or can lead to liability under the False Claims Act (31 U.S.C. §§ 3729–3733)."
 - (ii) "In addition to the foregoing, the Service Provider is in compliance with the rules and orders governing the Schools and Libraries Cybersecurity Pilot Program, and I acknowledge that failure to be in compliance and remain in compliance with those rules and orders may result in the denial of funding, cancellation of funding commitments, and/or recoupment of past

disbursements. I acknowledge that failure to comply with the rules and orders governing the Schools and Libraries Cybersecurity Pilot Program could result in civil or criminal prosecution by law enforcement authorities.”

- (iii) “By signing this request for reimbursement, I certify that the information contained in this request for reimbursement is true, complete, and accurate, and the expenditures, disbursements, and cash receipts are for the purposes and objectives set forth in the terms and conditions of the federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil, or administrative penalties for fraud, false statements, false claims, or otherwise. (U.S. Code Title 18, §§ 1001, 286–287, and 1341, and Title 31, §§ 3729–3730 and 3801–3812).”
- (iv) The funds sought in the request for reimbursement are for eligible services and/or equipment that were purchased in accordance with the Schools and Libraries Cybersecurity Pilot Program rules and requirements in this subpart and received by the school, library, or consortium.
- (v) The Service Provider is not seeking Schools and Libraries Cybersecurity Pilot Program reimbursement for eligible equipment and/or services for which the Service Provider has already been paid.
- (vi) The Service Provider certifies that the school’s, library’s, or consortium’s non-discount portion of costs for the eligible equipment and services has not been waived, paid, or promised to be paid by this Service Provider. The Service Provider acknowledges that the provision of a supported service or free services or equipment unrelated to the supported equipment or services constitutes a rebate of the non-discount portion of the costs as stated in § 54.2007(d).
- (vii) The Service Provider acknowledges that it must submit invoices detailing the items purchased and provided to the school, library, or consortium, along with the submission of its request for reimbursement as required by § 54.2008(b).
- (viii) The Service Provider certifies that it is compliant with the Commission’s rules and orders regarding gifts and this Service Provider has not directly or indirectly offered or provided any gifts, gratuities, favors, entertainment, loans, or any other thing of value to any eligible school, library, or consortium, except as provided for at § 54.2005(d).
- (ix) The Service Provider acknowledges that it may be subject to an audit, inspection, or investigation pursuant to its request for reimbursement, that it will retain for ten years any and all records related to its request for reimbursement, and will make such records and equipment purchased with Schools and Libraries Cybersecurity Pilot Program reimbursement available at the request of any representative (including any auditor) appointed by a state education department, the Administrator, the Commission and its Office of Inspector General, or any local, state, or federal agency with jurisdiction over the entity.
- (x) No kickbacks, as defined in 41 U.S.C. § 8701, were paid by the Service Provider to anyone in connection with the Schools and Libraries Cybersecurity Pilot Program or the schools and libraries universal service support mechanism.

- (xi) The Service Provider is not debarred or suspended from any Federal programs, including the universal service support mechanisms.
 - (xii) No universal service support has been or will be used to purchase, obtain, maintain, improve, modify, or otherwise support any equipment or services produced or provided by any company designated by the Commission as posing a national security threat to the integrity of communications networks or the communications supply chain since the effective date of the designations.
 - (xiii) No federal subsidy made available through a program administered by the Commission that provides funds to be used for the capital expenditures necessary for the provision of advanced communications services has been or will be used to purchase, rent, lease, or otherwise obtain, any covered communications equipment or service, or maintain any covered communications equipment or service, or maintain any covered communications equipment or service previously purchased, rented, leased, or otherwise obtained, as required by § 54.10.
- (b) *Required documentation.* Along with the submission of a completed FCC Form 472 or FCC Form 474, a participant or service provider seeking reimbursement from the Schools and Libraries Cybersecurity Pilot Program must submit invoices detailing the items purchased and received to the Administrator at the time the FCC Form 472 or FCC Form 474 is submitted.
- (c) *Reimbursement and invoice processing.* The Administrator shall accept and review requests for reimbursement and invoices subject to the invoice filing deadlines provided in paragraph (d) of this section.
- (d) *Invoice filing deadline.* Invoices must be submitted to the Administrator within ninety (90) days after the last date to receive service, in accordance with § 54.2001(c).
- (e) *Invoice deadline extensions.* In advance of the deadline calculated pursuant to paragraph (d) of this section, billed entities or service providers may request a one-time extension of the invoice filing deadline. The Administrator shall grant a ninety (90) day extension of the invoice filing deadline, if the request is timely filed.
- (f) *Choice of payment method.* Service providers providing discounted services under this subpart shall, prior to the submission of the FCC Form 471, permit the Schools and Libraries Cybersecurity Pilot Program participant to choose the method of payment for the discounted services from those methods offered by the Administrator, including making a full undiscounted payment and receiving subsequent reimbursement of the discount amount from the Administrator.

§ 54.2009 Audits, Inspections, and Investigations.

- (a) *Audits.* Schools and Libraries Cybersecurity Pilot Program participants and service providers shall be subject to audits and other investigations to evaluate their compliance with the statutory and regulatory requirements of the Schools and Libraries Cybersecurity Pilot Program, including those requirements pertaining to what services and equipment are purchased, what services and equipment are delivered, and how services and equipment are being used.
- (b) *Inspections and investigations.* Schools and Libraries Cybersecurity Pilot Program participants and service providers shall permit any representative (including any auditor) appointed by a state education department, the Administrator, the Commission, its Office of

Inspector General, or any local, state, or federal agency with jurisdiction over the entity to enter their premises to conduct inspections for compliance with the statutory and regulatory requirements in this subpart of the Schools and Libraries Cybersecurity Pilot Program.

§ 54.2010 Records Retention and Production.

- (a) *Recordkeeping requirements.* All Schools and Libraries Cybersecurity Pilot Program participants and service providers shall retain all documents related to their participation in the program sufficient to demonstrate compliance with all program rules for at least ten years from the last date of service or delivery of equipment. All Schools and Libraries Cybersecurity Pilot Program applicants shall maintain asset and inventory records of services and equipment purchased sufficient to verify the actual location of such services and equipment for a period of ten years after purchase.
- (b) *Production of records.* All Schools and Libraries Cybersecurity Pilot Program participants and service providers shall produce such records upon request of any representative (including any auditor) appointed by a state education department, the Administrator, the Commission, its Office of Inspector General, or any local, state, or federal agency with jurisdiction over the entity.

§ 54.2011 Administrator of the Schools and Libraries Cybersecurity Pilot Program.

- (a) The Universal Service Administrative Company is appointed the Administrator of the Schools and Libraries Cybersecurity Pilot Program and shall be responsible for administering the Schools and Libraries Cybersecurity Pilot Program.
- (b) The Administrator shall be responsible for reviewing applications for funding, recommending funding commitments, issuing funding commitment decision letters, reviewing invoices and recommending payment of funds, as well as other administration-related duties.
- (c) The Administrator may not make policy, interpret unclear provisions of statutes or rules, or interpret the intent of Congress. Where statutes or the Commission's rules in this subpart are unclear, or do not address a particular situation, the Administrator shall seek guidance from the Commission.
- (d) The Administrator may advocate positions before the Commission and its staff only on administrative matters relating to the Schools and Libraries Cybersecurity Pilot Program.
- (e) The Administrator shall create and maintain a website, as defined in § 54.5, on which applications for services will be posted on behalf of schools and libraries.
- (f) The Administrator shall provide the Commission full access to the data collected pursuant to the administration of the Schools and Libraries Cybersecurity Pilot Program.
- (g) The Administrator shall provide performance measurements pertaining to the Schools and Libraries Cybersecurity Pilot Program as requested by the Commission by order or otherwise.
- (h) The Administrator shall have the authority to audit all entities reporting data to the Administrator regarding the Schools and Libraries Cybersecurity Pilot Program. When the Commission, the Administrator, or any independent auditor hired by the Commission or the Administrator conducts audits of the participants of the Schools and Libraries Cybersecurity Pilot Program, such audits shall be conducted in accordance with generally accepted government auditing standards.
- (i) The Administrator shall establish procedures to verify support amounts provided by the Schools and Libraries Cybersecurity Pilot Program and may suspend or delay support amounts if a party fails to provide adequate verification of the support amounts provided upon reasonable request from the Administrator or the Commission.

- (j) The Administrator shall make available to whomever the Commission directs, free of charge, any and all intellectual property, including, but not limited to, all records and information generated by or resulting from its role in administering the support mechanisms, if its participation in administering the Schools and Libraries Cybersecurity Pilot Program ends. If its participation in administering the Schools and Libraries Cybersecurity Pilot Program ends, the Administrator shall be subject to close-out audits at the end of its term.

§ 54.2012 Appeal and waiver requests.

(a) Parties permitted to seek review of Administrator decision.

- (1) Any party aggrieved by an action taken by the Administrator must first seek review from the Administrator.
- (2) Any party aggrieved by an action taken by the Administrator under paragraph (a)(1) of this section may seek review from the Commission as set forth in paragraph (b) of this section.
- (3) Parties seeking waivers of the Commission's rules in this subpart shall seek relief directly from the Commission and need not first file an action for review from the Administrator under paragraph (a)(1) of this section.

(b) Filing deadlines.

- (1) An affected party requesting review of a decision by the Administrator pursuant to paragraph (a)(1) of this section shall file such a request within thirty (30) days from the date the Administrator issues a decision.
- (2) An affected party requesting review by the Commission pursuant to paragraph (a)(2) of this section of a decision by the Administrator under paragraph (a)(1) of this section shall file such a request with the Commission within thirty (30) days from the date of the Administrator's decision. Further, any party seeking a waiver of the Commission's rules under paragraph (a)(3) of this section shall file a request for such waiver within thirty (30) days from the date of the Administrator's initial decision, or, if an appeal is filed under paragraph (a)(1) of this section, within thirty days from the date of the Administrator's decision resolving such an appeal.
- (3) Parties shall adhere to the time periods for filing oppositions and replies set forth in § 1.45 of this chapter.

(c) General filing requirements.

- (1) Except as otherwise provided in this section, a request for review of an Administrator decision by the Commission shall be filed with the Commission's Office of the Secretary in accordance with the general requirements set forth in part 1 of this chapter. The request for review shall be captioned "In the Matter of Request for Review by (name of party seeking review) of Decision of Universal Service Administrator" and shall reference the applicable docket numbers.
- (2) A request for review pursuant to paragraphs (a)(1) through (3) of this section shall contain:
 - (i) A statement setting forth the party's interest in the matter presented for review;
 - (ii) A full statement of relevant, material facts with supporting affidavits and documentation;

- (iii) The question presented for review, with reference, where appropriate, to the relevant Commission rule, Commission order, or statutory provision; and;
 - (iv) A statement of the relief sought and the relevant statutory or regulatory provision pursuant to which such relief is sought.
 - (3) A copy of a request for review that is submitted to the Commission shall be served on the Administrator consistent with the requirement for service of documents set forth in § 1.47 of this chapter.
 - (4) If a request for review filed pursuant to paragraphs (a)(1) through (3) of this section alleges prohibitive conduct on the part of a third party, such request for review shall be served on the third party consistent with the requirement for service of documents set forth in § 1.47 of this chapter. The third party may file a response to the request for review. Any response filed by the third party shall adhere to the time period for filing replies set forth in § 1.45 of this chapter and the requirement for service of documents set forth in § 1.47 of this chapter.
- (d) *Review by the Wireline Competition Bureau or the Commission.*
- (1) Requests for review of Administrator decisions that are submitted to the Commission shall be considered and acted upon by the Wireline Competition Bureau; provided, however, that requests for review that raise novel questions of fact, law, or policy shall be considered by the full Commission.
 - (2) An affected party may seek review of a decision issued under delegated authority by the Wireline Competition Bureau pursuant to the rules set forth in part 1 of this chapter.
- (e) *Standard of review.*
- (1) The Wireline Competition Bureau shall conduct a *de novo* review of requests for review of decisions issued by the Administrator.
 - (2) The Commission shall conduct a *de novo* review of requests for review of decisions by the Administrator that involve novel questions of fact, law, or policy; provided, however, that the Commission shall not conduct a *de novo* review of decisions issued by the Wireline Competition Bureau under delegated authority.
- (f) *Schools and Libraries Cybersecurity Pilot Program disbursements during pendency of a request for review and Administrator decision.* When a party has sought review of an Administrator decision under paragraphs (a)(1) through (3) of this section, the Commission shall not process a request for the reimbursement of eligible equipment and/or services until a final decision has been issued either by the Administrator or by the Commission; provided, however, that the Commission may authorize disbursement of funds for any amount of support that is not the subject of an appeal.

§ 54.2013 Children's Internet Protection Act certifications

- (a) *Definitions.*
- (1) *School.* For the purposes of the certification requirements of this section, school means school, school board, school district, local education agency, or other authority responsible for administration of a school.
 - (2) *Library.* For the purposes of the certification requirements of this section, library means library, library board, or authority responsible for administration of a library.
 - (3) *Billed entity.* Billed entity is defined in § 54.2000. In the case of a consortium, the billed entity is the lead member of the consortium.

-
- (b) A school or *library* that receives support for eligible services and equipment through the Schools and Libraries Cybersecurity Pilot Program must make the certifications as described in paragraph (c) of this section.
- (c) *Certifications required under 47 U.S.C. §§ 254(h) and (l).*
- (1) A Schools and Libraries Cybersecurity Pilot Program participant need not complete additional Children's Internet Protection Act (CIPA) compliance certifications if the participant has already certified its CIPA compliance for the schools and libraries universal service support mechanism funding year preceding the start of the Schools and Libraries Cybersecurity Pilot Program (*i.e.*, has certified its compliance in an FCC Form 486 or FCC Form 479).
 - (2) Schools and Libraries Cybersecurity Pilot Program participants that have not already certified their CIPA compliance for the schools and libraries universal service support mechanism funding year preceding the start of the Schools and Libraries Cybersecurity Pilot Program (*i.e.*, have not completed a FCC Form 486 or FCC Form 479), will be required to certify:
 - (i) That they are in compliance with CIPA requirements under sections 254(h) and (l),
 - (ii) That they are undertaking the actions necessary to comply with CIPA requirements under sections 254 (h) and (l) as part of their request for support through the Schools and Libraries Cybersecurity Pilot Program, and will come into compliance within one year from the date of the submission of its FCC Form 471, or
 - (iii) That they are not required to comply with CIPA requirements under sections 254(h) and (l) because they are purchasing services to be used only in conjunction with student-, school staff- or library patron-owned computers.
- (d) *Failure to provide certifications.*
- (1) *Schools and libraries.* A school or library that knowingly fails to submit certifications as required by this section shall not be eligible for support through the Schools and Libraries Cybersecurity Pilot Program until such certifications are submitted.
 - (2) *Consortia.* A billed entity's knowing failure to collect the required certifications from its eligible school and library members or knowing failure to certify that it collected the required certifications shall render the entire consortium ineligible for support through the Schools and Libraries Cybersecurity Pilot Program.
 - (3) *Reestablishing eligibility.* At any time, a school or library deemed ineligible for equipment and services under the Schools and Libraries Cybersecurity Pilot Program because of failure to submit certifications required by this section may reestablish eligibility for support by providing the required certifications to the Administrator and the Commission.
- (e) *Failure to comply with the certifications.*
- (1) *Schools and libraries.* A school or library that knowingly fails to comply with the certifications required by this section must reimburse any funds and support received under the Schools and Libraries Cybersecurity Pilot Program for the period in which there was noncompliance.

-
- (2) *Consortia*. In the case of consortium applications, the eligibility for support of consortium members who comply with the certification requirements of this section shall not be affected by the failure of other school or library consortium members to comply with such requirements.
- (3) *Reestablishing compliance*. At any time, a school or library deemed ineligible for support through the Schools and Libraries Cybersecurity Pilot Program for failure to comply with the certification requirements of this section and that has been directed to reimburse the program for support received during the period of noncompliance may reestablish compliance by complying with the certification requirements under this section. Upon submittal to the Commission of a certification, the school or library shall be eligible for support through the Schools and Libraries Cybersecurity Pilot Program.
- (f) *Waivers based on state or local procurement rules and regulations and competitive bidding requirements*. Waivers shall be granted to schools and libraries when the authority responsible for making the certifications required by this section cannot make the required certifications because its state or local procurement rules or regulations or competitive bidding requirements prevent the making of the certification otherwise required. The waiver shall be granted upon the provision, by the authority responsible for making the certifications on behalf of schools or libraries, that the schools or libraries will be brought into compliance with the requirements of this section within one year from the date the waiver was granted.

APPENDIX B**Cybersecurity Pilot Program Eligible Services List**

The Federal Communications Commission's (FCC) rules provide that all equipment and services that are eligible to receive discounts under the Schools and Libraries Cybersecurity Pilot Program (Pilot or Pilot Program) are listed in this Pilot Eligible Services List (P-ESL). 47 CFR § 54.2003. The Pilot Program is administered by the Universal Service Administrative Company (USAC). 47 CFR § 54.2011. Eligible schools, libraries, and consortia of eligible schools and libraries that are selected for participation in the Pilot Program may seek support for eligible equipment and services as identified herein. 47 CFR § 54.2000 *et seq.*

Equipment and services that constitute a protection designed to improve or enhance the cybersecurity of a K-12 school, library, or consortia are eligible. A non-exhaustive list of four eligible technological categories and, for each category, a non-exhaustive list of eligible equipment and services, follows.

Advanced/Next-Generation Firewalls

Equipment and services that implement advanced/next-generation firewalls, including software-defined firewalls and Firewall as a Service, are eligible. Specifically, equipment, services, or a combination of equipment and services that limits access between networks, excluding basic firewalls that are funded through the Commission's E-Rate program, are eligible.

Eligible equipment and services may include the following features, substantially similar features, or their equivalents:

- Advanced Threat Detection and Prevention
- AI/ML Threat Detection and Response
- Application Awareness & Control
- Cloud-Delivered Threat Intelligence
- Comprehensive Network Visibility Software-defined Firewalls
- Deep Packet Inspection (DPI)
- Distributed-denial-of-service (DDoS) protection
- Firewall as a Service (FWaaS)
- Integrated Intrusion Prevention Systems (IPS)
- Internet of Things (IoT) Security
- Intrusion prevention/detection
- Malware Detection
- Network Segmentation
- Patch Management Systems
- Virtual Private Network (VPN)

Endpoint Protection

Equipment and services that implement endpoint protection are eligible. Specifically, equipment, services, or a combination of equipment and services that implements safeguards to protect school- and library-owned end-user devices, including desktops, laptops, and mobile devices, against cybersecurity threats and attacks are eligible.

Eligible equipment and services may include the following features, substantially similar features, or their equivalents:

- Anti-malware
- Anti-ransomware

- Anti-spam
- Anti-virus
- Endpoint Detection & Response (EDR)
- Extended Detection & Response (XDR)
- Insider and privilege misuse
- Privileged Access Management
- Secure Sockets Layer (SSL) inspections
- Target intrusions
- Web application hacking

Identity Protection and Authentication

Equipment and services that implement identity protection and authentication are eligible. Specifically, equipment, services, or a combination of equipment and services that implements safeguards to protect a user's network identity from theft or misuse and/or provide assurance about the network identity of an entity interacting with a system is eligible.

Eligible equipment and services may include the following features, substantially similar features, or their equivalents:

- Active Countermeasure Tools
- Cloud application protection
- Cloud Services
- Credential stuffing
- Content blocking and filtering/uniform resource locator (URL) filtering
- Content Caching Systems and Service
- Customer portal services
- Digital identity tools
- Distributed-denial-of-service (DDoS) protection
- Domain Name System (DNS)/DNS-layer security, blocking, and filtering
- Email and Web security
- Identity governance & technologies
- Intrusion Detection Systems (IDS)
- Logging practices/event logging
- Network access control
- Offsite/Immutable back-ups
- Multi-Factor Authentication (MFA)/phishing-resistant MFA
- Patching
- Password spraying
- Privileged identity management
- Secure Access Service Edge (SASE)
- Secure-By-Design equipment and services
- Security Information and Event Management (SIEM)
- Security Updates
- Single sign-on (SSO)
- Trusted Platform Module (TPM) and products with TPM chips
- Web Content Controls
- Wireless access controllers
- Zero Trust Architecture

Monitoring, Detection, and Response

Equipment and services that implement monitoring, detection, and response are eligible. Specifically, equipment, services, or a combination of equipment and services that monitor and/or detect threats to a network and that take responsive action to remediate or otherwise address those threats is eligible.

Eligible equipment and services may include the following features, substantially similar features, or their equivalents:

- Advanced attack surface management and asset management solutions
- Bug bounty solutions & services
- Compliance assessment
- Dark web scanning
- Data Loss Prevention
- Internal/external vulnerability scanning
- Network/device monitoring & response
- Network Security Audit
- Network traffic analysis
- Managed detection & response (MDR)
- Managed Service Providers
- Maturity models
- Network Detection Response (NDR)
- Penetration testing
- Security Operations Center (SOC) for around the clock (24/7/365) monitoring, detection, and response
- Threat hunting/Updates and threat intelligence
- Vulnerability management

Notes:

- Certain technologies (e.g., DDoS protection) are listed in multiple categories above, reflecting the multiple ways they are categorized in the marketplace.
- Eligible costs include maintenance, operation and support charges, monthly charges, special construction, installation and activation charges, software, modulating electronics, and other equipment necessary to make eligible equipment and services functional. All eligible equipment and services and related costs, including maintenance and operation, must be competitively bid.
- A manufacturer's multi-year warranty for a period up to three years that is provided as an integral part of an eligible component, without a separately identifiable cost, may be included in the cost of the component.
- Eligibility is limited to equipment that is network-based (i.e., that excludes end-user devices, including, for example, tablets, smartphones, and laptops) and services that are network-based and/or locally installed on end-user devices, where the devices are owned or leased by the school or library, and where equipment and services are designed to identify and/or remediate threats that could otherwise directly impair or disrupt a school's or library's network, including to threats from users accessing the network remotely.
- Ineligible costs include:
 - Any equipment, service, or other related cost that is eligible in the Commission's E-Rate program eligible services list in the corresponding E-Rate funding year for which Pilot reimbursement is sought.
 - Any equipment, service, or other related cost, or portion thereof, for which a participant has already received reimbursement in full or in part, or plans to apply for reimbursement in full or in part, through any other USF or federal, state, or local

program.

- Staff salaries and labor costs are not eligible.
- Consulting services that are not related to the installation and configuration of the eligible equipment and services are not eligible. These include services related to application assistance, program advice, and other activities not tied directly to the actual installation and initial configuration of eligible equipment and services.
- Long-term planning and risk assessment surveys, including threat intelligence analysis and costs associated with incident response plans.
- Security cameras, asset tracking tags, insurance costs, threat responses exercises, training (subject to the training exemption below), and any costs associated with responding to specific ransom demands are ineligible.
- Any equipment or services prohibited by the Secure and Trusted Communications Networks Act of 2019, Pub. L. No. 116-124, 134 Stat. 158 (2020) (codified as amended at 47 U.S.C. §§ 1601–1609) (Secure Networks Act) or the Commission’s rules, including sections 54.9 and 54.10 of the Commission’s rules, that implement the Secure Networks Act.

Training. Training is eligible as a part of the installation of the equipment and services only if it is basic instruction on the use of the eligible equipment and services, directly associated with equipment and services installation, and is part of the contract or agreement for the equipment and services. Training must occur concurrently with or within a reasonable time after installation.

APPENDIX C

Cybersecurity NPRM Commenters and Reply Commenters

Comments

Commenter	Abbreviation
ActZero	
Alliance for Digital Innovation	ADI
American Library Association	ALA
Apptegy, Inc.	Apptegy
Center for Internet Security, Inc.	CIS
Cisco Systems, Inc.	Cisco
Clark County School District	CCSD
Clear Creek Amana CSD	Clear Creek
Consortium for School Networking, American Library Association, Schools, Health & Libraries Coalition, National Association of State Boards of Education, All4Ed, Pacific Northwest Gigapop, State Educational Technology Directors Association, Council of the Great City Schools, National School Board Association, Council of Chief State School Officers, Link Oregon, Common Sense	CoSN
Council of the Great City Schools	Council GCS
CrowdStrike	CrowdStrike
Crown Castle Fiber LLC	Crown Castle
Cybersecurity Coalition and Information Technology Industry Council	Cybersecurity Coalition/ITI
Dallas Independent School District	Dallas ISD
E-Rate Central on behalf of the New York State E-Rate Coordinator	E-Rate Central
Funds For Learning, LLC	FFL
Illinois Office of Broadband	IOB
Juniper Networks	JN
K12 Security Information eXchange	K12 SIX
K12 Tech Talk Podcast	K12 Tech Talk
K12TechPro	K12TechPro
Mendocino County Office of Education	MCOE
Michigan Statewide Educational Network Michigan Statewide Educational Technology Leaders, MiSecure Operations Center	MISEN
Microsoft Corporation	Microsoft
Northwestern Consolidated School District of Shelby County	Shelby County
NCTA – The Internet & Television Association	NCTA
Ohio Information Technology Centers	
Palo Alto Networks, Inc.	Palo Alto Networks
Robert Frisby	
Rubrik, Inc.	Rubrik
The Friday Institute for Education Innovation	Friday Institute
Tim Roemer/Global Market Innovators	GMI
Tribal Ready, PBC	Tribal Ready
Union County Public Schools	Union County
Questar III BOCES	Questar

Reply Comments

Commenter	Abbreviation
Allendale Public Schools	Allendale
American Library Association	ALA
Association of California School Administrators and the California School Boards Association	ACSA-CSBA Federal Partnership
ATARC Cybersecurity Higher Education and Workforce Development Working Group	ATARC
City of New York Office of Technology and Innovation CTIA	City of NY OTI
Electronic Privacy Information Center	EPIC
Extreme Networks	Extreme
Fortinet, Inc.	Fortinet
Funds For Learning, LLC	FFL
Internet2	
Learning Technology Center of Illinois	LTC
Lumen Technologies, Inc.	Lumen
National Education Organizations	EdGroup
State Associations Representing Public School Superintendents	ASE
State E-Rate Coordinators' Alliance	SECA
The Quilt	Quilt
Vector Resources Inc., d/b/a VectorUSA	Vector
Wayne RESA ¹	
Wilson School District ²	Wilson
Wisconsin Department of Public Instruction	WI DPI
Zscaler, Inc.	Zscaler

¹ The following commenters filed reply comments using the same or a substantially similar form letter: Covenant Schools; Genesee Intermediate School District; Michigan Association for Computer Users in Learning (MACUL); Midland County Educational Service Agency; REMC Association of Michigan; St. Joseph County Intermediate School District et al.; Shiawassee Regional Education Service District.

² The following commenters filed reply comments using the same or a substantially similar form letter: Arizona Technology in Education Association–AzTEA; Kellog & Sovereign Consulting; Kiski Area School District (KASD); City of Woburn/Woburn Public Schools; Danvers Public Schools; EdTech Leaders Alliance-Ohio CoSN; Massachusetts Educational Technology Administrators Association (METAA); Nebraska Council of School Administrators (NCSA); NCTIES/NCCoSN; Twin Valley School District Technology Department (Twin Valley); California Association of School Business Officials.

APPENDIX D

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Schools and Libraries Cybersecurity Pilot Program Notice of Proposed Rulemaking (Cybersecurity NPRM)*, released in November of 2023.² The Federal Communications Commission (Commission) sought written public comment on the proposals in the *Cybersecurity NPRM*, including comment on the IRFA. No comments were filed addressing the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³

A. Need for, and Objectives of, the Report and Order

2. The nation's K-12 schools and libraries increasingly rely on remote, digital learning technologies to connect students, teachers, and library patrons to information, jobs, and other vital learning opportunities. This shift has increased the extent to which schools and libraries rely on networks to connect with student and patrons. This shift has also made school and library networks prime targets for cybersecurity threats and attacks. When these attacks occur, they have the potential to disrupt school and library operations, resulting in a loss of learning, reductions in available bandwidth, significant monetary losses, and the potential for the leak and theft of personal information and confidential data associated with students, school staff and library patrons.

3. The nation's eligible schools, libraries, and consortia (comprised of eligible schools and libraries) may request universal service discounts for services and equipment to support their network connectivity, including telecommunications services, Internet access, and internal connections, through the Commission's E-Rate program. The E-Rate program was created by the Commission in 1997 in response to the Telecommunications Act of 1996 (1996 Act).⁴ The E-Rate program currently funds basic firewall service provided as part of the vendor's Internet service as a category one service and separately-priced basic firewalls as a category two service. The E-Rate program, however, does not currently fund advanced firewalls or other cybersecurity services and equipment that have increasingly been requested by commenters to protect school and library networks from cyber harms over the years.

4. In the *Report and Order*, the Commission establishes a three-year Pilot Program (Pilot or Pilot Program) funded at \$200 million, within the Universal Service Fund (USF) but separate from the E-Rate program, to enable it to assess the costs and benefits of utilizing universal service funds to support schools' and libraries' cybersecurity needs and how other federal resources could be leveraged to ensure that these needs are addressed in the most efficient and effective manner. One objective of the Pilot is to help participants acquire cybersecurity services and equipment, including many of the equipment and services that have specifically been requested by commenters in the record, to improve the security of their broadband networks and data. Another objective of the Pilot is to measure the costs and effectiveness of cybersecurity services and equipment. By making a wide range of cybersecurity services and equipment eligible for USF support, the Pilot will enable the Commission to gather data on the associated cost and effectiveness of various solutions. A further objective of the Pilot is to evaluate how to best leverage other available low-cost and free federal resources to help schools and libraries proactively address K-12 cybersecurity risks. To ensure that these objectives can be met, the Commission also adopts requirements that Pilot participants provide initial, annual, and final reports so that Pilot

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 *Schools and Libraries Cybersecurity Pilot Program*, WC Docket No. 23-234, Notice of Proposed Rulemaking, FCC 23-92, 2023 WL 8605080 (Nov. 13, 2023).

³ 5 U.S.C. § 604.

⁴ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified at 47 U.S.C. § 151 *et seq.*).

participants can be evaluated for their cybersecurity readiness before they begin participation in, during, and after the conclusion of the Pilot Program. By taking these actions, the Commission will be able to better to fulfill its obligation to ensure that schools and libraries have access to advanced telecommunications, as provided for by Congress in the 1996 Act.

5. In addition, the *Report and Order* finalizes several aspects of the structure and administration of the Pilot based on the proposals made in the *Cybersecurity NPRM*. For example, the Pilot establishes: (1) that schools and school districts will be eligible to receive up to \$13.60 per student, annually, on a pre-discounted basis, to purchase eligible cybersecurity services and equipment, with a pre-discount annual funding floor of \$15,000 and a pre-discount annual funding maximum of \$1.5 million; (2) a pre-discount annual budget of \$15,000 per library, with the provision that library systems with more than 11 sites will be eligible for support up to a pre-discount maximum of \$175,000 annually; and (3) that consortia participants comprised of eligible schools and libraries are eligible to receive funding based on student count (using the annual pre-discount \$13.60 per student multiplier) and the number of library sites (using the \$15,000 per library pre-discount annual budget) subject to either the pre-discount \$175,000 annual budget maximum for library systems or pre-discount \$1.5 million annual budget maximum for schools depending on the consortium's constituency. While these budgets, including associated maximums and floors, are specified in terms of annualized dollar amounts, participants' expenses are capped based on the full three-year duration of the Pilot and not on an annual basis. Thus, Pilot participants may request reimbursement for expenses as they are incurred even if it means that the amount of funding disbursed to a participant in a given year of the program exceeds their annual budget, so long as the total amount disbursed to a participant over the three-year term does not exceed three times that annual budget. The Pilot requires participants to contribute a portion of the costs of the cybersecurity services and equipment they seek to purchase with Pilot Program support, similar to the non-discount share that E-Rate applicants are required to contribute to the cost of their eligible services and equipment. We also permit all eligible schools and libraries, including those that do not currently participate in the E-Rate program, to apply to participate in the Pilot.

6. We also adopt a Pilot Eligible Services List (P-ESL) in the *Report and Order*, which specifies eligible cybersecurity services and equipment for the Pilot. The P-ESL deems services and/or equipment eligible if they constitute a protection designed to improve or enhance the cybersecurity of a K-12 school, library, or consortia. To provide clarity and specificity to small entity and other participants, the P-ESL also enumerates as eligible, in a non-limiting manner, four categories of technology raised by commenters as effective in combatting cyber threats, namely, (i) advanced/next-generation firewalls; (ii) endpoint protection; (iii) identity protection and authentication; and (iv) monitoring, detection, and response. For purposes of the Pilot, we define: (i) an "advanced" or "next-generation" firewall as equipment, services, or a combination of equipment and services, that limits access between networks, excluding basic firewalls that are funded through the Commission's E-Rate program; (ii) endpoint protection as equipment, services, or a combination of equipment and services that implements safeguards to protect school- and library-owned end-user devices, including desktops, laptops, and mobile devices, against cybersecurity threats and attacks; (iii) identity protection and authentication as equipment, services, or a combination of equipment and services that implements safeguards to protect a user's network identity from theft or misuse and/or provide assurance about the network identity of an entity interacting with a system; and (iv) monitoring, detection, and response as equipment, services, or a combination of equipment and services that monitor and/or detect threats to a network and that take responsive action to remediate or otherwise address those threats. Through the list of examples provided in the P-ESL, we confirm that a wide range of services and equipment that we had proposed for inclusion in the *Cybersecurity NPRM*, or that commenters had otherwise requested, are eligible. In the *Report and Order*, we describe that eligibility is limited to equipment that is network-based (i.e., that excludes end-user devices, including, for example, tablets, smartphones, and laptops) and services that are network-based and/or locally installed on end-user devices, where the devices are owned or leased by the school or library, and where equipment and services are designed to identify and/or remediate threats that could otherwise directly impair or disrupt a school's or library's network, including to threats from users accessing the network remotely.

7. In the *Report and Order*, we explain that ineligible costs include, among other things, (i) any equipment, service, or other related cost that is eligible in the Commission's E-Rate program eligible services list in the corresponding E-Rate funding year for which Pilot reimbursement is sought, (ii) any equipment, service, or other related cost, or portion thereof, for which a participant has already received reimbursement in full or in part, or plans to apply for reimbursement in full or in part, through any other USF or federal, state, or local program, and (iii) any equipment or services prohibited by the Secure and Trusted Communications Networks Act of 2019, Pub. L. No. 116-124, 134 Stat. 158 (2020) (codified as amended at 47 U.S.C. §§ 1601–1609) (Secure Networks Act) or the Commission's rules, including sections 54.9 and 54.10 of the Commission's rules, that implement the Secure Networks Act.

8. We designate USAC to be the Administrator for the Pilot. We require applicants to submit part one of a FCC Form 484 application describing its proposed Pilot project and providing information to facilitate the evaluation and eventual selection of high-quality projects for inclusion in the Pilot. To facilitate the inclusion of a diverse set of Pilot projects and to target Pilot funds to the populations most in need of cybersecurity support, we anticipate selecting projects from, and providing funding to, a combination of large and small and urban and rural schools, libraries, and consortia, with an emphasis on funding proposed Pilot projects that include low-income and Tribal applicants. Further, we encourage participation in the Pilot by a broad range of service providers and do not discourage new companies from participating, nor do we require service providers to have preexisting service provider identification numbers (SPIN) before submitting cybersecurity bids or previous E-Rate experience before participating in the Pilot.

9. In the *Report and Order*, we describe that we will direct funding to: (1) the neediest eligible schools, libraries, and consortia who will benefit most from cybersecurity funding (i.e., those at the highest discount rate percentages); (2) as many eligible schools, libraries, and consortia as possible; (3) those schools, libraries, and consortia that include Tribal entities; and (4) a mix of large and small and urban and rural, schools, libraries, and consortia. This will ensure that the Pilot contains a diverse cross-section of applicants with differing cybersecurity postures and experiences. In the event that number of FCC Form 484 applications received exceeds the number of projects that can be funded through the Pilot, we will prioritize selection of Pilot participants by considering their funding needs in combination with the funding needs of the same type(s) of applicants with an eye toward selecting Pilot participants with differing levels of exposure to cybersecurity threats and attacks. In the event that there is insufficient funding to select all of the Pilot participants at a particular discount rate, we will prioritize the selection of Pilot participants within the discount rate using the percentage of students who are eligible for free and reduced lunches within each applicant's school district. Funding for libraries will be prioritized based on the percentage of free and reduced lunch eligible students in the school district that is used to calculate the library's discount rate. Funding for individual schools that are not affiliated financially or operationally with a school district, such as private or charter schools that apply individually, will be prioritized based on each school's individual free and reduced student lunch eligible population.

10. In the *Report and Order*, we direct the Bureau and the Universal Service Administration Company (USAC or the Administrator) to model the Pilot processes and forms on existing E-Rate and Emergency Connectivity Fund (ECF) programs' processes and forms to the extent possible for the Pilot Program. We expect the Bureau and USAC to leverage the following Pilot forms, that will mirror existing E-Rate and ECF forms: (1) FCC Form 470 (Description of Services Requested and Certification Form); (2) FCC Form 471 (Description of Services Ordered and Certification Form); (3) FCC Form 472 (Billed Entity Applicant Reimbursement (BEAR) Form); and (4) FCC Form 474 (Service Provider Invoice (SPI) Form).

11. To protect the integrity of the Pilot, and safeguard universal service funds, we implement a number of program integrity protections. For example, we implement document retention requirements and a prohibition on gifts, and we require applicants provide certain certifications and be subject to auditing. We have modeled these provisions after our E-Rate processes to protect the Pilot and ensure the limited program funding is used for its intended purposes. We also apply our existing suspension and debarment rules to the Pilot. We also delegate to Bureau the authority to address and resolve a number of

matters, including unforeseen administrative issues or problems, provided that doing so is consistent with the decisions we reach in the *Report and Order*. We expect that this action will allow the Bureau and USAC to reduce any undue burdens on applicants and other individual and entities involved in the Pilot Program, while ensuring that all program goals are efficient and effectively satisfied.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

12. There were no comments filed that specifically address the proposed rules and policies presented in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

13. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.⁵ The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

14. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.⁶ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁷ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁸ A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁹

15. *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.¹⁰ 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.¹¹ These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.¹²

16. Next, the type of small entity described as a “small organization” is generally “any not-

⁵ 5 U.S.C. § 604(a)(3).

⁶ *Id.* § 604 (a)(4).

⁷ *Id.* § 601(6).

⁸ *Id.* § 601(3) (incorporating by reference the definition of “small business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

⁹ 15 U.S.C. § 632.

¹⁰ 5 U.S.C. § 601(3)-(6).

¹¹ See SBA, Office of Advocacy, “What’s New With Small Business?,” <https://advocacy.sba.gov/wp-content/uploads/2023/03/Whats-New-Infographic-March-2023-508c.pdf> (Mar. 2023).

¹² *Id.*

for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹³ The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.¹⁴ Nationwide, for tax year 2022, there 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.¹⁵

17. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”¹⁶ U.S. Census Bureau data from the 2022 Census of Governments¹⁷ indicate there were 90,837 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.¹⁸ Of this number, there were 36,845 general purpose governments (county,¹⁹ municipal, and town or township²⁰) with populations of less than 50,000 and 11,879 special purpose governments (independent school districts²¹) with enrollment

¹³ 5 U.S.C. § 601(4).

¹⁴ The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), “Who must file,” <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

¹⁵ See Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2022 with revenue less than or equal to \$50,000 for Region 1-Northeast Area (71,897), Region 2-Mid-Atlantic and Great Lakes Areas (197,296), and Region 3-Gulf Coast and Pacific Coast Areas (260,447) that includes the continental U.S., Alaska, and Hawaii. This data includes information for Puerto Rico (469).

¹⁶ 5 U.S.C. § 601(5).

¹⁷ 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Census of Governments, <https://www.census.gov/programs-surveys/economic-census/year/2022/about.html>.

¹⁸ See U.S. Census Bureau, 2022 Census of Governments – Organization Table 2. Local Governments by Type and State: 2022 [CG2200ORG02], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). See also tbl.2. CG2200ORG02 Table Notes_Local Governments by Type and State_2022.

¹⁹ See *id.* at tbl.5. County Governments by Population-Size Group and State: 2022 [CG2200ORG05], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 2,097 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

²⁰ See *id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2022 [CG2200ORG06], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 18,693 municipal and 16,055 town and township governments with populations less than 50,000.

²¹ See *id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2022 [CG2200ORG10], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 11,879 independent school districts with enrollment populations less than 50,000. See also tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2022 [CG2200ORG04], CG2200ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2022.

populations of less than 50,000.²² 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.”²³

1. Schools and Libraries

18. *Schools.* The closest applicable industry with a SBA small business size standard is Elementary and Secondary Schools.²⁴ This industry comprises establishments primarily engaged in furnishing academic courses and associated course work that comprise a basic preparatory education.²⁵ A basic preparatory education ordinarily constitutes kindergarten through 12th grade.²⁶ The SBA small business size standard for Elementary and Secondary Schools classifies firms with annual receipts of \$17.5 million or less as small.²⁷ The Commission does not have a size standard for small entities specifically applicable to schools. The Commission’s definition of schools pertains to entities that participate in the E-Rate program which provides support to eligible schools and libraries to enable access to high-speed Internet access and telecommunications services at affordable rates, consistent with the objectives of universal service.

19. Under the E-Rate program an elementary school is generally “a non-profit institutional day or residential school that provides elementary education, as determined under state law.”²⁸ A secondary school is generally defined as “a non-profit institutional day or residential school that provides secondary education, as determined under state law,” and not offering education beyond grade 12.²⁹ For-profit schools, and schools with endowments in excess of \$50,000,000, are not eligible to receive discounts under the E-Rate program.³⁰ In calendar year 2017, the E-rate program provided funding to approximately 104,722 schools throughout the U.S. and its territories.³¹ While we do not have financial information that would allow us to estimate the number of schools that would qualify as small entities under SBA’s small business size standard, because of the nature of these entities we estimate that the majority of schools in the E-Rate program are small entities under the SBA size standard.

20. *Libraries.* The closest applicable industry with a SBA small business size standard is Libraries and Archives.³² This industry comprises establishments primarily engaged in providing library or archive services.³³ These establishments are engaged in maintaining collections of documents (e.g.,

²² While the special purpose governments category also includes local special district governments, the 2022 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

²³ This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,845) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (11,879), from the 2022 Census of Governments - Organizations tbls. 5, 6 & 10.

²⁴ See U.S. Census Bureau, *2017 NAICS Definition*, “611110 Elementary and Secondary Schools,” <https://www.census.gov/naics/?input=611110&year=2017&details=611110>.

²⁵ *Id.*

²⁶ *Id.*

²⁷ See 13 CFR § 121.201, NAICS Code 611110.

²⁸ 47 CFR § 54.500.

²⁹ *Id.*

³⁰ 47 CFR § 54.501.

³¹ See Universal Service Administrative Company, Annual Report, at 7, <https://www.usac.org/wp-content/uploads/about/documents/annual-reports/2017/USAC-2017-Annual-Report.pdf>.

³² See U.S. Census Bureau, *2017 NAICS Definition*, “519120 Libraries and Archives,” <https://www.census.gov/naics/?input=519120&year=2017&details=519120>.

books, journals, newspapers, and music) and facilitating the use of such documents (recorded information regardless of its physical form and characteristics) as required to meet the informational, research, educational, or recreational needs of their user.³⁴ These establishments may also acquire, research, store, preserve, and generally make accessible to the public historical documents, photographs, maps, audio material, audiovisual material, and other archival material of historical interest.³⁵ All or portions of these collections may be accessible electronically.³⁶ The SBA small business size standard for Libraries and Archives classifies firms with annual receipts of \$18.5 million or less as small.³⁷ For this industry, U.S. Census Bureau data for 2017 show that there were 1,864 firms that operated for the entire year.³⁸ Of this number, 1,228 firms had revenues of less than \$10 million.³⁹ Based on this data, the majority of firms in this industry can be considered small.

21. The Commission does not have a size standard for small entities specifically applicable to libraries. The Commission's definition of libraries pertains to entities that participate in the E-Rate program which provides support to eligible schools and libraries to enable access to high-speed Internet access and telecommunications services at affordable rates, consistent with the objectives of universal service. Under the E-Rate program, a library includes "(1) a public library, (2) a public elementary school or secondary school library, (3) an academic library, (4) a research library [] and (5) a private library, but only if the state in which such private library is located determines that the library should be considered a library for the purposes of this definition."⁴⁰ For-profit libraries, are not eligible to receive discounts under the program, nor are libraries whose budgets are not completely separate from any schools.⁴¹ In calendar year 2017, the E-rate program provided funding to approximately 11,475 libraries throughout the U.S. and its territories.⁴² While we do not have financial information which would allow us to estimate the number of libraries that would qualify as small entities under SBA's small business size standard, because of the nature of these entities we estimate that the majority of libraries in the E-Rate program are small entities under the SBA size standard.

(Continued from previous page) —————

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ See 13 CFR § 121.201, NAICS Code 519120 (as of 10/1/22 NAICS Code 519210).

³⁸ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 519120, <https://data.census.gov/cedsci/table?y=2017&n=519120&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

³⁹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in the individual category for less than \$100,000, to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in this category). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that the U.S. Census Bureau economic data includes sales, value of shipments or revenue information reported by firms. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

⁴⁰ 47 CFR § 54.500.

⁴¹ 47 CFR § 54.501.

⁴² See Universal Service Administrative Company, Annual Report, at 7, <https://www.usac.org/wp-content/uploads/about/documents/annual-reports/2017/USAC-2017-Annual-Report.pdf>.

2. Telecommunications Service Providers

22. *Telecommunications Resellers.* The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households.⁴³ Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.⁴⁴ Mobile virtual network operators (MVNOs) are included in this industry.⁴⁵ The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.⁴⁶ U.S. Census Bureau data for 2017 show that 1,386 firms operated in this industry for the entire year.⁴⁷ Of that number, 1,375 firms operated with fewer than 250 employees.⁴⁸ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 666 providers that reported they were engaged in the provision of local or toll resale services.⁴⁹ Of these providers, the Commission estimates that 640 providers have 1,500 or fewer employees.⁵⁰ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

23. *Local Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Local Resellers. Telecommunications Resellers is the closest industry with a SBA small business size standard.⁵¹ 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.⁵² Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.⁵³ Mobile virtual network operators (MVNOs) are included in this industry.⁵⁴ The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.⁵⁵ U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.⁵⁶ Of that number, 1,375

⁴³ See U.S. Census Bureau, *2017 NAICS Definition*, “517911 Telecommunications Resellers,” <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ See 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

⁴⁷ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePrevie w=false>.

⁴⁸ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁴⁹ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁵⁰ *Id.*

⁵¹ See U.S. Census Bureau, *2017 NAICS Definition*, “517911 Telecommunications Resellers,” <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ See 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

⁵⁶ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517911,

(continued....)

firms operated with fewer than 250 employees.⁵⁷ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 207 providers that reported they were engaged in the provision of local resale services.⁵⁸ Of these providers, the Commission estimates that 202 providers have 1,500 or fewer employees.⁵⁹ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

24. *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.⁶⁰ 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.⁶¹ By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.⁶² Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.⁶³

25. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁶⁴ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁶⁵ Of this number, 2,964 firms operated with fewer than 250 employees.⁶⁶ 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.⁶⁷ Of these providers, the Commission estimates that 4,146

(Continued from previous page)

<https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false>.

⁵⁷ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁵⁸ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁵⁹ *Id.*

⁶⁰ See U.S. Census Bureau, 2017 NAICS Definition, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁶¹ *Id.*

⁶² *Id.*

⁶³ 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.

⁶⁴ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁶⁵ See U.S. Census Bureau, 2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false>.

⁶⁶ *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.

⁶⁷ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), (continued....)

providers have 1,500 or fewer employees.⁶⁸ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

26. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.⁶⁹ 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.⁷⁰ 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.⁷¹ The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.⁷² U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.⁷³ Of those firms, 1,039 had revenue of less than \$25 million.⁷⁴ Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

27. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.⁷⁵ 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.⁷⁶ The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.⁷⁷ U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.⁷⁸ Of that number, 2,837 firms employed fewer than 250

(Continued from previous page) _____

<https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>, <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

⁶⁸ *Id.*

⁶⁹ See U.S. Census Bureau, *2017 NAICS Definition*, "517919 All Other Telecommunications," <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² See 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

⁷³ 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>.

⁷⁴ *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.

⁷⁵ 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>.

⁷⁶ *Id.*

⁷⁷ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

⁷⁸ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIIRM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIIRM&hidePreview=false>.

employees.⁷⁹ 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.⁸⁰ Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees.⁸¹ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

28. *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.⁸² The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.⁸³ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.⁸⁴ Of this number, 2,837 firms employed fewer than 250 employees.⁸⁵ 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.⁸⁶ Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees.⁸⁷ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

3. Internet Service Providers (ISPs)

29. *Wired Broadband Internet Access Service Providers (Wired ISPs).*⁸⁸ Providers of wired broadband Internet access service include various types of providers except dial-up Internet access providers. Wireline service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the Internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules.⁸⁹ Wired broadband Internet services fall in the Wired Telecommunications Carriers industry.⁹⁰ The SBA small business size standard for this industry

⁷⁹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁸⁰ 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>.

⁸¹ *Id.*

⁸² 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>.

⁸³ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

⁸⁴ 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>.

⁸⁵ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁸⁶ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁸⁷ *Id.*

⁸⁸ Formerly included in the scope of the Internet Service Providers (Broadband), Wired Telecommunications Carriers and All Other Telecommunications small entity industry descriptions.

⁸⁹ See 47 CFR § 1.7001(a)(1).

⁹⁰ See U.S. Census Bureau, 2017 NAICS Definition, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

classifies firms having 1,500 or fewer employees as small.⁹¹ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁹² Of this number, 2,964 firms operated with fewer than 250 employees.⁹³

30. Additionally, according to Commission data on Internet access services as of June 30, 2019, nationwide there were approximately 2,747 providers of connections over 200 kbps in at least one direction using various wireline technologies.⁹⁴ The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, in light of the general data on fixed technology service providers in the Commission's 2022 *Communications Marketplace Report*,⁹⁵ we believe that the majority of wireline Internet access service providers can be considered small entities

31. *Wireless Broadband Internet Access Service Providers (Wireless ISPs or WISPs)*.⁹⁶ Providers of wireless broadband Internet access service include fixed and mobile wireless providers. The Commission defines a WISP as "[a] company that provides end-users with wireless access to the Internet[.]"⁹⁷ Wireless service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the Internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules.⁹⁸ Neither the SBA nor the Commission have developed a size standard specifically applicable to Wireless Broadband Internet Access Service Providers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite).⁹⁹ The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer

⁹¹ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁹² See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIIRM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIIRM&hidePreview=false>.

⁹³ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁹⁴ See Federal Communications Commission, Internet Access Services: Status as of June 30, 2019 at 27, Fig. 30 (*IAS Status 2019*), Industry Analysis Division, Office of Economics & Analytics (March 2022). The report can be accessed at <https://www.fcc.gov/economics-analytics/industry-analysis-division/iad-data-statistical-reports>. The technologies used by providers include aDSL, sDSL, Other Wireline, Cable Modem and FTTP). Other wireline includes: all copper-wire based technologies other than xDSL (such as Ethernet over copper, T-1/DS-1 and T3/DS-1) as well as power line technologies which are included in this category to maintain the confidentiality of the providers.

⁹⁵ See *Communications Marketplace Report*, GN Docket No. 22-203, 2022 WL 18110553 at 10, paras. 26-27, Figs. I.A.5-7. (2022) (*2022 Communications Marketplace Report*).

⁹⁶ Formerly included in the scope of the Internet Service Providers (Broadband), Wireless Telecommunications Carriers (except Satellite) and All Other Telecommunications small entity industry descriptions.

⁹⁷ Federal Communications Commission, Internet Access Services: Status as of June 30, 2019 at 27, Fig. 30 (*IAS Status 2019*), Industry Analysis Division, Office of Economics & Analytics (March 2022). The report can be accessed at <https://www.fcc.gov/economics-analytics/industry-analysis-division/iad-data-statistical-reports>.

⁹⁸ See 47 CFR § 1.7001(a)(1).

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>.

employees.¹⁰⁰ U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.¹⁰¹ Of that number, 2,837 firms employed fewer than 250 employees.¹⁰²

32. Additionally, according to Commission data on Internet access services as of June 30, 2019, nationwide there were approximately 1,237 fixed wireless and 70 mobile wireless providers of connections over 200 kbps in at least one direction.¹⁰³ The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, based on data in the Commission's *2022 Communications Marketplace Report* on the small number of large mobile wireless nationwide and regional facilities-based providers, the dozens of small regional facilities-based providers and the number of wireless mobile virtual network providers in general,¹⁰⁴ as well as on terrestrial fixed wireless broadband providers in general,¹⁰⁵ we believe that the majority of wireless Internet access service providers can be considered small entities.

33. *Internet Service Providers (Non-Broadband)*. Internet access service providers using client-supplied telecommunications connections (e.g., dial-up ISPs) as well as VoIP service providers using client-supplied telecommunications connections fall in the industry classification of All Other Telecommunications.¹⁰⁶ The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.¹⁰⁷ For this industry, U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.¹⁰⁸ Of those firms, 1,039 had revenue of less than \$25 million.¹⁰⁹ Consequently, under the SBA size standard a majority of firms in this industry can be considered small.

4. Vendors of Internal Connections

34. *Vendors of Infrastructure Development or Network Buildout*. The Commission nor the SBA have developed a small business size standard specifically directed toward manufacturers of network facilities. There are two applicable industries in which manufacturers of network facilities could fall and each have different SBA business size standards. The applicable industries are "Radio and

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 See *IAS Status 2019*, Fig. 30.

¹⁰⁴ See *Communications Marketplace Report*, GN Docket No. 22-203, 2022 WL 18110553 at 27, paras. 64-68. (2022) (*2022 Communications Marketplace Report*).

¹⁰⁵ *Id.* at 8, para. 22.

¹⁰⁶ See U.S. Census Bureau, *2017 NAICS Definition*, "517919 All Other Telecommunications," <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

¹⁰⁷ See 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

¹⁰⁸ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFI, NAICS Code 517919, <https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFI&hidePreview=false>.

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. 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.

Television Broadcasting and Wireless Communications Equipment”¹¹⁰ with a SBA small business size standard of 1,250 employees or less,¹¹¹ and “Other Communications Equipment Manufacturing”¹¹² with a SBA small business size standard of 750 employees or less.”¹¹³ U.S. Census Bureau data for 2017 show that for Radio and Television Broadcasting and Wireless Communications Equipment there were 656 firms in this industry that operated for the entire year.¹¹⁴ Of this number, 624 firms had fewer than 250 employees.¹¹⁵ For Other Communications Equipment Manufacturing, U.S. Census Bureau data for 2017 show that there were 321 firms in this industry that operated for the entire year.¹¹⁶ Of that number, 310 firms operated with fewer than 250 employees.¹¹⁷ Based on this data, we conclude that the majority of firms in this industry are small.

35. *Telephone Apparatus Manufacturing.* This industry comprises establishments primarily engaged in manufacturing wire telephone and data communications equipment.¹¹⁸ These products may be stand-alone or board-level components of a larger system. Examples of products made by these establishments are central office switching equipment, cordless and wire telephones (except cellular), PBX equipment, telephone answering machines, LAN modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways.¹¹⁹ The SBA small business size standard for Telephone Apparatus Manufacturing classifies businesses having 1,250 or fewer employees as small.¹²⁰ U.S. Census Bureau data for 2017 show that there were 189 firms in this industry that operated for the entire year.¹²¹ Of this number, 177 firms operated with fewer than 250 employees.¹²² Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

¹¹⁰ 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>.

¹¹¹ See 13 CFR § 121.201, NAICS Code 334220.

¹¹² See U.S. Census Bureau, *2017 NAICS Definition*, “334290 Other Communications Equipment Manufacturing,” <https://www.census.gov/naics/?input=334290&year=2017&details=334290>.

¹¹³ See 13 CFR § 121.201, NAICS Code 334290.

¹¹⁴ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPfirm, NAICS Code 334220, <https://data.census.gov/cedsci/table?y=2017&n=334220&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=false>.

¹¹⁵ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We 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.

¹¹⁶ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPfirm, NAICS Code 334290, <https://data.census.gov/cedsci/table?y=2017&n=334290&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=false>.

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 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.

¹¹⁸ See U.S. Census Bureau, *2017 NAICS Definition*, “334210 Telephone Apparatus Manufacturing,” <https://www.census.gov/naics/?input=334210&year=2017&details=334210>.

¹¹⁹ *Id.*

¹²⁰ See 13 CFR § 121.201, NAICS Code 334210.

¹²¹ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPfirm, NAICS Code 334210, <https://data.census.gov/cedsci/table?y=2017&n=334210&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=false>.

5. Other Service Providers

36. *Custom Computer Programming Services.* This industry is comprised of establishments primarily engaged in writing, modifying, testing, and supporting software to meet the needs of a particular customer.¹²³ The industry includes firms engaged in applications software programming, computer program or software development, computer programming services, computer software analysis and design services, computer software programming services, computer software support services, and Web (i.e., Internet) page design services.¹²⁴ The SBA small business size standard for this industry classifies firms having annual receipts of \$30 million or less as small.¹²⁵ According to 2017 U.S. Census Bureau data there were 46,636 firms that operated in this industry for the entire year.¹²⁶ Of this number, 45,394 firms had revenue of less than \$25 million.¹²⁷ Based on this data, the Commission concludes that the majority of the businesses engaged in this industry are small.

37. *Other Computer Related Services (Except Information Technology Value Added Resellers).* This industry comprises establishments primarily engaged in providing computer related services (except custom programming, systems integration design, and facilities management services).¹²⁸ Establishments providing computer disaster recovery services or software installation services are included in this industry.¹²⁹ The SBA small business size standard for this industry classifies firms with annual receipts of \$30 million or less as small.¹³⁰ The 2017 Economic Census indicates that 6,228 firms in this industry operated for the entire year.¹³¹ Of that number, 6,104 firms had revenue of less than \$25 million.¹³² Based on this data, we conclude that a majority of firms in this industry are small.

(Continued from previous page)

¹²² *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹²³ See U.S. Census Bureau, 2017 NAICS Definition, “541511 Custom Computer Programming Services,” <https://www.census.gov/naics/?input=541511&year=2017&details=541511>.

¹²⁴ *Id.*

¹²⁵ See 13 CFR § 121.201, NAICS Code 541511.

¹²⁶ 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 541511, <https://data.census.gov/cedsci/table?y=2017&n=541511&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePrevie w=false>.

¹²⁷ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

¹²⁸ See U.S. Census Bureau, 2017 NAICS Definition, “541519 Other Computer Related Services,” <https://www.census.gov/naics/?input=541519&year=2017&details=541519>.

¹²⁹ *Id.*

¹³⁰ See 13 CFR § 121.201, NAICS Code 541519.

¹³¹ 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 541519, <https://data.census.gov/cedsci/table?y=2017&n=541519&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePrevie w=false>.

¹³² *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.

38. *Information Technology Value Added Resellers.* Information Technology Value Added Resellers (ITVARs) fall with the Other Computer Related Services industry.¹³³ ITVARs are a subgroup of this industry which the SBA describes as providing a total solution to information technology acquisitions by providing multi-vendor hardware and software along with significant value added services.¹³⁴ Significant value added services consist of, but are not limited to, configuration consulting and design, systems integration, installation of multi-vendor computer equipment, customization of hardware or software, training, product technical support, maintenance, and end user support.¹³⁵ The SBA small business size standard for ITVARs classifies a business as small if it has 150 or fewer employees.¹³⁶ According to U.S. Census Bureau data for 2017, 6,228 firms in this industry operated for the entire year.¹³⁷ Of this number, 6,086 firms operated with fewer than 100 employees.¹³⁸ Based on this data, the Commission estimates that the majority of information technology value added resellers can be considered small.

39. *Software Publishers.* This industry comprises establishments primarily engaged in computer software publishing or publishing and reproduction.¹³⁹ Establishments in this industry carry out operations necessary for producing and distributing computer software, such as designing, providing documentation, assisting in installation, and providing support services to software purchasers.¹⁴⁰ These establishments may design, develop, and publish, or publish only.¹⁴¹ The SBA small business size standard for this industry classifies businesses having annual receipts of \$41.5 million or less as small.¹⁴² U.S. Census Bureau data for 2017 indicate that 7,842 firms in this industry operated for the entire year.¹⁴³ Of this number 7,226 firms had revenue of less than \$25 million.¹⁴⁴ Based on this data, we conclude that a majority of firms in this industry are small.

¹³³ See U.S. Census Bureau, 2017 NAICS Definition, “541519 Other Computer Related Services,” <https://www.census.gov/naics/?input=541519&year=2017&details=541519>.

¹³⁴ See 13 CFR § 121.201, NAICS Code 541519_Except note 18.

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ 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 541519, <https://data.census.gov/cedsci/table?y=2017&n=541519&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

¹³⁸ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹³⁹ See U.S. Census Bureau, 2017 NAICS Definition, “511210 Software Publishers,” <https://www.census.gov/naics/?input=511210&year=2017&details=511210>.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² See 13 CFR § 121.201, NAICS Code 511210 (as of 10/1/22 NAICS Code 513210).

¹⁴³ See U.S. Census Bureau, 2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEREVFIEM, NAICS Code 511210, <https://data.census.gov/cedsci/table?y=2017&n=511210&tid=ECNSIZE2017.EC1700SIZEREVFIEM&hidePreview=false>.

¹⁴⁴ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We 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.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

40. While the Commission sought to minimize compliance burdens on small entities where practicable, the rules adopted in the *Report and Order* will impose new or additional reporting, recordkeeping, and/or other compliance obligations on small entities that participate in the Pilot Program. The adopted rules encompass a broad range of Pilot-related compliance requirements that are summarized in further detail below.

41. *Application process.* The purpose of the Pilot Program is to better assess the costs and benefits of utilizing universal service funds to support schools' and libraries' cybersecurity needs and how other federal resources could be leveraged to ensure that these needs are addressed in the most efficient and effective manner. To do so, we require Pilot applicants to submit, as part of their application to participate in the Pilot, part one (out of two parts) of a new FCC Form 484 application, including by completing appropriate certifications. In this first part of the application, an applicant will provide a general level of cybersecurity information about itself and its proposed Pilot project, and will use pre-populated data, as well as a number of "yes/no" questions and questions with a predetermined set of responses (i.e., multiselect questions with predefined answers). The applicant will explain how its proposed project meets a number of criteria outlined in the *Report and Order*. In addition, the applicant must present a clear strategy for addressing the cybersecurity needs of its K-12 school(s) and/or library(ies) pursuant to its proposed Pilot project, and clearly articulate how the project will accomplish the applicant's cybersecurity objectives. After selection for participation Pilot, participants shall submit to USAC a second part to the FCC Form 484, including by completing appropriate certifications. The second part will require that participants provide more detailed cybersecurity data and Pilot project information, including a description of the Pilot participant's current cybersecurity posture, information about the participant's planned use(s) for other federal, state, or local cybersecurity funding (i.e., funding obtained outside of the Pilot), and information about a participant's history of cybersecurity threats and attacks within a year of the date of its application. Moreover, we require applications to be submitted through an online Pilot portal on USAC's website and direct the Bureau to issue a Public Notice that includes details and instructions on how to submit an application using the Pilot portal on USAC's website.

42. *Competitive Bidding, Requests for Services, and Invoicing and Reimbursement Processes.* We require Pilot participants to provide information related to competitive bidding, requests for services and invoice and reimbursement information, including associated and appropriate certifications, using new Pilot Program forms that will mirror existing E-Rate and ECF forms: (1) FCC Form 470 (Description of Services Requested and Certification Form); (2) FCC Form 471 (Description of Services Ordered and Certification Form); (3) FCC Form 472 (Billed Entity Applicant Reimbursement (BEAR) Form); and (4) FCC Form 474 (Service Provider Invoice (SPI) Form).

43. *Reporting Requirements.* We require Pilot participants to submit initial, annual and final reports. Applicants must provide an initial baseline assessment using information that includes the reporting requirements for the second part of the application process described above.

44. *Document Retention Requirements.* We require Pilot participants to retain all documents related to their participation in the Pilot Program sufficient to demonstrate compliance with all program rules for at least 10 years from the last date of service or delivery of equipment and to maintain asset and inventory records of services and equipment purchased sufficient to verify the actual location of such services and equipment for a period of 10 years after purchase. This rule requires that Pilot participants must retain documents regarding participation in the Pilot, including asset and inventory records, accumulated during the Pilot, for a period of 10 years. We also require Pilot participants to present such records upon request of any representative (including any auditor) appointed by a state education department, the Administrator, the Commission, its Inspector General, or any local, state or federal agency with jurisdiction over the entity.

45. *Pilot Program Certifications.* As noted above, we require participants to provide several certifications as part of their FCC Form 484 application, competitive bidding requirements, requests for services, and invoicing processes. Similarly, we require their selected service providers to provide certifications related to invoicing processes. We also require Pilot participants and service providers to certify that they are not seeking support or reimbursement for Pilot-eligible services and equipment that has been purchased and reimbursed from other federal, state, Tribal, or local funding sources or that is eligible for discounts from E-Rate or another universal service program. Pilot participants and service providers must certify that they are seeking funding for only Pilot-eligible services and equipment.

46. *Other Delegations.* As part of the *Report and Order*, we also delegate to Bureau the authority to address and resolve a number of procedural or administrative matters, including unforeseen administrative issues or problems, provided that doing so is consistent with the decisions we reach in the *Report and Order*.

47. The record does not include a detailed cost/benefit analysis that would allow us to quantify the costs of compliance for small entities, including whether it will be necessary for small entities to hire professionals to comply with the adopted rules. However, as program participation by applicants and service providers is voluntary, and we expect that Pilot participants will carefully weigh the benefits, costs, and burdens of participation to ensure that the benefits outweigh their costs. We expect that there may be additional benefits that cannot be easily quantified, such as a reduction in learning downtime caused by cyberattacks, reputational benefits from increased trust in school and library systems, increased digital and cybersecurity literacy among students and staff, and the safeguarding of intellectual property. This limited Pilot Program will enable the Commission to evaluate the benefits of using universal service funding to fund cybersecurity services and equipment against the costs before deciding whether to support it on a permanent basis.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

48. The RFA requires an agency to provide, “a description of the steps the agency has taken to minimize the significant economic impact on small entities...including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.”¹⁴⁵

49. In the *Report and Order*, we take multiple steps that minimize economic impact on small entities related to the final rules we adopt. We have sought to minimize economic impact on eligible small schools, libraries and consortia by dividing the process of completing the application form for participation in the Pilot (FCC Form 484) into two parts. By requiring that an applicant only complete the first part of the application form, which seeks more general information, with their initial application (i.e., prior to our decision about whether to approve the entity as a participant in the Pilot), we minimize the economic impacts associated with filling out the second part of the form in at least two ways. First, applicants that are not selected for participation in the Pilot will never be required to fill out the second portion of the form. Second, applicants that are selected will have additional time to gather and prepare their answers, as compared to an alternate approach where we could have required that the entire form be completed with the initial application.

50. We have also significantly minimized economic impacts on eligible small schools, libraries, consortia and service providers by modeling the Pilot processes and forms, including those related to competitive bidding, requests for services, and invoicing and reimbursement processes, on existing E-Rate and ECF processes and forms. This includes submitting applications using the Pilot portal on USAC’s website. We expect this action will meaningfully reduce any economic impact on

¹⁴⁵ 5 U.S.C. § 604(a)(6).

small entities associated with completing information requested via these forms. First, we expect that many small entity participants, including their potential consultants and advisors, and service providers will be familiar with the substance of the forms from their involvement with the Commission's E-Rate and ECF processes and forms. Second, we expect that even those small entities that may not be involved with the E-Rate and ECF programs may benefit from the significant guidance and information that the Commission and USAC have issued over the years in those programs (e.g., trainings and instructions materials), that could also be relevant to the Pilot, including future guidance the Bureau will provide about the Pilot Program requirements through a Public Notice. Third, we expect that these forms will generally be easy to use and efficient to complete based on our observation, made over many years, that forms with similar substance have proven effective in the Commission's E-Rate and ECF programs. We thus expect our actions will significantly minimize any economic impact on small entities compared to an alternative approach where we developed Pilot processes and forms that were not related to those already developed in the Commission's E-Rate and ECF programs.

51. We have also designed our reporting requirements to minimize the economic impact on small entities while ensuring that we gather the information necessary to achieve the goals and ensure the success of the Pilot. In particular, have required only annual reporting from participants during the duration of the Pilot rather than alternate approaches where we could have required either per-incident "real-time" reports based on the occurrence of certain notable cyber events or regular but more frequent (e.g., quarterly) reporting. To further reduce economic impacts on small entities we have also directed the Bureau to consider the development of a standardized reporting form for use by Pilot participants.

52. Additionally, we have also delegated authority to the Bureau to address and resolve a number of matters, including unforeseen administrative issues or problems, provided that doing so is consistent with the decisions we reach in the *Report and Order*. We expect that that these delegations of authority will permit the Bureau and Administrator to take procedural actions, based on their experience gained managing the Pilot Program, to further reduce, wherever possible, economic impacts on small entities while still ensuring that all Pilot Program goals are effectively and efficiently satisfied.

53. We also will not require the use of specific federal government tools and resources in the Pilot as initially suggested in the *Cybersecurity NPRM*. Further, while several commenters support a shortened Pilot duration of either one year or eighteen months, we adopt our proposed three-year Pilot Program because it will allow us a better opportunity to evaluate whether universal service support should be used to fund cybersecurity services and equipment on a permanent basis. In determining the share of costs, participants will use their category one discount rate to determine the non-discount share of costs, instead of the category two discount proposed in the *Cybersecurity NPRM*, allowing participants with the highest discount rate to be eligible for support for 90 percent of their costs.

54. We considered, but declined to adopt, proposals to abandon the traditional E-Rate reimbursement structure and instead provide "seed" money at the start of the Pilot, because requiring participants to contribute their funds toward eligible equipment and services helps to safeguard the integrity of the program and is consistent with processes in E-Rate and other universal service programs. However, for the Pilot, we modify the time to request appeal and waiver of an action by USAC to 30 days instead of the 60-day timeframe in the existing programs. Though commenters assert this will limit flexibility for participants, we think the change is appropriate for the Pilot Program because it will allow for faster decisions in a program that has a limited duration.

G. Report to Congress

55. The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to Congress pursuant to the Congressional Review Act.¹⁴⁶ In addition, the Commission will send a copy of the *Report and Order*, including the FRFA, to the Chief Counsel for Advocacy of the SBA. A

¹⁴⁶ *Id.* § 801(a)(1)(A).

copy of the *Report and Order* and FRFA (or summaries thereof) will also be published in the *Federal Register*.¹⁴⁷

¹⁴⁷ *Id.* § 604(b).

**STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *Schools and Libraries Cybersecurity Pilot Program*, Report and Order, WC Docket No. 23-234 (June 6, 2024).

Last year, school districts as large as Los Angeles Unified in California and as small as St. Landry Parish in Louisiana were the target of cyberattacks. According to the Government Accountability Office, the loss of learning that follows these network disruptions can range from three days to three weeks. The recovery time for the school district can take as long as nine months. On top of that, the expense of addressing these attacks may mean millions for districts that never had this kind of a thing as a line item on their annual budget.

This situation is complex. But the vulnerabilities in the networks we have in our Nation's schools and libraries are real—and growing. So today we are doing something about it.

For decades, the Federal Communications Commission has helped schools and libraries secure access to communications services through the E-Rate program. This program is a powerhouse. It is the reason why schools and libraries across the country have access to high-speed broadband. We know now, though, that connecting these institutions can also introduce security challenges. We also know this is a multifaceted problem and there are many others at the local, state, and federal level, including the Department of Education and Cybersecurity and Infrastructure Security Agency, that need to be part of the solution. We do not have all the answers. But we can use our authority at the Commission to start asking the right questions.

That is why today we create a three-year Schools and Libraries Cybersecurity Pilot Program, with a budget of up to \$200 million from the Universal Service Fund. We will use this effort, modeled after our earlier and successful Connected Care Pilot Program, to study and better understand what equipment, services, and tools will help protect school and library broadband networks from cyberthreats. Over the course of the next three years, this initiative will make sure gains in enhanced cybersecurity do not come at the cost of undermining E-Rate's success in promoting digital equity and basic connectivity. Ultimately, we want to learn from this effort, identify how to get the balance right, and provide our local, state, and federal government partners with actionable data about the most effective and coordinated way to address this growing problem.

I want to thank the agency staff who worked on this important security initiative, including Allison Baker, Kristin Berkland, Callie Coker, Veronica Garcia-Ulloa, Jodie Griffin, Trent Harkrader, Bogyung Lim, Sue McNeil, Saswat Misra, Kiara Ortiz, Tiffany Purvis, Joseph Schlingbaum, and Johnnay Schrieber from the Wireline Competition Bureau; Larry Atlas, Jim Bird, Thomas Driscoll, Valerie Hill, Rick Mallen, Rachel May, Erika Olsen, Joel Rabinovitz, Royce Sherlock, and Elliot Tarloff from the Office of General Counsel; Behzad Ghaffari, Peter Gingeleskie, John Hannan, Liesl Himmelberger, Eugene Kiselev, Paulo Lopes, Jayson Palumbo, Eric Ralph, Steve Rosenberg, Michelle Schaefer, Craig Stroup, and Emily Talaga from the Office of Economics and Analytics; Nicole McGinnis, Drew Morin, Austin Randazzo, and James Wiley from the Public Safety and Homeland Security Bureau; Warren Firschein and Mark Stephens from the Office of the Managing Director; and Joycelyn James from the Office of Communications Business Opportunities.

**STATEMENT OF
COMMISSIONER GEOFFREY STARKS**

Re: *Schools and Libraries Cybersecurity Pilot Program*, Report and Order, WC Docket No. 23-234 (June 6, 2024).

Our schools possess massive amounts of data about students, including their social security numbers, health records, disciplinary records, and other personally identifiable information. Accordingly, schools are target rich environments for cyberattacks, such as ransomware, and are low hanging fruit because they are often resource constrained and lack cyber expertise. Bad actors know this, and take advantage of it. According to Verizon's 2024 Data Breach Investigations Report,¹ the education services sector experienced 1,780 attacks in 2023, up 258% from last year.² CISA and the Department of Education have developed free resources to help schools protect their networks, which I applaud, but our schools and libraries need additional help.

I'm proud to support today's E-Rate Cybersecurity Pilot that will make \$200 million available to schools and libraries to protect their networks against the threats they face every day. The E-Rate program is one of the Commission's most important and successful programs. But the connectivity we support must be secure. This Pilot will provide us with the information necessary to analyze whether and how the Commission should update our E-Rate program to help schools and libraries help themselves against the ongoing cyber threat.

I continue to work diligently to ensure our networks are secure in the United States, and I thank the Chairwoman for her leadership in considering how E-Rate can be an asset to protect school and library networks. I also thank her for taking my edits regarding the budget, as well as ensuring the Pilot produces the type of data necessary to analyze the Pilot's success. I want to thank the staff who worked on this item. I approve.

¹ See Verizon 2024 Data Breach Investigations Report, available at <https://www.verizon.com/business/resources/reports/2024-dbir-data-breach-investigations-report.pdf>.

² Reports about school or library system attacks abound. Major districts such as the Los Angeles Unified School District, Baltimore County Public Schools, Broward County Public Schools, the Minneapolis Public School system, the Fulton County School District, and the Albuquerque Public Schools have publicly announced attacks in recent years, impacting hundreds of thousands of current and past students. See Howard Blume, *L.A. Unified data breach last year includes at least 2,000 student records, officials say*, Los Angeles Times, Feb. 22, 2023, <https://www.latimes.com/california/story/2023-02-22/lausd-cyber-attack-includes-at-least-2-000-student-records>; Luke Barr, *Baltimore schools cyber attack cost nearly \$10M: State IG*, ABC News, Jan. 25, 2023, <https://abcnews.go.com/US/baltimore-schools-failed-fully-act-security-recommendations-cyber/story?id=96671802>; Amanda Batchelor, *Hackers post filed after Broward school district refuses to pay ransom*, Local10.com, Apr. 20, 2021, <https://www.local10.com/news/local/2021/04/20/hackers-post-files-after-broward-school-district-doesnt-pay-ransom/>; Alexandra Simon, Jennifer Hoff, *Minneapolis Public Schools confirms hackers release personal data*, KARE11, Mar. 17, 2023, <https://www.kare11.com/article/news/local/minneapolis-public-schools-confirms-hackers-released-personal-data/89-8e682442-2da4-434f-8e03-19f5d08009fe>; *Fulton County Schools investigating possible security breach of computer systems*, FOX5 Atlanta, Jan. 31, 2024, <https://www.fox5atlanta.com/news/fulton-county-schools-security-breach-computer-systems>; *A cyberattack in Albuquerque forces schools to cancel classes*, NPR, Jan. 14, 2022, <https://www.npr.org/2022/01/14/1072970219/cyber-attack-in-albuquerque-latest-to-target-public-schools>.

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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Connect America Fund Phase II Auction	)	AU Docket No. 17-182
	)	
The Uniendo a Puerto Rico Fund and the Connect USVI Fund	)	WC Docket No. 18-143
	)	
Rural Digital Opportunity Fund	)	WC Docket No. 19-126
	)	
Rural Digital Opportunity Fund Auction	)	AU Docket No. 20-34
	)	
Establishing a 5G Fund for Rural America	)	GN Docket No. 20-32
	)	
Letters of Credit for Recipients of High-Cost Competitive Bidding Support	)	WC Docket No. 24-144

NOTICE OF PROPOSED RULEMAKING

Adopted: June 6, 2024

Released: June 7, 2024

Comment Date: (30 days after date of publication in the Federal Register)

Reply Comment Date: (45 days after date of publication in the Federal Register)

By the Commission: Chairwoman Rosenworcel and Commissioner Starks issuing separate statements.

TABLE OF CONTENTS

Heading	Paragraph #
I. INTRODUCTION	1
II. BACKGROUND	5
III. DISCUSSION.....	16
A. Weiss Bank Safety Ratings.....	16
B. RDOF Letter of Credit Reduction.....	22
C. CAF II Auction Letter of Credit Waiver.....	25
D. Digital Equity and Inclusion	26
IV. PROCEDURAL MATTERS	27
V. ORDERING CLAUSES	33
APPENDIX A	14

I. INTRODUCTION

1. In this Notice of Proposed Rulemaking (NPRM), we seek comment on modifying Letter of Credit (LOC) rules for Universal Service Fund High Cost support authorized through a competitive process. We also seek comment on modifying the required value of a letter of credit for recipients of the Rural Digital Opportunity Fund (RDOF) support. Finally, we seek comment on making our waiver of

certain aspects of the LOC rules permanent for recipients of Connect America Fund Phase II (CAF II) support to align with the RDOF LOC requirements. We are seeking comment in these areas to explore potential ways to facilitate providers' compliance with program requirements while facilitating broadband deployment in unserved and underserved areas, and helping providers to meet their deployment milestones.

2. Currently, our rules require that entities authorized to receive High Cost support authorized through a competitive process have an LOC from a United States bank with a Weiss bank safety rating of B- or better.¹ When the Commission first adopted this rule, approximately 3,600 banks qualified to issue letters of credit. In the last 2 years, however, nearly half of those banks have lost their eligibility to issue LOCs as they have seen their Weiss rating fall below a B-.² Therefore, many carriers authorized to receive Connect America Fund Phase II Auction or Rural Digital Opportunity Fund support face the possibility of having their support withheld until they obtain a new LOC from a qualifying bank, and these carriers must incur increased costs and administrative burdens associated with obtaining a new LOC from a qualifying bank.³ We accordingly seek comment on whether the Commission should modify the current requirement of a B- or better Weiss safety rating.

3. In addition, RDOF support recipients are required to maintain LOCs that increase in value on an annual basis.⁴ Banks issuing LOCs generally require RDOF support recipients to maintain sufficient cash reserves to support the LOC, which impacts the financial resources available for the provider's operations, including deployment.⁵ As part of RDOF's rules, support recipients that meet their optional or required deployment milestone are allowed to reduce the value of their required LOCs to one year of their total support once USAC has verified deployment.⁶ This flexibility was intended to balance our responsibility to protect program funds while simultaneously reducing the financial burdens on RDOF support recipients to participate in the program as they met their deployment milestones.⁷ In this NPRM, we seek comment on providing additional flexibility by allowing an RDOF support recipient to lower the value of its LOC to one year of support if it has deployed service to 10 percent of its locations by the end of its second year of support, instead of 20 percent, and we seek comment on whether such a waiver would apply to recipients whose two-year optional milestone has already occurred.⁸

¹ 47 CFR §§ 54.315(c)(2)(i)(B) (Connect America Fund Phase II Auction or Auction 903); 54.804(c)(2)(i)(B) (Rural Digital Opportunity Fund or Auction 904); 54.1016(a)(2)(i)(B) (5G Fund); 54.1508(c)(1)(ii) (Stage 2 fixed support for the Uniendo a Puerto Rico Fund and the Connect USVI Fund).

² *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, DA 24-244, at 3, para. 6 (WCB Mar. 12, 2024) (*Weiss Waiver Order*).

³ See, e.g., Petition for Temporary Waiver of ECFiber, WC Docket No. 10-90, AU Docket No. 20-34, at 6 (filed Apr. 17, 2023) (*ECFiber Petition*) (explaining that, absent a waiver, ECFiber would need to have nearly \$500,000 tied up in Certificates of Deposit with banks that could no longer issue an RDOF LOC).

⁴ 47 CFR §§ 54.804(c)(1)(i)-(iv).

⁵ See, e.g., Petition of the Coalition of RDOF Winners for Waiver, WC Docket No. 10-90 et al., at 10 (filed Aug. 16, 2023) (*Coalition of RDOF Winners' Petition*) ("Banks generally require these standby letters of credit to be cash collateralized, meaning that the RDOF recipients have to tie up a significant portion of their free cash in support of these letters of credit.").

⁶ 47 CFR § 54.804(c)(1)(v).

⁷ *Rural Digital Opportunity Fund*, Report and Order, 35 FCC Rcd 686, 729, para. 97 (2020) (*Rural Digital Opportunity Fund Order*).

⁸ RDOF support recipients who began receiving support in 2021 had until December 31, 2023 to deploy service to 20% of their locations if they wished to take advantage of the optional milestone. Those recipients' first deployment obligation will be on December 31, 2024, at which point they will need to have deployed service to 40% of their locations. *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 711, 730, paras. 53, 99; 47 CFR § 54.802(c)(1).

4. Finally, we seek comment on making our waiver of certain aspects of the CAF II LOC rules permanent, and thereby continuing to allow CAF II support recipients that have met their deployment and reporting obligations to follow the RDOF's LOC rules, and maintain LOCs at lower values.

II. BACKGROUND

5. In 2016, the Commission adopted rules to implement a competitive bidding process to allocate support for Phase II of the Connect America Fund (Auction 903).⁹ In order to be authorized to receive support in Auction 903, winning bidders needed to make a detailed showing that they would be financially and technically capable of meeting their public interest obligations in the areas where they won support. One component of demonstrating financial capacity was obtaining an LOC from an eligible bank, which the Universal Service Administrative Company (USAC or Administrator) could draw on, should the need arise.¹⁰ The LOC requirement acts to protect the government's interest in the funds it disburses,¹¹ and it is an "effective means for accomplishing our role as stewards of the public's funds by securing our financial commitment to provide Connect America support in the auction context."¹²

6. The Commission also set out several requirements for a bank that would be eligible to issue these LOCs. As relevant here, the Commission required that any United States bank issuing the required LOC to an Auction 903 support recipient must maintain a Weiss bank safety rating of a B- or higher.¹³ This requirement struck a balance between providing "independent assurance of the safety and the soundness of the bank issuing a letter of credit," and expanding the pool of banks that would be eligible to issue these LOCs.¹⁴ The Commission noted that, in contrast with the rules it had adopted in 2014 for the Rural Broadband Experiments,¹⁵ which would have allowed only approximately 70 banks to issue LOCs, the adopted LOC rules for Auction 903 would allow approximately 3,600 banks to issue LOCs, and this expanded pool of eligible banks would facilitate auction participation from small entities across the Nation while still providing adequate protection for public funds.¹⁶ By adopting independent and objective criteria to evaluate a U.S. bank's suitability to issue an LOC, the Commission ensured that it would not be required to independently evaluate the financial health of different banks. For a support recipient to use a non-U.S. bank, which are not rated by Weiss, to secure a LOC, the bank, among other requirements, must have "a long-term unsecured credit rating issued by a widely-recognized credit rating agency that is equivalent to a BBB- or better rating by Standard & Poor's."¹⁷

⁹ *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 5989-99, paras. 119-40 (2016) (*CAF Phase II Auction Order*).

¹⁰ *Id.* at 5951, para. 2.

¹¹ *Id.* at 5989, para. 118.

¹² *Id.* at 5990, para. 120, and *see id.* (discussing how alternatives to LOCs do not "offer the same level of protection of ratepayers' contributions to the universal service fund").

¹³ *CAF Phase II Auction Order*, 31 FCC Rcd at 5992-94, paras. 126-27; 47 CFR §§ 54.315(c)(2)(i)(B); 54.804(c)(2)(i)(B).

¹⁴ *CAF Phase II Auction Order*, 31 FCC Rcd at 5993-94, para. 127.

¹⁵ *See Connect America Fund; ETC Annual Reports and Certification*, WC Docket Nos. 10-90, 14-58, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769, 8790, para. 59 (2014) (*Rural Broadband Experiments Order*) (setting forth the requirements that U.S. banks issuing LOCs for RBE participants must (1) be among the largest 100 banks in the U.S. and (2) have a credit rating issued by Standard & Poor's of BBB- or better (or the equivalent from a nationally recognized credit rating agency)).

¹⁶ *CAF Phase II Auction Order*, 31 FCC Rcd at 5993, para. 127.

¹⁷ *Id.* at 5996, para. 131; 47 CFR § 54.315(c)(2)(iv)(C).

7. In 2020, the Commission initiated its next reverse auction for fixed broadband support, the Rural Digital Opportunity Fund (RDOF) Auction (Auction 904).¹⁸ When adopting the rules governing a U.S. bank's eligibility to issue the required LOC to an Auction 904 support recipient, the Commission adopted the same bank eligibility requirement it had used in Auction 903.¹⁹ At the same time, the Commission made changes to other aspects of the LOC rules. In particular, the Commission reduced the value of the LOC that an RDOF support recipient was required to obtain and maintain as compared to the requirements applied for CAF II, and it allowed RDOF support recipients to reduce the value of their LOCs at an earlier point than CAF II support recipients were permitted.²⁰

8. In June 2020, in response to the COVID pandemic, the Wireline Competition Bureau waived the CAF II LOC rules, and allowed CAF II support recipients to follow the RDOF LOC rules instead.²¹ This waiver permitted CAF II support recipients to reduce their letter of credit burden sooner in their buildout term, as compared to requirements in the CAF II rules. That waiver has been renewed on an annual basis for CAF II support recipients who have met their deployment obligations.²²

9. In October 2020, the Commission established the 5G Fund for Rural America, adopting rules to use multi-round reverse auctions to distribute universal service support for high-speed, 5G mobile broadband services. Consistent with the requirements it adopted for CAF Phase II and RDOF, the Commission required all long-form applicants to obtain an LOC issued by a bank acceptable to the Commission in order to be authorized to receive support.²³ For letters of credit issued by United States banks, the Commission required the bank to be insured by the Federal Deposit Insurance Corporation (FDIC) and have a Weiss bank safety rating of B- or higher.²⁴

10. Since 2023, multiple banks that issued the required letters of credit to winning bidders authorized to receive support for Auctions 903 and 904 have had their Weiss bank safety ratings fall below a B-. In fact, more than 1,600 U.S. banks that had previously been eligible to issue LOCs to support recipients have seen their Weiss bank safety ratings fall below a B- in the past two years and,

¹⁸ See *Rural Digital Opportunity Fund Order*.

¹⁹ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 732, para. 107; 47 CFR § 54.804(c)(2)(i)(B). The Commission also adopted the same rule requiring non-U.S. banks to have a "long-term unsecured credit rating issued by a widely-recognized credit rating agency that is equivalent to a BBB- or better rating by Standard & Poor's." 47 CFR § 54.804(c)(2)(iv)(C).

²⁰ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 729, 730, paras. 98, 101.

²¹ *Connect America Fund; ETC Annual Reports and Certification; Rural Broadband Experiments; Connect America Fund Phase II Auction*, WC Docket Nos. 10-90, 14-58, 14-259; AU Docket No. 17-182, Order, 35 FCC Rcd 6556 (2020) (*Letter of Credit Waiver Order*) (waiving 47 CFR § 54.315(c) and instead directing CAF II funding recipients to comply with the 47 CFR 54.804(c) LOC rules for RDOF obligations).

²² See *Connect America Fund, et al., Order*, 36 FCC Rcd 16633 (WCB 2021) (*2021 LOC Waiver Extension*); *Connect America Fund, et al., Order*, 37 FCC Rcd 14592 (WCB 2022) (*2022 Letter of Credit Waiver Extension Order*); *Connect America Fund, et al., Order*, DA 23-1140 (WCB Dec. 6, 2023) (*2023 LOC Waiver Extension*).

²³ *Establishing a 5G Fund for Rural America*, GN Docket No. 20-32, Report and Order, 35 FCC Rcd 12174, 12263-69, paras. 225-44 (2020), modified by *Errata* released Nov. 10, 2020, Nov. 27, 2020, and Jan. 11, 2021 (*5G Fund Report and Order*).

²⁴ See 47 CFR § 54.1016(a)(2)(i). Non-U.S. Banks may issue LOCs to 5G Fund support winners, subject to the same rules established for Auctions 903 and 904. 47 CFR § 54.1016(a)(2)(iv); *5G Fund Report and Order*, 35 FCC Rcd at 12264, para. 226. In September 2023, the Commission adopted a Further Notice of Proposed Rulemaking for the 5G Fund seeking comment on, among other things, the 5G Fund budget, determining areas eligible for support, and requirements concerning cybersecurity, supply chain risk management plans, and Open Radio Access Networks. See *Establishing a 5G Fund for Rural America*, GN Docket No. 20-32, Further Notice of Proposed Rulemaking, FCC 23-74, 2023 FCC LEXIS 2941 (2023).

correspondingly, lost their eligibility to supply support recipients with LOCs.²⁵ When its bank loses eligibility to supply an LOC,²⁶ the auction winner authorized to receive support faces the prospect of support being withheld until it can obtain a new LOC from a qualifying bank.²⁷

11. Since 2023, a number of CAF II and RDOF support recipients have requested a temporary waiver of the requirement to have an LOC from a United States bank with a Weiss bank safety rating of B- or better because their original bank no longer meets this standard, requiring them to obtain a new LOC from a qualifying bank. In recognition of the time needed to obtain a new LOC from a different bank and the burdens on carriers whose support would otherwise be withheld, the Wireline Competition Bureau (Bureau) has granted these waiver requests,²⁸ thereby allowing those recipients to maintain an existing LOC at the required value²⁹ and continue to receive support while they go through the process of obtaining a new LOC.

12. Other interested parties have raised concerns about the reliability of the Weiss ratings. The Bank Policy Institute stated that “the Weiss Ratings methodology is opaque and the Weiss organization appears to lack sufficient resources to adequately assess all of the institutions it purports to rate.”³⁰ The Wisconsin Bankers Association asserted that Weiss is “not a nationally recognized statistical rating organization (“NRSRO”) that is registered with the U.S. Securities and Exchange Commission,” and that Weiss’s analysis appears to be “questionable, irresponsible, and [lacking in] any form of transparency.”³¹

13. In March 2024, the Bureau issued an order temporarily waiving for one year, *sua sponte*, the requirement that banks issuing LOCs for such recipients maintain a Weiss bank safety rating of B- or

²⁵ *Weiss Waiver Order* at 3, para. 6.

²⁶ *Id.*

²⁷ *CAF Phase II Auction Order*, 31 FCC Rcd at 5997, para. 135; *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 732, para. 107. See also 47 CFR §§ 54.315(c)(1), (4); 54.804(c)(1), (4); 54.1016. See also *CAF Phase II Auction Order*, 31 FCC Rcd at 5997, para. 133 (discussing the need to “secure a letter of credit from another issuing bank that meets our eligibility requirements”); *5G Fund Report and Order*, 35 FCC Rcd at 12266, para. 234.

²⁸ See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, 37 FCC Rcd 10271 (WCB 2022) (*Point Broadband Order*); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, 38 FCC Rcd 4336 (WCB 2023) (*ECFiber Order*); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, DA 23-513 (WCB June 14, 2023) (*DoCoMo Order*); *Streamlined Resolution of Requests Related to the Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket Nos. 02-60, 06-122, 10-90, 21-93, Public Notice, DA 23-756, at 22 & n.52 (WCB Aug. 31, 2023) (*August 2023 Streamlined Public Notice*); *Streamlined Resolution of Requests Related to the Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket Nos. 02-60, 06-122, 10-90, 20-34, 21-93, Public Notice, DA 23-1104, at 12 & n.39 (WCB Dec. 1, 2023) (*December 2023 Streamlined Public Notice*); *Streamlined Resolution of Requests Related to the Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket Nos. 02-60, 06-122, 10-90, 20-34, 21-93, Public Notice, DA 24-1, at 8 & n.25 (WCB Jan. 2, 2024) (*January 2024 Streamlined Public Notice*); *Streamlined Resolution of Requests Related to the Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket Nos. 02-60, 06-122, 10-90, 20-34, 21-93, Public Notice, DA 24-85, at 7 & n.24 (WCB Feb. 1, 2024) (*February 2024 Streamlined Public Notice*).

²⁹ 47 CFR §§ 54.315(c)(1); 54.804(c)(1).

³⁰ Letter from Joshua Smith, Vice President, Assistant General Counsel, Bank Policy Institute to The Honorable Jessica Rosenworcel, Chairwoman, FCC, WC Docket Nos. 17-182 and 20-34, at 2 (filed Apr. 10, 2024) (*BPI Letter*).

³¹ See E-mail from Rose Oswald Poels, President and CEO, the Wisconsin Bankers Association, at 2, submitted as an attachment to the Petition of Reedsburg Utility Commission for Waiver, AU Docket No. 20-34 (filed Feb. 22, 2024), available at <https://www.fcc.gov/ecfs/document/102221094523933/5> (*Wisconsin Bankers Association Letter*).

higher.³² The Bureau explained that this waiver was warranted due to the continued difficulties that auction winners authorized to receive support have faced obtaining new LOCs from banks with the requisite Weiss bank safety rating, and the burden that effort places on carriers' ability to efficiently serve consumers and deploy networks in furtherance of the Commission's universal service goals.³³ The Bureau order noted that any change of the programs' rules would require Commission action.³⁴ We now seek comment on potential changes to those rules.³⁵

14. *Rural Digital Opportunity Fund LOCs.* RDOF support recipients are required to increase the value of their LOC on an annual basis.³⁶ The Commission adopted the LOC requirement to ensure that providers are able to repay any funds issued in the event of non-compliance with program rules or other issues. The LOCs increase in value as RDOF recipients receive more of their support over time, to ensure that those funds can be recouped in the event of default. RDOF support recipients may reduce the value of those LOCs to one year of support, however, if they meet optional and required deployment obligations, because the Commission found that RDOF support recipients that "demonstrated significant and verifiable steps toward meeting their deployment obligations[]" should have the opportunity to avoid some of the more significant credit requirements.³⁷ Accordingly, if a provider meets an optional 20% deployment milestone by the end of its second year of RDOF support, it may reduce its LOC's value to one year of its RDOF support.³⁸ Some participants, however, have sought relief from the rules requiring LOCs to increase in value on an annual basis, arguing that the increased funds required to maintain LOCs could be more efficiently used on broadband deployment.³⁹ In this NPRM, we seek comment on whether the optional deployment threshold should be lowered from 20% to 10%, and whether such a reduction would facilitate broadband deployment and program compliance while continuing to safeguard our Fund expenditures. We also seek comment on whether such a waiver should apply to RDOF recipients whose two-year optional deployment milestone has already passed.

15. *CAF II Letter of Credit Waiver Extension.* The Bureau's most recent waiver, which expires on December 31, 2024, allows CAF II support recipients that have met all of their deployment and reporting requirements to continue to follow the RDOF LOC rules.⁴⁰ In this NPRM, we seek comment on a long-term solution by changing the CAF II LOC rules to match the RDOF LOC rules for those CAF II support recipients that have met all of their deployment and reporting requirements.⁴¹

III. DISCUSSION

A. Weiss Bank Safety Ratings

16. In this NPRM, we seek targeted comment on whether and how we should change the sections of our letter of credit rules requiring a minimum safety rating for issuing financial institutions.

³² See *Weiss Waiver Order*.

³³ See *Weiss Waiver Order*.

³⁴ See *id.* at 3-4, para. 9.

³⁵ We note that this Notice only applies to United States banks that are required to maintain a Weiss bank safety rating of B- or higher. We do not propose any changes to our rules which allow CoBank, the National Rural Utilities Finance Corporation, or a non-United States bank to issue LOCs, subject to certain conditions which are not at issue here. 47 CFR §§ 54.315(c)(2)(ii)-(iv); 54.804(c)(2)(ii)-(iv); 54.1016(a)(2)(ii)-(iv); 54.1508(c)(2)-(4).

³⁶ See *supra* para. 3.

³⁷ *Rural Digital Opportunity Fund Order*, 35 FCC Red at 731, para. 104.

³⁸ *Id.* at 730, para. 99.

³⁹ See, e.g. Coalition of RDOF Winners' Petition at 10.

⁴⁰ See *2023 LOC Waiver Extension*.

⁴¹ See Letter from Alan Buzacott, Executive Director, Federal Regulatory and Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed May 23, 2024) (*Verizon Ex Parte*).

Currently, Auction 903 and 904 support recipients are required to obtain a letter of credit from United States banks maintaining a Weiss bank safety rating of B- or better. In light of the developments in the banking industry described above, we seek comment on this requirement. We also seek comment on whether we should change our rule requiring United States banks to maintain a Weiss bank safety rating of B- or better for future recipients of support from the 5G Fund. If we decide to alter those rules, we seek comment on what requirements we should adopt for banks issuing letters of credit to support recipients, to further our dual goals of securing the financial commitments made through Auctions 903 and 904, and any auction of 5G Fund support, while maintaining a sufficiently expansive pool of issuing banks to enable broad participation in the programs by providers, and especially small providers. We seek comment on whether there are alternative, reliable ratings to use for assessing a bank's suitability for issuing an LOC to support recipients; or whether we should continue to utilize only Weiss ratings, but accept a lower grade for bank eligibility.⁴² In making any changes to the issuing bank eligibility rules, how can the Commission minimize any potential public interest harms and continue to responsibly steward the funds disbursed through CAF II Auction and RDOF programs as well as the 5G Fund? We anticipate that any changes to our bank eligibility rules could also apply to other FCC programs that currently have the same Weiss bank safety rating requirement.⁴³ We seek comment on this.

17. When the Commission adopted its requirement that banks maintain a Weiss bank safety rating of B- or better, it reasoned that Weiss offered “an independent and objective perspective of the safety of the banks it rates based on capitalization, asset quality, profitability, liquidity, and stability indexes.”⁴⁴ The Commission also determined that using the Weiss ratings would significantly increase the number of banks that could issue LOCs to support recipients, compared to a previous program that had more restrictive bank eligibility requirements, and that this change would encourage small entities to participate in Auction 903.⁴⁵ However, while approximately 3,600 banks were eligible to issue LOCs at the time of the Commission's previous order in 2016, that number has decreased by nearly half in the past two years.⁴⁶ We seek comment on any potential reasons for the significant number of decline in banks meeting this rating standard, and whether the conditions relating to that decline relate to the factors the Commission cared about when creating the initial LOC requirement. We also seek comment on whether these ratings changes have burdened entities, in particular small entities, that receive Auction 903 or 904 support. We seek specific examples demonstrating how the requirement burdens carriers and affects their ability to serve consumers. The record and the petitions certain carriers have filed seeking relief from the Weiss rating requirement indicate this is an issue worth exploring.⁴⁷ If the Commission ultimately concludes it is in the public interest to change the eligibility requirement for U.S. banks permitted to issue LOCs to support recipients, we seek comment on how we can best adopt changes that are still consistent with the Commission's rationale in adopting the original Weiss rating requirement.

18. First, we seek comment on any alternatives to using the Weiss bank safety rating. We note that our objective is to protect the Universal Service Fund and our expenditures, by ensuring that

⁴² The Wisconsin Bankers Association suggest that no bank safety rating is necessary. *Wisconsin Bankers Association Letter* at 2. (Stating that “WBA believes the FCC should remove the ‘safety rating’ requirement altogether”). However, we agree with the Commission's previous conclusion that eliminating a bank safety requirement and allowing any FDIC-insured bank to issue an LOC would then require the Commission “to conduct a comprehensive review of every bank to determine whether it has adequate safety and soundness,” and “the Commission lacks the expertise to conduct such a review and [such a review] would delay the authorization of winning bidders.” *CAF Phase II Auction Order*, 31 FCC Rcd at 5996, para. 132.

⁴³ See *supra* note 1 (listing the identical rule sections for Auction 903, Auction 904, the 5G Fund, and fixed support for Phase II of the Uniendo a Puerto Rico Fund and the Connect USVI Fund).

⁴⁴ *CAF Phase II Auction Order*, 31 FCC Rcd at 5993, para. 127.

⁴⁵ *Id.*

⁴⁶ *Weiss Waiver Order* at 3, para. 6.

⁴⁷ See *id.* at 2, para. 3 & n.7.

carriers have an LOC that can be relied upon, while simultaneously permitting carriers to choose from a reasonably wide range of banks that can issue LOCs for purposes of complying with our program rules. We seek comment on alternative approaches that would balance these objectives.

19. We seek specific comment on Bank of America's (BOA) proposed alternative method of determining a bank's eligibility.⁴⁸ BOA proposed that a U.S. bank could be eligible to issue LOCs to auction support recipients if the bank had either: (1) a Weiss bank safety rating of B- or better; or (2) a long-term unsecured credit rating issued by a widely-recognized credit rating agency that is equivalent to a BBB- or better rating by Standard & Poor's, which is the requirement for non-U.S. banks.⁴⁹ How would the Commission apply this proposed standard? Is the term "widely-recognized" credit rating agency a bright-line rule that Commission staff could easily apply?⁵⁰ What constitutes a widely-recognized agency? Would Commission staff or the Administrator be able to quickly and easily determine a bank's long-term unsecured credit rating? Are these ratings publicly available and free to access? If these ratings are not publicly available and free to access, how would Commission staff or the Administrator verify a bank's rating? As noted above, Commission staff or the Administrator should not be required to make any discretionary judgments about a bank's eligibility. Would this proposal provide additional alternatives to small businesses that have won support in Auction 903 or 904 or that may win support in a 5G Fund auction? We also seek comment more generally on alternative rating systems and alternative approaches to rating systems that could be used to evaluate the fitness of a U.S. bank, including any alternatives adopted by other agencies. What are the advantages or disadvantages of those rating systems and other approaches?

20. As another alternative, the Bank Policy Institute proposes that the "FCC reconsider its use of Weiss Ratings" and accept "letters of credit from any federally-supervised bank with an investment grade-rating for banks of \$100 billion or more in total assets or with a certificate that the bank is "well capitalized" for banks with assets below \$100 billion."⁵¹ We seek comment on this proposal. The Bank Policy Institute also argues that if the Commission wishes to use a credit-rating organization, it should use one of the ten nationally recognized credit rating statistical organizations which, unlike Weiss, are subject to SEC regulation.⁵² We also seek comment on the Bank Policy Institute's contention that using ratings from credit-rating organizations would be inconsistent with Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act.⁵³

21. Second, we seek comment on whether continuing to use only the Weiss ratings, but instead allowing issuing banks to have a lower bank safety rating, would provide a solution. Weiss currently rates 4,526 banks, and 3,923 of them have a bank safety rating of C- or better.⁵⁴ According to Weiss, a C rating means "This is a cautionary or yellow flag. In the event of a recession or major financial crisis, we feel this company may encounter difficulties in maintaining its financial stability."⁵⁵

⁴⁸ Letter from James Carlisle, Senior Vice President, Federal Government Relations, Bank of America, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Dec. 8, 2023) (BOA *Ex Parte*).

⁴⁹ *Id.*

⁵⁰ We note that neither the Commission nor Commission staff has previously determined whether a credit rating agency was "widely recognized."

⁵¹ BPI Letter at 6.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ <https://weissratings.com/en/banking> (last visited June 4, 2024).

⁵⁵ Weiss Bank Ratings (last visited May 14, 2024), <https://weissratings.com/en/products/bank-ratings> (noting that a "minus sign" grade means the relevant bank is in the lower third of banks with that letter grade, i.e., a bank with a C-rating would be in the lower third of banks with a C rating. A bank with a "plus sign" grade means the bank is in the top third of banks with that letter grade.).

Would using that threshold address the issues that have been raised and still protect the Fund? We note that the LOC plays a vital role in ensuring our ability to recoup funds in the event that an auction support recipient fails to complete its deployment obligations,⁵⁶ and we need to be certain that the banks issuing the LOCs will be able to honor them. Weiss's ratings are publicly available and free to use, which allows for bright-line determinations about a bank's eligibility. Are there other advantages or disadvantages with using Weiss ratings but changing the requirement from B- or higher to C- or higher? Would changing the requirement from a minimum of a B- to C+ or C strike a better balance?⁵⁷ We note that an interested party has suggested that any Weiss-rated bank with "certain of the five Weiss indices" "at a certain level" should be eligible to issue LOCs to participants in the programs that award high-cost support through competitive bidding.⁵⁸ We seek comment on that proposal, and on how such a proposal could work. Are there any issues we should consider with regard to administering and implementing a change in our rules regarding bank eligibility? If so, we seek comment on those issues, along with any potential solutions.

B. RDOF Letter of Credit Reduction

22. We next seek comment on potential changes to our rules requiring an increase in the value of an LOC for RDOF support recipients. An RDOF recipient has raised the concern of "the economic pressures being brought to bear on current RDOF recipients in light of the astronomical increase in broadband deployment costs,"⁵⁹ and says those pressures can be addressed by relief from our rules regarding an LOC's value. This recipient pointed out that because "banks generally require these LOCs to be cash collateralized, RDOF recipients must tie up significant portions of their free cash to serve as collateral for the LOC, which, in turn, means that these funds cannot be used for build out of RDOF networks."⁶⁰ This recipient specifically asks that all RDOF support recipients be allowed to reduce their LOCs to one year of their total authorized support.⁶¹

23. We seek comment on the burdens of maintaining the LOC values currently required by our rules, and relief that we could provide related to the value of the LOC to address this concern. Have the rules requiring LOCs to increase in value on an annual basis impacted RDOF support recipients' ability to meet their deployment obligations? One specific option we seek comment on is allowing RDOF support recipients who have deployed service to at least 10%, rather than 20%, of their locations by the end of their second year of support to lower the value of their LOCs to one year of their total support upon verification by USAC.⁶² Does 10% "demonstrate concrete progress in building its network"

⁵⁶ *CAF Phase II Auction Order*, 31 FCC Red at 5992, para. 124.

⁵⁷ 2,580 banks have a rating of C+ or higher, while 3,101 banks have a rating of C or higher. Weiss Bank Ratings (last visited June 4, 2024), <https://weissratings.com/en/products/bank-ratings>.

⁵⁸ See Letter from F.X. Flinn, Chair, Governing Board, East Central Vermont Telecommunications District (dba ECFiber) to Jessica Rosenworcel, Chairwoman, FCC, WC Docket No. 10-90 (filed May 28, 2024) (ECFiber May 28 *Ex Parte*) (Suggesting that any Weiss-rated bank with "certain of the five Weiss indices" "at a certain level" should be eligible to issue LOCs to participants in the programs discussed herein).

⁵⁹ Letter from L. Elizabeth Bowles, President & CEO, Aristotle Unified Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 1 (filed May 9, 2024) (Aristotle *Ex Parte*).

⁶⁰ *Id.* at 2.

⁶¹ *Id.* at 1 (making no reference as to whether or not the recipient would need to be in compliance with deployment obligation to benefit from this relief).

⁶² We decline to seek comment on applying any such change to the value of LOCs that are required of 5G Fund support recipients. See Letter from Amy E. Bender, Vice President, Regulatory Affairs, CTIA to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al. (filed May 28, 2024) (CTIA *Ex Parte*). For RDOF support recipients, we are seeking comment on changing the letter of credit value requirements when certain milestones have been met due to concern over "economic pressures," which purportedly arose or significantly increased after the close of the auction. By contrast, the timing of the 5G Fund auction has not yet been set. It follows that bidders in that auction can factor in current economic conditions and any costs of complying with the 5G Fund's LOC rules.

(continued....)

as the Commission reasoned when it adopted a 20% optional milestone?⁶³ Generally, what are the public interest harms and public interest benefits of a 10% two-year optional milestone? How should we account for the fact that the two-year optional milestone has already passed for those RDOF carriers authorized in 2021? What, if any, form of additional LOC relief would be in the public interest for those carriers since they must meet the required 40% milestone by December 31, 2024?

24. We emphasize that any such change would be limited to the optional milestone and would not impact the requirement that all RDOF support recipients must deploy service to 40% of eligible locations by the end of their third year of support.⁶⁴ In the event that an RDOF support recipient then failed to timely meet its 40% deployment obligation, the value of its LOC would need to increase to reflect the amount required under the current rules.⁶⁵

C. CAF II Auction Letter of Credit Waiver

25. We separately seek comment on a proposal made in the record to amend the relevant CAF II Auction rules to mirror the RDOF LOC rules.⁶⁶ With a rule change, CAF II support recipients that have met all of their deployment and reporting obligations would be able to continue to follow the RDOF LOC rules through the end of CAF-II. The Bureau previously granted waivers allowing CAF II providers to follow the RDOF LOC rules because of the continued hardship posed by the COVID-19 pandemic.⁶⁷ Are those conditions that justified multiple waivers still present? If those conditions have improved, would the public interest otherwise be served by providing this relief permanently? We seek specific examples showing why such relief remains necessary. Alternatively, would it be in the public interest to extend the waiver another year rather than making permanent rule changes?

D. Digital Equity and Inclusion

26. Finally, the Commission, as part of its continuing effort to advance digital equity for all,⁶⁸ 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 considerations⁶⁹ and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals in this Notice may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

CTIA's ex parte does not otherwise provide a compelling reason to seek comment on reducing the required letter of credit values for the 5G fund.

⁶³ See *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 730, para. 99.

⁶⁴ 47 CFR § 54.802(c)(1).

⁶⁵ 47 CFR § 54.804(c)(1)(iv).

⁶⁶ See *Verizon Ex Parte*.

⁶⁷ See, e.g., *2023 LOC Waiver Extension* at 1, 3, paras. 1, 8.

⁶⁸ 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.

⁶⁹ The term "equity" is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. See Exec. Order No. 13985, 86 Fed. Reg. 7009, Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (Jan. 20, 2021).

IV. PROCEDURAL MATTERS

27. *Paperwork Reduction Act Analysis.* This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

28. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),⁷⁰ 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.”⁷¹ Accordingly, we have prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the possible impact of potential rule and/or policy changes contained in this *Notice* on small entities. The IRFA is set forth in Appendix A. The Commission invites the general public, in particular small businesses, to comment on the IRFA. Comments must be filed by the deadlines for comments on the *Notice* indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA.

29. *Comments.* All comments to this Notice should be filed in WC Docket Nos. 10-90, Connect America Fund, 17-182, The Connect America Fund Phase II Auction, 18-143, The Uniendo a Puerto Rico Fund and the Connect USVI Fund, 19-126, The Rural Digital Opportunity Fund, and 20-34, the Rural Digital Opportunity Fund Auction, GN Docket No. 20-32 for the 5G Fund, and 24-144 for Letters of Credit for Recipients of High-Cost Competitive Bidding Support. Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of a proceeding, the Commission’s rules require paper filers to submit two additional copies for each additional docket or rulemaking number.⁷²
- 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 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 at its headquarters. This is a temporary measure taken to

⁷⁰ 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).

⁷¹ 5 U.S.C. § 605(b).

⁷² 47 CFR § 1.419(c).

help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.⁷³

30. *Ex Parte Presentations.* This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.⁷⁴ 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.

31. *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)

32. *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>.

V. ORDERING CLAUSES

33. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 4(i), 214, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 214, 254, 303(r), and 403, and sections 1.1 and 1.421 of the Commission’s rules, 47 CFR §§ 1.1 and 1.421, that this Notice of Proposed Rulemaking IS ADOPTED.

34. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 4(i), 214, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 214, 254, 303(r), and 403, and sections 1.1 and 1.421 of the Commission’s rules, 47 CFR §§ 1.1 and 1.421, NOTICE IS HEREBY GIVEN of the proposals described in this Notice of Proposed Rulemaking.

35. 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 on or before 30 days from publication of this item in the Federal Register, and reply comments on or before 45 days from publication of this item in the Federal Register.

⁷³ 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>.

⁷⁴ 47 CFR § 1.1200 *et seq.*

36. IT IS FURTHER ORDERED that the Commission's Office of the Secretary, SHALL SEND a copy of this Notice, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Federal Communications Commission (Commission) has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the Notice of Proposed Rulemaking (*Notice*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the *Notice*. The Commission will send a copy of the *Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the *Notice* and IRFA (or summaries thereof) will be published in the *Federal Register*.³

A. Need for, and Objectives of, the Proposed Rules

2. In the *Notice*, the Commission seeks comment regarding the rules determining a bank's eligibility to issue Letters of Credit (LOCs) for winners of Auction 903 and 904 support, along with winners of 5G Fund support and Phase II fixed support from the Puerto Rico/USVI Fund. The Commission's rules currently require recipients for support to maintain a letter of credit from a United States bank with a Weiss bank safety rating of B- or better. More than 1,600 U.S. banks that had previously been eligible to issue LOCs to support recipients have seen their Weiss bank safety ratings fall below a B- in the past two years and, correspondingly, lost their eligibility to supply support recipients with LOCs.⁴ We recognize that the current rules may burden those support recipients who wish to maintain their existing relationship with a bank that previously issued them an LOC. We seek comment on using a different Weiss letter grade as the threshold for bank eligibility. We alternatively seek comment on using a different rating system to evaluate a bank's health. We also seek comment on allowing Auction 904 support recipients who have deployed service to at least 10% of their required locations by the end of their second year of support to lower the value of their LOCs to one year of support. Finally, we seek comment on allowing Auction 903 support recipients that have met their deployment and reporting obligations to continue to maintain their LOCs under the Auction 904 rules.

B. Legal Basis

3. The proposed action is authorized pursuant to sections 4(i), 214, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 214, 254, 303(r), and 403, and sections 1.1 and 1.412 of the Commission's rules, 47 CFR §§ 1.1 and 1.412.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁵ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small

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 *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, DA 24-244, at 3, para. 6 (WCB Mar. 12, 2024) (*Weiss Waiver Order*).

⁵ 5 U.S.C. § 603(b)(3).

organization,” and “small governmental jurisdiction.”⁶ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁷ A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.⁸

5. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein.⁹ First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.¹⁰ These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.¹¹

6. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹² The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.¹³ Nationwide, for tax year 2022, there were approximately 530,109 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.¹⁴

7. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special

⁶ *Id.* § 601(6).

⁷ *Id.* § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

⁸ 15 U.S.C. § 632.

⁹ 5 U.S.C. § 601(3)-(6).

¹⁰ See SBA, Office of Advocacy, “What’s New With Small Business?,” <https://advocacy.sba.gov/wp-content/uploads/2023/03/Whats-New-Infographic-March-2023-508c.pdf> (Mar. 2023).

¹¹ *Id.*

¹² 5 U.S.C. § 601(4).

¹³ The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), “Who must file,” <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

¹⁴ See Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2022 with revenue less than or equal to \$50,000 for Region 1-Northeast Area (71,897), Region 2-Mid-Atlantic and Great Lakes Areas (197,296), and Region 3-Gulf Coast and Pacific Coast Areas (260,447) that includes the continental U.S., Alaska, and Hawaii. This data includes information for Puerto Rico (469).

districts, with a population of less than fifty thousand.”¹⁵ U.S. Census Bureau data from the 2022 Census of Governments¹⁶ indicate there were 90,837 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.¹⁷ Of this number, there were 36,845 general purpose governments (county,¹⁸ municipal, and town or township¹⁹) with populations of less than 50,000 and 11,879 special purpose governments (independent school districts²⁰) with enrollment populations of less than 50,000.²¹ Accordingly, based on the 2022 U.S. Census of Governments data, we estimate that at least 48,724 entities fall into the category of “small governmental jurisdictions.”²²

8. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks.²³ 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.²⁴ By exception, establishments providing satellite television distribution services using facilities

¹⁵ 5 U.S.C. § 601(5).

¹⁶ 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7”. *See also* Census of Governments, <https://www.census.gov/programs-surveys/economic-census/year/2022/about.html>.

¹⁷ *See* U.S. Census Bureau, 2022 Census of Governments – Organization Table 2. Local Governments by Type and State: 2022 [CG2200ORG02], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). *See also* tbl.2. CG2200ORG02 Table Notes_Local Governments by Type and State_2022.

¹⁸ *See id.* at tbl.5. County Governments by Population-Size Group and State: 2022 [CG2200ORG05], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 2,097 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

¹⁹ *See id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2022 [CG2200ORG06], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 18,693 municipal and 16,055 town and township governments with populations less than 50,000.

²⁰ *See id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2022 [CG2200ORG10], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 11,879 independent school districts with enrollment populations less than 50,000. *See also* tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2022 [CG2200ORG04], CG2200ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2022.

²¹ While the special purpose governments category also includes local special district governments, the 2022 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

²² This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,845) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (11,879), from the 2022 Census of Governments - Organizations tbls. 5, 6 & 10.

²³ U.S. Census Bureau, 2017 NAICS Definition, “517311 Wired Telecommunications Carriers,” <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

²⁴ *Id.*

and infrastructure that they operate are included in this industry.²⁵ Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.²⁶

9. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.²⁷ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.²⁸ Of this number, 2,964 firms operated with fewer than 250 employees.²⁹ 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.³⁰ Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.³¹ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

10. *Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers³² is the closest industry with an SBA small business size standard.³³ Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.³⁴ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.³⁵ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.³⁶ Of this number, 2,964 firms operated with fewer than

²⁵ *Id.*

²⁶ 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.

²⁷ 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

²⁸ 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>.

²⁹ *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.

³⁰ 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>.

³¹ *Id.*

³² U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

³³ 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

³⁴ 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.

³⁵ *Id.*

³⁶ 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>.

250 employees.³⁷ 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.³⁸ Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.³⁹ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

11. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers⁴⁰ is the closest industry with an SBA small business size standard.⁴¹ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁴² U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.⁴³ Of this number, 2,964 firms operated with fewer than 250 employees.⁴⁴ 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.⁴⁵ Of these providers, the Commission estimates that 916 providers have 1,500 or fewer employees.⁴⁶ Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

12. *Competitive Local Exchange Carriers (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.⁴⁷ Wired Telecommunications Carriers⁴⁸ is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having

³⁷ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

³⁸ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

³⁹ *Id.*

⁴⁰ U.S. Census Bureau, 2017 NAICS Definition, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁴¹ 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁴² *Id.*

⁴³ 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>.

⁴⁴ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁴⁵ 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>.

⁴⁶ *Id.*

⁴⁷ 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.

⁴⁸ U.S. Census Bureau, 2017 NAICS Definition, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

1,500 or fewer employees as small.⁴⁹ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁵⁰ Of this number, 2,964 firms operated with fewer than 250 employees.⁵¹ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 3,378 providers that reported they were competitive local exchange service providers.⁵² Of these providers, the Commission estimates that 3,230 providers have 1,500 or fewer employees.⁵³ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

13. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers⁵⁴ is the closest industry with a SBA small business size standard.⁵⁵ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁵⁶ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁵⁷ Of this number, 2,964 firms operated with fewer than 250 employees.⁵⁸ 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.⁵⁹ Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

14. *Local Resellers*. Neither the Commission nor the SBA have developed a small business size standard specifically for Local Resellers. Telecommunications Resellers is the closest industry with a SBA small business size standard.⁶⁰ 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

⁴⁹ 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁵⁰ U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIIRM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIIRM&hidePreview=false>.

⁵¹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁵² Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁵³ *Id.*

⁵⁴ U.S. Census Bureau, *2017 NAICS Definition*, “517311 Wired Telecommunications Carriers,” <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁵⁵ 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁵⁶ *Id.*

⁵⁷ 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>.

⁵⁸ *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.

⁵⁹ 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>.

⁶⁰ U.S. Census Bureau, *2017 NAICS Definition*, “517911 Telecommunications Resellers,” <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

satellite) to businesses and households.⁶¹ Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.⁶² Mobile virtual network operators (MVNOs) are included in this industry.⁶³ The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.⁶⁴ U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.⁶⁵ Of that number, 1,375 firms operated with fewer than 250 employees.⁶⁶ 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.⁶⁷ Of these providers, the Commission estimates that 202 providers have 1,500 or fewer employees.⁶⁸ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

15. *Toll Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Toll Resellers. Telecommunications Resellers⁶⁹ 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.⁷⁰ Mobile virtual network operators (MVNOs) are included in this industry.⁷¹ The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.⁷² U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.⁷³ Of that number, 1,375 firms operated with fewer than 250 employees.⁷⁴ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 457 providers that reported

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

⁶⁵ 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>.

⁶⁶ *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.

⁶⁷ 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>.

⁶⁸ *Id.*

⁶⁹ U.S. Census Bureau, *2017 NAICS Definition*, “517911 Telecommunications Resellers,” <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

⁷³ 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>.

⁷⁴ *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.

they were engaged in the provision of toll services.⁷⁵ Of these providers, the Commission estimates that 438 providers have 1,500 or fewer employees.⁷⁶ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

16. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. Wired Telecommunications Carriers⁷⁷ is the closest industry with a SBA small business size standard.⁷⁸ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁷⁹ U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.⁸⁰ Of this number, 2,964 firms operated with fewer than 250 employees.⁸¹ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 90 providers that reported they were engaged in the provision of other toll services.⁸² Of these providers, the Commission estimates that 87 providers have 1,500 or fewer employees.⁸³ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

17. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. Telecommunications Resellers⁸⁴ 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.⁸⁵ Mobile virtual network operators (MVNOs) are included in this industry.⁸⁶ The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.⁸⁷ U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale

⁷⁵ 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>.

⁷⁶ *Id.*

⁷⁷ U.S. Census Bureau, 2017 NAICS Definition, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁷⁸ 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁷⁹ *Id.*

⁸⁰ 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=EC1700SIZEEMPFI&hidePreview=false>.

⁸¹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁸² Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

⁸³ *Id.*

⁸⁴ U.S. Census Bureau, 2017 NAICS Definition, "517911 Telecommunications Resellers," <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

services for the entire year.⁸⁸ Of that number, 1,375 firms operated with fewer than 250 employees.⁸⁹ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 62 providers that reported they were engaged in the provision of prepaid card services.⁹⁰ Of these providers, the Commission estimates that 61 providers have 1,500 or fewer employees.⁹¹ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

18. *Fixed Microwave Services.* Fixed microwave services include common carrier,⁹² private-operational fixed,⁹³ and broadcast auxiliary radio services.⁹⁴ They also include the Upper Microwave Flexible Use Service (UMFUS),⁹⁵ Millimeter Wave Service (70/80/90 GHz),⁹⁶ Local Multipoint Distribution Service (LMDS),⁹⁷ the Digital Electronic Message Service (DEMS),⁹⁸ 24 GHz Service,⁹⁹ Multiple Address Systems (MAS),¹⁰⁰ and Multichannel Video Distribution and Data Service (MVDDS),¹⁰¹ where in some bands licensees can choose between common carrier and non-common carrier status.¹⁰² Wireless Telecommunications Carriers (except Satellite)¹⁰³ 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.¹⁰⁴ U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.¹⁰⁵ Of this number,

⁸⁸ 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 RM, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFI RM&hidePrevie w=false>.

⁸⁹ *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 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>.

⁹¹ *Id.*

⁹² 47 CFR Part 101, Subparts C and I.

⁹³ *Id.* Subparts C and H.

⁹⁴ 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.

⁹⁵ 47 CFR Part 30.

⁹⁶ 47 CFR Part 101, Subpart Q.

⁹⁷ *Id.* Subpart L.

⁹⁸ *Id.* Subpart G.

⁹⁹ *Id.*

¹⁰⁰ *Id.* Subpart O.

¹⁰¹ *Id.* Subpart P.

¹⁰² 47 CFR §§ 101.533, 101.1017.

¹⁰³ U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite),"* <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

¹⁰⁴ 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹⁰⁵ U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI RM, NAICS Code 517312,

(continued....)

2,837 firms employed fewer than 250 employees.¹⁰⁶ Thus under the SBA size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

19. The Commission's small business size standards with respect to fixed microwave services involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in fixed microwave services. When bidding credits are adopted for the auction of licenses in fixed microwave services frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in Part 101 of the Commission's rules for the specific fixed microwave services frequency bands.¹⁰⁷

20. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

21. *Cable and Other Subscription Programming.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis.¹⁰⁸ 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.¹⁰⁹ The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.¹¹⁰ The SBA small business size standard for this industry classifies firms with annual receipts less than \$41.5 million as small.¹¹¹ Based on U.S. Census Bureau data for 2017, 378 firms operated in this industry during that year.¹¹² 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.¹¹³ Based on this data, the Commission estimates that a majority of firms in this industry are small.

<https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=false>.

¹⁰⁶ *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.

¹⁰⁷ 47 CFR §§ 101.538(a)(1)-(3), 101.1112(b)-(d), 101.1319(a)(1)-(2), and 101.1429(a)(1)-(3).

¹⁰⁸ U.S. Census Bureau, *2017 NAICS Definition, "515210 Cable and Other Subscription Programming,"* <https://www.census.gov/naics/?input=515210&year=2017&details=515210>.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ 13 CFR § 121.201, NAICS Code 515210 (as of 10/1/22, NAICS Code 516210).

¹¹² U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREFIRM, NAICS Code 515210, <https://data.census.gov/cedsci/table?y=2017&n=515210&tid=ECNSIZE2017.EC1700SIZEREFIRM&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).

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. We note that the U.S. Census Bureau withheld publication of the number of firms that
(continued....)

22. *Cable Companies and Systems (Rate Regulation)*. The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.¹¹⁴ Based on industry data, there are about 420 cable companies in the U.S.¹¹⁵ Of these, only seven have more than 400,000 subscribers.¹¹⁶ In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.¹¹⁷ Based on industry data, there are about 4,139 cable systems (headends) in the U.S.¹¹⁸ Of these, about 639 have more than 15,000 subscribers.¹¹⁹ Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

23. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, contains a size standard for a "small cable operator," which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."¹²⁰ 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.¹²¹ Based on industry data, only six cable system operators have more than 498,000 subscribers.¹²² 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.¹²³ Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

24. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing*. This industry comprises establishments primarily engaged in manufacturing radio and

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.

¹¹⁴ 47 CFR § 76.901(d).

¹¹⁵ S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited July 23, 2023).

¹¹⁶ S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited July 23, 2023); S&P Global Market Intelligence, *Multichannel Video Subscriptions*, Top 10 (April 2022).

¹¹⁷ 47 CFR § 76.901(c).

¹¹⁸ S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited July 23, 2023).

¹¹⁹ S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited July 23, 2023).

¹²⁰ 47 U.S.C. § 543(m)(2).

¹²¹ *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).

¹²² 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).

¹²³ The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(e) of the Commission's rules. See 47 CFR § 76.910(b).

television broadcast and wireless communications equipment.¹²⁴ 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.¹²⁵ The SBA small business size standard for this industry classifies businesses having 1,250 employees or less as small.¹²⁶ U.S. Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year.¹²⁷ Of this number, 624 firms had fewer than 250 employees.¹²⁸ Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

25. *Satellite Telecommunications.* This industry comprises firms “primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”¹²⁹ 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.¹³⁰ U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year.¹³¹ Of this number, 242 firms had revenue of less than \$25 million.¹³² 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.¹³³ Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees.¹³⁴ Consequently, using the SBA’s small business size standard, a little more than half of these providers can be considered small entities.

26. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide

¹²⁴ 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>.

¹²⁵ *Id.*

¹²⁶ 13 CFR § 121.201, NAICS Code 334220.

¹²⁷ U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPfirm, NAICS Code 334220, <https://data.census.gov/cedsci/table?y=2017&n=334220&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=false>.

¹²⁸ *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.

¹²⁹ U.S. Census Bureau, *2017 NAICS Definition*, “517410 Satellite Telecommunications,” <https://www.census.gov/naics/?input=517410&year=2017&details=517410>.

¹³⁰ 13 CFR § 121.201, NAICS Code 517410.

¹³¹ 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>.

¹³² 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>.

¹³³ 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>.

¹³⁴ *Id.*

communications via the airwaves.¹³⁵ 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.¹³⁶ The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.¹³⁷ U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.¹³⁸ Of that number, 2,837 firms employed fewer than 250 employees.¹³⁹ 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.¹⁴⁰ Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees.¹⁴¹ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

27. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.¹⁴² 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.¹⁴³ 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.¹⁴⁴ The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.¹⁴⁵ U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.¹⁴⁶ Of those firms, 1,039 had revenue of less than \$25 million.¹⁴⁷ Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

¹³⁵ U.S. Census Bureau, *2017 NAICS Definition*, "517312 Wireless Telecommunications Carriers (except Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

¹³⁶ *Id.*

¹³⁷ 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹³⁸ 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>.

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.

¹⁴⁰ 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>.

¹⁴¹ *Id.*

¹⁴² See U.S. Census Bureau, *2017 NAICS Definition*, "517919 All Other Telecommunications," <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ See 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

¹⁴⁶ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFI, NAICS Code 517919, <https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFI&hidePreview=false>.

¹⁴⁷ *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.

28. *Wired Broadband Internet Access Service Providers (Wired ISPs).*¹⁴⁸ Providers of wired broadband Internet access service include various types of providers except dial-up Internet access providers. Wireline service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the Internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules.¹⁴⁹ Wired broadband Internet services fall in the Wired Telecommunications Carriers industry.¹⁵⁰ The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small.¹⁵¹ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.¹⁵² Of this number, 2,964 firms operated with fewer than 250 employees.¹⁵³

29. Additionally, according to Commission data on Internet access services as of June 30, 2019, nationwide there were approximately 2,747 providers of connections over 200 kbps in at least one direction using various wireline technologies.¹⁵⁴ The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, in light of the general data on fixed technology service providers in the Commission's 2022 *Communications Marketplace Report*,¹⁵⁵ we believe that the majority of wireline Internet access service providers can be considered small entities.

30. *Wireless Broadband Internet Access Service Providers (Wireless ISPs or WISPs).*¹⁵⁶ Providers of wireless broadband Internet access service include fixed and mobile wireless providers. The Commission defines a WISP as "[a] company that provides end-users with wireless access to the Internet[.]"¹⁵⁷ Wireless service that terminates at an end user location or mobile device and enables the

¹⁴⁸ Formerly included in the scope of the Internet Service Providers (Broadband), Wired Telecommunications Carriers and All Other Telecommunications small entity industry descriptions.

¹⁴⁹ 47 CFR § 1.7001(a)(1).

¹⁵⁰ U.S. Census Bureau, 2017 NAICS Definition, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

¹⁵¹ 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

¹⁵² 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=EC1700SIZEEMPFI&hidePreview=false>.

¹⁵³ *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.

¹⁵⁴ See Federal Communications Commission, Internet Access Services: Status as of June 30, 2019 at 27, Fig. 30 (*IAS Status 2019*), Industry Analysis Division, Office of Economics & Analytics (March 2022). The report can be accessed at <https://www.fcc.gov/economics-analytics/industry-analysis-division/iad-data-statistical-reports>. The technologies used by providers include aDSL, sDSL, Other Wireline, Cable Modem and FTTP). Other wireline includes: all copper-wire based technologies other than xDSL (such as Ethernet over copper, T-1/DS-1 and T3/DS-1) as well as power line technologies which are included in this category to maintain the confidentiality of the providers.

¹⁵⁵ *Communications Marketplace Report*, GN Docket No. 22-203, 2022 WL 18110553 at 10, paras. 26-27, Figs. II.A.5-7. (2022) (2022 *Communications Marketplace Report*).

¹⁵⁶ Formerly included in the scope of the Internet Service Providers (Broadband), Wireless Telecommunications Carriers (except Satellite) and All Other Telecommunications small entity industry descriptions.

¹⁵⁷ Federal Communications Commission, Internet Access Services: Status as of June 30, 2019 at 27, Fig. 30 (*IAS Status 2019*), Industry Analysis Division, Office of Economics & Analytics (March 2022). The report can be accessed at <https://www.fcc.gov/economics-analytics/industry-analysis-division/iad-data-statistical-reports>.

end user to receive information from and/or send information to the Internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules.¹⁵⁸ Neither the SBA nor the Commission have developed a size standard specifically applicable to Wireless Broadband Internet Access Service Providers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite).¹⁵⁹ The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.¹⁶⁰ U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.¹⁶¹ Of that number, 2,837 firms employed fewer than 250 employees.¹⁶²

31. Additionally, according to Commission data on Internet access services as of June 30, 2019, nationwide there were approximately 1,237 fixed wireless and 70 mobile wireless providers of connections over 200 kbps in at least one direction.¹⁶³ The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, based on data in the Commission's *2022 Communications Marketplace Report* on the small number of large mobile wireless nationwide and regional facilities-based providers, the dozens of small regional facilities-based providers and the number of wireless mobile virtual network providers in general,¹⁶⁴ as well as on terrestrial fixed wireless broadband providers in general,¹⁶⁵ we believe that the majority of wireless Internet access service providers can be considered small entities.

32. *Internet Service Providers (Non-Broadband)*. Internet access service providers using client-supplied telecommunications connections (e.g., dial-up ISPs) as well as VoIP service providers using client-supplied telecommunications connections fall in the industry classification of All Other Telecommunications.¹⁶⁶ The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.¹⁶⁷ For this industry, U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.¹⁶⁸ Of those firms, 1,039

¹⁵⁸ 47 CFR § 1.7001(a)(1).

¹⁵⁹ U.S. Census Bureau, *2017 NAICS Definition*, "517312 Wireless Telecommunications Carriers (except Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

¹⁶⁰ 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

¹⁶¹ U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPfirm, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=false>.

¹⁶² *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.

¹⁶³ *IAS Status 2019*, Fig. 30.

¹⁶⁴ *Communications Marketplace Report*, GN Docket No. 22-203, 2022 WL 18110553 at 27, paras. 64-68. (2022) (*2022 Communications Marketplace Report*).

¹⁶⁵ *Id.* at 8, para. 22.

¹⁶⁶ U.S. Census Bureau, *2017 NAICS Definition*, "517919 All Other Telecommunications," <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

¹⁶⁷ 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

¹⁶⁸ U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREFirm, NAICS Code 517919, <https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREFirm&hidePreview=false>.

had revenue of less than \$25 million.¹⁶⁹ Consequently, under the SBA size standard a majority of firms in this industry can be considered small.

33. *All Other Information Services.* This industry comprises establishments primarily engaged in providing other information services (except news syndicates, libraries, archives, Internet publishing and broadcasting, and Web search portals).¹⁷⁰ The SBA small business size standard for this industry classifies firms with annual receipts of \$30 million or less as small.¹⁷¹ U.S. Census Bureau data for 2017 show that there were 704 firms in this industry that operated for the entire year.¹⁷² Of those firms, 556 had revenue of less than \$25 million.¹⁷³ Consequently, we estimate that the majority of firms in this industry are small entities.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements for Small Entities

34. In the *Notice*, we seek comment on alternative methods of evaluating a bank's ability to provide a LOC to winners of Auction 903 and 904 support, along with winners of 5G Fund auctions. The *Notice* specifically seeks comment on modifying our rules to allow more banks to become or remain eligible to issue LOCs to Auctions 903 and 904 support recipients and to 5G Fund support recipients, which may alter reporting, recordkeeping, and compliance obligations for small entities that receive support. The *Notice* also seeks comment on allowing more Auction 904 support recipients to lower the value of their LOCs.

35. The potential changes in the *Notice* are intended to reduce the administrative burden on recipients of Auctions 903 and 904 support and 5G Fund support. The potential changes we seek comment on would allow support recipients, including small entities, to minimize their expenses by maintaining their existing LOC with the bank that issued it. As a result, if there is an economic impact on small entities as a result of these proposals, however, we expect the impact to be a positive one. Any potential changes we seek comment on would not add any additional compliance requirements for small entities, or additional costs for professional skills, because support recipients are already required to maintain a LOC under the current rules. The proposed changes would allow support recipients to maintain their existing LOCs instead of obtaining new ones. We also seek comment on allowing Auction 904 support recipients who have deployed service to at least 10% of their required locations by the end of their second year of support to lower the value of their LOCs. Finally, we seek comment on allowing Auction 903 support recipients that have met their deployment and reporting obligations to maintain LOCs in accordance with Auction 904's rules.

¹⁶⁹ *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.

¹⁷⁰ U.S. Census Bureau, *2017 NAICS Definition*, "519190 All Other Information Services," <https://www.census.gov/naics/?input=519190&year=2017&details=519190>.

¹⁷¹ 13 CFR § 121.201, NAICS Code 519190 (as of 10/1/22, NAICS Codes 519290).

¹⁷² U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 519190, <https://data.census.gov/cedsci/table?y=2017&n=519190&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

¹⁷³ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue of less than \$100,000 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in this category). Therefore, the number of firms revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered

36. The RFA requires an agency to describe any significant alternatives that could minimize impacts to small entities that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”¹⁷⁴

37. In the *Notice*, the Commission takes steps to minimize the economic impact on small entities and considers significant alternatives by proposing and seeking input on alternative proposals designed to balance our goal of allowing providers to obtain an LOC from a number of different banks while also ensuring these banks are able to fulfill those LOCs in the event that the LOCs need to be drawn upon. With these goals in mind, in the *Notice*, we sought comment on whether a different standard for evaluating banks would allow providers to obtain LOCs from a wider range of banks while simultaneously protecting our investment and the Universal Service Fund.

38. We also considered alternatives to our existing rules, by seeking comment on alternative standards that could be used to evaluate the health and suitability of a bank. For example, Bank of America proposed an alternative method of determining a bank’s eligibility that includes the current Weiss rating of B- or better or a long-term unsecured credit rating issued by a widely-recognized credit rating agency that is equivalent to a BBB- or better rating by Standard & Poor’s, which is the requirement for non-U.S. banks. In light of the economic burdens that auction support recipients could face by being required to obtain new LOCs from different banks, we sought comment on the most effective ways of allowing those support recipients to maintain their LOCs with the banks that originally issued them, as long as we are confident that the bank’s economic health is sufficient.

39. The matters discussed in the *Notice* are designed to ensure the Commission has a better understanding of both the benefits and the potential burdens associated with the different actions and methods before adopting its final rules. To assist in the Commission’s evaluation of the economic impact on small entities, as a result of actions we have proposed in the *Notice*, and to better explore options and alternatives, the Commission has sought comment from the parties. In particular, the Commission seeks comment on whether any of the economic burdens associated with the filing, recordkeeping and reporting requirements described above can be minimized for small businesses. Through comments received in response to the *Notice* and the IRFA, including costs and benefits information and any alternative proposals, the Commission expects to more fully consider ways to minimize the economic impact on small entities. The Commission’s evaluation of the comments filed in this proceeding will shape the final alternatives it considers, the final conclusions it reaches, and the actions it ultimately takes in this proceeding to minimize any significant economic impact that may occur on small entities as a result of any final rules that are adopted.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

40. None.

¹⁷⁴ 5 U.S.C. § 603(c)(1)–(4).

**STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *Letters of Credit for Recipients of High-Cost Competitive Bidding Support, et al.*, WC Docket Nos. 10-90, 18-143, 19-126, 24-144; AU Docket Nos. 17-182, 20-34; and GN Docket No. 20-32, Notice of Proposed Rulemaking (June 6, 2024)

We are on a mission to connect everyone, everywhere in this country to high-speed broadband. It's a lofty goal that requires attention to a whole lot of details. Today we address one of those details by taking a close look at the letter of credit requirement in our universal service support programs for broadband.

Historically, some of these programs have mandated that participating providers procure a letter of credit from a qualified financial institution. This protects public universal service funds in the event a provider receiving funds to expand broadband in rural areas defaults on its obligations. However, over time the number of banks meeting the rating standards in our different programs has decreased. This change in the marketplace has put a strain on providers because the cash reserves sufficient to secure a new letter or maintain a letter at the banks still in the business of providing them can sometimes slow deployment and operations.

That is why today we are taking a fresh look at our letter of credit requirements. Our goal is to make sure that we have right sized these letters and our rules for the current environment, so we can both protect our universal service programs and support broadband deployment for everyone, everywhere.

A special thank you to Commissioner Simington for identifying the need to address this issue. Thank you also to the staff responsible for this rulemaking, including Nathan Eagan, Jodie Griffin, Trent Harkrader, Jesse Jachman, and Heidi Lankau of the Wireline Competition Bureau; Malena Barzilai, Thomas Driscoll, Michael Janson, Richard Mallen and Wisam Naoum from the Office of General Counsel; Mary Lovejoy, Gary Michaels, Mark Montano, and Kelly Quinn from the Office of Economics and Analytics; Garnet Hanly from the Wireless Telecommunications Bureau; and Michael Gussow and Joycelyn James from the Office of Communications Business Opportunities.

**STATEMENT OF
COMMISSIONER GEOFFREY STARKS**

Re: *Letters of Credit for Recipients of High-Cost Competitive Bidding Support*, WC Docket No. 24-144, Notice of Proposed Rulemaking

When the Commission first launched the Rural Digital Opportunity Fund in 2020, we made a commitment to invest in rural communities and get them connected to broadband services. Keeping this promise demands that the Commission serve as a faithful steward of these funds, and ensure that each dollar goes toward the deployment of rural broadband infrastructure. Rural Americans have already waited far too long for these services, so they need us to get this right.

When we first laid out the RDOF program, I noted the importance of safeguarding this investment and stated that the letters of credit requirement would help “promote responsibility and protect the fund.” I believe this statement is no less true today and it applies to each of the broadband programs in this item. Requiring that support recipients obtain a letter of credit serves to demonstrate that the providers have the financial means to meet the broadband commitments they have made. When providers fail to meet their obligations and default on these commitments, of course, it is the rural communities that lack broadband services that are hurt.

As noted in this item, recent changes in the banking industry have significantly reduced the number of banks eligible to issue letters of credit. This has resulted in an influx of requests from support recipients for a waiver of these letter of credit rules as they have found that their bank no longer meets the requirements. I want to commend the Wireline Competition Bureau and its staff for diligently working through these requests and for issuing a temporary waiver earlier this year to ensure that Phase II of the Connected America Fund and the RDOF program can continue to run smoothly.

In light of these changes in the banking industry, today’s item re-evaluates the mechanism used to ensure the financial capabilities of broadband support recipients. Notably, we must do so without lessening the security and integrity of these programs. I believe this item does well to keep with the Commission’s goal of facilitating broad participation in these broadband programs while setting adequate safeguards for these public funds. This item has my support.

Thank you again to the Wireline Competition Bureau and staff for your good work on this item.

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

In the Matter of	)	
	)	
Political Programming and Online Public File	)	MB Docket No. 24-147
Requirements for Low Power Television Stations	)	
	)	MB Docket No. 24-148
Amendment of the Commission's Rules to	)	
Advance the Low Power Television, TV Translator	)	
and Class A Television Service	)	
	)	

NOTICE OF PROPOSED RULEMAKING

Adopted: June 5, 2024

Released: June 10, 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 and Commissioner Simington issuing separate statements;
Commissioner Carr dissenting and issuing a statement:

TABLE OF CONTENTS

Heading	Paragraph #
I. INTRODUCTION.....	1
II. BACKGROUND.....	2
III. DISCUSSION	7
A. Requiring Certain LPTV Stations to Maintain an Online Public Inspection File.....	8
1. Existing Public File Requirements	8
2. Application of Public File to Certain LPTV Stations.....	15
3. Public File Statutory Authority	26
B. Procedures for LPTV Stations to Establish an OPIF	27
C. Recordkeeping and Political Broadcasting Obligations Applicable to All LPTV Stations	30
D. Other Proposed Changes to Sections 73.3526	33
E. Revision to Rules Concerning Relocation of Facilities	37
1. Calculating Distance for Displaced and Channel Sharing Stations.....	37
2. The 30-Mile Distance Limit	40
3. Establishing Community of License Designations and Coverage Requirements	41
F. Establishing Minimum Operating Hours for LPTV Stations.....	45
G. Defining Minimum Programming Requirements	51
H. Class A, LPTV and TV Translator Station Designations and Call Signs	52
1. Changes Between LPTV and TV Translator Station Designations.....	52
2. Call Sign Assignments	56
I. Channel 14 Emission Masks.....	59
J. Prohibition on Operations Above Channel 36	62
K. Additional Class A, LPTV, and TV Translator Rule Clarifications	64
1. DTS Emission Masks	65
2. Interference Allowance	66
3. Maximum Grid Resolution.....	69

4. Displacement Rule Revisions.....	70
5. Program Test Authority Rule for LPTV/TV Translators	79
L. Part 73 and Part 74 Ministerial Rule Corrections	80
M. Cost/Benefit Analysis	84
N. Digital Equity and Inclusion	85
IV. PROCEDURAL MATTERS.....	86
V. ORDERING CLAUSES.....	95
APPENDIX A – Proposed Rules	
APPENDIX B – Initial Regulatory Flexibility Analysis	

I. INTRODUCTION

1. In this *Notice of Proposed Rulemaking (NPRM)*, we seek comment on revisions to our rules relating to the Low Power Television service (LPTV Service).¹ The Commission created the LPTV Service in 1982 to bring local television service to viewers “otherwise unserved or underserved” by existing full power service providers.² Today, these stations are an established component of the nation’s television system, delivering free over-the-air TV service, including locally produced programming, to millions of viewers in rural and discrete urban communities. In light of changes to the LPTV Service over the last forty years, we invite comment on changes to our rules and policies to ensure that LPTV Service continues to flourish and serve the public interest.

II. BACKGROUND

2. The LPTV Service was established over forty years ago as a secondary, niche service. At the time of its creation, the viability of the LPTV Service was not established and it was exempted from certain obligations applicable to other broadcasters, including certain recordkeeping and operating obligations.³ As the name suggests, stations in the LPTV Service have lower authorized power levels than full power TV stations.⁴ Because the LPTV Service operates at reduced power levels, the stations

¹ The LPTV Service includes low power television (LPTV) stations as well as television translator (TV translator) stations and Class A TV stations (Class A). In this item, we will at times specify LPTV stations only, and when we refer to LPTV and TV translator stations collectively we will use the term “LPTV/TV translator stations.” TV translator stations also include digital replacement translators (DRTs) or digital-to-digital replacement translators (DTDRTs). A DRT is a television translator station licensed to a full power television station that allows it to restore service to any loss areas that may have occurred as a result of its transition from analog to digital. *See* 47 CFR § 74.701(c). A DTDRT is a television translator station licensed to a full power television station that allows it to restore service to any loss areas that may have occurred as a result of the station being assigned a new channel pursuant to the Incentive Auction and repacking process. *See* 47 CFR § 74.701(d). Because certain part 74 rules also apply to Class A stations, some of the proposals contained in this NPRM may also affect Class A stations and we have noted this fact in those individual sections.

² *See Inquiry Into the Future Role of Low Power Television Broadcasting and Television Translators in the National Telecommunications System*, Notice of Proposed Rulemaking, 45 FR 69178, para. 1 (Oct. 17, 1980) (*LPTV NPRM*); *Low Power Television Service*, 51 RR 2d 476 (1982) (*LPTV Order*), *reconsideration granted in part*, 48 Fed. Reg. 21478 (1983); *Establishment of a Class A Television Service*, Report and Order, 15 FCC Rcd 6355 (2000), para. 1 (*Class A Order*), *reconsideration granted in part*, 16 FCC Rcd 8244 (2001). The LPTV Service is considered a “secondary” service. This means that LPTV/TV translators, may not cause interference to, and must accept interference from, full power television stations as well as certain land mobile radio operations and other primary services. *See LPTV Order*, 51 RR 2d at 479, para. 17. As a result of their secondary status, LPTV/TV translator stations can also be displaced by full power stations that seek to expand their service area, or by new full power stations seeking to serve the same area as existing LPTV/TV translator stations.

³ *See LPTV Order*, 51 RR 2d at 478 and 487, paras. 14 and 77.

⁴ LPTV/TV translator stations may radiate up to 3 kilowatts of power for stations operating on the VHF band (channels 2 through 13), and 15 kilowatts of power for stations operating on the UHF band (channels 14 through 36). By comparison, digital full power stations radiate up to 45 kilowatts of power on VHF channels 2 through 6, (continued....)

serve a much smaller geographic region than full power stations and can be fit into areas where a higher power station cannot be accommodated in the Table of TV Allotments or in accordance with section 307(b) of the Act.⁵ TV translator and Class A stations are technically equivalent to LPTV stations in most respects.⁶ While LPTV, TV translator, and Class A stations have many similarities under our rules, they are each a distinct class of broadcast television station, with differing rights and responsibilities.⁷

3. Currently, there are approximately 1,829 licensed LPTV stations.⁸ These stations operate in all states and territories. LPTV stations are permitted to both originate programming or retransmit, with permission, the signal of another TV station.⁹ LPTV stations are not limited in the amount of programming they may originate or rebroadcast, and have fewer operating obligations than full power television stations.¹⁰ LPTV stations completed the transition from analog to digital operations in 2021.¹¹

4. There are approximately 3,118 licensed TV translators,¹² most operating in the western regions of the United States. With limited exception, TV translators are not permitted to originate

(Continued from previous page)

160 kilowatts of power on VHF channels 7 through 13, and up to 1,000 kilowatts of power on UHF channels. See 47 CFR §§ 74.735(b), 73.614(b). LPTV/TV translator signals typically extend approximately 20 to 40 miles from a station's transmission site, while the signals of full power stations can reach as far as 60 to 80 miles. See *Class A Order*, 15 FCC Rcd at 6357, n.4.

⁵ 47 U.S.C. § 307(b); see *LPTV Order*, 51 RR 2d at 478, para. 14; *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, MB Docket No. 03-185, Report and Order, 19 FCC Rcd 19331, 19334-5 (2004) (*LPTV DTV First R&O*).

⁶ Operations of Class A TV stations, LPTV stations, and TV translator stations are generally governed by the same technical standards. See *LPTV DTV First R&O*, 19 FCC Rcd at 19334-35, paras. 4-5. Class A stations are licensed under part 73 of our rules but operate at the same power level as LPTV and TV translator stations. See *Class A Order*, 15 FCC Rcd at 6367, para. 29; 47 CFR § 74.735. Unlike LPTV and TV translator stations, Class A stations must comply with part 73 regulations applicable to full power TV broadcast stations, except for those that cannot apply for technical or other reasons. Class A stations also are afforded certain interference protection rights not available to LPTV or TV translator stations. *LPTV DTV First R&O*, 19 FCC Rcd at 19334-35, para. 5. Currently, licensees can switch between LPTV and TV translator designation by simple letter notification to the Commission. 47 CFR § 74.732(e). But see Section III.E.3. – Establishing Community of License Designations and Coverage Requirements (proposing a procedure and limits on designation switches).

⁷ For example, Class A stations are required to broadcast a minimum of 18 hours per day and an average of at least three hours per week of locally produced programming each quarter. 47 CFR § 73.6001(b). In addition, Class A stations must comply with certain part 73 regulations applicable to full power television stations, including our rules governing informational and educational children's programming and the commercial limits in children's programming. See *Class A Order*, 15 FCC Rcd at 6366, para. 24; 47 CFR §§ 73.670, 671. LPTV and TV translator stations are not subject to these requirements. As noted above, see *supra* note 2, LPTV and TV translator stations are secondary stations that may not cause interference to, and must accept interference from, full power television stations as well as certain land mobile radio operations and other primary services, and may be displaced by full power stations. TV translator stations are also limited in the amount of programming they may originate. See *infra* para. 4, note 13, and note 74.

⁸ *Broadcast Station Totals as of March 31, 2024*, Public Notice, DA 24-323 (rel. Apr. 3, 2024) (*Station Totals PN*). This includes both UHF and VHF stations.

⁹ See 47 CFR §§ 74.784, 74.790.

¹⁰ For example, LPTV stations are not currently subject to a minimum operating schedule (see 47 CFR § 74.790(h)). We note, however, that in this proceeding, we are proposing to adopt a minimum operating requirement for LPTV stations for the first time. See Section III. F. – Establishing Minimum Operating Requirements for LPTV Stations.

¹¹ See *Media Bureau Reminds Low Power Television and Television Translator Stations of July 13, 2021, Digital Transition Date*, Public Notice, 36 FCC Rcd 4771 (MB 2021) (*Digital Transition PN*).

¹² *Station Totals PN*, *supra* note 8.

programming and may only simultaneously retransmit the signal of another TV station, with permission.¹³ TV translator stations are intended to provide service to areas where direct reception of full-service broadcast stations is either not possible or unsatisfactory because of distance or intervening terrain obstructions. Although TV translators are not limited to operation within the contour of the station or stations they rebroadcast, they may be used to provide service to terrain-obstructed areas within a full-service station's service area. TV translators are often used to deliver the only over-the-air television service available to rural communities.¹⁴

5. In addition, there are approximately 379 licensed Class A stations.¹⁵ In 2000, as instructed by Congress in the Community Broadcasters Protection Act of 1999 (CBPA),¹⁶ the Commission established the Class A television service.¹⁷ Class A stations are stations that operate at low power, like LPTV/TV translator stations, but are afforded primary interference protection status. The CBPA allowed certain qualifying LPTV stations to apply for Class A status.¹⁸ Class A stations completed a transition from analog to digital operations in 2015.¹⁹ Although they are not a secondary service, Class A stations are still subject to the various LPTV/TV translator licensing and technical requirements found in part 74 of our rules.²⁰

6. The LPTV Service has thrived since its creation in providing service to millions in local communities of all kinds across the nation. All such stations are currently required to operate in digital format.²¹ While some LPTV stations air “niche” programming, sometimes locally produced, to residents of specific ethnic, racial, or special interest communities, sometimes in foreign languages, others are affiliated with a television network, including the top four networks (ABC, CBS, Fox, and NBC).²² In addition, while some LPTV stations remain small, independently owned stations, others are part of large

¹³ See 47 CFR §§ 74.784, 74.790. A TV translator station may receive the signal of the station it is rebroadcasting through multiple means, including over-the-air, satellite, microwave, and cable.

¹⁴ *LPTV DTV First R&O*, 19 FCC Rcd at 19334, para. 5.

¹⁵ *Station Totals PN*, *supra* note 8. In January 2023, Congress enacted the Low Power Protection Act (LPPA) “to provide low power TV stations with a limited window of opportunity” to apply for primary status as a Class A television licensee. Low Power Protection Act, Pub. L. 117-344, 136 Stat. 6193 (2023) (LPPA). The LPPA gives qualifying LPTV stations one year to apply for a Class A license, from the date that the Commission’s rules become effective and sets forth certain eligibility requirements. LPPA Sec.2(b). In December 2023, the Commission completed a proceeding to implement the LPPA. *Implementation of the Low Power Protection Act*, Report and Order, FCC 23-112 (Dec. 12, 2023) (*LPPA R&O*), appeal pending sub nom Radio Communications Corp. v FCC, No. 24-1004 (D.C. Cir.). On May 31, 2024, the Commission announced that the window for eligible LPTV stations under the LPPA to convert to Class A Status opened on May 31, 2024 and will close on May 30, 2025. See *Media Bureau Announces Filing Window for Qualified Low Power Television Stations to Convert to Class A Status Pursuant to the Low Power Protection Act*, Public Notice, DA 24-508, rel. May 31, 2024. We note that stations that may qualify for Class A status continue to be subject to the part 74 LPTV licensing and technical rules until they convert to Class A status.

¹⁶ Community Broadcasters Protection Act of 1999, Pub. L. No. 106-113, 113 Stat. App. I at pp. 1501A-594 - 1501A-598 (1999), codified at 47 U.S.C. § 336(f).

¹⁷ See *Class A Order*, 15 FCC Rcd at 6357-58, para. 2.

¹⁸ 47 U.S.C. § 336(f)(2)(A)(i); 47 U.S.C. § 336(f)(2)(A)(ii); 47 CFR § 73.6001(c).

¹⁹ See *Media Bureau Reminds Class A Television Stations of September 1, 2015 Digital Transition Date*, Public Notice, 30 FCC Rcd 8500 (MB 2015).

²⁰ See *LPTV DTV First R&O*, 19 FCC Rcd at 19333-34, para. 4; *Class A Order*, 15 FCC Rcd at 6365-69, paras. 23-31.

²¹ See 47 CFR § 74.790(m), previously § 74.731(m).

²² See *Class A Order*, 15 FCC Rcd at 6357, para. 2.

station groups.²³ In some areas unserved by any other television station, an LPTV station may be the only television station providing local news, weather, and public affairs programming.²⁴ Even in some well-served markets, LPTV stations may provide the only service targeted to the specific interests of residents of discrete geographical communities within those markets.²⁵ In many instances, these stations are significant enough voices in their communities to attract requests to carry political advertising and may also carry sponsored programming pursuant to time brokerage, local marketing agreements, or other agreements.²⁶

III. DISCUSSION

7. Given the maturation of the LPTV Service since its initiation, we seek comment in this proceeding about comprehensive updates to the regulations of the service.²⁷ In sections A through C below we invite comment on whether we should require certain LPTV stations to maintain an online public inspection file (OPIF). In sections D through L we propose updates and amendments to our rules to address advances in the LPTV Service, update our existing rules to provide clarifications and resolve inconsistencies in our rules, prevent abuse of our licensing processes, create an equal playing field, and ensure that LPTV/TV translator stations are able to fully utilize the country's limited spectral resources to provide television services.²⁸ Specifically, we propose and/or seek comment on whether to:

²³ For instance, Gray Television has purchased a number of LPTV stations. *See A New, Bigger LPTV Grab for Gray Television*, Radio and Television Business Report, Jan. 3, 2022, available at <https://www.rbr.com/a-new-bigger-lptv-grab-for-gray-television/>.

²⁴ *See Class A Order*, 15 FCC Rcd at 6357, para. 2; *Review of the Commission's Rules Governing the Low Power Television Service*, First Report and Order, 9 FCC Rcd 2555, para. 2 (1994) (*LPTV First Report and Order*).

²⁵ *Id.*

²⁶ Roughly 2% of LPTV stations are affiliated with one of the Big Four networks (ABC, CBS, NBC, and Fox) and approximately 15% of LPTV stations are affiliated with any network, according to publicly available information. *See* S&P Global Market Intelligence, available at <https://www.spglobal.com/marketintelligence/en/>. Network affiliated stations likely receive requests to carry political advertising and may carry sponsored programming pursuant to time brokerage, local marketing agreements, or other agreements. *See Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, 27 FCC Rcd 4535, 4558-59, para. 48 (2012) (*Second Report and Order*).

²⁷ In comments filed in response to the public draft item, the ATBA and LPTVBA suggest that the Commission should evaluate whether to increase maximum LPTV power levels for VHF stations (currently 3 kilowatts) and UHF stations (currently 15 kilowatts). *See* Letter from Lee Miller, Executive Director, Advanced Television Broadcasting Alliance to Marlene H. Dortch, Secretary, FCC, MB Docket Nos. 24-147 and 24-148 (filed May 29, 2024) (*ATBA Ex Parte*); Letter from Frank Copsidas, President and Founder, Low Power Television Broadcasters Association to Marlene H. Dortch, Secretary, FCC, MB Docket Nos. 24-147 and 24-148 (filed May 30, 2024). We decline to seek comment on this matter at this time. We also note that in 2004 the Commission evaluated and established maximum power levels for UHF digital operations based on stations' former analog contours. *See LPTV DTV First R&O*, 19 FCC Rcd at 19399, para. 206. Further, in 2011 the Commission increased the maximum LPTV power level of VHF stations from 0.3 kilowatts to 3 kilowatts. *See LPTV DTV Second R&O*, 26 FCC Rcd at 10750, para. 37.

²⁸ One Ministries requests that the Commission permit additional TV channel 6 LPTV stations to undertake so-called "FM6" operations. *See* Letter from Keith J. Leitch, President, One Ministries, Inc. (KQSL) to Marlene H. Dortch, Secretary, FCC, MB Docket Nos. 24-147 and 24-148 (filed May 17, 2024) (*One Ministries Ex Parte*). We decline to seek comment on this matter at this time. The Commission recently undertook an examination of this question and declined to permit an expansion of FM6 service to new stations. *See Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, MB Docket No. 03-185, Fifth Report and Order, FCC 23-58 at para. 32 (rel. July 20, 2023) (*FM6 R&O*) (new entrant channel 6 LPTV stations do not have similar equities at play as the existing 13 FM6 LPTV stations permitted to continue operating as they have no established listener base that relies upon them, and therefore there are insufficient public interest reasons to outweigh the interference concerns brought on by new FM6 operations). In

(continued....)

- Require certain LPTV stations to maintain an online public inspection file.
- Adopt procedures for certain LPTV stations to establish an online public inspection file.
- Specify in our rules that public inspection and political broadcasting requirements are applicable to all LPTV stations.
- Make other changes to Section 73.3526 of our rules to correct cross references and other inaccuracies relating to stations in the LPTV Service and commercial radio and TV stations and establish new reporting requirements for Class A and LPTV stations.
- Amend the method for calculating the maximum distance that a displaced or channel sharing station may move under the LPTV/TV translator displacement rule.
- Revise the LPTV/TV translator minor change rule to clarify the maximum distance that Class A and LPTV/TV translator stations may move.
- Require that Class A and LPTV/TV translator stations specify a community of license (COL) within their station's contour.
- Adopt minimum operating and defined minimum video program requirements for LPTV stations.
- Require that LPTV/TV translator stations seek authority to change designation between LPTV and TV translator status and require Class A and LPTV/TV translator stations to maintain a call sign consistent with their class of service.
- Require use of a "stringent" or "full-service" emission mask for channel 14 Class A and LPTV/TV translator stations to prevent interference to Land Mobile Radio (LMR) stations.
- Prohibit LPTV/TV translator station operations above TV channel 36.
- Remove the 30 day public notice comment period for displacement applications and clarify when an LPTV/TV translator station displaced by a full power station's channel substitution may apply for displacement.
- Clarify the existing displacement rule and interference thresholds for actual and predicted interference, and amend the definition of displacement to include displacement by LMR stations; by protected television facilities in Canada and Mexico; and due to interference to TV translator input channels.
- Codify other rule clarifications consistent with precedent, including the use of emission masks at Distributed Transmission System (DTS) transmitter sites; the maximum grid resolution permitted with interference analyses; and application of the part 73 "program test authority" rule to LPTV/TV translator stations.
- Remove duplicate definitions and re-letter the definitions remaining in the part 74 rules, and make other editorial, non-substantive corrections to the part 11, 73, and 74 rules.

A. Requiring Certain LPTV Stations to Maintain an Online Public Inspection File

1. Existing Public File Requirements

8. To provide the public with access to information about station operations, the Commission's rules have long required broadcast television and radio stations to maintain a physical public inspection file, including a political file, at their respective stations or headquarters and to place in

(Continued from previous page) _____

addition, One Ministries comments related to its specific station, KKPM-CD, Yuba City, CA, are outside the scope of this proceeding. *See supra* One Ministries *Ex Parte*.

the file records that provide information about station operations. The purpose of the public inspection file requirement is to “make information to which the public already has a right more readily available, so that the public will be encouraged to play a more active part in dialogue with broadcast licensees.”²⁹

9. The Commission promulgated its first political file rule in 1938.³⁰ That initial rule was essentially identical to our current political file regulation in its requirement that the file be available for public inspection and include both candidate requests for time and the disposition of those requests, including the “charges made” for the broadcast time.³¹ In 1965, following action by Congress to allow greater public participation in the broadcast licensing process, the Commission adopted a broader public inspection file rule to enable inspection of broadcast applications, reports, and related documents at a station’s main studio.³² The Commission noted that Congress’ actions “zealously guarded the rights of the general public to be informed”³³ and that the Commission’s goal was to make “practically accessible to the public information to which it is entitled.”³⁴

10. In 2012, the Commission replaced the decades-old requirement that commercial and noncommercial television stations maintain public files at their main studios with a requirement to post most of the documents in those files to a central, online public file hosted by the Commission.³⁵ In 2016, the Commission expanded the online public inspection file (OPIF) to include cable operators, Direct Broadcast Satellite (DBS) providers, broadcast radio licensees, and satellite radio (also referred to as “Satellite Digital Audio Radio Service” or “SDARS”) licensees.³⁶ The Commission’s goals were to modernize the procedures television broadcasters and other media entities use to inform the public about how they are serving their communities, make information concerning service more accessible to the public, and reduce the cost of compliance.³⁷

²⁹ *Expansion of Online Public File Obligations to Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees*, Report and Order, 31 FCC Rcd 526 (2016) (*Expanded Online File Order*), citing *Commission’s Rules Relating to Inspection of Records*, Report and Order, 4 R.R.2d 1664 (1965) (*Inspection of Records R&O*), *recon. granted in part and denied in part*, Memorandum Opinion and Order, 6 R.R.2d 1527 (1965).

³⁰ See 3 Fed. Reg. 1691 (1938).

³¹ *Id.*

³² *Inspection of Records R&O*, 4 R.R.2d at para. 2. These new requirements were adopted following Congress’ 1960 amendment of sections 309 and 311 of the Communications Act of 1934, as amended (the Act). 47 U.S.C. §§ 309 (Application for License) and 311 (Requirements as to Certain Applications in Broadcasting Service).

³³ *Inspection of Records R&O*, 4 R.R.2d at para. 9.

³⁴ *Id.* at para. 12. In determining that stations must maintain a local file in addition to the information made available to the public at the Commission’s offices in Washington, D.C., the Commission also noted that “the existence hundreds, and in some cases thousands, of miles away of a voluminous public file is of little practical value in providing interested persons with the kind of information needed for them to participate ... as Congress intended.” *Id.* at para. 10.

³⁵ See *Second Report and Order*, 27 FCC Rcd 4535. This order applied to full power commercial and noncommercial television broadcast stations and Class A TV stations.

³⁶ See *Expanded Online File Order*.

³⁷ *Id.* at 4536, para. 1. In transitioning entities to the online file, the Commission took a number of steps to minimize the burden on stations and other media entities. Broadcasters and other media entities must upload only those items required to be in the public file but not otherwise filed with the Commission or available on the Commission’s website. Any document or information required to be kept in the public file and that is required to be filed with the Commission electronically is imported to the online public file and updated by the Commission. See *Second Report and Order*, 27 FCC Rcd at 4540-41, para. 11; *Expanded Online File Order*, 31 FCC Rcd at 534, para. 17. In addition, entities were not required to upload their existing political files to the online file; rather, they were required only to upload new political file content on a going-forward basis. *Id.* Existing political files were required to be
(continued....)

11. Section 73.3526, the online public inspection file rule for commercial television and radio stations, requires “[e]very permittee or licensee of an AM, FM, TV, or Class A TV station in the commercial broadcast services” to maintain a public inspection file with material identified in the rule.³⁸ LPTV stations are not currently subject to section 73.3526. Among other required content, section 73.3526(e)³⁹ specifies that the public inspection file must include a copy of the station’s current authorization,⁴⁰ any application tendered for filing with the Commission together with related material,⁴¹ citizen agreements,⁴² contour maps,⁴³ ownership reports and related materials,⁴⁴ the political file,⁴⁵ the Equal Employment Opportunity file,⁴⁶ radio and television time brokerage agreements,⁴⁷ must-carry or retransmission consent elections,⁴⁸ radio and television joint sales agreements,⁴⁹ shared service agreements,⁵⁰ and foreign sponsorship disclosures.⁵¹ Section 73.3526(b) requires that television and radio station licensees or applicants subject to the rule place the contents of their public inspection file “in the online public file hosted by the Commission.”⁵²

12. When the Commission created the LPTV category of service in the *LPTV Order*, the Commission concluded that because the service was of undetermined viability and the stations are

(Continued from previous page) _____
maintained at the station, however, until the end of the two-year retention period. *See* 47 CFR §§ 73.3526(e)(6) and 73.1943(c).

³⁸ 47 CFR § 73.3526(a)(2).

³⁹ 47 CFR § 73.3526(e).

⁴⁰ 47 CFR § 73.3526(e)(1).

⁴¹ 47 CFR § 73.3526(e)(2).

⁴² 47 CFR § 73.3526(e)(3).

⁴³ 47 CFR § 73.3526(e)(4).

⁴⁴ 47 CFR § 73.3526(e)(5).

⁴⁵ 47 CFR § 73.3526(e)(6).

⁴⁶ 47 CFR § 73.3526(e)(7).

⁴⁷ 47 CFR § 73.3526(e)(14).

⁴⁸ 47 CFR § 73.3526(e)(15).

⁴⁹ 47 CFR § 73.3526(e)(16).

⁵⁰ 47 CFR § 73.3526(e)(18).

⁵¹ 47 CFR § 73.3526(e)(19). Some required public inspection file content identified in section 73.3526(e) does not apply to LPTV stations, including TV issues/programs lists (47 CFR § 73.3526(e)(11)(i)), records concerning commercial limits in children’s programming (47 CFR § 73.3526(e)(11)(ii)), and children’s television programming reports (47 CFR § 73.3526(e)(11)(iii)). These public file obligations relate to requirements that do not apply to LPTV stations. LPTV stations are not required to prepare children’s television programming reports or to comply with the commercial limits in children’s programming. *See* 47 CFR § 74.780 (which does not cross reference the children’s programming requirements in 47 CFR § 73.670-673). Nor are LPTV stations required to prepare issues/program lists. We do not propose to revisit these LPTV public file exceptions or the LPTV exclusion from the underlying requirements in this proceeding.

⁵² 47 CFR § 73.3526(b)(2)(i). As noted above, *see supra* note 37, broadcasters must upload only those items required to be in the public file but not otherwise filed with the Commission or available on the Commission’s website. Any document or information required to be kept in the public file and that is available to the Commission or required to be filed with the Commission electronically, including station authorizations and applications filed with the Commission, is imported to the online public file and updated by the Commission. In the event that the online public file does not reflect such required information, the licensee is responsible for posting such material. *See* 47 CFR § 73.3526(b)(3).

secondary, have small coverage areas, and are not required to serve a particular community or a specified coverage area, “minimal regulation of low power television is in the public interest notwithstanding the fact that it is a broadcast service.”⁵³ Nevertheless, the Commission concluded that sections 312(a)(7) and (f) and 315 of the Act apply to LPTV stations.⁵⁴ Section 312(a)(7) grants candidates for federal office reasonable access to broadcasting stations.⁵⁵ Section 315(a) states that, if a licensee permits one candidate for a public office to use its station, it must afford “equal opportunities” to all other candidates for that office to use the station.⁵⁶ Section 315(b) provides that, during certain periods before an election, political candidates are entitled to “the lowest unit charge of the station for the same class and amount of time for the same period.”⁵⁷ In addition, section 315(e) requires broadcast licensees to maintain and make available for public inspection certain records of requests to purchase broadcast time on the station.⁵⁸ While LPTV stations must comply with the statutory requirements of sections 312(a)(7) and 315, the Commission did not amend the political programming and political file rules that apply to LPTV when it last amended the political programming and political file rules that apply to full power and Class A stations.⁵⁹

13. LPTV stations do have certain recordkeeping obligations aside from the political programming requirements described above.⁶⁰ Section 74.781 requires LPTV stations to “maintain

⁵³ *LPTV Order*, 51 R.R.2d at paras. 14, 77. The Commission also determined that it would not impose requirements that differentiate between commercial versus noncommercial operation of LPTV stations. *Id.* at para. 77. The Commission determined that LPTV stations are required to comply with certain rules applicable to full power stations, however, including station identification requirements. *Id.* at para. 102. The Commission also required that LPTV stations limit operations to programming consistent with the definition of “broadcast” in the Act and the rules, comply with the prohibitions on the broadcast of obscene material, plugola, payola, and lottery information, and comply with the rule requiring fairness in licensee-conducted contests. *Id.* at paras. 104-105.

⁵⁴ *Id.* at para. 105.

⁵⁵ See 47 U.S.C. § 312(a)(7). That section permits revocation of a station license or construction permit “for willful or repeated failure to allow reasonable access to or to permit purchase of reasonable amounts of time for the use of a broadcasting station ... by a legally qualified candidate for Federal elective office on behalf of his candidacy.” *Id.* Section 312(f) defines the terms “willful” and “repeated.”

⁵⁶ 47 U.S.C. § 315(a).

⁵⁷ 47 U.S.C. § 315(b). At all other times, a station may charge candidates as much as it charges others for “comparable use” of the station. 47 U.S.C. § 315(b)(1)(B).

⁵⁸ See 47 U.S.C. § 315(e).

⁵⁹ Section 74.780 of the rules contains a list of broadcast regulations in part 73 applicable to LPTV stations. See 47 CFR § 74.780 (Broadcast regulations applicable to translators and low power stations). That section includes a cross reference to section 73.1940 entitled “Legally qualified candidates for public office.” Section 74.780 does not cross reference the other political programming and political file rules in part 73. Section 73.1940 of the rules used to contain all of the political programming and political file rules but, in 1991, those rules were separated into the current five rule sections 73.1940 through 73.1944. See *Codification of the Commission’s Political Programming Policies*, Notice of Proposed Rulemaking, 6 FCC Rcd 5707, 5708, para. 4 (1991). See also *Codification of the Commission’s Political Programming Policies*, Report and Order, 7 FCC Rcd 678 (1991) (*Political Programming Order*). The rules adopted in the *Political Programming Order* can be found at 57 Fed. Reg. 189 (Jan. 3, 1992). The Commission provided no explanation for not amending the cross-reference to the political programming and political file rules that apply to LPTV stations in part 74.

⁶⁰ The Commission’s rules governing LPTV stations are contained in part 74 of the rules. See 47 CFR Part 74 (Experimental Radio, Auxiliary, Special Broadcast and Other Program Distributional Services). More specific rules governing the LPTV Service are found in Part 74, Subpart G of the rules. See 47 CFR Part 74, Subpart G (Low Power TV and TV Translator Stations).

adequate station records”⁶¹ and make them available to the Commission upon request.⁶² Section 74.781(c) also requires that records “shall be maintained for inspection,”⁶³ although that sentence mentions only translator stations.⁶⁴ The records required to be maintained include the station authorization, official correspondence with the Commission, contracts, and “other pertinent documents.”⁶⁵ In addition, section 74.780 of the rules⁶⁶ also contains some recordkeeping obligations. For example, LPTV stations must retain records of programming that is a “political matter or matter involving the discussion of a controversial issue of public importance” pursuant to Commission’s sponsorship identification rules.⁶⁷ In addition, LPTV stations must provide to the Commission upon request a copy of any network affiliation contract between the station and a national network.⁶⁸

⁶¹ 47 CFR § 74.781(a) (requiring LPTV stations to “maintain adequate station records, including the current instrument of authorization, official correspondence with the FCC, contracts, permission for rebroadcasts, and other pertinent documents”).

⁶² 47 CFR § 781(c) (requiring records to be “made available upon request to any authorized representative of the Commission”).

⁶³ 47 CFR § 74.781(c) (requiring records to be “maintained for inspection at a residence, office, or public building, place of business, or other suitable place, in one of the communities of license of the translator, except that the station records of a translator licensed to the licensee of the primary station may be kept at the same place where the primary station records are kept”). That sentence was adopted in 1975, as part of the original version of subsection (c), and before the establishment of the low power television service. *In the Matter of Amendment of Sections 74.765, 74.1265, 74.781, and 74.1281 of the Rules Pertaining to Station Records of TV Translators, FM Translators and FM Boosters*, Supplemental Order, 54 FCC 2d 98 (1975)(*Station Records Supplemental Order*).

⁶⁴ The prior version of subsection (c) contained an additional requirement that stated that “the name of the person keeping station records, together with the address of the place where the records are kept, shall be posted in accordance with § 74.765(c) of the rules.” 47 CFR § 74.781(c) (2017). Section 74.765(c), in turn, required, among other things, that LPTV, translator, and booster stations post at the transmitter site “the name and address of the person and place where the station records are maintained..., so as to be visible to a person standing on the ground,” but the Commission has since eliminated that rule. *Amendment of Parts 0, 1, 5, 73, and 74 of the Commission’s Rules Regarding Posting of Station Licenses and Related Information; Modernization of Media Regulation Initiative*, Report and Order, 33 FCC Rcd 11876 (2018) (eliminating section 74.765 of the Commission’s rules because the required information is now available through electronic means). At the same time, the Commission made conforming edits to other rules, including eliminating the sentence in section 74.781(c) that cross-referenced section 74.765. *Id.*, 33 FCC Rcd at 11886, App. A, para. 20; *see also id.* at 11876, 11881 notes 1 & 30 (explaining that the Commission is “also eliminat[ing] provisions in our rules which reference or cross-reference broadcast license posting rules,” including 74.765).

⁶⁵ 47 CFR § 74.781(a). Although the Commission did not explain which “other pertinent documents” a licensee must maintain, other rules in part 74 require licensees, including LPTV stations, to maintain documents that are not listed in section 74.781(a) of our rules. *See* 47 CFR §§ 74.750(g) (requiring licensees to maintain records related to new or replacement modulating equipment), 74.751(d) (requiring licensees to maintain records related to new or replacement transmitting equipment).

⁶⁶ 47 CFR § 74.780.

⁶⁷ *See* 47 CFR § 74.780, which requires LPTV stations to comply with 47 CFR § 73.1212 (Sponsorship identification; list retention; related requirements).

⁶⁸ *See* 47 CFR § 74.780, which requires LPTV stations to comply with certain requirements in 47 CFR § 73.3613 (Availability to FCC of station contracts). Section 73.3613(a)(1) requires LPTV stations to provide to the Commission upon request network affiliation contracts between an LPTV station and a national network. 47 CFR § 73.3613(a)(1). That provision defines the term “network” as “any person, entity, or corporation which offers an interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated television licensees in 10 or more states; and/or any person, entity, or corporation controlling, controlled by, or under common control with such person, entity or corporation.” *Id.*

14. The implementation of the online file was a significant achievement in the Commission's ongoing efforts to improve public access to important station information. Since it was launched in 2012, more than 19,875,413 documents have been successfully uploaded into the online file, and the site receives 108,583 unique visitors every two weeks.⁶⁹ Today, all full power and Class A television broadcast stations, cable operators, full-service radio broadcasters, DBS providers, and SDARS licensees have fully transitioned to OPIF. Despite initial concerns, NAB characterized the initial implementation of the online file as "uneventful."⁷⁰ The benefits of the online public file, versus maintaining files in main studios or other station offices, are clear. The evolution of the Internet and the spread of broadband infrastructure have transformed the way society accesses information today. Prior to OPIF, reviewing a local public inspection file typically involved the substantial expense and inconvenience of traveling to the station.⁷¹ Maintaining station records instead in a centralized, online file permits review with a quick and essentially costless Internet search and increases transparency to the public. OPIF also is consistent with the online document retention procedures used by most businesses today to increase efficiency, reduce storage costs, and improve access.

2. Application of Public File to Certain LPTV Stations

15. As noted above, to "zealously guard[] the rights of the general public to be informed" and to make "practically accessible to the public information to which it is entitled,"⁷² full power and Class A television stations must comply with the public file rule. Yet LPTV stations, including stations that are leaders in their local markets and provide services comparable to those of full power and Class A stations, are currently required to make only certain records, including political file materials, available to the public and to provide certain records to the Commission upon request.⁷³ We believe that the benefits of OPIF described above also would support requiring certain LPTV stations to comply with the same OPIF obligations as full power and Class A stations, and we seek comment on this issue. We seek comment on how, specifically, the public uses the public file to safeguard the value of the public airways.⁷⁴ For instance, what information from broadcasters' public files does the public routinely seek? Has the trend toward consumption of video media not transmitted by broadcast licensees changed the informational or civic value of the public file—and, if so, how? Have any studies or other information-gathering activity utilizing public file information been completed by civil society or public interest groups, and what do those studies or analyses reveal, if anything? Given the fact that LPTV is now an established service, the increased relevance of the LPTV Service generally, and the category of LPTV stations with top-four network affiliations specifically, we seek comment on whether to require certain LPTV stations to comply with the online public inspection file requirements of section 73.3526 of our rules.⁷⁵ We invite comment

⁶⁹ These figures were derived by Commission staff analysis of the OPIF database.

⁷⁰ NAB Comments at 3, *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, MM Docket No. 00-168 (filed Aug. 26, 2013).

⁷¹ See *Second Report and Order*, 27 FCC Rcd at 4540, para. 10.

⁷² *Inspection of Records R&O*, 4 R.R.2d at paras. 2, 9, 12.

⁷³ See *supra* paras. 12-13.

⁷⁴ See Letter from Rick Kaplan, Chief Legal Officer and Executive Vice President Legal and Regulatory Affairs, National Association of Broadcasters to Marlene H. Dortch, Secretary, FCC, MB Docket Nos. 24-147 and 24-148 (filed June 3, 2024) (NAB Ex Parte) (late-filed in violation of 47 CFR § 1.1206(b)(2)(iv)).

⁷⁵ We do not seek comment in this proceeding on online public file requirements for TV translator stations. TV translators are permitted to originate only a very limited amount of programming. They may originate only emergency warnings of imminent danger and, in addition, not more than thirty-seconds per hour of public service announcements and material seeking and acknowledging financial support necessary to the continued operation of the station. See 47 CFR §74.790(f). Because they may originate only a very limited amount of programming, the underlying purpose of this proposal — i.e., to make information about the programming these stations air more available to the public — is less compelling with respect to translators. The relevant records that are pertinent to this (continued....)

on whether, for the reasons described below, we should modify our rules to extend the same OPIF requirements applicable to full power and Class A television stations to top-four network affiliated LPTV stations. We also invite comment on whether we should include LPTV stations affiliated with other national TV networks in the requirement to maintain an OPIF or, rather than tying any OPIF requirement for LPTV stations to network affiliation, if we should instead apply the OPIF requirement to LPTV stations that are among the top-four TV stations in each market based on the Nielsen ratings. Are there any other ways of differentiating among LPTV stations for purposes of imposing OPIF requirements?

16. It has been over 40 years since the implementation of the LPTV Service. Today, there are almost 1,900 LPTV stations currently operating and providing important programming to the communities they serve. Many LPTV stations now serve as a significant source of programming in their communities, especially those that are network affiliates.⁷⁶ Given these developments, has the LPTV Service become sufficiently well-established at this point in time to require that certain LPTV stations comply with the same or similar public file requirements that apply to full power and Class A TV stations? As LPTV stations have evolved to become, in some cases, a significant presence in their local markets, should such stations have a similar public inspection file obligation to ensure that this information is readily available to the public and the Commission? Is the Commission's prior justification for imposing minimal obligations on all LPTV stations⁷⁷ now less compelling for certain categories of stations? Is there any reason not to extend OPIF obligations to at least some LPTV stations? Would the burden of requiring any category of LPTV station to comply with the same OPIF obligations as full power and Class A stations outweigh the benefits to the public? What are the costs associated with differentiating among LPTV stations for these purposes?

17. Should stations with a top-four television network affiliation be subject to the OPIF requirements for the same reasons as full power and Class A stations – to zealously guard the rights of the general public to be informed and to make practically accessible to the public information to which it is entitled?⁷⁸ Would expansion of the online public file to this category of LPTV stations improve public access to the files of affiliated stations by clearly identifying the records LPTV stations are required to make available to the public in the centralized, online file?⁷⁹ In proposing to focus only on LPTV stations that are affiliated with a top-four television network, our goal is to limit the OPIF obligation to those LPTV stations that carry programming that is more likely to be widely viewed. Such stations have greater resources and thus can more easily address any implementation issues that may arise.⁸⁰ Top-four network affiliates are generally the top-rated stations in their local markets.⁸¹ In addition, LPTV stations affiliated with a top-four network are more likely to be carried by multichannel video programming distributors (MVPDs) despite their status as low power stations, thereby extending their reach.⁸² We seek

(Continued from previous page) _____

proceeding are maintained by the primary station that originates the translator station programming. See 47 CFR §§ 73.3526 and 3527.

⁷⁶ See *supra* para. 6.

⁷⁷ See *supra* para. 12.

⁷⁸ See *supra* para. 9 (citing *Inspection of Records R&O*, 4 R.R.2d at para. 9, 12).

⁷⁹ As explained above, currently LPTV stations are required to “maintain adequate station records” and make them available upon request to the Commission. See 47 CFR § 74.781; *supra* para. 13.

⁸⁰ See *Second Report and Order*, 27 FCC Rcd at 4535, para 46.

⁸¹ See 2014 *Quadrennial Regulatory Review*, Order on Reconsideration and Notice of Proposed Rulemaking, 32 FCC Rcd 9802, 9834, para. 74 (2017).

⁸² The Commission has found that LPTV stations have retransmission consent rights. See *Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Broadcast Signal Carriage Issues*, Report and Order, 8 FCC Rcd 2965, 2998, para. 140 (1993). In addition, both the Act and section 76.55 of the rules require the carriage of “qualified” LPTV stations in certain limited circumstances. See 47 U.S.C. § 534(h)(2); 47 CFR §

(continued....)

comment on the current extent of such MVPD carriage of non-class A LPTV stations. We note that the Commission has previously imposed different requirements on top-four network affiliates in light of the greater resources at their disposal and in recognition of the important role these stations play in providing local news and public affairs programming to their communities.⁸³ We also believe that top-four network affiliated LPTV stations are more likely to have the kinds of materials required to be retained in OPIF, such as political file material, than LPTV stations that are not network affiliates. Thus, we believe that requiring these stations to comply with OPIF would make important information about the stations more easily accessible and provide the public the opportunity to ensure that these stations are properly discharging their duty to operate in the public interest. We seek comment on these issues.

18. We also seek comment on what burdens the obligation to maintain an online public file would impose on LPTV stations with a top-four television network affiliation. Since LPTV stations currently must maintain certain records and provide these records to the Commission upon request,⁸⁴ would there be a significant additional burden for LPTV stations with a top-four affiliation to maintain

(Continued from previous page)

76.55(d). An LPTV station that conforms to the rules established for LPTV stations in part 74 of the Commission's rules will be considered "qualified" if: (1) it broadcasts at least the minimum number of hours required under 47 CFR Part 73; (2) it adheres to Commission requirements regarding the broadcast of nonentertainment programming, political programming, programming for children, and equal employment opportunity, and the Commission determines that the programming by the LPTV station would address local news and informational needs which are not being adequately served by full power television broadcast stations because of geographic distance of such full power stations from the low power station's community of license; (3) it complies with interference regulations consistent with its secondary status; (4) it is located no more than 35 miles from the cable system's headend and delivers to the principal headend an over-the-air signal of good quality; (5) the community of license of the station and the franchise area of the cable system are both located outside the largest 160 Metropolitan Statistical Areas on June 30, 1990, and the population of such community of license on that date did not exceed 35,000; and (6) there is no full power television broadcast station licensed to any community within the county or other political subdivision (of a State) served by the cable system. See 47 U.S.C. § 534(h)(2). The Commission has previously estimated that about 20 LPTV stations qualify for mandatory carriage. See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations, Channel Sharing by Full Power and Class A Stations Outside the Broadcast Television Spectrum Incentive Auction Context*, Report and Order, 32 FCC Rcd 2637, 2644, para. 12, note 47 (2017) ("Based on a review of the 2015 FCC Forms 325 filed by cable systems, only approximately 20 out of 1,975 LPTV stations and 15 of 417 Class A stations are carried on cable systems pursuant to mandatory carriage. The number of LPTV and Class A stations with mandatory cable carriage is approximate, as FCC Form 325 is filed annually only by systems with 20,000 or more subscribers. See 47 CFR § 76.403. In addition, the Commission requires Form 325 to be filed by a sampling of cable operators with less than 20,000 subscribers, *id.*, and the 2015 325 data includes information from these systems."). The Commission has since eliminated the annual FCC Form 325 filing requirement for cable television systems. See *FCC Form 325 Collection; Modernization of Media Regulation Initiative*, Report and Order, 33 FCC Rcd 9252 (2018).

⁸³ See, e.g., *Implementation of the DTV Delay Act, Consumer Education Initiative*, Third Report and Order and Order on Reconsideration, 24 FCC Rcd 3399, 3410, para. 22 ("The presence of ABC, CBS, FOX, and NBC network stations and affiliates in a market is critical to ensuring that over-the-air viewers have access to local news and public affairs, because these 'major network affiliates' are the primary source of local broadcast news and public affairs programming in most communities."). In the *Second Report and Order*, the Commission phased in its requirement that television stations post their political files online, starting first with top-four network affiliates in the top 50 DMAs, determining "it is appropriate to require stations with a greater market reach to undertake this time-sensitive transition first, as they will be more likely to have dedicated resources to address any implementation issues that arise, if necessary." 27 FCC Rcd at 4558, para. 45. The Commission has also used an affiliation-based standard in other contexts. See *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, 26 FCC Rcd 11847, para. 11 (2011); *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, Fifth Report and Order, 12 FCC Rcd 12809, para. 76 (1997).

⁸⁴ See 47 CFR § 74.781.

these same records in an OPIF file? We believe our proposal to use the online public file rather than paper files may result in modest costs upfront but will ultimately allow these stations to realize savings by no longer having to keep a local file on a going-forward basis.⁸⁵ We note, as described above, that the OPIF for full power and Class A stations has been a significant achievement that improves transparency and defied initial concerns. We also believe that LPTV stations affiliated with a top-four television network can more easily address any implementation issues that may arise than other LPTV stations. We invite comment on these views.

19. Should we extend OPIF requirements to LPTV stations that are affiliated with TV networks other than the top-four?⁸⁶ If so, what other LPTV network affiliates should be included in the OPIF requirement? Is there any reason to exclude any LPTV network affiliate from OPIF obligations and, if so, what are those? As noted above, approximately 15% of LPTV stations are affiliated with any network.⁸⁷ How would inclusion of LPTV stations with other network affiliations alter the benefits and burdens of requiring certain LPTV stations to maintain an OPIF?

20. Should we instead extend OPIF requirements to LPTV stations that are among the top-four television stations in each television market (Designated Market Area⁸⁸) based on ratings regardless of the station's network affiliation?⁸⁹ If we were to adopt this approach, we propose to calculate whether

⁸⁵ See *Second Report and Order*, 27 FCC Rcd at 4549, para. 29.

⁸⁶ Several entities commenting on the public release draft of the NPRM oppose extending the requirement to maintain an OPIF to LPTV stations not affiliated with a top-four TV network. See Letter from Perry Atkinson, President, theDove Media, Inc. to Marlene H. Dortch, Secretary, FCC, MB Docket Nos. 24-147 and 24-148 (filed May 22, 2024) (*theDove Ex Parte*); Letter from Rick Kurkjian, President and General Manager, CMC Broadcasting Company, Incorporated, to Marlene H. Dortch, Secretary, FCC, MB Docket Nos. 24-147 and 24-148 (filed May 23, 2024) (*CMC Ex Parte*); Letter from Steven D. Ritchie to Marlene H. Dortch, Secretary, FCC, MB Docket Nos. 24-147 and 24-148 (filed May 28, 2024) (*Ritchie Ex Parte*). Those parties that continue to advocate for this position after the NPRM is released should file responses to the NPRM within the specified time period. In addition, one entity advocates that the FCC extend must carry rights to Class A TV stations commensurate with those of full power TV stations. See *One Ministries Ex Parte*, *supra* note 28. This is an issue that has previously been rejected by the Commission, most recently last December, and we decline to revisit it here. See 47 U.S.C. § 534(h)(2) (laying out the eligibility criteria that “qualified low power stations” must meet to gain carriage); *LPPA R&O* at para. 53. See also *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, Third Report and Order and Fourth Notice of Proposed Rulemaking, 30 FCC Rcd 14927, 14953, para. 57 (2015) (*LPTV DTV Third R&O*); *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, 6839, para. 667 (2014) (*Incentive Auction R&O*) (subsequent history omitted).

⁸⁷ See *supra* note 26.

⁸⁸ The Nielsen Company assigns each broadcast television station to a designated market area (DMA). The DMA boundaries and DMA data are owned solely and exclusively by Nielsen. Nielsen, *Nielsen DMA Maps*, <http://www.nielsen.com/intl-campaigns/us/dma-maps.html>. Each DMA is a group of counties that form an exclusive geographic area in which the home market television stations hold a dominance of total hours viewed. There are 210 DMAs, covering the entire continental United States, Hawaii, and parts of Alaska. See *2018 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*, Notice of Proposed Rulemaking, 33 FCC Rcd 12111, note 137 (2018) (*2018 Quadrennial Review NPRM*).

⁸⁹ See, e.g., 47 CFR § 73.3555(b)(1) (referring to stations rated among the top-four in a market). This provision sets forth the Local Television Multiple Ownership Rule which provides that an entity may own up to two television stations in the same Nielsen Designated Market Area (DMA) if: (1) the digital noise limited service contours (NLSCs) of the stations (as determined by section 73.619 of the Commission’s rules) do not overlap; or (2) at the time the application to acquire or construct the station(s) is filed, at least one of the stations is not ranked among the top-four stations in the DMA, based on the Sunday to Saturday, 7AM to 1AM daypart audience share from ratings averaged over a 12-month period immediately preceding the date of application, as measured by Nielsen Media Research or by any comparable professional, accepted audience ratings service.

a station is rated among the Top 4 by cross-reference to the Commission's media ownership rules defining the Top 4 criteria in section 73.3555(b)(1) of our rules.⁹⁰ We invite comment on this proposal and on any alternative methods of calculating whether a station is among the Top 4 rated stations in the market.

21. Should we adopt some other measure for identifying those LPTV stations to which we should extend OPIF requirements? If we were to use an approach based on ratings rather than network affiliation, should we account for instances in which the LPTV station makes use of multicast streams, satellite stations,⁹¹ or translators? Should the ratings of these stations or streams be combined with the ratings of the primary station or stream to determine the station's ratings in the DMA?⁹² The Commission has previously expressed concern about using rankings or ratings, noting that those thresholds are subject to change and "would be difficult to measure and administer, and would provide uncertainty to broadcasters, as they are not as able to predict or control ratings."⁹³ Do those same concerns apply if we were to use rankings for purposes of determining which LPTV stations are subject to OPIF?

22. If we focused on ratings, how would we account for stations that over time moved in or out of the top-four rating category? For instance, should we require any station that was rated within the top-four in the market within a specific period of time, such as a two year period, to maintain an online public file? If a station is in the top-four for one month during a two-year period, should the station be required to maintain an OPIF for the entire two-year period? Should a different period of time apply and why? Should we recalculate the ratings/rankings at an established time each year for purposes of determining which LPTV stations are covered? Once a station achieves top-four status, should it be required to maintain an OPIF in perpetuity? That is, should we have a no backsliding requirement, such that once a station is covered under our OPIF requirements, it would remain covered? Would the fact that an LPTV station already incurred the modest cost of establishing an OPIF file, and the likely savings that would result from no longer having to maintain a local file, justify such a requirement? How would focusing on the top-four television stations in each television market alter the benefits and burdens of requiring a certain specified category of LPTV stations to maintain an OPIF?

23. If we require certain LPTV stations to comply with the OPIF obligations in section 73.3526 of our rules, we intend to implement efficiencies used in prior transition phases to OPIF in order to reduce the burden on these stations.⁹⁴ Specifically, we propose to require that LPTV stations upload only those OPIF documents not otherwise filed with the Commission or available on the Commission's

⁹⁰ *Id.*

⁹¹ Television satellite stations are full power terrestrial broadcast stations authorized under part 73 of the Commission's rules that generally retransmit some or all of the programming of another television station, known as the parent station, which typically is commonly owned or operated with the satellite station. *See 2018 Quadrennial Review NPRM* 33 FCC Rcd at 12137-38, para 68.

⁹² *See In the Matter of 2018 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*, Report and Order, MB Docket No. 18-349, FCC No. 23-117 (rel. Dec. 26, 2023) at para. 67, appeal pending, No. 24-1380 et al (8th Cir.).

⁹³ *See Second Report and Order*, 27 FCC Rcd at 4558, para. 47.

⁹⁴ As noted above, *see supra* note 37, when the Commission transitioned entities to OPIF, it minimized the burden on stations and other media entities by requiring that broadcasters and other media entities upload only those items required to be in the public file but not otherwise filed with the Commission or available on the Commission's website. Any document or information required to be kept in the public file and that is required to be filed with the Commission electronically is imported to the online public file and updated by the Commission. In addition, entities were not required to upload their existing political files to the online file; rather, they were required only to upload new political file content on a going-forward basis. Existing political files were required to be maintained at the station, however, until the end of the two-year retention period.

website. Any document or information required to be kept in the public file and that is required to be filed with the Commission electronically would be imported to the online public file and updated by the Commission.⁹⁵ Given these measures to minimize the burdens, would the benefits of imposing an OPIF requirement on top-four network affiliated LPTV stations or any other category of LPTV stations, including improving public access to information about LPTV station operations, outweigh any costs?

24. In addition, if we were to require certain LPTV stations to post political file information in OPIF, we propose to do so consistent with prior transitions.⁹⁶ Specifically, we propose that LPTV licensees required to comply with OPIF must upload documents to the online political file only on a going-forward basis, and will not be required to upload their existing political files.⁹⁷ Under this proposal, LPTV licensees could continue to maintain at the station those documents already in place in their political file at the time any new rules in this proceeding become effective, and in that way decrease the burden on LPTV licensees.⁹⁸ We seek comment on this proposal. Should we permit LPTV stations that are not required to maintain an OPIF to voluntarily maintain an OPIF? Should we permit LPTV stations that will be obligated to maintain an OPIF to elect voluntarily to upload to OPIF existing political file material (i.e., material that they would otherwise not be required to upload under the proposed rules)?⁹⁹

25. If we require certain LPTV stations to comply with the online public inspection file requirements of section 73.3526 of our rules, those LPTV stations would be required to maintain in their OPIF, and thus make available for public inspection, the material identified in that rule, including a copy of the station's current authorization, any application tendered for filing with the Commission together with related material, citizen agreements, contour maps, ownership reports and related materials, the political file,¹⁰⁰ the Equal Employment Opportunity file,¹⁰¹ must-carry or retransmission consent elections and foreign sponsorship disclosures.¹⁰² Pursuant to section 73.3526(b), LPTV station licensees and

⁹⁵ See 47 CFR § 73.3526(b)(3). In the event that the online public file does not reflect such required information, the licensee will be responsible for posting such material. *Id.*

⁹⁶ See *Second Report and Order*, 27 FCC Rcd at 4557-58, para. 44; *Expanded Online File Order*, 31 FCC Rcd at 537-538, para. 26.

⁹⁷ We note that section 315(e) states that a request to purchase broadcast time that is made by or on behalf of a legally qualified candidate for public office or communicates a message relating to a political matter of national importance shall be "placed in a political file as soon as possible and shall be retained by the licensee for a period of not less than 2 years." 47 U.S.C. § 315(e)(3). We propose that the requirement to place political advertising requests in the OPIF would apply only to political file records that are created after the effective date of any rules adopted in this proceeding.

⁹⁸ Under this proposal, existing political file material must be retained in the local political file at the station for the remainder of the two-year retention period.

⁹⁹ See *Expanded Online File Order*, 31 FCC Rcd at 538-39, para. 28.

¹⁰⁰ LPTV stations subject to an OPIF requirement would also be required to maintain back-up files for the political file and make those files available to the public in the event the Commission's online public file database is unavailable. *Id.* at 539, paras. 29-31.

¹⁰¹ We propose to require those LPTV stations that are required to maintain an OPIF and are also required to prepare an EEO public file report to upload this report to OPIF. Currently, only LPTV stations that are part of a station employment unit with full power stations, where the unit employs at least five or more full-time employees, are included in a EEO public file report uploaded to the public files belonging to the full power stations. See *Promoting Diversification of Ownership in the Broadcasting Services*, 76 FR 7719, 7720 (2011); *Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies*, Second Report and Order and Third Notice of Proposed Rulemaking, 17 FCC Rcd 24018, 24066, para.152 (2002).

¹⁰² See *supra* para. 11. As discussed below, we also propose to require LPTV stations to retain in the public file copies of any time brokerage or joint sales agreement relating to the station. See *infra* para. 36.

applicants subject to the rule would be required to place the contents of their public inspection file “in the online public file hosted by the Commission.”¹⁰³ Under our current rules, as discussed above, LPTV stations currently must maintain certain materials, including the current instrument of authorization, official correspondence with the FCC, contracts, permission for rebroadcasts, and “other pertinent documents,” and make them available to the Commission upon request.¹⁰⁴ If certain LPTV stations are covered by OPIF, we also propose that those stations include in their online file the list required to be “available for public inspection” pursuant to 73.1212(e).¹⁰⁵ Stations not required to maintain an OPIF would maintain the list as specified in section 74.781(c).¹⁰⁶ Is there any reason LPTV stations should be exempt from making the documents identified in 73.3526 available for public inspection in OPIF?¹⁰⁷

3. Public File Statutory Authority

26. We note that we have broad authority under Title III of the Act to regulate radio communications, including classification of stations, prescription of the nature of services to be rendered, and the authority to establish the licensing procedures for broadcast stations when the public interest is found to be served.¹⁰⁸ Section 303(b) provides that we have authority to “prescribe the nature of the service” offered by licensed stations.¹⁰⁹ And section 303(r) of the Act provides that we have authority to “[m]ake such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of th[e] Act.”¹¹⁰ We tentatively conclude that the OPIF obligations for LPTV stations on which we seek comment herein fall within this broad grant of authority because they would promote public understanding of various issues concerning the operation of the station and better inform the public about how the station is serving the community. Improving public access to information about certain LPTV stations also is consistent with the goal of sections 309 and 311 of the Act to permit public participation in broadcast licensing.¹¹¹ In addition, section 315(e) of the Act requires licensees to make their political files available for public inspection.¹¹² We believe that requiring LPTV licensees to make certain records available for public inspection in OPIF would further the Act’s goal of ensuring that the public can access important information about the station and, with respect to

¹⁰³ 47 CFR § 73.3526(b)(2)(i). As noted above, *see supra* note 37, broadcasters must upload only those items required to be in the public file but not otherwise filed with the Commission or available on the Commission’s website. Any document or information required to be kept in the public file and that is available to the Commission or required to be filed with the Commission electronically, including station authorizations and applications filed with the Commission, is imported to the online public file and updated by the Commission. In the event that the online public file does not reflect such required information, the licensee is responsible for posting such material. *See* 47 CFR § 73.3526(b)(3).

¹⁰⁴ *See supra* para. 13.

¹⁰⁵ *Id.* LPTV stations subject to OPIF would also be required to provide public notice via their OPIF as required by 47 CFR § 73.3580 (requiring broadcasters with an OPIF to reference that database in required online notices and on-air announcements).

¹⁰⁶ 47 CFR § 74.781(c).

¹⁰⁷ As noted above, some required public inspection file content identified in section 73.3526(e) does not apply to LPTV stations, including TV issues/programs lists, records concerning commercial limits in children’s programming, and children’s television programming reports, and we do not propose to revisit these LPTV public file exceptions or the LPTV exclusion from the underlying requirements in this proceeding. *See supra* note 51.

¹⁰⁸ *See National Association for Better Broadcasting v. FCC*, 849 F.2d 665, 666 (D.C. Cir. 1988).

¹⁰⁹ 47 U.S.C. § 303(b).

¹¹⁰ 47 U.S.C. § 303(r).

¹¹¹ 47 U.S.C. §§ 309, 311. *See supra* para. 9.

¹¹² 47 U.S.C. § 315(e).

political files, assist candidates and others seeking information about political advertisements being carried on the station. We invite comment on these views.

B. Procedures for LPTV Stations to Establish an OPIF

27. If we were to require that certain LPTV stations comply with the OPIF requirements in section 73.3526, such as those affiliated with a top-four TV network or those rated in the top four in a DMA or otherwise, we propose that the Media Bureau issue a Public Notice with an initial/draft list of those LPTV stations that fall within the affected group, based on generally accepted industry data. Licensees and other interested parties would be given a period of time to file comments on the initial/draft list in order to ensure it correctly identifies those LPTV stations subject to the OPIF requirement. The Media Bureau would subsequently issue a Public Notice including a final list of LPTV stations subject to the OPIF requirement in accordance with our rules and set a deadline by which each such LPTV station must begin to maintain the OPIF on the Commission's OPIF platform. Upon release of the Public Notice, the Commission would also send a copy of the public notice to the authorized representative of each station as reflected in the Commission's Licensing and Management System (LMS). We invite comment on this approach. We also seek comment on whether these proposals appropriately accommodate small entities.¹¹³

28. If, after the Media Bureau issues a final list of LPTV stations that are subject to the OPIF requirement, an LPTV station's network affiliation or ratings ranking changes such that it would either become or no longer be covered by the OPIF rule, we propose that the LPTV station must notify the Commission within 10 days of the change in their affiliation or ranking. If we tie the OPIF requirement to LPTV stations ranked in the top-four in the market, such a change would be calculated based on rankings averaged over a 12-month period.¹¹⁴ Specifically, we propose that LPTV stations be required to send written notice to the Commission at an email address to be provided by the Media Bureau in the Public Notice that includes the final list of LPTV stations. The email would request either that an OPIF be created for the station or that the station be deleted from the list of LPTV stations with an OPIF requirement. The LPTV station would also be required to include the date the station's affiliation or ranking changed, and details of the station's change in circumstance (i.e., its new affiliation or ranking information). For LPTV stations with a new OPIF requirement, this filing would initiate the process of the Commission creating an OPIF for that LPTV station. The Media Bureau would by letter inform the station of the deadline by which the LPTV station must upload documents to its OPIF. We propose that stations with a new OPIF requirement be required to begin uploading all required OPIF documents within 60 days of the date of the letter.¹¹⁵ For LPTV stations that notify the Commission that they are no longer subject to the OPIF rule, the Media Bureau would provide written confirmation to the licensee by letter verifying they are no longer subject to the rule. The station would be required to upload a copy of the letter to its OPIF to ensure members of the public are aware it is no longer subject to the OPIF rule.¹¹⁶ The OPIF would remain publicly accessible for historical and investigatory purposes.¹¹⁷ We seek

¹¹³ See also *infra* App. B – Initial Regulatory Flexibility Analysis.

¹¹⁴ See *supra* para. 20.

¹¹⁵ Under our proposal, stations would be required to upload any documents from the time the station became covered by the OPIF rule. In other words, if a document is due in the period after the station becomes covered by the rule but before the 60 day period it takes for the OPIF to become active, the station must upload copies of any document required to be placed in OPIF during that time period, once the OPIF becomes active. We seek comment on this proposal.

¹¹⁶ A station may notify the Media Bureau that it is no longer eligible in the middle of a reporting period. If so, we propose that stations would still be required to file information or documents covering the period of time that the station was covered by the LPTV OPIF rule.

¹¹⁷ A station's OPIF will remain active in the Commission's database in the event that the station later becomes subject to the OPIF rule and to enable Commission staff and the public to review the file, for instance as may be (continued....)

comment on these proposed procedures. How should the procedures change if we were to require stations to maintain an OPIF in perpetuity once they are required to do so?¹¹⁸ For example, in such a situation, would the LPTV station still have to notify the Commission about its change in rank/affiliation? Would there be other requirements that would no longer be needed (e.g., no need to upload a letter discussing the station's change in rank/affiliation)?

29. If we were to base an OPIF requirement on a station's market ranking should we adopt a waiting period before we impose an OPIF requirement on a station that becomes a top-four ranked station or drops out of the top-four to ensure that the change in market ranking is not short-lived? If so, how long should the waiting period be? As noted above, if we use an approach based on station ratings, that calculation is averaged over a 12-month period. If we adopt a waiting period, what should the waiting period be if we used an approach based on ratings? Should other procedures apply if we adopt a requirement based on a top-four market rating? If so why? We seek comment on these issues.

C. Recordkeeping and Political Broadcasting Obligations Applicable to All LPTV Stations

30. As discussed above, LPTV stations are currently required by section 74.781(a) of the rules to "maintain adequate station records, including the current instrument of authorization, official correspondence with the FCC, contracts, permission for rebroadcasts, and other pertinent documents."¹¹⁹ Section 74.781(b) also requires LPTV stations to retain certain information about tower lighting.¹²⁰ Section 74.781(c) specifies a location where records must be "maintained for inspection," but that sentence appears to refer only to translators, not LPTV stations. If we were to require a subset of LPTV stations to comply with section 73.3526, we propose to revise section 74.781(c) to reference the requirement that certain LPTV stations maintain an OPIF and to specify where LPTV stations must retain records not included in OPIF.¹²¹ Our proposed revisions to section 74.781 would specify where records for LPTV stations, including the political file, can be accessed by the Commission and the public.

31. In addition, we believe it is appropriate to require that all LPTV stations maintain records for public inspection, including those that do not have an OPIF requirement as a result of this proceeding. We interpret the requirement in section 74.781(c) that station records be "maintained for inspection" as mandating that such records be maintained for public inspection, as that paragraph separately mandates that station records also be made available to the Commission. While the inspection requirement in section 74.781(c) could be read to apply only to translators, we note that requirement was adopted in 1975,¹²² prior to the establishment of the LPTV Service. As both sections 74.781(a) and (b) clearly apply to both translators and LPTV stations, we believe section 74.781(c) is best read as not intended to limit the application of the inspection requirement solely to translators. Nothing in the Commission's order adding LPTV stations to section 74.781 suggests that the Commission intended to carve out LPTV

(Continued from previous page) _____

necessary as part of an investigation or at license renewal time. A licensee, whether it is still subject to the OPIF requirement or is not, would be permitted to delete documents from its OPIF consistent with the document retention policies set forth in section 73.3526 of the rules.

¹¹⁸ See *supra* para. 22.

¹¹⁹ 47 CFR § 74.781(a).

¹²⁰ 47 CFR § 74.781(b).

¹²¹ As discussed above, we propose that LPTV licensees required to comply with OPIF to upload documents to the online political file only on a going-forward basis. See *supra* para. 24. Under this proposal, LPTV licensees could continue to maintain locally those documents already in place in their political file at the time any new rules in this proceeding become effective. In addition, LPTV stations not required to maintain an OPIF must retain any political files and other documents required to be retained by the station pursuant to 47 CFR § 74.781(a) and (b). These documents must be retained as provided in 47 CFR § 74.781(c).

¹²² *Station Records Supplemental Order*, 54 FCC 2d 98. See also *supra* note 63.

stations from the inspection requirement.¹²³ Moreover, we tentatively conclude that it would serve the public interest to require LPTV stations maintain records for public inspection. Accordingly, we propose to revise the inspection requirement in section 74.781(c) to clarify that the rule applies to both translators and LPTV stations. We seek comment on these proposed changes to section 74.781(c). Is there any reason to exempt LPTV stations not subject to an OPIF requirement from a public inspection requirement? Is there any reason translators should be subject to a public inspection requirement and not LPTV stations?

32. We also propose to update the list of political programming rules applicable to LPTV stations to align that list with existing and longstanding statutory requirements pursuant to sections 312 and 315 of the Act.¹²⁴ Should we specify that LPTV stations are subject to sections 73.1941 through 73.1944 of the Commission's rules, in addition to 73.1940?¹²⁵ These rules codify the statutory requirements of sections 312(a)(7) and 315 of the Act, which apply to LPTV stations.¹²⁶ The Commission originally adopted the rules in their current format in 1991,¹²⁷ and said that the rules were intended to "accurately and closely reflect the language, intent, and requirements of the broadcasting portions" of the Act and to provide "detailed and practical advice" to broadcasters, candidates, and the public regarding broadcasters' requirements and the rights afforded to candidates by the Act.¹²⁸ The rules were also adopted "to promote achievement of the Act's objectives while being responsive to the evolving sales practices of broadcast stations."¹²⁹ We tentatively conclude that revising our rules to specify that the current versions of sections 73.1940 through 73.1944 are applicable to LPTV stations would more accurately reflect the statutory obligations of LPTV stations¹³⁰ and conform our requirements regarding LPTV stations to the requirements contained in sections 312(a)(7) and 315 of the Act. We seek comment on this tentative conclusion.

D. Other Proposed Changes to Sections 73.3526

33. Finally, we propose to make other changes to section 73.3526 of our rules¹³¹ to correct cross references and other inaccuracies, clarify existing requirements, establish a filing frequency for Class A stations to certify they have met their ongoing eligibility requirements, and require Class A and LPTV stations to disclose time brokerage agreements (TBAs) and joint service agreements (JSAs).

¹²³ See, e.g., *In the Matter of Operating and Maintenance Logs for Broadcast and Broadcast Auxiliary Stations*, BC Docket No. 82-537, 48 FR 38473, 48 FR 44805 (Erratum) (1983).

¹²⁴ 47 U.S.C. §§ 312, 315. As discussed above, the Commission has concluded that these provisions apply to LPTV stations. See *supra* para. 12. The list of "Broadcast regulations applicable to translators, and low power stations" in section 74.780 of our rules does not list sections 73.1941 through 73.1944, so we propose to add those to the list for the reasons stated above. We seek comment on this proposal.

¹²⁵ See 47 CFR §§ 73.1940 (Legally qualified candidates for public office), 73.1941 (Equal opportunities), 73.1942 (Candidate rates), 73.1943 (Political file), and 73.1944 (Reasonable access).

¹²⁶ 47 U.S.C. §§ 312(a)(7), 315. See *supra* para. 12.

¹²⁷ See *supra* note 59.

¹²⁸ *Political Programming Order*, 7 FCC Rcd at 679, para. 3.

¹²⁹ *Id.* The rules were also intended to require licensees to provide more timely, accurate, and complete information on rates and sales practices to candidates.

¹³⁰ When it created the LPTV service, the Commission required LPTV stations to comply with former section 73.1940 of the rules, which contained all the political programming and political file rules applicable to broadcast stations prior to the division of section 73.1940 into five rule sections in 1991. See *LPTV Order* at App. A (rules appendix), 47 FR 21468 at 21494. See also *supra* note 59.

¹³¹ 47 CFR § 73.3526.

34. First, we propose to add to section 73.3526(e)(11)(iii),¹³² which addresses the requirement to file an annual Children's Television Programming Report, a reference to Class A television stations. Class A stations have been required to prepare and file such reports since the Class A service was first established, but a reference to Class A was inadvertently omitted from this provision of the rules.¹³³ Further, section 73.3526(a)(2) specifically requires Class A stations to comply with section 73.3526(e)(11).¹³⁴ Second, we propose to correct section 73.3526(a)(2) to indicate that all commercial radio and television stations must comply with section 73.3526(e)(19),¹³⁵ which requires stations to retain in OPIF documentation sufficient to demonstrate that the station is in compliance with the requirements set forth in section 73.1212(j)(7) of the Commission's rules.¹³⁶ Third, we propose to correct section 73.3526(a)(2) to indicate that commercial radio and television stations must comply with sections 73.3526(e)(14) and (16).¹³⁷ These provisions expressly apply to commercial radio and TV stations,¹³⁸ but section 73.3526(a)(2) does not include a cross reference to both those provisions with respect to these stations. We seek comment on these rule clarifications.

35. Third, we propose to correct section 73.3526(a)(2) to indicate that Class A stations (including those established pursuant to the LPPA) must comply with section 73.3526(e)(17),¹³⁹ which requires that Class A stations include in OPIF documentation sufficient to demonstrate that the station is continuing to meet the ongoing Class A eligibility and service requirements set forth in section 73.6001.¹⁴⁰ In addition, we propose to establish how often Class A stations must provide such documentation and what type of documentation is required. As part of a Class A station's continuing eligibility obligation, it must broadcast a minimum of 18 hours per day and air an average of at least three hours per week of locally produced programming each quarter.¹⁴¹ Based on these ongoing eligibility requirements, we tentatively conclude that a quarterly filing is appropriate. All documentation would be required to be filed in a station's OPIF by the tenth day of the succeeding calendar quarter (e.g., January 10 for the quarter October—December; April 10 for the quarter January—March, etc.) and must be retained in the OPIF until final action has been taken on the station's next license renewal application. As to the type of documentation Class A stations may provide, the Media Bureau has generally accepted a certification of compliance as sufficient documentation. We propose to codify this requirement. However, given Congress' clear focus on locally produced programming,¹⁴² we seek comment on

¹³² 47 CFR §73.3526(e)(11)(iii).

¹³³ See *Class A Order*, 15 FCC Rcd 6355 at App. A (Final Rules).

¹³⁴ 47 CFR §73.3526(a)(2). Both sections 73.3526(e)(11)(i) and (ii) correctly make reference to both commercial TV and Class A TV stations. 47 CFR §73.3526(e)(11)(i), (ii). We also note that Class A stations are required to comply with section 73.671 of our rules, 47 CFR §73.671 (Educational and informational programming for children), which refers to the requirement to file a Children's Television Programming Report in section 73.3526(e)(11)(iii). See 47 CFR §§ 73.6026 (Broadcast regulations applicable to Class A television stations); 73.671(e)(6).

¹³⁵ 47 CFR §73.3526(e)(19) (Foreign sponsorship disclosures).

¹³⁶ 47 CFR §73.1212(j)(7).

¹³⁷ 47 CFR §§73.3526(e)(14) (Radio and television time brokerage agreements) and 73.3526(e)(16) (Radio and television joint sales agreements).

¹³⁸ See *infra* para 36 and note 144.

¹³⁹ 47 CFR §73.3526(e)(17).

¹⁴⁰ 47 CFR §73.6001.

¹⁴¹ *Id.*

¹⁴² See 47 U.S.C. § 336(f)(2)(A)(i) requiring that to be eligible for Class A status a station must "broadcast an average of at least 3 hours per week of programming produced within the market area served by the station, or the
(continued....)

whether to require that Class A stations also include a list of locally produced programming sufficient to demonstrate that the station aired an average of three hours per week of locally produced programming each quarter. How burdensome would providing such a list be and what would that burden consist of? If we were to adopt such a requirement, what information should be included (e.g., time, date, duration, and title of each program aired)? We also propose that, like issue/programs lists, Class A stations be able to choose the format of the information. We seek comment on these clarifications and proposals.

36. Finally, we propose to amend section 73.3526(a)(2) to indicate that Class A and LPTV stations must retain in their OPIF any TBA¹⁴³ or JSA¹⁴⁴ relating to the station. Full power commercial TV stations and commercial radio stations are currently subject to this requirement,¹⁴⁵ but our rules do not clearly apply this requirement to Class A stations. We propose to amend our rules to apply this requirement to both Class A and LPTV stations. The obligation to retain TBAs in particular was adopted to “make it easier for the Commission and others to properly monitor time brokerage to ensure that licensees retain control of their stations and adhere to the Communications Act, Commission Rules and policies and the antitrust laws.”¹⁴⁶ The Commission has noted that this requirement would impose “only a minimal burden on licensees.”¹⁴⁷ For similar reasons, the Commission also requires radio and television licensees to place copies of any JSAs in the public inspection file.¹⁴⁸ The obligation to disclose these agreements in a station’s public inspection file applies even if the agreement would not result in the arrangement being counted in determining the brokering licensee’s compliance with local and national multiple ownership rules.¹⁴⁹ We tentatively conclude that Class A and LPTV stations, like commercial television and radio stations, should also disclose such agreements for the same reasons disclosure is required for the commercial television and radio stations, and seek comment on this view. Is there any reason to exempt Class A and LPTV stations from this requirement?¹⁵⁰ We seek comment on these proposals.

(Continued from previous page) _____

market area served by a group of commonly controlled low-power stations that carry common local programming produced within the market area served by such group.”

¹⁴³ “Time brokerage” (also known as “local marketing”) is the sale by a licensee of discrete blocks of time to a “broker” that supplies the programming to fill that time and sells the commercial spot announcements in it. 47 CFR § 73.3555, Note 2(j).

¹⁴⁴ “Joint Sales Agreement” is an agreement with a licensee of a “brokered station” that authorizes a “broker” to sell advertising time for the “brokered station.” 47 CFR § 73.3555, Note 2(k).

¹⁴⁵ See 47 CFR § 73.3526(e)(14) and (e)(16). See also *Revision of Radio Rules and Policies*, Report and Order, 7 FCC Rcd 2755, 2789, para. 67 (1992) (*Revision of Radio Rules and Policies Report and Order*), Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 7 FCC Rcd 6387, 6401-02, para.65, note 100 and 6402, para. 67; *Review of the Commission’s Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, *Review of the Commission’s Regulations and Policies Affecting Investment in the Broadcast Industry*, *Reexamination of the Commission’s Cross-Interest Policy*, Report and Order, 14 FCC Rcd 12559, 12601-02, para. 94, 12613, para. 123 (1999) (*1999 Attribution Order*).

¹⁴⁶ *Revision of Radio Rules and Policies Report and Order*, 7 FCC Rcd at 2789, para. 67; *1999 Attribution Order*, 14 FCC Rcd at 12601, para. 92. Licensees may redact confidential or proprietary information. *Id.* at 12601, para. 94.

¹⁴⁷ *Id.*

¹⁴⁸ See *1999 Attribution Order*, 14 FCC Rcd at 12613, para. 123.

¹⁴⁹ *Revision of Radio Rules and Policies Report and Order*, 7 FCC Rcd at 2789, para. 67; *1999 Attribution Order*, 14 FCC Rcd at 12601, para. 92, 12613, para. 123. Class A and LPTV stations are not subject to the Commission’s multiple ownership rules.

¹⁵⁰ We note that full power commercial TV stations must also retain in OPIF any shared service agreements (SSAs) relating to the station. *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 1993*, Second Report and Order, 31 FCC Rcd 9864, 10008-10022, paras. 337-375 (2016) (*2014 Quadrennial Regulatory Review Second* (continued....))

E. Revision to Rules Concerning Relocation of Facilities

1. Calculating Distance for Displaced and Channel Sharing Stations

37. We next propose to modify our rules to resolve an inconsistency in calculating the distance a displaced or channel sharing station may relocate its facilities. The LPTV/TV translator rules contain limits on how far a station may relocate its transmission facilities.¹⁵¹ These limits were established to ensure that LPTV/TV translator modification applications for “minor change” remained just that. This was intended to ensure that stations continue to provide coverage to viewers that rely on their service, so that their viewers were not left behind when a station is displaced or chooses to relocate.¹⁵² Currently, a displaced LPTV/TV translator station may propose a change in transmitter site of not more than “30 miles from the reference coordinates of the existing station’s community of license.”¹⁵³ Further, the Commission’s channel sharing rules apply this rule to Class A and LPTV/TV translator station relocations resulting from a proposed channel sharing arrangement.¹⁵⁴ In contrast, a Class A or LPTV/TV translator station that is seeking to relocate its facility through a minor modification is limited to moving not greater than “30 miles (48 kilometers) from the reference coordinates of the existing station’s antenna location.”¹⁵⁵

38. Thus, there is an inconsistency between the manner in which these rules calculate the distance of a proposed relocation. Furthermore, because Class A and LPTV/TV translator stations are not

(Continued from previous page)

Report and Order). See also 47 CFR § 73.3526(e)(18) (defining shared services agreements, by which a station provides or collaborates to provide station-related services to stations with which it is not under common de jure control). In the 2014 Quadrennial Regulatory Review Second Report and Order, the Commission declined to expand the SSA disclosure requirement beyond commercial television stations on the ground that commenters in that proceeding did not provide sufficient justification for such an expansion. 2014 Quadrennial Regulatory Review Second Report and Order, 31 FCC Rcd at 10020, para. 368. We also decline, at this time, to propose to extend the SSA disclosure requirement to Class A and LPTV stations. Consistent with the 2014 Quadrennial Review Second Report and Order, we may revisit this decision in the future if evidence suggests that disclosure of SSAs by Class A and LPTV stations may be appropriate. *Id.*

¹⁵¹ See 47 CFR §§ 74.787(a)(4), 74.787(b)(1)(iii) (limiting station moves to 30 miles).

¹⁵² See Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations, MB Docket No. 03-185, Second Report and Order, 26 FCC Rcd 10732, 10767, para. 58 (2011) (LPTV DTV Second R&O). Displacement only applies to LPTV/TV translator stations, which are secondary. Displacement occurs when a TV broadcast station’s operation or construction permit causes or receives interference with respect to the LPTV/TV translator station, requiring that LPTV/TV translator station to modify its facilities to resolve that interference. Because of their primary protected status, Class A stations cannot be displaced. Any reference to displacement solely applies to LPTV/TV translator stations.

¹⁵³ See 47 CFR § 74.787(a)(4) (displacement applications) (emphasis added); 47 CFR § 76.53 (reference points list). In addition to the distance limitation, the service contours of the station’s existing and proposed facility must overlap. See 47 CFR § 74.787(a)(4). We note that we propose in this proceeding to revise the distance limitation rule to state that facilities may not be relocated greater than 48.3 kilometers and to make clear that the distance calculation may not be “rounded down.” See *infra* Section III.E.2 – The 30-Mile Distance Limit.

¹⁵⁴ See LPTV DTV Third R&O, 25 FCC Rcd at 14943, para. 33; 47 CFR §§ 73.6028 (Class A television channel sharing outside the incentive auction); 47 CFR § 74.799 (Low power television and TV translator channel sharing).

¹⁵⁵ See 47 CFR § 74.787(b)(1)(iii) (emphasis added). Such moves are deemed “minor changes” and are permitted at any time. Transmitter site moves of greater than 30 miles (48 kilometers) are considered “major changes.” See 47 CFR § 74.787(b)(1)(iii). Currently, major changes for LPTV/TV translator stations are frozen. See Freeze on the Filing of Applications for New Digital Low Power Television and TV Translator Stations, Public Notice, 25 FCC Rcd 15120 (MB 2010); Initiation of Nationwide First-Come, First-Served Digital Licensing for Low Power Television and TV Translators Postponed Until Further Notice, Public Notice, 25 FCC Rcd 8179 (MB 2010) (collectively “Freeze PNs”).

included in the Table of TV Allotments and not assigned a COL when licensed, using a station's COL as a reference point can be subject to abuse. As outlined later in this *NPRM*, although licensees may input a COL for their station in LMS, our rules do not currently have a procedure governing how Class A and LPTV/TV translator station may select a COL.¹⁵⁶ As a result, a licensee can change the COL for their station in LMS at any time, and theoretically could specify a COL that has no association with the actual location of the station's facilities. This could undermine the purpose of the existing rule, to limit displacement and channel sharing relocations to 30 miles, if a station was to first modify its COL to designate a location that is within 30 miles of the location where a station wants to relocate the facility or channel share, and then files a channel sharing or displacement application thereafter.

39. To resolve the inconsistency, close a possible loophole in our rules, and harmonize our rules with respect to all Class A and LPTV/TV translator facility relocations, we propose to amend our displacement and channel sharing rules to eliminate the reference to a station's COL and incorporate the language of the minor change rule that measures distance from the reference coordinates of the “*existing station's antenna location*.”¹⁵⁷ Even though later in this item we propose a process for Class A and LPTV/TV translator stations to designate a COL,¹⁵⁸ we believe that use of the COL as a reference point for displacement could continue to undermine the purpose of our displacement rule. Given the contour size and the hyper local nature of the LPTV Service, precision is necessary in order to stand by the original intent of the rule, which is to ensure minimized disruption to the existing audience when station facilities are relocated. Therefore, changing our rules to measure a station's proposed relocation based on the reference coordinates of its antenna location provides a better reference point for the station's service area. Conversely, measuring relocations based on the reference coordinates of a station's entire COL could continue to allow stations to potentially thwart the intent of the 30-mile relocation distance limit.¹⁵⁹ We seek comment on this proposal.

2. The 30-Mile Distance Limit

40. We also seek comment on clarifying the distance that Class A and LPTV/TV translator stations are allowed to move in a single minor modification application or a displacement application.¹⁶⁰ As noted above, moves in either situation are currently limited to “30 miles (48 kilometers)” in order to ensure continuity of service.¹⁶¹ For purposes of consistency and clarity, we propose to revise the rules that currently reference the 30-mile limit to state that a facility may not be relocated greater than 48.3

¹⁵⁶ See *infra* Section III. E. 3. – Establishing Community of License Designations and Coverage Requirements.

¹⁵⁷ 47 CFR § 74.787(b)(1)(iii) (emphasis added). We also propose to conform the Class A minor modification language found in 47 CFR § 73.3572(a)(2) by replacing the text currently found in (a)(2) with a cross-reference to the proposed 47 CFR § 74.787(b). We seek comment on this proposal.

¹⁵⁸ *Id.*

¹⁵⁹ For example, under our proposed COL rule, a station theoretically could still modify its COL to first designate a location that is within 30 miles of the location where it wants to relocate the facility or channel share, and then file the channel sharing or displacement application. In addition, because we propose to permit stations to select their COL based on overlap between a station's protected contour and the defined limits of the community, the reference coordinates for a station's COL may not be the best indicator for calculating displacement and if used undermine the intent of the displacement rule.

¹⁶⁰ See, e.g., 47 CFR §§ 74.787(a)(4), (b)(1)(iii). We note that the technical facilities of Class A television stations are subject to the part 74 technical and application rules. See *Class A Order*, 15 FCC Rcd at 6367, para. 28. To provide clarity to our rules, we propose modifying the Class A rules to make clear that Class A television stations are also subject to the 30-mile distance limit set forth in section 74.787. See *infra* App. A – Proposed Rules.

¹⁶¹ See *LPTV DTV Second R&O*, 26 FCC Rcd at 10767, para. 58 (adopting the “30-mile rule” in order to prevent stations from frustrating the intent of the minor change rule and ultimately leaving existing viewers of the station, who have come to rely on its service, behind).

kilometers and to make clear that the distance calculation may not be “rounded down.”¹⁶² We understand that Media Bureau staff permitted stations proposing a relocation of up to 30.49 miles to “round-down” the distance calculation to 30 miles to comply with the distance limitation. We propose to prohibit rounding of the distance calculation. Additionally, we propose to revise our rules to remove the imprecise miles-to-kilometers conversion and instead solely state that facility relocations may be not greater than 48.3 kilometers.¹⁶³ Any value over 48.3 kilometers, even by less than a tenth of a kilometer, will not be considered rule compliant.¹⁶⁴ We seek comment on these proposals. While there exists the possibility of a waiver of our rules, should we establish exceptions in certain circumstances to allow stations to relocate their facility to a location more than 48.3 kilometers from their reference coordinate.¹⁶⁵ We seek comment on what exceptions, if any, should be set forth in our rules. Finally, we seek comment on whether to adopt a different distance limit for transmitter site relocations that are proposed in minor modification applications. Commenters proposing a different distance limit should explain why their proposed limit is more appropriate than the current 30-mile limit and how it aligns with our goal of ensuring existing viewers are not harmed.¹⁶⁶

3. Establishing Community of License Designations and Coverage Requirements

41. We next propose to require that Class A and LPTV/TV translator stations specify a COL that is associated with their station’s actual service area. As noted above, Class A and LPTV/TV translator stations are not allotted in the Table of TV Allotments.¹⁶⁷ As a “fill-in” type service, their facilities can be authorized at any location so long as they do not cause interference to any other authorized television stations and as a secondary service their facilities can be easily displaced.¹⁶⁸ As a

¹⁶² See *infra* App. A – Proposed Rules.

¹⁶³ The current rule in section 74.787(b)(1)(iii) states that the limit is “30 miles (48 kilometers),” 47 CFR § 74.787(b)(1)(iii), but these values are not equivalent. Thirty miles is approximately 48.3 kilometers, while 48 kilometers is approximately 29.8 miles. We also note that most of our broadcast forms and rules utilize the metric system and believe using kilometers here would provide consistency. See, e.g., 47 CFR §§ 73.622(k), 74.709, 74.737 (using kilometers to measure distance); FCC Form 2100, Schedules A-F (using meters for height values).

¹⁶⁴ By permitting stations to “round down” it potentially allows stations to move a larger distance than was intended by the 30 mile limit and may result in a greater viewer loss. As stated in the *LPTV DTV Second R&O*, the 30 mile rule was adopted “[t]o ensure that low power television applications for ‘minor change’ remain just that, and to ensure that stations continue to provide coverage to viewers that rely on their service.” *LPTV DTV Second R&O*, 26 FCC Rcd at 10767, para. 58. Because 48.3 kilometers is equivalent to 30 miles, we believe this is consistent with the goals of the LPTV Service and will continue to help minimize negative impacts on existing viewers that have come to rely on LPTV/TV translator stations for service.

¹⁶⁵ See, e.g., Comments of the Advanced Television Broadcasting Alliance at 4-6, MB Docket Nos. 03-185 and 22-261 (filed Oct. 24, 2022) (requesting that the Commission “provide additional flexibility to allow stations to relocate”). We invite comment on additional flexibility that interested parties believe could be provided while ensuring the intent of the minor modification rule is not undermined and a station’s existing viewers maintain access to the services they have come to rely on.

¹⁶⁶ See, e.g., theDove *Ex Parte*, *supra* note 86 (suggesting the Commission expand the distance limit for LPTV moves to 45 miles); Ritchie *Ex Parte*, *supra* note 86 (suggesting the Commission allow LPTV stations to move beyond 30 miles); *supra* note 27 (suggesting the Commission ask whether a limit of 30 miles remains necessary and whether a different limit is more appropriate); Letter from Rick Kurkjian to Marlene H. Dortch, Secretary, FCC, MB Docket Nos. 24-147 and 24-148 (filed May 29, 2024) (suggesting that the distance limit on moves for LPTV stations be extended to 40 miles).

¹⁶⁷ See *supra* para. 38.

¹⁶⁸ See *LPTV Order*, 51 R.R. 2d at 488, para. 27 (“adopting a table of low power television assignments would represent an unnecessarily rigid approach in a demand-driven service where we are fostering marketplace sovereignty ... the public interest best will be served by permitting LPTV applicants to locate their stations and

(continued....)

result, the Commission has not previously imposed a rule or methodology for Class A or LPTV/TV translator stations to be formally assigned a COL.¹⁶⁹ Because our existing rules do not provide a clear rule or methodology, the Media Bureau has been processing requests for changes in a Class A and LPTV/TV translator station's COL only when at least a portion of the proposed community is located within the station's protected contour.

42. Formalizing the COL designation process and providing set standards for how a Class A and LPTV/TV translator station can select a COL will ensure that COL's listed in LMS and used by Stations actually reflects their service area. Although we believe that Class A and LPTV/TV translator stations should continue to possess the flexibility to determine where best to locate their stations' facilities, we believe that stations should be required to designate a COL that has a connection with its station's operations.¹⁷⁰ Further, this will also ensure that Class A and LPTV/TV translator stations continue to utilize their COL to create a connection with the communities they in fact serve and allow viewers and the Commission to fully evaluate whether a station has been operating in the public interest convenience and necessity.¹⁷¹ We propose the following criteria be applied for all Class A and LPTV/TV translator stations when designating a COL. First, we tentatively conclude that all Class A and LPTV/TV translator stations should be required to designate a COL whose boundary at least partially overlaps with the station's "protected service contour." We propose defining "protected service contour" as the protected contour provided for in section 74.792 of our rules for LPTV/TV translator stations and section 73.6010 of our rules for Class A stations.¹⁷² For purposes of determining whether a COL's boundary

(Continued from previous page) —————

configure their service areas as market conditions dictate"); *see Class A Order*, 15 FCC Rcd at 6367, para. 28 (2000) (concluding that a minimum community of license coverage requirement is not appropriate because of the lower power levels that Class A stations will operate and given that, in many cases, Class A stations are providing programming to areas where a higher power station could not be accommodated in the Table of Allotments). *See also Preservation of One Vacant Channel in the UHF Television Band For Use By White Space Devices and Wireless Microphones*, 25 FCC Rcd 6711, 6718 (2015) (noting that LPTV stations are not allotted channels but rather engineer facilities in the unused spectrum between full power stations).

¹⁶⁹ Section 73.1120 of our rules requires Class A stations be "licensed to the principal community or other political subdivision which it primarily serves." The rule goes on to state that the "principal community (city, town or other political subdivision) will be considered to be the geographical station location." 47 CFR § 73.1120. While our rules require that Class A stations be licensed to a "principal community" (i.e., COL) Class A stations are exempt from our part 73 principal city coverage requirement. *See Class A Order*, 15 FCC Rcd at 6367, paras. 27-28. In establishing the Class A service the Commission did not provide a clear process or parameters regarding how a Class A station could select or change its COL.

¹⁷⁰ *See* 47 CFR § 74.783 referencing 47 CFR § 73.1201 – Station identification (official station identification shall consist of the station's call letters immediately followed by *the community or communities specified in its license* as the station's location) (emphasis added); 47 CFR § 73.3580 – Local Public Notice (local public notice of the filing of applications for new LPTV stations must include *the station's community of license*) (emphasis added); 47 CFR § 76.55(d) - Definitions Applicable to the Must Carry Rules and 47 U.S.C. § 534(h)(2)(b) (in determining whether an LPTV station is a Qualified Low Power Station for must carry purposes, the Commission must determine, *inter alia*, that the station would address local news and informational needs which are not being adequately served by full power television broadcast stations because of the geographic distance of such full power stations *from the low power station's community of license*) (emphasis added); and 47 CFR § 73.1125 – Station Telephone Number (Class A stations must maintain a telephone number *in their community of license*) (emphasis added).

¹⁷¹ *See* 47 U.S.C. § 309(k) (as part of the license renewal process requiring a determination by the Commission that a broadcast television station has "served the public interest, convenience, and necessity"); 47 CFR § 73.3526(e)(11)(i) (requiring Class A broadcast stations to place in the OPIF on a quarterly basis a list of programs that have provided the station's most significant treatment of community issues during the prior quarter).

¹⁷² 47 CFR § 74.792; 47 CFR § 73.6010. Although other primary licensees may cause interference to secondary LPTV/TV translator stations, the service contour of LPTV/TV translator stations is protected from interference from other LPTV/TV translator stations. This is what is meant by the LPTV/TV translator station's "protected contour."

“overlaps with a station’s protected service contour,” we propose to examine the legal boundary of the community that has been designated by any federal, state, local, or tribal governmental entity.¹⁷³ In designating a COL, a station would be required to provide a map demonstrating that the contour overlaps with the COL’s legal boundary. Second, we tentatively conclude that any amount of overlap between the Station’s protected service contour and legal boundary of its COL will be deemed sufficient for a station to designate a community as its COL. We tentatively find that this standard is appropriate given the relatively small size of the coverage area of many Class A and LPTV/TV translator stations. For that reason, we tentatively conclude a more stringent coverage requirement, such as a percentage of population or land area, may be unworkable and limit a station’s COL options.¹⁷⁴ We seek comment on our tentative conclusions and invite alternative proposals and standards by which Class A and LPTV/TV translator stations may select a COL.¹⁷⁵

43. We also seek comment on whether we should require that a station serve the COL it has selected for a minimum period of time prior to being permitted to voluntarily change it. We propose to require Class A and LPTV/TV translator to serve their designated COL for at least one year before allowing them to change it. This will help ensure that when a station is licensed, it is not only intending to provide service to its community, but it in fact does so. Further, because a public interest benefit of designating a COL is to foster a connection between the station and the community it serves, we believe that such a restriction on community of license changes is justified. While stations in the LPTV Service are not in the Table of TV Allotments and are not held to our analysis under section 307(b) of the Act,¹⁷⁶ we find that they still must operate in the public interest, convenience, and necessity. As result, by designating a COL stations are committing to provide service to that area, in many cases unserved and underserved areas, for at least a certain period of time.¹⁷⁷ We seek comment on this proposal and whether there should be any exceptions to the rule. For example, we tentatively find it would be appropriate to allow stations to modify their COL prior to the one year if the station is displaced or for circumstances beyond a station’s control, such as natural disaster or other act of God, that cause the station to no longer

¹⁷³ For example, if a station designates Washington, DC as its COL, then it must show that its protected service area overlaps with the legal boundaries of Washington, DC as recognized by the District of Columbia.

¹⁷⁴ For example, an Class A or LPTV/TV translator station with a COL of Houston, Texas may find it difficult to serve a large percentage of the city’s estimated population of greater than 2.3 million spread out over 665 square miles given that the station is low power and can only serve a small area. See <https://www.houstontx.gov/about/houston/houstonfacts.html> (last visited Mar. 4, 2024).

¹⁷⁵ During the pendency of this proceeding, we will maintain the status quo and permit the Bureau to continue to process COL change requests in the same manner it has to date. Any COL changes made during the pendency of this proceeding will be required to come into compliance with any rules we adopt. But see *ATBA Ex Parte*, *supra* note 27 (recommending that the Commission seek comment on whether stations in the LPTV service should be required to have community of license). Cf. *supra* paras. 41-42 and notes 169-171.

¹⁷⁶ Section 307(b) of the Act requires that the Commission make the distribution of frequencies “as to provide a fair, efficient, and equitable distribution of radio service to each of the same.” 47 U.S.C. § 307(b). This requirement applies to channels allotted via the Table of Allotments, for example, for full power television stations. Because Class A and LPTV/TV translator stations are not assigned channels via the Table of Allotments, the Commission does not undertake a section 307(b) analysis when determining whether to grant an application in these services.

¹⁷⁷ The Commission had a similar focus when it adopted standards for reviewing requests by Rural Radio Service AM and FM stations to change their COL. See *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, MB Docket No. 09-52, Second Report and Order, First Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 26 FCC Rcd 2556, 2577, para. 36 (2011). The Commission explained that the intent of its policy change with respect to COL changes was to cause “applicants to give more consideration to the effects of proposed station moves on listeners, both those they would serve at a new community and those from whom they would remove existing service.” *Id.* at 2579, para. 40. We find that a similar intent lays behind our proposal to require that Class A and LPTV/TV translator stations to serve their COL for one year prior to making any COL change.

be able to cover its COL. We propose not to consider independent business decisions or finances, as a basis for changing a COL within the one year period. What are other exceptions we should consider as a basis for a change in COL sooner than one year? Should exceptions be enumerated in our rules or, given the unique facts and circumstances that may be present in such cases, should we rely exclusively on our existing waiver standard?

44. Finally, we propose that within six months of the effective date of any new COL rule we adopt in this proceeding, all Class A and LPTV/TV translators must designate a COL that is rule compliant. We propose to require all Class A and LPTV/TV translator stations designate a COL by filing an application for modification of license and pay the appropriate filing fee.¹⁷⁸ Stations whose current COL meets the requirement of the new rule, should it be adopted, do not need to take any action. To help ease the initial transition, we propose to waive any application filing fee during this six month period for requests that solely seeking to designate a COL that is rule compliant.¹⁷⁹ We seek comment on these proposals.

F. Establishing Minimum Operating Hours for LPTV Stations

45. We propose adopting minimum operating hours for LPTV stations¹⁸⁰ and seek comment on whether LPTV/TV translator stations should be required to certify with regard to their minimum operating hours on certain applications. Currently, LPTV stations are not subject to minimum required hours of operation¹⁸¹ and are not required to adhere to any regular schedule of operation. When the service was originally created, the Commission decided to not adopt such requirements given the undetermined viability of the service and because LPTV stations are low power, serve a small service area, have secondary interference protection status, and are not allotted in the Table of TV Allotments to serve a particular community or a specified coverage area.¹⁸² As a result, the Commission, at that time, concluded that “minimal regulation of low power television is in the public interest, notwithstanding the fact that it is a broadcast service.”¹⁸³

46. While there are no set minimum operating hours for LPTV stations, they are subject to specific rules if they discontinue operations for certain periods of time and remain silent for extended periods. Like all broadcast stations, an LPTV station that fails to operate for more than 10 days must

¹⁷⁸ FCC Form 2100, Schedule D for LPTV/TV translator stations and FCC Form 2100, Schedule F for Class A stations.

¹⁷⁹ 47 CFR § 1.1116.

¹⁸⁰ We do not believe it is necessary to place additional minimum operating requirements on TV translators. TV translator stations are reliant on the programming and operation of the station they are rebroadcasting and under our rules are “expected to provide service to the extent that such is within its control and to avoid unwarranted interruptions in the service provided.” 47 CFR § 74.763(a). *See also infra* para. 55 (discussing EAS obligations of TV translators). We believe that the requirement of section 74.763(a) already amounts to a minimum operating requirement that is beyond that of LPTV stations. However, as part of our reorganization of the rule we also propose to revise the language to clarify TV translators current obligation by replacing the word “expected” in the current rule with the word “required.” We believe this word change will make it clear that the provision of service by TV translators is “required” and that they are subject to the same general rules regarding silence and operations that are applicable to all television stations. *See* 47 CFR §§ 73.763(b) and (c), 74.780, and 73.1635; *infra* para. 46. We seek comment on this proposal and whether any additional operating requirements are necessary to ensure that TV translators are serving the public and providing service as intended by our rules. Are there situations in which a TV translator may not rebroadcast the programming of its primary station for the entire broadcast day? If so why and under what circumstances might that occur?

¹⁸¹ *See* 47 CFR § 74.790(h).

¹⁸² *LPTV Order*, 51 R.R. 2d at 478 and 487, paras. 14 and 77.

¹⁸³ *Id.*

notify the Commission that it is silent.¹⁸⁴ If a station remains silent for more than 30 days, it must seek authority to remain silent.¹⁸⁵ Unlike full power stations, failure of an LPTV station to operate for a period of 30 days or more, except for causes beyond the control of the licensee, shall be deemed evidence of discontinuation of operation and the license of the station may be cancelled at the discretion of the Commission.¹⁸⁶ Finally, as with all broadcast stations, an LPTV station's license will automatically expire, as a matter of law, if the station fails to transmit a broadcast signal for any consecutive twelve-month period, notwithstanding any provision, term, or condition of the license to the contrary.¹⁸⁷ Therefore, an LPTV station can operate briefly (for a few minutes or hours) every 30 days and avoid being deemed as having permanently discontinued operations under section 74.763(c) of our rules,¹⁸⁸ or do the same once per year and avoid automatic expiration of its license under section 312(g) of the Act.¹⁸⁹ In either instance, however, we tentatively find that the extremely minimal nature of those operations and the inherent lack of benefit to viewers from such minimal operations undermines the public interest benefit of the station and results in the underutilization of finite TV band spectrum. We tentatively find that these practices also threaten to undermine the value of the LPTV Service generally. We believe that adoption of minimum operating hours for LPTV stations will ensure that stations have a clear awareness of their public interest obligations to the viewers they have been licensed to serve, and prevent warehousing and underutilization of spectrum. We seek comment on this analysis.

47. We propose that all LPTV stations be required to operate not less than 14 hours per calendar week. We tentatively conclude that requiring LPTV stations to operate a minimum of 14 hours per calendar week will not be a burdensome requirement. We seek comment on this proposal. While the Commission felt such a requirement was not necessary when the service was originally created, 40 years later we tentatively conclude that additional requirements are needed to ensure that all licensed stations are operating in the public interest by serving their viewers as intended. Other broadcast services have

¹⁸⁴ See 47 CFR § 74.763(b).

¹⁸⁵ *Id.*

¹⁸⁶ 47 CFR § 74.763(c).

¹⁸⁷ *Id.*; see also 47 U.S.C. § 312(g) (providing that “[i]f a broadcasting station fails to transmit broadcast signals for any consecutive 12-month period, then the station license granted for the operation of that broadcast station expires at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary, except that the Commission may extend or reinstate such station license...for any reason to promote equity and fairness”). Discretion under section 312(g) to extend or reinstate a station license is severely limited. See, e.g., *A-O Broad. Corp.*, Memorandum Opinion and Order, 23 FCC Rcd 603, 617, para. 27 (“This limited, discretionary provision is phrased as an exception to the general rule that most affected licenses will be forfeited”). The Commission has exercised its authority to reinstate an expired license to “promote equity and fairness” only where the station failed to provide service for 12 consecutive months due to compelling reasons beyond the licensee's control. See, e.g., *V.I. Stereo Communications Corp.*, Memorandum Opinion and Order, 21 FCC Rcd 14259 (2006); *Community Bible Church*, Letter, 23 FCC Rcd 15012, 15014 (MB 2008); *Mark Chapman, Court-Appointed Agent*, Letter, 22 FCC Rcd 6578 (MB 2007). The Commission has declined to reinstate licenses where the failure to transmit a broadcast signal was due to the licensee's own actions, finances, and/or business judgment. See, e.g., *Word of God Fellowship*, Memorandum Opinion and Order, 29 FCC Rcd 13280 (2014) (exercise of discretion to reinstate not warranted where licensee had not shown that a television station's silence was due to a natural disaster or similar compelling circumstances beyond its control); *Christian Broadcasting of East Point, Inc.*, Memorandum Opinion and Order, 30 FCC Rcd 13975 (2015) (section 312(g) relief not warranted where station silence was due to being evicted from its tower site); *International Aerospace Solutions, Inc.*, Memorandum Opinion and Order, 38 FCC Rcd 1759 (2023) (relief not warranted where silence was due to loss of the authorized site for non-payment of rent and choice thereafter to operate from engineer's home without requesting and obtaining STA to do so).

¹⁸⁸ See 47 CFR § 74.763(c).

¹⁸⁹ 47 U.S.C. § 312(g).

minimum operating requirements, including other low power, secondary services.¹⁹⁰ For example, when the Commission was considering rules for its new Low Power FM (LPFM) radio service it noted that while it was “sympathetic with the position of some commenters that the market, not the Commission, should determine the hours a station operates,”¹⁹¹ it ultimately concluded that adoption of a minimum operating requirement for LPFM stations would ensure effective utilization of channels.¹⁹² Despite LPFM being a secondary service, the Commission went on to find that such a requirement was not excessive and should not impose an inordinate burden on LPFM licensees.¹⁹³ Similarly, we tentatively conclude that adopting a minimum operating requirement will achieve similar benefits to ensure the spectrum is being properly utilized without imposing significant costs or burdens on LPTV licensees. We seek comment on our tentative findings and conclusions.

48. Commercial full power television stations are required to operate not less than 2 hours in each day of the week and not less than a total of 28 hours per calendar week.¹⁹⁴ In addition, Class A stations are required to operate a minimum of 18 hours per day in order to maintain their Class A status.¹⁹⁵ Our proposed minimum operating requirement for LPTV reflects half of the hours that commercial full power television stations are required to operate and a fraction of what Class A stations are required to broadcast. Our proposal also does not subject LPTV stations to a daily operational requirement in order to allow LPTV stations with non-traditional business hours, such as schools and religious institutions, more flexibility to operate their stations and serve their viewers. As a result, we propose to permit LPTV stations to operate at any time over the course of a seven day calendar week in order to provide flexibility and tailor their broadcast schedule to their local community as long as they operate not less than 14 hours per calendar week.¹⁹⁶ We seek comment on this proposal.

49. We also seek comment on whether alternative minimum operating hours or requirements would accomplish the same goals of ensuring stations serve the public interest and prevent limited spectral resources to lie fallow for all but a few hours or days a year. For example, should we instead adopt a different weekly hourly requirement or instead a daily, monthly, or quarterly minimum operating requirement? If so, what is the appropriate amount of time we should require for any interval?

50. Finally, we propose to require that all LPTV/TV translator licensees certify in any application for minor or major modification of a licensed facility and its license renewal application whether the station has complied with its minimum operating requirement over the course of the current

¹⁹⁰ Commercial AM and FM radio - § 73.1740(a)(1); noncommercial educational FM stations - § 73.561; Low Power FM - § 73.850; Class A television - § 73.6001(b); full power TV - § 73.1740(a)(2); and FM6 stations – 74.790(o)(11).

¹⁹¹ *Creation of the Low Power Radio Service*, Notice of Proposed Rulemaking, 14 FCC Rcd 2471, 2503, para. 76 (1999).

¹⁹² See *Creation of the Low Power Radio Service*, Report and Order, 15 FCC Rcd 178, 250, para. 182 (2000) (*LPFM R&O*).

¹⁹³ All LPFM stations are required to operate at least 36 hours per week, consisting of at least 5 hours of operation per day on at least 6 days of the week; however, stations licensed to educational institutions are not required to operate on Saturday or Sunday or to observe the minimum operating requirements during those days designated on the official school calendar as vacation or recess periods. See 47 CFR § 73.850(b). In cases where individual parties are interested in applying for an LPFM station but did not have sufficient programming to meet the minimum operating hour requirements, the Commission encouraged those parties to find other applicants with whom they could share the license. *LPFM R&O*, 15 FCC Rcd at 150, para. 182.

¹⁹⁴ 47 CFR § 73.1740(a)(2)(ii).

¹⁹⁵ 47 CFR § 73.6001(b)(1).

¹⁹⁶ For example, in any calendar week a station could operate a single day for 14 hours, or could operate two hours a day over the course of seven days.

license term, and if not provide an explanation for its failure and why grant of the pending application is in the public interest. We believe such a requirement will help ensure, in a minimally burdensome manner, that stations are complying with their minimum operating requirements and utilizing their licensed spectrum in the public interest. We seek comment on this proposal. We also seek comment on what evidence (written or otherwise) should be deemed sufficient to support a license's operational certification if such certification is challenged. Should licensees be required to retain certain documents, such as written program logs to be made available at the request of the Commission or members of the public? And if so how long should licensees be required to retain such documentation?

G. Defining Minimum Programming Requirements

51. To ensure that LPTV/TV translator stations are fully utilizing their spectrum to provide free over-the-air television service for their viewers, as intended by our rules and the Act,¹⁹⁷ we propose to make LPTV/TV translator stations subject to the requirement currently in our part 73 rules that visual transmissions of test patterns, slides, or still pictures accompanied by unrelated aural transmissions may not be counted for purposes of complying with any minimum operating requirement.¹⁹⁸ This part 73 requirement currently applies to both full power and Class A stations. We tentatively find that extending this requirement to LPTV/TV translator stations is consistent with the primary purpose of licensing broadcast television spectrum – the provision of video programming services to viewers.¹⁹⁹ Adopting a requirement in our rules will provide clear guidance that LPTV/TV translator stations must provide video programming service to the public and utilize the spectrum for that purpose. We propose to apply this requirement only to programming aired on the station's primary stream and not apply it to a station's multicast stream.²⁰⁰ We seek comment on this proposal.

¹⁹⁷ The Commission has long held that “the fundamental use of the 6 MHz DTV license will be for the provision of free over-the-air television service.” See *Promoting Broadcast Internet Innovation through ATSC 3.0*, MB Docket No. 20-145, Report and Order, 35 FCC Rcd 14492, 14509, para. 33 and n. 108 (2020); *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, Fifth Report and Order, 12 FCC Rcd 12809, 12823 (1997); see also 47 CFR § 73.625(b) (DTV broadcast station permittees or licensees must transmit at least one over-the-air video program signal at no direct charge to viewers on the DTV channel); 47 CFR § 74.790(g)(3) (whenever operating, an LPTV station must transmit at least one over-the-air video program signal at no direct charge to viewers at a resolution of at least 480i (vertical resolution of 480 lines, interlaced)).

¹⁹⁸ 47 CFR § 73.1740(a)(2)(iii). Whenever operating, an LPTV/TV translator station must “transmit at least one over-the-air video program signal at no direct charge to viewers at a resolution of at least 480i (vertical resolution of 480 lines, interlaced).” 47 CFR § 74.790(g)(3).

¹⁹⁹ *Advanced Television Systems & Their Impact Upon the Existing Television Broadcast Service*, Report and Order, 12 FCC Rcd. 12809, para. 28 (1997) (“We expect that the fundamental use of the 6 MHz DTV license will be for the provision of free over-the-air television service.”). The Commission has long recognized that the airing of test patterns or static slides does not constitute “operations.” See *ETC Communications*, Letter Ruling, 25 FCC Rcd 10686, 10689 (MB 2010) (test patterns do not constitute “broadcast signals” for purposes of section 312(g) of the Communications Act); *A-O Broadcasting Corporation*, Memorandum Opinion and Order, 23 FCC Rcd 603 (2008) (equipment tests are not transmissions of broadcast signals as required by section 312(g)); *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Auction Broadcast Transition*, Public Notice, 32 FCC Rcd 858, 862, para. 11, n.16 (IATF/MB 2017) (interpreting the term “begins operating” to mean “when the station begins providing a broadcast television service to the public on its post-auction channel, not simply testing equipment on that channel.”). The Commission addressed a similar issue regarding so-called “FM6” LPTV stations. There the Commission, in adopting rules for continued FM6 LPTV service, required that such stations broadcast at least one stream of programming with synchronized audio and video on their digital television operations. See *FM6 R&O* at paras. 40-42.

²⁰⁰ For purposes of this *NPRM*, “multicast” stream(s) refers to a TV broadcast station's non-primary video programming stream(s); that is, stream(s) other than the station's primary video programming stream. Our proposed rule would not prevent an LPTV/TV translator station from providing an audio only stream or still pictures accompanied by unrelated aural transmissions on a multicast stream because, as long as stations are transmitting “at
(continued....)

H. Class A, LPTV and TV Translator Station Designations and Call Signs

1. Changes Between LPTV and TV Translator Station Designations

52. We propose to require that stations in the LPTV Service that seek to change their designation from LPTV to TV translator and vice versa, be required to seek Commission authority by way of a license modification application to make such a change.²⁰¹ We further propose that stations in the LPTV service be allowed to change their station designation not more than once every 12 months. By proposing these rules, we aim to provide clarity to viewers and broadcasters concerning the station's service classification and what Commission rules and service obligations apply.

53. Currently, if a station in the LPTV Service desires to change its designation between LPTV and TV translator (or vice versa), it requests this change by informally writing (by e-mail or letter) Media Bureau staff, who in turn makes the classification change in the Commission's database. Stations in the LPTV Service can change their designation without limit and without any justification. For many years after the creation of the LPTV Service, the distinction between LPTV and TV translator stations was minimal and, therefore, no formal change process or standards were necessary.²⁰² However, over the years the LPTV Service has changed and the Commission has adopted a number of regulations that have expanded the distinction between LPTV and TV translator stations. For example, beginning in 1994, the Commission created the Emergency Alert System (EAS), whereby broadcasters are required to transmit Presidential and other national alerts to the general public (and may transmit alerts originating at the state and local levels to the general public on a voluntary basis).²⁰³ EAS participants are required to submit EAS Test Reporting System (ETRS) filings in response to nationwide tests of the EAS (sometimes referred to as National Periodic Tests).²⁰⁴ LPTV stations are EAS participants and must submit the required ETRS filings; however, TV translator stations are not required to file them.²⁰⁵ In addition, in 2009, the Commission mandated that LPTV stations be subject to its rules requiring the filing of ownership reports.²⁰⁶ Because they do not originate programming, TV translator stations are not required to submit ownership reports.

(Continued from previous page)

least one over-the-air video program signal at no direct charge to viewers," they may "offer services of any nature, consistent with the public interest, convenience, and necessity, on an ancillary or supplementary basis" on the remainder of their channel. *See* 47 CFR § 74.790(i) referencing § 74.790(g)(3).

²⁰¹ Class A stations are required to notify the Commission "in writing" to be redesignated as LPTV. *See* 47 CFR § 73.6001(d). Given that the Commission receives a minimal number of requests for Class A to LPTV redesignation requests, and that such redesignation requests are not reversible, we do not find the need to require that Class A stations file an application in this regard. However, we propose to make clear in our rules that such a written request must be filed through the Office of the Secretary, Attention Chief, Video Division, Media Bureau. We seek comment on this proposal.

²⁰² *See* 47 CFR § 74.790(a) (TV translator stations provide a means whereby the signals of broadcast stations may be retransmitted to areas in which direct reception of such stations is unsatisfactory due to distance or intervening terrain barriers); *cf.* 47 CFR § 74.790(b) (An LPTV station may operate . . . for the retransmission of programming of a TV broadcast station . . . (or) for the origination of programming and commercial matter). *See* 47 CFR § 74.790(f) (TV translator station may transmit unlimited amounts of emergency warnings of imminent danger; and local public service announcements and requests seeking or acknowledging financial support limited to 30 seconds each, no more than once per hour).

²⁰³ *See* 47 CFR § 11.1.

²⁰⁴ *See Public Safety and Homeland Security Bureau Establishes February 28, 2023 Deadline for Annual Filing of Form One in the EAS Test Reporting System*, 37 FCC Rcd 14838 (PSHSB 2022); *see also* 47 CFR § 11.61(a)(3)(iv).

²⁰⁵ *Id.*

²⁰⁶ *See* 47 CFR § 74.797; *Promoting Diversification of Ownership In the Broadcasting Services*, MB Docket No. 09-294, Report and Order and Fourth Further Notice of Proposed Rulemaking, 24 FCC Rcd 5896, 5915 (2009).

54. To enable the Commission and public to better track station classification changes and to provide rule compliance clarity for stations in the LPTV Service, we propose to formalize the redesignation process by requiring that LPTV Service designation changes be made through an application for license modification and that applicants be required to pay the requisite application filing fee. We also propose to limit LPTV Service designation changes to not more than once every 12 months. We tentatively conclude such a limit would help ensure that stations are not attempting to switch classification from an LPTV to a TV translator in order to avoid regulatory burdens (i.e., ETRS filings or ownership reports) and then quickly switching back to obtain the benefits of being classified as an LPTV station (i.e., greater program origination ability). Are there any circumstances that stations should be permitted to change their designation more than once every 12 months and what type of showing should be required? We seek comment on these proposals.

55. Furthermore, we propose to amend our rules to require that all stations with the LPTV designation, regardless of how the station is operated, must comply with our EAS rules. We also propose to clarify that a station formally designated in the Commission's database as a TV translator is not required to comply with our Part 11 requirements, such as installing EAS equipment or meeting related obligations like filing in ETRS, if it entirely rebroadcasts the programming – including all EAS – of a Primary Station.²⁰⁷ The EAS rules currently provide that “LPTV stations that operate as television broadcast translator stations, as defined in § 74.701(b) of this chapter, are not required to comply with the requirements of this part.”²⁰⁸ In light of our proposal to formalize the designation process and given the distinctions between LPTV and TV translator stations that have developed over the years, we believe it is appropriate to require any station that has chosen to be designated as an “LPTV” to comply with our existing EAS rules for LPTV stations.²⁰⁹ We believe that this change will also help ensure that all LPTV stations, when constructed, install the necessary EAS equipment as required and further the public interest by ensuring alerts are properly disseminated.²¹⁰ Further, this change should not create any additional burdens given that under our proposed rule change any LPTV station that entirely rebroadcasts the programming of a Primary Station may change its designation from LPTV to TV translator status to remain exempt from our EAS rules as they may be today.²¹¹ We seek comment on whether there is any practical reason to maintain the existing exception to the EAS rule for LPTV stations that operate as translator stations.

²⁰⁷ See 47 CFR 74.701(b) (defining “Primary Station” as “the television station which provides the programs and signals being retransmitted by a television broadcast translator station.”). This definition would be retained in our proposed rule changes, but redesignated as section 74.701(e). See *infra* App. A – Proposed Rules. Rebroadcasts that fail to pass through or otherwise transmit EAS alerts may result in enforcement action against the TV translator station. TV translator stations are limited to transmitting locally originated messages that include emergency warnings of imminent danger, local public service announcements (PSAs) and seeking or acknowledging financial support deemed necessary to the continued operation of the station. 47 CFR § 74.790(f). Locally originated content related to PSAs and fundraising is limited to 30 seconds each and no more than once per hour. *Id.* Emergency transmissions are limited to no longer than necessary to protect life and property. *Id.* If a TV translator airs locally originated content it may need to install EAS equipment or monitor their Primary Station during periods of local origination to ensure that all EAS alerts provided by the Primary Station are being transmitted.

²⁰⁸ 47 CFR § 11.11(b).

²⁰⁹ We note that section 11.11(b) of our rules exempts LPTV stations from section 11.32's requirements to operate or maintain EAS Encoders. 47 CFR §§ 11.11(b); 11.32.

²¹⁰ See 47 CFR §§ 11.11(a).

²¹¹ See *supra* note 202. See also 47 CFR § 11.11(b) (“Analog and digital broadcast stations that operate as satellites or repeaters of a hub station (or common studio or control point if there is no hub station) and rebroadcast 100 percent of the programming of the hub station (or common studio or control point) may satisfy the requirements of this part through the use of a single set of EAS equipment at the hub station (or common studio or control point) which complies with §§ 11.32 and 11.33.”).

2. Call Sign Assignments

56. *TV Translator Stations.* We propose to clarify in our rules that all TV translator stations must have an alphanumeric call sign comprised of a prefix consisting of the initial letter “K” or “W” “(based on the station’s geographic location in relation to the Mississippi River), followed by the channel number assigned to the station and two additional letters, and a suffix consisting of the letter “-D.”²¹² Further, we propose that a station that converts from LPTV to TV translator status would have its four-letter LPTV call sign automatically modified by the Commission to an alphanumeric one that is consistent with our TV translator call sign rule.²¹³ We tentatively conclude that this proposal is consistent with our existing rule which requires that TV translator stations maintain a uniform call sign methodology and will help viewers distinguish between TV translator stations and other classes of the TV service.²¹⁴ We propose to automatically modify any call signs that do not comply with the proposed rule 30 days after the effective date of any Report and Order adopted in this proceeding. The 30-day period will allow licensees to inform their viewers of the impending call sign change. Given that TV translator stations are, with limited exception, restricted to rebroadcasting other station’s programming we tentatively find TV translators do not have their own unique identity and “grandfathering” existing call signs has no cognizable public interest benefit. We seek comment on this proposal and our tentative findings and conclusion.²¹⁵

57. *Class A and LPTV Stations.* Further, we propose to require that all Class A and LPTV stations must have a four-letter call sign, with the suffix “-LD” for LPTV stations and “-CD” for Class A stations. Our current rule is permissive and states that “[l]ow power television and Class A television stations *may* be assigned a four-letter prefix.”²¹⁶ It also permits LPTV stations to be assigned alphanumeric call signs just like TV translators.²¹⁷ We tentatively conclude that in light of the regulatory and service distinctions between TV translator, LPTV, and Class A stations that it is appropriate to require that each service conform to its own call sign prefix and suffix.²¹⁸ As an initial matter, we propose that any station that modifies its status from a TV translator to LPTV after the effective date of our proposed rule must submit a request for a new four-letter call sign prefix with the “-LD” suffix in the Commission’s call sign reservation system and pay the applicable fee.²¹⁹ Further, we propose that the

²¹² 47 CFR § 74.791(b) and (d).

²¹³ See 47 CFR § 74.791 (outlining how call signs are assigned for Class A, LPTV, and TV translator stations).

²¹⁴ As of May 15, 2024, the Media Bureau estimates that 70 TV translator stations have call signs that either do not have the proper TV translator prefix and/or the “-D” suffix.

²¹⁵ There is no fee associated with assignment of TV translator call signs.

²¹⁶ 47 CFR § 74.791(c).

²¹⁷ 47 CFR § 74.791(a). As of May 15, 2024, the Media Bureau estimates that 788 LPTV stations and 45 Class A stations have call signs that either do not have a four-letter prefix and/or the “-LD” or “-CD” suffix.

²¹⁸ See *supra* para. 6 (discussing the regulatory and service distinctions between TV Translator and LPTV stations). Similarly, Class A stations have even more pronounced regulatory and service distinctions compared to both TV translator and LPTV stations. For example, all Class A stations not only have primary interference protection, but must broadcast at least 18 hours per day, air an average of 3 hours of locally produced programming per week, maintain an OPIF, and air minimum amount of children’s television programming, among other unique requirements. See 47 CFR §§ 73.3526 (OPIF requirement); 73.6001(b) (minimum operating hour and locally produced programming requirement); 73.671 (children’s television programming requirement).

²¹⁹ The Commission’s fee payment schedule for media service applications is set forth in 47 CFR § 1.1104. Because stations are not able to freely switch from LPTV to Class A status (see 47 CFR § 73.6001(a) setting forth the qualifications requirements for LPTV stations to be designated Class A status), when an opportunity for a status change exists we propose that a station’s call sign will be modified to designate the “-CD” suffix as part of the Class A eligibility and licensing process. We also propose that the station will retain its current four-letter call sign prefix unless it conflicts with that of an existing Class A station. In such a circumstance, we propose that the former LPTV
(continued....)

Commission will modify a Class A station's call sign that reverts from Class A status to LPTV to reflect its LPTV status by automatically changing its call sign suffix from "-CD" to "-LD." The station will retain its current four-letter call sign prefix unless it conflicts with that of an existing LPTV station. In such a circumstance, the former Class A station will be required to modify its four-letter call sign prefix in the Commission's call sign reservation system. We also propose to provide all Class A and LPTV stations a period of 90 days from the effective date of our proposed rule to designate a four-letter call sign with the correct suffix. During this 90-day period, we propose to waive the fee associated with an initial call sign request by a station to modify its call sign in order to come into compliance with the proposed rule.²²⁰ We seek comment on this proposal.

58. Alternatively, we seek comment on whether the Commission should "grandfather" existing LPTV and Class A call signs that are not in compliance with our proposed new rule. As stations that originate programming, some LPTV and Class A stations may have developed an identity with viewers that involves their call sign. What are the specific public interest benefits we should consider when determining if existing Class A or LPTV stations should be permitted to retain their existing "non-compliant" call signs? Should stations be permitted to keep both their existing prefix and suffix? Should grandfathered call signs be transferrable and assignable? If we grandfather existing LPTV and Class A call signs, we tentatively conclude that only call signs of licensed stations on the release date of any Report and Order adopted in this proceeding will be eligible to be grandfathered. Further, we propose that any station with a grandfathered call sign will be required to bring its call sign into compliance with our proposed rule in the event it subsequently changes its classification (i.e., LPTV to TV translator or vice versa). We seek comment on these proposals and tentative conclusions.

I. Channel 14 Emission Masks

59. In an effort to further reduce the potential for interference to LMR facilities in the 460-470 MHz band²²¹ from Class A and LPTV/TV translator facilities operating on channel 14, we propose that new and modified channel 14 Class A and LPTV/TV translator stations (Channel 14 LPTV Stations) must use a "full service" or "stringent" emission mask – a "simple" emission mask would be prohibited. We propose that a currently licensed Channel 14 LPTV Station would not be required to make a change to its existing licensed facility, and would only be required to implement filtering with a superior emission mask when proposing modifications to its facility that would change the station's current service contour or to address interference caused to an LMR facility.²²²

(Continued from previous page) _____
station will be required to modify its four-letter call sign prefix in the Commission's call sign reservation system and pay the applicable fee unless otherwise waived by the Commission. Under the LPPA a limited number of LPTV stations were deemed eligible to convert from LPTV to Class A status. *See supra* note 15. Under our proposal, these stations will be required to modify their call signs in a manner that is consistent with our current rules and any new rules we adopt. We seek comment on this proposal.

²²⁰ 47 CFR § 1.1116. New LPTV and TV translator stations are initially assigned a prefix consisting of the initial letter 'K' or 'W' – based on whether the station is east or west of the Mississippi River, 47 CFR § 74.791(d) – followed by the channel number assigned to the station and two additional letters. Under our proposal, prior to filing an application for license to cover, LPTV stations will be required to modify their call sign to a four-letter call sign as proposed. For this initial call sign assignment we propose that a fee will not apply. We seek comment on this proposal.

²²¹ LMR services are used by companies, local governments, and other organizations to meet a wide range of communication requirements, including coordination of people and materials, important safety and security needs, and quick response in times of emergency. *See* 47 CFR Part 90.

²²² LPTV/TV translator stations are secondary to LMR operations. *See* 47 CFR 74.703(e). As of May 14, 2023, the Media Bureau has determined there are currently 7 Class A, 63 LPTV, and 80 TV translator stations operating on channel 14.

60. Interference to LMR facilities from adjacent channel 14 television facilities (full power and low power) has long been a concern of the Commission, including most recently when Class A and LPTV/TV translator television stations converted to digital operations.²²³ The Commission's rules currently require that all Class A and LPTV/TV translators stations seeking new or modified facilities specify in their application for construction permit that the station will be constructed to confine out-of-channel emissions using one of the following emission masks: simple, stringent, or full-service.²²⁴ As the Commission pointed out in its *Land Mobile Interference Order*, instances of interference to LMR facilities from channel 14 television facilities "have been readily resolved by the installation of appropriate filters."²²⁵ So-called "mask filters" decrease out-of-band emissions to operations on adjacent channels, and in 2011, the Commission amended its rules to permit Class A and LPTV/translator stations to specify the use of masks previously implemented by full power television stations to prevent interference ("full-service masks").²²⁶ Because of the potential for interference to LMR facilities, construction permits for Channel 14 LPTV Stations also contain a condition requiring permittees, to take measures during equipment tests to identify and substantially eliminate interference which may be caused to existing LMR facilities in the 460 to 470 MHz band.²²⁷ Further, Channel 14 LPTV Stations must provide documentation before operation that interference will not be caused to existing LMR facilities.²²⁸ A similar requirement applies to full power television stations and restrictions on a channel 14 station's ability to commence program test authority.²²⁹

61. Although the three standard mask filters found in our rules do not always resolve LMR interference issues, we believe they remain the most effective means to prevent out-of-band emissions and interference to LMR facilities on 460-470 MHz.²³⁰ Because the stringent and full-service masks are more restrictive than the simple mask and better decrease out-of-band emissions, their use for channel 14 stations would be expected to minimize potential interference to land mobile operations. Therefore, we propose to require all new or modified Channel 14 LPTV Stations to include the use of either stringent or

²²³ See, e.g., LMS File No. 0000214256, a request for special temporary authority filed by a channel 14 LPTV station. The station was forced to reduce its proposed power to resolve an interference complaint by a local LMR operator. The station ultimately filed a displacement application to move off channel 14 due to ongoing LMR interference complaints. See LMS File No. 0000219314.

²²⁴ 47 CFR § 74.794(a)(1) (defining simple, stringent and full service emissions masks). As of May 14, 2024, the Media Bureau has determined that of the seven Class A stations currently operating on channel 14, one is using the full-service mask and the other six are using the stringent mask. As for LPTV/TV translator stations operating on channel 14, three TV translators and 36 LPTVs are using the full-service mask; and 18 TV translators and 16 LPTVs are using the stringent mask; and 58 TV translators and 11 LPTVs are using the simple mask;.

²²⁵ *Resolution of Interference Between UHF Channels 14 and 69 and Adjacent-Channel Land Mobile Operations*, ET Docket 87-465, Report and Order, 6 FCC Rcd 5148, 5150, para. 11 (1991) (*Land Mobile Interference Order*).

²²⁶ See *LPTV DTV Second R&O*, 26 FCC Rcd at 10762-63, paras. 68-69 (2011). LPTV/translators had argued that "in areas where frequencies are not available, use of the full power DTV emission mask will enable them to secure a channel . . .", *id.* at 10763, para. 68, and the Commission agreed that "allowing low power television applicants to specify the use of the full power DTV emission mask [will] accommodate additional LPTV stations and enable more efficient use of the available spectrum." *Id.* at 10763, para. 69.

²²⁷ See 47 CFR § 73.1620(a)(1) citing 47 CFR § 73.617(b)(2)(ii).

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ *LPTV DTV Second R&O*, 26 FCC Rcd at 10763, para. 69. In some cases, even more filtering is required, such as an 8- or 12-pole filter or multiple cascaded filters to ensure minimal interference with neighboring analog and digital broadcasts. See "Very-Sharp Filter Enhanced Compensation in ATSC 1.0 & ATSC 3.0," a 2017 study by TeamCast, Hitachi Kokusai Electric Comark, LLC and Dielectric, a copy of which is available at: <https://comarktv.com/wp-content/uploads/2019/10/FINAL-2017-BEITC-Very-Sharp-Filter-Enhanced-Compensation-TeamCast-Comark-Dielectric-1.pdf>.

full-service mask filtering unless the station is decreasing power or making a modification to its facilities that does not change its service contour.²³¹ Based on our prior review, the cost difference between simple, stringent, and full-service mask filters is not substantial and because the filters are generally of similar physical size they should have similar installation costs. Specifically, we estimated in 2018 that the cost of any given mask filter would be similar, with any cost difference being more heavily dependent on the power of the proposed facilities than on the specific type of emission mask.²³² Therefore, we tentatively conclude that any increased cost of requiring Channel 14 LPTV stations to include stringent or full-service mask filters would not be unduly burdensome. Further, we tentatively conclude that the burden caused by any potential slight increase in cost to Channel 14 LPTV Stations would be outweighed by the benefits of reducing complaints from LMR stations, better protecting LMR stations from interference, and preventing wasted investments by Channel 14 LPTV Stations that, for example, install one type of mask filter and then determine that stricter mask filter is needed. We seek comment on this proposal and the burdens and benefits, including our cost assumptions,²³³ of requiring stringent or full-service mask filtering by Channel 14 LPTV Stations.

J. Prohibition on Operations Above Channel 36

62. We propose to prohibit any LPTV/TV translator stations from operating above channel 36 (out-of-core channels). As part of the Incentive Auction and repacking process, the Commission reallocated TV spectrum above channel 37 (614-698 MHz, the so-called “600 MHz Band”) for use by wireless broadband providers and provided LPTV/TV translator stations that were displaced with an opportunity to file a displacement application to move their facilities to a new in-core channel.²³⁴ Further, the Commission prohibited new operations on out-of-core channels (i.e., above channel 36).²³⁵ However, in order to provide flexibility for out-of-core stations to construct in-core channel displacement facilities, the Commission allowed out-of-core LPTV/TV translator stations to continue operating on their pre-auction channels until they were notified of likely interference by a new 600 MHz Band licensee.²³⁶

²³¹ We propose that stations currently operating without causing interference to LMR operations would not need to implement stringent or full-service masks because the purpose of the rule would already be met—to prevent interference to LMR operations. We expect that a station currently operating without causing interference which decreases power on otherwise-existing facilities would not be expected to cause interference, while the likelihood of a station proposing a modification without a significant change to its service contour would be small. We seek comment on this proposal and our analysis.

²³² See *Catalog of Potentially Reimbursable Costs Incurred by Low Power Television, Television Translator and FM Broadcast Stations*, Public Notice, 33 FCC Rcd 10081, 10085 (IATF and MB 2018).

²³³ If our cost estimates are no longer accurate, commenters should provide specific cost information.

²³⁴ See *Incentive Auction R&O*, 29 FCC Rcd at 6617-80, paras. 109-257; *Id.* at 6835-36, para. 659; see also *LPTV DTV Third R&O*, 30 FCC Rcd at 14946, para. 40. TV operations are not permitted on channel 37, which is allocated for the Radio Astronomy Service and Wireless Medical Telemetry Service. See 47 CFR § 73.603(c). 614-698 MHz is comprised of former TV channels 38-51.

²³⁵ See *Incentive Auction Task Force and Media Bureau Announce Post Incentive Auction Special Displacement Window April 10, 2018 Through May 15, 2018, And Make Location and Channel Data Available*, Public Notice, 33 FCC Rcd 1234, 1238 (IATF and MB 2018) (applicants in the post-Incentive Auction special displacement window may apply only for a channel that continues to be allocated to broadcast television service (channels 2-36) and not for channels above 36); 47 CFR § 74.702 (applicants for new LPTV/TV translator stations or for changes in the facilities of an authorized station may select one channel between 2 and 36).

²³⁶ See *Incentive Auction R&O*, 29 FCC Rcd at 6840, para. 670. LPTV/TV translator stations on channels 38 and 44-46 (guard band and duplex gap channels) were required to cease operations no later than the end of the post-Incentive Auction transition period – July 13, 2020. See *id.* at 6841, para. 672. In 2019, the Media Bureau announced a window filing opportunity for pending applications for new LPTV/TV translator stations on 600 MHz band channels to file an application for a new in-core channel. See *Filing Window for New Rural Digital Low Power Television and TV Translator Applicants Displaced by Incentive Auction and Station Repack December 2*, (continued....)

63. The Incentive Auction closed in 2017 and according to the Commission's records there are currently no LPTV/TV translator stations operating on out-of-core channel.²³⁷ Because all out-of-core stations appear to have received notice from a 600 MHz licensee, they are no longer able to operate on their licensed channels and are currently silent. Accordingly, we find that the flexibility previously afforded out-of-core stations is no longer necessary and we propose to amend our rules to prohibit television operation on all out-of-core channels. We propose that this prohibition would be effective upon publication in the Federal Register of a Report and Order adopting this proposed rule. Any license authorizing operation above channel 36 will be automatically canceled, without affirmative action by the Commission upon the effective date of our proposed rule. We seek comment on these proposals and tentative findings.

K. Additional Class A, LPTV, and TV Translator Rule Clarifications

64. To further clarify certain Class A and LPTV/TV translator technical rules and policies, we propose changes to our rules as further described below. We propose these changes to promote clarity and ensure that all applicants are treated equally.

1. DTS Emission Masks

65. We propose to require that all transmitters in a Class A or LPTV/TV translator station DTS facility must utilize the same emission mask and we tentatively conclude that all three emission masks found in our rules are permissible.²³⁸ A DTS network employs two or more transmission sites located within a station's service area, each using the same RF channel and synchronized to manage self-interference.²³⁹ To prevent interference to other facilities, all stations must specify an emission mask to be implemented with their DTS facilities.²⁴⁰ However, unlike full power television stations that may only use "full service" emission masks at each DTS site,²⁴¹ the DTS rules adopted for Class A and LPTV/TV translator stations rules do not address whether a different type of emission mask could be employed or whether the same emission mask must be used at each DTS site.²⁴² We tentatively conclude that allowing Class A and LPTV/TV translator stations to specify different emission masks at each site prevents

(Continued from previous page) _____

2019 to January 31, 2020, Public Notice, 34 FCC Rcd 11064 (IATF and MB 2019). The Media Bureau set a deadline of January 31, 2020 for such applications to be filed after which applications that were not amended to specify an in-core channel would be dismissed. *Id.* at 11065.

²³⁷ As of May 15, 2024, there are 17 licensed out-of-core stations that are currently silent with construction permits for in-core channels (channels 2-36) and 9 licensed out-of-core stations that are silent without an in-core construction permit. We take this opportunity to remind these stations that silence for any consecutive 12-month period will result in automatic license expiration at the end of that period pursuant to section 312(g) of the Act. 47 U.S.C. § 312(g). We encourage these stations to promptly apply for (as necessary) and complete construction of their in-core facilities so that the stations may once again serve the public.

²³⁸ See proposed 47 CFR §§ 73.6023(f)(6), 74.720(e)(6). As proposed above, DTS operations on channel 14 would not be permitted to use the simple mask. See *supra* Section III. I – Channel 14 Emissions Masks.

²³⁹ See 47 CFR §§ 73.6026 and 74.720; *Rules Governing the Use of Distributed Transmission System Technologies*, MB Docket No. 20-74, Report and Order, 36 FCC Rcd 1227, 1246, para. 29 (2021) (*LPTV DTS R&O*). Through synchronization of the transmitted signal, DTV receivers treat the multiple signals as reflections or "ghosts" and use "adaptive equalizer" circuitry to cancel and combine them to produce a single signal. See *Digital Television Distributed Transmission System Technologies*, MB Docket No. 05-312, Report and Order, 23 FCC Rcd 16731, 16734, para. 4 (2008).

²⁴⁰ See 47 CFR § 73.611.

²⁴¹ *Id.*

²⁴² The rulemaking for Class A and LPTV DTS facilities did not seek comment on this issue. See *Rules Governing the Use of Distributed Transmission System Technologies*, MB Docket No. 20-74, Notice of Proposed Rulemaking, 35 FCC Rcd 3330, 3331 (2020) and *LPTV DTS R&O*, 36 FCC Rcd at 1227.

determination of the proper interference threshold.²⁴³ In order to ensure accurate interference calculations and reduce the potential for interference from Class A and LPTV/TV translator DTS facilities, we tentatively conclude that we should amend our rules to require that all Class A and LPTV DTS sites must utilize the same emission mask. We also tentatively conclude that we should clarify our rules to require that Class A and LPTV/TV translator DTS stations may use any of the emission masks permitted by our rules, so long as the same emission mask is used at all of their DTS transmitter sites.²⁴⁴ We seek comment on these proposals.

2. Interference Allowance

66. We next propose to amend our rules to apply the same requirements to LPTV/TV translator stations as full-power and Class A TV stations when entering into an interference agreement.²⁴⁵ We also propose to allow stations operating pursuant to interference agreements or that are unilaterally accepting interference from another station, to maintain those agreed upon interference amounts when modifying a facility so long as applications involving stations with agreements remain compliant with those agreements. Currently, Class A and LPTV/TV translator stations are permitted to enter into interference agreements that supersede compliance with our interference protection standards, or to unilaterally accept incoming interference in excess of our 2% interference threshold.²⁴⁶ However, as our part 74 rules are currently written, when a Class A or LPTV/TV translator station agrees to accept interference above the 2% threshold (accepting station) from another Class A or LPTV/TV translator station (interfering station) and the interfering station subsequently modifies its facilities, the interfering station must reduce the level of interference to the accepting station to less than 2%.²⁴⁷ We tentatively conclude that this result is not justified when stations have either mutually agreed to, or a station has unilaterally agreed to accept, a certain level of interference.²⁴⁸

²⁴³ Pursuant to the procedures set forth in OET Bulletin No. 69, an interference calculation is done for each DTS transmitter site. See OET Bulletin No. 69 - Longley-Rice Methodology For Evaluating TV Coverage and Interference (Feb. 6, 2004) a copy of which is available at: <https://transition.fcc.gov/oet/info/documents/bulletins/oet69/oet69.pdf>. The root-sum-square of all the DTS transmitters is taken at each cell to produce a single interfering signal level, and then that is compared to a given threshold dependent on the emission mask in use. *Id.* Therefore, if each DTS transmitter has employed a different emission mask, then it is not possible to know which interference threshold to use. If different mask filters are specified for different sites in a DTS, the *TVStudy* software applies the threshold belonging to the least restrictive filter to all DTS sites. However, this does not properly reflect the potential interference because some sites would be creating less interference than a prediction using the least restrictive mask filter would suggest..

²⁴⁴ See proposed 47 CFR §§ 73.6023(f)(6), 74.720(e)(6), *infra* App. A – Proposed Rules. As proposed, DTS operations on channel 14 would not be permitted to use the simple mask.

²⁴⁵ See 47 CFR §§ 73.620(e), 73.6022.

²⁴⁶ See 47 CFR §§ 74.703(a), 73.6022; *LPTV DTV First R&O*, 19 FCC Rcd at 19369, paras 106-107.

²⁴⁷ See 47 CFR §§ 74.703(a), 73.6022. For example, Station A (interfering station) and Station B (accepting station) agree that Station A is permitted to cause up to 4% interference to Station B. Station A subsequently proposes to modify its facility where by it will now cause 3% interference to station B. Under our current rules the application would not be grantable because the modified facility exceeds the 2% interference threshold, even though Station B has previously agreed to receive up to 4% interference. Or instead, Station C (accepting station) is displaced and in order to receive grant of its application, it unilaterally agrees to accept 4% interference from Station D (interfering station). Following grant, Station D proposes to modify its facility that would continue to cause 4% interference to Station C. Again, under our current rules the application would not be grantable because the modified facility exceeds the 2% interference threshold, even though Station C had previously unilaterally agreed to receive 4% interference.

²⁴⁸ For example, under our proposal, if a station has unilaterally agreed to accept interference from another station, the interfering station would not need to come into compliance with the 2% interference threshold in our rules. Rather, where a station unilaterally agreed to accept interference above the 2% interference threshold, we propose to
(continued....)

67. We tentatively conclude that LPTV/TV translator stations seeking to enter into an agreement to resolve interference concerns should be subject to the same rules as Class A and full power stations. This includes entering into a signed written agreement that is submitted with the application and making clear that agreements may include the exchange of money or other consideration between entities.²⁴⁹ We believe codifying these parameters in our rules for LPTV/TV translators is appropriate to provide clarity to licensees and transparency to all. We seek comment on our tentative conclusion.

68. We propose that a Class A and LPTV/TV translator station that has unilaterally agreed to accept interference from another station above the 2% interference threshold in our rules, will have the higher interference percentage taken into account when an application to modify a facility is considered.²⁵⁰ We also propose that stations subject to written interference agreements may also have the higher interference percentage taken into account, so long as doing so is consistent with the agreement.²⁵¹ We propose that a station seeking to modify its facility would be required to demonstrate that no additional interference beyond what was previously caused or accepted will occur as a result of the proposed modification.²⁵² We tentatively find that this revision will help maintain the status quo and preserve existing service based on agreed upon or unilaterally accepted interference levels. We seek comment on this proposal and our tentative conclusions.

3. Maximum Grid Resolution

69. We propose to codify that a one square kilometer grid resolution should be the maximum permitted in evaluating the interference to Class A and LPTV/TV translator facilities.²⁵³ In the *LPTV DTV First R&O*, the Commission concluded that setting a one square kilometer maximum grid resolution was appropriate given that Class A and LPTV/TV translator facilities had smaller service areas and therefore required a finer grid resolution analysis.²⁵⁴ While the Commission announced this policy in the *LPTV DTV First R&O*, it was not codified.²⁵⁵ We note that many Class A and LPTV/TV translator applicants have been required to amend their showings after instead using a grid resolution of two square kilometers in their interference studies. For additional clarity, we propose to retain the one square kilometer maximum grid resolution adopted by the Commission in the *LPTV DTV First R&O*, and codify the requirement in our rules. We continue to believe that one square kilometer is the appropriate maximum grid resolution given Class A and LPTV/TV translators facilities' smaller service areas.²⁵⁶ We

(Continued from previous page) _____

take into account the higher interference percentage when considering an application to modify a facility. We seek comment on this proposal.

²⁴⁹ See 47 CFR § 73.620(e).

²⁵⁰ See 47 CFR § 74.793(h).

²⁵¹ Our proposed rule is not intended to override any written interference agreement. Therefore, if the interference is not unilateral and has been agreed to pursuant to a written interference agreement, we propose that the modifying station would be required to provide a copy of the original interference acceptance agreement with its application. Under our proposal, depending on the terms of the original interference agreement, Media Bureau staff may request a new interference agreement be entered into or that the modification application be amended to resolve any interference above the 2% interference threshold. We seek comment on this proposal.

²⁵² See proposed 47 CFR §§ 73.6017, 73.6019, 74.793(j), *infra* App. A – Proposed Rules.

²⁵³ See *LPTV DTV First R&O*, 19 FCC Rcd at 19367, para. 99.

²⁵⁴ *Id.* citing Comments of Association of Federal Communications Consulting Engineers and duTrie, Lundin & Rackley, Inc.

²⁵⁵ *Id.* at App. B – Final Rule Changes.

²⁵⁶ Class A and LPTV/TV translator stations are also permitted to request the use of a *smaller* 0.5 kilometer grid resolution per side, however, if not specified in the application, the one kilometer cell size per side will be assumed. See 47 CFR § 74.793(b), citing to § 73.620(b), which itself cites to § 73.616(d)(1), permitting the use of the smaller 0.5 kilometer grid resolution.

seek comment on this proposal and, if commenters believe that a different maximum grid resolution should be utilized, they should explain why it will provide a better basis for evaluating interference involving LPTV/TV translator stations.

4. Displacement Rule Revisions

70. *Displacement Public Notice Period.* We propose updates to our displacement rule in order to minimize service disruptions. The displacement rule states that displacement applications: “will be placed on public notice for a period of not less than 30 days to permit the filing of petitions to deny.”²⁵⁷ This comment period was implemented because displacements require channel changes, which create a greater concern for interference.²⁵⁸ Yet, displacements are considered applications for minor change, and minor change applications are not subject to the 30-day period for interested parties to file a petition to deny.²⁵⁹ In practice, requiring a displaced LPTV/TV translator station to wait a full 30 days to receive action on its displacement application may result in loss of service to viewers or continued loss of service to viewers by delaying Commission action and thereby a station’s ability to construct and commence operating from its displacement facility. To minimize service disruptions to the public, and expedite processing and construction, we propose eliminating the 30 day public notice period for displacement applications found in section 74.787(a)(4) of our rules.²⁶⁰ While stations could seek special temporary authority in order to resume operation during the pendency of their displacement application, we aim to streamline this process in order to prevent as much disruption in service to the public as possible and provide certainty to stations to plan and make the necessary investments in their new facilities. We do not anticipate that this change will negatively impact the Commission’s evaluation of objections to an application. Affected parties that want to oppose grant of a displacement application may still file an objection prior to Commission action²⁶¹ and seek reconsideration up to 30 days after the grant.²⁶² In addition, affected parties may report interference concerns raised by the displacement application at any time. We seek comment on these assumptions and the elimination of the 30-day public notice comment period for displacement applications.

71. *Displacements Caused by Full Power Channel Substitutions.* We propose to define when an LPTV/TV translator station displaced by a full power station’s channel substitution may apply for displacement. A full power television station seeking to change its operating channel must first submit a petition for rulemaking requesting that the Media Bureau change the Table of TV Allotments to reflect the new channel.²⁶³ If approved, the Media Bureau issues a Report and Order making the channel substitution and amending the Table of TV Allotments. It also orders the station to file an application for minor change in order to modify its facilities to the new channel.²⁶⁴ The Report and Order also includes a date upon which the channel change is effective, typically upon the date of publication of the Report and Order in the Federal Register.²⁶⁵

²⁵⁷ See 47 CFR § 74.787(a)(4) (displacement rule).

²⁵⁸ See *LPTV DTV Second R&O*, 26 FCC Rcd at 107663 (adopting new section 74.787(a)(4) to add procedures for the filing of digital LPTV/TV translator displacement applications).

²⁵⁹ 47 CFR § 73.3584.

²⁶⁰ 47 CFR § 74.787(a)(4). We also propose to remove similar language from 47 CFR § 74.732(d).

²⁶¹ 47 CFR § 73.3587.

²⁶² 47 CFR § 1.106.

²⁶³ See 47 CFR §§ 1.420 and 73.622(j).

²⁶⁴ See 47 CFR § 73.3572(a)(1).

²⁶⁵ See, e.g., *Amendment of Section 73.622(j), Table of Allotments, Television Broadcast Stations (Missoula, Montana)*, MB Docket No. 23-280, Report and Order at para. 7 (MB rel. Apr. 23, 2024).

72. An LPTV/TV translator station that is displaced by a full power station's channel substitution must file a displacement application to move its channel. At the same time, the Commission's rules prohibit "contingent applications," meaning that we will not entertain applications that rely upon action on another pending application.²⁶⁶ Therefore, despite attempts by some LPTV/TV translator stations to file a displacement application prior to approval of the request to amend the Table of TV Allotments to reflect the channel substitution, Commission staff has declined to consider displacement applications that are based on a full power television station channel substitution until after the Report and Order granting the channel substitution and amending the Table of TV Allotments is effective.²⁶⁷ To provide clarity, we propose to amend our rules to specify that such displacement applications cannot be filed until the Report and Order granting the channel substitution and amending the Table of TV Allotments is effective. This will ensure that the station is in fact qualified for displacement and prevent stations from prematurely reserving spectrum on a contingent basis. We do not anticipate that this will unduly delay construction of the displacement facility or result in service interruptions as a station granted a channel substitution needs time to construct their new facility, thus providing a displaced station ample time to construct its own facility. Under our proposal, displacement applications that are filed before the Report and Order granting the channel substitution and amending the Table of TV Allotments is effective will be dismissed without prejudice. We seek comment on this proposal.

73. *Displacement Eligibility.* We propose to enumerate in the displacement rule the precise circumstances that qualify LPTV/TV translator stations to seek a displacement channel. We also propose to permit displacement based on interference caused to a TV translator's input channel. Our current displacement rule states in part, that an LPTV/TV translator station "which is *causing or receiving interference or is predicted to cause or receive interference* to or from an authorized TV broadcast station or allotment or *other protected station or service*, may at any time file a displacement relief application for change in channel"²⁶⁸ We believe enumerating the circumstances where displacement applies will make it easier for licensees to determine if their station has in fact been displaced. Further, we propose revising the displacement rule to make clear that applicants must include an exhibit describing the specific cause of displacement in order to allow the Commission to more efficiently review displacement applications.²⁶⁹

74. First, we propose to clarify what is meant by "*causing or receiving interference*."²⁷⁰ Under our proposal, this basis for displacement refers to actual interference received by a TV broadcast station (i.e., a full power television station) from an LPTV or TV translator station.²⁷¹ While LPTV/TV translator stations are permitted to cause up to .5% predicted interference to a full power station, as a primary service full power stations are protected from actual interference within their noise limited service contour, even if the predicted interference is within the .5% threshold.²⁷² In order for an LPTV/TV translator station to qualify for displacement relief based on actual interference caused to a TV

²⁶⁶ See 47 CFR §§ 73.3517 and 74.780.

²⁶⁷ The Media Bureau has either dismissed or requested that the applicant withdraw their contingent displacement application.

²⁶⁸ 47 CFR § 74.787(a)(4) (emphasis added). For purposes of this rule "TV broadcast station" or "allotment" refers to full power television stations and allotments found in the Table of TV Allotments. See 47 CFR §§ 73.601, 73.622(j), 73.681.

²⁶⁹ We also propose to revise the displacement rule to clarify that DRTs and DTDRTs have processing priority over LPTV and TV translator stations. This is an existing rule, 47 CFR § 74.787(a)(5)(iii), and not a substantive change. Our proposed revision to the displacement rule merely provides the appropriate cross reference.

²⁷⁰ 47 CFR § 74.787(a)(4) (emphasis added).

²⁷¹ TV broadcast station is defined in the rules as a full power television station. See 47 CFR § 73.601.

²⁷² See 47 CFR § 74.703(b).

broadcast station, we propose that there must be at least (1) a single report of actual interference received by a TV broadcast station within its community of license, or (2) multiple reports of actual interference to a TV broadcast station within its protected contour.²⁷³ We seek comment on how many reports of actual interference should be required in each instance and what information should be provided to validate such claims. For example, the Commission has established a set of criteria that includes a requirement for a minimum number of listener complaints that must be provided to demonstrate actual interference caused by FM translators, ranging from at least 6 to a cap of 25 depending on the population served.²⁷⁴ To provide certainty and clarity should a similar standard be adopted here? If so, what would be the appropriate threshold of viewer complaints? Should population within an impacted station's protected contour inform the number of complaints required? Is it appropriate for the threshold to be different if the interference is occurring within a TV broadcast station's community of license as opposed to elsewhere within its protected contour? What documentation should stations that claim they are displaced as a result of actual interference be required to file with their displacement application?

75. Second, we propose to revise the displacement rule to clarify the levels of “*predicted*” interference that would qualify a station for a displacement channel. Under our revised rule, we propose that with respect to predicted interference “*caused*” to a TV broadcast station, the predicted interference would have to exceed the 0.5% de minimis interference threshold specified in section 74.793(e) of our rules to qualify the station to file a displacement application.²⁷⁵ With respect to predicted interference “*received*” from a TV broadcast station, we propose that the predicted interference would have to exceed the 2% interference threshold specified in section 74.793(h) of our rules to qualify the station to file a displacement application.²⁷⁶ We do not anticipate that this clarification of what is meant by “*predicted*” interference will materially alter the scope and application of the existing displacement rule. We seek comment on this assumption. This proposal is not intended to expand or restrict displacement eligibility for predicted interference beyond the scope of the current rule. It is also not intended to modify our current interference thresholds (i.e., 0.5% or 2%). Instead, this proposal is intended to clarify what is meant by the word “*predicted*” in the context of our current interference thresholds. We seek comment on this proposal.

76. Third, we propose to revise the displacement rule to make clear what “other protected station or service” means by adding two specific situations beyond interference to/from an authorized TV broadcast station that would qualify an LPTV/TV translator station to seek a displacement channel: (1)

²⁷³ Actual interference caused by a TV broadcast station to an LPTV/TV translator has not historically been used for determining displacement of an LPTV/TV translator station, and as such we do not propose to include it in our updated displacement definition. Because LPTV/TV translator stations are secondary and may receive up to 2% predicted interference before being displaced, the presence of actual interference cannot reliably be utilized to demonstrate displacement. This is especially true in cases where an LPTV/TV translator station accepts interference, including amounts that may be in excess of 2% and/or within its community of license. We believe that LPTV/TV translator stations that would receive actual interference significant enough to warrant displacement will be able to demonstrate such interference via our predicted interference method for displacement. We seek comment on this conclusion and proposal.

²⁷⁴ See 47 CFR § 74.1203(a)(3) Table 1 (setting out the minimum listener complaints required for interference complaint); *Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference*, Report and Order, 34 FCC Rcd 3457, 3464, para. 12 (2019). The Commission also adopted additional parameters and requirements to ensure the bona fides of such viewer complaints. See 47 CFR §§ 73.1201(k); 74.1203(a)(3); 74.1204(f).

²⁷⁵ See 47 CFR § 74.793(e).

²⁷⁶ See 47 CFR § 74.793(h).

interference to LMR facilities;²⁷⁷ (2) interference to/from protected television facilities in Canada and Mexico. We tentatively find that it would be helpful to memorialize in our rules that such circumstances involving “protected” services would qualify an LPTV/TV translator station for displacement.

77. Finally, we propose to add interference caused to a TV translator input channel as a basis for displacement. TV translators serve areas that would otherwise be unable to receive television service and are often found in rural and mountainous areas. Translator input channels provide TV translators a means to receive the programming that they are translating and would otherwise likely not be available over-the-air to the viewers they serve. While translator inputs are not “protected services,” we tentatively conclude it is in the public interest to protect these channels from interference given their often critical role in enabling TV translators to serve their viewers.

78. Enumerating these circumstances within the displacement rule will make it clearer for licensees to know when displacement relief is warranted. We seek comment on these proposals and whether there are other situations involving interference being caused or received by LPTV/TV translator stations to “other protected services,” or that otherwise would serve the public interest, that we should consider permitting as a basis for displacement.²⁷⁸

5. Program Test Authority Rule for LPTV/TV Translators

79. We propose to make the Commission’s part 73 “program test authority” (PTA) rule applicable to LPTV/TV translator stations.²⁷⁹ Currently, full power and Class A stations, with certain exceptions, may begin operating under PTA after completion of a facility provided that an application for license to cover is filed within ten days of commencing operations.²⁸⁰ A similar rule does not exist in the part 74 rules for LPTV/TV translator stations. The purpose of this change is to make clear that LPTV/TV translator stations, with limited exception, have the same flexibility to begin operating automatically pursuant to program authority, while also making clear that they are required to submit an application for license after completing construction and within ten days of commencing PTA.²⁸¹ We seek comment on this proposed revision.

²⁷⁷ See 47 CFR 74.703(e) (“Low power TV and TV translator stations are being authorized on a secondary basis to existing land mobile uses and must correct whatever interference they cause to land mobile stations or cease operation”).

²⁷⁸ See *ATBA Ex Parte* (asking that the Commission consider whether to allow a secondary channel sharee station that loses its channel as a result of the termination of a channel sharing arrangement to file an application for a new channel). Under our current rules, following the expiration or termination of a channel sharing arrangement, a station can either find a new channel sharing host or file a major modification application to obtain a new channel. While major modifications for new channels are currently frozen, the Media Bureau has recently announced it is commencing the process of lifting the freeze on major modification channel changes. See *Media Bureau Announces Commencement of First-Come, First-Serve Channel Change Opportunity for Class A Television, LPTV, and TV Translator Stations Beginning on August 20, 2024*, Public Notice, DA 24-498 (MB rel. May 28, 2024).

²⁷⁹ A permittee, upon completion of their facility and following equipment tests, 47 CFR § 73.1610, may commence operations pursuant to “program test authority” provided that: (1) an application for license is filed within 10 days of the commencement of program tests, and (2) the construction permit does not contain any special operating conditions that prohibit automatic program test authority. 47 CFR § 73.1620(a).

²⁸⁰ *Id.* See also *Reregulation and Oversight of the Rules for Radio and TV Broadcasting*, 76 F.C.C.2d 40 (1980) (allowing for the first time most broadcast permittees to begin program test authority operations automatically provided they submit an application for license within 10 days).

²⁸¹ Channel 14 stations would continue to be required to seek approval prior to commencing operations pursuant to program test authority. See 47 CFR § 73.1620(a). The Commission or the Media Bureau under its delegated authority may also continue to place conditions as may be necessary on a station’s construction permit requiring grant of program test authority prior to commencing operations.

L. Part 73 and Part 74 Ministerial Rule Corrections

80. We propose a few minor editorial changes to our rules as a result of inadvertent oversights in the *2022 Part 74 Order* and *2023 Part 73 Order*.²⁸² We also propose to reorganize section 74.780 to better reflect which part 73 rules are applicable to both LPTV and TV translator stations and which are applicable only to LPTV stations. We seek comment on these proposed minor revisions.

81. *Part 74 Rule Corrections.* In the Commission's *2022 Part 74 Order*, the Commission updated its part 74 rules for LPTV/TV translator stations to reflect the current operating environment, including the termination of analog operations.²⁸³ However, the *2022 Part 74 Order* inadvertently left in place a duplicate definition of low power TV station that exists in both sections 74.701(f) and (k) and a duplicate definition of television broadcast translator station that exists in both sections 74.701(a) and (j).²⁸⁴ We propose to remove the respective duplicate definitions in section 74.701 and re-lettering the remaining paragraphs as (a) through (g).²⁸⁵ Additionally, the Commission concluded that because LPTV/TV translators have completed their transition from analog to digital operations, there is no need to differentiate between digital and analog in the rules.²⁸⁶ Accordingly, for the aforementioned reasons, we propose to remove the remaining instances of the word "digital" from section 74.720, a rule which was added in a rulemaking that had not yet taken effect at the time the *2022 Part 74 Order* was adopted.²⁸⁷ Finally, we propose to eliminate the words "analog" and "digital" as they relate to LPTV operation from sections 11.11(a) and (b), 11.51(e), and 11.61 in accordance with actions taken in the *2022 Part 74 Order* removing such references.

82. *Reorganization of Section 74.780.* Throughout this item, we propose to add requirements applicable to LPTV stations.²⁸⁸ Section 74.780 contains a list of broadcast regulations applicable to both TV translators and LPTV stations. In order to make those requirements easier to locate, we propose to reorganize the requirements into subsections of the rule and group them based on the service(s) each subsection is applicable to, separating those rules that are applicable to TV translators and LPTVs from those rules that are applicable to LPTV stations only. In addition, we propose to remove the cross-

²⁸² The changes outlined in this section are contained in App. A – Proposed Rules.

²⁸³ See *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations, Update of Parts 74 of the Commission's Rules Related to Low Power Television and Television Translator Stations*, MB Docket Nos. 03-185 and 22-261, Order and Sixth Notice of Proposed Rulemaking, 37 FCC Rcd 8173 (2022) (*2022 Part 74 Order*); Erratum, FCC 22-58 (rel. Sept. 9, 2022).

²⁸⁴ 47 CFR §§ 74.701(a), (f), (j), and (k).

²⁸⁵ We also propose to update the cross-references in 47 CFR §§ 11.11(b), 11.11(e), 73.3580(a)(3), 74.783(a), 74.783(a)(1), and 74.790(g)(2) to reflect the new lettering and propose to update a defined term in 47 CFR § 74.784(e) to be consistent with the definitions in proposed § 74.701.

²⁸⁶ *2022 Part 74 Order* at 8176, para. 6.

²⁸⁷ 47 CFR § 74.720 (proposing to remove the word "digital" from the heading and paragraphs (a), (b), and (f)). See *LPTV DTS R&O*, 36 FCC Rcd at 1227 (adding section 74.720 to subpart G of part 74 of the Commission's rules); *Media Bureau Announces May 18, 2023 Effective Date of Revised DTS Rules for Class A and Low Power Television Broadcast Stations*, MB Docket No. 20-74 and GN Docket No. 16-142, Public Notice, 38 FCC Rcd 3419 (MB 2023).

²⁸⁸ We propose to add cross-references to 47 CFR §§ 73.1941, 73.1942, 73.1943, 73.1944, and 73.3526, and to modify the existing cross-reference to 47 CFR § 73.1940 to only be applicable to LPTV stations. *Supra* App. A – Proposed Rules.

reference to section 73.1692 found in the current section 74.780 since that section was previously removed from the rules.²⁸⁹ We seek comment on these proposals.

83. *Part 73 Rule Corrections.* In the Commission's 2023 *Part 73 Report and Order*, the Commission reorganized and streamlined its rules in recognition of the completion of the digital television transition and subsequent Incentive Auction and repack.²⁹⁰ However, a cross-reference to section 73.685 in section 73.7003 was inadvertently overlooked and not updated to reflect the new location of the rule, which is section 73.618. We propose to update this cross-reference to point to the new location of the cross-referenced rule.²⁹¹ We also propose to correct two other oversights in section 73.7003. The reference in paragraph (b)(4) to the "Grade B" contour should be replaced with a reference to the "NLSC" because Grade B refers to analog service, which no longer exists and NLSC is the correct contour.²⁹² Also an internal cross-reference in paragraph (c)(5)(ii) incorrectly refers to a non-existent paragraph and should instead reference paragraph (c)(5)(i) and we propose that correction. We also propose to replace a reference to "DTV" in 73.619(b)(1) with "TV" consistent with other similar replacements in the 2023 *Part 73 Report and Order*.²⁹³ The Commission also updated the part 73 rules to provide accurate information about current Commission forms and filing procedures,²⁹⁴ but did not update the reference to Forms 301 and 340 in section 73.625(c)(4)(i) or Form 302-CA in section 73.6002(a)(2). We propose to update these references to indicate the correct forms – Form 2100 Schedule 301-AM and Form 2100 Schedule F, respectively. Finally, after Federal Register publication, a few minor typographical mistakes were found in the updated part 73 rules, as adopted. In section 73.2080(f)(3), there are four instances of a struck "s" at the end of the word "Form" which was inadvertent and should be removed, and in section 73.4060(a), the citation has a struck "4" in it which should be removed. We seek comment on these proposals.

M. Cost/Benefit Analysis

84. We seek comment on the benefits and costs associated with adopting the proposals set forth in this NPRM. We seek comment on any benefits to the public and to industry through adoption of our proposals. We also seek comment on any potential costs that would be imposed on licensees, regulatees, and the public if we adopt the proposals contained in this NPRM. Comments should be accompanied by specific data and analysis supporting claimed costs and benefits.

N. Digital Equity and Inclusion

85. The Commission, as part of its continuing effort to advance digital equity for all,²⁹⁵ 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

²⁸⁹ See *Inquiry Into the Commission's Policies and Rules Regarding AM Radio Service Directional Antenna Performance Verification*, MB Docket No. 93-177, Third Report and Order and Second Order on Reconsideration, 28 FCC Red 12555 (2013).

²⁹⁰ *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) (2023 *Part 73 Report and Order*).

²⁹¹ *Id.* at para. 9, n. 27.

²⁹² *Id.* at para. 7, n. 19.

²⁹³ *Id.* at para. 10, n. 28.

²⁹⁴ *Id.* at para. 18.

²⁹⁵ 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.

or inequality, invites comment on any equity-related considerations²⁹⁶ and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

IV. PROCEDURAL MATTERS

86. *Ex Parte Rules - Permit-But-Disclose.* The proceeding this NPRM initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.²⁹⁷ 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.

87. *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).²⁹⁸

- 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.

²⁹⁶ 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).

²⁹⁷ 47 CFR §§ 1.1200 *et seq.*

²⁹⁸ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- 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-19.²⁹⁹
- 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.

88. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),³⁰⁰ 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.”³⁰¹ Accordingly, we have prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the possible/potential impact of the rule and policy changes contained in this *NPRM*. The IRFA is set forth in Appendix B. The Commission invites the general public, in particular small businesses, to comment on the IRFA. Comments must be filed by the deadlines for comments on the *NPRM* indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA.

89. *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 these information collection requirements. 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.

90. *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.

91. *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>.³⁰²

92. *OPEN Government Data Act.* The OPEN Government Data Act,³⁰³ requires agencies to make “public data assets” available under an open license and as “open Government data assets,” *i.e.*, in machine-readable, open format, unencumbered by use restrictions other than intellectual property rights,

²⁹⁹ *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020).

³⁰⁰ *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).

³⁰¹ *Id.* § 605(b).

³⁰² 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.

³⁰³ Congress enacted the OPEN Government Data Act as Title II of the Foundations for Evidence-Based Policymaking Act of 2018, Pub. L. No. 115-435 (2019), §§ 201-202.

and based on an open standard that is maintained by a standards organization.³⁰⁴ This requirement is to be implemented “in accordance with guidance by the Director” of the OMB.³⁰⁵

93. We tentatively conclude that requiring certain LPTV licensees to maintain an OPIF would not create “data assets” as defined in 44 U.S.C. § 3502(17). A “data asset” is “a collection of data elements or data sets that may be grouped together,”³⁰⁶ and “data” as “recorded information, regardless of form or the media on which the data is recorded.”³⁰⁷ The documents required to be maintained in an OPIF reflect unstructured information that is generally not systematically arranged in a table or database, and as such cannot readily be meaningfully grouped together. We tentatively conclude, therefore, that, in the absence of a standardized collection form, our requirement to maintain an OPIF is not subject to the requirements of the OPEN Government Data Act. We seek comment on this tentative conclusion.

94. *Additional Information.* For additional information on this proceeding, contact Kim Matthews, Policy Division, Media Bureau, at Kim.Matthews@fcc.gov or (202) 418-2154; Shaun Maher, Video Division, Media Bureau at Shaun.Maher@fcc.gov or (202) 418-2324; or Mark Colombo, Video Division, Media Bureau at Mark.Colombo@fcc.gov or (202) 418-7611.

V. ORDERING CLAUSES

95. Accordingly, **IT IS ORDERED** that, pursuant to the authority found in sections 1, 2, 4(i), 4(j), 303, 307, 309, 311, 312, and 315 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 303, 307, 309, 311, 312, 315 this Notice of Proposed Rulemaking **IS ADOPTED**.

96. **IT IS FURTHER ORDERED** that the Commission’s Office of the Secretary, **SHALL SEND** a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Act Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

³⁰⁴ 44 U.S.C. § 3502(20), (22) (definitions of “open Government data asset” and “public data asset”); *id.* § 3506(b)(6)(B) (public availability).

³⁰⁵ OMB has not yet issued final guidance.

³⁰⁶ *Id.* § 3502(17).

³⁰⁷ *Id.* § 3502(16).

APPENDIX A

Proposed Rules

The Federal Communications Commission proposes to amend 47 CFR parts 11, 73, and 74 to read as follows:

Part 11 of Title 47 of the U.S. Code of Federal Regulations is proposed to be amended to read as follows:

PART 11 – EMERGENCY ALERT SYSTEM (EAS)

1. The authority citation for part 11 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 154(i) and (o), 303(r), 544(g), 606, 1201, 1206.

2. Section 11.11 is amended by revising paragraphs (a) and (b) to read as follows:

§ 11.11 The Emergency Alert System (EAS).

(a) The EAS is composed of analog radio broadcast stations including AM, FM, and Low-power FM (LPFM) stations; digital audio broadcasting (DAB) stations, including digital AM, FM, and Low-power FM stations; ~~Class A television (CA) and Low-power TV (LPTV) stations; digital television (DTV)~~ broadcast stations, including ~~digital Class A and digital low-power TV (LPTV) stations;~~ analog cable systems; digital cable systems which are defined for purposes of this part only as the portion of a cable system that delivers channels in digital format to subscribers at the input of a Unidirectional Digital Cable Product or other navigation device; wireline video systems; wireless cable systems which may consist of Broadband Radio Service (BRS), or Educational Broadband Service (EBS) stations; DBS services, as defined in § 25.701(a) of this chapter (including certain Ku-band Fixed-Satellite Service Direct to Home providers); and SDARS, as defined in § 25.201 of this chapter. These entities are referred to collectively as EAS Participants in this part, and are subject to this part, except as otherwise provided herein. At a minimum EAS Participants must use a common EAS protocol, as defined in § 11.31, to send and receive emergency alerts, and comply with the requirements set forth in § 11.56, in accordance with the following tables:

Table 1—Analog and Digital Broadcast Station Equipment Deployment Requirements

EAS equipment requirement	AM & FM	Digital AM & FM	Analog & digital FM class D	Analog & digital LPFM	DTV	Analog & digital eClass A TV	Analog & digital LPTV
EAS decoder ¹	Y	Y	Y	Y	Y	Y	Y
EAS encoder	Y	Y	N	N	Y	Y	N
Audio message	Y	Y	Y	Y	Y	Y	Y
Video message	N/A	N/A	N/A	N/A	Y	Y	Y

¹ EAS Participants may comply with the obligations set forth in § 11.56 to decode and convert CAP-formatted messages into EAS Protocol-compliant messages by deploying an Intermediary Device, as specified in § 11.56(b).

* * * * *

(b) Analog class D non-commercial educational FM stations as defined in § 73.506 of this chapter, digital class D non-commercial educational FM stations, analog LPFM stations as defined in §§ 73.811 and 73.853 of this chapter, digital LPFM stations, ~~analog LPTV stations as defined in § 74.701(f), and digital LPTV stations as defined in § 74.701(kb) of this chapter~~ are not required to comply with § 11.32. ~~Analog and digital LPTV stations that operate as television broadcast translator stations, as defined in § 74.701(b) of this chapter, are not required to comply with the requirements of this part.~~ **Television broadcast translator stations, as defined in § 74.701(a) of this chapter, which entirely rebroadcast the programming of other broadcast television stations are not required to comply with the requirements of this part.** FM broadcast booster stations as defined in § 74.1201(f) of this chapter and FM translator stations as defined in § 74.1201(a) of this chapter which entirely rebroadcast the programming of other local FM broadcast stations are not required to comply with the requirements of this part. International broadcast stations as defined in § 73.701 of this chapter are not required to comply with the requirements of this part. Analog and digital broadcast stations that operate as satellites or repeaters of a hub station (or common studio or control point if there is no hub station) and rebroadcast 100 percent of the programming of the hub station (or common studio or control point) may satisfy the requirements of this part through the use of a single set of EAS equipment at the hub station (or common studio or control point) which complies with §§ 11.32 and 11.33.

* * * * *

3. Section 11.51 is amended by revising paragraph (e) to read as follows:

§ 11.51 EAS code and Attention Signal Transmission requirements.

* * * * *

(e) Analog class D non-commercial educational FM stations as defined in § 73.506 of this chapter, digital class D non-commercial educational FM stations, analog Low Power FM (LPFM) stations as defined in §§ 73.811 and 73.853 of this chapter, digital LPFM stations, ~~analog low power TV (LPTV) stations as defined in § 74.701(f) of this chapter, and digital LPTV stations as defined in § 74.701(bk) of this chapter~~ are not required to have equipment capable of generating the EAS codes and Attention Signal specified in § 11.31.

* * * * *

4. Section 11.61 is amended by revising paragraphs (a)(1)(i), (a)(2)(i)(A), and (a)(2)(ii) to read as follows:

§ 11.61 Tests of EAS procedures.

(a) * * *

(1) * * *

(i) Tests in odd numbered months shall occur between 8:30 a.m. and local sunset. Tests in even numbered months shall occur between local sunset and 8:30 a.m. They will originate from Local or State Primary sources. The time and script content will be developed by State Emergency Communications Committees in cooperation with affected EAS Participants. Script content may be in the primary language of the EAS Participant. These monthly tests must be transmitted within 60 minutes of receipt by EAS Participants in an EAS Local Area or State. Analog and digital class D non-commercial educational FM, analog and digital LPFM stations, and ~~analog and digital LPTV stations~~ are required to transmit only the test script.

* * * * *

(2) * * *

(i) * * *

(A) Analog and digital AM, FM, and TV broadcast stations must conduct tests of the EAS header and EOM codes at least once a week at random days and times. ~~Effective December 31, 2006, DAB stations must conduct these tests on all audio streams. Effective December 31, 2006, DAB and~~ TV stations must conduct these tests on all program streams.

* * * * *

(ii) DBS providers, SDARS providers, analog and digital class D non-commercial educational FM stations, analog and digital LPM stations, and ~~analog and digital~~ LPTV stations are not required to transmit this test but must log receipt, as specified in § 11.35(a) and 11.54(a)(3).

* * * * *

PART 73 – RADIO BROADCAST SERVICES

5. The authority citation for part 73 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, and 339.

6. Section 73.619 is amended by revising paragraph (b)(1) to read as follows:

§ 73.619 Contours and service areas.

* * * * *

(b) * * *

(1) In predicting the distance to the field strength contours, the F (50,50) field strength charts (Figures 9, 10 and 10b of § 73.699) and the F (50,10) field strength charts (Figures 9a, 10a and 10c of § 73.699) shall be used. To use the charts to predict the distance to a given F (50,90) contour, the following procedure is used: Convert the effective radiated power in kilowatts for the appropriate azimuth into decibel value referenced to 1 kW (dBk). Subtract the power value in dBk from the contour value in dBu. Note that for power less than 1 kW, the difference value will be greater than the contour value because the power in dBk is negative. Locate the difference value obtained on the vertical scale at the left edge of the appropriate F (50,50) chart for the TV station's channel. Follow the horizontal line for that value into the chart to the point of intersection with the vertical line above the height of the antenna above average terrain for the appropriate azimuth located on the scale at the bottom of the chart. If the point of intersection does not fall exactly on a distance curve, interpolate between the distance curves below and above the intersection point. The distance values for the curves are located along the right edge of the chart. Using the appropriate F (50,10) chart for the ~~DTV~~ station's channel, locate the point where the distance coincides with the vertical line above the height of the antenna above average terrain for the appropriate azimuth located on the scale at the bottom of the chart. Follow a horizontal line from that point to the left edge of the chart to determine the F (50,10) difference value. Add the power value in dBk to this difference value to determine the F (50,10) contour value in dBu. Subtract the F (50,50) contour value in dBu from this F (50,10) contour value in dBu. Subtract this difference from the F (50,50) contour

value in dBu to determine the F (50,90) contour value in dBu at the pertinent distance along the pertinent radial.

* * * * *

7. Section 73.625 is amended by revising paragraph (c)(4)(i) to read as follows:

§ 73.625 - TV antenna system.

* * * * *

(c)(4)(i) In cases where it is proposed to use a tower of an AM broadcast station as a supporting structure for a TV broadcast antenna, an appropriate application for changes in the radiating system of the AM broadcast station must be filed by the licensee thereof. A formal application (**FCC Form 2100 Schedule 301-AM**~~FCC Form 301, or FCC Form 340 for a noncommercial educational station~~) will be required if the proposal involves substantial change in the physical height or radiation characteristics of the AM broadcast antennas; otherwise an informal application will be acceptable. (In case of doubt, an informal application (letter) together with complete engineering data should be submitted.) An application may be required for other classes of stations when the tower is to be used in connection with a TV station.

* * * * *

8. Section 73.2080 is amended by revising paragraph (f)(3) to read as follows:

§ 73.2080 - Equal employment opportunities (EEO).

* * * * *

(f)(3) If a station is subject to a time brokerage agreement, the licensee shall file Forms 2100 Schedule 396 and EEO public file reports concerning only its own recruitment activity. If a licensee is a broker of another station or stations, the licensee-broker shall include its recruitment activity for the brokered station(s) in determining the bases of Forms 2100 Schedule 396 and the EEO public file reports for its own station. If a licensee-broker owns more than one station, it shall include its recruitment activity for the brokered station in the Forms 2100 Schedule 396 and EEO public file reports filed for its own station that is most closely affiliated with, and in the same market as, the brokered station. If a licensee-broker does not own a station in the same market as the brokered station, then it shall include its recruitment activity for the brokered station in the Forms 2100 Schedule 396 and EEO public file reports filed for its own station that is geographically closest to the brokered station.

* * * * *

9. Section 73.3526 is amended by revising paragraphs (a)(2), (e)(11)(iii), (e)(14), (e)(15), (e)(16), and (e)(17) to read as follows:

§ 73.3526 Online public inspection file of commercial stations.

* * * * *

(a)(2) Every permittee or licensee of an AM, FM, TV, or Class A TV station in the commercial broadcast services, **and every permittee or licensee of an LPTV station affiliated with a top-four TV network (ABC, CBS, NBC, or Fox)**, shall maintain a public inspection file containing the material, relating to that station, described in paragraphs (e)(1) through (e)(10) and paragraphs (e)(13) **and (e)(19)** of this section.

In addition, every permittee or licensee of a commercial TV ~~or Class A~~ station shall maintain for public inspection a file containing material, relating to that station, described in paragraphs (e)(11) and **(e)(14), (e)(15), (e)(16), and (e)(18)** of this section, **every permittee or licensee of a Class A TV station shall maintain for public inspection a file containing material, relating to that station, described in paragraphs (e)(11), (e)(14), (e)(15), (e)(16) and (e)(17) of this section, every permittee or licensee of an LPTV station affiliated with a top-four TV network shall maintain for public inspection a file containing material, relating to that station, described in paragraphs (e)(14), (e)(15), and (e)(16) of this section,** and every permittee or licensee of a commercial AM or FM station shall maintain for public inspection a file containing the material, relating to that station, described in paragraphs (e)(12), ~~and (e)(14), and (e)(16)~~ of this section. A separate file shall be maintained for each station for which an authorization is outstanding, and the file shall be maintained so long as an authorization to operate the station is outstanding.

* * * * *

(e)(11)(iii) *Children's television programming reports.* For commercial TV **and Class A** broadcast stations on an annual basis, a completed Children's Television Programming Report ("Report"), on FCC Form 2100 Schedule H, reflecting efforts made by the licensee during the preceding year to serve the educational and informational needs of children. The Report is to be electronically filed with the Commission by the thirtieth (30) day of the succeeding calendar year. A copy of the Report will also be linked to the station's online public inspection file by the FCC. The Report shall identify 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. The Report shall include the name of the individual at the station responsible for collecting comments on the station's compliance with the Children's Television Act, and it shall be separated from other materials in the public inspection file. These Reports shall be retained in the public inspection file until final action has been taken on the station's next license renewal application.

* * * * *

(e)(14) *Radio and television time brokerage agreements.* For commercial radio and television stations, **and LPTV stations affiliated with a top-four TV network,** a copy of every agreement or contract involving time brokerage of the licensee's station or of another station by the licensee, whether the agreement involves stations in the same markets or in differing markets, with confidential or proprietary information redacted where appropriate. These agreements shall be placed in the public file within 30 days of execution and retained in the file as long as the contract or agreement is in force.

(15) *Must-carry or retransmission consent election.* Statements of a commercial television or Class A television station's election, **or the election of an LPTV station affiliated with a top-four TV network,** with respect to either must-carry or re-transmission consent, as defined in §§76.64 and 76.1608 of this chapter. These records shall be retained for the duration of the three year election period to which the statement applies. Commercial television stations shall, no later than July 31, 2020, provide an up-to-date email address and phone number for carriage-related questions and respond as soon as is reasonably possible to messages or calls from multichannel video programming distributors (MVPDs). Each commercial television station is responsible for the continuing accuracy and completeness of the information furnished.

(16) *Radio and television joint sales agreements.* For commercial radio and commercial television stations, **and for LPTV stations affiliated with a top-four TV network,** a copy of agreement for the joint sale of advertising time involving the station, whether the agreement involves stations in the same markets or in differing markets, with confidential or proprietary information redacted where appropriate. These agreements shall be placed in the public file within 30 days of execution and retained in the file as long as the contract or agreement is in force.

(17) *Class A TV continuing eligibility.* Documentation sufficient to demonstrate that the Class A television station is continuing to meet the eligibility requirements set forth at §73.6001. **Such documentation must be filed every calendar quarter by the tenth day of the succeeding calendar quarter (e.g., January 10 for the quarter October—December, April 10 for the quarter January—March, etc.). The documentation shall include a certification that the Class A television station is continuing to meet the eligibility requirements set forth at §73.6001 and shall include, but shall not be limited to, the time, date, duration, and title of each locally produced program that was aired during that calendar quarter. The documentation described in this paragraph shall be retained in the public inspection file until final action has been taken on the station's next license renewal application.**

* * * * *

10. Section 73.3572 is amended by revising paragraph (a)(2) introductory text and removing paragraphs (a)(2)(i) through (ii) to read as follows:

§ 73.3572 - Processing of TV broadcast, Class A TV broadcast, low power TV, and TV translators applications.

* * * * *

(a)(2) In the case of Class A TV stations authorized under subpart J of this part and low power TV and TV translator stations authorized under part 74 of this chapter, **major or minor changes are defined in § 74.787(b). a major change is any change in:**

~~(i) Frequency (output channel), except a change in offset carrier frequency; or~~

~~(ii) Transmitting antenna location where the protected contour resulting from the change is not predicted to overlap any portion of the protected contour based on the station's authorized facilities.~~

* * * * *

11. Section 73.3580 is amended by revising paragraph (a)(3) to read as follows:

§ 73.3580 - Local public notice of filing of broadcast applications.

* * * * *

(a)(3): *Locally originating programming.* Programming from a low power television (LPTV) or television translator station as defined in § 74.701(gh) of this chapter.

* * * * *

12. Section 73.4060 is amended by revising paragraph (a) to read as follows:

§ 73.4060 - Citizens agreements.

(a) See Report and Order, Docket 20495, FCC 75-1359, adopted December 10, 1975. 57 F.C.C. 2d 42; 40 FR 459730, December 30, 1975.

* * * * *

13. Section 73.6001 is amended by revising paragraph (d) to read as follows:

§ 73.6001 – Eligibility and service requirements.

* * * * *

(d) Licensees unable to continue to meet the minimum operating requirements for Class A television stations, or which elect to revert to low power television status, shall promptly notify the Commission, in writing, and request a change in status. **The station's call sign will be modified to one consistent with the requirements of § 74.791(c) following reversion to low power television status.**

* * * * *

14. Amend § 73.6002 by:

- a. Revising paragraph (a)(2);
- b. Adding paragraphs (b) introductory text and (b)(1) through (3).

§ 73.6002 – Licensing requirements.

(a) * * *

* * * * *

(2) Files an acceptable application for a Class A Television license (FCC Form **2100 Schedule F302-CA**).
~~CA~~.

(b) Community coverage requirements.

(1) A Class A station's protected contour (see §73.6010 of this subpart) is required to overlap with at least a portion of its community of license.

(2) To change a Class A station's community of license, a modification of license must be filed specifying the new community and including an exhibit indicating that the protected contour of the facility specified in the license to cover overlaps with at least a portion of the proposed community of license. A station may change its community of license no more than once every 12 months.

(3) For purposes of determining whether a community of license's boundary overlaps with a station's protected service contour, an applicant shall use the legal boundary of the community as may be designated by any federal, state, local, or tribal governmental entity.

* * * * *

15. Section 73.6017 is revised to read as follows:

§ 73.6017 - Class A TV station protection of Class A TV stations.

An application to change the facilities of a Class A TV station will not be accepted if it fails to protect authorized Class A stations in accordance with the requirements of § 74.793 (b) through (d), ~~and~~ ~~74.793(g)~~, **and (j)** of this chapter. This protection must be afforded to applications for changes in other

authorized Class A stations filed prior to the date the Class A application is filed.

16. Section 73.6019 is revised to read as follows:

§ 73.6019 - Class A TV station protection of low power TV and TV translator stations.

An application to change the facilities of a Class A TV station will not be accepted if it fails to protect authorized low power TV and TV translator stations in accordance with the requirements of § 74.793(b) through (d), ~~and (h), and (j)~~ of this chapter. This protection must be afforded to applications for changes filed prior to the date the Class A station is filed.

17. Section 73.6023 is amended by adding paragraph (f)(6) to read as follows:

§ 73.6023 - Distributed transmission systems.

* * * * *

(f)(6) All DTS transmitters must use the same emission mask. See § 73.6024(d) of this subpart regarding permissible emission masks.

* * * * *

18. Section 73.7003 is amended by revising paragraphs (b)(2), (b)(4), and (c)(5)(ii) to read as follows:

§ 73.7003 - Point system selection procedures.

* * * * *

(b) * * *

* * * * *

(2) **Local diversity of ownership.** Two points for applicants with no attributable interests, as defined in § 73.7000, in any other broadcast station or authorized construction permit (comparing radio to radio and television to television) whose principal community (city grade) contour overlaps that of the proposed station. The principal community (city grade) contour is the 5 mV/m for AM stations, the 3.16 mV/m for FM stations calculated in accordance with § 73.313(c), and the contour identified in § **73.618(a)** ~~73.685(a)~~ for TV. Radio applicants will count commercial and noncommercial AM, FM, and FM translator stations other than fill-in stations. Television applicants will count UHF, VHF, and Class A stations.

* * * * *

(4) **Technical parameters.** One point to the applicant covering the largest geographic area and population with its relevant contour (60 dBu for FM and ~~Grade-B~~ NLSC for TV), provided that the applicant covers both a ten percent greater area and a ten percent greater population than the applicant with the next best technical proposal. The top applicant will receive two points instead of one point if its technical proposal covers both a 25 percent greater area and 25 percent greater population than the next best technical proposal.)

(c) * * *

* * * * *

(5) * * *

* * * * *

(ii) Groups of more than three tied, grantable applications will not be eligible for licensing under this section. Where such groups exist, the Commission will dismiss all but the applications of the three applicants that have been local, as defined in § 73.7000, for the longest uninterrupted periods of time. The Commission will then process the remaining applications as set forth in paragraph (c)(45)(i) of this section.

* * * * *

PART 74 - EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

19. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 307, 309, 310, 325, 336 and 554.

20. Section 74.701 is amended by revising paragraphs (a), (b), and (e) through (g) and removing paragraphs (h) through (m) to read as follows:

§ 74.701 Definitions.

(a) Television broadcast translator station (TV translator). **A station operated for the purpose of retransmitting the programs and signals of a television broadcast station, without significantly altering any characteristic of the original signal other than its frequency, for the purpose of providing television reception to the general public.** ~~A station in the broadcast service operated for the purpose of retransmitting the programs and signals of a television broadcast station, without significantly altering any characteristic of the original signal other than its frequency and amplitude, for the purpose of providing television reception to the general public.~~

(b) Low power TV station (LPTV). **A station authorized under the provisions of this subpart that may retransmit the programs and signals of a television broadcast station, may originate programming in any amount greater than 30 seconds per hour for the purpose of providing television reception to the general public and, subject to a minimum video program service requirement, may offer services of an ancillary or supplementary nature, including subscription-based services. (See § 74.790.)** ~~Primary station. The television station which provides the programs and signals being retransmitted by a television broadcast translator station.~~

* * * * *

(c) Primary station. **The television station which provides the programs and signals being retransmitted by a television broadcast translator station.** ~~[Reserved]~~

(f) Existing low power television or television translator station. **When used in this subpart, the terms existing low power television and existing television translator station refer to a low power television station or television translator station that is either licensed or has a valid construction permit.** ~~Low power TV station. A station authorized under the provisions of this subpart that may~~

retransmit the programs and signals of a TV broadcast station and that may originate programming in any amount greater than 30 seconds per hour and/or operates a subscription service. (See § 73.641 of part 73 of this chapter.)

(g) **Local origination.** For purposes of this part, local origination shall be any transmissions other than the simultaneous retransmission of the programs and signals of a TV broadcast station or transmissions related to service offerings of an ancillary or supplementary nature. Origination shall include locally generated television program signals and program signals obtained via video recordings (tapes and discs), microwave, common carrier circuits, or other sources. ~~[Reserved]~~

~~(h) Local origination. Program origination if the parameters of the program source signal, as it reaches the transmitter site, are under the control of the low power TV station licensee. Transmission of TV program signals generated at the transmitter site constitutes local origination. Local origination also includes transmission of programs reaching the transmitter site via TV STL stations, but does not include transmission of signals obtained from either terrestrial or satellite microwave feeds or low power TV stations.~~

~~(i) [Reserved]~~

(j) **Television broadcast translator station (“TV translator station”).** A station operated for the purpose of retransmitting the programs and signals of a television broadcast station, without significantly altering any characteristic of the original signal other than its frequency, for the purpose of providing television reception to the general public.

(k) **Low power TV station (“LPTV station”).** A station authorized under the provisions of this subpart that may retransmit the programs and signals of a television broadcast station, may originate programming in any amount greater than 30 seconds per hour for the purpose of providing television reception to the general public and, subject to a minimum video program service requirement, may offer services of an ancillary or supplementary nature, including subscription-based services. (See § 74.790.)

(l) **Digital program origination.** For purposes of this part, digital program origination shall be any transmissions other than the simultaneous retransmission of the programs and signals of a TV or DTV broadcast station or transmissions related to service offerings of an ancillary or supplementary nature. Origination shall include locally generated television program signals and program signals obtained via video recordings (tapes and discs), microwave, common carrier circuits, or other sources.

~~(m) Existing low power television or television translator station. When used in this subpart, the terms existing low power television and existing television translator station refer to a low power television station or television translator station that is either licensed or has a valid construction permit.~~

21. Section 74.720 is amended by:

- a. Revising the section heading and paragraphs (a) through (b);
- b. Adding paragraph (e)(6); and
- c. Revising paragraph (f).

The revisions read as follows:

§ 74.720 – ~~Digital~~ Low power TV distributed transmission systems.

(a) A ~~digital~~ low power TV or TV translator (LPTV) station may be authorized to operate multiple synchronized transmitters on its assigned channel to provide service consistent with the requirements of

this section. Such operation is called a distributed transmission system (DTS). Except as expressly provided in this section, LPTV stations operating a DTS facility must comply with all rules in this part applicable to LPTV single-transmitter stations.

(b) For purposes of compliance with this section, a ~~digital~~ LPTV station's "authorized facility" is the facility authorized for the station in a license or construction permit for non-DTS, single-transmitter-location operation. An ~~digital~~ LPTV station's "authorized service area" is defined as the area within its protected contour (described by § 74.792) as determined using the authorized facility.

* * * * *

(e)(6) All DTS transmitters must use the same emission mask. See § 74.794 of this subpart regarding permissible emission masks.

(f) All transmitters operating under a single LPTV DTS license must follow the same ~~digital~~ broadcast television transmission standard.

22. Section 74.732 is amended by revising paragraphs (d) through (e) to read as follows:

§ 74.732 – Eligibility and licensing requirements.

* * * * *

(d) The FCC will not act on applications for new low power TV or TV translator stations, ~~or for changes in facilities of existing stations, or for changes in output channel tendered by displaced stations pursuant to § 73.3572(a)(1),~~ when such changes will result in a major change, until the applicable time for filing a petition to deny has passed pursuant to section 73.3584(c) of this subpart.

(e) A proposal to change the primary TV station(s) being retransmitted ~~or an application of a licensed translator station to include low power TV station operation, i.e., program origination~~ will be subject only to a notification requirement.

* * * * *

23. Section 74.763 is amended by revising paragraph (a) introductory text and adding paragraphs (a)(1) through (3) to read as follows:

§ 74.763 – Time of operation.

(a) ~~A low power TV or TV translator station is not required to adhere to any regular schedule of operation. However, the licensee of a TV translator station is expected to provide service to the extent that such is within its control.~~ **Stations authorized subject to this subpart are required to operate with the following schedules:**

(1) The licensee of a low power TV station is required to air a minimum of 14 hours per calendar week of programming. Such operation must be consistent with § 73.1740(a)(2)(iii).

(2) The licensee of a TV translator, DRT, or DTDRT station is required to provide service to the extent that such is within its control and to avoid unwarranted interruptions in the service provided.

(3) All LPTV or TV translator station applicants for construction permits for minor or major modification of a licensed facility or applicants for renewal of a license must certify that the station has complied with the minimum operating requirement for its class of service set forth in this section. If an applicant cannot make such a certification, it must explain why and demonstrate that grant of such application is in the public interest.

* * * * *

24. Section 74.780 is revised to read as follows:

§ 74.780 - Broadcast regulations applicable to translators and low power stations.

(a) The following rules are applicable to TV translator and low power TV stations:

- (1) 47 CFR part 5—Experimental authorizations.**
- (2) 47 CFR 73.658—Affiliation agreements and network program practices; territorial exclusivity in non-network program arrangements.**
- (3) 47 CFR 73.1030—Notifications concerning interference to radio astronomy, research, and receiving installations.**
- (4) 47 CFR 73.1206—Broadcast of telephone conversations.**
- (5) 47 CFR 73.1207—Rebroadcasts.**
- (6) 47 CFR 73.1208—Broadcast of taped, filmed, or recorded material.**
- (7) 47 CFR 73.1211—Broadcast of lottery information.**
- (8) 47 CFR 73.1212—Sponsorship identifications; list retention; related requirements.**
- (9) 47 CFR 73.1216—Licensee-conducted contests.**
- (10) 47 CFR 73.1515—Special field test authorizations.**
- (11) 47 CFR 73.1615—Operation during modification of facilities.**
- (12) 47 CFR 73.1620—Program tests.**
- (13) 47 CFR 73.1635—Special temporary authorizations (STA).**
- (14) 47 CFR 73.1650—International agreements.**
- (15) 47 CFR 73.1680—Emergency antennas.**
- (16) 47 CFR 73.1740(a)(2)(iii)—Minimum operating schedule.**
- (17) 47 CFR 73.1940—Legally qualified candidates for public office.**
- (18) 47 CFR 73.3500—Application and report forms.**

-
- (19) 47 CFR 73.3511—Applications required.
 - (20) 47 CFR 73.3512—Where to file; number of copies.
 - (21) 47 CFR 73.3513—Signing of applications.
 - (22) 47 CFR 73.3514—Content of applications.
 - (23) 47 CFR 73.3516—Specification of facilities.
 - (24) 47 CFR 73.3517—Contingent applications.
 - (25) 47 CFR 73.3518—Inconsistent or conflicting applications.
 - (26) 47 CFR 73.3519—Repetitious applications.
 - (27) 47 CFR 73.3521—Mutually exclusive applications for low power TV and TV translator stations.
 - (28) 47 CFR 73.3522—Amendment of applications.
 - (29) 47 CFR 73.3525—Agreements for removing application conflicts.
 - (30) 47 CFR 73.3533—Application for construction permit or modification of construction permit.
 - (31) 47 CFR 73.3536—Application for license to cover construction permit.
 - (32) 47 CFR 73.3538(a)(1), (3), and (4) and (b)—Application to make changes in an existing station.
 - (33) 47 CFR 73.3539—Application for renewal of license.
 - (34) 47 CFR 73.3540—Application for voluntary assignment or transfer of control.
 - (35) 47 CFR 73.3541—Application for involuntary assignment of license or transfer of control.
 - (36) 47 CFR 73.3542—Application for emergency authorization.
 - (37) 47 CFR 73.3544—Application to obtain a modified station license.
 - (38) 47 CFR 73.3545—Application for permit to deliver programs to foreign stations.
 - (39) 47 CFR 73.3550—Requests for new or modified call sign assignments.
 - (40) 47 CFR 73.3561—Staff consideration of applications requiring Commission action.
 - (41) 47 CFR 73.3562—Staff consideration of applications not requiring action by the Commission.
 - (42) 47 CFR 73.3564—Acceptance of applications.
 - (43) 47 CFR 73.3566—Defective applications.
 - (44) 47 CFR 73.3568—Dismissal of applications.

-
- (45) 47 CFR 73.3572—Processing of TV broadcast, low power TV, and TV translator station applications.
- (46) 47 CFR 73.3580—Local public notice of filing of broadcast applications.
- (47) 47 CFR 73.3584—Petitions to deny.
- (48) 47 CFR 73.3587—Informal objections.
- (49) 47 CFR 73.3591—Grants without hearing.
- (50) 47 CFR 73.3593—Designation for hearing.
- (51) 47 CFR 73.3594—Local public notice of designation for hearing.
- (52) 47 CFR 73.3597—Procedures on transfer and assignment applications.
- (53) 47 CFR 73.3598—Period of construction.
- (54) 47 CFR 73.3601—Simultaneous modification and renewal of license.
- (55) 47 CFR 73.3603—Special waiver procedure relative to applications.
- (b) The following rules are applicable to low power TV stations only:
- (1) 47 CFR part 11—Emergency Alert System.
- (2) 47 CFR 73.1941—Equal opportunities.
- (3) 47 CFR 73.1942—Candidate rates.
- (4) 47 CFR 73.1943—Political file.
- (5) 47 CFR 73.1944—Reasonable access.
- (6) 47 CFR 73.2080—Equal employment opportunities.
- (7) 47 CFR 73.3526—Online public inspection file of commercial stations.
- (8) 47 CFR 73.3612—Annual employment report.
- (9) 47 CFR 73.3613—Availability to FCC of station contracts (network affiliation contracts only).
- ~~The following rules are applicable to TV translator and low power TV stations:~~
- ~~(a) 47 CFR part 5—Experimental authorizations.~~
- ~~(b) 47 CFR 73.658—Affiliation agreements and network program practices; territorial exclusivity in non-network program arrangements.~~

- ~~(c) 47 CFR part 11—Emergency Alert System (for low power TV stations locally originating programming as defined by § 74.701(h)).~~
- ~~(d) 47 CFR 73.1030—Notifications concerning interference to radio astronomy, research, and receiving installations.~~
- ~~(e) 47 CFR 73.1206—Broadcast of telephone conversations.~~
- ~~(f) 47 CFR 73.1207—Rebroadcasts.~~
- ~~(g) 47 CFR 73.1208—Broadcast of taped, filmed, or recorded material.~~
- ~~(h) 47 CFR 73.1211—Broadcast of lottery information.~~
- ~~(i) 47 CFR 73.1212—Sponsorship identifications; list retention; related requirements.~~
- ~~(j) 47 CFR 73.1216—Licensee conducted contests.~~
- ~~(k) 47 CFR 73.1515—Special field test authorizations.~~
- ~~(l) 47 CFR 73.1615—Operation during modification of facilities.~~
- ~~(m) 47 CFR 73.1635—Special temporary authorizations (STA).~~
- ~~(n) 47 CFR 73.1650—International agreements.~~
- ~~(o) 47 CFR 73.1680—Emergency antennas.~~
- ~~(p) 47 CFR 73.1692—Reserved.~~
- ~~(q) 47 CFR 73.1940—Legally qualified candidates for public office.~~
- ~~(r) 47 CFR 73.2080—Equal employment opportunities (for low power TV stations only).~~
- ~~(s) 47 CFR 73.3500—Application and report forms.~~
- ~~(t) 47 CFR 73.3511—Applications required.~~
- ~~(u) 47 CFR 73.3512—Where to file; number of copies.~~
- ~~(v) 47 CFR 73.3513—Signing of applications.~~
- ~~(w) 47 CFR 73.3514—Content of applications.~~
- ~~(x) 47 CFR 73.3516—Specification of facilities.~~
- ~~(y) 47 CFR 73.3517—Contingent applications.~~
- ~~(z) 47 CFR 73.3518—Inconsistent or conflicting applications.~~
- ~~(aa) 47 CFR 73.3519—Repetitious applications.~~

- ~~(bb) 47 CFR 73.3521 — Mutually exclusive applications for low power TV and TV translator stations.~~
- ~~(cc) 47 CFR 73.3522 — Amendment of applications.~~
- ~~(dd) 47 CFR 73.3525 — Agreements for removing application conflicts.~~
- ~~(ee) 47 CFR 73.3533 — Application for construction permit or modification of construction permit.~~
- ~~(ff) 47 CFR 73.3536 — Application for license to cover construction permit.~~
- ~~(gg) 47 CFR 73.3538(a)(1), (3), and (4) and (b) — Application to make changes in an existing station.~~
- ~~(hh) 47 CFR 73.3539 — Application for renewal of license.~~
- ~~(ii) 47 CFR 73.3540 — Application for voluntary assignment or transfer of control.~~
- ~~(jj) 47 CFR 73.3541 — Application for involuntary assignment of license or transfer of control.~~
- ~~(kk) 47 CFR 73.3542 — Application for emergency authorization.~~
- ~~(ll) 47 CFR 73.3544 — Application to obtain a modified station license.~~
- ~~(mm) 47 CFR 73.3545 — Application for permit to deliver programs to foreign stations.~~
- ~~(nn) 47 CFR 73.3550 — Requests for new or modified call sign assignments.~~
- ~~(oo) 47 CFR 73.3561 — Staff consideration of applications requiring Commission action.~~
- ~~(pp) 47 CFR 73.3562 — Staff consideration of applications not requiring action by the Commission.~~
- ~~(qq) 47 CFR 73.3564 — Acceptance of applications.~~
- ~~(rr) 47 CFR 73.3566 — Defective applications.~~
- ~~(ss) 47 CFR 73.3568 — Dismissal of applications.~~
- ~~(tt) 47 CFR 73.3572 — Processing of TV broadcast, low power TV, and TV translator station applications.~~
- ~~(uu) 47 CFR 73.3580 — Local public notice of filing of broadcast applications.~~
- ~~(vv) 47 CFR 73.3584 — Petitions to deny.~~
- ~~(ww) 47 CFR 73.3587 — Informal objections.~~
- ~~(xx) 47 CFR 73.3591 — Grants without hearing.~~
- ~~(yy) 47 CFR 73.3593 — Designation for hearing.~~
- ~~(zz) 47 CFR 73.3594 — Local public notice of designation for hearing.~~
- ~~(aaa) 47 CFR 73.3597 — Procedures on transfer and assignment applications.~~

~~(bbb) 47 CFR 73.3598—Period of construction.~~

~~(ccc) 47 CFR 73.3601—Simultaneous modification and renewal of license.~~

~~(ddd) 47 CFR 73.3603—Special waiver procedure relative to applications.~~

~~(eee) 47 CFR 73.3612—Annual employment report (for low power TV stations only).~~

~~(fff) 47 CFR 73.3613—Availability to FCC of station contracts (network affiliation contracts for low power TV stations only).~~

25. Section 74.781 is amended by revising paragraph (c) to read as follows:

§ 74.781 – Station records.

* * * * *

(c) **LPTV stations affiliated with a top-four TV network (ABC, CBS, NBC, or Fox) must maintain an OPIF consistent with § 73.3526 of this Chapter. For LPTV records in this section not required to be included in OPIF and for translator stations,** ~~the~~ station records shall be maintained for **public** inspection at a residence, office, or public building, place of business, or other suitable place, in one of the communities of license of the **LPTV or** translator, except that the station records of a translator licensed to the licensee of the primary station may be kept at the same place where the primary station records are kept. The station records shall **also** be made available upon request to any authorized representative of the Commission.

* * * * *

26. Section 74.783 is amended by revising paragraphs (a) introductory text and (a)(1) to read as follows:

§ 74.783 – Station identification.

(a) Each low power TV station as defined by § 74.701(~~bf~~) must transmit its station identification using one of the following methods:

(a)(1) When originating programming, as defined by § 74.701(~~gh~~), a low power TV station may use the station identification procedures given in § 73.1201 of this chapter on its primary stream. Other streams may use the method in paragraph (a)(2) of this section. The identification procedures given in the remainder of this paragraph are to be used at any time the station is not originating programming; or

* * * * *

27. Section 74.784 is amended by revising paragraph (e) to read as follows:

§ 74.784 – Rebroadcasts.

* * * * *

(e) The provisions of § 73.1207 of part 73 of this chapter apply to low power TV stations in transmitting any material during periods of **local program** origination obtained from the transmissions of any other type of station.

* * * * *

28. Section 74.787 is amended by:

- a. Revising paragraph (a)(1);
- b. Adding paragraphs (a)(1)(i) through (iii);
- c. Revising paragraph (a)(2);
- d. Adding paragraphs (a)(2)(i) through (ii);
- e. Revising paragraph (a)(4);
- f. Adding paragraphs (a)(4)(i) through (vi); and
- g. Revising paragraph (b)(1)(iii)

The revisions read as follows:

§ 74.787 – Licensing.

(a)(1) ~~[Reserved]~~ **Community coverage requirements.**

(i) A low power TV or TV translator station’s protected contour (see § 74.792) is required to overlap with at least a portion of its community of license.

(ii) To change a low power TV or TV translator station’s community of license, a modification of license must be filed specifying the new community and including an exhibit indicating that the protected contour of the facility specified in the license to cover overlaps with at least a portion of the proposed community of license. A station may change its community of license no more than once every 12 months.

(iii) For purposes of determining whether a community of license’s boundary overlaps with a station’s protected service contour, an applicant shall use the legal boundary of the community as may be designated by any federal, state, local, or tribal governmental entity.

(2) ~~[Reserved]~~ **Conversion between low power TV and TV translator.**

(i) A TV translator station may convert to a low power TV station by filing a modification of license requesting the conversion. The station’s call sign must be modified to one consistent with § 74.791(c) after converting to a low power TV station.

(ii) A low power TV station may convert to a TV translator station by filing a modification of license requesting the conversion. It shall specify the facility ID and call sign of the station(s) to be translated in its filing. The station’s call sign will be modified to one consistent with § 74.791(b) after converting to a TV translator station.

* * * * *

(4) Displacement applications. ~~A low power television, television translator, or DRT or DTDRT station which is causing or receiving interference or is predicted to cause or receive interference to or from an authorized TV broadcast station or allotment or other protected station or service, may at any time file a displacement relief application for change in channel, together with technical modifications that are necessary to avoid interference or continue serving the station's protected service area, provided the proposed transmitter site is not located more than 30 miles from the reference coordinates of the existing station's community of license. See § 76.53 of this chapter.~~

(i) Stations eligible to file displacement applications must meet at least one of the following requirements:

(A) Cause actual interference at multiple locations within a TV broadcast station's noise-limited service contour (See § 73.619(c)). If the interference is within the community of license of the TV broadcast station, then a single report of interference is sufficient for displacement.

(B) Cause predicted interference beyond the amount specified in § 74.792(e) with respect to a TV broadcast station, allotment, or other protected station or service, except if such interference has been previously accepted.

(C) Receive predicted interference beyond the amount specified in § 74.792(h) with respect to a TV broadcast station, allotment, or other protected station or service, except if such interference has been previously accepted.

(D) Cause interference to the input channel of a TV translator, DRT, or DTDRT station either located at the same or a nearby location as the existing low power TV, TV translator, DRT, or DTDRT operation.

(E) Cause interference to land mobile operations such that it must otherwise cease operations consistent with § 74.703(e).

(F) Is predicted to cause or receive interference to or from an authorized TV broadcast station or allotment with respect to protected foreign stations.

(ii) In the event a channel substitution in the Table of TV Allotments is the cause of a station's displacement, the displacement permit may not be granted prior to the grant of the construction permit of the station which requested the channel substitution. Further, a displaced station may only file an application for displacement relief after the channel substitution is final.

(iii) Eligible stations may file a displacement relief application shall be filed on FCC Form 2100, Schedule C, and will be considered a minor change and will be placed on public notice for a period of not less than 30 days to permit the filing of petitions to deny. for change in channel at any time, together with technical modifications that are necessary to avoid interference or continue serving the station's protected service area. The application should indicate the specific cause of displacement from paragraph (i) of this section. Such applications are treated as minor modifications and must be consistent with paragraph (b) of this section.

(iv) Displacement relief ~~These~~ applications will not be subject to the filing of competing applications.

(v) Where a displacement relief application for a low power television or television translator station becomes mutually exclusive with the application(s) for new low power television or television translator stations, or with other non-displacement relief applications for facilities modifications of low power television or television translator stations, priority will be afforded to the displacement application for the low power television or television translator station to the exclusion of other applications, except as otherwise specified with respect to DRTs and DTDRTs in paragraph (a)(5)(iii).

(vi) Mutually exclusive displacement relief applications for low power television and television translator stations shall be resolved via the Commission's part 1 and broadcast competitive bidding rules, §§ 1.2100 through 1.2199, and 73.5000 through 73.5009 of this chapter. Such applicants shall be afforded an opportunity to submit settlements and engineering solutions to resolve mutual exclusivity pursuant to § 73.5002(d) of this chapter.

* * * * *

(b)(1)(iii): Any change in transmitting antenna location of greater than ~~30 miles (48.3 kilometers)~~ from the ~~reference~~ coordinates of the existing ~~station's~~ antenna location.

* * * * *

29. Section 74.790 is amended by revising paragraph (g)(2) and adding paragraph (p) to read as follows:

§ 74.790 - Permissible service of TV translator and LPTV stations.

* * * * *

(g)(2) For the origination of programming and commercial matter as defined in § 74.701(g).

* * * * *

(p) No broadcast television stations are permitted to operate on channels above 36.

* * * * *

30. Section 74.791 is amending by revising paragraphs (a) through (c) to read as follows:

§ 74.791 Call signs.

(a) ~~Low power and television translator stations.~~ Call signs for new low power television and television translator stations will be made up of a prefix consisting of the initial letter K or W followed by the channel number assigned to the station and two additional letters and a suffix consisting of the letters –D, **consistent with paragraph (d) of this section. Prior to filing a license to cover, a new low power television station must modify its call sign to be consistent with the requirements of paragraph (c) of this section.**

(b) ~~Television translator stations.~~ Call signs for ~~digital~~ television translator stations will be made up of a prefix consisting of the initial letter K or W followed by the channel number assigned to the station and two additional letters and a suffix consisting of the letter –D, **consistent with paragraph (d) of this section.**

(c) **Low power television stations and Class A television stations.** Low power television and Class A television stations **will be made up of** ~~may be assigned~~ a call sign with a four-letter prefix pursuant to § 73.3550 of this chapter **along with a two-letter suffix.** Low power stations ~~with four letter prefixes~~ will be assigned the suffix –LD and ~~digital~~ Class A stations ~~with four letter prefixes~~ will be assigned the suffix –CD.

* * * * *

31. Section 74.793 is amended by revising paragraph (b) and adding paragraphs (i) through (j) to read as follows:

§ 74.793 – Low power TV and TV translator station protection of broadcast stations.

* * * * *

(b) Except as provided in this section, interference prediction analysis is based on the interference thresholds (D/U signal strength ratios) and other criteria and methods specified in § 73.620 of this chapter. **The 2 km cell size specified in § 73.620(b) is not permitted for Class A, LPTV, TV translator, DRT, and DTDRT stations, and if not specified in the application, the 1 km cell size will be assumed.**

* * * * *

(i) LPTV, TV translator, DRT, and DTDRT stations may negotiate interference consent agreements consistent with §§ 73.620(e) and 73.6022.

(j) If an existing authorization exceeds the interference thresholds consistent with paragraphs (g) or (h) of this section, when filing a non-displacement minor modification it may create interference up to but not exceeding the level previously authorized. In determining this level, the proposal shall use the same cell size and path profile increment in showing both the existing and proposed interference. If the proposal is subject to a formal interference agreement, that agreement must be included as an exhibit to the application.

32. Section 74.794 is amended by revising paragraph (a)(1) to read as follows:

§ 74.794 – Digital Emissions.

(a) * * *

(1) An applicant for an LPTV or TV translator station construction permit shall specify that the station will be constructed to confine out-of-channel emissions within one of the following emission masks: Simple, stringent, or full service. **Stations proposing new or modified operation on channel 14 shall specify either the stringent or full service emission mask.**

* * * * *

APPENDIX B

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Federal Communications Commission (Commission) has prepared this Initial Regulatory Flexibility Analysis (IRFA) concerning the possible significant economic impact on small entities by the policies and rules proposed in the *Notice of Proposed Rulemaking* (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments in the 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. In the NPRM, the Commission seeks comment on a number of proposals concerning changes to its rules and policies for the Low Power Television Service (LPTV Service). The LPTV Service includes low power television (LPTV), television translator (TV translator) and Class A television stations. The Commission believes now is an appropriate time to evaluate changes to its rules and policies in order to ensure that stations in the LPTV Service continue to flourish and serve the public interest of providing local television service to unserved or underserved viewers.

3. The Commission seeks comment on whether it should update its recordkeeping requirements to require LPTV stations affiliated with a top-four national television network (ABC, CBS, NBC, or Fox) to comply with the same online public inspection file (OPIF) requirements that apply to full power and Class A television stations. The Commission seeks comment on whether to include other LPTV network affiliates in the requirement to maintain an OPIF or, rather than tying any OPIF requirement for LPTV stations to network affiliation, or whether we should instead apply the OPIF requirement to the top-four LPTV stations in each market based on the Nielsen ratings. The Commission propose to update certain broadcasting rules that are applicable to all LPTV stations to identify more clearly where records can be accessed.

4. The NPRM also proposes changes to the Commission's rules and policies to help stations in the LPTV Service to be better prepared for future operations and enhance the LPTV Service overall. Many of the proposals would also affect Class A television (Class A) stations, therefore, comment is also sought from these stations. To resolve certain rule uncertainties and ensure that Class A and LPTV/TV translator stations are operating to their fullest potential and that licensees are not warehousing spectrum, the Commission proposes and seeks comment on a number of proposals including whether to:

- Require certain LPTV stations to maintain an online public inspection file.
- Adopt procedures for certain LPTV stations to establish an online public inspection file.
- Specify in our rules that public inspection and political broadcasting requirements are applicable to all LPTV stations.
- Make other changes to Section 73.3526 of our rules to correct cross references and other inaccuracies relating to stations in the LPTV Service and commercial radio and TV stations and establish new reporting requirements for Class A and LPTV stations.

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 (CWAAA).

² See 5 U.S.C. § 603(a).

³ See *id.*

- Amend the method for calculating the maximum distance that a displaced or channel sharing station may move under the LPTV/TV translator displacement rule.
- Revise the LPTV/TV translator minor change rule to clarify the maximum distance that Class A and LPTV/TV translator stations may move.
- Require that Class A and LPTV/TV translator stations specify a community of license (COL) within their station's contour.
- Adopt minimum operating and defined minimum video program requirements for LPTV stations.
- Require that LPTV/TV translator stations seek authority to change designation between LPTV and TV translator status and require Class A and LPTV/TV translator stations to maintain a call sign consistent with their class of service.
- Require use of a "stringent" or "full-service" emission mask for channel 14 Class A and LPTV/TV translator stations to prevent interference to Land Mobile Radio (LMR) stations.
- Prohibit LPTV/TV translator station operations above TV channel 36.
- Remove the 30 day public notice comment period for displacement applications and clarify when an LPTV/TV translator station displaced by a full power station's channel substitution may apply for displacement.
- Clarify the existing displacement rule and interference thresholds for actual and predicted interference, and amend the definition of displacement to include displacement by LMR stations; by protected television facilities in Canada and Mexico; and due to interference to TV translator input channels.
- Codify other rule clarifications consistent with precedent, including the use of emission masks at Distributed Transmission System (DTS) transmitter sites; the maximum grid resolution permitted with interference analyses; and application of the part 73 "program test authority" rule to LPTV/TV translator stations.
- Remove duplicate definitions and re-letter the definitions remaining in the part 74 rules, and make other editorial, non-substantive corrections to the part 11, 73, and 74 rules.

B. Legal Basis

5. The proposed action is authorized pursuant to sections 1, 2, 4(i), 4(j), 303, 307, 309, 311, 312, and 315 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 303, 307, 309, 311, 312, 315.

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.⁴ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁵ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁶ A small business

⁴ 5 U.S.C. § 603(b)(3).

⁵ *Id.* § 601(6).

⁶ *Id.* § 601(3) (incorporating by reference the definition of "small-business concern" in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with
(continued....)

concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.⁷ Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

7. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein.⁸ First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.⁹ These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.¹⁰

8. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."¹¹ The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.¹² Nationwide, for tax year 2022, there were approximately 530,109 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.¹³

9. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."¹⁴ U.S. Census Bureau data from the 2022 Census

(Continued from previous page)

the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

⁷ 15 U.S.C. § 632.

⁸ 5 U.S.C. § 601(3)-(6).

⁹ See SBA, Office of Advocacy, "What's New With Small Business?," <https://advocacy.sba.gov/wp-content/uploads/2023/03/Whats-New-Infographic-March-2023-508c.pdf> (Mar. 2023).

¹⁰ *Id.*

¹¹ 5 U.S.C. § 601(4).

¹² The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), "Who must file," <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

¹³ See Exempt Organizations Business Master File Extract (EO BMF), "CSV Files by Region," <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2022 with revenue less than or equal to \$50,000 for Region 1-Northeast Area (71,897), Region 2-Mid-Atlantic and Great Lakes Areas (197,296), and Region 3-Gulf Coast and Pacific Coast Areas (260,447) that includes the continental U.S., Alaska, and Hawaii. This data includes information for Puerto Rico (469).

¹⁴ 5 U.S.C. § 601(5).

of Governments¹⁵ indicate there were 90,837 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.¹⁶ Of this number, there were 36,845 general purpose governments (county,¹⁷ municipal, and town or township¹⁸) with populations of less than 50,000 and 11,879 special purpose governments (independent school districts¹⁹) with enrollment populations of less than 50,000.²⁰ Accordingly, based on the 2022 U.S. Census of Governments data, we estimate that at least 48,724 entities fall into the category of “small governmental jurisdictions.”²¹

10. *Television Broadcasting.* This industry is comprised of “establishments primarily engaged in broadcasting images together with sound.”²² These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.²³ 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.²⁴ 2017 U.S. Census Bureau data indicate that 744 firms in this industry operated for the

¹⁵ 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Census of Governments, <https://www.census.gov/programs-surveys/economic-census/year/2022/about.html>.

¹⁶ See U.S. Census Bureau, 2022 Census of Governments – Organization Table 2. Local Governments by Type and State: 2022 [CG2200ORG02], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). See also tbl.2. CG2200ORG02 Table Notes Local Governments by Type and State 2022.

¹⁷ See *id.* at tbl.5. County Governments by Population-Size Group and State: 2022 [CG2200ORG05], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 2,097 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

¹⁸ See *id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2022 [CG2200ORG06], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 18,693 municipal and 16,055 town and township governments with populations less than 50,000.

¹⁹ See *id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2022 [CG2200ORG10], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 11,879 independent school districts with enrollment populations less than 50,000. See also tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2022 [CG2200ORG04], CG2200ORG04 Table Notes Special Purpose Local Governments by State Census Years 1942 to 2022.

²⁰ While the special purpose governments category also includes local special district governments, the 2022 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

²¹ This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,845) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (11,879), from the 2022 Census of Governments - Organizations tbls. 5, 6 & 10.

²² See U.S. Census Bureau, 2017 NAICS Definition, “515120 Television Broadcasting,” <https://www.census.gov/naics/?input=515120&year=2017&details=515120>.

²³ *Id.*

²⁴ See 13 CFR § 121.201, NAICS Code 515120 (as of 10/1/22 NAICS Code 516120).

entire year.²⁵ Of that number, 657 firms had revenue of less than \$25,000,000.²⁶ Based on this data we estimate that the majority of television broadcasters are small entities under the SBA small business size standard.

11. As of March 31, 2024, there were 1,382 licensed commercial television stations.²⁷ Of this total, 1,263 stations (or 91.4%) had revenues of \$41.5 million or less in 2022, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on April 4, 2024, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates as of March 31, 2024, there were 383 licensed noncommercial educational (NCE) television stations, 379 Class A TV stations, 1,829 LPTV stations and 3,118 TV translator stations.²⁸ 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.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

12. The *NPRM* proposes new reporting, recordkeeping, and other compliance requirements for Class A, LPTV and TV translator stations, many of which include small entities. Although, the Commission cannot, at present, determine whether small entities will have to hire professionals to implement and comply with the *NPRM*'s proposed requirements, nor can it quantify the cost of compliance for small entities, we expect that the approaches we propose will have minimal cost implications for impacted entities because many of these requirements are part of existing reporting processes for these entities.

13. The proposed changes to our rules and policies are designed to ensure that LPTV service continues to serve the public interest. This includes updates to our recordkeeping requirements for LPTV stations that will centralize those records in an online public inspection file (OPIF) to make that information more easily accessible to the public while, at the same time, minimizing existing burdens associated with compliance. The *NPRM* seeks comment on whether to require that licensees of LPTV stations affiliated with a top-four TV network comply with section 73.3526 of the Commission's rules, which would require them to maintain certain records in the Commission's OPIF. We also invite comment on whether we should include other LPTV network affiliates in the requirement to maintain an OPIF. In addition, rather than tying any OPIF requirement for LPTV stations to network affiliation, we invite comment on whether we should instead apply the OPIF requirement to the top-four LPTV stations in each market based on the Nielsen ratings. Transitioning these LPTV stations to the online public file would improve public access to certain station records.

14. The *NPRM* also proposes to update the list of political programming rules applicable to LPTV stations to align with existing and longstanding statutory requirements, and to revise section

²⁵ 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>.

²⁶ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. 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.

²⁷ *Broadcast Station Totals as of March 31, 2024*, Public Notice, DA 24-323 (rel. Apr. 4, 2024) (*April 2024 Broadcast Station Totals PN*), <https://docs.fcc.gov/public/attachments/DA-24-323A1.pdf>.

²⁸ *Id.*

74.781 of our rules to require that LPTV stations without an OPIF requirement maintain documents for public inspection. In addition, we propose to make other changes to section 73.3526 of our rules to correct cross references and other inaccuracies, clarify existing requirements, establish a filing frequency for Class A stations to certify they have met their ongoing eligibility requirements, and require Class A and LPTV stations to disclose time brokerage agreements (TBAs) and joint service agreements (JSAs).

15. We propose requiring that LPTV and TV translator stations file an application for modification of license in order to change their community of license. Existing FCC Forms 2100 Schedule D (LPTV/TV translator) and F (Class A) will be used for this proposed requirement and no changes to the Forms are anticipated except for the burden estimates for the existing collections for these Forms. We also propose that LPTV/TV translator stations certify in applications for minor change or license that they are in compliance with any minimum operating requirements adopted in this proceeding. Existing FCC Form 2100 Schedule C and D would be modified and used for this requirement.

16. The *NPRM* proposes to require that LPTV/TV translator stations that seek to change their designation from LPTV to TV translator and vice versa, be required to seek formal authority to make this change. Existing FCC Form 2100 Schedule D would be used for this proposed requirement and no changes to the Form are anticipated except for the burden estimates for the existing collection for this Form. Finally, the *NPRM* proposes minimum operating hours of no less than 14 hours per week for LPTV stations.

17. The *NPRM* also proposes minimum operating hours of no less than 14 hours per week for LPTV stations. We anticipate the information we receive in comments including where requested, cost and benefit analyses, will help the Commission identify and evaluate relevant compliance matters for small entities, including compliance costs and other burdens that may result from the proposals and inquiries we make in the *NPRM*.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

18. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.”²⁹

19. The Commission proposes a number of alternatives that may have a significant impact on small entities. The *NPRM* seeks comment on whether to require LPTV stations affiliated with a top-four TV network to comply with section 73.3526 of the Commission’s rules, which requires stations to maintain certain records for public inspection in the Commission’s OPIF database. By limiting the proposal to LPTV stations affiliated with a top-four TV network, this approach would limit this obligation to a smaller number of LPTV stations that have widely-viewed programming and are therefore likely to have greater resources. Alternatively, the *NPRM* asks whether we should include other LPTV network affiliates in the requirement to maintain an OPIF or, rather than tying any OPIF requirement for LPTV stations to network affiliation, whether we should instead apply the OPIF requirement to the top-four LPTV stations in each market based on the Nielsen ratings.

20. If we were to require certain LPTV stations to comply with section 73.3526, the *NPRM* proposes to take similar measures to reduce the burden on these LPTV stations that the Commission took when it transitioned full power and Class A TV stations and other media entities to OPIF. Specifically, we propose to require LPTV stations to upload only those items required to be in the public file but not

²⁹ 5 U.S.C. § 603(c)(1)-(c)(4).

otherwise filed with the Commission or available on the Commission's website. Any document or information required to be kept in the public file and that is required to be filed with the Commission electronically would be imported to the online public file and updated by the Commission. In addition, if we require certain LPTV stations to maintain records in OPIF, instead of paper file, LPTV stations may have initial costs, but the effort by small stations and their related costs over time will be minimized by exempting existing political file material from the online file requirement and by requiring only that political file documents be uploaded on a going-forward basis, similar to our approach with respect to other entities that have already transitioned to OPIF. Additionally, the *NPRM* recommends that LPTV stations be required to operate not less than 14 hours per calendar week instead of requiring the daily operational requirements of commercial full power stations, thereby allowing the flexibility needed for LPTV stations without traditional hours to serve their viewers.

21. The remaining alternatives proposed by the Commission in the *NPRM* were considered to be the least costly and/or minimally burdensome for small and other entities impacted by the rules. The Commission expects to more fully consider the economic impact and alternatives for small entities following the review of comments filed in response to the *NPRM*.

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rule

22. None.

**STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *Political Programming and Online Public File Requirements for Low Power Television Stations; Amendment of the Commission's Rules to Advance the Low Power Television, TV Translator and Class A Television Service*, Notice of Proposed Rulemaking, MB Docket Nos. 24-147 and 24-148.

This month we celebrate the 90th birthday of the Federal Communications Commission. That means for nine decades this agency has had the responsibility to distribute broadcast licenses to support the development of local news and content.

From time to time, as technology and the marketplace changes, we update the way we do this. That is exactly what happened more than four decades ago, when the Commission authorized a new way to broadcast local video content: Low-Power Television, or LPTV.

In the intervening years, LPTV stations, with their more limited power levels and service areas, have grown to become an important part of our broadcasting system. Today there are more than 1,800 LPTV stations nationwide. These stations add to the diversity of voices on our airwaves and reach audiences that were previously unserved and underserved by full-power television stations.

So, just as we have before in our decades of work involving broadcasting, we think it is time to take a fresh look at modernizing our policies regarding LPTV. This is the reason we adopt this rulemaking today.

This effort starts with something very simple—transparency. These stations use public airwaves and it is a longstanding principle at this agency that the public is entitled to know by whom they are being persuaded. That is why we ask if LPTV stations affiliated with the top four networks—and there are many more of them now than there used to be—should be required to comply with the same online public file requirements that apply to other broadcasters. Again, this is about transparency—along with disclosure and common sense.

We also seek to clarify and update our rules where technological change requires it to ensure that LPTV stations are able to fully utilize their spectral resources to provide local television service. But as we do so, I believe we must be mindful that these stations often continue to have lesser reach and fewer resources. So if this were a Spiderman movie, you might say our approach is that “with lower power comes lower responsibility.” This strikes the right balance between the rights and responsibilities of these small but important licensees.

**DISSENTING STATEMENT OF
COMMISSIONER BRENDAN CARR**

Re: *Political Programming and Online Public File Requirements for Low Power Television Stations; Amendment of the Commission's Rules to Advance the Low Power Television, TV Translator and Class A Television Service*, Notice of Proposed Rulemaking, MB Docket Nos. 24-147 and 24-148.

For years, newspapers were closing in communities all across America. Thousands of publications went out of business, and the spotlights that their newsrooms and gumshoe reporters illuminated, for the stories that mattered most to their neighbors and fellow citizens, went dark. America is not better off for this loss.

For years, the FCC observed this decline in local newspapers. And the agency did nothing about it. As newspapers struggled—for various reasons—to generate the revenues and raise the investments necessary to stay in business, the FCC kept in place outdated regulations that prevented additional capital from flowing into the newspaper industry. When the FCC finally eliminated its newspaper / broadcast cross-ownership ban in 2017, it was too late for many of the mastheads.

Now, academics can go back and forth over how much of a difference it would have made if the FCC had modernized its regulations sooner, but the fact is that the FCC's artificial decision to keep constraints on investment in place did not help.

The FCC is approaching a fork in the road. Many segments of the broadcast industry are facing many of the same types of headwinds that newspapers previously confronted. And the FCC has many legacy regulations on the books that are not only preventing capital from flowing to broadcasters, but are also artificially raising their costs of doing business and forcing them to compete against unregulated Big Tech companies with one hand tied behind their backs.

So here's the choice we confront. The FCC can continue down the path of keeping legacy regulations on the books that are plainly doing more harm than good—while patting ourselves on the backs for retaining rules that previous Commissions predicted would serve the interests of localism, diversity, and competition in the context of a media marketplace that no longer exists today. Or we can do something else—we can modernize our rules, we can eliminate the restraints on broadcasters that no longer make sense in today's media marketplace, and we can unleash broadcasters to compete on level playing field with their Big Tech competitors.

I think we have an obligation to do the latter. That is why I have described this as a break glass moment for broadcasters. Unfortunately, this FCC has chosen the former. You can see it in this FCC's decision to increase regulations on broadcasters through the Quadrennial Review—a proceeding that Congress directed us to undertake for the purposes of reducing regulations. You can see it in the FCC's decisions to scuttle multiple broadcast transactions without even affording the parties a fair hearing or process. You can see it in the FCC's decision to impose new regulations relating to local broadcast content. You can see it in the FCC's recent vote to revive an unnecessary FM duplication rule that the agency eliminated back in 2020. And you can see it here.

Today's NPRM is particularly perplexing. It does not merely seek to keep legacy rules on the books; it proposes to ratchet up the regulation of low power television (LPTV). Our LPTV rules reflect a bargain struck more than 40 years ago to spur local programming in rural America. In exchange for being limited to lower power levels in sparsely populated regions without legal protection from harmful interference, LPTV stations were subjected to fewer regulatory burdens. In particular, LPTV stations—many of which are small businesses operating under financial stress—were exempt from various recordkeeping rules, including the public file rules, that apply to their full power counterparts. But after

more than 40 years, and with no valid justification, today's NPRM proposes to undo that bargain by extending assorted paperwork requirements on LPTV stations for the first time ever.

This proposal comes at precisely the wrong moment, and it is exactly the opposite of what we need to ensure that local broadcasters remain on the air. I dissent.

**STATEMENT OF
COMMISSIONER NATHAN SIMINGTON**

Re: *Political Programming and Online Public File Requirements for Low Power Television Stations; Amendment of the Commission's Rules to Advance the Low Power Television, TV Translator and Class A Television Service*, Notice of Proposed Rulemaking, MB Docket Nos. 24-147 and 24-148.

I would like to thank the Office of the Chairwoman for working with me to include questions aimed at examining the continued relevance and value of the public file, and I approve this item on that basis. I look forward to a thoroughgoing examination of the record that develops on these questions.

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

In the Matter of	)	
	)	
Amendment of Section 73.3556 of the	)	MB Docket No. 19-310
Commission's Rules Regarding Duplication of	)	
Programming on Commonly Owned Radio Stations	)	
	)	
Modernization of Media Regulation Initiative	)	MB Docket No. 17-105
	)	

ORDER ON RECONSIDERATION

Adopted: June 5, 2024

Released: June 10, 2024

By the Commission: Chairwoman Rosenworcel issuing a statement; Commissioner Carr dissenting and issuing a statement; Commissioner Simington dissenting.

I. INTRODUCTION

1. By this *Order on Reconsideration*, we grant the Petition for Reconsideration of REC Networks, the musicFIRST Coalition, and the Future of Music Coalition (Petitioners) requesting that the Commission¹ reinstate section 73.3556 of the Commission's rules (the radio duplication rule) for commercial FM stations.² We find that reinstating the prohibition on the duplication of FM programming beyond a 25% threshold serves the public interest by furthering the goals of competition, programming diversity, localism, and spectrum efficiency. We also find that the existing waiver process should address sufficiently the concerns of specific FM stations in unique circumstances.

II. BACKGROUND

2. The Commission's radio duplication rule has evolved over time consistent with changes in the broadcast radio market. The Commission first limited the duplication of programming by commonly owned radio stations serving the same local area in 1964 when it prohibited FM stations in

¹ Petition for Reconsideration of REC Networks, the musicFIRST Coalition, and the Future of Music Coalition (filed Nov. 20, 2020) (Petition).

² *Amendment of Section 73.3556 of the Commission's Rules Regarding Duplication of Programming on Commonly Owned Radio Stations*, MB Docket No. 19-310 et al., Notice of Proposed Rulemaking, 34 FCC Rcd 11544, para. 1 (2019) (*2019 Radio Duplication NPRM*). The radio duplication rule prohibited any commercial AM or FM radio station from devoting "more than 25 percent of the total hours in its average broadcast week to programs that duplicate those of any other station in the same service (AM or FM) which is commonly owned or with which it has a time brokerage agreement if the principal community contours . . . of the stations overlap and the overlap constitutes more than 50 percent of the total principal community contour service area of either station." 47 CFR § 73.3556. Principal community contours are defined as "predicted or measured 5 mV/m groundwave for AM stations and predicted 3.16 mV/m for FM stations." *Id.* A time brokerage agreement generally involves the sale by one radio licensee of blocks of time to a broker who then supplies programming to fill that time and sells the commercial spot advertising to support it. The subsequent Report and Order eliminated the radio duplication rule in its entirety, i.e., as applied to both AM and FM stations. See *Amendment of Section 73.3556 of the Commission's Rules Regarding Duplication of Programming on Commonly Owned Radio Stations*, MB Docket No. 19-310 et al., Report and Order, 35 FCC Rcd 8383, para. 1 (2020) (*2020 Radio Duplication Order*).

cities with populations over 100,000 from duplicating the programming of a co-owned AM station in the same local area for more than 50% of the FM station's broadcast day.³ The Commission observed that it had never regarded program duplication as an efficient use of FM frequencies; instead, it had allowed program duplication as, "at best, . . . a temporary expedient to help establish the FM service."⁴ Accordingly, the Commission envisioned "a 'gradual' process to end programming duplication once the number of applicants seeking licenses exceeded the number of vacant FM channels available in large cities."⁵

3. In 1976, the Commission tightened the radio duplication restriction. It limited FM stations to duplicating only 25% of the average program week of a co-owned AM station in the same local area if either the AM or FM station operated in a community with a population of over 25,000.⁶ At that time, the Commission observed that "the public does not have to depend on non-duplication to add diversity" when new broadcasting frequencies remain available.⁷ In 1986, in response to a petition for rulemaking seeking to exempt late-night hours when determining compliance with the radio duplication rule, the Commission eliminated the cross-service radio duplication rule entirely. It found that FM service had developed sufficiently to support the elimination of the rule and that FM stations were fully competitive, obviating the need to foster the development of an independent FM service through a requirement for separate programming.⁸

4. In 1992, as part of a broad proceeding reviewing its national and local radio ownership rules, the Commission adopted a new radio duplication rule limiting the duplication of programming by commonly owned stations or stations commonly operated through a time brokerage agreement in the same service (AM or FM) with substantially overlapping signals to 25% of the average broadcast week.⁹ The Commission saw no public benefit to allowing commonly owned same-service stations in the same local market to duplicate more than 25% of their programming, observing that: ". . . when a channel is licensed to a particular community, others are prevented from using that channel and six adjacent channels at varying distances of up to hundreds of kilometers. The limited amount of available spectrum could be used more efficiently by other parties to serve competition and diversity goals."¹⁰ The

³ 2019 *Radio Duplication NPRM*, 34 FCC Rcd at 11544-45, para. 2.

⁴ *Amendment of Part 73 of the Commission's Rules Regarding AM Station Assignment Standards and the Relationship Between the AM and FM Broadcast Services*, Docket No. 15084, Report and Order, 45 FCC 1515, 1530, para. 36 (1964) (*1964 Radio Duplication Order*).

⁵ *Id.* at 1532-33, paras. 41-42.

⁶ *AM-FM Program Duplication*, Docket No. 20016, Report and Order, 59 FCC 2d 147, 151, para. 9, Appx. A. (1976) (*AM-FM Program Duplication Order*). Based on its 12 years of experience observing the effects of the radio duplication rule, the Commission delayed implementation of the tightened 25% limit on smaller cities for approximately four years, establishing interim limits that prohibited FM stations from duplicating more than 25% of average broadcast week programming of a commonly owned AM station in communities over 100,000 and 50% of programming of a commonly owned AM station in communities over 25,000 but under 100,000. *Id.* at 153-54, paras. 12-13.

⁷ *Id.* at 151, para. 9.

⁸ See *Amendment of Section 73.242 of the Commission's Rules and Regulations in Regard to AM-FM Program Duplication*, Report and Order, 103 FCC 2d 922, 923-24 (1986) (*1986 Radio Duplication Rule*), paras. 5-7; see also *id.* at 924-25, paras. 9-10, Appx. B.

⁹ *Revision of Radio Rules and Policies*, MM Docket No. 91-140, Report and Order, 7 FCC Rcd 2755, 2783, para. 57 (1992) (*1992 Radio Rules Order*); 47 CFR § 73.3556.

¹⁰ *1992 Radio Rules Order*, 7 FCC Rcd at 2783, para. 57 (citing *Review of The Technical Assignment Criteria for the AM Broadcast Service*, MM Docket No. 87-267, Report and Order, 6 FCC Rcd 6273, 6329-30, paras. 176-79 (1991)); see *id.* at 2788, para. 64 (explaining that the Commission also incorporated time brokerage agreements in

(continued....)

Commission concluded, however, that limited programming duplication—specifically, below the 25% threshold—had benefits, stating “we are persuaded that limited simulcasting, particularly where expensive, locally produced programming such as on-the-spot news coverage is involved, could economically benefit stations and does not so erode diversity or undercut efficient spectrum use as to warrant preclusion.”¹¹

5. The Commission issued the *NPRM* initiating this proceeding in November 2019, seeking comment on the radio duplication rule and whether it should be retained, modified, or eliminated.¹² As the Commission noted in the *NPRM*, the broadcast industry has changed significantly since the Commission adopted the latest version of the radio programming duplication rule in 1992.¹³ In particular, significant growth in the number of radio broadcasting outlets,¹⁴ the advent of digital HD Radio, and the evolution of new and varied formats in which to disseminate programming (i.e., digital satellite radio, streaming via station websites, and mobile applications)¹⁵ have led to greater competition and programming diversity in radio broadcasting.¹⁶ Accordingly, the Commission asked commenters to address several issues, including the impact of market forces (i.e., new sources of audio programming, increased number of stations, instances of consolidation in any aspect of the media marketplace) and the impact of the radio duplication rule on the Commission’s public interest goals of competition, programming diversity, localism, and spectrum efficiency.¹⁷ The *NPRM* also sought comment on whether the Commission’s prior rationale (in 1986) for eliminating the cross-service duplication programming rule—that duplication is preferable to curtailing programming or going off the air entirely where separate programming is not economically feasible—applies equally to the same-service duplication rule.¹⁸ The *NPRM* sought input on the benefits of allowing some level of programming duplication, as well as potential modifications to the rule.¹⁹ In addition, the *NPRM* asked whether the rule should treat stations in the AM service and the FM service differently in light of the particular economic and technical challenges facing AM stations.²⁰ Finally, the *NPRM* asked commenters to discuss potential costs and benefits of

(Continued from previous page)

the rule because it was concerned about the possibility that “widespread and substantial time brokerage arrangements among stations serving the same market, in concert with increased common ownership permitted by our revised local rules, could undermine our continuing interest in broadcast competition and diversity”).

¹¹ *Id.* at 2784, para. 57.

¹² See 2019 Radio Duplication *NPRM*, 34 FCC Rcd at 11544, para. 1.

¹³ *Id.* at 11546, para. 6.

¹⁴ *Id.* In 1992, there were roughly 9,750 commercial AM and FM stations; today, there are over 11,100. See FCC, Broadcast Station Totals as of December 31, 2023, News Release (Jan. 8, 2024) <https://www.fcc.gov/edocs/search-results?t=advanced&titleText=broadcast%20station%20totals>. There are also significantly more non-commercial educational FM radio stations now (4,286 versus 1,588 in 1992), as well as 1,967 low power FM (LPFM) stations, a service that did not exist prior to 1999, all contributing to programming diversity. *Id.* Additionally, today there are over 8,900 FM translator and booster stations versus fewer than 2,000 such facilities in 1992, improving the reach and reception of full power stations.

¹⁵ 2019 Radio Duplication *NPRM*, 34 FCC Rcd at 11546, para. 6 (citing *Communications Marketplace Report* et al., Report, GN Docket No. 18-231 et al., 33 FCC Rcd 12558, 12632, para. 143 (2018)).

¹⁶ *Id.*

¹⁷ *Id.* at 11547-48, paras. 9-10.

¹⁸ *Id.* at 11548, para. 11.

¹⁹ *Id.* at 11548-49, paras. 12-13.

²⁰ *Id.* at 11549, para. 14.

modifying or eliminating the rule.²¹ Four parties filed comments in response to the *NPRM*, and two parties filed reply comments.²²

6. Prior to the Commission's elimination of the radio duplication rule for both AM and FM stations in August 2020, Commission staff publicly circulated a draft order that, if adopted, would have retained the rule for the FM band.²³ The draft order concluded that the radio duplication rule for the FM service remained useful in furthering the goals of competition, programming diversity, localism, and spectrum efficiency.²⁴ Among other things, the draft order concluded that the FM service does not face the same persistent challenges as the AM service, that the rule as applied to FM continued to "act as a useful guiderail" to encourage programming diversity and spectrum efficiency, and that the existing waiver process was sufficient to provide flexibility where needed.²⁵

7. Following public release of the draft order, NAB submitted a letter advocating for elimination of the rule for FM service as well as AM.²⁶ In the letter, NAB asserted that elimination of the rule entirely would provide needed flexibility and benefits to FM licensees and ease the burdens NAB alleged were caused by the rule.²⁷ For instance, NAB contended that FM station staffs forced to quarantine due to the pandemic could find it difficult to produce original programming. NAB further suggested that were the Commission to eliminate the rule, stations could pool resources to simulcast emergency information without incurring the delay of a waiver or could inform listeners of format changes by simulcasting their new formats on multiple stations.²⁸ NAB went on to assert that the rule as applied to FM stations produced no public interest benefits, that FM stations face considerable competition, and that market forces would naturally give commonly owned stations an incentive to air distinct programming, all of which warranted eliminating the rule to allow FM stations to repurpose costly programming, quickly and effectively, where appropriate.²⁹

8. In contrast to the draft order, the final *Order*, as adopted by the Commission, eliminated the radio duplication rule for both AM and FM services. Explaining its reasoning for the elimination of the rule for AM stations in the final *Order*, the Commission stated that AM stations could better serve the

²¹ *Id.* at 11549, para. 15.

²² The four parties that submitted comments included Bryan Broadcasting Corporation (BBC Comments) (requesting the Commission to allow "two AM radio stations serving the same geographic area to duplicate programming when one station transitions to all-digital transmission and one remains operating in analog."), Common Frequency, Inc. (CFI Comments) (opposing elimination of the rule for FM stations), National Association of Broadcasters (NAB Comments) (supporting elimination of the rule for FM stations), and REC Networks (REC Comments) (opposing elimination of the rule for FM stations). The two parties that submitted reply comments were Common Frequency, Inc. (CFI Reply) (opposing elimination of the radio duplication rule for FM stations) and Kern Community Radio (Kern Reply) (opposing elimination of the radio duplication rule for FM stations and offering several proposals for strengthening the rule).

²³ *Modernization of Media Regulation Initiative: Duplication of Programming on Commonly Owned Radio Stations*, Draft Report and Order, MB Docket Nos. 17-105 and 19-310, FCC-CIRC2008-02 (July 16, 2020) (Draft Order), <https://docs.fcc.gov/public/attachments/DOC-365578A1.pdf>.

²⁴ *Id.* at 8-9.

²⁵ *Id.*

²⁶ Letter from Rick Kaplan, General Counsel and Executive Vice President, National Association of Broadcasters, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 19-310 and 17-105, at 1-3 (filed July 30, 2020) (NAB July 30, 2020 *Ex Parte*).

²⁷ *Id.*

²⁸ *Id.* at 2.

²⁹ *Id.* at 2-3.

needs of the public if they were afforded greater regulatory flexibility for innovative experimentation with digital radio.³⁰ The Commission pointed to unique pressures facing the AM service, such as escalated environmental and man-made noise, which has increased levels of harmful interference.³¹ The Commission also stressed that unlike with FM service, the AM service faces higher operational costs due to the larger and more complex physical plants that are necessary to maintain the band.³² In removing the rule for FM stations, the Commission relied primarily on its desire to afford flexibility to respond to the exigencies of the ongoing COVID-19 national emergency.³³ Stating that the elimination of the rule was necessary for stations to inform listeners of emergency information and formatting changes, the Commission also asserted that programming duplication would in most cases not become a “common practice,” but rather a short-term response to unique circumstances.³⁴

9. On November 20, 2020, REC Networks, the musicFIRST Coalition, and the Future of Music Coalition filed a petition for reconsideration asking that the Commission reinstate the radio duplication rule for FM stations.³⁵ NAB filed an Opposition to the Petition on January 5, 2021.³⁶ Common Frequency filed a Reply to the Opposition on January 14, 2021, and REC Networks, the musicFIRST Coalition, and the Future of Music Coalition did the same on January 15, 2021.³⁷ Petitioners do not request that the Commission reinstate the radio duplication prohibition for AM stations.³⁸

III. DISCUSSION

10. As discussed further below, we reinstate section 73.3556 of our rules as to FM stations in order to further the goals of competition, programming diversity, localism, and spectrum efficiency. We find that Petitioners provide valid reasons to reconsider eliminating the radio duplication rule as applied to FM stations, and we conclude that the record supports reinstating the rule for FM service. Specifically, we find that the record does not provide sufficient evidence that the rule, as applied to FM service, has caused or will cause harm to FM licensees, that market forces alone would be sufficient to preserve the rule’s benefits, or that the 25% duplication allowance set forth in the former rule and the potential to seek a waiver to exceed that allowance in the event of special circumstances is insufficient to provide FM licensees with flexibility where needed. Furthermore, contrary to NAB’s assertion that unique economic pressures facing radio stations justified rescinding the rule for FM service, we find that the record lacks sufficient evidence to demonstrate that the rule actually contributes to such economic pressures or that eliminating the rule would reduce those pressures in any meaningful way. As a result, we believe that elimination of the rule for FM service in the final *Order* was, at best, premature given the absence of such evidence, and particularly as balanced against the countervailing public interest objectives the rule serves. Accordingly, we find that reinstating the radio duplication rule for FM service strikes the right balance between affording FM stations the ability to repurpose some amount of programming on commonly

³⁰ 2020 *Radio Duplication Order*, 35 FCC Rcd at 8387-88, paras. 9-10.

³¹ *Id.*

³² *Id.*

³³ *Id.* at 8388-90, paras. 10, 13-15.

³⁴ *Id.* at 8391, para. 16.

³⁵ Petition at 1.

³⁶ National Association of Broadcasters Opposition to Petition for Reconsideration (filed Jan. 5, 2021) (Opposition).

³⁷ Reply to Opposition to Petition for Reconsideration of Common Frequency (filed Jan. 14, 2021); Reply to Opposition to Petition for Reconsideration of REC Networks, the musicFIRST Coalition, and the Future of Music Coalition (filed Jan. 15, 2021).

³⁸ Petition at 1.

owned stations while continuing to further the public interest goals of competition, programming diversity, localism, and spectrum efficiency.

11. As an initial matter, we find that granting the Petition is within the Commission's discretion. Contrary to NAB's assertion that the Petition should be denied because it does not raise new issues that were not already addressed by the Commission in the *Order*,³⁹ we reiterate that "Commission precedent establishes that reconsideration is generally appropriate where the petitioner shows either a material error or omission in the original order."⁴⁰ In this instance, we are persuaded that the Commission's prior decision erred in eliminating the radio duplication rule for FM stations.⁴¹

12. We conclude that the record does not demonstrate that eliminating the radio duplication rule as applied to the FM service serves the public interest, and we are persuaded that the Commission's earlier conclusion that it did so was in error.⁴² Although the Commission stated in the *Order* that "bare assertions as to the continued usefulness of the radio duplication rule for the FM service—for instance, that the rule ensures 'some basic level of diversity and . . . prevent[s] spectrum warehousing'—are not persuasive," we find that contrary conclusions used to justify eliminating the rule for FM service in fact rest on "bare assertions" derived from an exceedingly thin record proffered in support of that decision. Specifically, only a single commenter—NAB—advocated for elimination of the rule with regard to FM service. In so doing, NAB offered only general assertions regarding arguments supporting elimination of the rule for AM that it contended could also apply to FM⁴³ and anecdotal suggestions that there could be select circumstances in which duplication would be "helpful" to FM stations.⁴⁴ On reconsideration, we find NAB's claims about the harms the rule causes to be lacking in concrete or credible support. By

³⁹ Opposition at 2-3.

⁴⁰ *Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule, Order on Reconsideration*, 32 FCC Rcd 3390, 3396, para. 16 (2017) (*UHF Discount Order on Reconsideration*). See also *Petition for Reconsideration by Acadiana Cellular General Partnership, Order on Reconsideration*, 20 FCC Rcd 8660, 8663, para. 8 (2006); *Universal Serv. Contribution Methodology Fed.-State Joint Bd. On Universal Serv. Glob. Conference Partners, A+ Conference Ltd., Free Conferencing Corp., & the Conference Grp.*, 27 FCC Rcd 898, 901 (2012) (*Universal Serv. Contribution Methodology Fed.-State Joint Bd.*), rev. dismissed in part and denied in part, *Conference Grp., LLC v. FCC*, 720 F.3d 957, 958 (D.C. Cir. 2013) ("Reconsideration of a Commission's decision may be appropriate when the petitioner demonstrates that the original order contains a material error or omission, or raises additional facts that were not known or did not exist until after the petitioner's last opportunity to present such matters. If a petition simply repeats arguments that were previously considered and rejected in the proceeding, the Commission may deny them for the reasons already provided."); *UHF Discount Order on Reconsideration*, 32 FCC Rcd at 3396, para. 16, n.56 ("Even if a petition is repetitious, the Commission can, in its discretion, consider it."); see also *Universal Serv. Contribution Methodology Fed.-State Joint Bd.*, 720 F.3d at 958 (Commission "may deny" repetitious petition); *Application of Paging Sys., Inc.*, 22 FCC Rcd 4602, 4604 n.23 (WTB 2007) (considering repetitious petition on the merits, even though staff could dismiss it); *Sequoia Cablevision*, 58 FCC 2d 669 (1976) (partially granting a repetitious petition for reconsideration of an order denying reconsideration despite the alleged procedural defect because "the language of Section 1.106(k)(3) of the Rules [applicable to petitions for reconsideration of orders denying reconsideration] is permissive, not mandatory").

⁴¹ We note that Petitioners have questioned whether the process by which the Commission eliminated the rule with respect to FM service complied with the Administrative Procedure Act. Petition at 8-18. Because we conclude that Petitioners make convincing arguments on the merits about the need to reinstate the rule for FM service to further the public interest goals of competition, programming diversity, localism, and spectrum efficiency, we need not reach Petitioners' separate arguments about whether to reinstate the rule based on alleged inadequacies in the process by which it was eliminated.

⁴² Most commenters in the proceeding did not support eliminating the radio duplication rule as to the FM service. See *supra* note 22.

⁴³ NAB Comments at 5.

⁴⁴ NAB July 30, 2020 *Ex Parte* at 2; see also Opposition at 5-6.

contrast, we find comments describing the benefits the rule is intended to foster and the harms that would accrue in its absence support retaining the rule.⁴⁵ Moreover, we find that, in the absence of more convincing evidence to assure us that elimination is wise at this time, there are various countervailing objectives that support reinstatement of the rule in the service of competition, programming diversity, localism, and spectrum efficiency, objectives that we find compelling for the reasons described herein.

13. Indeed, we find that the radio duplication rule acts as a useful guiderail in the FM service—where spectrum is in higher demand (than AM service) by consumers, advertisers, and owners⁴⁶—to encourage the diversification of programming on commonly owned FM stations, which then compete in the marketplace for listeners and advertisers. As Petitioners note, allowing duplication of FM programming beyond the 25% threshold can harm competition in the radio marketplace because, “[t]o the extent that larger clusters are allowed to slash programming costs by eliminating programming on one or more FM stations within a given single market, yet continue to sell advertising on such warehoused spectrum, it follows that competing independent radio stations in that shared market cannot take advantage of similarly drastic economies of scale.”⁴⁷ We conclude that a quantifiable cap on duplication for FM stations properly balances stations’ economic and practical needs to offer some duplication with consumers’ needs for diverse and local programming, and addresses competition concerns as well.⁴⁸ Given the potential economic incentives to duplicate programming (e.g., cost cutting), we share Petitioners’ concerns regarding the attendant harms to the public interest goals of diversity and localism—due to potential reduction of “local voices on local airwaves” providing “locally-relevant programming”—should we not reinstate the rule.⁴⁹

14. Regardless of any perceived benefits, we note that duplication of programming is an inherently inefficient use of spectrum.⁵⁰ While the Commission previously took the position that market forces give station owners an incentive to avoid duplicating programming that renders a prohibition on duplication unnecessary,⁵¹ on reconsideration we do not find sufficient evidence in the record to demonstrate that market forces would dictate against duplication above the rule’s threshold in all, or even most, instances. Conversely, we find that the record provides at least some evidence of an incentive to duplicate programming where market forces apparently failed to prevent it. Notably, Kern Community Radio (Kern), a prospective non-commercial community broadcaster, stated that, in addition to the rebroadcast of programming being imported from outside the market, duplication also is occurring in its local market of Bakersfield, California.⁵² Given that other commenters failed to cite evidence either refuting or countering the market information provided by Kern, we are not convinced that the duplication

⁴⁵ See Petition at 3-5; see also CFI Comments at 9-15; see also REC Comments at 2-3; see also Kern Reply at 1, 3; see also CFI Reply at 3-5.

⁴⁶ We note the AM service’s decades-long struggle with “a steady decline in listenership” can be attributed in part to the availability of higher fidelity alternatives. These include FM broadcasting. See *All-Digital AM Broadcasting et al.*, MB Docket No. 19-311 et al., Notice of Proposed Rulemaking, 34 FCC Rcd 11560, para. 2, n. 4 (2019) (citing Kintronic Comments at 1, MB Docket No. 19-311 and 13-249).

⁴⁷ Petition at 4.

⁴⁸ See *id.*

⁴⁹ *Id.* at 5.

⁵⁰ As recognized before by the Commission, where there is limited quantity of spectrum, duplication beyond a 25% allowance can be considered inefficient. *1992 Radio Rules Order*, 7 FCC Rcd at 2783-84, para. 57.

⁵¹ *2020 Radio Duplication Order*, 35 FCC Rcd at 8390-91, para. 16.

⁵² Kern Reply at 3-5 (stating that “49% percent of [Bakersfield market] FM facilities are either duplication of programming or rebroadcast of programming from outside the market,” and when counting for iHeart Radio and Spanish-language networks, the number “edges to 59%”).

in the Bakersfield-area market is somehow unique or isolated.⁵³ Thus, we find that it was erroneous for the Commission to have ignored such evidence when it agreed with NAB in 2020 that stations obviously are incentivized by market forces not to duplicate, and relied on this reasoning to rescind the rule.⁵⁴ While NAB contends that duplication could reduce the revenues that a station owner could otherwise earn by offering non-duplicative programming,⁵⁵ duplication also allows a station owner to reduce costs substantially. Additionally, the ability to operate a station inexpensively using duplicative programming may, in fact, give a group station owner a disincentive to invest in new programming, or an incentive to occupy the frequency simply to avoid the potential introduction of a competitor. We find NAB's theoretical arguments are insufficient to support the conclusion that market forces alone would be adequate to protect against duplication in the FM band. While experience with the AM band may, over time, provide some evidence relevant to such theoretical questions, without more or better evidence in the record of this proceeding, we find that it was premature to extend elimination of the rule to FM in the *Order*.

15. We further find that the Commission erred in abolishing the duplication rule in the context of the pandemic ongoing at the time.⁵⁶ On reconsideration, we find that the record fails to demonstrate that the 25% duplication allowance set forth in the former rule and the potential to seek a waiver to exceed that allowance would not sufficiently address exigent circumstances.⁵⁷ When eliminating the radio duplication rule, the Commission stated that the COVID-19 national emergency “highlight[ed] the need to provide broadcasters increased flexibility to react nimbly to local needs, as circumstances have changed rapidly in different jurisdictions across the country since the beginning of the outbreak.”⁵⁸ We acknowledge that there may be particular value in “allowing FM broadcasters to duplicate programming on a commonly owned station . . . in times of crisis, including the one our nation is currently undergoing”⁵⁹ because “small broadcasters with fewer resources are especially vulnerable if one of their studio employees contracts the virus.”⁶⁰ However, upon review we find that the record lacks sufficient evidence or examples of inefficiencies tied to the pandemic or other exigent circumstances that would justify permanent industrywide relief. In addition, the record lacks evidence that the existing 25% duplication allowance has proven to be insufficient for FM stations to respond to emergencies.⁶¹

⁵³ While NAB notes that the radio duplication rule was eliminated three years ago, thus providing an opportunity to assess whether stations increased duplication after elimination of the rule, NAB provides no evidence on this point or otherwise refutes or counters the information in the record. *See* Letter from Rick Kaplan, Chief Legal Officer and Executive Vice President, National Association of Broadcasters, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 19-310, 17-105 (filed Feb. 23, 2024); *see also* Letter from Rick Kaplan, Chief Legal Officer and Executive Vice President, National Association of Broadcasters, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 19-310, 17-105 (filed March 4, 2024); Letter from Rick Kaplan, Chief Legal Officer and Executive Vice President, National Association of Broadcasters, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 19-310, 17-105 (filed Feb. 15, 2024).

⁵⁴ *2020 Radio Duplication Order*, 35 FCC Rcd at 8390-91, para. 16.

⁵⁵ *Opposition* at 3.

⁵⁶ *See 2020 Radio Duplication Order*, 35 FCC Rcd at 8389-90, para. 14.

⁵⁷ Given that NAB has not provided evidence of a specific emergency situation in which greater flexibility would be, or would have been, critical, we conclude that use of the existing flexibility—including the 25% duplication allowance, waiver, and the STA process—are sufficient to address such situations.

⁵⁸ *See 2020 Radio Duplication Order*, 35 FCC Rcd at 8389-90, para. 14.

⁵⁹ NAB July 30, 2020 *Ex Parte* at 2.

⁶⁰ *Id.*

⁶¹ Given what we believe to be the minimal burden of addressing by waiver what NAB terms, somewhat imprecisely, as “times of crisis,” NAB July 30, 2020 *Ex Parte* at 2, and what we assume to be the relative

(continued....)

16. As the Petitioners note, the COVID-19 national emergency is “a temporary event.”⁶² During this time, the Commission has taken a number of steps to accommodate Commission licensees and regulatees in light of disruptions to their businesses.⁶³ As Petitioners state, “radio station owners whose financial struggles force a choice between duplicating programming or allowing one or more of their FM stations to go ‘dark’” may seek a waiver to exceed the 25% duplication allowance.⁶⁴ Overall, we find that the clear potential harms arising from the Commission’s elimination of the rule—harms to competition, diversity, localism, and spectrum efficiency—when weighed against speculative potential benefits, if any, merit reinstating the rule for FM service.⁶⁵ Further, we reject NAB’s suggestion that potential efficiency-related benefits can only be achieved through revocation of the rule entirely when adequate regulatory relief was previously provided for in the rule with the 25% duplication allowance.

17. Although the Commission previously expressed concerns regarding costs and delay associated with waiver requests to exceed the 25% duplication allowance based on special circumstances,⁶⁶ we find on reconsideration that in fact there is no information in the record demonstrating that the waiver process has proven unreasonably burdensome. We acknowledge that any waiver process inherently entails some level of cost and delay, but those costs must be balanced against the harms, noted above, that could ensue were the rule eliminated entirely. On balance, we do not find evidence that the waiver process entails costs or delay so unreasonable as to outweigh the legitimate safeguards the rule provides. Indeed, NAB has failed to provide concrete evidence demonstrating that FM stations have struggled to respond to weather and other emergency events because of the need to seek a waiver, despite raising such a concern.⁶⁷ We find that the rule provides stations a sufficient buffer under the 25% duplication allowance so that stations may react responsively and nimbly to emergencies, format changes, and other special circumstances that might warrant a temporary level of duplication.⁶⁸ We agree with Petitioners that the wholesale elimination of the radio duplication rule for FM stations across the industry “shortchange[d] the careful tailoring and analysis available through the waiver process,”⁶⁹ through which stations can seek relief.⁷⁰ A waiver process exists precisely to account for temporary or unique circumstances that warrant a limited departure from the overall rule.⁷¹

(Continued from previous page) —————

infrequency of such occasions, we do not believe that burden outweighs the risks associated with essentially exempting FM stations from the nonduplication limitations on such a vague basis. However, we would expect to look favorably upon waivers premised on adequately documented weather or similarly unforeseen emergencies, sought promptly at the time of such emergencies.

⁶² See Petition at 2. See also *Relating to a National Emergency Declared by the President on March 13, 2020*, 50 U.S.C. § 1622 (2023).

⁶³ See, e.g., *Sponsorship Identification*, Order, DA 20-679 (MB rel. June 26, 2020) (extending through August 31, 2020, the temporary waiver previously regarding certain sponsorship identification requirements).

⁶⁴ Petition at 2.

⁶⁵ Benefits of rescinding the rule cited by NAB, including efficiencies in responding to emergencies, are inherently speculative. The record contains no evidence demonstrating that such efficiencies could not be achieved with the 25% duplication allowance and existing waiver options. Opposition at 5-7.

⁶⁶ See *2020 Radio Duplication Order*, 35 FCC Rcd at 8389, para. 14.

⁶⁷ NAB July 30, 2020 *Ex Parte* at 2.

⁶⁸ See *1992 Radio Rules Order*, 7 FCC Rcd. at 2784, para. 57 (stating that the rule, including the duplication allowance, properly balances concerns of inefficient usage of spectrum with limited circumstances in which duplication may be considered efficient, profitable, and neutral towards programming diversity, such as “on-the-spot news coverage” for emergencies).

⁶⁹ Petition at 8.

⁷⁰ See *2020 Radio Duplication Order*, 35 FCC Rcd at 8390, para. 15.

18. Finally, whatever the alleged or perceived economic challenges facing the FM service may be, we conclude that the record does not establish that elimination of the prohibition on duplication as it pertains to FM service is an appropriate, or likely to be an effective, means to address those challenges.⁷² In its support of the elimination of the duplication rule, NAB has repeatedly emphasized how FM stations have encountered significant financial stress—in part due to listener demands for higher fidelity in an “expanding universe” of platforms and economic shocks from COVID-19.⁷³ However, as stated above, the rule was created in service of other objectives, which would be jeopardized in its absence.⁷⁴ Moreover, we cannot conclude that the duplication rule’s impacts are sufficiently tied to FM stations’ economic and listenership challenges such that revocation of the rule entirely would meaningfully address these larger concerns.⁷⁵ We find that the rule already provides adequate flexibility for those FM stations that choose partial or short-term duplication of programming in response to either economic challenges or other temporary emergency or reformatting needs.

19. We are not persuaded by NAB’s *ex parte* request to pause this *Order* until the Commission first collects and analyzes new data on the nature and prevalence of programming duplication, and/or information regarding recent changes to stations’ operations, since the Commission’s elimination of the duplication rule.⁷⁶ We note that NAB has not submitted such data. In any event, regardless of whether and to what extent duplication has begun to take place, it does not follow that the Commission should delay further the restoration of a useful guiderail. As noted above, in those instances where duplication is occurring or will occur in the future, and where there is a legitimate need for it, the 25% duplication allowance and waiver process will remain available to stations.

20. Although we reject calls to wait further to act, we provide a six-month grace period to the extent that some FM stations are currently employing duplication that exceeds the limits of the reinstated rule. In order to minimize possible service disruptions and burdens for these stations, and to provide them with an ample runway back to compliance with the reinstated rule, we will provide a six-month grace period after the rule’s effective date to come into compliance. The six-month grace period will begin when the reinstated rule becomes effective thirty days after publication in the Federal Register. Consistent with this grace period, we strongly encourage any FM station that currently exceeds the duplication allowance, and that intends to seek a waiver, to submit its request for a waiver within the first ninety days after the new rule becomes effective. We believe that adherence to this timeframe will

(Continued from previous page)

⁷¹ See 47 CFR §1.3; *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“[W]aiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”); *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (“An applicant for waiver faces a high hurdle even at the starting gate. ‘When an applicant seeks a waiver of a rule, it must plead with particularity the facts and circumstances which warrant such action.’”) (citation omitted).

⁷² See, e.g., *2020 Radio Duplication Order*, 35 FCC Rcd at 8387-89, paras. 9-14 (noting the relative challenges faced by the AM and FM services).

⁷³ NAB July 30, 2020 *Ex Parte* at 1-2.

⁷⁴ *1992 Radio Rules Order*, 7 FCC Rcd at 2788, para. 57 (citing *Review of The Technical Assignment Criteria for the AM Broadcast Service*, Report and Order, 6 FCC Rcd 6273, 6329-30 (1991)).

⁷⁵ Opposition at 4-5. Indeed, NAB itself asserts that duplication, generally speaking, should not be thought of as a profitable business model. NAB July 30, 2020 *Ex Parte* at 2.

⁷⁶ See Letter from Rick Kaplan, Chief Legal Officer and Executive Vice President, National Association of Broadcasters, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 19-310, 17-105 (filed Feb. 23, 2024); see also Letter from Rick Kaplan, Chief Legal Officer and Executive Vice President, National Association of Broadcasters, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 19-310, 17-105 (filed March 4, 2024); Letter from Rick Kaplan, Chief Legal Officer and Executive Vice President, National Association of Broadcasters, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 19-310, 17-105 (filed Feb. 15, 2024).

benefit such stations by permitting them to take advantage of the grace period and continue their current practices while any waiver request is under review. Nevertheless, we will permit FM stations currently employing duplication that exceeds the 25% duplication allowance to continue to transmit their programming in excess of the 25% duplication allowance unless and until the waiver request is denied.⁷⁷ In addition, we emphasize that the grace period and our guidance on waivers for those FM stations currently duplicating in excess of the 25% duplication allowance, as described directly above, does not preclude an FM station that later finds itself interested in pursuing a waiver from seeking one. The general process for seeking a waiver of the reinstated rule will continue to remain available beyond, and apart from, the grace period and ninety-day recommendation for requesting a waiver described in this paragraph.

21. In conclusion, we agree with Petitioners that the Commission erred by enacting a permanent rule change for the FM service when the existing duplication allowance and waiver option, adequately address issues that may arise. The reinstated rule will function as a useful guiderail promoting the public interest and will provide sufficient flexibility to serve the particularized needs of FM stations. For the reasons stated above, we find that any costs associated with reinstating the rule for FM service are outweighed by the benefits associated with the rule in furthering the public interest objectives of competition, programming diversity, localism, and spectrum efficiency. Accordingly, we grant the Petition and reinstate the radio duplication rule as to FM stations.

IV. PROCEDURAL MATTERS

22. *Supplemental Final Regulatory Flexibility Act Analysis.* In compliance with the Regulatory Flexibility Act (RFA),⁷⁸ this Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) supplements the Final Regulatory Flexibility Analysis (FRFA) included in the *Order*,⁷⁹ to the extent that changes adopted on reconsideration require changes to the information included and conclusions reached in the FRFA. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),⁸⁰ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *NPRM* that initiated this proceeding.⁸¹ The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. The Commission received no comments in response to the IRFA. This present Supplemental FRFA conforms to the RFA.⁸² The Supplemental FRFA is set forth in Appendix B.

23. *Paperwork Reduction Analysis.* This document does not contain new or revised information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13, (44 U.S.C. §§ 3501 through 3520). In addition, therefore, it does not contain any new or modified “information burden for small business concerns with fewer than 25 employees” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, 44 U.S.C. § 3506(c)(4).

24. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget concurs, that this rule is “non-major” under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send

⁷⁷ In the event that a waiver request is denied, we direct the Media Bureau to provide the licensee with additional time to come into compliance, not to exceed six months from waiver denial.

⁷⁸ See 5 U.S.C. § 604.

⁷⁹ 2020 Radio Duplication Order, 35 FCC Rcd at 8383, para. 1.

⁸⁰ 5 U.S.C. § 603. The RFA, *id.* §§ 601-12, 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).

⁸¹ See 2019 Radio Duplication NPRM, 34 FCC Rcd at 11553-55, Appx. B.

⁸² See 5 U.S.C. § 604.

a copy of the *Order on Reconsideration* to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

25. *Additional Information.* For additional information on this proceeding, contact John Bat, John.Bat@fcc.gov, of the Industry Analysis Division, Media Bureau, (202) 418-7921.

V. ORDERING CLAUSES

26. Accordingly, **IT IS ORDERED** that, pursuant to the authority found in sections 1, 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), and 303(r), this *Order on Reconsideration* **IS ADOPTED** and **WILL BECOME EFFECTIVE** 30 days after publication in the Federal Register.

27. **IT IS FURTHER ORDERED** that the Petition for Reconsideration filed by REC Networks, the musicFIRST Coalition, and the Future of Music Coalition **IS GRANTED**.

28. **IT IS FURTHER ORDERED** that, pursuant to the authority found in sections 1, 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), and 303(r), the Commission's rules **ARE AMENDED** as set forth in Appendix A and such rule amendment will become effective 30 days after publication in the Federal Register.

29. **IT IS FURTHER ORDERED** that the Commission's Office of the Secretary, **SHALL SEND** a copy of this *Order on Reconsideration*, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

30. **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's Office of the Managing Director, Performance Program Management **SHALL SEND** a copy of the *Order on Reconsideration* to Congress and to the Government Accountability Office.

31. **IT IS FURTHER ORDERED** that, should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 19-310 **SHALL BE TERMINATED** and its docket closed.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A**Final Rules**

For the reasons discussed above, the Federal Communications Commission amends part 73 of Title 47 of the Code of Federal Regulations as follows:

PART 73 – RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:
Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.
2. Add § 73.3556 to subpart H to read as follows:

§73.3556 Duplication of programming on commonly owned or time brokered stations

(a) No commercial FM radio station shall operate so as to devote more than 25 percent of the total hours in its average broadcast week to programs that duplicate those of any station in the same service which is commonly owned or with which it has a time brokerage agreement if the principal community contours (predicted 3.16 mV/m) of the stations overlap and the overlap constitutes more than 50 percent of the total principal community contour service area of either station.

(b) For purposes of this section, duplication means the broadcasting of identical programs within any 24 hour period.

APPENDIX B

Supplemental Final Regulatory Flexibility Act Analysis

A. Need For, and Objectives of, the *Order on Reconsideration*

1. The radio duplication rule prohibited any commercial AM or FM radio station from devoting “more than 25% of the total hours in its average broadcast week to programs that duplicate those of any other station in the same service (AM or FM) which is commonly owned or with which it has a time brokerage agreement if the principal community contours . . . of the stations overlap and the overlap constitutes more than 50% of the total principal community contour service area of either station.”¹ In this *Order on Reconsideration*, we restore the radio duplication rule as applied to FM stations in order to better serve the public interest.

2. We find that the record does not demonstrate that eliminating the radio duplication rule as applied to the FM service serves the public interest, as the FM service does not face the same persistent challenges as the AM service that eliminating the rule for AM stations was intended to mitigate. We find that there are likely benefits to restoring the radio duplication rule for FM stations. The radio duplication rule will act as a useful guiderail in the FM service—where spectrum is especially scarce—to encourage the diversification of programming on commonly owned FM stations. Accordingly, we restore the radio duplication rule for FM stations, while recognizing the 25% duplication allowance and the potential to seek a waiver to exceed that allowance in the event of special circumstances will provide FM licensees with flexibility where needed.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

3. There were no comments to the IRFA or FRFA filed.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

4. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.² The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Apply

5. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.³ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁴ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁵ A small business is

¹ 47 CFR § 73.3556. Principal community contours are defined as “predicted or measured 5 mV/m groundwave for AM stations and predicted 3.16 mV/m for FM stations.” *Id.* A time brokerage agreement generally involves the sale by one radio licensee of blocks of time to a broker who then supplies programming to fill that time and sells the commercial spot advertising to support it. *See 2019 Radio Duplication NPRM*, 34 FCC Rcd at 11544, para. 2, n. 1.

² 5 U.S.C. § 604(a)(3).

³ 5 U.S.C. § 603(b)(3).

⁴ *Id.* § 601(6).

⁵ *Id.* § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632). Pursuant
(continued....)

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.⁶ The rule changes adopted herein will directly affect certain small radio broadcast stations, specifically commercial FM radio stations. Below, we provide a description of these small entities, as well as an estimate of the number of such small entities, where feasible.

6. *Radio Stations.* This industry is comprised of “establishments primarily engaged in broadcasting aural programs by radio to the public.”⁷ Programming may originate in their own studio, from an affiliated network, or from external sources.⁸ The SBA small business size standard for this industry classifies firms having \$41.5 million or less in annual receipts as small.⁹ U.S. Census Bureau data for 2017 show that 2,963 firms operated in this industry during that year.¹⁰ Of this number, 1,879 firms operated with revenue of less than \$25 million per year.¹¹ Based on this data and the SBA’s small business size standard, we estimate a majority of such entities are small entities.

7. The Commission estimates that as of March 31, 2024, there were 4,427 licensed commercial AM radio stations and 6,663 licensed commercial FM radio stations, for a combined total of 11,090 commercial radio stations.¹² Of this total, 11,088 stations (or 99.98 %) had revenues of \$41.5 million or less in 2022, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Database (BIA) on April 4, 2024, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates that as of March 31, 2024, there were 4,320 licensed noncommercial (NCE) FM radio stations, 1,960 low power FM (LPFM) stations, and 8,913 FM translators and boosters.¹³ The Commission however does not compile, and otherwise does not have

(Continued from previous page) _____
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.” *Id.* § 601(3).

⁶ *Id.* § 632. Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission’s statistical account of television stations may be over-inclusive.

⁷ See U.S. Census Bureau, *2017 NAICS Definition, “515112 Radio Stations,”* <https://www.census.gov/naics/?input=515112&year=2017&details=515112>.

⁸ *Id.*

⁹ See 13 CFR § 121.201, NAICS Code 515112 (as of 10/1/22 NAICS Code 516110).

¹⁰ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 515112, <https://data.census.gov/cedsci/table?y=2017&n=515112&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>. We note that the U.S. Census Bureau withheld publication of the number of firms that operated for the entire year.

¹¹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in the individual categories for less than \$100,000, and \$100,000 to \$249,999 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in these categories). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

¹² *Broadcast Station Totals as of March 31, 2024*, Public Notice, DA 24-323 (rel. Apr. 4, 2024) (*April 2024 Broadcast Station Totals PN*), <https://docs.fcc.gov/public/attachments/DA-24-323A1.pdf>.

¹³ *Id.*

access to financial information for these radio stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of radio station licensees, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

8. We note, however, that in assessing whether a business concern qualifies as "small" under the above definition, business (control) affiliations¹⁴ must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of "small business" requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio or television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which the rules may apply does not exclude any radio or television station from the definition of a small business on this basis and is therefore possibly over-inclusive. An additional element of the definition of "small business" is that the entity must be independently owned and operated. Because it is difficult to assess these criteria in the context of media entities, the estimate of small businesses to which the rules may apply does not exclude any radio or television station from the definition of a small business on this basis and similarly may be over-inclusive.

E. Description of Projected Reporting, Record Keeping and Other Compliance Requirements

9. The *Order on Reconsideration* restores the radio duplication rule as applied to FM stations. Accordingly, the *Order on Reconsideration* reinstates prior reporting, recordkeeping, and compliance requirements for small entities. Therefore, the *Order on Reconsideration* will not impose additional obligations or expenditure of resources on small businesses.

F. Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

10. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.¹⁵

11. In this proceeding, we reinstate the radio duplication rule for FM stations. This action reinstates prior reporting, recordkeeping, and compliance requirements for all commercial FM radio stations, including small entities. We determined in this *Order on Reconsideration* that reinstating the radio duplication rule for FM stations would better serve the public interest and anticipate that reinstatement of the rule will positively impact broadcasters, including small entities, and avoid the potential harms described by Petitioners. We believe that the reinstated rule for FM broadcasters affords small businesses sufficient flexibility under the 25% duplication allowance. Because we do not anticipate that a large number of broadcasters will exceed the allowance, we find that the allowance by itself provides adequate accommodation for small businesses. For those few cases in which FM stations would surpass the duplication allowance, we permit stations to submit waiver requests which specify the need

¹⁴ "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both." 13 CFR § 21.103(a)(1).

¹⁵ 5 U.S.C. § 603(c)(1)-(c)(4).

for and special circumstances justifying duplication beyond the allowance. For those FM stations that duplicate programming in excess of the 25% duplication allowance, we will provide a six-month grace period to come into compliance with the reinstated rule. The period will begin when the reinstated rule becomes effective thirty days after publication in the Federal Register. In addition, we direct the Media Bureau to provide the licensee with additional time to come into compliance, not to exceed six months if a duplication waiver request is denied. We conclude that extending such flexibility to FM stations, especially for small entities, will mitigate some of the compliance burdens associated with the rule change. Taken together, these provisions allow for all stations, no matter their size and resources, to comply with the rule without being unduly burdened.

G. Report to Congress

12. The Commission will send a copy of this *Order on Reconsideration*, including this Supplemental FRFA, in a report to Congress and the Government Accountability Office pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.¹⁶ In addition, the Commission will send a copy of the *Order on Reconsideration*, including the Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Order on Reconsideration* and Supplemental FRFA (or summaries thereof) will also be published in the *Federal Register*.¹⁷

H. Federal Rules that May Duplicate, Overlap, or Conflict with the Rule

13. None.

¹⁶ See 5 U.S.C. § 801(a)(1)(A).

¹⁷ See *id.* § 604(b).

**STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *Amendment of Section 73.3556 of the Commission's Rules Regarding Duplication of Programming on Commonly Owned Radio Stations Modernization of Media Regulation Initiative*, Order on Reconsideration, MB Docket Nos. 19-310 & 17-105.

For decades, the Federal Communications Commission has built its media policies around the values of localism, competition, and diversity. I believe in these values because over history they are the best guideposts we have for communications policymaking.

I also believe we can modernize our rules while still honoring these principles. Here we do just that. The rationale for providing AM radio with additional flexibility to duplicate programming does not pertain to FM radio. The economic and signal quality issues are different, and the impact of content duplication is not the same. That is why today we do what we should have done in 2020—work to preserve relief to AM radio based on arguments supported by our record, and work to ensure continued diversity of programming on the FM dial.

Taking this step is recommitting to the essential values that have long supported our policies in this area. I appreciate the petition from REC Networks, the musicFIRST Coalition, and the Future of Music Coalition for providing us with the opportunity to do so.

**STATEMENT OF
COMMISSIONER BRENDAN CARR, DISSENTING**

Re: *Amendment of Section 73.3556 of the Commission's Rules Regarding Duplication of Programming on Commonly Owned Radio Stations Modernization of Media Regulation Initiative*, Order on Reconsideration, MB Docket Nos. 19-310 & 17-105.

America's radio broadcasters are facing an unprecedented set of challenges. Not only are they working through many of the same economic headwinds that businesses across the country are facing today, while in the background Big Tech companies continue to take greater shares of advertising spend, they are also seeing a large and growing set of unregulated competitors pouring into the market—new entrants that do not face the same regulatory barriers or costs that the federal government saddles on top of broadcasters.

If ever there were a moment for the FCC to modernize its regulations so that broadcasters could compete on a level playing field, that moment would be now. Yet the agency does the opposite today. Rather than accepting the reality that disruptive new forms of effective competition have eliminated the rationales for many of our media regulations—and then heading down the path of pruning back our outdated rules—the FCC decides today to put regulations that the FCC eliminated four years ago back in place.

In 2020, the Commission voted to end a 1960s-era regulation of FM broadcasters because, as the record showed, competition had long since eroded any justification for the rule. Eliminating the rule, the Commission determined, would ease regulatory burdens and costs (thus freeing up broadcasters to focus additional resources on serving their communities) without any offsetting public interest harms.

We now have almost four years of real-world experience to test the wisdom of the FCC's 2020 decision. Presumably, then, the FCC is reversing course for good reasons and not just regulatory reflex. The agency Order today must find that the 2020 vote resulted in actual harms? Nope. Not at all. The FCC musters no evidence on this score. Against the repeal's actual benefits, the FCC offers only theoretical harms that never materialized.

This is fatal to the Commission's decision today. Rather than putting unnecessary regulations back in place, the FCC should be ensuring that America's broadcasters have the flexibility necessary to compete with their unregulated competitors and serve their local communities.

I dissent.

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

In the Matter of	)	
	)	
iGEM Communications LLC	)	File No.:
	)	NAL/Acct. No.: 202432080016
	)	FRN: 0025593468

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: June 10, 2024

Released: June 11, 2024

By the Commission:

TABLE OF CONTENTS

Heading	Paragraph #
I. INTRODUCTION	1
II. BACKGROUND	1
A. Legal Framework	1
B. Factual Background	12
1. Failures to Pay USF Contributions on Time and in Full	13
2. Failures to Pay TRS Fund Contributions on Time	17
3. Failures to Pay LNP Assessment on Time	18
4. Failures to Submit Form 477 and BDC Filings on Time	19
5. The Enforcement Bureau's Investigation	20
III. DISCUSSION	21
A. iGEM Apparently Violated the Act and the Commission's Rules by Repeatedly Failing to Pay USF Contributions on Time and in Full.	23
B. iGEM Apparently Violated Commission Rules by Repeatedly Failing to Pay Timely TRS Fund Contributions.	26
C. iGEM Apparently Violated Commission Rules by Failing to Pay Timely an LNP Contribution.	27
D. iGEM Apparently Violated Commission Rules by Repeatedly Failing to Submit Timely Broadband Data Collection Reports.	28
IV. PROPOSED FORFEITURE	30
A. Proposed Forfeiture for Failure to Comply with USF Contribution Obligations.	33
B. Proposed Forfeiture for Failure to Comply with TRS Fund Contribution Obligations.	37
C. Proposed Forfeiture for Failure to Comply with LNP Contribution Obligations.	40
D. Proposed Forfeiture for Failure to Comply with Broadband Data Filing Requirements	43
E. Total Proposed Forfeiture	44
V. CONCLUSION	45
VI. ORDERING CLAUSES	46

I. INTRODUCTION

1. We propose a penalty of \$2,652,881 against iGEM Communications LLC d/b/a Globalgig (iGEM or Company) for apparently violating sections 225, 251(e)(2), and 254(d) of the Communications Act of 1934, as amended (Act), and sections 52.32, 64.604(c)(5)(iii), 54.706(a), and 1.7002 of the Commission's rules by apparently willfully and repeatedly failing to contribute fully and

timely to the Universal Service Fund (USF), to pay timely contributions to the Telecommunications Relay Service (TRS) Fund, to pay timely assessments for Local Number Portability (LNP) administration, and to submit timely reports pursuant to the Commission's Broadband Data Collection (BDC) requirements.

2. Compliance with the Act and the Commission's rules is paramount to the integrity and efficiency of the operations of the Commission and the programs it administers. Interstate telecommunications carriers and certain other providers of interstate telecommunications (collectively, Service Providers) are required to pay assessments on time and in full for certain cost recovery requirements implemented under the Act. Failing to pay timely and/or full contributions to the USF, TRS Fund, and LNP administration undermines the efficiency and effectiveness of these federal regulatory requirements and harms the public's interest in widely accessible telecommunications services, services to assist those with hearing or speech disabilities, and numbering portability. Delinquent contributors also obtain an unfair competitive advantage over companies that comply with the contribution requirements under the Act and the Commission's rules. Additionally, certain Service Providers must submit broadband and voice services data to the Commission. This information is critical to identifying unserved and underserved communities that are most in need of funding for high-speed broadband investment.

II. BACKGROUND

A. Legal Framework

1. Universal Service Fund Contribution Requirements

3. The Act codifies Congress' historical commitment to promote universal service to ensure that consumers in all regions of the nation have access to affordable, quality telecommunications services. In particular, section 254(d) of the Act requires, among other things, that "[e]very telecommunications carrier [providing] interstate telecommunications services . . . contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service."¹ In implementing this congressional mandate, the Commission directed all telecommunications carriers providing interstate telecommunications services to contribute to the USF based on their interstate and international end-user telecommunications revenues.² Under section 254(d) of the Act, the Commission also requires certain providers of interstate telecommunications, including but not limited to providers of interconnected Voice over Internet Protocol (iVoIP) and some providers of private services,³ to contribute to the USF.⁴ Service Providers that fail to pay timely and fully their share of contributions to the USF face significant consequences because such actions undermine the congressional mandates embodied in section 254 of the

¹ 47 U.S.C. § 254(d). The Universal Service Fund supports numerous public programs that provide support for high cost areas (i.e., the Connect America Fund), low income customers (i.e., Lifeline), schools and libraries (i.e., E-Rate), and rural healthcare. See 47 CFR Part 54, subparts D-G; Federal Communications Commission, "Universal Service," <https://www.fcc.gov/general/universal-service> (last visited Apr. 22, 2024).

² 47 CFR § 54.706(a)-(b).

³ See *id.* § 54.706(a)(11), (a)(18); *Universal Serv. Contribution Methodology*, WC Docket Nos. 06-122, 04-36; CC Docket Nos. 99-200, 98-171, 98-170, 95-116, 96-45, 92-237, 90-571, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006) (extending section 254(d) permissive authority to require iVoIP service providers to contribute to the USF), *petition for review denied, and vacated in part on other grounds, Vonage Holdings Corp. v. FCC*, 489 F.3d 1232 (D.C. Cir. 2007); *Federal-State Joint Board on Universal Serv.*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9183, paras. 794-96 (1997) (concluding that private Service Providers that offer interstate telecommunications to others for a fee are required to contribute to the USF), *aff'd in part, rev'd and remanded in part on other grounds, Texas Office of Public Util. Council v. FCC*, 183 F.3d 393 (5th Cir. 1999).

⁴ See 47 U.S.C. § 254(d) ("Any other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires."); 47 CFR § 54.706(a).

Act,⁵ deprive the USF of the monies necessary to carry out important regulatory objectives,⁶ and give delinquent contributors an economic advantage relative to competitors who make USF contributions on time and in full.⁷ Accordingly, the Commission “has repeatedly observed that compliance with its payment requirements is of paramount importance, and [it] is dedicated to taking the action needed to ensure compliance.”⁸

4. The Commission has established specific procedures to administer the USF. Each Service Provider required to contribute to the USF is required to file Telecommunications Reporting Worksheets annually (i.e., FCC Form 499-A or Annual Worksheets) and quarterly (i.e., FCC Form 499-Q or Quarterly Worksheets).⁹ A Service Provider must timely file Quarterly Worksheets by February 1, May 1, August 1, and November 1 of each year, and Annual Worksheets by April 1 of each year.¹⁰ The Universal Service Administrative Company (USAC), as the Commission’s administrator of the USF, uses the revenue projections submitted in the Quarterly Worksheets to determine and invoice each Service Provider’s monthly universal service contribution obligation.¹¹ Payments by Service Providers are due by the date shown on the invoice.¹² USAC must apply the American rule of accounting (American Rule) to

⁵ *Telseven, LLC*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 6636, 6637, para. 2 (2012) (*Telseven NAL*), forfeiture issued, Forfeiture Order, 31 FCC Rcd 1629 (2016) (*Telseven Forfeiture Order*).

⁶ We have repeatedly noted that the universal service support requirements cannot be fully effective if the USF is only partially funded due to delinquent Service Providers that deprive the USF of necessary funding. See *Globcom, Inc. d/b/a Globcom Global Commc’ns*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 19893, 19896, para. 6 (2003) (*Globcom NAL*), Order of Forfeiture, 21 FCC Rcd 4710 (2006) (*Globcom Forfeiture Order*); *ConQuest Operator Servs. Corp.*, Order of Forfeiture, 14 FCC Rcd 12518, 12518, para. 1 (1999) (*ConQuest Forfeiture Order*).

⁷ *PayG LLC d/b/a Skyswitch*, Notice of Apparent Liability for Forfeiture, 2023 FCC Lexis 1629, at *13-14 (2023) (“Delinquent [S]ervice [P]roviders obtain an unfair competitive advantage over [S]ervice [P]roviders that comply with the reporting provisions of the Commission’s rules, and fully pay USF, TRS Fund, LNP, NANP, and federal regulatory fee assessments required under the Commission’s rules.”) (*PayG 2023 NAL*); *Compass Global, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 6125, 6135-36, para. 21 (2008) (*Compass Global NAL*) (Service Provider “nonpayment of universal service contributions undermines the efficiency and effectiveness of the universal service support mechanisms. Moreover, delinquent carriers may obtain a competitive advantage over carriers complying with the Act and our rules.”); *Conquest Forfeiture Order*, 14 FCC Rcd at 12518-19, para. 1 (stating that “delinquent carriers deprive the universal service support mechanisms of the funds necessary to carry out the goals of this important statutory program.” Such carriers “enjoy a competitive advantage” over those who comply, and the Commission will not permit Service Providers “to shirk their responsibilities in an attempt to gain an advantage over their law-abiding competitors.”).

⁸ *Forfeiture Methodology for Violations of Rules Governing Payment to Certain Fed. Programs*, EB Docket No. 16-330, Memorandum Opinion and Order, 2023 WL 3749704, at *2, para. 7 (2023).

⁹ See 47 CFR § 54.711; *Telseven NAL*, 27 FCC Rcd at 6637, para. 2.

¹⁰ See, e.g., *Wireline Competition Bureau Releases the 2023 Telecomms. Reporting Worksheet Instructions and Accompanying Instructions*, WC Docket No. 06-122, Public Notice, 2022 WL 10379829, *10-11 (WCB 2022) (*2023 Annual Worksheet Instructions*); *Pac. Data Sys.*, Notice of Apparent Liability for Forfeiture, 2023 WL 1067981, at *2, para. 4 (EB 2023) (*Pac. Data Sys. NAL*). If the date falls on a weekend or holiday, the Worksheet is due the following business day. See Universal Serv. Admin. Co., “When to File: Upcoming Deadlines for Forms,” <https://www.usac.org/service-providers/contributing-to-the-usf/when-to-file/> (last visited Apr. 22, 2024).

¹¹ See generally *2023 Annual Worksheet Instructions*; see also 47 CFR §§ 54.706, 54.709.

¹² 47 CFR § 54.713(b) (stating in part that payments are delinquent if they are not made on or before the due date of the monthly invoice provided by USAC); *Globcom NAL*, *supra* note 6, at 19896, para. 5 (Service Providers “must pay their contribution by the date shown on the invoices.”); *Proposed Fourth Quarter 2023 Universal Serv. Contribution Factor*, CC Docket No. 96-45, Public Notice, 2023 WL 6036237, at *2 (OMD 2023) (“Contribution payments are due on the dates shown on the invoice.”). USF payments are typically due on the 15th of each month. If the 15th falls on a weekend or holiday, payments are due on the preceding business day. Universal Serv. Admin. Co., “How to Pay,” <https://www.usac.org/service-providers/making-payments/how-to-pay/> (last visited Apr. 22,

(continued...)

determine when USF contributions are fully paid.¹³ Under the American Rule, a payment is applied first to outstanding penalty and administrative cost charges, next to accrued interest, and third to outstanding principal, and “[i]n applying the payment to outstanding principal, [USAC] shall apply such payment to the contributor’s oldest past due amounts first.”¹⁴

5. The monthly USF contributions that were invoiced based on projected revenues reported in a Service Provider’s Quarterly Worksheets are subject to an annual true-up based on actual revenues reported in the Service Provider’s Annual Worksheet.¹⁵ The Commission’s rules further require that the information contained in the Worksheets be truthful and that the USF payments be accurate.¹⁶ The Commission’s equitable contribution scheme relies on the filing of timely, complete, and accurate Annual and Quarterly Worksheets by all Service Providers.¹⁷ Failure to provide all necessary information and contributions threatens the integrity and viability of the universal service mandate.¹⁸ The Commission has repeatedly warned carriers that attempts to evade these important responsibilities will result in enforcement action against them.¹⁹

2024). Nevertheless, the rules do not condition the payment requirements on receipt of an invoice or other notice from USAC. See 47 CFR § 54.706(b). A Service Provider that “does not file an Annual or Quarterly Worksheet may fail to receive an invoice from USAC, but is nonetheless required to contribute to the universal service fund, unless its revenues are considered *de minimis*.” *Globcom NAL*, *supra* note 6, at 19907, para. 5 & n.22.

¹³ See 47 CFR § 54.713(e); *Comprehensive Review of the Universal Serv. Fund Mgmt., Admin., and Oversight*, WC Docket Nos. 05-195, 03-109, and 02-60; CC Docket Nos. 97-21, 96-45, and 02-6, Report and Order, 22 FCC Rcd 16372, 16381, para. 16 (2007) (“Our actions today will also help clarify, for statute of limitations purposes, the amount of time a contributor’s debt is outstanding.”) (2007 USF Order).

¹⁴ 47 CFR § 54.713(e). USF assessments that have been delinquent for more than 90 days can be transferred to the United States Department of the Treasury (Treasury Department) for collection. See Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (codified in part at 31 U.S.C. §§ 3711, 3716, 3717, 3720B) (DCIA); 47 CFR § 1.1917. A Service Provider remains obligated to pay fully all unpaid assessments whether an administrator or a collection agent, both of which are acting on behalf of the Commission, is collecting USF, TRS Fund, LNP, North American Numbering Plan (NANP), or federal regulatory fee debt, and thus in either case, the payment violation continues until the debt is fully paid and a Service Provider remains subject to enforcement action. See, e.g., *PayG 2023 NAL*, *supra* note 7, at *41, para. 29 & n.119.

¹⁵ See 47 CFR §§ 54.706(b), 54.711; *Federal-State Joint Board on Universal Serv.*, CC Docket No. 96-45, Report and Order and Order on Reconsideration, 16 FCC Rcd 5748, 5752-53, para. 12 (2001).

¹⁶ 47 CFR §§ 54.711(a), 54.713. An officer of a company completing an Annual Worksheet must certify, in part, as follows: “I have examined the foregoing report and, to the best of my knowledge, information and belief, all statements of fact contained in this Worksheet are true and that said Worksheet is an accurate statement of the affairs of the above-named company for the previous calendar year.” See, e.g., 2023 FCC Form 499-A, Line 606. While the Commission requires revisions to Worksheets when errors are discovered, the requirement does not affect the separate requirement to submit accurate information in the first instance to the best of the filer’s knowledge, information, and belief. See, e.g., *2023 Annual Worksheet Instructions*, *supra* note 10, at *11 (delineating the obligation to make revisions); 2023 FCC Form 499-A, Line 606.

¹⁷ 47 CFR § 54.711. The Commission and USAC may review records and documentation underlying revenue reported on a contributor’s Worksheets to determine whether the contributor is properly reporting revenue, and thus contributing its fair share to the costs of the universal service program. See *id.* § 54.711(a); see also *id.* § 54.706(e).

¹⁸ *Globcom Forfeiture Order*, *supra* note 6, at 4729, para. 2.

¹⁹ See 47 CFR § 54.713(c); *Globcom Forfeiture Order*, *supra* note 6, at 19896, para. 6; *America’s Tele-Network Corp.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 20903, 20906, para. 8 (2000), *forfeiture issued*, 15 FCC Rcd 24391 (2000); *Matrix Telecom, Inc.*, Notice of Apparent Liability for Forfeiture, 15 FCC Rcd 13544, 13546, para. 7 (2000), *forfeiture issued*, 16 FCC Rcd 10553 (2001). Consequences also extend beyond enforcement. The Commission’s “red light” rule requires that action be withheld on any application or other request for benefits made by an entity that is delinquent in debts owed to the Commission and dismissal of such applications or requests if the delinquent debt is not resolved. See 47 CFR § 1.1910(b)(2); see, e.g., *Matter of Universal Serv. Contribution* (continued...)

2. Telecommunications Relay Service Fund Contribution Requirements

6. Section 225(b)(1) of the Act, which codifies Title IV of the Americans with Disabilities Act of 1990, directs the Commission to “ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.”²⁰ To that end, the Commission implemented TRS capability rules to enable persons with hearing and speech disabilities to communicate by telephone with voice-telephone users.²¹ Such services provide telephone access to a significant number of Americans who without it might not be able to make calls to or receive calls from voice-telephone users.²² The Commission further established the TRS Fund to reimburse TRS providers for the costs of providing interstate TRS.²³ Pursuant to section 64.604(c)(5)(iii)(A) of the Commission’s rules, certain Service Providers²⁴ must contribute to the TRS Fund based on their end-user revenues.²⁵ Under the Commission’s rules, the TRS Fund administrator, Rolka Loube, LLC (Rolka Loube), uses Annual Worksheet filings to determine each Service Provider’s annual or monthly TRS Fund contribution amounts.²⁶ The TRS Fund depends on Service Providers’ timely payment of contributions.²⁷ Service Providers that violate the TRS Fund contribution requirements undermine the Commission’s TRS requirements and could obtain an unfair advantage over competitors who comply with the statutory and regulatory requirements.²⁸

3. Local Number Portability Cost Recovery Requirements

7. Telecommunications number portability concerns the ability of consumers of telecommunications services to “retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.”²⁹ The presence of this feature in the telecommunications marketplace fosters consumer choice and enhances competition. The inability of customers to retain their telephone numbers

Methodology Petition for Waiver by Metocean Telematics, Ltd., WC Docket No. 06-122, Order, 2023 WL 4635081, at *2, para. 5 (WCB 2023).

²⁰ 47 U.S.C. § 225(b)(1).

²¹ See 47 CFR §§ 64.601-64.640; *Telecommunications Relay Servs. and Speech-to-Speech Servs. for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Report and Order, 15 FCC Rcd 5140, 5143-45, paras. 1-8 (2000) (*TRS Report and Order*).

²² *TRS Report and Order*, 15 FCC Rcd at 5143, para. 5.

²³ See *Telecomms. Relay Servs. and the Ams. with Disabilities Act of 1990*, CC Docket No. 90-571, Third Report and Order, 8 FCC Rcd 5300, 5300, para. 1 (1993).

²⁴ Every carrier providing interstate or intrastate telecommunications services (including interconnected VoIP Service Providers pursuant to 47 CFR § 64.601(b)) and every provider of non-interconnected VoIP service must contribute to the TRS Fund. See 47 CFR § 64.604(c)(5)(iii)(A).

²⁵ *Id.* Under the Commission’s rules, Service Providers must contribute at least \$25 per year, and Service Providers whose annual contributions are less than \$1,200 must pay the entire amount at the beginning of the contribution period. Otherwise, if their account is in good standing, Service Providers are permitted to divide their contributions into 12 equal monthly payments. *Id.* § 64.604(c)(5)(iii)(B).

²⁶ *Id.* Rolka Loube replaced the National Exchange Carrier Association as the TRS Fund administrator effective July 1, 2011. See *Interstate Telecommun. Relay Serv. (TRS) Fund Admin. Transition*, Public Notice, 26 FCC Rcd 8436 (2011).

²⁷ *Globcom NAL*, *supra* note 6, at 19904, para. 28.

²⁸ *PayG 2023 NAL*, *supra* note 7, at *13, para. 7; *Globcom NAL*, *supra* note 6, at 19904, para. 28.

²⁹ 47 CFR § 52.21(m). See also 47 U.S.C. § 153(37).

when changing local Service Providers would otherwise hamper the development of local competition.³⁰ Section 251(e)(1) of the Act directs the Commission to oversee the administration of telecommunications numbering to ensure the availability of telephone numbers on an equitable basis.³¹ Section 251(e)(2) of the Act requires that “[t]he cost of establishing telecommunications numbering administration arrangements and numbering portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.”³² In carrying out these statutory directives, the Commission adopted sections 52.17 and 52.32 of the Commission’s rules.³³ Under the Commission’s rules, Service Providers³⁴ must contribute to the costs of numbering administration and LNP on the basis of their end-user telecommunications revenues.³⁵ The LNP administrator, Telcordia Technologies, Inc. d/b/a iconectiv (iconectiv),³⁶ uses Annual Worksheet filings to determine Service Providers’ required payments for LNP administration.³⁷ As with USF and TRS Fund contribution requirements, delinquent Service Providers obtain an unfair competitive advantage over those Service Providers that do pay LNP assessments in full and on time.³⁸ The failure of Service Providers to make required LNP contributions “severely hampers the Commission’s ability to ensure that the cost of establishing telecommunications numbering administration arrangements is ‘borne by all telecommunications carriers on a competitively neutral basis’ as Congress envisioned.”³⁹

4. FCC Form 477 and Broadband Data Collection Filing Requirements

8. The Commission “has long recognized that precise, granular data on the availability of fixed and mobile broadband [is] vital to bringing digital opportunity to all Americans, no matter where

³⁰ The Commission has observed that in requiring number portability, “Congress recognized that the inability of customers to retain their telephone numbers when changing local [S]ervice [P]roviders hampers the development of local competition.” *Telephone Number Portability*, CC Docket No. 95-116, Third Report and Order, 13 FCC Rcd 11701, 11702, para. 3 (1998) (*Telephone Number Portability Report and Order*), *aff’d*, *Telephone Number Portability*, CC Docket No. 95-116, Memorandum Opinion and Order on Reconsideration and Order on Application for Review, 17 FCC Rcd 2578 (2002). *See also* H.R. Rep. No. 104-204(I), 104th Cong., 1st Sess. at 113 (1995) (Joint Explanatory Statement) (stating that “[t]he ability to change [S]ervice [P]roviders is only meaningful if a customer can retain his or her local telephone number”).

³¹ 47 U.S.C. § 251(e)(1).

³² *Id.* § 251(e)(2).

³³ 47 CFR §§ 52.17, 52.32.

³⁴ All telecommunications carriers and iVoIP providers in the United States shall contribute to meet the costs of establishing numbering administration and LNP. *See id.* §§ 52.17, 52.32; *see also id.* § 52.5(i)-(j) (stating that, for the purpose of the Commission’s Part 52 rules, “telecommunications carrier” includes an iVoIP Service Provider).

³⁵ *See id.* § 52.17(a) (“Contributions to support numbering administration shall be the product of the contributors’ end-user telecommunications revenues for the prior calendar year and a contribution factor determined annually . . . such contributions to be no less than twenty-five dollars (\$25).”); *see also id.* § 52.32(a) (Service Providers that have no intrastate, interstate, or international end-user telecommunications revenues derived from providing telecommunications service in areas a regional database serves must pay \$100 contributions for LNP, and if Service Providers derive intrastate, interstate, or international end-user telecommunications revenues in areas a regional database serves, the Service Providers must pay a charge that recovers the remaining shared costs of long-term number portability attributable to each Service Provider on a proportional basis.).

³⁶ *See Telcordia Techs., Inc. Petition to Reform Amendment 57 and to Order a Competitive Bidding Process for Number Portability Admin.*, WC Docket Nos. 07-149 and 09-109; CC Docket No. 95-116, Order, 31 FCC Rcd 8406, 8407, para. 1 (2016) (approving the recommendation of the North American Numbering Council (NANC) that iconectiv serve as the next LNP administrator).

³⁷ 47 CFR § 52.32(b).

³⁸ *PayG 2023 NAL*, *supra* note 7, at *13, para. 7.

³⁹ *Compass Global NAL*, *supra* note 7, at 6141, para. 37 (citing 47 U.S.C. § 251(e)(2)).

they live.”⁴⁰ In 2000, the Commission began collecting information about broadband deployment and local telephone competition through FCC Form 477.⁴¹ In 2022, the Commission sunset the collection of broadband data through FCC Form 477.⁴² The Commission continues to collect broadband and voice subscription data using FCC Form 477, but filers are required to submit their data through the BDC system.⁴³ The BDC system consists of a set of interrelated systems and processes to collect, validate, and publish complete, granular, and reliable data on broadband availability nationwide.⁴⁴

9. The following entities are required to submit timely and accurate reports in the BDC system on a semiannual basis: facilities-based providers of fixed or mobile broadband internet access service; providers of local telephone service; facilities of mobile telephony service; and providers of iVoIP service to end users.⁴⁵ Reports must be filed each year on or before March 1 (reporting data required on FCC Form 477 as of December 31 of the prior year) and September 1 (reporting data required on FCC Form 477 as of June 30 of the current year), absent an extension by the Commission.⁴⁶ Reports must also include certain certifications.⁴⁷

10. Revisions to reports must be submitted “if and when [Service Providers] discover a significant error” in their data.⁴⁸ If a Service Provider discovers any inaccuracy, omission, or significant reporting error in the original data submitted, the Service Provider is required to file corrected data within 30 days of the discovery or notification of the inaccuracy or omission.⁴⁹ The requirement to file corrected data is independent of the obligation to file timely, accurate, and complete data as part of the semiannual BDC submission.⁵⁰

⁴⁰ *Establishing the Digital Opportunity Data Collection Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195 and 11-10, Third Report and Order, 36 FCC Rcd 1126, 1126, para. 1 (2021) (*BDC Third Report and Order*).

⁴¹ *See Local Competition and Broadband Reporting*, CC Docket No. 99-301, Report and Order, 15 FCC Rcd 7717, 7719-20, para. 3 (2000); *see also* 47 U.S.C. § 1302(b) (requiring the Commission to determine and report annually on “whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion”).

⁴² *Establishing the Digital Opportunity Data Collection Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195 and 11-10, Order, 37 FCC Rcd 14957, 14957, para. 1 (2022) (sunsetting the collection of broadband deployment data through Form 477 effective upon publication of the Order in the Federal Register) (*BDC Order*); *see also* 87 Fed. Reg. 76949-59 (Dec. 16, 2022).

⁴³ *BDC Order*, 37 FCC Rcd at 14957, para. 1.

⁴⁴ *See Broadband Data Task Force and Office of Economics and Analytics Announce Inaugural Broadband Data Collection Filing Dates*, WC Docket Nos. 19-195 and 11-10, Public Notice, 37 FCC Rcd 2392, 2392, para. 2 (OEA 2022); *see generally* Broadband Deployment Accuracy and Technological Availability Act, Pub. L. No. 116-130, 134 Stat. 228 (codified at 47 U.S.C. §§ 641-646); *Establishing the Digital Opportunity Data Collection Modernizing the FCC Form 477 Data Program*, WC Docket No. 19-195 and 11-10, Second Report and Order and Third Further Notice of Proposed Rulemaking, 35 FCC Rcd 7460 (2020); *BDC Third Report and Order*.

⁴⁵ 47 CFR §§ 1.7001(a)-(b); 1.7002.

⁴⁶ *Id.* §§ 1.7002; 1.7004(a)-(b).

⁴⁷ *Id.* § 1.7004(d).

⁴⁸ *Id.* § 1.7001(e).

⁴⁹ 47 CFR § 1.7009(d)(1); *BDC Third Report and Order*, *supra* note 40, at 1145-46, paras. 145, 147. *See also* 47 CFR § 1.7006(d)(3)(i), (d)(4), (e)(6)(iii), (f)(7). The Commission “will not excuse providers from updating their data for non-significant reporting errors.” *BDC Third Report and Order*, *supra* note 40, at 1145, para. 145.

⁵⁰ *All Facilities-Based Broadband Internet Access Serv. Providers Must Timely File Complete & Accurate Data in the Broadband Data Collection*, WC Docket Nos. 19-195 and 11-10, Public Notice, 37 FCC Rcd 7341, 7343 (EB 2022) (*BDC Enforcement Advisory*).

11. The Commission's Enforcement Bureau (Bureau) advised all covered Service Providers of their duty to file broadband data and the potential consequences for failing to comply with the Commission rules.⁵¹ Failure to comply with the BDC reporting requirements may lead to enforcement action.⁵²

B. Factual Background

12. iGEM is a privately held limited liability company organized in Texas on January 11, 2016.⁵³ It is a wholly owned subsidiary of iGEM Communications Holdings Inc.,⁵⁴ and operates nationwide under the fictitious name "Globalgig."⁵⁵ iGEM provides local resale, iVoIP, and other services.⁵⁶ iGEM first provided telecommunications service in October 2016⁵⁷ and operates under the Commission's blanket domestic section 214 authorization as a "domestic, interstate communications common carrier for resold wireless and private line services[.]"⁵⁸ The Company provides telecommunications or telecommunications services nationwide and internationally on a stand-alone or integrated service based on the demands of its enterprise customers.⁵⁹

⁵¹ *Id.* at 7343.

⁵² See 47 CFR § 1.7001(f); *BDC Third Report and Order*, *supra* note 40, at 1182, para. 144 ("[F]ailure to timely file required data in the new Digital Opportunity Data Collection may lead to enforcement action"); *see, e.g., Your Town Online, Inc.*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 4409, 4411-12, para. 8 (EB 2021) (concluding that the company violated the Commission's rules when it failed to file any FCC Form 477); *Barrier Commc'ns Corp.*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 10186, 10197, para. 28 (2020) (concluding that the company failed to file FCC Form 477 numerous times in violation of the Commission's rules) (*Barrierfree NAL*).

⁵³ Letter from Philip Macres, Esq., Counsel for iGEM Communications LLC, to Patrick McGrath, Chief, Investigations and Hearings Division, FCC Enforcement Bureau, at 6, Response to Question 1 (Jan. 11, 2024) (on file in EB-IHD-23-00035763) (January 11, 2024 LOI Response).

⁵⁴ *Id.*

⁵⁵ *Id.* at 11, Response to Question 3.

⁵⁶ iGEM Communications, LLC, 499A – Annual Telecommunications Reporting Worksheet (2023) (Line 105); January 11, 2024 LOI Response at 13, Response to Question 5 (stating that iGEM also provides the following services: managed SD-WAN, SASE, Internet, private networking, managed network services, wireless networking, IoT connectivity, SIM management, private LTE, wireless broadband, SIP trunking, hosted PBX, POTS replacement, and Orchestra Network Platform).

⁵⁷ January 11, 2024 LOI Response at 28, Response to Question 20.

⁵⁸ *Id.* at 23, Response to Question 15. In 1999, the Commission granted all telecommunications carriers blanket authority under Section 214 of the Act, 47 U.S.C. § 214, to provide domestic interstate services and to construct or operate any domestic transmission line. *See Implementation of Section 402(b)(2)(A) of the Telecomm. Act of 1996*, Report and Order in CC Docket No. 97-11, Second Memorandum Opinion and Order in AAD File No. 98-43, 14 FCC Rcd 11364, 11365-66, para. 2 (1999) (*Section 402 Implementation Order*); 47 CFR § 63.01. This authority does not extend to the provision of international telecommunications services. *See Section 402 Implementation Order*, 14 FCC Rcd at 11366, para. 2 & n.8.

⁵⁹ January 11, 2024 LOI Response, *supra* note 53, at 29, Response to Question 21.

1. Failures to Pay USF Contributions on Time and in Full

13. Since 2017, iGEM has not paid USF contributions on time and in full.⁶⁰ By applying the American Rule of accounting to iGEM's USF account data, USAC identified the following 16 invoices that were paid untimely, one that was not fully paid, and three invoices that were not paid at all.⁶¹

14. *Untimely Payments.* Beginning on July 15, 2022, iGEM accumulated interest and penalties when it failed to pay invoices in full. Consistent with the American Rule, USAC applied subsequent payments first to pay penalties and then interest attributed to prior unpaid amounts. Thus, iGEM's untimely payments resulted in the following:

- The invoice issued to iGEM on July 15, 2022 (payment due on August 15, 2022), was not satisfied by the Company's payments until November 1, 2022.
- The invoice issued to iGEM on August 15, 2022 (payment due on September 15, 2022), was not satisfied by the Company's payments until December 1, 2022.
- The invoice issued to iGEM on September 15, 2022 (payment due on October 14, 2022), was not satisfied by the Company's payments until January 12, 2023.
- The invoice issued to iGEM on October 14, 2022 (payment due on November 15, 2022), was not satisfied by the Company's payments until February 7, 2023.
- The invoice issued to iGEM on November 15, 2022 (payment due on December 15, 2022), was not satisfied by the Company's payments until March 13, 2023.
- The invoice issued to iGEM on December 15, 2022 (payment due on January 13, 2023), was not satisfied by the Company's payments until April 12, 2023.
- The invoice issued to iGEM on January 13, 2023 (payment due on February 15, 2023), was not satisfied by the Company's payments until May 15, 2023.
- The invoice issued to iGEM on February 15, 2023 (payment due on March 15, 2023), was not satisfied by the Company's payments until June 13, 2023.
- The invoice issued to iGEM on March 15, 2023 (payment due on April 14, 2023), was not satisfied by the Company's payments until July 13, 2023.
- The invoice issued to iGEM on April 14, 2023 (payment due on May 15, 2023), was not satisfied by the Company's payments until August 15, 2023.
- The invoice issued to iGEM on May 15, 2023 (payment due on June 15, 2023), was not satisfied by the Company's payments until September 15, 2023.
- The invoice issued to iGEM on June 15, 2023 (payment due on July 14, 2023), was not satisfied by the Company's payments until October 16, 2023.

⁶⁰ See Letter from Fred Theobald, Director of Contributor Operations, Universal Serv. Admin. Co. to David Janas, Special Counsel, Investigations and Hearings Division, FCC Enforcement Bureau (Feb. 15, 2024) (on file in EB-IHD-23-00035763) (February 15, 2024 USAC Letter) (stating that pursuant to the Commission's rules, USAC has assessed iGEM interest and administrative penalties for late USF payments every month since September 2017).

⁶¹ See 47 CFR § 54.713(e); 2007 USF Order, *supra* note 13, at 16381, para. 16. Given the one-year statute of limitations, 47 U.S.C. § 503(b)(6)(B), USAC limited its analysis to assess USF payment violations that began approximately one year before USAC's initial analysis. USAC ultimately analyzed iGEM's account data for the period beginning July 15, 2022 and ending February 15, 2024. See Letter from Fred Theobald, Director of Contributor Operations, Universal Serv. Admin. Co. to David Janas, Special Counsel, Investigations and Hearings Division, FCC Enforcement Bureau (Dec. 7, 2023) (on file in EB-IHD-23-00035763) (December 7, 2023 USAC Letter); February 15, 2024 USAC Letter.

- The invoice issued to iGEM on July 14, 2023 (payment due on August 15, 2023), was not satisfied by the Company's payments until November 15, 2023.
- The invoice issued to iGEM on August 15, 2023 (payment due on September 15, 2023), was not satisfied by the Company's payments until December 15, 2023.
- The invoice issued to iGEM on September 15, 2023 (payment due on October 13, 2023), was not satisfied by the Company's payments until January 16, 2024.
- The invoice issued to iGEM on October 13, 2023 (payment due on November 15, 2023), was not satisfied by the Company's payments until February 15, 2024.

15. *Unsatisfied Invoice.* The invoice issued to iGEM on November 15, 2023 (payment due on December 15, 2023), was not fully satisfied. The principal balance of this invoice remains unpaid. The Company's payments to this invoice were applied to outstanding interest pursuant to the American Rule.

16. *Unpaid Invoices.* iGEM did not pay three invoices issued between December 15, 2023 and February 15, 2024 (payment due respectively between January 12, 2024 and March 15, 2024), specifically:

- The invoice issued to iGEM on December 15, 2023.
- The invoice issued to iGEM on January 12, 2024.
- The invoice issued to iGEM on February 15, 2024.

In sum, between July 15, 2022 and February 15, 2024, iGEM paid 16 invoices late and failed to pay fully 4 invoices.⁶² USAC also found that iGEM's largest amount of delinquent debt was \$1,027,881, rounded to the nearest dollar.⁶³

2. Failures to Pay TRS Fund Contributions on Time

17. Each year between 2021 and 2024, iGEM paid TRS Fund contributions late, for a total of 29 invoices.⁶⁴ Rolka Loube identified the following invoices that were not paid on time⁶⁵:

- The invoice issued to iGEM on July 16, 2021 (payment due August 15, 2021), was not paid until September 22, 2021.
- The invoice issued to iGEM on August 13, 2021 (payment due September 12, 2021), was not paid until September 22, 2021.
- The invoice issued to iGEM on September 10, 2021 (payment due October 10, 2021), was not paid until October 14, 2021.

⁶² December 7, 2023 USAC Letter; February 15, 2024 USAC Letter.

⁶³ February 15, 2024 USAC Letter at 2 (stating that iGEM's largest USF debt was \$1,027,880.63, which occurred on October 15, 2022).

⁶⁴ E-mail from Theresa Conway, Senior Program Analyst, Rolka Loube, to David Janas, Special Counsel, Investigations and Hearings Division, FCC Enforcement Bureau (Dec. 5, 2023) (on file in EB-IHD-23-00035763) (December 5, 2023 Rolka Loube Email); E-mail from Danielle L. Hulock, Chief Financial Officer, Rolka Loube, to Tram Pham, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau (Feb. 22, 2024) (on file in EB-IHD-23-00035763) (February 22, 2024 Rolka Loube E-mail); E-mail from Danielle L. Hulock, Chief Financial Officer, Rolka Loube, to Tram Pham, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau (Apr. 11, 2024) (on file in EB-IHD-23-00035763) (April 11, 2024 Rolka Loube E-mail).

⁶⁵ *Id.*

- The invoice issued to iGEM on October 8, 2021 (payment due November 7, 2021), was not paid until November 15, 2021.
- The invoice issued to iGEM on November 12, 2021 (payment due December 12, 2021), was not paid until December 13, 2021.
- The invoice issued to iGEM on December 10, 2021 (payment due January 9, 2022), was not paid until January 12, 2022.
- The invoice issued to iGEM on January 14, 2022 (payment due February 13, 2022), was not paid until February 14, 2022.
- The invoice issued to iGEM on February 11, 2022 (payment due March 13, 2022), was not paid until March 14, 2022.
- The invoice issued to iGEM on April 8, 2022 (payment due May 8, 2022), was not paid until May 11, 2022.
- The invoice issued to iGEM on May 13, 2022 (payment due June 12, 2022), was not paid until June 14, 2022.
- The invoice issued to iGEM on June 10, 2022 (payment due July 10, 2022), was not paid until July 13, 2022.
- The invoice issued to iGEM on September 9, 2022 (payment due October 9, 2022), was not paid until October 22, 2022.
- The invoice issued to iGEM on October 14, 2022 (payment due November 13, 2022), was not paid until November 21, 2022.
- The invoice issued to iGEM on November 11, 2022 (payment due December 11, 2022), was not paid until December 20, 2022.
- The invoice issued to iGEM on December 9, 2022 (payment due January 2, 2023), was not paid until January 30, 2023.
- The invoice issued to iGEM on January 13, 2023 (payment due February 12, 2023), was not paid until February 21, 2023.
- The invoice issued to iGEM on February 10, 2023 (payment due March 12, 2023), was not paid until March 22, 2023.
- The invoice issued to iGEM on March 10, 2023 (payment due April 9, 2023), was not paid until April 25, 2023.
- The invoice issued to iGEM on April 14, 2023 (payment due May 14, 2023), was not paid until May 30, 2023.
- The invoice issued to iGEM on May 12, 2023 (payment due June 12, 2023), was not paid until June 26, 2023.

- The invoice issued to iGEM on June 6, 2023 (payment due July 9, 2023), was not paid until July 27, 2023.
- The invoice issued to iGEM on July 18, 2023 (payment due August 17, 2023), was not paid until August 25, 2023.
- The invoice issued to iGEM on August 15, 2023 (payment due September 14, 2023), was not paid until September 29, 2023.
- The invoice issued to iGEM on September 12, 2023 (payment due October 12, 2023), was not paid until October 27, 2023.
- The invoice issued to iGEM on October 10, 2023 (payment due November 9, 2023), was not paid until November 30, 2023.
- The invoice issued to iGEM on November 14, 2023 (payment due December 14, 2023), was not paid until January 4, 2024.
- The invoice issued to iGEM on December 12, 2023 (payment due January 11, 2024), was not paid until January 29, 2024.
- The invoice issued to iGEM on January 16, 2024 (payment due on February 15, 2024), was not paid until March 5, 2024.
- The invoice issued to iGEM on February 13, 2024 (payment due on March 14, 2024), was not paid until March 28, 2024.

3. Failures to Pay LNP Assessment on Time

18. On October 31, 2023, iconectiv issued an invoice to iGEM with payment due on December 15, 2023.⁶⁶ iGEM made its payment on January 16, 2024.⁶⁷

4. Failures to Submit Form 477 and BDC Filings on Time

19. Between 2021 and 2023, iGEM submitted untimely BDC reports. For broadband collection data as of December 31, 2020, the Commission's rules required that the FCC Form 477 be submitted by March 15, 2021.⁶⁸ iGEM submitted its FCC Form 477 on May 17, 2021.⁶⁹ iGEM stated that there was "a delay in gathering the information caused by the migration" to a new billing platform.⁷⁰ It further stated that "the information was submitted within the period for 477 revisions. As such, the information was included in the FCC's data compilation, so the delay did not have any negative affect."⁷¹

⁶⁶ E-mail from Cathy McMahon, Senior Director LNP Account Management, iconectiv, to Tram Pham, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau (Jan. 10, 2024) (on file in EB-IHD-23-00035763).

⁶⁷ E-mail from Cathy McMahon, Senior Director LNP Account Management, iconectiv, to Tram Pham, Attorney Advisor, Investigations and Hearings Division, FCC Enforcement Bureau (Feb. 19, 2024) (on file in EB-IHD-23-00035763).

⁶⁸ *Form 477 Filing Interface Reopened; Filings of Data As of Dec. 31, 2020 Now Due Mar. 15, 2021*, WC Docket No. 11-10, Public Notice, 36 FCC Rcd 4744 (WCB 2021).

⁶⁹ January 11, 2024 LOI Response, *supra* note 53, at 55, Response to Question 45.

⁷⁰ *Id.*

⁷¹ *Id.*

For broadband collection data as of December 31, 2022, the Commission's rules required that reports be submitted no later than March 1, 2023.⁷² iGEM submitted its report on December 18, 2023.⁷³ For broadband collection data as of June 30, 2023, the Commission's rules required that reports be submitted no later than September 15, 2023.⁷⁴ iGEM submitted its report on December 18, 2023.⁷⁵ For data due on March 1, 2023, and September 15, 2023, the Company states that the reports "were filed late due to a switch of its billing platform's reporting engine, resulting in a delay for data to be pulled[.]"⁷⁶

5. The Enforcement Bureau's Investigation

20. On September 22, 2023, USAC referred iGEM to the Bureau for investigation.⁷⁷ On November 16, 2023, the Bureau issued a Letter of Inquiry (LOI) to iGEM concerning the Company's compliance with filing and contribution requirements arising under the Act and the Commission's rules.⁷⁸ iGEM filed a response to the LOI on January 11, 2024.⁷⁹ On December 12, 2023, iGEM and Bureau staff entered into a Tolling Agreement.⁸⁰

III. DISCUSSION

21. We find that iGEM apparently willfully and repeatedly violated sections 225, 251(e)(2), and 254(d) of the Act, and sections 52.32, 64.604(c)(5)(iii), 54.706(a), and 1.7002 of the Commission's rules by failing to contribute fully and timely to the USF, to pay timely contributions to the TRS Fund, to pay timely assessments for LNP administration, and to submit timely reports pursuant to the Commission's BDC filing requirements. The Company's conduct seriously undermines the Commission's ability to administer critical programs and obtain necessary information for the benefit of the public.

22. The Company committed 29 apparent violations that are within the statute of limitations. Specifically, the Company apparently failed to: (1) pay timely the December 15, 2022 USAC invoice (which was not fully satisfied until April 12, 2023); (2) pay timely the January 13, 2023 USAC invoice (which was not fully satisfied until May 15, 2023); (3) pay timely the February 15, 2023 USAC invoice (which was not fully satisfied until June 13, 2023); (4) pay timely the March 15, 2023 USAC invoice (which was not fully satisfied until July 13, 2023); (5) pay timely the April 14, 2023 USAC invoice (which was not fully satisfied until August 15, 2023); (6) pay timely the May 15, 2023 USAC invoice (which was not fully satisfied until September 15, 2023); (7) pay timely the June 15, 2023 USAC invoice (which was not satisfied until October 16, 2023); (8) pay timely the July 14, 2023 USAC invoice (which was not fully satisfied until November 15, 2023); (9) pay timely the August 15, 2023 USAC invoice

⁷² *Broadband Data Task Force Announces Opening of the Second Broadband Data Collection Filing Window*, WC Docket Nos. 19-195 and 11-10, Public Notice, 2022 WL 18023110, at *1 (BDTF 2022).

⁷³ January 11, 2024 LOI Response, *supra* note 53, at 56, Response to Question 46.

⁷⁴ *Broadband Data Collection Filing Deadline for June 30, 2023 Data Extended to Sept. 15, 2023*, WC Docket Nos. 19-195 and 11-10, Public Notice, 2023 WL 5090852, at *2 (BDTF & OEA 2023).

⁷⁵ January 11, 2024 LOI Response, *supra* note 53, at 56, Response to Question 46.

⁷⁶ *Id.*

⁷⁷ E-mail from Elfren Castro, Senior Manager of Contributor Operations, Finance, Universal Serv. Admin. Co. to David Janas, Special Counsel, Investigations and Hearings Division, FCC Enforcement Bureau (Sept. 22, 2023).

⁷⁸ Letter from Patrick M. McGrath, Chief, Investigations and Hearings Division, FCC Enforcement Bureau to Ernest Cunningham, Chief Executive Officer, and Jim Tipton, Chief Financial Officer, iGEM Communications LLC (Nov. 16, 2023) (on file in EB-IHD-23-00035763).

⁷⁹ See generally January 11, 2024 LOI Response, *supra* note 53.

⁸⁰ See Tolling Agreement executed by Patrick McGrath, Chief, Investigations and Hearings Division, FCC Enforcement Bureau and Jim Tipton, Chief Financial Officer, iGEM Communications LLC (Dec. 14, 2023) (on file in EB-IHD-23-00035763) (Tolling Agreement).

(which was not fully satisfied until December 15, 2023); (10) pay timely the September 15, 2023 USAC invoice (which was not fully satisfied until January 16, 2024); (11) pay timely the October 13, 2023 USAC invoice (which was not fully satisfied until February 15, 2024); (12) pay fully the November 15, 2023 USAC invoice; (13) pay the December 15, 2023 USAC invoice; (14) pay the January 12, 2024 USAC invoice; (15) pay the February 15, 2024 USAC invoice; (16) pay timely the March 10, 2023 TRS Fund invoice; (17) pay timely the April 14, 2023 TRS Fund invoice; (18) pay timely the May 12, 2023 TRS Fund invoice; (19) pay timely the June 6, 2023 TRS Fund invoice; (20) pay timely the July 18, 2023 TRS Fund invoice; (21) pay timely the August 15, 2023 TRS Fund invoice; (22) pay timely the September 12, 2023 TRS Fund invoice; (23) pay timely the October 10, 2023 TRS Fund invoice; (24) pay timely the November 14, 2023 TRS Fund invoice; (25) pay timely the December 12, 2023 TRS Fund invoice; (26) pay timely the January 16, 2024 TRS Fund invoice; (27) pay timely the February 13, 2024 TRS Fund invoice; (28) pay timely the October 31, 2023 LNP invoice; and (29) submit timely a BDC report by September 15, 2023.

A. iGEM Apparently Violated the Act and the Commission's Rules by Repeatedly Failing to Pay USF Contributions on Time and in Full.

23. iGEM apparently willfully and repeatedly violated section 254(d) of the Act and section 54.706(a) of the Commission's rules by failing to contribute fully and timely to the USF.⁸¹ Under section 54.706(a) of the Commission's rules, "[e]ntities [providing] interstate telecommunications to the public . . . for a fee . . . must contribute to the universal service support mechanisms."⁸² Although the Company provides telecommunications and telecommunications services,⁸³ iGEM apparently repeatedly and willfully failed to pay its USF contributions in full and on time.⁸⁴

24. All Service Providers must pay their USF contributions in full and in a timely manner.⁸⁵ A Service Provider that does not comply with the USF payment requirements frustrates the Commission's congressional mandate to ensure that contributions are made on an equitable and non-discriminatory basis.⁸⁶ USAC observed that iGEM made late payments or no payments 20 different times between August 15, 2022 and March 15, 2024, when the Company's USF contributions were due.⁸⁷ The Company does not dispute that it made paid its USF contributions late.⁸⁸ Further, USAC determined that the Company's largest delinquency for USF contributions was \$1,027,881, to the nearest dollar.⁸⁹

25. Service Providers must pay their USF contributions in full by each monthly deadline.⁹⁰ Each month that a Service Provider fails to make the required USF contribution in full and on time

⁸¹ 47 U.S.C. § 254(d); 47 CFR § 54.706(a).

⁸² 47 CFR § 54.706(a).

⁸³ January 11, 2024 LOI Response, *supra* note 53, at 29, Response to Question 21.

⁸⁴ *PayG 2023 NAL*, *supra* note 7, at *38-41 (noting that a company willfully and repeatedly failed to comply with Commission rules when it repeatedly failed to pay its USF contributions on time).

⁸⁵ See, e.g., 47 CFR §§ 54.706, 54.713; *Telseven NAL*, *supra* note 5, at 6638-39, para. 6; *Kajeet, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 26 FCC Rcd 16684, 16686-87, para. 6 (2011) (*Kajeet NAL*), *consent decree adopted*, Order, 30 FCC Rcd 10608 (2015); *NTS Commc'ns, Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 5137, 5139, para. 4 (2010) (*NTS NAL*), *consent decree adopted*, Order, 28 FCC Rcd 16515 (2013).

⁸⁶ See *Globalcom, Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 3479, 3485, para. 15 (2010).

⁸⁷ December 7, 2023 USAC letter at 1-2; February 15, 2024 USAC letter at 1-2.

⁸⁸ January 11, 2024 LOI Response, *supra* note 53, at Exhibits 26, 58.

⁸⁹ February 15, 2024 USAC letter at 2.

⁹⁰ See generally note 12.

constitutes a separate violation of the Commission's contribution requirements.⁹¹ Each failure to pay a monthly USF contribution is a continuing violation, which begins the day a Service Provider does not fully pay an owed contribution by the payment deadline, and continues until the Service Provider has fully paid the amount owed.⁹² Accordingly, iGEM's failures to pay monthly USF contributions on time and in full were separate continuing violations until the outstanding amounts were fully paid. By applying the American Rule of accounting to iGEM's USF account data, USAC determined that the Company failed to pay 16 USF contributions by the payment deadlines between August 15, 2022 and November 15, 2023.⁹³ iGEM did not fully pay the USF contribution on its November 15, 2023 invoice by the payment deadline of December 15, 2023.⁹⁴ Further, iGEM did not pay three USF invoices due between January 12, 2023, and March 15, 2024.⁹⁵ USAC therefore identified 20 separate USF payment violations between August 15, 2022 and March 15, 2024. Thus, we find that iGEM failed to pay its USF contributions in full and on time on 20 separate occasions, that 15 of these occasions are within the statute of limitations, and that iGEM apparently willfully and repeatedly violated section 254(d) of the Act and section 54.706(a) of the Commission's rules.⁹⁶

B. iGEM Apparently Violated Commission Rules by Repeatedly Failing to Pay Timely TRS Fund Contributions.

26. iGEM apparently willfully and repeatedly violated section 225 of the Act and section 64.604(c)(5)(iii) of the Commission's rules. As discussed above, the Commission established the TRS Fund to reimburse TRS providers for the costs of providing interstate telecommunications relay services. Failure to make timely contributions to the TRS Fund constitutes a continuing violation until the outstanding amount is paid.⁹⁷ In this case, the TRS Fund administrator, Rolka Loube, informed the Bureau that between 2021 and 2024, iGEM repeatedly paid TRS contributions late.⁹⁸ In 2021, iGEM paid

⁹¹ See, e.g., *Globcom NAL*, *supra* note 6, at 19900, para. 16; *ADMA Telecom, Inc.*, Notice of Apparent Liability, 24 FCC Rcd 838, 847, para. 20 (2009).

⁹² See, e.g., *PayG 2023 NAL*, *supra* note 7, at *40-41, para. 29; *Telseven NAL*, *supra* note 5, at 6644, 6647, paras. 15, 23; *Telrite Corp.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 7231, 7243, para. 27 (2008) (*Telrite NAL*). The Act and the Commission's rules establish that the obligation to pay USF contributions does not end until the contributor fully pays all assessments required under the Commission's rules. See 47 U.S.C. § 254(d) (Service Providers "shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.") (emphasis added); 47 CFR § 54.713(b) (providing that in addition to having a continuing obligation to pay delinquent USF payments, a USF contributor is also obligated to pay interest, penalties and other charges "until all charges and costs are paid in full") (emphasis added); *id.* § 54.706(a) (Service Providers "must contribute to the universal service support mechanisms.") (emphasis added).

⁹³ December 7, 2023 USAC letter at 1-2; February 15, 2024 USAC letter at 1-2.

⁹⁴ February 15, 2024 USAC letter at 1-2.

⁹⁵ *Id.*

⁹⁶ 47 U.S.C. § 254(d); 47 CFR § 54.706(a).

⁹⁷ See *PayG 2023 NAL*, *supra* note 7, at 15-16, para. 32; *Unipoint Technologies, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 12751, 12758-59, para. 15 (2012), *forfeiture issued*, Forfeiture Order, 29 FCC Rcd 1633 (2014); *RB Communications, Inc., d/b/a Starfone*, Notice of Apparent Liability for Forfeiture and Order, 27 FCC Rcd 4393, 4402, para. 25 (2012), *forfeiture issued*, Forfeiture Order, 29 FCC Rcd 5668 (2014); *Omniate International Telecom, LLC*, Notice of Apparent Liability for Forfeiture and Order, 24 FCC Rcd 4254, 4265, para. 27 (2009) (*Omniate NAL*).

⁹⁸ See December 5, 2023 Rolka Loube E-mail; February 22, 2024 Rolka Loube E-mail; April 11, 2024 Rolka Loube E-mail.

late six invoices.⁹⁹ In 2022, iGEM paid late nine invoices.¹⁰⁰ In 2023, iGEM paid each of its 12 TRS Fund invoices late.¹⁰¹ It paid untimely the following invoices: January 13, 2023, February 10, 2023, March 10, 2023, April 14, 2023, May 12, 2023, June 9, 2023, July 18, 2023, August 15, 2023, September 12, 2023, October 10, 2023, November 14, 2023, and December 12, 2023. In 2024, iGEM paid untimely its January 16, 2024 and February 13, 2024 invoices.¹⁰² Thus, we find that iGEM apparently willfully and repeatedly failed to pay its TRS contributions on time between 2021 and 2024. Of those late payments, the late payments on the invoices from March to December 2023 and January to February 2024 are within the statute of limitations. We therefore find that the Company apparently violated section 225 of the Act and section 64.604(c)(5)(iii) of the Commission's rules 29 times and that 12 apparent violations committed between 2023 and 2024 are within the statute of limitations.

C. iGEM Apparently Violated Commission Rules by Failing to Pay Timely an LNP Contribution.

27. iGEM apparently violated section 251(e)(2) of the Act and section 52.32 of the Commission's rules by willfully failing to pay the LNP administrator on time. As discussed above, the Act gives every telecommunications carrier a duty to provide local number portability and the cost of establishing this service must be borne by such carriers on a competitively neutral basis as determined by the Commission. A failure to make an LNP contribution constitutes a continuing violation until the outstanding amount is paid.¹⁰³ In this case, the LNP administrator, iconectiv, informed the Bureau that iGEM did not timely pay the assessment on its October 31, 2023 invoice. Thus, we find that iGEM apparently willfully failed to remit its LNP contribution in a timely manner in violation of section 251(e)(2) of the Act and section 52.32 of the Commission's rules.¹⁰⁴

D. iGEM Apparently Violated Commission Rules by Repeatedly Failing to Submit Timely Broadband Data Collection Reports.

28. iGEM apparently violated section 1.7002 of the Commission's rules by willfully and repeatedly failing to submit its BDC reports by the Commission's deadlines. For broadband data as of December 31, 2020, December 31, 2022, and June 30, 2023, iGEM submitted its reports beyond the deadlines set by the Commission, which were March 15, 2021, March 1, 2023, and September 15, 2023, respectively. Each of iGEM's broadband data filing failures constitutes a separate violation of the Commission's rules.¹⁰⁵ For data due on March 15, 2021, iGEM asserts that there was "a delay in gathering the information caused by the migration" to a new billing platform.¹⁰⁶ It further states that "the information was submitted within the period for [FCC Form] 477 revisions. As such, the information was

⁹⁹ See December 5, 2023 Rolka Loube E-mail.

¹⁰⁰ *Id.*

¹⁰¹ *Id.* See also February 22, 2024 Rolka Loube E-mail.

¹⁰² See February 22, 2024 Rolka Loube E-mail; April 11, 2024 Rolka Loube E-mail.

¹⁰³ See *PTT Phone Cards, Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Red 11531, 11538, para. 16 (2014); *Omnit NAL*, *supra* note 97, at 4265-66, para. 28; see also *PayG 2023 NAL*, *supra* note 7, at *48, para. 35 (stating that failures to pay NANP administration assessments fully when due are continuing violations); *Telrite NAL*, *supra* note 92, at 7245, para. 43 (stating that failure to make LNP contributions is analogous to failure to pay NANP contributions).

¹⁰⁴ See, e.g., *Telseven NAL*, *supra* note 5, at 6645, 6648, paras. 19, 26 (proposing a \$10,000 forfeiture penalty where a company failed to pay its NANP contribution on its July 12, 2011 invoice); *Telrite NAL*, *supra* note 92, at 7245, para. 34 (stating that failure to make LNP contributions is analogous to failure to pay NANP contributions); see also *Globcom Forfeiture Order*, *supra* note 6, at 4717, 4727, paras. 18, 45 (imposing a forfeiture penalty for 2002 and 2003 for a company's failure to pay its "TRS invoices dated November 3, 2002 and July 7, 2003").

¹⁰⁵ *BDC Third Report and Order*, *supra* note 40, at *47, para. 144.

¹⁰⁶ January 11, 2024 LOI Response, *supra* note 53, at 55, Response to Question 45.

included in the FCC's data compilation, so the delay did not have any negative affect."¹⁰⁷ Similarly, for data due on March 1, 2023, and September 15, 2023, the Company asserts that the reports "were filed late due to a switch of its billing platform's reporting engine, resulting in a delay for data to be pulled[.]"¹⁰⁸ This does not excuse the Company's violations. Entities are required to know and abide by the Commission's rules and will be subject to enforcement action absent special circumstances warranting a waiver.¹⁰⁹ In this case, the Company should have requested a waiver of the Commission's rules, rather than unilaterally deciding not to file timely reports.¹¹⁰ The Commission's rules do not otherwise provide an exception due to lack of "negative effect" as the Company suggests. Notably, for the reports due in March and September 2023, iGEM submitted its reports on December 18, 2023, *after* receiving an LOI from the Bureau. Compliance with the Commission's rules on a timely basis is a requirement for all Service Providers and coming into compliance in response to a Commission investigation does not obviate enforcement action.¹¹¹

29. Federal and state policymakers, in addition to the general public, have an urgent and compelling need for the required broadband data filings, particularly given that the filings are a prerequisite to the distribution of broadband deployment funds made available through various funding programs.¹¹² It is critical that all Service Providers subject to the BDC filing requirements file timely, accurate, and comprehensive data on the availability of their services. We find that iGEM apparently willfully and repeatedly violated section 1.7002 of the Commission's rules by failing to submit BDC information by the Commission deadlines, and we find that the Company's failure to submit a BDC report by the September 15, 2023 deadline is within the statute of limitations.

IV. PROPOSED FORFEITURE

30. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against any entity that "willfully or repeatedly fail[s] to comply with any of the provisions of [the Act] or of any rule,

¹⁰⁷ *Id.*

¹⁰⁸ January 11, 2024 LOI Response, *supra* note 53, at 56, Response to Question 46.

¹⁰⁹ See, e.g., *S. Cal. Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387, para. 3 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (stating that "inadvertence . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance") (internal citation omitted); see also *Townsquare Media of El Paso, Inc.*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 6661, 6662, para. 12 & n.37 (EB 2020) ("It is immaterial whether . . . violations were inadvertent, the result of ignorance of the law, or the product of administrative oversight.") (internal citations omitted).

¹¹⁰ See, e.g., *Peace Commc'ns, LLC*, Forfeiture Order, 2023 WL 8615307, at *3, para. 7 (EB 2023) ("[T]he proper course of action would have been to seek a waiver of the filing deadlines to obtain extensions and not to ignore major regulatory requirements repeatedly."); *Pac. Data Sys. NAL*, *supra* note 10, at *3, para. 10 (noting that even if the company experienced COVID-19 issues, "the proper course of action was to seek a waiver of the filing deadlines to obtain a deadline extension, not to ignore major regulatory requirements repeatedly.").

¹¹¹ See, e.g., *Westel, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 2023 WL 4682651, at *15, para. 28, n.125 (2023) ("Corrective action taken by an investigation target to come into compliance with Commission requirements is expected, and does not nullify or mitigate a forfeiture penalty."); *Air-Tel, LLC*, Forfeiture Order, 36 FCC Rcd 8867, 8875, para. 21 (2021) ("The Commission has long held that compliance with the Act and the Commission's rules by a licensee is expected and that coming into compliance in response to a Commission investigation does not warrant lenient enforcement."); *PTT Phone Cards, Inc.*, Forfeiture Order, 30 FCC Rcd 14701, 14704, para. 12 (2015) (stating that the Commission expects regulatees to come into compliance with Commission rules "as a matter of course."); *Carrera Commc'ns, LP*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 13307, 13313, para. 16, n.45 (2005) ("The Commission has repeatedly held that post-investigation corrective measures are not sufficient to avoid enforcement action.").

¹¹² *BDC Enforcement Advisory*, *supra* note 50. See also Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, div. F, tit. I, § 60102(c)(1), (c)(3) (2021), <https://www.govinfo.gov/content/pkg/BILLS-117hr3684enr/pdf/BILLS-117hr3684enr.pdf> (delineating, in part, a multibillion-dollar investment into ensuring access to reliable, affordable, high-speed broadband service).

regulation, or order issued by the Commission[.]”¹¹³ Section 503(b)(2)(B) of the Act authorizes us to assess a forfeiture against iGEM of up to \$244,958 for each violation or each day of a continuing violation, up to a statutory maximum of \$2,449,575 for a single act or failure to act.¹¹⁴ In exercising our forfeiture authority, we must consider the “nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”¹¹⁵ In addition, the Commission has established forfeiture guidelines that establish base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.¹¹⁶ The forfeiture guidelines listed in section 1.80 of the Commission’s rules specifically “are intended as a guide for frequently recurring violations” and not “a complete or exhaustive list of violations.”¹¹⁷

31. The Commission may adopt upward or downward adjustments to forfeitures when appropriate.¹¹⁸ Under section 1.80 of the Commission’s rules, we may adjust a forfeiture upward for egregious misconduct, ability to pay and relative disincentive, an intentional violation, substantial harm, prior violations of Commission requirements, substantial economic gain, or repeated or continuous violations.¹¹⁹ We may adjust a forfeiture downward for a minor violation, good faith or voluntary disclosure, a history of overall compliance, or an inability to pay.¹²⁰

32. Section 503(b)(6)(B) of the Act further provides that no forfeiture penalty shall be imposed if “the violation charged occurred more than 1 year prior to the date of issuance of the required notice or notice of apparent liability.”¹²¹ For payment violations, the Act and the Commission’s rules establish that the requirements to pay USF, TRS Fund, and LNP assessments impose continuing obligations to pay until the entire amount owed is satisfied.¹²² Since the obligations to pay continue until the obligations are satisfied, the statute of limitations does not begin to run until the amounts assessed are

¹¹³ 47 U.S.C. § 503(b).

¹¹⁴ See 47 U.S.C. § 503(b)(2)(B); 47 CFR § 1.80(b)(12); *Amendment of Section 1.80(b) of the Comm’n’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 23-1198, 2023 WL 8889597 (EB 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).

¹¹⁵ 47 U.S.C. § 503(b)(2)(E).

¹¹⁶ 47 CFR § 1.80(b)(11), Note 2 to paragraph (b)(11); *Comm’n’s Forfeiture Policy Statement & Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, CI Docket No. 95-6, Report and Order, 12 FCC Rcd 17087, 17116-17, para. 27 (1997) (*1997 Forfeiture Guidelines Order*), *recon. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

¹¹⁷ *1997 Forfeiture Guidelines Order*, at 17109-10, para. 53 (1997) (citing 47 U.S.C. § 503(b)(2)(E)).

¹¹⁸ See *id.* at 17110, para. 53 (citing 47 U.S.C. § 503(b)(2)(E)).

¹¹⁹ 47 CFR § 1.80(b)(11), Tbl. 3 to Para. (b)(11). See also *1997 Forfeiture Guidelines Order*, at 17098-99, para. 22 (stating that “[a]lthough we have adopted the base forfeiture amounts as guidelines to provide a measure of predictability to the forfeiture process, we retain our discretion to depart from the guidelines and issue forfeitures on a case-by-case basis, under our general forfeiture authority contained in Section 503 of the Act”).

¹²⁰ 47 CFR § 1.80(b)(11), Tbl. 3 to Para. (b)(11).

¹²¹ 47 U.S.C. § 503(b)(6)(B). iGEM and Bureau staff entered into a Tolling Agreement. See Tolling Agreement, *supra* note 80. The Tolling Agreement extends the statute of limitations, in part, for “any limitations period for any possible statutory or rule violations” for 60 calendar days “after the original date of expiration[.]” *Id.* The agreement did not revive any expired violations. We address any out-of-time violations herein because they illustrate a history of noncompliance by the Company, and we take this into account when determining upward adjustments to the proposed forfeiture.

¹²² See *supra* notes 90, 92, 97, and accompanying text.

fully satisfied.¹²³ For BDC filings, the statute of limitations begins to run on the date that a report is due.¹²⁴

A. Proposed Forfeiture for Failure to Comply with USF Contribution Obligations.

33. In assessing a forfeiture amount, we consider the nature, extent, and gravity of the violation.¹²⁵ The USF is a multibillion-dollar program that depends on Service Providers fully paying USF contributions on a timely basis.¹²⁶ We consider universal service nonpayment to be a serious threat to a key goal of Congress and one of the Commission's primary responsibilities.¹²⁷ Failing to "pay Congressionally-mandated USF contributions strikes at the core of the Commission's mission to promote access to affordable, quality telecommunications services for all Americans."¹²⁸ Such misconduct deprives the universal service programs of critical funding.¹²⁹ Failure to make USF contributions is therefore an egregious offense.¹³⁰ It not only deprives the USF of resources necessary to preserve and advance universal service, but it also bestows on delinquent entities an unfair competitive advantage by shifting to compliant contributors the economic costs and burdens associated with universal service.¹³¹

34. We have considered the Company's history of noncompliance and its degree of culpability. iGEM has repeatedly failed to pay its USF assessments in full and on time for nearly seven years. In October 2021, iGEM's USF delinquency totaled \$1,027,881. The Company apparently is highly culpable for repeatedly not paying or not paying timely its USF contributions for numerous years. Accordingly, we find that iGEM's misconduct was egregious, and apparently resulted in substantial harm to the Commission's USF contribution requirements implemented under the Act.¹³² iGEM's repeated and

¹²³ See, e.g., *PayG 2023 NAL*, *supra* note 7, at *56, para. 41; *Earle v. District of Columbia*, 707 F.3d 299, 307 (D.C. Cir. 2012) (explaining that when "the text of the pertinent law imposes a continuing obligation to act . . . 'a party can continue to violate it until that obligation is satisfied and the statute of limitations will not begin to run until it does.'" (quoting *AKM LLC v Secretary of Labor*, 675 F.3d 752, 763 (D.C. Cir. 2012) (Garland, J. concurring)); *Yukon-Kuskokwim Health Corp. v. U.S.*, 444 F.Supp.3d 215, 220-21 (D.D.C. 2020) (finding defendants ignored deadline to act for over 25 years, did not fulfill their obligation, and pertinent code imposed a "continuing obligation to act" on Defendants such that they 'continue to violate it until that obligation is satisfied.'"); *Appalachian Voices v. McCarthy*, 989 F.Supp.2d 30, 45 (D.D.C. 2013) (concluding that pertinent law "imposes 'a continuing obligation to act'" and defendant "'continue[s] to violate it until that obligation is satisfied'").

¹²⁴ See, e.g., *Barrier NAL*, *supra* note 52, at 10187, para. 2 & n.1.

¹²⁵ See 47 U.S.C. § 503(b)(2)(E).

¹²⁶ See, e.g., *Proposed Second Quarter 2023 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 23-213, 2023 WL 2559889 (OMD 2022).

¹²⁷ *Compass Global NAL*, *supra* note 7, at 6136, para. 21.

¹²⁸ *Local Phone Servs., Inc.*, Order of Forfeiture, 23 FCC Rcd 8952, 8952-53, para. 2 (2008).

¹²⁹ *Id.*

¹³⁰ See, e.g., *PayG 2023 NAL*, *supra* note 7, at *60, para. 43; *Telseven NAL*, *supra* note 5, at 6646-47, para. 23; *Kajeet NAL*, *supra* note 85, at 16694, para. 21; *ADMA Telecom, Inc.*, Forfeiture Order, 26 FCC Rcd 4152, 4157, para. 15 (2011); *Telrite NAL*, *supra* note 92, at 7241-42, para. 24.

¹³¹ *PayG 2023 NAL*, *supra* note 7, at *13, para. 7; *Telseven NAL*, *supra* note 5, at 6646-47, para. 23. See also *Compass Global NAL*, *supra* note 7, at 6138, para. 30 ("Nonpayment of universal service contributions is an egregious offense that bestows on delinquent carriers an unfair competitive advantage by shifting to compliant carriers the economic costs and burdens associated with universal service. A carrier's failure to make required universal service contributions hampers realization of Congress' policy objective in section 254(d) of the Act to ensure the equitable and non-discriminatory distribution of universal service costs among all telecommunications providers.").

¹³² See 47 CFR § 1.80(b)(11), Tbl. 3 to Para. (b)(11).

continuous payment violations also apparently resulted in a substantial economic gain to the Company, which withheld \$1,027,881 from the USF.¹³³

35. We have assessed a \$100,000 base forfeiture penalty for each month in which a Service Provider fails to pay a required USF contribution in full and on time.¹³⁴ In addition, we have imposed an upward adjustment of 100 percent of a Service Provider's USF delinquency to account for the degree of harm to the USF.¹³⁵ Accordingly, we propose a \$100,000 base forfeiture for each of the 15 USF payment violations that occurred within the relevant statute of limitations, which provides for a total base forfeiture of \$1,500,000.¹³⁶ We also apply an upward adjustment of 100 percent of iGEM's USF delinquency, which is \$1,027,881, to the nearest dollar. We therefore propose a total forfeiture of \$2,527,881 (\$1,500,000 base forfeiture + \$1,027,881 upward adjustment) for iGEM's apparent willful and repeated failures to pay USF contributions in full by the prescribed payment deadlines.

36. Beyond the forfeiture methodology described herein, we warn Service Providers that the Commission could issue higher forfeitures.¹³⁷ If the Commission finds it necessary, we could impose forfeitures for USF payment violations up to the statutory maximum forfeiture authorized under section 503(b) of the Act for each violation.¹³⁸

B. Proposed Forfeiture for Failure to Comply with TRS Fund Contribution Obligations.

37. The TRS Fund depends on Service Providers' timely payment of contributions.¹³⁹ Those that violate the contribution requirements undermine the TRS Fund and may obtain an unfair advantage over their competitors who do comply with the relevant rules.¹⁴⁰ The Company is highly culpable for willfully and repeatedly failing to pay timely its TRS Fund contributions for three years, between 2021 and 2023. Consequently, we find that the Company's misconduct was egregious and resulted in harm to the Commission's TRS Fund cost recovery requirements.

38. We have considered the Company's history of noncompliance and the degree of its culpability. iGEM has repeatedly failed to pay its TRS Fund contributions on time for three years. Violations occurring in 2023 and 2024, as discussed above, are within the statute of limitations. We have established a \$50,000 base forfeiture penalty for each year in which an entity fails to pay a TRS Fund

¹³³ *See id.*

¹³⁴ *PayG 2023 NAL*, *supra* note 7, at *65-67, paras. 46-47.

¹³⁵ *Id.* The Commission retains discretion impose forfeiture penalties for payment violations up to the statutory maximum forfeiture authorized under section 503(b) of the Act for each violation. *See* 47 U.S.C. § 503(b); 47 CFR § 1.80(a), (b); *PayG 2023 NAL*, *supra* note 7, at *76, para. 60; *Globcom Forfeiture Order*, *supra* note 6, at 4723, para. 35; *1997 Forfeiture Guidelines Order*, *supra* note 116, at 17100-01, para. 27.

¹³⁶ The earliest violation within the applicable statute of limitations, including the 60-day tolling period, is the Company's April 12, 2023 payment on its December 15, 2022 invoice. The statute of limitations would expire on June 11, 2024.

¹³⁷ *See PayG 2023 NAL*, *supra* note 7, at *67-68 (warning Service Providers that if the forfeiture methodology is not sufficient to deter violations of the USF payment rules, the Commission could issue higher forfeitures, up to the statutory maximum authorized under section 503(b) of the Act); *Globcom Forfeiture Order*, *supra* note 6, at 4724, para. 38 ("We again warn carriers that if the forfeiture methodology described herein is not adequate to deter violations of our USF and TRS rules, our statutory authority permits the imposition of much larger penalties and we will not hesitate to impose them.").

¹³⁸ *See* 47 U.S.C. § 503(b); 47 CFR § 1.80(a), (b); *Globcom Forfeiture Order*, *supra* note 6, at 4723, para. 35; *1997 Forfeiture Guidelines Order*, *supra* note 116, at 17100-01, para. 27.

¹³⁹ *Globcom NAL*, *supra* note 6, at 19904, para. 28.

¹⁴⁰ *Id.*

contribution on time.¹⁴¹ We have also imposed an upward adjustment of 100 percent of an entity's TRS Fund delinquency to account for the degree of harm to the TRS Fund.¹⁴² Although the Company paid its TRS Fund contributions late on numerous occasions, its payments were late by approximately four or fewer weeks, and it did not accrue a delinquency. We exercise our discretion based on the specific facts of this case and do not propose an upward adjustment. Accordingly, we propose a forfeiture penalty of \$100,000 for iGEM's apparent willful and repeated failure to pay timely its 2023 and 2024 TRS Fund contributions.

39. The Commission reminds Service Providers that we retain authority to impose a \$50,000 base forfeiture penalty for each year in which an entity fails to pay a TRS Fund contribution on time, plus an upward adjustment of 100 percent of an entity's TRS Fund delinquency. We may impose a different and higher forfeiture penalty up to the statutory maximum based on the circumstances of a particular case. If iGEM continues to make late TRS Fund contributions, we could assess a higher forfeiture penalty to account for the Company's continued harm to the TRS Fund, including an upward adjustment even if the Company does not accrue a delinquency. If the Commission finds it necessary, we could impose forfeitures for TRS payment violations up to the statutory maximum forfeiture authorized under section 503(b) of the Act for each violation.¹⁴³

C. Proposed Forfeiture for Failure to Comply with LNP Contribution Obligations.

40. Service Providers that fail to make or make untimely LNP contributions hamper the Commission's ability to carry out its congressional mandate.¹⁴⁴ Delinquent Service Providers otherwise obtain an unfair competitive advantage over those Service Providers that do comply with their LNP obligations.¹⁴⁵

41. We have considered the relevant statutory factors and impose the base forfeiture without upward adjustment. We have assessed a \$10,000 base forfeiture penalty for each year in which an entity fails to pay LNP contributions on time.¹⁴⁶ The LNP administrator, iconectiv, issued iGEM an invoice on October 31, 2023, and iGEM failed to pay its required contribution on time.¹⁴⁷ Thus, we propose a \$10,000 forfeiture for the Company's failure to make an LNP contribution by the payment deadline.

42. If the forfeiture methodology described in this NAL is not adequate to deter violations of the Commission's LNP contributions rules, we warn Service Providers that the Commission could issue higher forfeitures. If the Commission finds it necessary, we could impose forfeitures for USF payment

¹⁴¹ See *PayG 2023 NAL*, *supra* note 7, at *71, para. 52.

¹⁴² *Id.*

¹⁴³ See 47 U.S.C. § 503(b); 47 CFR. § 1.80(a), (b); *Globcom Forfeiture Order*, *supra* note 6, at 4723, para. 36; *1997 Forfeiture Guidelines Order*, *supra* note 116, at 17100-01, para. 27.

¹⁴⁴ *Compass Global NAL*, *supra* note 7, at 6141, para. 37.

¹⁴⁵ *PayG 2023 NAL*, *supra* note 7, at *13, para. 7. See also *Telrite NAL*, *supra* note 92, at 7245, para. 34 (“[T]he failure of carriers to make required LNP contributions for an extended period of time severely hampers the Commission's ability to ensure that the cost of establishing number portability arrangements are ‘borne by all telecommunications carriers on a competitively neutral basis’ as Congress envisioned.”).

¹⁴⁶ See *Telseven NAL*, *supra* note 5, at 6648, para. 27; *Kajeet NAL*, *supra* note 85, at 16695, para. 24; *Telrite NAL*, *supra* note 92, at 7245, para. 34; *Advanced Tel, Inc.*, Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 833, 841, para. 25 (2015).

¹⁴⁷ See, e.g., *Telseven NAL*, *supra* note 5, at 6645, 6648, paras. 19, 26 (proposing a \$10,000 forfeiture penalty where the company failed to pay its NANP contribution on its July 12, 2011 invoice). See also *Telrite NAL*, *supra* note 92, at 7245, para. 34 (stating that failure to make LNP contributions is analogous to failure to pay NANP contributions).

violations up to the statutory maximum forfeiture authorized under section 503(b) of the Act for each violation.¹⁴⁸

D. Proposed Forfeiture for Failure to Comply with Broadband Data Filing Requirements.

43. Service Providers that file untimely BDC reports deprive the Commission of critical information necessary to making access to broadband internet to unserved and underserved areas in the United States.¹⁴⁹ iGEM committed three apparent violations of the Commission's BDC filing rules, one of which is within the statute of limitations. iGEM failed to file a BDC report by September 15, 2023. The Company instead filed its BDC report on December 18, 2023, during a Bureau investigation. We have established a base forfeiture of \$15,000 per violation for Service Providers that fail to file, file untimely, or file materially inaccurate or incomplete reports.¹⁵⁰ Thus, we propose a \$15,000 forfeiture for the Company's failure to submit its BDC data by the September 15, 2023 filing deadline. If the forfeiture methodology described in this NAL is not adequate to deter violations of the Commission's BDC rules, we warn Service Providers that the Commission could issue higher forfeitures.

E. Total Proposed Forfeiture

44. Therefore, after applying the *Forfeiture Policy Statement*, section 1.80 of the Commission's rules, and the statutory factors, we propose a total forfeiture penalty of \$2,652,881 for which iGEM is apparently liable.¹⁵¹

V. CONCLUSION

45. We have determined that iGEM apparently willfully and repeatedly violated sections 225, 251(e)(2), and 254(d) of the Act, and sections 52.32, 64.604(c)(5)(iii), 54.706(a), and 1.7002 of the Commission's rules. We conclude that iGEM is apparently liable for a forfeiture of \$2,652,881.

VI. ORDERING CLAUSES

46. 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, iGEM Communications LLC is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of two million six-hundred and fifty-two thousand eight-hundred and eighty-one dollars (\$2,652,881) for willful and/or repeated violations of sections 225, 251(e)(2), and 254(d) of the Act, 47 U.S.C. §§ 225, 251(e)(2),

¹⁴⁸ See 47 U.S.C. § 503(b); 47 CFR § 1.80(a), (b); *Globcom Forfeiture Order*, *supra* note 6, at 4723, para. 36; *1997 Forfeiture Guidelines Order*, *supra* note 113, at 17100-01, para. 27.

¹⁴⁹ *BDC Third Report and Order*, *supra* note 40, at *47, para. 144 ("Timely filed Digital Opportunity Data Collection information is critical for the Commission to ensure its maps are as accurate and up-to-date as possible."). See also *Barrierfree NAL*, *supra* note 52, at 10189, para. 7 ("[T]he Commission has previously underscored the importance of timely and accurate FCC Form 477 filings[.]"); *CNS Internet Servs.*, Citation and Order, 36 FCC Rcd 9857, 9859, para. 8 (EB 2021) ("Timely data is essential to the mission of fostering the availability of broadband services across the United States, and failing to provide it materially impairs the Commission's ability to assess broadband deployment and to measure the subscribership upon which Commission policy is based.").

¹⁵⁰ 47 CFR § 1.80(b)(11), Tbl. 1; *BDC Third Report and Order*, *supra* note 40, at *46, *47, paras. 140, 144. In establishing this amount, the Commission rejected using the \$3,000 base forfeiture for failure to file required forms. *BDC Third Report and Order*, *supra* note 40, at *46, *47, paras. 140, 144. We imposed a \$15,000 base forfeiture per violation to "reflect the importance of the filings at issue, and to encourage compliance," "deter bad actors from willfully and knowingly, or recklessly submitting materially inaccurate or incorrect coverage data or information, and to create sufficient incentive for providers to submit accurate Digital Opportunity Data Collection submissions." *Id.* at *46, para. 140. We retain discretion to make upward or downward adjustments from the base forfeiture amount taking into consideration the facts of each individual case. *Id.* at *47, para. 144.

¹⁵¹ 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.

254(d), and sections 52.32, 64.604(c)(5)(iii), 54.706(a), and 1.7002 of the Commission's rules, 47 CFR §§ 52.32, 64.604(c)(5)(iii), 54.706(a), 1.7002.¹⁵²

47. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules,¹⁵³ within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, iGEM Communications LLC **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 50 below.

48. In order for iGEM Communications LLC to pay the proposed forfeiture, iGEM Communications LLC shall notify Patrick McGrath, Patrick.McGrath@fcc.gov, Kalun Lee, Kalun.Lee@fcc.gov, Georgina Feigen, Georgina.Feigen@fcc.gov, and Tram Pham, 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>. Upon payment, iGEM Communications, LLC shall send electronic notification of payment to Patrick McGrath, Patrick.McGrath@fcc.gov, Kalun Lee, Kalun.Lee@fcc.gov, Georgina Feigen, Georgina.Feigen@fcc.gov, and Tram Pham, Tram.Pham@fcc.gov, on the date said payment is made. Payment of the forfeiture must be made by credit card using CORES at <https://apps.fcc.gov/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:¹⁵⁴

- 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 159¹⁵⁵ or printed CORES form¹⁵⁶ 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).¹⁵⁷ 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,

¹⁵² 47 U.S.C. §§ 225, 251(e)(2), 254(d); 47 CFR §§ 52.32, 64.604(c)(5)(iii), 54.706(a), 1.7002.

¹⁵³ 47 CFR § 1.80.

¹⁵⁴ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6).

¹⁵⁵ FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

¹⁵⁶ 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>.

¹⁵⁷ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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.

49. 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. 20554.¹⁵⁸ 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.

50. 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.¹⁵⁹ The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554, ATTN: Enforcement Bureau – Patrick McGrath, Chief, Investigations and Hearings Division, FCC Enforcement Bureau, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to Patrick McGrath, Patrick.McGrath@fcc.gov, Kalun Lee, Kalun.Lee@fcc.gov, Georgina Feigen, Georgina.Feigen@fcc.gov, and Tram Pham, Tram.Pham@fcc.gov.

51. 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.¹⁶⁰ 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.¹⁶¹

¹⁵⁸ See 47 CFR § 1.1914.

¹⁵⁹ *Id.* §§ 1.16, 1.80(g)(3).

¹⁶⁰ 47 U.S.C. § 503(b)(2)(E).

¹⁶¹ 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, 778-79, 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).

52. **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 Jim Tipton, Chief Financial Officer and Director, iGEM Communications LLC d/b/a Globalgig, 706 Ben White Boulevard, #250B, Austin, TX 78704, and to Philip Macres, Esq., Klein Law Group PLLC, 1250 Connecticut Ave. NW, Suite 700, Washington D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary