Volume 39, No. 1, Pages 1 to 953,
January 2 – January 31, 2024

FCC Record

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

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

FCC Record

Volume 39, No. 1, Pages 1 to 953, January 2 – January 31, 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)

United States Government Printing Office * Washington, D.C.
For Sale by the Superintendent of Documents U.S. Government Printing Office on a subscription basis

Federal Communications Commission Record

Table of Contents
Volume 39
Issue 1

Table of Cases ***i***

Table of FCC and Delegated Authority Numbers ***iv***

Table of Docket Numbers ***vi***

Table of Rulemaking Numbers ***vii***

Table of Cities ***viii***

Table of Cases
Volume 39
Issue 1

Case Name	Page
WCB Issues Monthly USF Appeals	1
WCB Grants Domestic Section 214 Authorization	12
Crocodile Broadcasting Corp., Forfeiture Order	13
Bet-Nahrain, Inc., NALF	20
Common Frequency, Inc., Renewal Letter	25
Potential Termination of International Section 214 Authorization, DOJ Letter	30
WCB Grants Domestic Section 214 Transfer of CableSouth to MIP VI Outlier	56
International Authorizations Granted	61
Community Service Broadcasters, Inc., Consent Decree	66
KLLM(FM), Facility ID No. 762455, Informal Objection Letter	76
CGB Conditionally Grants TRS Certification to Global Caption	82
CGB Grants Conditional IP CTS Certification to Nagish	92
Satellite Licensing Division and Satellite Programs and Policy Division Information Action Taken	101
WCB Invites Comments on Section 214 Discontinuance Application(s)	104
MB Announes Comment Deadlines for DBS Billing Practices NPRM	108
WTB Grants AEP Motion for Extension of Time to File Reply Comments	109
FCC Issues Broadcast Station Totals as of December 31, 2023	111
FCC Adopts Rules to Implement STIR/SHAKEN Caller ID Authentication	112
WCB Seeks Comment on NECA's Modification of Average Schedule Formulas	128
EB Seeks to Remove BPO Innovate from Robocall Mitigation Database	130
PSHSB Grants Wavier for Alert SouthBay (California) WEA Test	135
WCB Invites Comments on Section 214 Discontinuance Application(s)	140
WCB Announces Requirements and Guidance for the Wind-Down of the ACP	144
WCB Reminds Reimbursement Program Recipients of Spending Report Deadline	159
WCB Seeks Comment on CRSTTA Petition for Declaratory Ruling	161
MB Announces Effective Date of Certain Low Power Protection Act Rules	163
Spokane Translator Association, NALF	164
Cascade Community Radio, NALF	168
WCB Announces Feb. 12, 2024 Deadline for Enhanced A-CAM CSCRM Plan	172
Table of TV Allotments, Television Broadcast Stations, Waynesboro, Virginia	174
Nexstar Media Inc., NALF	179
San Francisco Television Station KBCW, Inc., KPYX(TV), NALF	184
WTB Announces Comment Cycle for One CIS Certification Application	190
International Authorizations Granted	193
Satellite Licensing Division and Satellite Programs and Policy Division Information Action Taken	196
WTB Seeks Comment on Garmin Request to Waive 47 CFR 95.1787(a)(3)	198
Boundary County TV Translator District, Forfeiture Order	201
WCB Seeks Comments on Domestic Section 214 Application	206
WCB Addresses Recon Petition for Reimbursement Program Application	211
WTB Seeks Comment on Aviation Safety Advisory Group of AZ's Waiver	218
WCB Invites Comments on Section 214 Discontinuance Application(s)	220
WCB Invites Comments on Section 214 Discontinuance Application(s)	225
Comcast Cable Communications, LLC v. Mission Broadcasting, Inc., NALF	229
WTB Announces Auction 108 Long-form Applications are Accepted for Filing	240
WCB Grants Domestic Section 214 Authorization	244
CGB Grants Conditional TRS Certification to Rogervoice to Provide IP CTS	245
CGB Grants Conditional TRS Certification to NexTalk to Provide IP CTS	254
FCC Announces NANC Meetings	263
Shelby Broadcast Associates, LLC, NALF	265
CGB Seeks Comment on ClearCaptions Ownership Change	279

Case Name	Page
FCC Announces Membership and First Meeting of Precision Ag Task Force	282
Townsquare Media, KLIX(AM) and KIDO(AM), Consent Decree	286
WCB Denies Request to Reconsider Reimbursement Program Claim Decision	298
PSHSB Announces Region 6 (N. CA) to Hold 700 and 800 MHz RPC Meetings	304
WCB Announces TRS Rule Adopted in 2022 ICS Order Is Now Effective	306
MB Issues Order to Pay or to Show Cause to Daniel S. Stratemeyer, KZMA(FM) & WRIK(AM)	308
Satellite Licensing Division and Satellite Programs and Policy Division Information Actions Taken	312
International Authorizations Granted	315
Actions Taken Under Cable Landing License Act	323
Windstream Holdings II, LLC on International Section 214, Review Letter	324
Common Frequency, Inc., KQCF(FM), Dismissal Letter	327
FCC's BDTF Seeks Comment on the BDC Challenge Processes	334
WCB Seeks Comments on Domestic 214 Transfer of Outfitter Satellite to NextPlat	345
Wiley College, KBWC(FM), Consent Decree	348
FCC Announces Rechartering and Solicitation of Members for the WAC-27	358
WCB Seeks Comment on Domestic 214 Transfer of DQE to GI DI Vertigo	362
Table of TV Allotments, Television Broadcast Stations, Wittenberg and Shawano, Wisconsin	366
PSHSB Announces Voluntary DIRS Exercise February 6-8, 2024	370
WJAG, Inc., Consent Decree	372
WCB Announces Robocall Mitigation Database Filing Deadlines	383
CGB Provides RND Guidance to Service Providers	391
WCB Invites Comments on Section 214 Discontinuance Application(s)	393
WTB Reminds 700/220 MHz Guard Band Licensees to File Annual Report by March 1, 2024	397
WCB Seeks Comment on Using Fabric for High-Cost Deployment Obligations	399
WCB Announces Guidance on Enhanced A-CAM Locations and Coverage	423
International Authorizations Granted	428
Satellite Licensing Division and Satellite Programs and Policy Division Information Action Taken	433
Chairwoman Rosenworcel to Host an IPCS Listening Session in Charleston, SC	436
FCC Announces Comment Dates For Second FNPRM in RoboText Proceeding	438
Phonetime Inc. on International Section 214, Transfer Application Letter	439
WCB Invites Comments on Section 214 Discontinuance Application(s)	450
MB Announces Comment Deadlines for Blackout Reporting NPRM	454
WCB Seeks Comment on Domestic 214 Transfer of LPC to AAG	455
WCB Issues Streamlined Resolution of Reimbursement Program Requests	460
PSHSB Announces Region 8 RPCs to Hold 700 and 800 MHz Meetings	465
WCB Updates User Guides for Secure and Trusted Communications Networks Reimbursement Program	467
FCC Proposes Policy to Promote Localism	468
FCC Seeks Comment on Customer Rebates During TV Programming Blackouts	492
Cumulus Licensing LLC, Forfeiture Order	513
FCC Adopts Rules to Improve Wireless 911 Call Routing	527
FCC Acts to Improve Network Reliability During Disasters	623
FCC Adopts Guidance on Orbital Debris Mitigation Rules	705
FCC Proposes $358,665 Fine Against Wilfrid Salomon, NALF	723
FCC Proposes $2,391,097 Fine Against Fabrice Polynice a/k/a DJ Paz, NALF	733
FCC Proposes $358,665 Fine Against Brindley Marshall, NALF	745
FCC Proposes $120,000 Fine Against Abdias Datis, NALF	755
FCC Proposes $358,665 Fine Against Cameron Brown, NALF	765
FCC Identifies Six Tentative Selectees for New NCE FM Stations	774
City Communications, Inc., NALF	801
Tone Communication Services LLC, NALF	843

Case Name	**Page**
FCC Adopts Joint Boards Appointment Order	884
FCC Modernizes and Expands Access to the 70/80/90 GHz Bands	886

Table of FCC and Delegated Authority Numbers
Volume 39
Issue 1

DA/FCC Number	Page	DA/FCC Number	Page
DA 24-1	1	DA 24-54	286
DA 24-2	12	DA 24-55	298
DA 24-3	13	DA 24-56	304
DA 24-4	20	DA 24-57	306
DA 24-5	25	DA 24-58	308
DA 24-6	30	DA 24-59	312
DA 24-7	56	DA 24-60	315
DA 24-8	61	DA 24-61	323
DA 24-9	66	DA 24-62	324
DA 24-10	76	DA 24-63	327
DA 24-11	82	DA 24-64	334
DA 24-12	92	DA 24-66	345
DA 24-13	101	DA 24-67	348
DA 24-14	104	DA 24-68	358
DA 24-15	108	DA 24-69	362
DA 24-16	109	DA 24-70	366
DA 24-17	111	DA 24-71	370
DA 24-18	112	DA 24-72	372
DA 24-19	128	DA 24-73	383
DA 24-20	130	DA 24-74	391
DA 24-21	135	DA 24-75	393
DA 24-22	140	DA 24-76	397
DA 24-23	144	DA 24-77	399
DA 24-24	159	DA 24-78	423
DA 24-25	161	DA 24-79	428
DA 24-26	163	DA 24-80	433
DA 24-27	164	DA 24-81	436
DA 24-28	168	DA 24-82	438
DA 24-29	172	DA 24-83	439
DA 24-30	174	DA 24-84	450
DA 24-31	179	DA 24-86	454
DA 24-32	184	DA 24-87	455
DA 24-33	190	DA 24-88	460
DA 24-34	193	DA 24-90	465
DA 24-35	196	DA 24-91	467
DA 24-36	198	FCC 24-1	468
DA 24-38	201	FCC 24-2	492
DA 24-39	206	FCC 24-3	513
DA 24-40	211	FCC 24-4	527
DA 24-41	218	FCC 24-5	623
DA 24-42	220	FCC 24-6	705
DA 24-43	225	FCC 24-07	723
DA 24-44	229	FCC 24-08	733
DA 24-46	240	FCC 24-09	745
DA 24-47	244	FCC 24-10	755
DA 24-48	245	FCC 24-11	765
DA 24-49	254	FCC 24-12	774
DA 24-50	263	FCC 24-13	801
DA 24-51	265	FCC 24-14	843
DA 24-52	279	FCC 24-15	884
DA 24-53	282	FCC 24-16	886

Table of Docket Numbers
Volume 39
Issue 1

Docket Number	Page
10-90	1
23-361	12
23-372	56
03-123	82
03-123	92
01-1	101
23-394	104
23-405	108
23-390	109
23-415	128
15-94	135
23-421	140
21-450	144
18-89	159
09-197	161
23-126	163
10-90	172
24-4	174
13-111	190
01-1	196
24-7	198
23-263	206
18-89	211
24-8	218
23-398	220
23-400	225
22-443	229
23-383	244
03-123	245
03-123	254
23-1	263
03-123	279
19-329	282
18-89	298
02-378	304
12-375	306
23-119	324
11-10	334
23-419	345
24-30	358
24-3	362
23-336	366
17-97	383
17-59	391
23-375	393
10-90	399
10-90	423
21-402	438
24-23	450
23-427	454
23-381	455
18-89	460
02-378	465
18-89	467
24-14	468
24-20	492
18-64	527
21-346	623
18-313	705
96-45	884
20-133	886

Table of Rulemaking Numbers
Volume 39
Issue 1

Rulemaking Number	Page	Rulemaking Number	Page
RM-11974	174		
RM-11967	366		

Table of Localities
Volume 39
Issue 1

City/State	Page	City/State	Page
Waynesboro, VA	174		
Wittenberg, WI	366		
Shawano, WI	366		

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-1
Released: January 2, 2024

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

CC Docket No. 02-6
WC Docket No. 10-90
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 Reconsideration[3]

Holyoke RE-1J School District, CO, Application No. 211031257, Petition for Reconsideration, CC Docket No. 02-6 (filed Nov. 9, 2023)

Dismiss to Allow Appeal to be Filed with USAC[4]

---

[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).

Harlingen Consolidated Independent School District, TX, Application No. 171047074, Request for Waiver, CC Docket No. 02-6 (filed May 20, 2021)

Granted[5]

Contract Agreement in Place[6]

Komarek School District 94, IL, Application No. 221002792, Request for Waiver, CC Docket No. 02-6 (filed July 17, 2022)

Granting Additional time to Respond to USAC with Information During Invoicing[7]

Blackfoot Charter Community Learning Center, ID, Application No. 221035080, Request for Waiver, CC Docket No. 02-6 (filed Dec. 5, 2023)

Monticello Montessori Charter School, ID, Application No. 221033982, Request for Waiver, CC Docket No. 02-6 (filed Nov. 15, 2023)

Invoicing Certification[8]

(Continued from previous page)

[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 Feb. 8, 2023) (*Little Falls Township Order*) (dismissing without prejudice appeals that are filed with the Commission before being reviewed at USAC and waiving the 60-day appeal filing deadline to allow the party to refile its appeal at USAC and have it considered on the merits).

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

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

[6] *See, e.g., Request for Waiver of the Decision of the Universal Service Administrator by Barberton City School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 23 FCC Rcd 15526, 15532, para. 10 (WCB 2008) (*Barberton City School District Order*) (granting on the merits when petitioners submitted evidence to the Commission demonstrating that they had a valid, signed contract in place at the time it submitted its FCC Forms 471 to USAC).

[7] *See Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by Accomack County Public School et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, DA 23-48, para. 14 (WCB Jan. 19, 2023) (*Accomack County Public School Order*) (granting requests for review of applicants that had been denied funding during invoicing because they failed to respond to USAC's request for information within the USAC-specified time frame).

[8] Hampton-Dumont CSD's timely-filed invoices were denied because its BEAR service certifications were signed by a representative from the service provider and not an authorized user from the school district. Although Hampton-Dumont CSD appealed this funding denial with USAC, its appeal was mistakenly dismissed because the

(continued….)

Hampton-Dumont CSD, IA, Application No. 201018289, Request for Waiver, CC Docket No. 02-6 (filed Oct. 14, 2022)

Ministerial and/or Clerical Errors[9]

Midwest Comm Unit School District 191, IL, Application No. 221035027, Request for Waiver and/or Review, CC Docket No. 02-6 (filed Oct. 20, 2022)

MS Delta-Leflore Legacy Academy, MS, Application No. 221019659, Request for Waiver and/or Review, CC Docket No. 02-6 (filed Nov. 7, 2023, supplemented Nov. 27, 2023)

Ministerial and/or Clerical Errors – Invoicing[10]

Missouri Network Alliance, LLC (Illinois Department of Innovation and Technology Consortium), MO, Application No. 201032355, Request for Waiver, CC Docket No. 02-6 (filed Oct. 14, 2022)

State of Nebraska Department of Administration Services, Office of the CIO, NE, Application No. 211016541, Request for Waiver, CC Docket No. 02-6 (filed Nov. 9, 2022)

Permissible Service Implementation Delay[11]

Anderson Public Library, IN, Application No. 221037782, Request for Waiver, CC Docket No. 02-6 (filed Nov. 27, 2023)

(Continued from previous page)
USAC reviewer believed it was an invoice deadline waiver request. Hampton-Dumont CSD subsequently filed an appeal with the Commission attaching the invoices with the proper signatures.

[9] *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. 5, 15, 17, 20 (WCB 2010) (*Ann Arbor Public Schools Order*) (granting waivers where the applicant or USAC entered the wrong discount rate, selected the wrong category of service on its FCC Form 471 or the applicant omitted entities or services from source documents onto its FCC Form 471); *Requests for Review of Decisions of the Universal Service Administrator by Joseph Jingoli & Son*, CC Docket No. 02-6, Order, 22 FCC Rcd 19227, 19228-29, paras. 3-4 (WCB 2007) (*Joseph Jingoli & Son Order*) (granting petitioners' request to correct a mistaken cancellation of a funding request); *Requests for Review of Decisions of the Universal Service Administrator by Archer Public Library et al.; Schools and Libraries Universal Service Support Mechanism,* CC Docket No. 02-6, Order, 23 FCC Rcd 15518, 15521 n.19 (WCB 2008) (*Archer Public Library Order*) (permitting applicant to correct a mischaracterization of the nature of a recipient of service on form 471); *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket 13-184, 29 FCC Rcd 8870, 8955-56, para 218 (2014) (*First 2014 E-Rate Modernization Order*) (finding that "an applicant can add eligible schools within its district that were inadvertently omitted from its applications, even after the deadline for making changes to the FCC Form 471.").

[10] *See Accomack County Public School Order*, DA 23-48, para. 7-9 (granting waivers where the E-Rate invoice filers entered the wrong service start date, application number, funding request number, customer bill date or inadvertently requested an invoice filing deadline extension for the wrong funding request number). We also waive section 54.720 of the Commission's rules in cases where the petitioners filed their waiver request within 60 days of discovering or receiving notice of the ministerial or clerical error. *See id*. at para. 12 (waiving section 54.720 of the Commission's rules).

[11] *See, e.g.*, *Request for Review/Waiver of the Decision of the Universal Service Administrator by Accelerated Charter et al.; Schools and Libraries Universal Service Support Mechanism,* CC Docket No. 02-6, Order, 29 FCC Rcd 13652, 13652-3, para. 2 (WCB 2014) (*Accelerated Charter Order*) (granting late-filed extensions of the service implementation deadline when applicants demonstrated they were unable to complete implementation on time for reasons beyond the service providers' control and made significant efforts to secure the necessary extensions in a timely manner).

Price as Primary Factor[12]

Monmouth County Vocational School District, NJ, Application No. 211008516, Request for Waiver, CC Docket No. 02-6 (filed Oct. 31, 2022)

National Heritage Academies, MI, Application No. 221015410, Request for Waiver, CC Docket No. 02-6 (filed July 21, 2022)

Walnut Springs Independent School District, TX, Application No. 201047260, Request for Waiver, CC Docket No. 02-6 (filed Oct. 25, 2023)

Price as Primary Factor—Full Compliance with Rules[13]

Alamogordo Public Schools, NM, Application No. 191001089, Request for Review, CC Docket No. 02-6 (filed Feb. 6, 2020)

Service Provider Eligible at Invoicing Stage[14]

Floyd Municipal School District, NM, Application No. 579663, Request for Waiver, CC Docket No. 02-6 (filed Nov. 13, 2023)

Signed Contract Requirement[15]

Yuba City Unified School District, CA, Application No. 231023682, Request for Review, CC Docket No. 02-6 (filed Dec. 3, 2023)

SPIN Change[16]

---

[12] *Requests for Review of Decisions of the Universal Service Administrator by Allendale County School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 6109, 6114-15, para. 9 (WCB 2011) (*Allendale County School District Order*) (granting appeals where the record demonstrated that applicants gave the most weight to price during the bid evaluation process).

[13] *Id.* (granting appeals where the record demonstrated that the petitioners selected their respective vendors using price as the primary consideration in accordance with E-Rate program rules).

[14] USAC denied Floyd Municipal School District's request for reimbursement because it found that the service provider was "no longer active" in USAC's system. Consistent with our obligation to conduct a de novo review of appeals of decisions made by USAC, we grant this request for review. *See* 47 CFR § 54.723. Based on the facts and circumstances of this case, we find that the service provider, while not in USAC's system at the time of invoicing in 2018, provided the services at issue and appears to have been in good standing with USAC in the funding year at issue when the services were delivered. *See, e.g., Request for Review of a Decision of the Universal Service Support Mechanism by Grand Rapids Public Schools*, CC Docket No. 02-6, Order, 23 FCC Rcd 15413, 15416, para. 6 (WCB 2008) (conducting de novo review of the facts and circumstances to determine that USAC's decision was in error).

[15] *See, e.g., Barberton City School District Order*, 23 FCC Rcd at 15528, para. 5 (granting appeals on the merits because petitioners demonstrated that they had contracts in place that met the Commission's rules and procedures when submitting their FCC Forms 471).

[16] *See, e.g.*, *Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by Academy of Detroit West et al; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 35 FCC Rcd 1960, 1961-66, paras. 5-8, 15 (WCB 2020) (finding that when the new provider of service is unable to provide service, the applicant may receive support for service from the incumbent provider).

Cotter Schools, MN, Application No. 221038420, Request for Waiver and/or Review, CC Docket No. 02-6 (filed Oct. 22, 2023)

French American School of New York, NY, Application No. 231035159, Request for Waiver and/or Review, CC Docket No. 02-6 (filed Oct. 12, 2023, supplemented Dec. 6, 2023)

Waiver of Appeal Filing Deadline[17]

Archdiocese of Atlanta, GA, Application No. 201029131, Request for Waiver, CC Docket No. 02-6 (filed Oct. 28, 2022)

St. Raphael Catholic School, FL, Application No. 201013609, Request for Waiver, CC Docket No. 02-6 (filed Oct. 28, 2022)

Waiver of FCC Form 471 Deadline Due to Natural Disaster[18]

Fort Myers Beach Free Public Library, FL, Application No. 231039785, Request for Waiver, CC Docket No. 02-6 (filed Nov. 13, 2023)

Waiver of the Competitive Bidding 28-Day Rule[19]

Desoto County Schools, MS, Application No. 221021087, Request for Waiver, CC Docket No. 02-6 (filed July 15, 2022)

Denied

Discount Calculation[20]

[17] *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 back to USAC to make a determination on the merits. *See supra* note 5.

[18] Because of the devastation caused by Hurricane Ian in September 2022, we find it is in the public interest to grant a waiver of the funding year 2023 FCC Form 471 application filing window deadline to Fort Myers Beach Free Public Library. We emphasize the limited nature of this decision. The Commission's filing deadlines and procedural rules are necessary for the efficient administration of the E-Rate program and we are granting this waiver request due to the unique nature of the library's proximity to the destruction caused by Hurricane Ian. *See Requests for Waiver of Section 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, 1658, para. 9 (2010) (*State of Louisiana Department of Education Order*) (granting a limited waiver of the Commission's filing deadlines and procedural rules to school districts affected by the devastation caused by Hurricane Katrina). Consistent with precedent, we also find good cause exists to waive section 54.720(a) or (b) of the Commission's rules, which requires that petitioners file their appeals within 60 days of an adverse USAC decision. *See, e.g., ABC Unified School District Order*, 26 FCC Rcd at 11019, para. 2 (waiving the filing deadline for petitioners that submitted their appeals to the Commission or USAC only a few days late).

[19] *See, e.g., Application for Review of the Decision of the Universal Service Administrator by Aberdeen School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 22 FCC Rcd 8757 (2007) (*Aberdeen School District Order*) (granting waivers of violations of the 28-day waiting period rule when the applicants only missed the deadline by one to three days, thereby allowing their requests for services to be competitively bid for a meaningful period of time).

River Dell Regional High School, NJ, Application No. 221006666, Request for Review, CC Docket No. 02-6 (filed July 12, 2022)

FCC Form 470 Waiver Denial[21]

Scholarship Preparatory School Santa Ana 1, CA, No Application Filed, Request for Waiver, CC Docket No. 02-6 (filed Mar. 1, 2023)

Scholarship Preparatory School Santa Ana 2, CA, No Application Filed, Request for Waiver, CC Docket No. 02-6 (filed Mar. 1, 2023)

Late-Filed FCC Form 471 Applications[22]

Honey Grove Independent School District, TX, Application No. 231040024, Request for Waiver, CC Docket No. 02-6 (filed Dec. 12, 2023)

Maple Street School, VT, Application No. 231040013, Request for Waiver, CC Docket No. 02-6 (filed Dec. 8, 2023)

Notre Dame Academy, ME, Application No. 231039311, Request for Waiver, CC Docket No. 02-6 (filed Apr. 18, 2023)

Late-Filed Invoice or Invoice Deadline Extension[23]

Columbus City Schools, OH, Application No. 221031913, Request for Waiver, CC Docket No. 02-6 (filed Nov. 7, 2023)

(Continued from previous page)

[20] We deny River Dell Regional High School's appeal because it is using data from 2019, which is more than two years out from FY 2022. The most recent discount calculation data supports the lower discount amount. *See, e.g., Requests for Waiver and Review of Decisions of the Universal Service Administrator by Enterprise City Schools et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 2372 (WCB 2012) (finding that the applicants did not provide sufficient documentation to support their requested discount rate).

[21] Because there is no deadline for the FCC Form 470, we deny the petitioner's request for a deadline waiver of an FCC Form 470 that was not filed with enough time to allow for the 28-day competitive bidding period to run before timely filing the FCC Form 471. *See, e.g., Request for Waiver by Cotton Center ISD; Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.,* CC Docket Nos. 96-45, 97-21; Order, 17 FCC Rcd 643, 645, n.14 (CCB 2002) (*Cotton Center ISD Order*) (noting that "The FCC Form 470 merely initiates the process of requesting bids, and unlike the FCC Form 471 application, is not subject to a specified filing period and firm deadline.").

[22] *See, e.g.*, *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Academy of Math and Science, et al*, CC Docket No. 02-6, Order, 25 FCC Rcd 9256, 9261-62, para. 13 (2010) (*Academy of Math and Science Order*) (denying waivers of the FCC Form 471 application filing window deadline where petitioners failed to present special circumstances justifying waivers of our rules).

[23] 47 CFR § 54.514. *See also, e.g., Requests for Waiver of Decisions of the Universal Service Administrator by Ada School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 31 FCC Rcd 3834, 3836, para. 8 (WCB 2016) (*Ada School District Order*) (denying requests for waiver of the Commission's invoice filing deadline rule for petitioners that failed to demonstrate extraordinary circumstances justifying a waiver); *see also First 2014 E-Rate Modernization Order,* 29 FCC Rcd at 8966, para. 240 (establishing that it is generally not in the public interest to waive the Commission's invoicing rules absent extraordinary circumstances).

Harwood Unified Union School District, VT, Application Nos. 221029215, 221029254, Request for Waiver, CC Docket No. 02-6 (filed Dec. 1, 2023)

Jamestown Networks (Naselle-Grays River District 155, Yakima Valley Libraries), WA, Application Nos. 221016918, 221034762, Request for Waiver, CC Docket No. 02-6 (filed Dec. 7, 2023)

Midrash L'man Achai, NY, Application No. 221034069, Request for Waiver, CC Docket No. 02-6 (filed Nov. 16, 2023)

Ross County Christian Academy, OH, Application Nos. 211001993, 221007509, Request for Waiver, CC Docket No. 02-6 (filed Nov. 7, 2023)

Sierra Communications, Inc. (New Mexico State Library), NM, Application No. 221030628, Request for Waiver, CC Docket No. 02-6 (filed Dec. 13, 2023)

Untimely Filed Appeals or Waiver Requests[24]

Accion Social de Puerto Rico, Inc., PR, Application Nos. 201004612, 201025357, Request for Waiver, CC Docket No. 02-6 (filed Nov. 13, 2023)

All My Children Day Care & Nursery School 10, NY, Application No. 171028816, Request for Waiver, CC Docket No. 02-6 (filed Nov. 23, 2023)

James E. Sampson Memorial School, FL, Application No. 211031473, Request for Waiver, CC Docket No. 02-6 (filed Dec. 4, 2023)

Peoples Elementary School, NY, Application Nos. 171018612, 171048201, Request for Waiver, CC Docket No. 02-6 (filed Nov. 23, 2023)

Sacred Heart School, IA, Application No. 221033401, Request for Waiver, CC Docket No. 02-6 (filed Nov. 2, 2023)

School Admin District 17, ME, Application No. 231025250, Request for Waiver, CC Docket No. 02-6 (filed Nov. 17, 2023)

The Ergonomic Group, Inc. (Town Of Brookfield), CT, Application No. 221036653, Request for Review, CC Docket No. 02-6 (filed Dec. 5, 2023)

High-Cost Program (Connect America Fund)
WC Docket No. 10-90

[24] *See, e.g.*, *Requests for Review of Decisions of the Universal Service Administrator by Agra Public Schools I-134 et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 25 FCC Rcd 5684, 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 et al.; Schools and Libraries Universal Service Support 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).

Granted

Letter of Credit[25]

Declaration Network Group Inc.'s Petition for Extension of Temporary Waiver of Section 54.315(c)(2)(i)(B), WC Docket Nos. 10-90, 17-182 (filed Nov. 30, 2023)

Emergency Connectivity Fund Program
WC Docket No. 21-93

Dismiss as Moot – USAC Took Action Requested[26]

Shearim Torah High School, Inc., AZ, Application No. ECF202105618, Request for Waiver, WC Docket No. 21-93 (Nov. 20, 2023)

Granted[27]

Early Delivery[28]

Cesar Chavez Public Charter Schools, DC, Application No. ECF202209780, Request for Waiver, WC Docket No. 21-93 (filed Nov. 27, 2023)

Girls Global Public Charter Schools, DC, Application No. ECF202203946, Request for Waiver, WC Docket No. 21-93 (filed Dec. 8, 2023)

Puyallup School District 3, WA, Application No. ECF202207072, Request for Waiver, WC Docket No. 21-93 (filed Dec. 6, 2023)

[25] Declaration Network Group (DNG) seeks an extension of the temporary waiver of the Connect America Fund Phase II (CAF II) Auction Letter of Credit rules, which require a recipient of CAF II support to maintain a Letter of Credit (LOC) with a bank that maintains a Weiss safety rating of B- or better. We previously granted DNG a waiver of this rule until December 15, 2023. *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*).

DNG now seeks a waiver of an additional 12 months, until December 15, 2024. While we decline to grant DNG an additional 12 months to obtain a new LOC, we partially grant DNG's petition and extend its existing waiver until February 29, 2024. This extends DNG's waiver to a total of six months, in line with previous waiver grants. *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, DA 23-419 (WCB May 17, 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); *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*).

[26] *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).

[27] *See supra* note 5.

[28] *See Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket Nos. 21-93, 06-122, Public Notice, 37 FCC Rcd 7445, 7459 n.25 (WCB 2022) (granting requests for waivers for equipment delivered before the start of the approved funding year).

Granting Additional Time to Respond to USAC's Request for Information[29]

Quality Education and Development LLC (Waldwick SDA School), NY, Application No. ECF202107506, Request for Waiver, WC Docket No. 21-93 (filed Nov. 8, 2023)

Waiver of Service Delivery Date[30]

ACADIA Academy, ME, Application No. ECF202107980, Request for Waiver, WC Docket No. 21-93 (filed Dec. 7, 2023)

Denied

Service Substitution[31]

Alachua County School District, FL, Application No. ECF222120432, Request for Waiver, WC Docket No. 21-93 (filed Aug. 23, 2023)

Rural Health Care Program
WC Docket No. 02-60

Granted

[29] *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 requests for review for applicants that had been denied funding because they failed to respond to USAC's request for information within the USAC-specified time frame). Consistent with the Commission's decision to adopt the similar appeal and waiver rules that govern all of the Universal Service Fund programs, including the E-Rate program, and to leverage existing E-Rate processes and forms in the Emergency Connectivity Fund program, we rely on E-Rate program precedent to resolve these petitions for waiver of the Emergency Connectivity Fund program rules.

[30] *See, e.g.*, *Accelerated Charter Order*, 29 FCC Rcd at 13652-53, para. 2 (allowing extensions of the deadline for service implementation when applicants demonstrated they were unable to complete implementation on time for reasons beyond their control and made significant efforts to secure the necessary extensions). Consistent with the six-month extension granted to some applicants on May 12, 2023, we waive the service delivery deadline and direct USAC to set a new service delivery deadline of June 30, 2024, and adjust any associated administrative or procedural deadlines, including the invoice deadline, that might be necessary to effectuate our ruling. *Establishing Emergency Connectivity Fund to Close the Homework Gap*, WC Docket No. 21-93, Order, DA 23-405 (WCB May 12, 2023) (extending the deadline of equipment funding requests from the first and second application filing window by 180 days, but not to exceed beyond June 30, 2024). We also waive any associated administrative or procedural deadlines that might be necessary to effectuate our ruling. *See supra* note 5. 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 this petition for waiver of the Emergency Connectivity Fund program rules.

[31] *See, e.g.*, *State of Louisiana Department of Education Order*, 25 FCC Rcd at 1668, para. 18 (denying a service substitution request when it does not meet the Commission's requirements for granting a service substitution). 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 this petition for waiver of the Emergency Connectivity Fund program rules. *See also* 47 CFR § 54.1710(b)(2).

Waiver of the Service Provider Identification Number Change Deadline[32]

Colorado Hospital Association Broadband Services, CO, Request for Waiver, WC Docket No. 02-60, Funding Request Nos. 21177081, 21128091 (filed Oct. 20, 2022)

Colorado Hospital Association Broadband Services, CO, Request for Waiver, WC Docket No. 02-60, Funding Request Nos. 21117301, 21177611 (filed Dec. 13, 2022)

Colorado Hospital Association Broadband Services, CO, Request for Waiver, WC Docket No. 02-60, Funding Request No. RHC20220011725 (filed Dec. 18, 2023)

Hendrick Health System, TX; Neosho Memorial Regional, KS; Greenwood County Hospital – Howard, KS; NMRMC Erie Family Care Clinic, KS; Adventist West – Lodi Health Physicians, Galt Family Care, CA; Salina Regional Health Center, KS; Adventist Health, CA, Request for Waiver, WC Docket No. 02-60, Funding Request Nos. 21976721, 21997891, 21951591, 21951891, 21936421, 21892871, 21979451, 21922261, 21922381, 21916851, 21952851 (filed Nov. 30, 2022)

Texas Telehealth Consortium, TX, Request for Waiver, WC Docket No. 02-60, Funding Request No. 21161121 (filed Feb. 24, 2023)

Denied

Service Provider Identification Number Change Request[33]

Palmetto State Providers Network, SC, Request for Waiver, WC Docket No. 02-60, Funding Request No. RHC20220012612 (filed Nov. 14, 2023)

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

[33] *See, e.g., Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by Academy of Detroit West et al; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 35 FCC Rcd 1960, 1968-69, paras. 20-21, (WCB 2020) (denying appeal regarding an operational SPIN change request on the grounds that changing providers after competitive bidding to secure a lower price is not a legitimate reason to qualify for an operational SPIN change). *See also* 47 CFR § 54.625(b)(1)-(2) ("The applicant has a legitimate reason to change providers (e.g., breach of contract or the service provider is unable to perform)" and the "applicant's newly selected service provider received the next highest point value in the original bid evaluation, assuming there were multiple bidders"); *see also Promoting Telehealth in Rural America*, WC Docket No. 17-310, Report and Order, 34 FCC Rcd 7335, 7426-27, paras. 197-99 (WCB 2019) (asserting that legitimate operational SPIN changes include circumstances such as breach of contract or the service provider is unable to perform and, where there were multiple bidders, the newly selected service provider was the next highest scoring bidder).

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 -

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 24-2
Released: January 2, 2024

NOTICE OF DOMESTIC SECTION 214 AUTHORIZATION GRANTED

WC Docket No. 23-361

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

Domestic Section 214 Application Filed for Acquisition of Certain Assets of Velocity Telephone Incorporated by Metro Fibernet, LLC D/B/A Metronet,
WC Docket No. 23-361, Public Notice, DA 23-1127 (WCB 2023).

Effective Grant Date: January 1, 2024

For further information, please contact Tracey Wilson at (202) 418-1394 or Dennis Johnson at (202) 418-0809, Competition Policy Division, Wireline Competition Bureau.

-FCC-

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

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

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

In the Matter of	)	
	)	
CROCODILE BROADCASTING CORP.	)	Facility ID No.: 203215
	)	NAL/Acct. No.: MB-202441410001
Licensee of FM Translator Station W234DH,	)	FRN: 0008354904
Baton Rouge (formerly Norco), LA	)	File No. BLFT-20190830AAN
	)	

FORFEITURE ORDER

Adopted: January 3, 2024 **Released: January 3, 2024**

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Order the Media Bureau (Bureau) issues a monetary forfeiture to Crocodile Broadcasting Corp. (CBC), licensee of FM translator station W234DH (Translator) and KGLA(AM), Baton Rouge (formerly Norco) Louisiana. We find that the CBC willfully violated three Commission rules (Rules): section 74.1251(b) by failing to file an application for authority to alter the Translator's antenna system;[1] section 74.1251(b)(2)[2] by constructing and operating the Translator with an unauthorized antenna at an unauthorized height and with incorrect power; and section 1.17(a)(2)[3] by certifying inaccurately, but without intent to deceive, that it had constructed the Translator as authorized. We establish a forfeiture in the amount of Twelve Thousand Five Hundred Dollars ($12,500). We will, however, eliminate a reporting requirement originally proposed.

II. BACKGROUND

2. The matters at issue stem from CBC's construction of a new FM translator in a manner other than authorized.[4] CBC proposed to build the Translator with a directional antenna mounted at 150 meters above ground level[5] and certified in a License Application that the directional antenna was properly oriented and the station was constructed as authorized.[6] The Bureau thus licensed the facilities on September 20, 2019. A competing broadcaster sought reconsideration, alleging that CBC had

[1] 47 CFR § 74.1251(b).

[2] *Id*. § 74.1251(b)(2).

[3] *Id.* § 1.17(a)(2).

[4] CBC applied for authority to construct the Translator in order to rebroadcast KGLA(AM) pursuant to the Commission's AM Revitalization opportunities. *See* Application File No. BNPFT-20180409AAA (rec. Apr. 9, 2018). The Bureau granted a construction permit for the Translator on May 16, 2018, requiring completion by May 16, 2021. Application File No. BNPFT-20180409AAA (granted May 16, 2018) (Construction Permit).

[5] The specified antenna was directional, manufactured by PSI, model FML-2(0.75)-DA. However, the constructed antenna was omnidirectional, model ERI LP-2E. *See* CBC Opposition to Petition for Reconsideration, Attach. A at 2 (rec. Oct. 25, 2019) (Opposition).

[6] *See* Application File No. BLFT-20190830AAN, Section II, Certification, Section III, Quest. 4 (granted Sept. 20, 2019) (License Application).

substituted an omnidirectional antenna mounted approximately 5 meters lower than authorized.[7] CBC also reduced power without authority, apparently to avoid interference.[8] Antenna type, height, and power are important to achieve community coverage and to avoid interference to other stations. In opposing the reconsideration request, CBC acknowledged that it built and operated nonconforming facilities, explaining that the authorized directional antenna arrived damaged in August 2019 and that CBC was eager to commence operations while awaiting repair.[9] The Translator's temporary operation with an omnidirectional antenna at a lower height and power continued for approximately two months until October 24, 2019.[10]

3. On July 31, 2023, the Bureau issued an Order and Notice of Apparent Liability for Forfeiture.[11] The Bureau accepted CBC's contention that the incorrect certification was without any intent to deceive the Commission,[12] noted that CBC had subsequently obtained approval to modify the facilities,[13] and found that the Translator now operates with an authorized antenna, at an approved height and power, without any interference complaints.[14] However, because CBC had operated for two months with an unauthorized antenna at the wrong height and power, failed to apply for authority to use that equipment, and incorrectly certified authorized construction, the Bureau found CBC apparently liable for a monetary forfeiture of twelve thousand five hundred dollars ($12,500). The Bureau also proposed to establish reporting requirements out of concern for the accuracy of information CBC and its principals might supply in future applications.

4. CBC's response, filed on August 29, 2023, asks the Bureau to eliminate the reporting conditions and to cancel or reduce the forfeiture.[15] CBC's arguments center around an assertion that CBC was unaware of the unauthorized construction and operation of the Translator until it received the R&I Petition because its consulting engineer never informed CBC that he had constructed nonconforming facilities. CBC contends that its violation was not willful, it reasonably believed its certification to be

[7] Radio & Investments, Inc., Petition for Reconsideration (R&I Petition). The Bureau dismissed the R&I Petition because the broadcaster did not show that it could not have participated earlier. *See* 47 U.S.C. § 405(a); 47 CFR § 1.106(b)(1). Nevertheless, the Bureau considered on its own motion an appropriate response to CBC's admitted construction of facilities other than authorized.

[8] The Translator's authorized effective radiated power (ERP) was 0.25 kW, but operated with an ERP of 0.01 kW when using the temporary antenna.

[9] CBC, Opposition at 6-8, Attach A at 1-3.

[10] *Id*.

[11] *Crocodile Broad Corp*., Order and Notice of Apparent Liability for Forfeiture, DA 23-646 (rel. Jul. 31, 2023) (*NAL*).

[12] The Bureau noted, for example, that CBC would have no motive to deceive in order to prevent loss of the permit because over two years remained in which to construct, so CBC would have been in no danger of forfeiting the Construction Permit had it simply waited for the correct antenna to arrive. *NAL* at 4-5, citing *Swan Creek Communications, Inc. v. FCC*, 39 F.3d 1217, 1222 (D.C. Cir. 1994), and *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7435 (2004).

[13] *See* Application for Minor Modification, File No. 0000092898 (granted Jan. 24, 2020); Application for License to Cover, File No. 0000103923 (granted Feb. 10, 2020). The modified facilities, licensed to serve the community of Baton Rouge rather than Norco, use the authorized directional antenna mounted at 143 meters above ground level.

[14] The License Application for the previously authorized facilities remained relevant because CBC obtained its current authorization as a modification of the license grant.

[15] CBC, Request for Cancellation or Reduction of Proposed Forfeiture and Elimination of Reporting Requirement (rec. Aug. 29, 2023) (*Request*).

true, it quickly took corrective steps once it became aware of the problem, and that reporting conditions are unnecessary.[16]

III. DISCUSSION

5. Based on the wording of CBC's explanation in its Opposition, the Bureau believed that CBC was aware of the antenna substitution[17] but used nonconforming facilities out of eagerness to begin broadcasting.[18] The Bureau stated, for example, that CBC would have known at the time of application that it had not mounted the damaged directional antenna which it had returned to the manufacturer for repair and that CBC's certification to the truth of statements in the License Application,[19] was therefore without a reasonable basis in violation of section 1.17(a)(2) of the Rules.[20] The Bureau also found that CBC negligently failed to communicate the antenna change to counsel and to review the application thoroughly before it was submitted to the Commission.

6. CBC now disputes that it had any knowledge of the nonconforming construction at the time of application. CBC contends that the engineering-specific certifications in the License Application were those of its engineering consultant, not of CBC.[21] It further maintains that its own overall certification was truthful to the best of its knowledge and belief and that it had a reasonable basis to believe that the statements were correct because the outside engineer it hired to build the Translator assured CBC that he had completed construction pursuant to the Construction Permit.[22] CBC says that it

[16] CBC also argues that the Bureau has not provided adequate notice of its authority to impose reporting requirements. In view of our elimination of the reporting requirements, there is no need to address this argument. We briefly note, however, that CBC bases its concern on an incorrect premise that reporting requirements are "sanctions." *See Request* at 8, citing *CBS Corp. v. FCC,* 663 F.3d 122, 130 (3rd Cir. 2011). Reporting requirements are not sanctions but, rather, a requirement to provide addition information in future applications thereby alerting the Commission of potentially relevant history. The Bureau's authority to request such information is established in the Rules. *See* 47 CFR §§ 73.1015, 73.3514(b), and 73.3566(b).

[17] *See, e.g.,* Opposition at 6-7 (footnotes omitted) ("Crocodile Broadcasting discovered that the antenna was damaged . . . . The antenna was then returned to its manufacturer for repairs. While W234DH's authorized antenna was being repaired, Crocodile Broadcasting determined that it could temporarily commence on-air operations by sharing another antenna located at W234DH's transmitter site. . . . Crocodile Broadcasting mistakenly overlooked the fact that although W234DH was now operational, it was not operating with the facilities authorized in its Construction Permit.").

[18] *See NAL* at 5.

[19] *Id.* The standard licensee certification reads, in relevant part, "I certify that the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith. I acknowledge that all certifications and attached Exhibits are considered material representations." FCC Form 350, Certification, Section II. CBC's President signed this certification in the License Application.

[20] Section 1.17(a)(2), which governs submission of incorrect information without deceptive intent, focuses on whether the licensee or applicant had a reasonable basis for believing that a false material factual statement or omission was correct and not misleading. *See* 47 CFR § 1.17(a)(2) (no person may provide, in any written statement of fact, "material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading."). Even absent an intent to deceive, a false statement may constitute an actionable violation of section 1.17(a)(2) if it is submitted without a reasonable basis for believing that the statement is correct and not misleading.

[21] *Request* at 4.

[22] *Id.* at 2, 5.

had no reason to question the engineer because he was reputable in the industry[23] and had proven himself accurate and trustworthy in previous work for CBC. CBC did not present this argument at earlier stages of this proceeding but now characterizes its prior explanations as describing only what the engineer, not CBC, knew[24] at the time of application. CBC says that it did not learn of these matters until it received the R&I Petition after license grant.[25] CBC further argues that because it was unaware of the engineer's actions, it could not have willfully violated section 74.1251(b)(2)[26] by constructing the omnidirectional antenna or section 74.1251(b) by failing to seek modification of facilities that it did not know needed to be modified.[27] CBC, therefore, argues that the Bureau mischaracterized its actions as "gross negligence."[28]

7. We reject CBC's argument that its violations were not "willful." A "willful" violation under section 503(b) of the Act means "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.[29] Here, CBC willfully operated the Translator which its consulting engineer had built using an incorrect antenna, height, and power, even if, as CBC asserts, it was unaware that the facilities were unauthorized.[30] Nor do we accept CBC's contention that the engineer's actions should not be imputed to CBC. CBC's argument relies upon one sentence within *dicta* of a case decided more than 50 years ago.[31] CBC misinterprets that language as exempting licensees from liability if they investigate contractor qualifications prior to hiring and act quickly to correct any contractor mistakes. This is not so. Long-standing Commission precedent, more recent and more pertinent than the single case upon which CBC relies, holds licensees responsible for unintentional rule

[23] For example, CBC states that the engineer was a Certified Professional Broadcast Engineer, Certified Broadcast Networking Technologist, and had served as the Louisiana Certification Chairman for the Society of Broadcast Engineers. *Id.* at 4.

[24] Specifically, CBC maintains that its Opposition was "phrased such that knowledge and unilateral acts of an Outside Consulting Engineer are difficult to discern from those of CBC. At the time of the license application CBC lacked knowledge that construction remained incomplete. Only subsequently did CBC learn that the independent contractor was aware of that information at the time of application." *Id.*

[25] *Id.* at 4, n. 21.

[26] *Id*.

[27] 47 CFR § 74.1251(b).

[28] *Request* at 6.

[29] *See* 47 U.S.C. § 312(f)(1); *KOFI, Inc.,* Forfeiture Order, 20 FCC Rcd 17886, 17888 (EB 2005), citing *Southern Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991); *Radio Power Corp.,* Forfeiture Order, 21 FCC Rcd 6940, 6940 (EB 2006) (violation was willful despite misunderstanding between licensee and its engineering consultant concerning need to file an application).

[30] Moreover, we note that some aspects of the nonconforming construction may have been visually discernable had CBC verified the work completed. Most (though not all) directional antennas have more elements than omnidirectional antennas and appear visually more complex. The R&I Petition identified the constructed antenna as nonconforming based on its lack of parasitic elements that are generally present on directional antennas, and the different antenna shape from the model proposed. *See* R&I Petition at 4. Regarding the ERP, the power at which a station is operating should be readable on a meter in the transmitter building, or in many cases remotely at studio or a remote control site.

[31] *Request* at 6, citing *Crowell-Collier Broad. Corp.,* Letter Order, 14 FCC 2d 358, 359 (1966) (*Crowell*). There, the Commission faulted a licensee for not investigating allegations that its employees were engaging in payola and stated that "[t]he only way a licensee can avoid imputation of knowledge of improper conduct on the part of its employees is to investigate fully all reports or other indications of misconduct." *Crowell,* 14 FCC 2d at 359. CBC argues that it investigated its engineer's qualifications prior to construction, and CBC promptly investigated upon later receipt of the R&I Petition. *Request* at 6. It also claims to have taken quick action once it learned of the problem, such as requesting special temporary and applying to modify its facilities.

violations resulting from erroneous information from an engineer.[32] Even if we accept *arguendo* that CBC's consulting engineer was highly regarded, was never before inaccurate, and uncharacteristically failed to share material information with CBC, the "Commission has long held that licensees and other Commission regulatees are responsible for the acts and omissions of their employees and independent contractors"[33] The Commission has "consistently refused to excuse licensees from forfeiture penalties where actions of employees or independent contractors have resulted in violations."[34] Nothing in the record suggests that this precedent does not apply to the current circumstances. Further, with respect to CBC's corrective actions, the Commission expects that all licensees will quickly remedy any discovered violations. We do not, as CBC suggests, view its correction of the violations as a mitigating factor. The Commission has long held that a licensee's remedial steps in response to an enforcement action are not a reason to reduce a forfeiture.[35] To the extent that CBC disputes the Bureau's characterization of CBC's actions as "gross negligence," we note that this language simply mirrored CBC's own description of the circumstances.[36]

8. We do, however, accept CBC's contention that the circumstances as it now describes them would not raise the same level of concern about the accuracy of CBC's future applications. If the circumstances are as CBC presents, its failures lie primarily in reliance upon a contractor without verification and not upon an overarching propensity for carelessness in preparing and reviewing applications. Based on the updated record, we do not believe that CBC would be likely to submit inaccurate information to the Commission again and, therefore, we will not adopt the reporting requirements originally proposed.

IV. CONCLUSION

9. Based on the record before us and in light of the applicable statutory factors, we conclude that CBC willfully violated sections 74.1251(b), 74.1251(b)(2), and 1.17(a)(2) of the Rules by failing to file an application for authority to alter the Translator's antenna system; by constructing and operating the Translator with a nonconforming antenna mounted at an unauthorized height and using unauthorized power; and by certifying inaccurately, but without intent to deceive, that it had constructed the Translator as authorized. For the reasons discussed in the *NAL,* we find CBC liable for a forfeiture. We decline to cancel or reduce the $12,500 forfeiture proposed in the *NAL*. We do, however eliminate the proposed reporting requirements.

[32] *See, e.g., Air-Tel, LLC*, Forfeiture Order, 36 FCC Rcd 8867, 8874, para. 17 (2021) (licensee responsible for violations when its engineer mistakenly but unlawfully programmed equipment to operate outside the scope of the licensee's authorization); *MTD, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 34 (1991) (company's reliance on an independent contractor to construct a tower in compliance with FCC rules does not excuse that company from a forfeiture); *Wagenvoord Broad. Co.*, Memorandum Opinion and Order, 35 FCC 2d 361 (1972) (licensee responsible for violations despite its reliance on a consulting engineer).

[33] *Eure Family L.P.*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863-64, para. 7 (2002).

[34] *American Paging, Inc. of VA*, Notice of Apparent Liability for Forfeiture, 12 FCC Rcd 10417, 10420 para. 11 (WTB 1997) (quoting *Triad Broad. Co., Inc.*, 96 FCC 2d 1235, 1244 (1984)).

[35] S*ee, e.g., Dialing Services, LLC*, Forfeiture Order, 32 FCC Rcd 6192, 6204, para. 32 (2017). *See also AT&T Wireless Services, Inc.*, Forfeiture Order, 17 FCC Rcd 21866, 21875, para. 26 (2002) ("All licensees and Commission regulatees are expected to promptly take corrective action when violations are brought to their attention").

[36] *See* Opposition at 6 ("the error was the result of a gross oversight by Crocodile"), 8 ("The filing was an oversight resulting from Crocodile Broadcasting's gross negligence pure and simple.").

V. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act,[37] and section 1.80 of the Commission's rules,[38] Crocodile Broadcasting Corp. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of Twelve Thousand Five Hundred Dollars ($12,500) for willfully violating sections 74.1251(b), 74.1251(b)(2), and 1.17(a)(2) of the Commission's rules.[39]

11. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission's rules,47 CFR § 1.80, within thirty (30) calendar days after the release of this Forfeiture Order. In order for CBC to pay the forfeiture, it shall notify Irene Bleiweiss at Irene.Bleiweiss@fcc.gov of their intent to pay, whereupon an invoice will be posted in the Commission's Registration System (CORES) at https://apps.fcc.gov/cores/userLogin.do. CBC shall also send electronic notification of payment to Irene Bleiweiss, Media Bureau, Federal Communications Commission, at Irene.Bleiweiss@fcc.gov on the date said payment is made. If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to 47 U.S.C. § 504(a).

12. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission's online payment system),[40] or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. Below are instructions that payors should follow based on the form of payment selected:[41]

- 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).[42] For additional detail and wire transfer instructions, go to https://www.fcc.gov/licensing-databases/fees/wire-transfer.
- Payment by credit card must be made by using 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. with the first four digits, denoting the year, excluded (e.g., NAL 202312345678 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.

[37] 47 U.S.C. § 503(b).

[38] 47 CFR § 1.80.

[39] *See* 47 CFR. §§ 74.1251(b), 74.1251(b)(2), 1.17(a)(2).

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

[41] 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.

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

- 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. with the first four digits, denoting the year, excluded (e.g., NAL 202412345678 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.

13. Requests for full payment of the forfeiture proposed in this Forfeiture Order under the installment plan should be sent to: Associate Managing Director-Financial Operations, 45 L Street, NE, Washington, DC 20554.[43] 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.

14. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554, ATTN: Albert Shuldiner, Chief, Audio Division, Media Bureau, and **MUST INCLUDE** the NAL/Acct. No. referenced above. A courtesy copy must be emailed to Alexander Sanjenis (alexander.sanjenis@fcc.gov) and Olivia Hill (olivia.hill@fcc.gov).

15. **IT IS FURTHER ORDERED**, that copies of this Forfeiture Order shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Ernesto Alejandro Schweikert, Vice President, Crocodile Broadcasting Corp., 3540 South I-10 Service Rd. West, Metairie, LA 70001 and by electronic mail to alejandro@kgla.tv. A copy shall also be sent to the station's representative, Francisco Montero, Esq., Fletcher, Heald & Hildreth, PLC, 1300 N. 17th St., Arlington, VA 22209 and by electronic mail to montero@fhhlaw.com.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

[43] *See* 47 CFR § 1.1914.

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

In the Matter of	)	
	)	
Bet-Nahrain, Inc.	)	Facility ID No. 4939
	)	NAL/Acct. No. 202441420001
Licensee of Station KBSV(TV),	)	FRN: 0006804603
Ceres, California	)	LMS File No. 0000195478

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: January 3, 2024 **Released: January 3, 2024**

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the application (Application)[1] of Bet-Nahrain, Inc. (Licensee), for renewal of its license for KBSV(TV), Ceres, California (Station). In this *Notice of Apparent Liability for Forfeiture* (*NAL*), we find the Licensee apparently willfully and repeatedly violated the Commission's rules (Rules) by failing to timely file the Station's quarterly issues/programs lists in violation of section 73.3527(e)(8).[2] Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of nine thousand dollars ($9,000).

II. BACKGROUND

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

3. On July 21, 2022, the Licensee filed its Application. The Licensee admitted that it failed to upload a number of issues/programs lists to its OPIF in a timely manner. In total, a Bureau staff inspection of the Station's OPIF revealed that the Licensee failed to upload 16 copies of its issues/programs lists by the deadline established in section 73.3527(e)(8) of the Rules during the prior license term.[5] Specifically, it uploaded five lists more than one year late, six lists between one month and one year late, and five lists between one day and one month late. The Licensee did not provide any explanation for the late filings.

---

[1] Application of Bet-Nahrain, Inc. for Renewal of License, LMS File No. 0000195478 (filed Jul. 21, 2022). KBSV is a noncommercial educational television station.

[2] 47 CFR § 73.3527(e)(8).

[3] *Id.*

[4] *Id*.

[5] The Licensee disclosed that "some quarterly issues/programs ("I/P") lists had not been uploaded" and specifically disclosed the late filing of five issues/programs lists. Application at Online Public File Exhibit. Based on an inspection of the Station's OPIF, Bureau staff found an additional 11 issues/programs lists were uploaded late.

III. DISCUSSION

4. This NAL is issued pursuant to section 503(b)(1)(B) of the Communications Act of 1934, as amended (the Act), which states a person who is found to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission, shall be liable to the United States for a forfeiture penalty.[6] 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.[7] 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,[8] and the Commission has so interpreted the term in the section 503(b) context.[9] 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."[10]

5. *Apparent Violation.* In total, the Licensee failed to upload in a timely manner to the Station's OPIF copies of the Station's issues/programs lists for 16 quarters. These lists were between one day and over one year late. We therefore find that the Licensee has apparently willfully and repeatedly violated section 73.3527(e)(8) of the Rules.[11]

6. *Proposed Forfeiture.* The Commission's *Forfeiture Policy Statement* and section 1.80(b)(10) of the Rules establish a base forfeiture amount of $10,000 for public file violations.[12] 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."[13]

7. In this case, the Licensee failed to timely upload to its OPIF the Station's issues/programs lists for 16 quarters, including filing five lists over one year late, six lists between one month and one year late, and five lists between one day and one month late, in violation of section 73.3527(e)(8) of the Rules.[14] Licensee acknowledged its repeated failure to timely upload its issue/programs lists in its Application, but did not provide any explanation for why the issues/programs lists were uploaded to the Station's OPIF late. Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*, we find that under the facts of this case a forfeiture in the amount of $9,000 is appropriate for the Licensee's apparent failure to timely upload its issues/programs lists.

8. *License Renewal Application.* In evaluating an application for license renewal, the Commission's decision is governed by section 309(k) of the Act.[15] That section provides that if, upon

---

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

[7] 47 U.S.C. § 312(f)(1).

[8] *See* H.R. Rep. No. 97-765, at 51 (1982) (Conf. Rep.).

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

[10] 47 U.S.C. § 312(f)(2).

[11] *See* 47 CFR § 73.3527(e)(8).

[12] *See Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113–15 (1997) (*Forfeiture Policy Statement*), *recon. denied*, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b), paragraph (b)(10), Table 1.

[13] 47 U.S.C. § 503(b)(2)(E). *See also Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 CFR § 1.80(b)(10); 47 CFR § 1.80(b), paragraph (b)(10), Table 3.

[14] *See* 47 CFR § 73.3527(e)(8).

[15] 47 U.S.C. § 309(k).

consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.[16] If, however, the licensee fails to meet that standard, the Commission may deny the application—after notice and opportunity for a hearing under section 309(e) of the Act—or grant the application "on terms and conditions as are appropriate, including renewal for a term less than the maximum otherwise permitted."[17]

9. We find that the Licensee's apparent violation of section 73.3527(e)(8) of the Rules does not constitute a "serious violation" warranting designation of the Application for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, constitute a pattern of abuse.[18] Further, based on our review of the Application, we find that the Station served the public interest, convenience, and necessity during the subject license term. We will therefore grant the Application by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than those set forth in this *NAL* that would preclude grant of the Application.[19]

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and sections 1.80 and 0.283(d) of the Commission's rules, 47 CFR §§ 1.80 and 0.283, that **Bet-Nahrain, Inc.**, is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of nine thousand dollars ($9,000) for its apparent willful and repeated violation of section 73.3527(e)(8) of the Commission's rules, 47 CFR § 73.3527(e)(8).

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

12. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission's online payment system),[20] or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted**. Upon payment, Licensee must send notice that payment has been made to VideoNAL@fcc.gov**. Below are instructions that payors should follow based on the form of payment selected:[21]

---

[16] 47 U.S.C. § 309(k)(1).

[17] 47 U.S.C. §§ 309(k)(2), 309(k)(3).

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

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

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

[21] 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.

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed FCC Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).[22] For additional detail and wire transfer instructions, go to https://www.fcc.gov/licensing-databases/fees/wire-transfer.
- Payment by credit card must be made by using the Commission's Registration System (CORES) at https://apps.fcc.gov/cores/userLogin.do. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). After selecting the bill for payment, choose the "Pay by Credit Card" option. Please note that there is a $24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using the Commission's Registration System (CORES) at https://apps.fcc.gov/cores/paymentFrnLogin.do. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL/Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). Finally, choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

13. The written response seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Rules.[23] The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554, ATTN: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and **MUST INCLUDE** the NAL/Acct. No. referenced above. **A copy must also be emailed to VideoNAL@fcc.gov to assist in processing the response**.

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

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

[23] 47 CFR §§ 1.16 and 1.80(g)(3).

- 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.[24]

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to Generally Accepted Accounting Principles (GAAP); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we have discretion to not reduce or cancel the forfeiture if other prongs of 47 U.S.C. § 503(b)(2)(E) support that result.[25]

15. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, 45 L Street, NE, Washington, DC 20554.[26] Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

16. **IT IS FURTHER ORDERED**, that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Sargon Dadesho, President, Bet-Nahrain, Inc., P.O. Box 4116, Modesto, CA, 95352 and by e-mail to KBSV@AOL.com. A copy will also be sent to the Station's counsel, Howard Liberman, Esq., by e-mail to hliberman@wbklaw.com.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

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

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

[26] *See* 47 CFR § 1.1914.

Federal Communications Commission
Washington, D.C. 20554

January 3, 2024

DA 24-5
In Reply Refer to:
1800B3-IB
Released January 3, 2024

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Mr. Darrick Servis, CFO
Common Frequency, Inc.
P.O. Box 4301
Davis, CA 95617
Sent via email: darrick@commonfrequency.org

In re: **Common Frequency, Inc.**
Station KCFH(FM), Two Harbors, CA
Facility ID No. 175014
Application File No. 0000155817

Dear Licensee:

We have before us the application (Application) of Common Frequency, Inc. (Licensee) for renewal of its license for Station KCFH(FM), Two Harbors, California (Station).[1] For the reasons set forth below, we grant the Application for a shortened renewal period, instead of a full term of eight years, pursuant to section 309(k)(2) of the Communications Act of 1934, as amended (Act).[2] **The Station's term will expire on January 3, 2025, and a renewal application will be due on or before September 1, 2024.**[3] **This short-term, one-year license renewal is granted on the condition that the Licensee, by March 1, 2024, comes into compliance with public inspection file requirements as specified by section 73.3527 of the Commission's rules (Rules) including, but not limited to, requirements concerning issue-responsive programming specified in section 73.3527(e)(8).**[4]

Background. Licensee acquired the Station through an assignment of license consummated on August 11, 2015.[5] The Station's license term, like that of most California radio stations, ended on December 1, 2021. On August 2, 2021, Licensee timely filed the Application seeking to renew the Station's license. The Application acknowledges that the Station was off air pursuant to Special Temporary Authority (STA) when acquired from the prior licensee[6] and also for four periods of almost 12

[1] Application File No. 0000155817.

[2] 47 U.S.C. § 309(k)(2).

[3] *See* 47 CFR § 73.3539(a) ("an application for renewal of license shall be filed not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed").

[4] Section 73.3527(e)(8) requires noncommercial educational broadcast stations, every three months, to place in their public inspection files lists of programs that have provided the station's most significant treatment of community issues during the preceding three month period. *See* 47 CFR § 73.3527(e)(8).

[5] *See* Application File No. BALED-20150604ACD (consummated Aug. 11, 2015).

[6] The overall license term for California stations began on December 1, 2013. Licensee states that the assignor, Catalina Island Conservancy, kept the Station silent for two periods within assignor's portion of the license term: from January 9, 2014 to January 8, 2015, and from July 1, 2015 through the August 11, 2015 assignment to Licensee. Licensee resumed Station operations in June 2016, only to take it silent again two months later.

months each during Licensee's tenure: August 11, 2015 to June 5, 2016;[7] August 10, 2016 to August 10, 2017;[8] February 27, 2018 to February 16, 2019;[9] and October 28, 2019 to October 26, 2020.[10] Thus, the Station was silent for approximately 52% of its license term under Licensee. It has been on air without periods of silence from October 27, 2020 through present.

Licensee certifies in the Application that it has timely placed all required information in its public inspection file as required by section 73.3527 of the Rules. However, we have ascertained in our review of the Station's public file that the certification is inaccurate because information is missing.

Discussion. Silence instead of operation in accordance with a station's FCC authorization is a fundamental failure to serve a broadcast station's community of license, because a silent station offers that community no public service programming such as news, public affairs, weather information, and Emergency Alert System notifications. Moreover, brief periods of station operation sandwiched between prolonged periods of silence are of little value because the local audience is not accustomed to tuning into the station's frequency.[11]

The basic duty of broadcast licensees to serve their communities is reflected in section 309(k) of the Act.[12] That section provides that if, upon consideration of a station's license renewal application and related pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.[13] If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under section 309(e) of the Act – or grant the application "on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise

---

[7] *See* Application File No. BLESTA-20150604ACE (granted to assignor Aug. 1, 2015); Notice of Resumption of Operations by assignee, dated Jun. 6, 2015).

[8] *See* Application File No. BLSTA-20160825AAC (granted Sept. 7, 2016); Notice of Resumption of Operations, dated Aug. 16, 2017.

[9] *See* Application File No. BLSTA-201802227ABI (granted Mar. 12, 2018); Notice of Resumption of Operations, dated Feb. 22, 2019.

[10] *See* Application File No. BLSTA-20191028AAF (granted Nov. 22, 2019); Notice of Resumption of Operations, dated Oct. 27, 2020.

[11] *See Radioactive, LLC*, Hearing Designation Order, 32 FCC Rcd 6392, para. 2 (2017).

[12] 47 U.S.C. § 309(k). *See also* 47 U.S.C. § 312(g). In addition to its enforcement of sections 309(k) and 312(g) of the Act, the Commission has stressed its interest in promoting efficient use of radio broadcast spectrum for the benefit of the public in several different contexts. *See Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Third Report and Order, 26 FCC Rcd 17642, 17645, para. 7 (2011) (citing the Commission's "fundamental interest" in expediting new radio service and preventing "warehousing" of scarce spectrum); *1998 Biennial Regulatory Review – Streamlining of Mass Media Applications, Rules, and Processes*, Report and Order, 13 FCC Rcd 23056, 23090-93, paras. 83-90 (1998), *on reconsideration*, 14 FCC Rcd 17525, 17539, paras. 35-36 (1999); *Liberman Broad. of Dallas License LLC*, Letter, 25 FCC Rcd 4765, 4768 (MB 2010).

[13] 47 U.S.C. § 309(k)(1). The renewal standard was amended to read, as described, by section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). *See Implementation of Sections 204(a) and 204(c) of the Telecomm. Act of 1996*, Order, 11 FCC Rcd 6363 (1996).

permitted."[14]

In 2001, the Commission cautioned "all licensees that . . . a licensee will face a very heavy burden in demonstrating that it has served the public interest where it has remained silent for most or all of the prior license term."[15] It also acknowledged the agency's longstanding policy to encourage stations to resume broadcast operations when license renewal applications were pending. However, the Commission noted that section 309(k)(1) applies a "backwards-looking standard" that does not give any weight to efforts to return a station to full-time operation in the future.[16] The Commission held that denial of the renewal application of the station in question in the *Birach 2001 Order* would be fundamentally unfair because the Commission had not provided sufficient notice of the effect the section 309(k)(1) standard would have on silent stations.[17] Since the issuance of the *Birach 2001 Order*, licensees have been on notice as to how section 309(k)(1) applies to silent stations.

In this case, Licensee's conduct has repeatedly fallen short of that which would warrant routine license renewal. Licensee's stewardship of the Station fails to meet the public service commitment which licensees are expected to provide to their communities of license on a daily basis because the Station was silent for a significant portion of the license term.[18] Licensee's full-time operation during the last ten months of the license term through present does not offset its failure to broadcast during the majority of its stewardship.[19]

Moreover, Licensee's deficient public service commitment is reflected in a defective public inspection file. Among the items that each licensee must timely place in the file are quarterly lists of its most significant informational programming responsive to issues and problems of its community.[20] Licensee's Application incorrectly certifies that it met this requirement. The Station's file is missing issues/programs lists for many quarters during Licensee's stewardship, including all quarters prior to

[14] 47 U.S.C. §§ 309(k)(2), 309(k)(3).

[15] *See Birach Broad. Corp.,* Memorandum Opinion and Order, 16 FCC Rcd 5015, 5020, para. 13 (2001) (*Birach 2001 Order*).

[16] *Id.* at para. 12 ("[C]onsideration of post-term developments is fundamentally at odds with this backwards-looking standard.").

[17] In the *Birach 2001 Order*, the station was silent for the entire period (approximately two and one-half years) in which the license renewal applicant (Birach) held the license. Section 312(g) of the Act took effect during that period, and Birach returned the station to operation before that provision would have applied. *See* 47 U.S.C. § 312(g). The Commission stated: "The fact that Birach resumed WDMV operations only when faced with the potential license cancellation is not lost on us. Although we have concluded that Birach is qualified to be a licensee and that grant of the renewal application was proper, it is equally clear to us that Birach's conduct as a licensee upon acquiring WDMV fell far short of the service commitment which most licensees fulfill to their communities of license on a daily basis." *Id.*, 16 FCC Rcd at 2021, para. 13.

[18] *See Fox Television Stations, Inc.*, Memorandum Opinion and Order, 29 FCC Rcd 9564, 9571 n. 40 (MB 2014) (Commission considers the licensee's performance since the beginning of its most recent license term, but performance during the pendency of a renewal application is given less weight).

[19] *See Birach 2001 Order,* 16 FCC Rcd at 5020, para 12.

[20] *See* 47 CFR § 73.3527(e)(8).

2019.[21] Of the lists that are present, most were not timely and some were reconstructed almost two years past their due dates.[22] Lists for Third Quarter 2021 through Fourth Quarter 2022 (the most recent submissions)[23] appear to reflect programming aired only on two other stations operated by the same Licensee.[24] Lists for the immediately preceding period, Third Quarter 2019 through Second Quarter 2021, pertain to the correct Station but each list describes just two segments of a single, nationwide syndicated program. Although there is insufficient evidence to support a finding that Licensee's false certification of public file compliance is due to any deliberate misrepresentation or lack of candor, the file's deficiencies clearly demonstrate gross negligence and make it impossible for us to determine that the Station met its obligation to provide public service programming for its community, even during the portion of the license term it was on air.[25] Moreover, we are concerned that Licensee certified it had met the requirements when it clearly had not.

On the facts presented here, we conclude that a conditional short-term license renewal for the Station is the appropriate sanction. Although the Licensee did seek and obtain Commission authorization for the periods of silence, we cannot find that the Station served the public interest, convenience and necessity during the license term due to the extended periods of non-operation. Further, because the Station did not comply fully with public inspection file requirements it is uncertain, even for periods in which the Station did operate, whether the Station met its primary obligation to air informational programming responsive to issues and problems of the community.

Accordingly, pursuant to section 309(k)(2) of the Act, we will grant the Station a short-term license renewal, limited to a period of one year from the date of this letter and conditioned upon its coming into compliance with public file requirements.[26] Additionally, we admonish Licensee for its

---

[21] The file contains no issues/programs list for Fourth Quarter 2015 through Second Quarter 2019. The Station was silent for large portions of these periods but should have identified its most significant issue responsive programming for the periods it was on air. For any quarter in which it was entirely silent, Licensee should have stated that it aired no issue responsive programming that period due to silence.

[22] Issues/programs lists are due by the 10th of the month following end of a quarter. 47 CFR § 73.3527(e)(8). Licensee submitted its lists in two batches, one in June 2021 and the other in May 2023, with each batch covering five or more quarters. Late reconstruction of issues/programs lists, when necessary, does not constitute compliance.

[23] The file contains no lists for First Quarter 2023 through present.

[24] For the periods Third Quarter 2021 through Fourth Quarter 2022, the title of the electronic document uploaded to the Station's public file, *e.g.,* "Log Issue 3rd Quarter 2022 - KHCF-KZCF-KQCF-KCFH-KDXA" names the Station as one among five. However, the text of the document itself specifies that the programs named therein aired only on two stations: KHCF, Morgan Hill, CA and KZCF, Atwater, CA. Because the lists do not state whether all informational programming aired on the Morgan Hill and Atwater stations also aired on KCFH, the filings are not helpful in evaluating the extent to which the Station aired programming to meet the needs of Two Harbors. Further, the use of an identical, late-filed list for five stations provides no reasonable certainty that Licensee has considered the particular problems facing Two Harbors and the programming that would best address those issues.

[25] We further note that the Station's file does not identify any donors supporting specific programs, which would be required pursuant to 47 CFR § 73.3527(e)(9) if the Station had any such donors. Licensee should, by March 1, 2024, determine whether it has such donors and, if so, identify them in its public file.

[26] *See, e.g., South Seas Broad., Inc.,* Memorandum Opinion and Order and Notice of Apparent Liability, 24 FCC Rcd 6474 (MB 2008) (two-year renewal granted, NAL issued, for willfully and repeatedly violating 47 CFR § 73.1350 by engaging in operation of the station at an unauthorized site and willfully and repeatedly violating 47 CFR § 73.1740 by leaving the station silent without the proper authorization).

violation of the Rules by failing to timely place issue-programs lists in its public inspection file and by certifying incorrectly that it had timely and fully met public file requirements.

This short-term, one-year license renewal is granted **on the condition that the Licensee by March 1, 2024 bring its online public inspection file into full compliance with section 73.3527 of the Commission's rules**.[27] With respect to issues/program lists, Licensee should reconstruct and place in the file lists for First Quarter 2023 through Third Quarters 2023. Licensee must timely file an issues/program list for Fourth Quarter 2023 by January 10, 2024 and timely file such lists for all quarters thereafter to demonstrate that KCFH(FM) has presented significant informational programming each quarter responsive to issues it has determined to be important to Two Harbors, California. With respect to donor lists, Licensee must by March 1, 2024 place in its public file lists of donors supporting specific programs and, if there are none, shall so state. This limited, conditional renewal period will afford the Commission an opportunity to review the Station's public service performance, as well as compliance with the Act and the Commission's rules, and to take whatever corrective actions, if any, that may be warranted at that time.

Conclusion. Accordingly, for the reasons set forth above, **IT IS ORDERED THAT** the license renewal application (Application File No. 0000155817) filed by Common Frequency, Inc., for Station KCFH(FM), Two Harbors, California, IS GRANTED pursuant to section 309(k)(2) of the Communications Act of 1934, as amended,[28] for a license term of one year from the date of this letter,[29] under the condition that the Licensee brings its online public inspection file into full compliance with the requirements specified in 47 CFR § 73.3527 by March 1, 2024.

IT IS FURTHER ORDERED that Common Frequency, Inc. **IS ADMONISHED** for its inaccurate certification in the license renewal application to have been in compliance with section 73.3527 of the Commission's rules.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

cc (via electronic mail):
Todd Urick (todd@commonfrequency.org)
(Technical Representative for Common Frequency, Inc.)

[27] Under section 1.110, Licensee may challenge this conditional grant of its Application within 30 days of the date of this letter by filing a written request with the Commission rejecting the grant as made. *See* 47 CFR § 1.110.

[28] 47 U.S.C. § 309(k)(2).

[29] The date set in this letter for the new license term supersedes any notice generated from the FCC Licensing and Management System (LMS).

Federal Communications Commission
Washington, D.C. 20554

January 3, 2024

DA 24-6

By Certified and Regular Mail

Marco Antonio Fernandez Martinez, President
Quickly Phone USA, LLC
17971 Biscayne Blvd., Suite 201
Aventura, Florida 33160

Re: Potential Termination of International Section 214 Authorization, File No. ITC-214-20120920-00244

Dear Mr. Martinez:

We forward for your response the letter submitted by the U.S. Department of Justice (DOJ) in which the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (the "Committee") recommends that the Federal Communications Commission (FCC) terminate the international section 214 authorization issued on July 18, 2014 to Quickly Phone, LLC under file number ITC-214-20120920-00244,[1] in accordance with Section 10(f) of Executive Order 13913.[2] The DOJ Letter alleges that Quickly Phone has been wholly unresponsive to DOJ's multiple attempts to communicate regarding the Letter of Agreement (LOA), compliance with which is an express condition of Quickly Phone's authorization, and Quickly Phone's continued noncompliance with certain provisions of the LOA.[3] The letter states that the "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."[4]

We request that Quickly Phone respond to the Committee's allegations within 30 days from the date of this letter, by **February 2, 2024**. Please describe in your response any steps that you are taking or will take with the Committee to resolve its concerns. If Quickly Phone no longer provides services under its international section 214 authorization, ITC-214-20120920-00244, and does not intend to do so in the

[1] *International Authorizations Granted, Section 214 Applications (47 C.F.R. § 63.18)*, *Section 310(b)(4)Requests*, Public Notice, 29 FCC Rcd 9189 (IB 2014).

[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) (citing Exec. Order No. 13913, 85 Fed. Reg. 19643 (Apr. 4, 2020)). A copy of the DOJ Letter is attached to this letter and may also be viewed on the FCC's website by searching for File No. ITC-214-20120920-00244 in the International Communications Filing System (ICFS) at https://www.fcc.gov/icfs, and accessing the "Other Filings Related to this Application" from the Document Viewing Area. A confidential version of the DOJ Letter was also filed.

[3] *Id.* at 2-3

[4] *Id.* at 3.

future, please indicate in your response whether Quickly Phone is surrendering its international section 214 authorization.

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 issuance of an order to terminate Quickly Phone's section 214 authorization.[5]

Sincerely,

/*Denise Coca*/
Denise Coca, Chief
Telecommunications Analysis Division
Office of International Affairs

Enclosure: DOJ Letter

cc: By Certified and Regular Mail:
Marco Fernandez Martinez, President
7950 NW 53rd St, Suite 337
Miami, FL 33166

By Certified and Regular Mail:
Cecilia Padilla
Incorp Services
1090 Vermont Avenue, NW, No. 910
Washington, DC 20005
Cecilia.padilla@incorp.com

[5] Quickly Phone listed a D.C. Agent in Form 499-A as Cecilia Padilla from Incorp Services. However, the FCC Form 499 database indicates that Quickly Phone is "[n]o Longer Active as of 7/1/2014." On July 27, 2023, FCC staff contacted Incorp Services by phone at 1-800-246-2677 and left a message, after which Incorp Services staff returned the call and stated that Quickly Phone was not listed as a client of Incorp Services. The Office of International Affairs will post a copy of this letter in the FCC's Office of the Secretary as required by section 413 of the Communications Act of 1934, as amended, based on the determination that Cecilia Padilla is no longer serving as Quickly Phone's D.C. Agent. *See* 47 U.S.C. § 413.

REDACTED FOR PUBLIC INSPECTION

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 l2th 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 Quicky 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,

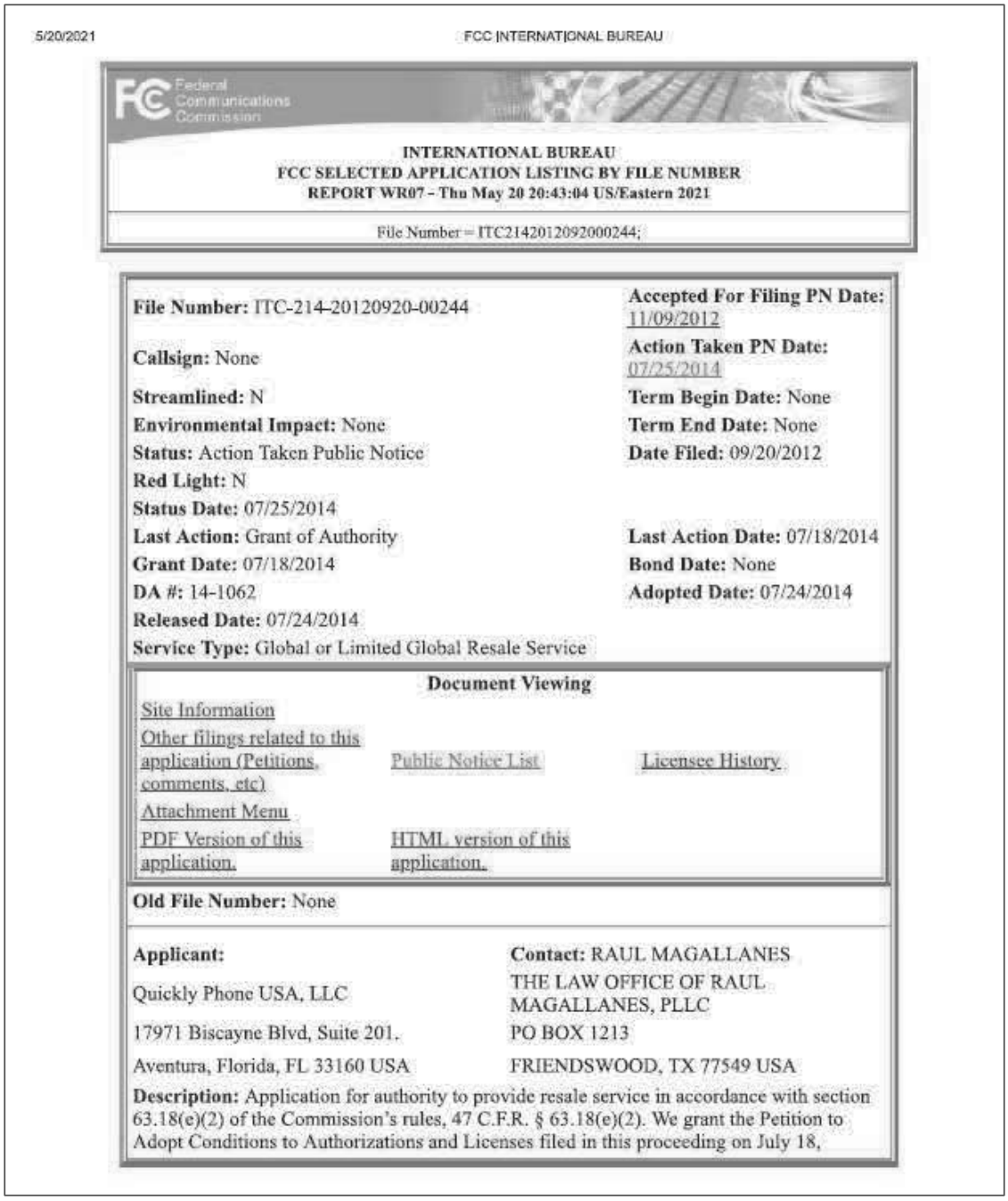
/s/

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

Federal Communications Commission

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)

Public Notice List

Licensee History

Attachment Menu

PDF Version of this application.

HTML version of this application.

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,

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

Exhibit 3: Quickly Phone 214 Authorization Application

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):

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 Phore.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

TELECOMMUNICATIONS LAW
The Law Office of
Raúl Magallanes

FCC LICENSING & REGULATION
P.O. Box 1213, Houston, TX 77549
(281) 317-1397 T. (281) 271-6085 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

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

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

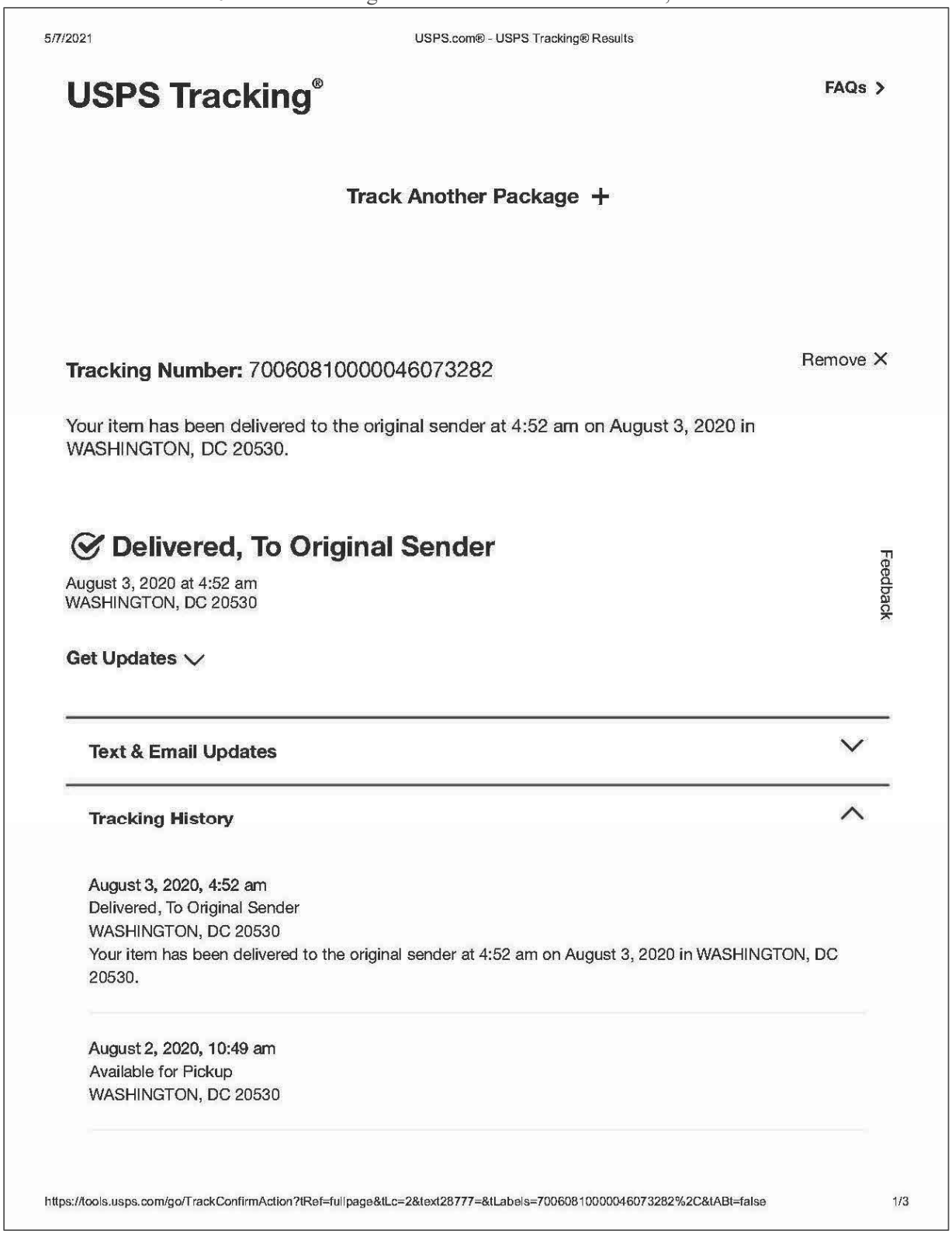
The original message was received at Tue, 2 Jun 2020 22:20:40 GMT from [10.187.9.62]

----- 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 ×

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

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&text28777=&tLabels=70060810000046073282%2C&tABt=false 1/3

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

See Less ^

Can't find what you're looking for?

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

FAQs

Feedback

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

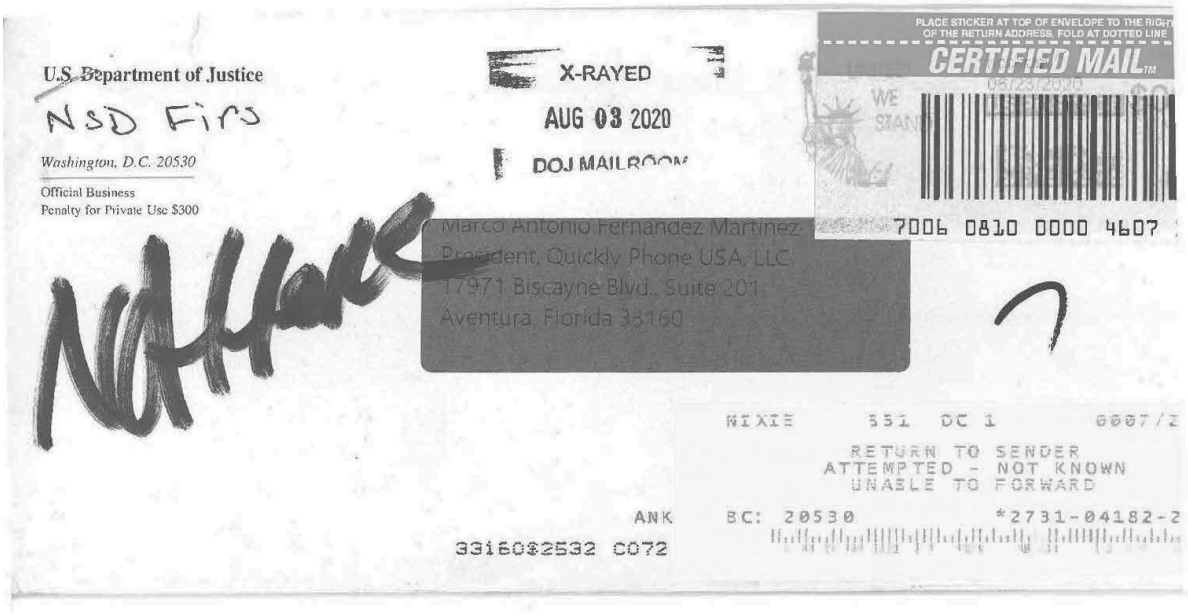


Exhibit 12: Florida Secretary of State, Division of Corporations website entry for Quickly Phone

DIVISION OF CORPORATIONS

Sunbiz.org DIVISION of CORPORATIONS an official State of Florida website

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

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 – L.C. Amendment	View image in PDF format
07/09/2013 – L.C. Amendment	View image in PDF format
09/28/2012 – L.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

Exhibit 13: USPS Tracking for Certified Letter to Miami, Florida Address

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

Feedback

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

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: https://www.fcc.gov

DA 24-7
Released: January 3, 2024

DOMESTIC SECTION 214 APPLICATION GRANTED FOR THE TRANSFER OF CONTROL OF CABLESOUTH MEDIA III, LLC TO MIP VI OUTLIER, LLC

WC Docket No. 23-372

By this Public Notice, the Wireline Competition Bureau (Bureau) grants an application filed by Hunt Group Holdings, LLC (Hunt Group), ITC Holdings, LLC (ITC Holdings), CableSouth Media III, LLC d/b/a Swyft Fiber (CableSouth), and MIP VI Outlier, LLC (MIP VI Outlier, collectively with Hunt Group, ITC, and CableSouth, Applicants), pursuant to section 214 of the Communications Act of 1934, as amended, and sections 63.03-04 of the Commission's rules,[1] requesting consent to transfer control of CableSouth to MIP VI Outlier.[2]

On November 16, 2023, the Bureau released a Public Notice seeking comment on the Application.[3] The Bureau did not receive comments or petitions in opposition to the Application.

Applicants and Description of Transaction

CableSouth, a Tennessee limited liability company, provides video programming and other communications services to residential customers throughout the Southeastern United States and, under the brand names "SwyftConnect" and "Swyft Fiber," CableSouth offers video, and digital voice services to residential, enterprise, and government customers in Arkansas, Louisiana, and Mississippi.[4] CableSouth is an Eligible Telecommunications Carrier (ETC) in Arkansas, Louisiana, and Mississippi and, on March 15, 2022, the Bureau authorized CableSouth to receive $152.9 million in Rural Digital Opportunity Fund (RDOF) Auction 904 support to provide service to 57,387 locations to be distributed over ten years in Arkansas, Louisiana, and Mississippi.[5] CableSouth is wholly owned by CableSouth Media, LLC, a Tennessee limited liability company, which, in turn, is wholly owned by Hunt Land

[1] *See* 47 U.S.C. § 214; 47 CFR §§ 63.03-04.

[2] Application of Hunt Group Holdings, LLC, ITC Broadband Holdings, LLC, CableSouth Media III, LLC, and MIP VI Outlier, LLC for Consent to Transfer of Control Pursuant to Section 214 of the Communications Act of 1934, as Amended, WC Docket No. 23-372 (filed Oct. 27, 2023) (Application). Any action on this domestic section 214 application is without prejudice to Commission action on other pending applications.

[3] *See Domestic Section 214 Application Filed for the Transfer of Control of CableSouth Media III, LLC to MIP VI Outlier, LLC*, WC Docket No. 23-372, Public Notice, DA 23-1089, at 5-6 (WCB 2023).

[4] Application at 3.

[5] *See Rural Digital Opportunity Fund Support Authorized for 5,657 Winning Bids*, AU Docket 20-34, WC Docket Nos. 19-126, 10-90, Public Notice, 37 FCC Rcd 3570 (WCB/OEA 2022) (*RDOF Public Notice*); *see also* Application at 3. Applicants state that CableSouth was a member of the Segnem Eger Consortium (the Consortium), which was an auction winner for RDOF Phase I support in Arkansas, Louisiana, and Mississippi, and that the Consortium assigned its winning RDOF bids to CableSouth. Application at 3 n.5. Applicants further state that CableSouth participates in the Lifeline program and the Affordable Connectivity Program and receives federal support through the E-Rate and Emergency Connectivity Fund programs. Application at 3.

Holdings, LLC (Hunt Land Holdings), a Louisiana limited liability company.[6] Hunt Land Holdings, a Louisiana holding company, is wholly owned by CSM Intermediate, LLC, which, in turn, is wholly owned by CSM Holding Company, LLC (CSM Holding), both Delaware limited liability companies.[7] Hunt Group, a Louisiana limited liability company, currently owns 65% of the equity in CSM Holding. ITC Holdings, a Delaware limited liability company, owns the remaining 35 percent.[8] Following the consummation of the proposed transaction, Hunt Group will hold 50% indirect equity and voting of CSM Holding and, therefore, a 50% indirect interest in CableSouth.[9]

MIP VI Outlier, a Delaware limited liability company, has been established to acquire an ownership interest in CSM Holding and is indirectly owned by investment vehicles managed by and/or affiliated with Macquarie Infrastructure Partners Inc. (MIP Inc.), a Delaware corporation, which is a wholly-owned subsidiary of Macquarie Infrastructure and Real Assets Inc. (MIRA Inc.).[10] MIRA Inc. is a wholly-owned subsidiary of Macquarie Holdings (U.S.A.) Inc., a Delaware corporation, which, in turn, is held by various intermediate Australian entities ultimately held by Macquarie Group Limited (MGL), a publicly traded company incorporated in Australia.[11] Applicants state that MIP VI Outlier is affiliated with various providers of domestic communications and telecommunications services, including Bluebird Network, LLC (Bluebird)[12] and Cincinnati Bell Inc. d/b/a altafiber (Cincinnati Bell).[13] Applicants state

[6] *Id.* at 2. Applicants provide information on individuals and entities holding a pre- and post-transaction 10% or greater interest in CableSouth. *See id.* at Exh. A (Pre-Transaction Organizational Chart), Exh. B (Post-Closing Indirect Interests in CableSouth by Hunt Group), and Exh. C (Post-Closing Indirect Interest in CableSouth by MIP VI Outlier, LLC).

[7] *Id.* at 2-3.

[8] *Id.* at 2.

[9] *Id.* at 13, Exh. A at 2. The 10% or greater owners of Hunt Group currently are Troy Borque (15%), Jason Hunt (15%), and Wilton K. Hunt (13.5%), each U.S. citizens, each of whom will continue to hold an interest in CableSouth post-transaction. *See, e.g.*, *id.* at Exh. A at 1 and 2, Exh. B at 1-2.

[10] *Id.* at 4, Exh. A at 2, Exh. C at 2.

[11] *Id.* at Exh. A at 2, Exh. C at 2-3. Applicants state that MIP Inc. and MIRA Inc. are part of the Real Assets division of Macquarie Asset Management (MAM), an operating group within MGL. Application at 4. Applicants state that MIP VI Outlier is affiliated with Accelecom Holdings LLC through an interest held by a division of Macquarie Capital, which is ultimately owned by MGL. *Id.* at n.10. Accelecom, through its affiliates, provides enterprise and wholesale services in Alabama, Florida, Georgia, Kentucky, Ohio, South Carolina, and Tennessee. *Id.*

[12] *Id.* at 15-16. Bluebird, which is owned by a fund managed by MIP Inc., provides domestic telecommunications through: (1) Missouri Network Alliance, LLC d/b/a Bluebird Network (MNA), a provider of transport and other services to wholesale and enterprise customers in Missouri, Illinois, Iowa, Oklahoma, Kansas, Kentucky, Tennessee, Nebraska, and Wisconsin, as well as a provider tandem switching and transport services for interexchange carriers in Missouri pursuant to interstate and intrastate tariffs; (2) Illinois Network Alliance, LLC, a provider of transport and access services to wholesale customers in Illinois, Kentucky, and Tennessee; and (3) PEG Bandwidth IL, LLC, a provider of competitive interexchange services in Illinois, Indiana, Iowa, and Missouri. *Id.*

[13] *Id.* at 16-17. MIP VI Outlier is affiliated with Red Fiber Parent, LLC, which is majority-owned by an investment vehicle managed by MIP Inc. *Id.* at 16. Red Fiber Parent, LLC owns Cincinnati Bell, which, through its subsidiaries, provides telecommunications services to residential and business customers through the following entities: (1) Cincinnati Bell Telephone Company LLC (CBT), an incumbent local exchange carrier (LEC) providing service in portions of Ohio, Kentucky, and Indiana; (2) Cincinnati Bell Extended Territories LLC, a competitive LEC providing service in Ohio in areas outside CBT's territory, which also holds authorization but does not currently provide competitive LEC and interexchange service throughout Ohio, Kentucky, and Indiana; (3) CBTS Technology Solutions LLC, a nationwide long distance competitive LEC, which also provides other communications services in all states except Alaska and Hawaii; (4) Hawaiian Telcom, Inc. (HTI), an incumbent

(continued….)

that two of Cincinnati Bell's subsidiaries receive RDOF Auction 904 support: CBT receives RDOF Auction 904 support in Indiana, Kentucky, and Ohio, and HTI receives RDOF Auction 904 support in Hawaii.[14]

According the Applicants, following the consummation of the transaction, Hunt Group and MIP VI Outlier will each hold a 50% interest in CSM Holding, with MIP VI Outlier holding *de jure* and *de facto* control.[15] Applicants assert that the proposed transaction would serve the public interest, convenience, and necessity.[16]

Discussion

We find, upon consideration of the record, that a grant of the Application will serve the public interest, convenience, and necessity. To make this determination under Commission precedent, we consider whether the proposed transaction could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes.[17] We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.[18] The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.[19]

We further find that there are no potential public interest harms identified in the record. First, the proposed transaction will not result in a reduction of competition. Applicants have no overlapping service areas for any facilities-based telecommunications services.[20] Applicants state that because the change in ownership will occur at the parent-company level, the proposed transaction will be seamless and not

LEC in Hawaii; (5) Hawaiian Telcom Services Company, Inc., a provider of interstate and intrastate long distance, wireless, and other communications services in Hawaii; and (6) Wavecom Solutions Corporation, a competitive LEC providing service in Hawaii. *Id.* at 16-17.

[14] *Id.* at 19.

[15] Applicants provide a full description of the proposed transaction in the Application. *See id.* at 4-6.

[16] *Id.* at 6-9.

[17] *See, e.g.*, *Application of Verizon Communications Inc. and América Móvil S.A.B. de C.V for Consent to Transfer Control of International Section 214 Authorization*, GN Docket No. 21-112, IBFS File No. ITC-T/C-20200930-00173, Memorandum Opinion and Order, 36 FCC Rcd 16994, 17001, para. 21 (2021) (*Verizon-TracFone Order*) (citing *China Mobile International (USA) Inc., Application for Global Facilities-Based and Global Resale International Telecommunications Authority Pursuant to Section 214 of the Communications Act of 1934, as Amended*, ITC-214-20110901-00289, Memorandum Opinion and Order, 34 FCC Rcd 3361, 3366, para. 9 (2019); *Applications for Consent to the Assignment and/or Transfer of Control of Licenses, Adelphia Communications Corporation (and Subsidiaries, Debtors-in-Possession), Assignors, to Time Warner Cable Inc. (Subsidiaries), Assignees; Adelphia Communications Corporation, (and Subsidiaries, Debtors-in-Possession), Assignors and Transferors et al*., MB Docket No. 05-192, Memorandum Opinion and Order, 21 FCC Rcd 8203, 8219-21, paras. 27-28 (2006) (*Adelphia-TWC Order*)).

[18] *See Verizon-TracFone Order*, 36 FCC Rcd at 17001, para. 21 (citing *Applications of AT&T Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 14-90, Memorandum Opinion and Order, 30 FCC Rcd 9131, 9140, para. 18 (2015) (*AT&T-DIRECTV Order*)) (further citations omitted).

[19] *See Verizon-TracFone Order*, 36 FCC Rcd at 17001, para. 21 (citing *AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 18; *Adelphia-TWC Order*, 21 FCC Rcd at 8217, para. 23; *Application of EchoStar Communications Corp., General Motors Corp., and Hughes Electronics Corp., Transferors, and EchoStar Communications Corp., Transferee*, CS Docket No. 01-348, Hearing Designation Order, 17 FCC Rcd 20559, 20574, para. 25 (2002)) (further citations omitted).

[20] Application at 8. Applicants state that neither MIP VI Outlier nor its owners provide or hold any other attributable interest in any entity that provides any telecommunications services in the markets where CableSouth operates. *Id.*

result in any harms or impact to CableSouth's existing customers.[21] Applicants further state that CableSouth will continue to provide high-quality broadband services to its customers under the same rates, terms, and conditions without any interruption of service,[22] and we thus expect no potential harm to existing customers to result from the transaction.

Second, Applicants state that they will meet all relevant RDOF support obligations,[23] and we expect that the proposed transaction will not negatively impact these obligations. Applicants state that the proposed transaction does not entail any increase to the debt load of CSM Holding or CableSouth or their affiliates, nor will there be a new authorization holder or the assignment of any support or assets.[24] Applicants confirm that all support received through RDOF, and the network assets built in connection with the RDOF program, will remain with CableSouth.[25] Overall, we conclude that the record in this proceeding does not support a finding of a public interest harm.

We next consider whether the proposed transaction is likely to generate verifiable, transaction-specific public interest benefits.[26] Applicants must provide evidence of a claimed benefit to allow the Commission to verify its likelihood and magnitude.[27] Where potential harms appear unlikely, as is the case with the Application before us here, the Commission accepts a lesser degree of magnitude and likelihood than when harms are present.[28]

Applicants state that the proposed transaction will enhance CableSouth's ability to deliver on the RDOF-funded network and fulfill its obligations under the program.[29] Because CableSouth will have access to capital, Applicants claim CableSouth will be well positioned to continue the network construction and deployment of FTTH and VoIP services that CableSouth has described in its long-form RDOF application, and also to accelerate deployment of the company's fiber network and services beyond the RDOF locations in Arkansas, Louisiana, and Mississippi.[30]

The Commission has specified that ensuring consumers receive new or additional services is an important public interest factor,[31] and accelerating private sector deployment of advanced services is one of the aims of the Act.[32] In light of the Applicants' commitments to meet all of CableSouth's federal high-cost funding obligations[33] and the fact that Applicants are prepared to devote additional capital to

[21] *Id.*

[22] *Id.*

[23] *Id.* at 7-9.

[24] *Id.* at 9.

[25] *Id.*

[26] *See AT&T/DIRECTV Order*, 30 FCC Rcd at 9237, paras. 273-74.

[27] *See id*. at 9237-38, paras. 275-76.

[28] *See id*.

[29] Application at 9.

[30] *Id.* at 7.

[31] *See, e.g.*, *AT&T-DIRECTV Order*, 30 FCC Rcd at 9140, para. 19.

[32] *See Verizon-TracFone Order*, 36 FCC Rcd at 17002, para. 22 (citing 47 U.S.C. §§ 254, 332(c)(7), 1302; Telecommunications Act of 1996, Pub. L. No. 104-104, Preamble, 110 Stat. 56 (1996) (one purpose of the Act is to "accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services")).

[33] Application at 9.

accelerate facilities-based service offerings,[34] we find it likely that the proposed transaction would result in some public interest benefits. Absent any potential harms, and considering that the proposed transaction is likely to yield some benefits, we find, on balance, that the proposed transaction serves the public interest.

Therefore, pursuant to section 214 of the Act, 47 U.S.C. § 214, and sections 0.91, 0.291, 63.03, and 63.04 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 63.03, and 63.04, the Bureau hereby grants the Application discussed in this Public Notice, subject to Applicants' compliance with all applicable obligations.[35]

Pursuant to section 1.103 of the Commission's rules, 47 CFR § 1.103, the grant is effective upon release of this Public Notice.[36] Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 CFR §§ 1.106, 1.115, may be filed within 30 days of the date of this Public Notice.

For further information regarding the transfer of control application, please contact Gregory Kwan at gregogry.kwan@fcc.gov, Wireline Competition Bureau.

-FCC-

[34] *Id*. at 7.

[35] *See RDOF Public Notice* at 1-9 (listing obligations of authorized support recipients).

[36] We direct Applicants to transmit a copy of this Public Notice to the Universal Service Administrative Company. We further direct Applicants to submit, within 30 days of closing the proposed transaction, a notice in WC Docket No. 23-23 that the proposed transaction has closed, with the consummation date, and also provide a courtesy copy of the notice to hcinfo@usac.org.

PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
45 L 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. 24-8

Report No. TEL-02327 **Thursday January 4, 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-214-20230925-00116 E Hadlo Technologies, 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: 12/29/2023

Hadlo Technologies, LLC (Hadlo) 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).

Hadlo, a Ohio limited liability company, is owned by two U.S. citizens: Thomas Hadden (50%) and Cathy Zygadlo (50%).

ITC-ASG-20231107-00140 E Element 78 Partners, LLC

Assignment

Grant of Authority Date of Action: 12/29/2023

Current Licensee: The Avail Group, LLC

FROM: The Avail Group, LLC

TO: Element 78 Partners, LLC

Element 78 Partners, LLC (E78) filed an application seeking consent for the assignment of the international section 214 authorization for the provision of global facilities-based and resale service held by The Avail Group, LLC (Avail) (ITC-214-20130422-00113) to E78. Pursuant to an August 29, 2023 Letter of Intent, E78 will purchase substantially all of the assets of Avail including its customer base and international section 214 authorization.

E78 is wholly owned by E78 Finance, LLC, which is wholly owned by E78 Finance Midco, LLC, which, in turn, is wholly owned by Element 78 Partners Holdings, LLC (E78 Partners Holdings), all Delaware entities. According to the Applicants, two entities hold a 10% or greater ownership interest in E78 Partners Holdings: Concord FG Holdings LP (Condor LP) (56% equity and voting) and Element 78 Management Holdings, LLC (19% equity and voting), both Delaware entities.

Concord FG Holdings GP LLC (Condor GP), a Delaware entity, is the general partner of Condor LP. Four entities hold a 10% or greater equity interest in Condor LP: Further Global Capital Partners, L.P. (FGCP LP) (28%); Further Global Capital Partners-A, L.P. (FGCP-A LP) (20%); Further Global Capital Partners II, L.P. (FGCP-II LP) (25%); and Further Global Capital Partners-A II, L.P. (FGCP-A-II LP) (23%), all Cayman Island entities. Further Global Capital Partners GP, L.P. (FGCP GP), a Delaware entity, is the general partner of FGCP LP and FCGP-A LP. Further Global Capital Partners II GP, L.P., a Delaware entity, is the general partner of FGCP-II LP and FCGP-A-II LP. Further Global Capital UGP, Ltd, a Cayman Island entity, holds 100% voting rights (0% equity) in FGCP GP and 50% equity and voting interest in Condor GP. Further, Global Capital II UGP, Ltd, a Cayman Island entity, holds 100% voting rights (0% equity) in FGCP II GP and 50% equity and voting interest in Condor GP. Pierre Oliver Sarkozy, a citizen of France and the United States, holds 100% voting rights (0% equity) in both Further Global Capital UGP, Ltd and Further Global Capital II UGP, Ltd. According to the Applicants, no other individual or entity will hold a 10% or greater equity or voting interest in E78.

In the Executive Branch Review Process Order, the Commission set out categories of applications with reportable foreign ownership that may be excluded from referral to the Executive Branch for review for national security, law enforcement, foreign policy, and trade policy issues. See Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership, IB Docket 16-155, Report and Order, 35 FCC 10927, 10938-42, paras. 29-39 (2020). The Applicants have made a showing that the only reportable foreign ownership in E78 is through passive, offshore intermediary holding companies and that 100% of the ultimate control is held by a U.S. citizen. We exercised our discretion and did not refer the application to the Executive Branch. Although we did not formally refer the application, we did provide a copy of the public notice the Executive Branch agencies. See id. at 10941, para. 36, n.99; see also id. at 10957, para 81, n.205.

This authorization is without prejudice to the Commission's action in any other related pending proceedings.

ITC-T/C-20231107-00139 E The Chillicothe Telephone Company

Transfer of Control

Grant of Authority Date of Action: 12/29/2023

Current Licensee: The Chillicothe Telephone Company

FROM: Horizon Acquisition Parent, LLC

TO: Shenandoah Telecommunications Company

The Chillicothe Telephone Company (CTC), an Ohio company that holds an international section 214 authorization to provide global resale service (ITC-214-20180110-00003), filed an application for consent to the transfer of control of CTC from Horizon Acquisition Parent LLC (HAP) to Shenandoah Telecommunications Company (Shentel). CTC is a wholly owned indirect subsidiary of HAP. Pursuant to an October 24, 2023 Agreement and Plan of Merger, Shentel will acquire HAP, and CTC will become an indirect wholly owned subsidiary of Shentel.

CTC will be a direct wholly owned subsidiary of Horizon Telecom, Inc., an Ohio corporation, which will be a direct subsidiary of Horizon Acquisition Parent LLC, a Delaware limited liability company, which, in turn, will be wholly owned by Shenandoah Personal Communications LLC, a Virginia limited liability company. Shenandoah Personal Communications LLC is wholly owned by Shentel Broadband Operations LLC, which is wholly owned by Shentel Broadband Holding Inc., both Delaware entities. Shentel holds a 94% controlling interest in Shentel Broadband Holding Inc. Shentel is a publicly traded company. According to the Applicants, two entities hold a 10% or greater interest in Shentel: BlackRock Inc, a Delaware corporation (16.3%) and The Vanguard Group, Inc, a Pennsylvania corporation (10.96%).

This authorization is without prejudice to the Commission's action in any other related pending proceedings.

ITC-T/C-20231221-00154 E Texas RSA 19 Limited Partnership

Transfer of Control

Grant of Authority Date of Action: 01/03/2024

Current Licensee: Texas RSA 19 Limited Partnership

FROM: New Cingular Wireless PCS, LLC

TO: New Cingular Wireless PCS, LLC

On December 21, 2023, Texas RSA 19 Limited Partnership (Texas RSA 19), a Delaware limited partnership that holds international section 214 authority for global resale service (ITC-214-20010412-00216), filed a notification of the pro forma transfer of control of Texas RSA 19, effective November 24, 2023. Prior to the transaction, New Cingular Wireless PCS, LLC (New Cingular Wireless) held a 33 1/3% general partnership interest in Texas RSA 19, and VTX Communications, LP (VTX) and Riviera Cellular & Telecommunications, Inc. each held a 33 1/3% limited partnership interest in Texas RSA 19. On November 24, 2023, VTX transferred its interest in Texas RSA 19 to New Cingular Wireless. New Cingular Wireless was and remains the general partner of Texas RSA 19 and now holds a 66 2/3% equity interest in Texas RSA 19.

ITC-T/C-20231221-00155 E Texas RSA 18 Limited Partnership

Transfer of Control

Grant of Authority Date of Action: 01/03/2024

Current Licensee: Texas RSA 18 Limited Partnership

FROM: New Cingular Wireless PCS, LLC

TO: New Cingular Wireless PCS, LLC

On December 21, 2023, Texas RSA 18 Limited Partnership (Texas RSA 18), a Delaware limited partnership that holds international section 214 authority for global resale service (ITC-214-20010412-00224), filed a notification of the pro forma transfer of control of Texas RSA 18, effective November 27, 2023. Prior to the transaction, New Cingular Wireless PCS, LLC (New Cingular Wireless) held a 34% general partnership interest in Texas RSA 18, VTX Communications, LP (VTX) held a 22% limited partnership interest, and SWT Unregulated Properties, Inc. held a 44% limited partnership interest in Texas RSA 18. On November 27, 2023, VTX transferred its interest in Texas RSA 18 to New Cingular Wireless. New Cingular Wireless was and remains the general partner of Texas RSA 18 and now holds a 56% equity interest in Texas RSA 18.

SURRENDER

ITC-214-20010822-00445 FRANZ, INC. (d/b/a TELELIGHT INC.)

FRANZ, INC. notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20210401-00056 The Walled Garden

The Walled Garden notified the Commission of the surrender of its international section 214 authorization.

CONDITIONS APPLICABLE TO INTERNATIONAL SECTION 214 AUTHORIZATIONS

(1) These authorizations are subject to the Exclusion List for International Section 214 Authorizations, which identifies restrictions on providing service to particular countries or using particular facilities. The most recent Exclusion List is at the end of this Public Notice. The list applies to all U.S. international carriers, including those that have previously received global or limited global section 214 authority, whether by Public Notice or specific written order. Carriers are advised that the attached Exclusion List is subject to amendment at any time pursuant to the procedures set forth in Streamlining the International Section 214 Authorization Process and Tariff Requirements, IB Docket No. 95-118, 11 FCC Rcd 12884 (1996), para. 18. A copy of the current Exclusion List is maintained in the FCC Reference Information Center and is available at https://www.fcc.gov/exclusion-list-international-section-214-authorizations. It is also attached to each Public Notice that grants international Section 214 authority.

(2) The export of telecommunications services and related payments to countries that are subject to economic sanctions may be restricted. For information concerning current restrictions, call the Office of Foreign Assets Control, U.S. Department of the Treasury, (202) 622-2520.

(3) Carriers shall comply with the requirements of Section 63.11 of the Commission's rules, which requires notification by, and in certain circumstances prior notification by, U.S. carriers acquiring an affiliation with foreign carriers. A carrier that acquires an affiliation with a foreign carrier will be subject to possible reclassification as a dominant carrier on an affiliated route pursuant to the provisions of section 63.10 of the rules.

(4) A carrier may provide switched services over its authorized resold private lines in the circumstances specified in section 63.23(d) of the rules, 47 CFR § 63.23(d).

(5) Carriers shall comply with the "No Special Concessions" rule, section 63.14, 47 CFR § 63.14.

(6) Carriers regulated as dominant for the provision of a particular communications service on a particular route for any reason other than a foreign carrier affiliation under section 63.10 of the rules shall file tariffs pursuant to Section 203 of the Communications Act, as amended, 47 U.S.C. § 203, and Part 61 of the Commission's Rules, 47 CFR Part 61. Carriers shall not otherwise file tariffs except as permitted by section 61.19 of the rules, 47 C.F.R. § 61.19. Except as specified in section 20.15 with respect to commercial mobile radio service providers, carriers regulated as non-dominant, as defined in section 61.3, and providing detariffed international services pursuant to section 61.19, must comply with all applicable public disclosure and maintenance of information requirements in sections 42.10 and 42.11.

(7) International facilities-based service providers must file and maintain a list of U.S.-international routes on which they have direct termination arrangements with a foreign carrier. 47 CFR § 63.22(h). A new international facilities-based service provider or one without existing direct termination arrangements must file its list within thirty (30) days of entering into a direct termination arrangement(s) with a foreign carrier(s). Thereafter, international facilities-based service providers must update their lists within thirty (30) days after adding a termination arrangement for a new foreign destination or discontinuing an arrangement with a previously listed destination. See Process For The Filing Of Routes On Which International Service Providers Have Direct Termination Arrangements With A Foreign Carrier, ITC-MSC-20181015-00182, Public Notice, 33 FCC Rcd 10008 (IB 2018).

(8) Any U.S. Carrier that owned or leased bare capacity on a submarine cable between the United States and any foreign point must file a Circuit Capacity Report to provide information about the submarine cable capacity it holds. 47 CFR § 43.82(a)(2). See https://www.fcc.gov/circuit-capacity-data-us-international-submarine-cables.

(9) Carriers should consult section 63.19 of the rules when contemplating a discontinuance, reduction or impairment of service.

(10) If any carrier is reselling service obtained pursuant to a contract with another carrier, the services obtained by contract shall be made generally available by the underlying carrier to similarly situated customers at the same terms, conditions and rates. 47 U.S.C. § 203.

(11) To the extent the applicant is, or is affiliated with, an incumbent independent local exchange carrier, as those terms are defined in section 64.1902 of the rules, it shall provide the authorized services in compliance with the requirements of section 64.1903.

(12) Except as otherwise ordered by the Commission, a carrier authorized here to provide facilities-based service that (i) is classified as dominant under section 63.10 of the rules for the provision of such service on a particular route and (ii) is

affiliated with a carrier that collects settlement payments for terminating U.S. international switched traffic at the foreign end of that route may not provide facilities-based switched service on that route unless the current rates the affiliate charges U.S. international carriers to terminate traffic are at or below the Commission's relevant benchmark adopted in International Settlement Rates, IB Docket No. 96-261, Report and Order, 12 FCC Rcd 19806 (1997). See also Report and Order on Reconsideration and Order Lifting Stay in IB Docket No. 96-261, FCC 99-124 (rel. June 11, 1999). For the purposes of this rule, "affiliated" and "foreign carrier" are defined in section 63.09.

(13) Carriers shall comply with the Communications Assistance for Law Enforcement Act (CALEA), see 47 CFR §§ 1.20000 et seq.

(14) Every carrier must designate an agent for service in the District of Columbia. see 47 U.S.C. § 413, 47 CFR §§ 1.47(h), 64.1195.

(15) Each carrier shall notify the Commission of any change in its contact information. Such notification shall be filed in the file number(s) for the international section 214 authorization(s) through the International Communications Filing System (ICFS).

Exclusion List for International Section 214 Authorizations

The following is a list of countries and facilities not covered by grant of global section 214 authority under section 63.18(e)(1) of the Commission's Rules, 47 CFR § 63.18(e)(1). Carriers desiring to serve countries or use facilities listed as excluded hereon shall file a separate section 214 application pursuant to section 63.18(e)(3) of the Commission's Rules. See 47 CFR § 63.22(c).

Countries:

None.

Facilities:

Any non-U.S.-licensed space station that has not received Commission approval to operate in the U.S. market pursuant to the procedures adopted in the Commission's DISCO II Order, IB Docket No. 96-111, Report and Order, FCC 97-399, 12 FCC Rcd 24094, 24107-72 paragraphs 30-182 (1997) (DISCO II Order). Information regarding non-U.S.-licensed space stations approved to operate in the U.S. market pursuant to the Commission's DISCO II procedures is maintained at https://www.fcc.gov/approved-space-station-list.

This list is subject to change by the Commission when the public interest requires. The most current version of the list is maintained at https://www.fcc.gov/exclusion-list-international-section-214-authorizations.

For additional information, contact the Office of International Affairs, Telecommunications and Analysis Division at (202) 418-1480.

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

In re Application of Community Service Broadcasters, Inc.	))	NAL/Account No. MB- 202441410002 FRN: 0004991949
For Approval of Transfer of Control from Kenneth E. Kunze (Deceased), Trustee, Kenneth E. Kunze Irrevocable Living Trust, to Kathryn E. Bottorff, Trustee, Kenneth E. Kunze Irrevocable Living Trust	)	Application File Nos. 0000193990-91 Facility ID Nos. 13002, 147705

ORDER

Adopted: January 18, 2024 **Released: January 18, 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 Community Service Broadcasters, Inc. (Community Service or Licensee), licensee of station WTCA(AM), Plymouth, Indiana, and FM translator W291BQ, Plymouth, Indiana (collectively, the Stations). The Consent Decree resolves issues arising from the Bureau's review of the captioned application for Commission consent to the transfer of control of Community Service from Kenneth E. Kunze (Mr. Kunze) (deceased), Trustee of the Kenneth E. Kunze Revocable Living Trust, to Kathryn E. Bottorff, Trustee of the Kenneth E. Kunze Irrevocable Living Trust.[1]

2. The Consent Decree concludes the Bureau's investigation of Community Service's compliance with section 310 of the Communications Act of 1934, as amended (the Act), and sections 73.3540 and 73.3541 of the Commission's rules (Rules).[2] Specifically, the Bureau finds that Mr. Kunze, who held 50% of the voting stock in Community Service, transferred his shares to the Kenneth E. Kunze Revocable Living Trust (Trust) in August 2011 without prior Commission approval.[3] Additionally, following the death of Mr. Kunze on December 8, 2020, Kathryn E. Bottorff, who held the remainder of the voting stock in Community Service, became the successor trustee of the Trust, acquiring 100% voting control of Community Service.[4] Community Service did not notify the Commission of the death of Mr. Kunze or file a transfer of control application for the changes in ownership until June 27, 2022, approximately 18 months after the 30-day period provided in section 73.3541 of the Commission's rules.[5]

3. Pursuant to the terms of the Consent Decree, Community Service stipulates that it violated section 310 of the Act and sections 73.3540 and 73.3541 of the Rules. Community Service agrees to make an eight thousand dollar ($8,000.00) civil penalty payment to the United States Treasury

[1] *See* Application File No. 0000193990 (filed June 27, 2022, and amended July 7, 2023) (Application). *See also Broadcast Applications*, Public Notice, Report No. PN- 1-220629-01 (MB June 29, 2022).

[2] *See* 47 U.S.C. § 310(d); 47 CFR §§ 73.3540, 73.3541.

[3] 47 CFR § 73.3540. Mr. Kunze was the settlor and initial trustee of Trust, which was revocable during his lifetime. Mr. Kunze amended and restated the Trust in February 2020. The Trust designates Kathryn E. Bottorff as the First Successor Trustee. Upon the death of Mr. Kunze, the Trust became irrevocable and non-amendable. *See* Application, Attachment 1, Kenneth E. Kunze Revocable Living Trust at 4, 6. *See also infra* n.4.

[4] 47 CFR § 73.3540.

[5] 47 CFR § 73.3541; s*ee supra* note 1.

and the Bureau agrees to terminate its investigation into the above violations.[6] A copy of the Consent Decree is attached hereto and incorporated by reference.

4. After reviewing the terms of the Consent Decree, we find that the public interest will be served by its approval and by terminating all pending proceedings relating to the Bureau's investigation of potential violations of the Rules and the Act in connection with the Application.

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 Community Service possesses the basic qualifications to continue to be a Commission licensee.

6. ACCORDINGLY, IT IS ORDERED that, pursuant to section 4(i) of the Act,[7] and by the authority delegated by sections 0.61 and 0.283 of the Rules,[8] the Consent Decree attached hereto IS ADOPTED without change, addition, or modification.

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

8. IT IS FURTHER ORDERED that copies of this Order shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Mark N. Lipp, Esq., Fletcher, Heald, & Hildreth, PLC, 1300 N. 17th Street, Suite 1100, Arlington, VA 22209, counsel for Community Service Broadcasters, Inc. and Kathryn E. Bottorff, Trustee of the Kenneth E. Kunze Irrevocable Living Trust.

9. IT IS FURTHER ORDERED that pursuant to section 73.3526(e)(10) of the Rules,[9] a copy of this Order and Consent Decree and as otherwise required all related investigatory materials SHALL BE RETAINED in the above-captioned Station's online public inspection file until grant of the next license renewal application.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

[6] *See* 47 CFR § 1.80.

[7] 47 U.S.C. § 4(i).

[8] 47 CFR §§ 0.61, 0.283.

[9] 47 CFR § 73.3526(e)(10).

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

In re Application of Community Service Broadcasters, Inc. For Approval of Transfer of Control from Kenneth E. Kunze (Deceased), Trustee, Kenneth E. Kunze Irrevocable Living Trust, to Kathryn E. Bottorff, Trustee, Kenneth E. Kunze Irrevocable Living Trust	)	NAL/Account No. MB-202441410002 FRN: 0004991949 Application File Nos. 0000193990-91 Facility ID Nos. 13002, 147705

CONSENT DECREE

I. INTRODUCTION

1. This Consent Decree is entered into by and between the Media Bureau (Bureau) of the Federal Communications Commission and Community Service Broadcasters, Inc., for the purpose of terminating the Bureau's investigation concerning compliance with section 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(d), and sections 73.3540 and 73.3541 of the FCC's rules, 47 CFR §§ 73.3540 and 73.3541.[1]

II. DEFINITIONS

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

a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. §151 *et. seq.*;

b) "Adopting Order" means the order of the Bureau adopting this Consent Decree;

c) "Application" means the FCC Form 2100, Schedule 316 application, as amended on July 7, 2023, for consent to transfer of control, Application File Number 0000193990;

d) "Bureau" means the Media Bureau of the Federal Communications Commission;

e) "Civil Penalty" means the payment Community Service has agreed to pay to the United States Treasury;

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

g) "Community Service" means Community Service Broadcasters, Inc.;

h) "Effective Date" means the date on which the Bureau releases the Adopting Order;

i) "Investigation" means the Bureau's investigation of information contained in the Application, as detailed herein;

j) "Involuntary Transfer of Control Rule" means 47 CFR § 73.3541;

[1] *See* 47 U.S.C. § 310(d); 47 CFR §§ 73.3540, 73.3541.

k) "Licenses" refers to the license authorizations for station WTCA(AM), Plymouth, Indiana (Facility ID No. 13002) and FM translator W291BQ, Plymouth, Indiana (Facility ID No. 147705);

l) "Licensee" means Community Service Broadcasters, Inc.;

m) "Parties" means Community Service and the Bureau;

n) "Rules" means the FCC's rules, found in Title 47 of the Code of Federal Regulations;

o) "Stations" means WTCA(AM), Plymouth, Indiana (Facility ID No. 13002) and FM translator W291BQ, Plymouth, Indiana (Facility ID No. 147705);

p) "Trust" means the Kenneth E. Kunze Revocable Living Trust established on August 2, 2011, and amended on February 10, 2020;

q) "Violations" means the violations of the Involuntary and Voluntary Transfer of Control Rules; and

r) "Voluntary Transfer of Control Rule" means 47 CFR § 73.3540.

III. BACKGROUND

3. Section 310(d) of the Act, provides in pertinent part:

> No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.[2]

4. The Voluntary Transfer of Control Rule states that "[p]rior consent of the FCC must be obtained for a voluntary assignment or transfer of control."[3] The rule requires that an application for consent to the transfer of control of a corporation holding a construction permit or license must be filed on FCC Form 315 (i.e., a "long form" or non pro forma application), where the transaction involves a substantial (or non pro forma) change in ownership or control, or on FCC Form 316 (i.e., a "short form" or pro forma application), where the transaction does not involve a substantial change in ownership or control.[4]

[2] 47 U.S.C. § 310(d).

[3] 47 CFR § 73.3540(a).

[4] *See* 47 CFR § 73.3540. The test for whether the interest to be transferred is "controlling" or "substantial" has generally been (a) whether 50% or more of the stock is being transferred, and (b) whether as a result of the transaction 50% or more of the outstanding stock will be held by persons whose qualifications to be Commission licensees have not previously been approved of or "passed upon" for the particular station involved. *Barnes Enterprises, Inc*., 55 FCC 2d 721 (1975); *Clay Broadcasters, Inc*., 21 RR 2d 442 (1971). Generally, any transfer which involves the movement of 50% or more of a licensee's stock, whether to persons passed upon or not, has required the filing of a long form application. As an exception to this general requirement, the Commission has allowed a short form to be used when the transaction involves a stock transfer whereby an existing stockholder with

(continued….)

5. The Involuntary Transfer of Control Rule stipulates that:

> The FCC shall be notified in writing promptly of the death or legal disability of an individual permittee or licensee, a member of a partnership, or a person directly or indirectly in control of a corporation which is a permittee or licensee. Within 30 days after the occurrence of such death or legal disability, an application on FCC Form 316 shall be filed requesting consent to involuntary assignment of such permit or license or for involuntary transfer of control of such corporation to a person or entity legally qualified to succeed to the foregoing interests under the laws of the place having jurisdiction over the estate involved.[5]

6. The record reveals that prior to August 2, 2011, there were four interest holders in Community Service: Kenneth E. Kunze (Mr. Kunze) (50.0% voting; 25.0% equity), Kathryn E. Bottorff (50.0% voting; 25.0% equity), Lora C. Ruhnow (0.0% voting; 25.0% equity), and James C. Kunze, Sr. (0.0% voting; 25.0% equity).[6] On August 2, 2011, Mr. Kunze established the Trust for which he served as both Settlor and Trustee.[7] At that time, Mr. Kunze transferred all of his shares in Community Service to the Trust without Commission consent.[8] In his capacity as Trustee, Mr. Kunze then restated and amended the Trust in February 2020.[9]

7. On December 8, 2020, Mr. Kunze passed away and, upon his death, Kathryn E. Bottorff succeeded him as Trustee of the Trust.[10] On that date, the right to vote the shares in Community Service held by the Trust transferred to Kathryn E. Bottorff as the successor Trustee.[11] As a result, Kathyrn E. Bottorff acquired positive (in this case, 100% voting) control of Community Service. Community Service should have filed, within 30 days of Mr. Kunze's death, an application seeking Commission consent for the transfer of control of Community Service, but it did not do so.[12]

(Continued from previous page)
negative (50%) control assumes positive control by acquiring all of the remaining stock. *Barnes Enterprises, Inc*., 55 FCC 2d at 725, n.4.

[5] 47 CFR § 73.3541.

[6] *See* Application File No. 0000217675 (filed July 7, 2023). We granted Application File Number 0000217675 on January 4, 2024. *See Broadcast Actions*, Public Notice, Report No. PN- 2-240108-01 (MB Jan. 8, 2024).

[7] *See* Application File No. 0000217675, Attachments 1 and 3, Transfer Narrative and Kenneth E. Kunze 2011 Trust Agreement, respectively.

[8] *Id*.; 47 CFR § 73.3540. On August 2, 2011, the ownership interests in Community Service became Kenneth E. Kunze, Trustee (50.0% voting; 25.0% equity), Kathryn E. Bottorff (50.0% voting; 25.0% equity), Lora C. Ruhnow (0.0% voting; 25.0% equity), and James C. Kunze, Sr. (0.0% voting; 25.0% equity). *See* Application File No. 0000217675, Attachment 1, Transfer Narrative. Community Service should have filed an application for voluntary transfer of control when Mr. Kunze transferred his shares in Community Service (i.e., 50.0% voting; 25.0% equity) to the Kenneth E. Kunze Revocable Living Trust. *See* 47 CFR § 73.3540.

[9] Mr. Kunze retained power to add property to or remove property from the Trust at any time and without limitation; to add, remove, or replace any beneficiary or any Trustee or Co-Trustee; and to amend, restate, or revoke the Trust, in whole or in part, by a signed written instrument. *See* Application, Attachment 1, Kenneth E. Kunze Revocable Living Trust at 6.

[10] *Id*. Upon Mr. Kunze's death, the Trust became irrevocable and non-amendable. Kathryn E. Bottorff then assumed duties as Trustee of the Kenneth E. Kunze Irrevocable Living Trust. *Id*. at 4, 6.

[11] *Id*.

[12] 47 CFR § 73.3541.

8. The Bureau commenced the Investigation into Community Service's Violations and suspended processing of the Application. The Parties acknowledge that any proceedings that might result from the Violations would be time-consuming and require a substantial expenditure of public and private resources. In order to conserve such resources, resolve the matter, and promote compliance with the Rules, the Parties are entering into this Consent Decree, in consideration of the mutual commitments made herein, which terminates the Investigation into the matters discussed above. As part of the Consent decree, Community Service agrees to make a Civil Penalty payment of eight thousand dollars ($8,000) to the United States Treasury.

IV. AGREEMENT

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

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

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

12. **Termination of Investigation**. In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, Community Service agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, it will not use the Violations or the existence of this Consent Decree in any action against Community Service, provided that it satisfies all of its obligations under this Consent Decree. In the event that Community Service fails to satisfy any of its obligations under this Consent Decree, the Bureau may take any enforcement action available pursuant to the Act and the Rules with respect to each Violation, and/or the violation of this Consent Decree.

13. **Admission of Liability**. Community Service and Transferee stipulate that the actions described in Paragraphs 6 and 7 violated section 310(d) of the Act and sections 73.3540 and 73.3541 of the Rules.

14. **Civil Penalty**. Community Service agrees to make the Civil Penalty payment to the United States Treasury in the amount of eight thousand dollars ($8,000), within thirty (30) calendar days of the Effective Date. Community Service acknowledges and agrees that upon execution of this Consent Decree, the Civil Penalty shall become a "Claim" or "Debt" as defined in section 3701(b)(1) of the Debt Collection Improvement Act of 1996.[13]

15. **Payment**. Community Service will also send electronic notification of payment to Christopher Clark at Christopher.Clark@fcc.gov on the date said payment is made. Payment of the Civil Penalty must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission's online payment system),[14] or by wire transfer. The Commission no longer

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

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

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

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

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

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

17. **Interest, Charges for Collection, and Acceleration of Maturity Date**. After an Event of Default has occurred under this Consent Decree, the then unpaid amount of the Civil Penalty or any Installment Payment shall accrue interest, computed using the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75%, from the date of the Event of Default until payment in full. Upon an Event of Default, the then unpaid amount of the Civil Penalty or any Installment Payment, together with interest, any penalties permitted and/or required by the law, including but not limited to 31 U.S.C. § 3717 and administrative charges, plus the costs of collection, litigation, and attorneys' fees, shall become

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

immediately due and payable, without notice, presentment, demand, protest, or notice of protest of any kind, all of which are waived by Community Service.

18. **Further Violation(s)**. Community Service acknowledges that the Bureau retains the discretion and authority to propose sanctions against Community Service, including the issuance of notices of apparent liability for forfeitures and for any apparent willful and/or repeated violation by Community Service of the Transfer of Control Rules that occur during the term of this Consent Decree.

19. **Qualifications; Agreement to Grant**. The Bureau finds that its Investigation raises no substantial and material questions of fact as to whether Community Service possesses the basic qualifications, including those relating to character, to continue to hold a Commission license or authorization. Accordingly, the Bureau agrees to grant the Application, after the Effective Date, provided that the following conditions have been met: 1) the Civil Penalty payment, referenced in paragraph 15 of this Decree, has been fully and timely satisfied; and 2) there are no issues other than the Violations that would preclude grant of the Application.

20. **Waivers**. Community Service agrees to waive any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge the validity of this Consent Decree and the Adopting Order, provided the Consent Decree is adopted without change, addition or modification. If any Party (or the United States on behalf of the Commission), brings a judicial action to enforce the terms of the Consent Decree or Adopting Order, no Party will contest the validity of the Consent Decree or Adopting Order, and Community Service will waive any statutory right to a *trial de novo*. Community Service further agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. section 504 and section 1.1501 *et. seq.* of the Rules relating to the Consent Decree or Adopting Order.

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

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

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

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

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

26. **Modifications**. This Consent Decree cannot be modified or amended without the advance written consent of all Parties.

27. **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.

28. **Authorized Representative**. Each Party represents and warrants to the other Party that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree

on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

29. **Counterparts**. This Consent Decree may be signed in counterparts and/or electronically and, when so executed, the counterparts, taken together, will constitute a legally binding and enforceable instrument whether executed electronically or by original signatures.

AUDIO DIVISION
MEDIA BUREAU
FEDERAL COMMUNICATIONS COMMISSION

By:
Albert Shuldiner, Chief

Date: 1/18/2024

COMMUNITY SERVICE BROADCASTERS, INC.

By: _____
Kathryn E. Bottorff, President

Date: _____

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.

29. **Counterparts**. This Consent Decree may be signed in counterparts and/or electronically and, when so executed, the counterparts, taken together, will constitute a legally binding and enforceable instrument whether executed electronically or by original signatures.

AUDIO DIVISION
MEDIA BUREAU
FEDERAL COMMUNICATIONS COMMISSION

By: _____
Albert Shuldiner, Chief

Date: _____

COMMUNITY SERVICE BROADCASTERS, INC.

By: Kathryn E. Bottorff
Kathryn E. Bottorff, President

Date: 1-15-24

Federal Communications Commission
Washington, D.C. 20554

January 4, 2024

DA 24-10
In Reply Refer to:
1800B3-CEG
Released: January 4, 2024

Michael Radio Company, LLC
Attn: Victor A. Michael, Jr.
1418 Bradley Ave.
Cheyenne, WY 82001
vicmichael@RF-Towers.com

White Park Broadcasting, Inc.
c/o Barry A. Friedman, Esq.
1919 M Street NW Ste. 700
Washington, DC 20036
barry.friedman@thompsonhine.com

In re: **KLLM(FM), Wheatland, Wyoming**
Facility ID No. 762455
Application File No. 205045

Informal Objection

Dear Applicant and Objector:

We have before us the above-referenced application (Modification Application) for a minor modification to KLLM(FM), Wheatland, Wyoming, (KLLM or Station) filed on December 12, 2022, by Michael Radio Company, LLC (Michael).[1] Michael seeks to relocate the KLLM transmitter to a new site and change its community of license from Wheatland, Wyoming, to Horse Creek, Wyoming.[2] We also have an informal objection (Objection) to the Modification Application filed by White Park Broadcasting, Inc. (White Park) on September 12, 2023.[3] For the reasons stated below, we grant the Objection and dismiss the Modification Application for failure to specify a licensable community, with no further opportunity for corrective amendment.

Background. When Michael originally filed the Modification Application on December 12, 2022, it proposed West Laramie, Wyoming, as the Station's community of license. On May 2, 2023, Bureau staff sent a deficiency letter providing Michael 30 days to demonstrate that West Laramie was a community for allotment purposes.[4] In the *Deficiency Letter*, the Bureau warned that failure to correct all

[1] *See Broadcast Applications*, Public Notice, Report No. PN-1-221215-01 (Dec. 12, 2022).

[2] *See* 47 CFR § 73.3573(g); *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services,* Report and Order, 21 FCC Rcd 14212 (2006) (authorizing community of license changes through the minor modification application process).

[3] Pleading File No. 220892. On October 26, 2023, Michael filed an opposition to the Objection (Opposition). Pleading File No. 224021.

[4] Email from Rolanda Faye Smith, Paralegal Specialist, Audio Division, FCC Media Bureau, to Vic Michael, Sole Member, Michael Radio Company (May 2, 2023, 2:58pm EDT) (*Deficiency Letter*) (citing 47 CFR § 73.3522(c)(2) ("... an applicant whose application is found to meet the minimum filing requirements but nevertheless is not complete and acceptable shall have the opportunity in the 30-day period specified in the FCC staff's deficiency letter

defects within the given time period would result in the dismissal of the Modification Application with no further opportunity for corrective amendment.[5] On May 11, 2023, Michael amended the Modification Application to change the proposed community of license to Laramie, Wyoming. On August 17, 2023, the Bureau notified Michael that its proposal was not a preferential arrangement of allotments, as retaining a fourth local service at Wheatland would be preferred over an eleventh local service for Laramie.[6] On August 20, 2023, Michael again amended the Modification Application, this time to specify Horse Creek, Wyoming, as the proposed community of license.

Michael claims that the Horse Creek is a licensable community and that its proposed allotment would be a preferential arrangement of allotments because it will provide a first local service to Horse Creek.[7] Michael provides the following materials in support of its claim: (1) a screenshot of the Wikipedia web page for Horse Creek; (2) an uncredited topographical map marked "Horse Creek"; (3) a photo of Clawson Elementary School and screenshot of the school's website;[8] (4) several screenshots of unidentified websites containing demographic information for Horse Creek zip code 82061; (5) screenshots of an unidentified website setting out the location and hours of the Horse Creek Post Office;[9] (7) an uncredited, undated photo titled "Horse Creek Post Office and Store";[10] (8) several screenshots of a Facebook page titled "Horse Creek, Wyoming;" (9) a Google Maps photo of the Horse Creek Fire Station; (10) an uncredited, undated photo of a sign for the Horse Creek Campground (part of Shoshone National Forest); (11) a screenshot of a Facebook page for Horse Creek Honey (a food stand located in Cheyenne, Wyoming); and (12) Facebook and Google Maps photos of Horse Creek Cattle Company Stone House and Ranch (described as a rental venue for weddings, business retreats, and family vacations).

In the Objection, White Park argues that Horse Creek does not constitute a community for allotment purposes. Specifically, it alleges that Clawson Elementary School is not operated by the Horse Creek community per se but is part of a regional school system serving all of Laramie County,[11] that the Horse Creek fire station is not a local organization but a station operated by the Laramie County Fire Authority,[12] and that the businesses bearing the "Horse Creek" name do not have physical locations in Horse Creek. White Park also compares Horse Creek to West Laramie which, in 2010, the Bureau found

---

to correct all deficiencies in the tenderability and acceptability of the underlying application, including any deficiency not specifically identified by the staff").

[5] *Id*.

[6] The FM Allotment Priorities are (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3). *Revision of FM Assignment Policies and Procedures,* Second Report and Order, 90 FCC.2d 88, 91-92, paras. 7-13 (1982). *See generally,* 47 U.S.C. § 307(b) (Section 307(b)) ("In considering applications for licenses, and modifications and renewals thereof . . . the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.").

[7] Modification Application, Attachment entitled "307(b) Study" (307(b) Statement) at 1.

[8] Clawson Elementary School, https://clawson.laramie1.org/en-US (last visited Oct. 24, 2023).

[9] The website is possibly PostOfficeLocations.net. The location given is 2854 Horse Creek Rd, Horse Creek, Wyoming 82061. 307(b) Statement at 17.

[10] 307(b) Statement at 19.

[11] Objection at 2.

[12] *Id*.

not to be a licensable community.[13] According to White Park, "there are absolutely no civic, cultural, religious, social or commercial entities in Horse Creek that serve to create any form of community"[14] and that if Horse Creek is granted status as a community then "the Commission will have eviscerated the allotment standards of Section 307(b) and opened itself up to an unlimited number of allotment modification submissions."[15]

In the Opposition, Michael reiterates that incorporation is not a prerequisite for community status, that Horse Creek is a geographic location used by various mapping, weather, and real estate services, and that although Horse Creek provides no government services, the fire station and school are "located within the community of Horse Creek, WY, they are intended for use by the residents and businesses of Horse Creek, and both have Horse Creek, WY, addresses."[16]

Discussion. We find that Horse Creek is not a licensable community for allotment purposes. If a locale is not either incorporated or listed in the U.S. Census, the proponent of an allotment must show that it is a "geographically identifiable population grouping."[17] The principal test for this is whether the location's "residents function as and conceive of themselves as a community around which their interests coalesce."[18] This may be proven by direct testimony of residents of the locality and/or other "indicia of community"—i.e., objective circumstances giving indication of a common perception that a locality's populace constitutes a distinct "population grouping,"[19] such as political, social, economic, commercial, cultural, public service, or religious organizations and services in the community.[20] Potentially relevant circumstances are many and various.[21] Frequently considered factors are whether the community is

---

[13] *Id*. at 3-4 (citing *Wheatland, Wyoming*, Letter Decision, Application File No. BPH-20100104AAK, Ref. No. 1800B3-BG (MB July 12, 2010)).

[14] *Id*. at 2.

[15] *Id*. at 4.

[16] Opposition at 1-2. Michael also argues, procedurally, that White Park lacks standing to file an informal objection. Since standing is not necessary to file an informal objection, we do not consider this argument further here.

[17] *See Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC.2d 88, 101, para. 34 (1982) ("[I]f a petitioner desires the assignment of a channel to a place that is neither incorporated nor listed in the census reports, it will be required to supply the Commission with information adequate to establish that such a place is a geographically identifiable population grouping and may therefore be considered a community for these purposes."); *Spring Valley, Arizona*, Letter Decision, 28 FCC Rcd 148, 150 (MB 2013) ("We have consistently held that a Census Designated Place listed in the U.S. Census is a licensable community"); *Matagorda, Texas*, Report and Order, 21 FCC Rcd 1736, 1736, paras. 1-3 (MB 2006) (finding that a community that is not incorporated or listed in the U.S. Census is licensable where it: (1) has more than 650 residents; (2) has its own post office and zip code; (3) has its own library, volunteer fire department, school district, and provides water and sewer services; (4) has its own justice of the peace and "numerous businesses, churches, and social organizations"; (5) is an "identifiable population grouping separate and apart from all others, and the geographic boundaries of the location do not enclose or contain areas or populations more logically identified as or associated with some other location"; (6) has a well-known history; (7) has an independent school district, businesses, churches, and civic organizations such as the Masonic Lodge and Chamber of Commerce.

[18] *Fortuna Foothills and Wellton, Arizona*, Memorandum Opinion and Order, 19 FCC Rcd 4619, 4620-21, para. 6 (MB 2004).

[19] *Central Florida Educational Foundation, Inc.,* Letter Decision, 23 FCC Rcd 1695, 1699 (MB 2008); *Bridgeport, Kansas, and Hutchinson, Kansas,* Letter Decision, 25 FCC Rcd 14357, 14360-61 (MB 2010); *Mighty-Mac Broadcasting Co*., Rev. Bd. Decision, 101 FCC 2d 303, 307-308 (Rev. Bd. 1985).

[20] *See, e.g., Big Coppitt Key, Florida*, Notice of Proposed Rulemaking, 37 FCC Rcd 6207, 6207, para. 4 (MB 2022).

[21] *Semora*, 5 FCC Rcd at 935, para. 6 (citing *Teche Broadcasting Corp*., 52 FCC.2d 970, 973, para. 11 (Rev. Bd. 1975) (stating that test for community status encompasses consideration of the totality of the circumstances).

marked on a published map,[22] whether it has a United States Postal Service (USPS) post office that offers residential service to the community,[23] whether it provides municipal services such as education, police, and fire protection,[24] whether it would more logically be considered part of another, more established, community,[25] whether it supports commercial activity,[26] and whether its name is used on businesses and other organizations.[27] The test to determine whether a specific location qualifies as a community under Section 307(b) is a liberal one and takes into account the totality of the circumstances.[28]

In this case, Horse Creek is neither incorporated nor listed with the U.S. Census. Michael has not provided any statements from residents that they "conceive of themselves as a community around which their interests coalesce."[29] Therefore, we must consider objective indicia of community status to determine whether Horse Creek is a "geographically identifiable population grouping" for Section 307(b) purposes. In this case, we examine map data, post office and zip code information, governmental services and functions, alternative/competing community identities, and commercial activity.

Map data. Horse Creek is marked as a location on Google Maps, Wikipedia, United States Geological Survey maps, and the Laramie County Fire Authority website.[30] Moreover, it is the name of a river, a road, and a campground. Therefore, Horse Creek satisfies the threshold test of being a physical place. As such, it may be used by location-based services such as weather and real estate listings. Nonetheless, it is well established that a mere geographic location is insufficient to establish community

---

[22] *See, e.g., Willow*, 10 FCC Rcd at 11523, para. 8; *Semora*, 5 FCC Rcd at 934, para. 6.

[23] *Willow*, 10 FCC Rcd at 11523, para. 8; *Semora*, 5 FCC Rcd at 934, para. 6; *Mighty-Mac Broadcasting Co.*, 101 FCC 2d 303, 307, para. 6 (R.B.1985).

[24] *Kearsarge*, 23 FCC Rcd at 12704 (holding that a political sub-division does not have community status where it has "no mayor or legislative body . . . [or] a fire department or schools under its direction).

[25] *See, e.g., Beacon Broadcasting*, Letter Decision, 104 FCC 2d 808 (Rev. Bd. 1986), modified, 2 FCC Rcd 3469 (1987), *aff'd sub nom. New South Broadcasting Corp. v. FCC*, 879 F.2d 867 (D.C. Cir. 1989) (holding that a specified location must be an identifiable population grouping, separate and apart from all others, and the geographic boundaries of the location must not enclose or contain areas or populations more logically identified or associated with some other location); *see also Hannibal, Ohio*, Report and Order, 6 FCC Rcd 2144 (MMB 1991).

[26] *See, e.g., Kearsarge*, 23 FCC Rcd at 12704 (no "banks, restaurants, gas stations, or hospitals" within community); *Semora*, 5 FCC Rcd at 934, para. 6 (stating that "[w]hile the amount of commercial activity in the town is limited, the Commission has never established a minimum amount of commercial activity necessary to qualify an area as a community" and noting that the town supports several stores, two restaurants, and a night club). *Semora*, 5 FCC Rcd at 935, para. 8; *Bridgeport, Kansas, and Hutchinson, Kansas,* Letter Decision, 25 FCC Rcd 14357, 14369-60 (MB 2010) (finding that there was no verifiable commercial activity in the community at issue).

[27] *See Willow*, 10 FCC Rcd at 11523, para. 8; *Semora*, 5 FCC Rcd at 934, para. 6 (noting that the fire department, Ruritan Club, and two churches bear the name of the town); *Beacon Broadcasting*, Memorandum Opinion and Order, 2 FCC Rcd 7562, 7562, para. 5 (1987).

[28] *See, e.g., Kearsarge, New Hampshire*, Letter Decision, 23 FCC Rcd 12701, 12702 (MB 2008) (citing *Willows and Dunnigan, California*, Report and Order, 10 FCC Rcd 11522, (Allocations Branch 1995); *Teche Broadcasting Corp*., 52 FCC.2d 970, 973, para. 11 (Rev. Bd. 1975); *Kenansville, Florida*, Memorandum Opinion and Order, 5 FCC Rcd 2663 (MMB 1990); *Semora, North Carolina*, Memorandum Opinion and Order, 5 FCC Rcd 934 (1990).

[29] *See, e.g., Beacon Broadcasting*, Memorandum Opinion and Order, 2 FCC Rcd 7562, 7562, para. 4 (1987); Mighty Mac Broadcasting Co., Decision, 58 RR 2d 599, 601 (1985).

[30] https://www.lcfawy.com/blank-page

status.[31] Therefore, we must examine additional factors to determine whether there is a population grouping at that geographic location that conceive of themselves as a community.

*Post office and/or zip code***.** In its 307(b) Statement, Michael claims that there is a federal post office serving Horse Creek.[32] This is not the case—the USPS website states that the Horse Creek Post Office closed on September 12, 2017,[33] and, in response to a telephone inquiry, USPS staff confirmed that residents of Horse Creek do not have a dedicated post office but receive their mail at a cluster box unit serviced daily by vehicle from Cheyenne. Although the 82061 zip code area is designated as "Horse Creek," this fact is of minimal value as an indicator of community status. As a routing tool used by the federal mail delivery system, a zip code area may straddle towns, counties, and even states. It is well established that the existence of a zip code area, without more, does not establish a geographically identifiable population grouping for allotment purposes.[34]

Governmental services and functions. The elementary school and fire protection services in Horse Creek are not provided by the community but by Laramie County, to a service area much larger than the area marked as "Horse Creek" on the map. Specifically, the Horse Creek Fire Department is part of Laramie County Fire Protection District 2 (Station 3), and Clawson Elementary is part of Laramie County School District #1. Although the Commission "does not require a municipality to provide every public service on its own in order to merit community status,"[35] here it appears that Horse Creek provides no governmental services at all. Therefore, this factor weighs against a finding of community status.

Alternative/competing identities. The Commission has found that a named neighborhood, precinct, village, or other area may not have community status if it is wholly located within a more identifiable community, such as a city or town.[36] Here, Horse Creek is not encompassed or intersected by an alternative community with a more dominant identification. Therefore, this factor does not weigh against a finding of community status.

Commercial activity. The Commission has never established a minimum amount of commercial activity necessary to qualify an area as a community.[37] Here, Michael identifies only one business that operates at the geographic location of Horse Creek—namely, Horse Creek Cattle Company Stone House

---

[31] *Bridgeport, Kansas, and Hutchinson, Kansas,* Letter Decision, 25 FCC Rcd 14357, 14358-59 (MB 2010) ("[T]he mere appearance of a place name on a map is not alone sufficient to establish that location as a licensable community.").

[32] 307(b) Statement at 17-19.

[33] USPS, "Postal history—Postmaster Finder," https://about.usps.com/who/profile/history/postmaster-finder/post-offices-by-zip.htm (last visited Oct. 24, 2023).

[34] *See Gaviota, California,* Report and Order, 16 FCC Rcd 1518 (MB 2000); *Crestview and Westbay, Florida*, 7 FCC Rcd 3059 (MMB 1992)(stating that the presence of a post office and a zip code is not sufficient to establish community status for allotment purposes).

[35] *Semora*, 5 FCC Rcd at 934, para. 8. *See also Willow*, 10 FCC Rcd at 11523, para. 9 (finding a licensable community where some municipal services were provided by the county); *Teche Broadcasting Corp*., 52 FCC.2d 970, 973, para. 11 (Rev. Bd. 1975) ("While Bayou Vista may rely on its neighboring communities for routine government services, this factor has not in past cases precluded a finding of community status.").

[36] *Kearsarge*, 23 FCC Rcd at 12704 (finding that a lighting precinct is merely a political sub-division located wholly within two adjacent incorporated towns); *Willow*, 10 FCC Rcd at 11523, para. 8 ("Dunnigan is not a small municipality on the fringe of an urban area and, therefore, this proceeding is distinguishable from other cases in which a petitioner attempts to establish the community status of a municipality on the fringe of an urban area."); *Beacon Broadcasting*, Memorandum Opinion and Order, 2 FCC Rcd 7562, 7562, para. 5 (1987).

[37] *Semora*, 5 FCC Rcd at 934, para. 6.

and Ranch. We conclude that this minimal level of commercial activity does not support a finding of community status.[38]

Taking all of the above factors into consideration, we conclude that Horse Creek does not constitute a licensable community for Section 307(b) allotment purposes. Michael has neither submitted the testimony of residents nor established the existence of a population grouping evidenced by political, social, economic, commercial, cultural, public service, or religious organizations and services in the community. Because the Application is dismissed on this basis, we need not conduct any further Section 307(b) analysis of the allotment priority of Horse Creek.

However, we take this opportunity to caution applicants regarding the use of materials obtained exclusively from online sources. If an applicant wishes to use a website or information obtained online (such as photographs), it should make every reasonable effort to verify or authenticate the information provided, including, for example, making a site visit to the community it proposes to serve, obtaining a statement from an individual with personal knowledge of the facts alleged, or at the very least corroborating the information using another reliable online source. Importantly, any website used to support an application must be clearly identified with the site owner or publisher, title of the page, URL address, last date visited, and any other relevant information. If reviewing staff cannot identify or verify a submission, it will be excluded from our community status determination.

We also remind applicants that effective April 1, 2023, petitioners and applicants submitting filings to the Audio Division must employ the most recent 2020 U.S. Census data available when determining a particular community's population in addition to the population served and overlap of service areas to communities and Urbanized Areas.[39]

Conclusion/Actions. For the reasons set forth above, IT IS ORDERED that the informal objection filed by White Park, Inc. on September 12, 2023, IS GRANTED and the modification application for KLLM(FM), Wheatland, Wyoming, Application File No. 205045, IS DISMISSED for failure to specify a licensable community, with no further opportunity for corrective amendment.[40]

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

---

[38] *See Winona, Arizona*, Report and Order, 15 FCC Rcd. 4331 (MMB 2000)(denying community status where there was no indication that the locality contains any political, social, economic, commercial, cultural or religious organizations or other services that identify themselves with that locality, nor any testimony of local residents attesting to community status).

[39] *See Audio Division Announces Availability of 2020 Decennial Census Data*, Public Notice, DA No. 23-74 (rel. January 26, 2023).

[40] *See* 47 CFR § 73.3564 ("Applications with uncorrected tender and/or acceptance defects remaining after the opportunity for corrective amendment will be dismissed with no further opportunity for amendment").

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

In the Matter of	)	
	)	
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities	)	CG Docket No. 03-123
	)	
	)	
	)	

ORDER

Adopted: January 4, 2024 **Released: January 4, 2024**

By the Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. The Consumer and Governmental Affairs Bureau (CGB or Bureau) of the Federal Communications Commission (FCC or Commission) conditionally grants certification to Global Caption, Inc. (Global Caption), to provide Internet Protocol Captioned Telephone Service (IP CTS) on a fully automatic basis in carceral facilities, pending verification that its actual provision of IP CTS to registered users meets or exceeds the Commission's minimum TRS standards.[1] This grant of conditional certification authorizes Global Caption to provide TRS Fund-supported IP CTS through January 5, 2026, or the date of grant or denial of full certification, whichever occurs earlier.

II. BACKGROUND

2. Global Caption, a privately-owned technology company, requests certification to provide TRS-Fund supported IP CTS in carceral facilities,[2] on a fully automatic basis, (i.e., using automatic

[1] *See Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Second Report and Order and Order, 26 FCC Rcd 10898, 10914-15, para. 37 (2011) (*2011 Internet-based TRS Certification Order*) (authorizing conditional certification). IP CTS is a form of telecommunications relay service (TRS) that allows individuals with hearing loss to both read captions and use their residual hearing to understand a telephone conversation. 47 CFR § 64.601(a)(23) (defining IP CTS). Captions may be displayed on a specialized IP CTS device or on an off-the-shelf computer, tablet, or smartphone. IP CTS providers must be granted certification by the Commission to be eligible to receive compensation from the Interstate TRS Fund. *Id.* § 64.606.

[2] Global Caption, Inc., Internet-Based TRS Certification Application, CG Docket No. 03-123 (filed Mar. 11, 2022) (Application) (redacted), https://www.fcc.gov/ecfs/document/10311773509888/2; *see also* Letter from Katherine Barker Marshall, Counsel to Global Caption, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 03-123 (filed Mar. 30, 2022) (2022 Amendment), https://www.fcc.gov/ecfs/document/1033076439141/1 (disclosing previously-redacted ownership information); Letter from Katherine Barker Marshall, Counsel to Global Caption, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 03-123 (filed Aug. 10, 2023) (2023 Amendment), https://www.fcc.gov/ecfs/document/108100689001697/1. Global Caption has redacted portions of its application for which it requests confidential treatment. Access to the redacted material is governed by the Third Protective Order in this docket. *See Misuse of Internet Protocol (IP) Captioned Telephone Service*; *Structure and Practices of the Video Relay Service Program*; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 13-24, 10-51, and 03-123, Order and Third Protective Order, 33 FCC Rcd 6802, 6803, para. 4 (2018). Although its Application stated that Global Caption may, in the future, opt to also serve consumer markets if economic conditions permit, Application at 4, the applicant subsequently withdrew its request for certification to serve non-carceral users. 2023 Amendment at 1. After Global Caption filed its application, the Commission adopted additional rules to expand the availability of TRS for incarcerated individuals with hearing and (continued….)

speech recognition (ASR) only for captioning of all calls, without any reliance on communications assistants (CAs)).[3] Specifically, Global Caption states it will make ASR-based IP CTS available for use by eligible individuals who speak English and Spanish, and will also offer the service to blind and hard of hearing individuals who read Braille.[4]

3. According to its application, Global Caption has developed an IP CTS application and call distribution platform that meets the security and technical requirements of carceral facilities and providers of incarcerated people's calling service (IPCS).[5] Global Caption states that it will provide IP CTS to incarcerated people pursuant to agreements with third-party technology firms, which in turn have agreements with IPCS providers.[6]

4. On April 7, 2022, the Bureau released a Public Notice seeking comment on Global Caption's application.[7] An IP CTS provider (ClearCaptions) and a coalition of accessibility advocacy and research organizations filed comments.[8] While not opposing Global Caption's application,[9] AARO contends that the Commission should require all providers of ASR-only IP CTS to offer a CA-assisted mode and allow users to switch from ASR-only to CA-assisted mode during a call.[10] In addition, the coalition restated a general concern about the need to establish metrics for IP CTS service quality.[11] ClearCaptions agrees that ASR-only IP CTS does not provide adequate quality of service in all scenarios and should be offered in conjunction with CA-assisted IP CTS.[12]

5. Global Caption's platform was tested for caption delay and accuracy by the Commission's National Test Lab (NTL).[13]

(Continued from previous page)
speech disabilities. *See Rates for Interstate Inmate Calling Services,* WC Docket No. 12-375, Fourth Report and Order and Sixth Further Notice of Proposed Rulemaking, FCC 22-76 (released Sept. 30, 2022) (*2022 IPCS Order*).

[3] Application at 3. The Commission has determined that the provision of IP CTS using only automatic speech recognition (ASR) to generate captions, without the involvement of a communications assistant (CA), is eligible for compensation from the TRS Fund if provided in compliance with applicable mandatory minimum TRS standards. *See Misuse of Internet Protocol (IP) Captioned Telephone Service*; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 13-24 and 03-123, Report and Order, Declaratory Ruling, Further Notice of Proposed Rulemaking, and Notice of Inquiry, 33 FCC Rcd 5800, 5827, para. 48, (2018) (*2018 ASR Declaratory Ruling*).

[4] Application at 3-4.

[5] *Id*. at 4, 7-8.

[6] *Id*. at 7. Global Caption itself will not work directly with IPCS providers. *Id.* n.11.

[7] *See Comment Sought on Application of Global Caption, Inc., for Certification as a Provider of Internet Protocol Captioned Telephone Service*, CG Docket No. 03-123, Public Notice, DA 22-375 (CGB Apr. 7, 2022).

[8] *See* ClearCaptions, LLC (ClearCaptions) Comments, CG Docket No. 03-123 (filed May 9, 2022) (ClearCaptions Comments); Hearing Loss Association of America (HLAA), Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), National Association for the Deaf (NAD), and Deaf/Hard of Hearing Technology Rehabilitation Engineering Research Center (DHH-RERC) (collectively, AARO), Comments on the Application of Global Caption, Inc. for Certification as a Provider of Internet Protocol Captioned Telephone Service, CG Docket No. 03-123 and WC Docket No. 12-375 (filed May 9, 2022) (AARO Comments).

[9] AARO Comments at 2.

[10] *Id*. at 5.

[11] *Id*.

[12] ClearCaptions Comments at 4.

[13] *See* FCC TRS National Test Lab, Internet Protocol Captioned Telephone Service Testing – Global Caption, Version 1.1, CG Docket No. 03-123 (posted by CGB, Nov. 15, 2023) (NTL Test Report). The National Test Lab
(continued….)

III. CERTIFICATION

6. We conditionally grant the application subject to verification—based on actual operating conditions—that Global Caption's provision of IP CTS will meet or exceed the minimum TRS standards.[14] This conditional certification is for provision of IP CTS only in carceral facilities, but without prejudice to Global Caption seeking broader authority in a subsequent application or amendment.[15]

7. *Sufficiency of the Application.* Global Caption's application is facially sufficient to satisfy the Commission's certification requirements. The application and supporting information provide a sufficient explanation, with documentary and other evidence, as to how the applicant will provide IP CTS and meet all minimum standards relevant to consideration of its application.[16] Global Caption also provides a description of its complaint procedures, confirmation that it will file annual compliance reports demonstrating continued compliance with the TRS rules, and a certification by a senior executive as to the accuracy and completeness of the information provided.[17] Further, as discussed below, the application and supporting information, including the results of independent testing of caption delay and accuracy,[18] sufficiently support Global Caption's specific claims regarding its use of ASR and the efficacy of such use in meeting the Commission's minimum TRS standards relating to speed of answer, service continuity, caption delay, accuracy, readability, verbatim transcription, privacy, and emergency call handling.[19]

8. *Speed of Answer.* Global Caption has made a sufficient showing that with its chosen ASR technology, it will meet or exceed the minimum TRS standards relating to speed of answer.[20] According to the application, Global Caption's ASR-based IP CTS platform is Internet accessible through an integrated software application that is seamlessly integrated with technology provider interfaces and inmate calling service/carceral institution equipment.[21] The ASR platform resides in core servers connected to broadband Internet access facilities capable of transmission speeds exceeding one gigabit per second.[22] Global Caption states that once the connection is made to Global Caption's servers, its

(Continued from previous page)
(NTL) is operated by MITRE Corporation as part of the CMS Alliance to Modernize Healthcare, a Federally Funded Research and Development Center sponsored by the Centers for Medicare & Medicaid Services (CMS). *See* CMS Alliance to Modernize Healthcare, Internet Protocol Caption Telephone Service (IP CTS) – Summary of Phase 2 Usability Testing Results (2016), CG Docket Nos. 03-123 and 13-24, at i-ii (posted by CGB, Apr. 11, 2018); CMS Alliance to Modernize Healthcare, Internet Protocol Caption Telephone Service (IP CTS) Devices: Summary of Phase 1 Activities (2017), CG Docket Nos. 03-123 and 13-24, at 10 (posted by CGB, Apr. 11, 2018) (NTL Phase 1 Summary).

[14] *See 2011 Internet-based TRS Certification Order*, 26 FCC Rcd at 10914-15, para. 37.

[15] *Cf.* 2023 Amendment at 1 (noting that Global Caption may seek broader certification authority in the future).

[16] *See* Application at 10-34; 2022 Amendment; 2023 Amendment.

[17] *See* Application at 33-34 (complaint procedures); *id.* at 34 (annual filing); 2023 Amendment (certification).

[18] NTL Test Report.

[19] *See 2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5834-35, para. 63 (noting that applicants to provide ASR-based IP CTS must support all claims regarding their use of ASR and its efficacy). In its comments, ClearCaptions recommends that the Commission review carefully the adequacy of Global Caption's ASR platform, the use of artificial intelligence, and quality assurance practices. ClearCaptions Comments at 2-5. ARRO similarly recommends that the Commission review carefully the adequacy of Global Caption's ability to ensure privacy and quality of service, including with respect to any vendor services, in carceral facilities. AARO Comments at 2-5. As discussed below, Global Caption's application and supporting materials adequately address these issues.

[20] *See* 47 CFR § 64.604(b)(2)(ii) (requiring IP CTS providers to answer 85% of calls within 10 seconds, measured daily).

[21] Application at 10.

[22] *Id.* at 14.

automated technology and monitored core processor capabilities require virtually no processing time, allowing Global Caption to exceed the Commission's speed-of-answer requirement.[23]

9. We accept Global Caption's explanation that an independent test result submitted with its initial application, which indicated an average speed of answer exceeding the rule's 10-second standard, did not take account of the special conditions that apply in the incarceration context.[24] The Commission measures speed of answer for IP CTS calls based on the time that elapses between an IP CTS user's initiation of contact with the captioning center and the start of captioning.[25] In carceral facilities, however, all calls are required to go through security review prior to connecting to the telecommunications network and (if Global Caption is providing IP CTS) to Global Caption servers.[26] Thus, when an inmate dials an outbound call,[27] security review must be completed and the call accepted by the called party before captioning can begin.[28] Once the call is approved and is accepted by the called party, the IPCS provider transmits the call to Global Caption's server and the conversation and captioning begin.[29] Therefore, Global Caption measures speed of answer based on the time that elapses between the delivery of a call to its server and the start of captioning.[30] This approach excludes the time period involved in the call approval and acceptance process—which, Global states, was inappropriately included in the independent test measurement.[31] We find that Global Caption's approach is a reasonable interpretation of a TRS provider's speed-of-answer obligation in the incarceration context, where the calling process is subject to an unusual degree of control by the telephone service provider.[32]

10. *Service Continuity*. We also find that Global Caption has sufficiently demonstrated its ability to maintain service continuity in the provision of ASR-only captioning.[33] Global Caption states that its IP CTS automatic call distribution platform resides on secure, redundant, and fully-accessible cloud-based servers to ensure uninterrupted operation under virtually any circumstances, which allows its technical staff to ensure that the platform remains fully operational at all times.[34] Global Caption accepts

[23] *Id.*

[24] *Id.*, Appx. A at 14 (confidential version) (describing results of testing conducted by Cositics, LLC).

[25] *Misuse of Internet Protocol (IP) Captioned Telephone Service*; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Structure and Practices of the Video Relay Service Program,* CG Docket Nos. 13-24, 03-123, and 10-51, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 35 FCC Rcd 10866, 10896-903, paras. 62-81 (2020) (*2020 IP CTS Metrics Notice*).

[26] *See* 2023 Amendment at 1.

[27] Correctional institutions generally do not allow incoming telephone calls to incarcerated people. *See, e.g.*, https://portal.ct.gov/DOC/Common-Elements/Common-Elements/Frequently-Asked-Questions-FAQ (last visited Dec. 27, 2023). Thus, Global Caption explains that, while its technology is technically capable of handling any type of call, it expects that it will receive only inmate-initiated calls from IPCS providers. Application at 12. We note that, in the event that an institution *does* allow incoming calls, nothing in section 64.6040 of the Commission's rules indicates that such calls would be exempt from the IPCS provider's obligation to ensure access to IP CTS. *See* 47 CFR § 64.6040.

[28] 2023 Amendment at 1-2, Amended Appx. B. The non-confidential attachment to the 2023 Amendment was filed with the Application as a confidential Appendix B.

[29] *Id.* at 1-2.

[30] *Id.* at 2.

[31] *See Id.* at 1-2.

[32] This order does not address to what extent any delay that might occur in connecting a call to Global Caption's server, once the approval and acceptance process is completed, would violate the Commission's IPCS rules.

[33] *See* 47 CFR § 64.604(b)(4)(ii) ("TRS shall have redundancy features functionally equivalent to the equipment in normal central offices, including uninterruptible power for emergency use.").

calls twenty-four hours a day, seven days a week.[35] Global Caption states that its equipment is maintained in secure, non-public locations, and is supported by uninterruptable emergency power backup generators and batteries, and redundant broadband Internet access to secure cloud-based data storage to ensure continuous operations.[36] Further, Global Caption explains, it has geographically-separated, built-in redundancy to ensure that, in the event of an interruption at one location, calls may be immediately routed to a non-affected location.[37] Technicians are on-call 24 hours a day seven days a week to ensure services remain operational.[38]

11. *Caption Speed/Delay*. Global Caption sufficiently supports its claim that its ASR platform will transcribe captions in real time and in compliance with the current TRS standards relating to captioning speed or delay.[39] In performance testing by NTL, Global Caption's average caption delay for two call scenarios ranged from 1.0 to 1.1 seconds, while other IP CTS providers' average caption delay results were longer, ranging from 1.8 to 2.4 seconds.[40] Additionally, NTL testing supports Global Caption's assertion that captions will be transcribed in real time and in compliance with the typing speed standard of 60 words per minute.[41] Global Caption also reports the results of ASR testing conducted on its behalf by Cositics, LLC,[42] which are comparable to results for other certified ASR IP CTS providers.[43]

(Continued from previous page)

[34] Application at 15.

[35] *Id.*

[36] *Id.*

[37] *Id.*

[38] *Id.*

[39] Caption speed is typically measured based on the time that elapses, i.e., the delay, between transmission of speech and transmission of the associated caption(s). *See* NTL Phase I Summary at 6. Currently, there is no quantitative standard for IP CTS caption speed or delay *per se*. However, captions must be delivered "fast enough so that they keep up with the speed of the other party's speech," and "if captions are not keeping up with the speech (although a short delay is inevitable), at some point the provider is no longer offering relay service and the call is not compensable." *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Internet-based Captioned Telephone Service*, CG Docket No. 03-123, 22 FCC Rcd 379, 388-89, para. 22 & n.69 (2007) (*2007 IP CTS Declaratory Ruling*). In addition, the typing speed standard for text-based TRS is applicable. *See id.* at 388, para. 22 n.69; 47 CFR § 64.604(a)(1)(iii) (requiring TRS CAs to have a minimum typing speed of 60 words per minute). Based on the test results and other evidence discussed in the text, Global Caption has shown not only that it will meet this standard but also that it will "keep up with the speed of the other party's speech." *2007 IP CTS Declaratory Ruling*, 22 FCC Rcd at 388, para. 22. On October 2, 2020, the Commission released a Further Notice of Proposed Rulemaking seeking comment on adopting metrics for IP CTS accuracy and caption delay. *IP CTS Metrics Notice*, 35 FCC Rcd at 10896-903, paras. 62-81.

[40] *See* NTL Test Report at 2.

[41] The test calls used in NTL's assessment featured overall speech rates between 89 and 118 words per minute and active speech rates between 156 and 168 words per minute. *Id.*, Appx. B at 11, Appx. D at 15. Global Caption's performance in these tests confirms that its transcription speed well exceeds 60 words per minute.

[42] *See* Application, Appx. A. at 14 (confidential version). Unlike the NTL test, this test measures "segment delay," i.e., it measures caption delay in terms of "segments," i.e., phrases, or "chunks" of words, rather than on a word-for-word basis. The delay for a given segment is determined by averaging (1) the first-word delay—the number of seconds between when the first word in the segment is stated and when it appears in captions—and (2) the last-word delay—the number of seconds between when the last word in the segment is stated and when it appears in captions. Average segment delay is computed by averaging all the segment delays in the sample. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Memorandum Opinion and Order, CG Docket No. 03-123, 36 FCC Rcd 7246, 7250, para. 8 n.34 (CGB 2021) (*ClearCaptions ASR Order*).

[43] *See ClearCaptions ASR Order*, 36 FCC Rcd at 7250, para. 8.

Thus, Global Caption's caption delay claims are supported by the results of testing by two organizations using different methodologies.

12. *Accuracy and Readability.* Although the TRS rules do not currently provide metrics for accuracy and readability, the typing, grammar, and spelling of captions must be "competent," and conversations must be transcribed "verbatim" with no intentional alteration of content unless the user specifically requests summarization.[44] We find sufficient record evidence that Global Caption's fully automatic IP CTS will meet or exceed the Commission's competence and "verbatim" requirements.

13. In testing by NTL, Global Caption's Word Error Rate for three call scenarios ranged from 4.1% to 11.9%, higher than but comparable to other IP CTS providers' aggregated Word Error Rate results, which averaged from 2.0% to 7.4% in the same call scenarios.[45] Further, Cositics test reports indicate that the accuracy of Global Caption's ASR-only service tested better than the industry average.[46] Like its caption delay claims, Global Caption's accuracy claims are thus supported by the results of testing by two organizations using different methodologies.

14. *Privacy*. The Commission's confidentiality requirements for TRS call content prohibit the retention of call content for any purpose, either locally or in the cloud.[47] In addition, providers must protect the privacy of customer information.[48] Our rules obligate a provider to protect call content and customer information regardless of the specific persons or entities (e.g., communications assistants, other employees, vendors, or agents) that a provider may designate to handle such information on its behalf.[49] Global Caption sufficiently describes how it will comply with these rules. Global Caption states that its ASR transcription does not involve human interaction and is not recorded.[50] Global Caption states that it does not have access to the transcripts and that its agreement with its vendor for ASR support specifically precludes the vendor from utilizing fragmented or anonymized conversation data in further developing and enhancing its ASR service.[51]

15. Further, Global Caption states that it does not monitor or store the conversations between incarcerated users and their called parties. Noting that a carceral facility may monitor all calls except those to counsel and clergy, Global Caption clarifies that such monitoring occurs internally within the confines of the facility, prior to the presentation of call content to Global Caption for captioning.[52] Global

[44] 47 CFR § 64.604(a)(1)(ii), (2)(ii). These standards apply to captions developed with ASR. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Declaratory Ruling, 18 FCC Rcd 16121, 16134-35, paras. 37-39 (2003); *2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5832-33, para. 60.

[45] NTL Test Report at 2.

[46] *See* Application at 8; *id.,* Appx. A at 14 (confidential version).

[47] *See* 47 CFR § 64.604(a)(2)(i) (prohibiting CAs from disclosing or retaining call content except as authorized by 47 U.S.C. § 605); *see also 2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5832-33, para. 60 (clarifying that rules prohibiting TRS CAs from disclosing the content of a relayed conversation or keeping records of the content beyond the duration of a call apply to ASR-based IP CTS).

[48] *See* 47 CFR § 64.611(j)(1)(xii) (requiring IP CTS providers to maintain the confidentiality of user registration and certification information); *id*. §§ 64.2001-64.2011 (restricting disclosure and use of customer proprietary network information); *see also id.* § 9.14(b)(2)(vi) (limiting disclosure and use of information obtained while handling 911 calls).

[49] *See*, *e.g.*, *2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5832-33, para. 60. As the Commission has noted previously, the use of ASR-only IP CTS can enhance call privacy by eliminating the need for a human CA to listen to a call. *Id*. at 5828, para. 50.

[50] Application at 11.

[51] *Id*. at 12.

[52] *Id*. at 11 n.23.

Caption explains that it does not retain copies of transcripts and cannot provide them to authorities if asked.[53]

16. *Emergency Call Handling.* Under the Commission's TRS standard for emergency call handling, an IP CTS provider must ensure that 911 calls are given priority over non-911 calls.[54] In addition, when responsible for placing or routing voice calls to the public switched telephone network, an IP CTS provider must ensure that the call is routed, and required caller information delivered to the appropriate public safety answering point (PSAP).[55] Noting that carceral facilities generally do not allow incarcerated people to dial 911, Global Caption states that it has arrangements in place to handle such calls in accordance with the individual carceral institution's requirements.[56] Given the control that carceral institutions and IPCS providers exercise over calls and the routing of calls placed by incarcerated people, we find that Global Caption has sufficiently demonstrated compliance with the emergency calling rules.

17. *Response to Additional Concerns Raised in Comments.* Consistent with the Bureau's prior orders granting conditional certification to IP CTS applicants that did not propose to employ any CAs,[57] we decline ClearCaptions' suggestion that we require Global Caption to offer CA-assisted IP CTS in addition to ASR-only IP CTS.[58] We are bound by the Commission's determination that the capabilities of ASR are sufficient to warrant its recognition as a TRS Fund-supported alternative to CA-assisted IP CTS.[59] For similar reasons, and consistent with prior orders,[60] we also decline AARO's request to require Global Caption to provide a means for consumers to choose between CA and ASR modes.[61] Whether to impose such a requirement is a policy determination for the Commission to make.

18. *Conditional Certification*. We grant Global Caption certification on a conditional basis, to provide IP CTS in carceral facilities for a period not to exceed two years from the effective date of this order, pending further verification based on actual performance that its service complies with the Commission's minimum TRS standards. Because Global Caption is a new applicant with no previous experience in the provision of TRS, relying solely on fully automatic captioning, and seeking to offer IP

[53] *Id*.

[54] 47 CFR § 9.14(b)(2)(ii).

[55] *Id*. § 9.14(b)(2)(i), (e).

[56] Application at 24 n.42; *see also 2022 IPCS Order*, para. 62.

[57] *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Memorandum Opinion and Order, 35 FCC Rcd 4568, 4569, para. 2 (CGB 2020) (*MachineGenius Certification* Order); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CG Docket No. 03-123, Memorandum Opinion and Order, 35 FCC Rcd 5635 (CGB 2020) (granting Clarity, LLC conditional certification to provide ASR-only IP CTS) (*Clarity Certification Order*).

[58] ClearCaptions Comments at 4.

[59] *See 2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5828-29, para. 51 (finding that "improvements in accuracy, coupled with ASR's advantages in speed and privacy, have made ASR a viable alternative to the use of human relay intermediaries for [Captioned Telephone Service (CTS)] and IP CTS"); *see also id.* at 5834-35, para. 63 ("Furthermore, while we are seeking more information about ASR technology in the FNPRM portion of this item, we do not agree that an ASR provider cannot be certified until we conduct 'further study' of such data.").

[60] *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Memorandum Opinion and Order, 37 FCC Rcd 5228, para. 3 (CGB 2022) (*Hamilton ASR Order*); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Memorandum Opinion and Order, 36 FCC Rcd 13241, 13248, para. 18 (CGB 2021) (*CaptionCall ASR Order*); *ClearCaptions ASR Order*, 36 FCC Rcd at 7257, para. 24.

[61] *See* AARO Comments at 5.

CTS in the special context of carceral facilities, we believe the best course is to collect additional information through observing Global Caption's service in operation to confirm that this service will meet or exceed the minimum TRS standards.[62]

19. To assist the Bureau in a final determination of Global Caption's qualifications to provide IP CTS, we require Global Caption to provide quarterly reports of consumer complaints, filed with the Commission in the same format and with the same degree of detail required in the log of consumer complaints that providers must file annually with the Commission.[63] The first report shall be due May 1, 2024, and shall cover the period from Global Caption's commencement of service through March 30, 2024.[64] Each subsequent report shall be filed on the first day of the second month of each calendar quarter and shall cover the preceding calendar quarter. For example, the second report shall be due August 1, 2024, and shall cover the calendar quarter from April 1 through June 30, 2024. Global Caption shall continue to file reports on a quarterly schedule until the expiration of this conditional certification, or until Commission action granting or denying full certification, whichever occurs earlier.

20. Pending a decision on full certification, the Bureau may request additional information in order to complete our review of Global Caption's application, such as the results and protocols for performance tests conducted by Global Caption or independent third parties.[65] We also require Global Caption to report promptly any changes in the information previously provided to the Commission in its application and supplemental filings, including, for example, any changes in service agreements and suppliers or in the manner in which Global Caption provides fully automatic IP CTS.

21. Pursuant to this grant of conditional certification, Global Caption may provide Fund-supported IP CTS in the manner described in its application, for a period not to exceed two years in carceral facilities, pending a final determination of its qualifications. This conditional certification is issued without prejudice to such final determination, which is dependent on verification of the information provided in Global Caption's application and supplemental filings, as well as the additional information provided pursuant to this order, and on the veracity of the applicant's representations that it

---

[62] *See 2011 Internet-based TRS Certification Order*, 26 FCC Rcd at 10914-15, para. 37 (reserving the right to grant conditional certification "where the Commission, upon initial review of the application, determines that the application facially meets the certification requirements, but that the Commission needs to verify some of the information contained in the application"); *2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5834-35, para. 63 (stating that "no application to provide ASR will be approved unless the applicant demonstrates that the specific ASR technology described in the application meets applicable FCC requirements"); *id*. at 5835, para. 64 (noting that certification of an ASR-only provider may be granted on a conditional basis to enable assessment of an applicant's actual performance).

[63] *See* 47 CFR § 64.604(c)(1); *see also 2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5835, para. 64 (noting that to the extent deemed necessary certification of a provider may be conditioned on the submission of periodic data to help confirm whether fully automatic IP CTS is providing functionally equivalent service).

[64] The first report shall specify the date of commencement of service.

[65] *See 2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5834-35, para. 63 (citing test results as an example of supporting information an ASR applicant might provide); *Notice of Conditional Grant of Application of Miracom USA, Inc., for Certification as a Provider of Internet Protocol Captioned Telephone Service Eligible for Compensation from the Telecommunications Relay Services Fund*, CG Docket Nos. 03-123, 10-51, and 13-24, Public Notice, 29 FCC Rcd 5105, 5106-10 (CGB 2014) (conditioning a provider's certification on submission of additional information, including quarterly testing and reports) (*Miracom Certification*). With some exceptions, such as speed of answer, the Commission's minimum TRS standards do not currently include quantitative metrics. However, testing with respect to various performance criteria, such as caption delay and accuracy, may be helpful in the overall evaluation of this application for the purpose of deciding whether to grant full certification. Further, the Commission has proposed to adopt quantified standards for caption delay and accuracy, which, if adopted, would be applicable to all IP CTS providers, including those applying for certification or authorized under conditional certification. *See IP CTS Metrics Notice*, 35 FCC Rcd at 10898-902, paras. 66-77.

will provide service in compliance with all pertinent Commission requirements. To assist in reaching a final determination, the Bureau may conduct one or more unannounced site visits to Global Caption's premises and may request additional documentation relating to Global Caption's provision of fully automatic IP CTS. Conversion to full certification will be granted if, based on a review of the applicant's documentation and other relevant information, the Commission finds that Global Caption is in compliance with applicable Commission rules and orders and is qualified to receive compensation from the Fund for the provision of IP CTS. If, at any time during the period in which Global Caption is operating pursuant to this conditional certification, the Commission determines that Global Caption has failed to provide sufficient supporting documentation for any of the assertions in its application, determines that any of those assertions cannot be supported, or finds evidence of any apparent rule violation, fraud, waste, or abuse, the Commission will take appropriate action, which may include the denial of Global Caption's application. In the event of such denial, Global Caption's conditional certification for its IP CTS will automatically terminate thirty-five (35) days after such denial.[66]

22. *Preventing Misuse*. We remind Global Caption and all other TRS providers that IP CTS is intended to provide a service functionally equivalent to voice telephone service, and must not be provided as a substitute for transcription of in-person meetings or conversations.[67] Further, although our rules do not prohibit Global Caption from enabling its registered users to save the captions as they appear on a device, they do prohibit an IP CTS provider itself from retaining call transcripts or subsequently providing transcripts to IP CTS users beyond the duration of the call.[68] We also remind Global Caption that its marketing of this service must conform with the Commission's rules.[69]

23. *Compensation.* Providers of IP CTS are currently compensated under a single formula, in the amount of $1.30 per minute. The Commission has sought comment on modifying this formula and is expected to adopt a revised compensation plan by June 30, 2024.[70] Newly certified IP CTS providers should not assume or expect that the current compensation formula will remain applicable or that any

[66] *See 2011 Internet-based TRS Certification Order*, 26 FCC Rcd at 10914-15*,* para. 37.

[67] For example, Communication Access Realtime Translation (CART) is often used to generate captions for live meetings, speeches, and other in-person situations where the provision of TRS Fund-supported relay services is not permitted. *See Miracom Certification*, 29 FCC Rcd at 5109; *see also Structure and Practices of the Video Relay Service Program*; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8618, 8691, para. 180 & n.465 (2013) (explaining that the use of TRS Fund-supported VRS to substitute for video remote interpreting—a service that is used when an interpreter cannot be physically present to interpret for two or more persons who are in the same location—is not permitted).

[68] *See* 47 CFR § 64.604(a)(2)(i). There is a limited exception applicable only to speech-to-speech services.

[69] *See, e.g.*, 47 CFR § 64.604(c)(8), (c)(11), (c)(13). The Commission has noted that the ease and convenience of using IP CTS, while facilitating use of the service by people with hearing loss who need it for effective communication, also creates a risk that IP CTS will be used even when it is not needed. *See 2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5805, para. 9.

[70] *Internet Protocol Captioned Telephone Service Compensation*; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Misuse of Internet Protocol (IP) Captioned Telephone Service*, CG Docket Nos. 22-408, 03-123, and 13-24, Notice of Proposed Rulemaking and Order on Reconsideration, FCC 22-97 (Dec. 22, 2022) (proposing revised compensation plan for IP CTS); *Internet Protocol Captioned Telephone Service Compensation*; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Misuse of Internet Protocol (IP) Captioned Telephone Services*, CG Docket Nos. 22-408, 03-123, and 13-24, Order, DA 23-1189 (Dec. 20, 2023) (extending the current compensation plan through June 30, 2024, or the effective date of Commission action revising the compensation formula, if earlier).

revised formula(s) will necessarily allow them to recover their cost of service, even if they serve a special population or use a new, more expensive method of providing service.[71]

IV. PROCEDURAL MATTERS

24. *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).

25. *Additional Information.* For further information regarding this item, please contact William Wallace, Disability Rights Office, Consumer and Governmental Affairs Bureau, at 202-418-2716 or by e-mail to William.Wallace@fcc.gov.

V. ORDERING CLAUSES

26. 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, and sections 0.141, 0.361, 1.3, and 64.606(b)(2) of the Commission's rules, 47 CFR §§ 0.141, 0.361, 1.3, 64.606(b)(2), and the authority delegated by paragraph 60 of the Commission's *2018 ASR Declaratory Ruling*, the application of Global Caption, Inc., for certification to provide IP CTS in carceral facilities is GRANTED as conditioned in this Order.

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

FEDERAL COMMUNICATIONS COMMISSION

Alejandro Roark, Chief,
Consumer and Governmental Affairs Bureau

[71] *See Miracom Certification*, 29 FCC Rcd at 5108 n.19 ("Compensation rates are determined in light of the minimum standards as set by the Commission. Although the Commission may periodically reassess those standards in light of new services and technologies, a TRS provider cannot unilaterally impose a higher standard or secure a higher compensation rate simply by utilizing a new, more expensive method of providing service.").

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

In the Matter of	)	
	)	
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities	)	CG Docket No. 03-123
	)	
	)	
	)	

ORDER

Adopted: January 4, 2024 **Released: January 4, 2024**

By the Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. The Consumer and Governmental Affairs Bureau (CGB or Bureau) of the Federal Communications Commission (FCC or Commission) grants conditional certification to Nagish, Inc. (Nagish), to provide Internet Protocol Captioned Telephone Service (IP CTS) on a fully automatic basis, pending verification that its actual provision of IP CTS meets or exceeds the Commission's minimum TRS standards.[1] This grant of conditional certification authorizes Nagish to provide TRS Fund-supported IP CTS through January 5, 2026, or the date of grant or denial of full certification, whichever occurs earlier. The Bureau also dismisses Nagish's request for waiver of certain TRS rules.

II. BACKGROUND

2. Nagish requests certification to provide IP CTS on a fully automatic basis (i.e., using automatic speech recognition (ASR) only[2] for captioning of all calls, without any reliance on communications assistants (CAs)).[3] Nagish also requests waiver of certain mandatory minimum TRS

[1] *See Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Second Report and Order and Order, 26 FCC Rcd 10898, 10914-15, para. 37 (2011) (*2011 Internet-based TRS Certification Order*) (authorizing conditional certification). IP CTS is a form of Internet-based telecommunications relay service (TRS) that allows individuals with hearing loss to both read captions and use their residual hearing to understand a telephone conversation. *See* 47 CFR § 64.601(a)(23) (defining IP CTS). Captions may be displayed on a specialized IP CTS device or an off-the-shelf computer, tablet, or smartphone. Internet-based TRS providers obtain certification from the Commission to be eligible to receive compensation from the TRS Fund. *Id*. § 64.606.

[2] The Commission has determined that the provision of IP CTS using only automatic speech recognition (ASR) to generate captions, without the involvement of a Communications Assistant (CA), is eligible for compensation from the TRS Fund if provided in compliance with applicable mandatory minimum TRS standards. *See Misuse of Internet Protocol (IP) Captioned Telephone Service*; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 13-24 and 03-123, Report and Order, Declaratory Ruling, Further Notice of Proposed Rulemaking, and Notice of Inquiry, 33 FCC Rcd 5800, 5827, para. 48, (2018) (*2018 ASR Declaratory Ruling*).

[3] Internet-based TRS Certification Application of Nagish, Inc., CG Docket No. 03-123 (filed June 23, 2022) https://www.fcc.gov/ecfs/document/106231030902855/1 (Application). Nagish has redacted portions of its application for which it requests confidential treatment. Access to the redacted material is governed by the Third Protective Order in this docket. *See Misuse of Internet Protocol (IP) Captioned Telephone Service*; *Structure and Practices of the Video Relay Service Program*; *Telecommunications Relay Services and Speech-to-Speech Services*

(continued….)

standards.[4] Nagish's proposed ASR-only IP CTS will be delivered via an over-the-top (OTT) Android- or iOS-compatible application downloaded onto a customer's existing mobile device.[5] Nagish states that it has contracts with various ASR providers and can incorporate new ASR vendors as needed.[6] According to the application, each ASR provider is subjected to extensive initial evaluation testing involving an array of call conditions[7] and is regularly tested "both manually and in an automated fashion."[8]

3. On October 12, 2022, the Bureau released a Public Notice seeking comment on Nagish's application and waiver request.[9] On November 14, 2022, ClearCaptions, LLC, and a coalition of accessibility advocacy and research organizations filed comments.[10] Although neither commenter expressly opposes Nagish's application, AARO argues that all providers of ASR-only IP CTS should be required to offer a CA-assisted mode and to allow users to switch from ASR-only to CA-assisted mode during a call.[11] AARO also restates a general concern regarding the need to establish metrics for IP CTS service quality.[12] ClearCaptions agrees that ASR-only IP CTS does not provide adequate quality of service in all scenarios and should be offered in conjunction with CA-assisted IP CTS.[13] Nagish filed reply comments on November 29, 2022,[14] and a supplemental filing on August 16, 2023.[15]

4. Nagish's platform was tested for caption delay and accuracy by the Commission's National Test Lab (NTL).[16]

(Continued from previous page)
for Individuals with Hearing and Speech Disabilities, CG Docket Nos. 13024, 10-51, and 03-123, Order and Third Protective Order, 33 FCC Rcd 6802, 6803, para. 4 (2018). Although the application seeks certification to provide a dual IP CTS/IP Relay service, this Order addresses only the IP CTS aspect of the application. A subsequent order considering the merits of Nagish's IP Relay offering will be issued at a later time.

[4] Application at 12-13, 16.

[5] *Id.* at 5.

[6] *Id.* at 6-7.

[7] *Id.* at 7.

[8] *Id.*

[9] *Comment Sought on Application of Nagish, Inc., for Certification as a Provider of Internet Protocol Captioned Telephone Service and Internet Protocol Relay Service*, CG Docket No. 03-123, Public Notice, DA 22-1090 (CGB 2022).

[10] All comments and reply comments were filed in CG Docket No. 03-123. *See* Comments of ClearCaptions, LLC (ClearCaptions) (rec. Nov. 14, 2022) (ClearCaptions Comments); Hearing Loss Association of America (HLAA), Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), National Association for the Deaf (NAD), and Deaf/Hard of Hearing Technology Rehabilitation Engineering Research Center (DHH-RERC) (collectively, AARO), Comments on the Application of Nagish, Inc. for Certification as a Provider of Internet Protocol Captioned Telephone Service and Internet Protocol Relay Service (rec. Nov. 14, 2022) (AARO Comments).

[11] AARO Comments at 2, 4.

[12] *Id.* at 4.

[13] ClearCaptions Comments at 4. ClearCaptions also raised a number of questions regarding the interaction between Nagish's proposed IP Relay service and its IP CTS service. We do not address those questions here because we are not addressing Nagish's application for certification to provide IP Relay in this Order.

[14] Nagish, Inc., Reply Comments (rec. Nov. 29, 2022) (Nagish Reply Comments).

[15] Amendment to Internet-Based TRS Certification Application of Nagish, Inc., CG Docket No. 03-123 (filed Aug. 16, 2023).

[16] *See* FCC TRS National Test Lab, Internet Protocol Captioned Telephone Service Testing – Nagish, Version 1.1, CG Docket No. 03-123 (posted by CGB, Oct. 27, 2023) (NTL Test Report). The National Test Lab (NTL) is operated by MITRE Corporation as part of the CMS Alliance to Modernize Healthcare, a Federally Funded
(continued….)

III. CERTIFICATION

5. We conditionally grant the application subject to verification—based on actual operating experience—that Nagish's provision of IP CTS will meet or exceed the minimum TRS standards.[17]

6. *Sufficiency of the Application*. Nagish's application is facially sufficient to satisfy the Commission's certification requirements. The application and supporting information provide a sufficient explanation, with documentary and other evidence, as to how the applicant will provide IP CTS and meet all minimum standards relevant to consideration of its application.[18] Nagish also provides a description of its complaint procedures, confirmation that it will file annual compliance reports demonstrating continued compliance with the TRS rules, and a verification statement from a senior executive as to the accuracy and completeness of the information provided.[19] Further, as discussed below, the application and supporting information, including the results of independent testing of caption delay and accuracy,[20] sufficiently support Nagish's specific claims regarding its use of ASR and the efficacy of such use in meeting the Commission's minimum TRS standards for speed of answer, service continuity, caption delay, accuracy, readability, verbatim transcription, privacy, and emergency call handling.[21]

7. *Speed of Answer*. Nagish has made a sufficient showing that with its chosen ASR technology, it will meet or exceed the minimum TRS standards relating to speed of answer.[22] According to the application, all calls are answered within one second.[23] When the call is connected, the ASR system will immediately begin generating and transmitting captions in real-time.[24] Additionally, Nagish states that the probability of a busy response is functionally equivalent to what a voice caller would experience in attempting to reach a party through the public switched telephone network.[25] It further maintains that there is adequate staffing and network facilities to ensure it can maintain appropriate speed-of-answer times under projected calling volume.[26]

(Continued from previous page)
Research and Development Center sponsored by the Centers for Medicare & Medicaid Services (CMS). *See* CMS Alliance to Modernize Healthcare, Internet Protocol Caption Telephone Service (IP CTS) – Summary of Phase 2 Usability Testing Results (2016), CG Docket Nos. 03-123 and 13-24, at i-ii (posted by CGB, Apr. 11, 2018); CMS Alliance to Modernize Healthcare, Internet Protocol Caption Telephone Service (IP CTS) Devices: Summary of Phase 1 Activities (2017), CG Docket Nos.03-123 and 13-24, at 10 (posted by CGB, Apr. 11, 2018) (NTL Phase 1 Summary).

[17] *See 2011 Internet-based TRS Certification Order*, 26 FCC Rcd at 10914-15, para. 37.

[18] *See* Application at 12-20; 47 CFR § 64.606(a)(2)(ii).

[19] *See* Application at 33-34 (complaint procedures); *id.* at 34 (annual filing); 2023 Amendment (verification).

[20] NTL Test Report.

[21] *See 2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5834-35, para. 63 (noting that applicants to provide ASR-based IP CTS must support all claims regarding their use of ASR and its efficacy). In its comments, ClearCaptions recommends that the Commission review carefully the adequacy of Nagish's ASR platform, the use of artificial intelligence, and quality assurance practices. ClearCaptions Comments at 2-5. AARO similarly recommend that the Commission review carefully the adequacy of Nagish's ability to ensure privacy and quality of service, including with respect to any vendor services. AARO Comments at 2-5. As discussed below, Nagish's application and supporting materials adequately address these issues.

[22] *See* 47 CFR § 64.604(b)(2)(ii) (requiring IP CTS providers to answer 85% of calls within 10 seconds, measured daily).

[23] Application at 17.

[24] *Id.* at 14.

[25] *Id.* at 17.

[26] *Id.*

8. *Service Continuity*. We also find that Nagish has demonstrated that it will be able to maintain service continuity in the provision of ASR-only captioning. IP CTS providers must have redundancy features functionally equivalent to the equipment in telephone company central offices.[27] Nagish's application states that the company will operate its service 24 hours per day, every day, and employs an uninterruptible power source for emergency use.[28] The applicant's reliance on multiple ASR vendors[29] provides additional assurance of service continuity.

9. *Caption Speed/Delay*. Nagish sufficiently supports its claim that its ASR platform will transcribe captions in real time and in compliance with the current TRS standards relating to captioning speed or delay.[30] In performance testing by the Commission's National Test Lab (NTL), Nagish's median caption delay for two call scenarios was 1.0 seconds, compared to an aggregate average of 1.8-2.4 seconds for other IP CTS providers.[31] Additionally, NTL testing supports Nagish's assertion that captions will be transcribed in real time and in compliance with the typing speed standard of 60 words per minute.[32]

10. *Accuracy and Readability*. Although the TRS rules do not currently provide quantitative standards for accuracy and readability, the typing, grammar, and spelling of captions must be "competent," and conversations must be transcribed "verbatim," with no intentional alteration of content unless a user specifically requests summarization.[33] We find sufficient record evidence that Nagish's fully automatic IP CTS will meet or exceed the Commission's competence and "verbatim" requirements.

---

[27] *See* 47 CFR § 64.604(b)(4)(ii) ("TRS shall have redundancy features functionally equivalent to the equipment in normal central offices, including uninterruptible power for emergency use.").

[28] Application at 17.

[29] *Id.* at 6-7.

[30] Caption speed is typically measured based on the time that elapses, i.e., the delay, between transmission of speech and transmission of the associated caption(s). *See* NTL Phase I Summary at 6. Currently, there is no quantitative standard for IP CTS caption speed or delay *per se*. However, captions must be delivered "fast enough so that they keep up with the speed of the other party's speech," and "if captions are not keeping up with the speech (although a short delay is inevitable), at some point the provider is no longer offering relay service and the call is not compensable." *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Internet-based Captioned Telephone Service*, CG Docket No. 03-123, Declaratory Ruling 22 FCC Rcd 379, 388-89, para. 22 & n.69 (2007) (*2007 IP CTS Declaratory Ruling*). In addition, the typing speed standard for text-based TRS applies to ASR-based IP CTS. *See id.* at 388, para. 22 n.69; 47 CFR § 64.604(a)(1)(iii) (requiring TRS CAs to have a minimum typing speed of 60 words per minute). Based on the test results and other evidence discussed in the text, Nagish has shown not only that it will meet this standard but also that it will "keep up with the speed of the other party's speech." *2007 IP CTS Declaratory Ruling*, 22 FCC Rcd at 388, para. 22. On October 2, 2020, the Commission released a Further Notice of Proposed Rulemaking seeking comment on adopting metrics for IP CTS accuracy and caption delay. *Misuse of Internet Protocol (IP) Captioned Telephone Service*; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 13-24, 03-123, and 10-51, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 35 FCC Rcd 10866, 10896-903, paras. 62-81 (2020) (*IP CTS Metrics Notice*).

[31] NTL Test Report at 2.

[32] Nagish has redacted its claimed words-per-minute upper limit. *See* Application at 13 (confidential version). However, the test calls used in NTL's assessment featured overall speech rates between 89 and 118 words per minute and active speech rates between 156 and 168 words per minute. NTL Test Report, Appx. B at 11, Appx. D at 15. Nagish's performance in these tests confirms that its transcription speed well exceeds 60 words per minute.

[33] 47 CFR § 64.604(a)(1)(ii), (2)(ii). These standards apply to captions generated with the help of ASR. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Declaratory Ruling, 18 FCC Rcd 16121, 16134-35, paras. 37-39 (2003); *2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5832, para. 60.

In testing by NTL, Nagish's Word Error Rate for three call scenarios ranged from 2.1% to 9.6%, comparable to other IP CTS providers' aggregated Word Error Rate results, which averaged from 2.0% to 7.4% in the same call scenarios.[34]

11. *Privacy*. The Commission's confidentiality requirements for TRS call content prohibit the disclosure or retention of call content for any purpose, either locally or in the cloud.[35] In addition, providers must protect the privacy of customer information.[36] Our rules obligate a provider to protect call content and customer information regardless of the specific persons or entities (e.g., CAs, other employees, vendors, or agents) that a provider may designate to handle such information on its behalf.[37] Nagish's application adequately describes how it assesses its vendors and how it protects user call data and other sensitive information.[38]

12. *Emergency Call Handling*. Under the Commission's TRS standard for emergency call handling, an IP CTS provider must ensure that 911 calls are given priority over non-911 calls.[39] In addition, when responsible for placing or routing voice calls to the public switched telephone network, an IP CTS provider must ensure that the call is routed, and required caller information delivered to the appropriate public safety answering point (PSAP).[40] Nagish sufficiently establishes that it will handle emergency calls in accordance with these rules.[41] According to Nagish, its product routes emergency calls to the appropriate PSAP based on the user's Registered Location information.[42] As a mobile phone app, Nagish's software may also have access to the user's geolocation, if the user grants such permission.[43] Nagish also states that it will prioritize incoming emergency calls over non-emergency calls and will only share information obtained via such calls with emergency call handlers, emergency response or law enforcement personnel, as required.[44]

13. *Response to Additional Concerns Raised in Comments*. Consistent with the Bureau's prior orders granting conditional certification to IP CTS applicants that did not propose to employ any CAs,[45] we decline ClearCaptions' suggestion that we require Nagish to offer CA-assisted IP CTS in

---

[34] NTL Test Report at 2.

[35] *See* 47 CFR § 64.604(a)(2)(i) (prohibiting CAs from disclosing or retaining call content except as authorized by 47 U.S.C. § 605); *see also 2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5832-33, para. 60 (clarifying that rules prohibiting TRS CAs from disclosing the content of a relayed conversation or keeping records of the content beyond the duration of a call apply to ASR-based IP CTS).

[36] *See* 47 CFR § 64.611(j)(1)(xii) (requiring IP CTS providers to maintain the confidentiality of user registration and certification information); 47 CFR §§ 64.2001-64.2011 (restricting disclosure and use of customer proprietary network information); *see also* 47 CFR § 9.14(b)(2)(vi) (limiting disclosure and use of information obtained while handling 911 calls).

[37] *See*, *e.g.*, *2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5832-33, para. 60. As the Commission has noted previously, the use of ASR-only IP CTS can enhance call privacy by eliminating the need for a human CA to listen to a call. *Id*. at 5828, para. 50.

[38] Application at 14-15 (confidential version).

[39] 47 CFR § 9.14(b)(2)(ii).

[40] *Id.* § 9.14(b)(2)(i), (e).

[41] Application at 17-18.

[42] *Id*.

[43] *Id.*

[44] *Id.*

[45] *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Memorandum Opinion and Order, 35 FCC Rcd 4568 (CGB 2020) (*MachineGenius Certification Order*); *Telecommunications Relay Services and Speech-to-Speech Services for*

(continued….)

addition to ASR-only IP CTS.[46] We are bound by the Commission's determination that the capabilities of ASR are sufficient to warrant its recognition as a TRS Fund-supported alternative to CA-assisted IP CTS.[47] For similar reasons, and consistent with prior orders,[48] we also decline AARO's request to require Nagish to provide a means for consumers to choose between CA and ASR modes.[49] Whether to impose such a requirement is a policy determination for the Commission to make.

14. *Conditional Certification*. We grant Nagish certification on a conditional basis, to provide IP CTS for a period not to exceed two years from the effective date of this order, pending further verification based on actual performance that its service complies with the Commission's minimum TRS standards. Because Nagish is a new applicant with no previous experience in the provision of TRS, and will rely solely on fully automatic captioning, we believe the best course is to collect additional information, through observing Nagish's service in operation, to confirm that this service will meet or exceed the minimum TRS standards.[50]

15. To assist the Bureau in its final determination of Nagish's qualifications to provide IP CTS, we require Nagish to provide quarterly reports of consumer complaints, filed with the Commission in the same format and with the same degree of detail required in the log of consumer complaints that providers must file annually with the Commission.[51] The first report shall be due May 1, 2024, and shall cover the period from the commencement of service through March 30, 2024.[52] Each subsequent report shall be filed on the first day of the second month of each calendar quarter and shall cover the preceding calendar quarter. For example, the second report shall be due August 1, 2024, and shall cover the period

(Continued from previous page)
Individuals with Hearing and Speech Disabilities, CG Docket No. 03-123, Memorandum Opinion and Order, 35 FCC Rcd 5635 (CGB 2020) (granting Clarity, LLC conditional certification to provide ASR-only IP CTS) (*Clarity Certification Order*).

[46] ClearCaptions Comments at 4.

[47] *See 2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5828-29, para. 51 (finding that "improvements in accuracy, coupled with ASR's advantages in speed and privacy, have made ASR a viable alternative to the use of human relay intermediaries for [Captioned Telephone Service (CTS)] and IP CTS"); *see also id.* at 5834-35, para. 63 ("Furthermore, while we are seeking more information about ASR technology in the FNPRM portion of this item, we do not agree that an ASR provider cannot be certified until we conduct 'further study' of such data.").

[48] *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Memorandum Opinion and Order, 37 FCC Rcd 5228, para. 3 (CGB 2022) (*Hamilton ASR Order)*; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Memorandum Opinion and Order, 36 FCC Rcd 13241, 13248, para. 18 (CGB 2021) (*CaptionCall ASR Order*); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Memorandum Opinion and Order, 36 FCC Rcd 7246, 7258, para. 24 (CGB 2021) (*ClearCaptions ASR Order*).

[49] *See* ARRO Comments at 5.

[50] *See 2011 Internet-based TRS Certification Order*, 26 FCC Rcd at 10914-15, para. 37 (reserving the right to grant conditional certification "where the Commission, upon initial review of the application, determines that the application facially meets the certification requirements, but that the Commission needs to verify some of the information contained in the application"); *2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5834-35, para. 63 (stating that "no application to provide ASR will be approved unless the applicant demonstrates that the specific ASR technology described in the application meets applicable FCC requirements"); *id*. at 5835, para. 64 (noting that certification of an ASR-only provider may be granted on a conditional basis to enable assessment of an applicant's actual performance).

[51] *See* 47 CFR § 64.604(c)(1); *see also 2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5835, para. 64 (noting that to the extent deemed necessary, certification of a provider may be conditioned on the submission of periodic data to help confirm whether ASR-only IP CTS is providing functionally equivalent service).

[52] Nagish's first report shall specify the date of commencement of service.

from April 1 through June 30, 2024. Nagish shall continue to file reports on a quarterly schedule until the expiration of this conditional certification, or until Commission action granting or denying full certification, whichever occurs earlier.

16. Pending a decision on full certification, the Bureau may request additional information in order to complete our review of Nagish's application, such as the results and protocols for performance tests conducted by Nagish or independent third parties.[53] We also require Nagish to report promptly any changes in the information previously provided to the Commission in its application and supplemental filings, including, for example, any changes in service agreements and suppliers, procedures for registering and screening prospective users, or the manner in which Nagish provides service.

17. Pursuant to this grant of conditional certification, Nagish may provide Fund-supported IP CTS in the manner described in its application, for a period not to exceed two years, pending a final determination of Nagish's qualifications. This conditional certification is issued without prejudice to such final determination, which is dependent on verification of the information provided in Nagish's application and supplemental filings, as well as the additional information provided pursuant to this order, and on the veracity of the applicant's representations that it will provide service in compliance with all pertinent Commission requirements. To assist in reaching a final determination, the Bureau may conduct one or more unannounced site visits to Nagish's premises and may request additional documentation relating to Nagish's provision of IP CTS. Conversion to full certification will be granted if, based on a review of the applicant's documentation and other relevant information, the Commission finds that Nagish is in compliance with applicable Commission rules and orders and is qualified to receive compensation from the Fund for the provision of IP CTS. If, at any time during the period in which Nagish is operating pursuant to this conditional certification, the Commission determines that Nagish has failed to provide sufficient supporting documentation for any of the assertions in its application, determines that any of those assertions cannot be supported, or finds evidence of any apparent rule violation, fraud, waste, or abuse, the Commission will take appropriate action, which may include the denial of Nagish's application. In the event of such denial, Nagish's conditional certification will automatically terminate thirty-five (35) days after such denial.[54]

18. *Preventing Misuse*. We remind Nagish and all other TRS providers that IP CTS is intended to provide a service functionally equivalent to voice telephone service, and must not be provided as a substitute for transcription of in-person meetings or conversations.[55] Further, although our rules do

[53] *See 2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5834-35, para. 63 (citing test results as an example of supporting information an ASR applicant might provide); *Notice of Conditional Grant of Application of Miracom USA, Inc., for Certification as a Provider of Internet Protocol Captioned Telephone Service Eligible for Compensation from the Telecommunications Relay Services Fund*, CG Docket Nos. 03-123, 10-51, and 13-24, Public Notice, 29 FCC Rcd 5105, 5106-10 (CGB 2014) (conditioning a provider's certification on submission of additional information, including quarterly testing and reports) (*Miracom Certification*). With some exceptions, such as speed of answer, the Commission's minimum TRS standards do not currently include quantitative metrics. However, testing with respect to various performance criteria, such as latency and accuracy of captions, may be helpful in the overall evaluation of this application for the purpose of deciding whether to grant full certification. Further, the Commission has proposed to adopt quantified standards for caption delay and accuracy, which, if adopted, would be applicable to all IP CTS providers, including those applying for certification or authorized under conditional certification. *See IP CTS Metrics Notice*, 35 FCC Rcd at 10898-902, paras. 66-77.

[54] *See 2011 Internet-based TRS Certification Order*, 26 FCC Rcd at 10914-15, para. 37.

[55] For example, Communication Access Realtime Translation (CART) is often used to generate captions for live meetings, speeches, and other in-person situations where the provision of TRS Fund-supported relay services is not permitted. *See Miracom Certification*, 29 FCC Rcd at 5110; *see also Structure and Practices of the Video Relay Service Program*; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8618, 8691, para. 180 & n.465 (2013) (explaining that the use of TRS Fund-supported

(continued….)

not prohibit Nagish from enabling its registered users to save the captions as they appear on a device, they do prohibit an IP CTS provider itself from retaining call transcripts or subsequently providing transcripts to IP CTS users beyond the duration of the call.[56] We also remind Nagish that its marketing of this service must conform with the Commission's rules.[57]

19. *Compensation.* Providers of IP CTS are currently compensated under a single formula, in the amount of $1.30 per minute. The Commission has sought comment on modifying this formula and is expected to adopt a revised compensation plan by June 30, 2024.[58] Newly certified IP CTS providers should not assume or expect that the current compensation formula will remain applicable or that any revised formula(s) will necessarily allow them to recover their cost of service, even if they serve a special population or use a new, more expensive method of providing service.[59]

IV. REQUEST FOR WAIVERS

20. For the reasons stated below, the Bureau dismisses Nagish's requests for waiver of certain TRS rules, to the extent that such requests relate to Nagish's provision of IP CTS.[60]

21. *Waiver standard.* A Commission rule may be waived for "good cause shown."[61] In particular, a waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.[62] In addition, we may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.[63] Such a waiver is appropriate if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.[64]

(Continued from previous page)
VRS to substitute for video remote interpreting—a service that is used when an interpreter cannot be physically present to interpret for two or more persons who are in the same location—is not permitted).

[56] *See* 47 CFR § 64.604(a)(2)(i). There is a limited exception applicable only to speech-to-speech services.

[57] *See, e.g.*, 47 CFR § 64.604(c)(8), (c)(11), (c)(13). The Commission has noted that the ease and convenience of using IP CTS, while facilitating its use by people who need it for effective communication, also creates a risk that IP CTS will be used when it is not needed. *See 2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5805, para. 9.

[58] *Internet Protocol Captioned Telephone Service Compensation*; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Misuse of Internet Protocol (IP) Captioned Telephone Service*, CG Docket Nos. 22-408, 03-123, and 13-24, Notice of Proposed Rulemaking and Order on Reconsideration, FCC 22-97 (Dec. 22, 2022) (proposing revised compensation plan for IP CTS); *Internet Protocol Captioned Telephone Service Compensation*; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Misuse of Internet Protocol (IP) Captioned Telephone Services*, CG Docket Nos. 22-408, 03-123, and 13-24, Order, DA 23-1189 (CGB Dec. 20, 2023) (extending the current compensation plan through June 30, 2024, or the effective date of Commission action revising the compensation formula, if earlier).

[59] *See Miracom Certification*, 29 FCC Rcd at 5108 n.19 ("Compensation rates are determined in light of the minimum standards as set by the Commission. Although the Commission may periodically reassess those standards in light of new services and technologies, a TRS provider cannot unilaterally impose a higher standard or secure a higher compensation rate simply by utilizing a new, more expensive method of providing service.").

[60] Application at 12-13, 16.

[61] 47 CFR § 1.3.

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

[63] *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.

[64] *Northeast Cellular*, 897 F.2d at 1166.

22. *Discussion*. Nagish seeks waiver of 47 CFR § 64.604(a)(i)-(iii), which addresses CA qualifications, "to the extent that the rules apply to CAs only."[65] The Bureau has previously held that ASR-only systems are capable of complying with these rules, making waiver unnecessary.[66] Further, as noted above, Nagish has sufficiently shown that its ASR-only service will meet or exceed these standards.

23. Nagish also requests waiver of any technical standards "applicable to CAs that do not apply to fully ASR-based" service offerings.[67] We are not aware of any provisions in section 64.604(b) of the Commission's rules that are applicable to IP CTS and that meet this description.

V. PROCEDURAL MATTERS

24. *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) or 202-418-0432 (TTY).

25. *Additional Information.* For further information regarding this item, please contact Ike Ofobike, Disability Rights Office, Consumer and Governmental Affairs Bureau, at 202-418-1028 or by e-mail to Ike.Ofobike@fcc.gov.

VI. ORDERING CLAUSES

26. 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), 225, sections 0.141, 0.361, 1.3, and 64.606(b)(2) of the Commission's rules, 47 CFR §§ 0.141, 0.361, 1.3, 64.606(b)(2), and the authority delegated by paragraph 60 of the Commission's *2018 ASR Declaratory Ruling*, the application of Nagish, Inc., for certification to provide IP CTS is GRANTED as conditioned in this Order.

27. IT IS FURTHER ORDERED, that the Request for Waiver of Nagish, Inc. is DISMISSED.

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

FEDERAL COMMUNICATIONS COMMISSION

Alejandro Roark, Chief
Consumer and Governmental Affairs Bureau

[65] Application at 13.

[66] *See*, *e.g.*, *MachineGenius Certification Order*, 35 FCC Rcd at 4579, para. 26.

[67] Application at 16. Technical standards are contained in 47 CFR § 64.604(b).

PUBLIC NOTICE

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

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

DA No. 24-13

Report No. SAT-01788 **Friday January 5, 2024**

Satellite Licensing Division and Satellite Programs and Policy Division Information

Actions Taken

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

SAT-AMD-20231205-00302 E S3160 MethaneSAT LLC
Amendment
Withdrawn Effective Date: 12/27/2023

Nature of Service: Earth Exploration Satellite Service

SAT-MOD-20230301-00045 E S2663 Hughes Network Systems, LLC
Modification 04/02/2023 - 02/02/2024
Grant of Authority Effective Date: 12/29/2023

Nature of Service: Fixed Satellite Service

On December 29, 2023, the Satellite Programs and Policy Division granted, with conditions, the request of Hughes Network Systems, LLC for modification of the operating authority for the Spaceway 3 space station by extending the license term until February 2, 2024, and specifying operations at the 56.75° W.L. orbital location instead of the previously authorized 94.95° W.L. orbital location. While at the 56.75° W.L. orbital location, Spaceway 3 operates using the 20.198 GHz (space-to-Earth) and 29.5-29.53 GHz (Earth-to-space) bands for telemetry, tracking, and command.

SAT-STA-20231018-00255 E S2715 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 01/04/2024

Application listed as granted in ICFS to reflect continuing operations pursuant to section 1.62 of the Commission's rules. 47 CFR § 1.62.

SAT-STA-20231027-00265 E S3033 Sirius XM Radio Inc.
Special Temporary Authority
Grant of Authority Effective Date: 01/03/2024

On January 3, 2024, the Satellite Programs and Policy Division granted, with conditions, the request of Sirius XM Radio Inc. for special temporary authority for a period of 30 days to perform testing of SXM-7 at the 85.15° W.L. orbital location using the 2345-2350 MHz (space-to-Earth) Wireless Communications Service (WCS D Block) band and the 7025-7075 MHz (Earth-to-space) feeder link band.

SAT-STA-20231107-00278 E S3083 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 01/04/2024

Application listed as granted in ICFS to reflect continuing operations pursuant to section 1.62 of the Commission's rules. 47 CFR § 1.62.

SAT-STA-20231108-00279 E S2408 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 01/04/2024

Application listed as granted in ICFS to reflect continuing operations pursuant to section 1.62 of the Commission's rules. 47 CFR § 1.62.

SAT-STA-20231116-00285 E S2715 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 01/04/2024

Application listed as granted in ICFS to reflect continuing operations pursuant to section 1.62 of the Commission's rules. 47 CFR § 1.62.

SAT-STA-20231206-00303 E S3032 BlackSky Global LLC
Special Temporary Authority
Effective Date:

On January 5, 2024, the Satellite Programs and Policy Division granted, with conditions, the request of BlackSky Global LLC for special temporary authority for an additional period of up to 30 days to operate the Global 8 satellite while the satellite is at lower altitudes than specified in the license. Specifically, the Division granted special temporary authority to BlackSky to operate in the earth exploration-satellite service and to conduct telemetry, tracking, and command with the Global 8 satellite at altitudes between 340 km and 385 km.

SAT-STA-20231207-00306 E S2408 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 01/04/2024

On January 4, 2024, the Satellite Programs and Policy Division granted, with conditions, special temporary authority to Intelsat License LLC, for an additional period of 30 days, to operate the Intelsat 904 space station with new C-band coverage areas at the 29.5° W.L. orbital location.

SAT-STA-20231207-00307 E S3083 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 01/04/2024

On January 4, 2024, the Satellite Programs and Policy Division granted, with conditions, the request of Intelsat License LLC, for special temporary authority for an additional period of 30 days, to operate the Galaxy 34 satellite at the 129.0° W.L. orbital location with new seasonal coverage in the 3700-4200 MHz (space-to-Earth) and 5925-6425 MHz (Earth-to-space) bands.

SAT-STA-20231218-00319 E S2715 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 01/04/2024

On January 4, 2024, the Satellite Programs and Policy Division granted, with conditions, special temporary authority to Intelsat License LLC, for an additional period of up to 30 days, to operate the Galaxy 17 space station's Ku-band beams over a new coverage area from the 85.0° W.L. orbital location. Galaxy 17 operates in the fixed-satellite service using the 11.7-12.2 GHz (space-to-Earth) and 14.0-14.5 GHz (Earth-to-space) bands, and uses the following center frequencies for telemetry, tracking, and command: 4197.125 MHz and 4198.875 MHz (space-to-Earth), and 5925.5 MHz and 6424.5 MHz (Earth-to-space).

SAT-STA-20231221-00324 E S2663 Hughes Network Systems, LLC

Special Temporary Authority

Withdrawn Effective Date: 01/02/2024

SAT-STA-20240103-00005 E S2912 Planet Labs PBC

Special Temporary Authority

Effective Date:

On January 5, 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 band (Earth-to-space) using different duty cycles than specified in its license.

INFORMATIVE

SAT-STA-20231208-00309 S3017 Hughes Network Systems, LLC

The Satellite Programs and Policy Division has designated the above-captioned proceeding as "permit-but-disclose" for purposes of the Commission's rules governing ex parte communications, effective January 5, 2024. We find that designating this proceeding as "permit-but-disclose" will serve the public interest by facilitating the resolution of broad policy issues raised by the application. See 47 CFR §§ 1.1200(a), 1.1206 and 1.1208 note 2.

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

PUBLIC NOTICE

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

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

DA 24-14
Released: January 5, 2043

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

WC Docket No(s). 23-393 & 23-394

Comments Due: January 22, 2024

Unless otherwise specified, the following procedures and dates apply to the application(s) (the Section 214 Discontinuance Application(s)) listed in the Appendix.

The Wireline Competition Bureau (Bureau), upon initial review, has found the Section 214 Discontinuance Application(s) listed herein to be acceptable for filing and subject to the procedures set forth in Section 63.71 of the Commission's rules.[1] The application(s) request authority, under section 214 of the Communications Act of 1934, as amended,[2] and section 63.71 of the Commission's rules,[3] to discontinue, reduce, or impair certain domestic telecommunications service(s) (Affected Service(s)) in specified geographic areas (Service Area(s)) as applicable and as fully described in each application.

In accordance with section 63.71(f) of the Commission's rules, the Section 214 Discontinuance Application(s) listed in the Appendix will be deemed granted automatically on **February 5, 2024**, the 31st day after the release date of this public notice, unless the Commission notifies any applicant(s) that their grant will not be automatically effective.[4] We note that the date on which an application for Commission authorization is deemed granted may be different from the date on which applicants are authorized to discontinue, reduce, or impair service ("Authorized Date"). Any applicant whose application has been deemed granted may discontinue, reduce or impair their Affected Service(s) in their Service Area(s) on or after the authorized date(s) specified in the Appendix, in accordance with their filed representations. Accordingly, pursuant to section 63.71(f), and the terms outlined in each application, absent further Commission action, each applicant may discontinue, reduce or impair the Affected Service(s) in the Service Area(s) described in their application on or after the authorized discontinuance date(s) listed in the Appendix for that application. For purposes of computation of time when filing a petition for reconsideration, application for review, or petition for judicial review of the Commission's decision(s), the date of "public notice" shall be the later of the auto grant date stated above in this Public Notice, or the release date(s) of any further public notice(s) or order(s) announcing final Commission

[1] 47 CFR § 63.71.

[2] 47 U.S.C. § 214.

[3] 47 CFR § 63.71.

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

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

Comments objecting to any of the applications listed in the Appendix must be filed with the Commission on or before **January 22, 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 are reminded that memoranda summarizing the presentation must (1) list all persons attending or

---

[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*.

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): Level 3 Telecom of North Carolina, LP**
WC Docket No. 23-393, Comp. Pol. File No. 1876
Link – https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2223-393*%22))
Affected Service(s) – Business Line Service, VersiPak Lines and Trunks Service, VersiPakFlex T Service and VersiPak Power T Service, VersiPak Flex T-12, VersiPak Flex T-24, VersiPak Power T-12, VersiPak IPRI Service, VersiPak Mach 2 Service and VersiPak Mach 3
Service Area(s) – Greensboro, Thomasville, and Winston Salem, North Carolina
Authorized Date(s) – on or after February 6, 2024
Contact(s) – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau

2) **Applicant(s): Level 3 Telecom of Kansas City, LLC**
WC Docket No. 23-394, Comp. Pol. File No. 1877
Link – https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2223-394*%22))
Affected Service(s) – Business Line Service, Channel 12, VersiPak Lines and Trunks Service, VersiPakFlex T Service and VersiPak Power T Service, VersiPak Flex T-12, VersiPak Flex T-24, VersiPak Power T-12, VersiPak IPRI Service, VersiPak Mach 2 Service and VersiPak Mach 3
Service Area(s) – Lenexa and Overland Park, Kansas and Kansas City and Riverside, Missouri
Authorized(s) – on or after February 6, 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 24-15
Released: January 5, 2024

MEDIA BUREAU ANNOUNCES COMMENT AND REPLY COMMENT DEADLINES FOR THE CABLE OPERATOR AND DBS PROVIDER BILLING PRACTICES NPRM

MB Docket No. 23-405

Comment Date: February 5, 2024
Reply Comment Date: March 5, 2024

On December 14, 2023, the Commission released a *Notice of Proposed Rulemaking* (*NPRM*) that sought comment on a proposal to "to adopt customer service protections that prohibit cable operators and direct broadcast satellite (DBS) service providers from imposing early termination fees (ETFs) and billing cycle fees (BCFs) on subscribers."[1] The Commission set deadlines for filing comments and reply comments in response to the *NPRM* at 30 and 60 days, respectively, after publication of the *NPRM* in the Federal Register.[2]

A summary of the *NPRM* was published in the Federal Register on January 5, 2024.[3] Accordingly, comments will be due on or before February 5, 2024 and reply comments on or before March 5, 2024. Commenters should follow the filing instructions provided in paragraph 26 of the *NPRM*.[4] The *NPRM* is available on the Commission's website.[5]

For additional information, contact Katie Costello. Policy Division, Media Bureau at katie.costello@fcc.gov or (202) 418-2233.

- FCC -

[1] *Promoting Competition in the American Economy: Cable Operator and DBS Provider Billing Practices,* Notice of Proposed Rulemaking, MB Docket No. 23-405, FCC 23-106, para. 1 (rel. December 14, 2023) (footnotes omitted).

[2] *Id*. at 1.

[3] 89 FR 740 (January 5, 2024).

[4] *See NPRM* at para. 26.

[5] *See* https://www.fcc.gov/document/fcc-proposes-rules-eliminate-video-service-junk-fees.

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

In the Matter of	)	
	)	
American Electric Power Service Corporation's Request for Waiver of Section 90.621(b)	)	WT Docket No. 23-390
	)	

ORDER GRANTING EXTENSION OF TIME

Adopted: January 5, 2024 **Released: January 5, 2024**

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

1. On January 3, 2024, American Electric Power Service Corporation (AEP) filed a Motion for Extension of Time seeking an extension of the reply comment deadline in the above captioned proceeding by 7 days.[1] By this Order, for the reasons stated below, the Wireless Telecommunications Bureau grants an extension of the reply comment deadline by 7 days to January 12, 2024.

2. On June 8, 2023, AEP filed an application requesting waiver of section 90.621(b) of the Federal Communications Commission's (Commission) rules.[2] On November 21, 2023, the Commission released a *Public Notice* seeking comment on this waiver request application and announcing a comment due date of December 21, 2023 and a reply comment due date of January 5, 2024.[3] On December 21, 2023, the Government Wireless Technology & Communications Association (GWTCA) filed a comment opposing AEP's waiver request application.

3. AEP seeks a 7-day extension of the reply comment deadline, stating that it became aware of the comment from GWTCA "during the Christmas holidays at which time the relevant AEP personnel were on leave."[4] AEP indicates that the relevant staff members are currently working "to review the Opposition" and seeks an "extension to prepare a responsive filing."[5] In its motion, AEP notes that this extension "will not adversely impact any party" and that it "has advised counsel for [GWTCA] orally of this extension request."[6]

4. We grant a 7-day extension of time to file reply comments in this proceeding. As set forth in section 1.46 of the Commission's rules, the Commission does not routinely grant extensions of time for filing reply comments.[7] In this case, however, we agree that a 7-day extension is warranted due to the intervening Christmas and New Years Day holidays. Providing a 7-day extension will allow AEP

[1] Motion of American Electric Power Service Corporation for Extension of Time, WT Docket No. 23-390, at 1 (filed Jan. 3, 2024), https://www.fcc.gov/ecfs/search/search-filings/filing/1010358792919 (AEP Motion for Extension of Time).

[2] American Electric Power Service Corporation, ULS File No. 0010577631 (filed June 8, 2023), https://wireless2.fcc.gov/UlsApp/ApplicationSearch/applMain.jsp?applID=14102475.

[3] *Wireless Telecommunications Bureau Seeks Comment on American Electric Power Service Corporation's Request for Waiver of Section 90.621(b)*, WT Docket No. 23-390, Public Notice, DA 23-1084, 2023 WL 8614340, at *1 (WTB Nov. 21, 2023).

[4] AEP Motion for Extension of Time at *1.

[5] *Id.*

[6] *Id.* at *1–2.

[7] 47 CFR § 1.46.

to provide a meaningful response to GWTCA.

5. Accordingly, **IT IS SO ORDERED** that, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and sections 0.131, 0.204, 0.331, and 1.46 of the Commission's Rules, 47 CFR §§ 0.131, 0.204, 0.331, and 1.46, the Motion for Extension of Time filed by American Electric Power Service Corporation on January 3, 2024 **IS GRANTED**.

6. **IT IS FURTHER ORDERED** that the deadline to file reply comments in this proceeding **IS EXTENDED** to January 12, 2024.

FEDERAL COMMUNICATIONS COMMISSION

Roger Noel
Chief
Mobility Division
Wireless Telecommunications Bureau

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-17
Released: January 8, 2024

BROADCAST STATION TOTALS AS OF DECEMBER 31, 2023

The Commission has announced the following totals for broadcast stations licensed as of December 31, 2023:

AM STATIONS	4,444	
FM COMMERCIAL	6,663	
FM EDUCATIONAL	4,286	
TOTAL		**15,393**
UHF COMMERCIAL TV	1,016	
VHF COMMERCIAL TV	364	
UHF EDUCATIONAL TV	267	
VHF EDUCATIONAL TV	116	
TOTAL		**1,763**
CLASS A UHF STATIONS	349	
CLASS A VHF STATIONS	30	
TOTAL		**379**
FM TRANSLATORS & BOOSTERS	8,927	
UHF TRANSLATORS	2,456	
VHF TRANSLATORS	665	
TOTAL		**12,048**
UHF LOW POWER TV	1,561	
VHF LOW POWER TV	317	
TOTAL		**1,878**
LOW POWER FM	1,967	
TOTAL		**1,967**
TOTAL BROADCAST STATIONS		**33,428**

- FCC -

Federal Communications Commission
Washington, D.C. 20554

January 05, 2024

DA 24-18

SMALL ENTITY COMPLIANCE GUIDE

The Commission's Rules Regarding Caller ID Authentication, Call Blocking, and Appeals of the STIR/SHAKEN Governance Authority Token Revocation Decisions

FCC 23-18; WC Docket No. 17-97; Adopted March 16, 2023
FCC 22-37; WC Docket No. 17-97 & CG Docket No. 17-59; Adopted May 19, 2022
FCC 21-122; WC Docket No. 17-97; Adopted December 9, 2021
FCC 21-93; WC Docket Nos. 17-97 & 21-291; Adopted August 5, 2021

In accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996, this Small Entity Compliance Guide (Guide) is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the rules adopted in the above-referenced Federal Communications Commission (FCC or Commission) rulemaking dockets. This Guide is not intended to replace or supersede these rules, but to facilitate compliance with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide cannot anticipate all situations in which the rules apply. Furthermore, the Commission retains the discretion to adopt case-by-case approaches, where appropriate, that may differ from this Guide. Any decision regarding a particular small entity will be based on the statute and any relevant rules.

In any civil or administrative action against a small entity for a violation of rules, the content of the Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties, or damages. Interested parties are free to file comments regarding this Guide in the above-referenced proceeding and the appropriateness of its application to a particular situation. The Commission will then consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The Commission may decide to revise this Guide without public notice to reflect changes in its approach to implementing a rule or it may clarify or update the text of the Guide. Direct your comments, recommendations, or request for further assistance to the FCC's Consumer Center:

1-888-CALL-FCC (1-888-225-5322);
Videophone: 1-844-4-FCC-ASL (1-844-432-2275)
Fax: 1-866-418-0232

TABLE OF CONTENTS

I. INTRODUCTION 1
II. OBJECTIVES OF THE MARCH 2023 PROCEEDING 1
III. BACKGROUND 1
IV. COMPLIANCE REQUIREMENTS 2
A. Definitions 2
B. Traceback Request Responses by Gateway Providers 3
C. Know Your Upstream Provider Requirements 3
D. Gateway Provider Blocking Requirements Upon Notification of Illegal Traffic 4
E. Gateway Provider Blocking Requirements Based on a Do-Not-Originate (DNO) List 5
F. Caller ID Authentication by Intermediate Providers 6
G. Caller ID Authentication in Non-IP Networks 6
H. Extension of STIR/SHAKEN Implementation Deadline 6
I. Robocall Mitigation 7
J. Certification in the Robocall Mitigation Database 7
K. Intermediate and Voice Service Provider Obligations 9
L. Review of Governance Authority Decision to Revoke an SPC Token 10
M. Public Safety Safeguards 11
N. Enforcement Tools and Obligations 11
V. RECORDKEEPING AND REPORTING REQUIREMENTS 12
VI. EFFECTIVE DATES 13
VII. INTERNET LINKS 13

I. INTRODUCTION

This Small Entity Compliance Guide (Guide) summarizes rules and technological standards the Federal Communications Commission (Commission) adopted in the following orders that were released between August 2021 and March 2023 in its efforts to combat illegal robocalls: 1) *Sixth Report and Order and Further Notice of Proposed Rulemaking (Sixth Report and Order)* adopted March 2023; 2) *Call Authentication Trust Anchor Third Report and Order* adopted in August 2021; 3) *Call Authentication Trust Anchor Fourth Report and Order* (*Small Provider Order*) adopted in December 2021; and 4) *Call Authentication Trust Anchor Fifth Report and Order* (*Gateway Provider Order*) adopted in May 2022.

In the *Sixth Report and Order*, the Commission adopted additional requirements that strengthen and expand the STIR/SHAKEN caller ID authentication framework. Widespread deployment of the STIR/SHAKEN framework will reduce the effectiveness of illegal call spoofing, allow law enforcement to identify bad actors more easily, and help phone companies identify calls with illegally spoofed caller ID information before those calls reach their subscribers. The *Sixth Report and Order* builds upon previous Commission orders summarized below, with the goal of protecting consumers from illegally spoofed robocalls. Links to each order can be found in Section VII of this Guide.

II. OBJECTIVES OF THE MARCH 2023 PROCEEDING

The *Sixth Report and Order* strengthens and expands caller ID authentication requirements in the STIR/SHAKEN ecosystem by requiring non-gateway intermediate providers that receive unauthenticated calls directly from an originating provider to use STIR/SHAKEN to authenticate those calls. Second, the *Sixth Report and Order* expands robocall mitigation requirements for all providers, including those that have not yet implemented STIR/SHAKEN because they lack the necessary infrastructure or are subject to an implementation extension. Third, the Commission defines and clarifies the STIR/SHAKEN obligations of satellite providers. Finally, the *Sixth Report and Order* empowers the Enforcement Bureau with new tools to impose penalties that will hold providers accountable for failing to comply with the Commission's rules.

III. BACKGROUND

In 2020, the Commission adopted the first two orders implementing its call authentication rules pursuant to the Telephone Robocall Abuse Criminal Enforcement and Deterrence (TRACED) Act,[1] including requiring voice service providers to adopt caller ID authentication technological standards known as "STIR/SHAKEN."[2] The Commission issued subsequent orders, summarized below, that strengthened and expanded these rules starting in 2021 with the *Call Authentication Trust Anchor Third Report and Order*, followed by the *Small Provider Order* and the *Gateway Provider Order*.

[1] Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105 (2019) (codified in 47 U.S.C. § 227b) (TRACED Act).

[2] Secure Telephone Identity Revisited (STIR) and Signature-based Handling of Asserted Information Using toKENs (SHAKEN) standards. *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 (2020) (*Caller ID Authentication First Report and Order*); *Call Authentication Trust Anchor*, WC Docket No. 17-97, Second Report and Order, 36 FCC Rcd 1859 (2020) (*Caller ID Authentication Second Report and Order*).

***Call Authentication Trust Anchor Third Report and Order*.**[3] The August 2021 *Call Authentication Trust Anchor Third Report and Order* (*Third Report and Order*) established a procedure for voice service providers and intermediate providers to appeal to the Commission when their Service Provider Code (SPC) token has been revoked by the private Governance Authority (GA) that oversees the STIR/SHAKEN framework. The *Third Report and Order* also set rules for when a provider must update its Robocall Mitigation Database submission to reflect a revocation. Rules adopted in the *Third Report and Order* became effective September 30, 2021.

***Call Authentication Trust Anchor Fourth Report and Order* (*Small Provider Order*).**[4] In December 2021, the *Small Provider Order* shortened the STIR/SHAKEN implementation deadline for small voice service providers with 100,000 or fewer subscriber lines by one year, i.e., no later than June 30, 2022, based on evidence that non-facilities-based small voice service providers were originating a high and increasing share of illegal robocalls relative to their subscriber base.[5] In addition, voice service providers suspected of originating illegal robocalls must implement STIR/SHAKEN within 90 days of an Enforcement Bureau determination following a summary process. Rules adopted in the *Small Provider Order* became effective February 24, 2022.

***Call Authentication Trust Anchor Fifth Report and Order* (*Gateway Provider Order*)**.[6] The May 2022 *Gateway Provider Order* required all gateway providers, not subject to certain continuing extensions in the Commission's rules, to authenticate with STIR/SHAKEN all Session Initiation Protocol (SIP) calls carrying U.S. North American Numbering Plan (NANP) numbers in the caller ID field by June 30, 2023. The *Gateway Provider Order* also required gateway providers to adopt specific robocall mitigation practices, such as responding to traceback requests within 24 hours, blocking substantially similar traffic when notified by the Commission of illegal traffic as well as calls from numbers on a "reasonable" do-not-originate list, and implementing "know-your-upstream provider" procedures. Rules adopted in the *Gateway Provider Order* became effective September 23, 2022.

IV. COMPLIANCE REQUIREMENTS

The Commission adopted definitions, key components, and dates for the compliance requirements in the *Third Report and Order*, *Small Provider Order*, *Gateway Provider Order*, and the *Sixth Report and Order*. The order that adopted or modified each rule is denoted in parentheses following each rule.

A. Definitions (47 CFR §§ 64.1200; 64.6300) (amended in the Small Provider Order, Gateway Provider Order, and Sixth Report and Order)

The Commission adopted several new definitions applicable to the Restrictions on Telemarketing, Telephone Solicitation, and Facsimile Advertising (Subpart L), and to Caller ID Authentication (Subpart HH) of part 64 of the Commission's rules:

---

[3] *Call Authentication Trust Anchor, Appeals of the STIR/SHAKEN Governance Authority Token Revocation Decisions*, WC Docket Nos. 17-97 and 21-291, Third Report and Order, 36 FCC Rcd 12878 (2021) (*Caller ID Authentication Third Report and Order*).

[4] *Call Authentication Trust Anchor*, WC Docket No. 17-97, Fourth Report and Order, 36 FCC Rcd 17840 (2021) (*Small Provider Order*).

[5] *Call Authentication Trust Anchor, Third Further Notice of Proposed Rulemaking*, WC Docket No. 17-97, 36 FCC Rcd 8827, 8830-32, paras. 6, 8-10 (2021) (citing data submitted in the record and Federal Trade Commission enforcement actions).

[6] *Call Authentication Trust Anchor*, CG Docket No. 17-59, WC Docket No. 17-97, Sixth Report and Order in CG Docket No. 17-59, Fifth Report and Order in WC Docket No. 17-97, Order On Reconsideration in WC Docket No. 17-97, 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, FCC 22-37 (2022) (*Gateway Provider Order*).

- Gateway provider is defined as "a U.S.-based intermediate provider that receives a call directly from a foreign originating provider or foreign intermediate provider at its U.S.-based facilities before transmitting the call downstream to another U.S.-based provider."
- U.S.-based is defined as a provider with "facilities in the United States, including a point of presence capable of processing the call."
- Receives a call directly is defined as the "foreign provider directly upstream of the gateway provider in the call path sent the call to the gateway provider, with no providers in-between."
- Intermediate provider is defined as "any entity that carries or processes traffic that traverses or will traverse the public switched telephone network at any point insofar as that entity neither originates nor terminates that traffic."
- Non-facilities-based small voice service provider is defined as "a small voice service provider that is offering voice service to end-users solely using connections that are not sold by the provider or its affiliates."
- Non-gateway Intermediate provider is defined as "any entity that is an intermediate provider" and "that is not a gateway provider" as those terms are defined above.

B. Traceback Request Responses by Gateway Providers (47 CFR § 64.1200(n)(1)) (amended in the *Gateway Provider Order*)

Gateway providers must (1) cooperatively participate with the industry traceback consortium; and (2) respond fully within 24 hours to all traceback requests it receives from the Commission, civil and criminal law enforcement, and the industry traceback consortium regarding calls for which it acts as a gateway provider.

The 24-hour clock does not start outside of business hours, and requests received during that time are deemed received at 8:00 a.m. on the next business day. If the 24-hour response period would end on a non-business day, either a weekend or a federal legal holiday, the 24-hour clock does not run for the weekend or holiday in question, and restarts at 12:01 a.m. on the next business day following when the request would otherwise be due. Business hours is defined as 8:00 a.m. to 5:30 p.m. on a business day. All times are local time for the office that is required to respond to the request.

C. Know Your Upstream Provider Requirements (47 CFR § 64.1200(n)(4)) *(*adopted in the *Gateway Provider Order*)

Gateway providers must take reasonable and effective steps to ensure that the immediate upstream foreign provider is not using the gateway provider to carry or process a high volume of illegal traffic onto the U.S. network.[7]

[7] A subsequent item, *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, FCC 23-37 (May 19, 2023) (*Seventh Report and Order*), redesignates this requirement as 47 CFR § 64.1200(n)(5) as part of other rule modifications. These changes will be covered in a subsequent Small Entity Compliance Guide.

D. Gateway Provider Blocking Requirements Upon Notification of Illegal Traffic (47 CFR § 64.1200(n)(5)-(6))[8] (adopted in the *Gateway Provider Order*)

Gateway providers properly notified must block illegal traffic and any substantially similar traffic on an ongoing basis (unless its investigation determines that the traffic is not illegal) when it receives actual written notice of such traffic by the Commission through its Enforcement Bureau. The gateway provider will not be held liable under the Communications Act or the Commission's rules if they inadvertently block lawful traffic as part of the requirement to block substantially similar traffic so long as it is blocking consistent with these requirements.

Notifications of Suspected Illegal Traffic. These notices shall: (1) identify with as much particularity as possible the suspected illegal traffic; (2) provide the basis for the Enforcement Bureau's reasonable belief that the identified traffic is unlawful; (3) cite the statutory or regulatory provisions the suspected illegal traffic appears to violate; and (4) direct the provider receiving the notice that it must comply with section 64.1200(n)(5) of the Commission's rules.

- Notifications shall specify a timeframe of no fewer than 14 days for an identified gateway provider to comply with the notice.
- Each notified provider must promptly investigate the identified traffic and report the results of that investigation to the Enforcement Bureau within the timeframe specified in the Notification.
- If the investigation determines that the provider serves as a gateway provider for the identified traffic, it must block the identified traffic within the timeframe specified in the Notification and include in its report to the Enforcement Bureau:
    - Certification that it is blocking the identified traffic and will continue to do so; and
    - A description of its plan to identify and block substantially similar traffic on an ongoing basis.
- If the provider's investigation determines that the identified traffic is not illegal, it shall provide an explanation as to why the provider reasonably concluded that the identified traffic is not illegal and what steps it took to reach that conclusion. Absent such a showing, or if the Enforcement Bureau determines based on the evidence that the traffic is illegal despite the provider's assertions, the identified traffic will be deemed illegal.
- If the notified provider determines during this investigation that it did not serve as the gateway provider for any of the identified traffic, it shall provide an explanation as to how it reached that conclusion and, if it is a non-gateway intermediate or terminating provider for the identified traffic, it must identify the upstream provider(s) from which it received the identified traffic and, if possible, take lawful steps to mitigate this traffic.
- If the notified provider determines that it is the originating provider for the identified traffic, or the traffic otherwise comes from a source that does not have direct access to the U.S. public switched telephone network, the notified provider must comply with 47 CFR

[8] The *Seventh Report and Order* redesignates 47 CFR § 64.1200(n)(5) as 47 CFR § 64.1200(n)(2) and 47 CFR § 64.1200(n)(6) as 47 CFR § 64.1200(n)(3) as part of other rule modifications. These changes will be covered in a subsequent Small Entity Compliance Guide.

§ 64.1200(n)(2) by effectively mitigating the identified traffic and report to the Enforcement Bureau any steps the provider has taken to effectively mitigate the identified traffic.

- If the Enforcement Bureau finds that an approved plan is not blocking substantially similar traffic, the identified provider shall modify its plan to block such traffic.
- If the Enforcement Bureau finds that the identified provider continues to allow suspected illegal traffic onto the U.S. network, it may proceed under § 64.1200(n)(5)(ii) or (iii) as appropriate.

Initial Determination Order. The Enforcement Bureau may issue an Initial Determination Order to the gateway provider stating the gateway provider is not in compliance with section 64.1200(n)(5) in the following circumstances:

- The provider fails to respond to the Notification of Suspected Illegal Traffic;
- The Enforcement Bureau determines that the response is insufficient,
- The gateway provider is continuing to allow substantially similar traffic onto the U.S. network after the timeframe specified in the Notification of Suspected Illegal Traffic, or
- Based on the evidence, the traffic is illegal despite the provider's assertions.

The Initial Determination Order shall include the Enforcement Bureau's reasoning for its determination and give the gateway provider a minimum of 14 days to provide a final response prior to the Enforcement Bureau making a final determination on whether the provider is in compliance with this section.

Final Determination Order. If the gateway provider does not provide an adequate response to the Initial Determination Order within the timeframe permitted in that Order or continues to allow substantially similar traffic onto the U.S. network, the Enforcement Bureau shall issue a Final Determination Order finding that the gateway provider is not in compliance with this section.

The Final Determination Orders shall be published in EB Docket No. 22-174 at *https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:("22-174"))*. A Final Determination Order may be issued up to one year after the release date of the Initial Determination Order, and may be based on either an immediate failure to comply with this rule or a determination that the gateway provider has failed to meet its ongoing obligation under this rule to block substantially similar traffic.

When the Commission's Enforcement Bureau has notified a gateway provider that it issued a Final Determination Order finding that the gateway provider failed to block as required under section 64.1200(n)(5), any provider immediately downstream from the gateway provider must block and cease accepting all traffic received directly from the identified gateway provider.

The Enforcement Bureau will publish the Final Determination Order in EB Docket No. 22-174 at *https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:("22-174"))*. Providers must monitor EB Docket No. 22-174 and initiate blocking no later than 30 days from the release date of the Final Determination Order. A provider that chooses to initiate blocking sooner than 30 days from the release date may do so consistent with section 64.1200(k)(4).

E. Gateway Provider Blocking Requirements Based on a Do-Not-Originate (DNO) List (47 CFR § 64.1200(o)) (adopted in the *Gateway Provider Order*)

Gateway providers must block calls purporting to originate from a number on at least one reasonable DNO list. Reasonable DNO lists may include only:

- Numbers for which the subscriber to which the number is assigned has requested that calls purporting to originate from that number be blocked because the number is used for inbound calls only;
- NANP numbers that are not valid;
- Valid NANP numbers that are not allocated to a provider by the NANP Administrator; and
- Valid NANP numbers that are allocated to a provider by the NANP Administrator, but are unused, so long as the provider blocking the calls is the allocatee of the number and confirms that the number is unused or has obtained verification from the allocatee that the number is unused at the time of blocking.

Reasonable DNO lists must include at a minimum any inbound-only government numbers where the government entity has requested the number be included and private inbound-only numbers that have been used in imposter scams, when a request is made by the private entity assigned such a number. Gateway providers, or those managing DNO lists, should ensure that entities can reasonably request inclusion on the list.

F. Caller ID Authentication by Intermediate Providers (47 CFR § 64.6302(c) adopted in the *Gateway Provider Order*, 47 CFR § 64.6302(d) adopted in the *Sixth Report and Order*)

By June 30, 2023, unless subject to an extension, a gateway provider must have authenticated caller identification information for all calls it receives using NANP resources that pertain to the U.S. in the caller ID field and for which the caller identification information has not been authenticated and which it will exchange with another provider as a SIP call.

By December 31, 2023, unless subject to an extension, a non-gateway intermediate provider must authenticate caller identification information for all calls it receives directly from an originating provider and for which the caller identification information has not been authenticated and which it will exchange with another provider as a SIP call.

G. Caller ID Authentication in Non-IP Networks (47 CFR § 64.6303(b) adopted in the *Gateway Provider Order,* 47 CFR § 64.6303(c) adopted in the *Sixth Report and Order*)

For the non-IP portions of their network, gateway providers and non-gateway intermediate providers must either (1) upgrade to IP and implement STIR/SHAKEN throughout its network, or (2) work to develop a non-IP caller ID authentication solution. If a provider wishes to comply by meeting the second option, it must maintain and be ready to provide the Commission, on request, documented proof that it is participating (on its own or through a representative, including a third-party representative) as a member of a working group, industry standards group, or consortium that is working to develop or is actively testing a non-IP caller ID authentication solution.

H. Extension of STIR/SHAKEN Implementation Deadline (47 CFR § 64.6304) (adopted in the *Small Provider Order,* amended in the *Gateway Provider Order and the Sixth Report and Order*)

Non-facilities-based small voice service providers were required to comply with the caller ID authentication and related requirements in section 64.6301 by June 30, 2022. The small voice service provider will no longer be exempt from the requirements of STIR/SHAKEN implementation beginning 90 days after the Enforcement Bureau determines that: 1) it notified the small voice service provider of suspected illegal calls and the Enforcement Bureau determines that provider failed to respond in a timely manner or with information requested (including credible evidence that the robocall traffic identified by the Enforcement Bureau is not illegal); 2) the small voice service provider failed to or demonstrate it has

taken steps to effectively mitigate the traffic; or 3) if the Enforcement Bureau determines the small voice service provider violated section 64.1200(n)(2). If the exemption would have terminated earlier than 90 days after the Enforcement Bureau determination, then that earlier termination date will apply.

Like voice service providers, gateway providers and non-gateway intermediate providers that are incapable of obtaining an SPC token due to the GA's token access policy have a STIR/SHAKEN implementation extension that runs until the gateway provider is capable of obtaining an SPC token as long as the provider diligently pursues obtaining the token.[9] Similarly, gateway providers and non-gateway intermediate providers that rely on technology that cannot initiate, maintain, carry, process, and terminate SIP calls are subject to a continuing extension. Small voice service providers that originate calls via satellite using NANP numbers have a continuing STIR/SHAKEN implementation extension.

I. Robocall Mitigation (47 CFR § 64.6305(a)-(c)) (amended in the *Small Provider Order*, *Gateway Provider Order*, and *Sixth Report and Order*)

All providers (i.e., voice service providers, gateway providers, and non-gateway intermediate providers) shall implement an appropriate robocall mitigation program. The program must include:

- Reasonable steps to avoid originating (for a voice service provider), or carrying or processing (for gateway providers and non-gateway intermediate providers) illegal robocall traffic;
- A commitment to respond fully and in a timely manner (for voice service providers and non-gateway intermediate providers) or within 24 hours (for gateway providers) to all traceback requests from the Commission, law enforcement, and the industry traceback consortium; and
- A commitment to cooperate with such entities in investigating and stopping any illegal robocallers that use its service to originate calls (for voice service providers) or carry or process calls (for gateway providers and non-gateway intermediate providers).

J. Certification in the Robocall Mitigation Database (47 CFR § 64.6305(d)-(e)) (adopted in the *Gateway Provider Order,* amended in the *Sixth Report and Order*)

All providers must certify in the Robocall Mitigation Database that all of the calls it originates on its network (if it is a voice service provider) or that it carries or processes on its network (if it is a gateway provider or non-gateway intermediate provider) are subject to a robocall mitigation program, that any prior certification has not been removed by Commission action, that the Commission has not prohibited it from filing in the Robocall Mitigation Database, and to one of the following:

- It has fully implemented the STIR/SHAKEN framework across its entire network, and all the calls it originates are compliant with sections 64.6301(a)(1) and (2) (if it is a voice service provider); or that all the calls it carries or processes are compliant with section 64.6302(b) if (it is a gateway provider or non-gateway intermediate provider);
- It has implemented the STIR/SHAKEN authentication framework on a portion of its network, and all calls it originates on that portion of its network are compliant with sections 64.6301(a)(1) and (2) (if it is a voice service provider), or that all calls that it carries or processes on that portion of its network are compliant with section 64.6302(b) (if it is a gateway provider or non-gateway intermediate provider); or
- It has not implemented STIR/SHAKEN on any portion of its network.

All providers must include the following information in its certification in English or with a certified English translation:

[9] *Gateway Provider Order*, para. 61; *Caller ID Authentication Sixth Report and Order*, para. 48.

- Identification of the type of extension or extensions the provider received under section 64.6304, if the provider is not a foreign provider, and the basis for the extension or extensions, or an explanation of why it is unable to implement STIR/SHAKEN due to a lack of control over the network infrastructure necessary to implement STIR/SHAKEN;

- The specific reasonable steps the provider has taken to avoid originating (if it is a voice service provider), or carrying or processing (if it is a gateway provider or non-gateway intermediate provider), illegal robocalls as part of its robocall mitigation program.

    - If it is a voice service provider, how it complies with its obligation to know its customers and take affirmative, effective measures to prevent new and renewing customers from originating illegal calls under section 64.1200(n). If it is a gateway provider, how it complies with its obligation to know its upstream providers under section 64.1200(n).

    - To comply with the requirement to describe their "new and renewing customer" and "know your upstream provider" procedures, providers must "describe any contractual provisions with end-users or upstream providers designed to mitigate illegal robocalls."[10]

    - All providers must describe any procedures in place to know its upstream providers, and the analytics systems it uses to identify and block illegal traffic, including whether it uses any third-party analytics vendors and the names of such vendors.

- A statement of the provider's commitment to respond fully and in a timely manner (if it is a voice service provider or non-gateway intermediate provider) and within 24 hours (if it is a gateway provider) to all traceback requests from the Commission, law enforcement, and the industry traceback consortium, and to cooperate with such entities in investigating and stopping any illegal robocallers that use its service to originate (if it is a voice service provider) or to carry or process calls (if it is a gateway or non-gateway intermediate provider); and

- A statement whether, at any time in the prior two years, the entity submitting the certification (and/or any entity for which the filing entity shares common ownership, management, directors, or control) has been the subject of a formal Commission, law enforcement, or regulatory agency action or investigation with accompanying findings of actual or suspected wrongdoing due to the filing entity transmitting, encouraging, assisting, or otherwise facilitating illegal robocalls or spoofing, or a deficient Robocall Mitigation Database certification or mitigation program description; and, if so, provide a description of any such action or investigation, including all law enforcement or regulatory agencies involved, the date that any action or investigation was commenced, the current status of the action or investigation, a summary of the findings of wrongdoing made in connection with the action or investigation, and whether any final determinations have been issued.

    - This requirement is limited to reporting formal actions and investigations that have been commenced or issued pursuant to a written notice or other instrument containing findings by the law enforcement or regulatory agency that the filing entity has been or is suspected of the illegal activities itemized above, including, but not limited to, notices of apparent liability, forfeiture orders, state or federal civil lawsuits or criminal indictments, and cease-and-desist notices.[11]

All providers must also file the following information in the Robocall Mitigation Database:

[10] *Caller ID Authentication Sixth Report and Order*, para. 40.

[11] *Id.* at para. 47.

- The provider's business name and primary address.
- Other business names in use by the provider.
- All business names previously used by the provider.
- Whether the provider and/or its affiliate is a foreign voice service provider.
- The name, title, department, business address, telephone number, and email address of one person within the company responsible for addressing robocall-mitigation related issues.
- Whether the provider is:
    - A voice service provider with a STIR/SHAKEN implementation obligation directly serving end users.
    - A voice service provider with a STIR/SHAKEN implementation obligation acting as a wholesale provider originating calls on behalf of another provider or providers.
    - A voice service provider, gateway provider, or non-gateway intermediate provider without a STIR/SHAKEN implementation obligation.
    - A gateway provider or non-gateway intermediate provider with a STIR/SHAKEN implementation obligation.
- The provider's Operating Company Number (OCN), if it has one.
- Information regarding the provider's principals, affiliates, subsidiaries, and parent companies in sufficient detail to facilitate the Commission's ability to determine whether the provider has been prohibited from filing in the Robocall Mitigation Database.[12]

All providers shall update their filings within 10 business days of any change to the foregoing information and update their filing following an SPC token revocation by the GA by the later of:

- the expiration of the 30-day period for appeal to the GA;
- following the completion of GA's final review process;
- the expiration of the 60-day period for appeal to the Commission; or
- 10 business days after the Wireline Competition Bureau releases a final decision.

All certifications shall be filed in the Robocall Mitigation Database and signed by a company officer pursuant to 47 CFR § 1.16. A provider who previously submitted plans with respect to STIR/SHAKEN rules that were not in English or submitted with an English translation must have updated its plans no later than January 26, 2023.[13] Providers may request confidential treatment of their filings, consistent with the Commission's existing confidentiality requirements.[14]

K. Intermediate and Voice Service Provider Obligations (47 CFR § 64.6305(g)(2)-(g)(4)) (adopted in the *Sixth Report and Order*)

Providers shall accept calls directly from a domestic voice service provider, only if that voice service provider's filing appears in the Robocall Mitigation Database and that filing has not been de-listed pursuant to an enforcement action.

---

[12] *Id.* at para. 46.

[13] *Gateway Provider Order*, para. 38.

[14] *Id.* para. 36; *Caller ID Authentication Sixth Report and Order*, para. 49.

Providers shall accept calls directly from a foreign voice service provider or foreign intermediate provider that uses NANP resources that pertain to the United States in the caller ID field to send voice traffic to residential or business subscribers in the United States only if that foreign provider's filing appears in the Robocall Mitigation Database and that filing has not been de-listed from the Robocall Mitigation Database due to an enforcement action.

Providers shall accept calls directly from a gateway provider, only if the gateway provider's filing appears in the Robocall Mitigation Database showing that the gateway provider has affirmatively submitted the filing, and that filing has not been de-listed pursuant to an enforcement action.

Providers shall accept calls directly from a non-gateway intermediate provider, only if that non-gateway intermediate provider's filing appears in the Robocall Mitigation Database showing that the non-gateway intermediate provider affirmatively submitted the filing, and that filing has not been de-listed pursuant to an enforcement action. The compliance date of this obligation for non-gateway intermediate providers will be no sooner than 90 days following the deadline established by the Wireline Competition Bureau notice for non-gateway intermediate providers to file a certification in the Robocall Mitigation Database.[15]

L. Review of Governance Authority Decision to Revoke an SPC Token (47 CFR §§ 64.6308, 0.91(r)) (adopted in the *Third Report and Order*)

Any provider (i.e., a voice service provider or intermediate provider) aggrieved by a Governance Authority (GA) decision to revoke that provider's token must first seek review from the GA and exhaust that process prior to seeking Commission review. A provider requesting Commission review of a GA decision shall file such a request within 60 days of the GA's final decision upholding a token revocation, and such request must be filed electronically in WC Docket No. 21-291 through the Commission's Electronic Comment Filing System (ECFS), and must be captioned "In the matter of Request for Review by (name of party seeking review) of Decision of the GA to Revoke an SPC Token." The process for filing oppositions and replies to oppositions to the appeal must follow 47 CFR § 1.45.

A copy of the request for review with the Commission must be served on the GA by the provider requesting review at sti-ga@atis.org or in accordance with any alternative delivery mechanism the GA establishes in its procedures. The request for review must contain:

- A statement setting forth the provider's asserted basis for appeal of the GA revocation decision;
- A full statement of the relevant, material facts with supporting affidavits and documentation, including any background information the provider deems useful to the Commission's review; and
- The question presented for review, with reference, where appropriate, to any underlying Commission rule or GA policy.

The Wireline Competition Bureau has authority to rule on the request for review in accordance with 47 CFR § 0.91(r) and the provider can seek review of the Wireline Competition Bureau's decision pursuant to 47 CFR § 1.115. Except in extraordinary circumstances, the Wireline Competition Bureau's decision should be expected no later than 180 days from the date the request for review is filed in ECFS. The Wireline Competition Bureau has discretion to pause the 180-day period in situations where actions outside of its control are responsible for delaying the review. The Wireline Competition Bureau must conduct *de novo* review of the GA decision.

[15] *Caller ID Authentication Sixth Report and Order*, para. 50.

Following a GA token revocation decision, a provider will not be considered out of compliance with the Commission's caller ID authentication rules until the later of:

- the expiration of the 30-day period for appeal to the GA;
- completion of the GA's final review process upholding the revocation; or
- where the provider has sought timely Commission review of a GA decision to revoke the provider's SPC token, until and unless the Wireline Competition Bureau has upheld or otherwise decided not to overturn the GA's decision.

The effective date of Commission action may not be stayed without an order by the Wireline Competition Bureau or Commission pursuant to 47 CFR §§ 1.102(b) and 1.106(n). Following revocation by the GA, and unless and until the revocation is reversed, the provider may not maintain possession and use of its token, and will not be able to continue to exchange STIR/SHAKEN-authenticated traffic during the pendency of an appeal.[16] A provider that relies on a delegated token from another entity may seek a waiver for a limited period if the token that it relies upon is revoked.[17]

M. Public Safety Safeguards (47 CFR §§ 64.1200(k)(5), (k)(6), and 64.6305(g)(5)) (amended in the *Gateway Provider Order, Sixth Report and Order*)

Providers must follow public safety safeguards when blocking calls under 47 CFR §§ 64.1200(k)(1)-(4), (1), (n)(5)-(6), (o) and 64.6305(e). A provider may not block a voice call if the call is an emergency call to 911 and must make all reasonable efforts to ensure that it does not block any calls from public safety answering points and government emergency numbers.

N. Enforcement Tools and Obligations (47 CFR §§ 1.80, 0.111) (amended in the *Small Provider Order*, *Gateway Provider Order, Sixth Report and Order*)

In the *Gateway Provider Order* and *Caller ID Authentication Sixth Report and Order,* the Commission adopted a number of several enforcement tools and obligations on providers. Specifically, it:

- Established a per-call maximum forfeiture amount of $23,727 for violations of the robocall blocking rules.[18]
- Concluded that gateway providers and non-gateway intermediate providers can be removed from the Robocall Mitigation Database or subject to other penalties if they file a deficient robocall mitigation plan, knowingly or negligently carry or process illegal robocalls, or accept calls from a provider not listed in the Robocall Mitigation Database or that has been de-listed through enforcement action.[19]
- Established a process for removal of all providers' filings from the Robocall Mitigation Database where they are found to be "facially deficient."[20]
    - Under that process, if the Enforcement Bureau believes that a filing is facially deficient, it will: (1) issue a notice to the provider explaining the basis for its conclusion and provide

[16] *Id.* at para. 28.

[17] *Id.* at para. 14

[18] 47 CFR § 1.80(b)(9)-(12).

[19] *Gateway Order*, para. 40; *Caller ID Authentication Sixth Report and Order*, para. 50; 47 CFR § 0.111(a)(28).

[20] *Caller ID Authentication Sixth Report and Order*, paras. 59-64.

an opportunity for the provider to cure the deficiency or explain why its certification is not deficient within 10 days; and

- (2) if the deficiency is not cured or the provider fails to establish that there is no deficiency within that 10-day period, the Enforcement Bureau will issue an order removing the provider from the Robocall Mitigation Database.

- Concluded that it may use its existing authority to revoke section 214 operating authority, or other provider authorizations, licenses, and/or instruments, for repeated violations of the robocall mitigation rules.[21]
  - The robocall mitigation rules include the specific obligations to:
    - Implement a robocall mitigation program that includes specific "reasonable steps" to mitigate illegal robocalls and comply with the steps outlined in the plan;
    - Submit a certification describing the mitigation program to the Robocall Mitigation Database;
    - Not accept traffic from providers not in the Robocall Mitigation Database; and
    - Authenticate calls under the Commission's caller ID authentication rules.
- Once an authorization, license, and/or instrument is revoked, the Commission will consider the public interest impact of that revocation when deciding whether to grant other future Commission authorizations, licenses, or certifications to that same entity, as well as the individual company owners, directors, officers, and principals (either individuals or entities) of such entities.

V. RECORDKEEPING AND REPORTING REQUIREMENTS

The *Gateway Provider Order* and the *Caller ID Authentication Sixth Report and Order* contain rules with new or modified information collection and reporting requirements as discussed in Section IV above. Both orders require each gateway or non-gateway intermediate provider to: (1) upgrade its non-IP networks to IP so that the STIR/SHAKEN authentication framework may be implemented, or (2) work to develop a non-IP authentication solution. To satisfy the latter option, a provider must, upon request, provide the Commission documented proof that it is participating, either on its own or through a representative, as a member of a working group or consortium that is working to develop a non-IP solution, or actively testing such a solution.

Gateway Provider Order. In addition to the requirements above, all gateway providers must describe in the Robocall Mitigation Database the specific reasonable steps taken to avoid carrying or processing illegal robocalls including how they are meeting their obligation to know their upstream provider. Gateway providers are also required to submit similar information to the Robocall Mitigation Database as voice service providers with a Robocall Mitigation Database filing requirement. The Commission clarified that voice service providers and gateway providers are required to submit all information in English or with a certified English translation. All gateway providers must also respond to traceback requests fully and within 24 hours and block calls based on at least one reasonable DNO list.

Caller ID Authentication Sixth Report and Order. In addition to the requirements above, all providers, including those that had already fully implemented STIR/SHAKEN and those that lack control over the network infrastructure necessary to implement STIR/SHAKEN, are required to submit a certification and robocall mitigation plan to the Robocall Mitigation Database. All Robocall Mitigation

[21] *Id.* at paras. 66-73; 47 CFR § 0.111(a)(29).

Database filers, including existing filers subject to new or modified requirements, must provide additional information on mitigation plans and make additional certifications with their filings.[22]

VI. EFFECTIVE DATES

- The *Caller ID Authentication Third Report and Order* became effective on September 30, 2021.
- The *Small Provider Order* became effective on February 24, 2022.
- The *Gateway Provider Order* became effective on September 23, 2022. Compliance with certain rules from the *Gateway Provider Order* became effective upon Office of Management and Budget's (OMB) approval of information collection requirements under the Paperwork Reduction Act (PRA). This includes compliance with amendments to 47 CFR § 64.1200(n)(1), required by September 23, 2022, and compliance with 47 CFR § 64.1200(o), required by December 19, 2022. Compliance with amendments to 47 CFR §§ 64.6303(b), 64.6305(b), 64.6305(c)(2) and 64.6305(d) was required by January 11, 2023, and compliance with amendments to 47 CFR § 64.6305(e)(2) and (e)(3) was required by April 11, 2023.
- The *Caller ID Authentication Sixth Report and Order* became effective on August 21, 2023, except for the amendments to 47 CFR §§ 64.6303(c) and 64.6305(d), (e), (f), and (g), which are pending OMB's approval of information collection requirements under the PRA. These rules shall become effective after the Wireline Competition Bureau publishes a public notice in the Federal Register announcing OMB's approval and the relevant effective date(s).

VII. INTERNET LINKS

A copy of the *Caller ID Authentication Third Report and Order* is available at: https://docs.fcc.gov/public/attachments/FCC-21-93A1.pdf.

A copy of the Federal Register Summary of the *Caller ID Authentication Third Report and Order* is available at: https://www.govinfo.gov/content/pkg/FR-2021-08-31/pdf/2021-18765.pdf.

A copy of the *Small Provider Order* is available at: https://docs.fcc.gov/public/attachments/FCC-21-122A1.pdf.

A copy of the Federal Register Summary of the *Small Provider Order* is available at: https://www.govinfo.gov/content/pkg/FR-2022-01-25/pdf/2022-01244.pdf.

A copy of the *Gateway Provider Order* is available at: https://docs.fcc.gov/public/attachments/FCC-22-37A1.pdf.

A copy of the Federal Register Summary of the *Gateway Provider Order* is available at: https://www.govinfo.gov/content/pkg/FR-2022-08-24/pdf/2022-18148.pdf. https://www.govinfo.gov/content/pkg/FR-2022-07-18/pdf/2022-13878.pdf

A copy of the Public Notice announcing compliance dates of the amendments to 47 CFR 64.6300 *et seq*. from the *Gateway Provider Order* that were pending PRA review is available at: https://docs.fcc.gov/public/attachments/DA-22-1303A1.pdf.

[22] *Caller ID Authentication Sixth Report and Order*, paras. 38-49.

A copy of the Federal Register Notice announcing the compliance date of the amendments to 47 CFR 64.1200(n)(1) from the *Gateway Provider Order* that were pending PRA review is available at: https://www.govinfo.gov/content/pkg/FR-2022-08-24/pdf/2022-18148.pdf.

A copy of the Federal Register Notice announcing the compliance date of the amendments to 47 CFR 64.1200(o) from the *Gateway Provider Order* that were pending PRA review is available at: https://www.govinfo.gov/content/pkg/FR-2022-11-18/pdf/2022-25148.pdf.

A copy of the *Caller ID Authentication Sixth Report and Order* is available at: https://docs.fcc.gov/public/attachments/FCC-23-18A1.pdf.

A copy of the Federal Register Summary of the *Caller ID Authentication Sixth Report and Order* is available at: https://www.govinfo.gov/content/pkg/FR-2023-06-21/pdf/2023-12142.pdf.

A copy of the Caller ID Authentication Rules (47 CFR § 64.6300 *et seq*.) is available at: https://www.ecfr.gov/current/title-47/chapter-I/subchapter-B/part-64#subpart-HH.

A copy of the Call Blocking Rules (47 CFR 64.1200 *et seq*.) is available at: https://www.ecfr.gov/current/title-47/chapter-I/subchapter-B/part-64/subpart-L.

PUBLIC NOTICE

Federal Communications Commission
45 L Street N.E.
Washington, DC 20554

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

DA 24-19
Released: January 9, 2024

WIRELINE COMPETITION BUREAU SEEKS COMMENT ON THE NATIONAL EXCHANGE CARRIER ASSOCIATION, INC.'S PROPOSED MODIFICATION OF AVERAGE SCHEDULE FORMULAS

WC Docket No. 23-415

Comment Date: February 8, 2024

Reply Comment Date: February 23, 2024

By this Public Notice, the Wireline Competition Bureau (Bureau) seeks comment from interested parties on the proposed modification of average schedule formulas that the National Exchange Carrier Association, Inc. (NECA) filed on December 21, 2023.[1] Pursuant to section 69.606 of the Commission's rules, NECA proposes to revise the formulas for average schedule interstate settlement disbursements in connection with the provision of interstate access services for the one-year period beginning July 1, 2024, through June 30, 2025.[2]

Filing Requirements. Interested parties may file comments on or before the dates indicated above.[3] All filings must refer to **WC Docket No. 23-415**.

- Electronic Filers: Comments may be filed electronically using the Commission's online Electronic Comment Filing System (ECFS): https://www.fcc.gov/ecfs/.[4]
- 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 at its headquarters. This is a temporary measure taken to

[1] 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).

[2] *See id*.; 47 CFR § 69.606(b).

[3] *See* 47 CFR §§ 1.415 and 1.419.

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

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

Availability of Documents. Comments, reply comments, and *ex parte* submissions will be publicly available online via ECFS.[6]

Ex Parte Rules. The proceeding is considered a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[7] Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

For further information, please contact Christopher Koves, Wireline Competition Bureau, Pricing Policy Division, at (202) 418-1520 or via email at Christopher.Koves@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 (OMD 2020), https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.

[6] Documents will generally be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

[7] 47 CFR §§ 1.1200 *et seq*.

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

In the Matter of	)	
	)	
BPO Innovate	)	EB-TCD-23-00035608
	)	

ORDER

Adopted: January 9, 2024 **Released: January 9, 2024**

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. By this Order, the Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission or FCC) directs BPO Innovate (BPO Innovate or Company) to demonstrate why the Bureau should not remove BPO Innovate from the Robocall Mitigation Database (RMD). BPO Innovate's RMD filing is deficient because (1) it failed to respond to traceback requests from the industry traceback consortium, which is contrary to its certification in the RMD, and (2) the document it filed in the RMD as its purported robocall mitigation plan does not describe the specific reasonable steps the Company has taken to avoid originating illegal robocall traffic. **Removal from the database would require all voice service providers and intermediate providers to cease accepting traffic directly from the Company.**[1] BPO Innovate must provide its response to this Order to the Bureau no later than 14 days after this Order is released.

II. BACKGROUND

2. The Commission may remove a voice service provider's filing from the RMD that it finds "deficient in some way."[2] To do so, the Commission first contacts the provider, notifying it that its filing is deficient, explaining the nature of the deficiency, and providing 14 days for the provider to cure the deficiency.[3] If the provider fails to cure the deficiency, the Bureau will release an order concluding that a provider's filing is deficient based on the available evidence. The order will direct the provider to—within 14 days—cure the deficiency in its filing and explain why the Bureau should not remove the Company's certification from the RMD.[4] If the provider fails to cure the deficiency or provide a sufficient explanation why its filing is not deficient within that 14-day period, the Bureau will release an order removing the provider from the RMD.[5]

[1] 47 CFR § 64.6305(g)(1).

[2] *See Call Authentication Trust Anchor*, WC Docket No. 17-97, Second Report and Order, 36 FCC Rcd 1859, 1902-03, para. 83 (2020) (*Second Caller ID Authentication Order*).

[3] *Call Authentication Trust Anchor*, WC Docket No. 17-97, Sixth Report and Order and Further Notice of Proposed Rulemaking, FCC 23-18, 2023 WL 2582652, at *21, para. 60 (Mar. 17, 2023) (*Sixth Caller ID Authentication Order*).

[4] *Id.* (quoting *Global UC Inc*, Removal Order, 37 FCC Rcd 13376, 13378, para. 5 (EB 2022)).

[5] *Id.*

3. BPO Innovate is a voice service provider.[6] It filed its RMD certification with the FCC on March 25, 2022.[7] The certification contained a declaration under penalty of perjury that some of the Company's traffic was subject to a robocall mitigation program.[8] It further committed—also under penalty of perjury—to "respond to all traceback requests from the Commission, law enforcement, and the industry traceback consortium."[9] BPO Innovate received numerous traceback requests from the Industry Traceback Group (ITG).[10] To date, and contrary to its RMD certification, BPO Innovate has not responded to any of these traceback requests.[11]

4. BPO Innovate's RMD certification also purported—under penalty of perjury—to attach a document detailing "the specific reasonable steps it has taken to avoid originating illegal robocall traffic as part of its robocall mitigation program."[12] The document uploaded by BPO Innovate as an attachment to its RMD certification as its purported robocall mitigation plan is actually a letter from the Internal Revenue Service (IRS) notifying the Company it had been assigned an Employer Identification Number.[13] Despite the Company's sworn certification, this document does not identify any specific reasonable steps BPO Innovate has taken to avoid originating illegal robocall traffic as part of its robocall mitigation program.[14]

III. DISCUSSION

A. BPO Innovate's Certification Is Deficient Because the Company Failed to Respond to Traceback Requests

5. The Commission's rules require a voice service provider to respond to all traceback requests from the Commission, law enforcement, and ITG "fully and in a timely manner[.]"[15] In addition, a voice service provider that certifies in the RMD that it has partially implemented the STIR/SHAKEN

---

[6] *See* BPO Innovate Listing (No. RMD0010872), Fed. Commc'ns Comm'n, Robocall Mitigation Database (filed Mar. 25, 2022), https://fccprod.servicenowservices.com/rmd?id=rmd_form&table=x_g_fmc_rmd_robocall_mitigation_database&sys_id=3717e6841b620d10aa3cea41f54bcb38&view=sp (Robocall Mitigation Database Filing) (indicating it is a voice service provider).

[7] *Id.*

[8] *Id.* ("The filer certifies that . . . some of the voice traffic that originates on its network is authenticated with STIR/SHAKEN, and the remainder of the voice traffic that originates on its network is subject to a robocall mitigation program.").

[9] *Id.*

[10] *See* ITG, BPO Innovate Traceback Report (on file in EB-TCD-23-00035608) (Traceback Report). The Industry Traceback Group is the registered traceback consortium. *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). BPO Innovate should have a record of each traceback request to which it has not responded, but if the Company would like to obtain a record of those requests it may contact EnforcementBureauTCD@fcc.gov.

[11] *See* Traceback Report.

[12] Robocall Mitigation Database Filing, *supra* note 6.

[13] *Id.* (click on "Download PDF" button).

[14] *See id*.

[15] 47 CFR § 64.1200(n)(1)(i) (2022). Effective January 8, 2024, section 64.1200(n)(1) was amended by the Commission in May 2023 to require a provider to fully respond to a traceback request within 24 hours of receipt of the request. *See* Advanced Methods to Target and Eliminate Unlawful Robocalls, Call Authentication Trust Anchor, 88 Fed. Reg. 43446, 43458 (July 10, 2023).

caller ID authentication framework on its network certifies that "it commits to respond fully and in a timely manner to all such traceback requests."[16]

6. BPO Innovate was obligated, as a voice service provider, to respond to tracebacks fully and in a timely manner.[17] Moreover, BPO Innovate certified in the RMD that it "commits to respond to all traceback requests from the Commission, law enforcement, and the industry traceback consortium."[18] BPO Innovate has not responded the traceback requests it has received.[19] BPO Innovate's sworn RMD certification that it will "respond to all traceback requests" is plainly inaccurate and therefore its RMD certification is deficient.[20]

B. BPO Innovate's Certification Is Deficient Because the Company Failed to Sufficiently Describe Its Robocall Mitigation Program

7. The Commission's rules require a voice service provider to "implement an appropriate robocall mitigation program."[21] A voice service provider that certifies that some or all of the calls that originate on its network are subject to a robocall mitigation program also certifies that "the attached document details the specific reasonable steps it has taken to avoid originating illegal robocall traffic as part of its robocall mitigation program."[22]

8. BPO Innovate is obligated, as a voice service provider to implement a robocall mitigation program.[23] BPO Innovate also certified that some of its traffic was subject to a robocall mitigation program[24] and that the document attached to its certification "details the reasonable steps it has taken to avoid originating illegal traffic as part of that robocall mitigation program."[25] The attachment BPO Innovate provided—an irrelevant letter from the IRS—does not remotely satisfy this requirement. Accordingly, BPO Innovate's RMD certification is deficient.[26]

C. BPO Innovate Must Cure or Face Removal from the RMD and Widespread Call Blocking

9. The Bureau contacted the Company on September 29, 2023, to inform it that its certification was deficient because the Company failed to respond to traceback requests and the robocall

---

[16] *See, e.g.*, Robocall Mitigation Database Filing, *supra* note 6; *see also* 47 CFR § 64.6305(c)(2)(iii) (2022) (rule establishing the certification requirement). Effective August 21, 2023, section 64.6305 was amended to, among other things, redesignate paragraph (c) as paragraph (d). *See* Call Authentication Trust Anchor, 88 Fed. Reg. 40096, 40118 (June 21, 2023).

[17] 47 CFR § 64.1200(n)(1)(i) (2022).

[18] Robocall Mitigation Database Filing, *supra* note 6, para. 2.

[19] *See* Traceback Report, *supra* note 10, para. 2.

[20] Robocall Mitigation Database Filing, *supra* note 6, para. 2.

[21] 47 CFR § 64.6305(a)(1).

[22] Robocall Mitigation Database Filing, *supra* note 6, para. 2; *see also* 47 CFR § 64.6305(c)(2)(ii) (2022) (establishing the certification requirement).

[23] 47 CFR § 64.6305(a)(1).

[24] Robocall Mitigation Database Filing, *supra* note 6, para. 2.

[25] *Id*.

[26] *See Sixth Caller ID Authentication Order*, *supra* note 3, at *21, para. 61 ("A certification is 'facially deficient' where the provider fails to submit a robocall mitigation plan within the meaning of our rules. That is, it fails to submit any information regarding the 'specific reasonable steps' it is taking to mitigate illegal robocalls."). The Commission has adopted an expedited procedure for removal of facially deficient certifications. *See id*. at *21-22, paras. 59-64. The Bureau reserves the right to use that expedited removal procedure whenever applicable in the future.

mitigation plan attached to its certification did not satisfy the Commission's requirements, and advised the Company it had 14 days to cure.[27] The Bureau's notice asked BPO Innovate to respond fully to the traceback requests and any future traceback requests, and upload a compliant Robocall Mitigation Plan.[28] The Bureau did not receive a response from BPO Innovate, and BPO Innovate did not cure the identified deficiencies.

10. The Bureau directs BPO Innovate to explain why the Bureau should not remove the Company's certification from the RMD.[29] This Order affords BPO Innovate notice and an opportunity to cure its deficiencies by: (a) responding fully to all of the traceback requests (and thereafter responding fully and in a timely manner to any future traceback requests) in accordance with its certification and as required by section 64.1200(n)(1) of the Commission's rules;[30] and (b) amending its filing in the RMD to attach a robocall mitigation plan that meets the requirements of section 64.6305(d)(2) of the Commission's rules, including the specific reasonable steps the Company has taken to avoid originating illegal robocall traffic.[31] Alternatively, the Company may explain why its certification is not deficient.[32]

11. BPO Innovate shall file its response with the Bureau within fourteen (14) calendar days of the date of this Order.[33] Failure to respond and correct the deficiencies, or provide a sufficient explanation for why BPO Innovate should retain its certification in the RMD will result in removal of the certification and accompanying filing.[34] **Removal of BPO Innovate's certification from the RMD will require all voice service providers and intermediate providers to cease accepting calls directly from BPO Innovate.**[35] If BPO Innovate is removed from the RMD, it shall not be permitted to refile until both the Bureau and the Wireline Competition Bureau determine that BPO Innovate has addressed and resolved any deficiencies in its RMD certification.

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to sections 4(i), 4(j), 227, 251(e), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 227, 251(e), 403; sections 0.111, 0.311, 1.1, 64.1200, and 64.6305 of the Commission's rules, 47 CFR §§ 0.111, 0.311, 1.1, 64.1200, 64.6305, this Order is **ADOPTED.**

13. **IT IS FURTHER ORDERED** that BPO Innovate **SHALL FILE** a written response to this Order **within fourteen (14) calendar days** from the release date of this Order. The written response must either inform the Bureau that BPO Innovate has corrected the deficiencies in its RMD certification or explain why its certification should not be removed from the RMD.

14. The response must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, ATTN: Enforcement Bureau – Telecommunications Consumers Division. The response must also be e-mailed to Kristi Thompson,

---

[27] Letter from Loyaan A. Egal, Chief, Enforcement Bureau, to BPO Innovate at Exhibit A (Sept. 29, 2023).

[28] *Id.*

[29] *See Second Caller ID Authentication Order*, *supra* note 2, at 1903, para. 83 ("Enforcement Actions may include, among others, removing a defective certification from the database after providing notice to the voice service provider and an opportunity to cure the filing . . . .").

[30] 47 CFR § 64,1200(n)(1).

[31] *Id*. § 64.6305(d)(2).

[32] The Bureau warns the Company that the Bureau will not entertain arguments that the submission of an inapposite IRS tax document in lieu of a substantive robocall mitigation plan somehow fulfilled the Company's obligations.

[33] *See Sixth Caller ID Authentication Order*, *supra* note 3, at *21, para. 60.

[34] *See id.*

[35] 47 CFR § 64.6305(g)(1).

Division Chief, Telecommunications Consumers Division, at kristi.thompson@fcc.gov, and Alexander Hobbs, Attorney Advisor, Telecommunications Consumers Division, at alexander.hobbs@fcc.gov.

15. **IT IS FURTHER ORDERED** that copies of this Order shall be sent by email and registered mail, return receipt requested, to: BPO Innovate, sales@bpoinnovate.com, 31 Myrte Ave., Keansburg, NJ 07734.

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

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Chief
Enforcement Bureau

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

In the Matter of	)	
	)	
Wireless Emergency Alerts	)	PS Docket No. 15-91
	)	
Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System	)	PS Docket No. 15-94

ORDER

Adopted: January 9, 2024 **Released: January 9, 2024**

By the Deputy Chief, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. In this Order, the Federal Communications Commission's (Commission) Public Safety and Homeland Security Bureau (Bureau) grants the waiver request submitted by Alert SouthBay, a regional alert and warning program encompassing fifteen cities in the South Bay region of Los Angeles County, California.[1] Alert SouthBay requests a waiver of the Commission's Wireless Emergency Alerts (WEA) rules to permit Participating Commercial Mobile Service (CMS) Providers[2] to participate in an end-to-end WEA test received by the public by default, scheduled for January 9, 2024, at 11:20 a.m. Pacific Standard Time (PST).[3]

2. Based on the circumstances discussed below, we find that waiver of the Commission's rules would serve the public interest. Accordingly, we grant the Alert SouthBay's waiver request to conduct an end-to-end WEA test using a WEA alert category that is received by the pubic by default, i.e., either an Imminent Threat Alert or a Public Safety Message, as outlined in 47 C.F.R. § 10.400.[4] The WEA will be transmitted to all members of the public with WEA-capable devices by default, subject to certain conditions.

II. BACKGROUND

3. WEA allows authorized government entities to send geographically-targeted emergency alerts to commercial wireless subscribers who have WEA-capable mobile devices and whose commercial mobile service providers are Participating CMS Providers.[5] The Commission's current rules prohibit use

[1] *See* Letter Sonya Sutherlin, Regional Alert and Warning Administrator, Alert SouthBay, to Federal Communications Commission (Jan. 8, 2024) (on file in Docket Nos. 15-91 and 15-94) (Alert SouthBay Letter). The fifteen cities in the program are the Cities of Inglewood, El Segundo, Manhattan Beach, Hermosa Beach, Redondo Beach, Torrance, Hawthorne, Gardena, Lomita, Lawndale, Carson, Palos Verdes Estates, Rancho Palos Verdes, Rolling Hills, and Rolling Hills Estates. Alert SouthBay Letter at 1

[2] Participating CMS Providers are commercial mobile service providers that have elected voluntarily to transmit WEA alert messages. 47 CFR §§ 10.10(d), (f). The WEA rules are set forth in Part 10 of the Commission's rules. *See generally* 47 CFR § 10.1, *et seq.*

[3] Alert SouthBay Letter at 1.

[4] *See* 47 CFR § 10.400 (b) and (d).

[5] *Commercial Mobile Alert System*, PS Docket No. 07-287, Third Report and Order, 23 FCC Rcd 12561, 12575, para. 32 (2008) (stating the requirements for wireless providers volunteering to participate in WEA).

of the WEA Attention Signal except during actual emergencies, authorized tests, and certain public service announcements.[6] The Commission's current rules allow WEA end-to-end tests that reach the public only when the test is conducted using the State/Local WEA Test category.[7] State/Local WEA Tests differ from actual WEAs in the following ways: Consumers will not receive State/Local WEA Tests by default; instead, consumers must affirmatively opt in to receive these WEA test alert messages.[8] Further, tests conducted using the State/Local WEA Test category must include conspicuous language sufficient to make it clear to the public that the WEA alert message is only a test.[9] As of December 19, 2019, alert originators wishing to conduct end-to-end WEA tests using the State/Local WEA Test category do not need to request a waiver from the Commission to permit WEA test alerts using the State/Local WEA Test category to be transmitted to the public.[10]

4. On October 19, 2023, the Commission adopted rules to require Participating CMS Providers to support up to two end-to-end WEA tests, per county (or county equivalent), per year, that consumers receive by default.[11] Under these adopted rules, in advance of conducting such a "WEA Performance and Public Awareness Test," an alerting authority must do the following: 1) conduct outreach and notify the public in advance of the planned WEA test and that no emergency is, in fact, occurring; 2) include in its test message that the alert is "only a test"; 3) coordinate the test among Participating CMS Providers that serve the geographic area targeted by the test, state, local, and Tribal emergency authorities, relevant State Emergency Communications Committees (SECCs), and first responder organizations; and 4) provide notification to the public in widely accessible formats that the test is only a test and is not a warning about an actual emergency.[12] These rules will become effective within 30 days of the Federal Register's publication of notice that OMB has completed its review of the *2023 WEA Accessibility Report and Order*'s information collection requirements.[13]

5. Alert SouthBay requests waiver of the Commission's rules to allow Participating CMS

---

[6] 47 CFR § 10.520(d). The Attention Signal is a loud, attention-grabbing, two-tone audio signal that uses frequencies and sounds identical to the attention signal used by the EAS. *Compare* 47 CFR § 10.520 *with* 47 CFR § 11.31(a)(2). On October 19, 2023, the Commission adopted an order that requires "Participating CMS Providers to support up to two end-to-end WEA tests, per county (or county equivalent), per year, that consumers receive by default." *But see Wireless Emergency Alerts; Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System*, PS Docket Nos. 15-91 and 15-94, Third Report and Order, FCC 23-88, at para. 35 (2023) (*2023 WEA Accessibility Report and Order*) (adopting rules to allow WEA Performance and Public Awareness Testing). This rule, however, has not yet become effective. *See 2023 WEA Accessibility Report and Order*, at paras. 40, 74.

[7] 47 CFR § 10.350. Specifically, the Commission's rules require Participating CMS Providers to participate in monthly tests initiated by the Federal Emergency Management Agency and in periodic tests of WEA's C-Interface. *Id.* On November 1, 2016, the Commission adopted a Report and Order that amended the WEA testing rules to permit emergency managers to conduct end-to-end WEA tests to the public to assess how WEA is working within their jurisdictions. *See Wireless Emergency Alerts; Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 11112, 11154-57, paras. 65-68 (2016) (*WEA R&O*).

[8] *WEA R&O*, 31 FCC Rcd at 11154-55, para. 65 (requiring Participating CMS Providers to provide their subscribers with the option to receive State/Local WEA Tests, whereby subscribers must affirmatively select the option to receive State/Local WEA Test messages).

[9] *Id.* (requiring State/Local WEA Test messages to include conspicuous language sufficient to make clear to the public that the message is only a test).

[10] *Id.*

[11] *See 2023 WEA Accessibility Report and Order*, at paras. 35-40 .

[12] *Id.* at 21-22, para. 35.

[13] *Id.* at 25, para. 40.

Providers to participate in its proposed end-to-end WEA test, which will be received by the public by default.–The geographic area is located along the southern California coastline and surrounded by five oil refineries. In addition to being in an area at high risk for fire,[14] the area includes a variety of topographies including the Palos Verde Peninsula, which is experiencing rapid land movement.[15] These land movements have resulted in the evacuation of approximately 20 homes in one community last summer.[16] Another 300 homes are in areas that could warrant evacuation at any time.[17]

6. The purpose of this regional test is to help ensure that WEAs continue to be an effective way to warn the public about emergencies, particularly those on the regional level,[18] and to better understand how WEA performs in the SouthBay area.[19] Alert SouthBay explains that there is limited cellular coverage in the test area, and the test will help identify whether and, if so, where there are gaps in WEA coverage.[20] To that end, in connection with the test, Alert SouthBay will include a survey on its website (www.alertsouthbay.com) that the public can complete to provide information about where and how they received the WEA test message. This information will help SouthBay identify whether an alternate means of alerting people is necessary to reach those who may not receive a WEA during an emergency, e.g., where there is limited or no cell coverage.[21]

7. The Alert SouthBay Letter also describes the community outreach it has done. They distributed a press release about the test at city council meetings, on their social media page, as well as with each city's social media pages. Los Angeles County OEM has also shared information about the test with area partners and county entities. Local papers have also provided information about the test.[22]

8. Alert SouthBay will send a 360- and 90-character length WEA test message, in both English and Spanish:

- Alert SouthBay: Wireless Emergency Alert TEST. NO ACTION NEEDED. Visit www.alertsouthbay.com
- Alert SouthBay- THIS IS A TEST of the Alert SouthBay Regional Wireless Emergency Alert System. NO ACTION IS NEEDED. For information about this alert and how to register, please

[14] Phone conversation between Soraya Sutherlin, Regional Alert and Warning Administrator, Alert SouthBay, and Nicole McGinnis, Deputy Chief, Public Safety and Homeland Security Bureau, Federal Communications Commission (Jan. 8, 2024) (Sutherlin/McGinnis Call).

[15] Alert SouthBay Letter at 1.

[16] *Id.*, *see* Michael Hixon, *Rancho Palos Verdes declares local emergency due to land movement* (Oct. 5, 2023) https://www.dailybreeze.com/2023/10/05/rancho-palos-verdes-declares-local-emergency-due-to-land-movement/ ("Land movement has become a critical issue on the Peninsula since 12 Rolling Hills Estat6es homes were lost to a landslide this summer."); Vivian Chow, Shelby Nelson, *More homes evacuated after massive landslide in Rolling Hills Estates* (July 12, 2023) https://ktla.com/news/local-news/more-homes-evacuated-after-massive-landslide-in-rolling-hills-estates/.

[17] Alert SouthBay Letter at 1.

[18] Alert SouthBay. *Alert SouthBay Plans Regional Emergency Alerts Test for January 9, 2024*, https://alertsouthbay.com/public-alert-and-warning (last visited Jan. 8, 2024)

[19] Sutherlin/McGinnis Call.

[20] Sutherlin/McGinnis Call.

[21] Phone conversation between Soraya Sutherlin, Regional Alert and Warning Administrator, Alert SouthBay, Erika Olsen, Acting Chief, Cybersecurity & Communications Reliability Division, Public Safety and Homeland Security Bureau, Federal Communications Commission, and David Kirschner, Cybersecurity & Communications Reliability Division, Public Safety and Homeland Security Bureau, Federal Communications Commission (Jan. 8, 2024).

[22] Alert SouthBay Letter at 2.

visit at https://alertsouthbay.com/public-alert-and-warning

- Alert SouthBay: Prueba del Sistema de Alerta. Sin acción. Visita www.alertsouthbay.com.
- Alert SouthBay- ESTA ES UNA PRUEBA del Sistema Regional de Alerta de Emergencia. No se necesita acción. Para obtener información sobre esta alerta y cómo registrarse, visite https://alertsouthbay.com/public-alert-and-warning.[23]

III. DISCUSSION

9. A provision of the Commission's rules "may be waived by the Commission on its own motion or on petition if good cause therefor is shown."[24] The Commission may find good cause to extend a waiver, "if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."[25] We conclude that there is good cause to grant the Alert SouthBay's waiver request for the end-to-end WEA tests received by the public by default, as described in its request.

10. We are persuaded it is in the public interest to allow the Alert SouthBay to test WEA's performance over the County's variety of geographic and demographic conditions, especially considering recent land movement and landslides, as well as the prevalent high fire risk. We also are persuaded that testing WEA in the Alert SouthBay area will help them to achieve their main goals of: (1) learning the extent of WEA's reach; and (2) developing a more complete emergency alerting plan, including one that does not rely on WEA where there may not be reliable cell coverage. In addition, the test will raise awareness about WEA in the community. As the Commission recently observed in adopting rules to require Participating CMS Providers to support up to two end-to-end WEA tests, per county (or county equivalent), per year, that consumers receive by default, "effective public awareness testing helps the public to understand how to respond to WEAs in the event of an actual emergency."[26]

11. We recognize, however, the test would not be in the public interest if it is presented in a manner that could lead the public to conclude that an actual alert is being transmitted, or would otherwise confuse the public. In reaching our decision, we have taken into consideration the extensive outreach plan that Alert SouthBay has implemented, as described in Alert SouthBay's Letter, including both public engagement and coordination with other emergency managers and local agencies.

12. We condition this waiver to require that the test may only be conducted at the time and date specified in Alert SouthBay's Letter and may only be conducted for the purposes described therein. Specifically, the waiver is based upon representations that:

> (1) this regional test is necessary to ensure that WEA continues to be an effective way to warn the public about regional emergencies;
>
> (2) Alert SouthBay will coordinate information about the test with relevant Participating CMS Providers, including first responder organizations such as police and fire agencies and 911 call centers, to ensure that they are aware of the test and can confirm to the public that the WEA messages are a test; and
>
> (3) the WEA test is not intended as a substitute for other scheduled WEA tests.

13. We also require that the tests and any post-test analysis and reports SouthBay chooses to

[23] Sutherlin/McGinnis Call.

[24] 47 CFR § 1.3.

[25] *See Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*citing WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (1973), *cert. denied*, 409 U.S. 1027 (1972)).

[26] *See 2023 WEA R&O* at para. 35, 38.

conduct or cause to be produced are done in a manner consistent with customers' expectations of privacy, confidentiality of Participating CMS Providers' network information, and the overall security of the WEA systems and infrastructure.[27] We encourage Alert SouthBay to report its test results in electronic format to the Bureau. Finally, we encourage members of the public who experience anomalous WEA test performance to report their experience to the Bureau by submitting a brief description of the issue to the FCC's Public Safety Support Center at https://www.fcc.gov/general/public-safety-support-center.

IV. ORDERING CLAUSE

14. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.3 of the Commission's rules, 47 CFR § 1.3, Sections 10.400, 10.520(d), 10.530(b), and 11.45 of the Commission's rules, 47 CFR §§ 10.400, 10.520(d), 10.530(b), and 11.45 of the Commission's rules, **ARE WAIVED**, to allow the test of WEA, as described above, in the geographic areas identified in the Alert SouthBay Letter; which test must be conducted subject to the conditions described herein. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 CFR §§ 0.191 and 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Nicole McGinnis
Deputy Chief
Public Safety and Homeland Security Bureau
Federal Communications Commission

[27] *See* 47 U.S.C. § 222.

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 24-22
Released: January 9, 2024

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

WC Docket No(s). 23-421

Comments Due: January 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 **February 9, 2024**, the 31st day after the release date of this public notice, unless the Commission notifies any applicant(s) that their grant will not be automatically effective.[4] We note that the date on which an application for Commission authorization is deemed granted may be different from the date on which applicants are authorized to discontinue, reduce, or impair service ("Authorized Date"). Any applicant whose application has been deemed granted may discontinue, reduce or impair their Affected Service(s) in their Service Area(s) on or after the authorized date(s) specified in the Appendix, in accordance with their filed representations. Accordingly, pursuant to section 63.71(f), and the terms outlined in each application, absent further Commission action, each applicant may discontinue, reduce or impair the Affected Service(s) in the Service Area(s) described in their application on or after the authorized discontinuance date(s) listed in the Appendix for that application. For purposes of computation of time when filing a petition for reconsideration, application for review, or petition for judicial review of the Commission's decision(s), the date of "public notice" shall be the later of the auto grant date stated above in this Public Notice, or the release date(s) of any further public notice(s) or order(s) announcing final Commission

[1] 47 CFR § 63.71.

[2] 47 U.S.C. § 214.

[3] 47 CFR § 63.71.

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

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

Comments objecting to any of the applications listed in the Appendix must be filed with the Commission on or before **January 24, 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): Level 3 Telecom of Minnesota, LLC**
WC Docket No. 23-421, Comp. Pol. File No. 1886
Link – https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2223-421*%22))
Affected Service(s) – Basic Business Line Service, Managed IP Trunks; Analog PBX Trunk; Analog PBX Trunk Service; Digital PBX Trunk Service; Digital PBX Trunks; VersiPak Lines and Trunks Service, VersiPakFlex T Service and VersiPak Power T Service, VersiPak Flex T-12, VersiPak Flex T-24, VersiPak Power T-12, VersiPak IPRI Service, VersiPak Mach 2 Service and VersiPak Mach 3 Service
Service Area(s) – Bloomington, Minneapolis, Minnetonka, and St. Louis Park, Minnesota
Authorized Date(s) – on or after February 9, 2024
Contact(s) – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau

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

In the Matter of	)	
	)	
Affordable Connectivity Program	)	WC Docket No. 21-450
	)	
	)	
	)	
	)	
	)	
	)	

ORDER

Adopted: January 11, 2024 **Released: January 11, 2024**

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, and consistent with the authority delegated by the Federal Communications Commission (Commission), the Wireline Competition Bureau (Bureau) announces requirements and guidance for the wind-down of the Affordable Connectivity Program (ACP). We currently project that the last month for which the ACP can fully reimburse providers for the ACP benefits provided to enrolled households is April 2024.[1] Should Congress not appropriate additional money, the existing funds will be exhausted, the Commission will have to end the ACP, and providers will stop providing discounts to enrolled households. The Commission nonetheless remains dedicated to providing ACP households an orderly transition out of the program and, more importantly, to keeping as many ACP households as possible connected to broadband service after the end of the program. To prepare low-income households and broadband providers, as well as the organizations that help support eligible households' enrollment, and as required by the Commission's delegation to the Bureau in the *ACP Order*, the Bureau announces ACP wind-down procedures.[2] These procedures include the process for notifying enrolled ACP

[1] April 2024 is currently projected to be the last data month for which providers will be eligible to receive full reimbursement for discounts passed through to ACP households for service and devices. The May 1, 2024 snapshot will show the households eligible to be claimed for the April 2024 data month.

[2] *Affordable Connectivity Program,* WC Docket No. 21-450, Report and Order and Further Notice of Proposed Rulemaking, 37 FCC Rcd 484, 485 at 591-92, paras. 231-33 (2022) (*ACP Order*). We find that notice and comment procedures are not required here under the Administrative Procedure Act, 5 U.S.C. § 551 *et seq*. We note that section 904(h) of the Consolidated Appropriations Act of 2021, which established the Emergency Broadband Benefit Program, the predecessor to ACP, included an exemption from APA rulemaking requirements. *See* Consolidated Appropriations Act, div. N, tit. IX, § 904(h)(1), *codified at* 47 U.S.C. § 1752(h)(1). In addition, certain of the rules being adopted here are procedural rules that are exempt from the notice and comment requirements. *See id.* at § 553(b)(A). To the extent the rules adopted here are substantive rules not otherwise exempt from the APA rulemaking requirements, we find good cause to forego notice and comment because it would be impracticable and contrary to the public interest. *See id.* at § 553(b)(B). Given the short period of time between now and the projected depletion of ACP funding, undertaking notice and comment would not permit us to adopt rules with enough time for providers and the Universal Service Administrative Company (USAC) to prepare for wind-down and give adequate notice to ACP households about the end of the program. This could lead to substantial consumer confusion and result in unwanted disruptions to service for ACP households that could deprive households of the broadband

(continued….)

households about the impact of program termination on their broadband service and bills and the freezing of new enrollments in the program. This Order also offers guidance to providers regarding advertising, awareness, and outreach requirements; the timing of claims submissions; and participation during a possible partially funded month of ACP. We also encourage providers to help ACP households transition to providers' own low-income internet offerings.

2. Congress provided $14.2 billion in funding for the ACP[3] and that funding has been drawn down each month as providers have claimed reimbursement for benefits passed through to households.[4] The ACP, which was launched two years ago, currently delivers discounted internet service to more than 22 million low-income households, benefiting both rural and urban households alike.[5] Despite news of the program's projected end, the ACP remains as popular as ever as more households continue to enroll in the program each month.[6] Moreover, the ACP is embraced by subscribers of all ages, with nearly half of subscribers over the age of 50.[7]

3. The ACP provides eligible households with a monthly discount on broadband service of up to $30 per month and up to $75 per month for households on qualifying Tribal lands.[8] Eligible households can also receive a one-time discount of up to $100 to purchase a laptop, desktop computer, or tablet from participating providers, if the household contributes more than $10 and less than $50 toward the purchase price.[9] Should the ACP not receive additional funding, the Commission will have to end the program and enrolled households will no longer receive the ACP discount after the end of the program.[10]

II. BACKGROUND

4. At the end of 2020 and during the COVID-19 pandemic, Congress established the Emergency Broadband Benefit Program (EBB Program), charging the Commission with building a new program to provide discounted internet service and connected devices to low-income households.[11]

(Continued from previous page)
connections they need for work, school, healthcare, and more and potentially resulting in significant adverse impacts on employment, education, and access to healthcare for millions of low-income consumers. We also note that we are making this Order effective upon release, pursuant to the exemption in 47 U.S.C. § 1752(h)(1), and we also find that we have good cause for doing so for all the reasons stated above.

[3] *ACP Order* at 37 FCC Rcd at 485, para. 1. Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (2021). The $14.2 billion appropriation is contained in Division J, Appropriations, Title IV — Financial Services and General Government, of the Infrastructure Act. The statutory changes to the EBB Program are contained in Division F, Broadband, Title V, Broadband Affordability, Section 60502, Broadband Affordability, of the Infrastructure Act. The statute as modified by the Infrastructure Act is codified at 47 U.S.C. § 1752.

[4] *See* Universal Service Administrative Co. (USAC), ACP Enrollment and Claims Tracker, https://www.usac.org/about/affordable-connectivity-program/acp-enrollment-and-claims-tracker/ (last visited Jan. 8, 2024).

[5] *See More Than 20 Million Households Enroll in Nation's Largest Broadband Affordability Program*, Fact Sheet (Aug. 14, 2023), https://docs.fcc.gov/public/attachments/DOC-396000A1.pdf.

[6] *See* USAC, ACP Enrollment & Claims Tracker, https://www.usac.org/about/affordable-connectivity-program/acp-enrollment-and-claims-tracker/ (last visited Jan. 8, 2024).

[7] USAC, Additional ACP Data, https://www.usac.org/about/affordable-connectivity-program/acp-enrollment-and-claims-tracker/additional-acp-data/ (last visited Jan. 8, 2024).

[8] 47 CFR § 54.1803(a).

[9] 47 CFR § 54.1803(b).

[10] 47 U.S.C. § 1752(b)(15) (providing that, at the end of the ACP, a household will be subject to the provider's generally applicable terms and conditions).

[11] Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182 (2020), *available at* https://www.congress.gov/bill/116th-congress/house-bill/133/text (Consolidated Appropriations Act).

Congress provided the Commission with $3.2 billion to be used until expended to provide a monthly discount for broadband service of up to $50 per eligible household, or up to $75 for households on qualifying Tribal lands, for broadband service plans that were offered as of December 1, 2020.[12] Providers were permitted to offer connected devices and receive a reimbursement of up to $100 with an accompanying co-payment from the consumer of more than $10 and less than $50.[13] As directed by Congress, the Commission conducted an expedited 60-day rulemaking and adopted rules for the EBB Program on February 25, 2021.[14] The EBB Program was launched on May 12, 2021 and grew to more than 9 million households by the end of that year.[15]

5. Just six months after the launch of the EBB Program, the Infrastructure Investment and Jobs Act (Infrastructure Act) became law. As part of the investment in broadband affordability, deployment, and access in the Infrastructure Act, Congress made several changes to the EBB Program to transform it from an emergency COVID-19 program to a longer-term broadband affordability program.[16] The Infrastructure Act provided $14.2 billion for the ACP. Pursuant to the Infrastructure Act, modifications to the EBB Program took effect on December 31, 2021, and the ACP immediately began accepting new enrollments.[17] As also required by statute, the Commission adopted the final rules for the ACP on January 14, 2022, after another 60-day rulemaking.[18] Those rules reflected new statutory requirements that modified the benefit amount, established new ways to qualify for the affordability program, strengthened controls to safeguard the integrity of the program, and established consumer protection provisions.[19] The Infrastructure Act also authorized the Commission to conduct outreach activities, including providing grants to outreach partners, to promote the ACP and increase enrollment in the program.[20] The Commission subsequently established an outreach grant program and ACP outreach

[12] *See Emergency Broadband Benefit Program*, WC Docket No, 20-445, Order, 36 FCC Rcd 4612, 4646, para. 71 (2021) (*EBB Program Order*).

[13] *EBB Program Order*, 36 FCC Rcd at 4651-53, paras. 79-81.

[14] *See generally EBB Program Order*.

[15] *See Wireline Competition Bureau Announces Emergency Broadband Benefit Program Launch Date*, WC Docket No. 20-445, Public Notice, 36 FCC Rcd 7614 (WCB 2021).

[16] Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, § 60502(a)(3), 135 Stat. 429, 1240 (2021) (codified at 47 U.S.C. § 1752).

[17] Consolidated Appropriations Act, div. N, tit. IX, § 904(b)(1), (4); *Wireline Competition Bureau Seeks Comment on the Implementation of the Affordable Connectivity Program*, WC Docket No. 21-450; Public Notice, 36 FCC Rcd 16290, 16291, para. 3 (WCB Nov. 18, 2021) (*ACP Public Notice*). The EBB Program transitioned to the ACP before the original funding of $3.2 billion was fully expended. Congress renamed the Emergency Broadband Benefit Fund as the Affordable Connectivity Fund and appropriated additional funds to the renamed program. Section 60502(a)(2) *Change to Program Name*. As such, the remaining funds from the original appropriation were used to support the ACP, bringing the total funding appropriated for the FCC's broadband affordability program to $17.4 billion. Information on the claims made under the EBB Program and per month for the ACP are available at https://www.usac.org/about/affordable-connectivity-program/acp-enrollment-and-claims-tracker/.

[18] *See ACP Order*, 37 FCC Rcd at 486-87, para. 4.

[19] 47 CFR § 54.1803(a) (establishing ACP benefit amount); *id.* § 54.1800(j) (establishing eligibility criteria for ACP); *id.* § 54.1801(e) (establishing removal and withdrawal procedures); *id.* § 54.1806 (establishing an annual recertification requirement); *id.* § 54.1807 (establishing enrollment representatives registration and compensation requirements); *id.* § 54.1809 (establishing requirements for non-usage de-enrollment); *id.* § 54.1810 (implementing ACP consumer protection measures).

[20] *See* 47 U.S.C. § 1752(b)(10)(C)(ii)(IV).

pilot programs to help deliver the message about the ACP and provide application assistance to eligible households across the country.[21]

6. Because the amount appropriated by Congress for the ACP was finite, the Commission recognized the need to prepare for the wind-down of the ACP should Congress not appropriate additional funding. When adopting the rules for the ACP, the Commission delegated authority to the Bureau to establish and implement requirements and procedures to wind down the ACP.[22] The *ACP Order* specifies that the Bureau, when developing wind-down procedures, should identify a process for notifying the public of the ACP's projected end as funds are nearing depletion.[23] The *ACP Order* gives the Bureau the authority to establish specific timeframes for consumer opt-ins before they can be charged a higher amount for broadband service than when the ACP benefit was being applied and the appropriate consumer notice and also provides the Bureau with flexibility in implementing a flexible approach to affirmative opt-in.[24] The *ACP Order* also provides that the wind-down procedures set by the Bureau must consider how the remaining funds will be distributed in the final month of the ACP, any timing considerations related to the reimbursement process, and other procedures necessary to smoothly wind down the program.[25]

7. To project the depletion of funding of the ACP, the Commission directed the Bureau, in coordination with the Office of the Managing Director (OMD), the Office of Economics and Analytics (OEA), and the Universal Service Administrative Company (USAC), to develop a forecast of the depletion of funding appropriated by Congress to the Commission to fund the ACP.[26] In addition to developing the forecast, the Commission and USAC have posted information showing weekly enrollment figures, monthly claims, and funding remaining to allow public stakeholders to track claims and enrollment trends in the program.[27] The current USAC forecast projects that there are sufficient funds to pay all provider claims in full through the April 2024 service month. The timeline for the wind-down procedures set forth in this Order are based on this forecast; however, the projected last fully funded month may shift based on changes in ACP enrollment trends or any additional funding if provided by Congress after release of this Order.

III. DISCUSSION

A. Preparing Consumers for the End of the ACP

8. *Timing of Bureau Announcement of Last Fully Funded Month of Program.* The Bureau will announce the upcoming end of the ACP approximately 60 days prior to the end of the last fully funded month of the program. Thus, based on current projections that the last fully funded month of the ACP is April 2024, we anticipate that this announcement will occur in late February 2024, but this timing may adjust based on activity in the program, particularly as a result of the freeze in enrollments discussed below. The Bureau's 60-day notice of the end of the last fully funded month of the program will, as set forth below, trigger certain required communication to households receiving ACP-supported service clearly explaining the impact of the end of the benefit on their broadband bills so that households can

[21] *See ACP Order*, 37 FCC Rcd at 519-20, para. 70; *see generally Affordable Connectivity Program,* WC Docket No. 21-450, Report and Order, 37 FCC Rcd 9928 (2022) (*Second ACP Order*); *Affordable Connectivity Program,* WC Docket No. 21-450, Report and Order, 37 FCC Rcd 9989 (2022) (*Third ACP Order*).

[22] *ACP Order* at 591-92, paras. 231-33; *ACP Public Notice*, 36 FCC Rcd at 16338, para. 128.

[23] *Id.* at 591-92, para. 232.

[24] *Id.*

[25] *Id.*

[26] *Id.*

[27] *See id.*; USAC, *ACP Enrollment and Claims Tracker*; https://www.usac.org/about/affordable-connectivity-program/acp-enrollment-and-claims-tracker/ (last visited Jan. 8, 2024).

make an informed choice about the broadband service they receive to stay connected. However, as set forth below we require providers to begin informing households about the upcoming end of the ACP benefit prior to this 60-day notice.

9. *Provider Notices to ACP Households Regarding End of Program and Continuation of Service.* In the *ACP Order*, the Commission found that, as with the EBB Program, "requiring providers to obtain an affirmative opt-in from households before they [could] be charged an amount higher than they would pay under the full reimbursement amount was necessary to 'guard against unexpected charges'"[28] if the ACP were to end. The Commission also found that "an affirmative opt-in following appropriate consumer notice is generally a good measure for avoiding consumer bill shock and ensuring the household is informed."[29]

10. Currently, Commission rules protect ACP households from bill shock in two ways. First, prior to enrolling a consumer in the ACP, participating providers are required to obtain affirmative consumer consent, either orally or in writing, that acknowledges that, after having reviewed the required disclosures about the ACP, the household consents to enroll with the provider.[30] One of these required disclosures is that the household will be subject to the provider's undiscounted rates and general terms and conditions if the ACP ends.[31] Second, the Commission requires providers to obtain a household's opt-in, either orally or in writing, to continue providing the broadband service to the household after the end of the ACP and to charge a higher rate than the household would pay if it were receiving the full discount permitted under ACP rules.[32]

11. Consistent with the direction from the Commission to the Bureau to establish specific timeframes for consumer opt-ins and the appropriate consumer notice,[33] the notice requirements we set out below are intended to ensure that enrolled households learn from their provider about the impact that the end of the ACP will have on the household's broadband bill. We do not prescribe a specific format or wording for these consumer notices but, to ensure that the notices meaningfully inform consumers about the impact of the end of the ACP on their broadband bills, certain key pieces of information must be included in the notices, as explained below.

12. *Timing and Content of Provider Notices.* To ensure that ACP households have multiple opportunities to receive information regarding the end of the ACP and alternative broadband service plans, including providers' low-income internet programs, and consistent with the goal of ensuring ACP households remain connected, providers shall send at least three notices related to the end of the ACP to their ACP households. The first required notice shall be sent as soon as practicable, but no later than 14 days after the release of this Order, and shall generally advise ACP households about the possibility of program termination and the potential impact on their broadband service and bills. After the Bureau issues its 60-day notice announcing the end of the last fully funded month of the ACP, providers shall send the second and third required notices to their ACP households notifying those households about the end of the program. The second required notice shall be sent as soon as practicable, but no later than 15 days after the last fully funded month of the ACP is announced by the Bureau in the 60-day notice. The third required notice shall coincide with the last bill or billing cycle in which the full ACP benefit is applied. The second and third required notices shall indicate that the ACP is ending and shall include (1) the date of the last bill on which the full ACP benefit will be applied and (2) the amount that the

[28] *ACP Order*, 37 FCC Rcd at 592, para. 232.

[29] *Id.*

[30] *Id.* at 566, para. 176; 47 CFR § 54.1810.

[31] *ACP Order*, 37 FCC Rcd at 566, para. 176; 47 CFR § 54.1810(a)(1)(v).

[32] *ACP Order*, 37 FCC Rcd at 592, para. 232.

[33] *Id.* at 592, para. 232.

household will be billed for the service once the full ACP benefit is no longer available and/or that the household will be subject to the provider's undiscounted rates and general terms and conditions after the end of the ACP. The second and third notices shall also remind ACP households of their ability to change their service and/or to opt out of continuing their service at the end of the ACP. Providers are strongly encouraged to include in these notices information on their lower cost offerings and low-income programs or a phone number or link to a website where ACP households may obtain such information. Providers are not limited to sending only three notices to their ACP households and are encouraged to correspond more frequently with their ACP households should the provider believe that such additional outreach is necessary or beneficial.

13. *Delivery of Provider Notices.* The required provider notices shall be sent to ACP households in writing, in a manner that is accessible to persons with disabilities. As noted above, we do not prescribe a specific format or wording for these consumer notices. However, we encourage providers to send these notices in a format (*e.g.*, email, text message, or paper mail) that is consistent with any consumer expressed preferences for receiving notices and other communications and using the same email, phone number, or mailing address to which bills or other monthly communications are sent. Providers are also encouraged to offer these notices in households' preferred language.

14. *Announcements and Notices from the Commission and USAC.* Like providers, the Commission and USAC have a responsibility to help enrolled households become aware of the impact of the end of the ACP. To that end, the Bureau has been coordinating with the Consumer and Governmental Affairs Bureau (CGB) to identify necessary changes to consumer-facing Commission websites and materials to effectively communicate end-of-program information upon announcement of wind-down procedures and the end of the ACP. USAC, at the Bureau's direction, has also been preparing updates to USAC websites and materials, including GetInternet.gov, as needed. USAC also played a critical role in communicating program information directly to enrolled households in the past, such as during the transition from the EBB Program to ACP in early 2022.[34] Accordingly, the Bureau and USAC have prepared and are ready to implement a communications plan for notifying enrolled households directly of the end of ACP, including multiple notices from USAC to ACP households.

15. *Subscriber Opt-In.* As with the transition from the EBB Program to the ACP, the Commission's approach to subscriber opt-in balances the goals of ensuring households can continue accessing the broadband service they need for work, school, healthcare, and more and of minimizing potential bill shock.[35] Consistent with the requirement of affirmative opt-in in the *ACP Order*,[36] we set forth below the elements for establishing a household's affirmative opt-in to continuing to receive broadband service after the end of the ACP.

16. For purposes of the unique circumstances of the wind-down of the ACP and pursuant to the *ACP Order*, we find that there are two elements to establishing that a household has affirmatively opted-in to continue receiving broadband service after the end of the ACP. The first element is established by the household's acknowledgment of having reviewed the required disclosures, which include a statement that the household will be subject to the provider's undiscounted rates and general terms and conditions if the program ends, when enrolling in the EBB Program or the ACP.[37] The second element is establishing the household's willingness and ability to pay for broadband service. Households

[34] *FCC Issues Further Guidance for Affordable Connectivity Program,* Order, WC Docket Nos. 20-445 and 21-450, 36 FCC Rcd 16786, 16792, para. 20 (WCB 2021) (*Dec. 8, 2021 Order*) (directing USAC to notify enrolled households of changes to the EBB Program).

[35] *See ACP Order*, 37 FCC Rcd at 583, para. 218.

[36] *See id.* at 592, para. 232; *see supra* paras. 9-10.

[37] *See ACP Order*, 37 FCC Rcd at 566, para. 176; 47 CFR § 54.1810; *Emergency Broadband Benefit Program*, WC Docket No. 2-445, Order, 36 FCC Rcd 4612, 4629, para. 38 (2021) (*EBB Program Order*).

are considered to have demonstrated a willingness and ability to pay for broadband after the end of the ACP if they (1) have informed their provider, either orally or in writing, that the provider may continue providing broadband service to the household after the end of the ACP and to charge a higher rate than the household would pay if it were receiving the full discount permitted under ACP rules;[38] (2) were existing paying internet service customers with their current broadband provider at the time the household enrolled in the EBB Program or the ACP; or (3) currently pay a fee for their ACP-supported broadband service.

17. This approach for households that have demonstrated a willingness and ability to pay (*i.e.*, that (1) already informed the provider they would continue at a higher rate; (2) were existing paying customers with the current provider before the EBB Program or the ACP; or (3) currently pay a fee for their ACP-supported service) is consistent with the approach to affirmative opt-in that the Commission took in the *ACP Order* when transitioning households from the EBB Program's $50 non-Tribal monthly benefit to the ACP's smaller $30 non-Tribal monthly benefit.[39] The *EBB Program Order* had required providers to "obtain an affirmative opt-in from households … before they can be charged an amount higher than they would pay under the full EBB Program reimbursement amount."[40] However, the *ACP Order* deemed affirmative opt-in to include "EBB households that (1) were existing paying internet service customers with the broadband provider when the household enrolled in the EBB with that provider; (2) previously consented to the provider's general terms and conditions if they continued to receive service at the end of the EBB Program; or (3) currently pay a fee for their supported internet service."[41] As the *ACP Order* explained, "[t]his category of households has demonstrated to their current provider a willingness and ability to pay for internet service; therefore, we find that there is little risk of unexpected financial harm even if their bill may potentially increase up to $20."[42] Interpreting the entirety of the *ACP Order*, the Commission's statements express a preference for a flexible approach to affirmative opt-in and provides the Bureau with flexibility in implementing it.

18. In addition, this approach reduces the risk of subjecting a large percentage of ACP households to service disruption and avoids increasing administrative burdens on service providers and households.[43] We believe this approach will help guard against unintended disconnections from broadband service for households that have demonstrated a willingness to pay for broadband without the ACP benefit, reduce consumer confusion and frustration, and mitigate bill shock.[44] In light of their demonstrated willingness and ability to pay for broadband service and the required provider notifications to ACP households regarding the end of the program—which must inform households of their ability to change their service and/or to opt out of continuing service at the end of the ACP, the risk of unexpected financial harm for these households is low as compared to the risk of harm to these households due to disconnection for failure to opt-in to receive undiscounted service. For example, requiring a household that was paying for non-discounted broadband service prior to enrollment in the ACP to submit additional consent to retain that broadband service with the provider after the end of the ACP could result in a disconnection of broadband service should the household fail to timely consent. The unwanted loss of broadband service could not only lead to consumer confusion for such households, but could deprive those households of the broadband connections they were relying on for needs related to work, school,

[38] *See ACP Order*, 37 FCC Rcd at 582, para. 215.

[39] *See id.* at 584-85, para. 220.

[40] *EBB Program Order*, 36 FCC Rcd at 4673, para. 132.

[41] *ACP Order*, 37 FCC Rcd at 584, para. 220.

[42] *Id*.

[43] *See id.* at 582, paras. 216, 218.

[44] *See id.* at 582, para. 215.

healthcare, and connections with governmental services. Losing such access could, in turn, result in loss of access to those services and employment, as the household spends the time to restore service.

19. Consistent with the *ACP Order*'s requirement of affirmative opt-in,[45] providers must collect an opt-in from households that have not established affirmative opt-in as described above prior to charging them a higher rate for that broadband service than the household was paying when the ACP benefit was applied. For these households, there may be a stronger risk of potential bill shock were they to receive a bill for undiscounted broadband service. This opt-in for this category of ACP households is warranted to ensure ACP households are adequately informed about their options and to protect households from bill shock. The opt-in must be collected either orally or in writing and providers may seek such opt-in from households at any time before increasing the household's bill due to the end of the ACP, including before the Bureau issues the 60-day notice of the end of the last fully funded month of the program.

20. *Ensuring ACP Households Remain Connected.* The ACP has made tremendous progress in bridging the digital divide by helping millions of low-income households for whom the cost of internet service has been a barrier to get or stay online. That progress would not be possible without the many participating providers serving ACP households. Unfortunately, losing the ACP benefit puts these ACP households at risk of losing their internet service altogether. Nevertheless, we are confident that participating providers will also play a crucial role in fulfilling an important goal of the wind-down procedures laid out in this Order: ensuring that ACP households remain connected at the end of the program. Some participating providers currently make low-income internet programs available to their households that can play a critical role in keeping ACP households connected. Consistent with this goal of ensuring that ACP households remain connected even after the end of the ACP, providers who already offer low-income internet programs are encouraged to help interested ACP households not already participating in these programs to transition to these programs, and providers that do not currently offer low-income internet programs are encouraged to develop such programs.

B. Enrollment Freeze and Its Impact on ACP Outreach

21. *Enrollment Freeze*. The Bureau will freeze new enrollments into the ACP beginning on February 8, 2024. Accordingly, enrollments into the ACP will be permitted until February 7, 2024 at 11:59 p.m. EST. The Bureau finds that this freeze will help to more accurately project funding exhaustion by increasing certainty in program commitments. For example, an enrollment freeze mitigates the risk that a spike in enrollments or device claims could hasten depletion of remaining ACP funds, preventing the Commission from fully funding benefits through April 2024 as currently projected. If funding were to run out earlier than projected, then low-income households enrolled in the ACP might lose their benefits earlier than anticipated, and before being given adequate time to learn of the program's end and make alternative arrangements for broadband service without the ACP discount. The Bureau finds that freezing enrollments will help reduce the risk of the last fully funded month shifting earlier, thus permitting providers and USAC adequate time to notify consumers about the impact on their broadband bills and services should the ACP not receive more funding. Moreover, to more smoothly administer the end of the program, providers and households must have confidence that the ACP can support ACP benefits through the forecasted end date.

22. At the Bureau's direction, USAC has developed and is ready to implement procedures for this freeze on new enrollments, including changes necessary to the National Lifeline Accountability Database (NLAD) and provider processes, and to publish information on its websites announcing the upcoming freeze in new enrollments. Any existing ACP eligibility determinations and enrollments must be completed by the time enrollments are to be frozen, and no future eligibility determinations or enrollments will be made by USAC or providers unless directed by the Bureau. We further direct USAC to remove paper applications and links to the National Verifier ACP application on its websites at the

[45] *See id.* at 592, para. 232.

time of the enrollment freeze.[46] We recognize that the freeze in enrollments will require service providers to adjust their own processes, including those relating to customer support and onboarding new ACP households. To ease provider administration of the wind-down of ACP, we do not require providers to perform transfer-in transactions for enrolled ACP households seeking to transfer their benefit, and instead we allow providers to choose whether to accept transfers after the ACP enrollment freeze. For those that wish to continue to accept new ACP households via benefit transfers when enrollments into the program are frozen, we remind those providers that they must continue to comply with the transfer notice and consent requirements in the Commission rules, as well as any transfer processes implemented by USAC.[47]

23. With the anticipated freeze in enrollments, we also plan to pause certain activities related to advertising, awareness, and outreach. These activities were included when the ACP was first established because the Commission recognized that, for the program to achieve its full potential and reach as many eligible households as possible, households likely to be eligible must be clearly informed of the program's existence and key program information and that the Commission, USAC, participating providers, and other stakeholders and partners play an important role in disseminating information about the ACP to enrolled households and households likely to be eligible.[48] Accordingly, the Commission adopted certain advertising and awareness requirements consistent with the Infrastructure Act and implemented certain statutorily authorized outreach tools.[49] As explained below, these activities that promote awareness of and facilitate enrollment in the ACP must also stop concurrently with the anticipated enrollment freeze, so as to avoid consumer confusion.

24. *Advertising, Notification Upon Subscription or Renewal, and Public Awareness Requirements.* The ACP rules include several requirements to ensure that consumers receive meaningful notice of the existence of the ACP. Commission rules require providers to publicize the availability of the ACP in a manner reasonably designed to reach those consumers likely to qualify for the program and in a manner that is accessible to individuals with disabilities.[50] In addition, consistent with the statutory requirements laid out in the Infrastructure Act,[51] the ACP rules include a requirement that participating providers must notify in writing or orally, in a manner that is accessible to individuals with disabilities, all consumers who either subscribe to or renew a subscription to an internet service offering about the ACP and how to enroll, along with requirements governing the timing and frequency of the required notices.[52] Also consistent with the statutory requirements laid out in the Infrastructure Act,[53] the ACP rules include a requirement that participating service providers carry out public awareness campaigns in their ACP areas of service that highlight the value and benefits of broadband internet access service and the existence of the ACP in collaboration with state agencies, public interest groups, and non-profit organizations.[54]

---

[46] 47 CFR § 54.1810(b). The Commission's rules provide that households may transfer their ACP service benefit once per calendar month, with limited exceptions. *See ACP Order*, 37 FCC Rcd at 570-71, paras. 187-89.

[47] 47 CFR § 54.1810(b)(1) (setting out requirements for providing notice to households and collecting consent prior to conducting a transfer); *id.* § 54.1810(b)(2) (establishing that providers must provide a notice to the subscriber that the transfer has occurred); and *id.* § 54.1810(b)(3) (limiting subscriber transfers to once per calendar month, with limited exceptions).

[48] *See ACP Order*, 37 FCC Rcd at 578-79, paras. 206-207.

[49] *See id.* at 571-575, paras. 190-97.

[50] 47 CFR § 54.1804(b); *ACP Order*, 37 FCC Rcd at 577-78, paras. 204-205.

[51] 47 U.S.C. § 1752(b)(10)(A); *ACP Order*, 37 FCC Rcd at 575, para. 200.

[52] 47 CFR § 54.1804(c); *ACP Order*, 37 FCC Rcd at 576, para. 202.

[53] 47 U.S.C. § 1752(b)(8).

[54] 47 CFR § 54.1804(d); *ACP Order*, 37 FCC Rcd at 578-79, paras. 206-207.

25. As a general matter, "an agency must adhere to its own rules and regulations."[55] Although strict application of a rule may be justified "to preserve incentives for compliance and to realize the benefits of easy administration that the rule was designed to achieve,"[56] the Commission's rules may be waived for "good cause shown."[57] The Commission may exercise its discretion to waive a rule where special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.[58] The Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.[59] The Bureau, under delegated authority, may act on requests for waiver of rules.[60]

26. While the advertising and promotion requirements detailed above have played a valuable part in educating the public about the ACP, continuing to require providers to disseminate information about the ACP after the program ceases to accept new enrollments in excess of statutory requirements would cause consumer confusion and thus be contrary to the public interest. Accordingly, the Bureau waives the requirements of section 54.1804(b) of the Commission's rules effective February 8, 2024, concurrent with the start of the enrollment freeze, and this waiver will remain in effect for the duration of the enrollment freeze. While the Bureau is unable to waive the underlying statutory requirements set forth in sections 54.1804(c) and (d) of the Commission's rules because they are contained in the statute[61] the Bureau advises that conducting campaigns informing consumers about the end of the ACP will be considered to be in compliance with those statutory requirements during the enrollment freeze.

27. *ACP Outreach Grant and Pilot Programs.* The Commission established the Affordable Connectivity Outreach Grant and ACP Pilot Programs to increase the awareness of and encourage participation in the ACP among eligible households.[62] Under the Affordable Connectivity Outreach Grant Program, over 200 governmental and non-governmental entities are receiving grant funding to promote awareness of the ACP.[63] The 23 participants in the Your Home, Your Internet Pilot Program, and the 11 participants in the ACP Navigator Pilot Program are connecting with eligible households in their communities to promote the ACP and help provide application assistance.[64] Congress authorized the Commission to "conduct outreach efforts to encourage households to enroll in the Affordable Connectivity Program" including providing grants to outreach partners in order to carry this out.[65] The Commission, in adopting rules for the Affordable Connectivity Outreach Grant Program, stated "[e]ntities

[55] *NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008).

[56] *Mary V. Harris Found. v. FCC*, 776 F.3d 21, 28 (D.C. Cir. 2015).

[57] 47 CFR § 1.3.

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

[59] *Id.* at 1166; *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

[60] 47 CFR § 0.291(b).

[61] *See* 47 U.S.C. § 1752(b)(8), (10)(A).

[62] *See generally,* FCC, Affordable Connectivity Outreach Grant Programs, https://www.fcc.gov/acp-grants (last visited Jan. 8, 2024) (providing information on the various FCC grants to fund ACP outreach activities performed by eligible governmental and non-governmental entities; FCC, Affordable Connectivity Pilot Program, https://www.fcc.gov/affordable-connectivity-pilot-programs (last visited Jan. 8, 2024) (describing the ACP Your Home, Your Internet and the ACP Navigator Pilot Programs).

[63] *See Consumer and Governmental Affairs Bureau Announces ACP Outreach Grant Program Target Funding*, WC Docket No. 21-450, Public Notice, DA-23-194 (CGB Mar. 10, 2023).

[64] *See Wireline Competition Bureau Announces Final List of Entities Selected for the Affordable Connectivity Pilot Programs,* WC Docket No. 21-440, Public Notice, DA 23-288 (WCB Apr. 6, 2023).

[65] *See* 47 U.S.C. § 1752(b)(10)(C)(ii)(IV).

that receive grant awards may continue to use their grant funds for outreach until enrollments cease."[66] The Commission recognized that, should enrollments stop during the wind-down of the ACP, continuing outreach efforts could undermine the objectives of the grant programs and create consumer confusion. Additionally, it would not be fiscally responsible to continue grant-funded enrollment efforts after an enrollment freeze. Therefore, consistent with the direction in the Commission's order establishing the Affordable Connectivity Outreach Grant Program, which includes grant funding for the ACP Pilots Programs, the Bureau and CGB will coordinate on communications and instructions to grant recipients and pilot participants on the need to cease grant-funded outreach work and other pilot-related activities that focus on enrollment activities as a result of the enrollment freeze.

C. Claims Process

28. *Expedited Claims Submission Timeline*. In the *ACP Order*, the Commission delegated to the Bureau the authority to develop procedures regarding how the remaining funds will be distributed in the final month of the ACP, any timing considerations related to the reimbursement process, and other procedures necessary to smoothly wind down the program.[67] Pursuant to this authority, we adopt the following modifications to the existing reimbursement process to require providers to submit new claims by the 1st of the second month after the snapshot date. We find these modifications are necessary to help ensure that USAC has a timely accounting of finalized provider claims to inform the forecast of remaining program funds and for the smooth administration of end-of-program procedures. Moreover, requiring providers to submit their claims on a shorter timeline will help track limited funding as it gives the Commission and USAC certainty of the amount the providers seek to claim for each service month.

29. Beginning with the February 1, 2024 snapshot, we require participating providers to submit to USAC their reimbursement claims for service for households captured on the snapshot report by no later than the 1st of the second month after the snapshot date, or the following business day in the event that the 1st falls on a weekend or holiday. For example, all claims and upward revisions for the February 1 uniform snapshot date and for claims and upward revisions for preceding months must be submitted no later than April 1, 2024. Thereafter, all claims must be submitted no later than the 1st of the second month after the snapshot date, or the following business day in the event that the 1st falls on a weekend or holiday. Reimbursement claims submitted after the deadline will not be processed. While downward revisions will continue to be accepted, providers should make every effort to ensure that their reimbursement claims are complete and accurate, particularly as the ACP enters the wind-down phase. To facilitate the efficient wind-down of the ACP, we strongly encourage providers to submit any remaining outstanding claims for reimbursement or revisions prior to February 1, 2024. Should the ACP receive additional funding, the Bureau will re-evaluate the need to continue to require providers to submit claims on this new timeline.

30. *Partial Reimbursement.* In the event that reimbursement claims in the final month of the ACP exceed the amount of remaining funds, reimbursements for benefits passed through to households will be paid out to providers on a reduced, pro-rata basis.[68] For example, if based on the forecast of the

[66] *See Second ACP Order*, 37 FCC Rcd at 9956, para. 50. *See also* Affordable Connectivity Outreach Grant Program, Notice of Funding Opportunity, FCC-ACOGP-23-001 (Nov. 10, 2022) and Affordable Connectivity Outreach Grant Program – Pilot Program Grants, Notice of Funding Opportunity, FCC-ACOGP-23-002 (Nov. 21, 2022). The Notices of Funding Opportunity, or NOFOs, provide detailed information about specific grant opportunities, including information about the amount of funding available, eligible entities, fundable expenses and activities, application and evaluation process, reporting requirements, and other rules and requirements for the grant opportunity.

[67] *ACP Order*, 37 FCC Rcd at 543, para. 123 (delegating to the Bureau to establish a different timeline to submit certified reimbursement claims when the ACP is winding down). *See also ACP Order*, 37 FCC Rcd at 591-92, para. 232.

[68] *Id.* at 592, para. 233.

depletion of funding established above, the remaining balance in the Affordable Connectivity Fund (Fund) is sufficient to pay out 80% of each reimbursement claim submitted in the final month, the Fund will pay out 80% of each claim on a pro-rata basis, thus depleting the Fund.[69] Similarly, if the Fund is only sufficient to pay 40% of each reimbursement claim in the final month, the Fund will pay out 40% of each claim on a pro-rata basis. We recognize that the *ACP Order* contained language that suggested that providers would "in no circumstances" receive less than 50%" of the providers' claim for the final month.[70] However, the *ACP Order* also recognizes that the Fund might not support a 50% pro-rata payout in the final month on claims submitted and directs staff in this event to determine how best to use the remaining funds consistent with the law.[71] Interpreting the entirety of the relevant paragraph, along with the fact that the Fund is limited,[72] the Commission's statement *expresses* a preference for a pro-rata reimbursement scheme and also provides the Bureau with flexibility in implementing it if the Fund will not support a 50% pro-rata reimbursement rate in the final month. The Bureau intends, absent unforeseen circumstances, to direct USAC to provide notice to participating providers of whether providers will receive partial payment and the projected pro-rata share of such partial payments for that month as soon as practicable.

31. We understand that providers desire certainty as to whether there will be funding to allow for a partial month payment for benefits passed through to ACP households and as to the amount that the fund can reimburse providers for that benefit applied to ACP households' bills. Without this certainty, providers may end up passing through a benefit to households for which they may not receive full reimbursement if the ACP cannot fund that reimbursement at the very end of the program. We also recognize the financial hardship that receiving a partial reimbursement may place not only on providers, but also on existing households, who may receive an unanticipated bill to cover the difference between the full ACP discount the household was expecting and the partial benefit that was applied. Therefore, to assist providers in winding down their own participation in the program, we will allow ACP participating providers to choose whether to forego providing ACP service and receiving partial payment for discounts passed through to ACP households after the last fully funded month. At the time of the 60-day notice of the end of the last fully funded month of the ACP, the Bureau will provide guidance to providers that wish to receive reimbursement for discounts provided to ACP households beyond that last fully funded month concerning how to notify USAC of their intention to do so. Providers that choose to forgo receiving partial reimbursement for the final month will not be required to pass through any benefits to ACP households after the announced last fully funded month. Providers that forgo reimbursement after the last announced fully funded month will not be expected to comply with voluntary withdrawal requirements set forth in section 54.1801(e) of the Commission's rules.

---

[69] *Id.* at 592, para. 233. Similarly, if the remaining fund is only sufficient to pay 40% of each reimbursement claim in the final month, the Fund will pay out 40% of each claim on a pro-rata basis.

[70] *Id.* ("Therefore, we direct the Bureau to implement similar procedures adopted in the EBB Program Order for reimbursement in the final month of the Affordable Connectivity Program in the event reimbursement claims exceed the amount of remaining funds, but in no circumstances will reimbursements be less than 50% of the provider's claim for that final month.").

[71] *Id*. ("If, however, projections from USAC indicate that less than 50% of claims can be paid out on a pro-rata basis for the expected final month of the Affordable Connectivity Program, then USAC shall immediately notify the Bureau, OEA, and OMD. If staff agree with USAC's projections, then USAC will pause the reimbursement process for the final month, and instead staff will determine how best to use the remaining funds consistent with the Infrastructure Act.").

[72] The Antideficiency Act (ADA) precludes an agency from "making or authorizing an expenditure from, or creating or authorizing an obligation under, any appropriation or fund in excess of the amount available in the appropriation." 31 U.S.C. § 1341(a)(1)(A). Thus, we believe it appropriate to interpret the *ACP Order* in a manner that does not suggest the agency can make payments in excess of the available funds.

D. Provider Applications and ACP High-Cost Area Benefit Eligibility

32. *Provider Application and Approval*. The Bureau finds that it would be administratively inefficient and confusing to consumers to approve new provider applications for the ACP when enrollments have been frozen. Processing new provider applications, approvals, and election notices risks confusing ACP households by creating a false expectation that, by subscribing with a newly approved provider, the household would be able to enroll or transfer to that provider to receive the ACP benefit during the enrollment freeze. Accordingly, the Bureau and USAC will stop reviewing new provider applications and election notices, as well as new applications for alternative verification processes, on February 7, 2024 at 6:00 PM EST, concurrent with the final day that enrollments will be permitted in the program. While application and election notice reviews are frozen, providers, however, must continue to update contact, device, or other participation information to USAC in accordance with the Commission's rules.[73]

33. *High-Cost Area Benefit Provider Applications*. As required by the Infrastructure Act, the Bureau established a mechanism for providers to offer a benefit to eligible households in certain areas designated as "high-cost" by the National Telecommunications and Information Administration (NTIA). In keeping with those requirements, around the same time NTIA designated such high-cost areas, on November 1, 2023, the Bureau announced that USAC will begin accepting applications from providers seeking to qualify to offer the high-cost area ACP benefit on January 17, 2024.[74] Due to the depletion of funding and upcoming enrollment freeze, USAC will not accept provider applications to offer the high-cost area benefit. We find that processing high-cost area benefit applications and releasing educational and training materials related to the high-cost area benefit during the enrollment freeze would cause confusion among current and potential ACP households. Approving ACP high-cost area benefit applications, publishing information, and moving ahead with implementing the enhanced benefit while new households and providers cannot enter the program could cause confusion among subscribers about the future status of the program and the availability of the enhanced benefit for new subscribers or providers. Furthermore, changing the amount of the discount received by ACP households enrolled with a provider approved to offer the ACP high-cost area benefit, from $30 to $75, may cause increased consumer confusion with regard to the availability of program funding. The Bureau will re-evaluate the status of the ACP high-cost area benefit provider applications if the ACP receives additional funding.

34. *Ongoing Program Integrity Obligations*. The Commission is committed to ensuring the integrity of the ACP and addressing potential non-compliance using the full range of the Commission's authority and available tools, including audit and investigatory procedures and in cooperation with the FCC Office of Inspector General and law enforcement agencies. This commitment will continue during the ACP wind-down phase. We remind participating service providers of their obligation to use robust policies and procedures for ensuring compliance with the Commission's rules – including the requirements set forth in this Order concerning consumer notices, opt-ins, and other aspects of wind-down – and de-enrolling households as appropriate. Even during a wind-down period, the Commission will use the full range of its authority and available tools to address non-compliance with the ACP rules, and providers are reminded of their obligation to comply with USAC and Commission requests. Providers are also reminded of their document retention requirements under the ACP programmatic rules, which will extend after the end of the ACP.[75] Similarly, the Commission and USAC will retain records from the

---

[73] *See* 47 CFR § 54.1801(c) (providing that "[a]ll participating providers shall maintain up-to-date contact and other administrative information contained in the election notice as designated by the [Bureau] and [USAC]. These updates shall be made within 10 business days of the change in designated information contained in the election notice.").

[74] *See Wireline Competition Bureau Announces Affordable Connectivity Program High-Cost Area Benefit Application Submission Timing and Processes*, WC Docket No. 21-450, Public Notice, DA 23-1034 (Nov. 1, 2023).

[75] *See* 47 CFR § 54.1811; *see also ACP Report and Order*, 37 FCC Rcd at 593, para. 234 (adopting Emergency Broadband Benefit document retention requirements without modification); *EBB Program Order*, 36 FCC Rcd

(continued….)

ACP under applicable National Archives and Records Administration schedules and directives[76]—after which, the Commission will appropriately dispose of such records and rescind the applicable System of Records Notice under the Privacy Act of 1974.[77]

35. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, that 47 CFR § 54.1804(b) of the Commission's rules is WAIVED effective February 8, 2024, to the extent described herein.

36. Accordingly, IT IS ORDERED, pursuant to pursuant to the authority contained in in Section 904 of Division N, Title IX of the Consolidated Appropriations Act, 2021, Pub. L. No 116-260, 134 Stat. 1182 as amended by Infrastructure Investment and Jobs Act, Pub. L. No 117-58, 135 Stat. 429 (2021), 5 U.S.C. § 551 *et seq.*, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, section 303(r) of the Communications Act, as amended, 47 U.S.C. § 303(r), and sections 0.91 and 0.291 of the Commission's rules, 47 CFR §§ 0.91 and 0.291, that this Order is ADOPTED.

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

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau

(Continued from previous page)
4612, 4644, para. 67 ("We require that providers keep all documentation provided to them from the applicant used to make eligibility determinations, for as long as the applicant receives the Emergency Broadband Benefit, and also for no less than the six full calendar years following the termination of the EBB Program.").

[76] *See* National Archives and Records Administration (NARA) Records Schedule DAA-0173-2021-0022, Emergency Broadband Benefit Program (EBB Program)/Affordable Connectivity Program (ACP).

[77] *See* Federal Communications Commission, *Privacy Act of 1974; System of Records*, 86 F.R. 71,494 (2021).

APPENDIX

Anticipated ACP Wind-Down Timeline

Date	Activity
January 25, 2024	Deadline for first of three required provider notices to ACP households, which must be provided no later than 14 days after release of the Order.
February 7, 2024	Final day for households to enroll in the program. The Bureau and USAC will stop reviewing new provider application and election notices, as well as applications for alternate verification processes at 6:00 p.m. EST. USAC systems will become unavailable for consumer application and enrollment processing, effective 11:59 p.m. EST.
February 8, 2024	ACP enrollment freeze begins and no new providers will be approved to participate in the program.
Late February 2024*	Anticipated timing of Bureau announcement of last fully funded month of ACP and projected amount available for reimbursement after the last fully funded month, if applicable. Second of three required provider notices to ACP households must be provided no later than 15 days after the Bureau announcement.
April 1, 2024	Participating providers must submit to USAC their reimbursement claims for discounted service provided to households for the February 1 uniform snapshot date and all claims and upward revisions for preceding months.
April 2024*	Projected final service month for which ACP can fully reimburse providers for ACP discounts.
May 2024*	Partial provider claims for discounted service provided during this month may be available if funding remains.

* Assuming a last fully funded month of April 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 24-24
Released: January 10, 2024

WIRELINE COMPETITION BUREAU REMINDS SECURE AND TRUSTED COMMUNICATIONS NETWORKS REIMBURSEMENT PROGRAM RECIPIENTS OF THEIR FEBRUARY 12, 2024 SPENDING REPORT FILING OBLIGATION

WC Docket No. 18-89

By this Public Notice, the Wireline Competition Bureau (Bureau) reminds recipients[1] in the Secure and Trusted Communications Networks Reimbursement Program (Reimbursement Program) of their obligation to file reimbursement spending reports with the Federal Communications Commission (Commission) "[w]ithin 10 days after the end of January and July . . . starting with the recipient's initial draw down of reimbursement funds."[2] Accordingly, all recipients who have been notified of the approval of a reimbursement claim request must submit their next spending report by February 12, 2024. For additional information about Reimbursement Program spending report requirements, please refer to the *Initial Spending Report PN*.[3]

Recipients must submit their spending reports through the Supply Chain Reimbursement Program Online Portal, https://fccprod.servicenowservices.com/scrp by completing FCC Form 5640 Part L: Spending Reports. 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/efcs.

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

[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(l)(1); *see also 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, 14360, para. 188 (2020) (*2020 Supply Chain Order*). This reporting obligation terminates once the recipient has filed a "final spending report showing the expenditure of all funds received as compared to the estimated costs" submitted. 47 CFR § 1.50004(l)(2). The final spending report is due after the filing of a final certification by the recipient. *2020 Supply Chain Order*, 35 FCC Rcd at 14360, para. 188.

[3] *Wireline Competition Bureau Reminds Secure and Trusted Communications Networks Reimbursement Program Recipients of Their Spending Report Filing Obligation*, WC Docket No. 18-89, Public Notice, DA 23-25 (WCB Jan. 11, 2023).

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 Street NE
Washington, DC 20554

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

DA 24-25
Released: January 10, 2024

WIRELINE COMPETITION BUREAU SEEKS COMMENT ON THE CHEYENNE RIVER SIOUX TRIBE TELEPHONE AUTHORITY'S PETITION FOR DECLARATORY RULING FOR RECOGNITION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER

WC Docket No. 09-197

Comment Date: February 12, 2024
Reply Comment Date: February 26, 2024

The Wireline Competition Bureau (Bureau) seeks comment on the petition filed by the Cheyenne River Sioux Tribe Telephone Authority (CRSTTA) seeking a declaratory ruling from the Federal Communications Commission (Commission) that CRSTTA may "cease ETC participation [in universal service programs] under Section 214(e)(2) [of the Communications Act of 1934, as amended]," submit a request to be redesignated as an ETC by the Commission under section 214(e)(6), and once designated, "carry out all required regulatory compliance common to other Commission-designated ETCs through the USAC 54.314 electronic filing system."[1]

Filing Requirements. Interested parties may file comments on or before the dates indicated above.[2] All filings must refer to Cheyenne River Sioux Tribe Telephone Authority Petition for Declaratory Ruling and must be submitted to **WC Docket No. 09-197**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).[3]

- Electronic Filers: Comments may be filed electronically using the Internet by accessing 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

[1] Petition for Declaratory Ruling of the Cheyenne River Tribe Telephone Authority, WC Docket No. 09-197 at 1, 4, 18 (filed Dec. 15, 2023), https://www.fcc.gov/ecfs/document/121531322182/1 (Declaration Petition); 47 CFR § 54.314 (annual reports must be filed by either states on behalf of state-designated ETCs or by ETCs directly if designated by the Commission).

[2] *See* 47 CFR §§ 1.2, 1.405, and 1.419.

[3] *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

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.[4]

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & 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.[5] Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenters written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission's rules. In proceedings governed by section 1.49(f) of the rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml., .ppt, searchable .pdf).[6] Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

For further information regarding this proceeding, please contact Nissa Laughner, Telecommunications Access Policy Division, Wireline Competition Bureau at Nissa.Laughner@fcc.gov.

- FCC -

[4] *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.

[5] *See* 47 CFR §§ 1.1200 *et seq.*

[6] *Id.* § 1.1206(b).

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-26
Released: January 10, 2024

MEDIA BUREAU ANNOUNCES EFFECTIVE DATE OF CERTAIN LOW POWER PROTECTION ACT RULES

MB Docket No. 23-126

On December 12, 2023, the Commission released a *Report and Order* (*Order*) that adopted rules to implement the Low Power Protection Act (LPPA).[1] The LPPA provides qualifying low power television (LPTV) stations with a limited window of opportunity to apply for primary spectrum use status as Class A television stations.[2]

On January 10, 2024, the Federal Register published a summary of the final rules adopted in the *Order*.[3] Accordingly, the rules adopted in the *Order* will take effect on February 9, 2024, except for sections 73.6030(c) and 73.6030(d) which contain new or modified information collection requirements that require review by OMB.[4] At the conclusion of the OMB review process, the Media Bureau will announce the effective date of that information collection in a document published in the Federal Register. The Media Bureau will thereafter issue a Public Notice that establishes the one-year application filing window once the revised application form (FCC Form 2100) is available for use by applicants.[5]

For additional information, contact Kim Matthews, Policy Division, Media Bureau at Kim.Matthews@fcc.gov or (202) 418-2154.

-- FCC --

[1] 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*) available at https://docs.fcc.gov/public/attachments/FCC-23-112A1.pdf.

[2] *See id*.

[3] *See* Federal Communications Commission, 47 CFR Part 73, Low Power Protection Act, Final Rule, 89 FR 1466 (Jan. 10, 2024).

[4] *See Order* at para. 61 & Appx. B (Final Rules), 47 CFR §§ 73.6030(c) (Application Requirements), 73.6030(d) (Licensing Requirements). 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.).

[5] *See 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).

Before the

Federal Communications Commission
Washington, DC 20554

In re Application of	)	
	)	
Spokane Translator Association	)	Facility ID No. 135324
	)	NAL/Acct. No. MB-202441410003
For Renewal of License for	)	FRN: 0021250121
Low Power FM Station KVFS-LP	)	
Spokane, Washington	)	File No. 0000226648

MEMORANDUM OPINION AND ORDER AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: January 11, 2024 **Released: January 11, 2024**

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the application[1] of Spokane Translator Association (Licensee) for renewal of license for low power FM (LPFM) Station KVFS-LP, Spokane, Washington (Station). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)*,[2] we find that the Licensee apparently willfully violated section 73.3539[3] of the Commission's rules (Rules) by failing to timely file a license renewal application for the Station, as ordered by a short-term renewal letter.[4] Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of one thousand five hundred dollars ($1,500).

II. BACKGROUND

2. Section 73.3539(a) of the Rules requires that applications for renewal of license for broadcast stations must be filed "not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed."[5] Licensee's prior term expired on February 1, 2022. Accordingly, it filed an initial renewal application on October 4, 2021.[6] Due to significant periods of silence during the Station's previous term, the Bureau determined that the Station failed to meet its public service commitment, and the license should only be renewed for a period of one year.[7] The *Short Term Renewal Letter* granted Licensee's prior renewal application for a period of one year, to expire on

[1] Application File No. 0000226648 (filed Nov. 16, 2023) (2023 Renewal Application).

[2] This *NAL* is issued pursuant to sections 309(k) and 503(b) of the Communications Act of 1934, as amended (Act), and section 1.80 of the Rules. *See* 47 U.S.C. §§ 309(k), 503(b); 47 CFR § 1.80. The Bureau has delegated authority to issue the NAL under section 0.283 of the Commission's rules. *See* 47 CFR § 0.283.

[3] *See* 47 CFR § 73.3539.

[4] *Spokane Translator Association*, Letter Order, Ref 1800B3-ATS (MB Feb. 3, 2023) (*Short Term Renewal Letter*); *see also* Application File No. 0000162531 (filed Oct. 4, 2021) (2021 Renewal Application), Attach. "2023-02-03 KVFS-LP Short Term Letter.pdf".

[5] 47 CFR § 73.3539(a).

[6] 2021 Renewal Application.

[7] *Short Term Renewal Letter* at 1-3.

February 3, 2024, and specified that, pursuant to section 73.3539(a), the 2023 Renewal Application must be filed by October 1, 2023. Licensee did not file the 2023 Renewal Application until November 16, 2023. Licensee provides no explanation for its untimely filing of the 2023 Renewal Application.

III. DISCUSSION

3. *Proposed Forfeiture*. In this case, the Licensee failed to file the 2023 Renewal Application on or before October 1, 2023, as required by section 73.3539(a) of the Rules and the *Short Term Renewal Letter*. The 2023 Renewal Application was not received until November 16, 2023. Moreover, as noted above, Licensee did not provide an explanation that would excuse the late filing.

4. This *NAL* is issued pursuant to section 503(b)(1)(B) of the Act. Under that provision, a person who is found to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.[8] Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.[9] The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act,[10] and the Commission has so interpreted the term in the section 503(b) context.[11]

5. The Commission's *Forfeiture Policy Statement* and section 1.80(b)(11) of the Rules establish a base forfeiture amount of $3,000 for the failure to file a required form.[12] 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."[13]

6. In this case, the Licensee failed to file a timely renewal application for the Station and has not provided any explanation for its untimely filing. However, the Licensee did file the 2023 Renewal Application prior to the expiration of the Station's license. Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*, we will reduce the forfeiture from the base amount to $1,500 for the failure to file a timely license renewal application because, as an LPFM station, the Station is providing a secondary service.[14]

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended, and section 1.80 of the Commission's rules,[15] that Spokane Translator Association is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of one thousand five hundred dollars ($1,500) for its apparent willful violation of section 73.3539 of the

---

[8] 47 U.S.C. § 503(b)(1)(B). *See also* 47 CFR § 1.80(a)(1).

[9] 47 U.S.C. § 312(f)(1).

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

[11] *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).

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

[13] 47 U.S.C. § 503(b)(2)(E); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 CFR § 1.80(b)(11).

[14] *See, e.g., La Casa de la* Raza, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 22-195 (MB Feb. 25, 2022) and *Virginia Center for Public Press*, Memorandum Opinion and Order and Notice of Apparent Liability, 34 FCC Rcd 9312 (MB 2019) (each proposing a $1,500 forfeiture for untimely filed renewal application for LPFM station).

[15] 47 U.S.C. § 503(b); 47 CFR § 1.80.

Commission's rules.[16]

8. **IT IS FURTHER ORDERED**, pursuant to section 1.80 of the Commission's rules, that, within thirty (30) days of the release date of this Notice of Apparent Liability, Spokane Translator Association **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission's online payment system),[17] or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. Below are instructions that payors should follow based on the form of payment selected:[18]

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

10. 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

[16] 47 CFR § 73.3539.

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

[18] 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.

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

Street, N.E., Washington, DC 20554.[20] 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, ARINQUIRIES@fcc.gov.

11. 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.[21] The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street NE, Washington DC 20554, ATTN: Albert Shuldiner, Chief, Audio Division, Media Bureau, 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.[22] A copy must be emailed to Alexander.Sanjenis@fcc.gov and Olivia.Hill@fcc.gov.

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

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we have discretion to not reduce or cancel the forfeiture if other prongs of section § 503(b)(2)(E) of the Communications Act of 1934, as amended, support that result.[23]

13. **IT IS FURTHER ORDERED**, that copies of this Notice of Apparent Liability shall be sent by First Class and Certified Mail, Return Receipt Requested, to Spokane Translator Association, c/o Ian Cunningham, Esq., 426 E 22nd Ave., Spokane, WA 99203.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

[20] *See* 47 CFR § 1.1914.

[21] 47 CFR §§ 1.16 and 1.80(g)(3).

[22] 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).

[23] 47 U.S.C. § 503(b)(2)(E). *See, e.g.*, *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).

Before the
Federal Communications Commission
Washington, DC 20554

In re Application of	)	
	)	
Cascade Community Radio	)	Facility ID No. 196380
	)	NAL/Acct. No. MB-202441410004
For Renewal of License for	)	FRN: 0017039645
Low Power FM Station KVRN-LP	)	File No. 0000226531
Portland, Oregon	)	

MEMORANDUM OPINION AND ORDER AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: January 11, 2024 **Released: January 11, 2024**

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the application[1] of Cascade Community Radio (Licensee) for renewal of license for low power FM (LPFM) Station KVRN-LP, Portland, Oregon (Station). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)*,[2] we find that the Licensee apparently willfully violated section 73.3539[3] of the Commission's rules (Rules) by failing to timely file a license renewal application for the Station, as ordered by a short-term renewal letter.[4] Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of one thousand five hundred dollars ($1,500).

II. BACKGROUND

2. Section 73.3539(a) of the Rules requires that applications for renewal of license for broadcast stations must be filed "not later than the first day of the fourth full calendar month prior to the expiration date of the license sought to be renewed."[5] Licensee's prior term expired on February 1, 2022. Accordingly, it filed an initial renewal application on October 1, 2021.[6] Due to significant periods of silence during the Station's previous term, the Bureau determined that the Station failed to meet its public service commitment, and the license should only be renewed for a period of one year.[7] The *Short Term Renewal Letter* granted Licensee's prior renewal application for a period of one year, to expire on February 1, 2024, and specified that, pursuant to section 73.3539(a), the 2023 Renewal Application must

[1] Application File No. 0000226531 (filed Nov. 16, 2023) (2023 Renewal Application).

[2] This *NAL* is issued pursuant to sections 309(k) and 503(b) of the Communications Act of 1934, as amended (Act), and section 1.80 of the Rules. *See* 47 U.S.C. §§ 309(k), 503(b); 47 CFR § 1.80. The Bureau has delegated authority to issue the NAL under section 0.283 of the Commission's rules. *See* 47 CFR § 0.283.

[3] *See* 47 CFR § 73.3539.

[4] *Cascade Community Radio*, Letter Order, Ref 1800B3-ATS (MB Feb. 1, 2023) (*Short Term Renewal Letter*); *see also* Application File No. 0000162477 (filed Oct. 1, 2021) (2021 Renewal Application), Attach. "2023-02-01 KVRN-LP Short Term Letter.pdf".

[5] 47 CFR § 73.3539(a).

[6] *See* 2021 Renewal Application.

[7] *Short Term Renewal Letter* at 1-3.

be filed by October 1, 2023. Licensee did not file the 2023 Renewal Application until November 16, 2023. Licensee provides no explanation for its untimely filing of the 2023 Renewal Application.

III. DISCUSSION

3. *Proposed Forfeiture*. In this case, the Licensee failed to file the 2023 Renewal Application on or before October 1, 2023, as required by section 73.3539(a) of the Rules and the *Short Term Renewal Letter*. The 2023 Renewal Application was not received until November 16, 2023. Moreover, as noted above, Licensee did not provide an explanation that would excuse the late filing.

4. This *NAL* is issued pursuant to section 503(b)(1)(B) of the Act. Under that provision, a person who is found to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.[8] Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.[9] The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act,[10] and the Commission has so interpreted the term in the section 503(b) context.[11]

5. The Commission's *Forfeiture Policy Statement* and section 1.80(b)(11) of the Rules establish a base forfeiture amount of $3,000 for the failure to file a required form.[12] 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."[13]

6. In this case, the Licensee failed to file a timely renewal application for the Station and has not provided any explanation for its untimely filing. However, the Licensee did file the 2023 Renewal Application prior to the expiration of the Station's license. Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*, we will reduce the forfeiture from the base amount to $1,500 for the failure to file a timely license renewal application because, as an LPFM station, the Station is providing a secondary service.[14]

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended, and section 1.80 of the Commission's rules,[15] that Cascade Community Radio is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of one thousand five hundred dollars ($1,500) for its apparent willful violation of section 73.3539 of the

---

[8] 47 U.S.C. § 503(b)(1)(B). *See also* 47 CFR § 1.80(a)(1).

[9] 47 U.S.C. § 312(f)(1).

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

[11] *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).

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

[13] 47 U.S.C. § 503(b)(2)(E); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 CFR § 1.80(b)(11).

[14] *See, e.g., La Casa de la* Raza, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 37 FCC Rcd 2703 (MB 2022) and *Virginia Center for Public Press*, Memorandum Opinion and Order and Notice of Apparent Liability, 34 FCC Rcd 9312 (MB 2019) (each proposing a $1,500 forfeiture for untimely filed renewal application for LPFM station).

[15] 47 U.S.C. § 503(b); 47 CFR § 1.80.

Commission's rules.[16]

8. **IT IS FURTHER ORDERED**, pursuant to section 1.80 of the Commission's rules, that, within thirty (30) days of the release date of this Notice of Apparent Liability, Cascade Community Radio **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission's online payment system),[17] or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. Below are instructions that payors should follow based on the form of payment selected:[18]

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

10. 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

[16] 47 CFR § 73.3539.

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

[18] 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.

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

Street, N.E., Washington, DC 20554.[20] 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, ARINQUIRIES@fcc.gov.

11. 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.[21] The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street NE, Washington DC 20554, ATTN: Albert Shuldiner, Chief, Audio Division, Media Bureau, 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.[22] A copy must be emailed to Alexander.Sanjenis@fcc.gov and Olivia.Hill@fcc.gov.

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

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we have discretion to not reduce or cancel the forfeiture if other prongs of section § 503(b)(2)(E) of the Communications Act of 1934, as amended, support that result.[23]

13. **IT IS FURTHER ORDERED**, that copies of this Notice of Apparent Liability shall be sent by First Class and Certified Mail, Return Receipt Requested, to Cascade Community Radio, c/o Josh Kretzmann, Operations Manager, 3801 SE 153rd Ave., Portland, OR 97236.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

[20] *See* 47 CFR § 1.1914.

[21] 47 CFR §§ 1.16 and 1.80(g)(3).

[22] 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).

[23] 47 U.S.C. § 503(b)(2)(E). *See, e.g.*, *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).

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 24-29
Released: January 11, 2024

WIRELINE COMPETITION BUREAU ANNOUNCES FEBRUARY 12, 2024 DEADLINE FOR CERTIFYING AND SUBMITTING ENHANCED A-CAM CYBERSECURITY AND SUPPLY CHAIN RISK MANAGEMENT PLANS

WC Docket Nos. 10-90, 14-58, 09-197, 16-271

The Commission required Enhanced Alternative Connect America Cost Model (A-CAM) carriers to implement operational cybersecurity and supply chain risk management plans by January 1, 2024—the start of the Enhanced A-CAM support term—to "emphasize the critical importance of cybersecurity and supply chain risk management in modern broadband networks, consistent with broader initiatives across the federal government . . . ."[1] Enhanced A-CAM carriers must certify and submit such plans to the Universal Service Administrative Company (USAC) by January 2, 2024 or within 30 days of approval under the Paperwork Reduction Act, whichever is later.[2] On January 11, 2024, the Wireline Competition Bureau published an Effective Date Notice in the Federal Register announcing that the Office of Management and Budget had approved the relevant information collection.[3] Accordingly, carriers must certify and submit their cybersecurity and supply chain risk management plans by 11:59 p.m. EST on Monday, February 12, 2024.

More information about certifying and submitting the plans using USAC's Enhanced A-CAM Cybersecurity and Supply Chain Risk Management Plan Certification Filing System is available at: https://www.usac.org/wp-content/uploads/high-cost/documents/Tools/EACAM-CSCRMP-Certification-Filing-System-User-Guide.pdf.

If an Enhanced A-CAM carrier fails to submit the plans and make the certification by the deadline, or does not have in place operational plans at any time during the support term, the Bureau will direct USAC to withhold 25% of monthly support until the carrier comes into compliance.[4] If an Enhanced A-CAM carrier makes a substantive modification to its plans, it must submit its updated plan to USAC within 30 days of making the modification.[5]

---

[1] 47 CFR § 54.308(e)(1); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., FCC 23-60, at 47, para. 109 (July 24, 2023) (*Enhanced A-CAM Order*).

[2] 47 CFR § 54.308(e)(2); *Enhanced A-CAM Order* at 47, para. 109.

[3] Federal Communications Commission, Final rule, Announcement of Effective Date, 89 Fed. Reg. 1833 (Jan. 11, 2023).

[4] 47 CFR § 54.308(e)(3); *Enhanced A-CAM Order* at 47, 49, paras. 109, 112.

[5] 47 CFR § 54.308(e)(6); *Enhanced A-CAM Order* at 48-49, para. 112.

For additional information, please contact Heidi Lankau (Heidi.Lankau@fcc.gov) of the Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418-2876.

-FCC-

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

In the Matter of	)	
	)	
Amendment of Section 73.622(j), Table of TV	)	MB Docket No. 24-4
Allotments, Television Broadcast Stations	)	RM-11974
(Waynesboro, Virginia)	)	

NOTICE OF PROPOSED RULEMAKING

Adopted: January 11, 2024 **Released: January 11, 2024**

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Video Division of the Media Bureau (Bureau), has before it a petition for rulemaking (Petition) filed January 9, 2024, by VPM Media Corporation (Petitioner).[1] The Petitioner requests the allotment of reserved noncommercial educational (NCE) television channel *12 to Waynesboro, Virginia (Waynesboro), as the community's first local television service and its first NCE television service.[2]

II. BACKGROUND

2. The Petitioner states that Waynesboro qualifies as a community for allotment purposes. In support, it states that Waynesboro is an independent and principal city of the Staunton-Waynesboro Metropolitan Statistical Area.[3] As of the 2020 Census, Waynesboro had a population of 22,196 and the Staunton-Waynesboro Statistical Area had a population of 125,654.[4] In addition, Waynesboro has its own ZIP Code, two post offices, city council, public school system, police department, and library.[5] The Petitioner states its intention to file an application for channel *12 if allotted, and take all necessary steps to obtain a construction permit.[6]

III. DISCUSSION

3. We find the proposed amendment to the Table of TV Allotments warrants consideration. The Petitioner's proposal would result in a first local service to Waynesboro under the second priority of the Commission's television allotment priority standard.[7] The Petitioner demonstrates, and a Bureau staff

[1] VPM Media Corporation's Petition for Rulemaking, LMS File No. 0000235050 (filed Jan. 9, 2024) (Petition).

[2] NCE television stations are identified in the Table by an asterisk to indicate they are reserved for noncommercial educational use. 47 CFR § 73.622(a).

[3] Petition at 3.

[4] *Id*.

[5] *Id*.

[6] *Id*.

[7] The Commission determines a preferential arrangement of television allotments based on the following five priorities: (1) provide at least one television service to all parts of the United States; *(2) provide each community with at least one television broadcast station*; (3) provide a choice of at least two television services to all parts of the United States; (4) provide each community with at least two television broadcast stations; and (5) assign any remaining channels to communities based on population, geographic location, and the number of television services available to the community from stations located in other communities. *Amendment of Section 3.606 of the Commission's Rules and Regulations,* Sixth Report and Order, 41 F.C.C. 148, 167-173 (1952) (emphasis added).

engineering analysis confirms, that channel *12 can be allotted to Waynesboro, consistent with the minimum geographic spacing requirements for new allotments in section 73.623(d) of the Commission's rules (Rules),[8] at 37° 38' 24" N and 78° 27' 11" W (allotment point). In addition, the allotment point complies with section 73.625(a)(1) of the Rules as the entire community of Waynesboro is encompassed by the proposed 43 dBμ contour.[9]

4. Accordingly, we seek comment on the proposed amendment of the Table of TV Allotments, section 73.622(j) of the Rules,[10] for the community listed below, to read as follows:

	Channel No.	
City and State	Present	Proposed
Waynesboro, Virginia	--	*12

IV. PROCEDURAL MATTERS

5. *Showings Required*. Comments are invited on the proposal discussed in this Notice of Proposed Rulemaking (*NPRM*). The Petitioner or any proponent that expresses interest in the allotment will be expected to answer whatever questions are presented in initial comments. The Petitioner of a proposed allotment is required to file comments even if it only resubmits or incorporates by reference its former pleadings. The Petitioner must restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly.[11] Failure to file may lead to denial of the request. Any requests by a proponent for withdrawal or dismissal of an allotment request must be filed with the Commission in accordance with section 1.420(j) of the Rules.[12]

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

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments.[13]

(b) The filing of a counterproposal may lead the Commission to allot a different channel than was requested in the Petition.[14]

7. *Comments and Reply Comments*. Pursuant to sections 1.415, 1.419, and 1.420 of the Rules,[15] interested parties may file comments and reply comments on or before the dates indicated on the

[8] 47 CFR § 73.623(d). The Commission recently amended its rules to relocate the text from section 73.623(d), relating to the minimum distance separations for new TV allotments, to a new section 73.622(k) (Table of TV allotments). *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 at para. 38 (rel. Sept. 19, 2023) (*Part 73 Amendment R&O*). The amended rules are not yet effective as of the release of this *NPRM*.

[9] *See* 47 CFR § 73.625(a)(1) and Petition at 2. The Commission also amended its rules to create a new section 73.618 (Antenna location and principal community coverage), which relocates, verbatim, the language from section 73.625(a) (DTV coverage of principal community and antenna system). *See Part 73 Report and Order* at para. 37.

[10] 47 CFR § 73.622(j).

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

[12] 47 CFR § 1.420(j).

[13] 47 CFR § 1.420(d).

[14] 47 CFR § 1.420(g)(2).

[15] 47 CFR §§ 1.415, 1.419, and 1.420.

first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).[16]

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://apps.fcc.gov/ecfs/. Parties that choose to file electronically only need to submit one copy of each filing so long as the submission conforms to all procedural and filing requirements. Online filing is optional.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Any paper filing that is not addressed to the Office of the Secretary will be treated as filed on the day it is received in the Office of the Secretary. Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.
  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
  - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington D.C. 20554.
  - Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.[17]
  - 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.

8. *Service.* Pursuant to section 1.420 of the Rules,[18] all submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. The person filing the comments shall serve comments on the petitioners. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments.[19] Additionally, a copy of such comments should be served on the Petitioner, as follows:

Ari Meltzer
Wiley Rein LLP
2050 M Street NW
Washington, D.C. 20036

9. *Ex Parte Notices– Restricted*. The proceeding this Notice initiates shall be treated as a "restricted" proceeding in accordance with the Commission's *ex parte* rules.[20] For purposes of this restricted notice and comment rulemaking proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a notice of proposed rulemaking until the proceeding has been decided and such decision in the applicable docket is no longer subject to

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

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

[18] 47 CFR § 1.420.

[19] *See* 47 CFR § 1.420(a), (b) and (c).

[20] 47 CFR §§ 1.1200 *et seq.*

reconsideration by the Commission or review by any court.[21] An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding.[22] However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in a particular docket unless the Commission specifically waives this service requirement.[23] Any comment that has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

10. *Providing Accountability Through Transparency Act.* The Providing Accountability Through Transparency Act requires each agency, in providing notice of a rulemaking, to post online a brief plain-language summary of the proposed rule.[24] Accordingly, the Commission will publish the required summary of this Notice of Proposed Rulemaking on https://www.fcc.gov/proposed-rulemakings.

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

12. *Paperwork Reduction and Regulatory Flexibility*. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980, as amended,[25] do not apply to a rulemaking proceeding to amend the Table of Allotments, section 73.622(j) of the Rules.[26] This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995.[27] 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.[28]

13. *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).

14. *Additional Information*. For further information concerning the proceeding listed above, contact Emily Harrison, Video Division, Media Bureau by phone at (202) 418-1665 or by e-mail at Emily.Harrison@fcc.gov.

V. ORDERING CLAUSES

---

[21] 47 CFR § 1.1208.

[22] 47 CFR § 1.1204(a)(10).

[23] 47 CFR § 1.1204(a)(10)(ii). In addition, an oral presentation in a restricted proceeding not designated for hearing requesting action by a particular date or giving reasons that a proceeding should be expedited other than the need to avoid administrative delay is permitted. A detailed summary of the presentation must be filed in the record and served by the person making the presentation on the other parties to the proceeding, who may respond in support or opposition to the request for expedition, including by oral *ex parte* presentation, subject to the same service requirement. 47 CFR § 1.1204(a)(11).

[24] 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.

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

[26] 47 CFR § 73.622(j).

[27] *See* 44 U.S.C. §§ 3501-3520.

[28] *See* 44 U.S.C. § 3506(c)(4).

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

16. **IT IS FURTHER ORDERED** that, pursuant to applicable procedures set forth in sections 1.415, 1.419, 1.420 of the Rules, 47 CFR §§ 1.415, 1.419, and 1.420, interested parties may file comments, including counterproposals, on the *NPRM* in MB Docket No. 24-4 and RM-11974 on or before thirty (30) days after publication in the Federal Register and reply comments on or before forty five (45) days after publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

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

In the Matter of	)	
	)	
Nexstar Media Inc.	)	Facility ID No. 8523
	)	NAL/Acct. No. 202441420002
Licensee of Station KAMR-TV,	)	FRN: 0009961889
Amarillo, Texas	)	LMS File No. 0000188479

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: January 11, 2024 **Released: January 11, 2024**

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the application[1] of Nexstar Media Inc. (Licensee), for renewal of its license for full power television station KAMR-TV, Amarillo, Texas (Station). In this *Notice of Apparent Liability for Forfeiture* (*NAL*), we find the Licensee apparently willfully and repeatedly violated the Commission's rules (Rules) by failing to timely file the Station's quarterly issues/programs lists in violation of section 73.3526(e)(11)(i) of the Rules.[2] Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of six thousand dollars ($6,000).

II. BACKGROUND

2. Section 73.3526(e)(11)(i) of the Rules requires every commercial television licensee to place in its Online Public Inspection File (OPIF), on a quarterly basis, an issues/programs list that details programs that have provided the station's most significant treatment of community issues during the preceding three month period and must include a brief narrative of the issues addressed, as well as the time, date, duration, and title of each program in which the issues were treated.[3] Issues/programs lists must be placed in the station's OPIF by the tenth day of the succeeding calendar quarter and copies must be retained until final action on the station's next license renewal application.[4]

3. On April 1, 2022, the Licensee filed its Application. The Licensee disclosed in the Application that the licensee failed to upload copies of its issues/programs lists in a timely manner.[5] On July 6, 2023, the Licensee amended its Application disclosing additional late filed issues/programs lists.[6] In total, the Licensee disclosed and a Bureau staff inspection of the Station's OPIF confirmed that the Licensee failed to upload copies of its issues/programs lists for nine quarters. Specifically, it uploaded five lists more than one year late, two lists between one month and one year late, and two lists between one day and one month late. The Licensee did not provide an explanation for the late filings.

[1] Application of Nexstar Media Inc. for Renewal of License, LMS File No. 0000188479 (filed April 1, 2022, amended July 6, 2023) (Application).

[2] 47 CFR § 73.3526(e)(11)(i).

[3] *Id.*

[4] *Id*.

[5] Application at KAMR Online Public File.

[6] Application at KAMR Online Public File Amended

III. DISCUSSION

4. This *NAL* is issued pursuant to section 503(b)(1)(B) of the Communications Act of 1934, as amended (Act), which states a person who is found to have willfully or repeatedly failed to comply with any provision of the Act, or any rule, regulation, or order issued by the Commission, shall be liable to the United States for a forfeiture penalty.[7] 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.[8] 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,[9] and the Commission has so interpreted the term in the section 503(b) context.[10] 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."[11]

5. *Apparent Violation.* The Licensee admits that it failed to upload in a timely manner to the Station's OPIF copies of the Station's issues/programs lists. In total, the Licensee failed to upload in a timely manner issues/programs lists for nine quarters. These lists were between one day and over one-year late, as outlined above.[12] We therefore find that the Licensee has apparently willfully and repeatedly violated section 73.3526(e)(11)(i) of the Rules.[13]

6. *Proposed Forfeiture Amount*. The Commission's *Forfeiture Policy Statement* and section 1.80(b)(10) of the Rules establish a base forfeiture amount of $10,000 for public file violations.[14] In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in section 503(b)(2)(E) of the Act, including "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."[15]

7. In this case, the Licensee failed to timely upload to its OPIF copies of its issues/programs lists for nine quarters, including five lists that were filed over one year late, two lists that were filed between one month and one year late, and two lists that were filed between one day and one month late, in violation of section 73.3526(e)(11)(i) of the Rules.[16] Although the Licensee did not provide an explanation for its repeated failure to timely upload its issue/programs lists, we note that "employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations."[17] Further, it is well established precedent that "inadvertence . . . is at best, ignorance of the law, which the

---

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

[8] 47 U.S.C. § 312(f)(1).

[9] *See* H.R. Rep. No. 97-765, at 51 (1982) (Conf. Rep.).

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

[11] 47 U.S.C. § 312(f)(2).

[12] *See supra* para. 3.

[13] *See* 47 CFR § 73.3526(e)(11)(i).

[14] *See Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, CI Docket No. 95-6, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (*Forfeiture Policy Statement*), *recon. denied*, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b), paragraph (b)(10), Table 1.

[15] 47 U.S.C. § 503(b)(2)(E). *See also Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 CFR § 1.80(b)(10); 47 CFR § 1.80(b), paragraph (b)(10), Table 3.

[16] *See* 47 CFR § 73.3526(e)(11)(i).

[17] *Application for Review of Monetary Forfeiture Assessed Against Standard Comm'cns Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358, 359, para. 4 (1986).

Commission does not consider a mitigating circumstance."[18] Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*, we find that under the facts of this case, including the number of late filings and the extent by which they were late, a forfeiture in the amount of $6,000 is appropriate for the Licensee's apparent failure to timely upload its issues/programs lists. We also find that the Licensee's apparent violation of section 73.3526(e)(11)(i) of the Rules[19] does not constitute a "serious violation" warranting designation of the Application for evidentiary hearing.[20]

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and sections 1.80 and 0.283(d) of the Commission's Rules, 47 CFR §§ 1.80 and 0.283(d), that **Nexstar Media, Inc.** is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of six thousand dollars ($6,000) for its apparent willful and repeated violation of section 73.3526(e)(11)(i) of the Commission's Rules, 47 CFR § 73.3526(e)(11)(i).

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

10. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission's online payment system),[21] or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. **Upon payment, Licensee must send notice that payment has been made by e-mail to VideoNAL@fcc.gov.** Below are instructions that payors should follow based on the form of payment selected:[22]

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed FCC Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment

[18] *Southern California*, 6 FCC Rcd at 4387, para. 3.

[19] 47 CFR § 73.3526(e)(11)(i).

[20] In evaluating an application for license renewal, the Commission's decision is governed by section 309(k) of the Act. 47 U.S.C. § 309(k). That section provides that if, upon consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application. 47 U.S.C. § 309(k)(1). If, however, the licensee fails to meet that standard, the Commission may deny the application—after notice and opportunity for a hearing under section 309(e) of the Act—or grant the application "on terms and conditions as are appropriate, including renewal for a term less than the maximum otherwise permitted." 47 U.S.C. §§ 309(k)(2), 309(k)(3). The Licensee's Application is subject to an unrelated informal objection. *See* Informal Objection to Renewal Application of Nexstar Media, Inc. filed by WNAC, LLC, LMS Pleading File No. 0000216427 (filed June 8, 2023). This *NAL* does not address this informal objection, nor is it intended to prejudge any future decisions or actions regarding the informal objection. The Station's license renewal will be acted upon by separate action upon conclusion of the proceeding related to the informal objection and this forfeiture proceeding.

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

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

type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).[23] For additional detail and wire transfer instructions, go to https://www.fcc.gov/licensing-databases/fees/wire-transfer.

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

11. The written response seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Rules.[24] The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554, ATTN: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and **MUST INCLUDE** the NAL/Acct. No. referenced above. **A copy must also be sent by e-mail to VideoNAL@fcc.gov to assist in processing the response.**

- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
    - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
    - Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, 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.[25]

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

[24] 47 CFR §§ 1.16 and 1.80(g)(3).

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

12. 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 Principles (GAAP); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we have discretion to not reduce or cancel the forfeiture if other prongs of 47 U.S.C. § 503(b)(2)(E) support that result.[26]

13. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, 45 L Street, NE, Washington, D.C. 20554.[27] 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.

14. **IT IS FURTHER ORDERED**, that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to **Nexstar Media, Inc.**, Jason Roberts, VP & Associate General Counsel, 545 E John Carpenter Freeway Suite 700, Irving, TX 75062, and by e-mail to jasroberts@nexstar.tv.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

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

[27] *See* 47 CFR § 1.1914.

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

In the Matter of	)	
	)	
San Francisco Television Station KBCW, Inc.	)	Facility ID No. 69619
	)	NAL/Acct. No. 202441420003
Licensee of Station KPYX(TV)	)	FRN: 0003742632
San Francisco, California	)	LMS File No. 0000196368
	)	

MEMORANDUM OPINION AND ORDER AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: January 11, 2024 **Released: January 11, 2024**

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it the application (Application)[1] of San Francisco Television Station KBCW, Inc. (Licensee), for renewal of its license for KPYX(TV), San Francisco, California (Station).[2] In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* (*NAL*), we find the Licensee apparently willfully and repeatedly violated the Commission's rules (Rules) by failing to timely file the Station's quarterly issues/programs lists in violation of section 73.3526(e)(11)(i) of the Rules.[3] Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of three thousand dollars ($3,000).

II. BACKGROUND

2. Section 73.3526(e)(11)(i) of the Rules requires every commercial television licensee to place in its OPIF, on a quarterly basis, an issues/programs list that details programs that have provided the station's most significant treatment of community issues during the preceding three month period and must include a brief narrative of the issues addressed, as well as the time, date, duration, and title of each program in which the issues were treated.[4] Issues/programs lists must be placed in the station's OPIF by the tenth day of the succeeding calendar quarter and copies must be retained until final action on the station's next license renewal application.[5]

3. On August 1, 2022, the Licensee filed its Application. The Licensee disclosed and a Bureau staff inspection of the Station's OPIF revealed that the Licensee failed to upload a total of six issues/programs lists by the deadline established in section 73.3526(e)(11)(i) of the Rules during the prior license term.[6] Specifically, it uploaded one issues/programs list over six months late and five

[1] Application of San Francisco Television Station KBCW, Inc. for Renewal of License, File No. 0000196368 (filed Aug. 1, 2022).

[2] Prior to Sep. 1, 2023, Station was referred to by the call sign KBCW. *See* Application of San Francisco Television Station KBCW, Inc. for Call Sign Change, LMS File No. 0000218049 (granted Jul. 19, 2023).

[3] 47 CFR § 73.3526(e)(11)(i).

[4] *Id.*

[5] *Id*.

[6] Application at Attach.

issues/programs lists over one year late. In the Application, the Licensee states that the documents were filed in a timely manner, but inadvertently uploaded to the incorrect folder.[7] However, the Licensee did not provide specifics as to the location of the misfiled documents and Bureau staff was unable to independently locate the misfiled documents in the Station's OPIF.

III. DISCUSSION

4. This *NAL* is issued pursuant to section 503(b)(1)(B) of the Communications Act of 1934, as amended (the Act), which states a person who is found to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission, shall be liable to the United States for a forfeiture penalty.[8] Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.[9] The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act,[10] and the Commission has so interpreted the term in the section 503(b) context.[11] Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."[12]

5. *Apparent Violation.* In total, the Licensee failed to upload in a timely manner to the Station's OPIF copies of the Station's issue/programs lists for six quarters, with one list being uploaded over six months late and five being uploaded over one year late. We therefore find that the Licensee has apparently willfully and repeatedly violated section 73.3526(e)(11)(i) of the Rules.[13]

6. *Proposed Forfeiture.* The Commission's *Forfeiture Policy Statement* and section 1.80(b)(10) of the Rules establish a base forfeiture amount of $10,000 for public file violations.[14] In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in section 503(b)(2)(E) of the Act, including "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."[15]

7. In this case, the Licensee failed to timely upload to its OPIF issue/programs lists for a total of six quarters, in violation of section 73.35276(e)(11)(i) of the Rules.[16] While Licensee contends in the Application that the documents were uploaded in a timely manner to an incorrect folder, it does not identify where the documents were uploaded. Bureau staff attempted to find the misfiled documents in the Station's OPIF and could not locate them. It is well settled Commission precedent that administrative oversight is not an excuse for failure to comply with the Commission's rules or a mitigating

---

[7] *Id.*

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

[9] 47 U.S.C. § 312(f)(1).

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

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

[12] 47 U.S.C. § 312(f)(2).

[13] *See* 47 CFR § 73.3526(e)(11)(i).

[14] *See Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (*Forfeiture Policy Statement*), *recon. denied*, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b), paragraph (b)(10), Table 1.

[15] 47 U.S.C. § 503(b)(2)(E). *See also Forfeiture Policy Statement*, 12 FCC Rcd at 17100–01; 47 CFR § 1.80(b)(10); 47 CFR § 1.80(b), paragraph (b)(10), Table 3.

[16] *See* 47 CFR § 73.3526(e)(11)(i).

circumstance.[17] Furthermore, applicants and licensees are responsible for the errors or oversights of their employees.[18] Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*, we find that under the facts of this case a forfeiture in the amount of $3,000 is appropriate for the Licensee's apparent failure to timely upload its issues/programs lists.

8. *License Renewal Application.* In evaluating an application for license renewal, the Commission's decision is governed by section 309(k) of the Act.[19] That section provides that if, upon consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.[20] If, however, the licensee fails to meet that standard, the Commission may deny the application—after notice and opportunity for a hearing under section 309(e) of the Act—or grant the application "on terms and conditions as are appropriate, including renewal for a term less than the maximum otherwise permitted."[21]

9. We find that the Licensee's apparent violation of section 73.3526(e)(11)(i) of the Rules does not constitute a "serious violation" warranting designation of the Application for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, constitute a pattern of abuse.[22] Further, based on our review of the Application, we find that the Station served the public interest, convenience, and necessity during the subject license term. We will therefore grant the Application by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than those set forth in this *NAL* that would preclude grant of the Application.[23]

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and sections 1.80 and 0.283(d) of the Commission's rules, 47 CFR §§ 1.80 and 0.283, that **San Francisco Television Station KBCW, Inc.**, is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of three thousand dollars ($3,000) for

[17] *See, e.g.*, *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, para. 3 (1991), recon. denied, 7 FCC Rcd 3454 (1992) (stating that "inadvertence . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance") (internal cite omitted); *Standard Comm'cns Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358, 358, para. 4 (1986) (stating that "employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations").

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

[19] 47 U.S.C. § 309(k).

[20] 47 U.S.C. § 309(k)(1).

[21] 47 U.S.C. §§ 309(k)(2), (k)(3).

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

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

its apparent willful and repeated violation of section 73.3526(e)(11)(i) of the Commission's rules, 47 CFR § 73.3526(e)(11)(i).

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

12. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission's online payment system),[24] or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted**. Upon payment, Licensee must send notice that payment has been made to VideoNAL@fcc.gov.** Below are instructions that payors should follow based on the form of payment selected:[25]

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

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

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

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

13. The written response seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Rules.[27] The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554, ATTN: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and **MUST INCLUDE** the NAL/Acct. No. referenced above. **A copy must also be emailed to VideoNAL@fcc.gov to assist in processing the response.**

- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
    - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
    - Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.
    - Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.[28]

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we have discretion to not reduce or cancel the forfeiture if other prongs of 47 U.S.C. § 503(b)(2)(E) support that result.[29]

15. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, 45 L Street, NE, Washington, DC 20554.[30] Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

16. **IT IS FURTHER ORDERED**, that a copy of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Daniel G. Ryson, Director Spectrum Management, 2020 M Street, NW- Licensing DEPT, Washington, DC 20036 and by e-mail to dryson@cbs.com. A copy shall also be sent by e-mail to the Station's contact representatives Martha E. Heller, Vice President,

[27] 47 CFR §§ 1.16 and 1.80(g)(3).

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

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

[30] *See* 47 CFR § 1.1914.

Government Relations and Regulatory, Paramount Global at martha.heller@viacomcbs.com and John Bagwell, SVP and Associate General Counsel, Paramount Global at john.bagwell@paramount.com.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-33
Released: January 12, 2024

WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON A CONTRABAND INTERDICTION SYSTEM CERTIFICATION APPLICATION

GN Docket No. 13-111

Comment Deadline: February 12, 2024

On July 13, 2021, the Commission released the *Second Report and Order* in this proceeding, which adopted a framework requiring the disabling of contraband wireless devices detected in correctional facilities upon satisfaction of certain criteria.[1] On December 17, 2021, the Wireless Telecommunications Bureau (Bureau) issued the *Guidance Public Notice*, which established the minimum criteria that must be demonstrated in and provided guidance on the submission of a Contraband Interdiction System (CIS) certification application.[2] Specifically, phase one of the CIS certification application process requires an applicant to describe the legal and technical qualifications of and provide a test plan for the system that the applicant seeks to use as the basis for qualifying requests for contraband device disabling.[3] Per the *Second Report and Order*, stakeholders will have an opportunity to review and comment on the CIS certification applications prior to testing or deploying at a correctional facility.[4]

By this Public Notice, the Bureau announces that the CIS application listed in Attachment A hereto has been found complete, and stakeholders are invited to review the application and file comments using the Commission's Electronic Comment Filing System (ECFS).[5] All filings must reference **GN Docket 13-111 and the relevant file number**, as listed in Attachment A. Stakeholders seeking review of confidential filings are required to follow the procedures set forth in the Protective Order.[6] We call attention to a change to the Commission's typical protective order provisions that is being adopted for this proceeding. Under this Protective Order, experts employed by wireless providers participating in the proceeding will be permitted to have access to Confidential Information. Experts employed by other commercial entities will continue to be prohibited from such access. We urge all parties who plan to seek

[1] *See Promoting Technological Solutions to Combat Contraband Wireless Device Use in Correctional Facilities*, GN Docket No. 13-111, Second Report and Order and Second Further Notice of Proposed Rulemaking, 36 FCC Rcd 11813, 11814, para. 2 (2021) (*Second Report and Order*); *see also Promoting Technological Solutions to Combat Contraband Wireless Device Use in Correctional Facilities*, GN Docket No. 13-111, Erratum (rel. Aug. 3, 2021).

[2] *Wireless Telecommunications Bureau Provides Guidance for Filing Contraband Interdiction System Certification Applications and Self-Certifications*, GN Docket No. 13-111, Public Notice, DA 21-1572, 2-4, paras. 5-6, 9-10 (WTB 2021) (*Guidance Public Notice*).

[3] *Guidance Public Notice*, at 2-4, paras. 5-10.

[4] *Second Report and Order*, 36 FCC Rcd at 11822, 11824, paras. 24, 27.

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

[6] *See Promoting Technological Solutions to Combat Contraband Wireless Device Use in Correctional Facilities*, GN Docket No. 13-111, Protective Order, DA 23-223 (Mar. 24, 2023).

access to confidential information in this proceeding (and who have filed or have a good faith intention to file material comments) to promptly file an Acknowledgement of Confidentiality, as set forth in the Protective Order.

Additional Information. For further information regarding this Public Notice, please contact Halie Peacher, Attorney Advisor, WTB, Mobility Division at (202) 418-0514 or Halie.Peacher@fcc.gov.

-FCC-

ATTACHMENT A

CIS Certification Application Name and Associated File Number

CIS Certification Applicant	File Number
Trace-Tek, LLC[7]	0006

[7] Application of Trace-Tek, LLC for Certification of Contraband Interdiction System Under 47 CFR Section 20.23, GN Docket No. 13-111 (filed Nov. 30, 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. 24-34

Report No. TEL-02331 **Friday January 12, 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).

SURRENDER

ITC-214-19980312-00185 T-NETIX, INC.

T-NETIX, Inc. notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20040114-00011 TCS Telecom, Inc.

TCS Telecom, Inc. notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20050801-00299 Buffalo-Lake Erie Wireless Systems Co., L.L.C.

Buffalo-Lake Erie Wireless Systems Co., L.L.C. notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20080131-00042 PTGi International Carrier Services, Inc.

PTGi International Carrier Services, Inc. notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20100507-00186 Voxbeam Telecommunications Inc.

Voxbeam Telecommunications Inc. notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20150130-00023 Astro Telecommunications LLC

Astro Telecommunications 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. 24-35

Report No. SAT-01790 **Friday January 12, 2024**

Satellite Licensing Division and Satellite Programs and Policy Division Information

Actions Taken

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

SAT-STA-20231102-00273 E S2406 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 01/10/2024

On January 10, 2024, the Satellite Programs and Policy Division granted, with conditions, Intelsat License LLC's request for special temporary authority, for a period of 180 days, to operate the Intelsat 902 space station over new C-band coverage areas at the 50.1° W.L. orbital location.

SAT-STA-20231208-00309 E S3017 Hughes Network Systems, LLC
Special Temporary Authority
Withdrawn Effective Date: 01/05/2024

SAT-STA-20231211-00310 E S2380 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 01/10/2024

On January 10, 2024, the Satellite Programs and Policy Division granted, with conditions, the request of Intelsat License LLC for special temporary authority, for a period of 30 days, to conduct telemetry, tracking and command (TT&C) operations necessary to drift Intelsat 9, starting January 19, 2024, from the 310.0° E.L. orbital location to the 66.25° E.L. orbital location using the following TT&C center frequencies: 11.7005 GHz, 11.7020 GHz (space-to-Earth), 14.0005 GHz, and 14.4945 GHz (Earth-to-space).

SAT-STA-20231211-00311 E S2382 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 01/10/2024

On January 10, 2024, the Satellite Programs and Policy Division granted, with conditions, the request of Intelsat License LLC for special temporary authority, for a period of 30 days, to conduct telemetry, tracking and command (TT&C) operations necessary to drift Intelsat 10, starting January 19, 2024, from the 177.8° E.L. orbital location to the 66.10° E.L. orbital location using the following TT&C center frequencies: 11.6990 GHz, 12.7475 GHz, 12.7485 GHz, and 12.7495 GHz (space-to-Earth); and 14.0005 GHz, and 14.4995 GHz (Earth-to-space).

SAT-STA-20231220-00322 E S2406 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 01/10/2024

Application listed as granted in ICFS to reflect continuing operations pursuant to section 1.62 of the Commission's rules. 47 CFR § 1.62.

SAT-STA-20240103-00002 E S3144 Momentus Space LLC
Special Temporary Authority
Granted in Part/ Deferred in Part Effective Date: 01/09/2024

On January 9, 2024, the Satellite Programs and Policy Division granted in part/deferred in part, with conditions, the request of Momentus Space LLC for special temporary authority to continue to operate its Vigoride-5 (VR-5) space station. Specifically, the Division authorized Momentus to operate for an additional period of up to 30 days.

SAT-STA-20240103-00003 E S2382 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 01/10/2024

On January 10, 2024, the Satellite Programs and Policy Division granted, with conditions, Intelsat License LLC's request for special temporary authority, for a period of 30 days, to operate the Intelsat 10 space station at the 177.8° E.L. orbital location.

CORRECTIONS

SAT-STA-20231206-00303 S3032 BlackSky Global LLC

The January 5, 2024 Actions Taken public notice for the above-captioned application, Report No. SAT-01788, is corrected to reflect a grant date of January 11, 2024.

SAT-STA-20240103-00005 S2912 Planet Labs PBC

The January 5, 2024 Actions Taken public notice for the above-captioned application, Report No. SAT-01788, is corrected to reflect a grant date of January 11, 2024.

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 24-36
Released: January 12, 2024

WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON REQUEST BY GARMIN INTERNATIONAL, INC., FOR WAIVER OF 47 CFR § 95.1787(a)(3)

WT Docket No. 24-7

Comment Date: February 12, 2024 **Reply Date: February 27, 2024**

On October 5, 2023, Garmin International, Inc. (Garmin) filed a petition for waiver of the Commission's rules governing the General Mobile Radio Service (GMRS) operations in the 462 MHz band.[1] Specifically, Garmin seeks a waiver of section 95.1787(a)(3) of the Commission's rules to obtain equipment certification for certain hand-held GMRS devices. Section 95.1787(a)(3) limits GMRS digital data transmissions (not to exceed one second in duration)[2] to one transmission every 30 seconds.[3] The proposed product will automatically transmit digital data, such as GPS location data, once every five seconds, for a duration of 50 milliseconds each, provided that the channel being used has not been utilized for voice communications in the previous 30 seconds during non-emergency situations.[4] Garmin also proposes several conditions that would be required upon grant of this waiver request to protect against interference and congestion.[5] Garmin alleges that its request builds on, but is narrower than, the recent waiver granted by the Mobility Division to Midland Radio Corporation.[6]

Garmin asserts that increasing the permitted frequency of GMRS digital data transmissions would

[1] Request for Waiver of Section 95.1787(a)(3) of the Commission's Rules, Non-Docketed ECFS INBOX-1.3 (Oct. 5, 2023), https://www.fcc.gov/ecfs/document/1005158792395/1) (Garmin Petition).

[2] *See* 47 CFR § 95.1787(a)(2).

[3] *See* 47 CFR § 95.1787(a)(3).

[4] Garmin Petition at 1. The measures detailed above are referred to as Listen-Before-Talk protocols. However, in the event of an emergency, these measures are not employed. *Id.* at 8. Garmin's GMRS devices have methods to determine if an emergency is occurring, such as pressure on the SOS button or "selection of an emergency-related functionality" on the interface of the GMRS device. *Id.* at 8 & n.15. Some examples of emergencies highlighted by Garmin include safety of life situations and search and rescue missions. *Id.* at 8, 10.

[5] *Id*. at 12. Specifically, Garmin proposes that the Commission impose the following conditions on any grant of its waiver request: (1) transmitters must not be capable of modification by end users to adjust the frequencies of operation; (2) restrict operation to 462 MHz interstitial channels; (3) limit digital data transmissions to once every five seconds with each transmission lasting no more than 50 milliseconds in duration; and (4) to eliminate any potential for harmful interference to voice communications, GMRS devices must employ a Listen Before Talk protocol that would suspend data transmissions whenever the device detects that another GMRS user is using the channel for voice communications until the channel has been clear of any voice communications for at least 30 seconds. *Id.*

[6] *Id.* at 2 (citing *Midland Radio Corp. Petition for Waiver of Certain FCC's Rules to Authorize a Radio System to Improve Safety for Off-Road GMRS Users*, Order, DA 23-633 (WTB 2023).

help individuals in remote locations remain in contact with one another and ensure more accurate tracking of their positions whether for recreational or safety reasons, especially in areas with weak or no cellular reception.[7] Garmin further argues that a waiver would serve the public interest by guaranteeing "that critical communications and location information are automatically available with sufficient time and information to" locate individuals both in emergency and non-emergency situations.[8]

By this *Public Notice*, the Wireless Telecommunications Bureau seeks comment on all aspects of this petition for waiver. To develop a complete record on the issues presented by this request, the proceeding will be treated, for *ex parte* purposes, as a "permit-but-disclose" proceeding in accordance with section 1.1200(a) of the Commission's rules,[9] subject to the requirements under section 1.1206(b).[10] Garmin filed its petition electronically as a non-docketed proceeding in the Commission's Electronic Comment Filing System.[11] We have opened a new docket, **WT Docket 24-7**, to facilitate consideration of this request and have moved Garmin's petition into this docket. Parties should file all comments and reply comments in **WT Docket 24-7**.

Filing Requirements. Interested parties may file comments in response to this *Public Notice* on or before the date indicated on the first page of this document.[12] Parties may file comments, identified by **WT Docket No. 24-7**, by any of the following methods:

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS): http://apps.fcc.gov/ecfs/.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service first class, 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 445 12th Street, SW, 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.[13]
- People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

Ex Parte Rules. As stated above, the proceeding this Notice initiates shall be treated as a "permit-

[7] Garmin Petition 4–5.

[8] *Id*. at 13.

[9] 47 CFR § 1.1200(a).

[10] 47 CFR § 1.1206(b).

[11] *See* Garmin Petition.

[12] *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121-01 (1998).

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

but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[14] Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

For further information, contact Mr. Thomas Reed of the Wireless Telecommunications Bureau, Mobility Division, at Thomas.Reed@fcc.gov.

Action by the Chief, Mobility Division, Wireless Telecommunications Bureau.

- FCC -

[14] 47 CFR §§ 1.1200 *et seq.*

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

In the Matter of	)	
	)	
BOUNDARY COUNTY TV TRANSLATOR DISTRICT	)	Facility ID Nos. 6531 and 6535
	)	NAL/Acct. No. MB-. 202341420041
	)	FRN: 0010200160
For Licenses to Cover Television Translator Stations K46HZ-D, Bonners Ferry, Idaho and K50GL-D, Bonners Ferry, Idaho	)	LMS File Nos. 0000218655 and 0000218656
	)	
	)	
	)	

FORFEITURE ORDER

Adopted: January 12, 2024 **Released: January 12, 2024**

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order*, we issue a monetary forfeiture in the amount of two thousand dollars ($2,000) to Boundary County TV Translator District (Licensee), licensee of television translator (TV translator) stations K46HZ-D, Bonners Ferry, Idaho, and K50GL-D, Bonners Ferry, Idaho (collectively, Stations). We find that the Licensee willfully violated section 74.788[1] of the Commission's rules (Rules) by failing to timely file license to cover applications, and willfully and repeatedly violated section 73.1745 of the Rules[2] and section 301 of the Communications Act of 1934, as amended (Act),[3] by engaging in unauthorized operation of the Stations after their construction permits had expired.

II. BACKGROUND

2. On October 13, 2023, the Media Bureau (Bureau) issued a *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* (*NAL*) in the amount of thirteen thousand dollars ($13,000) to Licensee.[4] In the *NAL*, we found that the Licensee had failed to timely file licenses to cover as required by section 74.788 of the Rules.[5] Further, as a result of its late filing, we found that Licensee apparently engaged in unauthorized operation of the Stations in violation of section 73.1745 of the Rules[6] and section 301 of the Act.[7] The *NAL* gave the Licensee thirty days to pay the full amount of the

[1] 47 CFR § 74.788.

[2] 47 CFR § 73.1745.

[3] 47 U.S.C. § 301.

[4] *Boundary County TV Translator District,* Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 23-953 (MB Oct. 13, 2023) (*NAL*). Broken down, the proposed forfeiture came to six thousand, five hundred dollars ($6,500) per station.

[5] 47 CFR § 74.788.

[6] 47 CFR § 73.1745.

[7] 47 U.S.C. § 301.

proposed forfeiture or file a written statement seeking reduction or cancellation of the proposed forfeiture.[8]

3. On November 8, 2023, the Licensee submitted a written response in which it did not dispute that it had violated the Rules and Act, but requested that we reconsider the proposed forfeiture based on the Licensee's claimed inability to pay the proposed forfeiture amount.[9] The Response included copies of Licensee's Income Statements for the periods 2020-2021, 2021-2022 and 2022-2023 in support of this request. The Stations are community translators serving rural areas that, would otherwise have limited, if any, over-the-air television service.

III. DISCUSSION

4. The forfeiture amount proposed in this case was assessed in accordance with section 503(b) of the Act,[10] section 1.80 of the rules,[11] and the Commission's *Forfeiture Policy Statement*.[12] In assessing forfeitures, section 503(b)(2) of the Act requires that we take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.[13]

5. As noted in the *NAL*, the Commission will not consider reducing or canceling a forfeiture in response to claimed inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status.[14] Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.[15] In general, a licensee's gross revenues are the best indicator of its ability to pay a forfeiture. We recognize that, in some cases, other financial indicators, such as net losses, may also be relevant.[16] 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.[17]

6. Here, the Licensee has provided us with its Income Statements for the three year periods of 2020-2021, 2021-2022, and 2022-2023 in order to demonstrate that the proposed forfeiture of $13,000 would constitute an excessive fine. In considering claims of financial hardship, the range of forfeitures that the Commission has deemed reasonable generally average about five percent of the violator's gross annual income and have not exceeded eight percent thereof,[18] although a forfeiture equal to five percent

[8] *Id.* at 5, para. 11.

[9] Letter from Boundary County TV Translator District (dated Nov. 8, 2022) (on file at LMS File Nos. 0000218655 and 0000218656) (Response).

[10] 47 U.S.C. § 503(b).

[11] 47 CFR § 1.80.

[12] *See Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) *(Forfeiture Policy Statement), recon. denied*, 15 FCC Rcd 303 (1999).

[13] 47 U.S.C. § 503(b)(2)(E).

[14] *See NAL* at 6, para. 14.

[15] *See Discussion Radio, Inc.,* Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7441 (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).

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

[17] *Id.*

[18] *Zuma Beach FM Emergency and Community Broadcasters, Inc.*, Memorandum Opinion and Order, 34 FCC Rcd 5302, 5304 (MB 2019).

of gross revenues has been found to be excessive where a licensee operated at a significant loss.[19] In this case, the proposed forfeiture amount in the *NAL* equals approximately seven percent of Licensee's gross revenue, as averaged over the last three years and the Licensee has not operated at a loss during that time period. The Commission has also reduced forfeiture amounts when the station(s) in question are translators in rural areas that provide the only over-the-air broadcast service to viewers in their service area(s).[20] As such, based on the facts before us, we are unwilling to cancel the forfeiture altogether. Instead, based on the Licensee's financial information, history of compliance, and the unique facts and circumstances presented, notably that the Stations are community translators serving rural areas that would otherwise have limited, if any, over-the-air television service, we find that a reduction in the total forfeiture amount to two thousand dollars ($2,000) is appropriate for the violations involved in this case and is reasonable based on the Licensee's finances. This amount represents a fine of $1,000 per station.

7. Accordingly, we have considered Licensee's Response and the record of this case in light of the above statutory factors, our rules, and the *Forfeiture Policy Statement*. We conclude that Licensee willfully[21] violated section 74.788 of the Commission's rules[22] and willfully and repeatedly[23] violated section 73.1745 of the Rules[24] and section 301 of the Communications Act.[25] However, for the reasons set forth above, we find that reducing the forfeiture to $2,000 is warranted.[26]

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.283 and 1.80 of the Commission's rules,[27] that Boundary County TV Translator District **SHALL FORFEIT** to the United States the sum of two thousand dollars ($2,000) for willfully violating section 74.788 of the Commission's rules[28] and willfully and repeatedly violation

[19] *See e.g., Valley Air, LLC*, Letter, 24 FCC Rcd 5505 (MB 2009) (*Valley Air*) (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).

[20] *See e.g. Methow Valley Communications District*, Forfeiture Order, DA 23-403 (rel. May 12, 2023) (paid May 18, 2023) (reducing the proposed forfeiture based on the Station's history of compliance and fact that the station is a community translator serving rural areas with limited or no over-the-air television service).

[21] Section 312(f)(1) of the Act defines "willful" as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history of section 312(f)(1) of the Act clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. No. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. *See Southern California Broadcasting Company*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88 (1991) (*Southern California*).

[22] 47 CFR § 74.788.

[23] Section 312(f)(2) of the Act defines "repeated" as "the commission or omission of [any] act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2). *See Southern California*, 6 FCC Rcd at 4388 (applying this definition of repeated to Sections 312 and 503(b) of the Act).

[24] 47 CFR § 73.1745.

[25] 47 U.S.C. § 301.

[26] As stated in the *NAL*, we will act on the Applications following the conclusion of this forfeiture proceeding if there are no issues other precluding grant. *See NAL* at para. 9. Also pending before the Commission is an application for renewal of the Stations' licenses. *See id.* at n.29. The Stations are TV translators, and, as is permitted, the Licensee filed a joint renewal application for both Stations. *See* LMS File No. 0000192151. We will act on the pending license renewal application by separate staff action, following conclusion of this forfeiture proceeding and in accordance with the Commission renewal standard set forth under section 309(k) of the Act. *See* 47 U.S.C. § 309(k).

[27] 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

[28] 47 CFR § 74.788.

section 73.1745 of the Commission's rules and section 301 of the Communications Act of 1934.[29]

9. 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),[30] or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. Notification of payment must be e-mailed to VideoNAL@fcc.gov and Shaun Maher at Shaun.Maher@fcc.gov. Below are instructions that payors should follow based on the form of payment selected:[31]

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

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

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

10. Requests for full payment of the forfeiture proposed in this *Forfeiture Order* under an installment plan should be sent to: Associate Managing Director-Financial Operations, 45 L Street, NE, Washington, DC 20554.[33] Questions regarding payment procedures should be directed to the Financial

[29] 47 CFR § 73.1745 and 47 U.S.C. § 301.

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

[31] 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.

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

[33] *See* 47 CFR § 1.1914.

Operations Group Help Desk by phone, 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

11. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by First Class and Certified Mail, Return Receipt Requested, to Boundary County TV Translator District, P.O. Box 894, Bonners Ferry, ID 83805, as well as by e-mail to: ELAUTOMATION@STARBAND.NET.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

PUBLIC NOTICE

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

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

DA 24-39
Released: January 12, 2024

DOMESTIC SECTION 214 APPLICATION FILED FOR THE TRANSFER OF CONTROL OF CONSOLIDATED COMMUNICATIONS OF COMERCO COMPANY AND CONSOLIDATED COMMUNICATIONS OF WASHINGTON COMPANY, LLC TO NEXTCAPE, LLC

NON-STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 23-263

Comments Due: January 26, 2024
Reply Comment Due: February 2, 2024

By this Public Notice, the Wireline Competition Bureau seeks comment from interested parties on an application filed by Consolidated Communications, Inc. (CCI), Consolidated Communications of Comerco Company (CCCC), Consolidated Communications of Washington Company, LLC (CCWC) (CCCC and CCWC, together, the Licensees), and NextCape, LLC (NextCape) (NextCape, together with CCI and the Licensees, collectively, Applicants), pursuant to section 214 of the Communications Act of 1934, as amended, and sections 63.03-04 of the Commission's rules,[1] requesting consent to transfer indirect control of CCCC and CCWC to NextCape.[2]

[1] *See* 47 U.S.C. § 214; 47 CFR §§ 63.03-04.

[2] Application of Consolidated Communications, Inc., Consolidated Communications of Comerco Company, Consolidated Communications of Washington Company, LLC, and NextCape LLC, WC Docket No. 23-263 (filed Aug. 1, 2023) (Application). Applicants also filed an application for the transfer of an authorization associated with international services (IB File No. ITC-T/C-2023-0801-00096). On September 14, 2023, the Bureau granted Alphaboost Purchaser, LLC (Alphaboost Purchaser), an entity related to NextCape, authority to acquire Mashell Telecom, Inc. d/b/a Ranier Connect (Mashell Telecom), and eligible telecommunications carrier (ETC) and incumbent local exchange carrier (LEC) providing service in the State of Washington. *See Domestic Section 214 Application Granted for the Transfer of Control of Mashell Telecom, Inc. d/b/a Rainier Connect to Alphaboost Purchaser, LLC*, WC Docket No. 23-30, Public Notice, DA 23-151 (WCB 2023); *see also* Letter from Tyler J. Wood, Deputy Chief for Compliance and Enforcement, U.S Department of Justice, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 23-30 and ITC-T/C-20230120-00004, and Attach. (filed Dec. 20, 2024) (requesting the Commission to replace the former Letter of Assurance between Alphaboost Purchaser and Mashell Telecom executed on August 24, 2023, with a modified Letter of Assurance on behalf of Alphaboost Holdings, LLC and its subsidiaries, including Mashell Telecom executed on December 14, 2023). Applicants filed supplements in the domestic and international dockets on September 19, 2023 and December 22, 2023. Letter from Russell M. Blau, Counsel for Applicants, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 23-263 and IB File No. ITC-T/C-2023-0801-00096 (filed Sept. 19, 2023) (September

CCI, an Illinois corporation, is a wholly-owned subsidiary of Consolidated Communications Holdings, Inc., a publicly traded Delaware corporation which has various operating subsidiaries that provide telecommunications services to residential and business customers across a twenty-three state service area.[3] CCCC, a Washington corporation and wholly-owned subsidiary of CCI, provides competitive telecommunications services in the state of Washington.[4] CCWC, a Delaware limited liability company and wholly-owned subsidiary of CCCC, provides service as an incumbent LEC also in the State of Washington.[5]

NextCape, a Delaware limited liability company created for the purposes of the proposed transaction,[6] is an indirect wholly-owned subsidiary Palisade Diversified Infrastructure Fund No. 3 (PDIF3), an Australia infrastructure fund.[7] Applicants state that following the consummation of the proposed transaction, NextCape is expected to be owned indirectly by funds managed by Palisade Americas Management, LLC (PAM), a Delaware entity, and Palisade Investment Partners Limited (PIPL), an Australia specialist infrastructure investment manager.[8]

Supplement); Letter from Russell M. Blau, Counsel for Applicants, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 23-263 and IB File No. ITC-T/C-2023-0801-00096 (filed Dec. 22, 2023) (December Supplement). Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

[3] Application at 3.

[4] *Id.*

[5] *Id.* at 4. Applicants state that CCWC is also designated as an ETC and receives support in the Federal Universal Service Fund (USF) Lifeline Program, as well as Connect America Fund, Intercarrier Compensation (CAF-ICC) recovery support in the federal USF high cost program. *Id.*

[6] Applicants state that, prior to closing, NextCape will become a direct, wholly-owned subsidiary of Alphaboost Holdings, LLC (Alphaboost Holdings). December Supplement at 2; Application at n.3.

[7] Application at 2. Applicants provide pre and post-transaction ownership charts and further information on post-transaction ownership. *See* September Supplement at Updated Exh. A (Current and Post-Transaction Corporate Ownership Structures), Updated Exh. B (Post-Transaction Ownership of the Licensees); December Supplement at Attach. 1 (Replacement Updated Exhibit A, Page 2 (Post Ownership Structure of the Licensees)). The trustee for PDIF3 is Pinnacle RE Services Limited (Pinnacle RE), an Australian entity. September Supplement at Updated Exh. A at 2, Updated Exh. B at para. 7. The equity interest holders of PDIF3 are the following Australian entities: UniSuper (up to 15.18% equity); AZN Australia Staff Super Scheme (up to 13.94%); and Palisade Unlisted Infrastructure Trust (up to 19.62%). *Id.* at Updated Exh. A at 2, Updated Exh. B at paras. 9-11. The trustee for UniSuper is UniSuper Limited; the trustee for ANZ Australia Staff Super Scheme is ANZ Staff Super Scheme (Australia) Pty Limited; and the trustee for Palisade Unlisted Infrastructure Trust is Pinnacle Fund Services Limited, each Australian entities. *Id*. Pinnacle RE and Pinnacle Fund Services Limited are indirectly held by Pinnacle Investment Management Limited (PIML), an Australian entity, which, in turn is indirectly held by the following Australian entities and individuals: HSBC Custody Nominees (Australia) Limited (20.76%); JP Morgan Nominees Australia Pty Limited (10.72%); Steven Wilson (11.28%), and Ian Macoun (9.1%). *Id.* at Updated Exh. A at 4, Updated Exh. B at para. 7 and n.4.

[8] Application at 2. PAM is expected to manage Alphaboost Parent, LLC, a Delaware entity, which, in turn, indirectly wholly owns NextCape. December Supplement, Attach. 1 at 1. Applicants state that PAM is expected to be owned by: (i) Palisade Investment Partners Americas, LLC (PIPA), a Delaware company, with a 75%-100% ownership interest, and (ii) a Delaware entity that has not yet been formed (and may be named Palisade Americas ManCo, LLC), with an up to 25% ownership interest. December Supplement, Attach. 1 at 1; September Supplement, Updated Exh. B at n.2. PIPA is managed by PIPL, which, in turn, is held by the following Australian entities and individuals: PIML (35.90%); Ian Macoun (5%); House of Lloyds Trust (18.47%); Rigg Family Trust (13.83%); and Palisade Officers Shareholding Trust (POST) (21.80%). September Supplement, Updated Exh. A at 3, Updated Exh. B at para. 8. The trustee for the House of Lords Trust is Angela Mary Lloyd, an Australian citizen; the trustee for the Rigg Family Trust is Vicky Rigg, an

Pursuant to the terms of the stock purchase agreement, NextCape will acquire all issued and outstanding interests in CCCC, which will continue to directly wholly own CCWC. As a result, CCCC will be a direct, wholly-owned subsidiary of NextCape and CCWC will be an indirect, wholly-owned subsidiary of NextCape.[9]

Applicants assert that a grant of the Application would serve the public interest, convenience, and necessity.[10] Because the proposed transaction is more complex than those accepted for streamlined treatment, and in order to analyze whether the proposed transaction would serve the public interest, we accept the Application for non-streamlined processing.[11]

No Referral to Executive Branch Agencies: The Commission determined in the Executive Branch Review Process Order that it would generally exclude from referral to the Executive Branch applications where the Applicants have "an existing mitigation agreement, there are no new reportable foreign owners of the applicant since the effective date of the mitigation agreement, and the applicant agrees to continue to comply with the terms of that mitigation agreement."[12] The Applicants argue that the Application qualifies for an exclusion from referral to the Executive Branch since it meets those criteria.[13] The Applicants state that Alphaboost Holdings, the parent of NextCape, is party to a December 14, 2023 Letter of Agreement from Michael Reynolds, Pak Ka Kelvin Wong, and Anand Vadapalli, Alphaboost Holdings, LLC, to the Chief, Foreign Investment Review Section, and Deputy Chief, Compliance and Enforcement, Foreign Investment Review Section, on behalf of the Assistant Attorney General for National Security, United States Department of Justice, National Security Division (Dec. 14, 2023) (December 14, 2023 LOA).[14] The Applicants further state that the December 14, 2023 LOA remains in place, that there are no new reportable foreign owners of Alphaboost Holdings since the effective date of the December 14, 2023 LOA and that NextCape agrees to comply with the terms of the December 14, 2023 LOA.[15] We find that the Applicants have made a showing that this Application comes within an exclusion from referral to the Executive Branch for national security, law enforcement, foreign policy and

---

Australian citizen; and the trustee for POST is Posh Nominees Pty Ltd, an Australian entity. *Id*., Updated Exh. B at para. 8 and n.8.

[9] Application at 4-5. Applicants note that, prior to the consummation of the proposed transaction, there will be a *pro forma* assignment of domestic and international customers which are currently served by Consolidated Communications Enterprise Services, Inc., an interexchange carrier and affiliate of Consolidated, to CCCC. *Id.* at 6.

[10] *Id.* at 6-9. Applicants state that there is no incumbent LEC local service territory overlap between Licensees' and Mashell Telecom's networks. *Id.* at 9; *see also supra* note 2. Applicants note that there is minimal service area overlap in the City of Yelm, Washington; however, they assert there is sufficient market competition with other unaffiliated carriers that serve these areas. *Id.* at 9. Applicants state that, although Licensees and Mashell Telecom have fiber running through each other's service areas, neither has on-net buildings located in the other's service area. *Id.*

[11] 47 CFR § 63.03(b).

[12] *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket 16-155, Report and Order, 35 FCC Rcd 10927, 10939, para. 30 (2020) (Executive Branch Review Process Order); see also 47 CFR § 1.40001(a)(2)(iii).

[13] Application at 14-15; September Supplement at 1-3; December Supplement at 2-3.

[14] *See* ITC-T/C-20230120-00004, International Authorizations Granted, Report No. TEL-02326, Public Notice, DA 23-1212 (OIA rel. Dec. 29, 2023).

[15] September Supplement at 2; December Supplement at 2.

trade policy review. Although we are not formally referring the Application, we will provide a courtesy copy of this public notice to the Executive Branch agencies.[16]

> Domestic Section 214 Application Filed for the Transfer of Control of Consolidated Communications of Comerco Company and Consolidated Communications of Washington Company, LLC to NextCape, LLC, WC Docket No. 23-263 (filed Aug. 1, 2023).

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 January 26, 2024**, and reply comments **on or before February 2, 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.[17] 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) David Krech, International Bureau, david.krech@fcc.gov; and
3) Jim Bird, Office of General Counsel, jim.bird@fcc.gov

[16] *See Executive Branch Review Process Order* at 10939, para 30, n. 81.

[17] Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (OS 2020).

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 Gregory Kwan, Competition Policy Division, Wireline Competition Bureau, at (202) 418-1191.

-FCC-

[18] *See* 47 CFR § 1.45(c).

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

In the Matter of	)	
	)	
Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs	)	WC Docket No. 18-89
	)	
Petition for Reconsideration by PTA-FLA, Inc.	)	SCRP Participant ID: SCRP0001018
	)	File No. SCRP001018-AM001

ORDER ON RECONSIDERATION

Adopted: January 16, 2024 **Released: January 16, 2024**

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. Pursuant to section 1.106(a)(1) of the Commission's rules,[1] the Wireline Competition Bureau (Bureau) addresses PTA-FLA, Inc.'s (PTA-FLA) Petition for Reconsideration[2] (Petition) of the Bureau's denial of PTA-FLA's Application Request for Funding Allocation (Application).[3] The Bureau denies the Petition on the merits, upholding its prior determination that PTA-FLA is not a provider of advanced communications service and therefore is not eligible to participate in the Secure and Trusted Communications Networks Reimbursement Program (Reimbursement Program).[4]

II. BACKGROUND

2. The Secure and Trusted Communications Networks Act of 2019 (Secure Networks Act), as amended, directed the Commission to establish the Reimbursement Program.[5] The purpose of the

[1] 47 CFR § 1.106(a)(1).

[2] Petition for Reconsideration of PTA-FLA, Inc., WC Docket No. 18-89 (filed Aug. 15, 2022) (Petition).

[3] PTA-FLA filed its Application on January 23, 2022 and amended it on May 17, 2022. PTA-FLA, Inc., Application Request for Funding Allocation, File No. SCRP001018-AM001 (filed May 17, 2022) (Application). The Bureau denied the Application via email on July 15, 2022. Email from FCC SCRP Team to Leslie Williams and Ellen Diemer (July 15, 2022, 15:20 EST) (included as Exh. 1 to Petition) (Denial Email).

[4] The Bureau has the authority to act on petitions for reconsideration of final non-rulemaking actions taken pursuant to delegated authority. 47 CFR § 1.106(a)(1). The Bureau's denial of PTA-FLA's Application was done pursuant to delegated authority. Specifically, the Commission delegated to the Bureau "authority . . . to adopt the necessary policies and procedures relating to allocations, draw downs, payments, obligations, and expenditures of money from the Reimbursement Program . . . review the estimated cost forms, issue funding allocations for costs reasonably incurred, set filing deadlines and review information and documentation regarding progress reports, allocations, and final accountings." 47 CFR § 1.50004(p).

[5] 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) (Secure Networks Act), *as amended by* Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, § 901, 134 Stat. 1182 (2020) (CAA). The Commission adopted the *2020 Supply Chain Order* on December 10, 2020, in which it established the Reimbursement Program. *Protecting*

(continued….)

Reimbursement Program is to reimburse providers of advanced communications service[6] with ten million or fewer customers for reasonable costs incurred for the removal, replacement, and disposal of covered communications equipment or services that pose an unacceptable national security risk, *i.e.*, communications equipment or service produced or provided by Huawei Technologies Company (Huawei) or ZTE Corporation (ZTE) that were obtained by providers on or before June 30, 2020.[7]

3. Pursuant to the Commission's rules implementing the Secure Networks Act and Reimbursement Program procedures adopted by the Bureau, the Bureau opened an application filing window on October 29, 2021.[8] The filing window closed on January 14, 2022.[9] The Bureau commenced the official 90-day application review period for the Reimbursement Program on January 31, 2022.[10] The Bureau and the Fund Administrator assessed the applications based on: (1) whether the application was complete; (2) whether the applicant was eligible for the Reimbursement Program; and (3) whether the cost estimates provided by the applicant were reasonably necessary for the removal, replacement, or disposal of covered communications equipment and services.[11]

4. After reviewing PTA-FLA's Application, the Bureau sent an email to PTA-FLA's designated contact on May 12, 2022 notifying PTA-FLA that it did not appear to be eligible for the Reimbursement Program because it had ceased network operations in 2014 and therefore did not qualify

(Continued from previous page)
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 to incorporate the CAA amendments to the Secure Networks Act. *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*).

[6] For purposes of the Secure Networks Act, "advanced communications service" "has the meaning given the term 'advanced telecommunications capability' in section 706 of the Telecommunications Act of 1996." 47 U.S.C. § 1608(1). Section 706 defines "advanced telecommunications capability" "without regard to any transmission media or technology, as high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology. 47 U.S.C. § 1302(d)(1).

[7] *See* 47 U.S.C. § 1603(c); *2021 Supply Chain Order*, 36 FCC Rcd at 11978, para. 46; *see also 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).

[8] *Wireline Competition Bureau Announces Application Filing Window for the Secure and Trusted Communications Networks Reimbursement Program – Filing Window Opens October 29, 2021*, WC Docket No. 18-89, Public Notice, DA 21-1207, at 1 (WCB Sept. 27, 2021).

[9] The Commission delegated authority to the Bureau to set the length of the window. *2021 Supply Chain Order*, 36 FCC Rcd at 11996-97, para. 95. For good cause shown, the application filing window was extended 14 days. *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs; Motion for Extension of Time of the Rural Wireless Association, Inc. and NTCA – The Rural Broadband Associations*, WC Docket No. 18-89, Order, DA 21-1648, para. 6 (WCB Dec. 29, 2021).

[10] *Wireline Competition Bureau Announces Applications Filed for the Secure and Trusted Communications Networks Reimbursement Program*, WC Docket No. 18-89, Public Notice, DA 22-131, at 1 (WCB Feb. 9, 2022) (*Applications Filed Public Notice*). Given the number and complexity of the applications filed, the Bureau extended the application review period by an additional 45 days, as authorized under the Secure Networks Act and the Commission's rules. *Id*. at 4. This brought the deadline to complete review of Reimbursement Program applications to June 15, 2022, which was further extended pursuant to the Secure Networks Act because applicant cure periods were still pending. 47 U.S.C. § 1603(d)(3)(B).

[11] *See* 47 CFR § 1.50004(d); *2020 Supply Chain Order*, 35 FCC Rcd 14336, para. 121; *2021 Supply Chain Order*, 36 FCC Rcd at 11992-96, paras. 86-94.

as a provider of advanced communications service.[12] PTA-FLA responded by amending its Application on May 17, 2022, asserting that it qualified as a provider of advanced communications service because it had affiliates that provided advanced communications service.[13]

5. The Bureau issued a Public Notice approving Reimbursement Program applications and allocating all appropriated funds to those approved applications on July 15, 2022.[14] On the same day, the Bureau denied PTA-FLA's Application because it determined that PTA-FLA is not a provider of advanced communications service and therefore is not eligible to participate in the Reimbursement Program.[15] PTA-FLA subsequently filed its Petition pursuant to section 1.106 of the Commission's rules,[16] contending that (1) it qualifies as a provider of advanced communications service because its affiliates provide such service; (2) the Commission should grant its Application because it would serve the public interest by helping fund the removal, replacement, and disposal of covered equipment owned by PTA-FLA; and (3) if the Commission does not grant reconsideration, it should open a new filing window for applications to the Reimbursement Program.[17]

III. DISCUSSION

6. We deny PTA-FLA's Petition because, after reviewing the record, we uphold our initial determination that PTA-FLA is not a provider of advanced communications service and therefore is not eligible to participate in the Reimbursement Program. To be eligible to participate in the Reimbursement Program, an entity must be a "[p]rovider[] of advanced communications service with ten million or fewer customers."[18] This standard has two independent prongs. First, the entity must be a provider of advanced communications service.[19] The Secure Networks Act defines a "provider of advanced communications service" as "a person who provides advanced communications service to United States customers."[20] Second, if the entity is a provider of advanced communications services, it must have "ten million or fewer customers" of advanced communications service.[21] For purposes of this second prong, "customers" include both customers of the applicant and of its affiliates.[22] For the purposes of our analysis, we refer to

[12] Email from FCC SCRP Team to Leslie Williams and Ellen Diemer (May 12, 2022, 07:28 EST).

[13] Application, Attach. 1 (Eligibility Amendment). PTA-FLA's Petition listed three PTA-FLA affiliates as providing advanced communication services—SI Wireless, LLC, Gallatin Wireless LLC, and Rural Connect LLC. Petition at 2. Of these, SI Wireless and Gallatin Wireless separately applied to the Reimbursement Program and were allocated funds. *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, Appx. A at 6, 12 (WCB July 18, 2022) (*SCRP Granted Applications Public Notice*). Rural Connect LLC did not apply to the Reimbursement Program.

[14] *SCRP Granted Applications Public Notice*, DA 22-774, at 1.

[15] Petition, Exh. 1 (Denial Email) ("Based on the information contained in your application, we have determined that you are ineligible to participate in the SCRP because you do not qualify as a provider of advanced communications services with 10 million or fewer customers as defined under the Commission's rules. 47 CFR §§ 1.50001(a), 1.50004(a). Specifically, Applicant ceased network operations in 2014 and is thus no longer considered a provider for purposes of the SCRP.").

[16] Petition at 1.

[17] *Id*. at 1-3.

[18] 47 CFR § 1.50004(a); *see also* 47 U.S.C. §§ 1603(b) and 1608(10)(A).

[19] 47 U.S.C. §§ 1603(b) and 1608(10)(A); 47 CFR § 1.50004(a).

[20] 47 U.S.C. § 1608(10)(A).

[21] 47 CFR § 1.50004(a); *2021 Supply Chain Order*, 36 FCC Rcd at 11963, para. 15 (defining "customer" as those taking advanced communications service from the provider and/or its affiliate).

[22] 47 U.S.C. §§ 1603(b) and 1608(6). As discussed in the *2020 Supply Chain Order*, customers of affiliates of an applicant are counted for this purpose to help ensure that the Reimbursement Program, as intended by Congress,

(continued….)

the two prongs as the "service" prong and the "customers" prong. If the entity fails either prong it is not eligible to participate in the Reimbursement Program.[23]

7. As previously found, PTA-FLA ceased network operations in 2014 and therefore has not been a provider of advanced communications service since at least 2014.[24] PTA-FLA does not contest this.[25] Rather, it argues that as of January 23, 2022 it had affiliates that provided advanced communications service, and that by virtue of those services it too qualified as an advanced communications service provider.[26] More specifically, PTA-FLA contends that because the definition of "customers" in the Secure Networks Act includes both customers of the applicant and its affiliates, PTA-FLA must also be allowed to treat *services* provided by its affiliate as if they were provided by PTA-FLA for purposes of the "service" prong of the eligibility standard.[27] We disagree, as the language and structure of sections 4 and 9 of the Secure Networks Act defeat PTA-FLA's argument.

8. First, in applying the "service" prong we must consider the definition of "provider of advanced communications service" in the Secure Networks Act.[28] The definition is "a person [i.e., an individual or entity] who provides advanced communications service" to United States customers.[29] PTA-FLA's argument, however, would require us to expand that definition to read "a person who provides advanced communications service to United States customers *itself or has an affiliate that does so*."[30] Such a reading is inconsistent with the language of the statute. Thus, we decline to read "affiliates" into the definition.[31]

9. Second, and relatedly, Congress did include affiliates in other definitions under the Secure Networks Act. In particular, in section 9(6) Congress expressly included "affiliates" of an

(Continued from previous page)
supports smaller providers with 10 million or fewer attributable customers and not providers that are part of a larger operator that provides services through multiple subsidiaries. *2020 Supply Chain Order*, 35 FCC Rcd at 14333, para. 114.

[23] 47 U.S.C. § 1608(a)-(b); 47 CFR § 1.50004(a).

[24] Petition, Exh. 1 (Denial Email).

[25] Application, Attach. 1 at 1 (Eligibility Amendment) (PTA-FLA requested that the text of its Eligibility Amendment be kept confidential); *see also* Petition at 3 n.6 (stating that "[i]n 2014, PTA-FLA discontinued its provision of advanced communications service, transferring its customers and covered equipment to various affiliates"); *id*. at 2 ("PTA-FLA was not providing advanced communications service directly to customers on January 23, 2022, the date it filed its FCC Form 5640 [Application][.]"). PTA-FLA asserts it could provide such service in the future (Petition at 5) but that is not relevant to the analysis of its eligibility at the time of its Application or at present.

[26] Petition at 3. PTA-FLA relies on advanced communications services provided by its affiliates Rural Connect, LLC, SI Wireless, LLC, and Gallatin Wireless, LLC. *Id*.

[27] *Id*. at 2-3

[28] 47 U.S.C. § 1608(10).

[29] 47 U.S.C. § 1608(10). Section 1608(10) refers to "a person who provides advanced communications service," and section 1608(6) defines "person" and an "individual or entity." Thus, a "provider of advanced communications service" is "a[n] [individual or entity] who provides advanced communications service."

[30] Alternatively, PTA-FLA's approach would require us to revise the definition of "person" under 47 U.S.C. § 1608(8) to read "an individual or entity, *or an affiliate of such entity*."

[31] Where a statute is silent on an issue (in this case, on whether "a person who provides advanced communications service" includes affiliates of that person), courts must "construe [the statute's] silence as exactly that: silence." *EEOC v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 774 (2015) ("The problem with [the defendants' proposed] approach is the one that inheres in most incorrect interpretations of statutes: It asks us to add words to the law to produce what is thought to be a desirable result. That is Congress's province."); *Alabama v. North Carolina*, 560 U.S. 330, 352 (2010) ("We do not—we cannot—add provisions to a federal statute.").

advanced communications service provider when defining "customers" for purposes of the 10-million-customer limit in section 4(b).[32] If Congress wanted to similarly include "affiliates" in the definition of a "provider of advanced communications service,"[33] it would have done so. Thus, consistent with principles of statutory construction, we presume this omission to be intentional, meaning that advanced communications services provided by affiliates are not to be attributed to an entity to determine whether that entity itself qualifies as a provider of advanced communications service.[34] Moreover, section 9(6)'s definition of "customers" itself draws a clean distinction between a provider of advanced communications service (covered in subsection (A)) and affiliates of such a provider (covered in subsection (B)). This further supports the view that Congress recognized a distinction between a provider of advanced communications service and its affiliates, and knew to specifically mention affiliates when it meant to include them.[35] Indeed, if, as PTA-FLA argues, Congress meant a "provider of advanced communications service" to always include both the applicant to the Reimbursement Program and all its affiliates, the specific reference to affiliates in section 9(6)(B) of the Secure Networks Act would be unnecessary, and therefore superfluous. We decline to read the statute in a way that would render that provision superfluous.[36]

10. Third, PTA-FLA does not identify any direct textual support in the Secure Networks Act or the Commission's rules or orders for the proposition that an entity can qualify as a "provider of advanced communications service" based solely on the services provided by its affiliate.[37] Instead, PTA-FLA relies solely on the discussion of how to count *customers* of an affiliate for purposes of the "customers prong" under the *2021 Supply Chain Order*.[38] That discussion, however, is limited to implementing the "customers" prong,[39] and PTA-FLA does not explain how that discussion could require the Bureau to treat the *services* of an affiliate as the services of an applicant under the separate "service" prong.[40] If anything, the relevant discussion in the *2021 Supply Chain Order* undercuts PTA-FLA's position. Like the definition of "customer" in the Secure Networks Act, that discussion distinguishes between providers and affiliates, repeatedly referring to providers *and/or* affiliates as separate entities. Specifically, the Commission defined the term "customer" based on those taking advanced

[32] 47 U.S.C. § 1608(6)(A)-(B) (defining the "customers" of a provider of advanced communications service to include both the customers of that provider and the customers of its affiliates).

[33] 47 U.S.C. § 1608(10).

[34] *INS v. Cardoza-Fonseca*, 480 U.S. 421, 432 (1987) ("[W]here Congress includes particular language in one section of a statute but omits it in another provision of the same Act, it is generally presumed that Congress acts intentionally and purposefully in the disparate inclusion or exclusion."); *Russello v. United States*, 464 U.S. 16, 23 (1983) (same). If that is true in different sections of the same act, this principle would likewise apply within a single section of an act.

[35] *Florida Pub. Telecomms. Ass'n, Inc. v. FCC*, 54 F.3d 857, 860 (D.C. Cir. 1995) (referring to "the usual canon that when Congress uses different language in different sections of a statute, it does so intentionally" and finding that when a term was used in several sections of a statute but was "noticeably absent" from the section at issue, Congress meant to exclude it from that section).

[36] *Republic of Sudan v. Harrison*, 139 S. Ct. 1048, 1058 (2019) ("[W]e are hesitant to adopt an interpretation of a congressional enactment which renders superfluous another portion of that same law."; rejecting interpretation of first clause in a statute as already including the concepts reflected in the second clause, as that would have rendered the second clause superfluous); *Young v. United Parcel Serv., Inc.*, 575 U.S. 206, 226 (2015) (courts are to interpret statutes in a way to avoid surplusage).

[37] *See* Petition at 2-3.

[38] *Id*. (citing *2021 Supply Chain Order*, 36 FCC Rcd at 11963-64, para. 15).

[39] *See 2021 Supply Chain Order*, 36 FCC Rcd at 11963-64, para. 15

[40] Petition at 2-3.

communications service from "the provider and/or its affiliate."[41] If the Commission had intended for a provider to include any affiliates, it presumably would not have referred to them as distinct entities in the very paragraph cited by PTA-FLA. And thus, instead of defining a "customer" in terms of those taking advanced communications service from "the provider *and/or* its affiliate," the Commission would have defined a "customer" in terms of those taking advanced communications service from "the provider, *including* any affiliates."

11. PTA-FLA also makes two other arguments that we find unpersuasive. First, PTA-FLA contends an eligibility finding would serve the public interest by preventing PTA-FLA's affiliate, Rural Connect, from continuing to use Huawei and ZTE equipment and by preventing PTA-FLA itself from redeploying such equipment or reselling it to a third party.[42] In the alternative, PTA-FLA contends that if the Commission denies the Petition, it should open a new filing window for "PTA-FLA and other similarly situated applicants to apply for funding[.]"[43] PTA-FLA asserts that this would serve the public interest because it "would give PTA-FLA the opportunity to ensure its eligibility by recommencing the provision of advanced communications service itself, rather than through an affiliate."[44]

12. With regard to the first argument, the Commission supports the goals of the Secure Networks Act to improve the security of the nation's communications networks, but we are bound by the parameters Congress established in the statute when it directed the Commission to implement the Reimbursement Program. Therefore, whether an eligibility finding would serve the public interest is irrelevant because, as discussed above, PTA-FLA does not meet the statutory requirement[45] to be a provider of advanced communications service. With regard to its request for a new filing window, we decline to open a subsequent filing window. Despite PTA-FLA's contention that there is money available for disbursement through a second window,[46] at this time all of the funds appropriated to the Reimbursement Program have been allocated to Reimbursement Program recipients.[47] In addition, even if funding were available, that would not change the fact that PTA-FLA does not meet the eligibility standard. For these reasons, we deny PTA-FLA's Petition.

---

[41] *2021 Supply Chain Order*, 36 FCC Rcd at 119363-64, para. 15. *See also 2020 Supply Chain Order*, 35 FCC Rcd at 14333, para. 114 ("Accordingly, we interpret 'customers of such provider' and 'customers of any affiliate' to mean those customers taking advanced communications service from *the provider and its affiliates*.") (emphasis added).

[42] Petition at 4.

[43] *Id.* at 4-6.

[44] *Id.* at 5.

[45] 47 CFR § 1.50004(a); 47 U.S.C. § 1608(10)(A). Regardless of whether the public interest would be served by an eligibility finding, we cannot deviate from the Secure Networks Act's requirement that to be eligible for the Reimbursement Program an applicant must be a provider of advanced communications service.

[46] Petition at 6.

[47] In fact, because cost estimates from providers exceeded available funding, the Commission's rules required the Bureau to prorate the allocations approved for the Priority 1 applicants (those with fewer than two million customers) on an equal basis, consistent with the Secure Networks Act's requirement that funding be distributed on an equitable basis. 47 CFR § 1.50004(f)(1); *see also* 47 U.S.C. § 1603(d)(5)(A). The pro-rata factor applied to the funding allocations was approximately 39.5%. *SCRP Granted Applications Public Notice* at 3. PTA-FLA's claim that $62 million remains available to be allocated to approved applicants is incorrect, and may rest on a failure to account for the expected $62 million in program administration expenses. *Id.* at 2 n.12.

IV. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 4, 7, and 9 of the Secure Networks Act, 47 U.S.C. §§ 1603, 1606, and 1608, Division N, Title IX, sections 901 and 906 of the Consolidated Appropriations Act, 2021, and sections 0.91, 0.291, 1.106, and 1.50004 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.106, and 1.50004, that the Petition for Reconsideration filed by PTA-FLA, Inc. is DENIED.

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 24-41
Released: January 12, 2024

WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON AVIATION SAFETY ADVISORY GROUP OF ARIZONA'S REQUEST FOR WAIVER OF SECTIONS 87.187 AND 87.323(b)

WT Docket No. 24-8

Comments Due: February 12, 2024
Reply Comments Due: February 26, 2024

By this Public Notice, we seek comment on Aviation Safety Advisory Group of Arizona's (ASAGA) request for waiver of sections 87.187[1] and 87.323(b)[2] of the Commission's rules to assign four frequencies—121.950 MHz, 122.775 MHz, 122.850 MHz, and 123.300 MHz—for air-to-air use in the Phoenix metropolitan airspace.[3] ASAGA is an Arizona non-profit organization comprised of volunteer aviators who work with aviation stakeholders throughout Arizona to promote and educate others on safety practices.[4]

In its waiver request, ASAGA stated that the existing frequencies used for air-to-air communications are "congested" and "do not adequately serve safety for those engaged in flight training."[5] If assigned, ASAGA asserts that the requested frequencies would be used for flight training by those in the Phoenix airspace.[6]

The Bureau seeks comment on ASAGA's waiver request. Interested parties may file comments on or before the dates indicated on the first page of this document.

[1] Section 87.187 of the Commission's rules provides aircraft station frequencies and their designated purposes. 47 CFR § 87.187.

[2] Section 87.323(b) provides aviation support station frequencies, including 121.950 MHz and 123.300 MHz, for several purposes. 47 CFR § 87.323(b).

[3] Aviation Safety Advisory Group of Arizona, Inc. Waiver Request (submitted July 7, 2023), https://www.fcc.gov/ecfs/search/search-filings/filing/1070705497358 (ASAGA Waiver Request). The language in ASAGA's Waiver Request could be construed as a Petition for Rulemaking to amend section 87.187, but it does not fully meet the rulemaking requirements of section 1.401 and, thus, we only seek comment on the waiver request. *Id.* at 1–2.

[4] Aviation Safety Advisory Group of Arizona, *About*, https://asagaz.org/about (last visited Nov. 30, 2023).

[5] ASAGA Waiver Request at 1.

[6] *Id.* at 2. According to ASAGA, one use example for these frequencies is a pilot's ability to self-announce altitude or planned maneuvers. *Id.*

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, subject to the requirements under section 1.1206(b). We have opened a new docket, **WT Docket No. 24-8**, to facilitate consideration of the Request and have moved ASAGA's Request into this docket. Parties should file all comments and reply comments in **WT Docket No. 24-8**.

Filing Requirements. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).[7]

- 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.[8]

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).

Additional Information. For further information regarding this Public Notice, please contact Christine Parola, Mobility Division, Wireless Telecommunications Bureau, at Christine.Parola@fcc.gov.

-FCC-

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

[8] *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.

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 24-42
Released: January 12, 2024

COMMENTS INVITED ON SECTION 214 APPLICATION(S) TO GRANDFATHER DOMESTIC NON-DOMINANT CARRIER TELECOMMUNICATIONS AND/OR INTERCONNECTED VOIP SERVICES

WC Docket No(s). 23-397, 23-398 & 23-399

Comments Due: January 29, 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 **February 12, 2024**, the 31st day after the release date of this public notice, unless the Commission notifies any applicant(s) that their grant will not be automatically effective.[4] We note that the date on which an application for Commission authorization is deemed granted may be different from the date on which applicants are authorized to discontinue, reduce, or impair service ("Authorized Date"). Any applicant whose application has been deemed granted may discontinue, reduce or impair their Affected Service(s) in their Service Area(s) on or after the authorized date(s) specified in the Appendix, in accordance with their filed representations. Accordingly, pursuant to section 63.71(f), and the terms outlined in each application, absent further Commission action, each applicant may discontinue, reduce or impair the Affected Service(s) in the Service Area(s) described in their application on or after the authorized discontinuance date(s) listed in the Appendix for that application. For purposes of computation of time when filing a petition for reconsideration, application for review, or petition for judicial review of the Commission's decision(s), the date of "public notice" shall be the later of the auto grant date stated above in this Public

[1] 47 CFR § 63.71. *See* Appendix for additional details regarding specific proceedings.

[2] 47 U.S.C. § 214.

[3] 47 CFR § 63.71.

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

Notice, or the release date(s) of any further public notice(s) or order(s) announcing final Commission action, as applicable. Should no petitions for reconsideration, applications for review, or petitions for judicial review be timely filed, the proceeding(s) listed in this Public Notice shall be terminated, and the docket(s) will be closed.

Comments objecting to any of the applications listed in the Appendix must be filed with the Commission on or before **January 29, 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): AT&T Services, Inc., on behalf of its affiliates**[9]
WC Docket No. 23-397, Comp. Pol. File No. 1878
Link – https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2223-397*%22))
Affected Service(s) – DS1 and DS3 services
Service Area(s) – service areas within nine wire centers in Florida, Kentucky, Michigan, Ohio and Tennessee, as specified in the application
Authorized Date(s) – on or after February 12, 2024
Contact(s) – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau
Note: On or after February 12, 2024, AT&T plans to grandfather the Affected Service(s) in the affected Service Area(s) as follows: AT&T will no longer allow new orders, renewal of service agreements, or requests for physical changes, including moves to different service addresses, unless a customer's contract expressly allows such orders or changes. Following the expiration of any current term agreement, AT&T will provide the Affected Service(s) on a month-to-month basis during which it may change the rates, terms, and conditions of the Affected Service(s) upon notification. On December 14, 2023, AT&T amended its filing to correct certain data cited in its original application.

2) **Applicant(s): AT&T Services, Inc., on behalf of its affiliate BellSouth Telecommunications, LLC, d/b/a AT&T Florida and AT&T Tennessee**
WC Docket No. 23-398, Comp. Pol. File No. 1879
Link – https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2223-398*%22))
Affected Service(s) – Remote Call Forwarding or Telebranch
Service Area(s) – service areas within four wire centers in Florida and Tennessee, as specified in the application
Authorized Date(s) – on or after February 12, 2024
Contact(s) – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau
Note: On or after February 12, 2024, AT&T plans to grandfather the Affected Service(s) in the affected Service Area(s) as follows: AT&T will no longer allow new orders, renewal of service agreements, or requests for physical changes, including moves to different service addresses, unless a customer's contract expressly allows such orders or changes. Following the expiration of any current term agreement, AT&T will provide the Affected Service(s) on a month-to-month basis during which it may change the rates, terms, and conditions of the Affected Service(s) upon notification. On December 14, 2023, AT&T amended its filing to correct certain data cited in its original application.

3) **Applicant(s): AT&T Services, Inc. on behalf of its affiliates**[10]
WC Docket No. 23-399, Comp. Pol. File No. 1880

[9] BellSouth Telecommunications, LLC, d/b/a AT&T Florida, AT&T Kentucky, and AT&T Tennessee; Michigan Bell Telephone Company, d/b/a AT&T Michigan; The Ohio Bell Telephone Company, d/b/a AT&T Ohio (AT&T)

[10] BellSouth Telecommunications, LLC, d/b/a AT&T Florida, AT&T Louisiana, and AT&T Tennessee; Michigan Bell Telephone Company d/b/a AT&T Michigan; Southwestern Bell Telephone Company, d/b/a AT&T Missouri and AT&T Texas (AT&T)

Link – https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2223-399*%22))
Affected Service(s) – AT&T Phone Service and AT&T Phone for Business (VOIP services)
Service Area(s) – service areas within nine wire centers in Florida, Louisiana, Michigan, Missouri, Tennessee and Texas, as specified in the application
Authorized Date(s) – on or after February 12, 2024
Contact(s) – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau
Note: On or after February 12, 2024, AT&T plans to grandfather the Affected Service(s) in the affected Service Area(s) as follows: AT&T will no longer allow new orders, renewal of service agreements, or requests for physical changes, including moves to different service addresses, unless a customer's contract expressly allows such orders or changes. Following the expiration of any current term agreement, AT&T will provide the Affected Service(s) on a month-to-month basis during which it may change the rates, terms, and conditions of the Affected Service(s) upon notification. On December 14, 2023, AT&T amended its filing to correct certain data cited in its original application.

PUBLIC NOTICE

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

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

DA 24-43
Released: January 12, 2024

COMMENTS INVITED ON SECTION 214 APPLICATION TO GRANDFATHER DOMESTIC LEGACY VOICE SERVICES

WC Docket No. 23-400

Comments Due: January 22, 2024

Unless otherwise specified, the following procedures and dates apply to the application(s) (the Section 214 Discontinuance Application(s)) listed in the Appendix.

The Wireline Competition Bureau (Bureau), upon initial review, has found the Section 214 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 grandfather certain domestic telecommunications service(s) (Affected Service(s)) in specified geographic areas (Service Area(s)) as applicable and as fully described in each application.[4]

In accordance with section 63.71(k)(3) of the Commission's rules, the Section 214 Application(s) listed in the Appendix will be deemed granted automatically on **February 6, 2024**, the 25th day after the release date of this public notice, unless the Commission notifies any applicant(s) that their grant will not be automatically effective.[5] 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 grandfather service ("Authorized Date"). Any applicant whose application has been deemed granted may grandfather

[1] 47 CFR § 63.71. *See* Appendix for additional details regarding Section 63.71 Application of AT&T Services, Inc. on behalf of its affiliates (AT&T), WC Docket No. 23-400 (filed Nov. 16, 2023) (Application).

[2] 47 U.S.C. § 214.

[3] 47 CFR § 63.71.

[4] AT&T states that, "[p]ursuant to 47 C.F.R. § 63.71(g), AT&T has already discontinued all services provided over legacy facilities in broad identifiable areas within the footprint of many of these wire centers, because no customers were purchasing the services and AT&T had received no reasonable requests for the service for a 30-day period immediately preceding discontinuance." *See* Application at 10. The Bureau emphasizes that the release of this public notice and any subsequent automatic grant of this grandfathering application in no way addresses or signifies the Bureau's view or affirmation that AT&T's described prior or planned discontinuance of the Affected Services in wire centers where they have no customers is, or is not, consistent with section 63.71 of the Commission's rules.

[5] *See* 47 CFR § 63.71(k)(3) (stating, in relevant part, that "[a]n application filed by any carrier seeking to grandfather any legacy voice service or to grandfather any data service operating at speeds lower than 1.544 Mbps for existing customers shall be automatically granted on the 25th day …unless the Commission has notified the applicant that the grant will not be automatically effective.").

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(k)(3), and the terms outlined in each application, absent further Commission action, each applicant may grandfather the Affected Service(s) in the Service Area(s) described in their application on or after the authorized date(s) listed in the Appendix. 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 auto grant date stated above in this Public Notice, or the release date(s) of any further public notice(s) or order(s) announcing final Commission action, as applicable. Should no petitions for reconsideration, applications for review, or petitions for judicial review be timely filed, the proceeding(s) listed in this Public Notice shall be terminated, and the docket(s) will be closed.

Comments objecting to the application listed in the Appendix must be filed with the Commission on or before **January 22, 2024**. Comments should refer to the specific WC Docket No. and Comp. Pol. File No. listed in the Appendix for the particular Section 214 Application that the commenter intends to address. Comments should include specific information about the impact of the proposed grandfathering 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. 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

---

[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: 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).

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

– FCC –

Appendix

1) **Applicant(s): AT&T Services, Inc. on behalf of its affiliates**[9]
WC Docket No. 23-400, Comp. Pol. File No. 1881
Link – https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2223-400*%22))
Affected Service(s) – AT&T Residential Local Service and AT&T Business Local Exchange Access Line Service aka POTS
Service Area(s) – service areas within 60 wire centers in Florida, Illinois, Indiana, Kentucky, Louisiana, Michigan, Missouri, Ohio, Oklahoma, South Carolina, Tennessee, Texas and Wisconsin, as specified in the application
Authorized Date(s) – on or after February 6, 2024
Contact(s) – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau
Note: On or after February 6, 2024, AT&T plans to grandfather the Affected Service(s) in the affected Service Area(s) as follows: AT&T will no longer allow new orders, renewal of service agreements, or requests for physical changes, including moves to different service addresses, unless a customer's contract expressly allows such orders or changes. Following the expiration of any current term agreement, AT&T will provide the Affected Service(s) on a month-to-month basis during which it may change the rates, terms, and conditions of the Affected Service(s) upon notification. On December 14, 2023, AT&T amended its filing to correct certain data cited in its original application

[9] BellSouth Telecommunications, LLC, d/b/a AT&T Florida, AT&T Kentucky, AT&T Louisiana, AT&T South Carolina, and AT&T Tennessee; Illinois Bell Telephone, LLC, d/b/a AT&T Illinois; Indiana Bell Telephone Company, Inc., d/b/a AT&T Indiana; Michigan Bell Telephone Company d/b/a AT&T Michigan; The Ohio Bell Telephone Company, d/b/a AT&T Ohio; Southwestern Bell Telephone Company, d/b/a AT&T Missouri, AT&T Oklahoma, and AT&T Texas; and Wisconsin Bell, Inc., d/b/a AT&T Wisconsin (AT&T).

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

In the Matter of	)	
	)	
Comcast Cable Communications, LLC,	)	MB Docket No. 22-443
	)	File No. CSR-9005-C
Complainant,	)	NAL/Acct. No. MB-202441430001
	)	
v.	)	
	)	
Mission Broadcasting, Inc.	)	
	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: January 12, 2024 **Released: January 12, 2024**

By the Chief, Media Bureau:

I. INTRODUCTION

1. The Commission has before it a complaint by Comcast Cable Communications, LLC (Comcast) against Mission Broadcasting, Inc. (Mission)[1] alleging violations of the requirement to negotiate retransmission consent in good faith pursuant to section 325(b)(3)(C) of the Communications Act of 1934, as amended (the Act), and the Commission's implementing rules.[2] Among other allegations, Comcast asserts that Mission, licensee of New York, NY television station WPIX, breached its statutory duty to negotiate in good faith. Comcast claims that Mission did so by conditioning retransmission consent on Comcast's acceptance of contract proposals that were presumptively inconsistent with competitive marketplace considerations because they would foreclose the filing of future complaints with the Commission.[3] For the reasons set forth below, we find that, upon consideration of the totality of the circumstances, Comcast has satisfied its burden of proof with respect to Mission's failure to negotiate in good faith. We, therefore, grant the Complaint, in part, and propose a forfeiture of $150,000 against Mission, licensee of WPIX.

[1] Verified Complaint of Comcast Cable Communications, LLC, Against Nexstar Media Group, Inc. and Mission Broadcasting, Inc. for Failure to Negotiate Retransmission Consent in Good Faith, MB Docket No. 22-443 (filed Dec. 12, 2022), https://www.fcc.gov/ecfs/document/1212102136916/1 (Complaint). Comcast's informal complaint alleges additional good faith negotiation violations against both Mission and Nexstar Media Group, Inc (Nexstar). In this Order we address only a subset of the allegations against Mission, the licensee of WPIX, and do not address any of the allegations against Nexstar, which represented WPIX and Mission in the negotiations with Comcast. The remaining allegations are under review by the Commission pending the outcome of ongoing investigations.

[2] 47 U.S.C. § 325(b)(3)(C); 47 § CFR 76.65. *See also* 47 CFR § 76.7.

[3] Complaint at 25, para. 56; Reply in Support of Verified Complaint of Comcast Cable Communications, LLC Against Nexstar Media Group, Inc. and Mission Broadcasting, Inc. for Failure to Negotiate Retransmission Consent in Good Faith, MB Docket No. 22-443, at 5-9 (filed Jan. 27, 2023), https://www.fcc.gov/ecfs/document/10127083345523/1 (Reply).

II. BACKGROUND

A. Relevant Law and Commission Rules

2. Section 325(b)(3)(C) of the Act imposes on television broadcast stations and multichannel video programming distributors (MVPDs) a duty to negotiate retransmission consent in good faith.[4] Specifically, section 325(b)(3)(C)(ii) directs the Commission to establish rules that "prohibit a television broadcast station that provides retransmission consent from . . . failing to negotiate in good faith."[5] Section 325 also provides that "enter[ing] into retransmission consent agreements containing different terms and conditions . . . with different [MVPDs]," is not a violation of the duty to negotiate in good faith "if such different terms and conditions are based on competitive marketplace considerations."[6] In the 2000 *Good Faith Order*, the Commission adopted rules that implemented the statutory good faith negotiation provision and established complaint procedures for alleged violations of the rules.[7] The *Good Faith Order* adopted a two-part test for good faith.[8] The first part of the test sets forth an objective list of negotiation standards.[9] Each of the standards applies to "Negotiating Entit[ies]," which the rules define as "a broadcast television station or [MVPD]."[10] A Negotiating Entity that engages in any of the acts or practices set forth in the list is deemed to have committed a *per se* breach of its statutory duty to negotiate retransmission consent in good faith.[11]

3. The second part of the good faith test considers whether a Negotiating Entity has failed to negotiate in good faith based on the "totality of the circumstances."[12] Under this standard, a broadcast station or MVPD may present facts to the Commission that, viewed in their totality, amount to a failure to negotiate in good faith.[13] When adopting this standard, the Commission explained that specific retransmission consent proposals could be "sufficiently outrageous. . . as to breach [the] good faith negotiation obligation."[14] The Commission stated further that, while it was "difficult to develop a . . . list of proposals that indicate an automatic absence of competitive marketplace considerations . . . it is implicit in section 325(b)(3)(C) that any effort to stifle competition through the negotiation process would not meet the good faith negotiation requirement."[15] Consistent with this reasoning, the Commission identified several examples of "bargaining proposals [that] presumptively are not consistent with

[4] 47 U.S.C. § 325(b)(3)(C).

[5] 47 U.S.C. § 325(b)(3)(C)(ii).

[6] 47 U.S.C. § 325(b)(3)(C)(ii).

[7] *Implementation of the Satellite Home Viewer Improvement Act of 1999, Retransmission Consent Issues: Good Faith Negotiation and Exclusivity*, First Report and Order, CS Docket No. 99-363, 15 FCC Rcd 5445 (*Good Faith Order*), *recon. granted in part*, Order on Reconsideration, 16 FCC Rcd 15599 (2001).

[8] *Good Faith Order*, 15 FCC Rcd at 5457, para. 30.

[9] 47 CFR §§ 76.65(b)(1)(i)–(ix) (listing *per se* standards for good faith negotiation). Although the requirement to negotiate in good faith originally was imposed only on television broadcast stations, a reciprocal obligation later was imposed on MVPDs. *See Implementation of Section 207 of the Satellite Home Viewer Extension and Reauthorization Act of 2004: Reciprocal Bargaining Obligation*, Report and Order, 20 FCC Rcd 10339 (2005).

[10] 47 CFR § 76.65(b)(1).

[11] *Good Faith Order*, 15 FCC Rcd at 5462-64, paras. 40-46.

[12] 47 CFR § 76.65(b)(2).

[13] *Id*.

[14] *Good Faith Order*, 15 FCC Rcd at 5458, para. 32.

[15] *Id*. at 5470, para. 58.

competitive marketplace considerations and the good faith negotiation requirement," including "proposals for contract terms that would foreclose the filing of complaints with the Commission."[16]

4. A broadcast station or MVPD that believes itself aggrieved under the good faith rules may file a complaint pursuant to section 76.7 of the Commission's rules.[17] The burden of proof in good faith complaint proceedings is on the complainant.[18]

B. Factual Summary[19]

5. Comcast is an MVPD and a Negotiating Entity as defined in section 76.65 of the Commission's rules. Mission is the licensee of 29 full power television broadcast stations, including WPIX.[20] WPIX is a television broadcast station, and a Negotiating Entity as defined in section 76.65. Nexstar, the other party named in Comcast's complaint, owns or "partners" with 200 full power broadcast stations nationwide.[21] Nexstar represented WPIX in the Comcast retransmission consent negotiations.[22] Except where otherwise noted in this item, references to actions taken and statements made by WPIX were performed by Nexstar on behalf of the station.

6. On October 28, 2022, WPIX sent Comcast an initial proposal for renewal of retransmission consent for WPIX.[23] Representatives for Comcast and WPIX exchanged several proposals throughout November by phone, letter, and email.[24] As of December 3, 2022, after the expiration of its agreement with Mission, Comcast discontinued carriage of WPIX.[25] On December 7 and 9, 2022, WPIX made the proposals at issue in this proceeding.[26] These proposals would have, in relevant part, prevented either party from seeking Commission action related to certain carriage negotiations.[27] On December 12, 2022, Comcast filed the instant Complaint. On December 17, 2022, Comcast and WPIX successfully

---

[16] *Id*.

[17] 47 CFR §§ 76.65(c), 76.7.

[18] 47 CFR § 76.65(d).

[19] All parties filing in this proceeding have requested confidentiality for certain information. We have not ruled on these requests. This summary is based on undisputed statements by the parties, and where possible relies on information placed in the portion of the record for which confidentiality has not been requested. Where necessary, information for which confidentiality was requested has been identified, redacted, and marked with the double-bracketed letter "C" ([[C]]) throughout this Memorandum Opinion and Order.

[20] Mission Broadcasting, Inc., Biennial Ownership Report, FCC File Number 0000224346 (filed Oct. 31, 2023).

[21] Nexstar Media Group, Inc., *Company History*, https://www.nexstar.tv/history/ (last visited Jan. 8, 2024).

[22] *See* Mission Broadcasting, Inc.'s Answer to Good Faith Negotiation Complaint of Comcast Communications, LLC, MB Docket No. 22-443, at 6 (filed Jan. 17, 2023), https://www.fcc.gov/ecfs/document/1011762908612/1 (Mission Answer), citing a November 11, 2022 Mission email to Comcast [[C]] REDACTED [[C]]

[23] Complaint at 11, para. 23; Answer of Nexstar Media Groups, Inc., MB Docket No. 22-43, at 6 (filed Jan. 17, 2023), https://www.fcc.gov/ecfs/document/10117301437727/1 (Nexstar Answer).

[24] Nexstar Answer at 6.

[25] Complaint at ii (explaining that Comcast's existing retransmission consent agreement with Mission, covering the carriage of WPIX, expired on [[C]] REDACTED [[C]]). *See also* Mission Answer at 9.

[26] Complaint at 13; Nexstar Answer at 9; Reply at 5-8.

[27] Complaint at iii, 3, and paras. 6, 23, 51; Reply at 6-7. Specifically, the proposals read as follows (emphasis added):

December 7, 2022 - [[C]] REDACTED [[C]]

December 9, 2022 - [[C]] REDACTED [[C]]

executed a retransmission consent agreement that did not contain the disputed terms, and Comcast restored WPIX to its systems.[28]

7. Both Mission and Nexstar filed timely answers to the Complaint on January 17, 2023. Comcast filed a timely Reply on January 27, 2023. The Commission subsequently sought additional information from Mission, including confirmation of certain information provided by Comcast.[29] Mission, the owner and licensee of WPIX, responded that it had no information regarding the negotiation for carriage of WPIX, and was not a party to the ultimate agreement for carriage of the station.[30] It did not dispute any of the factual claims in the record.

III. DISCUSSION

8. Based on the evidence developed in the record and through the Bureau's investigation, we find that Comcast has met its burden in proving that, based on the totality of circumstances, Mission breached its duty to negotiate retransmission consent in good faith. Specifically, we find that Mission violated the good faith negotiation requirements when WPIX proposed terms for renewal of the parties' agreement that would foreclose the filing of complaints with the Commission. As noted above, the *Good Faith Order* states that "proposals for contract terms that would foreclose the filing of complaints with the Commission" are presumptively inconsistent with the good faith negotiation requirement.[31]

9. Nexstar does not dispute that it made the proposals identified by Comcast when negotiating as the representative of WPIX, or that those proposals would have foreclosed the filing of certain complaints with the Commission.[32] Rather, it argues that "releasing FCC-related claims or withdrawing FCC complaints is not novel,"[33] and "parties typically agree to withdraw good faith negotiation complaints once retransmission consent agreements have been reached."[34] We find these arguments unpersuasive. As noted, the *Good Faith Order* plainly states that "proposals for contract terms that would foreclose the filing of complaints with the Commission" are presumptively at odds with the good faith negotiation requirement, and the Commission cited no exception or qualifying language that would support interpreting this phrase more narrowly.[35] Whether parties sometimes determine that withdrawing existing complaints is in their mutual best interest after a carriage agreement is reached is not relevant to the question of whether they engage in good faith during the negotiation process. Nexstar also suggests that proposals failing to comport with the requirements of good faith are not violative if they are "not included in the final agreement,"[36] and that a good faith complaint should not be considered by

[28] Nexstar Answer at 10 – 11.

[29] Letter from Maria Mullarkey, Chief, Policy Division, Media Bureau, Federal Communications Commission, to Dennis P. Thatcher, President, Mission Broadcasting, Inc. (June 21, 2023).

[30] Letter from Dennis P. Thatcher, President, Mission Broadcasting, Inc., to Maria Mullarkey, Chief, Policy Division, Media Bureau, Federal Communications Commission (July 21, 2023).

[31] *Supra* para. 3, citing *Good Faith Order*, 15 FCC Rcd at 5470, para. 58.

[32] Nexstar Answer at 20-25. Nexstar does dispute an alternative version of the allegation, but offers no evidence or substantive argument in support of even this strawman argument. Nexstar Answer at 24 ((("Comcast claims without basis that Nexstar's settlement proposal would [[C]] REDACTED [[C]]… [t]he settlement proposal did nothing of the sort") (emphasis added). On the contrary, Comcast claims only that the settlement proposal would have foreclosed the filing of complaints with respect to the WPIX agreement, and Nexstar does not dispute this factual statement. We therefore reject this argument.

[33] Nexstar Answer at 22.

[34] Nexstar Answer at 22.

[35] *Good Faith Order*, 15 FCC Rcd at 5470, para. 58.

[36] Nexstar Answer at 24.

the Commission unless an objection was first raised with the other party in the negotiation.[37] On the contrary, a party may reasonably decide that, in order to prevent significant disruption to viewers, it must seek to reach agreement even with a counterparty it feels is not negotiating in good faith. Our rules permit the filing of complaints even after an agreement is signed precisely because the process can be corrupted without being totally derailed. We therefore reject both of these arguments as inconsistent with our rules and the Commission's obligations and authority to ensure parties negotiate retransmission consent in good faith.[38]

10. Mission itself argues that it is not responsible for actions taken by Nexstar on behalf of WPIX, even though it identified Nexstar as the approved delegated negotiator for retransmission of the signal of its licensed station, WPIX.[39] Not only does this argument contravene basic principles of agency law,[40] it also ignores Commission precedent that licensees are ultimately responsible for the acts of their licensed stations.[41] We therefore reject this argument, and grant the complaint against Mission with respect to this claim.

IV. NOTICE OF APPARENT LIABILITY FOR FORFEITURE

A. Discussion

11. Based on our review of the evidence in the record, described in section I.B. above, we find that Mission apparently willfully and repeatedly violated section 325 of the Act and section 76.65 of the Commission's rules when WPIX proposed contract terms that are presumptively inconsistent with competitive marketplace considerations and the good faith negotiation requirements.[42] Accordingly, and as explained herein, the Bureau proposes a forfeiture of $150,000 (one hundred fifty thousand dollars).

12. As explained in section I.A. above, section 325 of the Act "prohibit[s] a television broadcast station that provides retransmission consent from . . . failing to negotiate in good faith."[43] Section 76.65 of our rules gives the Commission latitude to consider whether a Negotiating Entity has failed to negotiate in good faith based on the "totality of the circumstances."[44] As our implementing Order explained, proposals that are "sufficiently outrageous," such as "terms that would foreclose the filing of complaints with the Commission," are "presumptively" not consistent with the good faith negotiation requirement under the totality of the circumstances test.[45]

13. The facts applicable to this Notice of Apparent Liability are discussed in more detail

---

[37] Nexstar Answer at 22 ("To the extent that Comcast understood that the language in the proposed settlement [[C]] REDACTED [[C]]").

[38] 47 CFR § 76.65.

[39] *See* Comcast Reply at 9 & n.31; Mission Answer at 16.

[40] American Law Institute, Restatement of Agency § 1.01 (3d ed. 2006).

[41] *See, e.g.*, 47 CFR § 73.1212 (licensee responsible for compliance with rules during programming provided by a third party); *Cosmopolitan Broadcasting Corp. v. FCC*, 581 F.2d 917, 927 (D.C. Cir. 1978) (licensee liable for violations committed by time brokers); *DirectTV, LLC; AT&T Services, Inc. v. Deerfield Media, Inc.*, MB Docket No. 19-168, Forfeiture Order, 36 FCC Rcd 12078, 12094, para. 35 (2021) (finding that licensees are required to ensure that each station complies with rules); *Complaints Against Various Licensees Regarding Their Broadcast of the Fox Television Program "Married By America" on April 7, 2003*, Forfeiture Order, 23 FCC Rcd 3222, 3237-38, 3240-41, para. 41, Attach. A (2008) (finding the licensees of stations that broadcast indecent material liable for a forfeiture penalty of the base amount on a per-station basis)).

[42] Sections I and II of this item, *supra*, are incorporated into and made a part of this Notice of Apparent Liability for Forfeiture.

[43] 47 U.S.C. § 325(b)(3)(C)(ii).

[44] 47 U.S.C. § 76.65(b)(2).

[45] *Good Faith Order*, 15 FCC Rcd at 5458, 5470, paras. 32, 58.

above. WPIX repeatedly offered contract proposals that would have foreclosed the filing of certain complaints with the Commission. Considering the totality of the circumstances, Mission's willful course of conduct constituted an ongoing violation of the good faith negotiation requirements. Accordingly, we find that Mission failed to negotiate in good faith with Comcast for retransmission of its signals in apparent violation of section 325 of the Act and section 76.65 of the Commission's rules.

B. Proposed Forfeiture

14. Section 503(b)(1)(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."[46] Section 312(f)(1) of the Act defines "willful" as the "conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.[47] This definition of willful applies to section 503(b) of the Act.[48]

15. Section 503(b)(2)(A) of the Act authorizes the Commission to assess a forfeiture of up to $59,316 per violation or day of a continuing violation, up to a statutory maximum of $593,170 for a single act or failure to act.[49] In exercising our forfeiture authority, we consider the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, substantial economic gain, and such other matters as justice may require.[50] As required by the Act, the Commission applies these statutory factors to determine an appropriate forfeiture amount based on its evaluation of the merits of each case.[51] Additionally, the Commission has established base forfeitures to reflect "the degree of harm or potential for harm that may

[46] 47 U.S.C. § 503(b)(1)(B).

[47] 47 U.S.C. § 312(f)(1).

[48] *See, e.g.*, *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991) ("[C]onsistent with congressional intent, recent Commission interpretations of 'willful' do not require licensee intent to engage in a violation."), *recon. denied*, 7 FCC Rcd 3453 (1992).

[49] 47 U.S.C. § 503(b)(2)(A). These amounts reflect inflation adjustments of the forfeitures specified in section 503(b)(2)(A) of the Act. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. No. 114-74, § 701, 129 Stat. 584, 599 (2015 Inflation Adjustment Act) required agencies, starting in 2017, to adjust annually the civil monetary penalties covered thereunder, and to publish each such annual adjustment by January 15. 47 CFR § 1.80(b)(1). The 2015 Inflation Adjustment Act amended the Federal Civil Penalties Inflation Adjustment Act of 1990, which is codified, as amended, at 28 U.S.C. § 2461 note (4). The Enforcement Bureau of the FCC released the order making the 2023 annual adjustment on December 23, 2022. *See Amendment of Section 1.80(b) of the Commission's Rules, of Civil Monetary Penalties to Reflect Inflation*, Order, 37 FCC Rcd 15060 (EB 2022) (setting January 15, 2023, as the effective date for the increases). The 2015 Inflation Adjustment Act provides that the new penalty levels shall apply to penalties assessed after the effective date of the increase." *See* 28 U.S.C. § 2461 note, citing Inflation Adjustment Act, as amended § 6.

[50] 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(11), Note § II.

[51] 47 U.S.C. § 503(b).

arise from the violation."[52] The Commission, moreover, is authorized to adjust the base forfeiture amount upward or downward, taking into account the particular facts in each case.[53]

16. The Commission's *Forfeiture Policy Statement* establishes a base forfeiture of $7,500 for "violation of the cable broadcast carriage rules."[54] Mission's apparently violative conduct occurred when WPIX, its licensed station, offered contract provisions that were presumptively inconsistent with competitive marketplace considerations and the good faith negotiation requirements.[55] Because they are substantively identical with respect to the violation at issue, we consider WPIX's two sequential offers of violative proposals to have constituted a "single act" that continued over an extended period of time.[56] The record indicates that WPIX offered the violative proposals on December 7 and December 9, 2022 and the parties successfully executed a retransmission consent agreement for WPIX on December 17, 2022.[57] We multiply the $7,500 per day base forfeiture amount set forth in section 1.80 of the Commission's rules by the number of days that the apparent violations continued (10). This calculation (10 x $7,500) yields a base forfeiture of $75,000, which we then adjust, as discussed below, based on our assessment of the statutory factors.

---

[52] *Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17098, para. 20 (*Forfeiture Policy Statement*), *recon. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

[53] *Forfeiture Policy Statement*, 12 FCC Rcd at 17099, para. 22 (noting that "[a]lthough [the Commission has] adopted the base forfeiture amounts as guidelines to provide a measure of predictability to the forfeiture process, [the Commission] retain[s the] discretion to depart from the guidelines and issue forfeitures on a case-by-case basis, under [the] general forfeiture authority contained in Section 503 of the Act"). *See also* 47 CFR § 1.80, note to (b)(11)(section II):

Upward Adjustment Criteria
(1) Egregious misconduct.
(2) Ability to pay/relative disincentive.
(3) Intentional violation.
(4) Substantial harm.
(5) Prior violations of any FCC requirements.
(6) Substantial economic gain.
(7) Repeated or continuous violation.

Downward Adjustment Criteria
(1) Minor violation.
(2) Good faith or voluntary disclosure.
(3) History of overall compliance.
(4) Inability to pay.

[54] *Forfeiture Policy Statement*, 12 FCC Rcd at 17113; 47 CFR § 1.80(b)(11), Table 2 (setting the base forfeiture amount for violations of the cable broadcast carriage rules at $7,500).

[55] Complaint at 24-25, para. 55; Nexstar Answer at 22; Reply at 5-8.

[56] *See, e.g.*, *Acerome Jean Charles, Boston, Massachusetts*, Notice of Apparent Liability for Forfeiture, 34 FCC Rcd 12744, 12747, para. 15 (2019) ("[D]uring the 27-day period . . . Jean Charles was apparently committing a single, continuing violation of section 301 of the Act. We therefore propose a base forfeiture of $10,000 for each day during this 27-day period, resulting in a proposed base forfeiture of $270,000."). *See also DirectTV, LLC; AT&T Services, Inc. v. Deerfield Media, Inc.*, MB Docket No. 19-168, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 10695 (2020) (distinguishing *TV Max, Inc. and Broadband Ventures Six, LLC d/b/a Wavevision, Thomas M. Balun, Eric Meltzer, and Richard Gomez, et al*., MB Docket Nos. 12-113, 12-181, 12-222, and 12-266, Forfeiture Order, 29 FCC Rcd 8648 (2014)). We note that if we treated the proposals as two distinct continuing violations, with the first expiring when the second proposal was made, Mission's apparent liability would not change.

[57] Nexstar Answer at 10-11. Nexstar's public response indicates that "[f]ive days after Comcast filed the Complaint," the parties "successfully executed a retransmission consent agreement." *Id*.

17. In implementing section 503(b) of the Act, the FCC has established base forfeitures for some common violations to reflect "the degree of harm or potential for harm that may arise from the violation."[58] In exercising the Commission's maximum forfeiture authority, the Commission has the discretion to adjust the forfeiture amount based on the particular facts and circumstances of the violations.[59] In addition, the FCC has established upward and downward adjustment factors it considers in determining forfeitures.[60] For example, the Commission has previously established that it may consider a prior violation of any of its regulations, even if the prior violation does not relate to the type of violation at issue in the current matter.[61] After reviewing the facts and circumstances of this case, we find that, in light of Mission's prior violation of Commission rules[62] and its financial relationship with Nexstar,[63] the public interest would be served by upwardly adjusting the base forfeiture to $150,000 to ensure that Mission's ability to pay[64] does not render the proposed forfeiture "merely an affordable cost of doing business" and that the forfeiture acts as a "meaningful sanction and deterrent against future

[58] *Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17098, para. 20 (Forfeiture Policy Statement), recon. denied, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

[59] *In the Matter of Globalcom, Inc. D/B/A Globalcom Global Communications*, Apparent Liability for Forfeiture, 21 FCC Rcd 4710, at 4721, para. 30 (2006).

[60] *Forfeiture Policy Statement*, 12 FCC Rcd at 17099.

[61] 47 CFR § 1.80 (listing "[p]rior violations of any FCC requirements" as one upward adjustment factor for section 503 forfeitures). *See, e.g.*, *Cumulus Radio, et al*, Forfeiture Order, 36 FCC Rcd 738, 743, para. 18 (2022) (the Commission upwardly adjusted the base forfeiture amount by $129,000 based on the licensee's past violations of Commission's rules).

[62] *See, e.g.*, *Mission Broadcasting, Inc. Licensee of Station KTVE El Dorado, Arkansas*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 100 (Video Div. 2014) (issuing a $1,000 forfeiture against Mission for willfully and repeatedly violating section 73.3526 of the Commission's rules, which requires licensees to publicize the existence and location of the station's Children's Television Programming Reports); *Mission Broadcasting, Inc. Licensee of Station KJTL(TV) Wichita Falls, Texas*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 10695 (Video Div. 2007) (issuing a $4,000 monetary forfeiture against Mission for willfully and repeatedly violating sections 73.3526(e)(11)(i) and 73.3526(e)(11)(ii) of the Commission's rules, which requires licensees to place in the Station's public inspection file all required TV issues/program lists and records concerning its compliance with the children's programming commercial limits).

[63] While Mission is not a subsidiary of Nexstar, it operates as a Variable Interest Entity (VIE) of the larger company, meaning that Nexstar is considered to have a controlling interest in Mission for financial reporting purposes with the U.S. Securities and Exchange Commission. *See* Nexstar Media Group, Inc., Securities and Exchange Commission Annual Report (Form 10-K) at 28 (filed Feb. 28, 2023), https://www.sec.gov/ix?doc=/Archives/edgar/data/1142417/000095017023005209/nxst-20221231.htm.

[64] Nexstar's 2022 net revenues were significantly in excess of five billion dollars, and have been trending consistently upwards. Nexstar Media, Inc., Form 10-K 2022 (Feb. 28, 2023) https://www.sec.gov/ix?doc=/Archives/edgar/data/1142417/000095017023005209/nxst-20221231.htm. We note that as a VIE, Mission's revenues and assets are consolidated with Nexstar's financial accounting and annual reporting. Hence, Mission and Nexstar are effectively treated as a single entity for financial purposes in the Nexstar 10-K.

misconduct."[65] We also consider whether there is any basis to downwardly adjust the proposed forfeiture.[66] We find none.

V. CONCLUSION

18. For the reasons discussed above , we find that Mission willfully, repeatedly and continuously violated section 325(b) of the Act and section 76.65(b)(4) of the Commission's rules when WPIX offered proposals for contract terms that were presumptively inconsistent with competitive marketplace considerations and the good faith negotiation requirement. Given this violation, we find that Mission is also apparently liable for the forfeiture of $150,000. [67]

VI. ORDERING CLAUSES

19. **ACCORDINGLY, IT IS ORDERED**, pursuant to Section 503(b) of the Communications Act of 1934, as amended,[68] and sections 0.283 and 1.80 of the Commission's rules,[69] that Mission Broadcasting, Inc. is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of One Hundred Fifty Thousand Dollars ($150,000) for willfully and repeatedly violating the Commission's rules.

20. **IT IS FURTHER ORDERED** that the complaint filed by Comcast on December 12, 2022 against Mission Broadcasting, Inc., pursuant to section 325(b)(3)(C) of the Act, 47 U.S.C. § 325(b)(3)(C), and sections 76.7 and 76.65 of the Commission's rules, 47 CFR §§ 76.7 and 76.65, is **GRANTED IN PART.**

21. **IT IS FURTHER ORDERED**, pursuant to Section 1.80 of the Commission's rules,[70] that within thirty days (30) calendar days of the release of this Notice of Apparent Liability for Forfeiture, Mission 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 consistent with paragraphs 24-25 below.

---

[65] *Notice of Apparent Liability for Forfeiture of Enserch Corp. Licensee of 23 Fixed Microwave Service Stations and 147 Private Land Mobile Radio Service Stations Operating throughout Texas*, File No. 92EF0033, Notice of Apparent Liability for Forfeiture, 14 FCC Rcd 16757, para. 8 (1999). *See also Cumulus Radio LLC; Radio License Holding CBC, LLC; Cumulus Licensing LLC; and Radio License Holdings LLC*, File No.: EB-IHD-18-00027598, Forfeiture Order, 36 FCC Rcd. 738, 743-47, paras. 16-22 (doubling base forfeiture based on company's prior rule violations, including of unrelated rules); *Time Warner Entertainment-Advance/Newhouse Partnership Kansas City, MO*, File No.: EB-11-KC-0058, Forfeiture Order, 28 FCC Rcd 15826, para. 6 (increasing the base forfeiture by 150% based on company's ability to pay and prior violations); *AT&T Inc., Parent Company Of New Cingular Wireless Pcs, LLC and AT&T Mobility Puerto Rico, Inc.*, File No.: EB-SED-13-00008891, Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 856, 862, para. 14 (2015) ("We also recognize that AT&T is a multi-billion dollar global enterprise. In this respect, the Commission has determined that large or highly profitable companies should expect the assessment of higher forfeitures for violations of the Act and the Rules. Thus, to ensure that the forfeiture liability serves as an effective deterrent and not simply a cost of doing business for AT&T, a significant upward adjustment of the base forfeiture amount is warranted.") (*internal footnotes omitted*) (*resolved via consent decree*) *citing GCI Commc'ns Corp., Notice of Apparent Liability for Forfeiture*, File No.: EB-FIELDWR-12-00004576, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 12991, 12994, para. 9 (Enf. Bur. 2013) (doubling base forfeiture based on company's ability to pay) (*forfeiture paid*).

[66] *Supra* note 53.

[67] *Supra* note 1. As noted above, the remaining issues raised in the Complaint are pending review by the Commission.

[68] 47 U.S.C. § 503(b).

[69] 47 CFR §§ 0.283, 1.80.

[70] 47 CFR § 1.80.

22. Mission Broadcasting, Inc. shall send electronic notification of payment to the Chief, Media Bureau, Policy Division at Maria.Mullarkey@fcc.gov, and Lyle Elder at Lyle.Elder@fcc.gov on the date said payment is made. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission's Fee Filer (the Commission's online payment system),[71] or by wire transfer. 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:[72]

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

- Payment by credit card must be made by using the Commission's Fee Filer website at https://apps.fcc.gov/FeeFiler/login.cfm. To pay by credit card, log-in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu, and select the bill number associated with the NAL Account from the case caption, above – the bill number is the NAL Account number with the first two digits excluded – and then 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 Fee Filer website at https://apps.fcc.gov/FeeFiler/login.cfm. Select "Pay bills" on the Fee Filer Menu and then select the bill number associated to the NAL Account– the bill number is the NAL Account number with the first two digits excluded – and choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

23. Any request for making full payment over time under an installment plan should be sent to: Jae Song, Chief Financial Officer - Financial Operations, Federal Communications Commission, 45 L Street, NE, Room 3-103, Washington, DC 20002.[74] Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

24. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(f)(3) of the Commission's rules.[75] The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, DC 20002, ATTN: Media Bureau – Policy Division, and must include the relevant NAL/Account Number(s)

[71] Payments made using the Commission's Fee Filer system do not require the submission of FCC Form 159.

[72] 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.

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

[74] 47 CFR § 1.1914.

[75] *Id*. §§ 1.16, 1.80(f)(3).

referenced in the caption. The statement must also be e-mailed to the Chief, Media Bureau, Policy Division at Maria.Mullarkey@fcc.gov, and Virgie Ingram at Virgie.Ingram@fcc.gov.[76]

25. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation.

26. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by certified mail, return receipt requested, to counsel for Mission Broadcasting, Inc., Wiley Rein, LLP, 2050 M Street, NW, Washington, D.C. 20036, ATTN: Gregory L. Masters and Eve Reed.

FEDERAL COMMUNICATIONS COMMISSION

Holly Saurer
Chief, Media Bureau

[76] 47 CFR § 1.1914.

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 24-46
January 16, 2024

WIRELESS TELECOMMUNICATIONS BUREAU ANNOUNCES THAT APPLICATIONS FOR AUCTION 108 LICENSES ARE ACCEPTED FOR FILING

On August 29, 2022, bidding concluded in the Federal Communications Commission's (Commission's) auction of new flexible-use geographic overlay licenses in the 2.5 GHz band, and the Office of Economics and Analytics (OEA) and the Wireless Telecommunications Bureau (WTB) announced the results of that auction on September 1, 2022.[1] Long-form applications (FCC Form 601) for licenses won in Auction 108 were due on September 16, 2022. The three long-form applications listed in Attachment A have been found, upon initial review, to be acceptable for filing.[2] The Commission may return or dismiss the applications, however, if upon further examination, they are found to be defective or not in compliance with the Commission's rules.[3]

Petitions to deny the applications listed in Attachment A must be filed no later than **January 26, 2024**, ten (10) days after the date of this Public Notice.[4] Oppositions to a petition to deny must be filed no later than **February 2, 2024**, five (5) business days after the filing date for petitions to deny. Replies to oppositions must be filed no later than **February 9, 2024**, five (5) business days after the filing date for oppositions. All pleadings filed regarding any of these Auction 108 long-form applications should reference the file number of the application. Each application is a restricted proceeding under the Commission's rules.[5] A petitioner shall serve a copy of its petition to deny on the applicant and on all other interested parties pursuant to 47 CFR § 1.47. Oppositions and replies shall be served on the petitioner and all other interested parties.[6]

Pleadings must be filed electronically through the Commission's Universal Licensing System (ULS), pursuant to the following instructions.[7] Pleadings must be filed electronically using the Internet by accessing ULS: https://www.fcc.gov/wireless/systems-utilities/universal-licensing-system. Each screen indicates the information to be provided or the action(s) to be performed to complete that screen.

---

[1] *Auction of Flexible-Use Licenses in the 2.5 GHz Band Closes*, Public Notice, DA 22-910 (OEA & WTB Sept. 1, 2022).

[2] The Commission's authority to issue licenses pursuant to a system of competitive bidding lapsed on March 9, 2023. *See* 47 USC 309(j)(11); Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, 136 Stat. 4459 (December 29, 2022) (extending the Commission's spectrum auction authority through March 9, 2023). Congress subsequently passed legislation authorizing the Commission to process any remaining licenses won in Auction 108 within 90 days of enactment, which occurred on December 19, 2023. *See* 5G Spectrum Authority Licensing Enforcement Act (5G SALE Act), Pub. L. No. 118-27 (2023).

[3] *See* 47 CFR § 1.934(a), (d).

[4] *See* 47 CFR § 1.2108 (Procedures for filing petitions to deny against long-form applications).

[5] *See* 47 CFR § 1.1208 (Restricted proceedings).

[6] *See* 47 CFR § 1.939(c).

[7] *See* 47 CFR § 1.939(b); *Completing the Transition to Electronic Filing, Licenses and Authorizations, and Correspondence in the Wireless Radio Services*, WT Docket No. 19-212, Report and Order, 35 FCC Rcd 10781, 10788-89, paras. 22-26 (2020).

From the ULS website, click on "SUBMIT A PLEADING" to begin the process of filing a pleading. The link takes the user to the *Pleadings Information* screen. Upon completing the *Pleadings Information* screen, click "CONTINUE" to go to the *File Numbers/Call Signs* screen. Upon providing the information required on that screen, complete steps three and four at the *Attach File* and *Confirmation* screens, respectively. For more information, detailed instructions can be found in the *Public Notice* announcing the implementation of electronic filing for pleadings.[8]

We request that one copy of each pleading be delivered electronically, by email to: Madelaine Maior and Nadja Sodos-Wallace at Madelaine.Maior@fcc.gov and Nadja.SodosWallace@fcc.gov.

The applications listed in Attachment A are available to the public for electronic viewing through ULS. Any amendments to an FCC Form 601 application also must be filed electronically through ULS. For technical assistance in using ULS for viewing an application or filing an amendment to an application, contact the ULS Licensing Support Hotline at (877) 480-3201. The ULS Licensing Support Hotline is available Monday through Friday, from 8:00 A.M. to 6:00 P.M. Eastern Time. All calls to the ULS Licensing Support Hotline are recorded. Questions regarding procedural issues should be directed to Madelaine Maior, (202) 418-1466 or Madelaine.Maior@fcc.gov. Copies of materials can be obtained from the FCC's Reference Information Center at (202) 418-0270. Press contact: Will Wiquist at (202) 418-0509 or Will.Wiquist@fcc.gov.

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

[8] *Wireless Telecommunications Bureau Enhances the Commission's Universal Licensing System To Implement Electronic Filing for Pleadings*, Public Notice, 21 FCC Rcd 424 (WTB 2006).

ATTACHMENT A
2.5 GHz EDUCATIONAL BROADBAND SERVICES
APPLICATIONS ACCEPTED FOR FILING
AUCTION ID: 108
SORTED BY LICENSEE
DATE OF REPORT: January 16, 2024

Legal Entity Name	File Number	Market Number	Channel Block	Market Description	Seeking Tribal Lands Bidding Credit
Northern Valley Communications, LLC	0010207796	D46017	1	Buffalo	N
Northern Valley Communications, LLC	0010207796	D46065	1	Hughes	N
Northern Valley Communications, LLC	0010207796	D46069	1	Hyde	N
Northern Valley Communications, LLC	0010207796	D46085	1	Lyman	N
Northern Valley Communications, LLC	0010207796	D46117	1	Stanley	N
Paladin Wireless LLC	0010203494	D13105	3	Elbert	N
Paladin Wireless LLC	0010203494	D13119	1	Franklin	N
Paladin Wireless LLC	0010203494	D13141	1	Hancock	N
Paladin Wireless LLC	0010203494	D13141	2	Hancock	N
Paladin Wireless LLC	0010203494	D13141	3	Hancock	N
Paladin Wireless LLC	0010203494	D13221	1	Oglethorpe	N
Paladin Wireless LLC	0010203494	D13221	3	Oglethorpe	N
Paladin Wireless LLC	0010203494	D13265	1	Taliaferro	N
Paladin Wireless LLC	0010203494	D13301	1	Warren	N
SkyPacket Networks Inc.	0010207717	D24001	1	Allegany	N
SkyPacket Networks Inc.	0010207717	D54057	1	Mineral	N

ATTACHMENT B
2.5 GHz EDUCATIONAL BROADBAND SERVICES
APPLICATIONS ACCEPTED FOR FILING
AUCTION ID: 108
SORTED BY Market
DATE OF REPORT: January 16, 2024

Legal Entity Name	File Number	Market Number	Channel Block	Market Description	Seeking Tribal Lands Bidding Credit
Paladin Wireless LLC	0010203494	D13105	3	Elbert	N
Paladin Wireless LLC	0010203494	D13119	1	Franklin	N
Paladin Wireless LLC	0010203494	D13141	1	Hancock	N
Paladin Wireless LLC	0010203494	D13141	2	Hancock	N
Paladin Wireless LLC	0010203494	D13141	3	Hancock	N
Paladin Wireless LLC	0010203494	D13221	1	Oglethorpe	N
Paladin Wireless LLC	0010203494	D13221	3	Oglethorpe	N
Paladin Wireless LLC	0010203494	D13265	1	Taliaferro	N
Paladin Wireless LLC	0010203494	D13301	1	Warren	N
SkyPacket Networks Inc.	0010207717	D24001	1	Allegany	N
Northern Valley Communications, LLC	0010207796	D46017	1	Buffalo	N
Northern Valley Communications, LLC	0010207796	D46065	1	Hughes	N
Northern Valley Communications, LLC	0010207796	D46069	1	Hyde	N
Northern Valley Communications, LLC	0010207796	D46085	1	Lyman	N
Northern Valley Communications, LLC	0010207796	D46117	1	Stanley	N
SkyPacket Networks Inc.	0010207717	D54057	1	Mineral	N

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 24-47
Released: January 16, 2024

NOTICE OF DOMESTIC SECTION 214 AUTHORIZATION GRANTED

WC Docket No. 23-383

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

Domestic Section 214 Application Filed for the Acquisition of
Certain Assets of The Avail Group, LLC
by Element 78 Partners, LLC, WC Docket No. 23-383,
Public Notice, DA 23-1167 (WCB 2023).

Effective Grant Date: January 15, 2024

For further information, please contact Tracey Wilson at (202) 418-1394 or Dennis Johnson at (202) 418-0809, Competition Policy Division, Wireline Competition Bureau.

-FCC-

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

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

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

In the Matter of	)	
	)	
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities	)	CG Docket No. 03-123
	)	
	)	
	)	

ORDER

Adopted: January 17, 2024 **Released: January 17, 2024**

By the Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. The Consumer and Governmental Affairs Bureau (CGB or Bureau) of the Federal Communications Commission (FCC or Commission) grants conditional certification to Rogervoice to provide Internet Protocol Captioned Telephone Service (IP CTS) on a fully automatic basis, pending verification that its actual provision of IP CTS meets or exceeds the Commission's minimum standards.[1] This grant of conditional certification authorizes Rogervoice to provide TRS Fund-supported IP CTS through January 20, 2026, or the date of grant or denial of full certification, whichever occurs earlier. The Bureau also finds good cause to grant Rogervoice's request for waiver of the TRS rule regarding the language of consumer self-certifications.[2]

II. BACKGROUND

2. Rogervoice requests certification to provide IP CTS on a fully automatic basis (i.e., using automatic speech recognition (ASR) only[3] for captioning of all calls, without any reliance on communications assistants (CAs)).[4] Rogervoice's proposed ASR-only IP CTS will be delivered via an

[1] *See Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Second Report and Order and Order, 26 FCC Rcd 10898, 10914-15, para. 37 (2011) (*2011 Internet-based TRS Certification Order*) (authorizing conditional certification). IP CTS is a form of Internet-based telecommunications relay service (TRS) that allows individuals with hearing loss to both read captions and use their residual hearing to understand a telephone conversation. *See* 47 CFR § 64.601(a)(23) (defining IP CTS). Captions may be displayed on a specialized IP CTS device or an off-the-shelf computer, tablet, or smartphone. Internet-based TRS providers obtain certification from the Commission to be eligible to receive compensation from the TRS Fund. *Id*. § 64.606.

[2] *See* 47 CFR § 64.611(j)(1)(v).

[3] The Commission has determined that the provision of IP CTS using only automatic speech recognition (ASR) to generate captions, without the involvement of a Communications Assistant (CA), is eligible for compensation from the TRS Fund if provided in compliance with applicable mandatory minimum TRS standards. *See Misuse of Internet Protocol (IP) Captioned Telephone Service*; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 13-24 and 03-123, Report and Order, Declaratory Ruling, Further Notice of Proposed Rulemaking, and Notice of Inquiry, 33 FCC Rcd 5800, 5827, para. 48 (2018) (*2018 ASR Declaratory Ruling*).

[4] Internet-Based TRS Certification Application of Rogervoice, CG Docket No. 03-123 (filed Mar. 8, 2022), https://www.fcc.gov/ecfs/document/10308635529430/1 (Application); Supplement to Application of Rogervoice for Certification as a Provider of Internet Protocol Captioned Telephone Services, CG Docket No. 03-123 (filed July 30, 2023), https://www.fcc.gov/ecfs/document/10729195451572/1 (Supplement). Rogervoice has redacted portions of (continued….)

over-the-top (OTT) Android- or iOS-compatible application (also called Rogervoice) on a customer's existing mobile device.[5] A privately-held company, Rogervoice is authorized to provide IP CTS in France and also makes its application available in other parts of the world.[6] Rogervoice states that it enables captioning in more than 100 languages and dialects.[7]

3. On March 14, 2022, the Bureau sought comment on Rogervoice's application.[8] One comment and one reply comment were filed. A coalition of accessibility advocacy and research organizations (AARO) filed comments.[9] While not opposing NexTalk's application, AARO argues that all providers of ASR-only IP CTS should be required to offer a CA-assisted mode and to allow users to switch from ASR-only to CA-assisted mode during a call.[10] AARO also states a general concern regarding the need to establish metrics for IP CTS service quality.[11] Rogervoice filed a reply.[12]

4. Rogervoice's platform was tested for caption delay and accuracy by the Commission's National Test Lab.[13]

III. CERTIFICATION

5. We conditionally grant the application subject to verification—based on actual operating experience—that Rogervoice's provision of IP CTS will meet or exceed the minimum TRS standards.[14]

6. *Sufficiency of the Application*. Rogervoice's application is facially sufficient to satisfy the Commission's certification requirements. The application and supporting information provide a sufficient explanation, with documentary and other evidence, as to how the applicant will provide IP CTS

(Continued from previous page)
its application for which it requests confidential treatment. Access to the redacted material is governed by the Third Protective Order in this docket. *See Misuse of Internet Protocol (IP) Captioned Telephone Service*; *Structure and Practices of the Video Relay Service Program*; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 13-24, 10-51, and 03-123, Order and Third Protective Order, 33 FCC Rcd 6802, 6803, para. 4 (2018).

[5] Application at 5.

[6] *Id.* at 4.

[7] *Id.* at 6.

[8] *Comment Sought on Application of Rogervoice for Certification as a Provider of Internet Protocol Captioned Telephone Service*, CG Docket No. 03-123, Public Notice, 37 FCC Rcd 3432 (Mar. 14, 2022).

[9] Hearing Loss Association of America (HLAA), Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), National Association for the Deaf (NAD), and Deaf/Hard of Hearing Technology Rehabilitation Engineering Research Center (DHH-RERC) (collectively, AARO), Comments (rec. Apr. 14, 2022) (AARO Comments).

[10] AARO Comments at 4.

[11] *Id.* at 4.

[12] Reply Comments of Rogervoice (rec. May 1, 2022) (Rogervoice Reply).

[13] *See* FCC TRS National Test Lab, Internet Protocol Captioned Telephone Service Testing – Rogervoice, CG Docket No. 03-123, at 2 (posted by CGB, Nov. 15, 2023) (NTL Test Report). The National Test Lab is operated by MITRE Corporation as part of the CMS Alliance to Modernize Healthcare, a Federally Funded Research and Development Center sponsored by the Centers for Medicare & Medicaid Services (CMS). *See* CMS Alliance to Modernize Healthcare, Internet Protocol Caption Telephone Service (IP CTS) – Summary of Phase 2 Usability Testing Results (2016), CG Docket Nos. 03-123 and 13-24, at i-ii (posted by CGB, Apr. 11, 2018); CMS Alliance to Modernize Healthcare, Internet Protocol Caption Telephone Service (IP CTS) Devices: Summary of Phase 1 Activities (2017), CG Docket Nos.03-123 and 13-24, at 10 (posted by CGB, Apr. 11, 2018) (NTL Phase 1 Summary).

[14] *See 2011 Internet-based TRS Certification Order*, 26 FCC Rcd at 10914-15, para. 37.

and meet all minimum standards relevant to consideration of its application.[15] Rogervoice also provides a description of its complaint procedures, confirmation that it will file annual compliance reports demonstrating continued compliance with the TRS rules, and a certification by a senior executive as to the accuracy and completeness of the information provided.[16] Further, as discussed below, the application and supporting information, including the results of independent testing of caption delay and accuracy,[17] sufficiently support Rogervoice's specific claims regarding its use of ASR and the efficacy of such use in meeting the Commission's minimum TRS standards for speed of answer, service continuity, caption delay, accuracy, readability, verbatim transcription, privacy, and emergency call handling.[18]

7. *Speed of Answer*. Rogervoice has made a sufficient showing that, with its chosen ASR technology, it will meet or exceed the minimum TRS standards relating to speed of answer.[19] Rogervoice notes that because it employs no CAs, a Rogervoice user will never experience a busy response due to CA unavailability, and adds that calls that reach the Rogervoice app are delivered to the customer within one to two seconds.[20] Based on these statements and the applicant's explanation of its technology and availability of service,[21] we conclude that NexTalk has sufficiently supported its claims that its speed of answer will exceed the current IP CTS standard.

8. *Service Continuity*. We also find that Rogervoice has sufficiently demonstrated that it will be able to maintain service continuity. IP CTS providers must have redundancy features functionally equivalent to the equipment in telephone company central offices.[22] According to Rogervoice's Application, "Rogervoice's servers are cloud-based, and Rogervoice's service level agreement with its provider requires redundancy and backup power systems in place to ensure that Rogervoice's customers are never without service."[23]

9. *Caption Speed/Delay*. There is sufficient support for Rogervoice's claim that its ASR platform will transcribe captions in real time and in compliance with the current TRS standards relating to captioning speed, or delay.[24] In performance testing by NTL, Rogervoice's median caption delay for two

[15] *See* Application at 9-19; 47 CFR § 64.606(a)(2)(ii).

[16] *See* Application at 15-16, 18-19, 21; *see also id*., Attach. (confidential) (employee compliance manual).

[17] NTL Test Report.

[18] *See 2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5834-35, para. 63 (noting that applicants to provide ASR-only IP CTS must support all claims regarding their use of ASR and its efficacy). In comments, AARO recommends that the Commission review carefully the adequacy of Global Caption's ability to ensure privacy and quality of service, including with respect to any vendor services. AARO Comments at 2-5. As discussed below, Rogervoice's application and supporting materials adequately address these issues.

[19] *See* 47 CFR § 64.604(b)(2)(ii) (requiring IP CTS providers to answer 85% of calls within 10 seconds, measured daily).

[20] Application at 9.

[21] *Id*. at 9-10 (confidential); *id*. at 12.

[22] *See* 47 CFR § 64.604(b)(4)(ii).

[23] Application at 12.

[24] Caption speed is typically measured based on the time that elapses, i.e., the delay, between transmission of speech and transmission of the associated caption(s). *See* NTL Phase 1 Summary at 6. Currently, there is no quantitative standard for IP CTS caption speed or delay *per se*. However, captions must be delivered "fast enough so that they keep up with the speed of the other party's speech," and "if captions are not keeping up with the speech (although a short delay is inevitable), at some point the provider is no longer offering relay service and the call is not compensable." *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Internet-based Captioned Telephone Service*, CG Docket No. 03-123, Declaratory Ruling, 22 FCC Rcd 379, 388-89, para. 22 & n.69 (2007) (*2007 IP CTS Declaratory Ruling*). In addition, the typing speed standard for text-based TRS applies to ASR-based IP CTS. *See id.* at 388, para. 22 n.69; 47 CFR § 64.604(a)(1)(iii)

(continued….)

call scenarios ranged from 1.2 to 1.3 seconds, compared to an aggregate average of 1.8 to 2.4 seconds for other IP CTS providers.[25] Additionally, NTL testing supports Rogervoice's assertion that captions will be transcribed in real time and in compliance with the typing speed standard of 60 words per minute.[26]

10. *Accuracy and Readability*. Although the TRS rules do not currently provide quantitative standards for accuracy and readability, the typing, grammar, and spelling of captions must be "competent," and conversations must be transcribed "verbatim," with no intentional alteration of content unless a user specifically requests summarization.[27] We find sufficient record evidence that Rogervoice's service will meet or exceed the Commission's competence and "verbatim" requirements. In testing by NTL, Rogervoice's median Word Error Rates for three call scenarios ranged from 2.7% to 11.7%, higher than but comparable to other IP CTS providers' aggregated Word Error Rate results, which ranged from 2.0% to 7.4% for the same call scenarios.[28]

11. *Privacy*. The Commission's confidentiality requirements for TRS call content prohibit the disclosure or retention of call content for any purpose, either locally or in the cloud.[29] In addition, providers must protect the privacy of customer information.[30] The Commission's rules obligate a provider to protect call content and customer information regardless of the specific persons or entities (e.g., CAs, other employees, vendors, or agents) that a provider may designate to handle such information on its behalf.[31] Rogervoice sufficiently describes how it will comply with the Commission's TRS confidentiality requirements and customer proprietary network information (CPNI) rules.[32] Rogervoice

(Continued from previous page)
(requiring TRS CAs to have a minimum typing speed of 60 words per minute). Based on the test results and other evidence discussed herein, Rogervoice has shown not only that it will meet this standard but also that it will "keep up with the speed of the other party's speech." *2007 IP CTS Declaratory Ruling*, 22 FCC Rcd at 388, para. 22. On October 2, 2020, the Commission released a Further Notice of Proposed Rulemaking seeking comment on adopting metrics for IP CTS accuracy and caption delay. *Misuse of Internet Protocol (IP) Captioned Telephone Service*; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 13-24, 03-123, and 10-51, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 35 FCC Rcd 10866, 10896-903, paras. 62-81 (2020) (*IP CTS Metrics Notice*).

[25] NTL Test Report at 2.

[26] The test calls used in NTL's assessment featured overall speech rates between 89 and 118 words per minute and active speech rates between 156 and 168 words per minute. NTL Test Report, Appx. B at 11, Appx. D at 15. Rogervoice's performance in these tests confirms that its transcription speed well exceeds 60 words per minute.

[27] 47 CFR § 64.604(a)(1)(ii), (2)(ii). These standards apply to captions generated with the help of ASR. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Declaratory Ruling, 18 FCC Rcd 16121, 16134-35, paras. 37-39 (2003); *2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5832, para. 60.

[28] NTL Test Report at 2.

[29] *See* 47 CFR § 64.604(a)(2)(i) (prohibiting CAs from disclosing or retaining call content except as authorized by 47 U.S.C. § 605); *see also 2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5832-33, para. 60 (clarifying that rules prohibiting TRS CAs from disclosing the content of a relayed conversation or keeping records of the content beyond the duration of a call apply to ASR-only IP CTS).

[30] *See* 47 CFR § 64.611(j)(1)(xii) (requiring IP CTS providers to maintain the confidentiality of user registration and certification information); *id.* §§ 64.2001-64.2011 (restricting disclosure and use of customer proprietary network information); *see also id.* § 9.14(b)(2)(vi) (limiting disclosure and use of information obtained while handling 911 calls).

[31] *See*, *e.g.*, *2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5832-33, para. 60. As the Commission has noted previously, the use of ASR-only IP CTS can enhance call privacy by eliminating the need for a human CA to listen to a call. *Id*. at 5828, para. 50.

[32] *See* Application at 12-13; *id.*, Attach. at 10-11 (confidential).

states that neither its ASR-only service nor any third-party vendor stores call transcriptions or recordings once a call is completed.[33] Rogervoice adds that its systems for safeguarding customer data—which already comply with the French Data Protection Act and the European Union's General Data Protection Regulation (GDPR)—will comply with the Commission's CPNI rules as well.[34] Among other things, Rogervoice provides ongoing training to personnel on authorized use of CPNI and a disciplinary process for improper uses, and maintains records of all use of CPNI in sales and marketing campaigns.[35]

12. *Emergency Call Handling*. Under the Commission's TRS standard for emergency call handling, an IP CTS provider must ensure that 911 calls are given priority over non-911 calls.[36] In addition, when responsible for placing or routing voice calls to the public switched telephone network, an IP CTS provider must ensure that the call is routed, and required caller information delivered, to the appropriate public safety answering point (PSAP).[37] Rogervoice sufficiently establishes that it will handle emergency calls in accordance with these rules.[38] Because Rogervoice does not use CAs, 911 calls are automatically at the top of the queue when they come in and do not require a prioritization mechanism.[39] Further, according to the application, through a third-party vendor, Rogervoice has secured access to a commercially available database that enables the transmission of 911 calls to the appropriate PSAP.[40] Rogervoice delivers the user' name and registered location with each call, as well as a callback number that enables captions on callback.[41] The Application also states that Rogervoice provides automated dispatchable location to the PSAP where technically feasible. Specifically, Rogervoice offers its users the option of giving Rogervoice access to their cell phones' geolocation capability for purposes of 911 calls, and explains that such access will enable the delivery of more accurate location information to emergency personnel.[42]

13. *Response to Additional Concerns Raised in Comments*. Consistent with the Bureau's prior orders granting conditional certification for the provision of IP CTS without any reliance on CAs,[43] we decline AARO's request that we require Rogervoice to provide CA-assisted captioning as an option for users.[44] We are bound by the Commission's determination that the capabilities of ASR are sufficient

[33] Rogervoice Reply at 2.

[34] Application at 12-13.

[35] *Id.*, Attach. at 10-11 (confidential).

[36] 47 CFR § 9.14(b)(2)(ii).

[37] *Id.* § 9.14(b)(2)(i), (e).

[38] *See* Application at 13-14; *id.*, Attach. at 11 (confidential).

[39] *Id.* at 13.

[40] *Id*.; *id.*, Attach. at 11 (confidential).

[41] *Id*. at 13-14; *id.*, Attach. at 11 (confidential).

[42] *Id.* at 14; *id.*, Attach. at 11 (confidential).

[43] *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Memorandum Opinion and Order, 35 FCC Rcd 4568 (CGB 2020) (*MachineGenius Certification*); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Memorandum Opinion and Order, 35 FCC Rcd 5635 (CGB 2020). In other orders, the Bureau has declined to require providers that use both ASR-only and CA-assisted captioning modes to provide a means for users to switch from one mode to the other. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Memorandum Opinion and Order, 37 FCC Rcd 5228, para. 3 (CGB 2022); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Memorandum Opinion and Order, 36 FCC Rcd 13241, 13248, para. 18 (CGB 2021); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Memorandum Opinion and Order, 36 FCC Rcd 7246, 7258, para. 24 (CGB 2021).

to warrant its recognition as a TRS Fund-supported alternative to CA-assisted IP CTS.[45] Whether to impose a requirement to offer both ASR-only and CA-assisted captioning modes is a policy determination for the Commission to make.

14. *Conditional Certification*. We grant Rogervoice certification on a conditional basis, to provide IP CTS for a period not to exceed two years from the effective date of this order, pending further verification based on actual performance that its service complies with the Commission's minimum TRS standards. Because Rogervoice is a new applicant with no previous experience in the provision of TRS, and will rely solely on fully automatic captioning, we believe the best course is to collect additional information, through observing Rogervoice's service in operation, to confirm that this service will meet or exceed the minimum TRS standards.[46]

15. To assist the Bureau in its final determination of Rogervoice's qualifications to provide IP CTS, we require Rogervoice to provide quarterly reports of consumer complaints, filed with the Commission in the same format and with the same degree of detail required in the log of consumer complaints that providers must file annually with the Commission.[47] The first report shall be due May 1, 2024, and shall cover the period from the commencement of service through March 30, 2024.[48] Each subsequent report shall be filed on the first day of the second month of each calendar quarter and shall cover the preceding calendar quarter. For example, the second report shall be due August 1, 2024, and shall cover the period from April 1 through June 30, 2024. Rogervoice shall continue to file reports on a quarterly schedule until the expiration of this conditional certification, or until Commission action granting or denying full certification, whichever occurs earlier.

16. Pending a decision on full certification, the Bureau may request additional information in order to complete our review of Rogervoice's application, such as the results and protocols for performance tests conducted by Rogervoice or independent third parties.[49] We also require Rogervoice to

(Continued from previous page)
[44] *See* AARO Comments at 4.

[45] *See 2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5828-29, para. 51 (finding that "improvements in accuracy, coupled with ASR's advantages in speed and privacy, have made ASR a viable alternative to the use of human relay intermediaries for [Captioned Telephone Service (CTS)] and IP CTS"); *see also id.* at 5834-35, para. 63 ("Furthermore, while we are seeking more information about ASR technology in the FNPRM portion of this item, we do not agree that an ASR provider cannot be certified until we conduct 'further study' of such data.").

[46] *See 2011 Internet-based TRS Certification Order*, 26 FCC Rcd at 10914-15, para. 37 (reserving the right to grant conditional certification "where the Commission, upon initial review of the application, determines that the application facially meets the certification requirements, but that the Commission needs to verify some of the information contained in the application"); *2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5834-35, para. 63 (stating that "no application to provide ASR will be approved unless the applicant demonstrates that the specific ASR technology described in the application meets applicable FCC requirements"); *id*. at 5835, para. 64 (noting that certification of an ASR-only provider may be granted on a conditional basis to enable assessment of an applicant's actual performance).

[47] *See* 47 CFR § 64.604(c)(1); *see also 2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5835, para. 64 (noting that to the extent deemed necessary, certification of a provider may be conditioned on the submission of periodic data to help confirm whether ASR-only IP CTS is providing functionally equivalent service).

[48] Rogervoice's first report shall specify the date of commencement of service.

[49] *See 2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5834-35, para. 63 (citing test results as an example of supporting information an ASR applicant might provide); *Notice of Conditional Grant of Application of Miracom USA, Inc., for Certification as a Provider of Internet Protocol Captioned Telephone Service Eligible for Compensation from the Telecommunications Relay Services Fund*, CG Docket Nos. 03-123, 10-51, and 13-24, Public Notice, 29 FCC Rcd 5105, 5106-10 (CGB 2014) (*Miracom Certification*) (conditioning a provider's certification on submission of additional information, including quarterly testing and reports). With some exceptions, such as speed of answer, the Commission's minimum TRS standards do not currently include quantitative metrics. However, testing with respect to various performance criteria, such as caption delay and
(continued….)

report promptly any changes in the information previously provided to the Commission in its application and supplemental filings, including, for example, any changes in service agreements and suppliers, procedures for registering and screening prospective users, or the manner in which Rogervoice provides service.

17. Pursuant to this grant of conditional certification, Rogervoice may provide Fund-supported IP CTS in the manner described in its application, for a period not to exceed two years from the effective date of this order, pending a final determination of its qualifications. This conditional certification is issued without prejudice to such final determination, which is dependent on verification of the information provided in Rogervoice's application and supplemental filings, as well as the additional information provided pursuant to this order, and on the veracity of the applicant's representations that it will provide service in compliance with all pertinent Commission requirements. To assist in reaching a final determination, the Bureau may conduct one or more unannounced site visits to Rogervoice's premises and may request additional documentation relating to Rogervoice's provision of IP CTS. Conversion to full certification will be granted if, based on a review of the applicant's documentation and other relevant information, the Commission finds that Rogervoice is in compliance with applicable Commission rules and orders and is qualified to receive compensation from the Fund for the provision of IP CTS. If, at any time during the period in which Rogervoice is operating pursuant to this conditional certification, the Commission determines that Rogervoice has failed to provide sufficient supporting documentation for any of the assertions in its application, determines that any of those assertions cannot be supported, or finds evidence of any apparent rule violation, fraud, waste, or abuse, the Commission will take appropriate action, which may include the denial of Rogervoice's application. In the event of such denial, Rogervoice's conditional certification will automatically terminate thirty-five (35) days after such denial.[50]

18. *Preventing Misuse*. We remind Rogervoice and all other TRS providers that IP CTS is intended to provide a service functionally equivalent to voice telephone service, and must not be provided as a substitute for transcription of in-person meetings or conversations.[51] Further, although our rules do not prohibit Rogervoice from enabling its registered users to save the captions as they appear on a device, they do prohibit an IP CTS provider itself from retaining call transcripts or subsequently providing transcripts to IP CTS users beyond the duration of the call.[52] We also remind Rogervoice that its marketing of this service must conform with the Commission's rules.[53]

19. *Compensation.* Providers of IP CTS are currently compensated under a single formula,

(Continued from previous page)
accuracy, may be helpful in the overall evaluation of this application for the purpose of deciding whether to grant full certification. Further, the Commission has proposed to adopt quantified standards for caption delay and accuracy, which, if adopted, would be applicable to all IP CTS providers, including those applying for certification or authorized under conditional certification. *See IP CTS Metrics Notice*, 35 FCC Rcd at 10898-902, paras. 66-77.

[50] *See 2011 Internet-based TRS Certification Order*, 26 FCC Rcd at 10914-15, para. 37.

[51] For example, Communication Access Realtime Translation (CART) is often used to generate captions for live meetings, speeches, and other in-person situations where the provision of TRS Fund-supported relay services is not permitted. *See Miracom Certification*, 29 FCC Rcd at 5110; *see also Structure and Practices of the Video Relay Service Program*; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8618, 8691, para. 180 & n.465 (2013) (explaining that the use of TRS Fund-supported VRS to substitute for video remote interpreting—a service that is used when an interpreter cannot be physically present to interpret for two or more persons who are in the same location—is not permitted).

[52] *See* 47 CFR § 64.604(a)(2)(i). There is a limited exception applicable only to speech-to-speech services.

[53] *See, e.g.*, *id.* § 64.604(c)(8), (c)(11), (c)(13). The Commission has noted that the ease and convenience of using IP CTS, while facilitating its use by people who need it for effective communication, also creates a risk that IP CTS will be used when it is not needed. *See 2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5805, para. 9.

in the amount of $1.30 per minute. The Commission has sought comment on modifying this formula and is expected to adopt a revised compensation plan by June 30, 2024.[54] Newly certified IP CTS providers should not assume or expect that the current compensation formula will remain applicable or that any revised formula(s) will necessarily allow them to recover their cost of service, even if they serve a special population or use a new, more expensive method of providing service.[55]

IV. REQUEST FOR WAIVER

20. *Waiver standard*. A Commission rule may be waived for "good cause shown."[56] In particular, a waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.[57] In addition, we may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.[58] Such a waiver is appropriate if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.[59]

21. *Discussion*. We grant Rogervoice's request for partial waiver of section 64.611(j)(1)(v) of the Commission's rules, which requires a consumer's written self-certification to state that "[t]he consumer understands that the captioning on captioned telephone service is provided by a live communications assistant who listens to the other party on the line and provides the text on the captioned phone."[60] As the Bureau has previously explained, the required statement is incorrect as applied to fully automatic IP CTS and would misinform consumers if they never actually connect to a live CA.[61] As the Commission has observed in the context of potentially analogous professional attestations, that "portion of the attestation is only required to the extent that captions are produced [with CA assistance] and not exclusively through a non-CA assisted automatic speech recognition engine."[62]

V. PROCEDURAL MATTERS

22. *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) or 202-418-0432 (TTY).

---

[54] *Internet Protocol Captioned Telephone Service Compensation*; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Misuse of Internet Protocol (IP) Captioned Telephone Service*, CG Docket Nos. 22-408, 03-123, and 13-24, Notice of Proposed Rulemaking and Order on Reconsideration, 37 FCC Rcd 15243 (2022) (proposing revised compensation plan for IP CTS); *Internet Protocol Captioned Telephone Service Compensation*; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Misuse of Internet Protocol (IP) Captioned Telephone Services*, CG Docket Nos. 22-408, 03-123, and 13-24, Order, DA 23-1189 (Dec. 20, 2023) (extending the current compensation plan through June 30, 2024, or the effective date of Commission action revising the compensation formula, if earlier).

[55] *See Miracom Certification*, 29 FCC Rcd at 5108 n.19 ("Compensation rates are determined in light of the minimum standards as set by the Commission. Although the Commission may periodically reassess those standards in light of new services and technologies, a TRS provider cannot unilaterally impose a higher standard or secure a higher compensation rate simply by utilizing a new, more expensive method of providing service.").

[56] 47 CFR § 1.3.

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

[58] *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.

[59] *Northeast Cellular*, 897 F.2d at 1166.

[60] Application at 19 (citing 47 CFR § 64.611(j)(1)(v)).

[61] *MachineGenius Certification*, 35 FCC Rcd at 4580-81, para. 30.

[62] *2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5861-62, para. 133 n.366.

23. *Additional Information.* For further information regarding this item, please contact William Wallace, Disability Rights Office, Consumer and Governmental Affairs Bureau, at 202-418-2716 or by e-mail to William.Wallace@fcc.gov.

VI. ORDERING CLAUSES

24. 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), 225, sections 0.141, 0.361, 1.3, and 64.606(b)(2) of the Commission's rules, 47 CFR §§ 0.141, 0.361, 1.3, 64.606(b)(2), and the authority delegated by paragraph 60 of the Commission's *2018 ASR Declaratory Ruling*, the application of Rogervoice for certification to provide IP CTS is GRANTED as conditioned in this Order.

25. IT IS FURTHER ORDERED, that Rogervoice's Request for Waiver is GRANTED.

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

FEDERAL COMMUNICATIONS COMMISSION

Alejandro Roark, Chief
Consumer and Governmental Affairs Bureau

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

In the Matter of	)	
	)	
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities	)	CG Docket No. 03-123
	)	
	)	
	)	

ORDER

Adopted: January 17, 2024 **Released: January 17, 2024**

By the Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. The Consumer and Governmental Affairs Bureau (CGB or Bureau) of the Federal Communications Commission (FCC or Commission) grants conditional certification to NexTalk, Inc. (NexTalk), to provide Internet Protocol Captioned Telephone Service (IP CTS) on a fully automatic basis, pending verification that its actual provision of IP CTS meets or exceeds the Commission's minimum standards.[1] This grant of conditional certification authorizes NexTalk to provide TRS Fund-supported IP CTS through January 20, 2026, or the date of grant or denial of full certification, whichever occurs earlier. The Bureau also addresses NexTalk's request for waiver of certain TRS rules.

II. BACKGROUND

2. NexTalk requests certification to provide IP CTS on a fully automatic basis (i.e., using automatic speech recognition (ASR) only[2] for captioning of all calls, without any reliance on communications assistants (CAs)).[3] NexTalk also requests waiver of certain mandatory minimum TRS

[1] *See Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Second Report and Order and Order, 26 FCC Rcd 10898, 10914-15, para. 37 (2011) (*2011 Internet-based TRS Certification Order*) (authorizing conditional certification). IP CTS is an Internet-based telecommunications relay service (TRS) that allows individuals with hearing loss to both read captions and use their residual hearing to understand a telephone conversation. *See* 47 CFR § 64.601(a)(23) (defining IP CTS). Captions may be displayed on a specialized IP CTS device or an off-the-shelf computer, tablet, or smartphone. Internet-based TRS providers obtain certification from the Commission to be eligible to receive compensation from the TRS Fund. *Id*. § 64.606.

[2] The Commission has determined that the provision of IP CTS using only automatic speech recognition (ASR) to generate captions, without the involvement of a Communications Assistant (CA), is eligible for compensation from the TRS Fund if provided in compliance with applicable mandatory minimum TRS standards. *See Misuse of Internet Protocol (IP) Captioned Telephone Service*; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 13-24 and 03-123, Report and Order, Declaratory Ruling, Further Notice of Proposed Rulemaking, and Notice of Inquiry, 33 FCC Rcd 5800, 5827, para. 48 (2018) (*2018 ASR Declaratory Ruling*).

[3] *See* Internet-based TRS Certification Application of NexTalk, Inc., CG Docket No. 03-123 (filed Feb. 7, 2022) https://www.fcc.gov/ecfs/document/10208159809413/1 (Application) (redacted). NexTalk has redacted portions of its application for which it requests confidential treatment. Access to the redacted material is governed by the Third Protective Order in this docket. *See Misuse of Internet Protocol (IP) Captioned Telephone Service*; *Structure and Practices of the Video Relay Service Program*; *Telecommunications Relay Services and Speech-to-Speech Services*
(continued….)

standards.[4] NexTalk's proposed ASR-only IP CTS will be delivered via an over-the-top (OTT) application—branded SpeechPath, and "developed by and exclusively for NexTalk"[5]—that will be available to download and install on Windows-based, Internet-connected devices.[6] NexTalk will assign users a ten-digit number to send and receive calls.[7] NexTalk contends that its ASR-only captioning approach improves upon traditional TRS solutions due to ASR's significantly higher accuracy, faster speed of answer and transcription speed, greater privacy, and lower captioning latency.[8]

3. On February 17, 2022, the Bureau sought comment on NexTalk's application and waiver request.[9] A coalition of accessibility advocacy and research organizations (AARO) filed comments.[10] While not opposing NexTalk's application, AARO argues that all providers of ASR-only IP CTS should be required to offer a CA-assisted mode and to allow users to switch from ASR-only to CA-assisted mode during a call.[11] AARO also states a general concern regarding the need to establish metrics for IP CTS service quality.[12] NexTalk filed a reply.[13]

4. NexTalk's platform was tested for caption delay and accuracy by the Commission's National Test Lab (NTL).[14]

III. CERTIFICATION

5. We conditionally grant the application subject to verification—based on actual operating experience—that NexTalk's provision of IP CTS will meet or exceed the minimum TRS standards.[15]

6. *Sufficiency of the Application*. NexTalk's application is facially sufficient to satisfy the Commission's certification requirements. The application and supporting information provide a sufficient

(Continued from previous page)
for Individuals with Hearing and Speech Disabilities, CG Docket Nos. 13024, 10-51, and 03-123, Order and Third Protective Order, 33 FCC Rcd 6802, 6803, para. 4 (2018).

[4] Application at 6-7.

[5] *Id.* at 2.

[6] *Id.* at 4.

[7] *Id*.

[8] *Id.* at 4, Appx. A at 4.

[9] *Comment Sought on Application of NexTalk, Inc., for Certification as a Provider of Internet Protocol Captioned Telephone Service*, CG Docket No. 03-123, Public Notice, 37 FCC Rcd 1887 (CGB 2022).

[10] *See* Hearing Loss Association of America (HLAA), Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), National Association for the Deaf (NAD), and Deaf/Hard of Hearing Technology Rehabilitation Engineering Research Center (DHH-RERC) (collectively, AARO), Comments (rec. Mar. 17, 2022) (AARO Comments).

[11] AARO Comments at 4.

[12] *Id.* at 4.

[13] NexTalk, Reply Comments (rec. Apr. 1, 2022) (NexTalk Reply).

[14] *See* FCC TRS National Test Lab, Internet Protocol Captioned Telephone Service Testing – NexTalk, Version 1.1, CG Docket No. 03-123, at 2 (Sept. 29, 2023) (posted by CGB, Nov. 3, 2023) (NTL Test Report). The National Test Lab is operated by MITRE Corporation as part of the CMS Alliance to Modernize Healthcare, a Federally Funded Research and Development Center sponsored by the Centers for Medicare & Medicaid Services (CMS). *See* CMS Alliance to Modernize Healthcare, Internet Protocol Caption Telephone Service (IP CTS) – Summary of Phase 2 Usability Testing Results (2016), CG Docket Nos. 03-123 and 13-24, at i-ii (posted by CGB, Apr. 11, 2018); CMS Alliance to Modernize Healthcare, Internet Protocol Caption Telephone Service (IP CTS) Devices: Summary of Phase 1 Activities (2017), CG Docket Nos.03-123 and 13-24, at 10 (posted by CGB, Apr. 11, 2018) (NTL Phase 1 Summary).

[15] *See 2011 Internet-based TRS Certification Order*, 26 FCC Rcd at 10914-15, para. 37.

explanation, with documentary and other evidence, as to how the applicant will provide IP CTS and meet all minimum standards relevant to consideration of its application.[16] NexTalk also provides a description of its complaint procedures, confirmation that it will file annual compliance reports demonstrating continued compliance with the TRS rules, and a certification by a senior executive as to the accuracy and completeness of the information provided.[17] Further, as discussed below, the application and supporting information, including the results of independent testing of caption delay and accuracy,[18] sufficiently support NexTalk's specific claims regarding its use of ASR and the efficacy of such use in meeting the Commission's minimum TRS standards for speed of answer, service continuity, caption delay, accuracy, readability, verbatim transcription, privacy, and emergency call handling.[19]

7. *Speed of Answer.* NexTalk has made a sufficient showing that with its chosen ASR technology, it will meet or exceed the minimum TRS standards relating to speed of answer.[20] NexTalk notes that because it employs no CAs, there are no queues while waiting for a CA,[21] and adds that NexTalk usually answers 99.99% of calls placed by users within two seconds.[22] When the call is connected, the IP CTS user will see transcriptions "virtually instantaneously."[23] Based on these statements and the applicant's explanation of its service architecture,[24] we conclude that NexTalk has sufficiently supported its claims that its speed of answer will exceed the current IP CTS standard.

8. *Service Continuity*. We also find that NexTalk has sufficiently demonstrated that it will be able to maintain service continuity. IP CTS providers must have redundancy features functionally equivalent to the equipment in telephone company central offices.[25] NexTalk's application states that the company will operate its service 24 hours per day, every day, and utilizes commercial data centers with Fortune 100 companies that provide redundancy and service guarantees, and offer the requisite uninterruptible power for emergency use.[26]

9. *Caption Speed/Delay*. There is sufficient support for NexTalk's claim that its ASR platform will transcribe captions in real time and in compliance with the current TRS standards relating to captioning speed, or delay.[27] In performance testing by NTL, NexTalk's median caption delay for two

---

[16] *See* Application, Appx. A (detailing how NexTalk will meet application requirements); 47 CFR § 64.606(a)(2)(ii).

[17] *Id.* at 11-12.

[18] NTL Test Report.

[19] *See 2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5834-35, para. 63 (noting that applicants to provide ASR-only IP CTS must support all claims regarding their use of ASR and its efficacy). In comments, AARO recommends that the Commission carefully evaluate NexTalk's application, particularly with regard to NexTalk's privacy and security. AARO Comments at 2, 3. As discussed below, NexTalk's application and supporting materials adequately address these issues.

[20] *See* 47 CFR § 64.604(b)(2)(ii) (requiring IP CTS providers to answer 85% of calls within 10 seconds, measured daily).

[21] Application, Appx. A at 6.

[22] *Id.*, Appx. A at 5.

[23] *Id.* at 5.

[24] *Id*. at 4-5.

[25] *See* 47 CFR § 64.604(b)(4)(ii).

[26] Application, Appx. A at 6.

[27] Caption speed is typically measured based on the time that elapses, i.e., the delay, between transmission of speech and transmission of the associated caption(s). *See* NTL Phase 1 Summary at 6. Currently, there is no quantitative standard for IP CTS caption speed or delay *per se*. However, captions must be delivered "fast enough so that they keep up with the speed of the other party's speech," and "if captions are not keeping up with the speech (although a short delay is inevitable), at some point the provider is no longer offering relay service and the call is not

(continued….)

call scenarios was 0.9 seconds, compared to an aggregate average of 1.8 to 2.4 seconds for other IP CTS providers.[28] Additionally, NTL testing supports NexTalk's assertion that captions will be transcribed in real time and in compliance with the typing speed standard of 60 words per minute.[29]

10. *Accuracy and Readability*. Although the TRS rules do not currently provide quantitative standards for accuracy and readability, the typing, grammar, and spelling of captions must be "competent," and conversations must be transcribed "verbatim," with no intentional alteration of content unless a user specifically requests summarization.[30] We find sufficient record evidence that NexTalk's service will meet or exceed the Commission's competence and "verbatim" requirements. According to its application, NexTalk's SpeechPath software has been in use since 2018 and boasts an "incredibly high degree of accuracy."[31] NexTalk also states that SpeechPath "has more than a 90% accuracy rate right out of the box based on internal testing,"[32] and that in a recorded video demonstration it made only one word error in 50 words of text.[33] NTL's testing generally supports NexTalk's claims. In testing by NTL, NexTalk's median Word Error Rates for three call scenarios ranged from 0.8% to 7.6%, comparable to other IP CTS providers' aggregated Word Error Rate results, which ranged from 2.0% to 7.4% for the same call scenarios.[34]

11. *Privacy*. The Commission's confidentiality requirements for TRS call content prohibit the disclosure or retention of call content for any purpose, either locally or in the cloud.[35] In addition, providers must protect the privacy of customer information.[36] The Commission's rules obligate a

(Continued from previous page)
compensable." *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Internet-based Captioned Telephone Service*, CG Docket No. 03-123, Declaratory Ruling, 22 FCC Rcd 379, 388-89, para. 22 & n.69 (2007) (*2007 IP CTS Declaratory Ruling*). In addition, the typing speed standard for text-based TRS applies to ASR-based IP CTS. *See id.* at 388, para. 22 n.69; 47 CFR § 64.604(a)(1)(iii) (requiring TRS CAs to have a minimum typing speed of 60 words per minute). Based on the test results and other evidence discussed in the text, NexTalk has shown not only that it will meet this standard but also that it will "keep up with the speed of the other party's speech." *2007 IP CTS Declaratory Ruling*, 22 FCC Rcd at 388, para. 22. On October 2, 2020, the Commission released a Further Notice of Proposed Rulemaking seeking comment on adopting metrics for IP CTS accuracy and caption delay. *Misuse of Internet Protocol (IP) Captioned Telephone Service*; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 13-24, 03-123, and 10-51, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 35 FCC Rcd 10866, 10896-903, paras. 62-81 (2020) (*IP CTS Metrics Notice*).

[28] NTL Test Report at 2.

[29] The test calls used in NTL's assessment featured overall speech rates between 89 and 118 words per minute and active speech rates between 156 and 168 words per minute. NTL Test Report, Appx. B at 11, Appx. D at 15. NexTalk's performance in these tests confirms that its transcription speed well exceeds 60 words per minute.

[30] 47 CFR § 64.604(a)(1)(ii), (2)(ii). These standards apply to captions generated with the help of ASR. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Declaratory Ruling, 18 FCC Rcd 16121, 16134-35, paras. 37-39 (2003); *2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5832, para. 60.

[31] NexTalk Application at 3.

[32] *Id.* at 3.

[33] *Id.* at 5.

[34] NTL Test Report at 2.

[35] *See* 47 CFR § 64.604(a)(2)(i) (prohibiting CAs from disclosing or retaining call content except as authorized by 47 U.S.C. § 605); *see also 2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5832-33, para. 60 (clarifying that rules prohibiting TRS CAs from disclosing the content of a relayed conversation or keeping records of the content beyond the duration of a call apply to ASR-only IP CTS).

provider to protect call content and customer information regardless of the specific persons or entities (e.g., CAs, other employees, vendors, or agents) that a provider may designate to handle such information on its behalf.[37] NexTalk adequately describes how it will comply with the Commission's TRS confidentiality requirements and customer proprietary network information (CPNI) rules.[38] Among other things, NexTalk explains that its SpeechPath system uses 256-bit encryption on all calls and does not record, store, or cache the content of any call after the call ends, although users may choose to record the conversations themselves.[39] NexTalk also states that it will train employees, agents, and contractors on CPNI compliance, and establish systems for verifying customer approval prior to using, disclosing, or permitting access to a customer's CPNI and otherwise ensuring compliance with all CPNI rules.[40]

12. *Emergency Call Handling*. Under the Commission's TRS standard for emergency call handling, an IP CTS provider must ensure that 911 calls are given priority over non-911 calls.[41] In addition, when responsible for placing or routing voice calls to the public switched telephone network, an IP CTS provider must ensure that the call is routed, and required caller information delivered to the appropriate public safety answering point (PSAP).[42] NexTalk sufficiently establishes that it will handle emergency calls in accordance with these rules.[43] Because NexTalk does not use CAs, there is no delay related to ensuring the availability of a CA, and thus no prioritizing issue.[44] According to the application, NexTalk routes emergency calls to the appropriate PSAP based on the user's Registered Location information, and the telephone number assigned to the user is automatically transmitted with the E911 call as the callback number, enabling captioning to occur on a callback.[45]

13. *Response to Additional Concerns Raised in Comments*. Consistent with the Bureau's prior orders granting conditional certification for the provision of IP CTS without any reliance on CAs,[46]

(Continued from previous page)

[36] *See* 47 CFR § 64.611(j)(1)(xii) (requiring IP CTS providers to maintain the confidentiality of user registration and certification information); *id.* §§ 64.2001-64.2011 (restricting disclosure and use of customer proprietary network information); *see also id.* § 9.14(b)(2)(vi) (limiting disclosure and use of information obtained while handling 911 calls).

[37] *See*, *e.g.*, *2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5832-33, para. 60. As the Commission has noted previously, the use of ASR-only IP CTS can enhance call privacy by eliminating the need for a human CA to listen to a call. *Id*. at 5828, para. 50.

[38] Application at 5, 11, Appx. A at 2, 32-46.

[39] *Id.* at 5, 11, Appx. A at 2.

[40] *Id.*, Appx. A at 32-46.

[41] 47 CFR § 9.14(b)(2)(ii).

[42] *Id.* § 9.14(b)(2)(i), (e).

[43] Application at 10-11, Appx. A at 18.

[44] *Id*. at 11.

[45] *Id*. at 10-11, Appx. A at 18.

[46] *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Memorandum Opinion and Order, 35 FCC Rcd 4568 (CGB 2020) (*MachineGenius Certification*); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Memorandum Opinion and Order, 35 FCC Rcd 5635 (CGB 2020) (*Clarity Certification*). In other orders, the Bureau has declined to require providers that use both ASR-only and CA-assisted captioning modes to provide a means for users to switch from one mode to the other. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Memorandum Opinion and Order, 37 FCC Rcd 5228, para. 3 (CGB 2022); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Memorandum Opinion and Order, 36 FCC Rcd 13241, 13248, para. 18 (CGB 2021); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech*

(continued….)

we decline AARO's request that we require NexTalk to provide CA-assisted captioning as an option for users.[47] We are bound by the Commission's determination that the capabilities of ASR are sufficient to warrant its recognition as a TRS Fund-supported alternative to CA-assisted IP CTS.[48] Whether to impose a requirement to offer both ASR-only and CA-assisted captioning modes is a policy determination for the Commission to make.

14. *Conditional Certification*. We grant NexTalk certification on a conditional basis, to provide IP CTS for a period not to exceed two years from the effective date of this order, pending further verification based on actual performance that its service complies with the Commission's minimum TRS standards. Because NexTalk is a new applicant with no previous experience in the provision of TRS, and will rely solely on fully automatic captioning, we believe the best course is to collect additional information, through observing NexTalk's service in operation, to confirm that this service will meet or exceed the minimum TRS standards.[49]

15. To assist the Bureau in its final determination of NexTalk's qualifications to provide IP CTS, we require NexTalk to provide quarterly reports of consumer complaints, filed with the Commission in the same format and with the same degree of detail required in the log of consumer complaints that providers must file annually with the Commission.[50] The first report shall be due May 1, 2024, and shall cover the period from the commencement of service through March 30, 2024.[51] Each subsequent report shall be filed on the first day of the second month of each calendar quarter and shall cover the preceding calendar quarter. For example, the second report shall be due August 1, 2024, and shall cover the period from April 1 through June 30, 2024. NexTalk shall continue to file reports on a quarterly schedule until the expiration of this conditional certification, or until Commission action granting or denying full certification, whichever occurs earlier.

16. Pending a decision on full certification, the Bureau may request additional information in order to complete our review of NexTalk's application, such as the results and protocols for performance tests conducted by NexTalk or independent third parties.[52] We also require NexTalk to report promptly

(Continued from previous page)
Disabilities, CG Docket No. 03-123, Memorandum Opinion and Order, 36 FCC Rcd 7246, 7258, para. 24 (CGB 2021).

[47] *See* AARO Comments at 4.

[48] *See 2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5828-29, para. 51 (finding that "improvements in accuracy, coupled with ASR's advantages in speed and privacy, have made ASR a viable alternative to the use of human relay intermediaries for [Captioned Telephone Service (CTS)] and IP CTS"); *see also id.* at 5834-35, para. 63 ("Furthermore, while we are seeking more information about ASR technology in the FNPRM portion of this item, we do not agree that an ASR provider cannot be certified until we conduct 'further study' of such data.").

[49] *See 2011 Internet-based TRS Certification Order*, 26 FCC Rcd at 10914-15, para. 37 (reserving the right to grant conditional certification "where the Commission, upon initial review of the application, determines that the application facially meets the certification requirements, but that the Commission needs to verify some of the information contained in the application"); *2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5834-35, para. 63 (stating that "no application to provide ASR will be approved unless the applicant demonstrates that the specific ASR technology described in the application meets applicable FCC requirements"); *id*. at 5835, para. 64 (noting that certification of an ASR-only provider may be granted on a conditional basis to enable assessment of an applicant's actual performance).

[50] *See* 47 CFR § 64.604(c)(1); *see also 2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5835, para. 64 (noting that to the extent deemed necessary, certification of a provider may be conditioned on the submission of periodic data to help confirm whether ASR-only IP CTS is providing functionally equivalent service).

[51] NexTalk's first report shall specify the date of commencement of service.

[52] *See 2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5834-35, para. 63 (citing test results as an example of supporting information an ASR applicant might provide); *Notice of Conditional Grant of Application of Miracom USA, Inc., for Certification as a Provider of Internet Protocol Captioned Telephone Service Eligible for*
(continued….)

any changes in the information previously provided to the Commission in its application and supplemental filings, including, for example, any changes in service agreements and suppliers, procedures for registering and screening prospective users, or the manner in which NexTalk provides service.

17. Pursuant to this grant of conditional certification, NexTalk may provide Fund-supported IP CTS in the manner described in its application, for a period not to exceed two years from the effective date of this order, pending a final determination of its qualifications. This conditional certification is issued without prejudice to such final determination, which is dependent on verification of the information provided in NexTalk's application and supplemental filings, as well as the additional information provided pursuant to this order, and on the veracity of the applicant's representations that it will provide service in compliance with all pertinent Commission requirements. To assist in reaching a final determination, the Bureau may conduct one or more unannounced site visits to NexTalk's premises and may request additional documentation relating to NexTalk's provision of IP CTS. Conversion to full certification will be granted if, based on a review of the applicant's documentation and other relevant information, the Commission finds that NexTalk is in compliance with applicable Commission rules and orders and is qualified to receive compensation from the Fund for the provision of IP CTS. If, at any time during the period in which NexTalk is operating pursuant to this conditional certification, the Commission determines that NexTalk has failed to provide sufficient supporting documentation for any of the assertions in its application, determines that any of those assertions cannot be supported, or finds evidence of any apparent rule violation, fraud, waste, or abuse, the Commission will take appropriate action, which may include the denial of NexTalk's application. In the event of such denial, NexTalk's conditional certification will automatically terminate thirty-five (35) days after such denial.[53]

18. *Preventing Misuse*. We remind NexTalk and all other TRS providers that IP CTS is intended to provide a service functionally equivalent to voice telephone service, and must not be provided as a substitute for transcription of in-person meetings or conversations.[54] Further, although our rules do not prohibit NexTalk from enabling its registered users to save the captions as they appear on a device, they do prohibit an IP CTS provider itself from retaining call transcripts or subsequently providing transcripts to IP CTS users beyond the duration of the call.[55] We also remind NexTalk that its marketing of this service must conform with the Commission's rules.[56]

(Continued from previous page)

Compensation from the Telecommunications Relay Services Fund, CG Docket Nos. 03-123, 10-51, and 13-24, Public Notice, 29 FCC Rcd 5105, 5106-10 (CGB 2014) (*Miracom Certification*) (conditioning a provider's certification on submission of additional information, including quarterly testing and reports). With some exceptions, such as speed of answer, the Commission's minimum TRS standards do not currently include quantitative metrics. However, testing with respect to various performance criteria, such as caption delay and accuracy, may be helpful in the overall evaluation of this application for the purpose of deciding whether to grant full certification. Further, the Commission has proposed to adopt quantified standards for caption delay and accuracy, which, if adopted, would be applicable to all IP CTS providers, including those applying for certification or authorized under conditional certification. *See IP CTS Metrics Notice*, 35 FCC Rcd at 10898-902, paras. 66-77.

[53] *See 2011 Internet-based TRS Certification Order*, 26 FCC Rcd at 10914-15, para. 37.

[54] For example, Communication Access Realtime Translation (CART) is often used to generate captions for live meetings, speeches, and other in-person situations where the provision of TRS Fund-supported relay services is not permitted. *See Miracom Certification*, 29 FCC Rcd at 5110; *see also Structure and Practices of the Video Relay Service Program*; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8618, 8691, para. 180 & n.465 (2013) (explaining that the use of TRS Fund-supported VRS to substitute for video remote interpreting—a service that is used when an interpreter cannot be physically present to interpret for two or more persons who are in the same location—is not permitted).

[55] *See* 47 CFR § 64.604(a)(2)(i). There is a limited exception applicable only to speech-to-speech services.

19. *Compensation.* Providers of IP CTS are currently compensated under a single formula, in the amount of $1.30 per minute. The Commission has sought comment on modifying this formula and is expected to adopt a revised compensation plan by June 30, 2024.[57] Newly certified IP CTS providers should not assume or expect that the current compensation formula will remain applicable or that any revised formula(s) will necessarily allow them to recover their cost of service, even if they serve a special population or use a new, more expensive method of providing service.[58]

IV. REQUEST FOR WAIVERS

20. For the reasons stated below, the Bureau grants one of NexTalk's requests for waiver and dismisses the other.[59]

21. *Waiver standard*. A Commission rule may be waived for "good cause shown."[60] In particular, a waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.[61] In addition, we may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.[62] Such a waiver is appropriate if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.[63]

22. *Discussion*. NexTalk seeks waiver of sections 64.604(c)(5)(iii)(D)(*2*)(*ii*) and (*x*) of the Commission's rules, which require, respectively, that TRS providers seeking compensation from the TRS Fund must submit, for each call, a CA identification number[64] and the URL through which a call was initiated.[65] We have previously held that when captions are provided via ASR, an IP CTS provider can comply with the CA identification number requirement by providing an identification number for its ASR system in the CA identification number field, or by providing other ASR-identifying information as the

(Continued from previous page)

[56] *See, e.g.*, *id.* § 64.604(c)(8), (c)(11), (c)(13). The Commission has noted that the ease and convenience of using IP CTS, while facilitating its use by people who need it for effective communication, also creates a risk that IP CTS will be used when it is not needed. *See 2018 ASR Declaratory Ruling*, 33 FCC Rcd at 5805, para. 9.

[57] *Internet Protocol Captioned Telephone Service Compensation*; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Misuse of Internet Protocol (IP) Captioned Telephone Service*, CG Docket Nos. 22-408, 03-123, and 13-24, Notice of Proposed Rulemaking and Order on Reconsideration, 37 FCC Rcd 15243 (2022) (proposing revised compensation plan for IP CTS); *Internet Protocol Captioned Telephone Service Compensation*; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Misuse of Internet Protocol (IP) Captioned Telephone Services*, CG Docket Nos. 22-408, 03-123, and 13-24, Order, DA 23-1189 (Dec. 20, 2023) (extending the current compensation plan through June 30, 2024, or the effective date of Commission action revising the compensation formula, if earlier).

[58] *See Miracom Certification*, 29 FCC Rcd 5108 n.19 ("Compensation rates are determined in light of the minimum standards as set by the Commission. Although the Commission may periodically reassess those standards in light of new services and technologies, a TRS provider cannot unilaterally impose a higher standard or secure a higher compensation rate simply by utilizing a new, more expensive method of providing service.").

[59] Application at 6-7.

[60] 47 CFR § 1.3.

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

[62] *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.

[63] *Northeast Cellular*, 897 F.2d at 1166.

[64] 47 CFR § 64.604(c)(5)(iii)(D)(*2*)(*ii*).

[65] *Id.* § 64.604(c)(5)(iii)(D)(*2*)(*x*).

administrator directs.[66] Accordingly, no waiver is needed.

23. As for the requirement that the URL address through which the call was initiated be included in a provider's reports to the TRS Fund administrator for compensation of call minutes, we have explained in prior orders[67] that there is a difference between the rule as codified,[68] which states that the specified call data is required from all TRS providers, and the Report and Order adopting the rule, which states that the rule applies to VRS providers.[69] We have not interpreted the rule as requiring IP CTS providers to submit a URL address for each call.[70] However, to the extent a waiver is required, we grant it, because the Report and Order indicates that the URL address requirement was intended to apply only to VRS providers.

V. PROCEDURAL MATTERS

24. *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) or 202-418-0432 (TTY).

25. *Additional Information.* For further information regarding this item, please contact Ike Ofobike, Disability Rights Office, Consumer and Governmental Affairs Bureau, at 202-418-1028 or by e-mail to Ike.Ofobike@fcc.gov.

VI. ORDERING CLAUSES

26. 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), 225, sections 0.141, 0.361, 1.3, and 64.606(b)(2) of the Commission's rules, 47 CFR §§ 0.141, 0.361, 1.3, 64.606(b)(2), and the authority delegated by paragraph 60 of the Commission's *2018 ASR Declaratory Ruling*, the application of NexTalk, Inc., for certification to provide IP CTS is GRANTED as conditioned in this Order.

27. IT IS FURTHER ORDERED that, NexTalk's Request for Waiver is GRANTED IN PART and DISMISSED IN PART, as discussed herein.

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

FEDERAL COMMUNICATIONS COMMISSION

Alejandro Roark, Chief
Consumer and Governmental Affairs Bureau

[66] *See Clarity Certification*, 35 FCC Rcd at 5646, para. 28; 47 CFR § 64.604(c)(5)(iii)(D)(*1*) ("TRS providers seeking compensation from the TRS Fund shall provide the administrator with . . . information reasonably requested to determine the TRS Fund revenue requirements and payments.").

[67] *See, e.g.*, *Clarity Certification*, 35 FCC Rcd at 5647, para. 31.

[68] 47 CFR § 64.604(c)(5)(iii)(D)(*2*)(*x*).

[69] *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, 5579-80, para. 73 (2011).

[70] *See, e.g.*, *Clarity Certification*, 35 FCC Rcd at 5647, para. 31.

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-50
Released: January 17, 2024

FCC ANNOUNCES MEETINGS 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 two meetings of the North American Numbering Council (NANC). The meetings will be held on **March 1, 2024 at 10:00 am ET and on June 25, 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 March meeting, the NANC will consider and vote on a report and recommendation from the Toll Free: Future Utilization of Numbers (T-FUN) Working Group regarding certain toll-free numbering resources. The NANC will also hear routine status reports from the Numbering Administration Oversight Working Group (NAOWG), the North American Portability Management, LLC, and the Secure Telephone Identity Governance Authority. The agenda may be modified at the discretion of the NANC Chairwoman and the Designated Federal Officer.

At the June meeting, the NANC will consider and vote on reports and recommendations from the following Working Groups:

- The T-FUN Working Group regarding certain toll free numbering resources;
- The Call Authentication Trust Anchor Working Group regarding the regulatory treatment of international cellular roaming traffic;
- 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; and
- The NAOWG regarding (1) the Numbering Administration Performance Review; and (2) the North American Numbering Plan Fund Size Projections and Contribution Factor.

The NANC will also hear a report from the Billing & Collection Agent, Welch LLP. 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

[1] *See* 5 U.S.C. 10.

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.

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	)	
	)	
SHELBY BROADCAST ASSOCIATES, LLC	)	NAL/Acct. No. MB-202441410005
	)	FRN: 0018897223
Licensee of Station W252BE	)	Facility ID No. 141124
Tarrant, Alabama	)	File Nos. 0000091616, BALFT-20200608AAG, BLFT-20181016ABE, BSTA-20180720AAR

MEMORANDUM OPINION AND ORDER
AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: January 17, 2024 **Released: January 17, 2024**

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. We have before us the captioned application for renewal of license (Renewal Application) filed by Shelby Broadcast Associates, LLC (Shelby) for FM translator station W252BE, Tarrant, Alabama (Station).[1] We also have before us a Petition for Reconsideration (Renewal Petition) filed by Marble City Media, LLC (Marble City) on April 16, 2020,[2] seeking reconsideration of the Media Bureau (Bureau)'s March 19, 2020, grant of the Renewal Application,[3] and related responsive pleadings.[4] Also before us is the captioned application (Assignment Application) filed by Shelby for consent to assign the Station license to Rivera Communications, LLC (Rivera).[5] We also have before us a Petition to Deny the Assignment Application (Assignment Petition) filed by Marble City,[6] and related responsive pleadings.[7] Finally, we have before us the captioned license to cover application (2018 License Application)[8] and

[1] Application File No. 0000091616 (filed Nov. 27, 2019).

[2] Petition for Reconsideration, Pleading File No. 0000112328 (filed Apr. 16, 2020).

[3] Bureau staff granted the Renewal Application on March 19, 2020. On April 16, 2020, Bureau staff rescinded the grant and returned the Renewal Application to pending status. *See Broadcast Actions*, Public Notice, Report No. PN-2-200420-01 (MB Apr. 20, 2020). Accordingly, we will treat the Petition for Reconsideration as an Informal Objection to the Renewal Application.

[4] Shelby filed an Opposition to the Renewal Petition, Pleading File No. 0000112903 (filed Apr. 29, 2020) (Renewal Opposition). Marble City filed a Reply to Opposition to Petition for Reconsideration, Pleading File No. 0000113432 (filed May 8, 2020) (Renewal Reply).

[5] Application File No. BALFT-20200608AAG (filed June 10, 2020).

[6] Marble City Petition to Deny (filed Jul. 10, 2020).

[7] Shelby filed an Opposition to Petition to Deny (filed Jul. 23, 2020) (Shelby Assignment Opposition). Rivera, the proposed assignee, also filed an Opposition to Petition to Deny (filed Jul. 23, 2020) (Rivera Assignment Opposition). Marble City filed a Reply to Shelby's Opposition to Petition (filed Aug. 4, 2020) (Assignment Reply to Shelby) and a Reply to Rivera's Opposition to Petition (filed Aug. 4, 2020) (Assignment Reply to Rivera).

[8] Application File No. BLFT-20181016ABE (filed Oct. 16, 2018).

application for Special Temporary Authority (2018 STA Application) filed by Shelby.[9]

2. In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* (*NAL*),[10] we find, as discussed below, that Shelby apparently has willfully and repeatedly operated the Station at variance from its license without Commission authorization, in violation of section 301 of the Act[11] and section 73.1745(a)[12] of the Rules, willfully failed to timely file for special temporary authorization (STA) to operate with its nonconforming technical facilities in violation of section 73.1635(a)(1)[13] of the Rules, and willfully failed to disclose material information regarding such unauthorized operation, in violation of section 1.17[14] of the Rules. Based on our review of the record before us, we conclude that Shelby is apparently liable for a monetary forfeiture in the amount of sixteen thousand five hundred dollars ($16,500) for these violations. For these reasons, we will grant in part and otherwise deny the Renewal Petition and deny the Assignment Petition.

II. BACKGROUND

3. On November 17, 2015, Valleydale Broadcasting, LLC (Valleydale), the Station's former licensee, filed an application for Special Temporary Authority (STA) (2015 STA Application), to operate from a lower antenna height and at a higher effective radiated power (ERP) than authorized in its license because the Station's coaxial cable was severed.[15] Bureau staff granted the 2015 STA Application on November 20, 2015, with an expiration of May 19, 2016. On May 19, 2016, Valleydale filed a request to extend the 2015 STA (2015 STA Extension Application), to continue operating from the lower antenna height and higher ERP.[16] Bureau staff granted the 2015 STA Extension Application on May 23, 2016, with an expiration of November 19, 2016 (2015 STA Extension).

4. On April 7, 2017, Valleydale filed an application for consent to assign the Station's license to Shelby.[17] While that application was pending, on May 12, 2017, Valleydale filed an application for minor change to a licensed facility application to modify the Station's ERP and antenna pattern and to resolve alleged interference caused to Marble City's full-service FM station, WFXO(FM), Alexander City, Alabama (Modification Application).[18] Bureau staff granted the Modification Application on June 21,

[9] Application File No. BSTA-20180720AAR (filed Jul. 20, 2018).

[10] 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 FCC'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.

[11] 47 U.S.C. § 301.

[12] 47 CFR § 73.1745(a).

[13] 47 CFR § 73.1635(a)(1).

[14] 47 CFR § 1.17.

[15] *See* Application File No. BSTA-20151116ASH (filed Nov. 16, 2015).

[16] *See* Application File No. BESTA-20160518ACE (filed May 18, 2016).

[17] Application File No. BALFT-20170406ABR (granted June 20, 2017); Notice of Consummation (filed June 21, 2017) (stating consummation of assignment took place on June 20, 2017).

[18] *See* Application File No. BPFT-20170511AAL (filed May 11, 2017). Since February 10, 2017, Marble City has filed numerous pleadings related to interference complaints against the Station, alleging that W252BE caused co-channel interference to WFXO(FM). *See* License Application, Application File No. BLFT-20140411AAT (filed Apr. 11, 2014); Complaint Regarding Co-Channel Interference Caused By Transmissions of FM Translator Station W252BE, (filed Feb. 10, 2017) and Amendment (filed Mar. 9, 2017). Bureau staff issued a Letter on March 29, 2017, requiring Shelby to resolve all interference complaints or risk suspension of operations of the Station. Shelby filed a Response to Complaint Regarding Interference By Marble City Media and FCC Letter of Inquiry (filed May 12, 2017). Marble City filed a Reply to Response to Interference Complaint and FCC Letter of Inquiry and Opposition to W252BE Modification Application (filed May 18, 2017). Ultimately, in response to a Bureau inquiry
(continued....)

2017.[19] On July 6, 2018, Marble City again raised allegations of interference and argued Shelby, now the licensee of the Station, lacked a valid license because the Station was not modified to operate with the technical specifications authorized in the Modification Application.[20]

5. On July 19, 2018, Shelby once again filed for an engineering STA (Dismissed STA Application) to operate the Station from its licensed site with a lower antenna height and a new directional antenna pattern, but it was dismissed the same day for failure to state a reason for the request.[21] On July 23, 2018, Shelby filed the 2018 STA Application, which provided the same justification for STA as the 2015 STA—that the Station's cable was severed. Marble City promptly filed an Informal Objection against the 2018 STA Application on July 24, 2018.[22] Marble City objected to Shelby's reliance on the same explanation put forth in the 2015 STA Application, and argued that since the Station has been operating with unauthorized facilities at the authorized location since November 19, 2016, when the 2015 STA Extension expired, the Station's license is expired under section 312(g).[23]

6. *License Application*. On October 17, 2018, Shelby filed the 2018 License Application to cover the Modification Application. On October 19, 2018, Marble City filed an informal objection, stating that Shelby was not operating the Station with the authorized antenna height, power, or orientation, and asserting that there is no license to modify because it expired under section 312(g) after more than one year of unauthorized operation.[24]

7. *Renewal Application.* In the Renewal Petition, Marble City requests reconsideration of the Bureau's grant of the Station's Renewal Application. Marble City incorporates by reference its history of pleadings filed from 2017 to the present and reiterates allegations regarding the status of Shelby's license and Shelby's character qualifications.[25] Specifically, Marble City alleges that: 1) Shelby lacks a license

---

letter, on November 6, 2019, Marble City stated that since its original interference complaint in 2017, WFXO(FM) and the Station have both modified their technical operations, and the specifications in the original 2017 complaint are no longer valid. Marble City also argued that because it alleges the Station's license expired under section 312(g) of the Communications Act of 1934, as amended (47 U.S.C. § 312(g)), the interference complaint is moot. *See Letter from James D. Bradshaw, Deputy Chief, Audio Division, Media Bureau to Marble City Media, LLC* (Oct. 7, 2019) (citing *Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference*, Report and Order, FCC 19-40, 34 FCC Rcd 3457 (2019)); *Reply to James D. Bradshaw, from Marble City Media, LLC*, (Nov. 6, 2019). However, in Marble City's most recent filing, the Rivera Reply, Marble City stated it hired a professional engineer who determined that the Station, at its most recently proposed parameters in the Modification Application, covered by the pending license application (Application File No. BLFT-20181016BE), is still likely to cause interference to WFXO(FM). Rivera Reply at 2 and Exh. A.

[19] *Broadcast Applications*, Public Notice, Report No. 49014 (MB June 26, 2017).

[20] *See* Modification Application, Marble City Revival of Complaint and Petition for Cancellation of W252BE License (filed Jul. 6, 2018) (2018 Complaint).

[21] *See* Application File No. BSTA-20180718AAD (filed Jul. 18, 2018); *Letter from Dale Bickel, Senior Engineer, Audio Division, Media Bureau, to Shelby Broadcast Associates, LLC* (dated July 19, 2018) ("We discern no reason for this STA other than the broadcaster's convenience."). The Bureau's Letter dismissing this STA application also cautioned Shelby that it must file an FCC Form 349 construction permit application before modifying the facilities to make the requested changes. All permittees and licensees of FM translators are required to file a formal application on FCC Form 349 to make equipment modifications including, *inter alia,* a change in the transmitting antenna system, a change in the overall height of the antenna, and any increase of authorized ERP. *See* 47 CFR §§ 74.1251 (b)(2), (b)(3), and (b)(7).

[22] *See* 2018 STA Application. Shelby requested STA to operate at reduced ERP from 90 watts to 65 watts.

[23] *See* 2018 STA Application, Marble City Informal Objection (filed Jul. 24, 2018).

[24] *See* 2018 License to Cover Application, Marble City Comments on Application for License (filed Oct. 19, 2018) (2018 Comments).

[25] Renewal Petition at 1-2. Marble City incorporates by reference ten pleadings it has filed against the Station's licensee since February 10, 2017. *See also* 2018 Complaint and 2018 Comments.

to operate the Station because the STA Extension expired on November 19, 2016, and Shelby took no further action, which meant that the Station operated at variance from the specifications in its license for more than a year, triggering license expiration under section 312(g) of the Act;[26] 2) in response to Marble City's 2018 Complaint, Shelby admitted that the Station operated at parameters at variance from its license for more than one year;[27] and 3) Shelby improperly answered character certifications in the Renewal Application when it certified that it does not have any unresolved or adverse character issues, because (a) Marble City's prior pleadings allege a history of operating the Station without authorization, (b) there were instances where Shelby apparently submitted inaccurate information to the Bureau regarding the Station's operational status, and (c) Shelby's principals were licensees of two cancelled stations involved in cases in which those principals were found to have made false statements and operated with unauthorized facilities.[28]

8. In its Renewal Opposition, Shelby counters that: 1) the Renewal Petition should be dismissed because, in the more than one hundred days that the Renewal Application was pending, Marble City failed to file any pleading against the Renewal Application and has not shown good cause why it was unable to participate before the application was granted;[29] 2) Shelby incorporates by reference its 2018 Complaint Opposition, in which Shelby maintains that the Station's unauthorized operation does not result in a section 312(g) expiration because, although the Station operated with a lower antenna height and higher ERP, the Station remained at its authorized site and was never silent;[30] and 3) in the cases Marble City cites, character issues were not left unresolved or adversely resolved, and in any event, Shelby amended the Renewal Application to include those decisions and updated its responses in the character issues section.[31]

9. In its Renewal Reply, Marble City contends that: 1) Shelby's procedural argument to dismiss the Renewal Petition does not outweigh the Commission's public interest in considering the Petition for Reconsideration due to the seriousness of the allegations;[32] 2) Shelby mischaracterizes prior Marble City pleadings as interference complaints when their focus was on the validity of the Station's license;[33] 3) Shelby still has not rebutted the claim involving the Station's unauthorized operations, which are equivalent to no operation under section 312(g);[34] and 4) Shelby ignores or mischaracterizes critical facts and Commission actions related to its character qualifications.[35]

10. *Assignment Application*. In its Assignment Petition, Marble City argues that the Bureau should not act on the Assignment Application until determining whether the Station license is valid and assignable, and questions of character qualifications are resolved.[36]

---

[26] *Id.* at 4, *citing* 2018 Comments.

[27] *Id.* (citing BMLFT-20140520ALM, Opposition to Revival (2018 Complaint Opposition), at 2, para. 2 and Ex. 1 Decl. of Lee Reynolds (filed Aug. 6, 2018)).

[28] Renewal Petition at 7 (citing *Shelby Broad. Assoc., LLC*, Letter Order (MB Nov. 29, 2018) (*W243AP Letter*); *Valleydale Broad., LLC*, Letter Order (MB Nov. 15, 2017) (*WZNN Letter*) (together, 2017 Letters) (finding that licenses held by Shelby or its principals had expired under section 312(g)).

[29] Renewal Opposition at 1-2. *See* 47 CFR § 1.106(b)(1).

[30] Renewal Opposition at 3; 2018 Complaint Opposition at 3-4.

[31] *Id.* at 3-4.

[32] Renewal Reply at 1-2, citing 47 U.S.C. §§ 309(a) and 309(k).

[33] Renewal Reply at 2.

[34] *Id.*

[35] *Id.* at 3-6.

[36] Assignment Petition at 1. Marble City also incorporates by reference eleven pleadings against Shelby's filings. *Id.* at 1-2.

11. Both Shelby and Rivera, the proposed assignee, filed Oppositions to the Assignment Petition. In its Opposition, Shelby references its responses to the license expiration allegations in the Renewal Application proceeding, and maintains that the decisions cited by Marble City do not include character issues that were left unresolved or resolved adversely, and in any event, the Assignment Application reflects updated responses to the character certifications.[37]

12. In its Reply to Shelby, Marble City maintains that Shelby does not address the substance of its Assignment Petition, and further, grant of the Assignment Application is not in the public interest and refers to its prior filings demonstrating, it claims, that the license has expired under section 312(g) and therefore should not be assignable.[38] Marble City also maintains that character qualifications were at issue in the 2017 Letters, the WZNN Letter should have been filed with the Assignment Application, and a hearing is warranted.[39]

13. In its Opposition, Rivera explains that: 1) there are only three stations providing Spanish language programming in the Birmingham, Alabama market; 2) if assigned, the Station would be the only Spanish language FM station, since it would rebroadcast the Spanish language programming from its primary AM station;[40] 3) the Birmingham terrain is hilly, so the FM translator would provide the most effective coverage of Rivera's three station signals to the Birmingham market;[41] 4) the Station reduced ERP from 90 watts to 65 watts in response to prior interference complaints from Marble City;[42] and 5) assignment to Rivera will help eliminate issues between Shelby and Marble City, and Rivera has a history of operation without objection from the public and fully met its own obligations to comply with the Rules.[43]

14. In its Reply to Rivera, Marble City explains that it does not believe Shelby is operating at the STA parameters, but instead is likely operating at the parameters reflected in the Modification Application and the License Application.[44] Marble City reiterates that the license expiration, not interference, is its primary objection, but it also hired a professional engineer who concluded that interference is still likely to continue.[45]

III. DISCUSSION

A. Renewal Application

15. *Procedural Issue.* Section 1.106(b)(1) of the Rules provides that if a petition for reconsideration is filed by a person who is not a party to the original proceeding, it must show good reason why it was not possible for petitioner to participate in the earlier stages of the proceeding.[46] Section 1.106(c)(1) of the Rules[47] provides that the Bureau will only accept a petition for reconsideration relying on facts not previously presented to the Commission if: (1) the petition relies on facts relating to

[37] Shelby Assignment Opposition at 1.

[38] Assignment Reply to Shelby at 1-3.

[39] *Id.* at 3-7.

[40] Rivera Assignment Opposition at 1 and Exh. 1.

[41] *Id.* at 2.

[42] *Id.* at 2 and Exh. 2. *See also* BSTA-20180720AAR.

[43] *Id.* at 2.

[44] Assignment Reply to Rivera at 1-2.

[45] *Id.* at 2 and Exh. A.

[46] 47 CFR § 1.106(b)(1).

[47] 47 CFR § 1.106(c)(1) ("In the case of any order other than an order denying an application for review, a petition for reconsideration . . . may be granted only [if] . . . the facts or arguments fall within one or more of the categories set forth in § 1.106(b)(2) . . .").

events which have occurred, or circumstances which have changed since the last opportunity to present such matters; (2) the petition relies on facts unknown to petitioner until after his last opportunity to present such matters, which could not, through the exercise of ordinary diligence, have been learned prior to such opportunity; or (3) the designated authority determines that consideration of the facts relied on is required in the public interest.[48]

16. Marble City was not a party to the original proceeding and has not demonstrated why participation in the earlier stages of the proceeding was not possible. Marble City has likewise not demonstrated that new information or changed circumstances prevented earlier participation. Shelby filed the Renewal Application on November 27, 2019, and Bureau staff granted the Renewal Application more than one hundred days later on March 19, 2020. Marble City had ample opportunity to object to the Renewal Application prior to grant but did not do so. However, we will not dismiss the Renewal Petition because Marble City's allegations in this matter remain unresolved in Shelby's other pending applications, and the Bureau erred in granting the Renewal Application while those applications remained pending. We find the public interest would be best served by treating the Renewal Petition as an informal objection to the Renewal Application.[49]

17. *Substantive Issues.* In evaluating an application for license renewal, the Commission's decision is governed by section 309(k) of the Act.[50] That section provides that if, upon consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.[51] If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under section 309(e) of the Act – or grant the application "on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted."[52]

18. *Section 312(g) Expiration*. We reject Marble City's claim that the Station's unauthorized operation triggers automatic expiration of the Station's license under section 312(g) of the Act. Section 312(g) provides that if a broadcast 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 to promote equity and fairness.[53] The Commission has also held that, in cases involving operation from an unauthorized site or on an unauthorized frequency, such operation is "no better than silence" for section 312(g) purposes; therefore, consecutive periods of both silence and operation from an unauthorized site or on an unauthorized frequency are considered in the aggregate when calculating a consecutive 12-month period under the

[48] 47 CFR § 1.106(b); s*ee also Coosa Valley News, Inc., c/o Mr. Thom Holt, Mr. Howard C. Toole,* Letter Order, 23 FCC Rcd 17310, 17313 (MB 2008); *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC Rcd 685, 686, para. 2 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966).

[49] *Cf. New York Telephone Co.*, Memorandum Opinion and Order on Reconsideration, 6 FCC Rcd 3303, 3304 (1991), *aff'd sub nom. New York State Department of Law v. FCC*, 984 F.2d 1209 (D.C. Cir. 1993) (declining to dismiss a petition for reconsideration that did not satisfy the requirements of section 1.106(b)(1) because the public interest would be best served by "exercising our discretion to address petitioners' claims and clarify our action in this proceeding"); *see generally* 47 CFR § 1.106(c)(2) (A procedurally-defective petition for reconsideration may be granted "if the Commission or the designated authority determines that consideration of the facts or arguments relied on is required in the public interest"). As shown above in note 3, the Renewal Application was returned to pending status in 2020.

[50] 47 U.S.C. § 309(k).

[51] 47 U.S.C. § 309(k)(1).

[52] 47 U.S.C. §§ 309(k)(2), 309(k)(3).

[53] 47 U.S.C. § 312(g).

Act.[54]

19. Marble City has not demonstrated that the Station's operations at the authorized location with unauthorized parameters, *i.e.,* lower antenna height and higher ERP output, triggered expiration of the Station's license under section 312(g). Both Marble City and Shelby have submitted documentation showing that, after the Station's coaxial cable connecting the transmitter to the antenna was severed, the Station resumed operation at the authorized location with the authorized antenna and frequency, at a lower height and higher ERP.[55] In past cases, we have held that when a licensee engages in unauthorized operations including unauthorized antenna height or output at variance from its license, but the station operates on its authorized frequency at its authorized site, the violations do not support a finding of license cancellation under section 312(g).[56] Instead, for nonconforming operations not involving an unauthorized location or frequency, even if the violation lasted longer than a year, the Bureau has typically entered into a consent decree or imposed a forfeiture under section 503(b)(1) of the Act.[57] Accordingly, we deny the Petition for Reconsideration in part, as it relates to claims of section 312(g) license expiration.

20. *Unauthorized Operations and Material Factual Information*. Section 301 of the Act and section 73.1350 of the Rules prohibit the operation of a broadcast station except under, and in accordance with, a Commission-granted authorization.[58] Section 73.1745(a)[59] further prohibits the operation of a broadcast station at variance from the terms of the Station's authorization. Pursuant to section 73.1635,[60] a licensee may request special temporary authority to operate for a limited time at variance from the terms of its authorization. However, the licensee must request STA ten days prior to beginning operation at variance from the terms of its authorization.[61]

---

[54] *See Eagle Broad. Group, Ltd.*, Memorandum Opinion and Order, 23 FCC Rcd 588, 592, para. 9 (2008) (*Eagle*), *aff'd by Eagle Broad. Group, Ltd. v. FCC*, 563 F.3d 543 (D.C. Cir. 2009) ("Under the statute, unauthorized and unlicensed transmissions are no better than silence")*; Absolute Broad. LLC*, Memorandum Opinion and Order, FCC-23-38 at 8, para. 18 (2023) (*Absolute*).

[55] *See* 2018 Complaint Opposition at 2 and Exh. 1 Decl. of Lee Reynolds. *See also* 2018 Complaint at 4-6, Exh. 2 Statement of Frank L. Giardina, and Exh. 3 Statement of Larry Wilkins.

[56] *See Absolute,* FCC 23-38 at 8-9, para. 19 (citing *Zwerling Broad. System, Ltd*, Forfeiture Order, DA 22-1318 (MB Dec. 15, 2022) (imposing a forfeiture on an AM station for years of "non-conforming operations," including exceeding its authorized nighttime power limit)); *Low Power Television Stations KRLB-LD, Richland, WA, et al.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 22-1058 (MB Oct. 4, 2022) (imposing a forfeiture on low power TV stations for years of "unauthorized operation" after failing to file applications for licenses to cover after the expiration of the underlying construction permits); *Roy E. Henderson*, Forfeiture Order, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 33 FCC Rcd 5223 (MB 2018) (*Henderson*) (imposing a forfeiture on an FM licensee for "unauthorized operation with non-conforming facilities" for more than a year, specifically, an unauthorized power reduction, while finding that the station had not expired under section 312(g)).

[57] *Compare Henderson* (finding monetary forfeiture, not license cancellation, was warranted for unauthorized operations at variance from the station license where, *inter alia*, licensee remained at its authorized site) *and John L. White,* Notice of Apparent Liability for Forfeiture and Order, 24 FCC Rcd 12541 (MB 2009) (*White*), *with Great Lakes Community Broad., Inc.*, Memorandum Opinion and Order, 24 FCC Rcd 8239 (MB 2009), *and A-O Broad. Corp.*, Memorandum Opinion and Order, 23 FCC Rcd 603 (2008) (finding cancellation appropriate when unauthorized operations at variance from the station license were, *inter alia*, at a different location than the authorized site).

[58] *See* 47 U.S.C. § 301; 47 CFR § 73.1350.

[59] 47 CFR § 73.1745(a).

[60] 47 CFR § 73.1635.

[61] 47 CFR 73.1740(a)(4); *South Seas Broad. Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 23 FCC Rcd 6474, para 2. (MB 2008).

21. We find that the Station has operated with parameters at variance from its authorization, at its authorized location since November 8, 2015, when it suffered damage, adjusted its parameters, and applied for the 2015 STA Application.[62] However, these operations have been unauthorized since the 2015 STA Extension expired on November 19, 2016. Shelby continued operating at variance from its license, without authorization, and made no attempt to address this issue until July 19, 2018, when Shelby filed the Dismissed STA Application and 2018 STA Application. Moreover, when Valleydale filed the 2015 STA Application, it explained that "[o]n Sunday November 8, 2015 the W252BE coaxial cable suffered catastrophic damage . . . the cable was completely severed . . . [and] to recommence broadcasting, climbers lowered the current antenna to the location of the cut . . . to increase its ERP from 90 watts to 112 watts."[63] Valleydale further stated that "the facility remains on the same tower that supports the licensed facility of W252BE."[64] Subsequently, in its 2018 Complaint pleading, Marble City submitted documentation from two engineers who inspected the site and confirmed the Station was operating at variance from both its license *and* the 2015 STA Application.[65]

22. In its 2018 Complaint Opposition, Shelby admitted that the Station previously operated and continued to operate at variance from its license, stating "W252BE is still operating [at] parameters at variance from its license. The failure to extend the STA on November 19, 2016 was simply an oversight of Mr. Reynolds."[66] Shelby also admitted that the 2015 STA Application was filed with "inaccurate technical information."[67] We further find that Shelby failed to timely request STA to operate from the lower antenna height and increased ERP, as Shelby waited roughly twenty months after the Station proceeded with unauthorized operations, until July 19, 2018, and July 23, 2018, to file the Dismissed STA Application, which lacked a reason for the request, and the 2018 STA Application, both of which were filed after Marble City filed the 2018 Complaint. In light of these admissions and findings, we grant the Renewal Petition in part, and find that a monetary forfeiture is an appropriate penalty.[68]

23. *False Certification*. Section 1.17(a)(2) of the Rules provides that no person may provide, in any written statement of fact, "material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading."[69] Even absent an intent to deceive, a false statement may constitute an actionable violation of section 1.17(a)(2) if it is submitted without a reasonable basis for believing that the statement is correct and not misleading.[70]

24. Shelby certified "Yes" in the Renewal Application that "there had been no violations by the licensee of the Communications Act of 1934, as amended, or the rules or regulation of the Commission during the preceding license term."[71] We find that Shelby apparently lacked a reasonable basis for this certification because, at the time the Renewal Application was filed in 2020, Shelby was aware that the

[62] 2018 Complaint Opposition at 3, para. 3.

[63] 2015 STA Application, Exh. 12.

[64] *Id.* at Exh. 11.

[65] *See* 2018 Complaint at 4-6, Exh. 2 Statement of Frank L. Giardina, and Exh. 3 Statement of Larry Wilkins.

[66] *See* 2018 Complaint Opposition at 2, para. 2 and Exh. 1 Decl. of Lee Reynolds.

[67] *Id.* at 3.

[68] Because the Station has operated continuously from its authorized site, we find that monetary forfeiture, rather than cancellation of the Station's license pursuant to section 312(g), is appropriate. *See supra* note 57.

[69] *See* 47 CFR § 1.17(a)(2).

[70] *See Amendment of Section 1.17 of the Commission's Rules Concerning Truthful Statements to the Commission,* Report and Order, 18 FCC Rcd 4016, 4017, para. 5 (2003) (subsequent history omitted).

[71] Renewal Application at Renewal Certification, FCC Violations during the Preceding License Term.

Station was operating with an incorrect antenna height. Moreover, while Shelby amended its application certifications regarding unresolved character issues, it should not have certified that there were no prior violations during the license term, and Shelby has yet to amend its application, or otherwise attach an explanatory exhibit detailing its violations. We accordingly issue this *NAL* to Shelby for this apparent violation of section 1.17(a)(2) of the Rules.

25. *Proposed Forfeiture.* We find that Shelby has apparently willfully and repeatedly violated section 301 of the Act and section 73.1745 of the Rules by engaging in unauthorized operation of the Station from June 20, 2017, when it became the licensee of the Translator, to the present. We also find that Shelby apparently willfully violated section 73.1635(a)(1) of the Rules by failing to timely file the Dismissed and 2018 STAs. We further find that Shelby apparently willfully violated section 1.17 of the Rules by failing to provide accurate technical specifications in the 2015 STA Application and by not disclosing its violation of section 301 of the Act and sections 73.1745 and 73.1635(a)(1) of the Rules in the Renewal Application. Under section 503(b)(1)(B) of the Act, a person who is found to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.[72] 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.[73] 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,[74] and the Commission has so interpreted the term in the section 503(b) context.[75] 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."[76]

26. The Commission's *Forfeiture Policy Statement* and section 1.80(b)(11) of the Rules establish a base forfeiture amount of $10,000 for operation without an instrument of authorization for the service, and $3,000 for failure to file a required form or information.[77] 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)(D) 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."[78]

27. Here, the Station has apparently been operating at variance from the terms of its authorization since November 8, 2015, despite the filing and grant of the 2015 STA Application and STA Extension Application. Shelby has since taken corrective action to come into compliance with the Act and our Rules, by filing the Modification Application and the 2018 STA Application. However, this corrective action is expected and does not nullify or mitigate the violations.[79] For the unauthorized operations, extensive

[72] 47 U.S.C. § 503(b)(1)(B). *See also* 47 CFR § 1.80(a)(1).

[73] 47 U.S.C. § 312(f)(1).

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

[75] *See Southern California Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991).

[76] 47 U.S.C. § 312(f)(2).

[77] *See Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) *(Forfeiture Policy Statement), recon. denied*, 15 FCC Rcd 303 (1999); 47 CFR § 1.80, Paragraph (b)(10), Table 1.

[78] 47 U.S.C. § 503(b)(2)(D); *see also Forfeiture Policy Statement,* 12 FCC Rcd at 17100, para. 27; 47 CFR § 1.80(b)(11).

[79] *See e.g. AT&T Wireless Services, Inc.,* Forfeiture Order, 17 FCC Rcd 21866, 21871, para. 14 (2002) (finding that remedial action to correct violation at issue was not a mitigating factor; licensees are expected to take remedial action when violations are brought to their attention).

period of time, and ongoing nature of the violations, a forfeiture in the base amount of $10,000 is appropriate.[80] Regarding Shelby's failure to timely file the required STA and corresponding technical information, a forfeiture in the base amount of $3,000 is appropriate.[81] Taking into consideration all of the factors required by section 503(b)(2)(E) of the Act and the *Forfeiture Policy Statement*, we will reduce the forfeiture for these apparent violations from the base amount of $10,000 for unauthorized service to $5,000, and from $3,000 for the late-filed STA applications, to $1,500 because, as a translator station, the Station is providing a secondary service.[82] Finally, based on the gravity of the section 1.17(a)(2) violations, and Shelby's history or prior offenses, we propose a forfeiture amount of $10,000 for submitting false certifications in its Renewal Application.[83] Considering the record as a whole, we propose a total forfeiture of $16,500.

28. *Character Issues.* Marble City has not established that Shelby lacks the character qualifications necessary to be a Commission licensee. Marble City has not made a *prima facie* case that Shelby submitted misrepresentations[84] in the form of false statements to the Commission regarding the Station's operational status. We also conclude that Marble City has not made a *prima facie* case that Shelby made a false certification regarding "character issues" in the Renewal Application or the Assignment Application when it indicated that it was not a party to a broadcast application "where character issues were left unresolved or were resolved adversely against the applicant."[85]

29. In support of its claim, Marble City cites two letter decisions in which Bureau staff issued a notice of license expiration under section 312(g) against stations WZNN(FM), Maplesville, Alabama, and

[80] *Cf. White,* 24 FCC Rcd at 12544, paras. 11-12 (citing $10,000 base forfeiture for unauthorized service, but reducing proposed forfeiture to $4,000, because licensee delayed in filing an STA for just over nine weeks).

[81] *See e.g., Id.*, 24 FCC Rcd at 12544, para. 12 ($3,000 forfeiture proposed for late filed applications for modification and STA).

[82] *See, e.g., Corning Christian Radio Corp.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 22-1084 (MB Oct. 12, 2022); *Virginia Center for Public Press,* Memorandum Opinion and Order and Notice for Apparent Liability for Forfeiture, 34 FCC Rcd 9312 (MB 2019) (each reducing forfeiture for untimely filed renewal application for LPFM station due to secondary service status).

[83] *See E-String Wireless,* Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 31 FCC Rcd 133, 139, para. 16 and n.50 (MB 2016) (proposing $5,000 forfeiture to licensee of translator that made false certifications in license to cover application, and noting a higher forfeiture would be appropriate for licensees of full-service stations*); see also San Francisco Unified School District*, Hearing Designation Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 13326, 13334, para. 19, n.40 (2004) (false certifications are abuses of Commission processes which waste Commission resources and which may not only violate 47 CFR § 73.1015 but may subject the applicant to a monetary forfeiture as well as criminal liability under 18 U.S.C. § 1001 (*citing Financial Certifications by Applicants for Broadcast Station Permits*, Public Notice, 2 FCC Rcd 2122 (1987)).

[84] A misrepresentation is a false statement of fact or false certification made with intent to deceive the Commission. *Fox River Broad., Inc.*, Order, 93 FCC 2d 127, 129 (1983); *San Francisco Unified Sch. Dist.*, Hearing Designation Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 13326, 13334 nn.40-41 (2004) (subsequent history omitted). Intent to deceive is established if a licensee or applicant knowingly makes a false statement (or false certification) and can also be inferred when the surrounding circumstances clearly show the existence of intent to deceive. *Leflore Broad. Co., Inc. v. FCC*, 636 F.2d 454, 462 (D.C. Cir. 1980); *American Int'l Dev., Inc.*, Memorandum Opinion and Order, 86 FCC 2d 808, 816 n.39 (1981), *aff'd sub nom. KXIV, Inc. v. FCC,* 704 F.2d 1294 (D.C. Cir. 1983). In a case where all of the allegations are a matter of public record on file with the Commission, there is no logical basis to infer a motive to deceive unless there is other probative evidence of intent to deceive. *KAXT, LLC*, Memorandum Opinion and Order, 32 FCC Rcd 9638, 9646, para. 16 and n.69 (2017) (*KAXT*).

[85] *KAXT*, 32 FCC Rcd at 9646, para. 16 ("[u]ntil such [character] allegations are determined to have merit and are designated for hearing, no 'unresolved' issue is pending 'against' the applicant, so there is nothing to report.").

W243AP, Mooresville, Alabama, licensed to Valleydale and Shelby respectively.[86] The 2017 Letters, however, do not make findings of character issues, do not conclude that Shelby, Valleydale, or their principals lack the character qualifications to be a Commission licensee, and do not leave character qualification issues unresolved.[87] The *WZNN(FM) Letter* required that a copy be attached to every facilities application filed by Valleydale, its principals, and stations in which they hold an interest under section 1.2112 of the Rules.[88] While not specifically enumerated in the ordering clauses, Shelby should have disclosed the WZNN Letter in its responses to the character-related certifications in the Renewal Application and answered the certifications correspondingly. Shelby has since amended the Renewal Application to include the 2017 Letters and reversed its responses to the certifications. The Assignment Application does not certify that are no pending or unresolved character issues and includes the 2017 Letters. As such, Marble City's argument regarding the certifications is now moot. While Marble City has raised allegations related to Shelby's character qualifications, it has not made a *prima facie* case that Shelby or Valleydale possessed the intent to deceive necessary for a false certification finding[89] and therefore has not demonstrated that Shelby lacks the character qualifications needed to be a Commission licensee. Moreover, we note that section 309(k)(1) of the Act limits the scope of our review to the station for which license renewal is being considered.[90] Thus, Shelby's purported behavior involving other stations is not germane to our consideration of the Renewal Application.

B. Assignment Application

30. *Discussion.* Section 310(d) of the Act[91] requires the Commission to determine whether the proposed assignment of a broadcast license would be in the public interest. Informal objections, like petitions to deny, must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with the public interest, convenience, and necessity.[92] For the reasons discussed above, Petitioner has not satisfied this threshold requirement.

31. Marble City makes no argument that Rivera is unqualified to become the new licensee of the Station. Moreover, Rivera currently holds two broadcast licenses in the Birmingham market without issue. While Marble City has referenced and filed voluminous pleadings and arguments related to Shelby's unauthorized operations and character qualifications, for the reasons discussed above in reference to the Renewal Application, we do not find that these violations resulted in license expiration

[86] *See* 2017 Letters (finding the stations' licenses expired as a matter of law after more than one year of unauthorized operation under section 312(g) of the Act).

[87] Bureau staff declined to exercise discretion to reinstate the licenses after expiration because the circumstances that led to expiration under section 312(g) were within the licensees' control. The WZNN Letter went further, citing Valleydale's violations of section 301 of the Act for operating from an alternate facility without FCC approval and informing the Commission that it returned to air with the same facilities, which were in fact operating from a different location. However, the primary issue in the 2017 Letters was a section 312(g) analysis, and the WZNN Letter did not make a determination on Valleydale's character qualifications.

[88] WZNN Letter at 3.

[89] *See supra* note 73.

[90] *See* 47 U.S.C. § 309(k)(1) ("If the licensee of a broadcast station submits an application to the Commission for renewal of such license, the Commission shall grant the application if it finds, *with respect to that station*, during the preceding term of its license ...") (emphasis added). *See also Entercom Licenses, LLC*, Hearing Designation Order and Notice of Opportunity for Hearing, 31 FCC Rcd 12196,12208, para. 28 (2016) ("for renewal purposes, section 309(k)(1) limits the scope of our review to the station for which license renewal is being considered.").

[91] 47 U.S.C. § 310(d).

[92] 47 U.S.C. § 309(d). *See, e.g., WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197, n.10 (1990), *aff'd sub nom. Garden State Broadcasting L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864, para. 6 (1986).

pursuant to Section 312(g). We also find that Marble City has not made a *prima facie* case that Shelby lacks the character qualifications necessary to be a Commission licensee, or to assign the license it holds.

32. *Conclusions/Actions.* Considering the entire record in this proceeding, we find that Shelby's apparent violations of the Act and the Rules do not constitute "serious violations,"[93] warranting designation for evidentiary hearing and that the proposed forfeiture constitutes a sufficient penalty for these apparent violations. Moreover, we find no evidence of violations that, when considered together, evidence a pattern of abuse.[94] We therefore deny the Renewal Petition.

33. Concerning the Assignment Application, we find that Marble City has failed to raise a substantial and material question of fact calling for further inquiry regarding the Assignment Application. We therefore deny the Assignment Petition.

IV. ORDERING CLAUSES

34. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended, and section 1.80 of the Commission's rules, that Shelby Broadcast Associates, LLC, is hereby **NOTIFIED** of his **APPARENT LIABILITY FOR FORFEITURE** in the amount of sixteen thousand five hundred dollars ($16,500) for apparent willful and repeated violation of section 301 of the Act and sections 73.1745(a), 73.1635, and 1.17(a)(2),of the Commission's rules.

35. **IT IS FURTHER ORDERED**, pursuant to section 1.80 of the Commission's rules, that, within thirty (30) days of the release date of this *NAL,* that Shelby Broadcast Associates, LLC, **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

36. Payment of the Civil Penalty must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission's online payment system),[95] or by wire transfer. Payments by check or money order to pay a civil penalty are no longer accepted. Below are instructions that payors should follow based on the form of payment selected:[96]

- 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)

[93] *See* 47 U.S.C. § 309(k)(1)(c).

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

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

[96] 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.

captioned above (Payor FRN).[97] For additional detail and wire transfer instructions, go to https://www.fcc.gov/licensing-databases/fees/wire-transfer.

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

37. 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.[98] 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.

38. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington DC 20554, ATTN: Albert Shuldiner, Chief, Audio Division, Media Bureau, and **MUST INCLUDE** the NAL/Acct. No. referenced above. A copy must be emailed to Alexander Sanjenis (alexander.sanjenis@fcc.gov) and Olivia Hill (olivia.hill@fcc.gov).

39. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

40. **IT IS FURTHER ORDERED** that the Petition for Reconsideration, filed on April 16, 2020, by Marble City Media, LLC **IS GRANTED IN PART AND DENIED IN PART**.

41. **IT IS FURTHER ORDERED** that the Petition to Deny the Assignment Application, filed on July 10, 2020, by Marble City Media, LLC, **IS DENIED**.

---

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

[98] *See* 47 CFR § 1.1914.

42. **IT IS FURTHER ORDERED** that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Shelby Broadcast Associates, LLC, c/o Lee Reynolds, 5256 Valleybrook Trace, Birmingham, AL 35244, (and via email to: LEER@REYNOLDSTECHNICAL.COM), and to its counsel, Scott Woodworth, Esq., Edinger Associates PLLC, 1725 I Street N.W., Suite 300, Washington, DC 20006, (and via email to: swoodworth@edingerlaw.net), and to Marble City Media, LLC, c/o M. Scott Johnson, Esq., Smithwick and Belendiuk, P.C., 5028 Wisconsin Avenue, Suite 301, Washington, DC 20016 (and via email to: sjohnson@fhhlaw.com), and to Rivera Communications, c/o Larry Perry, Esq., 11464 Saga Lane, Ste. 400, Knoxville, TN 37931 (and via email to: larryperry@att.net).

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-52
Released: January 17, 2024

COMMENT SOUGHT ON APPLICATION OF CC OPPORTUNITIES, LLC, AND CLEARCAPTIONS, LLC, FOR CONDITIONAL CERTIFICATION AS A PROVIDER OF INTERNET PROTOCOL CAPTIONED TELEPHONE SERVICE

CG Docket No. 03-123

Comment Date: February 6, 2024
Reply Comment Date: February 16, 2024

The Consumer and Governmental Affairs Bureau (CGB or Bureau) of the Federal Communications Commission (FCC or Commission) seeks comment on the application of CC Opportunities, LLC, and ClearCaptions, LLC, for conditional certification as a provider of Internet Protocol Captioned Telephone Service (IP CTS).[1]

CC Opportunities proposes to acquire majority ownership and control of ClearCaptions.[2] Conditional certification would allow ClearCaptions, after acquisition by CC Opportunities, to remain eligible to receive compensation from the Interstate Telecommunications Relay Service (TRS) Fund for providing IP CTS, on an interim basis pending the filing of, and Commission action on, an application for full certification that will be filed after CC Opportunities' proposed acquisition of ClearCaptions is consummated.[3]

CC Opportunities and ClearCaptions have redacted portions of their application for which they request confidential treatment. Access to the redacted material is governed by the Third Protective Order in this docket.[4]

[1] *See* Application of CC Opportunities, LLC and ClearCaptions, LLC for Conditional Certification to Provide Internet Protocol Captioned Telephone Service, CG Docket No. 03-123 (filed Dec. 19, 2023) (Application), https://www.fcc.gov/ecfs/document/121966686766/1 (redacted).

[2] Application at 2.

[3] *See* Application at 4-9 (detailing proposed transaction); *Consumer and Governmental Affairs Bureau Clarifies the Transferability of Telecommunications Relay Service (TRS) Provider Certification*, CG Docket No. 03-123, Public Notice, 23 FCC Rcd 10438 (CGB 2008) (clarifying that Commission certifications to provide TRS cannot be transferred, and if an acquiring entity is not already eligible to receive compensation from the TRS Fund, it must be certified before it can offer service for which it seeks compensation from the Fund).

[4] *See Misuse of Internet Protocol (IP) Captioned Telephone Service*; *Structure and Practices of the Video Relay Service Program*; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 13-24, 10-51, and 03-123, Order and Third Protective Order, 33 FCC Rcd 6802, 6803, para. 4 (CGB 2018).

Filing Requirements. Interested parties may file comments on or before the dates indicated on the first page of this document.[5] All filings must reference CG Docket No. 03-123. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).[6]

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: https://www.fcc.gov/ecfs/filings.
- Paper Filers:
  - Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
  - Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
  - U.S. Postal Service first-class, Express, and Priority mail may be addressed to 45 L Street, NE, Washington, DC 20554.
  - Effective March 19, 2020, and until further notice, the Commission does not accept any hand delivered or messenger delivered filings as a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. In the event that the Commission announces the lifting of COVID-19 restrictions, a filing window will be opened at the Commission's office located at 9050 Junction Drive, Annapolis Junction, MD 20701.[7]

Ex Parte Rules. The proceeding this Public Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules.[8] Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with section 1.1206(b). In proceedings governed by section 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through

[5] See 47 CFR §§ 1.1, 1.49.

[6] *See* FCC, Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (May 1, 1998).

[7] *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-closesheadquarters-open-window-and-changes-hand-delivery-policy.

[8] 47 CFR § 1.1200 *et seq.*

the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

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

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.

-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 24-53
Released: January 17, 2024

FCC ANNOUNCES THE MEMBERSHIP AND FIRST MEETING OF THE RE-CHARTERED TASK FORCE FOR REVIEWING THE CONNECTIVITY AND TECHNOLOGY NEEDS OF PRECISION AGRICULTURE IN THE UNITED STATES

GN Docket No. 19-329

This Public Notice serves as notice that, consistent with the Federal Advisory Committee Act[1] and the Agriculture Improvement Act of 2018,[2] Federal Communications Commission Chairwoman Jessica Rosenworcel, in consultation with Secretary of Agriculture Tom Vilsack, has appointed members to serve on the re-chartered Task Force for Reviewing the Connectivity and Technology Needs of Precision Agriculture in the United States (Precision Agriculture Connectivity Task Force or Task Force). The Task Force will hold the first meeting of its third and final term on **Wednesday, January 31, 2024, beginning at 10:00 am EST**. Notice of this meeting has been published in the Federal Register.[3] This Public Notice also provides below a limited exemption from our *ex parte* rules, under authority of section 1.1200(a) of the Commission's rules, 47 CFR § 1.1200(a), for certain communications between Task Force and working group members and FCC staff or Commissioners.[4]

In its third term, the Task Force will continue its work to provide advice and recommendations to the Commission on accelerating the deployment of broadband Internet access service on unserved agricultural land to promote precision agriculture. The Task Force will perform duties and will submit a report consistent with sections 12511(b)(3)(A) and (b)(5) of the 2018 Farm Bill.[5] Four working groups will assist the Task Force in carrying out its work: (1) Mapping and Analyzing Connectivity on Agricultural Lands; (2) Examining Current and Future Connectivity Demand for Precision Agriculture; (3) Encouraging Adoption of Precision Agriculture and Availability of High-Quality Jobs on Connected Farms; and (4) Accelerating Broadband Deployment on Unserved Agricultural Lands.[6] Along with the

[1] Federal Advisory Committee Act, 5 U.S.C. Ch. 10 (FACA).

[2] Pub. L. No. 115-334, 132 Stat. 4490 (2018 Farm Bill).

[3] Federal Communications Commission, Federal Advisory Committee Act; Task Force for Reviewing the Connectivity and Technology Needs of Precision Agriculture in the United States, 89 Fed. Reg. 1574 (Jan. 10, 2024).

[4] *See FCC Announces the Membership of and First Meeting of the Task Force for Reviewing the Connectivity and Technology Needs of Precision Agriculture in the United States*, GN Docket No. 19-329, Public Notice, 34 FCC Rcd 10493 (WCB 2019) (providing a similar exemption from our *ex parte* rules for the first term of the Task Force); *FCC Announces the Membership and First Meeting of the Re-Chartered Task Force for Reviewing the Connectivity and Technology Needs of Precision Agriculture in the United States*, GN Docket No. 19-329, Public Notice, 36 FCC Rcd 16828 (WCB 2021) (providing a similar exemption from our *ex parte* rules for the second term of the Task Force).

[5] 2018 Farm Bill § 12511(b)(3)(A) & (b)(5).

statutory requirements, Chairwoman Rosenworcel has announced that the work of the Task Force and its working groups will include consideration of how connectivity can improve sustainability in agricultural production.[7]

Chairwoman Rosenworcel has designated Michael Adelaine, Ph.D., CIO Emeritus & Special Advisor to the President, *South Dakota State University*, to serve as Chair of the Task Force. Chairwoman Rosenworcel has designated two Vice Chairs: Dr. Sreekala Bajwa, Vice President, Dean & Director, *Montana State University College of Agriculture & Montana Agricultural Experiment Station*; and Ryan Krogh, Global Product Family Business Manager - Combines & FEE, *John Deere*. A full list of Task Force Members appointed to date by the Chairwoman in consultation with the Secretary is attached to this Public Notice.[8]

The primary tasks on the agenda of the Task Force's first meeting will be to introduce members of the Task Force, review the policies relevant to the Task Force's duties, and begin discussing strategies to advance broadband deployment on agricultural land to promote precision agriculture. This agenda may be modified at the discretion of the Task Force Chair and the Designated Federal Officer.

The Task Force meeting will be open to the public and held in the Commission Meeting Room at FCC Headquarters, 45 L Street, N.E., Washington, D.C. The FCC will accommodate as many live attendees as possible; however, admittance will be limited due to seating availability. The Task Force meeting will also be available on the Internet via live feed from the FCC's web page at www.fcc.gov/live.

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

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

Pursuant to the Federal Advisory Committee Act, the Commission is responsible for oversight of the Task Force, including its subcommittees and working groups.[9] As a result, FCC staff or Commissioners may participate in or attend meetings or other activities held by both the Task Force and its subcommittees and working groups. In light of this, we are announcing that, pursuant to section 1.1200(a) of the Commission's rules, 47 CFR § 1.1200(a), presentations to the Task Force, including to its subcommittees and working groups, and at any roundtable discussions sponsored by the Task Force, as

(Continued from previous page)

[6] For more information on the working groups, *see FCC Announces and Solicits Nominations for Working Groups of the Task Force for Reviewing the Connectivity and Technology Needs of Precision Agriculture in the United States*, GN Docket No. 19-329, Public Notice, 34 FCC Rcd 10496 (WCB 2019).

[7] *See Rechartering of the Precision Agriculture Connectivity Task Force and Request for Nominations for Membership*, GN Docket No. 19-329, Public Notice, DA 23-739 (WCB rel. Aug. 21, 2023); U.S. Dept. of Agriculture, *Sustainable Agricultural Productivity Growth: What, Why and How* (visited Aug. 8, 2023), https://www.usda.gov/oce/sustainability/spg-faqs.

[8] Section 12511(b)(4)(A)(i) of the 2018 Farm Bill provides that the Task Force will be composed of not more than 15 voting members. Reflecting the requirements of FACA that advisory committees be fairly balanced, this provision of the statute also requires the appointment of representatives of statutorily designated groups with an interest in precision agriculture. Today, we announce the appointment of 13 voting members of the Task Force. We will announce appointments to fill the two remaining seats when the vacancies are filled.

[9] *See* 5 U.S.C. Ch. 10.

well as presentations between Task Force members (including members of any subcommittees or working groups) and FCC staff or Commissioners incidental to and in connection with such Task Force meetings or roundtable discussions, will be treated as exempt presentations for *ex parte* purposes. This exemption covers presentations from Task Force members to FCC staff and Commissioners in other settings only to the extent that the Task Force members are presenting the views of the Task Force or its working groups, as opposed to an individual member's own views or that of a member's organization. We find that this modification of the *ex parte* rules is in the public interest because it will allow the Task Force to develop and shape its advice and recommendations to the Commission more efficiently and effectively.

We recognize that some issues may be addressed by the Task Force that are the subject of pending FCC proceedings. The Commission will not rely in these proceedings on any information submitted to the Task Force, or to any of its subcommittees, working groups, or sponsored roundtables, or information conveyed by Task Force members (including members of any subcommittees or working groups) to FCC staff or Commissioners unless that information is first placed in the record of the relevant proceeding.

More information about the Precision Agriculture Connectivity Task Force is available at https://www.fcc.gov/task-force-reviewing-connectivity-and-technology-needs-precision-agriculture-united-states. You may also contact Christi Shewman, Designated Federal Officer, at (202) 418-0640, or Christi.Shewman@fcc.gov; Emily Caditz, Deputy Designated Federal Officer, at (202) 418-2268, or Emily.Caditz@fcc.gov; Thomas Hastings, Deputy Designated Federal Officer, at (202) 418-1343, or Thomas.Hastings@fcc.gov.

- FCC -

MEMBERS OF THE TASK FORCE

Chair:

Michael Adelaine, Ph.D., CIO Emeritus & Special Advisor to the President, *South Dakota State University*

Vice Chairs:

Sreekala Bajwa, Ph.D., Vice President, Dean & Director, *Montana State University College of Agriculture & Montana Agricultural Experiment Station*

Ryan Krogh, Global Product Family Business Manager - Combines & FEE, *John Deere*

Members:

Andy Bater, Farmer, *Fifth Estate Growers, LLC*

Timothy Bradford, Jr., Ph.D., Director of Agronomy, *Vayda, Inc.*

Julie Bushell, Chief Executive Officer, Ethos Connected (representing *Irrigation Association*)

Joseph M. Carey, Special Government Employee

Heather Hampton+Knodle, Vice President & Secretary, *Knodle Ltd. Farms*

Carolyn Price, Executive Director, *Upstate New York Towns Association*

Brad Robison, Chief Executive Officer, Tallahatchie Valley Electric Power Association and Tallahatchie Valley Internet Services, LLC; President, MS Fiber (representing the *National Rural Electric Cooperative Association*)

Joshua Seidemann, Vice President, Policy and Industry Innovation, *NTCA–The Rural Broadband Association*

Joy Sterling, Chief Executive Officer, *Iron Horse Vineyards*

Dan Watermeier, Commissioner, First District, *Nebraska Public Service Commission*

Andy Berke, Administrator, Rural Utilities Service, United States Department of Agriculture, will serve as an ex-officio, nonvoting member of the Task Force.

Christi Shewman, Designated Federal Officer
Emily Caditz, Deputy Designated Federal Officer
Thomas Hastings, Deputy Designated Federal Officer

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

In the Matter of	)	File No. MB/Pol. 230202
	)	Acct. No. MB-202441430002
Townsquare Media, Inc., Parent Company of	)	FRN: 0020136958
Licensees of Stations KLIX(AM), Twin Falls, ID	)	Facility ID No. 3404
and KIDO(AM), Nampa, ID	)	Facility ID No. 17396

ORDER

Adopted: January 17, 2024 **Released: January 17, 2024**

By the Chief, Media Bureau:

1. In this Order, we adopt the attached Consent Decree entered into by the Media Bureau (Bureau) and Townsquare Media, Inc. (Townsquare), parent company of the licensees of Stations KLIX(AM), Twin Falls, ID, and KIDO(AM), Nampa, ID. The Consent Decree resolves the Bureau's investigation into Townsquare's willful and repeated violations of sections 317(a) of the Communications Act of 1934, as amended, and 73.1212(a) of the Commission's rules, relating to on-air sponsorship identification announcements; and sections 315(e) of the Communications Act of 1934, as amended, and 73.1943 of the Commission's rules, relating to the maintenance of online political files. Pursuant to the Consent Decree, Townsquare agrees, among other things, to implement a comprehensive plan to ensure its future compliance with its sponsorship identification and online political file obligations, submit annual compliance reports to the Bureau through the remainder of the current license terms of the two stations, and pay a Civil Penalty to the United States Treasury in the total amount of $500,000. This action reinforces the Bureau's commitment to ensuring compliance with sponsorship identification and online political file requirements.

2. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the referenced investigation regarding Townsquare's compliance with its sponsorship identification and political file obligations.

3. In the absence of material new evidence relating to this matter, we do not set for hearing the question of Townsquare's basic qualifications to hold or obtain any Commission license or authorization.[1]

4. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Act[2] and the authority delegated by sections 0.61(e) and 0.283 of the Commission's rules,[3] the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

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

[1] *See* 47 CFR § 1.93(b).

[2] 47 U.S.C. § 154(i).

[3] 47 CFR §§ 0.61(e), 0.283.

6. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent via e-mail to Kathleen A. Kirby, Esq., Wiley Rein LLP, counsel for Townsquare Media, Inc, at kkirby@wiley.law

FEDERAL COMMUNICATIONS COMMISSION

Holly Saurer
Chief, Media Bureau

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

In the Matter of	)	File No. MB/Pol. 230202
	)	Acct. No. MB-202441430002
Townsquare Media, Inc., Parent Company of	)	FRN: 0020136958
Licensees of Stations KLIX(AM), Twin Falls, ID	)	Facility ID No. 3404
and KIDO(AM), Nampa, ID	)	Facility ID No. 17396

CONSENT DECREE

1. The Media Bureau of the Federal Communications Commission and Townsquare Media, Inc. (Townsquare), parent company of the licensees of Stations KLIX(AM), Twin Falls, ID, and KIDO(AM), Nampa, ID (together, the Stations), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Media Bureau's investigation into Townsquare's willful and repeated violations of sections 317(a) of the Communications Act of 1934, as amended,[1] and 73.1212(a) of the Commission's rules,[2] relating to on-air sponsorship identification announcements; and sections 315(e) of the Communications Act of 1934, as amended,[3] and 73.1943 of the Commission's rules,[4] relating to the maintenance of online political files. The investigation revealed that Townsquare failed to provide on-air sponsorship identification announcements for multiple episodes of, and numerous advertisements promoting, a paid-for political program that Townsquare broadcast over the Stations from October 2021 to March 2023. The investigation further revealed that Townsquare failed over the same period of time to upload records of multiple episodes of the program featuring uses by legally qualified candidates for public office and communicating messages relating to political matters of national importance to the Stations' respective online political files. As set forth herein, to resolve this matter, Townsquare agrees to implement a comprehensive plan to ensure its future compliance with its sponsorship identification and online political file obligations, submit annual compliance reports to the Bureau through the remainder of the current license terms of the Stations, and pay a Civil Penalty to the United States Treasury in the total amount of $500,000. This action reinforces the Bureau's commitment to ensuring compliance with sponsorship identification and online political file requirements.

I. DEFINITIONS

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

(a) "Act" means the Communications Act of 1934, as amended.[5]

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

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

(d) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.

[1] 47 U.S.C. § 317(a).

[2] 47 CFR § 73.1212(a).

[3] 47 U.S.C. § 315(e).

[4] 47 CFR § 73.1943.

[5] 47 U.S.C. § 151 *et seq.*

(e) "Communications Laws" means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which Townsquare is subject by virtue of its status as a Commission licensee.

(f) "Covered Employees" means all managers, supervisors, employees, contractors, and agents of Townsquare at all broadcast stations of which Townsquare is and becomes the licensee who perform, supervise, oversee, or manage the performance of, duties that relate to Townsquare' responsibilities under the Communications Laws, the Sponsorship ID Rules, the Political File Rules, and this Consent Decree.

(g) "Effective Date" means the date on which the Bureau releases an Adopting Order which adopts and incorporates this Consent Decree after it has been duly executed by the Parties.

(h) "Investigation" means the investigation which the Bureau commenced on March 2, 2023, in File No. MB/Pol. 230202.

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

(j) "Political File Rules" means the political file requirements set forth in in sections 315(e) of the Communications Act of 1934, as amended, and 73.1943 of the Commission's rules.

(k) "Program" means the weekly program initially named "Red Wave Radio" and subsequently renamed "Keep Idaho Red," episodes of which were broadcast over Stations KLIX(AM) and KIDO(AM) between October 2021 and March 2023.

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

(m) "Sponsorship ID Rules" means the on-air sponsorship identification requirements set forth in sections 317(a) of the Communications Act of 1934, as amended, and 73.1212(a) of the Commission's rules.

(n) "Townsquare" means Townsquare Media, Inc., and all of its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest, including, but not limited to, Townsquare Radio Holdings, LLC; Townsquare Media Licensee of Utica/Rome, Inc.; Townsquare Media of Lafayette, LLC; Townsquare Media Licensee of St. Cloud, Inc.; Townsquare Media of El Paso, Inc.; Townsquare Media of Grand Rapids, Inc.; Townsquare Media of Evansville/Owensboro, Inc.; Townsquare License, LLC; Townsquare Media of Flint, Inc.; Townsquare Media Licensee of Peoria, Inc.; Townsquare Media of Albany, Inc.; Townsquare Media Killeen-Temple License, LLC; Townsquare Media of Fort Collins, Inc.; Townsquare Media of Buffalo, Inc.; and Townsquare Media Presque Isle License, LLC.

II. BACKGROUND

A. Legal Background

3. *Sponsorship Identification.* Beginning with the Radio Act of 1927, broadcast stations have been required to identify on-air the sponsor of any paid program material that they broadcast.[6] When Congress adopted the Communications Act of 1934, and created the Federal Communications Commission, it incorporated into section 317 almost verbatim the same requirement that stations provide on-air sponsorship identification announcements.[7] Since that time, the Commission has continued to underscore the need for transparency and disclosure to the public about the true identity of a program's sponsor. The Commission has explained that its sponsorship identification requirements are "grounded in

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

[7] See 47 U.S.C. § 317.

the principle that listeners and viewers are entitled to know who seeks to persuade them . . . ."[8] When broadcasters air paid-for programming without disclosing the program's sponsor, they can mislead the public.[9]

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

> All matter broadcast by any radio station for which any money, service or other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person . . . .[10]

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

> When a broadcast station transmits any matter for which money, service, or other valuable consideration is either directly or indirectly paid or promised to, or charged or accepted by such station, the station, at the time of the broadcast, shall announce: (1) That such matter is sponsored, paid for, or furnished, either in whole or in part, and (2) By whom or on whose behalf such consideration was supplied . . . .[11]

5. In the case of any political matter that is broadcast for which a station receives or is promised valuable consideration, an on-air sponsorship identification announcement must be provided at the beginning and end of the broadcast if the program is more than five minutes in duration.[12] However, if the program is five minutes or less in duration, only one such on-air sponsorship identification announcement need be made at the beginning or end of the broadcast.[13]

6. *Political Files*. More than 80 years ago the Commission promulgated its first political file rule requiring stations to maintain and make available for public inspection information about political advertising.[14] Such disclosure was – and is – intended to further the First Amendment's goal of fostering an informed electorate that is able to evaluate the validity of messages and hold accountable the interests that disseminate political advocacy.[15]

7. The Bipartisan Campaign Reform Act of 2002 (BCRA)[16] amended section 315 of the Act by codifying the Commission's long-established record-keeping requirement[17] for each request for the purchase political advertising time that "is made by or behalf of a legally qualified candidate for public office."[18] The BCRA further amended section 315 of the Act by expanding record-keeping requirements

---

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

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

[10] 47 U.S.C. § 317(a).

[11] 47 CFR § 73.1212(a).

[12] 47 CFR § 73.1212(d).

[13] *Id*.

[14] *In the Matter of Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, 27 FCC Rcd 4535, 4537 (2012), citing 3 Fed. Reg. 1691 (1938).

[15] 27 FCC Rcd at 4543.

[16] Pub. L. No. 107-155, 116 Stat. 81 (2002) (BCRA).

[17] See 47 CFR § 73.1943(a).

[18] 47 U.S.C. § 315(e)(1)(A).

to include each request for the purchase of political advertising time that "communicates a message relating to any political matter of national importance, including (i) a legally qualified candidate; (ii) any election to Federal office; or (iii) a national legislative issue of public importance."[19] This latter category of requests are commonly referred to as "issue ads." In 2022, the Commission amended its rules consistent with the Bipartisan Campaign Reform Act of 2002.[20]

8. Section 315(e)(3) of the Act requires broadcast stations to place information about each request for the purchase of political broadcast time into their political files "as soon as possible."[21] In addition, section 73.1943(d) of the rules expressly states that the phrase "as soon as possible" means "immediately, absent unusual circumstances."[22] The timeliness of placing information into political files (particularly, records about candidate-requests for the purchase of broadcast time) is *critical* because, among other things, it directly affects the statutory rights of opposing candidates to request equal opportunities and present their positions to the public prior to an election.[23]

9. For decades, broadcast stations were required to maintain physical copies of their public inspection files – of which political files are a part – at a location in their community of license.[24] However, in 2012 the Commission adopted rules requiring television stations to transition their public and political inspection files to an online, Commission-hosted database,[25] and in 2016 the Commission did likewise for radio stations and other licensees.[26]

10. In adopting online disclosure rules for TV, the Commission emphasized the importance of maintaining online political files:

> [P]lacing the political file online will enable candidates, as well as the public, journalists, educators, and the research community, to identify and investigate those sponsoring political advertisements. Under current rules, the political file must contain, among other things, all specific requests for broadcast time made by or on behalf of a candidate and the disposition of those requests. It must also contain information regarding other appearances by candidates (excluding those in certain news programming exempt from the equal opportunities provision), and information about issue advertising that "communicates a message relating to any political matter of national importance." As noted by some commenters, political ad spending is rapidly increasing, and often the only way to track such expenditures is through stations' political files. . . As the Supreme Court stated in *Citizens United v. FEC*, "transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages" and that, "[w]ith the advent of the Internet, prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for

[19] 47 U.S.C. § 315(e)(1)(B).

[20] *Revisions to Political Programming and Record Keeping Rules*, Report and Order, 87 FR 7748 (published Feb. 10, 2022).

[21] 47 U.S.C. § 315(e)(3).

[22] 47 CFR § 73.1943(d). Bureau staff has informally interpreted the term, "immediately, absent unusual circumstances" to mean "within one business day" after a request for the purchase of broadcast time is made.

[23] Pursuant to section 73.1941(c) of the rules, candidates have one week from an opponent's initial "use" to request equal opportunities. 47 CFR § 73.1941(c). The failure by a station to promptly upload information about each "use" denies requesting candidates the notice they need to assert their statutory rights to equal opportunities in a timely manner.

[24] See 47 CFR § 73.3526.

[25] *See Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, 27 FCC Rcd 4535 (2012).

[26] *See 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).

their positions and supporters."[27]

11. Furthermore, when the Commission extended the online political file requirement to radio stations and other licensees, it took the opportunity to remind them about the importance of uploading records of requests for the purchase of broadcast time in an expeditious manner, stating that the "contents of the political file are time-sensitive. Therefore, it is essential that there be no delay in posting political file materials to the online file."[28]

B. Factual Background

12. Townsquare is a publicly-traded media company (NYSE: TSQ) with principal offices in Purchase, NY.[29] Through its wholly-owned subsidiaries, it is the licensee of more than 350 commercial radio stations across the United States.[30] In the third quarter of 2023, Townsquare reported net revenues of $115.1 million.[31]

13. The Investigation revealed that for nearly one and a half years (from early October 2021 to late March 2023), the Stations broadcast a one-hour episode of, and 30-second advertisements promoting, the Program. The format of each episode nominally resembled a news interview/public affairs program produced and presented by the Stations. In fact, however, all episodes of the Program were paid political presentations. Townsquare was paid to broadcast episodes of the Program and related advertisements initially by and on behalf of the Idaho Republican Party, and later by Tom Luna on behalf of a company doing business as Tom Luna and Associates. The hosts of each episode (Tom Luna and Victor Miller, chairman of the Ada County (Idaho) Republican Party) were solely responsible for producing the Program, including selecting guests and determining program content. Neither station provided any on-air Sponsorship ID announcements for the vast majority of the episodes or promotional advertisements that they aired revealing to listeners the true nature of the broadcasts and the identity of those who paid for them. In addition, multiple episodes of the Program contained appearances that constituted uses by legally qualified candidates for public office and communicated messages relating to political matters of national importance. Neither station uploaded records of any such candidate uses or messages to their respective online political files.

14. To resolve the Bureau's Investigation, the Parties now enter into this Consent Decree under the terms and conditions specified below.

III. TERMS OF AGREEMENT

15. **Adopting Order**. This Consent Decree shall be incorporated by the Bureau in an Adopting Order.

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

17. **Effective Date**. The Parties agree that this Consent Decree shall become effective on the Effective Date, as defined herein. The Parties further agree that, as of the Effective Date, this Consent

---

[27] *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, 27 FCC Rcd 4535, 4543-4544 (2021) (footnotes omitted).

[28] *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, para. 27 (2016).

[29] https://otp.tools.investis.com/clients/us/tsm/SEC/sec-show.aspx?FilingId=16647381&Cik=0001499832&Type=PDF&hasPdf=1

[30] https://www.townsquaremedia.com/equity-investors

[31] https://otp.tools.investis.com/clients/us/tsm/SEC/sec-show.aspx?FilingId=17042623&Cik=0001499832&Type=PDF&hasPdf=1

Decree shall have the same force and effect as any other order of the Commission.

18. **Termination of Investigation**. In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, Townsquare agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute any new proceeding on its own motion against Townsquare concerning the matters that were the subject of the Investigation, or to set for hearing the question of Townsquare' basic qualifications to be a Commission licensee or hold Commission licenses or authorizations based on the matters that were the subject of the Investigation.[32] Townsquare acknowledges and agrees that nothing herein prevents the Bureau or Commission from instituting any new proceedings against Townsquare during the term of this Consent Decree concerning any matters that were not the subject of the Investigation.

19. **Admission of Liability**. Townsquare admits that its conduct described above in Paragraph 13 of this Consent Decree constituted willful and repeated violations of sections 315(e) and 317(a) of the Communications Act of 1934, as amended; and sections 73.1212(a) and 73.1943 of the Commission's rules.

20. **Compliance Officer**. Townsquare agrees that, within 30 calendar days after the Effective Date, it shall retain the services of an independent corporate governance, consulting, law or accounting firm to serve as a Compliance Officer that will fully and completely discharge the duties set forth below, provided that no such firm shall have had any professional relationship with Townsquare during any time between August 26, 2020, and August 15, 2023. The firm retained as the Compliance Officer shall, on behalf of Townsquare, be responsible for developing, implementing, and administering the Compliance Plan and ensuring that Townsquare complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge all duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the Sponsorship ID Rules and Political File Rules prior to assuming such duties.

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

1. The Compliance Plan shall contain, at a minimum, the following components:

(a) **Operating Procedures**. The Compliance Plan shall contain Operating Procedures that all Covered Employees must follow to ensure Townsquare' compliance with the Sponsorship ID Rules and the Political File Rules. The Operating Procedures shall include internal procedures and policies specifically designed to ensure that Townsquare complies with the Sponsorship ID Rules and the Political File Rules.

(b) **Compliance Manual**. The Compliance Plan shall include a Compliance Manual that the Compliance Officer has distributed to all Covered Employees. The Compliance Manual shall explain fully and completely the Sponsorship ID Rules and the Political File Rules and include the Operating Procedures that Covered Employees shall follow. The Compliance Officer shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. The Compliance Officer shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.

[32] *See* 47 CFR § 1.93(b).

(c) **Compliance Training Program**. The Compliance Plan shall contain a comprehensive Compliance Training Program for all Covered Employees regarding compliance with the Sponsorship ID Rules and the Political File Rules. As part of the Compliance Training Program, the Compliance Officer shall advise all Covered Employees of Townsquare's obligation to report any noncompliance with the Sponsorship ID Rules and the Political File Rules under Paragraph 22 of this Consent Decree and shall instruct Covered Employees on how to disclose noncompliance to the Compliance Officer and Townsquare. The Compliance Officer shall train all Covered Employees pursuant to the Compliance Training Program within 75 calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after the initial Compliance Training Program shall be trained within 30 calendar days after the date such person becomes a Covered Employee. The Compliance Officer shall repeat compliance training on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.

22. **Reporting Noncompliance**. Townsquare agrees that it shall report any noncompliance with the Sponsorship ID Rules and the Political File Rules and with the terms and conditions of this Consent Decree within 15 calendar days after discovery of such noncompliance at all stations of which Townsquare is and becomes the licensee. Such reports shall include a detailed explanation of: (i) each instance of noncompliance; (ii) the steps that Townsquare has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that Townsquare has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to Robert Baker, Policy Division, Media Bureau, Federal Communications Commission, at Robert.Baker@fcc.gov; Gary Schonman, Policy Division, Media Bureau, Federal Communications Commission, at Gary.Schonman@fcc.gov; and Sima Nilsson, Policy Division, Media Bureau, Federal Communications Commission, at Sima.Nilsson@fcc.gov.

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

(a) Each Compliance Report shall include a detailed description of Townsquare's efforts during the preceding period to comply with the terms and conditions of this Consent Decree and the Sponsorship ID Rules and the Political File Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Townsquare, stating that the Compliance Officer has personal knowledge that Townsquare: (i) has established and implemented the Compliance Plan; (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (iii) is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in Paragraph 22 of this Consent Decree.

(b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and shall comply with section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.[33]

(c) If the Compliance Officer is unable to provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Townsquare, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully: (i) each instance of noncompliance; (ii) the steps that Townsquare has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that Townsquare has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.

[33] 47 CFR § 1.16.

(d) All Compliance Reports shall be submitted via email to: Robert Baker, Policy Division, Media Bureau, Federal Communications Commission, at Robert.Baker@fcc.gov; Gary Schonman, Policy Division, Media Bureau, Federal Communications Commission, at Gary.Schonman@fcc.gov; and Sima Nilsson, Policy Division, Media Bureau, Federal Communications Commission, at Sima.Nilsson@fcc.gov.

24. **Termination Date**. The Parties agree that this Consent Decree and the requirements herein shall expire on the date that the grant of the next license renewal application for Station KLIX(AM) or for Station KIDO(AM) becomes final, whichever is later.

25. **Civil Penalty**. Townsquare agrees that it shall pay a Civil Penalty to the United States Treasury in the total amount of $500,000. The Parties acknowledge that the amount of this Civil Penalty payment takes into consideration the factors set forth in section 503(b)(2)(E) of the Act,[34] including Townsquare's ability to pay. Townsquare agrees to pay the Civil Penalty in consecutive quarterly installments (each an Installment Payment) of $30,000 each, until the Civil Penalty is paid in full. Townsquare agrees that each Installment Payment shall be due and received by the United States Treasury on or before the first day of each calendar quarter (Due Date), with the first such Installment Payment due and received by the United States Treasury on or before the first day of the first full month after the Effective Date. Townsquare acknowledges and agrees that upon execution of this Consent Decree, the Civil Penalty and each Installment Payment shall become a "Claim" or "Debt" as defined in 31 U.S.C. § 3701(b)(1).[35] Upon an Event of Default, as defined below, all procedures for collection as permitted by law may, at the Commission's discretion, be initiated. On the date each Installment Payment is made, Townsquare shall send notification of the payment via email to: Robert Baker, Assistant Chief, Policy Division, Media Bureau, Federal Communications Commission, at Robert.Baker@fcc.gov; Gary Schonman, Special Counsel, Policy Division, Media Bureau, Federal Communications Commission, at Gary.Schonman@fcc.gov; and Sima Nilsson, Attorney-Advisor, Policy Division, Media Bureau, Federal Communications Commission, at Sima.Nilsson@fcc.gov.

26. Below are payment instructions that Townsquare shall follow based on the form of payment it has selected:[36]

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned above and the letters "FORF". In addition, a completed Form 159[37] or printed Commission Registration System (CORES) form[38] 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).[39] 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

[34] 47 U.S.C. § 503(b)(2)(E).

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

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

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

[38] 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.

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

Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the CD Acct. No. The bill number is the CD Acct. No. with the first two digits excluded (e.g., CD 1912345678 would be associated with FCC Bill Number 12345678). After selecting the bill for payment, choose the "Pay by Credit Card" option. Please note that there is a $24,999.99 limit on credit card transactions.

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

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

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

29. **Waivers**. Townsquare agrees that, as of the Effective Date, it waives any and all rights it may otherwise have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order. The Parties agree that Townsquare shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. The Parties further agree that if either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent Decree or the Adopting Order, neither Townsquare nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Townsquare shall waive any statutory right to a trial *de novo*. Townsquare agrees to waive any claims it may otherwise have under the Equal Access to Justice Act[40] relating to the matters addressed in this Consent Decree.

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

31. **Invalidity**. The Parties agree that 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

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

used in any manner in any legal proceeding.

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

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

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

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

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

37. **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.

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

_____
Holly Saurer
Chief, Media Bureau

_____
Date

_____
Townsquare Media, Inc.

_____
Date

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

In the Matter of	)	
	)	
Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs	)	WC Docket No. 18-89
	)	
	)	
	)	

ORDER DENYING REQUEST FOR RECONSIDERATION

Adopted: January 18, 2024 **Released: January 18, 2024**

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. NE Colorado Cellular Inc. dba Viaero Wireless (Viaero) asks the Wireline Competition Bureau (Bureau) to reconsider the Bureau's denial of reimbursement claims filed by Viaero under the Secure and Trusted Communications Networks Reimbursement Program (Reimbursement Program) for certain equipment that Viaero purchased to replace equipment manufactured by Huawei Technologies Company (Huawei).[1] For the reasons set forth below, we maintain that the expenses at issue are not reimbursable under the Reimbursement Program and that denying reimbursement for the expenses is appropriate to prevent waste, fraud, or abuse.

II. BACKGROUND

2. 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 services with ten million or fewer customers for costs reasonably 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 or ZTE Corporation (ZTE) that were obtained by providers on or before June 30, 2020.[2] The Reimbursement Program was later funded by a $1.9 billion congressional

[1] Letter from David A. LaFuria, counsel for NE Colorado, Inc., to Trent Harkrader, Chief, Wireline Competition Bureau (Nov. 2, 2023) (Viaero Letter). While the Viaero Letter Request refers to seeking reconsideration of a decision to deny reimbursement by the Fund Administrator for the Replacement Program, the Bureau itself makes the final decision on reimbursement requests. *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, 14336, para. 121 (2020) (*2020 Supply Chain Order*).

[2] 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) (for purposes of the Secure and Trusted Communications Networks Act, defining "advanced communications services," by reference to 47 U.S.C. § 1302(d)(1), as "high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology"). The Commission adopted rules implementing the Secure Networks Act on December 10, 2020. *2020 Supply Chain Order*, 35 FCC Rcd 14284. 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 (continued….)

appropriation,[3] which is less than the $5.6 billion in collective funds requested by applicants.[4] Because demand exceeded available funding, the Secure Networks Act 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).[5] Demand from Priority 1 applicants alone exceeded the amount appropriated, and these applicants consequently received a partial, pro-rated funding allocation of approximately 39.5% of their reasonable and supported estimated costs for removing, replacing, and disposing of covered communications equipment and services.[6]

3. The Secure Networks Act requires Reimbursement Program funds to be used "solely for the purposes of permanently removing . . ., replacing . . ., [and] disposing of [] covered communications equipment or services . . . ."[7] In implementing this language, the Commission recognized that several recipients might have begun the process of removing covered equipment and services from their networks prior to the creation of the Reimbursement Program, and therefore allows recovery of such costs (provided they were incurred after April 17, 2018).[8] However, regardless of whether the costs were incurred before or after creation of the Reimbursement Program, the Commission adopted a "costs reasonably incurred" standard for determining whether costs associated with the removal, replacement, and disposal of covered communications equipment and services are eligible for reimbursement.[9]

(Continued from previous page)
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* 47 CFR § 1.50004(a)(1)-(2); *2021 Supply Chain Order*, 36 FCC Rcd at 11980, para. 50; *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*).

[3] 47 U.S.C. § 1603(k) ("In carrying out [the Reimbursement Program], the Commission may not expend more than $1,900,000,000.").

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

[5] *See* 47 U.S.C. § 1603(d)(5)(C); *see also* 47 CFR § 1.50004(f)(1) (requiring the Bureau to "issue full funding allocations for all eligible providers in the Priority 1 prioritization category before issuing funding allocations in any subsequent prioritization categories"); *SCRP Granted Applications Public Notice* at 2-3.

[6] *See* 47 CFR § 1.50004(f)(1) ("If there is insufficient funding to fully fund all requests in a particular prioritization category, then the Wireline Competition Bureau will pro-rate the available funding among all eligible providers in that prioritization category."); *see also SCRP Granted Applications Public Notice* at 2-3 (noting that Priority 1 applicants received a pro-rated 39.5% share of their reasonable and supported estimated costs for carrying out their removal, replacement, and disposal).

[7] 47 U.S.C. § 1603(c)(1)(A)-(C).

[8] *2020 Supply Chain Order*, 35 FCC Rcd at 14340, paras. 130-33; *Wireline Competition Bureau Finalizes Application Filings, Procedures, Cost Catalog, and Replacement List for the Secure and Trusted Communications Networks Reimbursement Program*, WC Docket No. 18-89, Public Notice, DA 21-947, 36 FCC Rcd 12190, 12206, para. 47 (WCB Aug. 3, 2021).

[9] The Commission adopted the "costs reasonably incurred" standard to align with the rules of the Broadcast Incentive Auction, stating that it saw "no reason to deviate"[9] from the Broadcast Incentive Auction standard, which required reimbursement of "costs that are reasonable to provide facilities comparable to those . . . reasonably replaced." *2020 Supply Chain Order*, 35 FCC Rcd at 14334-36, paras. 120-21, citing *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Report and Order, 29
(continued….)

Recognizing that application of this reasonableness standard would need to occur on a case-by-case basis, the Commission delegated to the Bureau "authority . . . to make reimbursement determinations . . . ."[10]

4. Prior to passage of the Secure Networks Act and establishment of the Reimbursement Program, Viaero purchased and installed new equipment at several hubs in its network to replace equipment manufactured by Huawei.[11] Viaero obtained equipment for several of these hubs from {[ ]}[12] Viaero intended this equipment to be a permanent replacement for the Huawei equipment.[13] In July 2021, Viaero selected {[ ]} as its "primary equipment vendor" to {[ ]} In January 2023, however, Viaero discovered that its {[ ]}[15] Viaero asserts that the only remedy for this compatibility issue was to replace the {[ ]} equipment, and that it therefore purchased equipment from another manufacturer, {[ ]} to replace the {[ ]} equipment.[16]

5. Viaero then sought reimbursement under the Reimbursement Program for both the original equipment and the equipment that replaced it.[17] The Bureau authorized reimbursing Viaero for the second set of equipment, but not for the first set, which it deemed to be duplicative.

III. DISCUSSION

6. Viaero asks the Bureau reconsider its decision to deny reimbursement claims for the cost of first set of equipment that was later replaced by the second set[18] Viaero argues that (1) reimbursing it for the the first set of equipment as well as the second set of equipment will not increase the overall amount of Reimbursement Program funding made available to Viaero; (2) nothing in the Commission's orders or rules expressly prohibits the expenditure of funds for interim equipment; and (3) at the time of purchase it intended the first set of equipment to be a permanent replacement for the Huawei equipment, had a good-faith, reasonable belief that the first set of equipment would work with whatever network vendor Viero eventually chose, and obtained the best possible pricing.

7. We deny Viaero's request to reconsider our denial of reimbursement claims associated with the costs for the {[ ]} equipment. We find the costs were not reasonably incurred to remove, replace, and dispose of covered Huawei equipment.[19] Viaero initially bought the {[ ]} equipment to replace Huawei equipment,[20] but when Viaero later chose {[ ]} as its primary

(Continued from previous page)
FCC Rcd 6567, 6821, para. 623 (2014) (*Incentive Auction Order*); *see also* 31 U.S.C. § 1301(a) ("Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.").

[10] *2020 Supply Chain Order*, 35 FCC Rcd at 14336, para. 121.

[11] Viaero Letter at 1.

[12] *Id*.

[13] *Id*. at 2.

[14] *Id*. at 1.

[15] *Id*. at 2.

[16] *Id*.

[17] *Id*.

[18] As noted above, Viaero's Letter asks the Commission to reconsider the Fund Administrator's decision to deny reimbursement, but it is actually the Bureau that authorizes or denies reimbursement requests, *2020 Supply Chain Order*, 35 FCC Rcd 14284, 14336, para. 121, and we therefore treat Viaero's Letter as a request for the Bureau to reconsider its own decision under 47 CFR § 1.106(a)(1).

[19] 47 CFR § 1.50004(a).

[20] Viaero Letter at 1-2.

network vendor it did not confirm that the {[ ]} equipment would be compatible with the {[ ]} equipment, which was why it had to buy the {[ ]} equipment as a replacement.[21] The Bureau granted Viaero's reimbursement claim for the {[ ]} equipment as being reasonably incurred to replace Huawei equipment. However, we cannot conclude that the costs for the {[ ]} equipment were also reasonably incurred, because they are duplicative of the costs for the {[ ]} equipment. This duplication of costs was the result of Viaero choosing {[ ]} as its primary network vendor, and was avoidable if Viaero had planned differently to ensure compatibility of equipment. Accordingly, on the facts here, we cannot say the costs for the {[ ]} equipment were reasonably incurred.

8. In addition, the Bureau has a statutory obligation to prevent waste, fraud, and abuse in the Reimbursement Program,[22] and denying reimbursement for the {[ ]} equipment is necessary to prevent waste. Viaero asserts that its purchase of {[ ]} equipment was reasonable because at the time of purchase, it had a good-faith, reasonable belief that the {[ ]} equipment would be compatible with the equipment of whatever primary network vendor Viaero ultimately chose.[23] Regardless of that belief, however, Viaero did not confirm that the {[ ]} equipment would be compatible with the {[ ]} equipment. Further, even if that failure was inadvertent, the fact remains that Viaero was reimbursed for the {[ ]} equipment it used to replace the {[ ]} equipment. The Bureau concludes that reimbursing Viaero for duplicative sets of equipment to replace a single set of Huawei equipment would waste Reimbursement Program resources that could be used for other purposes, such as replacing other Huawei equipment in Viaero's network.[24] This is an independent basis for denying reimbursement.

9. Viaero raises a number of other arguments in its request for reconsideration, which we now address. First, Viaero argues that reimbursement of the {[ ]} equipment would not increase its overall funding allocation from the Reimbursement Program. But even if reimbursing Viaero for both sets of equipment would not increase the overall amount of reimbursement funding allocated to Viaero, that has no bearing on the how we apply the "costs reasonably incurred" standard to specific costs. As discussed above, the costs for the {[ ]} equipment were not reasonably incurred because they were duplicative and that duplication was avoidable, and because allowing double reimbursement would improperly waste Reimbursement Program resources. Moreover, the amount allocated to a recipient of the Reimbursement Program is the maximum amount it can be reimbursed for costs reasonably incurred. It is not an amount that recipients are guaranteed or entitled to recover, and recipients cannot recover for costs that do not meet the "costs reasonably incurred" standard (e.g., costs ineligible for reimbursement). Reimbursing Viaero for costs not reasonably incurred would undermine the Reimbursement Program's integrity and fail to protect the Program from waste, fraud, and abuse.

10. Second, we reject Viaero's argument that nothing in the Commission's orders or rules expressly prohibits the expenditure of funds for interim equipment. While the orders and rules do not expressly contemplate whether interim equipment may be found reasonable and thus reimbursable, the *2021 Supply Chain Order* did expound on the "costs reasonably incurred" standard with regard to technology upgrades. In that Order, the Commission directed the Bureau, with the assistance of the Fund Administrator, to first consider whether the cost is typically incurred when transitioning from covered communications equipment and services to a replacement.[25] Upgrade costs incurred beyond the cost of

[21] *Id*.

[22] 47 U.S.C. § 1603(e)(1).

[23] Viaero Letter at 3.

[24] *See 2020 Supply Chain Order* 35 FCC Rcd at 14335, para. 120 (one purpose of the reasonableness standard is to "ensure that excessive, unreasonable costs do not jeopardize the available funding needed by all participating providers").

[25] *2021 Supply Chain Order*, 36 FCC Rcd at 11994, para. 89.

comparable replacement are borne by the provider.[26] In this context, Viaero argues that the costs for the {[ ]} equipment constitutes interim equipment and should be reimbursable. However, the {[ ]} equipment was not equipment necessary to transition from covered equipment to a replacement, but rather was supposed to serve as the replacement until it was deemed incompatible with other replacement equipment that Viaero purchased. Viaero has already received reimbursement for the reasonably incurred costs of its replacement equipment.

11. Moreover, the Bureau's Frequently Asked Questions (FAQs) regarding the Reimbursement Program address the use of temporary/interim facilities and this FAQ supports our interpretation of the "costs reasonably incurred" standard above. In response to the question "Are temporary/interim facilities reimbursable?," the FAQs state that "if a provider requires interim facilities to meet its removal, replacement, or disposal term, or avoid prolonged down-time during the transition, then interim facilities may be reimbursable. Circumstances will be considered on a case-by-case basis . . . ."[27] Viaero asserts that {[ ]}[28] Viaero then contends that while the{[ ]} equipment was originally intended to be permanent equipment, it became "interim" equipment when it had to be replaced due to incompatibility, and therefore should be reimbursable under the approach described in the FAQ.[29] We disagree. The FAQ merely states that requests for reimbursement of interim facilities may be granted and will be considered on a case-by-case basis.[30] The FAQ does not state that temporary or interim facilities will always be deemed reimbursable. In addition, it is not clear that the {[ ]} equipment would qualify as "interim" facilities. Although "interim" facilities are not defined, the FAQ refers to "temporary/interim equipment" used to help a recipient meet its removal, replacement, and disposal term deadline, or to avoid prolonged downtime during the transition to new equipment.[31] In other words, it contemplates equipment that was always intended to be temporary and was installed only to help meet the term deadline or prevent outages.[32] That is not the situation here. To the contrary, Viaero asserts that the {[ ]} equipment was purchased with the intent of being permanent replacement equipment, and it was replaced only because it was incompatible with the equipment of the primary vendor that Viaero later chose for its network.[33] In other words, the {[ ]} equipment was not intended to be interim equipment, and became duplicative equipment as a result of Viaero's choice of {[ ]} as its primary network vendor. and failure to determine in advance whether the {[ ]} equipment would be compatible with the primary vendor's equipment.

12. Third, Viaero argues that it had a good-faith, reasonable belief that the {[ ]} equipment would be a permanent replacement for the Huawei multiplexing equipment and did not learn until much later that the {[ ]} equipment was not compatible with the primary network vendor's

[26] *Id*.

[27] Secure and Trusted Communications Networks Reimbursement Program: Frequently Asked Questions, https://docs.fcc.gov/public/attachments/DA-23-991A2.pdf, last visited Jan. 16, 2024 (Reimbursement Program FAQs).

[28] Viaero Letter at 2-3.

[29] *Id*.

[30] Reimbursement Program FAQs (stating, in response to question "Are temporary/interim facilities reimbursable?" that "Circumstances will be considered on a case-by-case basis.")

[31] *Id*. (response to question "Are temporary/interim facilities reimbursable?").

[32] *See Incentive Auction Order*, 29 FCC Rcd at 6823-24, para. 627 (stating that interim facilities may be used for temporary operations for a station or to meet a construction deadline or to avoid prolonged periods off the air while repacking changes are made).

[33] Viaero Letter at 2-3.

equipment.[34] But even if Viaero acted in good faith, that does not change the fact that it exercised its business judgment to purchase two sets of equipment, one of which ultimately proved to be incompatible, to replace one set of Huawei equipment, and now seeks full reimbursement for both replacement sets. As discussed above, while Viaero describes this as an unforeseen circumstance, the question remains whether Viaero or the Reimbursement Program should bear the cost of the duplicative equipment. We find that it would be unreasonable for the Reimbursement Program to bear the cost of both sets of equipment, and doing so could amount to waste of Reimbursement Program resources.

13. For these reasons, we deny Viaero's request to reconsider our decision to deny reimbursement for the {[ ]} equipment at issue.

IV. ORDERING CLAUSES

14. 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), section 4(c)(1)(a) of the Secure and Trusted Communications Networks Act, as amended, 47 U.S.C. § 1603(c)(1)(A), and sections 0.204, 0.291, 1.106, and 1.50004(a) of the Commission's rules, 47 CFR §§ 0.204, 0.291, 1.106, 1.50004(a), the request for reconsideration filed by NE Colorado, Inc. dba Viaero Wireless is DENIED.

15. IT IS FURTHER ORDERED that, pursuant to the authority delegated in section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau

[34] *Id*. at 3.

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 24-56
January 18, 2024

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES REGION 6 (NORTHERN CALIFORNIA) TO HOLD 700 MHZ AND 800 MHZ REGIONAL PLANNING COMMITTEE MEETINGS

PS Docket 23-237 and WT Docket 02-378

The Region 6 (Northern California)[1] Regional Planning Committees (RPC's) will hold two consecutive planning meetings on Thursday, February 8, 2024. Beginning at 1:00 p.m (PST), the 700 MHz RPC meeting will convene at the Tracy Community Center, 950 East St, Tracy, CA 95376. The 800 MHz RPC meeting will convene immediately following the conclusion of the 700 MHz RPC meeting. Attendance in-person is highly encouraged however, those who are unable to attend in-person can participate via Zoom as follows.

- ZOOM Link: https://zoom.us/j/95316874334 (The moderator will let you into the meeting just before it begins. Please be sure that your name is entered correctly upon entering so we may identify you to the other attendees.)
- To join the ZOOM meeting manually: http://join.zoom.us; Meeting ID: 953 1687 4334

The agenda for both the 700 MHz and 800 MHz RPC meetings include:

- Call to Order and introductions
- Election of Chair and Vice Chair to replace retired Vice Chair mid-term
- Review of open committee positions and elections to fill open positions
- Establish working group to review and make any necessary updates to Bylaws
- Discuss Plan and creation of Plan revision working groups

Both Region 6 RPC meetings are open to the public. All public safety providers in Region 6 may utilize these frequencies. It is essential that 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 allotment 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 6 should plan to attend. For further information, please contact:

John Lemmon, Chair
Region 6 Regional Planning Committee, 700MHz and 800 MHz
State of California Governor's Office of Emergency Services
Public Safety Communications Office

[1] Region 6 (Northern California) includes forty-eight (48) counties of California situated north of the northernmost borders of San Luis Obispo, Kern, and San Bernardino counties.

601 Sequoia Pacific Boulevard
Sacramento, California 95811
(916) 657-6153
Email: john.lemmonpsc@gmail.com
john.lemmon@caloes.ca.gov

- FCC -

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-57
Released: January 18, 2024

WIRELINE COMPETITION BUREAU ANNOUNCES THAT A RULE ADOPTED IN THE 2022 ICS ORDER REQUIRING CERTAIN TRS OBLIGATIONS IS NOW EFFECTIVE

WC Docket Nos. 23-62, 12-375

By this Public Notice, the Wireline Competition Bureau (Bureau) announces that the Office of Management and Budget (OMB) has approved the new information collection requirements associated with section 64.6040(c) of the Commission's rules,[1] which was adopted in the Commission's *2022 ICS Order*.[2] Those requirements are now effective.[3]

In the *2022 ICS Order*, the Commission adopted rules to improve access to communications services for incarcerated people with communication disabilities.[4] The Commission determined, among other things, that some of these rules, including section 64.6040(c), which requires inmate calling services providers to take certain actions to facilitate the provision of advanced forms of Telecommunications Relay Service (TRS) in correctional facilities, required review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA).[5] The Commission stated that section 64.6040(c) would not become effective until OMB completed any review required under the PRA and that the Commission would provide an effective date by subsequent Public Notice.[6]

The relevant information collection, OMB Control No. 3060-1222,[7] was submitted to OMB for

[1] 47 CFR § 64.6040(c).

[2] *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Fourth Report and Order and Sixth Further Notice of Proposed Rulemaking, 37 FCC Rcd 11900 (2022) (*2022 ICS Order*).

[3] Federal Communications Commission, *Rates for Interstate Inmate Calling Services*, 89 Fed. Reg. 269 (Jan. 3, 2024) (*January 3 ICS Effective Date Notice*), *modified by* Federal Communications Commission, *Rates for Interstate Inmate Calling Services; Correction*, 89 Fed. Reg. 2514 (Jan. 16, 2024) (*January 16 ICS Effective Date Notice*). The *January 16 ICS Effective Date Notice* corrected the announcement of the effective date in the *January 3 ICS Effective Date Notice* to delay the applicability of section 64.6040(c) until January 16, 2024.

[4] *See 2022 ICS Order, passim*.

[5] *See 2022 ICS Order*, 37 FCC Rcd at 11967, para. 173; *see also infra* n.8 (describing the PRA status of these sections). The Commission also determined that sections 64.611(k)(1)(iv)-(v) and 64.6060(a)(5)-(7) required PRA approval by OMB. 47 CFR §§ 64.611(k)(1)(iv)-(v), 64.6060(a)(5)-(7).

[6] *See 2022 ICS Order*, 37 FCC Rcd at 11967, para. 173.

[7] This information collection, OMB Control No. 3060-1222, is titled "Inmate Calling Services (ICS) Annual Reporting, Certification, and Other Requirements," and sets out the information collection requirements for the Annual Reports filed by ICS providers. These reports enable the Commission to, among other things, monitor and

(continued….)

review; and the collection, including the information requirements associated with section 64.6040(c), was approved by OMB on December 14, 2023.[8] On January 16, 2024, the Commission published a notice in the Federal Register indicating that section 64.6040(c) was effective and applicable as of January 16, 2024.[9] Accordingly, the effective date for section 64.6040(c) is January 16, 2024.

For additional information regarding this matter, contact William Kehoe, Pricing Policy Division, Wireline Competition Bureau, (202) 418-7122, or email William.Kehoe@fcc.gov.

- FCC -

(Continued from previous page)
track trends in the ICS marketplace, increase provider transparency, and ensure compliance with the Commission's rules. The release of the *2022 ICS Order* necessitated a revision of this collection because of the new rules that improve access to communications services for incarcerated people with communication disabilities.

[8] *See* Notice of Office of Management and Budget Action for OMB Control No. 3060-1222 (approved Dec. 14, 2023). OMB approved section 64.611(k)(1)(i)-(iii) on December 21, 2023, and that rule is now effective. *See* Federal Communications Commission, *VRS and IP CTS—Commencement of Pending User Registration; Rates for Interstate Inmate Calling Services*, 88 Fed. Reg. 88257 (Dec. 21, 2023).

[9] *January 16 ICS Effective Date Notice* at 2514. Under the *January 16 ICS Effective Date Notice*, section 64.6040(c) became "applicab[le]," and therefore effective, as of January 16, 2024.

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Daniel S. Stratemeyer	)	Facility ID 89496
Licensee of KZMA(FM), Naylor, Missouri,	)	FRN: 0006178073
	)	
and	)	
	)	Facility ID 63816
WRIK(AM), Brookport, Illinois	)	FRN: 0006178073

ORDER TO PAY OR TO SHOW CAUSE

Adopted: January 18, 2024 **Released: January 19, 2024**

By the Chief, Media Bureau and the Managing Director, Office of Managing Director:

I. INTRODUCTION

1. By this Order to Pay or to Show Cause, we initiate a proceeding to revoke the licenses held by Daniel S. Stratemeyer (Licensee) for WRIK(AM), Brookport, Illinois, and KZMA(FM), Naylor, Missouri (Stations) respectively, for failure to pay delinquent regulatory fees and associated interest, administrative costs, and penalties owed to the Federal Communications Commission (Commission). For the reasons set forth below, we direct Licensee to pay the overdue regulatory fees, including any associated interest, penalties, and administrative costs, or show cause why the payment demanded is inapplicable or should otherwise be waived or deferred.

II. DISCUSSION

2. Under section 9 of the Communications Act of 1934, as amended (Act), and section 1.1151 of the Commission's rules (Rules), the Commission is required to "assess and collect regulatory fees" to recover the cost of carrying out the functions of the Commission."[1] When the required payment is received late or is incomplete, the Commission must assess a penalty equal to "25 percent of the amount of the fee which was not paid in a timely manner."[2]

3. For fiscal year (FY) 2010, the deadline for paying regulatory fees was August 31, 2010;[3] for fiscal year (FY) 2012, it was September 13, 2012;[4] and for FY 2013, it was September 20, 2013.[5] When Licensee failed to pay or only partially paid its regulatory fees by these deadlines, the Commission assessed charges that included the statutory late payment penalty required by the Act[6] and section 1.1164

[1] 47 U.S.C. § 159(a)(1); 47 CFR § 1.1151.

[2] 47 U.S.C. § 159A(c)(1); 47 CFR § 1.1164.

[3] *Payment Methods and Procedures for Fiscal Year 2010 Regulatory Fees*, Public Notice, DA 10-1450, 25 FCC Rcd 10670 (OMD August 9, 2011).

[4] *Payment Methods and Procedures for Fiscal Year 2012 Regulatory Fees*, Public Notice, DA 12-1294, 27 FCC Rcd 9204 (OMD August 13, 2012).

[5] *Payment Methods and Procedures for Fiscal Year 2013 Regulatory Fees*, Public Notice, DA 13-1796, 28 FCC Rcd 12635 (OMD September 4, 2013).

[6] 47 U.S.C. § 159(c)(3) (1993); 47 U.S.C. § 159A(c)(1) (2018). The RAY BAUM'S Act, Repack Airwaves Yielding Better Access for Users of Modern Services Act of 2018, Pub. L. No. 115-141, 132 Stat. 348, 1095, modified section 9 of the Act and added a new section 9A. Prior to October 1, 2018, when the RAY BAUM'S Act

(continued…)

of the Rules,[7] and interest, penalties, and administrative costs required by section 3717 of the Debt Collection Improvement Act of 1996 (the DCIA), section 9A(c)(2) of the Act and section 1.1940 of the Rules.[8]

4. The Commission's records show that Licensee currently has unpaid regulatory fee debt for WRIK(AM) of $4,366.06 for FY 2010; $4,385.37 for FY 2012; and $4,369.89 for FY 2013; and for KZMA(FM) of $3,995.36 for FY 2010; $3,912.93 for FY 2012; and $3,920.09 for FY 2013. Additional charges will continue to accrue on these debts until they are paid in full. The Commission sent Licensee demand letters in accordance with the requirements of the DCIA demanding payment of Licensee's delinquent regulatory fees.[9] When Licensee did not pay these regulatory fee debts, the Commission transferred all of the foregoing regulatory fee debts to the United States Department of Treasury (Treasury) for collection.[10] At the Commission's request, the United States Department of Treasury has returned those regulatory fee debts to the Commission for further collection. Additionally, please note that our records show there is an overpayment of $2,613.03 under this FRN,[11] which the Commission will apply to reduce Licensee's delinquent regulatory fee debt, upon written instruction from Licensee.[12]

5. The Commission has authority under section 9A(c)(4) of the Act and section 1.1164(f) of the Rules to revoke licenses and authorizations for failure to pay regulatory fees (or related interest and penalties) in a timely fashion. Accordingly, we require Licensee to file with the Media Bureau documented evidence within sixty (60) calendar days of the date of this Order that full payment of all outstanding regulatory fee debt has been made or show cause why the payment is inapplicable or should be waived or deferred.[13] Licensee is hereby notified that failure to provide such evidence of payment or to show cause within the time specified may result in revocation of Licensee's license for the Stations. Additionally, in order to apply the overpayment to an outstanding balance, Licensee must instruct the Commission to what debt the overpayment should be applied.

6. Under section 9A(c)(4)(C) of the Act and section 1.1164(f) of the Rules,[14] an adjudicatory hearing will not be designated unless Licensee presents a substantial and material question of

---

became effective, section 9(c)(1) set forth the penalties for late payment of regulatory fees. As amended by the RAY BAUM's Act, section 9A(c)(1) now sets forth those penalties.

[7] 47 CFR § 1.1164.

[8] 31 U.S.C. § 3717; 47 U.S.C. § 159A(c)(2); 47 CFR § 1.1940.

[9] *See* 31 U.S.C. § 3711; 31 CFR § 901.2. In addition to the demand letters, the Media Bureau notified Licensee of its delinquency in paying the regulatory fees owed by the Licensee. Emails from Robin Lott, Audio Division, FCC Media Bureau to Daniel S. Stratemeyer (Apr. 6, 2023 8:41 AM EDT and 11:26 AM EDT).

[10] *See* 31 U.S.C. § 3711(g); 31 CFR §§ 285.12(c), 901.1; 47 CFR § 1.1917.

[11] The overpayment consists of $2,613.03 made by Licensee to the Treasury that included Treasury fees. When the Treasury returned the Licensee's regulatory fee debts to the Commission, it also sent the $2,613.03 to the Commission.

[12] Licensee may request that the Commission apply the $2,613.03 payment to reduce its delinquent regulatory fee debt by electronic transmission to Cheryl.Collins@fcc.gov or Theresa.Meeks@fcc.gov. Licensee must include its FRN in the request. Upon receipt of the request, the Commission will apply the $2,613.03 to Licensee's delinquent debt in accordance with 47 CFR § 1.1940(f).

[13] The Commission may waive, reduce, or defer payment of fee debt where good cause is shown and where waiver, reduction or deferral would promote the public interest. The Commission interprets this provision narrowly, granting relief only when a requesting party has shown extraordinary circumstances outweighing the public interest in recovering the cost of the Commission's regulatory services. A party seeking a waiver for financial hardship must conclusively prove financial hardship, providing copies of all such financial documents as are necessary to show that it lacks sufficient funds to pay its regulatory fees and maintain its service to the public. *Assessment and Collection of Regulatory Fees for Fiscal Year 2019*, MD Docket 19-105, Report and Order and Further Notice of Proposed Rulemaking, 34 FCC Rcd 8189, 8207-08, paras. 49-51 (2019).

[14] 47 U.S.C. § 159A(c)(4)(C)(i); 47 CFR § 1.1164(f)(1).

fact. Further, disposition of any adjudicatory hearing will be based upon written evidence only, and Licensee will bear the burden to introduce evidence and to provide proof in any such hearing.[15] Unless the Licensee substantially prevails in the hearing, the Commission may assess the Licensee for the costs of such hearing.[16]

7. To the extent that Licensee is a respondent in other administrative proceedings, both before this agency and other federal agencies, action in this proceeding is without prejudice to action in those proceedings. Further, the existence of any such proceedings and matters raised therein are not considered in this proceeding.

III. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to section 9A(c)(4) of the Act and sections 0.11, 0.61, 0.231, 0.283 and 1.1164(f) of the Rules,[17] Daniel S. Stratemeyer is hereby **ORDERED TO PAY TO THE FEDERAL COMMUNICATIONS COMMISSION** within sixty (60) calendar days of the date of this Order the outstanding regulatory fees for FYs 2010, 2012, and 2013, **OR SHOW CAUSE** to the Commission within sixty (60) calendar days of the date of this Order why these regulatory fees are inapplicable or should otherwise be waived or deferred.

9. **IT IS FURTHER ORDERED** that payment of the delinquent regulatory fee debt must be made through the Commission's Registration System (CORES)[18] or by wire transfer, and must include the FRNs referenced above. Additional wire transfer instructions are as follows:

ABA Routing Number 021030004

Receiving Bank:
TREAS NYC
33 Liberty St.
New York, NY 10045

(BNF) Beneficiary: FCC
Account #: 27000001
OBI Field (skip one space between each information item)

Daniel S. Stratemeyer must provide the Payer FRN (if different than the FRN referenced above) and a contact phone number.

Daniel S. Stratemeyer must fax a copy of the wire transfer confirmation to the FCC at (202) 418-2843 or send the wire transfer confirmation copy to the FCC via email to RROGWireFaxes@fcc.gov on the same day the wire transfer is initiated.

10. **IT IS FURTHER ORDERED** that Daniel S. Stratemeyer must submit a completed FCC Form 159 (Remittance Advice) at the time of payment. The FCC Form 159 must be faxed to the FCC at (202) 418-2843. An FCC Form 159 and detailed instructions for completing the form may be obtained at http://www/fcc.gov/Forms/Forms 159/159.pdf. When completing the FCC Form 159, Daniel S. Stratemeyer must enter its FRN in block number 23A (call sign/other ID) and enter the following payment codes for the fiscal years involved in block number 24A (payment type code): for WRIK(AM), 1037 (for FY 2010); 1237 (for FY 2012); and 1337 (for FY 2013); and for KZMA(FM), 1042 (for FY 2010); 1242 (for FY 2012); and 1342 (for FY 2013).

[15] 47 U.S.C. § 159A(c)(4)(C)(ii); 47 CFR § 1.1164(f)(2).

[16] 47 U.S.C. § 159A(c)(4)(C)(ii)(iii) ; 47 CFR § 1.1164(f)(3).

[17] 47 U.S.C. § 159A(c)(4); 47 CFR §§ 0.11, 0.61, 0.231, 0.283 and 1.1164(f).

[18] https://apps.fcc.gov/cores/userLogin.do

11. Any written response must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to section 1.16 of the Commission's rules.[19] The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street NE, Washington DC 20554, ATTN: Albert Shuldiner, Chief, Audio Division, Media Bureau. Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.[20] A courtesy copy emailed to Alexander.Sanjenis@fcc.gov will 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.

12. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by registered mail, return receipt requested, to Daniel S. Stratemeyer, c/o Jason D. Crockett, P.O. Box 62960-4903, Metropolis, IL 62960-4903.

FEDERAL COMMUNICATIONS COMMISSION

Holly Saurer
Chief, Media Bureau

Mark Stephens,
Managing Director, Office of Managing Director

[19] 47 CFR § 1.16.

[20] 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).

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. 24-59

Report No. SAT-01792 **Friday January 19, 2024**

Satellite Licensing Division and Satellite Programs and Policy Division Information

Actions Taken

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

SAT-AMD-20230616-00143 E S2179 EchoStar Satellite Services L.L.C.
Amendment
Grant of Authority Effective Date: 01/12/2024

Nature of Service: Fixed Satellite Service

On January 12, 2024, the Satellite Programs and Policy Division granted, with conditions, the modification request of EchoStar Satellite Services, LLC, to extend the license term for the EchoStar 9 space station until September 30, 2024. EchoStar 9 operates from the 120.9° W.L. orbital location and uses the 11.7-12.2 GHz, 18.3-18.5 GHz, 18.6-18.8 GHz, 19.7-19.9 GHz, and 20.0-20.2 GHz (space-to-Earth), and 14.0-14.5 GHz, 28.4-28.6 GHz, 29.3-29.7 GHz, and 29.8-30.0 GHz (Earth-to-space) frequencies. Telemetry, tracking, and command is performed using the 11705.5 MHz and 12198 MHz (space-to-Earth), and 14003 MHz and 14497 MHz (Earth-to-space) center frequencies.

SAT-AMD-20231220-00321 E S3182 Spire Global, Inc.
Amendment
Grant of Authority Effective Date: 01/16/2024

Nature of Service: Mobile Satellite Service, Other

On January 16, 2024, the Satellite Programs and Policy Division granted, with conditions, Spire Global Inc.'s request for authority to construct, deploy, and operate three NGSO satellites, Hubble 1, Hubble 2, and Hubble 3. The satellites are authorized to operate at an altitude of 525 km (± 20 km) with a 97.5 degree inclination. Spire is authorized to operate using the 2482.710675-2483.424 MHz band (Earth-to-space) for reception from a single experimental earth station. Spire is also authorized to operate the satellites in the 402-403 MHz band (center frequency 402.79 MHz, 15 kHz emission bandwidth (Earth-to-space) (space-to-Earth)) for telemetry, tracking, and command backup, in the 2020-2025 MHz band (center frequency 2022.5 MHz 5 MHz emission bandwidth (space-to-Earth)) for telemetry and data downlink, in the 2025-2110 MHz (center frequency 2032.5 MHz 1 MHz emission bandwidth (Earth-to-space)) for a command uplink, and in the 2200-2290 MHz (center frequency 2200.5 MHz 1 MHz emission bandwidth (space-to-Earth) (outside the U.S. only) for telemetry and data downlink. This application was granted under the streamlined small satellite procedures, 47 CFR § 25.122.

SAT-LOA-20230924-00232 E S3182 Spire Global, Inc.
Launch and Operating Authority
Grant of Authority Effective Date: 01/16/2024

Nature of Service: Mobile Satellite Service, Other

On January 16, 2024, the Satellite Programs and Policy Division granted, with conditions, Spire Global Inc.'s request for authority to construct, deploy, and operate three NGSO satellites, Hubble 1, Hubble 2, and Hubble 3. The satellites are authorized to operate at an altitude of 525 km (± 20 km) with a 97.5 degree inclination. Spire is authorized to operate using the 2482.710675-2483.424 MHz band (Earth-to-space) for reception from a single experimental earth station. Spire is also authorized to operate the satellites in the 402-403 MHz band (center frequency 402.79 MHz, 15 kHz emission bandwidth (Earth-to-space) (space-to-Earth)) for telemetry, tracking, and command backup, in the 2020-2025 MHz band (center frequency 2022.5 MHz 5 MHz emission bandwidth (space-to-Earth)) for telemetry and data downlink, in the 2025-2110 MHz (center frequency 2032.5 MHz 1 MHz emission bandwidth (Earth-to-space)) for a command uplink, and in the 2200-2290 MHz (center frequency 2200.5 MHz 1 MHz emission bandwidth (space-to-Earth) (outside the U.S. only) for telemetry and data downlink. This application was granted under the streamlined small satellite procedures, 47 CFR § 25.122.

SAT-MOD-20220624-00063 E S2179 EchoStar Satellite Services L.L.C.
Modification 08/31/2022 - 09/30/2024
Grant of Authority Effective Date: 01/12/2024

Nature of Service: Fixed Satellite Service

On January 12, 2024, the Satellite Programs and Policy Division granted, with conditions, the modification request of EchoStar Satellite Services, LLC, to extend the license term for the EchoStar 9 space station until September 30, 2024. EchoStar 9 operates from the 120.9° W.L. orbital location and uses the 11.7-12.2 GHz, 18.3-18.5 GHz, 18.6-18.8 GHz, 19.7-19.9 GHz, and 20.0-20.2 GHz (space-to-Earth), and 14.0-14.5 GHz, 28.4-28.6 GHz, 29.3-29.7 GHz, and 29.8-30.0 GHz (Earth-to-space) frequencies. Telemetry, tracking, and command is performed using the 11705.5 MHz and 12198 MHz (space-to-Earth), and 14003 MHz and 14497 MHz (Earth-to-space) center frequencies.

SAT-MOD-20230526-00125 E S2733 Intelsat License LLC
Modification
Grant of Authority Effective Date: 01/18/2024

Nature of Service: Fixed Satellite Service

On January 18, 2024, the Satellite Programs and Policy Division granted, with conditions, the request of Intelsat License LLC for modification of the authorization for the Galaxy 18 space station by extending the license term through June 2, 2028. Galaxy 18 provides fixed-satellite service from the 123.0° W.L. orbital location in the 3700-4200 MHz (space-to-Earth), 5925-6425 MHz (Earth-to-space), 11.7-12.2 GHz (space-to-Earth), and 14.0-14.5 GHz (Earth-to-space) frequency bands. Galaxy 18 conducts telemetry, tracking, and command operations using the following center frequencies: 4197.125 MHz and 4198.875 MHz (space-to-Earth); and 5926.5 MHz and 6424.5 MHz (Earth-to-space).

SAT-MOD-20230714-00170 E S2640 DIRECTV Enterprises, LLC
Modification
Grant of Authority Effective Date: 01/18/2024

Nature of Service: Fixed Satellite Service

On January 18, 2024, the Satellite Programs and Policy Division granted, with conditions, DIRECTV Enterprises, LLC's request for modification of the authorization for the D11 space station by extending the license term to December 31, 2028. The D11 space station operates from the 99.185° W.L. orbital location, and operates in the 18.3-18.8 GHz (space-to-Earth), and 28.35-28.6 GHz and 29.25-29.5 GHz (Earth-to-space) frequency bands. Telemetry, tracking, and command is conducted using the 18.30025 GHz (space-to-Earth), and 29.5704 GHz, 29.5629 GHz, and 29.56665 GHz (Earth-to-space frequencies); and 29.56165-29.57165 GHz (Earth-to-space) (back-up) center frequencies.

SAT-MOD-20230922-00231 E S2669 DIRECTV Enterprises, LLC
Modification
Grant of Authority Effective Date: 01/18/2024

Nature of Service: Other

On January 18, 2024, the Satellite Programs and Policy Division granted, with conditions, DIRECTV Enterprises, LLC's request to modify the authorization for the D9S space station by extending the license term from December 17, 2023, until July 31, 2024. The D9S space station operates at the 101.2° W.L. orbital location using the 12.2-12.7 GHz, 18.3-18.8 GHz, 19.7-20.2 GHz (space-to-Earth), and 17.3-17.8 GHz 28.35-28.6 GHz and 29.25-29.5 GHz, 29.5-30 GHz (Earth-to-space) frequency bands. Telemetry, tracking, and command operations are conducted using the 12.6955 GHz (space-to-Earth) and 17.7950 GHz (Earth-to-space) center frequencies.

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 D.C. 20554

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

DA No. 24-60

Report No. TEL-02332 **Friday January 19, 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-214-20221213-00155 E OneQode 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: 01/18/2024

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

OneQode, a Wyoming limited liability company, is wholly owned by OneQode Ltd, a Cyprus entity, which in turn is wholly owned by OneQode Holdings Limited, a Cayman Islands entity. BlockSense Limited (BlockSense), a Cayman Islands entity, has a 46% ownership interest in OneQode Holdings Limited. Prakash V, a Singapore citizen, holds a 50% ownership interest in BlockSense. Matthew Shearing, an Australian citizen, holds a 50% ownership interest in BlockSense and has de facto control of OneQode as the managing member of OneQode.

Pursuant to Commission practice, the application for international section 214 authority was referred to the relevant Executive Branch agencies for their views on any national security, law enforcement, foreign policy, or trade policy concerns related to the foreign ownership of the Applicant. On January 10, 2024, the National Telecommunications and Information Administration notified the Commission that the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Committee) "has reviewed the application and has no recommendation at this time to the Commission approving the application and no objection to the Commission granting it" and that the Committee "reserves the right to review any resulting authorization in the future to identify any additional or new risks to U.S. national security or law enforcement interests."

ITC-ASG-20230309-00029 E CenturyLink Communications, LLC

Assignment

Grant of Authority Date of Action: 01/15/2024

Current Licensee: Embarq Communications of Virginia, Inc.

FROM: Embarq Communications of Virginia, Inc.

TO: CenturyLink Communications, LLC

On March 9, 2023, CenturyLink Communications LLC (CenturyLink Communications) filed a notification of the pro forma assignment of an international section 214 authorization for the provision of global facilities-based and resale service (ITC-214-20050816-00336) from Embarq Communications of Virginia Inc. (Embarq VA) to CenturyLink Communications, effective April 1, 2014 . Prior to the transaction Embarq VA was a direct wholly owned subsidiary of Embarq Communications Inc. (Embarq) and an indirect wholly owned subsidiary of CenturyLink, Inc. In a corporate reorganization, Embarq VA was merged into Embarq which was then merged into CenturyLink Communications, with CenturyLink Communications being the surviving entity. CenturyLink Communications is a direct wholly owned subsidiary of Lumen Technologies, Inc., both Delaware entities.

ITC-ASG-20230309-00030 E CenturyLink Communications, LLC

Assignment

Grant of Authority Date of Action: 01/15/2024

Current Licensee: Embarq Communications of Virginia, Inc.

FROM: Embarq Communications, Inc.

TO: CenturyLink Communications, LLC

On March 9, 2023, CenturyLink Communications LLC (CenturyLink Communications) filed a notification of the pro forma assignment of an international section 214 authorization for the provision of global facilities-based and resale service (ITC-214-20050816-00337) from Embarq Communications Inc. (Embarq) to CenturyLink Communications, effective April 1, 2014. Prior to the transaction Embarq was an indirect wholly owned subsidiary of CenturyLink, Inc. In a corporate reorganization, Embarq was merged into CenturyLink Communications, with CenturyLink Communications being the surviving entity. CenturyLink Communications is a direct wholly owned subsidiary of Lumen Technologies, Inc., both Delaware entities.

ITC-ASG-20230309-00031 E CenturyLink Communications, LLC

Assignment

Grant of Authority Date of Action: 01/15/2024

Current Licensee: Madison River Communications Corp

FROM: Madison River Communications, LLC

TO: CenturyLink Communications, LLC

On March 9, 2023, CenturyLink Communications LLC (CenturyLink Communications) filed a notification of the pro forma assignment of an international section 214 authorization for the provision of global facilities-based and resale service (ITC-214-19980820-00614) from Madison River Communications Corp. (Madison River) to CenturyLink Communications, effective April 1, 2014. Prior to the transaction Madison River was an indirect wholly owned subsidiary of CenturyLink, Inc. In a corporate reorganization, Madison River was merged into CenturyLink Lyon 1 Corporation which was then merged into CenturyLink Communications, with CenturyLink Communications being the surviving entity. CenturyLink Communications is a direct wholly owned subsidiary of Lumen Technologies, Inc., both Delaware entities.

ITC-ASG-20230309-00032 E CenturyLink Communications, LLC

Assignment

Grant of Authority Date of Action: 01/15/2024

Current Licensee: CenturyTel Long Distance, Inc.

FROM: CenturyTel Long Distance, Inc.

TO: CenturyLink Communications, LLC

On March 9, 2023, CenturyLink Communications LLC (CenturyLink Communications) filed a notification of the pro forma assignment of an international section 214 authorization for the provision of global resale service (ITC-214-19990224-00099) from CenturyTel Long Distance, Inc. (CenturyTel) to CenturyLink Communications, effective April 1, 2014. Prior to the transaction CenturyTel was a direct wholly owned subsidiary of CenturyLink, Inc. In a corporate reorganization, CenturyTel was merged into CenturyLink Communications, with CenturyLink Communications being the surviving entity. CenturyLink Communications is a direct wholly owned subsidiary of Lumen Technologies, Inc., both Delaware entities.

ITC-ASG-20230309-00033 E CenturyLink Communications, LLC

Assignment

Grant of Authority Date of Action: 01/15/2024

Current Licensee: Qwest LD Corp.

FROM: Qwest LD Corp.

TO: CenturyLink Communications, LLC

On March 9, 2023, CenturyLink Communications LLC (CenturyLink Communications) filed a notification of the pro forma assignment of an international section 214 authorization for the provision of global facilities-based and resale service (ITC-214-20021009-00495) from Qwest LD Corp. (Qwest LD) to CenturyLink Communications, effective April 1, 2014. Prior to the transaction Qwest LD was an indirect wholly owned subsidiary of CenturyLink, Inc. In a corporate reorganization, Qwest LD was merged into CenturyLink Communications, with CenturyLink Communications being the surviving entity. CenturyLink Communications is a direct wholly owned subsidiary of Lumen Technologies, Inc., both Delaware entities.

ITC-ASG-20230309-00034 E CenturyLink Communications, LLC

Assignment

Grant of Authority Date of Action: 01/15/2024

Current Licensee: CenturyTel Fiber Company II, LLC d/b/a LightCore, a CenturyTel Company

FROM: CenturyTel Fiber Company II, LLC d/b/a LightCore, a CenturyTel Company

TO: CenturyLink Communications, LLC

On March 9, 2023, CenturyLink Communications LLC (CenturyLink Communications) filed a notification of the pro forma assignment of international section 214 authorization for the provision of global resale service (ITC-214-20100317-00102) from CenturyTel Fiber Company II, LLC (CenturyTel Fiber) to CenturyLink Communications, effective April 1, 2014. Prior to the transaction CenturyTel Fiber was a direct wholly owned subsidiary of CenturyLink, Inc. In a corporate reorganization, CenturyTel Fiber was merged into CenturyLink Communications, with CenturyLink Communications being the surviving entity. CenturyLink Communications is a direct wholly owned subsidiary of Lumen Technologies, Inc., both Delaware entities.

ITC-ASG-20230309-00035 E CenturyLink Communications, LLC

Assignment

Grant of Authority Date of Action: 01/15/2024

Current Licensee: Gulf Long Distance LLC

FROM: Gulf Long Distance LLC

TO: CenturyLink Communications, LLC

On March 9, 2023, CenturyLink Communications LLC (CenturyLink Communications) filed a notification of the pro forma assignment of an international section 214 authorization for the provision of global facilities-based and resale service (ITC-214-19930622-00106) from Gulf Long Distance LLC (Gulf LD) to CenturyLink Communications, effective April 1, 2014. Prior to the transaction Gulf LD was an indirect wholly owned subsidiary of CenturyLink, Inc. In a corporate reorganization, Gulf LD was merged into CenturyLink Lyon 1 Corporation which was then merged into CenturyLink Communications, with CenturyLink Communications being the surviving entity. CenturyLink Communications is a direct wholly owned subsidiary of Lumen Technologies, Inc., both Delaware entities.

ITC-ASG-20230309-00036 E CenturyLink Communications, LLC

Assignment

Grant of Authority Date of Action: 01/15/2024

Current Licensee: Coastal Long Distance Services LLC

FROM: Coastal Long Distance Services LLC

TO: CenturyLink Communications, LLC

On March 9, 2023, CenturyLink Communications LLC (CenturyLink Communications) filed a notification of the pro forma assignment of an international section 214 authorization for the provision of global facilities-based and resale service (ITC-214-19930720-00130) from Coastal Long Distance Services, LLC (Coastal LD) to CenturyLink Communications, effective April 1, 2014. Prior to the transaction Coastal LD was an indirect wholly owned subsidiary of CenturyLink, Inc. In a corporate reorganization, Coastal LD was merged into CenturyLink Lyon 1 Corporation which was then merged into CenturyLink Communications, with CenturyLink Communications being the surviving entity. CenturyLink Communications is a direct wholly owned subsidiary of Lumen Technologies, Inc., both Delaware entities.

ITC-ASG-20231218-00152 E Claro video, LLC

Assignment

Grant of Authority Date of Action: 01/15/2024

Current Licensee: Telmex Holdings, LLC

FROM: Telmex Holdings, LLC

TO: Claro video, LLC

On December 18, 2023, Claro video, LLC (Claro video) filed a notification of the pro forma assignment of an international section 214 authorization for the provision of global resale service (ITC-214-19970227-00124) from Telmex Holdings, LLC (Telmex) to Claro video, effective December 7, 2023. In a corporate reorganization, Telmex assigned its international 214 authorization to its affiliate Claro video, both Delaware limited liability companies. Both Telmex and Claro video are indirect wholly owned subsidiaries of América Móvil, S.A.B. de C.V., a Mexico entity.

SURRENDER

ITC-214-19910624-00006 Guam Cable Group, Inc.

Guam Cable Group, Inc. notified the Commission of the surrender of its international section 214 authorization.

ITC-214-19921211-00121 Guam Cable Group, Inc.

Guam Cable Group, Inc. notified the Commission of the surrender of its international section 214 authorization.

ITC-214-19930308-00039 BT Americas Holdings Inc.

BT Americas Holdings Inc. notified the Commission of the surrender of its international section 214 authorization.

ITC-214-19930315-00261 CenturyLink Communications, LLC

CenturyLink Communications, LLC notified the Commission of the surrender of its international section 214 authorization.

ITC-214-19930622-00106 CenturyLink Communications, LLC

CenturyLink Communications, LLC notified the Commission of the surrender of its international section 214 authorization.

ITC-214-19930720-00130 CenturyLink Communications, LLC

CenturyLink Communications, LLC notified the Commission of the surrender of its international section 214 authorization.

ITC-214-19940210-00065 Verizon Americas LLC

Verizon Americas LLC notified the Commission of the surrender of its international section 214 authorization.

ITC-214-19940223-00091 Verizon Americas LLC

Verizon Americas LLC notified the Commission of the surrender of its international section 214 authorization.

ITC-214-19940829-00393 CenturyLink Communications, LLC

CenturyLink Communications, LLC notified the Commission of the surrender of its international section 214 authorization.

ITC-214-19950613-00022 Guam Cable Group, Inc.

Guam Cable Group, Inc. notified the Commission of the surrender of its international section 214 authorization.

ITC-214-19960215-00016 CenturyLink Communications, LLC

CenturyLink Communications, LLC notified the Commission of the surrender of its international section 214 authorization.

ITC-214-19960329-00130 MCI Communications Services LLC

MCI Communications Services LLC notified the Commission of the surrender of its international section 214 authorization.

ITC-214-19960730-00354 Guam Cable Group, Inc.

Guam Cable Group, Inc. notified the Commission of the surrender of its international section 214 authorization.

ITC-214-19960802-00363 BT Americas Holdings Inc.

BT Americas Holdings Inc. notified the Commission of the surrender of its international section 214 authorization.

ITC-214-19960802-00365 BT Americas Holdings Inc.

BT Americas Holdings Inc. notified the Commission of the surrender of its international section 214 authorization.

ITC-214-19960909-00433 BT Americas Holdings Inc.

BT Americas Holdings Inc. notified the Commission of the surrender of its international section 214 authorization.

ITC-214-19960916-00448 CenturyLink Communications, LLC

CenturyLink Communications, LLC notified the Commission of the surrender of its international section 214 authorization.

ITC-214-19961120-00583 DOCOMO PACIFIC, INC.

DOCOMO PACIFIC, INC. notified the Commission of the surrender of its international section 214 authorization.

ITC-214-19970602-00298 KPN B.V.

KPN B.V. notified the Commission of the surrender of its international section 214 authorization.

SURRENDER

ITC-214-19970702-00363 KPN B.V.

KPN B.V. notified the Commission of the surrender of its international section 214 authorization.

ITC-214-19970702-00369 KPN B.V.

KPN B.V. notified the Commission of the surrender of its international section 214 authorization.

ITC-214-19971031-00673 Qwest Services Corporation

Qwest Services Corporation notified the Commission of the surrender of its international section 214 authorization.

ITC-214-19971125-00739 BT Americas Holdings Inc.

BT Americas Holdings Inc. notified the Commission of the surrender of its international section 214 authorization.

ITC-214-19971216-00792 BT Americas Holdings Inc.

BT Americas Holdings Inc. notified the Commission of the surrender of its international section 214 authorization.

ITC-214-19980820-00614 CenturyLink Communications, LLC

CenturyLink Communications, LLC notified the Commission of the surrender of its international section 214 authorization.

ITC-214-19990224-00099 CenturyLink Communications, LLC

CenturyLink Communications, LLC notified the Commission of the surrender of its international section 214 authorization.

ITC-214-19990302-00194 KPN INTERNATIONAL DEVELOPMENT, INC.

KPN INTERNATIONAL DEVELOPMENT, INC. notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20010323-00152 Piedmont Communications Services, Inc

Piedmont Communications Services, Inc notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20021009-00495 CenturyLink Communications, LLC

CenturyLink Communications, LLC notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20030117-00022 CenturyLink Communications, LLC

CenturyLink Communications, LLC notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20030404-00169 Guam Cable Group, Inc.

Guam Cable Group, Inc. notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20030909-00430 Comtech Solutions LLC

Comtech Solutions LLC notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20040517-00201 DOCOMO PACIFIC, INC.

DOCOMO PACIFIC, INC. notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20040723-00514 Insight Midwest Holdings, LLC

Insight Midwest Holdings, LLC notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20050816-00336 CenturyLink Communications, LLC

CenturyLink Communications, LLC notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20050825-00347 MCV CNMI Holding Corp

MCV CNMI Holding Corp notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20070109-00014 TMP Corp.

TMP Corp. notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20100317-00102 CenturyLink Communications, LLC

CenturyLink Communications, LLC notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20100513-00197 Vind Communications Inc.

Vind Communications Inc. notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20130308-00072 M3COM, LLC

M3COM, LLC notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20131106-00300 Accoona Global LLC

Accoona Global LLC notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20141230-00330 Voice Ring, Inc.

Voice Ring, Inc. notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20150122-00012 Optivon of Florida, LLC

Optivon of Florida, LLC notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20150416-00090 Megaport (USA), Inc.

Megaport (USA), Inc. notified the Commission of the surrender of its international section 214 authorization.

SURRENDER

ITC-214-20151002-00232 CallFire, Inc.

CallFire, Inc. notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20160310-00119 Limitless Mobile Wholesale, Inc.

Limitless Mobile Wholesale, Inc. notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20210812-00120 NetZero Wireless, Inc.

NetZero Wireless, Inc. notified the Commission of the surrender of its international section 214 authorization.

ITC-MOD-20040827-00359 Verizon Business Global LLC dba Verizon Business

Verizon Business Global LLC dba Verizon Business 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. 24-61

Report No. SCL-00446 **Friday January 19, 2024**

Actions Taken Under Cable Landing License Act

Section 1.767(a) Cable Landing Licenses, Modifications, and Assignments or Transfers of Control of Interests in Cable Landing Licenses (47 CFR § 1.767(a))

By the Chief, Telecommunications and Analysis Division, Office of International Affairs:

Pursuant to an Act relating to the landing and operation of submarine cables in the United States, 47 U.S.C. §§ 34-39 (Cable Landing License Act), Executive Order No. 10530, Exec. Ord. No. 10530 reprinted as amended in 3 U.S.C. § 301, and section 1.767 of the Commission's rules, 47 CFR § 1.767, the following applications ARE GRANTED. These grants of authority are taken under section 0.261 of the Commission's rules. 47 CFR § 0.261. Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules may be filed within thirty (30) days of the date of this public notice. 47 CFR §§ 1.106, 1.115.

These applications have been coordinated with the Department of State and other Executive Branch agencies pursuant to section 1.767(b) of the Commission's rules and consistent with procedures established with the Department of State. 47 CFR § 1.767(b); see Review of Commission Consideration of Applications under the Cable Landing License Act, IB Docket No. 00-106, Report and Order, 16 FCC Rcd 22167, 22192-93, paras. 51-52 (2001) (Submarine Cable Landing License Report and Order); Commission Announces Department of State's Revised Procedures for its Consideration of Submarine Cable Landing License Applications, IB Docket No. 16-155, Public Notice, DA 22-435 (rel. Apr. 19, 2022).

This public notice serves as each cable landing licensee's Cable Landing License, or modification thereto, pursuant to the Cable Landing License Act and sections 1.767 and 1.768 of the Commission's rules. 47 CFR §§ 1.767, 1.768. Cable landing licensees should review the terms and conditions of their licenses. Failure to comply with these terms and conditions or relevant Commission rules and policies could result in fines or forfeitures.

INFORMATIVE

SCL-STA-20231221-00041 GU Holdings Inc.

On January 18, 2024, we granted the request for special temporary authority (STA) filed by GU Holdings Inc. on behalf of itself, Edge Cable Holdings USA, LLC, and PLDT Inc. (together, the "Applicants") to construct, connect, and test at their own risk those portions of the Apricot cable system in U.S. territory prior to the Commission's action on the pending cable landing license application for the Apricot cable system (SCL-LIC-20220715-00024). The Applicants acknowledge that grant of the STA will not prejudice action by the Commission on the underlying application and that the STA is subject to cancellation or modification upon notice without a hearing.

The STA expires on July 16, 2024.

Federal Communications Commission
Washington, D.C. 20554

January 19, 2024

DA 24-62

Via E-mail

Jeffrey Carlisle
Lerman Senter PLLC
2001 L Street NW, Suite 400
Washington, DC 20036
jcarlisle@lermansenter.com

Re: Review of International Section 214 Authorizations to Assess Evolving National Security, Law Enforcement, Foreign Policy, and Trade Policy Risks, IB Docket No. 23-119, MD Docket No. 23-134

Dear Mr. Carlisle:

Below, we respond to your letter, dated January 12, 2024, explaining that Windstream Holdings II, LLC (Windstream) qualifies for the exemption from the one-time collection of foreign ownership information (One-Time Information Collection) in IB Docket No. 23-119.[1] On April 20, 2023, the Commission adopted the *Evolving Risks Order and NPRM* that, among other things, requires all international section 214 authorization holders (Authorization Holders) to provide foreign ownership information in the One-Time Information Collection.[2] On August 22, 2023, the Office of International Affairs adopted an exemption (Exemption) for Authorization Holders whose applications were granted within three years prior to the deadline of the One-Time Information Collection.[3] To qualify for the Exemption:

> (1) The Authorization Holder must have filed an application for an initial International Section 214 Authorization, modification, or *substantial* (not a *pro forma* filing) assignment or transfer of control of the authorization that was reviewed by the Executive Branch agencies and was granted by the Commission on or after January 22, 2021;[4] and

[1] Letter from Jeffrey Carlisle, David Keir, and Shannon Sylvester, Counsel to Windstream Holdings II, LLC, to Marlene H. Dortch, Secretary, FCC (Jan. 12, 2024) (on file in IB Docket No. 23-119, MD Docket No. 23-134) (Windstream Letter).

[2] *Review of International Section 214 Authorizations to Assess Evolving National Security, Law Enforcement, Foreign Policy, and Trade Policy Risks; Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1109 of the Commission's Rules*, IB Docket No. 23-119, MD Docket No. 23-134, Order and Notice of Proposed Rulemaking, FCC 23-28 (Apr. 25, 2023).

[3] *Review of International Section 214 Authorizations to Assess Evolving National Security, Law Enforcement, Foreign Policy, and Trade Policy Risks; Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1109 of the Commission's Rules*, IB Docket No. 23-119, MD Docket No. 23-134, Order, DA 23-745 (Aug. 22, 2023) (*Exemption Order*).

[4] *Id.* at para. 7; *The Office of International Affairs Announces the Opening of the One-Time Information Collection Filing Window for International Section 214 Authorization Holders to Provide Foreign Ownership Information*, IB

(2) There are no Reportable Foreign Interest Holders of the Authorization Holder other than those disclosed in the application (including any amendment), and there are no changes to the Reportable Foreign Interest Holders disclosed in the application (including any amendment) as of December 23, 2023.[5]

Windstream states that "[o]n August 28, 2020, the Wireline Competition Bureau, International Bureau, Wireless Telecommunications Bureau and Office of Economics and Analytics (the "Bureaus") granted Windstream's applications for transfer of control to facilitate the company's emergence from bankruptcy."[6] Windstream adds that "[t]he Bureaus conditioned the grant on Windstream filing a Petition [for] Declaratory Ruling [(Petition)] to review and approve its foreign ownership, following the grant of the transfer of control.[7] Windstream indicates that the "Petition was granted on June 2, 2023"[8] and "while [Windstream's] transfer of control application was granted before January 22, 2021, the substantive review of Windstream's foreign ownership took place after that date pursuant to the two-step process, which included consideration of Windstream's [Petition] by the Commission and the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector."[9] Windstream states that "[g]iven that the substantive review of Windstream's foreign ownership occurred within the three year exemption period, and fully consistent with the practical objectives underpinning this relief, we respectfully submit that the exemption applies to Windstream."[10]

We agree with Windstream and interpret the first condition of the Exemption as covering Windstream. Windstream qualifies for the Exemption provided it certifies in response to the One-Time Information Collection, in accordance with the terms of the relevant certification, that there have been no new or changed Reportable Foreign Interest Holders. For further information, please contact Svantje Swider, Office of International Affairs, Telecommunications and Analysis Division, at Svantje.swider@fcc.gov or (202) 418-0772.

Docket No. 23-119, MD Docket No. 23-134, Public Notice, DA 23-1146, at 4 (OIA Dec. 13, 2023) (*Filing Window Public Notice*).

[5] *Exemption Order* at para. 7; *Filing Window Public Notice* at 4.

[6] Windstream Letter at 1.

[7] *Id.*; *see id*. (stating that "[t]he Bureaus had previously used this two-step approval process to allow a licenseholder to exit from bankruptcy quickly, while still providing for a full review of the licenseholder's foreign ownership."); *see also Applications Granted for the Transfer of Control of Windstream Holdings, Inc., Debtor-in-Possession, and Subsidiaries*, WC Docket No. 20-151, AU Docket No. 19-244, Public Notice, DA 20-985, at 8 (IB, WCB, WTB, OEA Aug. 28, 2020) ("We find, upon consideration of the record, that the proposed transfers of control and assignments under sections 214 and 310(d) of the Act will serve the public interest, convenience, and necessity, and we therefore grant the applications . . . ., conditioned upon the filing, no later than 30 days after closing the transaction authorized by this grant, of (1) a petition for declaratory ruling to exceed the aggregate foreign ownership benchmark set forth in section 310(b)(4) of the Act . . . .").

[8] Windstream Letter at 2; *see also Grant of Windstream Holdings II, LLC Petition for Declaratory Ruling*, IB Docket No. 22-129, File Nos. ISP-PDR-20201021-00010 and ISP-AMD-20230330-00005, DA 23-475, at 1 (OIA June 2, 2023).

[9] Windstream Letter at 2.

[10] *Id*. at 2.

Sincerely,

/*Denise Coca*/
Denise Coca, Chief
Telecommunications Analysis Division
Office of International Affairs

cc:

David Keir
Lerman Senter PLLC
2001 L Street NW, Suite 400
Washington, DC 20036
dkeir@lermansenter.com

Shannon Sylvester
Lerman Senter PLLC
2001 L Street NW, Suite 400
Washington, DC 20036
dkeir@lermansenter.com

Federal Communications Commission
Washington, D.C. 20554

January 19, 2024

DA 24-63
In Reply Refer to:
1800B3-IB
Released January 19, 2024

Mr. Darrick Servis, CFO
Common Frequency, Inc.
P.O. Box 4301
Davis, CA 95617
(via e-mail to **darrick@commonfrequency.org**)

Re: KQCF(FM), Chiloquin, OR
Facility ID No: 176407
File Nos. 0000162427, BSTA-20220425AAI

Dear Mr. Servis:

The Media Bureau (Bureau), in conjunction with the referenced application for license renewal,[1] has been considering the operations of KQCF(FM), Chiloquin, Oregon (Station), a noncommercial educational (NCE) broadcast station licensed to Common Frequency, Inc. (Licensee). For the reasons below, we have determined that the Station failed to operate from an authorized location for over twelve consecutive months and that its license, therefore, terminated automatically pursuant to section 312(g) of the Communications Act of 1934, as amended (Act).[2] Accordingly, we dismiss the Renewal Application as moot and delete the Station from our database.

Background

The Station's licensed facilities consist of an antenna attached to a tree in the yard of a residence (Licensed Site). Use of a tree as an antenna support structure for a broadcast station, which is uncommon but permissible if the licensee complies with our RF radiation rules, forms the basis for one of the arguments discussed herein.[3] The Station, with special temporary authority (STA) from the Bureau,

[1] File No. 0000162427 (rec. Oct. 1, 2021) (Renewal Application).

[2] 47 CFR § 312(g).

[3] Many different types of structures can be used to support communications antennas. *See* FCC Form 854, Instructions, Item 39. Licensee has used trees instead of traditional towers for this station at several locations. It states briefly that it did so because there is an airport in Chiloquin. *See* Common Frequency, Response to Letter of Inquiry (Jan. 3, 2024) (January Response) at 2. (Antennas mounted in trees are not exempt from the airport slope requirements in 47 CFR § 17.7(b), but Licensee apparently assumed it is unlikely that an airport would allow trees to obstruct air traffic.)

temporarily ceased broadcasting for three periods of almost one year each during the license term.[4] It also moved transmitter sites three times. The Station's most recent move, in November 2022, forms the basis for our conclusions herein. On January 9, 2024, upon receipt of the Bureau's inquiry into these matters, Licensee voluntarily removed the Station from the air while awaiting a Bureau determination of whether the Station's operations from November 2022 onward at the current location have been permissible.[5]

Two factors are central to our analysis. The first is section 312(g) of the Act.[6] That provision establishes that if a station fails to transmit broadcast signals for any consecutive 12-month period, its license expires at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary, except that the Commission may reinstate such a license to promote equity and fairness. Operations from an unauthorized transmitter site are not considered "broadcast signals" and are no better than silence.[7] The purpose of this provision is to ensure that stations are serving the public as authorized and not warehousing spectrum that could be used by others willing and able to do so.

The second factor is section 73.1690(b) of the Commission's rules (Rules), which identifies circumstances in which licensees must obtain Commission authority prior to modifying a station's transmission facilities.[8] Among the circumstances requiring a construction permit are:

(1) Any construction of a new tower structure for broadcast purposes, except for replacement of an existing tower with a new tower of identical height and geographic coordinates;[9] and

(2) Any change in station geographic coordinates including coordinate corrections of more than 3 seconds latitude and/or 3 seconds longitude. FM and TV directional stations must also file a construction permit application for any move of the antenna to another tower structure located at the same coordinates.[10]

---

[4] The Renewal Application identifies these periods as August 10, 2016 to August 10, 2017, June 3, 2018 to June 3, 2019, and October 27, 2019 to October 27, 2020. These periods of silence, representing about 34 percent of the license term, would be relevant if we were to consider whether the Station has met the criteria for license renewal. *See* 47 U.S.C. § 309(k). For example, the Bureau determined with respect to several other stations licensed to this Licensee that extended periods of silence warranted short-term renewals of one-year instead of the standard eight-year license term. *See, e.g., Darrick Servis,* Letter Order, DA 24-5 (MB Jan. 3, 2024) (KCFH(FM), Two Harbors, CA).

[5] *See* File No. 0000235039 (rec. Jan. 9, 2024) (describing reason for silence as a Bureau suggestion of "inadvertent out-of-compliance" with section 73.1690(b)(2) and stating that Licensee "awaits communication/direction"). Stations must operate in accordance with the parameters of a license or other authorization (such as an STA) issued by the Commission. *See* 47 U.S.C. § 301.

[6] 47 U.S.C. § 312(g), implemented by 47 CFR § 73.1740(c).

[7] *See Eagle Broad. Group, Ltd.*, Memorandum Opinion and Order, 23 FCC Rcd 588, 592, para. 9, *aff'd sub nom., Eagle Broad. Group, Ltd. v. FCC,* 563 F.3d 543 (D.C. Cir. 2009) (*Eagle*); *Absolute Broad., LLC,* Memorandum Opinion and Order, FCC 23-38, n.69 and cases cited therein (rel. May 17, 2023); *Great Lakes Community Broad., Inc.*, Memorandum Opinion and Order, 24 FCC Rcd 8239, 8244-47 (MB 2009).

[8] 47 CFR § 73.1690(b).

[9] *Id.* § 73.1690(b)(1).

[10] *Id.* § 73.1690(b)(2).

The record reflects that Licensee learned in September 2021 that the owner of the Licensed Site was selling the property and would require the Station to vacate.[11] Licensee requested and received Commission authority, expiring November 5, 2022, to operate temporarily from a site about 540 meters away (STA Site), also from a tree.[12] In October 2022, the Bureau granted a permit expiring October 2025 authorizing the Station to move to a cell tower on a permanent basis (Cell Site); Licensee has not yet constructed that facility.[13] In May 2023, about six months after expiration of the authorization for the STA Site, Licensee emailed the Bureau staff member who had granted the STA to state that the Station had resumed "normal licensed operations" on November 1, 2022.[14] The Bureau, however, observed an apparent inconsistency between that assertion and Licensee's prior statements that the Licensed Site was no longer available.[15] The Bureau attempted, by email, to clarify whether the Station's operations from November 1, 2022 onward were from an authorized location.[16] In June 2023, Licensee responded that it was operating with an antenna mounted "back at the authorized site," which it described as a "tree adjacent to the last tree it was licensed at."[17] Licensee's June Letter included a brief contention that its current facilities were authorized under section 73.1690(b)(2) of the Rules.[18] The Bureau requested additional clarification in a November 20, 2023 letter of inquiry.[19] The Bureau therein questioned whether Licensee returned to the Licensed Site and, if not, asked for further explanation of the purported relevance of section 73.1690(b)(2). That provision would, the Bureau stated, permit *correction* of misstated coordinates but not relocation of the Station's antenna.[20]

Licensee, in a January 3, 2024 response,[21] acknowledges that it did not regain use of the Licensed Site.[22] Rather, it moved the Station's antenna and transmitter to a new location (Current Site), *i.e.,* a tree belonging to a neighbor whose property borders the Licensed Site.[23] The Licensed Site and the Current

---

[11] The Station was, as a result, silent for five days in September 2021 but renegotiated its agreement with the owner and returned to the air temporarily, pending a move. *See* File No. BLSTA-20210902AAE (filed Sept. 2, 2021, dismissed Oct. 5, 2021); Resumption of Operations Notification (Oct. 5, 2021). That brief period off air, as well as two other short periods of silence during site moves, did not require notification to or authority from the Commission. *See* 47 CFR § 73.1740.

[12] *See* File No. BSTA-20220425AAI (filed Apr. 25, 2022, granted May 9, 2022, and expired Nov. 5, 2022) (STA Request). The STA Site was located at 42° 34' 27.8" N and 121° 51' 40.9" W (NAD 83).

[13] File No. 0000185079 (granted Oct. 11, 2022).

[14] *See* Email from Randy Henry, Station Manager, randy_henry@hotmail.com to Dale Bickel, Engineer, FCC Dale.Bickel@fcc.gov FCC, (9:30 am, May 11, 2023) (Resumption Notice).

[15] *E.g.,* STA Request at Attach. 4.

[16] *See* Email from Dale Bickel, Engineer, FCC, Dale.Bickel@fcc.gov to Randy Henry, Station Manager, randy_henry@hotmail.com (1:40 pm, May 11, 2023).

[17] Common Frequency, Inc., Letter to Dale Bickel, Engineer, Supplementary Information Concerning STA BSTA-20220425AAI (June 2, 2023) (June Letter) at 1.

[18] *Id.*, citing 47 CFR § 73.1690(b)(2) (emphasis added).

[19] Letter of Inquiry (MB Nov. 20, 2023) (Inquiry).

[20] *Id.* at 5, para. 2.

[21] Common Frequency, Inc., Letter to Marlene Dortch, Secretary, FCC (rec. Jan. 3, 2024) (January Response).

[22] *Id.* at 1-2.

[23] Licensee describes the relationship between the Current and Licensed Sites as a return to the same "approximate area of broadcast, and reestablish[ment of] what it perceived to be licensed operations." *Id.* at 1.

Site are approximately 32 meters apart, and differ with respect to geographic coordinates, street addresses, and owners. Licensee argues that the move required no Commission authorization because the coordinates of the two trees differ by less than one second latitude and longitude,[24] whereas Licensee interprets section 73.1690(b)(2) to allow any move of three seconds or less without approval.

Analysis

Licensee's contention that its operations from November 1, 2022 onward have been authorized focuses on the first sentence of section 73.1690(b)(2). That Rule specifies that a permit is required for "*Any change in station geographic coordinates including coordinate corrections of more than 3 seconds latitude and/or 3 seconds longitude.*"[25] Licensee contends that this language is "vague" and "inexact," and that Licensee did not intend to violate the rule, but interpreted it as excluding all location changes of three seconds or less from the requirement of obtaining Commission consent.[26] Indeed, Licensee argues that the three-second language would be redundant if permits were necessary for smaller moves.[27]

Licensee misunderstands this Rule. The three-second language in section 73.1690(b)(2) addresses situations in which a station is not physically moving to a new location or changing licensed parameters. It pertains only to correction of inaccurate coordinates for an existing, authorized location. Such a correction may be necessary, for example, due to discovery of a surveying error after construction. The Commission adopted the three-second provision over 20 years ago and has since applied it consistently only to coordinate corrections. The Rule's purpose is to allow licensees to correct relatively minor, inadvertent errors by filing a single license modification application[28] rather than the prior two-step process, which required a construction permit followed by an application for license.[29] The one-step

---

[24] The licensed coordinates are 42° 34' 10.0" N, 121° 51' 41.7" W (NAD 83). *See* File No. 0000125106 (granted Nov. 3, 2020) (License). The coordinates from which the Station is operating are 42° 34' 9.1" N, 121° 51' 42.4" W. The two locations, thus, differ by 0.9 seconds latitude and 0.7 seconds longitude. Licensee states that, because it cited section 73.1690(b)(2) in its June Letter and the Bureau did not quickly inform it that the Rule does not permit relocations within three seconds, Licensee did not take measures that it otherwise would have to comply with the Bureau's reading of the Rule. *See* January Response at 9.

[25] 47 CFR § 73.1690(b)(2) (emphasis added).

[26] January Response at 9.

[27] Licensee opines that if the Rule were to be understood as suggested by the Bureau, the Rule would just have stated "*any change in station geographic coordinates shall require a construction permit,* or "*all moves require construction permits*." January Response at 8 (emphasis added). The Rule, as originally adopted, contained just such an all-inclusive wording but was modified to make a small exception for corrections within three seconds. *See infra,* note 29.

[28] *See* 47 CFR §§ 73.1690(b)(2), 73.1690(c)(11).

[29] As originally adopted, section 73.1690(b)(2) required construction permits for "Any change in station geographic coordinates, including coordinate corrections" and rejected a commenter suggestion to permit corrections solely by license application. *See Amendment of Parts 73 and 74 of the Commission's Rules to Permit Certain Minor Changes in Broadcast Facilities Without a Construction Permit,* Report and Order, 12 FCC Rcd 12371, 12435, 12405-06 (1997). The Commission later added the language at issue to exempt corrections of three seconds or less. *See 1998 Biennial Regulatory Review – Streamlining of Mass Media Applications,* Second Report and Order, 15 FCC Rcd. 21649, 21667, paras. 34-35 (2000) (*Streamlining*). The Commission thereby streamlined the process for correcting coordinates by replacing the former two-step process (first filing an application for a construction permit, and second, after grant of the construction permit application, an application for license to cover the permit) with a single step (filing of an application to modify the station's existing authorization).

process applies only to corrections and not to physical relocations because even short relocations can alter a station's signal.[30]

This case involves a station relocation rather than a correction of an error in coordinates. Moreover, even assuming that Licensee misinterpreted the Rule as providing an exemption from construction permit requirements, Licensee was clearly mistaken in its further assumption or conclusion that the Rule negates the need to obtain any Commission authority whatsoever. The Rule simply condenses the Commission approval process from two steps to one. Licensees availing themselves of the construction permit exemption to correct an error in coordinates (rather than a site change) must nevertheless seek authority to operate from their correct coordinates by following a single step of applying for a modification of license.[31] Licensee did not apply for such a modification.[32]

In addition, a permit was necessary under the immediately preceding rule, section 73.1690(b)(1), which pertains to new antenna support structures. Licensee mistakenly asserts that section 73.1690(b)(1) is inapplicable because it is worded in terms of "*construction of a new tower structure for broadcast purposes,*" whereas Licensee did not build a tower.[33] Essentially, Licensee is arguing that antenna mounts in trees are exempt from licensing requirements because trees are neither towers nor newly constructed. This argument is without merit. A tree used to hold a broadcast antenna for the first time is a new antenna support structure. The rule uses the term "new tower structure" rather than the longer phrase "new antenna support structure" because support structures other than traditional towers are uncommon for reasons based on engineering standards and practices.[34] However, new placement of an antenna in a tree is no different for licensing purposes than placement on a metal tower at that location. There is nothing about the nature of a tree that would subject it to different regulations or allow trees in different locations to be considered interchangeable. The Commission needs to know the precise location of any structure upon which a broadcast antenna is mounted to ensure adequate interference protection to other stations and safety of air navigation. When a broadcaster applies for a construction permit, the Commission

---

[30] For example, by examining a construction permit application, the Bureau can consider any changes in spacing, compliance with international agreements, and terrain shielding which can result even from short-distance moves. *See Streamlining*, 15 FCC Rcd at 21667, para. 38 (*de minimis* changes in a short-spacing context may raise technical or international issues appropriately considered in an application for construction permit). *Cf. Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television,* Report and Order, FCC 23-25, paras. 40-41 (rel. Apr. 17, 2023) (modifying rules applicable to low power television stations to match those for full service stations in section 73.1690(b)(2) which "apply only to coordinate corrections and not to relocations"); *Amy Meredith*, Letter Order, 37 FCC Rcd 7266 (MB 2022), *recon. denied*, DA 22-1352 (MB rel. Dec. 22, 2022) (*Meredith*) (rejecting argument that construction 30 yards from permitted location was sufficiently close to satisfy requirements of original construction permit for FM translator under 47 CFR § 74.1254(b)(4)).

[31] *See* 47 CFR § 73.1690(c)(11). Licensee cites no case indicating that a station's move of three seconds or less does not require Commission approval of a construction permit application and then a license application.

[32] Although the Bureau would have dismissed a one-step application from Licensee because the move was subject to the two-step process requiring a construction permit, making such a filing would have alerted Licensee of its error concerning the requirements of section 73.1690(b)(2).

[33] 47 CFR § 73.1690(b)(1) (emphasis added).

[34] *E.g.*, antennas attached to trees may be more susceptible to damage from wind, lightning, and wildlife. Part 73 of the Rules does not define "tower structure." Part 17, which is applicable to communications structures including those associated with broadcast stations, uses the term "antenna structure." That term is defined as a structure that is constructed or used to transmit radio energy, or that is constructed or used for the primary purpose of supporting antennas to transmit and/or receive radio energy, and any antennas and other appurtenances mounted thereon, from the time construction of the supporting structure begins until such time as the supporting structure is dismantled. 47 CFR § 17.2(a).

announces the application by public notice, thereby enabling potentially interested parties to comment on such matters.

In sum, Licensee was required to obtain Commission approval prior to moving to the Current Site, but did not do so. Operation from an unapproved site, even one relatively close to that permitted, is unauthorized.[35] The Commission has consistently held that broadcast licenses cancel automatically as a matter of law pursuant section 312(g) when a station has operated from an unauthorized site for more than 12 months.[36] Because Licensee operated the Station solely from an unauthorized location from November 1, 2022 onward, its license expired after 12 consecutive months, *i.e.,* on November 1, 2023.

We have considered on our own motion whether there are circumstances justifying reinstatement of the Station's license, but conclude that there are not. Section 312(g) grants the Commission authority to reinstate expired licenses in limited circumstances, including if the Commission finds that such action would "promote equity and fairness."[37] The Commission has exercised that discretion only rarely, such as in natural disasters, where silence or unauthorized operation resulted from compelling circumstances beyond the licensee's control.[38] Licensee has failed to provide any evidence that its unauthorized operation at the Current Site was due to factors beyond its control. Rather, it chose to operate from the Current Site, for which it had no FCC approval, instead of pursuing other available options that might have resulted in receipt of operating authority such as seeking an extension of temporary authority for the

---

[35] *See Chinese Voice of Golden City*, Memorandum Opinion and Order, 35 FCC Rcd 567, 570, para. 11 (2020), *aff'd sub nom*. *Chinese Voice of Golden City v. FCC* (D.C. Cir. Nov. 30, 2021) (per curiam) (rejecting argument that operations from location 256 feet from authorized site was *de minimis* and did not trigger automatic expiration under section 312(g)). *See also Liberty Univ.,* Memorandum Opinion and Order and Consent Decree, DA 23-899 (MB rel. Sept. 29, 2023) (agreed termination of NCE station license and $10,000 civil penalty for licensee that incorrectly submitted a license modification application for correcting licensed coordinates when in fact it had changed sites and, thus, violated 47 U.S.C. § 301 and 47 CFR § 1.17(a)(2) by representing, without intention to deceive Commission, that it was operating as licensed following expiration of STA but was actually operating from different coordinates about one second away); *Meredith,* 37 FCC Rcd at 7269 (rescission of initial license of FM translator station built 30 yards from authorized location).

[36] *Eagle*, 23 FCC Rcd at 592, para. 9 (unauthorized, unlicensed broadcasts cannot constitute transmission of broadcast signals to avoid license expiration under section 312(g)); *Absolute Broad., LLC*, Memorandum Opinion and Order, FCC-23-38 at 8, para. 18 (2023) (unauthorized operation is no better than silence for purposes of section 312(g)); *A-O Broad. Corp.*, Memorandum Opinion and Order, 23 FCC Rcd 603, 608, para.10 (2008), *recon. dismissed, Barry Wood, Esq.,* Letter Order, 24 FCC Rcd 13666 (2019) (*A-O*) (transmission from unauthorized location insufficient to avoid consequences of section 312(g)); *Int'l Aerospace Sols., Inc*., Memorandum Opinion and Order, FCC 23-8, para. 9 (2023) (upholding determination that station licenses expired pursuant to section 312(g) due to combined silence and operation from an unauthorized site).

[37] 47 U.S.C. § 312(g).

[38] *See, e.g., V.I. Stereo Commc'ns Corp.*, Memorandum Opinion and Order, 21 FCC Rcd 14259 (2006) (reinstatement warranted for station that sustained damage from three hurricanes where original facilities were destroyed and the rebuilt facility also sustained damage). *See also Community Bible Church*, Letter Order, 23 FCC Rcd 15012, 15014 (MB 2008) (reinstatement warranted where licensee took all steps needed to return to air, but remained off air to promote air safety after discovering and reporting that FCC and FAA records contained incorrect tower information); *Sumiton Broad. Co., Inc*., Letter Order, 22 FCC Rcd 6578, 6580 (MB 2007) (reinstating license where silence was necessary to comply with court order); *Universal Broad. of New York, Inc*., Memorandum Opinion and Order, 34 FCC Rcd 10319 (MB 2019) (station's inability to file an STA to resume service due to a federal government shutdown was a compelling circumstance under section 312(g)).

STA Site,[39] constructing pursuant to its construction permit for the Cell Site, or obtaining approval for the Current Site.[40]

Accordingly, the license for KQCF(FM), Chiloquin, Oregon cancelled automatically pursuant to section 312(g) of the Act and its call sign is deleted. The KQCF(FM) application for license renewal, File No. 0000162427, is dismissed as moot.[41]

Sincerely,

Albert Shuldiner

Albert Shuldiner
Chief, Audio Division
Media Bureau

cc (via electronic mail):
Todd Urick (todd@commonfrequency.org)
(Technical Representative for Common Frequency, Inc.)

[39] We note that Licensee states that it abandoned the STA Site due to electrical difficulties there. *See* January Response at 10-11.

[40] Licensee describes the Station as providing "vital information for the town" in a "rural area of limited broadcast media." January Response at 2. We recognize that the Station, during the periods in which it was not silent or at an unauthorized location, has provided the sole transmission service licensed to Chiloquin. However, we also note that Chiloquin receives a 70 dBu city-grade signal from three FM commercial stations, 60 dBu service from one NCE FM station, and primary service (2 mv/m) from two AM stations. Most of these stations are licensed to Klamath Falls, Oregon, which is approximately 27 miles from Chiloquin. Given this number of available signals, we are not concerned that there would be a lack of broadcast communications sources in the event of an emergency. *See A-O,* 23 FCC Rcd at 613-14, paras. 19-20 (reinstatement of license lost pursuant to section 312(g) not warranted where other signals could provide emergency communications). Moreover, the City of Chiloquin government (City) does not appear to rely on any broadcast signal, including that of the instant Station, for the City's emergency alert plan. Rather, the City directs residents to sign up for emergency email notifications through its website, which is connected to OR-Alert, a state-wide system used by Oregon cities, counties, and emergency agencies to send local alerts to residents. *See* City of Chiloquin, Sign Up for Emergency Notifications, https://www.cityofchiloquin.org/community/page/emergency-alert-project (accessed Jan. 17, 2024). Furthermore, establishing future radio service in Chiloquin remains a possibility because the Station's frequency would become available for application by others seeking to modify existing stations at any time and/or in a future filing window for new NCE stations.

[41] We reject Licensee's suggestion that the Station's unauthorized operations, which occurred after the eight-year term for which the Station is seeking license renewal, is not relevant to the Renewal Application. *See* January Response at 11. Because that lack of authorized operations caused the Station's license to cancel pursuant to section 312(g), there is no license to renew. Further, Licensee is wrong in its belief that there would have been no need to amend the Renewal Application to reflect changes occurring after filing. *Id.* Applicants are responsible for the continuing accuracy and completeness of information furnished in a pending application. *See* 47 CFR § 1.65.

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 24-64
Released: January 19, 2024

BROADBAND DATA TASK FORCE SEEKS COMMENT ON THE BROADBAND DATA COLLECTION CHALLENGE PROCESSES

WC Docket Nos. 11-10, 19-195

Comment Date: February 19, 2024
Reply Comment Date: March 5, 2024

By this Public Notice, the Broadband Data Task Force, in coordination with the Wireless Telecommunications Bureau (WTB), Wireline Competition Bureau, and Office of Economics and Analytics (OEA) (collectively BDTF), seeks public comment on its Broadband Data Collection (BDC) challenge processes. The BDC is the most granular, detailed collection of broadband availability data the FCC has ever gathered or released, depicting location-level information on mass-market fixed broadband internet access services available across the United States as well as standardized coverage maps of 3G, 4G, and 5G mobile wireless services. Importantly, the BDC—for the first time ever—also provides opportunities for consumers, State, local, and Tribal governmental entities, and other stakeholders to challenge the coverage and broadband availability information reported to the FCC and depicted in the new maps.

Pursuant to section 802(b)(5)(D) of the Communications Act, as amended by Pub. L. No. 116-130, the Commission is required to submit a report to Congress that evaluates the challenge processes and considers whether the Commission should commence an inquiry on the need for other tools to help identify potential inaccuracies in BDC data and improve the accuracy of those data.[1] Comments received in response to this Public Notice will inform this report. To this end, we request input on the extent to which stakeholders are participating in the challenge processes, whether they find the challenge processes to be "user-friendly", and, if not, what improvements the Commission can make to its processes to make participation more user-friendly, and the effectiveness of the challenge processes in improving the quality and accuracy of our broadband availability data.

Background

The BDA, enacted in March 2020, required the Commission to establish a user-friendly challenge process through which consumers, State, local, and Tribal governmental entities, and other entities or individuals may challenge the accuracy of: (1) the coverage maps; (2) broadband availability information submitted by providers; or (3) information included in the Broadband Serviceable Location Fabric (Fabric), a dataset of all Broadband Serviceable Locations (BSLs) in the United States.[2] The BDA required the Commission to take into consideration a number of factors when establishing the challenge

[1] *See* 47 U.S.C. § 642(b)(5)(D); Broadband Deployment Accuracy and Technological Availability Act, Pub. L. No. 116-130, 134 Stat. 228 (2020) (codified at 47 U.S.C. §§ 641-646) (Broadband DATA Act or BDA), 47 U.S.C. § 642(a)(1)(A). The report must be submitted to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce. 47 U.S.C. § 642(b)(5)(D).

[2] 47 U.S.C. § 642(a)(1)(B)(iii), (b)(5).

processes, including: "(I) the types of information that an entity or individual submitting a challenge should provide to the Commission in support of the challenge; (II) the appropriate level of granularity for the information [that an entity or individual submitting a challenge should provide to the Commission in support of the challenge]; (III) the need to mitigate the time and expense incurred by, and the administrative burdens placed on, entities or individuals in [ ] challenging the accuracy of a coverage map and responding to challenges . . .; (IV) the costs to consumers and providers resulting from a misallocation of funds because of a reliance on outdated or otherwise inaccurate information in the coverage maps; (V) any lessons learned from the challenge process established under Mobility Fund Phase II, as determined from comments solicited by the Commission; and (VI) the need for user-friendly challenge submission formats that will promote participation in the challenge process . . . ."[3] More specifically, the BDA required the Commission to develop an online mechanism for submitting challenges that: (1) is integrated into the coverage maps; (2) allows an entity or individual to submit a challenge; (3) makes challenge data available in both GIS and non-GIS formats; and (4) clearly identifies broadband availability and upload and download speeds as reported by providers.[4] The BDA further required the Commission to adopt a process to verify the data submitted through the challenge process and allow providers to respond to challenges.[5]

The Commission addressed the requirements of section 802(b)(5) of the BDA in its *Third Report and Order* in this proceeding, adopted in January 2021.[6] In the *Third Report and Order*, the Commission adopted rules for administering the fixed availability data challenge process, including the categories of information that consumers, governmental agencies, and other entities must provide to the Commission when submitting a challenge and the procedures the Commission will use to resolve fixed availability challenges.[7] The Commission also adopted a distinct process for submitting challenges to the location information included in the Fabric.[8]

Similarly, the Commission adopted rules for challenges to mobile wireless coverage data based upon lack of service or poor service quality such as slow delivered user speeds.[9] In so doing, the Commission delegated authority to WTB and OEA to implement detailed technical aspects of the mobile challenge process, including thresholds for when a challenge requires a provider response and a process for mobile providers to respond to challenges.[10] The Commission's Office of Engineering and Technology (OET), OEA, and WTB subsequently adopted the *Mobile Technical Requirements Order*, which outlined the technical requirements to implement the mobile challenge, verification, and crowdsourcing processes required by the BDA as part of the Commission's ongoing BDC effort.[11] The *Mobile Technical Requirements Order* adopted processes and methodologies for collecting mobile challenge data and determining when a mobile availability challenge is "cognizable," as well as processes for mobile providers to respond to challenges. To challenge the availability of mobile broadband service, individuals and entities can submit on-the-ground speed test data using the FCC's Speed Test app, or

[3] 47 U.S.C. § 642(b)(5)(B)(i)(I)-(VI).

[4] 47 U.S.C. § 642(b)(5)(B)(iv)(I)-(IV).

[5] 47 U.S.C. § 642(b)(5)(B)(ii), (iii).

[6] *See Establishing the Digital Opportunity Data Collection*, WC Docket Nos. 19-195, 11-10, Third Report and Order, 36 FCC Rcd 1126 (2021) (*Third Report and Order*).

[7] *Id.* at 1155-62, 1163-64, paras. 70-88, 90-94; 47 CFR § 1.7006(d).

[8] *Id.* at 1162, 1165, paras. 89, 95-96; 47 CFR § 1.7006(d).

[9] *Id.* at 1165-75, paras. 97-124; 47 CFR § 1.7006(e).

[10] *See, e.g.*, *id.* at 1168, paras. 105-06.

[11] *Establishing the Digital Opportunity Data Collection*, WC Docket No. 19-195, Order, 37 FCC Rcd 3007 (WTB, OEA, OET, 2022) (*Mobile Technical Requirements Order*).

another speed-test app approved by OET.[12] Once the threshold for "failed" tests for a given technology within a certain area and at different times of day are met, a challenge is created and the provider must respond.

The inaugural filing window in which providers of broadband Internet access service were required to file availability data as part of the BDC opened on June 30, 2022, and closed on September 1, 2022. Contemporaneous with the closing of the initial filing window, the BDTF released a Public Notice announcing that bulk challenges to the Fabric data would be accepted through the BDC system's filing interface beginning on September 12, 2022.[13] And on September 15, 2022, the BDTF released data specifications for bulk fixed availability challenges and crowdsource data.[14] The Commission released a pre-production draft of the FCC National Broadband Map on November 18, 2022.[15] The pre-production draft reflected the first round of provider-submitted availability data, and formally began the start of the challenge processes for fixed and mobile broadband availability data, as well as the consumer Fabric challenge process.[16] Since that time, the Commission has regularly updated both the Fabric data and the National Broadband Map based upon the information gathered through the challenge processes.

The BDTF has provided a host of technical assistance and educational resources for consumers, service providers, state, local, and Tribal governmental entities, and other interested parties that explain the various challenge processes and other opportunities to participate in the BDC, such as submitting crowdsource data. The FCC's BDC webpage contains best practices, virtual technical assistance webinars, workshops, and video tutorials detailing the various ways that consumers and entities may help improve the accuracy of the data on the National Broadband Map and providing step-by-step instructions on how to do so.[17] The BDTF has engaged with hundreds of stakeholders on the challenge processes, and has provided resources for governmental and other entities to raise consumer awareness about the National Broadband Map and encourage consumers to contribute data directly to the FCC by viewing the National Broadband Map and filing challenges using the map interface.[18] The BDTF also maintains an online Help Center which includes a variety of self-help resources such as knowledge base articles, tutorial videos, and step-by-step instructions for both consumers and entities who wish to participate in the BDC challenge processes.[19]

In addition to the challenge processes, other efforts, including some that are statutorily mandated, are being used to help improve the maps and verify the data submitted by providers.[20] For example, in

[12] *Third Report and Order,* 36 FCC Rcd at 1166-67, paras. 103-04.

[13] *Broadband Data Task Force Announces the Start of the Broadband Serviceable Location Fabric Bulk Challenge Process*, WC Docket Nos. 19-195, 11-10, Public Notice, 37 FCC Rcd 10140 (2022).

[14] *Broadband Data Task Force Publishes Specifications for Bulk Fixed Availability Challenge and Crowdsource Data*, WC Docket Nos. 19-195, 11-10, Public Notice, 37 FCC Rcd 10626 (2022).

[15] *Broadband Data Task Force Releases Pre-Production Draft of the National Broadband Map; Announces the Start of the Broadband Availability Challenge Processes*, WC Docket Nos. 11-10, 19-195, Public Notice, 37 FCC Rcd 13348 (2022).

[16] *Id.*

[17] FCC, *Broadband Data Collection Resources*, https://www.fcc.gov/BroadbandData/resources (last visited Dec. 26, 2023). The "Releases" tab includes Public Notices, Orders, and other relevant Commission releases. The "Education" tab includes FAQs, overview documents, several tutorial videos and pre-recorded technical assistance workshops, and other resources detailing the challenge processes. The "Key Reference Documents" includes challenge data specifications.

[18] FCC, *National Broadband Map Outreach Toolkit*, https://www.fcc.gov/national-broadband-map-outreach-toolkit (last visited Dec. 26, 2023).

[19] FCC, *Broadband Data Collection Help Center*, https://help.bdc.fcc.gov/hc/en-us (last visited Dec. 26, 2023).

[20] *See* 47 U.S.C. § 642(a)(1)(B)(i), (b)(4)(B).

building the BDC system, staff developed automated BDC system validations that trigger when a provider's BDC filings may warrant further review. There are also separate processes in place to independently verify providers' BDC filings based on BDC system flags, crowdsource data, irregularities in filings, or other indications that a provider's data may be inaccurate.[21] To further assist the Commission in verifying the accuracy of mobile and fixed wireless providers' broadband availability maps and data submitted in the challenge and verification processes, the Commission has awarded two contracts: one for propagation modeling software and automation services, in July 2022, and a second for wireless engineering analysis and support services, in January 2023. Commission staff have initiated over 900 verification inquiries to date, resulting in updates to over 600 submissions from providers and a clearer picture of broadband availability in every state and territory. The Commission also has authority to conduct regular audits of BDC data and pursue enforcement actions for noncompliance.[22]

Discussion

The BDC allows for consumers, Tribal entities, governments, providers, and other third parties to continually improve and refine the accuracy of the broadband availability data through two challenge processes: one for the availability data submitted by fixed and mobile service providers and another for the locations represented in the Fabric. Both types of challenges allow for consumer challenges, submitted directly through the National Broadband Map interface, and bulk challenges, filed in the BDC system.

Evaluation of the Fixed Availability Challenge Process. The fixed availability challenge process is designed to allow consumers and other parties to challenge whether the National Broadband Map accurately reflects the *availability* of a fixed broadband service at a specific location as reported by a particular provider. This challenge process allows stakeholders to dispute whether a given type of fixed service (e.g., fiber to the premises) at a reported maximum advertised upload and download speed is available at the challenged location.[23] Commission staff review challenge submissions in accordance with the Commission's rules and if a filing is accepted, it is forwarded to the provider being challenged who is then required to submit a response within 60 days.[24] If the provider disputes the challenge, a second 60-day period begins wherein the provider and challenger are encouraged to work together toward a resolution.[25] If, however, a resolution is not reached, Commission staff will adjudicate the challenge. The National Broadband Map will be updated according to the result of the challenge.[26]

[21] 47 CFR § 1.7006(b)(4), (c).

[22] 47 U.S.C. §§ 644(a), 643; 47 CFR §§ 1.7006(a), 1.7009.

[23] The fixed availability challenge process is not intended to address disputes that subscribers have with their broadband provider about quality of service issues, such as network performance experienced at a particular location. *See Third Report and Order,* 36 FCC Rcd at 1156, para. 72, n.230.

[24] *Third Report and Order,* 36 FCC Rcd at 1159, para. 83.

[25] *Id.* at 1160, para. 84. The provider may also "concede" the challenge, in which case the National Broadband Map will be updated to reflect a correction for the challenged location. *Id.* at 1160, para. 83.

[26] *Id.* at 1160, para. 84.

Between November 18, 2022, and November 16, 2023,[27] approximately 3.7 million fixed availability challenges were accepted and submitted to providers for response.[28] The vast majority of these challenges were submitted through the bulk challenge process.[29] In total, 140 distinct entities submitted bulk fixed availability challenges during this period.[30] Of the total number of fixed availability challenges served on providers, more than 2.2 million were conceded by providers, resulting in updates to the map. Roughly 866,000 challenges were disputed by providers and ultimately adjudicated by FCC staff;[31] of those, approximately 276,000 were upheld by the FCC in favor of the challenger (resulting in additional updates to the map), while approximately 590,000 were overturned by the FCC. In total, more than 2.5 million updates to the National Broadband Map have occurred as a direct result of fixed availability challenges.[32]

We seek comment on participation in the fixed broadband availability challenge process. Are the Commission's fixed availability challenge rules sufficiently user-friendly so as to promote participation in the challenge process? Do the categories of fixed availability challenges accurately reflect the types of impediments to fixed broadband availability at specific BSLs?[33] Is 60 days the appropriate amount of

[27] The Commission released the third iteration of the National Broadband Map on November 17, 2023, displaying provider availability data as of June 30, 2023. *See* The Hon. Jessica Rosenworcel, Chairwoman, FCC, *National Broadband Map 3.0: Thankful for Continued Improvements*, Notes from the FCC (Nov. 17, 2023), https://www.fcc.gov/news-events/notes/2023/11/17/national-broadband-map-30-thankful-continued-improvements. Accordingly, fixed availability challenges received after November 16, 2023 were made to the June 30, 2023 availability data collection.

[28] This figure only reflects challenges that, upon initial review by FCC staff, were found to have included sufficient information for the challenge to be accepted for submission and served upon the challenged service provider. The system allows for challengers to "delete" a submission at any point throughout the process prior to a challenge being fully resolved. Those "accepted-and-later-deleted" challenges are not reflected in this figure. Some challenge submissions, including several bulk availability challenge submissions from governmental or other entities (which are subject to a higher evidentiary standard on the part of the challenger), did not contain location-specific evidence supporting the challenge type asserted for the challenged locations and were therefore not accepted for filing. FCC staff contacted bulk filers whose submissions were not accepted to explain the challenge process and the need for more granular evidence or improved methodologies that would support a more location-specific analysis of the reported broadband availability being challenged. This engagement and technical assistance resulted in a number of bulk challengers refiling their bulk challenge submissions with improved evidence and/or methodologies and were accepted for filing. Other filers resubmitted their original filings as crowdsource submissions, which require less location-specific evidence and can form the basis for FCC verifications or audits.

[29] Of these 3.7 million challenges, approximately 20,000 were submitted via the National Broadband Map interface, while the remainder were submitted through the bulk challenge process.

[30] Entities used a total of 140 FCC Registration Numbers to file bulk fixed availability challenges.

[31] This number reflects challenges that were disputed by the challenged provider at the "final response" stage which occurs after the second 60-day period allotted for dialogue between the challenger and the provider. It does not include challenges that were initially disputed by the provider, but later either conceded by the provider at the final response stage or withdrawn by the challenger.

[32] This figure only represents challenges which were either conceded by the service provider or upheld by the FCC. Service providers have made innumerable other updates to fixed broadband availability data displayed on the National Broadband Map due to other efforts, such as challenges ultimately withdrawn by a challenger due to the challenger and the service provider resolving the challenge among themselves (without an FCC adjudication), as well as changes resulting from the submission of crowdsource data, verification inquiries initiated by FCC staff, and other measures.

[33] FCC, *How to Format Bulk Fixed Challenge and Crowdsource Data*, https://help.bdc.fcc.gov/hc/en-us/articles/10390523851803-How-to-Format-Bulk-Fixed-Challenge-and-Crowdsource-Data. The challenge codes are: 1) provider failed to schedule a service installation within 10 business days of a request; 2) provider did not install the service at the agreed-upon time; 3) provider requested more than the standard installation fee to connect

(continued….)

time allotted to providers for initially responding to a challenge that has been submitted and accepted? Does the fixed availability challenge process appropriately balance the time, expense, and burden to entities and individuals in challenging the accuracy of the maps, on the one hand, and to providers in responding to challenges, on the other hand?

Do the number of unique entities participating in the bulk fixed availability challenge process, and the number of bulk challenges submitted, indicate sufficiently robust participation in this process? Did bulk filers consult the Commission's rules before submitting a challenge? If not, were other resources helpful in filing a challenge (e.g., Help Center articles, online tutorials, etc.)? Would other online or in-system support be helpful when filing a bulk fixed availability challenge? Are the availability data downloads and other resources available to bulk challengers adequate to support their review and submission of bulk challenges to the data reflected on the National Broadband Map?

Is the fixed availability challenge submission form on the challenge interface of the National Broadband Map sufficiently user-friendly? Do the Commission's rules appropriately balance the level of effort placed on consumers in submitting fixed availability challenges against the need for a user-friendly process? Do the data depicted in the National Broadband Map clearly identify the locations at which broadband internet access service is available and the providers offering those services? What, if anything, should the Commission glean from the number of fixed availability challenges submitted by consumers and others using the map interface? Would other technical assistance resources or user interface enhancements be helpful to individual fixed availability challengers? Are there other ways the Commission can promote the fixed availability challenge process to consumers?

As noted above, the Commission's rules establish a higher evidentiary standard for governmental and other entities than for individual consumer challengers.[34] Given the heightened standard of proof that applies to challenges of availability data by entities or individuals who do not own or reside at, or are otherwise authorized to request service at, the challenged location(s), we seek comment on whether we should require those challengers to submit data via the BDC system pursuant to the data specifications applicable to bulk challenges (i.e., only permit consumers who own or reside at, or are otherwise authorized to request service at, the challenged location to use the National Broadband Map interface to submit fixed availability challenges). Are there benefits to allowing non-consumer challengers to submit challenges directly through the map interface? Assuming that we continue to permit both individuals and entities to submit fixed availability challenges using the National Broadband Map interface, should we allow individuals to provide additional information or otherwise expressly indicate that they reside at, or are authorized to request service at, the challenged location? Should we instead require challengers who do *not* own or reside at, or are authorized to request service at, the challenged location to provide additional information to explain or substantiate their relationship to the challenged location? Should we do both? Would the fixed availability challenge process remain "user-friendly" in the event we were to make any or all of these changes?

The fixed challenge process includes a period of time when providers are able to work with the challenger to try and resolve the challenge through consensus as to whether or not service is available, as reported, at the location(s) being challenged. Over 1.3 million challenges were withdrawn or deleted and

---

this location; 4) provider denied the request for service; 5) provider does not offer the technology entered above at this location; 6) provider does not offer the speed(s) shown on the Broadband Map for purchase at this location; 7) the actual speed of the service does not match its advertised speed (crowdsource only); 8) no wireless or satellite signal is available at this location; 9) new, non-standard equipment is required to connect this location; and 10) missing provider (crowdsource only).

[34] *See supra,* n. 31; *compare* 47 CFR § 1.7006(d)(7) ("In consumer challenges to availability and coverage map data, a consumer's challenge must make an initial showing, *by a preponderance of the evidence*, that a provider's data are inaccurate") *with id.* at § 1.7006(d)(8) ("In challenges to availability and coverage data by governmental (State, local, Tribal), or other entities, the challenger must make a detailed, clear and methodologically sound showing, *by clear and convincing evidence*, that a provider's data are inaccurate") (emphases added).

providers conceded over 91,000 challenges following interactions between challengers and providers.[35] Are these interactions leading to mutual understanding of the services that are truly available? Is 60 days, during the second stage of the challenge process, the appropriate amount of time allotted to this dialogue? Are there ways the Commission can improve this stage of the challenge process to ensure both parties have an opportunity to attempt a resolution of the challenge prior to FCC adjudication?

Does the fixed availability challenge process, and resulting increased accuracy of the National Broadband Map, effectively reduce "the costs to consumers and providers resulting from a misallocation of funds because of a reliance on outdated or otherwise inaccurate information in the coverage maps . . . ."?[36]

Evaluation of the Mobile Availability Challenge Process. In addition to fixed broadband availability data, the National Broadband Map shows mobile wireless broadband coverage data reported by each mobile wireless service provider for 3G, 4G, and 5G network technologies. These coverage areas on the National Broadband Map reflect where subscribers should be able to receive mobile connectivity, by technology and at a minimum throughput (*i.e.*, download and upload speed), when outdoors or in a moving vehicle.[37] If the information on mobile coverage submitted by a provider does not match the on-the-ground subscriber experience, the subscriber can dispute that information by taking outdoor or in-vehicle speed tests on a mobile device using the FCC Speed Test app.[38] The FCC Speed Test app is free and may be downloaded from the Apple or Google Play app stores.[39] Entities – including service providers, state, local, and Tribal governments, as well as other third parties (e.g., consumer groups, non-governmental groups, etc.) – interested in submitting multiple mobile speed test results to challenge the mobile coverage shown on the National Broadband Map may either use the FCC Speed Test app or their own hardware or software to collect mobile speed test data and upload it into the BDC system through a bulk mobile speed test data submission process.[40] Challenge speed test results are analyzed and aggregated each month to determine whether there is a pattern of speed tests from the same geographic area that meets the Commission's thresholds for creating a cognizable challenge and requiring a provider response.[41] Providers must rebut or concede cognizable challenges within 60 days of notification.[42]

Between November 18, 2022, and August 31, 2023,[43] nearly 190,000 mobile on-the-ground speed test results were submitted to the Commission—all of which were submitted directly via the FCC Speed

---

[35] Challengers can withdraw challenges at any time after submission prior to FCC adjudication or provider concession. Additionally, the system allows for challengers to "delete" a submission at any point throughout the process prior to the challenges being fully resolved. Of the over 2.2 million challenges conceded by providers, over 91,000 of those concessions occurred during the second stage of the challenge process.

[36] *See* 47 U.S.C. § 642(b)(5)(B)(i)(IV).

[37] *See* 47 CFR § 1.7004(c)(3). The National Broadband Map does not display mobile indoor coverage.

[38] Challenge speed tests must be taken between the hours of 6:00 a.m. - 10:00 p.m., local time, and may not be taken indoors.

[39] *See* Federal Communications Commission, FCC Speed Test App FAQs, November 23, 2022, https://www.fcc.gov/consumers/guides/fcc-speed-test-app-tip-sheet (last visited Jan. 4, 2024).

[40] *Mobile Technical Requirements Order*, 37 FCC Rcd at 3013, para. 13 (citing *Third Report and Order*, 36 FCC Rcd at 1172, para. 117).

[41] *See generally*, *Mobile Technical Requirements Order*, 37 FCC Rcd at 3012-44, paras. 13-59.

[42] *Mobile Technical Requirements Order*, 37 FCC Rcd at 3044, para. 61 (citing *Third Report and Order*, 36 FCC Rcd at 1168, 1173-74, paras. 107, 121; 47 CFR § 1.7006(e)(3), (f)(4)).

[43] Commission staff perform an analysis of mobile speed test data at the end of each month to determine whether a sufficient number of tests have been submitted to create a cognizable challenge. Mobile service providers have 60 days to respond to cognizable challenges and, if a provider rebuts a challenge within the allotted 60-day time period, the Commission will review the provider's response and resolve the challenge within 90 days of the provider

(continued….)

Test app—resulting in 35 cognizable challenges and 18 corrections to mobile wireless coverage data displayed in the National Broadband Map.

We seek comment on participation in the mobile broadband availability challenge process. What, if anything, should the Commission glean from the number of speed tests submitted using the FCC Speed Test app and the resulting number of cognizable challenges to mobile coverage data? Are the Commission's mobile availability challenge rules sufficiently user-friendly so as to promote participation in the challenge process? Have consumers and other entities experienced problems in understanding how to use the FCC Speed Test app, including when mobile speed tests may be submitted to challenge the National Broadband Map versus when they may be submitted as crowdsource data? Are the challenge thresholds set out in the *Mobile Technical Requirements Order* adequately formulated to allow for the creation of a cognizable mobile challenge, or should they be adjusted? Does the mobile availability challenge process appropriately balance the time, expense, and burden of entities and individuals in challenging the accuracy of the maps, on the one hand, and providers in responding to challenges, on the other hand? Do the data depicted in the National Broadband Map clearly identify the areas in which mobile broadband internet access service is available, as well as the hexagonal areas and service providers subject to challenge?

Are there barriers preventing full participation in the mobile challenge process, including both to the submission of challenges and/or to providers accurately demonstrating their coverage when challenged? In addition to the existing technical assistance workshops, recorded webinars, tutorial videos, knowledge base articles, methodologies, and data specifications, are there other resources that the Commission could provide which would be helpful to stakeholders who wish to participate in the mobile availability challenge process? Are there other ways the Commission can promote participation in the mobile availability challenge process?

Evaluation of the Fabric Challenge Process. Similar to the availability challenge processes, challenges to Fabric data help to identify missing BSLs and inaccurate data associated with existing BSLs. Fabric challenges may be submitted on an individual basis by consumers, or in bulk by governmental entities, service providers, and other third parties.[44] Fabric challenges must be based on a pre-approved list of reasons.[45] The BDTF, in consultation with CostQuest LLC, the Commission's Fabric contractor, resolves Fabric challenges and responds with a reason for acceptance or denial.[46] Given the amount of work required to resolve Fabric challenges, including manual review, the Commission has generally announced a date by which bulk challenges to a particular version of the Fabric should be

---

submitting its final response. 47 U.S.C. § 642(b)(5)(C)(i). In cases where a challenged provider concedes or loses a challenge, the provider must file updated data depicting the challenged area that has been shown to lack sufficient service within 30 days of the concession or notification of the Commission's decision. *See* 47 CFR § 1.7006(e)(6)(iii), (f)(7). Given these timelines, cognizable challenges created after August 31, 2023 are still in process as of the release of this *Public Notice*. Accordingly, we provide data on speed test results submitted between November 18, 2022 and August 31, 2023.

[44] 47 CFR § 1.7006 (d); *Third Report and Order*, 36 FCC Rcd at 1161-62, para. 89.

[45] FCC, *Data Specifications for Bulk Fabric Challenge Data*, https://us-fcc.app.box.com/v/bdc-bulk-fabric-challenge-spec. The challenge codes are: 1) Missing Broadband Serviceable Location; 2) Incorrect Location Primary Address; 3) Incorrect Location Unit Count; 4) Incorrect Location Building Type Code; 5) Location is Not Within Footprint of the Correct Building; 6) Location is Not Broadband Serviceable; 7) Add Supplemental Address; 8) Remove Secondary Address. *See also* FCC, *Fabric Challenge Category Code Overview*, https://help.bdc.fcc.gov/hc/en-us/articles/9201263798811-Fabric-Challenge-Category-Code-Overview-.

[46] *See* FCC, *Fabric Challenge Response Codes*, https://help.bdc.fcc.gov/hc/en-us/articles/17077103993371-Fabric-Challenge-Response-Codes (Jul. 12, 2023). The Commission delegated authority to OEA, in consultation with the Wireline Competition Bureau, "to ensure that locations reflect broadband serviceability to the extent they are able to make determinations given the data available." *Third Report and Order*, 36 FCC Rcd at 1176, para. 128. OEA works with the Fabric vendor, CostQuest LLC, to implement the adjudication methodology determined by OEA to meet the requirements of the *Third Report and Order* and to resolve Fabric challenges.

submitted in order to be reflected in the next version of the Fabric.[47] Once the FCC has processed and resolved Fabric challenges, bulk Fabric challengers are able to download a comma-separated value (CSV) file from the BDC system indicating how each challenge was addressed.[48] Individual challengers are notified of the outcome of their challenge via email and can see the results of the challenge on the National Broadband Map. Challenges that are accepted are incorporated into the next version of the Fabric dataset.

Between September 12, 2022, and October 22, 2023,[49] the Commission received approximately 9.23 million Fabric challenges. Similar to fixed availability challenges , the vast majority of Fabric challenges were submitted through the bulk Fabric challenge process.[50] In total, 461 entities submitted bulk Fabric challenges during this period.[51] Challengers submitted roughly 7.66 million challenges to add new locations to the Fabric (i.e., "Challenge Code 1" Fabric challenges) and roughly 1.57 million challenges for other categories of Fabric changes during this period. The FCC upheld over 497,000 of the Challenge Code 1 challenges to add a new Fabric location and approximately 1.2 million of the challenges for other categories of Fabric changes.[52]

We seek comment on participation in the Fabric challenge process. Do the number of entities participating in the bulk Fabric challenge process, and the number of bulk challenge submissions, indicate sufficiently robust participation in this process? What about the number of individual Fabric challenges received from consumers through the map interface? Is the individual Fabric challenge submission interface on the National Broadband Map user-friendly? Do the Commission's rules appropriately balance the level of effort placed on individual Fabric challengers against the need for a user-friendly process? Do the data depicted in the National Broadband Map clearly identify the BSLs and other Fabric locations included in the data as well as the attributes of that data that may be corrected in the challenge process? Are the Commission's Fabric challenge rules and systems sufficiently user-friendly to encourage participation in the bulk Fabric challenge process? Do the Fabric challenge reason codes adequately capture the possible challenge types that a user may wish to submit to the Fabric location dataset? Based on the location challenges received to date, we have found that individuals and community-based organizations often have localized and current information about their communities. How can the Commission continue to encourage ongoing participation from these groups? In addition to the existing technical assistance workshops, recorded webinars, tutorial videos, knowledge base articles, FAQs, Fabric methodology manuals, and Fabric challenge data specifications, are there other Fabric

---

[47] *See e.g., Broadband Data Task Force Begins Accepting Challenges to June 2023 Broadband Serviceable Location Fabric*, WC Docket Nos. 11-10, 19-195, Public Notice, DA 23-579 (BDTF Jul. 3, 2023). Individual challenges to Fabric data submitted through the National Broadband Map interface are reviewed and aligned with updates the FCC and CostQuest make to the subsequent Fabric version through their own efforts as well as through adjudications of bulk Fabric challenges. *See id.* at 1-2, n.4.

[48] FCC, *Challenge Resolution Information for Bulk Fabric Challengers,* https://help.bdc.fcc.gov/hc/en-us/articles/11587546422427-Challenge-Resolution-Information-for-Bulk-Fabric-Challengers (Dec. 27, 2022).

[49] The bulk Fabric challenge process began on September 12, 2022, and FCC and CostQuest provided the latest version of the Fabric (version 4) to licensees on or around December 31, 2023. The latest challenges received in time to be incorporated into version 4 of the Fabric, and to have information on the resolution of challenges, were received on October 22, 2023.

[50] Of the 9.2 million Fabric challenges, approximately 22,000 were submitted via the National Broadband Map interface, while the remainder were submitted through the bulk challenge process.

[51] Entities used a total of 461 FCC Registration Numbers to file Fabric challenges.

[52] Importantly, the number of Challenge Code 1 challenges denied by the FCC includes (1) challenges that confirmed the presence of a BSL independently found to exist by the FCC and CostQuest (e.g., more than two million challenges included geographic coordinates of a location for which a BSL was already represented in the Fabric data) and (2) challenges that were rejected due to the FCC having already accepted a prior challenge submitted earlier in time.

resources that the Commission could provide which would be helpful to stakeholders who wish to participate in the Fabric challenge process? Are there other ways the Commission can promote the Fabric challenge process to consumers and other stakeholders?

The Need for Other Tools. The BDA requires the Commission, following the opportunity for notice and comment afforded by this Public Notice, to consider whether it should "commence an inquiry on the need for other tools to help . . . identify potential inaccuracies in the data relating to broadband internet access service that providers report; and . . . improve the accuracy of [providers' biannual BDC data]."[53]

We seek comment on whether additional tools are necessary to help identify potential inaccuracies in the availability data that broadband service providers report in the BDC. Does the fixed availability challenge process allow challengers to submit appropriate types of evidence at adequate levels of granularity in support of their challenges? As an example, we seek comment on whether (and, if so, under what conditions) speed test data could indicate a lack of availability of fixed broadband service.[54] The BDTF is currently unaware of any mechanism whereby a speed test website or application would collect data from an individual or entity that is not a subscriber of a fixed broadband service that would demonstrate that a service is unavailable at a specific BSL. Does any such testing platform exist? If so, how would the Commission encourage its adoption and use? Similarly, should the Commission accept challenges to the maximum latency of fixed availability services and, if so, how would it collect reliable challenge data disputing latency?

Similarly, does the mobile availability challenge process allow challengers to submit appropriate types of evidence at adequate levels of granularity in support of their challenges? In particular, the BDTF has adopted procedures for the approval of third-party speed test applications for use in the mobile challenge process.[55] To date, however, the only approved application is the FCC Speed Test app.[56] Does the FCC Speed Test app fully provide a "user-friendly [ ] process through which consumers, State. Local, and Tribal governmental entities, and other entities or individuals may submit coverage data to the Commission to challenge the accuracy of the [mobile] coverage maps . . . ."?[57] Are there other tools for identifying potential inaccuracies in mobile broadband internet access service coverage data that the Commission should consider allowing as part of the BDC? Are there other ways to incentivize bulk submission of mobile speed tests? Has the H3 indexing system been an efficient way to identify geographic areas subject to a cognizable mobile challenge?[58] If not, then is there another open-source system available to the Commission and other stakeholders to use instead? Have providers experienced difficulty using the H3 system (and, if so, what are those difficulties, and how can the Commission address them)? Should the Commission expand the scenarios in which infrastructure data, on their own, may be used to respond to a mobile challenge? If so, what scenarios should be added?

When providing input, commenters should explain how any such tools would be different from existing validation mechanisms available to the Commission, including the BDC system flags, informal

---

[53] 47 U.S.C. § 642(b)(5)(D)(ii).

[54] The fixed availability challenge process "is not meant to address disputes that subscribers have with their broadband provider about quality of service issues, such as network performance experienced at a particular location." *Third Report and Order*, 36 FCC Rcd at 1156, para. 72, n.230.

[55] *OET Announces Procedures for Third-Party Mobile Speed Test Apps*, WC Docket Nos. 11-10, 19-195, Public Notice, 37 FCC Rcd 5004 (2022).

[56] The Commission has contracted with Mozark PTE, Ltd. to build a new version of the FCC Speed Test app, which will be released in the future. *See* Sam.gov, *BDC Speed Test Mobile Application for Broadband Data Collection* (Mar. 29, 2023), https://sam.gov/opp/fe1a53db903b4c2da0c166500eb25a1f/view.

[57] 47 U.S.C. § 642(b)(5)(A)(i).

[58] UberBlog, *H3: Uber's Hexagonal Hierarchical Spatial Index*, https://www.uber.com/blog/h3/ (June 27, 2018).

investigations, verification inquiries based upon crowdsourced data and other information, audits, and enforcement actions.

Procedural Matters

Ex Parte Rules. Pursuant to the provisions of 47 CFR § 1.1200(a) of the Commission's rules, this proceeding is deemed an exempt proceeding, comparable to a notice of inquiry proceeding.[59] *Ex parte* presentations to or from Commission decision-making personnel are permissible and need not be disclosed.

Comment Filing Procedures. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://apps.fcc.gov/ecfs/.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE Washington, DC 20554
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, DA 20-304 (March 19, 2020), https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.

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

Contact Person. For further information about this proceeding, please contact Will Holloway, Assistant Counsel, Broadband Data Task Force, at William.Holloway@fcc.gov.

For additional information and questions regarding the Broadband Data Collection, please visit the BDC website at https://www.fcc.gov/BroadbandData.

– FCC –

[59] 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* 47 CFR § 1.1204(b)(1) (providing that *ex parte* presentations in notice of inquiry proceedings are presumptively exempt from disclosure).

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 24-66
Released: January 22, 2024

DOMESTIC SECTION 214 APPLICATION FILED FOR THE TRANSFER OF CONTROL OF OUTFITTER SATELLITE, INC. TO NEXTPLAT CORP.

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 23-419

Comments Due: February 5, 2024
Reply Comment Due: February 12, 2024

By this Public Notice, the Wireline Competition Bureau seeks comment from interested parties on an application filed by Outfitter Satellite, Inc. (Outfitter Satellite) and NextPlat Corp. (NextPlat, together with Outfitter Satellite, 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 Outfitter Satellite to NextPlat.[2]

Outfitter Satellite, a Tennessee corporation, provides resold satellite phone service to customers nationwide.[3] NextPlat, a Nevada corporation, does not currently provide any domestic telecommunications services nor is it affiliated with any such entity. The following U.S. citizens and trust currently hold a ten percent or greater interest in NextPlat: Charles Matthew Fernandez (27%); Rodney Barreto (18%); and the Frost Gamma Investments Trust (14%).[4]

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

[2] Application for Consent to Transfer Control of Outfitter Satellite, Inc. to NextPlat Corp., WC Docket No. 23-419 (filed Dec. 12, 2023) (Application). Applicants also filed an application for the transfer of authorizations associated with international services. On January 19, 2024, Applicants filed a supplement to their domestic section 214 application. Letter from Michael Donahue, counsel to Outfitter Satellite Inc, and Richard Barbara, counsel to NextPlat Corp., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 23-419 (filed Jan. 19, 2024). Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

[3] Applicants state that Outfitter Satellite also provides satellite phones and other satellite communications equipment, such as terminals for broadband Internet access to customers for use in remote locations. Applicants further state that customers may use their services domestically when they are in remote locations in the United States or in the event of a natural disaster that impacts the viability of traditional communications. Customers using Outfitter Satellite's services domestically can place intrastate, interstate, and international calls.

[4] Applicants state that the trustee for the Frost Gamma Investments Trust is Philip Frost, a U.S. citizen, who therefore indirectly holds a 14% interest in NextPlat.

Pursuant to the terms of the proposed transaction, NexPlat will acquire all the shares of Outfitter Satellite. 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. We accept the application for streamlined filing under section 63.03(b)(2)(i) of the Commission's rules.[5]

Domestic Section 214 Application Filed for the Transfer of Control of Outfitter Satellite, Inc. to NextPlat Corp.,WC Docket No. 23-419 (filed Dec. 12, 2023).

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 February 5, 2024**, and reply comments **on or before February 12, 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) Gregory Kwan, Competition Policy Division, Wireline Competition Bureau, gregory.kwan@fcc.gov; and
3) Jim Bird, Office of General Counsel, jim.bird@fcc.gov.

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

[5] 47 CFR § 63.03(b)(2)(i).

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.[6] 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.

FCC

[6] *See* 47 CFR § 1.45(c).

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

In re Application of	)	
	)	
Wiley College	)	FRN: 0013202617
	)	Facility ID No. 72449
For Renewal of License for	)	File No. 0000143497
Station KBWC(FM)	)	
Marshall, Texas	)	

ORDER

Adopted: January 23, 2024 **Released: January 23, 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 Wiley College (Licensee), the licensee for Station KBWC(FM), Marshall, Texas (Station). The Consent Decree resolves issues arising from the Bureau's review of the captioned license renewal application (Application) for the Station. In particular, the Consent Decree resolves the Bureau's investigation of Licensee's compliance with the Public File Rule contained in section 73.3527 of the Commission's rules (Rules).[1] The Bureau's Audio Division suspended processing of the Application because Licensee did not comply with its public file obligations in section 73.3527.

2. The Bureau and Licensee have negotiated the attached Consent Decree in which Licensee stipulates that it violated section 73.3527 of the Rules. Pursuant to the Consent Decree, Licensee agrees, among other things, to implement a comprehensive compliance plan to ensure future compliance with its online public inspection file obligations and, one year after entering into the Consent Decree, submit a compliance report to the Audio Division.

3. After reviewing the terms of the Consent Decree, we find that the public interest will be served by its approval and by terminating all pending proceedings relating to the Bureau's consideration of potential violations of the Rules.

4. Based on the record before us, we conclude that nothing in that record creates a substantial and material question of fact as to whether Licensee possess the basic qualifications to be a Commission licensee.

5. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 4(i), 4 (j) and 503(b) of the Communications Act of 1934, as amended,[2] and by the authority delegated by Sections 0.61 and 0.283 of the Commission's rules,[3] the Consent Decree attached hereto **IS ADOPTED** without change, addition or modification.

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

[1] 47 CFR § 73.3527.

[2] 47 U.S.C. § 154(i), 154(j), and 503(b).

[3] 47 CFR §§ 0.61, 0.283.

7. **IT IS FURTHER ORDERED** that copies of this Order shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Wiley College, c/o George Stiell, 711 Wiley Ave, Marshall, TX 75670.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

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

In the Matter of Online Public Inspection Files of	)	File No.: 0000143497
	)	
Wiley College	)	FRN: 0013203617
	)	
Licensee of Station KBWC(FM) Marshall, Texas	)	

CONSENT DECREE

1. The Media Bureau of the Federal Communications Commission and Wiley College (hereafter "Licensee," as defined below), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Media Bureau's investigation into the Licensee's compliance with section 73.3527 of the Commission's rules,[1] relating to the maintenance of online public inspection files. To resolve this matter, the Licensee agrees to implement a comprehensive Compliance Plan to ensure its future compliance with section 73.3527.

I. DEFINITIONS

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

(a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq*.

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

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

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

(e) "Covered Employees" means all employees and agents of the Licensee, including students enrolled at 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.

(f) "Effective Date" means the date by which both the Bureau and the Licensee have signed the Consent Decree.

(g) "Investigation" means the Bureau's decision to hold and not process the Licensee's license renewal application identified in Appendix A due to the noncompliance with its public file obligations.

(h) "Licensee" means Wiley College and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.

(i) "Online Public Inspection File Rule" means 47 CFR § 73.3527.

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

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

[1] 47 CFR § 73.3527.

II. BACKGROUND

3. Section 73.3527 requires radio station licensees to maintain an online public inspection file and to upload certain documents to the Commission's public inspection file database throughout the year. It is crucial that stations maintain online public inspection files that are complete and up to date because the information in them directly affects, among other things, the public's ability to be informed about a station's compliance with its obligations.

4. The Licensee owns and operates one or more radio stations licensed by the Commission. The Licensee recently filed an application for renewal of radio station licenses. Further, we have determined that the Licensee did not comply with the Online Public Inspection File Rule. That application is identified in **Appendix A**. Based on the Licensee's noncompliance with the Online Public Inspection File Rule, the Bureau commenced the Investigation and suspended processing that license renewal application.

5. The radio industry is recovering from a recent dramatic reduction in sponsorship revenues which, in turn, placed the industry, including the Licensee, under significant, ongoing financial stress. The Bureau believes that the exceptional circumstances brought about by the industry's economic situation present a unique situation which, on balance, warrant resolution of the Bureau's investigation under the terms and conditions described below.

III. TERMS OF AGREEMENT

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

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

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

9. **Termination of Investigation**. In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In addition, the Bureau agrees to process the Licensee's pending radio license renewal application identified in Appendix A in the ordinary course. In consideration for such, the Licensee agrees to the terms, conditions, and procedures contained herein.

10. The Bureau agrees that, in the absence of new material evidence, the Bureau will not use the facts developed in this Investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion or in response to any petition to deny or other third-party objection, any new proceeding, formal or informal, or take any action on its own motion against the Licensee concerning the matters that were the subject of the Investigation. The Bureau also agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or to set for hearing the question of the Licensee's basic qualifications to be a Commission licensee or to hold Commission licenses or authorizations.[2]

11. **Admission of Liability**. The Licensee admits for the purpose of this Consent Decree that it failed to timely place records in its online public inspection file, in repeated violation of section 73.3527 of the Rules.

[2] *See* 47 CFR § 1.93(b).

12. Pursuant to section 503(b)(2)(E) of the Act, in exercising its forfeiture authority, the Commission may consider, among other things, "any history of prior offenses" by the licensee.[3] The Licensee acknowledges that the Commission or its delegated authority may consider the Licensee's admission of liability in this Consent Decree in proposing any future forfeiture against Licensee in the event the Licensee is determined to have apparently committed a violation of the Act, the Rules, or of any orders of the Commission after the Effective Date, whether related to the online public inspection file and record keeping or otherwise.

13. **Compliance Officer**. Within 30 calendar days after the Effective Date, the Licensee shall designate a senior manager to serve as a Compliance Officer and to discharge the duties set forth below. The Compliance Officer shall report directly to the Licensee's Chief Executive Officer (or equivalent senior officer/owner) on a regular basis, and shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that the Licensee complies with the terms and conditions of the Compliance Plan and this Consent Decree. The Compliance Officer shall have specific knowledge of the Online Public Inspection File Rule prior to assuming his/her duties. The Bureau acknowledges that the Compliance Officer, Chief Executive Officer, and/or owner may be the same individual.

14. **Compliance Plan**. For purposes of settling the matters set forth herein, the Licensee agrees that it shall, within 30 calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the Online Public Inspection File Rule, and with the terms and conditions of this Consent Decree. The Compliance Plan, with the exception of the Compliance Report described below in paragraph 14(c), shall apply to all radio stations owned by the Licensee. The Compliance Plan shall contain, at a minimum, the following elements:

(a) **Compliance Manual.** The Compliance Plan shall include a Compliance Manual that is distributed to all Covered Employees. The Licensee may adopt a Compliance Manual that it has prepared or one that has been prepared by an outside source, such as a trade association (e.g., the National Association of Broadcasters), another licensee, or a law firm. The Compliance Manual shall:

i. thoroughly explain the requirements embodied in the Online Public Inspection File Rule;

ii. contain Operating Procedures that Covered Employees must follow to help ensure the Licensee's compliance with the Online Public Inspection File Rule. The Operating Procedures shall include internal procedures and policies specifically designed to ensure that the Licensee's stations upload all required information to their online public inspection files in a timely manner and otherwise maintain full, complete, and up to date information therein. The Operating Procedures shall also include a compliance checklist that describes the steps that a Covered Employee must follow to ensure compliance with the Online Public Inspection File Rule; and

iii. be periodically reviewed and revised as necessary to ensure that the information set forth therein remains current, complete, accurate, and effective.

(b) **Compliance Training Program.** If the Licensee has Covered Employees, the Compliance Plan shall include a Compliance Training Program to provide periodic training to those Covered Employees on complying with the Online Public Inspection File Rule. As part of the compliance training program, Covered Employees shall be 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

[3] *See* 47 U.S.C. § 503(b)(2)(E).

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 15 below.

i. The compliance report shall include a certification by the Compliance Officer stating that the Compliance Officer has personal knowledge that the Licensee: (i) has established and implemented the Compliance Plan; (ii) has utilized the operating procedures since the implementation of the Compliance Plan; and (iii) is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree.

ii. The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and must comply with section 1.16 of the Rules,[4] and be subscribed to as true under penalty of perjury in substantially the form set forth therein.

iii. If the Compliance Officer is unable to provide the requisite certification, the Compliance Officer shall provide the Bureau with a report detailing the noncompliance, as described below.

iv. The compliance report shall be submitted to the Audio Division staff: Alexander Sanjenis (alexander.sanjenis@fcc.gov).

15. **Reporting Noncompliance**. The Licensee shall, for each station it owns, report any instance of noncompliance with the Online Public Inspection File Rule, and any instance of noncompliance with any applicable terms and conditions of this Consent Decree within 10 calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of: (i) each such instance of noncompliance; (ii) the steps that the Licensee has taken or will take to remedy such noncompliance, including the schedule on which such actions will be taken; and (iiii) the steps that the Licensee has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventative action will be taken. All reports of noncompliance shall be submitted to the Audio Division staff: Alexander Sanjenis (alexander.sanjenis@fcc.gov).

16. **Termination Date**. The obligations to which the Licensee is subject pursuant to this Consent Decree shall terminate upon submission of the Compliance Report pursuant to Paragraph 14(c), *provided* the Bureau is satisfied that the Licensee has demonstrated substantial compliance with its obligations. If the Bureau is not satisfied that the Licensee has demonstrated substantial compliance with its obligations, the Bureau may, within its the sole discretion and authority, extend the termination date of this Consent Decree for up to an additional 24 months.

17. **Further Violation(s)**. The Licensee acknowledges that the Bureau retains the discretion and authority to propose sanctions against the Licensee, including the issuance of notices of apparent

[4] 47 CFR § 1.16.

liability for forfeitures, for any apparent willful and/or repeated violation by the Licensee of the Online Public Inspection File Rule that occurs during the term of this Consent Decree.

18. **Waivers**. As of the Effective Date, the Licensee waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order. The Licensee shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent Decree or Adopting Order, neither the Licensee nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and the Licensee shall waive any statutory right to a trial *de novo*. The Licensee hereby agrees to waive any claims it may have under the Equal Access to Justice Act[5] relating to the matters addressed in this Consent Decree.

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

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

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

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

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

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

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

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

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

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

Albert Shuldiner
Chief, Audio Division

January 23, 2024
Date

George Stiell
Wiley College

Date

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

Albert Shuldiner
Chief, Audio Division

Date

George Stiell
Wiley College

Tasma Bradley
Wiley University

01/14/23
Date

Appendix A

Station Call Sign	Community of License	Application for License Renewal File No.
KBWC(FM)	Marshall, Texas	0000143497

PUBLIC NOTICE

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

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

DA 24-68
January 25, 2024

Announcement of Chartering and Solicitation of Members for the World Radiocommunication Conference Advisory Committee

OIA Docket No. 24-30

By this Public Notice, the Federal Communications Commission ("Commission") announces its intent to recharter the World Radiocommunication Conference Advisory Committee (hereinafter the "Committee" or "WAC-27"), subject to the approval of the General Services Administration (GSA), and further solicits applications for membership on the Committee.

PURPOSE AND FUNCTIONS

The Committee's mission is to provide to the Commission advice, technical support, and recommended proposals for the International Telecommunication Union World Radiocommunication Conferences (WRCs). In particular, the Committee will focus on the international frequency spectrum issues identified on the WRC-27 agenda with the goal of identifying private sector/public priorities and objectives. The Committee will be charged with gathering the data and information necessary to formulate meaningful recommendations for these objectives. Additional information on WRCs, specifically WRC-27, is available at https://www.fcc.gov/wrc-27

BACKGROUND

When rechartered, the Committee will operate in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. Ch. 10. Each meeting of the Committee will be open to the public. A notice of each meeting will be published in the Federal Register at least fifteen (15) days in advance of the meeting. Records will be maintained of each WAC-27 meeting and made available for public inspection.

WHO MAY APPLY FOR MEMBERSHIP AND OBLIGATIONS OF MEMBERS

The Commission seeks applications from interested organizations, institutions, or other entities from both the public and private sectors that wish to be considered for membership on the Committee. Selections will be based on factors such as expertise and diversity of viewpoints that are necessary to address effectively the questions before the Committee. Individuals who do not represent an organization, institution, or entity, but who possess expertise valuable to the Committee's work may also apply. However, any applicants who want to serve in their individual capacities should be aware that

government ethics rules may require detailed financial and other disclosures as part of the consideration of their application to serve as independent subject matter experts, and if appointed such individuals would be considered special government employees (SGEs).

Applicants should describe both their specific interests and their expertise or experience as it relates to the questions before the Committee, including such matters as wireless communications infrastructure and equipment, telecommunications, fixed, mobile, broadcasting, satellite, and other radiocommunication services, consumer advocacy, and underserved populations (*e.g.*, persons living in rural areas and tribal communities).

All organizational or individual members appointed to the Committee or its working groups are subject to an ethics review by the Commission's Office of General Counsel. Some applicants possessing expertise or perspectives of interest to the Committee, and who have been appointed to serve on the Committee in an individual capacity (and not as the representative of a nonprofit organization, corporation, or other entity) are deemed to be Special Government Employees (SGEs). Such individuals are ineligible to serve if they are federally registered lobbyists. SGEs are subject to a variety of restrictions under the conflict of interest statutes, 18 U.S.C. § 203 et seq., and the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635. SGEs must file confidential employee financial disclosure reports prior to beginning their service and annually thereafter. SGEs will also be subject to ethics restrictions in section 4(b) of the Communications Act, 47 U.S.C. § 154(b), and in the Commission's rules, 47 CFR Part 19 and 5 CFR Parts 3901 and 3902.

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 Committee's Designated Federal Officer (DFO) any changes in representation during their tenure on the Committee. Committee members will not be compensated for their service

In preparation for WRC-27, it is anticipated that the Committee will continue to meet two to three times per calendar year. In addition, working groups will be described on the Committee's website, and all members would be expected to participate in working groups for which they have interest and qualifications. All meetings will be fully accessible to individuals with disabilities.

APPLICATION PROCEDURE, DEADLINE AND MEMBER APPOINTMENTS

Each organization, institution or entity (organizational applicant) may propose for nomination one primary representative. Organizational applicants are also encouraged to propose one alternate representative. The application requirements for both organizational and individual applicants are set forth below.

Organizational Applicants: Applications from 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(s);
- A statement summarizing the nominee's qualifications and reasons why the nominee should be appointed to the Committee;
- A current resume of the nominee; and
- A statement describing the organization the nominee would represent, with an explanation of the benefit of having the organization represented on the Committee.

The application from organizational applicants 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 Committee. 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 as a committee member 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 World Radiocommunication Conference Advisory Committee of the FCC."

- 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 applicant 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 World Radiocommunication Conference Advisory Committee.

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 Committee, other than representing the organizational applicant that has nominated them for service on the Committee. 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 the Committee. The statement shall include the individual's specific knowledge or expertise that is relevant to the work of the Committee;
- 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 Committee.

In addition to the application information required above, 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. Members of the Committee who fail to disclose any such interests (whether in their initial applications or after appointment to the Committee) will be subject to removal from the Committee.

Members who are appointed will serve at the discretion of the Chairwoman of the Federal Communications Commission. Committee members will not be compensated for their service. Applicants must be willing to commit to serve through the completion of the Committee's work in preparation for WRC-27. Members should be willing and able to attend the meetings of the Committee and are also expected to participate in deliberations of at least one working group. The time commitment to each working group may be substantial. Working group deliberations may be conducted through virtual meetings, e-mail and teleconferences.

Nominations and all applications, including contact information and the statement of qualifications, should be submitted by e-mail to WAC-27applications@fcc.gov by **February 12, 2024**. Because the Commission recognizes that technologies and spectrum priorities may evolve over the course of the multi-year WRC-27 preparatory cycle and that the expertise or experience relevant to the mission of this Committee may change over time, the Commission will continue to accept applications for Committee Membership on a rolling basis after the initial February 12, 2024 deadline.

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

For additional information about the Committee, please contact Gregory Baker, Designated Federal Official for the Committee, at (202) 418-0611 (WRC-27@fcc.gov and Gregory.baker@fcc.gov).

- 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 24-69
Released: January 23, 2024

DOMESTIC SECTION 214 APPLICATION FILED FOR THE TRANSFER OF CONTROL OF DQE COMMUNICATIONS LLC TO GI DI VERTIGO ACQUISITION LLC

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 24-3

Comments Due: February 6, 2024
Reply Comment Due: February 13, 2024

By this Public Notice, the Wireline Competition Bureau seeks comment from interested parties on an application filed by Duquesne Light Holdings, Inc. (DLH), DQE Communications LLC (DQE), and GI DI Vertigo Acquisition LLC (GI DI Vertigo) (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 to transfer control of DQE to GI DI Vertigo.[2]

DQE, a Pennsylvania limited liability company, provides services primarily to businesses and carriers in Pennsylvania, West Virginia, and Ohio. DLH, a Pennsylvania corporation, is the holding company for DQE. DLH is a direct, wholly-owned subsidiary of DQE Holdings LLC (DQE Holdings), a Delaware limited liability company. A consortium consisting of several institutional investors own all the common equity of DQE Holdings. DLH's officers and directors are all U.S. citizens.

GI DI Vertigo, a newly-formed Delaware limited liability company, was created for the purpose of completing the proposed transaction. GI DI Vertigo is a wholly-owned, indirect subsidiary of GI DI Vertigo Parent LP, a Delaware limited partnership, which, in turn, is indirectly owned and controlled by multiple private equity funds "GI Partners." The equity in the GI Partners' funds is held through limited partnership interests, which include foreign entities, and control of these GI Partners' funds ultimately rests in U.S. entities and Rick Magnuson, a U.S. citizen (100% voting interest).[3] GI

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

[2] Domestic Section 214 Application Filed for the Transfer of Control of DQE Communications LLC to GI DI Vertigo Acquisition LLC, WC Docket No. 24-3 (filed Dec. 29, 2023) (Application). Applicants filed supplements to the Application on January 17, 2024 and January 19, 2024. Letter from Henry Shi, Counsel for GI DI Vertigo Acquisition LLC to Marlene H. Dortch, Secretary, FCC, WC Docket No. 24-3 (filed Jan. 17, 2024); Letter from Henry Shi, Counsel for GI DI Vertigo Acquisition LLC, and Tamar E. Finn, Counsel for Duquesne Light Holdings, Inc. and DQE Communications LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 24-3 (filed Jan. 17, 2024). Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

DI Vertigo is affiliated with the following providers: Skybeam, LLC, which provides fixed broadband services in Illinois, Iowa, Kansas, Nebraska, and Texas; Essex Telecom, Inc., which provides fixed wireless services in Illinois; Clarity Telecom, LLC, which is an incumbent local exchange carrier (LEC) in South Dakota and is authorized to provide competitive local exchange and/or interexchange in Minnesota, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming; Single Digital, Inc., which provides interconnected VoIP services in multiple states; Blue Stream Communications LLC, which provides broadband, video, and Voice over Internet Protocol (VoIP) service in Florida; ITS Telecommunications Systems, LLC, which provides service as an incumbent LEC in South Florida; and ITS Fiber, LLC, which provides service as a competitive LEC in South Florida. Applicants state that GI Partners' affiliates do not control any dominant telecommunications carriers within the areas served by DQE.

Pursuant to the terms of the proposed transaction, the Applicants entered into a Membership Interest Purchase Agreement (Agreement), whereby DLH will sell 100% of the issued and outstanding membership interests of DQE to GI DI Vertigo. As a result of the proposed transaction, DQE will be a direct, wholly-owned subsidiary of GI DI Vertigo. Applicants state that, after consummation of the proposed transaction, DQE will continue to exist and operate under the same name and will continue to provide service pursuant to then-existing rates, terms, and conditions for the near term.

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. We grant this request and accept the application for filing under section 63.03(b)(2)(ii) of the Commission's rules.[4]

No Referral to Executive Branch Agencies: The Commission determined in the *Executive Branch Review Process Order* that it would not routinely refer to the Executive Branch "standalone applications to transfer control of domestic section 214 authority."[5] The Commission, however, retains the discretion to refer a domestic-only section 214 transaction should it find that a particular application may raise national security, law enforcement, foreign policy, or trade policy concerns for which it would benefit from the advice of the Executive Branch.[6] Applicants state that the Application involves the transfer of control of carriers that hold only domestic section 214 authority and that, consistent with the decision in the *Executive Branch Review Process Order*, the Application does not require a referral to the Executive Branch.[7] We do not find any special circumstances that warrant referral of this Application to the Executive Branch agencies. While we are not referring the Application, we will provide a courtesy copy of this public notice to the Executive Branch agencies.[8]

---

[3] Richard Magnuson will indirectly control DQE as Trustee of the Magnuson Living Trust, which is the Managing Member of GI Manager LLC. The only beneficiaries of the trust are Richard Magnuson, Allison Magnuson, Taylor Magnuson, and Scott Magnuson, who are all U.S. citizens.

[4] 47 CFR § 63.03(b)(2)(ii).

[5] *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket No. 16-155, Report and Order, 35 FCC Rcd 10927, 10936, para. 25 (2020) (*Executive Branch Review Process Order*).

[6] *Id*.

[7] Application at 12-13.

[8] *See Executive Branch Review Process Order*, 35 FCC Rcd at 10941, para. 36 n.99; *see also id*. at 10939, para 30 n.81.

Domestic Section 214 Application Filed for the Transfer Of Control of
DQE Communications LLC to GI DI Vertigo Acquisition LLC,
WC Docket No. 24-3 (filed Dec. 29, 2023).

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 February 6, 2024**, and reply comments **on or before February 13, 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) Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, dennis.johnson@fcc.gov; and
3) Jim Bird, Office of General Counsel, jim.bird@fcc.gov.

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

For further information, please contact Dennis Johnson at dennis.johnson@fcc.gov.

-FCC-

[9] *See* 47 CFR § 1.45(c).

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

In the Matter of	)	
	)	
Amendment of Section 73.622(j)	)	MB Docket No. 23-336
Television Broadcast Stations	)	RM-11967
(Wittenberg and Shawano, Wisconsin)	)	

REPORT AND ORDER

(**Proceeding Terminated**)

Adopted: January 24, 2024 **Released: January 24, 2024**

By the Chief, Video Division, Media Bureau:

1. The Video Division, Media Bureau (Bureau) has before it a Notice of Proposed Rulemaking[1] issued in response to a Petition for Rulemaking filed by TV 49, Inc. (TV-49 or Petitioner), the permittee of an unbuilt television station on channel 31 allotted to Wittenberg, Wisconsin (Wittenberg).[2] The Petitioner has requested that the Commission delete channel 31 from Wittenberg and allot it to Shawano, Wisconsin (Shawano) in the Table of TV Allotments[3] and modify its construction permit to specify Shawano as its community of license. TV-49 filed comments in support of the petition, as required by the rules,[4] reaffirming its commitment to file for channel 31 at Shawano. No other comments were filed. For the reasons set forth below, we conclude that the public interest would be served by reallotting channel 31 from Wittenberg to Shawano in the Table of TV Allotments consistent with the technical parameters set forth in the Amended Petition.

2. Section 1.420(i) of the rules provides that the Commission, during a rulemaking proceeding to amend the Table of TV Allotments, may modify a station's permit to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.[5] The Commission will apply this procedure in the limited circumstances in which: (1) the new allotment will be mutually exclusive with a station's existing allotment; (2) the new allotment will result in a preferential arrangement of the allotments according to the Commission's television allotment priorities;[6] and (3) the new allotment will not deprive a community of its sole local

[1] *Amendment of Section 73.622(j), Television Broadcast Stations (Wittenberg and Shawano, Wisconsin)*, MB Docket No. 23-336, Notice of Proposed Rulemaking, DA 23-936 (rel. Oct. 6, 2023) (*NPRM*).

[2] Facility ID No. 776266. TV-49 filed its Petition on July 25, 2023 and amended the Petition on October 5, 2023 (Amended Petition) at the staff's request to propose a lower effective radiated power (ERP) in order to demonstrate it would not cause impermissible interference to WITI, Milwaukee, Wisconsin.

[3] 47 CFR § 73.622(j).

[4] 47 CFR §§ 1.415, 1.419; *see also Buffalo, Iola, Normangee, and Madisonville, Texas*, MB Docket No. 07-279, Report and Order, 24 FCC Rcd 8192, 8194, para. 9 (MB 2009).

[5] 47 CFR § 1.420(i); *Modification of FM and TV Authorizations to Specify a New Community of License*, MM Docket No. 88-526, Report and Order, 4 FCC Rcd 4870, 4873, para. 22 (1989) (*Change in Community R&O*), *recon. granted in part*, 5 FCC Rcd 7094 (1990) (*Recon MO&O*).

[6] The Commission determines a preferential arrangement of allotments based on five priorities, the pertinent one here being the Commission's second priority, which is to provide each community with at least one television broadcast station. *See Amendment of Section 3.606 of the Commission's Rules and Regulations,* Sixth Report and Order, 41 F.C.C. 148, 167, para. 63 (1952) (*Sixth Report and Order*).

transmission outlet.[7] Generally, the Commission considers its prohibition on the removal of a community's first local service to be presumptively inconsistent with the public interest.[8] The Commission, however, will waive its general prohibition on the removal of a community's sole first local service in the "rare circumstance" where such a removal might serve the public interest, for example, by providing a first reception service to a significantly sized population.[9]

3. The Technical Exhibit submitted with TV-49's Amended Petition demonstrates that the proposed allotment of channel 31 at Shawano is short-spaced to the current allotment at Wittenberg and thus, is mutually exclusive.[10] We also conclude that the reallotment of channel 31 from Wittenberg to Shawano will result in a preferential arrangement of allotments in accordance with the Commission's second television allotment priority – to provide each community with at least one television broadcast station.[11] Shawano is the seat of Shawano County, in which both communities are located, and is nine times larger than Wittenberg.[12] As TV-49 has demonstrated, Shawano has the population and public services indicative of a community deserving of its own television station. For example, the Shawano school district operates five public schools and Northeast Wisconsin Technical College operates a Regional Learning Campus in Shawano.[13] Shawano is governed by a mayor and six alderpersons, who collectively comprise its Common Council.[14] Shawano also provides a number of municipal services, including but not limited to those provided through the Shawano-Bonduel Municipal Court, the Shawano Department of Public Works, the Shawano Police Department, and the Shawano Municipal Utilities.[15]

4. While based on the facts above we find that TV-49's proposal represents a preferential arrangement of allotments pursuant to the Commission's second allotment priority, grant of the proposed reallotment will remove Wittenberg's only local service, which the Commission generally prohibits.[16] After reviewing the record, we find on balance that the public would benefit from grant of a waiver of our general prohibition on the removal of a community's first local service. Not only is Shawano a significantly more populated community, but the channel 31 facility has not yet been constructed, and thus no viewers have come to rely on any existing service, a factor the Commission has found to be mitigating in the context of whether it would remove the sole channel allotted to a community.[17] Of equal

[7] *Change in Community RO&O*, 4 FCC Rcd at 4874, para. 28.

[8] *Recon MO&O*, 5 FCC Rcd at 7096, para. 17.

[9] *Id*. *See also* 47 CFR § 1.3 (waiver for good cause shown). Waiver is appropriate if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest. *See WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-28 (D.C. Cir. 2008).

[10] Amended Petition at 4 and Technical Exhibit at 2 and Figure 1; *see NPRM* at para 3.

[11] *See supra* n.7.

[12] *NPRM* at para. 4. Shawano's Census 2020 population is 9,243 people, while Wittenberg's Census 2020 population is 1,015. *Id*. In fact, the city of Shawano is home to almost a quarter of the population of Shawano County, which had a total of 40,881 residents at the time of the 2020 U.S. Census. *See* Quick Facts, Shawano County, Wisconsin, U.S. Census Bureau, available at https://www.census.gov/quickfacts/fact/dashboard/shawanocountywisconsin/PST045222 (last visited Jan. 22, 2024).

[13] *Id*.

[14] *NPRM* at para. 4.

[15] *Id*.

[16] *See supra* n. 9.

[17] *See Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Lake Havasu City, Arizona, and Laughlin, Nevada)*, MM Docket No. 99-114, Report and Order, 15 FCC Rcd 11664, 11665, para. 3 (MMB 2000) (finding that while the proposed reallotment would remove the only television channel allotted to Lake Havasu City, Arizona, the station had not yet commenced operation and therefore the reallotment proposal would not represent a loss of service to the residents of that community); *Amendment of Section 73.606(b), Table of*

(continued….)

significance is that fact that six licensed full power television stations currently provide noise-limited service to all of Wittenberg[18] and TV-49 demonstrates that once the Station commences operations it will also provide noise-limited service to Wittenberg. In addition, the proposed allotment at Shawano is otherwise in compliance with all of our technical rules. As proposed, channel 31 can be allotted to Shawano in compliance with the principal community coverage requirements of section 73.625(a) of the rules,[19] at coordinates 44° 46' 56.0" N and 88° 36' 32.0" N. Furthermore, we find that this proposed change in community of license meets the technical requirements set forth in sections 73.616 and 73.623 of the rules with the following specifications:[20]

City and State	Channel	Power (kW)	Antenna HAAT (m)
Shawano, Wisconsin	31	65	168

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, **IT IS ORDERED**, That effective 30 days after date of publication in the Federal Register, the Table of TV Allotments, section 73.622(j) of the Commission's rules, 47 CFR § 73.622(j), **IS AMENDED**, with respect to the community listed below, to read as follows

City and State	Channel
Shawano, Wisconsin	31
Wittenberg, Wisconsin	-

6. **IT IS FURTHER ORDERED**, That effective 30 days after the date of publication in the Federal Register, channel 31 is deleted from Wittenberg, Wisconsin and channel 31 is allotted to Shawano, Wisconsin. **IT IS FURTHER ORDERED**, That after the effective date, TV-49, Inc. **SHALL FILE** an application on FCC Form 2100, Schedule A requesting a modification of its construction permit, and pending the grant of aforementioned application, its community of license **SHALL BE MODIFIED** to Shawano, Wisconsin.

Allotments, Television Broadcast Stations (Farmington and Gallup, New Mexico), MM Docket No. 92-81, Report and Order, 11 FCC Rcd 2357, 2360, para. 19 (MMB 1996) (granting a change in community of license to a larger community and finding that any potential loss of service is mitigated by the fact that the station was unconstructed and not a service upon which the public has come to rely), *recon. denied*, 14 FCC Rcd 18983 (MMB 1999).

[18] These are stations WSAW-TV, WAOW, and WHRM-TV, all licensed to Wausau, Wisconsin; WBAY-TV, Green Bay, Wisconsin; WJFW-TV, Rhinelander, Wisconsin; and WTPX-TV, Antigo, Wisconsin. *NPRM* at n.18. *See also Amendment of Section 73.622(i) Digital Television Broadcast Stations (Block Island and Newport, Rhode Island),* MB Docket No. 18-153, Report and Order, 33 FCC Rcd 8773, 8775, para. 3, n.18 (MB 2018) ("The Commission considers a community 'well-served' when it is served by at least five full power over-the-air signals.").

[19] 47 CFR § 73.625(a). The Commission recently amended its rules to create a new section 73.618 (Antenna location and principal community coverage), which relocates, verbatim, the language from section 73.625(a) (DTV coverage of principal community and antenna system). *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, at para. 37 (rel. Sept. 19, 2023) (*Part 73 Amendment R&O*). The amended rules are not effective as of the date of release of this Report and Order, and as such, we continue to reference 47 CFR § 73.625(a).

[20] 47 CFR §§ 73.616, 73.623. The Commission also recently amended its rules, including combining parts of sections 73.616(a) (Post-transition DTV station interference protection), 73.622(a), and 73.623(a) into one rule that includes all requirements for modifying a television allotment, modified section 73.622(a) (Table of TV allotments). *Part 73 Amendment R&O* at para. 38. The adopted order also relocated section 73.616(c), specifying the protected facilities of TV allotments, to new section 73.619(d). *Part 73 Amendment R&O* at para. 37. As these rule changes are not yet effective, we continue to make reference to 47 CFR §§ 73.616 and 73.623.

7. **IT IS FURTHER ORDERED**, That pursuant to section 801(a)(1)(A) of the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A), the Commission **SHALL SEND** a copy of the Order to Congress and to the Government Accountability Office**.**

8. **IT IS FURTHER ORDERED,** That should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 23-336 and RM-11967 **SHALL BE TERMINATED** and its docket closed.

9. *Additional Information*. For further information concerning the proceeding listed above, contact Joyce L. Bernstein, Video Division, Media Bureau by e-mail at Joyce.Bernstein@fcc.gov.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

PUBLIC NOTICE

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

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

DA 24-71
January 24, 2024

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES EXERCISE OF THE DISASTER INFORMATION REPORTING SYSTEM ON FEBRUARY 6-8, 2024

The Federal Communications Commission's Public Safety and Homeland Security Bureau (Bureau) will conduct a Disaster Information Reporting System (DIRS) exercise on February 6th through February 8th, 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 and its purpose is to 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 DIRS system transitioned to a new platform, accessible directly at https://dirs.fcc.gov. The new DIRS system was modernized to enhance security and network features to better ensure the system's integrity and reliability.

DIRS users who have not accessed the new system yet and do not have an existing account in the FCC's Commission Registration System (CORES), will need to create a CORES account prior to accessing DIRS. New DIRS users will first need to register in CORES, and then create a new DIRS account. Legacy DIRS users, with an existing CORES account, will not need to create a new DIRS account. The username and password 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 "exercise" activation letter on February 6th, to all registered DIRS participants. The activation letter will clearly state that this is 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 February 7th with an updated report filed by February 8th at 10:00 AM EST. The Bureau will send a deactivation letter

by 3:00 PM EST on February 8th letting all participants know that the exercise has been completed.

Providers wishing to participate in this voluntary exercise, should email michael.caiafa@fcc.gov and ryan.hedgpeth@fcc.gov 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).

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 Ryan Hedgpeth, at ryan.hedgpeth@fcc.gov, or 202-418-7095, both of the Public Safety and Homeland Security Bureau, Cybersecurity and Communications Reliability Division.

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

In re Applications of	)	NAL/Acct. No. MB-202441410006
	)	
WJAG, Inc.	)	FRN: 0004992103
	)	
for Consent to Transfer of Control of Stations WJAG(AM), Norfolk, Nebraska, KQKX(FM), Norfolk, Nebraska, KEXL(FM), Pierce, Nebraska, and K290AT, Norfolk, Nebraska	)	Facility ID Nos. 73121, 73122, 170494, and 155264
	)	
from	)	
	)	
Eugene F. Huse, Jr. (Deceased) (Transferor) Karla S. Huse (Deceased) (Transferor)	)	Application File No. 0000171561
	)	
to	)	
	)	
W.H. Huse Revocable Trust (Transferee)	)	
	)	
and	)	
	)	
W.H. Huse Revocable Trust (Transferor)	)	Application File No. 0000186217
	)	
to	)	
	)	
W.H. Huse Living Trust (Transferee)	)	

ORDER

Adopted: January 26, 2024 **Released: January 26, 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 WJAG, Inc. (Licensee), licensee of stations WJAG(AM), Norfolk, Nebraska; KQKX(FM), Norfolk, Nebraska; KEXL(FM), Pierce, Nebraska; and K290AT, Norfolk, Nebraska (Stations). The Consent Decree resolves issues arising from the Bureau's review of the captioned applications (Voluntary Transfer Applications or Applications).[1]

2. In the course of processing the Voluntary Transfer Applications, the Bureau staff found that three unauthorized transfers of control occurred prior to the filing of the Applications, with the first

[1] Application File No. 0000171561 (filed Nov. 26, 2021) (seeking consent to the transfer of control from the W.H. Huse Revocable Trust to the W.H. Huse Living Trust); Application File No. 0000186217 (filed Mar. 9, 2022), amended Apr. 1, 2023, Sept. 22, 2023, and Jan. 18, 2024 (seeking consent to the transfer of control from Eugene F. Huse, Jr. to the W.H. Huse Revocable Trust). *See Broadcast Applications*, Public Notice, Report No. PN-1-211129-01, at 6, 15-16, 18 (MB Nov. 29, 2021); *Broadcast Applications*, Public Notice, Report No. PN-1-220314-01, at 3, 6, 14 (MB Mar. 14, 2022).

taking place in 2017 and the last in 2019. The Consent Decree concludes the Bureau's investigation of Licensee's compliance with section 310(d) of the Communications Act of 1934, as amended (the Act),[2] and section 73.3540 of the Commission's rules (Rules).[3]

3. Pursuant to the terms of the Consent Decree, Licensee stipulates that it violated section 310(d) of the Act and section 73.3540 of the Rules. The Consent Decree requires, among other things, that the Licensee make an eight thousand dollar ($8,000) civil penalty payment to the United States Treasury and implement a compliance plan to ensure future compliance with section 310(d) of the Act and section 73.3540 of the Rules. A copy of the Consent Decree is attached hereto and incorporated by reference.

4. After reviewing the terms of the Consent Decree, we find that the public interest will be served by its approval and by terminating all pending proceedings relating to the Bureau's investigation of potential violations of the Rules and the Act in connection with the Voluntary Transfer Applications.

5. Based on the record before us, we conclude that nothing in the record creates a substantial and material question of fact as to whether the Licensee possesses the basic qualifications to be a Commission licensee.

6. ACCORDINGLY, IT IS ORDERED that, pursuant to section 4(i) of the Act,[4] and by the authority delegated by sections 0.61 and 0.283 of the Rules,[5] the Consent Decree attached hereto IS ADOPTED without change, addition, or modification.

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

8. IT IS FURTHER ORDERED that copies of this Order shall be sent, by First Class and Certified Mail, Return Receipt Requested, to WJAG, Inc., and to its counsel, Mark N. Lipp, Esq., Fletcher, Heald & Hildreth, PLC, 1300 North 17th Street, Suite 1100, Arlington, VA 22209.

9. IT IS FURTHER ORDERED that pursuant to section 73.3526(e)(10) of the Rules,[6] a copy of this Order and Consent Decree and as otherwise required all related investigatory materials SHALL BE RETAINED in the above-captioned Stations' online public inspection file until grant of the next license renewal application.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

[2] 47 U.S.C. § 310(d).

[3] 47 CFR § 73.3540.

[4] 47 U.S.C. § 4(i).

[5] 47 CFR §§ 0.61, 0.283.

[6] *Id.* § 73.3526(e)(10).

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

In re Applications of	)	NAL/Acct. No. MB-202441410006
	)	
WJAG, Inc.	)	FRN: 0004992103
	)	
for Consent to Transfer of Control of Stations WJAG(AM), Norfolk, Nebraska, KQKX(FM), Norfolk, Nebraska, KEXL(FM), Pierce, Nebraska, and K290AT, Norfolk, Nebraska	)	Facility ID Nos. 73121, 73122, 170494, and 155264
	)	
from	)	
	)	
Eugene F. Huse, Jr. (Deceased) (Transferor) Karla S. Huse (Deceased) (Transferor)	)	Application File No. 0000171561
	)	
to	)	
	)	
W.H. Huse Revocable Trust (Transferee)	)	
	)	
and	)	
	)	
W.H. Huse Revocable Trust (Transferor)	)	Application File No. 0000186217
	)	
to	)	
	)	
W.H. Huse Living Trust (Transferee)	)	

CONSENT DECREE

I. INTRODUCTION

1. This Consent Decree is entered into by and between the Media Bureau (Bureau) of the Federal Communications Commission and WJAG, Inc., licensee of the above-captioned stations, for the purpose of terminating the Bureau's investigation concerning compliance with section 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(d), and section 73.3540 of the Commission's rules, 47 CFR § 73.3540.

II. DEFINITIONS

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

(a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et. seq.*;

(b) "Adopting Order" means the order of the Bureau adopting this Consent Decree;

(c) "Bureau" means the Media Bureau of the Federal Communications Commission;

(d) "Civil Penalty" means the payment Licensee has agreed to pay to the United States Treasury;

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

(f) "Effective Date" means the date on which the Bureau releases the Adopting Order;

(g) "Eugene Huse" means Eugene F. Huse, Jr.;

(h) "William Huse" or "W.H. Huse" means William H. Huse;

(i) "Karla Huse" means Karla S. Huse;

(j) "Investigation" means the Bureau's investigation of information contained in the Voluntary Transfer Applications, as detailed herein;

(k) "Licensee" means WJAG, Inc., licensee of stations WJAG(AM), Norfolk, Nebraska; KQKX(FM), Norfolk, Nebraska; KEXL(FM), Pierce, Nebraska; and K290AT, Norfolk, Nebraska, and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest;

(l) "Parties" means the Licensee and the Bureau;

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

(n) "Trust" means the WJAG Voting Trust;

(o) "Violations" mean the violations of the Voluntary Transfer of Control Rule and section 310(d) of the Act;

(p) "Voluntary Transfer Applications" means, collectively, the FCC Form 2100, Schedule 316 application for consent to the voluntary transfer of control seeking consent to the transfer of control from the W.H. Huse Revocable Trust to the W.H. Huse Living Trust, Application File No. 0000171561, and the FCC Form 2100, Schedule 315 application for consent to the voluntary transfer of control seeking consent to the transfer of control from Eugene F. Huse, Jr. to the W.H. Huse Revocable Trust, Application File No. 0000186217;

(q) "Voluntary Transfer of Control Rule" means 47 CFR § 73.3540.

III. BACKGROUND

3. Section 310(d) of the Act, provides in pertinent part:

> No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.[1]

The Voluntary Transfer of Control Rule implements section 310(d) of the Act.[2] It is well-settled that "control" as used in the Act and the Voluntary Transfer of Control Rule encompasses all forms of control,

[1] 47 U.S.C. § 310(d).

[2] 47 CFR § 73.3540. In particular, the Voluntary Transfer of Control Rule states, in pertinent part, that "[p]rior consent of the FCC must be obtained for a voluntary assignment or transfer of control." *Id*. § 73.3540(a). The rule states further that an "[a]pplication for consent to the transfer of control of a corporation holding a construction permit or license must be filed on [FCC Form 2100, Schedule 315]" where the transaction involves a substantial (or non pro forma) change in ownership or control, or on FCC Form 2100, Schedule 316 where the transaction is pro (continued….)

actual or legal, direct or indirect, negative or *affirmative*, and that passage of *de facto* as well as *de jure* control requires the prior consent of the Commission.[3]

4. Prior to 2017, Eugene Huse (now deceased) owned a controlling, majority interest in the Licensee. Specifically, Eugene Huse held 52% of the voting stock and 50.4% of non-voting stock of the Licensee.[4] In addition, his wife, Karla Huse (now deceased), held 1% of the Licensee's voting stock and 1.7% of the non-voting stock.[5] On March 1, 2017, and without prior Commission consent, Eugene and Karla Huse transferred their shares in the Licensee to a trust, the WJAG Voting Trust.[6] The couple's son, William Huse, was the trustee of the Trust, and Eugene and Karla Huse were the beneficiaries of the Trust.[7]

5. Subsequently, on August 30, 2018, the voting and non-voting shares held by the WJAG Voting Trust (constituting a controlling majority interest in the Licensee) were transferred to the W.H. Huse Revocable Trust without prior Commission consent.[8] William Huse was the sole trustee of the W.H. Huse Revocable Trust.[9] Finally, in August 2019, and similarly without prior Commission consent, all of the shares held by the W.H. Huse Revocable Trust (which originated from Eugene Huse and Karla Huse) were transferred to the W.H. Huse Living Trust.[10] William Huse is the sole trustee of the W.H. Huse Living Trust.

6. On November 26, 2021, the Licensee filed the Voluntary Transfer Application belatedly seeking Commission consent to the 2019 transfer of control from the W.H. Huse Revocable Trust to the W.H. Huse Living Trust.[11] In the course of processing that Voluntary Transfer Application, Bureau staff identified the two additional unauthorized transfers of control discussed above. On March 9, 2022, the Licensee filed a second Voluntary Transfer Application to address the earlier transfer of control of the

---

forma (i.e., does not involve a substantial change in ownership or control). *Id.* § 73.3540(a). The test for whether a change in ownership or control is "substantial" has generally been (a) whether 50 percent or more of the voting stock is being transferred, and (b) whether as a result of the transaction 50 percent or more of the outstanding voting stock will be held by persons whose qualifications to be Commission licensees have not previously been approved of or "passed upon." *Barnes Enterprises*, *Inc*., 55 FCC 2d 721 (1975); *Clay Broadcasters*, *Inc*., 21 RR 2d 442 (1971).

[3] *See, e.g.*, *Stereo Broadcasters, Inc.*, 55 FCC 2d 819, 821 (1975) (citing *WWIZ, Inc.*, 36 FCC 561 (1964)), *modified*, 59 FCC 2d 1002 (1976).

[4] *See* Voluntary Transfer Application FCC File No. 0000186217, Timeline of Various Transactions exhibit.

[5] *Id*.

[6] *Id*.

[7] *Id*. William Huse indicates that the WJAG Voting Trust was created to be a voting trust within the meaning of Section 21-271(a) of the Nebraska Model Business Corporation Act, and that the purpose of the trust was to ensure continuity for the Licensee in the event that the beneficiaries (Eugene and Karla Huse) were no longer able to make decisions regarding the corporate governance of the Licensee. *See* Voluntary Transfer Application FCC File No. 0000186217, Affidavit of William H. Huse.

[8] *Id*.

[9] *Id*. As a result of the demise of Eugene Huse, and consistent with the terms of the WJAG Voting Trust, on August 30, 2018, the beneficial interests held by Eugene and Karla Huse in the WJAG Voting Trust were also transferred to William Huse as Trustee of the W.H. Huse Revocable Trust.

[10] *Id*. At that time William Huse also transferred 13,000 Class B non-voting shares that he owned personally and which comprised 1.2% of the non-voting shares of the Licensee to the W.H. Huse Living Trust.

[11] *See* Application File No. 0000171561 (filed Nov. 26, 2021); *see also*, *Broadcast Applications,* Public Notice, Report No. PN-1-211129-01, at 6, 15-16, 18 (MB Nov. 29, 2021).

Licensee from Eugene Huse to a trust controlled by William Huse.[12] These various transfers of control were done without prior Commission consent as required by section 310(d) of the Act and the Voluntary Transfer of Control Rule.

7. Based on the foregoing, the Bureau commenced the Investigation and suspended processing of the Voluntary Transfer Applications. The Parties acknowledge that any proceedings that might result from the Violations would be time-consuming and require a substantial expenditure of public and private resources. In order to conserve such resources, resolve the matters, and promote compliance with the Rules, the Parties are entering into this Consent Decree, in consideration of the mutual commitments made herein.

IV. TERMS OF AGREEMENT

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

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

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

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

12. The Bureau further agrees that, in the absence of new material evidence, it will not use the Violations or the existence of this Consent Decree in any action against Licensee concerning the matters that were the subject of the Investigation, provided that the Licensee satisfies all of its obligations under this Consent Decree. In the event that the Licensee fails to satisfy any of its obligations under this Consent Decree, the Bureau may take any enforcement action available pursuant to the Act and the Rules with respect to each Violation, and/or the violation of this Consent Decree.

13. **Admission of Liability**. Licensee stipulates that its actions described in Paragraph 4 violated section 310(d) of the Act and the Voluntary Transfer of Control Rule.

14. **Civil Penalty**. Licensee agrees to pay the Civil Penalty to the United States Treasury in the amount of eight thousand dollars ($8,000), within thirty (30) calendar days after the Effective Date. Licensee acknowledges and agrees that upon execution of this Consent Decree, the Civil Penalty shall become a "Claim" or "Debt" as defined in section 3701(b)(1) of the Debt Collection Improvement Act of 1996.[13]

15. **Payment**. Licensee will also send electronic notification of payment to Brendan Holland at Brendan.Holland@fcc.gov and to Olivia Hill at Olivia.Hill@fcc.gov on the date said payment is made. Payment of the Civil Penalty must be made by credit card, ACH (Automated Clearing House)

[12] *See* Application File No. 0000186217 (filed Mar. 9, 2022), amended Apr. 1, 2023, Sept. 22, 2023, and Jan. 18, 2024; *see also*, *Broadcast Applications*, Public Notice, Report No. PN-1-220314-01, at 3, 6, 14 (MB Mar. 14, 2022).

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

debit from a bank account using CORES (the Commission's online payment system),[14] or by wire transfer. The Commission no longer accepts Civil Penalty payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:[15]

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

16. **Compliance Officer**. Within 30 calendar days after the Effective Date, Licensee shall designate William Huse to serve as the Compliance Officer who will discharge the duties set forth below, supervise Licensee's compliance with the Act and the Rules, and serve as the point of contact on behalf of the Licensee for all FCC-related compliance matters.

17. **Compliance Plan**. For purposes of settling the matters set forth herein, the Licensee agrees that it shall, within thirty (30) calendar days after the Effective Date, develop, implement, and maintain for a period of three (3) years a Compliance Plan designed to ensure future compliance with the

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

[15] 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.

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

Commission's transfer of control rules. The Compliance Plan shall apply to all radio stations owned by the Licensee. The Compliance Plan shall contain, at a minimum, the following elements:

a. **Compliance Manual**. Licensee will issue a Compliance Manual that is distributed to employees and others who perform duties for the Licensee that trigger or may trigger compliance-related responsibilities. Licensee may adopt a Compliance Manual that it has prepared or one that has been prepared by an outside source, such as a trade association (e.g. the National Association of Broadcasters), another licensee, or a law firm. The Compliance Manual shall include: (1) an overview of the Commission's requirements with respect to applications for assignment or transfer of control of FCC licenses, including the need for prior approval for license assignments and transfers of control as set forth in the Rules; and (2) a description of the regulatory requirements applicable to the accurate reporting of information in assignment and transfer of control applications as set forth in the Rules. Licensee shall update the Compliance Manual from time to time to reflect changes to relevant sections of the Act, Rules, and Commission orders, and as otherwise needed.

b. **Compliance Training Program**. Licensee shall administer a Compliance Training Program for employees and others who perform duties for the Licensee related to assignment and transfer of control applications. This Compliance Training Program shall be completed for all such employees within sixty (60) calendar days of the Effective Date. This Compliance Training Program shall also be presented to new employees who are engaged in such activities, within the first sixty (60) calendar days of employment. This Compliance Training Program shall track the Compliance Manual, focusing on proper implementation of the Compliance Manual.

c. **Compliance Reports**. Licensee shall submit a Compliance Report to the Commission 90 days after the Effective Date and annually thereafter on the anniversary of the Effective Date for a period of three (3) years. Each Compliance Report will include a certification by the Compliance Officer, as an agent of and on behalf of Licensee, attesting to personal knowledge that: (1) Licensee has established operating procedures intended to ensure compliance with the terms and conditions of this Consent Decree and with section 310(d) of the Act and the Voluntary Transfer of Control Rule, together with an accompanying statement explaining the basis for the certification; (2) Licensee has been utilizing those procedures since the previous Compliance Report was submitted; and (3) Licensee is not aware of any instances of non-compliance with the Consent Decree or those specified sections of the Act and Rules. The certification must comply with section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein. If the Compliance Officer cannot provide the requisite certification, then the Compliance Officer shall provide the Commission with a detailed explanation of: (i) any instances of non-compliance with this Consent Decree and the Act or Rules, and (ii) the steps that Licensee has taken or will take to remedy each instance of non-compliance and ensure future compliance, and the schedule on which proposed remedial actions will be taken. A copy will be served on Brendan Holland, Audio Division, FCC Media Bureau, at Brendan.Holland@fcc.gov.

18. **Qualifications; Agreement to Grant**. The Bureau finds that its Investigation raises no substantial and material questions of fact as to whether the Licensee possesses the basic qualifications, including those relating to character, to hold a Commission license or authorization. Accordingly, the Bureau agrees to grant the Voluntary Transfer Applications after the Effective Date, provided that the following conditions have been met: 1) the Civil Penalty payment, referenced in paragraph 15 of this Decree, has been fully and timely satisfied; and 2) there are no issues other than the Violations that would preclude grant of the Voluntary Transfer Applications.

19. **Waivers**. Licensee agrees to waive any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge the validity of this Consent Decree and the Adopting Order, provided the Consent Decree is adopted without change, addition or modification. If any Party (or the United States on behalf of the Commission), brings a judicial action to enforce the terms of the Consent Decree or Adopting Order, no Party will contest the validity of the Consent Decree or Adopting Order, and Licensee will waive any statutory right to a *trial de novo*. Licensee further agrees to waive any claims it may otherwise have under the Equal Access to Justice Act[17] relating to the Consent Decree or Adopting Order.

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

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

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

23. **Successors and Assigns**. 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 or amended without the advance written consent of all Parties.

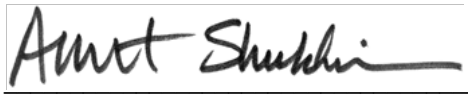
26. **Paragraph Headings**. The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

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

[17] 5 U.S.C. § 504; 47 CFR §§ 1.1501-.1530.

28. **Counterparts**. This Consent Decree may be signed in counterparts and/or electronically and, when so executed, the counterparts, taken together, will constitute a legally binding and enforceable instrument whether executed electronically or by original signatures.

MEDIA BUREAU
FEDERAL COMMUNICATIONS COMMISSION

By: 
Albert Shuldiner, Chief, Audio Division

Date: January 26, 2024

WJAG, Inc.

By: _____
William H. Huse, President

Date: _____

28. **Counterparts**. This Consent Decree may be signed in counterparts and/or electronically and, when so executed, the counterparts, taken together, will constitute a legally binding and enforceable instrument whether executed electronically or by original signatures.

MEDIA BUREAU
FEDERAL COMMUNICATIONS COMMISSION

By: _____
Albert Shuldiner, Chief, Audio Division

Date: _____

WJAG, Inc.

By: _____
William H. Huse, President

Date: _____

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-73
Released: January 25, 2024

WIRELINE COMPETITION BUREAU ANNOUNCES ROBOCALL MITIGATION DATABASE FILING DEADLINES AND INSTRUCTIONS AND ADDITIONAL COMPLIANCE DATES

WC Docket No. 17-97

This Public Notice announces effective dates and compliance deadlines for revised Robocall Mitigation Database filing requirements and related rules adopted in the *Sixth Caller ID Authentication Report and Order*, including the additions of and revisions to 47 CFR §§ 64.6303(c), 64.6305(d), 64.6305(e), 64.6305(f) and 64.6305(g).[1]

Pursuant to these rules, all providers, regardless of whether they are required to implement STIR/SHAKEN—including all intermediate providers and providers that lack control over the network infrastructure necessary to implement STIR/SHAKEN—are now required to file certifications and robocall mitigation plans to the Robocall Mitigation Database.[2] They must also comply with expanded content requirements for these submissions.[3] Providers newly required to file in the Robocall Mitigation

[1] *See Call Authentication Trust Anchor*, WC Docket No. 17-97, Sixth Report and Order and Further Notice of Proposed Rulemaking, FCC 23-18, at 55, para. 125 (Mar. 17, 2023) (*Sixth Caller ID Authentication Report and Order*) (directing the Bureau "to announce effective dates for the additions of and revisions to 47 CFR §§ 64.6303(c), 64.6305(d), 64.6305(e), 64.6305(f) and 64.6305(g), as redesignated by this *Sixth Report and Order*, by subsequent Public Notice" following completion by the Office of Management and Budget (OMB) of any review required under the Paperwork Reduction Act). On November 7, 2023, OMB approved the information collection associated with these rules. OMB Control Number 3060-1285. Notice of OMB approval was published in the Federal Register on January 25, 2024. 89 Fed. Reg. 4833 (*Federal Register Notice*). These provisions will be effective February 26, 2024. Compliance with 47 CFR § 64.6305(g)(4) will be required no sooner than May 28, 2024.

[2] *Sixth Caller ID Authentication Report and Order* at 21, para. 37. Voice service providers, gateway providers, and those non-gateway intermediate providers that receive unauthenticated Session Initiation Protocol (SIP) calls directly from an originating provider are required to implement STIR/SHAKEN. *See* 47 CFR §§ 64.6301(a), 64.6302(c), (d). Non-gateway intermediate providers that do not receive unauthenticated SIP calls directly from originating providers and providers who lack control over the network infrastructure necessary to implement STIR/SHAKEN do not have an implementation obligation. *See Sixth Caller ID Authentication Report and Order* at 10-11, para. 17; *Call Authentication Trust Anchor*, WC Docket No. 17-97, Second Report and Order, 36 FCC Rcd 1859, 1868, para. 19 (2020) (citing *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, 3260, para. 40) (*Second Caller ID Authentication Report and Order*). Some providers with an implementation obligation have been granted an extension. *See* 47 CFR § 64.6304(a)(1)(iii), (b), (c). Providers claiming an implementation extension have always been required to submit certifications and robocall mitigation plans to the Robocall Mitigation Database. *See Sixth Caller ID Authentication Report and Order* at 5-6, 7, 20, paras. 7-8, 10, 36.

[3] *See Sixth Caller ID Authentication Report and Order* at 20-29, paras. 36-52.

Database must submit their initial filings containing all required information and certifications by **February 26, 2024**.[4] Existing filers must update their Robocall Mitigation Database submissions to provide all newly required information and certifications by the same date.[5]

Intermediate providers and voice service providers are already required to refuse traffic from any voice service provider or gateway provider that is not listed in the Robocall Mitigation Database.[6] Beginning on **May 28, 2024**, they will also be prohibited from accepting traffic from any non-gateway intermediate provider not listed in the Robocall Mitigation Database.[7] Stated differently, voice service providers and intermediate providers must refuse to carry traffic from *any* provider that is not listed in the Robocall Mitigation Database as of **May 28, 2024**.

The Robocall Mitigation Database submission portal is now open to accept new and updated filings. To assist filers with compliance, this Public Notice provides an overview of the expanded Robocall Mitigation Database filing requirements, along with filing instructions regarding the format of required submissions.[8]

I. EXPANDED ROBOCALL MITIGATION DATABASE FILING REQUIREMENTS AND ASSOCIATED DEADLINES

In the *Sixth Caller ID Authentication Report and Order*, the Commission adopted rules requiring all non-gateway intermediate providers, as well as voice service providers that have fully implemented STIR/SHAKEN and those that lack control over the network infrastructure necessary to implement STIR/SHAKEN, to meet the same "reasonable steps" general mitigation standard that previously applied to gateway providers and voice service providers that had not fully implemented STIR/SHAKEN under the Commission's rules.[9] Pursuant to this standard, a provider's program is "sufficient if it includes detailed practices that can reasonably be expected to significantly reduce" the carrying or processing (for intermediate providers) or origination (for voice service providers) of illegal robocalls.[10] Each provider

[4] *See* 47 CFR § 64.6305(d), (e), (f). The Commission required all providers newly subject to the Robocall Mitigation Database filing requirement, as well as existing filers subject to new or modified requirements, to submit a certification to the Robocall Mitigation Database, or amend their current certification, by the later of: (1) 30 days following publication in the Federal Register of notice of approval by the Office of Management and Budget (OMB) of any associated Paperwork Reduction Act (PRA) obligations; or (2) any deadline set by the Bureau through Public Notice. *Sixth Caller ID Authentication Report and Order* at 27, para. 49.

[5] *Sixth Caller ID Authentication Report and Order* at 27, para. 49. In addition, non-gateway intermediate providers must comply with the Commission's rules regarding caller ID authentication in non-IP networks by February 26, 2024, including the Commission's record keeping requirements. *See* 47 CFR § 64.6303(c); *Sixth Caller ID Authentication Report and Order* at 15, para. 26.

[6] *See* 47 CFR § 64.6305(g)(1), (3).

[7] *See id.* § 64.6305(g)(4); *Sixth Caller ID Authentication Report and Order* at 28, 29, paras. 50, 52.

[8] *Sixth Caller ID Authentication Report and Order* at 29, para. 52 (directing the Bureau to specify the form and format of any submissions, and to provide appropriate instructions and training materials as necessary).

[9] *Id.* at 17, para. 29. All providers newly covered by the general mitigation standard were required to meet that standard by August 21, 2023. *Id*. at 20, para. 35 (requiring providers newly covered by the general mitigation standard to meet that standard within 60 days following Federal Register publication of the Report and Order); *see* 88 Fed. Reg. 40096 (June 21, 2023) (announcing August 21, 2023 effective date for rules adopted in the Report and Order, except for certain amendments that were delayed).

[10] *Sixth Caller ID Authentication Report and Order* at 18, para. 31; *see Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1900, para. 78 (obligation for voice service providers); *Advanced Methods to Target and Eliminate Unlawful Robocalls, Call Authentication Trust Anchor*, CG Docket No. 17-59, WC Docket No. 17-97, 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, 6907-08, para. 103 (2022) (obligation for gateway providers) (*Gateway Provider Order*).

"must comply with the practices" that its program requires, and its program is insufficient if the provider "knowingly or through negligence" carries or processes calls (for intermediate providers) or originates (for voice service providers) unlawful robocall campaigns.[11] Providers' programs must also commit to respond fully, within 24 hours, to all traceback requests from the Commission, law enforcement, and the industry traceback consortium, and to cooperate with such entities in investigating and stopping illegal robocallers that use its service to originate, carry, or process illegal robocalls.[12]

Universal Robocall Mitigation Database Filing Obligation. Consistent with the expanded robocall mitigation obligations adopted in the *Sixth Caller ID Authentication Report and Order*, by **February 26, 2024**, all providers must submit or resubmit a filing to the Robocall Mitigation Database that includes the following: (1) a certification stating that all calls that they originate on their network are subject to a robocall mitigation program meeting the requirements above, that any prior certification has not been removed by Commission action and they have not been prohibited from filing in the Robocall Mitigation Database, and whether they have fully, partially, or not implemented STIR/SHAKEN on the IP portions of their networks;[13] (2) a robocall mitigation plan that describes the specific "reasonable steps" the provider has taken to avoid the origination, carrying, or processing of illegal robocall traffic as part of its robocall mitigation program, and includes other required contents described below;[14] (3) the provider's business name, address, and other identifying information;[15] and (4) certain additional information as described below.[16]

Additional Information to be Provided on the Submission Form. In the *Sixth Caller ID Authentication Report and Order*, the Commission adopted rules requiring all providers—including those newly obligated to file and those with an existing filing—to submit additional information with their certifications and mitigation plans.[17] Specifically, new and existing filers will be required to provide the following additional information on the submission form: (1) the role(s) they are playing in the call chain;[18] (2) detailed information supporting any claimed STIR/SHAKEN implementation extension or

---

[11] *Sixth Caller ID Authentication Report and Order* at 18, para. 31; *see Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1900, para. 78; *Gateway Provider Order,* 37 FCC Rcd at 6908, para. 103.

[12] 47 CFR § 64.6305(a)(2), (b)(2), (c)(2); *see Sixth Caller ID Authentication Report and Order* at 18-19, para. 31; *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, Eighth Further Notice of Proposed Rulemaking, Third Notice of Inquiry, FCC 23-37, at 23, para. 52 (May 19, 2023).

[13] 47 CFR § 64.6305(d)(1), (e)(1), (f)(1); *see also Sixth Caller ID Authentication Report and Order* at 23, 25, paras. 42, 46.

[14] *See Sixth Caller ID Authentication Report and Order* at 20, 22-23, paras. 36, 40-41; 47 CFR § 64.6305(d)(2), (e)(2), (f)(2).

[15] Such information includes: (1) the business name(s) and primary address of the provider; (2) other business names in use by the provider; (3) all business names previously used by the provider; (4) whether the provider is also a foreign voice service provider; and (5) the name, title, department, business address, telephone number, and email address of one person within the company responsible for addressing robocall mitigation-related issues. *See Sixth Caller ID Authentication Report and Order* at 23-24, paras. 42-43; 47 CFR § 64.6305(d)(4), (e)(4), (f)(4).

[16] *See Sixth Caller ID Authentication Report and Order* at 24-27, paras. 43-48; 47 CFR § 64.6305(d)(1)-(2), (d)(4), (e)(1)-(2), (e)(4), (f)(1)-(2), (f)(4).

[17] *See Sixth Caller ID Authentication Report and Order* at 21-27, paras. 37-48.

[18] *Id.* at 24-25, para. 44. Specifically, providers must indicate whether they are: (1) a voice service provider with a STIR/SHAKEN implementation obligation serving end-users; (2) a voice service provider with a STIR/SHAKEN obligation acting as a wholesale provider originating calls; (3) a voice service provider without a STIR/SHAKEN obligation; (4) a non-gateway intermediate provider with a STIR/SHAKEN obligation; (5) a non-gateway intermediate provider without a STIR/SHAKEN obligation; (6) a gateway provider with a STIR/SHAKEN

(continued….)

exemption;[19] (3) information regarding their principals, affiliates, subsidiaries, and parent companies;[20] (4) a statement whether they are subject to a Commission, law enforcement, or regulatory agency action or investigation due to suspected unlawful robocalling or spoofing and provide information concerning any such actions or investigations;[21] and (5) the filer's Operating Company Number (OCN) if they have one.[22] The submission form will prompt this information from the filer via clearly-labeled checkboxes, dropdown menus, and text fields, as described in more detail in the filing instructions provided below. All required fields must be completed before a filing can be submitted.

Additional Information to be Provided with Robocall Mitigation Plans. Consistent with existing filers' prior obligations, all providers must upload a robocall mitigation plan to the Robocall Mitigation Database portal that describes the specific "reasonable steps" the provider has taken to avoid, as applicable, the origination, carrying, or processing of illegal robocall traffic as part of its robocall mitigation program.[23] Gateway providers must also provide a description of how they have complied with the know-your-upstream provider requirement in section 64.1200(n)(5) of the Commission's rules.[24] In addition, as part of their obligation to describe with particularity their specific mitigation practices:[25] (1) voice service providers must describe how they are meeting their existing obligation to take affirmative, effective measures to prevent new and renewing customers from originating illegal calls;[26] (2) non-gateway intermediate providers and voice service providers must, like gateway providers, describe any "know-your-upstream provider" procedures in place designed to mitigate illegal robocalls;[27] and (3) all providers must describe any call analytics systems they use to identify and block illegal traffic,

(Continued from previous page)
obligation; (7) a gateway provider without a STIR/SHAKEN obligation; and/or (8) a foreign provider. *Id.*; 47 CFR § 64.6305(d)(4)(vi), (e)(4)(vi), (f)(4)(vi).

[19] *Sixth Caller ID Authentication Report and Order* at 25, para. 45; 47 CFR § 64.6305(d)(2)(i), (e)(2)(i), (f)(2)(i). Specifically, a filer asserting it does not have an obligation to implement STIR/SHAKEN because of an ongoing extension, or because it lacks control over the network infrastructure necessary to implement STIR/SHAKEN, must both explicitly state the rule that exempts it from compliance and explain in detail why that exemption applies to the filer. *Sixth Caller ID Authentication Report and Order* at 25, para. 45.

[20] *Sixth Caller ID Authentication Report and Order* at 25-26, para. 46. Filers must provide sufficient detail regarding their ownership and management to facilitate the Commission's ability to determine whether the provider has been prohibited from filing in the Robocall Mitigation Database. *Id.* If the filer requires more space than is provided on the submission form, they may include this information as part of their robocall mitigation plan.

[21] *Id.* at 26-27, para. 47; 47 CFR § 64.6305(d)(2)(iv), (e)(2)(iv), (f)(2)(iv). This reporting requirement is limited to formal actions and investigations that have been commenced or issued pursuant to a written notice or other instrument containing findings by the law enforcement or regulatory agency that the filing entity has been or is suspected of the illegal activities itemized above, including, but not limited to, notices of apparent liability, forfeiture orders, state or federal civil lawsuits or criminal indictments, and cease-and-desist notices. *Sixth Caller ID Authentication Report and Order* at 26, para. 47.

[22] *Sixth Caller ID Authentication Report and Order* at 27, para. 48; 47 CFR § 64.6305(d)(4)(vii), (e)(4)(vii), (f)(4)(vii).

[23] 47 CFR § 64.6305(d)(2)(ii), (e)(2)(ii), (f)(2)(ii).

[24] *Id.* § 64.6305(e)(2)(ii); *see also id*. § 64.1200(n)(4) ("A voice service provider must . . . [i]f the provider acts as a gateway provider, take reasonable and effective steps to ensure that any foreign originating provider or foreign intermediate provider from which it directly receives traffic is not using the gateway provider to carry or process a high volume of illegal traffic onto the U.S. network.").

[25] *Sixth Caller ID Authentication Report and Order* at 22, para. 40.

[26] 47 CFR § 64.6305(d)(2)(ii); *see also id*. § 64.1200(n)(4).

[27] *Id.* § 64.6305(d)(2)(ii), (f)(2)(ii).

including whether they use a third-party vendor or vendors and the name of the vendor(s).[28] To comply with the new requirements to describe their "new and renewing customer" and "know-your-upstream provider" procedures, providers must describe any contractual provisions with end-users or upstream providers designed to mitigate illegal robocalls.[29] All mitigation plans must be submitted in PDF format.

We caution providers to carefully review their robocall mitigation plans to ensure they provide sufficient detail for the Commission to identify the specific steps a provider is taking to mitigate illegal robocalls and assess whether they are reasonable. The Commission has made clear that robocall mitigation plans that fail to provide sufficient information may be deemed facially deficient and subject to the expedited removal procedure adopted in the *Sixth Caller ID Authentication Report and Order*.[30] Indeed, the Commission's Enforcement Bureau has initiated actions to remove facially deficient filings from the Robocall Mitigation Database.[31] Accordingly, while a sufficient robocall mitigation plan is not necessarily a lengthy one, providers should ensure that their plans contain detailed information that responds to each requirement of the Commission's rules.

Providers That Play More Than One Role in the Call Chain. Some new and existing filers may play different roles in the call chain depending on the source of the call and their particular network and business model. For example, a voice service provider may originate some traffic and act as a non-gateway intermediate provider and/or gateway provider for other traffic originated elsewhere. Such providers must indicate on the submission form that they are certifying as more than one provider-type,[32] and will be presented with up to three sets of certification options—one set containing the required certifications for voice service providers,[33] one set containing the required certifications for gateway providers,[34] and one set containing the required certifications for non-gateway intermediate providers,[35]

[28] *Id.* § 64.6305(d)(2)(ii), (e)(2)(ii), (f)(2)(ii).

[29] *Sixth Caller ID Authentication Report and Order* at 22, para. 40. Providers are not required to submit contractual provisions, but to describe them in general terms, including whether such provisions are typically included in their contracts. *Id.* at 22, para. 40 n.154.

[30] *See id.* at 32-33, para. 61. The Commission provided the following non-exclusive examples of filings that may be deemed facially deficient: (1) a request for confidentiality with no underlying substantive filing; (2) only non-responsive data or documents (e.g., a screenshot from the Commission's website of a provider's FCC Registration Number data or other document that does not describe robocall mitigation efforts); (3) information that merely states how STIR/SHAKEN generally works, with no specific information about the provider's own robocall mitigation efforts; or (4) a certification that is not in English and lacks a certified English translation. *Id*. The Commission found that such filings fail to submit "even the most basic information required" to determine if the steps a provider is taking to mitigate illegal robocalls are reasonable. *Id*.

[31] *See Viettel Business Solutions Company*, EB-TCD-23-00034918, Order, DA 23-979 (EB Oct. 16, 2023); *Etihad Etisalat (Mobily)*, EB-TCD-23-00034920, Order, DA 23-967 (EB Oct. 16, 2023); *Claude ICT Poland Sp. z o. o. dba TeleCube.PL*, EB-TCD-23-00034944, Order, DA 23-961 (EB Oct. 16, 2023); *Nervill LTD*, EB-TCD-23-00034946, Order, DA 23-970 (EB Oct. 16, 2023); *Textodog Inc. dba Textodog and Textodog Software Inc.*, EB-TCD-23-00035605, Order, DA 23-976 (EB Oct. 16, 2023); *Phone GS*, EB-TCD-23-00035606, Order, DA 23-972 (EB Oct. 16, 2023); *Computer Integrated Solutions dba CIS IT & Engineering*, EB-TCD-23-00035613, Order, DA 23-962 (EB Oct. 16, 2023); *Datacom Specialists*, EB-TCD-23-00035614, Order, DA 23-963 (EB Oct. 16, 2023); *DomainerSuite, Inc.*, EB-TCD-23-00035615, Order, DA 23-964 (EB Oct. 16, 2023); *Evernex SMC PVT LTD*, EB-TCD-23-00035616, Order, DA 23-966 (EB Oct. 16, 2023); *Humbolt Voip*, EB-TCD-23-00035617, Order, DA 23-965 (EB Oct. 16, 2023); *My Taxi Ride Inc*, EB-TCD-23-00035618, Order, DA 23-968 (EB Oct. 16, 2023).

[32] Only a single Robocall Mitigation Database filing can be associated with a given FCC Registration Number (FRN), and therefore a provider that plays more than one role in the call chain will not be permitted to submit more than one filing to the Robocall Mitigation Database using the same FRN. See the Robocall Mitigation Database Filing Instructions for more information, available at https://www.fcc.gov/sites/default/files/rmd-instructions.pdf.

[33] *See* 47 CFR § 64.6305(d)(1).

[34] *See id.* § 64.6305(e)(1).

depending on which provider-type(s) they select on the form. A non-gateway intermediate provider that previously submitted a certification and, if applicable, a robocall mitigation plan to the Robocall Mitigation Database as a voice service provider, gateway provider, or combined gateway and voice service provider, must amend its current certification and any mitigation plan to comply with the requirements described in this Public Notice.[36] A provider that plays more than one role in the call chain need only submit a single mitigation plan, but should explain the mitigation steps it undertakes in each role, to the extent those mitigation steps are different.[37] Amended certifications and associated robocall mitigation plans must also be submitted by **February 26, 2024**.[38]

Filings Imported from the Intermediate Provider Registry. To the extent a non-gateway intermediate provider's filing was imported into the Robocall Mitigation Database via the Intermediate Provider Registry, that Robocall Mitigation Database entry is not sufficient to meet the non-gateway intermediate provider's affirmative obligation to submit a certification to the Robocall Mitigation Database.[39] Such providers must submit an affirmative filing and certification consistent with the filing requirements and instructions provided in this Public Notice.

In light of non-gateway intermediate providers' affirmative obligation to submit a certification and mitigation plan to the Robocall Mitigation Database, the Bureau has determined that it is no longer necessary to import filings from the Intermediate Provider Registry or to maintain current imported filings.[40] Accordingly, on **February 26, 2024**, the Bureau will cease importing filings from the Intermediate Provider Registry and will remove all current imported filings from the Robocall Mitigation Database.[41]

(Continued from previous page)
[35] *See id.* § 64.6305(f)(1).

[36] *See Sixth Caller ID Authentication Report and Order* at 27, para. 49 ("Existing filers subject to new or modified requirements adopted in this . . . *Order* must amend their filings with the newly required information by the . . . deadline."). The certification option(s) the provider previously selected when it certified as a voice service provider and/or gateway provider will not be pre-filled on the submission form. The filer will be required to select or re-select a certification option for each relevant provider-type before the filing can be submitted. See the Robocall Mitigation Database filing instructions for more information, available at https://www.fcc.gov/sites/default/files/rmd-instructions.pdf.

[37] *Sixth Caller ID Authentication Report and Order* at 22, para. 39.

[38] *See id.* at 27, para. 49; *Federal Register Notice*, 89 Fed. Reg. at 4833.

[39] *Sixth Caller ID Authentication Report and Order* at 28, para. 51.

[40] Previously, all intermediate providers were imported into the Robocall Mitigation Database from the rural call completion database's Intermediate Provider Registry so that all intermediate providers would be represented therein, giving downstream providers "confidence that any provider not listed in the Robocall Mitigation Database is out of compliance with [the Commission's] rules, rather than leaving the potential for uncertainty about whether a provider . . . was not required to be included in the database because it does not originate traffic." *Second Caller ID Authentication Report and Order*, 36 FCC Rcd at 1904, para. 87 n.340; *see also* 47 CFR § 64.6305(g) (requiring intermediate providers and terminating voice service providers to accept calls from a domestic voice service provider, foreign provider, gateway provider, or non-gateway intermediate provider only if that provider is listed in the Robocall Mitigation Database). Now that all providers, regardless of whether they originate traffic, including gateway and non-gateway intermediate providers, are required to submit a certification to the Robocall Mitigation Database, it is no longer necessary to import filings from the Intermediate Provider Registry or maintain current imported filings to facilitate compliance with the requirements of section 64.6305(g).

[41] *See Sixth Caller ID Authentication Report and Order* at 29, para. 52 ("We . . . delegate to the . . . Bureau the authority to make the necessary changes to the Robocall Mitigation Database to indicate whether a non-gateway intermediate provider has made an affirmative filing (as opposed to being imported as an intermediate provider) . . . and to announce its determination as part of its guidance."); *Gateway Provider Order*, 37 FCC Rcd at 6885, para. 48 ("Consistent with our direction to the . . . Bureau to make the necessary changes to the portal to effectuate the rules we adopt today, we direct the Bureau to determine how to manage the imported data of gateway providers . . . .").

Obligations on Downstream Intermediate Providers and Voice Service Providers. In the *Sixth Caller ID Authentication Report and Order*, the Commission adopted a rule prohibiting "downstream providers . . . from accepting any traffic from a non-gateway intermediate provider not listed in the Robocall Mitigation Database, either because the provider did not file or their certification was removed . . . as part of an enforcement action."[42] The Commission stated that compliance with this rule would be required no sooner than "90 days following the deadline for non-gateway intermediate providers to submit a certification to the Robocall Mitigation Database."[43] With the filing deadline now established for **February 26, 2024**, this prohibition will go into effect on **May 28, 2024**. As of that date, intermediate providers and voice service providers will be prohibited from accepting calls directly from a non-gateway intermediate provider if that non-gateway intermediate provider's filing does not appear in the Robocall Mitigation Database.[44] The Bureau will remove from the Robocall Mitigation Database the filing and certification of any provider that is de-listed pursuant to an enforcement action.[45]

II. CERTIFICATION FILING INSTRUCTIONS

All providers must submit or resubmit their certification, mitigation plan, identification and other required information, and contact information via the Robocall Mitigation Database portal on the Commission's website at https://fccprod.servicenowservices.com/rmd?id=rmd_welcome.[46] All certifications and robocall mitigation program descriptions submitted to the Robocall Mitigation Database must be in English or with a certified English translation,[47] and must be signed by an officer in conformity with section 1.16.[48]

Updated instructions for submitting a certification and accompanying information can be found at https://www.fcc.gov/files/rmd-instructions. New and existing filers must submit any necessary updates regarding changes to their certification, mitigation plan, identification or other required information, or contact information to the Commission within 10 business days of the change.[49]

Public Database Location. The Robocall Mitigation Database is publicly available on the Commission's website at https://fccprod.servicenowservices.com/rmd?id=rmd_listings. A list of all providers with current filings in the database, published as a .csv file, may be downloaded at any time at https://fccprod.servicenowservices.com/rmd?id=rmd_welcome.[50]

Confidential Submissions. Providers may request that materials or information submitted to the Commission in their robocall mitigation plans be withheld from public inspection, consistent with the

[42] *Sixth Caller ID Authentication Report and Order* at 28, para. 50; *see also* 47 CFR § 64.6305(g)(4).

[43] *Sixth Caller ID Authentication Report and Order* at 28, para. 50.

[44] 47 CFR § 64.6305(g)(4); *see also Sixth Caller ID Authentication Report and Order* at 28, para. 51.

[45] *See Sixth Caller ID Authentication Report and Order* at 29, para. 52 ("We . . . delegate to the . . . Bureau the authority to make the necessary changes to the Robocall Mitigation Database to indicate . . . whether any provider's filing has been de-listed as part of an enforcement action, and to announce its determination as part of its guidance.").

[46] 47 CFR § 64.6305(d)(3)(i), (e)(3)(i), (f)(3)(i).

[47] *Sixth Caller ID Authentication Report and Order* at 24, para. 42; 47 CFR § 64.6305(d)(2), (e)(2), (f)(2).

[48] *Sixth Caller ID Authentication Report and Order* at 24, para. 42; 47 CFR § 64.6305(d)(3)(ii), (e)(3)(ii), (f)(3)(ii).

[49] *Id.* § 64.6305(d)(5), (e)(5), (f)(5); *see also Sixth Caller ID Authentication Report and Order* at 24, 27, paras. 42, 49.

[50] This list excludes providers with filings that have been removed pursuant to an enforcement action or were voluntarily deleted.

Commission's confidentiality rules.[51] To do so, providers must submit a request for confidential treatment of that information in WC Docket No. 17-97 through the Commission's Electronic Comment Filing System (ECFS).[52] Providers must then upload *both* the redacted (i.e., public) and unredacted (i.e., non-public) PDF copies of their robocall mitigation plans via the Robocall Mitigation Database portal. To do so, providers should check the box stating that they request that some of the filing's contents be kept confidential in the "Upload" section of the Robocall Mitigation Database submission form and follow the prompts to upload both the redacted and unredacted versions of their plans.[53] We remind providers that requests for confidential treatment and associated redactions that are overbroad or otherwise inconsistent with the Commission's rules will be rejected. Comprehensive instructions for submitting confidential filings via the portal are available at https://www.fcc.gov/files/rmd-instructions.

For further information, please contact Erik Beith, Wireline Competition Bureau, Competition Policy Division, at (202) 418-0756 or by email at Erik.Beith@fcc.gov.

- FCC -

[51] *Sixth Caller ID Authentication Report and Order* at 28, para. 49; *see also Wireline Competition Bureau Adopts Protective Order for Robocall Mitigation Program Descriptions*, WC Docket No. 17-97, Public Notice, Attach., 36 FCC Rcd 14562, 14566, para. 2 (WCB 2021) (defining confidential information filed as part of a robocall mitigation plan as information filed consistent with the protective order or sections 0.459 or 0.461 of the Commission's rules) (*Protective Order*); 47 CFR § 0.459.

[52] 47 CFR § 0.459; *see also Protective Order*, 36 FCC Rcd at 14569, para. 5. Confidentiality requests should not be submitted through the Robocall Mitigation Database portal.

[53] *Protective Order*, 36 FCC Rcd at 14569, para. 5.

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 24-74
Released: January 25, 2024

CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU PROVIDES ADDITIONAL GUIDANCE FOR USERS OF THE REASSIGNED NUMBERS DATABASE

CG Docket No. 17-59

With this Public Notice, the Consumer and Governmental Affairs Bureau supplements previous guidance on the Reassigned Numbers Database to reiterate that the permanent disconnection reporting rule[1] requires every service provider to file a monthly report even if it does not have permanent disconnections to disclose.

In the 2018 *Reassigned Numbers Order*, the Commission addressed the problem of unwanted calls to consumers with numbers reassigned from a previous consumer; it did so by establishing a single, comprehensive Reassigned Numbers Database.[2] Callers can now check the database to ensure they reach consumers that expect their calls and avoid calling consumers with reassigned numbers who may not wish to receive the call.[3]

To ensure the database is up-to-date, the Commission required service providers to report each month permanent disconnections of numbers assigned to them.[4] The permanent disconnection reporting requirements took effect on April 15, 2021.[5] Section 64.1200(l) of the rules states that, as of that date, and "on the 15th day of each month thereafter," service providers "shall . . . report to the Administrator the most recent date each NANP telephone number . . . was permanently disconnected."[6] The rule is obligatory (as indicated by the word "shall") and does not include any exceptions to the monthly reporting requirement. The *Reassigned Numbers Order* used similar obligatory language in describing this

[1] 47 CFR § 64.1200(l)(2).

[2] *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Second Report and Order, 33 FCC Rcd 12024 (2018) (*Reassigned Numbers Order*).

[3] *Id.* at 12025, para. 3; *see also* Press Release, FCC, FCC Announces Launch of Reassigned Numbers Database on November 1, 2021 to Reduce Unwanted Calls (Oct. 25, 2021), https://www.fcc.gov/document/fcc-host-webinar-upon-launch-reassigned-numbers-database-nov-1.

[4] *Reassigned Numbers Order*, 33 FCC Rcd at 12038, para. 39; 47 CFR § 64.1200(l)(2).

[5] *Consumer and Governmental Affairs Bureau Announces Compliance Date for Remaining Reassigned Numbers Database Rule Regarding Reporting of Disconnect Data*, CG Docket No. 17-59, Public Notice, 36 FCC Rcd 1441, 1441-42 (CGB 2021) (*Reporting PN*). Small service providers had an additional six months, until October 15, 2021, to comply with the reporting requirement. *Reassigned Numbers Order*, 33 FCC Rcd at 12038, para. 43; *Reporting PN*, 36 FCC Rcd at 1441-42. The Consumer and Governmental Affairs Bureau published technical specifications describing the format for the report on January 15, 2021. *Consumer and Governmental Affairs Bureau Announces Technical Specifications for Reassigned Numbers Database Reporting*, CG Docket No. 17-59, Public Notice, DA 21-67 (CGB 2021).

[6] 47 CFR § 64.1200(l)(2).

requirement: "We require providers to report data to the Administrator on the 15th day of each month."[7] It is thus clear that, under this requirement, providers must submit a report each month, without exception, even when no new permanent disconnections occurred during the most recent month. Indeed, guidance provided by the database Administrator in the Submit User Guide confirms that"[i]f there are no permanently disconnected [telephone numbers] to report for a monthly period, the user must report no disconnected telephone numbers in order to be in compliance."[8]

Notwithstanding this background and in an abundance of caution, to the extent that some providers have interpreted the rule's monthly filing obligation to not apply during months where the provider had no disconnections, we reiterate that a provider must submit a report even when it has no disconnections to report in a given month. More specifically, for months in which service providers have zero permanent disconnections, service providers should report no disconnections per longstanding guidance from the Administrator.[9] Without a zero-disconnection report, the Commission and the Administrator would not be able to discern if the lack of a filing was because there were no disconnections during that month or because the provider was in violation of the rule by not reporting that month's disconnections.

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

Additional Information. For further information, contact Rebecca Maccaroni of the Consumer and Governmental Affairs Bureau at (202) 418-7603 or Rebecca.Maccaroni@fcc.gov.

- FCC -

[7] *Reassigned Numbers Order*, 33 FCC Rcd at 12038, para. 39.

[8] *Reassigned Numbers Database*, Submit User Guide, p.11, https://www.reassigned.us/sites/default/files/resources/userguides/Submit_User_Guide_1.pdf (last visited Jan. 8, 2024).

[9] *Id*. In addition, in monthly correspondence, the database Administrator instructs providers with no disconnections to report to either use the "No Disconnect Data" button or upload a report stating there is no reportable disconnection data. Email from support@reassigned.us to registered service providers (Jan. 8, 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

DA 24-75
Released: January 26, 2024

COMMENTS INVITED ON SECTION 214 APPLICATION(S) TO DISCONTINUE DOMESTIC NON-DOMINANT CARRIER TELECOMMUNICATIONS AND/OR INTERCONNECTED VOIP SERVICES

WC Docket No(s). 23-375

Comments Due: February 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 **February 26, 2024**, the 31st day after the release date of this public notice, unless the Commission notifies any applicant(s) that their grant will not be automatically effective.[4] We note that the date on which an application for Commission authorization is deemed granted may be different from the date on which applicants are authorized to discontinue, reduce, or impair service ("Authorized Date"). Any applicant whose application has been deemed granted may discontinue, reduce or impair their Affected Service(s) in their Service Area(s) on or after the authorized date(s) specified in the Appendix, in accordance with their filed representations. Accordingly, pursuant to section 63.71(f), and the terms outlined in each application, absent further Commission action, each applicant may discontinue, reduce or impair the Affected Service(s) in the Service Area(s) described in their application on or after the authorized discontinuance date(s) listed in the Appendix for that application. For purposes of computation of time when filing a petition for reconsideration, application for review, or petition for judicial review of the Commission's decision(s), the date of "public notice" shall be the later of the auto grant date stated above in this Public

[1] 47 CFR § 63.71.

[2] 47 U.S.C. § 214.

[3] 47 CFR § 63.71.

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

Notice, or the release date(s) of any further public notice(s) or order(s) announcing final Commission action, as applicable. Should no petitions for reconsideration, applications for review, or petitions for judicial review be timely filed, the proceeding(s) listed in this Public Notice shall be terminated, and the docket(s) will be closed.

Comments objecting to any of the applications listed in the Appendix must be filed with the Commission on or before **February 12, 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): Blueface US, LLC**
WC Docket No. 23-375, Comp. Pol. File No. 1873
Link – https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2223-375*%22))
Affected Service(s) – over-the-top interconnected voice over Internet protocol service and associated features
Service Area(s) –Alabama, Arizona, California, Colorado, Connecticut, the District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Texas, Utah, Washington, Wisconsin, and Wyoming
Authorized Date(s) – on or after February 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 24-76
Released: January 25, 2024

Guard Band Licensee and Band Manager Annual Reports Due March 1, 2024; Reports Must Be Filed Through the Universal Licensing System

By this Public Notice, the Wireless Telecommunications Bureau (Bureau) reminds 700 MHz Guard Band Licensees[1] and 220 MHz Band Managers[2] (hereafter "Licensees") of their obligation to file timely annual reports on or before Friday, March 1, 2024.[3] In the annual reports, Licensees must provide information about the manner in which the spectrum in each of their markets is being utilized.[4] The information provided should accurately convey the current level of service being offered in each licensed area, including information regarding coverage provided by Licensees' operations and any spectrum lease agreements. Failure to file an annual report as required[5] may result in enforcement action.

Filing Annual Reports

Licensees must file the required annual report information for each license held through the Commission's Universal Licensing System (ULS) at https://www.fcc.gov/universal-licensing-system. Under "Filing" click on the "Submit a Pleading" link. Thereafter, select "700 MHz Guard Band/Band Manager Report" under the "Pleading Type" dropdown menu, and follow the system's instructions to provide the requisite contact and filer information. After filling out filer and contact information, choose "Callsign" and enter the call sign(s) that are to be associated with an annual report. After entering the applicable call sign(s), follow directions to attach and submit the annual report(s).

[1] *See* 47 CFR § 27.607.

[2] *See Request for Waivers to Provide Band Management Services Utilizing Licenses in the 220–222 MHz Band*, WT Docket 02-224, Memorandum Opinion and Order, 17 FCC Rcd 20464, 20470 (WTB 2002) (*Access 220 MO&O*); *Access 220, LLC., Assignor, and Spectrum Equity, Inc., Assignee, Application for Assignment of 220 MHz Licenses and Request for Waiver*, Memorandum Opinion and Order, 27 FCC Rcd 9321 (WTB 2012).

[3] Section 27.607(b) provides that the annual reports must be filed by March 1. 47 CFR. § 27.607(b).

[4] *See In the Matter of Service Rules for the 746–764 and 776–794 MHz Bands, and Revisions to Part 27 of the Commission's Rules,* Second Report and Order, 15 FCC Rcd 5299, ¶ 79 (2000); 47 CFR § 27.607(b).

[5] *See* 47 CFR § 27.607(c); *Access 220 MO&O*, 17 FCC Rcd at 20470; *see also "700 MHz Guard Band Managers' First Annual Report is Due October 1, 2002*," Public Notice, 17 FCC Rcd 8577 (WTB 2002). The basic information required in the annual reports was revised in April 2007. *See Service Rules for the 698–746, 747–762 and 777–792 MHz Bands*, WT Docket No. 06-150, *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, *Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones*, WT Docket No. 01-309, *Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services*, WT Docket 03-264, *Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules*, WT Docket No. 06-169, *Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band*, PS Docket No. 06-229, *Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010*, WT Docket No. 96-86, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 8064 (2007).

Accessing Annual Reports

The annual reports may be viewed at https://www.fcc.gov/annual-guard-band-reports or by ULS license search at http://wireless2.fcc.gov/UlsApp/UlsSearch/searchLicense.jsp. When accessing annual reports in ULS, search for the license by call sign and view the report in license details under attachments.

For additional information on filing this annual report, please contact Thomas Reed of the Bureau's Mobility Division at 202-418-0531 or Thomas.Reed@fcc.gov.

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-77
Released: January 25, 2024

WIRELINE COMPETITION BUREAU SEEKS COMMENT ON LEVERAGING THE BROADBAND SERVICEABLE LOCATION FABRIC FOR HIGH-COST SUPPORT MECHANISM DEPLOYMENT OBLIGATIONS

WC Docket No. 10-90
WC Docket No. 16-271
WC Docket No. 18-143
WC Docket No. 19-126
AU Docket No. 20-34

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)

TABLE OF CONTENTS

Heading Paragraph #

I. INTRODUCTION 1
II. BACKGROUND 2
A. High-Cost Program 2
B. Broadband Serviceable Location Fabric 5
III. DISCUSSION 8
A. Using the Fabric to Identify Locations in High-Cost Program Supported Areas 9
B. Relevant High-Cost Support Mechanisms Specific Uses for the Fabric 12
1. Rural Digital Opportunity Fund 12
2. The Bringing Puerto Rico Together and Connect USVI Funds 37
3. Alternative Connect America Cost Model I & II 48
4. The Alaska Plan 54
IV. PROCEDURAL MATTERS 58

I. INTRODUCTION

1. In this Public Notice, the Wireline Competition Bureau (WCB or the Bureau) seeks comment on using the data included in the Broadband Serviceable Location Fabric (Fabric) to update and verify compliance with certain High-Cost program support recipients' deployment obligations. Generally, we propose to leverage the Fabric to provide support recipients a reliable data source for determining locations and to maximize the number of consumers that are served by recipients of various High-Cost support mechanisms.

II. BACKGROUND

A. High-Cost Program

2. The Universal Service Fund's High-Cost program is designed to ensure that consumers in rural, insular, and high-cost areas have access to modern communications networks capable of providing voice and broadband service at rates that are reasonably comparable to those in urban areas.[1] Starting in 2011, the Commission modernized the High-Cost program, which included developing a new forward-looking cost model, the Connect America Cost Model (CAM), to calculate the cost of providing service in rural and high-cost areas, and adopting specific broadband deployment obligations for recipients of various High-Cost support mechanisms.[2]

3. For a number of these programs, the Commission relied on data sources to establish deployment obligations that provided an estimate of the number of locations in existence in the relevant support recipient's service area at a particular point in time. Relevant here, the Commission used the CAM for the Rural Digital Opportunity Fund (RDOF), and the Alternative-Connect America Cost Model (A-CAM) for the various A-CAM offers to estimate location totals.[3] Additionally, for the Bringing Puerto Rico Together Fund (Uniendo a Puerto Rico Fund) and the Connect USVI Fund, the Commission relied on the most current Census Bureau data at the time to estimate the number of locations in Puerto Rico and the U.S. Virgin Islands.[4] Recognizing that these sources may not reflect actual conditions on the ground over these programs' multi-year support terms, the Commission delegated to WCB the task of revising deployment obligations once more information was available regarding the actual number of locations within the support recipients' service areas.[5]

---

[1] 47 U.S.C. § 254(b)(3).

[2] *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order or FNPRM*), *aff'd sub nom. In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

[3] *See, e.g.*, *Rural Digital Opportunity Fund et al.*, WC Docket No. 19-126 et al., Report and Order, 35 FCC Rcd 686, 709, para. 45 (2020) (*RDOF Order*); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3100, para. 29 (2016) (*2016 Rate-of-Return Reform Order*). The CAM and A-CAM rely on 2010 Census data updated to 2011 counts using Census Bureau 2011 county estimates and GeoResults (Q3/2012) to estimate the number of housing units and small businesses, i.e., businesses to which mass market services will be made available. CostQuest Associates, Inc., Connect America Cost Model (CACM): Model Methodology 12-15 (Dec. 22, 2014), https://transition.fcc.gov/wcb/CAM v.4.2 Methodology.pdf (CAM Methodology); CostQuest Associates, Inc., Connect America Cost Model (A-CAM): Model Methodology 12-16 (May 1, 2018), https://apps.fcc.gov/edocs_public/attachmatch/DOC-350679A1.pdf (A-CAM Methodology). *See also Wireline Competition Bureau Provides Guidance to Carriers Receiving Connect America Fund Support Regarding their Broadband Location Reporting Obligations*, Public Notice, WC Docket No. 10-90, 31 FCC Rcd 12900, 12903-05 (WCB 2016) (*Location Guidance Public Notice*); *Rural Digital Opportunity Fund Phase I Auction Scheduled for October 29, 2020; Notice and Filing Requirements and Other Procedures for Auction 904*, AU Docket No. 20-34 et al., Public Notice, 35 FCC Rcd 6077, 6084-85, para. 17 n.29 (2020) (*Auction 904 Procedures Public Notice*).

[4] *The Uniendo a Puerto Rico Fund and the Connect USVI Fund et al.*, WC Docket No. 18-143 et al., Report and Order and Order on Reconsideration, 34 FCC Rcd 9109, 9143, paras. 60-61 (2019) (*2019 PR-USVI Order*); *Wireline Competition Bureau Releases List of Reserve Prices and Location Counts for the Uniendo a Puerto Rico Fund and Connect USVI Stage 2 Fixed Support Competitive Proposal Process*, WC Docket No. 18-143 et al., Public Notice, 34 FCC Rcd 12339 (WCB 2019) (*PR-USVI Location Count Public Notice*).

[5] *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 709-11, paras. 45-51; *2019 PR-USVI Order*, 34 FCC Rcd at 9144, para. 63; *2016 Rate-of-Return Order*, 31 FCC Rcd at 3102, para. 34.

4. Moreover, for all modernized High-Cost programs, including those that did not rely on cost model or Census Bureau data to determine deployment obligations,[6] the Commission has reiterated its goal of ensuring the universal availability of broadband and voice networks in funded areas.[7] To measure progress in meeting this goal and monitor compliance with service milestones, the Commission requires recipients of high-cost program support to report deployment data in the High Cost Universal Broadband portal (HUBB) on at least an annual basis.[8]

B. Broadband Serviceable Location Fabric

5. In March 2020, Congress passed the Broadband Data Act that requires the Commission to establish a semiannual collection of geographically granular broadband coverage data for use in creating coverage maps, establish processes for challenges to the coverage data and for accepting crowdsourced information, and create a comprehensive database of Broadband Serviceable Locations (BSL).[9] The Broadband Data Act defines the Fabric as the "common dataset of all locations in the United States where fixed broadband internet access service can be installed, as determined by the Commission,"[10] and directs that the Fabric "shall . . . serve as the foundation upon which all data relating to the availability of fixed broadband internet service . . . shall be reported and overlaid."[11] The Broadband Data Act also requires the Commission to create a process whereby information included in the Fabric may be challenged by "consumers, State, local and Tribal government entities, and other entities or individuals."[12]

6. In July 2020 and January 2021, the Commission adopted rules establishing certain elements of the Fabric, consistent with the Broadband Data Act.[13] In November 2021, the Commission awarded the contract for Fabric development to CostQuest Associates.[14] In April 2022, the Broadband Data Task Force, WCB, and the Office of Economics and Analytics (OEA) provided access to a preliminary version of the Fabric,[15] in June 2022 released the first production version of the Fabric,[16] and

---

[6] *Connect America Fund, et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 10139, 10145 para. 16 (2016) (*Alaska Plan Order*).

[7] *See, e.g.*, *USF/ICC Transformation Order*, 26 FCC Rcd at 17681, para. 51; *Alaska Plan Order*, 31 FCC Rcd at 10145-46, para. 16.

[8] 47 CFR § 54.316.

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

[10] 47 U.S.C. § 642(b)(1)(A)(i).

[11] 47 U.S.C. § 642(b)(1)(B)(ii).

[12] 47 U.S.C. § 642(b)(5)(A).

[13] *Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket No. 19-195 et al., Second Report and Order and Third Further Notice of Proposed Rulemaking, 35 FCC Rcd 7460, 7483-84, paras. 52-54 (2020) (*Second BDC Report and Order*); *Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket No. 19-195 et al., Third Report and Order, 36 FCC Rcd 1126, 1175-77, paras. 126-32 (2021) (*Third BDC Report and Order*). The Commission adopted definitions for residential and business locations that are based on definitions used for the Commission's High-Cost programs, with the exception that residential locations include group quarters for the Fabric and these are not included as eligible locations in the High-Cost program. *Third BDC Report and Order*, 36 FCC Rcd at 1176, para. 127; *Location Guidance Public Notice*, 31 FCC Rcd at 12903-04.

[14] *Broadband Data Task Force Announces Access to Preliminary Broadband Serviceable Location Fabric to Fixed Service Providers and Guidance for Filing Fixed Broadband Availability Data*, WC Docket No. 19-195 et al., Public Notice, 37 FCC Rcd 5046, 5048 (BDTF, OEA, WCB 2022) (*Preliminary Fabric Public Notice*).

[15] *See generally Preliminary Fabric Public Notice.*

in January 2023 and July 2023 released updated versions of the Fabric.[17] Each Fabric version is associated with a relevant "as of" date for fixed broadband availability reporting, and thus an updated iteration of the Fabric will be released in conjunction with the opening of a Broadband Data Collection (BDC) filing window for reporting broadband availability as of June 30 or December 31 of each year.[18] The Commission assigns each BSL[19] in the Fabric a unique identifier (Location ID), which reflects a single point defined by a set of geographic coordinates that fall within the footprint of a structure, as well as other attributes of the structure.

7. Currently, to ensure that Fabric data are consistent with data that high-cost support recipients are reporting to the HUBB to demonstrate compliance with their service milestones, we expect that support recipients will review the data they submit into the HUBB and as part of the BDC to identify any inconsistencies between the datasets.[20] If a support recipient identifies a mismatch between its two datasets, it can take one of the following steps to address the mismatch: remove the location from its HUBB submission, modify the attributes in its datasets to ensure that the HUBB and Fabric data submissions are consistent, or submit a Fabric challenge through the National Broadband Map or the BDC system. Moving forward and starting with Enhanced A-CAM, the FCC and USAC are developing a new version of the HUBB to accept data based on locations served that is based on Fabric Location IDs. Carriers will be provided a list of eligible Locations IDs within their service area. As carriers deploy broadband service in satisfaction of public interest obligations, they will report those eligible Location IDs in the HUBB.

III. DISCUSSION

8. We propose using the Fabric as the data source to revise and verify deployment obligations for a number of the high-cost support mechanisms, including RDOF, A-CAM I and II, the Bringing Puerto Rico Together Fund, the Connect USVI Fund, and the Alaska Plan to promote universal access to broadband across the areas funded by these programs. We seek comment on this proposal and on specific issues related to location total adjustments or verifications for each program.[21]

(Continued from previous page)

[16] *Broadband Data Task Force Announces The Availability Of The Production Version Of The Broadband Serviceable Location Fabric*, WC Docket No. 19-195 et al., Public Notice, 37 FCC Rcd 7537 (BDTF, WCB, OEA 2022).

[17] *Broadband Data Task Force Announces Opening of the Third Broadband Data Collection Filing Window and Availability of the June 2023 Broadband Serviceable Location Fabric*, WC Docket No. 19-195 et al., Public Notice, DA 23-580 (BDTF July 3, 2023) (*Third BDC Filing Window Public Notice*); *Broadband Data Task Force Announces Recommended Best Practices for Challenges to Updated Broadband Serviceable Location Fabric*, WC Docket No. 11-10 et al., Public Notice, DA 23-69, at 1 (BDTF Jan. 25, 2023) (*Fabric Challenges Best Practices Public Notice*).

[18] *Fabric Challenges Best Practices Public Notice* at 1.

[19] A BSL is a business or residential location in the United States at which fixed broadband Internet access service is, or can be, installed. A residential BSL includes all residential structures, including structures that are (or contain) housing units or group quarters (as those terms are defined by the United States Census Bureau). A business BSL includes all non-residential (business, government, non-profit, etc.) structures that are on property without residential locations and that would expect to demand Internet access service. We use "location" throughout this Public Notice to refer to the number of units associated with a BSL in the Fabric.

[20] 47 CFR § 54.316.

[21] We do not address the Connect America Fund Phase II auction in this Public Notice because we recently completed a location adjustment process where recipients had the opportunity to have their support and obligations adjusted if they could demonstrate it is more likely than not that they have identified all eligible locations in their service area and the number of locations they identified was less than the number of locations estimated by the CAM. *Connect America Fund et al.*, WC Docket No. 10-90, Order, DA 23-117 (WCB Feb. 9, 2023) (*ELAP Resolution Order*). We also do not address the recently adopted Enhanced A-CAM program because obligations for

(continued….)

A. Using the Fabric to Identify Locations in High-Cost Program Supported Areas

9. We propose to use the Fabric to identify the actual number of residential and small business units in each relevant high-cost support recipient's service area, i.e., the number of high cost-eligible locations. Because the Broadband Data Act directs the Commission to include in the Fabric "all locations in the United States where fixed broadband internet access service can be installed,"[22] and to iteratively update the Fabric, including by incorporating the results of challenges submitted by stakeholders, improved and more updated data sets, and updates to reflect on-the-ground changes,[23] we expect the Fabric is and will continue to be the most comprehensive and up-to-date source available to identify all the high-cost eligible locations in the eligible census blocks within a support recipient's service area. The Fabric identifies BSLs, which are locations "where fixed mass-market broadband Internet access service has, or could be, installed."[24] Moreover, because the Fabric must "serve as the foundation upon which all data relating to the availability of fixed broadband internet access service . . . shall be reported and overlaid," the Fabric will help facilitate our future coordination with other agencies to avoid duplicative funding.[25]

10. In identifying the high-cost eligible locations that are relevant to a high-cost support recipient's service area, we propose to exclude group quarters locations, which are currently included as BSLs in the Fabric, from revised locations totals to remain consistent with our previous guidance to exclude such locations from our High-Cost support mechanism location counts.[26] We also propose that if a portion of a parcel is inside an eligible census block,[27] but the BSL structure located on the parcel falls outside of the census block, the BSL will not be counted towards a support recipient's location total,

(Continued from previous page)
those support recipients were already set using the Fabric. *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., FCC 23-60, at 16, para. 34 (July 24, 2023) (*Enhanced A-CAM Order*). Moreover, we do not address the Rural Broadband Experiments in this Public Notice because the deployment period has ended for this program. *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., 29 FCC Rcd 8769, 8794, para. 74 (2014). Finally, we do not address Connect America Fund Broadband Loop Support (CAF BLS) in this Public Notice because the five-year deployment obligation term ended on December 31, 2023 and the Commission deferred the commencement of the next five-year deployment obligation term until January 1, 2025 while it considers general program reforms. *Connect America Fund et al.*, WC Docket No. 10-90, Second Report and Order, FCC 23-118 (Dec. 27, 2023) (citing *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 23-60, at 58-59, paras. 138-42 (Jul. 24, 2023)). WCB intends to use the Fabric to verify CAF BLS carriers' claims that they have served 100% of the locations in their service areas.

[22] 47 U.S.C. § 642(b)(1)(A)(i).

[23] 47 U.S.C. § 642(b)(5)(A); *see also Third BDC Filing Window Public Notice* at 2 (describing changes incorporated into a new version of the Fabric).

[24] *Broadband Data Task Force Publishes Data Specification for Bulk Challenges of Broadband Serviceable Location Fabric Data and Provides Further Details on Fabric Locations Data*, WC Docket No. 19-195 et al., Public Notice, 37 FCC Rcd 7686, 7690 (BDTF/WCB/OEA 2022).

[25] 47 U.S.C. § 642(b)(1)(B)(ii). *See, e.g.,* The Broadband Interagency Coordination Act of 2020, Pub. L. No. 116-260, 134 Stat. 3214, Div. FF, tit. IX, § 904 (2020), codified at 47 U.S.C § 1308 et seq. (building on existing coordination and improving interagency efforts to facilitate efficient use of funds for broadband deployment).

[26] *Third BDC Report and Order*, 36 FCC Rcd at 1176, para. 127; *Location Guidance Public Notice*, 31 FCC Rcd at 12903.

[27] We note that for the Bringing Puerto Rico Together Fund and the Connect USVI Fund, the Commission adopted unique eligible geographic areas that are not defined by U.S. Census Blocks. *2019 PR-USVI Order*, 34 FCC Rcd at 9140, para. 51. For purposes of this Public Notice, all references to eligible census blocks include the eligible geographic areas adopted in the Bringing Puerto Rico Together Fund and the Connect USVI Fund unless otherwise specifically noted.

consistent with our other High-Cost programs. We note that for support programs where the location totals were determined by the CAM or A-CAM, these models assigned locations to census blocks using 2010 Census data that was updated to 2011 counts using Census Bureau 2011 county estimates.[28] Because the Fabric incorporates 2020 Census data, we plan to overlay 2010 census blocks over the Fabric locations to determine updated location counts. Are there are any further adjustments or implications we should consider in using this approach?

11. We seek comment on our proposal to use the Fabric as the source for data on supported locations and on the adjustments we propose here. Should we use any sources to supplement our use of the Fabric? If we do rely on the Fabric as a source, are the adjustments we have identified appropriate? Are there other adjustments we would need to make to ensure we are accurately identifying the high cost-eligible locations located in the eligible census blocks in each support recipient's service area? Commenters suggesting that different sources should be used or that different adjustments should be made for one support mechanism and not another should explain the characteristics of the particular support mechanism that require different sources or adjustments.

B. Relevant High-Cost Support Mechanisms Specific Uses for the Fabric

1. Rural Digital Opportunity Fund

a. Background

12. In January 2020, the Commission adopted a framework for RDOF to award high-cost support through a multi-round reverse, descending clock auction in unserved areas.[29] Bidding concluded in November 2020,[30] and currently there are 379 support recipients with authorized winning bids totaling over $6 billion in support over a 10-year term, covering just under 3.5 million locations in 48 states and one territory.[31] While authorized bids included a range of performance tiers, over 97% of locations are covered by authorized winning bids for Gigabit speed broadband service.[32]

13. Using CAM-estimated location totals, the Commission adopted service milestones for RDOF recipients, requiring support recipients to commercially offer voice and broadband service to 40% of the CAM-calculated number of locations in the relevant eligible census blocks in a state by the end of the third full calendar year following funding authorization, and 20% each year thereafter.[33] To account for disparities between locations on the ground and those estimated by the CAM and to acknowledge its confidence that the Commission would have access to more accurate location data in the next few years, the Commission directed WCB to seek comment on the updated location data and publish revised location counts no later than the end of service milestone year six.[34] The Commission indicated that it

[28] CAM Methodology at 12-15; A-CAM Methodology at 12-16.

[29] *RDOF Order*, 35 FCC Rcd at 688, para. 5. RDOF support was targeted to census blocks that were wholly unserved with fixed voice and broadband service at speeds of 25/3 Mbps, which were identified using the most recent publicly available FCC Form 477 data and a limited challenge process. *Id.* at 690-94, paras. 9-16.

[30] *Rural Digital Opportunity Fund Phase I Auction (Auction 904) Closes; Winning Bidders Announced; FCC Form 683 Due January 29, 2021*, AU Docket No. 20-34 et al., Public Notice, 35 FCC Rcd 13888 (WCB and OEA 2020) (*Auction 904 Closing Public Notice*).

[31] *Rural Digital Opportunity Fund Auction 904 Application Review Concludes; Long-Form Applications Made Public*, AU Docket No. 20-34 et al., Public Notice, DA 23-1185 (WCB Dec. 20, 2023).

[32] *Id.*

[33] 47 CFR § 54.802(c)(1); *RDOF Order*, 35 FCC Rcd at 709, para. 45. A support recipient is deemed to be commercially offering voice and/or broadband service if it provides services to the location or could provide it within 10 business days upon request. *Id.* at 711-12, para. 54.

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

did not expect these updated location counts would result in significantly increasing the deployment obligations of support recipients, and thus the Commission decided that a support recipient no longer had to maintain a letter of credit to protect the public's funds once it had been verified that the support recipient had met the sixth year service milestone.[35]

14. The Commission also adopted a framework for how service milestones would be revised in various circumstances after WCB had published more accurate location counts. Specifically, in areas where there are more locations than locations estimated by the CAM, a support recipient has until the end of the eighth calendar year to offer service to the additional locations, and only CAM location counts will be used to measure compliance with interim service milestones up to 100% of CAM locations by the end of the sixth calendar year.[36] If the new location count exceeds the CAM location count by more than 35%, an RDOF support recipient can also seek additional support or relief from the Commission.[37] Additionally, an RDOF support recipient may seek to have its new location count adjusted to exclude locations that are ineligible, unreasonable to deploy to, or are part of a development that is newly built after the sixth year of support for which the cost and/or time to deploy before the end of the support term would be unreasonable.[38]

15. If there are fewer locations than estimated by the CAM in a service area, the Commission directed support recipients to notify WCB no later than March 1st following the fifth year of deployment.[39] Upon confirmation by WCB, the support recipient will be required to serve 100% of the new number of locations by the end of the sixth calendar year.[40] If the new location total is less than 65% of the CAM location total, WCB will reduce the support recipient's support on a pro rata basis by the number of reduced locations.[41] The Commission directed RDOF support recipients that discover that there are not enough locations to meet their 40% or 60% service milestones to seek waiver from WCB.[42]

16. Finally, the Commission required that RDOF support recipients offer service upon reasonable request to locations built after WCB has updated location totals.[43] However, the Commission made several exceptions and did not require an RDOF support recipient to serve locations that do not request service, locations with exclusive arrangements with other providers, and locations built after service milestone year eight.[44]

b. Discussion

17. As directed by the Commission, we seek comment on how to implement the Commission's framework for adjusting required location totals based on an updated location data source. Specifically, we seek comment on the timing for when WCB should announce new location totals, how we should adjust support in certain circumstances where there are significantly more or fewer locations in a service area than estimated by the CAM, standards we should use for waivers and determining whether requests for service are reasonable, and how we should apply the framework to support

[35] *Id.* at 731, para. 103.

[36] 47 CFR § 54.802(c)(1)(i); *RDOF Order*, 35 FCC Rcd at 710, para. 49.

[37] 47 CFR § 54.802(c)(1)(i); *RDOF Order*, 35 FCC Rcd at 710, para. 49.

[38] *RDOF Order*, 35 FCC Rcd at 710-11, para. 50.

[39] 47 CFR § 54.802(c)(1)(ii); *RDOF Order*, 35 FCC Rcd at 711, para. 51.

[40] 47 CFR § 54.802(c)(1)(ii); *RDOF Order*, 35 FCC Rcd at 711, para. 51.

[41] 47 CFR § 54.802(c)(1)(ii); *RDOF Order*, 35 FCC Rcd at 711, para. 51.

[42] *RDOF Order*, 35 FCC Rcd at 711, para. 51.

[43] 47 CFR § 54.802(c)(1)(iii); *RDOF Order*, 35 FCC Rcd at 711, para. 52.

[44] *RDOF Order*, 35 FCC Rcd at 711, para. 52.

recipients that have multiple performance tiers associated with their winning bids.

(i) Timing for Revised Location Totals

18. Given the Commission's direction that WCB adopt revised location totals by the end of the sixth calendar year,[45] we seek comment on when WCB should consult the location data source to identify the relevant residential and small business units and announce revised location totals. If WCB adopts its proposal to use the Fabric as the location source for RDOF, we propose that WCB announce revised location totals for each support recipient within a reasonable time after the Fabric version expected to be released in June 2027 is made available to licensees. The FCC typically releases an updated Fabric approximately every six months,[46] in around June and December. We expect that using the version of the Fabric that is expected to be released in June 2027 would provide sufficient time for WCB to recalculate location totals prior to December 31, 2027, which is the sixth year service milestone for RDOF support recipients authorized in 2021.

19. We anticipate that using the version of the Fabric expected to be released in June 2027 will balance our objectives of ensuring that the revised location totals are based on the most up-to-date location data and also giving support recipients notice of their revised location totals prior to the sixth year service milestone. Because support recipients will have the opportunity to access earlier versions of the Fabric, they will be able to monitor the addition of any locations to the Fabric and plan accordingly so they are prepared to serve any new BSLs once revised location totals are announced. We seek comment on this proposal and on whether there are any sound reasons for adopting and announcing revised location totals earlier or later than proposed. Commenters proposing that WCB use different location data sources for RDOF should address timing considerations for their proposed sources.

20. We also propose to adopt revised location totals for all support recipients at the same time, rather than waiting to the following year to adopt revised location totals for support recipients authorized in 2022 and 2023.[47] Such an approach may mean that locations built after we announce revised location totals will not be included in the new totals and that support recipients authorized in 2022 and 2023 will have an extra year to meet their eighth year service milestone if they have newly identified locations when compared to those authorized in 2021. However, we expect the benefits of the administrative efficiency of determining and announcing all revised location totals at once will outweigh any potential concerns this approach may raise, particularly given that any locations built after the revised location totals and prior the end of the eighth year of support will be subject to the requirement that the support recipient serve the location upon reasonable request.[48] We seek comment on this rationale and on any other suggestions for how we can reconcile the requirement to announce revised locations by the sixth year service milestone with the fact that RDOF authorizations span multiple years.

(ii) More Locations than Included in the RDOF Auction

21. We seek comment on how to implement the Commission's framework for support recipients that must deploy to additional locations once WCB announces revised location totals. Specifically, we seek comment on implementing the Commission's decision to give an opportunity for those support recipients to seek additional support relief if their new location count exceeds the CAM

[45] *Id.* at 709, para. 45.

[46] *Fabric Challenges Best Practices Public Notice* at 1.

[47] Support recipients authorized in 2022 and 2023 have the same service milestones and must serve 100% of CAM estimated locations by December 31, 2028. *Rural Digital Opportunity Fund Support for 1,764 Winning Bids Ready to be Authorized; Bid Defaults Announced*, AU Docket No. 20-34 et al., Public Notice, DA 22-1321 (WCB/OEA Dec. 16, 2022).

[48] *RDOF Order*, 35 FCC Rcd at 711, para. 52.

locations within their service area in each state by more than 35% .[49] For such support recipients, we propose to increase support on a pro rata basis for each location over the 35% threshold based on the average support amount per location.[50]

22. We also seek comment on any alternatives. For example, we could require a support recipient to seek a waiver of the requirement to serve a certain number of locations, but we expect it would be administratively burdensome to have to address such waivers on a case-by-case basis. Further, such an approach would potentially leave locations stranded without service and ineligible for other funding programs. As another alternative, we could provide additional time for locations above the 35% threshold to be served, but this would further delay the provision of broadband to these locations.

23. Additionally, we seek comment on whether WCB should set any parameters for the flexibility support recipients have to seek to have their new location counts adjusted to exclude additional locations. Specifically, the Commission explained that support recipients could seek to exclude additional locations that it determines are ineligible, unreasonable to deploy to, or part of a development newly built after year 6 for which the cost and/or time to deploy would be unreasonable.[51] Should we set up a process by which support recipients must notify us that their new location total includes locations that they would like to be excluded so that those locations can become eligible for other funding programs? Should we require that support recipients notify us in the relevant docket by a specific date during the support term? Are there any standards or procedures we could adopt to balance this flexibility with the Commission's goal of "seek[ing] to ensure the availability of broadband and voice services to as many rural consumers and small businesses . . . by the end of the ten-year term as possible"?[52]

24. For example, we propose that if a support recipient seeks to have its new location total adjusted to remove locations it claims are ineligible, that support recipient must first successfully challenge the location as part of the BDC's Fabric challenge process if we use the Fabric to revise location totals.[53] This would enable us to conserve administrative resources by leveraging the Commission's existing process and would also help to maintain consistency between the Fabric and the support recipient's obligations.

25. We also seek comment on what criteria we should consider when determining whether a location is unreasonable to serve.[54] Given the Commission's goal of maximizing RDOF support to serve as many consumers and small businesses as possible,[55] we expect that we would not routinely grant requests to exclude locations from a support recipient's new location total.

---

[49] *Id.* at 710, para. 49

[50] As an example, if a RDOF support recipient's original CAM-estimated location total is 100 locations for $10,000 in support over the 10-year term and its revised location total is 138 locations, we propose increasing the support recipient's support by approximately $217.38. The average support per location would be approximately $72.46 ($10,000 divided by 138= $72.46 (rounded to the nearest cent)) and the support recipient would receive an increase in support for three locations because three locations exceed the 35% threshold ($72.46 x 3 = $217.38).

[51] *RDOF Order*, 35 FCC Rcd at 710-11, para. 50.

[52] *Id.* at 710, para. 47.

[53] Individual challenges can be made directly on the FCC National Broadband Map. Federal Communications Commission, National Broadband Map, https://broadbandmap.fcc.gov/home (last visited Jan. 25, 2024). *See also Broadband Data Task Force Publishes Specifications for Bulk Fixed Availability Challenge and Crowdsource Data*, WC Docket No 19-195 et al., Public Notice, 37 FCC Rcd 10626 (BDTAF/WCB/OEA 2022).

[54] *RDOF Order*, 35 FCC Rcd at 710-11, para. 50.

[55] *Id.* at 710, para. 47.

(iii) Fewer Locations than Included in the RDOF Auction

26. We seek comment on how to implement the Commission's framework for support recipients that have fewer actual locations in the eligible census blocks in their service area than estimated by the CAM.

27. *Prior to the sixth year service milestone*. First, the Commission directed support recipients to notify WCB no later than March 1st following the fifth year of deployment if there are fewer locations than were included in the RDOF auction.[56] We propose that if such a support recipient claims to have served all existing locations in the eligible census blocks prior to WCB announcing revised location totals, we would permit the support recipient to rely on the latest version of the Fabric available to Fabric licensees to demonstrate that there are no other locations left to serve and to request a verification that it has served all the locations identified in the Fabric. If a verification determines that the support recipient has served all existing locations prior to the sixth year service milestone, we propose permitting the support recipient to close out its letter of credit. We expect changes in the Fabric will not be significant enough that it would be necessary for support recipients to keep their letters of credit open to secure any additional deployment that may be required after WCB revises location totals.[57] Moreover, any non-compliance issues can be handled pursuant to the Commission's rules.[58] We seek comment on these assumptions and on whether it would be more advantageous to take another approach like requiring support recipients to wait until WCB announces the revised support totals before closing out their letters of credit once their deployment has been verified.

28. Because a support recipient with fewer locations than estimated by the CAM must serve all of its initial, model-estimated locations by the sixth year service milestone,[59] we seek comment on requiring a support recipient that has already been verified to have served all existing locations to serve any locations that are newly identified prior to the sixth year service milestone, up to the CAM-estimated location total. If we were to adopt this approach, should WCB announce after each Fabric release whether there are any new locations identified by the Fabric in the eligible census blocks served by a support recipient which we already verified has served all previously existing locations? If so, should WCB require that the support recipient serve the newly identified locations by the sixth year service milestone at the latest or by some other reasonable amount of time after WCB announces the newly identified locations? We seek comment on the administrative challenges of monitoring the Fabric to identify new locations on a rolling basis and on the burdens of having to serve newly identified locations prior to the sixth year service milestone.

29. As an alternative, should WCB instead wait until it officially revises location totals for all support recipients to identify any newly added locations for those support recipients that WCB has already verified have served 100% of existing locations? If so, should such support recipients have until the eighth year service milestone to serve any of the newly identified locations? Are there any other alternatives for how we can ensure that new locations are timely served?

30. We seek comment on, for added protection, whether and how we should withhold a certain percentage of support for support recipients if we permit them to close out their letters of credit prior to sixth year service milestone because there are fewer existing locations than estimated by the CAM and we have verified they have served all existing locations. For example, should we withhold

[56] *Id.* at 711, para. 51.

[57] *See also id.* at 731, para. 103 (permitting RDOF support recipients to close out their letters of credit once it has been verified they have met the sixth year service milestone because the Commission does not "expect new additional locations in years seven and eight to be significant enough that it would be necessary to secure that additional deployment with a letter of credit . . . .").

[58] *See, e.g.*, 47 CFR § 54.320.

[59] *RDOF Order*, 35 FCC Rcd at 711, para. 51.

support for all RDOF support recipients, or because WCB will only reduce support once it announces revised location totals if the revised location total is less than 65% of the CAM-estimated locations,[60] should we only withhold support in circumstances where the number of locations the RDOF support recipient has served is less than 65% of the CAM-estimated total? Should we withhold support on a pro rata basis based on the gap between the CAM-estimated locations and the locations that do exist?[61] As an alternative, should we withhold support on a pro rata basis for only the number of locations that bring the location total below the 65% threshold, if applicable?[62] Should the support recipient be entitled to have all of its withheld support restored and its support payments resumed for any newly added locations once it has demonstrated that it is now offering the required service to any newly added locations? Or, for administrative efficiency, should support be restored and support payments resumed after the six year service milestone once it has been verified how many locations the support recipient has served? Given the Commission's rules provide broad authority to take other non-compliance measures, is it even necessary to withhold support to protect the public's funds under these circumstances?[63] We also seek comment on any alternatives, with a particular focus on how to balance administrative efficiency with our responsibility to protect the public's funds.

31. If a support recipient is unable to meet interim service milestones because there are significantly fewer existing locations than estimated by the CAM, the Commission directed such support recipients to seek a waiver of the relevant interim service milestones.[64] We propose finding good cause exists to waive the relevant interim service milestones if the support recipient demonstrates with Fabric data that it has identified all existing locations in its service area and USAC verifies that the support recipient offers service meeting the relevant Commission requirements to all existing locations. Generally, the Commission's rules may be waived for good cause shown.[65] 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.[66]

32. We propose finding that the fact that the Fabric shows that there are no more locations to serve in the relevant service area would constitute special circumstances to warrant a waiver. Moreover, we would find the waiver would serve the public interest because the support recipient could use any resources tied up by maintaining a letter of credit towards deploying more voice and broadband service, and the Commission would still have the ability to take further non-compliance measures if the support recipient does not serve any newly added locations as required. We seek comment on our proposal and on any alternative approaches. For example, WCB could handle waivers on a case-by-case basis, but we expect such an approach to be unnecessarily onerous for both the petitioner and WCB when there is already an objective data source that both can rely on to confirm the existence of locations.

33. *Post WCB's announcement of revised location totals.* We seek comment on how to implement the requirement that WCB reduce support for those support recipients for which the revised

[60] *Id.* at 711, para. 51.

[61] For example, if the location total is 10 locations and only five exist, WCB would withhold support for five locations.

[62] For example, if the location total is 10 locations and only 5 exist, WCB would withhold support for two of the five locations because if three locations were missing, the provider would have served 70% of the CAM-calculated total—the additional two locations pushes the percentage of total locations served below 65%.

[63] *See, e.g.*, 47 CFR § 54.320(c).

[64] *RDOF Order*, 35 FCC Rcd at 711, para. 51.

[65] 47 CFR § 1.3.

[66] *See Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969), *cert. denied*, 93 S.Ct. 461 (1972) (*WAIT Radio)*) (*Northeast Cellular*).

location count is less than 65% of the CAM locations.[67] We propose interpreting the Commission's direction that support be reduced on a pro rata basis by the number of reduced locations to mean that WCB would apply the pro rata support reduction to the number of locations that bring the location total below the 65% threshold.[68] This would avoid the inequity of support recipients being subject to no support reduction if their revised location total is 65% of the CAM-estimated location total, but being subject to a pro rata support reduction for all of the locations that make up the gap between the CAM estimated location total and the revised location total if their revised location total is 64% or less of the CAM estimated location total.

(iv) Multiple Performance Tiers

34. A number of support recipients were authorized to receive support for multiple performance tiers in a state.[69] We propose that when revising the location totals for such support recipients, we proportionally adjust their location totals for each performance tier so that we maintain the same ratio of locations across all performance tiers for the new location total as what was authorized under the initial deployment obligation.[70] This approach is consistent with the Commission's direction that compliance with service milestones be determined at the state level, so that a recipient will be in compliance with service milestones if it offers service meeting the relevant performance requirements to the required percentage of locations across all of the relevant eligible census blocks in the state.[71] As an alternative, should we just require that the support recipient serve more locations at the higher speed tier than the lower speed tier without requiring the support recipient to serve a set percentage of locations at each speed tier? We seek comment on these options and on whether any other approaches would better align with such support recipients' deployment plans. For example, WCB could assign any new locations the performance tier associated with the census block where the location is located. This approach could better reflect RDOF support recipients' initial plans given a winning bidder had to assign a performance tier to each census block group when bidding, but the approach would not account for the flexibility the Commission afforded RDOF support recipients when deciding to measure compliance on a state-level basis.

(v) Newly Built Locations

35. RDOF support recipients must offer the required service upon reasonable request to any locations built after WCB announces revised location totals and prior to the end of the eighth year of support, excluding any locations that do not request service or that have exclusive arrangements with

[67] *RDOF Order*, 35 FCC Rcd at 51.

[68] *Id.* at 51. For example, if an applicant has a location total of 100, and the new count is only 20 locations, WCB would reduce support on a pro rata basis by multiplying the average support amount in the state by 45 locations (80 missing locations minus 35 locations that would not have been subject to a support reduction if they were the only locations that were missing).

[69] *See* Federal Communications Commission, Auction 904: Rural Digital Opportunity Fund, "Results" tab, https://www.fcc.gov/auction/904 (last visited Jan. 25, 2024); *RDOF Order*, 35 FCC Rcd at 702-05, paras. 31-37 (describing the RDOF performance tiers and latency levels).

[70] For example, if a RDOF support recipient was authorized to offer Gigabit service to 50 locations and Above Baseline to 50 locations, and then 20 additional locations are added when WCB revises the location totals, WCB would adjust the location count so that the RDOF support recipient would have to serve 10 additional locations at Gigabit and 10 additional locations at Above Baseline.

[71] *RDOF Order*, 35 FCC Rcd at 712, para. 54. This approach is also consistent with how WCB adjusted location totals for Connect America Fund Phase II auction support recipients that were authorized to receive support for multiple performance tiers in a state and that participated in the Eligible Locations Adjustment Process. *ELAP Resolution Order* at 6, para. 12, n.32.

other providers.[72] We propose to rely on Fabric data to identify any new locations as of the end of the eighth year of support and confirm compliance with this requirement. We seek comment on this proposal and on whether any other data sources should be consulted.

36. We also seek comment on criteria for determining whether a request is reasonable. What kinds of parameters would appropriately balance the burden on RDOF support recipients of serving newly built locations with the Commission's goal of maximizing RDOF support to serve as many consumers and small businesses as possible?[73]

2. The Bringing Puerto Rico Together and Connect USVI Funds

a. Background

37. Hurricanes Irma and Marie caused widespread devastation to Puerto Rico and the U.S. Virgin Islands, destroying thousands of homes and causing near total destruction of critical infrastructure.[74] The Commission took a number of actions to facilitate restoration of communication services in Puerto Rico and the U.S. Virgin Islands, including in 2018 establishing the Bringing Puerto Rico Together Fund and the Connect USVI Fund to award high-cost support in two stages.[75]

38. In Stage 1, the Commission provided approximately $51.2 million in new support to Puerto Rico and $13 million to the U.S. Virgin Islands to help provide immediate relief and restore voice and broadband service.[76] In Stage 2, the Commission adopted a single-round competitive proposal process to allocate Stage 2 support to promote the deployment of advanced, hardened networks to all locations in the Territories.[77] In 2021, the Bureau authorized $84,456,870 in Connect USVI Fund Stage 2 support to Liberty Mobile USVI, Inc.[78] to provide fixed voice and broadband service for a 10-year period to more than 46,000 locations in the U.S. Virgin Islands.[79] The Bureau also authorized $127,095,164 in Bringing Puerto Rico Together Fund support to Puerto Rico Telephone Company, Inc. and Liberty Communications of Puerto Rico, LLC collectively to provide fixed voice and broadband service for a 10-year period to more than 1.2 million locations in Puerto Rico.[80]

39. The Commission relied on Census Bureau data to determine the specific deployment obligations for each authorized carrier.[81] Acknowledging the uncertainty of location data following the

[72] *RDOF Order*, 35 FCC Rcd at 711, para. 52.

[73] *Id.* at 710, para. 47.

[74] *PR-USVI Order*, 33 FCC Rcd at 5404-05, para. 1.

[75] *See generally id.*.

[76] *Id.* at 5408-09, para. 15.

[77] *2019 PR-USVI Order*, 34 FCC Rcd at 9114-15, para. 11.

[78] Liberty Mobile is the successor company of the winning Stage 2 applicant, Broadband VI. *Domestic 214 Application Granted for the Transfer of Control of Broadband VI, LLC to Liberty Mobile USVI, Inc.*, WC Docket No. 21-386, Public Notice, 36 FCC Rcd 17330 (WCB 2021).

[79] *Connect USVI Fund Stage 2 Support Authorized for Broadband VI*, WC Docket No. 18-43 et al., Public Notice, 36 FCC Rcd 9405 (WCB 2021) (*Broadband VI Authorization Public Notice*).

[80] *Wireline Competition Bureau Authorizes Stage 2 Support for Puerto Rico Telephone Company and Liberty Communications of Puerto Rico*, WC Docket No. 18-143 et al., Public Notice, 36 FCC Rcd 9914 (WCB 2021) (*PRTC and Liberty Authorization Public Notice*).

[81] *2019 PR-USVI Order*, 34 FCC Rcd at 9143, paras. 60-61; *Wireline Competition Bureau Releases Updated List of Reserve Prices and Location Counts for the Uniendo a Puerto Rico Fund and Connect USVI Fund Stage 2 Fixed Support Competitive Proposal Process*, WC Docket No. 18-143 et al., Public Notice, 35 FCC Rcd 8228 (WCB 2020).

hurricanes and the compelling need to adequately verify the number of locations, the Commission adopted a location adjustment process within one year after the release of a public notice announcing winning bidders.[82] As part of this process, the Commission required that support recipients that could not identify enough actual locations must submit evidence of the total number of locations in the eligible areas, including geolocation data, of all the locations it could identify.[83] The Commission explained that the process was mandatory for support recipients to ensure accuracy and efficient use of support.[84] The Commission also directed WCB to provide stakeholders an opportunity to review and comment on the information provided.[85] If WCB determined by a preponderance of evidence that there were no additional locations, the Commission directed WCB to issue an order and adjust the support recipients' required total location obligation and reduce their support on a pro rata basis.[86] Moreover, the Commission adopted a fifth-year reassessment, creating a voluntary opportunity for support recipients to request the Commission to carefully review their obligations no later than the beginning of the fifth year of support, and directed WCB to seek comment on any requested reassessment, including the documentation, data, and evidence to put forward to support the request.[87] WCB will make adjustments to the location totals and support amounts, if WCB determines such adjustments are warranted.[88]

40. In April 2023, the Commission acknowledged that the location adjustment process was delayed.[89] The Commission explained that WCB expects to implement the adjustment process based on an internal review of the Fabric.[90]

b. Discussion

41. We propose to leverage Fabric data to simplify the location adjustment process for the Bringing Puerto Rico Together Fund and the Connect USVI Fund. Specifically, we propose to require support recipients to submit a document in the relevant docket that identifies when there is a discrepancy between estimated locations and actual locations as shown by the Fabric. Rather than duplicate the map data by requiring support recipients to submit individual geocodes for each location shown by the Fabric, we propose it is sufficient for support recipients to incorporate the data from the Fabric in their filings by reference and certify that the Fabric accurately depicts the number of actual locations in their service

[82] *2019 PR-USVI Order*, 34 FCC Rcd at 9144-45, paras. 63-65. The Commission noted that the process it adopted was similar to the Eligible Locations Adjustment Process that it adopted for the CAF Phase II auction. *2019 PR-USVI Order*, 34 FCC Rcd at 9144, para. 63. *See generally Connect America Fund et al*., WC Docket No. 10-90 et al., Order on Reconsideration, 33 FCC Rcd 1380, 1389, para. 23 (2018); *ELAP Resolution Order*.

[83] *2019 PR-USVI Order*, 34 FCC Rcd at 9145, para. 65.

[84] *Id.* at 9145,para. 64.

[85] *Id.* at 9145, para. 65.

[86] *Id.* at 9145, paras. 64-65. The Commission indicated the new support amount would be calculated by reducing authorized support by (total support/model locations) x number of deficient locations. *2019 PR-USVI Order*, 34 FCC Rcd at 9145, para. 65 n.238. WCB dismissed as untimely and alternatively denied requests to reconsider or review the location adjustment process and pro rate support reduction to align the process with the location recount process adopted for RDOF. *The Uniendo a Puerto Rico Fund and the Connect USVI Fund et al.*, WC Docket No. 18-143 et al., Order on Reconsideration and Order, 35 FCC Rcd 8211, 8213-15, 8219-21, paras. 8-11, 21-27 (WCB 2020).

[87] *2019 PR-USVI Order*, 34 FCC Rcd at 9145-46, para. 66.

[88] *Id.* at 9145-46, para. 66; *The Uniendo a Puerto Rico Fund and the Connect USVI Fund et al.*, WC Docket No. 18-143 et al., Report and Order and Order on Review, FCC 23-32, at 5-6, para. 11 n.29 (Apr. 2023) (*PR-USVI Transitional Support Order*).

[89] *PR-USVI Transitional Support Order* at 5-6, para. 11 n.29.

[90] *Id.*

area based on their independent review of the relevant area. To the extent a carrier claims that the Fabric does not accurately depict the number of locations, the service recipient must submit challenges as part of the BDC location challenge process to either add or remove locations from the Fabric. We seek comment on whether this proposal meets the Commission's requirement that support recipients submit evidence of existing locations and meets the Commission's objective of adequately verifying the number of locations that exist in the Territories post-hurricane.[91]

42. Are there any alternatives that better achieve this objective? For example, since the process is mandatory for all support recipients, should WCB instead conduct an internal review of the Fabric data to identify where there might be discrepancies rather than having the support recipients conduct an independent review and file a notification with the Commission? How would this approach be consistent with the Commission's requirement that the support recipient submit data as part of this process?

43. We propose that rather than provide a separate opportunity for stakeholders to comment on support recipients' filings, we will rely on the BDC's location challenge process for administrative efficiency. For example, once support recipients have notified us that there is a location discrepancy based on Fabric data or WCB alternatively conducts an internal review, we could wait a reasonable amount of time for stakeholders to file challenges to the Fabric to seek to have locations removed or added. We seek comment on this approach and suggestions for how much time we should provide to stakeholders to file challenges and for challenges to be resolved, understanding that the Fabric is only updated twice each year. If we adopt this approach, what would be a reasonable amount of time to wait for challenges? Should we require stakeholders to notify WCB if they are going to file challenges? Is it necessary to wait for challenges from stakeholders if they have already had ample opportunity to challenge the Fabric data prior to this process? That is, rather than set aside a certain amount of time for challenges, should we just rely on any challenges that have already been incorporated into the data at the time WCB conducts its review of the data?

44. Once any challenges to the Fabric from stakeholders have been adjudicated, we propose finding that the support recipient has met its burden of proof to receive a downward adjustment in its location total and a corresponding pro rata support reduction for the number of locations reflected in the Fabric data. Are there any alternative approaches that would better further the Commission's objective of providing stakeholders with an opportunity to review and comment on the existence of locations without duplicating existing Commission processes?

45. When should WCB conduct the location readjustment process? The Commission anticipated that the process would occur within one year of the announcement of winning bidders, but later explained the process had been delayed.[92] How much time do service providers need to adjust to any changes to their support and location totals so that they can meet the 100% service milestone by December 31, 2027?[93]

46. We also seek comment on leveraging Fabric data if a support recipient requests a reassessment of its obligations no later than the beginning of the fifth year of support, i.e., 2026. Should we adopt the same or similar process for the reassessment that we adopt for the location adjustment process? What other information might be instructive for WCB to collect from support recipients to reassess their obligations? Given that the adjustment process has been delayed, should we just combine this assessment with the location adjustment process for administrative efficiency? Are there any

[91] *2019 PR-USVI Order*, 34 FCC Rcd at 9144, para. 63.

[92] *Id.* at 9144, para. 63; *PR-USVI Transitional Support Order* at 5-6, para. 11 n.29.

[93] *PRTC and Liberty Authorization Public Notice*, 36 FCC Rcd at 9916; *Broadband VI Authorization Public Notice*, 36 FCC Rcd at 9407.

benefits or drawbacks for service providers or the public in giving support recipients an opportunity to have their obligations reassessed independently of the location adjustment process?

47. We also seek comment on how to adjust support if the number of locations in a municipio or island is higher than what was initially determined.[94] Should WCB increase support on a pro rata basis for any additional locations if the actual number of locations is higher? Are there any other approaches we should use for adjusting support? The Commission has reiterated that Bringing Puerto Rico Together Fund and the Connect USVI Fund support recipients must serve all locations in their supported areas.[95]

3. Alternative Connect America Cost Model I & II

a. Background

48. In 2016, the Commission provided rate-of-return carriers with a voluntary path from traditional rate-of-return support to model-based support and using the A-CAM established a fixed monthly support amount over a 10-year term ending in 2026 in exchange for broadband deployment to a pre-determined number of eligible locations (A-CAM I).[96] Whether a support recipient was required to offer broadband at speeds of 25/3 Mbps, 10/1 Mbps, 4/1 Mbps or upon reasonable request was based on the housing unit density of the eligible areas in the offer and could be met by serving any eligible location in the support recipient's service area.[97] The Commission made a subsequent offer to existing A-CAM carriers for more support and increased deployment,[98] and then another offer for more support, increased deployment, and an extended support term (Revised A-CAM I).[99] The Commission also made a new model offer for carriers still receiving support pursuant to legacy support mechanisms based on historical costs (A-CAM II).[100]

49. The Commission decided that A-CAM support recipients that discover there is a widely divergent number of locations in their funded census blocks as compared to the model should have the opportunity to seek an adjustment to modify their deployment obligations.[101] It delegated to WCB the authority to adjust the number of funded locations downward and reduce associated funding levels.[102]

50. In July 2023, the Commission adopted the Enhanced A-CAM support program to support the widespread deployment of 100/20 Mbps broadband service throughout the rural areas served by carriers currently receiving A-CAM support and in areas served by rate-of-return carriers.[103] While

[94] *2019 PR-USVI Order*, 34 FCC Rcd at 9145-46, para. 66; *PR-USVI Transitional Support Order* at 6, para. 11 n.29.

[95] *PR-USVI Transitional Support Order* at 6, para. 11 n.29.

[96] *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3094-3117, paras. 17-79.

[97] *Id.* at 3097-98, paras. 23-26.

[98] *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., 33 FCC Rcd 2990, 3018-21, paras. 62-68 (2018).

[99] *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., 33 FCC Rcd 11893, 11900-03, paras. 20-30 (2018) (*December 2018 Rate-of-Return Order*).

[100] *Id.* at 11903-15, paras. 31-69.

[101] *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3102, para. 34.

[102] *Id.* at 3102, para. 34.

[103] *See generally Enhanced A-CAM Order*.

216A-CAM I and A-CAM II carriers at the holding company level accepted Enhanced A-CAM offers,[104] they are still required to report any progress made in 2023 towards their existing A-CAM I and A-CAM II service milestones and will be subject to non-compliance measures if they do not meet those service milestones.[105]

b. Discussion

51. We propose to permit A-CAM I & A-CAM II recipients to seek a downward adjustment in their location totals by using the Fabric to demonstrate the actual number of locations in their service areas. Should we adopt the same process we propose above for support recipients of the Bringing Puerto Rico Together Fund and the Connect USVI Fund—i.e., requiring support recipients to request a downward adjustment in the docket and incorporating Fabric data by reference? If so, should we also provide an opportunity for stakeholders to file challenges to the Fabric through the National Broadband Map or in the BDC system in response to the notification or should we rely on prior challenges that are already incorporated into the data at the time of WCB's review? Should WCB apply a preponderance of the evidence standard consistent with the standard adopted for the CAF Phase II auction Eligible Location Adjustment Process, The Bringing Puerto Rico Together Fund, and the Connect USVI Fund? If so, should WCB find that the standard has been met if it verifies that the Fabric data is consistent with the support recipient's requested adjustment? We seek comment on these issues and on any alternatives.

52. Although A-CAM recipients have a variety of broadband speed obligations within their service areas, they are able to meet their obligations by deploying to any location within the eligible area.[106] Accordingly, if we grant a downward adjustment in the location total, we propose reducing the location total on a pro rata basis so that we would reduce the number of locations proportionally across all of the speed tiers.[107] Similarly, we also propose to reduce support on a pro rata basis.[108] We seek comment on these proposals and whether WCB should use any alternative approaches for reducing location totals and support amounts.

53. We also seek comment on the timing for when WCB should give A-CAM recipients an opportunity to seek a downward adjustment. For administrative efficiency, should we offer a one-time opportunity for A-CAM recipients to seek a downward adjustment? If so, when would it be an appropriate time to offer this opportunity so as to maximize the number of locations that are identified, but also give support recipients enough time to adjust their plans prior to the end of the support term? For example, we could require that A-CAM providers with support terms that end in 2028 to submit their request for a downward adjustment based on the latest release of Fabric data prior to end of the sixth year support, consistent with the Commission's requirement that WCB make location adjustments for RDOF recipients, which also have a 10-year support term, prior to the sixth year of support.

---

[104] *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 Oct. 30, 2023) (*Enhanced A-CAM Authorization Public Notice*).

[105] *Enhanced A-CAM Order* at 23, para. 49.

[106] *See, e.g.*, *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3100-01, para. 32; *December 2018 Rate-of-Return Reform Order*, 33 FCC Rcd at 11914-15, para. 67.

[107] For example, if a support recipient has to serve eight locations—2 at 25/3 Mbps, 2 at 10/1 Mbps, 2 at 4/1 Mbps and 2 upon reasonable request and based on Fabric data there are only four locations, the support recipient would have to serve 1 at 25/3 Mbps, 1 at 10/1 Mbps, 1 at 4/1 Mbps and 1 upon reasonable request to maintain the same proportion across speed tiers.

[108] We propose reducing authorized support by (total support/model locations) x number of deficient locations.

4. The Alaska Plan

a. Background

54. In 2016, the Commission adopted the Alaska Plan which is based on the Alaska Telephone Association (ATA) consensus proposal to freeze $1.5 billion in funding over 10 years and allocate that money to maintain, extend, and upgrade fixed and mobile broadband service across certain areas of Alaska.[109] For fixed service, the goal was to support at least 10/1 Mbps service to as many Alaskans as possible, but the Commission permitted carriers to submit commitments at lesser speeds, recognizing that due mainly to the lack of access to adequate facilities necessary to support last mile connections, Alaskan carriers may not be able to serve all their committed locations at 10/1 Mbps.[110] Ultimately, WCB authorized 13 rate-of-return carriers to receive Alaska Plan support, with terms ending December 31, 2026.[111]

55. The Commission required participants offering fixed service to commit to upgrade or deploy new voice and broadband service to a specific number of locations by the end of the fifth year of their support term and complete their deployment by the end of the 10th year of their support term.[112] However, the deployment obligations were subject to change. The Commission delegated to WCB the authority to approve changes to the fixed deployment obligations if such changes are due to circumstances that did not exist at the time the performance plans were adopted and are consistent with the public interest and *Alaska Plan Order* requirements.[113] The Commission also directed WCB to reassess the fixed deployment obligations in the approved performance plans before the end of the fifth year of support, and to review carriers that lack access to infrastructure and thus cannot commit to maintaining existing Internet access at speeds below 10/1 Mbps on a biennial basis.[114] Alaska Plan participants offering fixed service were required to update their end-of-term commitments no later than the end of the fourth year of support.[115] In 2021, WCB released a public notice announcing fixed performance obligations for Alaska Plan participants after conducting this midterm review.[116] In October 2023, the Commission released a Notice of Proposed Rulemaking seeking comment on the next phase of high-cost fixed and mobile support in Alaska—the Alaska Connect Fund.[117]

b. Discussion

56. It is our expectation that Alaska Plan participants will offer voice and broadband service to 100% of the locations in remote communities, including those locations not connected to the road system, at performance levels consistent with the type of middle mile commercially available in the community. The rationale is that while the communities are remote and isolated, the locations within the communities are in relatively close proximity. To avoid stranding locations in the Alask Plan

---

[109] *Alaska Plan Order*, 31 FCC Rcd 10139.

[110] *Id.* at 10145, para. 14.

[111] *Wireline Competition Bureau Authorizes Alaska Plan Support for 13 Alaskan Rate-of-Return Companies*, WC Docket Nos. 10-90, 16-271, Public Notice, 31 FCC Rcd 13347 (WCB 2016).

[112] *Alaska Plan Order*, 31 FCC Rcd at 10149, para. 30.

[113] *Id.* at 10158-59, para. 63.

[114] *Id.* at 10158, paras. 61-62.

[115] *Id.* at 10158, para. 61.

[116] *Wireline Competition Bureau Announces Performance Obligations for Rate-of-Return Alaska Plan Recipients After the Midterm Review*, WC Docket No. 10-90 et al., Public Notice, 36 FCC Rcd 18171 (WCB 2021).

[117] *Connect America Fund et al.*, WC Docket No. 10-90 et al., Notice of Proposed Rulemaking et al., FCC 23-87 (Oct. 20, 2023).

participants' service areas without access to broadband service, we propose to use Fabric data to identify all locations within each Alaska Plan participant's service area and adjust the Alaska Plan recipient's required location total to account for any locations not already included in the location total pursuant to WCB's delegated authority to approve changes to deployment obligations.[118] We seek comment on whether Fabric data is the best source for identifying such locations, and whether other sources should be used including submissions from the carrier.

57. Specifically, we could conclude that a comprehensive source like the Fabric had not been released when deployment obligations were reassessed in 2021 and that it would serve the public interest to further revise deployment obligations to ensure they accurately reflect the facts on the ground. If we were to take this step, when would be an appropriate time to revise deployment obligations so that Alaska Plan participants are able to complete deployment to all relevant locations by the end of the support term, i.e., December 31, 2026? Should stakeholders have a defined period of time to make any final challenges to the Fabric through the National Broadband Map or in the BDC system so that the revised obligations incorporate any successful challenges? What other steps could WCB take to make certain that all locations in Alaska Plan recipients' service areas have access to voice and broadband service through the Alaska Plan?

IV. PROCEDURAL MATTERS

58. *Initial Paperwork Reduction Act.* This document contains proposed new or modified information collection requirements. The Commission as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

59. *Supplemental Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980 (RFA),[119] the Bureau has prepared this Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the Public Notice. The supplemental IRFA supplements the Commission's Initial Regulatory Flexibility Analyses (IRFAs) in connection with the *USF/ICC Transformation FNPRM*,[120] *April 2014 Connect America FNPRM*,[121] *2018 Rate-of-Return Reform NPRM*,[122] and *Rural Digital Opportunity Fund NPRM* (*NPRMs and FNPRMs*),[123] and Final Regulatory Flexibility Analyses (FRFAs) in connection with the *USF/ICC Transformation Order*,[124] *2016 Rate-of-Return Reform Order*,[125] *2018 Rate-of-Return Reform Order*,[126] *Alaska Plan Order,*[127] and *Rural Digital*

[118] *Alaska Plan Order*, 31 FCC Rcd at 10158-59, para. 63.

[119] 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), Public L. No. 104-121, Title II, 110 Stat. 857 (1996).

[120] *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18364-95, Appx. P.

[121] *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., 29 FCC Rcd 7051, 7216-44, Appx. D (2014) (*April 2014 Connect America FNPRM*).

[122] *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., 33 FCC Rcd 2990, 3070-94, Appx. C (2018) (*2018 Rate-of-Return Reform NPRM*).

[123] *Rural Digital Opportunity Fund et al.*, WC Docket Nos. 19-126, 10-90, Notice of Proposed Rulemaking, 34 FCC Rcd 6778, 6821-34, Appx. B (2019) (*RDOF NPRM*).

[124] *USF/ICC Transformation Order*, 26 FCC Rcd at 18324-63, Appx. O.

[125] *2016 Rate-of-Return Order*, 31 FCC Rcd at 3286-3314, Appx. D.

Opportunity Fund Order.[128] Written public comments are requested on this Supplemental IRFA. Comments must be identified as responses to the Supplemental IRFA and must be filed by the same deadline for comments specified on the first page of this Public Notice. The Commission will send a copy of this Public Notice, including this Supplemental IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[129] In addition, this Public Notice and Supplemental IRFA (or summaries thereof) will be published in the *Federal Register*.[130]

60. *Need for, and Objectives of, the Proposed Rules*. This Public Notice proposes to leverage the Fabric, the "common dataset of all locations in the United States where fixed broadband internet access service can be installed, as determined by the Commission,"[131] to provide recipients with a reliable data source for determining locations and to maximize the number of consumers that are served by recipients of various High-Cost support mechanisms. This includes using the Fabric to identify the actual number of residential and small businesses in each relevant high-cost support recipient's service area. The Commission delegated to WCB the authority to revise deployment obligations, and adjust funded locations and funding levels for support recipients' service areas.[132] For RDOF, the Public Notice seeks to determine how to implement the Commission's framework for adjusting required location totals based on an updated location source. For the Bringing Puerto Rico Together Fund and the Connect USVI Fund, the Public Notice proposes and seeks comment on procedures for leveraging Fabric data to simplify the location adjustment process for these programs. For A-CAM I & II, the Public Notice considers permitting recipients to seek a downward adjustment in their location totals by using the Fabric to demonstrate the actual number of locations in their service areas. For the Alaska Plan, the Public Notice seeks to determine whether and how to adjust participants' required location totals to include all locations within each Alaska Plan participants' service area as identified by the Fabric.

(Continued from previous page)

[126] *2018 Rate-of-Return Order*, 33 FCC Rcd at 11992-12016, Appx. C.

[127] *Alaska Plan Order*, 31 FCC Rcd at 10189-200, Appx. B.

[128] *RDOF Order*, 35 FCC Rcd at 758-772, Appx. B. The Commission did not prepare an IRFA or FRFA for the Bringing Puerto Rico Together Fund and the Connect USVI Fund because the Commission anticipated that the rules adopted for these programs would not affect a substantial number of small entities. *PR-USVI Stage 2 Order*, 34 FCC Rcd at 9186, paras. 163-66; *The Uniendo a Puerto Rico Fund and the Connect USVI Fund et al.*, WC Docket No. 18-143 et al., Order and Notice of Proposed Rulemaking, 33 FCC Rcd 5404, 5428-29, paras. 102-103 (2018). The Commission sought written public comment on the proposals in the *NPRMs and FNPRMs*, including comments on the IRFAs. The Commission received comments in response to the *USF/ICC Transformation Order* IRFA, but did not receive any comments in response to the other Regulatory Flexibility Analyses. *USF/ICC Transformation Order*, 26 FCC Rcd at 18333, Appx. O. The comments received in response to the *USF/ICC Transformation Order* IRFA were addressed in the *USF/ICC Transformation Order FRFA*,[128] and did not specifically address the issues that we seek comment on in this Public Notice. *Id.*; *See* Letter from Brenda Crosby, President, Cascade Utilities, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, et al., at 3 (filed Apr. 6, 2011); Comments of Molalla Telephone Company at 3 (filed Apr. 18, 2011); Letter from John Hemphill, Vice President, Pine Telephone System, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, et al., at 3 (filed Mar. 30, 2011); Letter from Dave Osborn, Valley Telephone Cooperative, Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, et al., at 3-4 (filed Aug. 29, 2011).

[129] *See* 5 U.S.C. § 603(a).

[130] *Id.*

[131] 47 U.S.C. § 642(b)(1)(A)(i).

[132] *See, e.g.*, *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 709-12, paras. 45-52; *2019 PR-USVI Order*, 34 FCC Rcd at 9144-46, paras. 63-66; *2016 Rate-of-Return Order*, 31 FCC Rcd at 3102, para. 34; *Alaska Plan Order*, 31 FCC Rcd at 10158-59, para. 63.

61. *Legal Basis*. The statutory basis for the Bureau's proposed action is authorized pursuant to sections 4(i), 5(c), 214, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C §§ 154(i), 155(c), 214, 254, 303(r), and 403.

62. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply*. 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.[133] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[134] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[135] 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.[136]

63. As noted above, Regulatory Flexibility Analyses were incorporated in the *USF/ICC Transformation FNPRM*,[137] *April 2014 Connect America FNPRM*,[138] *2018 Rate-of-Return Reform NPRM*,[139] *Rural Digital Opportunity Fund NPRM*,[140] *USF/ICC Transformation Order*,[141] *2016 Rate-of-Return Reform Order*,[142] *2018 Rate-of-Return Reform Order*,[143] *Alaska Plan Order,*[144] and *Rural Digital Opportunity Fund Order*.[145] In those analyses, the Commission described in detail the small entities that might be significantly affected. Accordingly, in this Public Notice, for the Supplemental IRFA, we hereby incorporate by reference the descriptions and estimates of the number of small entities from these previous Regulatory Flexibility Analyses.

64. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* For the relevant High-Cost programs, the Public Notice proposes and seeks comment on streamlined procedures that will leverage existing processes for maintaining the accuracy of the Fabric to minimize the burdens on support recipients, including small businesses, in

---

[133] 5 U.S.C. § 603(b)(3).

[134] 5 U.S.C. § 601(6).

[135] 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."

[136] 15 U.S.C. § 632.

[137] *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18364-95, Appx. P.

[138] *April 2014 Connect America FNPRM*, 29 FCC Rcd at 7216-44, Appx. D.

[139] *2018 Rate-of-Return Reform NPRM*, 33 FCC Rcd at 3070-94, Appx. C.

[140] *Rural Digital Opportunity Fund Order*, 34 FCC Rcd at 6821-34, Appx. B.

[141] *USF/ICC Transformation Order*, 26 FCC Rcd at 18324-63, Appx. O.

[142] *2016 Rate-of-Return Order*, 31 FCC Rcd at 3286-3315, Appx. D.

[143] *2018 Rate-of-Return Order*, 33 FCC Rcd at 11992-12016, Appx. C.

[144] *Alaska Plan Order*, 31 FCC Rcd at 10189-200, Appx. B.

[145] *RDOF Order*, 35 FCC Rcd at 758-772, Appx. B. The Commission did not prepare an IRFA or FRFA for the Bringing Puerto Rico Together Fund and the Connect USVI Fund because the Commission anticipated that the rules affected for these programs would not affect a substantial number of small entities. *PR-USVI Stage 2 Order*, 34 FCC Rcd at 9186, paras. 163-66; *The Uniendo a Puerto Rico Fund and the Connect USVI Fund*, WC Docket No. 18-143 et al., Order and Notice of Proposed Rulemaking, 33 FCC Rcd 5404, 5428-29 (2018).

demonstrating how many actual locations are within their service areas. These proposals may require modifications to the current compliance obligations for small and other providers based upon the proposed methodologies for adjusting support for RDOF, A-CAM, Bringing Puerto Rico Together Fund, and Connect USVI Fund providers based on the number of locations in their service areas that may impact their ability to meet their service obligations. Additionally, the compliance obligations for small and other providers may be impacted by proposals on certain parameters for identifying the locations that high-cost recipients are required to serve—for generally identifying which Fabric locations are relevant to the high-cost support obligations, and more specifically for identifying which locations must be served after the Bureau conducts its recount for RDOF—which may result in an increase or decrease in the number of locations certain support recipients, including small businesses, are required to serve. The Commission anticipates the proposals discussed in the Public Notice will have minimal cost implications because they impact recipients who are currently receiving support from the relevant programs and much of the required information is already collected to ensure compliance with the terms and conditions of support.

65. *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*. 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 such small entities."[146]

66. Among the alternatives considered that may impact small entities is whether we should require RDOF support recipients to seek a waiver of, or require additional time to meet, the requirement to serve more locations when their new location count exceeds the CAM locations within their service areas in each state by more than 35%, though addressing such waivers on a case-by-case basis may prove to be administratively burdensome and potentially leave locations stranded without service and ineligible for other funding programs. We also consider whether WCB should wait until it officially revises location totals for all support recipients to identify any newly added locations for those RDOF support recipients that WCB has already verified serve 100% of existing locations, and if so, whether these recipients should have until the eighth year service milestone to serve any of the newly identified locations. Additionally, in regards to multiple performance tier requirements, we consider whether after the recount we should require that the RDOF support recipients serve more locations at the higher speed tier than the lower speed tier without requiring that the support recipient serve a set percentage of locations at each speed tier, or instead whether we should assign locations the performance tier associated with the census block where the location is located. When a carrier receiving Bringing Puerto Rico Together Fund or Connect USVI Fund support claims that Fabric does not accurately depict the number of locations, we consider whether WCB should conduct an internal review of the Fabric data to identify where there might be discrepancies instead of having the support recipients conduct an independent review and file a notification with the Commission. Before reaching any final conclusions and taking any final actions however, the Bureau expects to review the comments filed in response to the Public Notice and more fully consider the economic impact and alternatives for small entities.

67. As noted above, we seek comment on how the proposals in this Public Notice could affect the IRFAs and FRFAs. Such comments must be filed in accordance with the same filing deadlines for responses to this Public Notice and have a separate and distinct heading designating them as responses to the IRFAs and FRFAs.

[146] 5 U.S.C. § 603(c)(1)-(4).

68. *Instructions for Filing Comments.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://apps.fcc.gov/ecfs/.

- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.

- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

- 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.[147] *See* FCC Announces Closure of FCC Headquarters Open Window and Change in Hand Delivery Policy, Public Notice, 35 FCC Rcd 2788, 2788-89 (OS 2020).

69. Comments and reply comments exceeding 10 pages must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.49 and all other applicable sections of the Commission's rules. We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission. We also strongly encourage parties to track the organization set forth in the Public Notice in order to facilitate our internal review process.

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. *Ex Parte Presentations- Permit-But-Disclose*. The proceeding this Public Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[148] 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

[147] *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (OS 2020), https://www.fcc.gov/document/fcc-closes-headquarters-open-window-andchanges-hand-delivery-policy.

[148] 47 C.F.R. §§ 1.1200 *et seq.*

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.

72. *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.

73. *Contact Person.* For further information about this proceeding, please contact, Heidi Lankau, Attorney Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau, at Heidi.Lankau@fcc.gov.

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-78
Released: January 25, 2024

WIRELINE COMPETITION BUREAU ANNOUNCES GUIDANCE REGARDING LOCATIONS AND BROADBAND COVERAGE FOR ENHANCED ALTERNATIVE CONNECT AMERICA MODEL MECHANISM
WC Docket No. 10-90

In this Public Notice, the Wireline Competition Bureau (Bureau) provides guidance regarding the resolution of outstanding location and broadband coverage issues in the Enhanced Alternative Connect America Model (Enhanced A-CAM) mechanism. First, the Bureau provides guidance about which Broadband Serviceable Location Fabric (Fabric) location and Broadband Data Collection (BDC) availability data will be used to determine final deployment obligations and support amounts for Enhanced A-CAM recipients. Second, the Bureau addresses three outstanding issues related to the assignment of specific locations to Enhanced A-CAM recipients' study areas: the treatment of locations outside a carrier's study area that were included in calculations of Enhanced A-CAM offers; the treatment of locations that are within two Enhanced A-CAM study areas due to overlaps in the certified study area boundaries submitted to the Commission; and the identification of locations in Tribal lands. Finally, the Bureau announces the release of files documenting the effects of these issues on the status of specific locations in Enhanced A-CAM carrier service areas.

Background. The Commission adopted the Enhanced A-CAM mechanism on July 24, 2023, as a voluntary path for supporting widespread deployment of 100/20 Mbps or better broadband service throughout the rural areas served by carriers currently receiving A-CAM support and in areas served by legacy rate-of-return support recipients.[1] On August 30, 2023, the Bureau released a Public Notice announcing Enhanced A-CAM offers for eligible carriers, as well as the *Enhanced A-CAM Implementation Order*, which addressed matters that had been delegated to the Bureau by the Commission.[2] On September 21, 2023, the Bureau released a Public Notice revising Enhanced A-CAM offers for 82 companies, and offering preliminary guidance regarding the assignment to carriers, in the documentation of the Enhanced A-CAM offers, of locations outside their study area boundaries or in

[1] *See Connect America Fund; ETC Annual Reports and Certifications; Telecommunications Carriers Eligible to Receive Universal Service Support; Connect America Fund – Alaska Plan; Expanding Broadband Service Through the ACAM Program*, WC Docket Nos. 10-90, 14-58, 09-197, and 16-271; RM-1168, Report and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 23-60, at 42, para. 98 (July 24, 2023) (*Enhanced A-CAM Order*).

[2] *See Wireline Competition Bureau Announces Enhanced Alternative Connect America Cost Model Support Amounts Offered to Rate-of-Return Carriers to Expand Rural Broadband,* WC Docket No. 10-90, Public Notice, DA 23-779 (WCB Aug. 30, 2023) (*Enhanced A-CAM Offer PN*); *Connect America Fund; ETC Annual Reports and Certifications; Telecommunications Carriers Eligible to Receive Universal Service Support; Connect America Fund – Alaska Plan; Expanding Broadband Service Through the ACAM Program*, WC Docket Nos. 10-90, 14-58, 09-197, and 16-271; RM-1168, Order, DA 23-778 (WCB Aug. 30, 2023) (*Enhanced A-CAM Implementation Order*).

areas with overlapping study area boundaries.[3] On October 30, 2023, the Bureau authorized 368 companies to receive Enhanced A-CAM support beginning January 1, 2024.[4] On November 17, 2023, the Enhanced A-CAM commitments were uploaded to the Broadband Funding Map.[5]

Location and Broadband Availability Data for Final Deployment Obligations and Support Amounts. In the *Enhanced A-CAM Order*, the Commission directed the Bureau and the Office of Economics and Analytics (OEA) to adjust carriers' lists of required deployment locations as more complete data become available, which "specifically shall reflect locations and broadband deployment that existed at the time Enhanced A-CAM offers were made, but were not reflected in the Fabric or the National Broadband Map," as well for enforceable commitments not included in the Broadband Funding Map.[6] The Commission provided further instruction regarding adjustments to support due to updated deployment obligations.[7] Consistent with this direction from the Commission, the Bureau sets forth the following procedures for determining locations and broadband deployment applicable to Enhanced A-CAM.

To identify broadband serviceable locations (BSLs) to which deployment may be required (depending on the current availability of 100/20 Mbps or faster broadband service), the Bureau plans to use Version 4 (released December 27, 2023) of the Fabric, as modified by any successful challenges to location data submitted by March 8, 2024.[8] Version 4 of the Fabric was generated between July and December 2023, and the Bureau and OEA have determined that dataset best represents the locations that existed at the time the offers were made.[9] Version 4 of the Fabric incorporates bulk challenges to Version 3 data submitted by September 8, 2023, as well as data from additional data sources and other improvements by the Commission and CostQuest. Moreover, incorporating successful challenges submitted by March 8, 2024 offers the opportunity to address data issues with the locations in Enhanced A-CAM offers that interested parties identified after the September 8, 2023 deadline for incorporation of Fabric challenges in Version 4. Successful challenges that would be incorporated include bulk challenges to Version 3 filed between September 9, 2023 and the release of Version 4, individual challenges to Version 3 filed before March 8, 2024, and any bulk challenges to Version 4 filed by March 8, 2024. Including the results of these challenges will ensure that Enhanced A-CAM relies on the most accurate location data to determine obligations and calculate support.

---

[3] *Wireline Competition Bureau Announces Corrected Enhanced Alternative Connect America Cost Model Offers for 82 Companies*, WC Docket 10-90, Public Notice, DA 23-835 (WCB rel. Sept. 21, 2023) (*Enhanced A-CAM Corrected Offers PN*).

[4] *Wireline Competition Bureau Authorizes 368 Companies in 44 States to Receive Enhanced Alternative Connect America Cost Model Support to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, DA 23-1025 (WCB rel. Oct. 30, 2023). The number of companies was determined by counting each holding company as a distinct company in each state for which it elected Enhanced A-CAM.

[5] *See* FCC Broadband Funding Map, *available at* fundingmap.fcc.gov.

[6] *Enhanced A-CAM Order* at para. 43.

[7] *Id.* at paras. 77-78.

[8] The Bureau establishes March 8, 2024 as the deadline for entities to submit bulk challenges to Version 4 of the Fabric in order to have them processed and considered for potential inclusion into Version 5 of the Fabric. *See* FCC, Broadband Data Collection, at www.fcc.gov/BroadbandData (noting key National Broadband Map dates in 2024).

[9] Although the Commission noted in the *Enhanced A-CAM Order* that it "expected" the Bureau and OEA would "ultimately rely on Fabric v.3 and [associated National Broadband Map]" as a result of the Commission's guidance that any adjustments should reflect locations and broadband deployment at the time of the offers, *Enhanced A-CAM Order*, para. 43 & n. 146, for the reasons described here the Bureau and OEA have determined that Version 4 better meets the stated criteria.

To identify broadband availability at the relevant locations, the Bureau plans to use BDC availability data as of December 31, 2023 due March 1, 2024 (the filing window associated with the release of Fabric Version 4), as well as any challenges to broadband availability that have been resolved by May 15, 2025. Due to the potential length of time required to fully resolve broadband availability challenges, any challenge must be filed by August 1, 2024 order to guarantee resolution by the May 15, 2025, cutoff. Because of this potential time required to resolve a broadband availability challenge, it is not feasible to set a cutoff earlier than May 15, 2025, while also providing interested parties with an appropriate amount of time to submit challenges. Further, a cutoff later than May 15, 2025, may prevent the Bureau and OEA from finalizing Enhanced A-CAM obligations and support by December 31, 2025, as required by the *Enhanced A-CAM Order*. [10]

Challenges that would be incorporated, if resolved by May 15, 2025, would include challenges to availability data as of June 30, 2023 and December 31, 2024, based on Version 3 and Version 4 of the Fabric, respectively. While the Bureau and OEA recommend filing any broadband availability challenges by August 1, 2024, challenges filed after that date also will be applied if resolved prior to May 15, 2025. In the small number of cases where a location is added to Fabric Version 5 due to a timely successful challenge, the Bureau plans to use broadband availability data as of June 30, 2024 for those locations (the filing round associated with Fabric Version 5), as modified by any availability challenges to such data that are resolved by May 15, 2025. Using the broadband availability data as described here will provide the most comprehensive data set for the locations included in Version 4 of the Fabric, as modified by challenges.

The dates most relevant to this process are summarized below:

Action	Date
Fabric Version 4 Available to Licensees	December 27, 2023
Broadband Availability Data for Fabric Version 4 Due	March 1, 2024
Last Day to File Challenges to Location Data for Application to Enhanced A-CAM Obligations and Support	March 8, 2024
Last Day to File Challenges to Broadband Availability Data with Guaranteed Resolution in Time for Application to Enhanced A-CAM Obligations and Support	August 1, 2024
All Broadband Availability Challenges Resolved by this Date will be Applied to Enhanced A-CAM Obligations and Support	May 15, 2025

Offer Locations Outside Study Area Boundaries. As previously acknowledged by the Bureau in the *Enhanced A-CAM Corrected Offers PN*, some Enhanced A-CAM carriers were assigned locations outside their certified study areas in the "Potentially Eligible Locations" file, which was made available to document the calculation of Enhanced A-CAM offers.[11] This issue is caused by an algorithm in the Connect America Cost Model which assumes a location is served from the nearest point along a road and, if the road is in an adjacent study area, assigns the location to the adjacent study area, rather than based on the certified study area boundaries.[12] On November 17, 2023, Enhanced A-CAM commitments were

[10] *Enhanced A-CAM Order* at para. 43.

[11] The "Potentially Eligible Locations" file was posted to the A-CAM page at cacm.usac.org. For a discussion of this data source, see the Enhanced A-CAM Calculations Methodology and Data Sources, available at https://docs.fcc.gov/public/attachments/DOC-396476A1.pdf.

[12] *Enhanced A-CAM Corrected Offers PN*, at 2. The Bureau noted that electing carriers would be committing to serve all locations in their study areas that were without 100/20 Mbps service, and would therefore be required to

(continued….)

uploaded to the Broadband Funding Map using the most recently updated and certified study area boundaries.[13] As the Bureau noted in the *Enhanced A-CAM Corrected Offers PN*, carriers electing Enhanced A-CAM "should recognize that, by electing Enhanced A-CAM, they would be committing to serve all locations in their study areas that are currently without 100/20 Mbps and may therefore be required to serve locations that the Enhanced A-CAM offers assigned to adjacent study areas in error."[14] Further the Bureau noted that carriers electing Enhanced A-CAM "should recognize that they will not be required to serve, and may not ultimately receive support for, locations outside their study areas."[15] Using the certified study area boundaries with location data from the Fabric resolves the issue with locations outside study areas being assigned incorrectly to carriers. As detailed below, updated files will be provided to help carriers, states, and other interested parties assess the impact of using the certified study area boundaries.

Offer Locations In Overlapping Study Area Boundaries. In addition to the above, the Bureau and the Office of Economics and Analytics estimate that, according to Version 3 of the Fabric, approximately 1,036 locations are within the certified, overlapping study area boundaries of multiple Enhanced A-CAM electing carriers. In the Potentially Eligible Locations file, these locations were assigned to one carrier based on model algorithms. In the Broadband Funding Map, these locations are assigned to two Enhanced A-CAM carriers because the certified study area boundaries were the basis for all assignments. In order to avoid funding duplicative deployment, it is necessary to assign those locations to only one Enhanced A-CAM carrier.[16]

The Bureau determines that using the model-assigned carrier, as reflected originally in the Potentially Eligible Locations file, for the final assignment of an obligation to deploy 100/20 Mbps or faster service (or to at least maintain service, if 100/20 Mbps or faster service is already provided) is a reasonable outcome in cases where the model-assigned carrier already provides some level of service. Further, the Bureau concludes the obligation should lie with the model-assigned carrier in cases where neither of the carriers provides any level of service. Only in cases where the model-assigned carrier does not provide any service, while the other, overlapping carrier does, will we change the assignment for the final obligations. In the event that a location does not have a "model-assigned" carrier because the location was not in Version 2 of the Fabric used to develop the offers, the location will be assigned to the carrier reporting the highest level of broadband service (as determined by summing reported upload and download speeds) according to the Broadband Data Collection. There may ultimately be a small number of locations for which these guidelines do not resolve the assignment.[17] In those cases, the Bureau will assign the location to the same carrier as the next nearest assigned location within one of the overlapping census blocks. If necessary, the Bureau will consult with the states and carriers to address any remaining assignment issues.

(Continued from previous page)
serve locations in their study area assigned to adjacent study areas in error as part of the offer calculation. *Id.* The Bureau further recognized that carriers would not be required to serve locations outside their certified study areas that had been assigned to them in error. *Id.*

[13] *See* FCC Broadband Funding Map, *available at* fundingmap.fcc.gov.

[14] *Enhanced A-CAM Corrected Offers PN* at 2.

[15] *Id.*

[16] The Bureau notes that there were also many locations in study areas overlapped by local exchange carriers that were not eligible for or did not elect Enhanced A-CAM. Enhanced A-CAM carriers will be required to serve them consistent with the Commission's Enhanced A-CAM rules. In some cases, a location that was assigned by the model to a carrier that did not elect Enhanced A-CAM, as reflected in the Potentially Eligible Locations file, will be reflected in the Enhanced A-CAM carriers locations going forward.

[17] The Bureau and OEA estimate that, of the 1,036 locations in Version 3 of the Fabric in overlapping study areas, 59 locations are not model-assigned, of which 43 may be assigned based on a carrier providing a higher level of broadband service but 16 locations may not be.

Tribal Locations. In posting the Enhanced A-CAM commitments to the Broadband Funding Map, the Bureau and OEA identified a discrepancy between Tribal locations shown in the Broadband Funding Map and Tribal locations shown in the Enhanced A-CAM offers. The Tribal locations in the Broadband Funding Map reflect updated information regarding Tribal boundaries but are consistent with the definition of Tribal lands used in prior A-CAM offers. The Enhanced A-CAM offers relied on information from the Connect America Model. As the Bureau finalizes deployment obligations and support amounts, it will rely on the current Tribal boundaries as reflected in the Broadband Funding Map.

Interim Eligible Locations File. For transparency purposes, the Bureau has posted two files documenting the guidance described in this Public Notice.[18] First, an "Interim Eligible Locations" file shows all BSLs in Fabric Version 3 within the certified study area boundaries of Enhanced A-CAM-electing carriers. For each BSL, the file shows: the Location ID; the Census Block ID; the state; the Provider ID of the Enhanced A-CAM carrier; the study area code; the number of units at the BSL; the Tribal status of the location; the broadband availability status of the location;[19] the applicability of any other programs with an enforceable commitment to deploy broadband;[20] and whether the location is a "required location," to which the Enhanced A-CAM carrier is obligated to deploy 100/20 Mbps or faster service. Locations within overlapping study area boundaries are assigned to carriers and study areas as described above. This file will allow Enhanced A-CAM carriers and other interested parties to see, based on currently available data, what locations are "required" (to which the Enhanced A-CAM carrier must deploy 100/20 Mbps or faster service) or "carrier-served" (to which the Enhanced A-CAM carrier must at least maintain existing 100/20 Mbps or faster service). This file will be updated in the future to reflect locations and broadband availability are finalized, as discussed above. A second file, "Interim Carrier Location Assignments," identifies whether BSLs have been added to or removed from a particular study area in the "Interim Eligible Locations" file as compared to the "Potentially Eligible Locations" file that was provided at the time of the Enhanced A-CAM offers. The Bureau will continue to consider any questions or concerns raised by parties, and provide additional guidance or updates as warranted.

For additional information on this proceeding, please contact Stephen Wang (Stephen.Wang@fcc.gov) of the Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418-7400.

- FCC -

[18] The files are available at https://www.fcc.gov/files/enhanced-acam-interim-locations.

[19] The codes for this variable are as follows: (1) ILEC-only served; (2) ILEC and competitively served; (3) unserved; (4) served only by a competitor; (5) unserved, subject to an enforceable commitment to deploy reflected in the Broadband Funding Map (BFM); and (6) ILEC-only served, subject to a competitive commitment to deploy, reflected in the BFM. Locations coded as (5) and (6) were previously coded in the "Potentially Eligible Locations" file as (4) and (2), respectively.

[20] This variable is coded as follows: (0) not subject to an enforceable commitment in the BFM; (1) unserved, loan to ILEC; (2) unserved, grant to ILEC; (3) unserved, loan or grant to competitor; (4) ILEC-only served, loan to ILEC; (5) ILEC-only served, grant to ILEC; (6) ILEC-only served, loan or grant to competitor; (7) ILEC and competitive served, with a BFM commitment; (8) only competitive served, with a BFM commitment.

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. 24-79

Report No. TEL-02336 **Friday January 26, 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).

INFORMATIVE

ITC-214-19970128-00044 Global Tel*Link Corporation

By letter filed January 18, 2024, Global Tel*Link Corporation notified the Commission that the following wholly-owned subsidiaries may provide international telecommunications service under the international section 214 authorization held by the applicant, pursuant to section 63.21(h) of the Commission's rules, 47 CFR 63.21(h): DSI-ITI, Inc. d/b/a ViaPath Technologies, Public Communications Services, Inc. d/b/a ViaPath Technologies, and Value-Added Communications, Inc. d/b/a ViaPath Technologies.

SURRENDER

ITC-214-19920915-00084 Value-Added Comm, Inc.

Value-Added Comm, Inc. notified the Commission of the surrender of its international section 214 authorization.

ITC-214-19930312-00048 Vitelcom Cellular, Inc. d/b/a Innovative Wireless

Vitelcom Cellular, Inc. d/b/a Innovative Wireless notified the Commission of the surrender of its international section 214 authorization.

ITC-214-19940415-00137 Electric Lightwave, LLC

Electric Lightwave, LLC notified the Commission of the surrender of its international section 214 authorization.

ITC-214-19960228-00091 MOULTRIE INFOCOMM, INC.

MOULTRIE INFOCOMM, INC. notified the Commission of the surrender of its international section 214 authorization.

ITC-214-19960305-00097 AG LONG DISTANCE, INC.

AG LONG DISTANCE, INC. notified the Commission of the surrender of its international section 214 authorization.

ITC-214-19970320-00161 UNITED STATES CELLULAR CORPORATION

UNITED STATES CELLULAR CORPORATION notified the Commission of the surrender of its international section 214 authorization.

SURRENDER

ITC-214-19970421-00220 AT&T Corp.

AT&T Corp. notified the Commission of the surrender of its international section 214 authorization.

ITC-214-19970603-00300 3 Rivers F/O, Inc.

3 Rivers F/O, Inc. notified the Commission of the surrender of its international section 214 authorization.

ITC-214-19970922-00571 GLOBALPHONE CORP.

GLOBALPHONE CORP. notified the Commission of the surrender of its international section 214 authorization.

ITC-214-19971120-00724 ACCESS POINT, INC.

ACCESS POINT, INC. notified the Commission of the surrender of its international section 214 authorization.

ITC-214-19971201-00749 CHOICE COMMUNICATIONS, LLC

CHOICE COMMUNICATIONS, LLC notified the Commission of the surrender of its international section 214 authorization.

ITC-214-19980210-00094 TDS METROCOM, LLC

TDS METROCOM, LLC notified the Commission of the surrender of its international section 214 authorization.

ITC-214-19980527-00346 Startec Global Communications Corporation

Startec Global Communications Corporation notified the Commission of the surrender of its international section 214 authorization.

ITC-214-19980619-00425 Electric Lightwave, LLC

Electric Lightwave, LLC notified the Commission of the surrender of its international section 214 authorization.

ITC-214-19980820-00606 Columbia Ventures Corporation

Columbia Ventures Corporation notified the Commission of the surrender of its international section 214 authorization.

ITC-214-19980903-00628 PUBLIC COMMUNICATIONS SERVICES, INC.

PUBLIC COMMUNICATIONS SERVICES, INC. notified the Commission of the surrender of its international section 214 authorization.

ITC-214-19981019-00723 Enhanced Communications Network, Inc.

Enhanced Communications Network, Inc. notified the Commission of the surrender of its international section 214 authorization.

ITC-214-19990202-00054 Master Call Communications,Inc

Master Call Communications,Inc notified the Commission of the surrender of its international section 214 authorization.

ITC-214-19990406-00240 ATC Long Distance

ATC Long Distance notified the Commission of the surrender of its international section 214 authorization.

ITC-214-19990729-00490 Electric Lightwave, LLC

Electric Lightwave, LLC notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20010412-00208 McAllen-Edinburg-Mission SMSA Limited Partnership

McAllen-Edinburg-Mission SMSA Limited Partnership notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20020604-00276 Econodial, LLC

Econodial, LLC notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20020924-00488 Global Jewish Assistance and Relief Network

Global Jewish Assistance and Relief Network notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20021219-00604 Choice Communications LLC

Choice Communications LLC notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20030219-00079 Amertel Communications, Inc.

Amertel Communications, Inc. notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20030710-00340 ACT American Carrier Telecomunications Corp.

ACT American Carrier Telecomunications Corp. notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20050425-00175 MOSINEE TELEPHONE COMPANY, LLC

MOSINEE TELEPHONE COMPANY, LLC notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20051011-00431 Electric Lightwave, LLC

Electric Lightwave, LLC notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20080506-00206 MTPCS, LLC

MTPCS, LLC notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20080527-00242 THE STATE LONG DISTANCE TELEPHONE COMPANY, LLC

THE STATE LONG DISTANCE TELEPHONE COMPANY, LLC notified the Commission of the surrender of its international section 214 authorization.

SURRENDER

ITC-214-20091123-00501 SAL Spectrum, LLC

SAL Spectrum, LLC notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20100407-00149 DSI-ITI, Inc.

DSI-ITI, Inc. notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20101208-00473 PriorityOne Telecommunications, Inc.

PriorityOne Telecommunications, Inc. notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20120125-00010 Master Call Corporation

Master Call Corporation notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20120419-00106 Cohere Communications, LLC

Cohere Communications, LLC notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20120803-00198 Delta Telecom, Inc.

Delta Telecom, Inc. notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20121005-00255 SkyNet360, LLC

SkyNet360, LLC notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20121020-00272 PinVOCO, LLC

PinVOCO, LLC notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20121211-00318 Opelika Power Services, City of Opelika, AL

Opelika Power Services, City of Opelika, AL notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20130916-00248 Momentum Telecom, Inc

Momentum Telecom, Inc notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20130921-00249 CircleNet

CircleNet notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20141022-00280 Talk America Services, LLC

Talk America Services, LLC notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20160509-00151 Master Call Connections

Master Call Connections notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20190516-00113 Advanced Network Management Inc.

Advanced Network Management Inc. notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20201002-00175 Teltek Systems, Inc.

Teltek Systems, Inc. notified the Commission of the surrender of its international section 214 authorization.

ITC-MOD-20050329-00170 Intelsat General Communications LLC

Intelsat General Communications 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. 24-80

Report No. SAT-01794 **Friday January 26, 2024**

Satellite Licensing Division and Satellite Programs and Policy Division Information

Actions Taken

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

SAT-LOA-20230414-00088 E S3170 Loft Orbital Solutions Inc.
Launch and Operating Authority
Grant of Authority Effective Date: 01/19/2024

Nature of Service: Earth Exploration Satellite Service

On January 19, 2024, the Satellite Programs and Policy Division granted, with conditions, Loft Orbital Solutions Inc.'s request for authority to construct, deploy, and operate one NGSO satellite, YAM-6, at initial deployment to approximately 500 km (+/- 25 km) altitude, 97.6 (±0.1) degrees inclination with operations authorized down to 350km. Loft is authorized to operate using the following frequencies: 2025-2110 MHz (center frequency 2070.0 MHz, 132 kHz emission bandwidth) (Earth-to-space) for primary earth-exploration satellite service (EESS) data uplink and primary command uplink; 8025-8400 MHz (center frequency 8125.0 MHz, 100 MHz emission bandwidth) (space-to-Earth) for primary EESS data downlink and primary telemetry and tracking downlink; 449.75-450.25 MHz (center frequencies of 450.125 MHz and 450.2 MHz, each with 17kHz emission bandwidth) (Earth-to-space) for backup command uplink; 400.15-401 MHz (center frequency 400.875 MHz, 34 kHz emission bandwidth) (space-to-Earth) and 401-402 MHz (center frequencies 401.017 MHz, 401.85 MHz, 401.155 MHz, 401.225 MHz, 401.375 MHz, 401.4375 MHz, 401.5 MHz, and 401.015 MHz, each with 34 kHz emission bandwidth) (space-to-Earth) for backup telemetry and tracking downlinks. Loft is also authorized to operate using frequencies in the 2200-2290 MHz (center frequency 2277.3 MHz, 5 MHz emission bandwidth) (space-to-Earth) and 2025-2110 MHz (center frequency 2102.5 MHz, 1 MHz emission bandwidth) (Earth-to-space) for experimental communications, and using 1525-1559 MHz (space-to-space) and 1626.5-1660.5 MHz (space-to-space) for inter-satellite communications with Inmarsat satellites. This application was granted under the streamlined small satellite procedures, 47 CFR § 25.122.

SAT-LOA-20230729-00189 E S3179 Quantum Space LLC
Launch and Operating Authority
Granted in Part/ Deferred in Part Effective Date: 01/20/2024

Nature of Service: Other

On January 20, 2024, the Satellite Programs and Policy Division granted-in-part and deferred-in-part Quantum Space LLC's request for authority to deploy and operate one satellite, Quantum Sentry. Quantum Space is authorized to operate in sun-synchronous orbit at an altitude of 525 kilometers (+/- 20 kilometers) and at an inclination of 97.5 degrees (+/- 0.1 degrees). The Division authorized Quantum Space to use the 401-402 MHz (space-to-Earth) band for telemetry downlink, and the 2025-2110 MHz (Earth-to-space) band for data uplink for the space research service and command uplink. Specifically, Quantum Space may operate at center frequencies of 401.5 MHz with 40 kHz bandwidth and 2055 MHz with 0.3 MHz bandwidth. Quantum Space may also receive signals from the Global Positioning System at center frequencies of 1575.42 MHz and 1227.60 MHz. This application was granted under the small satellite licensing procedures in section 25.122 of the Commission's rules, 47 CFR § 25.122.

SAT-STA-20231101-00271 E S2704 Intelsat License LLC

Special Temporary Authority

Grant of Authority Effective Date: 11/15/2023

On November 15, 2023, the Satellite Programs and Policy Division granted, with conditions, the request of Intelsat License LLC for special temporary authority, for an additional period of 60 days, to operate Intelsat 5 at the 166.15° E.L. orbital location. Intelsat 5 operates in the fixed-satellite service in the 3700-4200 MHz, 10.70-10.95 GHz, 11.2-11.7 GHz, (space-to-Earth), 5925-6425 MHz, 12.75-13.25 GHz, and 14.0-14.25 GHz (Earth-to-space) frequency bands. Intelsat conducts telemetry, tracking, and command operations with Intelsat 5 using the following center frequencies: 11.451 GHz, 11.452 GHz, 11.454 GHz (space-to-Earth), 13.999 GHz and 14.498 GHz (Earth-to-space).

SAT-STA-20231101-00272 E S2408 Intelsat License LLC

Special Temporary Authority

Grant of Authority Effective Date: 01/23/2024

Nature of Service: Fixed Satellite Service

On January 23, 2024, the Satellite Programs and Policy Division granted, with conditions, special temporary authority to Intelsat License LLC, for a period of 180 days to operate the Intelsat 904 space station with new C-band coverage areas at the 29.5° W.L. orbital location.

SAT-STA-20231201-00298 E S3154 Momentus Space LLC

Special Temporary Authority

Grant of Authority Effective Date: 01/22/2024

On January 22, 2024, the Satellite Programs and Policy Division granted, with conditions, the request of Momentus Space LLC for special temporary authority to operate its Vigoride-6 (VR-6) space station for an additional 30 days.

SAT-STA-20231221-00323 E S3066 Intelsat License LLC

Special Temporary Authority

Grant of Authority Effective Date: 01/23/2024

Nature of Service: Fixed Satellite Service

On January 23, 2024, the Satellite Programs and Policy Division granted, with conditions, special temporary authority to Intelsat License LLC, for an additional period of 60 days, for the Intelsat 40e space station to provide fixed-satellite service in the 18.8-19.3 GHz (space-to-Earth) and 28.6-29.1 GHz (Earth-to-space) frequency bands from the 91.0° W.L. orbital location.

SAT-STA-20231228-00328 E S2704 Intelsat License LLC

Special Temporary Authority

Grant of Authority Effective Date: 01/23/2024

Nature of Service: Fixed Satellite Service

On January 23, 2024, the Satellite Programs and Policy Division granted, with conditions, special temporary authority to Intelsat License LLC, for an additional period of 60 days, to operate Intelsat 5 at the 166.15° E.L. orbital location. Intelsat 5 operates in the fixed-satellite service in the 3700-4200 MHz, 10.70-10.95 GHz, 11.2-11.7 GHz, (space-to-Earth), 5925-6425 MHz, 12.75-13.25 GHz, and 14.0-14.25 GHz (Earth-to-space) frequency bands. Intelsat conducts telemetry, tracking, and command operations with Intelsat 5 using the following center frequencies: 11.451 GHz, 11.452 GHz, 11.454 GHz (space-to-Earth), 13.999 GHz and 14.498 GHz (Earth-to-space).

SAT-STA-20240110-00010 E S2408 Intelsat License LLC

Special Temporary Authority

Grant of Authority Effective Date: 01/23/2024

Application listed as granted in ICFS to reflect continuing operations pursuant to section 1.62 of the Commission's rules. 47 CFR § 1.62.

SAT-STA-20240110-00013 E S2715 Intelsat License LLC

Special Temporary Authority

Grant of Authority Effective Date: 01/23/2024

On January 23, 2024, the Satellite Programs and Policy Division granted, with conditions, special temporary authority to Intelsat License LLC, for a period of 60 days to operate the Galaxy 17 space station's Ku-band beams over a new coverage area from the 85.0° W.L. orbital location. Galaxy 17 operates in the fixed-satellite service using the 11.7-12.2 GHz (space-to-Earth) and 14.0-14.5 GHz (Earth-to-space) bands, and uses the following center frequencies for telemetry, tracking, and command: 4197.125 MHz and 4198.875 MHz (space-to-Earth), and 5925.5 MHz and 6424.5 MHz (Earth-to-space).

SAT-STA-20240117-00015 E S2715 Intelsat License LLC

Special Temporary Authority

Grant of Authority Effective Date: 01/23/2024

Application listed as granted in ICFS to reflect continuing operations pursuant to section 1.62 of the Commission's rules. 47 CFR § 1.62.

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 24-81
Released: January 25, 2024

CHAIRWOMAN ROSENWORCEL TO HOST A LISTENING SESSION CONCERNING INCARCERATED PEOPLE'S COMMUNICATIONS SERVICES IN CHARLESTON, SOUTH CAROLINA

WC Docket Nos. 23-62 and 12-375

On February 1, 2024, Federal Communications Commission Chairwoman Jessica Rosenworcel will host a listening session in Charleston, South Carolina, to hear from formerly incarcerated people and their loved ones about their experiences using incarcerated people's communications services (IPCS). Participants will explain 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 in support of the Commission's ongoing efforts to ensure just and reasonable rates and charges for IPCS consumers.

The listening session will take place from 2:30 p.m.to 4:00 p.m. Eastern Daylight Time at the City of North Charleston Cultural Arts Department, Park Circle Community Building, 4800 Park Circle, North Charleston, South Carolina 29405. The program agenda will include opening remarks from Chairwoman Rosenworcel and former Acting Chair and Commissioner Mignon Clyburn followed by a discussion with current and former IPCS consumers, providing the Commission with first-hand accounts. 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 all advanced communications services, including audio or video 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 St., NE
Washington, DC 20554

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

DA 24-82
Released: January 26, 2024

FCC ANNOUNCES COMMENT DATES FOR SECOND FURTHER NOTICE OF PROPOSED RULEMAKING IN ROBOTEXT PROCEEDING

CG Docket Nos. 02-278, 21-402, 17-59

Comment Date: February 26, 2024
Reply Comment Date: March 11, 2024

On December 18, 2023, the Commission released a Second Report and Order, Second Further Notice of Proposed Rulemaking, and Waiver Order, Targeting and Eliminating Unlawful Text Messages and Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991.[1] Among other things, the item sought comment on stronger blocking requirements following Commission notification, updates on the progress on text message authentication, requiring providers to make email-to-text services opt in, and how the Commission can refine and expand its efforts to assist businesses, particularly small businesses, in complying with the one-to-one prior express written consent requirement. The Second Further Notice of Proposed Rulemaking sets deadlines for filing comments and reply comments at 30 days and 45 days after publication in the Federal Register.

On January 26, 2024, a summary of the Second Further Notice of Proposed Rulemaking was published in the Federal Register.[2] Accordingly, comments are due February 26, 2024, and reply comments are due March 12, 2024. Complete comment filing instructions are set forth in the Second Further Notice of Proposed Rulemaking and the Federal Register.

For further information, contact Jerusha Burnett, Attorney Advisor, Consumer Policy Division, Consumer and Governmental Affairs Bureau, at 202 418-0526 or jerusha.burnett@fcc.gov, or Mika Savir, Attorney Advisor, Consumer Policy Division, Consumer and Governmental Affairs Bureau, at (202) 418-0384 or mika.savir@fcc.gov.

---

[1] *Targeting and Eliminating Unlawful Text Messages, Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Second Report and Order, Second Further Notice of Proposed Rulemaking in CG Docket Nos. 02-278, 21-402, and Waiver Order in CG Docket No. 17-59, FCC 23-107 (rel. Dec. 18, 2023).

[2] Federal Communications Commission, Targeting and Eliminating Unlawful Text Messages and Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, 89 FR 5117 (Jan. 26, 2024).

Federal Communications Commission
Washington, D.C. 20554

January 29, 2024

DA-24-83

By Certified Mail, First-Class Mail, and Email

Miguel Vazquez
President and Chief Executive Officer
Phonetime Inc.
1250 E Hallandale Beach Blvd.
Hallandale, FL 33009
mike@phonetime.com

Re: Proposed Transfer of Control of Phonetime Inc. from Tellza, Inc. to Mexedia, Inc., File No. ITC-T/C-20230327-00041

Dear Mr. Vazquez:

On March 24, 2023, Phonetime Inc. (Phonetime), Mexedia, Inc. (Mexedia), and Tellza, Inc. (Tellza, and together, the "Applicants") filed the above referenced application with the Federal Communications Commission (Commission or FCC) seeking consent to the proposed transfer of control of Phonetime from Tellza to Mexedia.[1] On April 7, 2023, the Office of International Affairs found the application acceptable for filing and referred the application to the Committee for the Assessment of Foreign Participation in the United States Telecommunications Sector (Committee) for review of any national security or law enforcement concerns related to the foreign ownership of the Applicants.[2] On November 2, 2023, the Committee returned the above referenced application to the Commission stating that based "upon [the Committee's] consideration of the application, the information provided by the involved parties, and publicly available information,"[3] the Applicants "appear to have engaged in an unauthorized transfer of control of an international facilities-based section 214 authorization" and the Committee "is informing the FCC so that the FCC may take any appropriate action in accordance with FCC rules and regulations."[4]

The Committee states that, in January 2023, prior to filing the above referenced application with the Commission, "Tellza appears to have transferred control of Phonetime and its international section 214 authorization, ITC-214-19970516-00274, to Mexedia without FCC approval."[5] The Committee asserts that Mexedia and Phonetime are holding Phonetime out to the public as a Mexedia company, despite not yet receiving approval from the Commission.[6]

Phonetime must respond to this letter and the Committee's allegations by **February 28, 2024**. We ask that you address in detail whether the transaction has been consummated prior to FCC approval in violation the

[1] FCC Transfer of Control Application, FCC File No. ITC-T/C-20230327-00041 (Mar. 24, 2023).

[2] *Non Streamlined International Applications/Petitions Accepted for Filing*, Public Notice, Report No. TEL-02264NS at 1 (OIA April 7, 2023).

[3] Letter from Makenzie B. Skopowski, Attorney Advisor, Foreign Investment Review Section, National Security Division, U.S. Department of Justice, to Marlene H. Dortch, FCC at 1 (Nov. 2, 2023) (on file in ITC-T/C-20230327-00041) (DOJ Letter).

[4] *Id.*

[5] *Id.* at 3.

[6] *Id*. (for example, stating that on September 16, 2022, Mexedia posted a press release on its website titled, "Phonetime and Matchcom Acquisition.").

Communications Act of 1934, as amended (Act) and the Commission's transfer of control rules.[7] If so, we ask that you identify the date on which the transaction was consummated and whether Mexedia currently controls Phonetime. We note that we have referred this matter to the FCC's Enforcement Bureau.

Sincerely,

/*Denise Coca*/
Denise Coca, Chief
Telecommunications Analysis Division
Office of International Affairs

Enclosures: DOJ Letter Redacted

cc:

By Certified Mail, First-Class Mail, and Email:

Miguel Vazquez
Phonetime Inc.
1680 Michigan Avenue, Suite 700
Miami Beach, FL 33139
mike@phonetime.com

Daniel Contreras
Phonetime Inc.
1680 Michigan Avenue, Suite 700
Miami Beach, FL 33139
docontreras@mexedia.com

Jeffrey D. Katz
Tellza, Inc.
3 Bethesda Metro Center, Suite 500
Bethesda, MD 20814
jeffrey@jdkatz.com

Daniel Contreras
Mexedia, Inc.
3 Bethesda Metro, Suite 500
Bethesda, MD 20814
dcontreras@mexedia.com

[7] 47 CFR § 63.24.

[E.O. 13913, SEC. 8 INFO REDACTED / FOR PUBLIC INSPECTION]

U.S. Department of Justice

National Security Division

Foreign Investment Review Section *Washington, D.C. 20530*

November 2, 2023

By Electronic Mail

Ms. Marlene H. Dortch
Federal Communications Commission
445 l2th St. SW, Room TW-B204
Washington, DC 20554

Re: Notice of Apparent Violation and Return of Application; Phonetime Inc./Tellza, Inc./Mexedia, Inc.; TT Case No. TT-2023-016; FCC Docket No. ITC-T/C-20230327-00041.

Dear Ms. Dortch:

The Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (hereinafter the "Committee") hereby notifies the Federal Communications Commission ("FCC") that the above-referenced application is being returned to the FCC for further review under the FCC's rules and regulations.[1] Specifically, the applicants in the above-described application appear to have engaged in an unauthorized transfer of control of an international facilities-based section 214 authorization. The Committee is informing the FCC so that the FCC may take any appropriate action in accordance with FCC rules and regulations.

I. Background and Procedural History

On March 24, 2023, Phonetime Inc. ("Phonetime"), Mexedia, Inc. ("Mexedia"), and Tellza, Inc. ("Tellza") filed an application to the FCC seeking consent to the proposed transfer of control of Phonetime from Tellza to Mexedia.[2] Phonetime is a Florida corporation that holds an international section 214 facilities-based authorization from the FCC (ITC-214-19970516-00274).[3] Phonetime was granted international section 214 authority on July 3, 1997, to operate as a facilities based-carrier in accordance with the provisions of 47 C.F.R. § (e)(1) of the FCC's rules.[4] Phonetime is a supplier of long-distance services, and holds itself out to the public as such

[1] See attached notification from the Chair.
[2] FCC Transfer of Control Application, FCC File No. ITC-T/C-20230327-00041 (Mar. 24, 2023) (the "2023 FCC Application) (PUBLIC EXHIBIT 1), at PHONETIME-PUBLIC-001 to 012.
[3] *Id*. at PHONETIME-PUBLIC-001 to 002.
[4] *Id*. at PHONETIME-PUBLIC-004 to 005.

a provider.[5] The applicants stated that Phonetime's parent company at the time of the application was Tellza, a publicly traded Canadian company (TSX: TEL).[6] Tellza, the Canadian entity, also owns another entity called Tellza, Inc. that is incorporated in Florida company and a supplier of long-distance telecommunications services, as well as Matchcom Telecommunications ("Matchcom").[7] In their 2023 FCC Application, the applicants listed the Chief Executive Officer ("CEO") of both Phonetime and Tellza as Mike Vazquez.[8]

Mexedia, Inc. (f/k/a Airtime Technologies USA, Inc.) is a Florida-based corporation.[9] The applicants describe Mexedia as a "technology company that offers innovative solutions, and consolidated tools encapsulated in a single integrated technology ecosystem, enabling companies to manage all customer communications activities."[10] Mexedia is owned by Mexedia Societa Per Azioni SB ("Mexedia SPA"), which is incorporated in Italy.[11] Mexedia SPA is a subsidiary of an Ireland-based entity called Heritage Ventures, Limited ("Heritage Ventures").[12] Orlando Taddeo, an Italian citizen, is the sole owner of Heritage Ventures which holds an 89.5 percent interest in Mexedia SPA.[13]

The requested transfer of control does not involve a transfer of operating authority, assets, or customers.[14] Once complete, the transaction would allow Phonetime to continue to provide service to its existing customers under existing service arrangements.[15] The applicants assert that the transfer of control will serve the public interest by allowing the companies to offer less expensive services, better enabling them to serve both international and domestic customers.[16]

On April 7, 2023, the FCC found the application to be acceptable for filing. The FCC then referred the application to the Committee for its views on any national security, law enforcement, foreign policy, or trade policy concerns related to the foreign ownership of the applicants.[17] The Committee has reviewed Phonetime's application, as well as the applicants' responses to the Committee's triage questions. Upon consideration of the application, the information provided by the involved parties, and publicly available information, the Committee

---

[5] *See id.* at PHONETIME-PUBLIC-002; *see also Who We Are*, PHONETIME, https://www.phonetime.com/ - phonetime-tabs-vertical (last visited Oct. 11, 2023) (PUBLIC EXHIBIT 3), at PHONETIME-PUBLIC-014.
[6] 2023 FCC Application, at PHONETIME-PUBLIC-002; Supplemental Information for Application ITC-T/C-20230327-00041 (Apr. 11, 2023) (PUBLIC EXHIBIT 2), at PHONETIME-PUBLIC-013.
[7] 2023 FCC Application, at PHONETIME-PUBLIC-002; *About Us*, MATCHCOM, https://matchcoms.com/ (last visited Oct. 16. 2023) (PUBLIC EXHIBIT 4), at PHONETIME-PUBLIC-015 (explaining that Matchcom is an international wholesale business company that provides value throughout their business partnerships."); Supplemental Information for Application ITC-T/C-20230327-00041, at PHONETIME-PUBLIC-013.
[8] *See* 2023 FCC Application, at PHONETIME-PUBLIC-004.
[9] *Id.* at PHONETIME-PUBLIC-002.
[10] *Id*.
[11] *Id*. PHONETIME-PUBLIC-006.
[12] *Id*.
[13] *Id*. at PHONETIME-PUBLIC-002.
[14] *Id*.
[15] *Id*. at PHONETIME-PUBLIC-009.
[16] *Id*.
[17] FCC Non Streamlined International Applications/Petitions Accepted For Filing Section 214 Applications, Public Notice, Report No. TEL-02264NS (Apr. 7, 2023), https://docs.fcc.gov/public/attachments/DOC-392404A1.pdf (PUBLIC EXHIBIT 5), at PHONETIME-PUBLIC-016 to 017.

is returning the application to the FCC for further review under its rules and regulations for the reasons outlined below.

II. Relevant FCC Rules

International mergers and acquisitions are subject to 47 C.F.R. § 63.24.[18] Pursuant to 47 C.F.R. § 63.24(a), "[A]n international section 214 authorization may be assigned, or control of such authorization may be transferred by the transfer of control of any entity holding such authorization, to another party, whether voluntarily or involuntarily, directly or indirectly, *only upon application to and prior approval by the Commission* (emphasis added).[19]

Pursuant to 47 C.F.R. § 63.24(b):

> [A] transfer of control is a transaction in which the authorization remains held by the same entity, but there is a change in the entity or entities that control the authorization holder. *A change from less than 50 percent ownership to 50 percent or more ownership shall always be considered a transfer of control.* A change from 50 percent or more ownership to less than 50 percent ownership shall always be considered a transfer of control (emphasis added).[20]

III. Apparent Violations

In January 2023, Tellza appears to have transferred control of Phonetime, and its international section 214 authorization, ITC-214-19970516-00274, to Mexedia without FCC approval. A review of available information suggests that the transfer of control has already taken place.

Mexedia and Phonetime are holding Phonetime out to the public as a Mexedia company. On September 16, 2022, Mexedia posted a press release on its website titled, "Phonetime and Matchcom Acquisition" indicating that it had closed agreements to purchase Phonetime and Matchcom.[21] When asked about the press release on Mexedia's website which indicates that Mexedia has already closed on its acquisition of Phonetime, Mexedia stated, **[REDACTED]**.[22] The company also stated that **[REDACTED]**.[23] Mexedia's website lists both Phonetime and Matchcom Telecommunications as recent additions to its list of Mexedia owned companies.[24]

---

[18] *Transfer of Control*, FEDERAL COMMUNICATIONS COMMISSION, https://www.fcc.gov/general/transfer-control.
[19] 47 C.F.R. § 63.24(a).
[20] 47 C.F.R. § 63.24(c).
[21] *Phonetime and Matchcom Acquisition*, MEXEDIA, https://mexedia.com/en/press-releases/ ("Italian tech company Mexedia SpA SB closes agreements to purchase Phonetime Inc. and Matchcom Telecommunications Inc. (together, the US companies) as part of the 2025 medium term plan which the company has set out last May.") (last visited Oct. 11, 2023) (PUBLIC EXHIBIT 6), at PHONETIME-PUBLIC-018.
[22] Phonetime Inc./Tellza, Inc./Mexedia, Inc. Triage Response, Round III, Question 11 (Sept. 28, 2023) (CONFIDENTIAL EXHBIT 1).
[23] *Id.*
[24] *About Us*, MEXEDIA, https://mexedia.com/en/the-group/ (PUBLIC EXHIBIT 7), at PHONETIME-PUBLIC-019.

Phonetime's website specifically states, "Phonetime is part of Mexedia S.p.A. SB."[25] Similar to Phonetime's website, Matchcom's website also states, "Matchcom is a company of Mexedia S.p.A. SB."[26]

Additionally, Mexedia's leadership and owners appear to already be in control of Phonetime. In June 2023, when asked to provide information about what Mexedia's leadership role in Phonetime would be post-transaction, the applicants stated that **[REDACTED]**.[27] According to Phonetime's 2023 Foreign Profit Corporation Annual Report,[28] a public document filed with the Florida Secretary of State on April 14, 2023, Orlando Taddeo is listed as a director of Phonetime and Daniel Contreras is identified as the President and CEO of Phonetime.[29]

2023 FOREIGN PROFIT CORPORATION ANNUAL REPORT

FILED
Apr 14, 2023
Secretary of State
7226804386CC

DOCUMENT# F19000003980

Entity Name: PHONETIME INC.

Current Principal Place of Business:

1680 MICHIGAN AVENUE
SUITE 700
MIAMI BEACH, FL 33139

Current Mailing Address:

1680 MICHIGAN AVENUE
SUITE 700
MIAMI BEACH, FL 33139 US

FEI Number: NOT APPLICABLE

Certificate of Status Desired: No

Name and Address of Current Registered Agent:

GRAYROBINSON, P.A.
401 EAST LAS OLAS BOULEVARD
10TH FLOOR
FORT LAUDERDALE, FL 33301 US

The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.

SIGNATURE: CARLOS J. REYES, ESQ. 04/14/2023
Electronic Signature of Registered Agent — Date

Officer/Director Detail :

Title	PRESIDENT, CEO	Title	DIRECTOR
Name	CONTRERAS, DANIEL	Name	TADDEO, ORLANDO
Address	1680 MICHIGAN AVENUE SUITE 700	Address	1680 MICHIGAN AVENUE SUITE 700
City-State-Zip:	MIAMI BEACH FL 33139	City-State-Zip:	MIAMI BEACH FL 33139

In September 2023, when asked why Daniel Contreras is now listed as the CEO of Phonetime if the transaction has not yet occurred, Phonetime explained: **[REDACTED]**.[30]

[25] *Who We Are*, at PHONETIME-PUBLIC-014.
[26] *See About Us*, MATCHCOM https://matchcoms.com/ (PUBLIC EXHIBIT 4), at PHONETIME-PUBLIC-015.
[27] Phonetime Inc./Tellza, Inc./Mexedia, Inc. Triage Response, Section II, Question 9(b)(ii) (June 14, 2023) (CONFIDENTIAL EXHIBIT 2).
[28] Each year, the Florida Secretary of State requires all Florida businesses to file an Annual Report for the previous year to maintain an "active status."
[29] 2023 Foreign Profit Corporation Annual Report, Florida Department of State (April 14, 2023) https://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail?inquiryType=DocumentNumber&aggregateId=forp-f19000003980-6055fe81-bb04-44e2-a4ff-9d6e699c2631&directionType=Initial&searchNameOrder=PHONETIME%20F190000039800&searchTerm=F19000003980 (last visited Oct. 11, 2023) (PUBLIC EXHIBIT 8), at PHONETIME-PUBLIC-021.
[30] Phonetime Inc./Tellza, Inc./Mexedia, Inc. Triage Response, Round III, Question 11 (Sept. 28, 2023); CONFIDENTIAL EXHIBIT 1.

The applicants further explained that these corporate leadership changes are **[REDACTED]**.[31] Moreover, the applicants contended that transaction had not yet been completed because **[REDACTED]**.[32]

[REDACTED].[33] As noted above, FCC rules state, "A change from 50 percent of more ownership to less than 50 percent ownership shall always be considered a transfer of control."[34] **[REDACTED]**.

Separately, the Committee notes that Phonetime appears to have been previously involved in an unauthorized transfer of control of an international section 214 authorization several years ago. On November 10, 2009, as related to a review of Phonetime's application to the FCC to acquire control of Symphony Telecommunications, LLC ("Symphony") (FCC IB File No. ITC-T/C-20080206-00088) by the ad hoc group of Executive Branch agencies formerly known as Team Telecom, Phonetime provided a Letter of Agreement to the U.S. Department of Justice ("DOJ") and the U.S. Department of Homeland Security ("DHS") outlining obligations Phonetime agreed to undertake to mitigate risks to U.S. national security and law enforcement interests.[35] The Letter of Agreement—signed by Phonetime's then-President and CEO, as well as its Chief Financial Officer—stated that "[t]he [FCC] granted Symphony's section 214 authority in 2004 in IB File No. ITC-214-20041201-00472. Phonetime acquired Symphony in late 2007 without the required FCC transfer-of-control authorization."[36]

I. Conclusion

The facts above suggest that the applicants may have engaged in a transfer of control within authorization from the FCC. Phonetime and Mexedia are communicating to the public that Phonetime is a Mexedia company; Phonetime identifies Mexedia corporate leaders and owners as its own; and **[REDACTED]**. There is no record of a corresponding FCC approval for a transfer of control of Phonetime's international Section 214 authorization. Accordingly, the

---

[31] *Id*.
[32] *Id*.
[33] Phonetime Inc./Tellza, Inc./Mexedia, Inc. Triage Response, Round III, Exhibit B (Sept 28, 2023); CONFIDENTIAL EXHIBIT 1. **[REDACTED]**. Phonetime Inc./Tellza, Inc./Mexedia, Inc. Triage Response, Round I, Question 27 (July 28, 2023) (CONFIDENTIAL EXHIBIT 3).
[34] 47 CFR § 63.24(c) ("A change from 50 percent or more ownership to less than 50 percent ownership shall always be considered a transfer of control.").
[35] Petition to Adopt Conditions to Authorizations and Licenses, *In the Matter of Phonetime, Inc. Application for consent to transfer control of Section 214 authorization under the Communications Act of 1934, as amended*, FCC File No. ITC-T/C-20080206-00088 (Nov. 18, 2009), including the Phonetime, Inc. Letter of Agreement (Nov. 10, 2009) (PUBLIC EXHIBIT 9), at PHONETIME-022 to 026.
[36] *See id.* at PHONETIME-PUBLIC-024. Phonetime's November 10, 2009 Letter of Agreement to DOJ and DHS was later superseded by a June 5, 2018 Letter of Agreement made by Tellza Inc. to DOJ, signed by Mike Vazquez as CEO of Tellza. Petition to Adopt Conditions to Authorizations and Licenses, *In the Matter of Matchcom Telecommunications and Phonetime, Inc. Application for Global and Limited Facilities-based Authority and Global and Limited Global Resale Authority Pursuant to Section 214 of the Communications Act of 1934, as amended*, FCC File No. ITC-214-20170227-00054, including the Tellza, Inc. Letter of Agreement (June 5, 2018) (PUBLIC EXHIBIT 10), at PHONETIME-PUBLIC-027 to 035. Matchcom later voluntarily surrendered the international Section 214 authorization related to the June 5, 2018 Letter of Agreement. *See* Matchcom Telecommunications, Inc., Voluntary Surrender of International Section 214 Authorization, IBFS File No. ITC-214-20170227-00054 (Dec. 2, 2020) (PUBLIC EXHIBIT 11), at PHONETIME-PUBLIC-036.

application is being returned to the FCC so that the FCC may take any appropriate action in accordance with FCC rules and regulations.

Thank you for your consideration.

Sincerely,

/s/_____

Makenzie B. Skopowski
Attorney Advisor
Makenzie.Skopowski@usdoj.gov
(202) 305-5835

Tyler J. Wood
Deputy Chief
Compliance and Enforcement
Foreign Investment Review Section
National Security Division
U.S. Department of Justice

cc: FCC-TTelecom@fcc.gov
Kathleen.Collins@fcc.gov
Denise.Coca@fcc.gov
David.Krech@fcc.gov
Adrienne.McNeil@fcc.gov
Eileen.Keenan@usdoj.gov
Compliance.Telecom@usdoj.gov
Robert.Kaminaris@usdoj.gov
Applications.TT@usdoj.gov
dhsteamtelecom@hq.dhs.gov
osd.pentagon.ousd-a-s.list.team-telecom@mail.mil

[E.O. 13913, SEC. 8 INFO REDACTED / FOR PUBLIC INSPECTION]

INDEX OF PUBLIC EXHIBITS

Ex. No.	Description	Start Page
1	FCC Transfer of Control Application, FCC File No. ITC-T/C-20230327-00041 (Mar. 24, 2023), https://licensing.fcc.gov/myibfs/download.do?attachment_key=21094215.	PHONETIME-PUBLIC-001
2	Supplemental Information for Application ITC-T/C-20230327-00041 (Apr. 11, 2023), https://licensing.fcc.gov/myibfs/download.do?attachment_key=21502087.	PHONETIME-PUBLIC-013
3	*Who We Are*, PHONETIME, https://www.phonetime.com/ -phonetime-tabs-vertical.	PHONETIME-PUBLIC-014
4	*About Us*, MATCHCOM, https://matchcoms.com/.	PHONETIME-PUBLIC-015
5	FCC Non Streamlined International Applications/Petitions Accepted For Filing Section 214 Applications, Public Notice, Report No. TEL-02264NS (Apr. 7, 2023), https://docs.fcc.gov/public/attachments/DOC-392404A1.pdf.	PHONETIME-PUBLIC-016
6	*Phonetime and Matchcom Acquisition*, MEXEDIA, https://mexedia.com/en/press-releases/.	PHONETIME-PUBLIC-018
7	*About Us*, MEXEDIA, https://mexedia.com/en/the-group/.	PHONETIME-PUBLIC-019
8	2023 Foreign Profit Corporation Annual Report, Florida Department of State (Apr. 14, 2023) https://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail?inquiryType=DocumentNumber&aggregateId=forp-f19000003980-6055fe81-bb04-44e2-a4ff-9d6e699c2631&directionType=Initial&searchNameOrder=PHONETIME%20F190000039800&searchTerm=F19000003980.	PHONETIME-PUBLIC-021
9	Petition to Adopt Conditions to Authorizations and Licenses, *In the Matter of Phonetime, Inc. Application for consent to transfer control of Section 214 authorization under the Communications Act of 1934, as amended*, FCC File No. ITC-T/C-20080206-00088 (Nov. 18, 2009), including the Phonetime, Inc. Letter of Agreement (Nov. 10, 2009), https://licensing.fcc.gov/myibfs/download.do?attachment_key=782144.	PHONETIME-PUBLIC-022

[E.O. 13913, SEC. 8 INFO REDACTED / FOR PUBLIC INSPECTION]

Ex. No.	Description	Start Page
10	Petition to Adopt Conditions to Authorizations and Licenses, *In the Matter of Matchcom Telecommunications and Phonetime, Inc. Application for Global and Limited Facilities-based Authority and Global and Limited Global Resale Authority Pursuant to Section 214 of the Communications Act of 1934, as amended*, FCC File No. ITC-214-20170227-00054, including the Tellza, Inc. Letter of Agreement (June 5, 2018), https://licensing.fcc.gov/myibfs/download.do?attachment_key=1427170.	PHONETIME-PUBLIC-027
11	Matchcom Telecommunications, Inc., Voluntary Surrender of International Section 214 Authorization, IBFS File No. ITC-214-20170227-00054 (Dec. 2, 2020), https://licensing.fcc.gov/myibfs/download.do?attachment_key=2863519.	PHONETIME-PUBLIC-036

INDEX OF CONFIDENTIAL EXHIBITS

Ex. No.	Description
1	Phonetime Inc./Tellza, Inc./Mexedia, Inc. Triage Response (September 28, 2023).
2	Phonetime Inc./Tellza, Inc./Mexedia, Inc. Triage Response (June 14, 2023).
3	Phonetime Inc./Tellza, Inc./Mexedia, Inc. Triage Response (July 28, 2023).

U.S. Department of Justice

National Security Division

Foreign Investment Review Section *Washington, D.C. 20530*

Phonetime Inc., FCC File No. ITC-T/C-20230327-00041 (TT 23-016)

Pursuant to Executive Order 13913 (Apr. 4, 2020), the Chair of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector ("Committee") returns the above-referenced application for further review under the Commission's rules and regulations.

Digitally signed by DEVIN DEBACKER
Date: 2023.11.01 11:52:34 -04'00'

Devin A. DeBacker
Chief
Foreign Investment Review Section
National Security Division
U.S. Department of Justice

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 24-84
Released: January 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). 23-422, 24-22 & 24-23

Comments Due: February 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 **March 1, 2024**, the 31st day after the release date of this public notice, unless the Commission notifies any applicant(s) that their grant will not be automatically effective.[4] We note that the date on which an application for Commission authorization is deemed granted may be different from the date on which applicants are authorized to discontinue, reduce, or impair service ("Authorized Date"). Any applicant whose application has been deemed granted may discontinue, reduce or impair their Affected Service(s) in their Service Area(s) on or after the authorized date(s) specified in the Appendix, in accordance with their filed representations. Accordingly, pursuant to section 63.71(f), and the terms outlined in each application, absent further Commission action, each applicant may discontinue, reduce or impair the Affected Service(s) in the Service Area(s) described in their application on or after the authorized discontinuance date(s) listed in the Appendix for that application. For purposes of computation of time when filing a petition for reconsideration, application for review, or petition for judicial review of the Commission's decision(s), the date of "public notice" shall be the later of the auto grant date stated above in this Public 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 **February 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): CTSI, LLC d/b/a Frontier Communications CTSI, LLC**
WC Docket No. 23-422, Comp. Pol. File No. 1887
Link – https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2223-422*%22))
Affected Service(s) – business and residential local exchange service, remote call forwarding, and intrastate and interstate toll and toll-free services, ISDN, T-1 and other special data circuits to off-net customers[8]
Service Area(s) – Pennsylvania
Authorized Date(s) – on or after March 1, 2024
Contact(s) – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau

2) **Applicant(s): HCI Telcom, Inc. d/b/a Hubris Communications and d/b/a IdeaTek (HCI)**
WC Docket No. 24-22, Comp. Pol. File No. 1888
Link – https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2224-22*%22))
Affected Service(s) – analog voice service(s) supported by copper telephone lines
Service Area(s) – Wichita, Kansas
Authorized Date(s) – on or after March 1, 2024
Contact(s) – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau
Note: On January 22, 2024, HCI filed a supplemental letter to explain why it's proposed discontinuance is not a technology transition as defined in section 63.60(i) of the Commission's rules.

3) **Applicant(s): Global Crossing Telecommunications, Inc.; Global Crossing Local Services, Inc., and Global Crossing Telemanagement VA, LLC (Global Crossing)**
WC Docket No. 24-23, Comp. Pol. File No. 1889
Link – https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2224-23*%22))
Affected Service(s) – Local Exchange Service; Operator Service and Directory Assistance; Long Distance Service provided over copper facilities and a VoIP platform; International Long Distance; International Local Inbound; Toll Free Service provided over copper facilities and a VoIP platform; International Toll Free Service and Universal International Free Phone Number Service provided over copper facilities and a VoIP platform; and Voice Local Services
Service Area(s) – all 50 states, the District of Columbia and Puerto Rico
Authorized Date(s) – on or after March 1, 2024
Contact(s) – Kimberly Jackson, (202) 418-7393 (voice), Kimberly.Jackson@fcc.gov, of the Competition Policy Division, Wireline Competition Bureau
Note: On or after March 1, 2024, Global Crossing plans to grandfather the affected services as follows: the affected services will no longer be available to new customers or for new orders from existing customers, existing contracts for the affected services will not be renewed, orders to install new services for existing customers will no longer be accepted, and limited MACDs will be accepted for migrations and disconnects only. On January 25, 2024, Global Crossing filed a supplemental letter to clarify certain details regarding the proposed discontinuance.

[8] Only an affected service that is offered in whole or in part as an interstate telecommunications service is currently subject to the section 214 discontinuance process

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 24-86
Released: January 30, 2024

MEDIA BUREAU ANNOUNCES COMMENT AND REPLY COMMENT DEADLINES FOR THE COMMERCIAL TELEVISION BROADCAST STATION BLACKOUT REPORTING NPRM

MB Docket No. 23-427

Comment Date: February 26, 2024
Reply Comment Date: March 26, 2024

On December 21, 2023, the Commission released a *Notice of Proposed Rulemaking* (*NPRM*) that sought comment on a proposal to "amend the Commission's rules to require notification to the Commission when a blackout of a broadcast television station, or stations, occurs on a video programming service offered by a multichannel video programming distributor (MVPD) for 24 hours or more due to a breakdown in retransmission consent negotiations between broadcasters and MVPDs."[1] The Commission set deadlines for filing comments and reply comments in response to the *NPRM* at 30 and 60 days, respectively, after publication of the *NPRM* in the Federal Register.[2]

A summary of the *NPRM* was published in the Federal Register on January 26, 2024.[3] Accordingly, comments will be due on or before February 26, 2024 and reply comments on or before March 26, 2024. Commenters should follow the filing instructions provided in paragraph 38 of the *NPRM*.[4] The *NPRM* is available on the Commission's website.[5]

For additional information, contact Brooke Olaussen of the Policy Division, Media Bureau at brooke.olaussen@fcc.gov or (202) 418-1060.

- FCC -

[1] *Reporting Requirements for Commercial Television Broadcast Station Blackouts,* MB Docket No. 23-427, Notice of Proposed Rulemaking, FCC 23-115, para. 1 (Dec. 21, 2023).

[2] *Id*. at 1.

[3] Federal Communications Commission, Reporting Requirements for Commercial Television Broadcast Station Blackouts, 89 Fed. Reg. 5184 (Jan. 26, 2024).

[4] *See NPRM* at para. 38.

[5] *See* https://www.fcc.gov/document/fcc-seeks-comment-tv-blackout-reporting-requirements.

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 24-87
Released: January 30, 2024

DOMESTIC SECTION 214 APPLICATION FILED FOR THE TRANSFER OF CONTROL OF LA PORTE CITY TELEPHONE COMPANY TO ALPINE ACQUISITION GROUP, LLC

NON-STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 23-381

Comments Due: February 13, 2024
Reply Comment Due: February 20, 2024

By this Public Notice, the Wireline Competition Bureau seeks comment from interested parties on an application filed by La Porte City Telephone Company (LPC) and Alpine Acquisition Group, LLC (AAG) (together, Applicants), pursuant to section 214(a) of the Communications Act of 1934, as amended, and sections 63.03-04 of the Commission's rules,[1] requesting consent to transfer control of LPC to AAG.[2]

LPC, an Iowa corporation and independent local exchange carrier (LEC), provides local exchange service and exchange access service in the Benton, Black Hawk, Buchanan, and Tama counties of Iowa, to approximately 1,126 total access lines.[3] LPC also provides Internet access and digital TV services.[4] LPC is a designated eligible telecommunications carrier in Iowa and receives

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

[2] Application for the Transfer of Control of La Porte City Telephone to Alpine Acquisition Group, LLC, pursuant to Section 214 of the Communications Act of 1934, as Amended, WC Docket No. 23-381 (filed Nov. 6, 2023) (Application). Applicants also filed an application for the transfer of authorizations associated with international services. Applicants filed supplements to the Application on November 16, 2023 and January 26, 2024. Supplement to Application for the Transfer of Control of La Porte City Telephone to Alpine Acquisition Group, LLC, pursuant to Section 214 of the Communications Act of 1934, as Amended, WC Docket No. 23-381 (filed Dec.14, 2023) (Dec. Supplement); Supplement to Application for the Transfer of Control of La Porte City Telephone to Alpine Acquisition Group, LLC, pursuant to Section 214 of the Communications Act of 1934, as Amended, WC Docket No. 23-381 (filed Jan. 26, 2024) (Jan. Supplement). Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

[3] Application at 5.

[4] *Id*.

high-cost universal service support through the Connect America Fund Broadband Loop Support (CAF BLS) and High-Cost Loop Support (HCLS) mechanisms.[5]

AAG, an Iowa limited liability company, is a wholly-owned subsidiary of Alpine Communications, L.C. (Alpine), an Iowa limited liability company and independent incumbent LEC that provides telecommunications services in the state of Iowa.[6] AAG does not offer domestic telecommunications services.[7] AAG's parent company, Alpine, provides local exchange service and exchange access service in Clayton County and Fayette County, Iowa to approximately 3,548 total access lines. Alpine also provides wireless telecommunications, Internet access, video, and monitored security services.[8] Alpine also receives high-cost universal service support through the CAF BLS and HCLS mechanisms.[9]

AAG's 10% or greater owner-affiliates are as follows: Breda Telephone Corporation (Breda), an Iowa corporation and incumbent LEC, provides local exchange and exchange access to 781 access lines and also provides long distance, Internet access, digital television, hosted PBX, ethernet transport, and managed IT services (22.96%); Farmers Mutual Telephone Co. (Farmers Mutual), an Iowa corporation and incumbent LEC, provides local exchange and exchange access to 885 access lines and also provides long distance, Internet access, digital television, home security, medical alert, managed Wi-Fi, hosted firewall, and ethernet services (22.18%); Jefferson Telephone Company (Jefferson), an Iowa corporation and incumbent LEC, provides local exchange and exchange access to 1,524 access lines and also provides Internet access, digital and IP television, special access, and managed Wi-Fi services (12.72%); Webster-Calhoun Cooperative Telephone Association (Webster-Calhoun), an Iowa corporation and incumbent LEC, provides local exchange and exchange access to 2,327 access lines and also provides digital television, and hosted and managed Wi-Fi services (12.72%); Van Buren Telephone Company, Inc. (Van Buren), an Iowa corporation and incumbent LEC, provides local exchange and exchange access to 1,524 access lines and also provides Internet access service (12.72%); and RockTel, Inc., a holding company whose sole purpose is to hold a an ownership interest in Alpine and is owned by Rockwell Cooperative Telephone Company (Rockwell), an Iowa corporation and incumbent LEC that provides local exchange and exchange access to 649 access lines and also provides Internet access and IP television services (12.62%).[10] Breda, Jefferson, Van Buren, and Rockwell receive model-based high-cost universal support through the Enhanced Alternative Connect America Cost Model (A-CAM) mechanism in Iowa.[11] Webster-Calhoun also receives model-based high-cost universal

---

[5] *Id.* at 7; *see also* ACAM, ACAM II, and CAF BLS Buildout Requirements Report, available at Universal Service Administrative Company (USAC), available at https://www.usac.org/high-cost/funds/acam-ii/ (Authorization Report) (identifying recipients of ACAM, ACAM II, and CAF BLS support). LPC also participates in the Lifeline program and Affordable Connectivity Program in Iowa and will continue to do so post-consummation of the transaction. Application at 7.

[6] *Id*. at 4.

[7] *Id*. at 5.

[8] *Id*.

[9] *Id.* at 7; *see also* Authorization Report.

[10] Application at 4; Jan. Supplement at 1-2; *see also* Dec. Supplement at 1-2 (listing the geographic service areas for AAG's owner-affiliates).

[11] Dec. Supplement at 8; *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).

support through A-CAM II support mechanism in Iowa.[12] Farmers Mutual receives cost-based high-cost universal service support through the HCLS and CAF BLS mechanisms in Iowa.[13]

Pursuant to the terms of the Transaction, AAG will purchase and hold all outstanding shares of stock in LPC, and LPC will continue to operate as a direct, wholly-owned subsidiary of AAG.[14] Applicants assert that the proposed transaction would serve the public interest, convenience, and necessity by ensuring the continued operation of LPC with no interruption in service to LPC's rural customers, by a company with decades of experience in the field that has acted as a manager of LPC since 2009 under a management services agreement.[15] Applicants explain that Alpine, as AAG's parent company, can "realize economies of scale that will help ensure the financial and operational security of the LPC operations."[16] Also, Applicants assert there are no service area overlaps between LPC and Alpine or the AAG owner-affiliates that hold 10% or more interest in AAG through Alpine.[17]

Applicants request streamlined treatment of the proposed transaction under the Commission's rules.[18] Because the proposed transaction would involve the exchange and assumption of Universal Service Fund high-cost mechanism obligations, in order to sufficiently analyze whether the proposed transaction would serve the public interest, we accept the Application for non-streamlined processing.[19]

Domestic Section 214 Application Filed for the Transfer of Control of
La Porte City Telephone Company to Alpine Acquisition Group, LLC,
WC Docket No. 23-381 (filed Nov. 6, 2023).

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 February 13, 2024**, and reply comments **on or before February 20, 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

[12] Dec. Supplement at 8; *see also* Authorization Report.

[13] *Id.*

[14] Application at 5.

[15] *Id*. at 6.

[16] *Id.*

[17] *Id*. at 5; Jan. Supplement at 1.

[18] Application at 5.

[19] *See* 47 CFR § 63.03(c)(1)(v).

U.S. Postal Service mail.[20] All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

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

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

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

1) Tracey Wilson, Competition Policy Division, Wireline Competition Bureau, tracey.wilson@fcc.gov;
2) Megan Danner, Competition Policy Division, Wireline Competition Bureau, megan.danner@fcc.gov;
3) David Krech, Office of International Affairs, david.krech@fcc.gov; and
4) Jim Bird, Office of General Counsel, jim.bird@fcc.gov.

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

To allow the Commission to consider fully all substantive issues regarding the application in as timely and efficient a manner as possible, petitioners and commenters should raise all issues in their initial filings. New issues may not be raised in responses or replies.[21] A party or interested person 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.

---

[20] Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (OS 2020).

[21] *See* 47 CFR § 1.45(c).

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

-FCC-

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-88
Released: January 31, 2024

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

WC Docket No. 18-89

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

As directed by the Secure and Trusted Communications Networks Act of 2019, as amended (Secure Networks Act), the Commission established the Reimbursement Program to reimburse providers of advanced communications services with ten million or fewer customers for reasonable costs incurred in the removal, replacement, and disposal of covered communications equipment or services from their networks that pose a national security risk, i.e., communications equipment or services produced or provided by Huawei Technologies Company (Huawei) or ZTE Corporation (ZTE), that were obtained by providers on or before June 30, 2020.[1] The Reimbursement Program is funded by a $1.9 billion congressional appropriation,[2] which is less than the $5.6 billion in collective funds requested by applicants to the program.[3] Because demand exceeded available funding, the Secure Networks Act

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

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

[3] *See Wireline Competition Bureau Announces the Grant of Applications for the Secure and Trusted Communications Networks Reimbursement Program*, WC Docket No. 18-89, Public Notice, DA 22-774, at 1-2 (WCB July 18, 2022) (*SCRP Granted Applications Public Notice*) (explaining that "[e]ach applicant was required to

(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."[10] 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.

Consistent with the Commission's goal of streamlining our internal review processes,[11] and pursuant to our delegated authority,[12] we have until now resolved petitions for extensions of recipients' removal, replacement, and disposal terms in stand-alone orders addressing each petition. For petitions that are consistent with Commission or Bureau precedent, we typically have issued brief orders to accelerate their disposition. Specifically, the Commission has granted individual term extensions to recipients based on issues that, through no fault of the recipients, have prevented them from completing

(Continued from previous page)
include in its application estimates for the costs that it will reasonably incur for the permanent removal, replacement, and disposal of covered communications equipment and services" and identifying that, across all filed applications, applicants sought a total of "approximately $5.6 billion in gross program support").

[4] *See* 47 U.S.C. § 1603(d)(5)(C); 47 CFR § 1.50004(f)(1); *SCRP Granted Applications Public Notice* at 2-3.

[5] The Commission's rules provide that "[i]f there is insufficient funding to fully fund all requests in a particular prioritization category, then the [Bureau] will pro-rate the available funding among all eligible providers in that prioritization category." 47 CFR § 1.50004(f)(1); *see also* 47 U.S.C. § 1603(d)(5)(A) ("[T]he Commission shall make reasonable efforts to ensure that reimbursement funds are distributed equitably among all applicants for reimbursements under the Program according to the needs of the applicants, as identified by the applications of the applicants.").

[6] *See* 47 CFR § 1.50004(f)(1); *see also SCRP Granted Applications Public Notice* at 2-3.

[7] 47 U.S.C. § 1603(d)(6)(A); 47 CFR § 1.50004(h).

[8] *See* 47 U.S.C. § 1603(d)(6)(C).

[9] *See* 47 U.S.C. § 1603(d)(6)(C); 47 CFR § 1.50004(h)(2) ("Individual extensions. Prior to the expiration of the removal, replacement and disposal term, a Reimbursement Program recipient may petition the Wireline Competition Bureau for an extension of the term. The Wireline Competition Bureau may grant an extension for up to six months after finding, that due to no fault of such recipient, such recipient is unable to complete the permanent removal, replacement, and disposal by the end of the term. The Wireline Competition Bureau may grant more than one extension request to a recipient if circumstances warrant.").

[10] 47 CFR § 1.50004(h)(2); *see also 2020 Supply Chain Order*, 35 FCC Rcd at 14354-56, paras. 171, 173 and n.501.

[11] *See Report on FCC Process Reform,* GN Docket No. 14-25 (Staff Working Group, Feb. 14, 2014) (*Process Reform Report*).

[12] *See* 47 CFR §§ 0.91, 0.291, 1.50004(h)(2).

the removal, replacement, and disposal of covered communications equipment and services within one year of receiving their initial reimbursement. This can occur, for example, due to the lack of funding to fully reimburse recipients, which can require revising 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.[13] The detailed rationales for these decisions are explained in the Bureau's prior orders.

We encourage Program recipients to submit petitions as soon as they become aware of the need for the extension. Recipients should fully explain and support their assertions with specific facts showing why they cannot meet their existing removal, replacement, and disposal term, so that the Bureau can review the sufficiency of the request. In order to further speed 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, we will issue a Public Notice, as necessary but not more frequently than monthly, disposing of pending petitions that do not involve complicated and/or controversial issues, in a manner consistent with Commission and/or Bureau precedent.[14] Accordingly, we hereby grant the pending petitions listed below for an extension of a recipient's term to remove, replace, and dispose of its covered equipment:[15]

---

[13] *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 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 23-1110, paras. 8-11 (WCB Nov. 28, 2023) (*Triangle Telephone/Triangle Communication Extension Order*) (granting extension of time requests by Triangle Telephone Cooperative Association Inc. and Triangle Communication System, Inc. based on supply chain issues); *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs,* WC Docket No. 18-89, Order, DA 23-1196, para. 5 (WCB Dec. 21, 2023) (*GigSky, Inc. Extension Order*) (granting extension of time request by GigSky, Inc. based on funding issues).

[14] The Bureau routinely resolves other matters in this manner 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).

[15] 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. In addition, we expressly reject any suggestion in the requests that a recipient is required to meet its statutorily mandated removal, replacement, and disposal obligations only if full funding is made available by Congress. Recipients should be aware of the lack of full funding will not necessarily be a sufficient showing for repetitive extension requests, as recipients should continually be making 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. A recipient's 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. 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).

Recipient – Mediacom Communications Corporation, SCRP0001140

Grounds for individual term extension – Mediacom requests a second three-month extension of its deadline to remove, replace, and dispose of covered equipment and services in its network under 47 CFR § 1.50004(h)(2). Mediacom contends that its ability to complete the removal, replacement, and disposal of covered equipment and services by its current deadline has, through no fault of its own, been materially affected by supply chain issues, namely unanticipated delays in delivery of necessary equipment, and that it will need additional time to complete its work.[16] The Bureau finds Mediacom's showing persuasive and that its situation is consistent with the situation of other recipients that have been granted extensions on similar grounds,[17] and accordingly grants the requested extension.

New RRD term expiration date – Mediacom's deadline to remove, replace, and dispose of covered equipment and services in its network under 47 CFR § 1.50004(h)(2) IS EXTENDED from January 15, 2024 to April 15, 2024.

Recipient – NfinityLink Communications, Inc. dba InfinityLink Communications, SCRP0001173

Grounds for individual term extension – NfinityLink Communications, Inc. (InfinityLink) requests a six-month extension of its deadline to remove, replace, and dispose of covered equipment and services in its network under 47 CFR § 1.50004(h)(2). InfinityLink contends that its ability to complete the removal, replacement, and disposal of covered equipment and services by its current deadline has, through no fault of its own, been materially affected by supply chain issues, namely unanticipated delays in delivery of necessary equipment due to low inventory and extended lead times by suppliers, and that it will need additional time to complete its work.[18] The Bureau finds InfinityLink's showing persuasive and that its situation is consistent with the situation of other recipients that have been granted extensions on similar grounds,[19] and accordingly grants the requested extension.

New RRD term expiration date – InfinityLink'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 February 15, 2024 to August 15, 2024.

Recipient – Vitelcom Cellular, Inc. d/b/a Viya Wireless, SCRP0001020

Grounds for individual term extension – Vitelcom Cellular, Inc. d/b/a Viya Wireless (Viya Wireless) requests a six-month extension of its deadline to remove, replace, and dispose of covered equipment and services in its network under 47 CFR § 1.50004(h)(2). Viya Wireless contends that its ability to complete the removal, replacement, and disposal of covered equipment

[16] Request of Mediacom for Extension of Time, WC Docket No. 18-89 (filed Dec. 5, 2023), https://www.fcc.gov/ecfs/document/1205916330084/1

[17] *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.

[18] Request of NfinityLink for Extension of Time, WC Docket No. 18-89 (filed Dec. 21, 2023), https://www.fcc.gov/ecfs/document/1221307724730/1

[19] *See supra*, n.17.

and services by its current deadline has, through no fault of its own, been materially affected by supply chain issues, namely unanticipated delays in delivery of necessary equipment, and that it will need additional time to complete its work.[20] The Bureau finds Viya Wireless's showing persuasive and that its situation is consistent with the situation of other recipients that have been granted extensions on similar grounds,[21] and accordingly grants the requested extension.

New RRD term expiration date – Viya Wireless's deadline to remove, replace, and dispose of covered equipment and services in its network under 47 CFR § 1.50004(h)(2) IS EXTENDED from January 11, 2024 to July 11, 2024.

Recipient – Country Wireless LLC, SCRP0001017

Grounds for individual term extension – Country Wireless requests a six-month extension of its deadline to remove, replace, and dispose of covered equipment and services in its network under 47 CFR § 1.50004(h)(2). Country Wireless contends that its ability to complete the removal, replacement, and disposal of covered equipment and services by its current deadline has, through no fault of its own, been materially affected by the lack of full funding for the required work, coupled with its status as a small rural provider with limited financial resources to spare for this work, and that it will need additional time to complete its work.[22] The Bureau finds Country Wireless's showing persuasive and that its situation is consistent with the situation of other recipients that have been granted extensions on similar grounds,[23] and accordingly grants the requested extension.

New RRD term expiration date – Country Wireless's deadline to remove, replace, and dispose of covered equipment and services in its network under 47 CFR § 1.50004(h)(2) IS EXTENDED from February 24, 2024 to August 23, 2024.

The deadline for filing petitions for reconsideration or applications for review concerning the disposition of any of these extension requests is 30 days from the release date of this Public Notice.[24]

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 -

[20] Request of Vitelcom Cellular, Inc. d/b/a Viya Wireless for Extension of Time, WC Docket No. 18-89 (filed Jan. 4, 2024), https://www.fcc.gov/ecfs/document/1010496842214/1

[21] *See supra*, n.17.

[22] Request of Country Wireless LLC for Extension of Time, WC Docket No. 18-89 (filed Jan. 4, 2024), https://www.fcc.gov/ecfs/document/101030669915800/1

[23] *See 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.

[24] *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).

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 24-90
January 31, 2024

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES REGION 8 (NEW YORK METROPOLITAN AND NORTHERN NEW JERSEY) REGIONAL PLANNING COMMITTEES TO HOLD 700 MHZ AND 800 MHZ MEETINGS

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

The Region 8 (New York Metropolitan and Northern New Jersey)[1] 700 MHz and 800 MHz Regional Planning Committees (RPCs) will hold their 2024 quarterly meetings on the following dates. The Region Secretary will email the virtual meeting link information two weeks prior to each virtual meeting. To be added to the email distribution list, please email your contact information to David Stern, Region Secretary, at david.stern@vcomm-eng.com. The 700 MHz meeting will begin at 10:00 am and the 800 MHz meeting will immediately follow.

Region 8: 2024 Meeting Dates

- February 8, 2024, 10:00 am – Bergen County Public Safety Operations EOC, Mahwah, NJ
- May 9, 2024, 10:00 am – Rockland County Fire Academy, Pomona, NY
- September 12, 2024, 10:00 am – Bergen County Public Safety Operations EOC, Mahwah, NJ
- December 12, 2024, 10:00 am – Rockland County Fire Academy, Pomona, NY

The purpose of these meetings is to discuss the needs of the 700 and 800 MHz spectrum users including public safety, public health, emergency management, and public utility services.

The agenda for the 700 MHz meetings include:

- Review and approve meeting agenda
- Review and approve previous meeting report
- Interoperability (SIEC/SWIC Reports)
  - New York State
  - New Jersey
- 700 MHz Technical Subcommittee
  - Applications Status
  - Adjacent Region Concurrence Requests
- 4.9 GHz Updates
- Old Business

[1] The Region 8 700 MHz and 800 MHz regional planning area consists of the following counties in New York State and New Jersey: Bronx, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, Dutchess, and Westchester Counties, New York; Bergen, Essex, Hudson, Morris, Passaic, Sussex, Union, Warren, Middlesex, Somerset, Hunterdon, Mercer, and Monmouth Counties, New Jersey. Region 8's 800 MHz planning area also includes the following counties from Connecticut: Fairfield, Litchfield, New Haven, and Middlesex Counties, Connecticut.

- New Business/Comments
- Next Meeting - TBA

The agenda for the 800 MHz meetings include:

- Review and approve meeting agenda
- Review and approve previous meeting report
- 800MHz Technical Subcommittee
  - Applications Status
  - Adjacent Region Concurrence requests
- NRPC Updates
- Old Business
- New Business/Comments
- Next Meeting - TBA

All eligible public safety providers whose sole purpose or principal purpose is to protect the safety of life, health, or property in Region 8 would utilize these frequencies. It is essential that not only public safety, but all government, Native American Tribal, and non-governmental organizations eligible under Section 90.523 of the Commission's Rules be represented in order to ensure that each agency's future spectrum needs are considered in the allocation process. Interested parties wishing to participate in the planning process for utilization of the new public safety spectrum in the 700 MHz and 800 MHz are encouraged to attend. For additional information concerning these meetings, or to be put on the Region's email list, please contact either the Region 8 Chair or Secretary listed below or visit the committee web site at http://www.dhses.ny.gov/oiec/committees.

Maribel Martinez-Bradwell
Chair, FCC Region 8 700 and 800-MHz Planning Committees
New York State Police, Radio Engineer
1220 Washington Ave.
State Campus, Building 22
Albany, NY 12226
Office: (518) 457-8995
Maribel.Martinez-Bradwell@troopers.ny.gov

David K. Stern
Secretary, FCC Region 8 700 and 800-MHz Planning Committees
V-COMM, L.L.C.
2540 U.S. Highway 130, Suite 101
Cranbury, NJ 08512
Office: (609) 655-1200, ext. 323
Fax: (609) 409-1927
david.stern@vcomm-eng.com

– 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 24-91
Released: January 31, 2024

WIRELINE COMPETITION BUREAU UPDATES USER GUIDES FOR THE SECURE AND TRUSTED COMMUNICATIONS NETWORKS REIMBURSEMENT PROGRAM

WC Docket No. 18-89

By this Public Notice, the Wireline Competition Bureau announces that it has published additional User Guides for the Secure and Trusted Communications Networks Reimbursement Program (Reimbursement Program). These new User Guides as well as existing User Guides and other important documents related to the Reimbursement Program are available on the FCC's website at https://www.fcc.gov/supplychain/reimbursement. We encourage Reimbursement Program recipients to regularly consult the Reimbursement Program webpage for updates. 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.

- FCC -

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

In the Matter of	)	
	)	
Priority Application Review for Broadcast Stations	)	MB Docket No. 24-14
that Provide Local Journalism or Other Locally	)	
Originated Programming	)	
	)	

NOTICE OF PROPOSED RULEMAKING

Adopted: January 10, 2024 **Released: January 17, 2024**

Comment Date: 30 days after date of publication in the Federal Register
Reply Comment Date: 60 days after date of publication in the Federal Register

By the Commission: Chairwoman Rosenworcel issuing a statement; Commissioners Carr and Simington dissenting and issuing separate statements.

I. INTRODUCTION

1. In this *Notice of Proposed Rulemaking* (*NPRM*), we propose to prioritize processing review of certain applications filed by commercial and noncommercial radio and television broadcast stations that provide locally originated programming. Our goal is to provide additional incentive to stations to provide programming that responds to the needs and interests of the communities they are licensed to serve. In 2017, the Commission eliminated the rule that required broadcast stations to maintain a main studio located in or near their community of license, as well as the associated requirement that the main studio have program origination capability. We propose this processing priority in order to further encourage radio and TV stations to serve their community of license with local journalism or other locally originated programming.[1] Such prioritization would be granted to renewal applicants,[2] as well as applicants for assignment or transfer of license,[3] that certify they provide locally originated programming, thereby advancing our efforts to promote localism and serve local communities across the nation.

[1] References to "local" programming in this docket are limited to programming produced consistent with the "local market" and "locally originated" definitions that the Commission ultimately adopts in this proceeding. *See infra* paras. 12-16. The term does not encompass content produced entirely outside of the broadcaster's service area, regardless of the topics covered in the programming.

[2] *See*, *e.g.*, 47 CFR § 73.3539 (Application for renewal of license). *See also* FCC Form 3500, Schedule 303-S (Application for Renewal of License for AM, FM, TV, Translator, or LPTV Station).

[3] *See*, *e.g.*, 47 CFR § 73.3540 (Application for voluntary assignment or transfer of control). *See also* FCC Forms 3500, Schedule 314 (Assignment of license), Schedule 315 (Transfer of control), Schedule 316 ("Short Form" assignment or transfer application), and Schedule 345 (Application for Transfer of Control of Corporate Licensee or Permittee or Assignment of License or Permit for an FM or TV Translator Station, or a Low Power TV Station).

II. BACKGROUND

2. One of a broadcaster's fundamental public service obligations is to provide programming that is responsive to the needs and interests of its community of license.[4] The Communications Act requires the Commission to determine, in the case of applications for licenses, "whether the public interest, convenience, and necessity will be served by granting such application."[5] The Commission has consistently interpreted this requirement to mean that licensees must air programming that serves their local community.[6] The main studio and local program origination rules were originally adopted to ensure that broadcast stations fulfill their local service obligations.[7] In furtherance of section 307(b) of the Communications Act of 1934, as amended (the Act), which requires the Commission to "make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide for a fair, efficient, and equitable distribution of radio service to each of the same,"[8] each broadcast radio and television station is assigned to a community of license that it is obligated to serve. The main studio rule required stations to maintain the main studio in or near its community of license to facilitate interaction between the station and the local community it is licensed to serve.[9] The Commission also required that the main studio have a "meaningful management and staff presence" to fulfill the main studio's function,[10] and that the main studio be equipped with production and transmission facilities.[11]

3. Locally originated programming was deemed an important element of a station's service obligations from the time location requirements for AM, FM, and TV broadcast stations were first adopted.[12] As the main studio played a key role in the origination of a broadcast station's programming, its location in the community helped to ensure that the station could participate in community activities, that community members could participate in live programs, and that community residents could more easily present complaints or suggestions to the station.[13] The Commission reasoned that interaction

---

[4] *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, 27 FCC Rcd 4535, 4537, para. 4 (2012), citing *Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, Report and Order, 98 FCC 2d 1075, 1091, para. 32 (1984) (*Commercial TV Deregulation Order*).

[5] 47 U.S.C. § 309(a).

[6] *Broadcast Localism*, Notice of Inquiry, 19 FCC Rcd 12425, para. 1 (2004).

[7] *Amendment of Sections 73.1125 and 73.1130 of the Commission's Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations*, Report and Order, 2 FCC Rcd 3215, 3217-18, para. 29 (1987) (*1987 Main Studio and Program Origination Order*).

[8] 47 U.S.C. §307(b).

[9] *Broadcast Localism*, Notice of Inquiry, 19 FCC Rcd 12425,12426, para 3 (2004).

[10] *See Elimination of the Main Studio Rule*, Notice of Proposed Rulemaking, 32 FCC Rcd 4415, 4416-17, para. 4 (2017) (*Main Studio Elimination NPRM*), citing *Amendment of Sections 73.1125 and 73.1130 of the Commission's Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations*, Memorandum Opinion and Order, 3 FCC Rcd 5024, 5026, para. 24 (1988) (*1988 Main Studio Program Origination Reconsideration Order*).

[11] *See Main Studio Elimination NPRM*, 32 FCC Rcd at 4416-17, para. 4. In 1987, the Commission deleted its rule requiring each broadcast station to originate more than 50 percent of its non-network programs from its main studio or other points within its community of license. *See 1987 Main Studio Program Origination Order*, 2 FCC Rcd at 3218-19, paras. 39-43 (1987).

[12] *See 1987 Main Studio Program Origination Order*, 2 FCC Rcd at 3217-18, para. 29, citing *Public Service Responsibility of Broadcast Licensees* (March 7, 1946) (the "Blue Book").

[13] *See 1987 Main Studio Program Origination Order*, 2 FCC Rcd at 3217-18, para. 29. *See also Applications of the Tribune Company, Tampa, Florida, et. al*., 19 FCC 100, 148 (1954) ("The accessibility of the broadcast station's

(continued….)

between the station and the community would help foster programming responsive to community needs and concerns.[14]

4. In 2017, however, the Commission eliminated the main studio rule and the associated requirements that the main studio have full-time management and staff present during normal business hours, and that it have program origination capability.[15] The Commission found that technological changes have "rendered local studios unnecessary" as a means for viewers and listeners to contact or access their local station.[16] The Commission noted that most community members communicate with stations via email, station websites, telephone, or other means, rather than visiting a main studio, and that public inspection files can now be viewed on the Commission's Online Public Inspection File (OPIF) database.[17] The Commission also found that there was no evidence that the physical location of a station's main studio is the reason broadcasters are able to deliver content that meets the needs and interests of the local community.[18]

5. The elimination of the main studio rule and its associated requirements followed other, earlier steps taken by the Commission to reduce or eliminate regulations applicable to TV and radio broadcasters that were intended to reinforce the obligation of stations to provide programming responsive to community needs and interests. In its radio and television deregulation orders, the Commission eliminated its formal ascertainment and program log requirements and quantitative guidelines regarding the duration, type, and time of presentation of nonentertainment programming.[19] While the Commission concluded generally that these requirements were no longer necessary or appropriate means to ensure station operation in the public interest, it reaffirmed the continuing obligation of all licensees to provide issue-responsive programming.[20]

6. Currently, the Commission requires stations to prepare quarterly a list of programs that "have provided the most significant treatment of community issues."[21] The purpose of this requirement is to provide both the public and the Commission with information needed to monitor a licensee's performance in meeting its public interest obligation of providing programming that is responsive to its

---

main studio may well determine in large part the extent to which the station (a) can participate and be an integral part of community activities, and (b) can enable members of the public to participate in live programs and present complaints or suggestions to the stations.").

[14] *See 1987 Main Studio and Program Origination Order*, 2 FCC Rcd at 3217-18, para. 29.

[15] *Elimination of the Main Studio Rule*, Report and Order, 32 FCC Rcd 8158 (2017) (*Main Studio Elimination Order*).

[16] *Id*. at 8163, para. 9.

[17] *Id*.

[18] *Id*. at 8162, para. 8.

[19] *See Deregulation of Radio*, 84 FCC 2d 968 (1981) (*Radio Deregulation Order*), recon. denied in part, 87 FCC 2d 797 (1981), aff'd in part and remanded in part, *Office of Communication of the United Church of Christ* v. FCC, 707 F.2d 1413 (D.C.Cir.1983); *1984 TV Deregulation Order*, 98 FCC 2d 1076 (1984) (*Commercial TV Deregulation Order*), recon. denied, 104 FCC 2d 357 (1986), aff'd in part and remanded in part, *Action for Children's Television v. FCC*, 821 F.2d 741 (D.C.Cir.1987).

[20] *See*, *e.g*., *1984 TV Deregulation Order*, 98 FCC 2d at 1091, para. 31 ("…the Commission's involvement in the area of non-entertainment programming has always been driven by a concern that issues of importance to the community will be discovered and addressed in programming so that the informed public opinion, necessary in a functioning democracy, will be possible."). *See also Deregulation of Radio*, 84 FCC 2d at 977, para. 24.

[21] 47 CFR §§ 73.3526(e)(11)(i) (commercial broadcast stations) and 73.3527(e)(8) (noncommercial educational broadcast stations). *See also Radio Deregulation Order*, 84 FCC 2d at 998-99, para. 71; *Commercial TV Deregulation Order*, 98 FCC 2d at 1077, paras. 2-3.

community.[22] Our current rules require full-power radio and TV and Class A TV broadcasters to post these issues/programs lists on the station's OPIF.[23] Further, as part of the broadcast station license renewal process, the Commission is required to find that "the station has served the public interest, convenience, and necessity" during its preceding license term.[24]

III. DISCUSSION

7. To provide an additional incentive to stations to broadcast content responsive to the needs of the local community, particularly news and information, we propose to adopt a change in our application processing procedures that would benefit those radio and TV broadcasters that certify that they provide locally originated content. Specifically, when reviewing applications for renewal, transfer, or assignment of license, we propose to adopt a processing policy to prioritize evaluation of those applications filed by stations that certify that they provide locally originated programming. These applications would be the first to be reviewed, which would likely result in quicker action and, if the application is granted, quicker approval of these applications.

8. We tentatively conclude that our proposal to award priority application review to applicants that provide locally originated programming advances the Commission's longstanding policy goal of encouraging licensees to air programming that serves the needs and interests of their local community. We also tentatively conclude that the provision by a station of locally originated programming serves as a reasonable gauge of whether the station is serving the public interest by providing programming that is responsive to particular local needs.[25] In addition, by focusing on where the programming is created,[26] our proposal avoids having the Commission try to evaluate the content of a station's broadcasts to determine their local nature.[27]

---

[22] *See Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, 15 FCC Rcd 19816, 19821, para. 13 (2000), citing *Commercial TV Deregulation Order*, 98 FCC 2d at 1076, 1107-11 (explaining the purpose of the issues/programs lists for commercial television).

[23] *See* 47 CFR §§ 73.3526(e)(11)(i) and 73.3527(e)(8).

[24] 47 U.S.C. § 309(k)(1). In addition, as a general matter, when a broadcast station seeks to renew or transfer its license, it must give public notice to its community to ensure that members of the community have an opportunity to file a petition to deny if they object to the station's application for renewal or transfer of license. *See* 47 CFR § 73.3580.

[25] *See Creation of a Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2262, para. 144 (2000) (*LPFM Report and Order*) (adopting a rule that favors the selection of LPFM applicants that pledge to provide locally originated programming) (subsequent history omitted).

[26] *See infra* Section II.B.2 for further discussion of the term "locally originated programming," including calls for comment on the value of content collected from local sources regardless of where the content producer may be located.

[27] *See Creation of a Low Power Radio Service*, Memorandum Opinion and Order on Reconsideration, Memorandum Opinion and Order on Reconsideration, 15 FCC Rcd 19208, 19247, para. 98 (2000). In 2007, the Commission established a rebuttable presumption that the public interest would be served by waiving the Commission's rules that make LPFM stations secondary to subsequently authorized full-service stations if the LPFM station could demonstrate that it has regularly provided at least eight hours per day of locally originated programming. *See Creation of a Low Power Radio Service*, Third Report and Order and Second Further Notice of Proposed Rulemaking, 22 FCC Rcd 21912, 21940-42, paras. 68-71 (2007). On review, the United States Court of Appeals for the D.C. Circuit concluded that the "presumption appears not to implicate the Commission's consideration of programming content as the Commission's reference to 'locally originating programming' refers under its rules to the geographic location of the production of programming, not the substantive content of the programs." *Nat'l Ass'n of Broad. v. FCC*, 569 F.3d 416, 427 (D.C. Cir. 2009). We also note that in both the Community Broadcasters Protection Act of 1999 (CBPA) and in the 2023 Low Power Protection Act, Congress required the Commission to adopt rules that would allow certain secondary LPTV stations to obtain primary

(continued….)

9. The Commission has recognized that programming does not have to be locally originated to have interest or value to audiences in any particular community and has suggested that locally originated content may not always be responsive to a community's needs or interests.[28] But the corollary that some may read into those statements – that locally originated programming is not valuable enough to warrant Commission attention – goes too far. To the contrary, programming containing at least some locally sourced content appears quite likely to be responsive to local concerns and interests. We believe that the incentives behind the creation of local programming (including but not limited to financial incentives) tend to align local creators with the needs and interests of local audiences; evidence suggests that creators of local programming would be unlikely to expend time and financial resources on material that has little or no appeal to local listeners and viewers.[29] We also recognize that the line between "local" and "non-local" is not always a sharp one; broadcasters may "localize" a state, national, or international issue by providing local commentary or local expert explanations on the probable effect of the issue on people within the station's signal contour.[30] Such content plainly also serves local needs and interests. We seek comment on these views.

10. Accordingly, to the degree that the *Main Studio Elimination Order* could be read to the contrary, we tentatively conclude that locally originated programming usually reflects needs, interests, circumstances, or perspectives that may be quite pertinent to that community and that production of local broadcast programming remains a key consideration. We also question whether the *Main Studio Elimination Order*'s predictive judgment – that the Commission's action there would foster creation of more and better local content – has actually come to pass.[31] We invite comment on these views and

---

interference protection if, among other things, they provided a certain amount of locally produced programming. *See* 47 U.S.C. § 336(f)(2)(A)(i)(II); Low Power Protection Act, Pub. L. 117-344, 136 Stat. 6193 (2023).

[28] *See Main Studio Elimination Order*, 32 FCC Rcd at 8169, para. 19.

[29] See, e.g., 2014 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 et al., MB Docket No. 14-50, Second Report and Order, 31 FCC Rcd 9864, para. 26 (2016) ("Competition within a local market motivates a broadcast television station to invest in better programming and to provide programming tailored to the needs and interests of the local community in order to gain market share. By thus strengthening its position in the local market, a television broadcaster also strengthens its ability to compete for advertising revenue and retransmission consent fees, an increasingly important source of revenue for many stations. As a result, viewers in the local market benefit from such competition among numerous strong rivals in the form of higher quality programming.") Such an understanding also comports with the professional standards of broadcast newsrooms; like their programming counterparts throughout the station, broadcast journalists seek to gather and disseminate information that is relevant and interesting to their local audiences. See, e.g., Brian S. Brooks, Beverly J. Horvit, Daryl R. Moen, News Reporting & Writing 3, 8-9 (13th ed. 2020) (emphasizing in the first chapter of an academic textbook published by the Missouri School of Journalism that the key elements of news and journalism fundamentally include relevance and proximity to a local audience, and instructing, "Generally, people are more interested in and concerned about what happens close to home.").

[30] *See*, *e.g.*, New York Film Academy, "Localizing a National News Story," (June 24, 2015), https://www.nyfa.edu/student-resources/localizing-a-national-news-story/#:~:text=Adapting%20a%20national%20news%20story,concerns%20of%20their%20audience%20members. ("Adapting a national news story for local audiences has many benefits: It helps small-market journalists through slow news days, improves social media reach, engages local audiences with stories they're already interested in, and allows reporters to learn more about the opinions and concerns of their audience members.").

[31] Recent anecdotal evidence is not encouraging in this regard. *See*, *e.g.*, *Sinclair cuts TV news teams as it moves away from broadcast*, Baltimore Business Journal (May 26, 2023), https://www.bizjournals.com/baltimore/news/2023/05/26/sinclair-cuts-local-teams-amid-reorganization.html; *Sinclair-owned Medford station ends local news after 61 years*, Central Oregon Daily News (May 12, 2023), https://centraloregondaily.com/ktvl-medford-sinclair-cbs-final-newscasts/; Gainesville's CBS4 to cease local broadcasts, staff laid off by Sinclair, The Gainesville Sun (May 2, 2023), https://www.gainesville.com/story/news/2023/05/02/sinclair-shuts-down-local-gainesville-tv-station-lays-off-

(continued….)

request commenters to provide analysis and data in support of their positions. Under our proposal, licensees will continue to ultimately have the discretion to determine what mix of local and non-local programming will best serve the community. We tentatively conclude our proposal does not interfere with this discretion but merely offers an opportunity to licensees to obtain prioritized review of applications if they certify that they provide programming that is locally originated. We invite comment generally on these views.

A. Processing Priority

11. We tentatively conclude that our proposal would apply only to those applications for which processing is not immediately available because the application has a hold,[32] petition to deny,[33] or other pending issue that requires further staff review. Applications without holds or other processing issues requiring additional staff review, also referred to here as "simple" applications, would be acted upon consistent with current routine processing procedures.[34] In contrast, applications that have holds related to the applicant's failure to comply with Commission rules, or where petitions to deny or informal objections[35] have been filed, generally require additional staff research and processing time before they can be processed. The amount of time it takes to process these types of applications is often dependent upon the number of applications pending before the Commission at any given time, the complexity of the issues involved, and the availability of Commission staff to process the applications in light of other agency priorities. With respect to these more "complex" applications, we propose that the staff first would consider those that are filed together with a certification that the station provides programming that is locally originated. We tentatively conclude this approach will not slow the review of "simple" applications that are otherwise grantable but will create a priority system for more "complex" applications that require further staff attention. We will not delay the processing of a "simple" application while a more "complex" application with a certification is pending. We seek comment on this approach.

12. We propose that the decision by a licensee to elect to certify that the station meets the local programming guideline be purely voluntary, and we seek comment on this proposal. With respect to those licensees that either cannot, or choose not, to provide a certification, the Commission staff will process the licensee's application pursuant to its normal procedures. Applications that do not include a certification will not be scrutinized or processed differently as a substantive matter than applications with a certification, other than the prioritization proposal discussed above.

13. While we do not propose at this time to extend our proposed application processing priority to modification applications,[36] waiver requests,[37] or requests for Special Temporary Authority

---

employees/70174013007/, Recent research data suggests similar patterns. RTDNA Research, *Local News Staffing Doesn't Stick to the Trend* (June 16, 2022), https://www.rtdna.org/news/local-news-staffing-doesnt-stick-to-the-trend (TV news employment down 6.3% in 2022; radio news staffing, already low, drops further).

[32] The staff may place a "hold" on an application where a station licensee has failed to comply with a Commission rule. For example, stations are required to routinely file with the Commission information regarding station ownership (*see* 47 CFR § 73.3612) and to place information regarding political advertisements in the station's online public inspection file (*see* 47 CFR §§ 73.1943, 73.3526(e)(6), 73.3527(e)(5)) and the Commission may place a hold on any application filed by the station if this information was not timely filed or placed in the public inspection file. *See also* 47 U.S.C. § 309 (requiring the Commission to determine that grant of an application would serve the public interest, convenience, and necessity).

[33] *See*, *e.g.*, 47 CFR § 73.3584 (Procedure for filing petitions to deny).

[34] *See*, *e.g.*, 47 CFR §§ 73.3584 (Staff consideration of applications requiring Commission action), 73.3562 (Staff consideration of applications not requiring action by the Commission).

[35] *See*, *e.g.*, 47 CFR § 73.3587 (Procedure for filing informal objections).

[36] *See*, *e.g.*, 47 CFR § 73.3538 (Application to make changes in an existing station).

[37] *See*, *e.g.*, 47 CFR § 1.3 (Suspension, amendment, or waiver of rules).

(STA),[38] we invite comment on whether these types of applications and requests should be included in our proposal herein. Based upon the experience of the Media's Bureaus licensing divisions, we note that the review time for these applications is generally more abbreviated than for renewals and transactions, and therefore such a prioritization may not be appreciably relevant. Despite this, should these, or other, kind of requests be treated in the same manner as renewal applications and applications for assignment and transfer of control for purposes of application processing priority?

14. Finally, we do not propose to offer priority application review, as outlined herein, to applications filed for radio translators or boosters or TV translators.[39] Booster stations do not originate programming and translator stations may only originate a very limited amount of programming so the underlying purpose of the proposed processing policy—i.e., to further incentivize broadcast licensees to serve community needs and interests through production of locally originated programming—would not apply.[40] Accordingly, we believe there would be minimal value, if any, in asking these stations to certify they provide locally originated programming content. As noted above, we tentatively conclude this approach will not slow the review of "simple" applications that are otherwise grantable. We seek comment on our proposals and findings.

B. Applications Eligible for Processing Priority

1. "Local" Market

15. Under our proposal, we would prioritize the review of applications filed by stations that provide locally originated programming. We invite comment on how we should define "local" for this purpose. The former main studio rule required each AM, FM, and television broadcast station to maintain a main studio that is located either: "(1) [w]ithin the station's community of license;[41] (2) [a]t any location within the principal community contour of any AM, FM, or TV broadcast station licensed to the station's community of license;[42] or (3) [w]ithin twenty-five miles from the reference coordinates of the center of its community of license as described in § 73.208(a)(1)."[43] Should we define "locally originated" programing as programming originated within one or more of these geographic areas? One purpose of the former main studio rule was to ensure that the station complied with its local service obligations.[44] Would adopting a definition of the geographic area in which "locally originated " programming is created for purposes of priority application review in a manner similar to the geographic area used for the former main studio rule help ensure that this programming reflects the needs and interests of the local

[38] *See*, *e.g.*, 47 CFR § 73.1635 (Special temporary authorizations (STA)).

[39] Translator and booster stations are operated for the purpose of retransmitting the programs and signals of a primary TV or radio station to expand the area where the primary station's signal can be received and, with limited exceptions, do not originate programming. *See* 47 CFR §§ 74.701, 74.790, 74.1201, 74.1231. TV translators 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.

[40] *See* 47 CFR §§ 74.790 (permissible service of TV translator stations), 74.1231 (permissible service of FM translator and FM booster stations).

[41] Each broadcast radio and television station is assigned to a community of license that it is obligated to serve. *See* 47 CFR §§ 73.622 (TV Table of Allotments), 73.202 (FM Table of Allotments), 73.24 and 73.37 (AM).

[42] The principal community contour requirements for AM, FM, and full-power television broadcast stations are found in 47 CFR §§ 73.24(i), 73.315(a) and 73.685(a), respectively.

[43] *See* former 47 CFR § 73.1125(a)-(d) (June 1, 2017).

[44] *See Revitalization of the AM Radio Service*, First Report and Order, Further Notice of Proposed Rulemaking, and Notice of Inquiry, 30 FCC Rcd 12145, 12180, para. 88 (2015).

community? Should we instead define the "local" market as the station's service contour?[45] As service contours generally encompass a larger geographic area than a station's community of license or principal community contour, this definition would give the station more flexibility with respect to where local programming could be originated.[46] We invite comment generally on how to define the geographic area in which a program should be originated in order to qualify as "local" under our proposal herein. Should we define the local market differently for radio stations than for TV stations? Should we define the local market differently for low power TV stations than full power TV stations?

2. Locally "Originated" Programming

16. We also invite comment on how to define programming "originated" locally for purposes of qualifying for priority application review. We propose that any kind of activity involved in creating audio (radio) or video (TV) programming that occurs within the "local" market, as defined in this proceeding, would be sufficient. Local program origination could involve, for example, activities such as program scripting, recording (video or audio) at a studio or other location in the local market, or editing. Our proposed approach would include programming that contains video or audio recordings that were made at locations outside the local market, as long as the program also includes some other element of local creation.[47] For particular programming that contains content made at locations outside the local market, should we establish a minimum amount of required locally originated programming? What other kinds of local activities should qualify as local program origination?

17. We note that, in the case of mutually exclusive applications for new LPFM stations, the Commission's rules favor the selection of applicants that pledge to provide at least eight hours of locally originated programming each day.[48] The LPFM rules define "local origination" as "the production of programming by the licensee within ten miles of the coordinates of the proposed transmitting antenna" and provides the following examples of locally originated programming: "licensee produced call-in shows, music selected and played by a disc jockey present on site, broadcasts of events at local schools,

[45] The service contour defines the area within which the station's signal is protected from interference, and is an estimate of the station's overall coverage. *See*, *e.g.*, 47 CFR §§ 73.182(d)(4) (AM), 73.622(e)(1) (full-power TV), 73.6010 (Class A TV), 74.792 (LPTV). *See also* https://www.fcc.gov/media/radio/fm-and-tv-propagation-curves. The principal community contour is the contour within which a station's community of license should be located, while the community of license is the specific community to which the station is licensed.

[46] We note that when implementing the requirement in the CBPA that Class A TV stations broadcast programming "produced within the [station's] market area" (47 U.S.C. § 336(f)(2)(A)(i)(II)), the Commission declined to allow programming to be produced anywhere within the station's Designated Market Area (DMA). Instead, the Commission required that such programming be produced within the predicted Grade B contour of the Class A TV station. The Commission concluded that, because of the local nature of Class A TV service, defining the "market area" where Class A stations were required to produce programming as the smaller Grade B signal contour was more appropriate. *See In the Matter of Establishment of A Class A Television Service,* Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd 8244, 8253, para. 24 (2001) (*Class A MO&O*) (explaining that "the predicted Grade B signal contour of an LPTV station, which typically would not extend beyond 20-25 miles, is generally smaller than the DMA, which normally encompasses several counties. In some cases, different communities within a DMA might be served by different Class A stations. Given the disparity in size and the local nature of Class A service, defining a Class A station's "market area" as the Grade B signal contour rather than the much larger DMA is more appropriate").

[47] *See*, *e.g.*, *Creation of a Low Power Radio Service*, Memorandum Opinion and Order on Reconsideration, 15 FCC Rcd 19208, 19246-47, para. 98 (2000) (clarifying that, under the point system for resolving mutual exclusivity among LPFM applicants, an LPFM station may claim a point for local origination based on coverage of a high school away game played more than 10 miles away, so long as the production involves facilities located within a 10-mile radius of the antenna). *See also Creation of a Low Power Radio Service*, Second Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 6763, 6767, para. 10 (2005) (clarifying that LPFM programming that is produced outside of the local market and does not involve any local production facilities does not qualify as locally originated programming).

[48] *See* 47 CFR § 73.872(b)(2).

and broadcasts of musical performances at a local studio or festival, whether recorded or live."[49] We propose that these kinds of programs and activities would qualify as locally originated programming for purposes of our proposed priority application review, and invite comment on this proposal. Are there other examples of locally originated programming we should provide?

18. We note that, in the LPFM context for resolving mutually exclusive applications, the rules require the locally originated programming to be produced by the licensee.[50] We do not propose to adopt a similar requirement for this priority application review proposal. Thus, we propose that the locally originated content can be produced by a third party that is not the licensee. We invite comment on this approach.

19. The LPFM rules further provide that local origination "does not include the broadcast of repetitive or automated programs or time-shifted recordings of non-local programming whatever its source."[51] Should we exclude these kinds of programs and/or time-shifted recordings from the definition of local programming for purposes of priority application review? In addition, the LPFM rules provide that "local origination does not include a local program that has been broadcast twice, even if the licensee broadcasts the program on a different day or makes small variations in the program thereafter."[52] In adopting this restriction for LPFM, the Commission noted that local origination is a "central virtue" of that service and that there was "room for abuse" if repetitious, automated programs could count as locally originated.[53] Should we adopt this same restriction on repetition of locally originated programming for purposes of priority application review? With respect to television stations, should we define "locally originated programming" for purposes of priority application review as programming containing simultaneous video and audio programming where the audio portion of the programming directly relates to the video portion of the program? This would mean that, for television applicants, video-only[54] or audio-only programming would not count for purposes of obtaining priority application review. For television stations, would this restriction help ensure that locally originated programming contains the type of television services viewers expect TV stations to provide?[55]

C. Certification

20. We propose to provide priority staff review to licensees that certify that the station(s) provides on average at least three hours per week of locally originated programming. We note that, to be eligible for Class A status, the CBPA required that low power TV stations, during the 90 days preceding the date of enactment of the statute, broadcast an average of at least three hours per week of programming produced within the "market area" served by the station.[56] Should we adopt the same three-hour guideline for purposes of priority staff review? We note that under a three-hour per week criteria, stations

[49] *Id*.

[50] *Id*.

[51] *Id*.

[52] *Id*.

[53] *Creation of a Low Power Radio Service*, Third Report and Order and Second Further Notice of Proposed Rulemaking, 22 FCC Rcd 21912, 21922-23, para. 24 (2007).

[54] One example of such video-only programming would be a television station that carried a channel showing only video from a traffic camera. *See*, *e.g.*, *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, Fifth Report and Order, MB Docket 03-185, FCC 23-58 (rel. July 20, 2023) at paras. 40-41 (requiring that FM6 LPTV stations provide at least one stream of synchronized video and audio programming on the ATSC 3.0 portion of the spectrum at any time the station is operating).

[55] *Id*. at para. 40.

[56] *See supra* note 31. Class A stations must continue to meet these requirements to retain Class A status. *See* 47 CFR § 73.6001(c).

on the air 24 hours per day seven days each week that air locally originated programming for just two minutes at the top of each hour would exceed a three-hour guideline.[57] Should the guideline number be greater or less than three hours? Should it be prorated for stations that are on the air less than 24 hours per day? Should the amount be the same for radio and television stations? Should it be the same for commercial and non-commercial stations? Should applicants be required to have met the required amount of hours per week for a minimum number of days or weeks prior to filing of the application? If so, what would be an appropriate minimum number of days or weeks? As in the CBPA, would 90 days prior to the filing of the application be an appropriate timeframe? Should applicants also be required to continue to meet the required amount of hours per week while the subject application is pending? Should applicants be required to re-certify compliance while the application is pending? Should applicants also be required to continue to meet the required amount of hours per week for a minimum number of days or weeks after the application is granted? If so, what would be an appropriate minimum number of days or weeks?

21. We propose that the Media Bureau add a question to each FCC application form for which expedited processing would be made available (*e.g.*, each TV/radio renewal, transfer, and assignment application form) asking the licensee whether it certifies, under penalty of perjury, that the station(s) provides at least three hours per week of locally originated programming, consistent with the criteria adopted in this proceeding. We invite comment on this approach. We propose that, in the case of applications involving multiple stations (such as an application proposing the transfer or assignment of multiple stations), priority review be available only if the applicant certifies that every station included in the application meets the priority processing criteria, and invite comment on this proposal. Should we require the applicant to provide any additional information that would permit the Commission to review the certification, such as identifying the programs the applicant claims are locally originated?

D. Digital Equity and Inclusion

22. Finally, the Commission, as part of its continuing effort to advance digital equity for all,[58] 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[59] 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

23. *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.[60]

---

[57] 2 minutes/hour x 24 hours/day = 48 minutes/day x 7 days/week = 336 minutes/week or 5.60 hours/week.

[58] 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.

[59] 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).

[60] 47 CFR §§ 1.1200 *et seq.*

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.

24. *Filing Requirements—Comments and Replies*. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://apps.fcc.gov/ecfs/.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
    - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
    - Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, 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.[61]
- 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.

25. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),[62] requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings,

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

[62] *See* 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).

unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."[63] Accordingly, we have prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the possible impact of the rule changes proposed in this *NPRM* on small entities. 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 *NPRM* indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA.

26. *Providing Accountability Through Transparency Act*. The Providing Accountability Through Transparency Act requires each agency, in providing notice of a rulemaking, to post online a brief plain-language summary of the proposed rule.[64] Accordingly, the Commission will publish the required summary of this Notice of Proposed Rulemaking/Further Notice of Proposed Rulemaking on https://www.fcc.gov/proposed-rulemakings.

27. *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.

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

29. *Additional Information*. For additional information on this proceeding, contact Kim Matthews, Kim.Matthews@fcc.gov, of the Policy Division, Media Bureau, (202) 418-2154.

V. ORDERING CLAUSES

30. Accordingly, IT IS ORDERED that, pursuant to the authority found in sections 1, 2, 4(i), 4(j), 303, 307, and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 303, 307, and 309, this *Notice of Proposed Rulemaking* IS ADOPTED.

31. IT IS FURTHER ORDERED that the Office of the Secretary, Reference Information Center, 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

[63] *See id*. § 605(b).

[64] 5 U.S.C. § 553(b)(4). The Providing Accountability Through Transparency Act, Pub. L. No. 118-9 (2023), amended section 553(b) of the Administrative Procedure Act.

APPENDIX A

Proposed Rules

NEW RULE LANGUAGE IS IN BOLD

The Federal Communications Commission proposes to amend 47 CFR part 73 to read as follows:

PART 73 – RADIO BROADCAST SERVICES

1. The Authority citation for Part 73 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

2. Section 73.3514 is amended to add paragraph (c) to read as follows:

§ 73.3514 Content of Applications

(a) Each application shall include all information called for by the particular form on which the application is required to be filed, unless the information called for is inapplicable, in which case this fact shall be indicated.

(b) The FCC may require an applicant to submit such documents and written statements of fact as in its judgment may be necessary. The FCC may also, upon its own motion or upon motion of any party to a proceeding, order the applicant to amend the application so as to make it more definite and certain.

(c) Applicants for renewal, assignment, or transfer of license for commercial and noncommercial AM, FM, and TV broadcast stations may request priority staff review of such applications if the applicant certifies that the station provides an average of at least three hours per week of locally originated programming. This paragraph does not apply to TV translator or radio translator or booster stations.

(1) For purposes of this provision, locally originated programming is programming produced either

(i) [w]ithin the station's community of license;
(ii) [a]t any location within the principal community contour of any AM, FM, or TV broadcast station licensed to the station's community of license; or
(iii) [w]ithin 25 miles from the reference coordinates of the center of its community of license as described in § 73.208(a)(1).

(2) For purposes of this provision, locally originated programming is defined as

(i) programming that was created within the area defined in paragraph (c)(1). Programming that contains video or audio recordings that were made at locations outside the area defined in paragraph (c)(1) qualifies as locally originated programming as long as the program also includes some other element of local creation that takes place in the area defined in paragraph (c)(1), including program

scripting, recording (video or audio) at a studio or other location in the local market, editing, or other activity.

(ii) Locally originated programming does not include: the broadcast of repetitive or automated programs or time-shifted recordings of non-local programming whatever its source; a local program that has been broadcast twice, even if the licensee broadcasts the program on a different day or makes small variations in the program thereafter. In addition, with respect to television stations, locally originated programming is programming containing simultaneous video and audio programming where the audio portion of the programming directly relates to the video portion of the program.

APPENDIX B

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) 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 provided on the first page of 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 this *NPRM*, we propose to prioritize processing review of certain applications filed by commercial and noncommercial radio and television broadcast stations that provide locally originated programming. Our goal is to provide additional incentive to stations to provide programming that responds to the needs and interests of the communities they are licensed to serve. In 2017, the Commission eliminated the rule that required broadcast stations to maintain a main studio located in or near their community of license, as well as the associated requirement that the main studio have program origination capability. We propose this processing priority in order to further encourage radio and TV stations to serve their community of license with local journalism or other locally originated programming. Such prioritization would be granted to renewal applicants, as well as applicants for assignment or transfer of license, that certify they provide locally originated programming, thereby advancing our efforts to promote localism and serve local communities across the nation.

3. The *NPRM* also seeks comment on the Commission's proposal to exclude television translator and radio translator and booster stations from the proposed priority application review proposal and on whether its proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well as the scope of the Commission's relevant legal authority.

B. Legal Basis

4. The proposed action is authorized pursuant to sections 1, 2, 4(i), 4(j), 303, 307, and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 303, 307, and 309.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

5. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[4] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[5] In addition, the term "small business" has the

[1] *See* 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] *See* 5 U.S.C. § 603(a).

[3] *See id*.

[4] *Id*. § 603(b)(3).

[5] *Id*. § 601(6).

same meaning as the term "small business concern" under the Small Business Act.[6] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[7]

6. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein.[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]

7. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[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 2020, there were approximately 447,689 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]

8. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[14] U.S. Census Bureau data from the 2017 Census

---

[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 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] *See* 5 U.S.C. § 601(3)-(6).

[9] *See* SBA, Office of Advocacy, "What's New With Small Business?,"

https://advocacy.sba.gov/wp-content/uploads/2023/03/Whats-New-Infographic-March-2023-508c.pdf. (Mar. 2023)

[10] *Id*.

[11] *See* 5 U.S.C. § 601(4).

[12] The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. S*ee* 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 2020 with revenue less than or equal to $50,000 for Region 1-Northeast Area (58,577), Region 2-Mid-Atlantic and Great Lakes Areas (175,272), and Region 3-Gulf Coast and Pacific Coast Areas (213,840) that includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

[14] *See* 5 U.S.C. § 601(5).

of Governments[15] indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.[16] Of this number, there were 36,931 general purpose governments (county,[17] municipal, and town or township[18]) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts[19] with enrollment populations of less than 50,000.[20] Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of "small governmental jurisdictions."[21]

9. *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] *See* 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with "2" and "7". *See also* Census of Governments, https://www.census.gov/programs-surveys/cog/about.html.

[16] *See* U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02], https://www.census.gov/data/tables/2017/econ/gus/2017-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. CG1700ORG02 Table Notes_Local Governments by Type and State_2017.

[17] *See id.* at tbl.5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 2,105 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: 2017 [CG1700ORG06], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 18,729 municipal and 16,097 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: 2017 [CG1700ORG10], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 12,040 independent school districts with enrollment populations less than 50,000. *See also* tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2017.

[20] While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

[21] This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 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.

10. As of March 31, 2023, there were 1,375 licensed commercial television stations.[27] Of this total, 1,282 stations (or 93.2%) had revenues of $41.5 million or less in 2021, according to Commission staff review of the BIA Kelsey Media Access Pro Television Database (BIA) on April 7, 2023, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates as of March 31, 2023, there were 383 licensed noncommercial educational (NCE) television stations, 381 Class A TV stations, and 1,887 LPTV 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.

11. *Radio Broadcasting.* This industry is comprised of "establishments primarily engaged in broadcasting aural programs by radio to the public."[29] Programming may originate in the station's own studio, from an affiliated network, or from external sources.[30] The SBA small business size standard for this industry classifies firms having $41.5 million or less in annual receipts as small.[31] U.S. Census Bureau data for 2017 show that 2,963 firms operated in this industry during that year.[32] Of this number, 1,879 firms operated with revenue of less than $25 million per year.[33] Based on this data and the SBA's small business size standard, we estimate a majority of such entities are small entities.

---

[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, 2023*, Public Notice, DA 23-300 (rel. April 6, 2023) (*March 2023 Broadcast Station Totals PN*), https://docs.fcc.gov/public/attachments/DA-23-300A1.pdf.

[28] March 2023 Broadcast Station Totals PN.

[29] *See* U.S. Census Bureau, *2017 NAICS Definition, "515112 Radio Stations*," https://www.census.gov/naics/?input=515112&year=2017&details=515112.

[30] *Id.*

[31] *See* 13 CFR § 121.201, NAICS Code 515112 (as of 10/1/22 NAICS Code 516110).

[32] *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.

[33] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in the individual categories for less than $100,000, and $100,000 to $249,999 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in these categories). Therefore, the number of firms with revenue that meet the SBA size standard would be higher that noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

12. The Commission has estimated the number of licensed commercial radio stations to be 11,153 (4,472 commercial AM stations and 6,681 commercial FM stations).[34] Of this total, 11,151 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 7, 2023, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates that as of March 31, 2023, the number of licensed noncommercial radio stations to be 4,219, and the number of Low Power FM Stations (LPFM) to be 1,999.[35] The Commission however does not compile, and otherwise does not have access to financial information for these radio stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of radio station licensees, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

13. We note that in assessing whether a business entity qualifies as small under the above definition, business control affiliations[36] must be included. This estimate, therefore, likely overstates the number of small entities that might be affected, 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" is that the entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any radio station from the definition of a small business on this basis and therefore may be over-inclusive to that extent. Also, an additional element of the definition of "small business" is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and the estimates of small businesses to which they apply may be over-inclusive to this extent.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

14. We expect that the proposed rules set forth in the *NPRM* will impose new or additional filing, recordkeeping and reporting requirements for small and other entities. We note, however, that while the proposed rules will create additional compliance requirements, the *NPRM* also proposes that the decision by a licensee to elect to certify that the station meets the local programming guideline be purely voluntary. With respect to those small or other licensees that either cannot, or choose not, to provide a certification, the Commission staff will process the licensee's application pursuant to its normal procedures.

15. The *NPRM* proposes to provide priority in terms of processing review to applications filed by commercial and noncommercial radio and television broadcast stations that certify that they provide on average at least three hours per week of locally originated programming. The *NPRM* also seeks comment on whether applicants should also be required to re-certify compliance while the subject application is pending, and whether they should be required to continue to meet the required amount of hours per week for a minimum number of days or weeks after the application is granted. We propose that the Media Bureau add a question to each FCC application form for which expedited processing would be made available (e.g., each TV/radio renewal, transfer, and assignment application form) asking the licensee whether it certifies, under penalty of perjury, that the station(s) provides at least three hours per week of locally originated programming, consistent with the criteria adopted in this proceeding. We also propose that, in the case of applications involving multiple stations, priority review be available only if

[34] *See March 2023 Broadcast Station Totals PN.*

[35] *See March 2023 Broadcast Station Totals PN.*

[36] "[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 power to control both." 13 CFR § 121.103(a)(1).

the applicant certifies that every station included in the application meets the priority processing criteria. We invite comment on these proposals. We also seek comment on whether we should require applicants to provide any additional information that would permit the Commission to review the certification, such as identifying the programs the applicant claims are locally originated.

16. We propose that licensees that request priority staff review of an application(s) be required to certify, under penalty of perjury, that the station meets the criteria adopted in this proceeding. The *NPRM* seeks comment on whether we should require applicants to provide any additional information that would permit the Commission to review the certification, such as identifying the programs the applicant claims are locally originated. We expect that the information we receive in the comments will help the Commission identify and evaluate relevant compliance matters for small entities, including compliance costs and other burdens that may emerge as a result of the potential changes discussed in the *NPRM*.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

17. 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 such small entities."[37]

18. The *NPRM* seeks comment generally on its proposal to provide priority staff review of applications filed by stations that certify that they provide an average of at least three hours per week of locally originated programming. The *NPRM* invites comment on whether this guideline is appropriate. We also invite comment on all the proposed approaches and on any alternatives, which will provide the Commission additional information on possible steps that can be taken to minimize any significant impact on small entities.

19. In an effort to minimize significant economic impact on small entities as a result of the proposals that are ultimately adopted, the *NPRM* makes clear that a station's participation in certifying that it meets the qualifications for priority application review is purely voluntary. A station may choose whether it wants to provide the additional information to qualify for prioritized review of its application and, should it decline to, would have its application processed pursuant to its normal procedures. Applications that do not include a certification will not be scrutinized or processed differently as a substantive matter than applications with a certification, other than the prioritization proposal discussed in the *NPRM*.

20. Finally, we do not propose to offer priority application review, as outlined herein, to applications filed for radio translators or boosters or TV translators. Booster stations do not originate programming and translator stations may only originate a very limited amount of programming so the underlying purpose of the proposed processing policy—i.e., to further incentivize broadcast licensees to serve community needs and interests through production of locally originated programming—would not apply. Accordingly, we believe there would be minimal value, if any, in asking these stations to certify they provide locally originated programming. We tentatively conclude that our prioritized processing approach will not slow the review of "simple" applications that are otherwise grantable.

[37] 5 U.S.C. § 603(c)(1)-(c)(4).

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules

21. None.

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: Priority Application Review for Broadcast Stations that Provide Local Journalism or *Other Locally Originated Programming*; Notice of Proposed Rulemaking; MB Docket No. 24-14

This is an initiative to support local journalism. Local news is essential. It helps us make decisions about our lives, our communities, and our country.

For decades, the Federal Communications Commission has supported the development of local news and content through the distribution of broadcast licenses under the Communications Act. These local licenses are powerful. In exchange for access to the public airwaves, the law has long required that they broadcast in a manner that serves the interest of their community of license.

Here, we propose to sweeten the incentives for locally-originated news and content. After all, having the capacity to develop programming locally is important. It adds to the diversity of voices on our airwaves and strengthens the ability of stations to meet their obligation under the law to serve their community of license. Plus, without it, stations can just pump in programming from the largest metropolitan areas and miss opportunities for content creation in their own backyard. So in this rulemaking we build on the time-tested model used with the Children's Television Act and propose a first-in-class processing review for renewals when a station can certify that it provides locally-originated programming. This is a tried-and-true incentive-based system that creates no new obligations, but instead puts in place a structure to better support the capacity for local news and content—and the local journalism that is absolutely vital for our communities and our democracy.

DISSENTING STATEMENT OF
COMMISSIONER BRENDAN CARR

Re: *Priority Application Review for Broadcast Stations that Provide Local Journalism or Other Locally Originated Programming*, Notice of Proposed Rulemaking, MB Docket No. 24-14

This one is a head scratcher.

My colleagues wanted to seek comment on prioritizing the FCC's processing of applications filed by broadcasters that provide locally originated programming. I was happy to support them and their proposal. I am not sure the idea will make much difference in the real world, but I don't see how it can do much harm. So I looked forward to offering my colleagues my support.

But then things went sideways fairly quickly. When I read the item, I was surprised to learn that it did something entirely different and separate from just proposing the prioritization of locally originated programming. It also raised the FCC's 2017 decision to repeal the main studio rule and determined—even though this is a Notice of Proposed Rulemaking with no evidentiary record before the agency—that this 2017 decision was an error. Of course, there is no basis for asserting that conclusion here, but more fundamentally there is no reason to get into that rule at all in this Notice. There are plenty of ways that the FCC can ground its prioritization proposal in the agency's long-standing and statutorily-grounded commitment to localism.

So I suggested a few edits to my colleagues along those lines. Let's cut back on the discussion of the main studio rule, which we don't need to get into here, and then move forward together with the localism proposal. After all, the Notice does not propose to reinstate the main studio rule, so dialing back the discussion seems like low hanging fruit. These changes represented the types of edits in service of finding common ground that had become common at the agency in recent years.

But, surprisingly, I was told that these edits were a no go. My colleagues were only interested in moving forward with the localism proposal if they could also cast aspersion on the separate main studio rule along the way. Odd. That's their choice, of course, but it is not one that I support. It also introduces unnecessary litigation risk. How can the FCC ground its localism proposal in the FCC's record-less conclusion that the 2017 main studio repeal was an error while simultaneously not proposing to reinstate that rule? Anyways, that will be for my colleagues to figure out.

For my part, I hope that this episode is just an isolated hiccup in our otherwise good working relationship. I will certainly work hard to find common ground with my colleagues on the next item. I hope that they reciprocate my willingness.

DISSENTING STATEMENT OF
COMMISSIONER NATHAN SIMINGTON

Re: *Priority Application Review for Broadcast Stations that Provide Local Journalism or Other Locally Originated Programming*; Notice of Proposed Rulemaking; MB Docket No. 24-14

Washington D.C., perhaps because it is full of lawyers who are frustrated writers, is replete with aphoristic language and metaphorical imagery. We inhabit a land of stalking horses and trial balloons; open doors and ropes on which to push. Yet, for me, the language that this item recollects is that of Chicagoan Emily Nicklin, the first female partner to serve on the Kirkland & Ellis executive committee in the mid-1980s. Emily described other partners at the firm as "wolves in wolves' clothing"—meaning, presumably, that they lacked the decency or even wherewithal to hide their ambitions or aggression. A good thing, perhaps, when it comes to counsel! Less so when it comes to nominally public-minded regulation.

Commission leadership has clothed recent regulatory revanchism in broadcast in the language of localism, and this item is no different. It purports to serve localism by providing an incentive to broadcasters to create or retain sources of "locally-originated programming." If broadcasters wish to have their broadcast license applications fast-tracked,—that is, timely processed—and those applications are otherwise encumbered by a hold, petition to deny, or "other processing issue" (left to the staff's discretion), then staff will timely act on the application. While the language of the item suggests that this means that broadcasters with locally-originated programming have a leg up, what it *actually* means is that any broadcaster who originates news for Market A from a studio in Market B might now have any application—at least for which a "processing issue" credibly can be discovered or manufactured—slowed. This is a collateral attack on the Commission's elimination of the Main Studio Rule, and the item all but says so.

But, does it serve localism? Well, I guess truth will out. If, as it turns out, local broadcasters with locally-originated programming, per the item's definition, pour in to thank the Commission for its leadership in correcting a longstanding issue with application processing time, I will happily admit my mistake, eat humble pie at an Open Meeting, and may even vote to approve the final order. Or had an actual shot clock system been proposed instead of an approach to application processing that represents a flexible vacuity meant to arm the political opponents of broadcasters, there might have been some reason to support the item, and perhaps some commenters will agree. Instead, what I think more likely is that broadcasters will come in worried, as I am, about weaponization of application processing, and may even demonstrate by a review of application processing times that this item, unlike a refresh of the vMVPD record, is an answer to a question that no one asked.

Yet again, when it comes to broadcast, the Commission has forgotten its shearling coat—it is a wolf in wolf's clothing. And when it comes to wolves, best not to answer the door. I dissent.

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

In the Matter of	)	
	)	
Customer Rebates for Undelivered Video Programming During Blackouts	)	MB Docket No. 24-20
	)	
	)	

NOTICE OF PROPOSED RULUEMAKING

Adopted: January 10, 2024 **Released: January 17, 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 Starks issuing separate statements; Commissioners Carr and Simington dissenting and issuing separate statements.

I. INTRODUCTION

1. In this *Notice of Proposed Rulemaking*, we seek comment on whether to require cable operators and direct broadcast satellite (DBS) providers to give their subscribers rebates when those subscribers are deprived of video programming they expect to receive during programming blackouts that result from failed retransmission consent negotiations or failed non-broadcast carriage negotiations. When such blackouts occur, subscribers often pay the same monthly subscription fee for a service package that does not include all of the channels for which they signed up to receive. In other words, consumers are paying for a service that they are no longer receiving in full. This proceeding seeks comment on whether and how we should address this customer service shortcoming. We also seek comment on how the market addresses this issue currently.

II. BACKGROUND

2. The Communications Act of 1934, as amended (the Act), requires that cable operators and satellite TV providers obtain a broadcast TV station's consent to lawfully retransmit the signal of a broadcast station to subscribers.[1] Commercial stations may either demand carriage pursuant to the Commission's must carry rules or elect retransmission consent and negotiate for compensation in exchange for carriage.[2] If a station elects retransmission consent but is unable to reach agreement for carriage, or the parties to an existing retransmission consent agreement do not extend, renew, or revise that agreement prior to its expiration, the cable operator or DBS provider loses the right to carry the signal. The same is true if a cable operator or DBS provider cannot negotiate for carriage with a non-broadcast network. In both cases, the result is a blackout of that existing programming on the platform.[3] When these blackouts occur, the cable operator or DBS provider's subscribers typically lose access to the station or network's entire signal on the platform, including both the national and local programming provided by the broadcaster, unless and until the parties are able to reach an agreement.

[1] 47 U.S.C. § 325.

[2] *Id.* § 325(b)(3)(B).

[3] Federal Communications Commission, *Retransmission Consent*, https://www.fcc.gov/media/policy/retransmission-consent (last updated Sept. 27, 2021).

3. Over the past decade, data indicates that the number of blackouts resulting from unsuccessful retransmission consent negotiations has increased dramatically.[4] These blackouts often frustrate subscribers because they lose access to programming from their cable operator or DBS provider that they had previously received.[5] A leading cause of these disputes is disagreements over per-subscriber programming fees.[6] However, subscribers may not see rebates or bill reductions during the carriage dispute when the cable operator or DBS provider does not carry the broadcast TV station,[7] even though many cable operators and DBS providers charge a fee on subscribers' bills that purportedly pays programmers for subscriber access to the broadcast signal or network.[8]

III. DISCUSSION

4. We seek comment on whether and how to require cable operators and DBS providers to give their subscribers rebates[9] when they blackout a channel due to a retransmission consent dispute or a

[4] *See* Atif Zubair, *History of Retrans Deals and Signal Blackouts*, 1993-2014 YTD, Market Intelligence, S&P Capital IQ Pro (Feb. 25, 2014); Atif Zubair, *Retrans Roundup 2019*, Market Intelligence, S&P Capital IQ Pro (Jan. 21, 2020); Peter Leitzinger, *Retrans Roundup 2021*, Market Intelligence, S&P Capital IQ Pro (Jan. 28, 2022); Peter Leitzinger, *Retrans Roundup 2022*, Market Intelligence, S&P Capital IQ Pro (Feb. 7, 2023).

[5] *See*, *e.g.*, Alex Weprin, *Disney Channels, Including ABC and ESPN, Go Dark on Charter Spectrum In Major Carriage Dispute*, The Hollywood Reporter (Aug. 31, 2023), https://www.hollywoodreporter.com/business/business-news/espn-abc-pulled-charter-spectrum-carriage-dispute-1235579642/; Alex Weprin, *Nexstar-Owned Stations Go Dark on DirecTV in Fresh Carriage Dispute*, The Hollywood Reporter (July 2, 2023), https://www.hollywoodreporter.com/business/business-news/nexstar-owned-stations-pulled-directv-carriage-dispute-1235528176/; Jon Lafayette, *Northwest Broadcasting CEO Calls Out Charter's Rutledge*, Broadcasting and Cable (Feb. 6, 2018), https://www.nexttv.com/news/northwest-broadcasting-ceo-calls-out-charter-s-rutledge-171588; Claire Atkinson, *CBS blackout is the latest frustration for TV viewers caught in the middle of price wars*, NBC News (July 22, 2019), https://www.nbcnews.com/business/business-news/cbs-blackout-latest-frustration-tv-viewers-caught-middle-price-wars-n1032436.

[6] Cable operators and DBS providers typically pay broadcast licensees and cable programming networks a fee that is based on the number of subscribers that receive the licensee's or network's channel. *See generally 2022 Communications Marketplace Report*, FCC 22-103 at paras. 219, 275, and 294 (rel. Dec. 30, 2022).

[7] Michael Petro, *Spectrum Providing Refunds for Blackout of Disney Channels*, The Buffalo News (Sept. 14, 2023), https://buffalonews.com/business/local/western-new-york-spectrum-disney-blackout-refunds/article_7613a46e-5276-11ee-a852-172275f7f08b.html; David Satin, *DIRECTV Customers Affected by Nexstar Outage Can Get Bill Credit, but They Have to Sign Up; Here's How to Do It*, MSN (July 5, 2023), https://www.msn.com/en-us/money/companies/directv-customers-affected-by-nexstar-outage-can-get-bill-credit-but-they-have-to-sign-up-here-s-how-to-do-it/ar-AA1dsBCB; Michael Hiltzik, *Your Time Warner Cable refund for a weeklong blackout: $4*, The Los Angeles Times (Aug. 12, 2013), https://www.latimes.com/business/la-xpm-2013-aug-12-la-fi-mo-timewarner-20130811-story.html; Spectrum Residential Video Service Agreement, https://www.spectrum.com/policies/residential-video-service-agreement ("In the event particular programming becomes unavailable, either on a temporary or permanent basis, due to a dispute between Spectrum and a third party programmer, Spectrum shall not be liable for compensation, damages (including compensatory, direct, indirect, incidental, special, punitive or consequential losses or damages), credits or refunds of fees for the missing or omitted programming. Your sole recourse in such an event shall be termination of the Video Services in accordance with the Terms of Service.").

[8] *See*, *e.g.*, ACA Connects Comments, MB Docket No. 23-203, at 6 ("[S]ome ACA Connects Members explicitly pass through retransmission consent fees and [regional sports network] fees as line items on subscriber bills."); NCTA Reply, MB Docket No. 23-203, at 9 ("Itemizing broadcast TV and regional sports fees separately is not deceptive, but rather to inform consumers about the factors that affect the cost of their video service.").

[9] We note that the Act uses the term "refund" in section 632(b) whereas Congress referred to "rebates or credits" when discussing outages in the legislative history of section 632(b). *Compare* 47 U.S.C. 552(b)(3) *with* H.R. REP. 102-628, at *34. Neither the Act nor the legislative history otherwise define these terms. We note that the dictionary definitions of each terms is similar. *See* Merriam-Webster Dictionary, online version, https://www.merriam-webster.com/dictionary/rebate (defining "rebate" as "a return of a part of a payment");

(continued….)

failed negotiation for carriage of a non-broadcast channel. In the event that we adopt such a requirement, we seek comment below on (i) how to apply the rule, (ii) whether to specify the method that cable operators and DBS providers use to offer the rebates and if so, how they should issue rebates, (iii) our authority to adopt a rebate rule, (iv) how to enforce a rebate rule, (v) the costs and benefits of such a rule, and (vi) the effects that such a rule would have on digital equity and inclusion. We also invite comment on any other proposals to ensure that subscribers are made whole when they lose access to programming that they expected to receive in exchange for paying a monthly subscription fee when they signed up for service.

5. We seek comment on this proposal at this time because, as discussed above, data indicates that the number of blackouts has increased dramatically in the last several years. Why is this? Is increased consolidation in either the broadcaster or MVPD market leading to an increase in blackouts? Has the proliferation of streaming services, including live linear streaming services (vMVPDs) impacted the amount or duration of blackouts, as these services may provide subscribers with alternative viewing options during a carriage dispute? Are broadcasters or programmers with certain categories of programming (e.g. sports) more likely to have negotiations that result in blackouts? Are there certain broadcasters or MVPDs whose negotiations result in blackouts more frequently than others? Are there proposals we should consider to incentivize both broadcasters/programmers and distributors to limit programming blackouts? [10]

6. *Applicability*. We seek comment on whether to require cable operators and DBS providers to provide rebates if they blackout video channels due to a retransmission consent dispute or a failed negotiation for carriage of a non-broadcast channel. Below, we seek comment on whether various provisions of the Act give us authority to require cable operators and DBS providers to give their subscribers rebates when the operator or providers ceases to carry a channel due to a retransmission consent or program carriage dispute; given that the authority upon which we base this proposal is cable and DBS-specific, are those the only entities to which this proposal should apply?[11] If we were to require cable operators and DBS providers to give rebates to subscribers who are deprived of programming they expected to receive, should the rule apply to any channel that is blacked out?[12] What if the parties never reach an agreement for carriage? Would subscribers be entitled to rebates in perpetuity and how would that be calculated? Or should the rebate end when the subscriber renews the contract if the channel is still

(Continued from previous page)
https://www.merriam-webster.com/dictionary/credit (defining "credit" as "a deduction from an amount otherwise due"); https://www.merriam-webster.com/dictionary/refund (defining "refund" as "to return (money) in restitution, repayment, or balancing of accounts"). Accordingly, we tentatively conclude that Congress did not intend for there to be any legal distinction between these terms, and thus we may use these terms interchangeably, as we do throughout this notice. We seek comment on this analysis and tentative conclusion.

[10] While this proceeding pertains to the effects of blackouts resulting from retransmission consent negotiations, we note that this docket is not intended to seek comment on the Commission's retransmission consent rules. Commenters that wish to propose regulations pertaining to retransmission consent should instead file in response to the Commission's Notice of Proposed Rulemaking seeking comment on rules related to retransmission consent. *Amendment of the Commission's Rules Related to Retransmission Consent*, MB Docket No. 10-71, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 3351 (2014). We note that the "totality of the circumstances" docket was terminated as dormant in 2020. *Termination of Certain Proceedings as Dormant*, CG Docket No. 20-158, Order, 35 FCC Rcd 10498 (2020).

[11] Commenters that suggest that we apply a blackout rebate requirement to non-cable or DBS entities should identify the statutory authority under which we could apply such a requirement.

[12] *See* Alex Weprin, *Weather Channel brushes off a blackout*, Politico (Feb. 6, 2014) https://www.politico.com/media/story/2014/02/weather-channel-brushes-off-a-blackout-001667/; David Lieberman, *The Weather Channel Returns To DirecTV*, Deadline (April 8, 2014), https://deadline.com/2014/04/the-weather-channel-returns-directv-deal-711602/ (reporting on a nearly three month blackout of The Weather Channel on DIRECTV).

blacked out at the time of renewal? Similarly, if a subscriber initiates service during a blackout, would that subscriber be entitled to a rebate or a lower rate? Does the "good faith" negotiation requirement in section 325 of the Act confer unique status on broadcast channels that provides a basis to distinguish broadcast and broadcast-affiliated channels (that is, those channels that are owned by a company that also holds or controls broadcast licenses) from non-broadcast or independent channels?[13] That is, does the "good faith" negotiation requirement make an eventual carriage agreement more likely, and therefore suggest that a rebate would be temporary? If so, should this affect whether the rebate policy should apply to such entities, and why? To the extent that the existing terms of service between a cable operator or DBS provider and its subscriber specify that the cable operator or DBS provider is not liable for credits or refunds in the event that programming becomes unavailable, we seek comment on whether to deem such provisions unenforceable if we were to adopt a rebate requirement.[14]

7. *Rebates*. We seek comment on how cable operators and DBS providers currently handle this issue. Are there providers who currently provide subscribers with rebates or credits during a programming blackout? If so, does the provider proactively grant that rebate or credit to all subscribers affected, or is the subscriber required to affirmatively request it? How is the rebate or credit calculated? Are there providers who grant rebates or credits for the blackout of certain channels, but not of others? What are the deciding factors in such a case? Are there providers who do not grant rebates or credits during blackouts? If so, what is their rationale? How would requiring cable operators and DBS providers to provide rebates or credits change providers' current customer service relations during a blackout?

8. We seek comment on how to calculate the rebate to which a subscriber is entitled after a channel is blacked out and what methodology should be used. Would it be reasonable to require a cable operator or DBS provider to rebate the cost that it paid to the programmer to retransmit or carry the channel prior to the carriage impasse? We understand that carriage contracts can be complex; for example, rates may depend on the number of subscribers reached and the number of bundled channels being carried,[15] video service providers can receive advertising time in exchange for carriage,[16] providers' profits for specific channels may vary depending on the packages and bundles that they offer, and specific per-subscriber rates may be confidential. Given these complexities, are there specific nuances that we could adopt as part of a rule to ensure that subscribers are made whole when they lose access to a channel? Should we instead simply require cable operators and DBS providers to provide a rebate or credit to the consumer that in good faith approximates the value of the consumer's access to the channel? Should the Commission specify the method for providing the rebate?

9. *Authority.* We tentatively conclude that sections 335 and 632 of the Act provide us with authority to require cable operators and DBS providers to issue a rebate to their subscribers when they blackout a channel.[17] The Commission has relied on this authority to propose and adopt cable customer

[13] 47 U.S.C. § 325(b)(3(C). *See also* 47 CFR § 76.65 (Commission regulation implementing section 325's good faith negotiation requirement).

[14] *See* Spectrum Residential Video Service Agreement, supra note 7.

[15] *See* Petition for Declaratory Ruling That Conduct Violates 47 U.S.C. § 548, MB Docket No. 17-361 at 6-15 (filed Dec. 19, 2017), https://www.fcc.gov/ecfs/document/1219303576562/2 (detailing complex carriage agreement terms between a regional sports network and a cable operator).

[16] *See* ACA Reply Comments, MB Docket No. 18-92, at n.13 ("[S]ome cable operators do derive some revenue from inserting ads into cable programming streams [but] the vast majority of their revenue comes from subscriber fees.").

[17] 47 U.S.C. §§ 335, 552.

service regulations for decades,[18] and recently proposed to use this authority to adopt a customer service rule that would apply to DBS as well as cable.[19]

10. We tentatively conclude that the broad authority we have to adopt "public interest or other requirements for providing video programming"[20] under section 335(a) permits us to require DBS providers to give subscribers rebates for blackouts. Section 335(a) authorizes the Commission to impose on DBS providers public interest requirements for providing video programming. Although section 335(a) requires the Commission to adopt certain statutory political broadcasting requirements for DBS providers,[21] the statute is clear that this list is not exhaustive.[22] We tentatively find that requiring rebates for service interruptions due to blackouts pertains to the "provi[sion] of video programming" and is in the public interest because the proposed rule would prevent DBS subscribers from being charged for services for the period that they did not receive them. Moreover, we tentatively find that a rebate requirement would ensure that DBS subscribers are made whole when they face interruptions of service that are outside their control.[23] Accordingly, we tentatively conclude that we have authority under section 335(a) to apply our proposed rule to DBS providers. We seek comment on these tentative findings and conclusions. We also seek comment on whether there are alternative or additional statutes or arguments that provide a legal basis for our authority to adopt these requirements for DBS providers. For example, do we have authority under other provisions of Title III?[24]

11. We also seek comment on whether we have—and should exercise—ancillary authority under section 4(i) of the Act to extend our proposed rule to DBS providers and whether it is necessary to undertake this regulation for the Commission to effectively perform its responsibilities under the foregoing primary sources of statutory authority.[25] Applying the rebate requirement to such providers would ensure uniformity of regulation between and among cable operators (regulated under Title VI and by various state consumer protection laws and local franchising provisions) and DBS providers (under Title III), thereby preventing DBS from gaining a competitive advantage over their competitors because they will not be required to provide rebates to their subscribers for loss of service due to blackouts.

---

[18] *Implementation of Section 8 of the Cable Television Consumer Protection and Competition Act of 1992 Consumer Protection and Customer Service*, MM Docket No. 92-263, Report and Order, 8 FCC Rcd 2892, 2895, para. 10 (1993) (*Cable Operator Customer Service R&O*) ("[W]e conclude that the Commission is required to establish baseline customer service standards on which local governments may rely to ensure that the cable systems they regulate provide an adequate level of customer service to cable subscribers.").

[19] *All-In Pricing for Cable and Satellite Television Service*, Notice of Proposed Rulemaking, MB Docket No. 23-203, FCC 23-52, 2023 WL 4105426 (rel. June 20, 2023) (*All-In NPRM*).

[20] 47 U.S.C. § 335(a). *See also* 47 U.S.C. § 303(v) (granting the Commission "exclusive jurisdiction to regulate the provision of direct-to-home satellite services").

[21] 47 U.S.C. § 335(a) (directing the Commission to apply to DBS the access to broadcast time requirement of section 312(a)(7), the use of facilities requirements of section 315, and to examine the opportunities that DBS service provides for the principle of localism under the Act).

[22] 47 U.S.C. § 335(a) ("Any regulations prescribed pursuant to such rulemaking shall, *at a minimum*, apply the access to broadcast time requirement of section 312(a)(7) and the use of facilities requirements of section 315 to providers of direct broadcast satellite service …") (emphasis added).

[23] *See FCC v. WNCN Listeners Guild*, 450 U.S. 582, 596 (1981) ("[T]he Commission's judgment regarding how the public interest is best served is entitled to substantial judicial deference.").

[24] *See Targeting and Eliminating Unlawful Text Message*s, Report and Order and Further Notice of Proposed Rulemaking, 2023 WL 2582658, para. 40 (2023) (noting the Commission's authority under Sections 303(b), 307, and 316).

[25] 47 U.S.C. § 154(i).

12. We tentatively conclude that section 632—which directs the Commission to "establish standards by which cable operators may fulfill their customer service requirements"— grants us the authority to adopt a rebate requirement that would apply to cable operators.[26] Sections 632(b)(2) and (b)(3) direct the Commission to establish standards governing "outages" and "communications between the cable operator and the subscriber (including standards governing bills and refunds)."[27] Although the statute does not define the term "outages," we tentatively find that Congress intended that term to apply not only to a complete system failure but to broadly cover any interruption of service under the requirements of 632(b)(2). Moreover, because our proposed rules seek to address cable operators' billing and refund practices concerning blacked out programming, we tentatively conclude that these are customer service matters within the meaning of section 632(b)(3). We tentatively find that this interpretation is supported by the legislative history. Specifically, when Congress adopted section 632, it directed us to "provide guidelines governing the provision of rebates and credits to customers due to system failures *or other interruptions of service*."[28] From a subscriber's perspective, when a cable operator blacks out a signal over failed carriage negotiations, we tentatively find it to be an interruption of service—that is an "outage" within the meaning of (b)(2): the subscriber is paying for a service in exchange for a particular package of channels, and that particular package of channels is no longer available in full for a period of time. Regardless of whether the outage is due to a technical issue, a breakdown in retransmission consent negotiations, or for some other reason, we tentatively find that the subscriber's service interruption may be regulated under (b)(2), and entitled to a rebate. We tentatively find that we are also authorized under (b)(3) to require the cable operator to provide a rebate to the affected subscriber for the service loss during that period. In addition, we tentatively find that we may regulate blackout-related rebates under our general authority in 632(b) to establish "customer service" standards. Although the term "customer service" is not defined in the statute, the legislative history defines the term "customer service" to mean "in general" "the direct business relation between a cable operator and a subscriber," and goes on to explain that "customer service requirements" include requirements related to "rebates and credits to consumers."[29] We tentatively conclude that the proposed rebate requirement satisfies the definition of a "customer service requirement" because billing practices governing an interruption of service, such as blackouts, involve the "direct business relation between a cable operator and a subscriber." Furthermore, the list of topics Congress required the Commission to address in terms of customer service was not exhaustive.[30] We tentatively conclude that blackout-related rebates are precisely the type of customer service concerns that Congress meant to address when it enacted section 632.[31] Thus, we tentatively find that our proposed rules are within the statute's grant of authority. We seek comment on this analysis.

13. We acknowledge that section 623 of the Act limits our authority to regulate rates for cable service in areas where effective competition exists,[32] and that nearly all cable operators now face

[26] 47 U.S.C. § 552.

[27] 47 U.S.C. § 552(b)(3).

[28] House Committee on Energy and Commerce, H.R. REP. 102-628, at 105 (1992 Cable Act House Report) (emphasis added). *See also id*. at 34-37 (1992) (1992 Cable Act House Report); Senate Committee on Commerce, Science and Transportation, S. REP. 102-92, at 1, 3 (1992).

[29] H.R. REP. 98-934 at 79 (1984), *reprinted in* 1984 U.S.C.C.A.N. 4655, 4716.

[30] 47 U.S.C. § 552(b) (directing the Commission to establish customer service requirements, including three enumerated categories "at a minimum").

[31] H.R. REP. 102-628, at *34 (noting that customer service topics include "rebates and credits to consumers" and "information on billing or services").

[32] Section 623 prohibits the Commission from regulation of "the rates for the provision of cable service" in franchise areas where effective competition exists. 47 U.S.C. § 543(a)(2).

effective competition and are not subject to rate regulation.[33] However, there is no such limitation in section 632's customer service provision.[34] Furthermore, the availability of other service providers offering video programming in the franchise area may provide some prospective options for subscribers, or some deterrent effect for the conduct we aim to address, but we tentatively find that does not prevent a cable operator offering services under an existing contract from charging a subscriber for a channel that carries no programming due to a business dispute that is at least somewhat within the purview of the cable operator to resolve. We tentatively conclude that a rebate requirement for interruption of service due to blackouts would not be rate regulation. The statute does not define the term "rates" or explain the meaning of the phrase "rates for the provision of cable service" for purposes of section 623. Recent court decisions distinguish prohibited rate regulations from regulations similar to the one we propose here that provide basic protections for cable customers. In *Spectrum Northeast, LLC v. Frey*,[35] the First Circuit upheld a Maine regulation that requires cable operators to issue prorated credits or rebates for the days remaining in a billing period after a subscriber terminates cable service.[36] The court determined that the federal preemption of cable rate regulation "did not extend to the regulation of termination rebates"[37] and concluded that the Maine law is not a law governing "rates for the provision of cable service" but rather is a "consumer protection law" that is not preempted.[38] The New Jersey Supreme Court also recently upheld a similar New Jersey statute.[39] In *Matter of Altice*, the Supreme Court of New Jersey concluded that a requirement that cable operators issue refunds for the remaining days in a billing cycle is not rate regulation because "the plain and ordinary meaning of rate regulation . . . is not so broad as to encompass all laws that affect or concern cable prices."[40] Both cases involved requirements that addressed cable operator charges to subscribers for services that were no longer being provided to the subscriber. Here, too, our proposed requirement would prohibit cable operators from charging subscribers for the period of time that particular programming is *not* being provided by the cable operator. That contrasts with our common understanding of rate regulation, which is when the government sets "the amount charged for a particular product . . . as defined by a particular unit of measurement in relation to the product."[41] Our proposal contains no limits on the amount that a cable operator may charge for a channel; rather, it would simply require the operator to rebate the amount it charges if it does not deliver the product. Accordingly, we tentatively conclude that the courts' logic in *Spectrum Northeast, LLC v. Frey* and *Matter of Altice* applies to the rebate requirements for blackouts. We seek comment on this analysis.

---

[33] *See, e.g.*, *NATOA v. FCC*, 862 F.3d 18 (D.C. Cir. 2017) (upholding the FCC's rebuttable presumption that cable operators are subject to effective competition under the competing provider test); *Petition for Determination of Effective Competition in 32 Massachusetts Communities and Kauai, HI*, Memorandum Opinion and Order, 34 FCC Rcd 10229 (2019), *petition for review denied*, *Mass. Dep't of Telecomms. & Cable v. FCC*, 983 F.3d 28 (1st Cir. 2020) (finding of LEC effective competition).

[34] 47 U.S.C. § 552.

[35] *Spectrum Northeast, LLC v. Frey*, 22 F.4th 287 (1st Cir. 2022), *cert denied*, 143 S.Ct. 562 (2023).

[36] 47 U.S.C. § 543(a)(1); Maine regulation, 30-A M.R.S.A. § 3010(1-A) ("A franchisee shall grant a subscriber a pro rata credit or rebate for the days of the monthly billing period after the cancellation of service if that subscriber requests cancellation of service 3 or more working days before the end of the monthly billing period.").

[37] *Spectrum Northeast*, 22 F.4th at 299-301.

[38] *Id*. at 303.

[39] N.J. Admin. Code § 14:18-3.8.

[40] *Alleged Failure of Altice USA, Inc., to Comply with Certain Provisions of the New Jersey Cable Television Act, N.J.S.A. 48:5A-1 et seq., and the New Jersey Administrative Code, N.J.A.C. 14:18-1.1 et seq*., 291 A.3d 790, 798 (NJ 2023).

[41] *Spectrum Northeast, LLC v. Frey*, 22 F.4th at 292 (quoting Appellant's Brief).

14. We also tentatively conclude that our proposal to require rebates in the event of a blackout is consistent with Section 624(f) of the Act, which provides that "[a]ny Federal agency . . . may not impose requirements regarding the *provision* or content of cable services, except as expressly provided in this subchapter."[42] As an initial matter, we tentatively conclude that our proposed rebate requirement is authorized by Section 632, as noted above. In any event, we note that courts have interpreted Section 624(f) to prohibit regulations that are based on the content of cable programming (*e.g.*, requirements to carry or not carry certain programming).[43] Because the blackout rebate proposal is not content-based (that is, it does not require the cable operator to carry or not carry certain programming), we tentatively conclude it does not violate Section 624(f). We seek comment on this analysis.

15. As noted above, based on the language and structure of section 632, Congress authorized the Commission to establish customer service requirements for cable operators, and franchising authorities to adopt additional laws above and beyond the Commission's baseline requirements.[44] Therefore, we tentatively find that our proposed rule for cable operators would not preempt state and local laws applied to cable operators that require rebates for blackouts or otherwise exceed the requirements we adopt in this proceeding, so long as they are not inconsistent with Commission regulations. We seek comment on this analysis.

16. *Enforcement*. The Commission shares authority over cable customer service issues under the Act: "the Commission sets baseline customer service requirements at the federal level, and state and local governments tailor more specific customer service regulations based on their communities' needs."[45] Given the bifurcated authority we share with state and local governments, we seek comment on how best to enforce a rebate rule. Do state and local authorities have adequate resources to effectively enforce these rules? If not, is the Commission best equipped to enforce a rebate requirement based on consumer complaints?[46] Is there a better enforcement mechanism to ensure that subscription video providers provide their subscribers with rebates or credit? Given our shared jurisdiction over cable customer service issues, we seek specific comment from State and local authorities regarding their local subscriber complaints and regulation experiences with respect to service interruptions due to blackouts. What is the most effective way to enforce a requirement applicable to DBS providers?

17. *Cost/Benefit Analysis*. We invite commenters to address the costs and benefits of requiring cable operators and DBS providers to offer rebates to their subscribers when those subscribers

[42] 47 U.S.C. § 544(f) (emphasis added).

[43] *United Video, Inc. v. FCC*, 890 F.2d 1173, 1189 (D.C. Cir. 1989) ("the key is whether a regulation is content-based or content-neutral. . . . [I]t does not suggest a concern with regulations of cable that are not based on the content of cable programming, and do not require that particular programs or types of programs be provided."). *See also Comcast of Maine/New Hampshire, Inc. v. Mills*, 435 F.Supp.3d 228, 235-44 (D. Maine 2019); *Storer Cable Commc'ns v. City of Montgomery, Ala*., 806 F. Supp. 1518, 1544-46 (M.D. Ala. 1992); *Morrison v. Viacom, Inc*., 61 Cal. Rptr.2d 544, 555-57 (Cal. Ct. App. 1997).

[44] 47 U.S.C. § 552. *See Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992*, Second Report and Order, MB Docket No. 05-311, 22 FCC Rcd 19633, 19646, para. 27 (2007) (citing 47 U.S.C. §552(d)(2) (stating that the "statute's explicit language makes clear that Commission standards are a floor for customer service requirements, rather than a ceiling, and thus do not preclude LFAs from adopting stricter customer service requirements").

[45] *All-In NPRM* at para. 11.

[46] We note that the Commission has always retained its enforcement authority to address "systemic abuses that undermine the statutory objectives." *1993 Cable Consumer Protection Order*, 8 FCC Rcd at 2897, para. 19. In addition, the Commission has broad authority under the Act to enforce its rules. *See* 47 U.S.C. § 151 (directing the Commission to "execute and enforce the provisions of [the Communications] Act"); 47 U.S.C. § 312(b) (authorizing the Commission to order persons to cease and desist from violating any provision of the Act or the Commission's rules); 47 U.S.C. § 503 (authorizing the Commission to assess a forfeiture penalty for failure to comply with any of the provisions of the Act, or any rule, regulation, or order issued by the Commission under this Act).

are deprived of video programming for which they paid. What are the burdens and costs of providing rebates? Would the benefits to subscribers outweigh any such costs and burdens? Are the costs and benefits different for small cable entities, and if so, should we impose different obligations on those entities? How would requiring cable operators and DBS providers to offer rebates affect carriage negotiations with broadcast stations and non-broadcast programmers? Specifically, how would this policy affect the likelihood of blackouts, the duration of blackouts if they were to occur, and the carriage fee ultimately negotiated?

18. *Digital Equity and Inclusion*. Finally, the Commission, as part of its continuing effort to advance digital equity for all,[47] 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[48] 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

19. *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.[49] 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. Memoranda must contain a summary of the substance of the *ex parte* presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. 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 rules.[50] In proceedings governed by section 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment

[47] 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.

[48] 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).

[49] 47 CFR §§ 1.1200 *et seq.*

[50] 47 CFR § 1.1206(b).

filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable.pdf).[51] Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

20. *Providing Accountability Through Transparency Act*. The Providing Accountability Through Transparency Act requires each agency, in providing notice of a rulemaking, to post online a brief plain-language summary of the proposed rule.[52] Accordingly, the Commission will publish the required summary of this Notice of Proposed Rulemaking on: https://www.fcc.gov/proposed-rulemakings.

21. *Filing Requirements—Comments and Replies*. Pursuant to sections 1.415 and 1.419 of the Commission's rules,[53] 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).[54]

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://apps.fcc.gov/ecfs/.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
    - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
    - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington 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.[55]

22. *Regulatory Flexibility Act*. The Regulatory Flexibility Act of 1980, as amended (RFA),[56] 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."[57] 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 of Proposed Rulemaking. The IRFA is attached as Appendix A. Written public comments are requested on the IRFA. Comments must have a separate and distinct heading designating them as

[51] 47 CFR § 1.49(f).

[52] 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.

[53] *See* 47 CFR §§ 1.415, 1419.

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

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

[56] *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).

[57] *Id.* § 605(b).

responses to the IRFA and must be filed by the deadlines for comments on the first page of this document.

23. *Paperwork Reduction Act*. This document may contain 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 (OMB) to comment on any information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

24. *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).

25. *Additional Information*. For additional information on this proceeding, contact Brendan Murray, Brendan.Murray@fcc.gov of the Media Bureau, Policy Division, at (202) 418-1573.

V. ORDERING CLAUSES

26. Accordingly, **IT IS ORDERED** that, pursuant to the authority contained in sections 1, 4(i), 4(j), 303, 335(a), 632(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 303, 335(a), and 552(b) this Notice of Proposed Rulemaking **IS ADOPTED**.

27. **IT IS FURTHER ORDERED** that the Commission's Office of the Secretary **SHALL SEND** a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Initial Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Federal Communications Commission (Commission) has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rule changes 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 in 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*, we address whether subscriber rebates should be offered by cable operators or direct broadcast satellite (DBS) providers in instances where those operators and providers fail to agree on carriage terms with a broadcaster or programming network and, as a result of the dispute, subscribers lose access to the channels over which the parties are negotiating. At present, the resulting subscriber blackouts lead to subscribers often paying the same monthly subscription fee for a service package that does not include all of the channels that expected to receive when signing up for service. The *Notice* aims to address that customer service shortcoming, as well as address how such a rebate program could be implemented in a manner that does not create undue economic hardship to small and other entities in their efforts at compliance with the rules proposed in the *Notice*, should they be adopted.

B. Legal Basis

3. The proposed action is authorized pursuant to sections 1, 4(i), 4(j), 303, 335(a), and 632(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 303, 335(a), and 552(b).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

4. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[4] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[5] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act (SBA).[6] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field

[1] 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[2] 5 U.S.C. § 603(a).

[3] *Id*.

[4] *Id*. § 603(b)(3).

[5] *Id.* § 601(6).

[6] *Id*. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632(a)(1)). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

of operation; and (3) satisfies any additional criteria established by the SBA.[7] Below, we provide a description of the impacted small entities, as well as an estimate of the number of such small entities, where feasible.

5. *Cable Companies and Systems (Rate Regulation Standard)*. The Commission has developed its own small business size standards 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.[8] Based on industry data, there are about 420 cable companies in the U.S.[9] Of these, only seven have more than 400,000 subscribers.[10] In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.[11] Based on industry data, there are about 4,139 cable systems (headends) in the U.S.[12] Of these, about 639 have more than 15,000 subscribers.[13] Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

6. *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."[14] 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 based on the cable subscriber count established in a 2001 Public Notice.[15] Based on industry data, only six cable system operators have more than 498,000 subscribers.[16] 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.[17] 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.

7. *Direct Broadcast Satellite (DBS) Service*. DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic "dish"

[7] 15 U.S.C. § 632.

[8] 47 CFR § 76.901(d).

[9] S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

[10] 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).

[11] 47 CFR § 76.901(c).

[12] S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

[13] S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q (*last visited May 26, 2022).

[14] 47 U.S.C. § 543(m)(2).

[15] *FCC Announces Updated Subscriber Threshold for the Definition of Small Cable Operator*, Public Notice, DA 23-906 (MB rel. Sept. 27, 2023) (*Subscriber Count PN*).

[16] 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).

[17] 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).

antenna at the subscriber's location. DBS is included in the Wired Telecommunications Carriers industry which comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks.[18] Transmission facilities may be based on a single technology or combination of technologies.[19] 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.[20] By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.[21]

8. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[22] U.S. Census Bureau data for 2017 show that 3,054 firms operated in this industry for the entire year.[23] Of this number, 2,964 firms operated with fewer than 250 employees.[24] Based on this data, the majority of firms in this industry can be considered small under the SBA small business size standard. According to Commission data however, only two entities provide DBS service, DIRECTV and DISH Network, which require a great deal of capital for operation.[25] DIRECTV and DISH Network both exceed the SBA size standard for classification as a small business. Therefore, we must conclude based on internally developed Commission data, in general DBS service is provided only by large firms.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

9. The *Notice* does not specifically propose any new or modified reporting or record keeping requirements for small entities, although comments we receive in response to the *Notice* may potentially lead to new compliance requirements in the future. The *Notice* seeks comment on whether to require cable operators and DBS providers to give subscribers rebates for channels that are not provided due to a breakdown in retransmission consent negotiations. If subscriber rebates are implemented, the Commission will need to determine how small and other entities may comply with any adopted rules, what the method used to offer rebates should be, and how such rebates could be issued to their subscribers.

---

[18] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[19] *Id.*

[20] *See id*. Included in this industry are: broadband Internet service providers (*e.g.*, cable, DSL); local telephone carriers (wired); cable television distribution services; long-distance telephone carriers (wired); closed-circuit television (CCTV) services; VoIP service providers, using own operated wired telecommunications infrastructure; direct-to-home satellite system (DTH) services; telecommunications carriers (wired); satellite television distribution systems; and multichannel multipoint distribution services (MMDS).

[21] *Id*.

[22] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[23] *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.

[24] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[25] *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Eighteenth Report,* Table III.A.5*,* 32 FCC Rcd 568, 595 (Jan. 17, 2017).

10. In assessing the cost of compliance for small entities, at this time the Commission is not in a position to determine whether, if adopted, our proposals and the matters upon which we seek comment will require small entities to hire professionals to comply with the proposed rules in the *Notice,* and cannot quantify the operational and implementation costs of compliance with the potential rule changes discussed herein. To help the Commission more fully evaluate the cost of compliance, in the *Notice* we seek comment on the costs and benefits of these proposals. We expect the comments that we receive from the parties in the proceeding, including cost and benefit analyses, will help the Commission identify and evaluate compliance costs and burdens for small entities.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered

11. 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 such small entities."[26]

12. At this time, the Commission is not aware of any revisions or new requirements that, if adopted, would impose a significant economic impact or burdens on small entities. The *Notice* invites comment on how to accommodate entities for which compliance with the proposed rules would pose an undue hardship.

13. The Commission expects to more fully consider the economic impact and alternatives for small entities following the review of comments and costs and benefits analyses filed in response to the *Notice*. The Commission's evaluation of this information will shape the final alternatives it considers, the final conclusions it reaches, and any final actions it ultimately takes in this proceeding to minimize any significant economic impact that may occur on small entities.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

14. None.

[26] 5 U.S.C. § 603(c)(1)-(4).

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *Customer Rebates for Undelivered Video Programming During Blackouts*, MB Docket No. 24-20, Notice of Proposed Rulemaking.

You should get what you pay for. It's a simple principle. But for too many consumers, this is not happening. When they turn on the television to watch the local news, their favorite show, or the big game, the screen goes dark. Instead of the programming they were sold when they signed up for service, they get a message telling them that their cable or satellite company is in a dispute with a broadcast company and until these two battle it out, they are stuck with a blackout. It's not right. And it's happening too often, for longer periods of time.

Enough. When consumers are saddled with a blackout like this, I think they deserve a refund. They should not be asked to shell out for programming that they were promised but are unable to watch. This rulemaking is about fairness. It asks questions about how our rules can make sure consumers get what they pay for and not have to spend for service they are not getting and screens that go dark.

DISSENTING STATEMENT OF
COMMISSIONER BRENDAN CARR

Re: *Customer Rebates for Undelivered Video Programming During Blackouts*, MB Docket No. 24-40, Notice of Proposed Rulemaking.

At President Biden's urging, the FCC launched a proceeding last month to regulate certain fees (or rates) charged by cable and DBS providers—even though today those providers are far from 800 pound gorillas when it comes to the modern video marketplace. I dissented from that decision because I cannot support the Biden Administration's inexorable march towards rate regulation and because the FCC plainly does not have the legal authority to impose those forms of rate regulation. Indeed, the FCC purported to ground the decision in a statutory provision that Congress passed to address customer service issues, like wait times on calls to service centers, not rate regulation.

Today, the FCC heads right back down this same path—proposing to impose another form of rate regulation using the agency's limited authority to regulate customer service issues. And once again, this action comes at a time when consumer choice has never been greater and traditional MVPDs are bleeding market share to new, unregulated competitors.

I cannot support this effort. Accordingly, I dissent.

STATEMENT OF
COMMISSIONER GEOFFREY STARKS

Re: *Customer Rebates for Undelivered Video Programming During Blackouts*, MB Docket No. 24-40, Notice of Proposed Rulemaking.

It's an unfortunate fact – the last several years have brought dozens of programming blackouts to tens of millions of subscribers. Let's look at some numbers. According to S&P Global, there were 24 retrans blackouts in 2019 – more than there had been in any single year before – lasting 171 days and affecting more than 20 million subscribers.[1] And while the number of blackouts in the last year or two may be lower, in proportion with a lower number of new agreements negotiated, the duration of those blackouts hasn't been: the four resolved blackouts that S&P clocked in 2022 lasted for 152 days.[2]

It's simple – the programming that customers pay for should be available when they turn on the TV. Why is that increasingly not the case? We need to dig deeper, and so I appreciate the Chairwoman and Commissioner Gomez supporting my additions to the item, which now asks for answers to the difficult questions involved here. Why have blackouts increased? How has the availability of streaming services, particularly live linear streaming services that consumers can sign up for and begin receiving immediately, impacted the amount and duration of blackouts? Are programmers with channels that have certain categories of programming – like sports – more likely to have negotiations that result in blackouts? I look forward to the record on these issues. By learning the factors that are contributing to the recent rise in blackouts, we can determine what, if any, steps we can take to limit them from the start.

I was also pleased to learn in meetings with MVPDs that many providers offer some form of rebate or credit for blackouts already, so the item now seeks to learn more about current practices in the marketplace. This information will guide us as we determine how any potential rebates should be structured.

Thanks also to the Commission staff who worked on this important item. It has my support.

[1] *See* Atif Zubair, *History of Retrans Deals and Signal Blackouts*, 1993-2014 YTD, Market Intelligence, S&P Capital IQ Pro (Feb. 25, 2014); Atif Zubair, *Retrans Roundup 2019*, Market Intelligence, S&P Capital IQ Pro (Jan. 21, 2020). For clarity, S&P Global refers to "one blackout" as a dispute between one broadcaster and one distributor; it does not refer to the number of stations at issue. Other sources may report on a per-station basis, *see* Mike Farrell, "Cable Retrans Blackouts Declined Sharply in 2021, But 2022 Could See An Uptick in Disputes," Multichannel News (Jan. 7, 2022), https://www.nexttv.com/news/cable-retrans-blackouts-declined-sharply-in-2021-but-2022-could-see-an-uptick-in-disputes.

[2] Peter Leitzinger, *Retrans Roundup 2022*, Market Intelligence, S&P Capital IQ Pro (Feb. 7, 2023).

DISSENTING STATEMENT OF COMMISSIONER NATHAN SIMINGTON

Re: *Customer Rebates for Undelivered Video Programming During Blackouts*, MB Docket No. 24-40, Notice of Proposed Rulemaking.

I dissent from this item because it, *at best,* will create zero consumer welfare (and, likely, will harm consumer welfare) while simultaneously misreading the Act. Let us treat the misreading first.

For its authority, the item relies on Sections 335(a) and 632 of the Act. Section 335(a) establishes Commission authority to create certain video programming requirements for DBS operators, and Section 632 establishes Commission authority to create customer service requirements for cable providers. Section 335(a), read in context, applies principally (though not exclusively) to provision of political broadcasting, while Section 632, read in context, applies principally to practices related to customer-facing functions of installation, maintenance, and service of cable facilities.

While the Act has play in the joints as a feature, these Sections of the Act have *nothing* to do with blackout rebates and cannot credibly be read as justifying the step the Commission takes today. It is true, and a well-established principle of law, that authorizing statutes for administrative agencies are intended to be read with some flexibility—that is the nature of Congressional delegation of certain technical rulemaking. But authorizing statutes are not enchanted bags of holding, capable of carrying every wild ambition or policy frolic. Rebates for channel blackouts are about as related to customer service requirements or political programming obligations, such as those denominated in the Act, as is what employees at cable and DBS operators wear. Is it too late to get in a casual Fridays edit?

So, okay: the tentative conclusions regarding authority contained in the NPRM are not supported by our statute, which is "illegal" with more words. But is it nevertheless a good *idea*? That is, *had* the Commission authority to undertake a rebates mandate, *should* it do so? Also no.

It will be easy to cast minority dissents on this item as representing some kind of retrograde, pro-business, anti-consumer stance straight out of the bloodless capitalist playbook. Indeed, I look forward to reading the popular tech press on just this issue. But here is my pitch to them: *this item costs consumers more and doesn't help anyone.* Had I *actually believed* that this item would *save* consumers even one thin dime, or make even one consumer whole who would not otherwise be made whole, *and* the Commission had discovered a proper and legal basis for authority, I would have voted *for* it. But that is not, at all, what is going to happen.

This item proposes to do a couple of things: it proposes to require cable and DBS providers exclusively to shoulder the financial burden of blackouts, and it asks after a methodology for calculating how blackouts will be compensated. First things first: does the requirement to rebate cable and DBS customers for a broadcast programming blackout save consumers money?

Well, of course, right? No. Why? Because broadcasters can use this new regulatory reality as a mote of leverage in retransmission consent negotiations with MVPDs. If you and I are negotiating whether you will carry my popular product in your high-traffic store, and we cannot agree on a wholesale price, consumers might raise a hue and cry that affects us both until we resolve our dispute. And we, of course, have a natural incentive to resolve our dispute: I want my product carried in your store, and you want my product on your shelves. But if I know that there will be a new rebate cost to you for every day my product is missing from your shelves that you *cannot* shift to me—well, why would I not hold out for just a bit more? You're the one who has to pay back your customers for the days my item went missing. (Yes, yes, I am losing some brand prestige and there happens to be a complicating cost for some other lost

revenues, but they are not as significant to me as extracting this higher price.) How much of the anticipated rebate can I soak up through my higher price, relative to our previously-negotiated, lower price? Well, what's preventing me from taking it all?

Let us say, further, that I distribute my product to multiple stores. Some of these stores actually *already* compensate consumers for the days in which my product goes missing as we negotiate over our wholesale pricing, in a manner that kept customers coming in the door. Oops! There goes an element of consumer choice. Now *all* stores *have* to provide rebates, and on *exactly* the same terms. But is that a good thing?

Well, what are the terms? The item has deferred suggesting a particular approach, but let us suppose that the final order will arrive at a methodology that calculates and distributes blackout rebates by subscriber count and length of blackout. That is: check the per subscriber monthly or annual cost a broadcaster charges an MVPD to carry its programming (to the fraction of MVPD system subscribers to which that particular programming is delivered), multiply it by the quantum of time of the blackout, and then distribute that amount, *pro rata*, to all subscribers affected by the blackout. I mean, is there another fair and administrable way to accomplish this that does not just manufacture numbers?

Tabling, for the moment, whether this item will force parties to violate their own nondisclosure agreements around retransmission consent pricing, let's take a worked example. A broadcaster and MVPD do not reach accord on a retransmission consent agreement, and the MVPD is forced to black out broadcast programming (during a critical moment in some sports season, no less) for two weeks. Let us assume it is a one station blackout in one market. Let us further assume, strictly for the sake of argument, that the station charged to the MVPD before the blackout, or will charge after, $5 per subscriber per month for retransmission of its signal to that particular market. (Note that this is actually a pretty high multiple of the average, at least according to the most recent RAY BAUM cable pricing report, but we are keeping the math simple.)

So now cable subscribers in this market are entitled to a rebate for a couple of weeks—or about $2.50—on next month's bill (or whenever). But does this rebate make anyone whole? Well, let us see. Suppose that the most desirable programming on the blacked out station were the live sports content. In fact, with the exception of local news, let us suppose that were the *only* content not available to the consumer in that market on other platforms. Well, the distribution of how strongly a consumer in that market desires that sports content is pretty bimodal, right? Some *really* wanted to see the live games they missed. Some couldn't have cared less.

Is the consumer who may not have even *noticed* the blackout made whole, or do they get a couple of bucks' worth of credit on their next bill that they didn't anticipate, don't understand, and may call about? And does the sports fan who was *deeply impacted* and *personally offended* by the blackout feel satisfied with a rebate that gives him change back from a Costco hot dog? (And, recall, this is *more* than consumers are likely to get for a time increment like this once this scheme is implemented.) And yet *this will be the new normal* as it relates to blackout rebates: a confusing, yet fairly distributed, pittance that costs money to administer, creates consumer confusion, and makes literally not one consumer psychologically whole—at the expense, to be clear, of marginally *higher* MVPD costs driven by marginally *higher* retransmission consent rates that I have every reason to expect will swamp whatever consumer welfare could have even *arguably* been contained in this item. And all of this at a time where MVPDs, shedding subscribers in video but growing in commercial relevance as internet service providers, are asking themselves whether they want to remain in the video distribution business at all.

Let me be clear: there are no innocents in the retransmission consent negotiation. Broadcasters and MVPDs alike are sophisticated actors negotiating over creation and distribution of valuable IP for

which each needs (never mind deserves) to be compensated. Public-spiritedness doesn't power antennas or bury cable. It is no sin to get paid, broadcasters produce content worth the price, and blackouts, infuriating though they are, are a feature of price discovery. But this item proposes to place a thumb on the scale with zero attendant consumer benefit on the other side of the ledger.

The Commission lacks the authority to do what this item proposes, but we shouldn't do it even if we could. I dissent.

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

In the Matter of	)	
	)	
Cumulus Licensing LLC	)	File No.: EB-IHD-20-00031223
	)	NAL/Acct. No.: 202132080015
Former Licensee of Stations	)	FRN: 0002834810
WEGC(FM), Sasser, GA	)	
Facility ID Number: 40463;	)	
WJAD(FM), Leesburg, GA	)	
Facility ID Number: 57782;	)	
WKAK(FM), Albany, GA	)	
Facility ID Number: 831;	)	
WQVE(FM), Albany, GA	)	
Facility ID Number: 54704; and	)	
WALG(AM), Albany, GA	)	
Facility ID Number: 54703		

FORFEITURE ORDER

Adopted: January 12, 2024 **Released: January 16, 2024**

By the Commission:

I. INTRODUCTION

1. The Federal Communication Commission's (FCC or Commission) equal employment opportunity (EEO) rules prohibit broadcasters from discriminating in hiring on the basis of race, color, religion, national origin or gender, and require most broadcasters to conduct and document broad recruitment efforts. On February 25, 2022, the Commission issued a *Notice of Apparent Liability for Forfeiture* (*NAL*) for $32,000 against Cumulus Licensing LLC (Cumulus), former licensee of WEGC(FM), Sasser, Georgia; WJAD(FM), Leesburg, Georgia; WKAK(FM), Albany, Georgia; WQVE(FM), Albany, Georgia; and WALG(AM), Albany, Georgia (collectively, the Stations), for apparently violating the Commission's EEO rules by failing to (i) upload its annual EEO public file report (Annual Report) in the Stations' online public inspection files; (ii) upload its Annual Report to the Stations' websites; and (iii) analyze its EEO program.[1] Cumulus filed a Response to the *NAL* (NAL Response) on March 28, 2022, in which it urged the Commission to "correct the record" in this proceeding and reconsider the proposed forfeiture.[2] For the reasons discussed below, we assess a forfeiture of $26,000.

II. BACKGROUND

2. *Legal Framework*. Section 73.2080(c)(6) of the Commission's rules requires a licensee to place its station's Annual Report in its public inspection file and on its website, if it has one.[3] A station's Annual Report includes critical information concerning its recruitment activity, including: (i) a list of full-time vacancies over the prior year; (ii) the recruitment sources utilized to fill full-time

[1] *Cumulus Licensing LLC*, Notice of Apparent Liability for Forfeiture, 37 FCC Rcd 3461 (2022) (*NAL*).

[2] Cumulus Licensing LLC, Response to Notice of Apparent Liability for Forfeiture (Mar. 28, 2022) (on file in EB-IHD-20-00031223) (NAL Response).

[3] 47 CFR § 73.2080(c)(6).

vacancies; (iii) the recruitment source that referred the hiree for each full-time vacancy; (iv) data reflecting the total number of persons interviewed for full-time vacancies and the total number of interviewees referred by each recruitment source; and (v) a list and brief description of its recruitment initiatives.[4] Section 73.2080(c)(3) of the Commission's rules requires a licensee to analyze its EEO recruitment program for its employment unit on an ongoing basis to ensure that it is effective in achieving broad outreach to potential applicants, and address any problems found as a result of its analysis.[5] In addition, section 73.3526(e)(7) of the Commission's rules requires that a licensee place required information, including EEO files such as its Annual Report, in its station's public inspection file.[6]

3. *Factual Background*. Cumulus is an indirect subsidiary of Cumulus Media, Inc., which, on its website, reports that it owns and operates 403 radio stations across 85 media markets,[7] as well as Westwood One, the largest audio network in America.[8] In the Stations' most recent license renewal applications (Renewal Applications), Cumulus stated that it had not uploaded its EEO files to the Stations' online public inspection files in a timely manner.[9] In response to a Letter of Inquiry issued by the FCC Enforcement Bureau's Investigations and Hearings Division,[10] Cumulus acknowledged that the Stations' 2018 Annual Report, covering the December 1, 2017 to November 30, 2018 reporting period, had not been added to the Stations' public inspection files and websites until September 11, 2019[11]—

[4] *Id*.

[5] *Id.* § 73.2080(c)(3).

[6] *Id.* § 73.3526(e)(7).

[7] *See* Cumulus Media, *About Us*, https://www.cumulusmedia.com (last visited Sept. 1, 2023).

[8] *Id.*

[9] 47 CFR § 73.3526. *See* Form 303-S Applications for Renewal of Broadcast Station License, WEGC(FM), Sasser, GA (Facility ID Number 40463), Renewal File No. 0000098498 (filed Aug. 25, 2020), https://enterpriseefiling.fcc.gov/dataentry/public/tv/draftCopy.html?displayType=html&appKey=25076ff37414384b0174271ea2051252&id=25076ff37414384b0174271ea2051252&goBack=N; WJAD(FM), Leesburg, GA (Facility ID Number 57782), Renewal File No. 0000098499 (filed Aug. 25, 2020), https://enterpriseefiling.fcc.gov/dataentry/public/tv/draftCopy.html?displayType=html&appKey=25076ff37414384b017427295ecb1271&id=25076ff37414384b017427295ecb1271&goBack=N); WKAK(FM), Albany, GA (Facility ID Number 831), Renewal File No. 0000098501(filed Aug. 25, 2020), https://enterpriseefiling.fcc.gov/dataentry/public/tv/draftCopy.html?displayType=html&appKey=25076ff37414384b0174272d723c128e&id=25076ff37414384b0174272d723c128e&goBack=N; WQVE(FM), Albany, GA (Facility ID Number 54704), Renewal File No. 0000098500 (filed Aug. 25, 2020), https://enterpriseefiling.fcc.gov/dataentry/public/tv/draftCopy.html?displayType=html&appKey=25076ff37414384b01742730ae1e12ad&id=25076ff37414384b01742730ae1e12ad&goBack=N; WALG(AM), Albany, GA (Facility ID Number 54703), Renewal File No. 0000098497 (filed Aug. 25, 2020), https://enterpriseefiling.fcc.gov/dataentry/public/tv/draftCopy.html?displayType=html&appKey=25076ff37414384b0174271781c61234&id=25076ff37414384b0174271781c61234&goBack=N.

[10] Letter from Christopher J. Sova, Deputy Chief, Investigations and Hearings Division, FCC Enforcement Bureau, to Richard S. Denning, Executive Vice President, Secretary and General Counsel, Cumulus Licensing LLC (July 23, 2020) (on file in EB-IHD-20-00031223) (LOI).

[11] Letter from Richard S. Denning, Executive Vice President, Secretary and General Counsel, Cumulus Licensing LLC and Mark Lipp, Esq., Fletcher, Heald & Hildreth, counsel to Cumulus Licensing LLC, to EEO Staff, Investigations and Hearings Division, FCC Enforcement Bureau, at Response to Questions 3, 5 (Aug. 20, 2020) (on file in EB-IHD-20-00031223) (LOI Response). Every eight years, the filing deadline for Georgia radio station license renewal applications falls on December 1, and those stations must upload their Annual Report on or before December 1 on an annual basis. *See* 47 CFR §§ 73.3539, 73.2080(c)(6). In 2018, however, December 1 fell on a Saturday, and the 2018 Annual Report was therefore due on the next business day, i.e., December 3, 2018.

more than nine months after the December 3, 2018 deadline. Cumulus explained that this failure was due to a "routine administrative change" and the loss of a former employee.[12]

4. On February 25, 2022, the Commission issued the *NAL*[13] against Cumulus for its apparent willful and repeated violation of sections 73.2080(c)(6), 73.2080(c)(3), and 73.3526(e)(7) of the Commission's rules.[14] Specifically, the Commission found that Cumulus apparently violated section 73.2080(c)(6) by failing to upload the Stations' 2018 Annual Report to the Stations' online public inspection files and websites in a timely manner.[15] The Commission further found that these failures reveal a continuing lack of EEO assessment, in apparent violation of section 73.2080(c)(3).[16] The Commission also found that by failing to upload its 2018 Annual Report into its public inspection files in a timely manner, Cumulus apparently violated section 73.3526(e)(7) of the Commission's rules.[17] The Commission proposed a total forfeiture of $32,000 for Cumulus's apparent violations of the EEO rules in this case.[18]

5. On March 28, 2022, Cumulus filed a Response to the *NAL*.[19] Cumulus makes a number of arguments as to why the Commission should correct the record in this proceeding and reconsider the proposed forfeiture in the *NAL*.[20] Specifically, Cumulus argues that (i) there is no basis for assuming that Cumulus could not have adequately analyzed the Stations' EEO program;[21] (ii) the proposed forfeiture is unprecedented for one late upload;[22] (iii) the upward adjustment based on past violations is unjust;[23] and (iv) increasing the forfeiture amount based on pre-reorganization conduct is inconsistent with federal bankruptcy law and Commission precedent.[24]

---

[12] LOI Response at 4.

[13] On November 24, 2020, the Commission and Cumulus executed a tolling agreement which, among other things, preserved the Commission's legal rights to issue one or more NALs and initiate collection proceedings, as applicable, with respect to the potential violations, while allowing for the grant of the Renewal Applications and for the consummation of the assignment of the licenses for the Stations in connection with Cumulus's sale of the Stations to a third party. *See* Agreement Regarding Assignment Applications executed by Jeffrey J. Gee, Chief, Investigations and Hearings Division, FCC Enforcement Bureau, and Richard S. Denning, Executive Vice President, Secretary and General Counsel, Cumulus Licensing LLC (Nov. 24, 2020) (on file in EB-IHD-20-00031223). Cumulus sold the Stations to First Media Services, LLC on December 15, 2020, pursuant to assignment applications BAL-20200429AAB, and BALH-20200429AAC-F; Consummation Notice of Cumulus Licensing LLC, File Nos. BAL-20200429AAB et al. (filed Dec. 17, 2020). Pursuant to the tolling agreement, Cumulus agreed, among other things, to waive any right it might otherwise have to assert that it is no longer a holder of the Commission-issued licenses for the Stations.

[14] *NAL*, *supra* note 1, at *1-6, paras. 1-20. The *NAL* includes a more complete discussion of the facts and history of this case and is incorporated herein by reference. *See id*.

[15] *Id.* at *2, paras. 5-6.

[16] *Id.* at *3, paras. 8-9.

[17] *Id.* at *2, para. 7.

[18] *Id.* at *3-5, paras. 10-18.

[19] NAL Response, *supra* note 2.

[20] *See id.* at 1-10, paras. 1-15.

[21] *Id.* at 8-9, para. 13.

[22] *Id.* at 1-4, paras. 1-3.

[23] *Id.* at 4-6, paras. 4-8.

[24] *Id.* at 6-8, paras. 9-12.

6. On March 28, 2022, the National Association of Broadcasters (NAB) filed "Comments" in response to the *NAL*,[25] an enforcement matter that concerns Cumulus's compliance with our EEO rules. NAB is not a party to this adjudicatory proceeding, nor is it named or addressed in the *NAL*. NAB offers no legal or procedural basis for submitting its nonparty filing.[26] The NAB Comments largely duplicate Cumulus's arguments in its NAL Response, which we already address in this Forfeiture Order.[27] More broadly, NAB urges the Commission to apply a more balanced and reasonable approach to proposed forfeitures going forward,[28] claims that are more appropriately raised in a petition for declaratory ruling or other proceeding of general applicability, rather than in an individual enforcement matter such as this.[29] Indeed, as courts have held, the fact that a decision would apply to similarly situated nonparties does not provide a basis to challenge that decision formally.[30] Accordingly, we dismiss NAB's Comments. On alternative and independent grounds, and for the limited purpose of helping to inform our discussion of Cumulus's violation of our EEO rules, we consider and reject the arguments raised in the NAB Comments. In doing so, we do not bestow, or intend to bestow, party status on NAB.[31]

[25] The National Association of Broadcasters, Comments of The National Association of Broadcasters (Mar. 28, 2022) (on file in EB-IHD-20-00031223) (NAB Comments).

[26] NAB simply states in a footnote that it "is the nonprofit trade association that advocates on behalf of free local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts." *Id.*

[27] NAB argues that the *NAL* improperly "elevates ministerial compliance over substance, unfairly penalizing Cumulus for understandable and inevitable human error that ultimately caused no harm." *Id*. at 2. NAB urges the FCC to eliminate the *NAL*'s proposed forfeiture, alleging that the *NAL* turns on a purely ministerial error – the failure to upload the reports in a timely manner – that generated no public complaint and created no consumer harm but was an unintentional oversight that led to a temporary failure to comply with an administrative requirement that Cumulus discovered and promptly corrected. *Id*. at 2-5. NAB asks the FCC revisit its conclusion that prior Cumulus rule violations warrant upward adjustment of the base forfeiture amount here, noting that the majority of the prior violations cited in the *NAL* predate Cumulus's 2018 transfer of control, the oldest of the prior violations occurred in 2003, and several cited prior violations are more than ten years old. *Id*. at 2, 5-6. NAB also argues that the FCC unlawfully equates failure to upload an annual EEO public file report with failure to analyze a licensee's EEO program, alleging there was no public complaint regarding the failure to upload the annual report, and the FCC presents no factual or logical basis for its conclusion that Cumulus's administrative failure to upload its completed annual EEO report necessarily means that Cumulus failed to analyze its EEO programs. *Id*. at 2-3, 6-7. According to NAB, the FCC cannot lawfully assess penalties based on what it claims is unsubstantiated conjecture, especially when faced with evidence to the contrary. *Id*. at 2-3. NAB urges the FCC to treat Cumulus's failure to upload a completed report, which it claims is a simple administrative error, as a minor violation, subject to admonishment, or exercise its discretion to reduce the forfeiture amount rather than impose upward adjustments. *Id*. at 7.

[28] *Id*. at 3.

[29] *See, e.g.*, *T-Mobile USA, Inc., A Subsidiary of T-Mobile US, Inc.,* Forfeiture Order, 29 FCC Rcd 10752, 10755, 10762-63 paras. 9, 24 (2014) (dismissing third-party comments filed in response to an NAL which presented questions concerning the Commission's methodology for calculating forfeitures in circumstances not presented in the NAL).

[30] *See, e.g.*, *The Conference Group, LLC v. FCC,* 720 F.3d 957, 958-59 (D.C. Cir. 2013) ("Because the decision was an adjudication and the [third-party challenger] was not a party, it lacks standing to challenge the merits of that adjudication. Although the Commission stated its decision would apply to 'similarly situated' providers, that is true of all precedents. And this court has held that the mere fact that an adjudication creates a precedent that could harm a nonparty does not create the injury-in-fact required for Article III standing.").

[31] *See* 47 CFR § 1.1202(d)(3) (explaining that unless otherwise ordered by the Commission, only the subject of a notice of apparent liability is considered a party).

III. DISCUSSION

7. The Commission proposed a forfeiture in this case in accordance with section 503(b) of the Communications Act of 1934, as amended (Act),[32] section 1.80 of the Commission's rules,[33] and the Commission's *Forfeiture Policy Statement*.[34] When we assess forfeitures, section 503(b)(2)(E) of the Act requires that we take into account the "nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."[35] We have fully considered Cumulus's NAL Response, which includes a variety of factual and legal arguments, but we find none of them persuasive.

A. Cumulus Violated the EEO Rules

8. Cumulus does not contest the Commission's conclusion that it apparently violated sections 73.2080(c)(6) and 73.3526(e)(7) of the Commission's rules, as described in the *NAL*.[36] Thus, we need not address these conclusions made in the *NAL* and affirm that Cumulus violated sections 73.2080(c)(6) and 73.3526(e)(7) of the Commission's rules.[37]

9. The Commission properly found that Cumulus apparently violated section 73.2080(c)(3) of the Commission's rules by failing to analyze the Stations' EEO program.[38] Cumulus contends that there is no basis for the *NAL* holding that Cumulus's Albany market employees could not have evaluated the Stations' EEO program because they failed to upload the Annual Report on time.[39] Cumulus argues that those employees properly analyzed the Stations' EEO program by preparing the Annual Report on time, and maintains that uploading the Annual Report to the public inspection file does not involve any such analysis.[40] Accordingly, Cumulus contends that the violation does not apply here and requests elimination of the $6,000 forfeiture for its failure to evaluate its EEO program.[41]

10. We affirm the *NAL*'s finding that Cumulus apparently violated section 73.2080(c)(3) of the Commission's rules.[42] Section 73.2080(c)(3) of the Commission's rules requires a licensee analyze its station's EEO recruitment program on an ongoing basis to ensure that it is effective in achieving broad outreach to potential applicants, and to address any problems found as a result of such analysis.[43] In its implementing order, the Commission held that the public has an important role in monitoring broadcaster compliance with our EEO rule and that the Annual Report is designed to facilitate meaningful public input.[44] The Commission also held that it would sanction licensees for their "failure to analyze routinely

---

[32] 47 U.S.C. § 503(b).

[33] 47 CFR § 1.80.

[34] *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

[35] 47 U.S.C. § 503(b)(2)(E).

[36] *See NAL*, *supra* note 1, at *2, paras. 5-7.

[37] *See id*.

[38] *See id.*, *supra* note 1, at *3, paras. 8-9.

[39] NAL Response, *supra* note 2, at 8-9, para. 13.

[40] *Id*. (citing Declaration of April Bailey, Exh. 6 of LOI Response) (Bailey Decl.).

[41] *Id*.

[42] *See NAL*, *supra* note 1, at *3, paras. 8-9.

[43] 47 CFR § 73.2080(c)(3).

[44] *Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies*, MM Docket No. 98-204, Second Report and Order and Third Notice of Proposed Rule Making, 17 FCC Rcd 24018, 24062, para. 140 (2002) (*Broadcast and Cable EEO Rules and Policies*).

the adequacy of the various program elements in achieving broad outreach to all segments of the community."[45]

11. Cumulus's admitted failure to upload the Stations' Annual Report to its online public inspection files and websites in a timely manner impacted the public's essential right to participate in monitoring and providing input on Cumulus's EEO program at the Stations.[46] Merely compiling an Annual Report without also posting it to publicly accessible locations may, in certain circumstances (such as those present here), prevent the Stations from fulfilling their obligation to analyze their recruitment program "on an ongoing basis" in response to public input. The Annual Report constitutes the only public record summarizing a station's recruitment program under FCC EEO rules for that 12-month period and its label, "annual EEO public file report," signifies an important purpose is review by both the Commission and the public. Public input, initiated on the basis of an Annual Report, can be instrumental in the evaluation of a licensee's effectiveness in achieving broad outreach to potential applicants and ensuring that any problems can be addressed on a timely basis.[47] As a result, Cumulus's characterization of the requirement to upload an Annual Report to the station online public inspection file and website as a mere administrative task undermines the Commission's goal of ensuring meaningful public input via public access to the Annual Report.[48]

12. Further, compiling the Annual Report alone, without also uploading it to its intended destination in a timely manner, here more than nine months late, may, in certain circumstances, constitute (and here does constitute) a violation of the requirements to analyze the Stations' EEO program. The length of time during which Cumulus failed to upload its Annual Report is persuasive evidence that Cumulus did not "routinely analyze the adequacy of their various EEO program elements in achieving broad outreach to all segments of the community" and address any problems found as a result of such analysis.[49] Even assuming Cumulus may have engaged in some self-evaluation,[50] we affirm the *NAL*'s

[45] *Id*. at 24067, para. 156.

[46] *NAL*, *supra* note 1, at *3, para. 8.

[47] For example, without details of a station's employment outreach, qualifying organizations in the community are unable to review a station's outreach to potential applicants and request notification of future full-time vacancies. 47 CFR § 73.2080(c)(2). As noted in the implementing order, this notification requirement provides a "safety valve" to ensure that no segment of the community is inadvertently omitted from recruitment efforts. *See Broadcast and Cable EEO Rules and Policies*, *supra* note 44, at 24053, para. 106.

[48] NAB alleges that the stations did not receive any public complaint about the missing Annual Report, a fact not present in the record, and therefore there is "no reason to believe there would have been any public input …and thus no reason to impute to Cumulus a failure to analyze based on lack of public input" and that "the Commission does not point to a single instance in this or any other circumstance where the public has viewed a station's annual EEO reports for this purpose." *NAB Comments*, *supra* note 19, at 6. Moreover, NAB contends that the "NAL conflates the substantive analysis of an EEO program with ministerial compliance and then accepts this conflation as conclusive." *Id* at 7. As an initial matter, we give no weight to NAB's allegation about the lack of complaints considering that Cumulus itself does not claim that it did not receive complaints about the missing Annual Report. In any event, the FCC is not required to rely on a complaint from the public or instances of public viewing behavior to find a licensee failed to comply with one of its obligations. Further, it is unknowable whether, if the Annual Report had been posted to the public file and website in a timely fashion as required, it would not have generated comment from the public during the timeframe it was missing. At its heart, Cumulus's failure to upload the Annual Report denied the public its opportunity to weigh in, either positively or constructively, regarding a licensee's employment outreach. This lack of opportunity for the public to participate directly impacts the licensee's ability to evaluate its EEO program as required.

[49] *See Broadcast and Cable EEO Rules and Policies*, *supra* note 44, at 24067, para. 156; *see also* 47 CFR § 73.2080(c) (specific EEO program requirements).

[50] *See* NAL Response, *supra* note 2, at 8-9, para. 13; Bailey Decl; Statement of Ron Giovanniello, Market Manager of Harrisburg, PA stations (describing the process for preparing annual EEO report, allegedly typical of various Cumulus markets).

finding that the record supports a finding that Cumulus failed to analyze its Stations' program "on an ongoing basis" in response to public input as required under section 73.2080(c)(3). Here the record shows that for more than nine months the licensee failed to even realize that it had not uploaded its 2018 Annual Report to the Stations' public inspection files and websites, and thereby deprived the public of any opportunity to identify areas of concern that could be considered.[51] Consequently, given the specific circumstances of this case, we reject Cumulus's argument that any self-evaluation it did in fact undertake was adequate and satisfied the self-assessment rule. Thus, we affirm that Cumulus violated section 73.2080(c)(3) of the Commission's rules.[52]

B. The FCC Properly Determined the Original Basis for the Proposed Forfeiture

13. The *NAL* found Cumulus apparently liable for the following forfeitures: (i) $26,000 for Cumulus's apparent violations of section 73.2080(c)(6) for failing to upload and maintain the Stations' 2018 Annual Reports in their public inspection files and on the Stations' websites for over nine months,[53] plus (ii) $6,000 for Cumulus's apparent failure to analyze its stations' EEO program adequately in apparent violation of section 73.2080(c)(3) of the Commission's rules.[54] The $26,000 and $6,000 amounts each reflect an upward adjustment of the base forfeitures of $10,000 and $2,000, respectively, considering the circumstances of this case, including Cumulus's history of prior offenses.[55] The proposed base forfeiture amounts and upward adjustments are consistent with our rules and precedent. The Commission declined to issue a separate forfeiture for Cumulus's apparent violation of section 73.3526(e)(7) of the Commission's rules in this case.[56] In applying the applicable statutory factors, we also considered whether there may be any basis for a downward adjustment of the proposed forfeiture, and we found none.[57]

1. Cumulus Failed to Provide a Valid Justification for Reducing the Proposed Forfeiture

14. Cumulus contends that the proposed $32,000 forfeiture for just one late upload of an EEO report is unprecedented since there are no other comparable fines for such a violation.[58] Cumulus states that it is not able to find any instances during the last renewal cycle where the Commission imposed a forfeiture for uploading just one EEO Public File Report to its online files and websites late.[59] Cumulus argues that its research indicates that monetary forfeitures were imposed for failing to upload multiple documents timely rather than just one, and those forfeitures were substantially lower than the forfeiture proposed here.[60] However, review of our EEO case law is not limited to the previous renewal cycle, and Cumulus cites no authority for this proposition. To the extent this case includes a larger forfeiture than prior cases, it is fully justified given the facts and circumstances of this case, considering Cumulus's prior

[51] *NAL*, *supra* note 1, at *3, para. 9.

[52] *See id.* at *3, paras. 8-9.

[53] *See id.* at *4-5, paras. 11-15.

[54] *See id.* at *5, para. 16.

[55] *See id.* at *4-5, paras. 11-16.

[56] *See id.* at *5, para. 17 (further noting that the Commission has previously issued separate forfeitures for violations of section 73.3526(e) and reserving the right to do so when considering future such violations).

[57] *See id.* at *5, para. 18.

[58] NAL Response, *supra* note 2, at 1-4, paras. 1-3, and at 9, para. 14.

[59] *Id.* at 2, para. 2.

[60] *Id.* at 2, para. 2. Notably, Cumulus cites EEO cases dating back to 1997 in support of its argument. *See id*. at n.3.

history of rule violations, including violations of the EEO rules.[61] Thus, contrary to Cumulus's allegation otherwise, this case is consistent with Commission precedent.[62]

15. We disagree with Cumulus that a substantially lesser forfeiture or an admonishment would be more appropriate.[63] Cumulus notes that the FCC recognizes that certain new online public file uploading requirements, which began March 1, 2018, for most stations, were often challenging for licensees, and, further, COVID-19 caused disruptions to station operations, resulting in alternative non-forfeiture penalties in other situations.[64] Here, Cumulus claims it was the first time that an EEO report was to be uploaded into the online public files and websites for this market under the new rules, the person responsible for uploading this report is a former employee, and the report, although uploaded late, was timely prepared.[65] According to Cumulus, based on past enforcement cases, and the inadvertent failure of a former employee to upload one EEO public file report late, it would be more appropriate to issue an admonishment or lower forfeiture here, consistent with the treatment of other FCC licensees.[66] We disagree. We previously rejected Cumulus's arguments that the forfeiture penalty should be adjusted downward as Cumulus's parent emerged from bankruptcy in 2018 and because the COVID-19 pandemic negatively impacted its 2020 advertising revenue.[67] Cumulus failed to submit any evidence in response to the NAL to alter our prior finding. Moreover, Cumulus was required to upload the Stations' 2018 Annual Report into the Stations' public inspection files and on their websites by December 3, 2018[68] — over nine months after the new uploading requirements became effective on March 1, 2018.[69] Cumulus had enough time to learn about and follow the new rules. In 2014, the Commission began alerting broadcast licensees to the proposed new online public inspection file requirements for radio licensees by initiating a rulemaking[70] and issued new rules in 2016.[71] Further, there was at least a two-year plus transition

[61] *See NAL*, *supra* note 1, at *1-6, paras. 3-19.

[62] Indeed, the imposition of meaningful forfeitures for failing to file FCC forms has long been recognized under Commission precedent. *See, e.g.*, *Standard Communications Corp.,* Memorandum Opinion and Order, 1 FCC Rcd 358, para. 4 (1986) (finding that the violator's "contention that their omission of required forms 'constitutes no more than a technical or a clerical error' implies the type of indifference to Commission Rules that justifies the imposition of forfeitures….Employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations….Failures to file required Commission documents are considered serious violations which often result in substantial forfeitures") (citations omitted). Moreover, Cumulus has a prior history of violating the Commission's EEO rules. *See Cumulus Licensing LLC*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 18433 (MB 2008) (forfeiture paid) (finding that Cumulus violated the EEO rules by failing to perform an EEO recruitment initiative, analyze its EEO program, maintain EEO recruitment records, report EEO recruitment sources, report interviewee data, and maintain required EEO information in its stations' public inspection files); *Cumulus Licensing LLC*, Notice of Apparent Liability for Forfeiture, 32 FCC Rcd 10285 (MB 2017) (forfeiture paid) (finding that Cumulus has a history of violations relating to the EEO rules).

[63] NAL Response, *supra* note 2, at 3-4, para. 3.

[64] *Id.* at 2-4, paras. 2-3.

[65] *Id.* at 3, para. 3.

[66] *Id.* at 3-4, para. 3.

[67] *See NAL*, *supra* note 1, at *5, para. 18.

[68] *See id.* at *2, para. 5.

[69] *See 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, 558-59, para. 83 (2016) (*2016 Report and Order*) (determining, among other things, that online public file requirements would be implemented on a rolling basis for AM and FM broadcast radio licensees with a final deadline of March 1, 2018).

[70] *See Expansion of Online Public File Obligations To Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees*, Notice of Proposed Rulemaking, 29 FCC Rcd 15943 (2014).

[71] *See 2016 Report and Order* at 567, para. 104.

period—from the adoption of the rules in January 2016 to the aforementioned March 2018 deadline—before commercial broadcast radio stations outside the top 50 markets were required to upload new public file materials.[72] Finally, contrary to Cumulus's statement, the responsibility to place the Annual Report on a station's website was not a new one in 2018. Indeed, the station website posting obligation has been in place since the adoption of the current EEO regulatory program in 2003.[73]

16. Additionally, as we already stated, where lapses occur in maintaining the public file, neither the negligent acts or omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation.[74] Although Cumulus contends that the employee responsible for uploading the Annual Report is no longer employed with it, Commission precedent has held a licensee liable for the actions of a terminated employee where the violative conduct arose during the time of employment.[75] Thus, Cumulus has provided no justification for a lower forfeiture or admonishment on these bases.

2. Although We Affirm the Violations in the *NAL*, We Rescind the Forfeiture Amount for One Violation

17. We recognize, however, that we have not previously imposed a forfeiture for failing to analyze a station's EEO program in violation of section 73.2080(c)(3) based solely on the failure to post or upload an annual EEO public file report in a timely manner. Although nothing in our case law suggests that such a failure does not also amount to a violation of our self-assessment rule, Cumulus may not have had the requisite notice of the imposition of a separate forfeiture associated with its violation of section 73.2080(c)(3) in this particular instance. Accordingly, we rescind the forfeiture amount of $6,000 for the violation of section 73.2080(c)(3). We reiterate that making an EEO report publicly available is an essential part of the self-assessment required of broadcast stations under section 73.2080(c)(3). Going forward, Cumulus and all other licensees are on notice that the Commission in the future will consider the timeliness of posting an Annual Report to the public inspection file, including specifically the length of time constituting a failure to timely post such a report, as one factor among the totality of circumstances indicating whether a Station has met its obligations under our section 73.2080(c)(3) EEO self-assessment rule.

3. The FCC Appropriately Considered Past Violations

18. We properly considered Cumulus's prior history of Commission rule violations—particularly, Cumulus's prior violations of the EEO rules—when setting the penalty in this case. Cumulus claims the upward adjustment from $10,000 to $26,0000 based on past EEO violations in 2008 and 2017, and a variety of unrelated past violations dating back to 2003 is unjust,[76] as the upward

---

[72] *Id*. at 528, para. 3.

[73] *Broadcast and Cable EEO Rules and Policies*, *supra* note 44, at 24062, para. 141.

[74] *See NAL*, *supra* note 1, at *2, para. 6; *see also PTT Phone Cards, Inc.,* Forfeiture Order, 30 FCC Rcd 14701, 14704 para. 10 & n.23 (2015) (rejecting the argument that a forfeiture should be reduced because the violation was "inadvertent" as a result of "ignorance of the law through administrative oversight").

[75] *See Dial-A-Page, Inc.,* Memorandum Opinion and Order, 8 FCC Rcd 2767, 2768 (1993), *recon. denied*, First Report and Order, 10 FCC Rcd 8825 (1995) ("The fact that the misconduct was attributable to an employee is not relevant. A licensee is fully responsible under the doctrine of *respondeat superior*, whether or not violations were intentional or inadvertent."). *See also American Paging, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 10417, 10419-20 (WTB 1997) (rejecting the licensee's "attempts to divert its responsibility" for the violation because a terminated manager "failed to take the proper steps" and explaining "that the actions of an employee are imputed to the employer is a basic tenet of agency law."); *Eure Family Limited Partnership*, 17 FCC Rcd 7042, 7044 (EB 2002) ("Indeed, it is a basic tenet of agency law that the actions of an employee or contractor are imputed to the employer and 'the Commission has consistently refused to excuse licensees from forfeiture penalties where actions of employees or independent contractors have resulted in violations.'") (citations omitted).

[76] NAL Response, *supra* note 2, at 4, para. 4.

adjustment amounts to a punishment for the past misdeeds of others[77] given that Cumulus's ownership structure changed substantially during the time of the cited violations (2003 to the present).[78] Cumulus acknowledges that a licensee is accountable for the base forfeiture for past violations despite a subsequent transfer of control, as the licensee remains responsible for such past violations.[79] Nevertheless, Cumulus claims that the FCC is not required to adjust a base forfeiture upwardly based on past violations despite a subsequent transfer of control.[80] According to Cumulus, the FCC should consider "specific factors," citing *WLDI, Inc.*[81] and *Citadel Broadcasting Company*[82] and pointing to the fact that the employee responsible for the violation left the company soon after the uploading deadline, followed by the sale of the Albany stations to a new owner, and the departure of all the market employees from Cumulus.[83] Cumulus argues that the FCC improperly failed to consider the degree of culpability in prior violations cited in the *NAL*, including that Cumulus underwent transfers of control in 2012 and 2018 and the management team in charge of Cumulus changed substantially since those prior violations occurred; according to Cumulus, there was no participation nor any degree of culpability by the board members or the management team in earlier violations.[84] Accordingly, Cumulus urges the FCC to use its discretion and reconsider its upward adjustment of the proposed forfeiture.[85]

19. We decline to reduce or eliminate our upward adjustment of the proposed forfeiture based on Cumulus's arguments concerning its past violations. As Cumulus knows, we previously addressed and rejected similar arguments in a case against Cumulus entities.[86] As we explained in that case, consideration of a licensee's full enforcement history, including all its prior rule violations, is relevant to the issue of whether upward adjustment is appropriate in a particular proceeding, notwithstanding that those violations occurred prior to that licensee's transfer of control.[87] Such an evaluation is consistent with long-settled Commission precedent that licensees remain liable for rule violations even when the violations occur prior to transfer of control of a licensee's stock.[88] Indeed, when considering forfeitures, the Commission is *required* under the Act to consider a violator's history of prior

[77] *Id.* at 9, paras. 14-15.

[78] *Id.* at 4, para. 5.

[79] *Id.* at 4-5, para. 5.

[80] *Id.* at 4-6, paras. 5-8.

[81] *WLDI, Inc*., Order, 17 FCC Rcd 14750 (EB 2002) (reaffirming $16,800 forfeiture against WLDI, Inc. for broadcasting indecent material) (*WLDI, Inc*.).

[82] *Citadel Broadcasting Company*, Forfeiture Order, 25 FCC Rcd 15060 (MB-Aud. Div. 2010) (issuing $8,000 forfeiture for Citadel's failure to properly maintain stations' public inspection files) (*Citadel Broadcasting*).

[83] NAL Response, *supra* note 2, at 5-6, paras. 5-8.

[84] *Id.* at 5-6, paras. 7-8.

[85] *Id.* at 6, para. 8.

[86] *Cumulus Radio LLC; Radio License Holding CBC, LLC; Cumulus Licensing LLC; and Radio License Holdings LLC*, Forfeiture Order, 36 FCC Rcd 738, 744-45, paras. 17-20 (2021) (finding the FCC appropriately considered past violations despite those violations occurring under the authority of a corporate board different from that which currently governs its operations) (*Cumulus Radio LLC*).

[87] *Id.* at 744, para. 18.

[88] *Id*. (citing *EZ Sacramento, Inc. and Infinity Broadcasting Corp. of Washington, D.C*., Memorandum Opinion and Order, 16 FCC Rcd 4958, 4959, para. 3 (2001) (finding the fact ownership of the company changed hands does not affect the company's liability) (*EZ Sacramento*), *recons. dismissed*, Memorandum Opinion and Order, 16 FCC Rcd 15605 (2001)); *see also Winslow Communications, Inc*., Memorandum Opinion and Order, 45 FCC2d 662 (1974) (rejecting licensee's argument that it should not be liable for violation when violation occurred prior to transfer of control of licensee's stock).

offenses.[89] Further, the Commission has held that when determining the amount of a forfeiture, it is not significant that control of a company was acquired after the violation occurred.[90]

20. Cumulus's reliance on Enforcement Bureau case *WLDI, Inc.*[91] and Media Bureau's Audio Division case *Citadel Broadcasting Company*[92] is misplaced. The Commission is not bound by any decision of one of its bureaus.[93] In addition, the Commission has discretion to increase or decrease a forfeiture based on the unique facts of a case and is not bound by forfeitures in other cases involving different circumstances.[94]

21. Moreover, Cumulus's implication that it is a drastically different organization post-transfer is belied by the fact that its core senior management team remained unchanged by the 2018 transfer of control. Cumulus Media, Inc.'s President and Chief Executive Officer, Mary G. Berner, continued to serve in the same capacity.[95] Likewise, the transfer of control left the company's chief financial officer and general counsel in place.[96] Even Cumulus acknowledges that the general counsel remained in his position during this period, though also noting his role is "advisory" without ultimate decision-making over station employees and their job responsibilities.[97]

4. The FCC Properly Considered Cumulus's Pre-Reorganization Conduct

22. We appropriately considered Cumulus's pre-reorganization conduct when increasing the forfeiture amount. Cumulus argues that the FCC improperly considered Cumulus's history of violations which occurred prior to Cumulus's reorganization under Chapter 11 of the U.S. Bankruptcy Code on June 4, 2018, when increasing the forfeiture amount, as it causes the new stockholders of Cumulus (i.e., its creditors) to suffer a reduction in the value of the consideration provided to them under the reorganization plan approved by the Bankruptcy Court pursuant to the Bankruptcy Code.[98] According to Cumulus, encumbering Cumulus's post-bankruptcy fresh start with acts of pre-reorganization Cumulus is

---

[89] 47 U.S.C. § 503(b)(2)(E) ("In determining the amount of such a forfeiture penalty, the Commission or its designee shall take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, *any history of prior offenses*, ability to pay, and such other matters as justice may require.") (emphasis added).

[90] *See, e.g.*, *EZ Sacramento* at 4959, para. 3.

[91] *WLDI, Inc*., *supra* note 81, at 14750.

[92] *Citadel Broadcasting Company*, *supra* note 82, at 15060.

[93] *See, e.g.*, *Comcast Corp. v. FCC*, 526 F. 3d 763, 769-70 (D.C. Cir. 2008).

[94] *Continental Broadcasting Co. v. FCC*, 439 F. 2d 580, 583 (D.C. Cir. 1971), *cert. denied*, 403 U.S. 905 (1971) (finding the Commission is not bound to treat cases similarly solely because they appear comparable); *see also Forfeiture Policy Statement*, *supra* note 34, at 17100, para. 26 (noting "the Commission's discretion to increase or reduce a forfeiture penalty as much as warranted based on the unique facts of each case").

[95] *See, e.g.*, Cumulus Media, *Executive Leadership – Mary Berner*, https://www.cumulusmedia.com/about-us/executive-leadership-team/ (last visited Sept. 1, 2023) (Berner was named President and Chief Executive Officer of Cumulus Media Inc. in October 2015, after having served on the company's Board of Directors for six months); Cumulus Media, Inc., Debtor-in-Possession, Applications to Transfer Control of and Assign FCC Authorizations and Licenses, BTC-20180322ABI, *et al*., Comprehensive Exh. (Mar. 22, 2018), granted with conditions, *Cumulus Media, Inc.*, Memorandum Opinion and Order, 33 FCC Rcd 5243, 5244, para. 2 (MB-AD 2018) (granting transfer of control of Commission authorizations, with conditions, in connection with Cumulus Media, Inc.'s reorganization).

[96] *See Emerging From Chapter 11, Cumulus Turns Page On New Chapter*, Inside Radio (June 5, 2018), https://www.insideradio.com/emerging-from-chapter-11-cumulus-turns-page-on-new-chapter/article_b6193d3c-6882-11e8-85d1-0b7d91a4acdb.html?utm_medium=social&utm_source=email&utm_campaign=user-share.

[97] NAL Response, *supra* note 2, at 6, n.15.

[98] *Id.* at 6-7, paras. 9-11.

inconsistent with the Commission's obligation to reconcile its policies with federal bankruptcy laws, one of which is to maximize the amount creditors can realize on their claims, policies embodied in other federal statutes, and Commission principles underpinning its *Second Thursday* decision,[99] which focus on the protection of innocent third-party creditors.[100]

23. We properly considered Cumulus's violations prior to its reorganization when increasing the forfeiture amount.[101] Despite its claims, Cumulus has not shown that the forfeiture we impose today in any way diminishes any consideration provided to innocent creditors in connection with Cumulus's emergence from bankruptcy in 2018. While Cumulus claims our action here is inconsistent with the goal of bankruptcy law to provide a debtor with a "fresh start,"[102] it provides no support for the notion that this policy was intended to absolve licensees of the consequences of pre-bankruptcy violations of the FCC's rules.[103] In addition, despite Cumulus's claims, we find no inconsistency between the principles underlying the *Second Thursday* exception to the *Jefferson Radio* policy and our decision to increase forfeiture amounts based on pre-bankruptcy violations.[104] As an initial matter, we note that the *Second Thursday* exception applies when character qualifications are at issue, which are not present in the current matter. Moreover, unlike the considerations underlying *Second Thursday*, the record reflects that at least some Cumulus officials involved with pre-bankruptcy Cumulus remain in those positions.[105] We conclude that the increased forfeiture serves the public interest, as Cumulus's repeated disregard of the Commission's rules is contrary to the public interest.[106] Accordingly, we affirm our upward adjustment of the forfeiture based on Cumulus's violations prior to its reorganization.

---

[99] *See Second Thursday Corp*., Memorandum Opinion and Order, 22 FCC 2d 515, *recon. granted in part*, Memorandum Opinion and Order, 25 FCC 2d 112 (1970) ("*Second Thursday*").

[100] NAL Response, *supra* note 2, at 7-8, paras. 11-12.

[101] We note that the mere fact of a bankruptcy is not dispositive as to whether a party is able to pay a forfeiture. In a number of forfeiture proceedings, the Commission has denied requests for both cancellation and reduction of forfeitures, imposing forfeiture amounts in full on parties involved in bankruptcy proceedings. *See, e.g*., *STI Telecom Inc*., Forfeiture Order, 30 FCC Rcd 11742, 11757-78, para. 35 (2015); *Coleman Enters., Inc*., Order of Reconsideration, 16 FCC Rcd 10016, 10027-28, para. 11 (2001) ("purported cooperation with the Commission after its violations, whether standing alone or coupled with its Chapter 11 bankruptcy filing, is not an adequate basis for reducing the forfeiture in this case."). *See also N. Am. Telecomms. Corp*., Forfeiture Order, 18 FCC Rcd 1868, 1869, para. 5 (EB, 2003) ("filing for bankruptcy does not preclude the Commission from issuing an order imposing a forfeiture ...."); *William Flippo*, Forfeiture Order, 15 FCC Rcd 23340, 23340, para. 3 (EB, 2000) ("we are not inclined to adjust the forfeiture amount even where the recipient has filed for bankruptcy protection"). We already considered and rejected Cumulus's argument that the forfeiture penalty should be adjusted downward as Cumulus's parent emerged from bankruptcy in 2018, noting Cumulus failed to submit any evidence of inability to pay a forfeiture. *NAL*, *supra* note 1, at *5, para. 18. Since the *NAL*, Cumulus still has not submitted any such evidence.

[102] NAL Response, *supra* note 2, at 8.

[103] *See Cumulus Radio LLC*, *supra* note 88, at 744-45, paras. 17-20 (The Commission rejected an argument by Cumulus that past violations involving licensees prior to bankruptcy reorganization should not be considered in making an upward adjustment.).

[104] NAL Response, *supra* note 2, at 7-8. The *Second Thursday* exception allows for the assignment of a license despite unresolved character questions when the assignment will benefit innocent creditors and the persons charged with misconduct will have no part in the proposed operation and will derive either no benefit or minimal benefits that are outweighed by equitable considerations in favor of innocent creditors. *Second Thursday Corp*., 22 FCC 2d at 516, para. 5.

[105] *See supra* para. 21.

[106] *NAL*, *supra* note 1, at *4, para. 14.

IV. CONCLUSION

24. Based on the record before us and in light of the applicable statutory factors, we conclude that Cumulus willfully and repeatedly violated sections 73.2080(c)(3), 73.2080(c)(6) and 73.3526(e)(7)[107] by failing to (i) upload its Annual Report in the Stations' online public inspection files; (ii) upload its Annual Report to the Stations' websites; and (iii) analyze its EEO program. As discussed herein, we rescind the forfeiture amount of $6,000 for Cumulus's violation of section 73.2080(c)(3) of the Commission's rules and thereby reduce the $32,000 forfeiture amount proposed in the *NAL* to $26,000.

V. ORDERING CLAUSES

25. Accordingly, **IT IS ORDERED** that the comments filed by the National Association of Broadcasters ARE DISMISSED and alternatively ARE DENIED as discussed herein.

26. **IT IS FURTHER 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, Cumulus Licensing LLC **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of twenty-six thousand dollars ($26,000) for willfully and repeatedly violating section 73.2080(c)(6) of the Commission's rules, 47 CFR § 73.2080(c)(6).

27. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission's rules within thirty (30) calendar days after the release of this Forfeiture Order.[108] Cumulus Licensing LLC shall send electronic notification of payment to Patrick McGrath, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, at Patrick.McGrath@fcc.gov, with a copy to Estella.Salvatierra@fcc.gov, on the date said payment is made. If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to section 504(a) of the Act.[109]

28. In order for Cumulus Licensing LLC to pay the proposed forfeiture, Cumulus Licensing LLC shall notify Patrick McGrath at Patrick.McGrath@fcc.gov and Estella Salvatierra at Estella.Salvatierra@fcc.gov of its intent to pay, whereupon an invoice will be posted in the Commission's Registration System (CORES) at https://apps.fcc.gov/cores/userLogin.do. Payment of the forfeiture must be made by credit card using CORES at https://apps.fcc.gov/cores/userLogin.do, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:[110]

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned above and the letters "FORF". In addition, a completed Form 159[111] or printed CORES form[112] 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

[107] 47 CFR §§ 73.2080(c)(3), 73.2080(c)(6), and 73.3526(e)(7).

[108] 47 CFR § 1.80.

[109] 47 U.S.C. § 504(a).

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

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

[112] 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).[113] 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.

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

30. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by first class mail and certified mail, return receipt requested, to Richard S. Denning, Executive Vice President and General Counsel, Cumulus Licensing LLC, 3280 Peachtree Road, NW, Suite 2200, Atlanta, GA 30305, and to Mark N. Lipp, Esq., Counsel for Cumulus Licensing LLC, Fletcher Heald & Hildreth, PLC, 1300 N. 17th Street, Suite 1100, Arlington, VA 22209.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

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

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

In the Matter of	)	
	)	
Location-Based Routing for Wireless 911 Calls	)	PS Docket No. 18-64
	)	

REPORT AND ORDER

Adopted: January 25, 2024 **Released: January 26, 2024**

By the Commission: Chairwoman Rosenworcel and Commissioners Starks and Gomez issuing separate statements.

TABLE OF CONTENTS

Heading Paragraph #

I. INTRODUCTION 1
II. BACKGROUND 4
III. DISCUSSION 21
A. Location-Based Routing 21
1. Wireless 911 Voice Calls 21
a. Nationwide and Network-Wide Implementation 23
b. Technical Considerations 34
c. Compliance Timelines 42
2. Text-to-911 56
3. Definitions 66
4. Timeliness and Accuracy of Location-Based Routing Information 72
a. Timeliness Threshold 73
b. Accuracy Threshold 78
c. Default to Best Available Location Information 85
d. Validation 89
B. Delivery of Wireless 911 Calls and Texts to NG911 Networks 91
C. Certification and Reporting Requirements 93
D. Additional Proposals 106
E. Promoting Digital Equity and Inclusion 111
F. Summary of Benefits and Costs for Location-Based Routing 117
1. Benefits of Location-Based Routing 118
2. Costs of Implementation 120
IV. PROCEDURAL MATTERS 136
V. ORDERING CLAUSES 141
Appendix A – Proposed Rules
Appendix B – Final Regulatory Flexibility Analysis
Appendix C – List of Commenting Parties

I. INTRODUCTION

1. In this *Report and Order*, we require Commercial Mobile Radio Service (CMRS) providers[1] to implement location-based routing for wireless 911 voice calls and real-time text (RTT) communications[2] to 911 nationwide. With location-based routing (LBR) as implemented under these rules, CMRS providers will use precise location information to route wireless 911 voice calls and RTT communications to 911 to the appropriate public safety answering point (PSAP). For the millions of individuals seeking emergency assistance each year by wireless 911 voice call or RTT communication to 911, improving routing for these services will reduce emergency response times and save lives.

2. In December 2022, the Commission adopted a *Notice of Proposed Rulemaking* proposing to require CMRS providers and covered text providers to implement location-based routing for wireless 911 voice calls and texts nationwide.[3] Public safety commenters overwhelmingly supported the Commission's proposals. Legacy tower-based routing results in millions of 911 voice calls nationwide arriving at the incorrect PSAP for the caller's location, which can result in a delay of a minute or more in dispatch and response.[4] The record confirms that implementing location-based routing is technologically feasible and will significantly reduce wireless 911 voice call transfers, saving valuable time for both PSAPs and callers. As a result of the location-based routing rules we adopt today, millions more wireless 911 calls will reach the appropriate PSAP without the need for transfer or delay.

3. To facilitate the implementation of location-based routing for wireless 911 voice calls and RTT communications to 911, we take the following actions:

- We require CMRS providers to deploy location-based routing technology for wireless 911 voice calls and RTT communications to 911 on their Internet Protocol (IP)-based networks (i.e., 4G LTE, 5G, and subsequent generations of IP-based networks). We also require CMRS providers to use location-based routing to route wireless 911 voice calls and RTT communications to 911 originating on their IP-based networks when location information meets certain thresholds for accuracy and timeliness.
- We require CMRS providers to use location-based routing for wireless 911 voice calls and RTT communications to 911 when caller location information available to the CMRS provider's

[1] In this *Report and Order*, we use the term Commercial Mobile Radio Service (CMRS) provider to refer to providers of CMRS, as defined in 47 CFR § 9.3 ("Commercial mobile radio service (CMRS)"). When addressing the record in this proceeding, we assume that commenters using terms such as "wireless carriers" or "wireless providers" refer to CMRS providers subject to part 9 of the Commission's rules.

[2] The Commission defines real-time text as "[t]ext communications that are transmitted over Internet Protocol (IP) networks immediately as they are created, *e.g.,* on a character-by-character basis." 47 CFR § 9.3; *accord id.* § 67(g). In this *Report and Order*, we use the term "RTT communications" to refer to instances in which an RTT user initiates contact with 911, for consistency with our part 9 and part 67 rules. *See* 47 CFR §§ 9.10(c), 67.1(g), 67.2(c)(2). When addressing the record in this proceeding, we assume that commenters using the terms "RTT call" or "RTT message" refer to the same RTT communications described in the Commission's part 9 and part 67 rules.

[3] *Location-Based Routing for Wireless 911 Calls,* PS Docket No. 18-64, Notice of Proposed Rulemaking, 37 FCC Rcd 15183, 15184, para. 1 (2022) (*Notice of Proposed Rulemaking*).

[4] The Commission has previously found that a one minute increase in response times increases mortality, and that a one minute decrease in response times decreases mortality. *See, e.g.*, *Wireless E911 Location Accuracy Requirements*, Third Further Notice of Proposed Rulemaking, 29 FCC Rcd 2374, 2388-89, para. 33 & n.70 (2014). As stated in the *Notice of Proposed Rulemaking* and affirmed in this *Report and Order*, the Commission estimates that the implementation of wireless location-based routing under the rules we adopt today will save 13,837 lives annually, assuming a one-minute decrease in response time. *See Notice of Proposed Rulemaking*, 37 FCC Rcd at 15206-07, para. 61 & n.161; *see also* Section III.F.1.

network at time of routing is ascertainable within a radius of 165 meters at a confidence level of at least 90%. In the absence of these conditions, CMRS providers must use alternative routing methods based on "best available" location information, which may include but is not limited to device-based or tower-based location information.

- We adopt the proposed six-month timeline for nationwide CMRS providers to implement location-based routing for wireless 911 voice calls and provide twenty-four months for non-nationwide CMRS providers to implement location-based routing of wireless 911 voice calls.[5] In addition, we provide 24 months for all CMRS providers to implement location-based routing for RTT communications to 911.
- We require CMRS providers within 60 days of the applicable compliance deadlines to certify and submit evidence of compliance with location-based routing requirements. At that time, CMRS providers also must submit one-time live call data reporting on the routing methodologies for calls in live call areas, and they must certify the privacy of location information used for location-based routing.
- We defer consideration of proposals in the *Notice of Proposed Rulemaking* to require CMRS providers and covered text providers[6] to implement location-based routing for Short Message Service (SMS) texts to 911.
- We defer consideration of proposals and issues raised in the *Notice of Proposed Rulemaking* concerning IP-formatted delivery of wireless 911 voice calls, texts, and associated routing information for consideration in the Commission's pending Next Generation 911 (NG911) Transition docket (PS Docket No. 21-479—Facilitating Implementation of Next Generation 911 Services).[7]

II. BACKGROUND

4. *Legacy Enhanced 911 Routing*. When the first 911 call was placed in 1968,[8] 911 service was provided to the public over wireline telephone networks, and wireline providers used the fixed location of the calling telephone to route 911 calls to the nearest PSAP.[9] With the deployment of the first generation of cellular service, wireless 911 voice calls could originate from any location served by the wireless network,[10] and the caller could move locations during the call. To enable timely routing of wireless 911 voice calls, CMRS providers typically programmed their networks to use the location of the

[5] The Commission defines a "[n]on-nationwide CMRS provider" for purposes of its part 9 rules as "[a]ny CMRS provider other than a nationwide CMRS provider." 47 CFR § 9.10 (i)(1)(v). A "[n]ationwide CMRS provider" for purposes of the Commission's part 9 rules is "[a] CMRS provider whose service extends to a majority of the population and land area of the United States." 47 CFR § 9.10 (i)(1)(iv).

[6] The Commission defines "covered text provider" as including "all CMRS providers as well as all providers of interconnected text messaging services that enable consumers to send text messages to and receive text messages from all or substantially all text-capable U.S. telephone numbers, including through the use of applications downloaded or otherwise installed on mobile phones." 47 CFR § 9.10(q)(1).

[7] *See Facilitating Implementation of Next Generation 911 Services (NG911)*, PS Docket No. 21-479, Notice of Proposed Rulemaking, FCC 23-47, 2023 WL 3946685 (June 9, 2023), https://www.fcc.gov/document/fcc-proposes-action-expedite-transition-next-generation-911-0 (*NG911 Notice of Proposed Rulemaking*).

[8] FCC, *911 and E911 Services* (Nov. 3, 2023), https://www.fcc.gov/general/9-1-1-and-e9-1-1-services ("[T]he first 911 call was placed in Haleyville, Alabama in 1968.").

[9] *Location-Based Routing for Wireless 911 Calls,* PS Docket No. 18-64, Notice of Inquiry, 33 FCC Rcd 3238, 3240, para. 6 (2018) (*Notice of Inquiry*).

[10] *Id.*

first cell tower receiving the call to determine the nearest PSAP and route the call accordingly.[11] This became the basis for routing of wireless Enhanced 911 (E911) calls (legacy E911 routing).

5. *Wireless 911 Voice Call Misroutes*. Technical limitations of legacy E911 routing can result in a CMRS provider routing a wireless 911 voice call to a PSAP other than the one designated by the relevant state or local 911 authority to receive 911 calls from the caller's actual location.[12] The Commission considers wireless 911 voice calls routed to a PSAP other than the one designated for the caller's location to be "misrouted,"[13] although such misroutes generally result from tower-based call routing mechanisms working as designed, not from technical failure of those mechanisms.[14] The Alliance for Telecommunications Industry Solutions (ATIS) estimates that on average 12% of wireless legacy E911 voice calls nationwide are misrouted.[15] Other commenters indicate that the percentage of misrouted wireless 911 voice calls is higher in some jurisdictions.[16] These estimates support the conclusion that tower-based routing causes millions of wireless 911 voice calls to be misrouted annually.[17]

6. When a wireless 911 voice call is misrouted, the answering telecommunicator must transfer the call to the PSAP that has jurisdiction to dispatch aid to the 911 caller's location. This process consumes time and resources for both the transferring PSAP and the receiving PSAP and delays the dispatch of first responders to render aid.[18] Commenters submit anecdotal evidence that a typical misroute introduces a delay of about a minute.[19] NENA estimates that call transfers consume over

[11] *Id.* at 3240, para. 7.

[12] *Notice of Proposed Rulemaking*, 37 FCC Rcd at 15185-86, para. 7. For example, a cell tower in Northern Virginia may pick up a wireless 911 voice call originating in Washington, D.C., but route the call to a Virginia PSAP. *Id.*

[13] *Id.*

[14] *Id.* at 15186, para. 7 n.11.

[15] Alliance for Telecommunications Industry Solutions (ATIS), Analysis of Predetermined Cell Sector Routing Outcomes Compared to Caller's Device Location, *ATIS-0500039* at 4 (July 2, 2019), https://access.atis.org/apps/group_public/document.php?document_id=48697 (*ATIS-0500039*). Intrado cites a 2018 study concluding that 12.96% out of a set of five million wireless 911 calls were misrouted. Intrado Life & Safety, Inc. (Intrado) Public Notice Comments at 3 & n.8, 4 (rec. July 11, 2022) (Intrado PN Comments).

[16] For example, the Fayetteville (Arkansas) Police Department reports that "roughly 30% or more" of the 911 calls its jurisdiction receives are misrouted from neighboring jurisdictions. Natisha Claypool, Assistant Dispatch Manager, Fayetteville Police Department Public Notice Comments (rec. July 11, 2022) (Fayetteville Police Department PN Comments). Intrado estimates, based on data collected in AT&T's pilot implementation of location-based routing in February/March 2022, that Palm Beach County, Florida, was experiencing misrouted calls with tower-based routing at a rate of at least 11%, and as high as 20-50% along PSAP boundaries. Intrado PN Comments at 4-5.

[17] In the Commission's 2023 annual 911 fee report, respondents reported receiving a combined total of approximately 158 million wireless 911 voice calls in calendar year 2022. FCC, Fifteenth Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges at 16, Table 3 (2023), https://www.fcc.gov/general/911-fee-reports (Fifteenth Annual 911 Fee Report). Assuming 12% of these calls were misrouted, misroutes would total nearly 19 million calls. NENA: The 9-1-1 Association (NENA) estimates that 23 million wireless 911 voice calls are misrouted annually. NENA Notice of Proposed Rulemaking Comments at 2 (rec. Feb. 15, 2023) (NENA NPRM Comments).

[18] *Notice of Proposed Rulemaking*, 37 FCC Rcd at 15186-87, para. 8.

[19] *See, e.g.*, Association of Public-Safety Communications Officials International, Inc. (APCO) Public Notice Comments at 2 (rec. July 11, 2022) (APCO PN Comments) (noting that "it's possible that a misrouted call will introduce a delay of a minute or longer"); NENA Public Notice Comments at 4 (rec. July 11, 2022) ("[T]he general anecdotal consensus was that a call transfer typically takes 'about a minute.'"); Peninsula Fiber Network Public Notice Comments at 1 (rec. July 8, 2022) ("Each transfer takes between 15 to 90 seconds to set up and complete.").

200,000 hours per year of excess 911 professional labor.[20] Misrouted wireless 911 voice calls can also contribute to confusion and delay in emergency response.[21] This delay can have deadly consequences.[22]

7. *Location-Based Routing Notice of Inquiry*. In 2018, the Commission released a *Notice of Inquiry* seeking comment on issues related to misrouted wireless 911 calls, including the feasibility of location-based routing.[23] Historically, generating precise caller location information typically required too much time to be used for 911 call routing.[24] The Commission noted, however, that then-recent advances in location technology suggested it was feasible to pinpoint a wireless 911 voice caller's location quickly enough to support an initial routing determination.[25] The Commission also found that many location-based routing methods were promising.[26] The record received in response to the *Notice of Inquiry* confirmed the emergence of potential location-based routing solutions but also indicated uncertainty about the capabilities of such solutions at the time.[27]

[20] NENA Public Notice Comments at 4 (rec. July 11, 2022) (NENA PN Comments).

[21] For example, on June 4, 2020, 16-year-old Fitz Thomas drowned at Confluence Park on the Potomac River, which separates Loudoun County, Virginia, and Montgomery County, Maryland. Press Release, Loudoun County Office of the County Administrator, Public Affairs and Communications, Loudoun County Releases Significant Incident Review of Goose Creek Drowning at 1 (Aug. 31, 2020), https://www.loudoun.gov/ArchiveCenter/ViewFile/Item/10062. Due to the incident's proximity to the jurisdictional border of the Potomac River and the use of legacy E911 routing, both counties received wireless 911 calls routed from the park located on the Virginia side of the river. *Id.* at 2. Efforts to determine Thomas's actual location contributed to a delay in dispatching first responders. *Id.* On July 15, 2022, Ma Kaing was shot and killed by a stray bullet outside her home in the East Colfax neighborhood of Denver. Jennifer Kovaleski, *Stuck on the line: Cellphone calls routed to the wrong 911 center are costing life-saving seconds*, Denver7 (Nov. 19, 2022), https://www.denver7.com/news/investigations/stuck-on-the-line-cellphone-calls-routed-to-the-wrong-911-center-are-costing-life-saving-seconds. The news media reported that four calls from her family and neighbors were misrouted to a neighboring PSAP and required transfer; three callers hung up after waiting minutes on hold. *Id.*

[22] The news media have widely reported on such tragic occurrences. For example, in December 2015, dispatchers were unable to locate Shanell Anderson, who drowned after accidentally driving off the road and into a pond close to the line between Fulton and Cherokee Counties in Georgia. Brendan Keefe and Phillip Kish, *Lost on the Line: Why 911 is broken*, 11ALIVE (Aug. 12, 2019), https://www.11alive.com/article/news/local/lost-on-the-line-why-911-is-broken/85-225104578. According to the news media, Shanell Anderson was able to call 911, but the call was picked up by a cell tower in Fulton County and routed to that county's PSAP, where critical minutes were lost while dispatchers sought to determine the county in which she was located (Cherokee County). *Id.* In another incident in 2008, Olidia Kerr Day made a wireless 911 call before she was fatally shot in a murder-suicide in front of the Plantation, Florida, police department. Sofia Santana, *Cell Phone 911 Calls Are Often Routed to the Wrong Call Centers*, Sun Sentinel (June 21, 2008), https://www.sun-sentinel.com/sfl-flbsafe911calls0621sbjun21-story.html. According to the news media, although she placed the call in Plantation, the call was routed to the 911 center in Sunrise, Florida, and had to be transferred to Plantation. *Id.*

[23] *Notice of Inquiry*, 33 FCC Rcd at 3246-51, paras. 17-33.

[24] *Id.* at 3240, para. 3.

[25] *Id.*

[26] *Id.* at 3240, para. 4.

[27] Commenters to the *Notice of Inquiry* offered varying opinions about whether technologies were capable of location-based routing without delaying 911 calls. *See, e.g.*, AT&T Notice of Inquiry Reply at 11 (rec. June 28, 2018) ("Even the most promising of location-based technologies . . . have limits."); Motorola Solutions, Inc. Notice of Inquiry Comments at 2 (rec. May 7, 2018) (asserting that testing has confirmed that location-based wireless routing is faster and more accurate than legacy wireless routing).

8. *Location-Based Routing Public Notice*. In June 2022, the Commission released a *Public Notice* to refresh the record on location-based routing developments since the *Notice of Inquiry*.[28] Commenters confirmed that continued reliance on legacy E911 routing methodology results in a considerable number of wireless 911 voice call misroutes,[29] which imposes significant burdens on public safety.[30] Public safety commenters agreed that early location-based routing implementations by CMRS providers had shown that the technology was now technologically feasible.[31] Several commenters noted that device-based hybrid (DBH) location technologies[32] were widely available on mobile devices and could be used for routing a high percentage of wireless 911 voice calls.[33]

9. *Location-Based Routing Notice of Proposed Rulemaking*. On December 22, 2022, the Commission adopted the *Notice of Proposed Rulemaking* in this proceeding, which proposed rules for CMRS and covered text providers to implement location-based routing for wireless 911 voice calls and 911 texts[34] nationwide, including wireless 911 voice calls and 911 text messages originating in legacy, transitional, and NG911-capable public safety jurisdictions.[35] The Commission proposed to establish

[28] *Federal Communications Commission Seeks to Refresh the Record on Location-Based Routing for Wireless 911 Calls*, PS Docket No. 18-64, Public Notice, 37 FCC Rcd 7196, 7196 (2022) (*Public Notice*).

[29] *E.g.*, Intrado PN Comments at 3 & n.8, 4-5; NENA PN Comments at 2; Fayetteville Police Department PN Comments; *see also ATIS-0500039* at 4.

[30] *E.g.*, APCO PN Comments at 2; Boulder Regional Emergency Telephone Service Authority (BRETSA) Public Notice Reply at 1-3 (rec. July 25, 2022) (BRETSA PN Reply).

[31] APCO PN Comments at 2; NENA Public Notice Reply at 6 (rec. July 25, 2022) (NENA PN Reply); BRETSA PN Reply at 5.

[32] Device-based hybrid (DBH) location is an estimation method that typically utilizes either a selection or a combination of location methods available to the handset in a given environment, including crowd-sourced Wi-Fi, A-GNSS, and possibly other handset-based sensors. *Public Notice*, 37 FCC Rcd at 7197-98 n.8 (citing *CSRIC V LBR Report* at 16). It also includes an associated uncertainty estimate reflective of the quality of the returned location. *Id.*

[33] CTIA Public Notice Reply at 3 (rec. July 25, 2022); AT&T Public Notice Comments at 2 (rec. July 11, 2022) (AT&T PN Comments); Intrado PN Comments at 8-9.

[34] A "911 text message" is "a message, consisting of text characters, sent to the short code '911' and intended to be delivered to a PSAP by a covered text provider, regardless of the text messaging platform used." 47 CFR § 9.10(q)(9). The Commission's text-to-911 rules are technology neutral and apply to both Short Message Service (SMS) and real-time text (RTT). *Transition from TTY to Real-Time Text Technology; Petition for Rulemaking to Update the Commission's Rules for Access to Support the Transition from TTY to Real-Time Text Technology, and Petition for Waiver of Rules Requiring Support of TTY Technology*, CG Docket No. 16-145, GN Docket No. 15-178, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 13568, 13593, para. 45 n.181 (2016) (*RTT Order*). RTT transition obligations only apply to a subset of covered text providers: "those entities that are involved in the provision of IP-based wireless voice communication service, and only to the extent that their services are subject to existing TTY technology support requirements under Parts 6, 7, 14, 20, or 64 of the Commission's rules." *RTT Order*, 31 FCC Rcd at 13576-77, para. 12.

[35] *Notice of Proposed Rulemaking*, 37 FCC Rcd at 15184-85, para. 3. In the *Notice of Proposed Rulemaking*, the Commission used the term "NG911-capable" to refer to PSAPs or jurisdictions that have implemented IP-based network and software components that are capable of supporting the provision of NG911, including but not limited to an Emergency Services Internet Protocol Network (ESInet). *Id.* at 15184, para. 3 n.5. NG911 relies on IP-based architecture rather than the Public Switched Telephone Network (PSTN)-based architecture of legacy 911 to provide an expanded array of emergency communications services that encompasses both the core functionalities of legacy E911 and additional functionalities that take advantage of the enhanced capabilities of IP-based devices and networks. *Framework for Next Generation 911 Deployment*, PS Docket No. 10-255, Notice of Inquiry, 25 FCC Rcd 17869, 17877, para. 18 (2010). NG911 architecture also provides for transitional network components to enable delivery of legacy 911 calls to ESInets during the transition to full end-state NG911. *See id.* at 17878, para. 20 (explaining that emergency calls can be delivered to ESInets from legacy networks).

requirements with respect to the accuracy and timeliness of location information CMRS and covered text providers would use to comply with location-based routing requirements.[36] In particular, the Commission proposed to require CMRS providers and covered text providers to use location-based routing for 911 calls and texts when they have location information that meets the following specifications for timeliness and accuracy: (i) the information must be available to the provider network at the time the call or text is routed, and (ii) the information must identify the caller's horizontal location within a radius of 165 meters at a confidence level of at least 90%.[37]

10. The Commission also proposed that when location information does not meet one or both of these requirements, CMRS providers and covered text providers would be required to route 911 calls and texts based on the best available location information, which could include cell tower coordinates.[38] In addition, to help ensure that public safety jurisdictions transitioning to NG911 could realize the benefits of location-based routing in an efficient and cost-effective manner, the Commission proposed to require CMRS providers and covered text providers to deliver wireless 911 voice calls, texts, and location information for routing[39] in IP format upon request of 911 authorities[40] who have established the capability to accept NG911-compatible IP-based 911 communications.[41] At the time of the *Notice of Proposed Rulemaking*, AT&T, T-Mobile, and Verizon had stated publicly in the record or elsewhere that they had deployed or planned to deploy location-based routing to some extent on their networks for voice calls.[42] The Commission received twenty-six comments, fourteen replies, and several *ex parte* filings.[43]

[36] *Notice of Proposed Rulemaking*, 37 FCC Rcd at 15198, para. 37.

[37] *Id.*

[38] *Id.* at 15195-97, paras. 28, 30.

[39] In NG911 architecture, device-based location information embedded in IP-formatted 911 calls is first used by the provider to route the call to an ESInet, and the ESInet operator then applies NG911 network routing policies to the embedded information to route the call to the appropriate PSAP. *Notice of Proposed Rulemaking* 37 FCC Rcd at 15203, para. 53.

[40] While the Commission has not specifically defined the term "911 authorities" in this proceeding, we use this term in this *Report and Order* to generally mean "[t]he state, territorial, regional, Tribal, or local agency or entity with the authority and responsibility under applicable law to designate the point(s) to receive emergency calls." *NG911 Notice of Proposed Rulemaking* at *21, para. 53 (proposing a definition of the term "911 Authority" that would define the term for purposes of Commission rules related to the NG911 transition).

[41] *Notice of Proposed Rulemaking*, 37 FCC Rcd at 15185, para. 4.

[42] Press Release, T-Mobile USA, Inc. (T-Mobile), T-Mobile First to Roll Out Cutting-Edge 911 Capabilities (Dec. 17, 2020), https://www.t-mobile.com/news/network/tmobile-next-generation-911-location-based-routing (T-Mobile Dec. 17, 2020 Press Release); T-Mobile Public Notice Reply at 2 & n.6 (rec. July 25, 2022) (T-Mobile PN Reply); AT&T PN Comments at 4; CB Cotton, Verizon plans to update 911 routing technology after Denver's East *Colfax* neighborhood calls for change, Denver7 (Aug. 5, 2022), https://www.denver7.com/news/local-news/verizon-plans-to-update-911-routing-technology-after-denvers-east-colfax-neighborhood-calls-for-change.

[43] A list of entities that filed comments, replies, and *ex partes* in response to the *Notice of Proposed Rulemaking* may be found in Appendix C.

11. Virtually all public safety commenters[44] and some additional commenters[45] support Commission action to require CMRS providers to implement location-based routing for wireless 911 voice calls. Multiple public safety commenters and Intrado support the Commission's proposal that CMRS providers implement location-based routing nationwide.[46] Commenters representing wireless interests urge the Commission to allow CMRS providers to implement location-based routing voluntarily or on a PSAP-by-PSAP basis, as opposed to a nationwide mandate.[47] With respect to text-to-911, numerous commenters support requiring covered text providers to implement location-based routing,[48] but some commenters contend that such a requirement would be premature.[49] Citing a lack of technical standards for routing SMS texts to 911, NENA, ATIS, and Southern Linc oppose requiring covered text

[44] NENA NPRM Comments at 1; APCO Notice of Proposed Rulemaking Comments at 1 (rec. Feb 16, 2023) (APCO NPRM Comments); National Association of State 911 Administrators (NASNA) Notice of Proposed Rulemaking Comments at 8 (rec. Feb. 16, 2023) (NASNA NPRM Comments); Michigan State 911 Committee Notice of Proposed Rulemaking Comments at 1 (rec. Feb. 9, 2023) (Michigan State 911 NPRM Comments); Colorado Public Utilities Commission (COPUC) Notice of Proposed Rulemaking Comments at 2 (rec. Feb. 15, 2023) (COPUC NPRM Comments); Keith Johnson, System Chief LC-CFRS, Nicole Pickrell, Deputy Chief LCFR Notice of Proposed Rulemaking Comments at 3 (rec. Feb. 16, 2023) (filed on behalf of Loudoun County, Virginia) (Loudoun County NPRM Comments); Texas 9-1-1 Alliance, Texas Commission on State Emergency Communications, Municipal Emergency Communication Districts Association Notice of Proposed Rulemaking Comments at 2 (rec. Feb. 16, 2023) (Texas 9-1-1 Entities NPRM Comments); BRETSA Notice of Proposed Rulemaking Comments at 10 (rec. Feb. 16, 2023) (BRETSA NPRM Comments); Adams County E-911 Emergency Telephone Service Authority, Arapahoe County 911 Authority, Jefferson County Emergency Communications Authority Notice of Proposed Rulemaking Comments at 1-2 (rec. Feb. 17, 2023) (Adams County et al. NPRM Comments); Acadian Ambulance Service Inc., Benjamin Blanchard, Senior IT Director Notice of Proposed Rulemaking Comments at 1 (rec. Feb. 13, 2023); Joseph Lyons Notice of Proposed Rulemaking Comments (rec. Feb. 3, 2023) (Joseph Lyons NPRM Comments); Val Sprynczynatyk Notice of Proposed Rulemaking Comments (rec. Feb. 7, 2023); Jon Marcy, Kevin Brown, John Holloway Notice of Proposed Rulemaking Comments at 2 (rec. Feb 8, 2023) (filed on behalf of Defense Information Systems Agency (DISA)) (DISA NPRM Comments).

[45] Verizon Notice of Proposed Rulemaking Comments at 9 (rec. Feb. 16, 2023) (Verizon NPRM Comments); Intrado Notice of Proposed Rulemaking Comments at 1 (rec. Feb. 16, 2023) (Intrado NPRM Comments); Industry Council for Emergency Response Technologies, Inc. (iCERT) Notice of Proposed Rulemaking Comments at 2 (rec. Feb. 14, 2023) (iCERT NPRM Comments); Motorola Solutions Connectivity, Inc. Notice of Proposed Rulemaking Reply at 1 (rec. Mar. 20, 2023); American Trauma Society Notice of Proposed Rulemaking Comments at 2 (rec. Feb 16, 2023).

[46] APCO NPRM Comments at 2; Adams County et al. NPRM Comments at 1; DISA NPRM Comments at 2; Michigan State 911 NPRM Comments at 1; Intrado NPRM Comments at 2-3.

[47] *See, e.g.,* CTIA Notice of Proposed Rulemaking Comments at 4 (rec. Feb. 16, 2023) (CTIA NPRM Comments); Verizon NPRM Comments at 1; T-Mobile Notice of Proposed Rulemaking Comments at 3 (rec. Feb. 16, 2023) (T-Mobile NPRM Comments); AT&T Notice of Proposed Rulemaking Comments at 3 (rec. Feb. 16, 2023) (AT&T NPRM Comments); Southern Linc Notice of Proposed Rulemaking Reply at 4 (rec. Mar. 20, 2023) (Southern Linc NPRM Reply); iCERT NPRM Comments at 2; Rural Wireless Association, Inc. Notice of Proposed Rulemaking Reply at 4 (rec. Mar. 20, 2023) (RWA NPRM Reply); Colorado Council of Authorities, Inc. (CCOA) Notice of Proposed Rulemaking Reply at 1-2 (rec. Mar. 20, 2023) (CCOA NPRM Reply).

[48] NASNA NPRM Comments at 13; COPUC NPRM Comments at 2; BRETSA NPRM Comments at 10; DISA NPRM Comments at 2; Intrado NPRM Comments at 1.

[49] CTIA NPRM Comments at 2; Competitive Carriers Association (CCA) Notice of Proposed Rulemaking Comments at 16-18 (rec. Feb. 16, 2023) (CCA NPRM Comments); T-Mobile NPRM Comments at 11; Verizon NPRM Comments at 5-6.

providers to implement location-based routing for SMS but suggest that the Commission should require location-based routing for IP-based text solutions such as RTT.[50]

12. In response to the Commission's proposed timeliness and accuracy requirements for use of location-based routing, some commenters express support for the proposed requirements,[51] while others oppose the proposed accuracy threshold and request flexibility for providers to set their own thresholds.[52] In response to the Commission's proposed requirement for CMRS and covered text providers to deliver 911 calls, texts, and associated routing information in IP format upon request of 911 authorities who have established the capability to accept such communications, multiple commenters ask the Commission to address such proposals together with corresponding proposed requirements for other types of originating service providers in a separate proceeding.[53]

13. *NG911 Notice of Proposed Rulemaking*. In June 2023, the Commission adopted a *Notice of Proposed Rulemaking* in PS Docket No. 21-479 to advance the nationwide transition to Next Generation 911 (*NG911 Notice of Proposed Rulemaking*).[54] In the *NG911 Notice of Proposed Rulemaking*, the Commission proposed to require wireline, interconnected Voice over Internet Protocol (VoIP), and Internet-based Telecommunications Relay Service (TRS) providers to complete all translation and routing to deliver 911 calls, including associated location information, in the requested IP-based format to an Emergency Services IP network (ESInet) or other designated point(s) that allow emergency calls to be answered, upon request of 911 authorities who have certified the capability to accept IP-based 911 communications.[55] This proposal is similar to that proposed for CMRS and covered text providers in the *Notice of Proposed Rulemaking* in this proceeding.

14. *Ongoing Location-Based Routing Deployment*. As the Commission noted in the *Notice of Proposed Rulemaking*, several developments indicate that location-based routing has become a viable methodology for CMRS providers to route wireless 911 voice calls and texts.[56] These developments

[50] NENA Notice of Proposed Rulemaking Reply at 8-9 (Mar. 20, 2023) (NENA NPRM Reply); ATIS Notice of Proposed Rulemaking Comments at 1, 3 (rec. Feb. 16, 2023) (ATIS NPRM Comments); Southern Linc NPRM Reply at 6-7; *see also* T-Mobile NPRM Comments at 11 (urging the Commission to "refrain from adopting an LBR mandate for interim and legacy texts to 911 and focus its efforts on encouraging all stakeholders to invest in next-generation communication technologies"); Alaska Telecom Association Notice of Proposed Rulemaking Reply at 3-4 (rec. Mar. 20, 2023) (Alaska Telecom NPRM Reply).

[51] APCO NPRM Comments at 2; Adams County et al. NPRM Comments at 3; BRETSA Notice of Proposed Rulemaking Reply at 6 (rec. Mar. 20, 2023) (BRETSA NPRM Reply); Intrado NPRM Comments at 5; *see also* AT&T NPRM Comments at 4 (supporting a definition of "device-based location information" that is tied to timeliness and accuracy metrics "that the Commission believes would represent a significant improvement over cell-based routing methodologies").

[52] CTIA Notice of Proposed Rulemaking Reply at 5 (rec. Mar. 20, 2023) (CTIA NPRM Reply); T-Mobile NPRM Comments at 9; Verizon NPRM Comments at 4; Southern Linc NPRM Reply at 5-6; ATIS NPRM Comments at 3-4; iCERT NPRM Comments at 3-4.

[53] Letter from Christiaan Segura, Director, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 18-64, at 2 (filed July 3, 2023) (CTIA July 3, 2023 Ex Parte); Intrado NPRM Comments at 2, 5-6; Texas 9-1-1 Entities NPRM Comments at 5-6 n.21; NENA NPRM Reply at 4-5; Verizon Notice of Proposed Rulemaking Reply at 4-5 (rec. Mar. 20, 2023) (Verizon NPRM Reply) (recommending the Commission "coupl[e] LBR with a framework for i3-based NG911 implementation"); see also Letter from Joely Denkinger, Regulatory Counsel, Federal Affairs, GCI Communication Corp., to Marlene H. Dortch, Secretary, FCC, PS Docket Nos. 18-64, 21-479, at 1 (filed July 17, 2023) (GCI July 17, 2023 Ex Parte).

[54] *NG911 Notice of Proposed Rulemaking*, 2023 WL 3946685.

[55] *NG911 Notice of Proposed Rulemaking* at *1, *34-35, para. 2, Appx. A.

[56] *Notice of Proposed Rulemaking*, 37 FCC Rcd at 15188-89, paras. 11-12.

include studies on misroutes and location-based routing technology[57] and increased deployment of DBH location technologies on consumer handsets.[58] In 2019, ATIS published two studies on legacy E911 misroutes and the feasibility of location-based routing.[59] In those studies, ATIS concluded that "location-based routing is technically feasible within the timing considerations recommended by [Communications Security, Reliability, and Interoperability Council (CSRIC)] V"[60] and evaluated where "sub-optimal routing" occurred for a sample set of wireless emergency calls.[61] ATIS has also issued two standards that support location-based routing: *ATIS-0700042* (Enhancing Location-Based Routing of Emergency Calls) and *ATIS-0700015* (ATIS Standard for Implementation of 3GPP Common IMS Emergency Procedures for IMS Origination and ESInet/Legacy Selective Router Termination).[62] The Competitive Carriers Association (CCA) states that in these and other documents, "ATIS has defined several architecture options that carriers can use to provide location-based routing as well as several call flow options from which carriers can choose to employ to conduct location-based routing."[63]

15. The three nationwide CMRS providers are continuing to deploy location-based routing for wireless 911 voice calls on their networks. AT&T completed the rollout of location-based routing on its network in June 2022 and uses location-based routing to deliver wireless 911 voice calls to nearly all PSAPs nationwide, regardless of whether such PSAPs support legacy E911 or are transitioning to

[57] *ATIS-0500039*; ATIS, Enhancing Location-Based Routing of Emergency Calls, ATIS-0700042 (July 12, 2019), https://access.atis.org/apps/group_public/document.php?document_id=48218 (*ATIS-0700042*).

[58] Press Release, CTIA, Wireless Industry Announces Development in Improving 9-1-1 Location Accuracy (Sept. 5, 2018), https://www.ctia.org/news/wireless-industry-announces-development-in-improving-9-1-1-location-accuracy; Letter from Paul Margie, Counsel, Apple Inc., to Marlene H. Dortch, Secretary, FCC, PS Docket No. 18-64 et al., at 2 (filed Sept. 24, 2019) (Apple Sept. 24, 2019 *Ex Parte*). Device-based hybrid (DBH) location is "[a]n estimation method that typically utilizes either a selection or a combination of location methods available to the handset in a given environment—including crowd-sourced Wireless Fidelity (Wi-Fi), Assisted-Global Navigation Satellite System (A-GNSS), and possibly other handset-based sensors." *ATIS-0700042* at 2. "It also includes an associated uncertainty estimate reflective of the quality of the returned location." *Id.*

[59] *ATIS-0700042*; *ATIS-0500039*. ATIS observed that calls that are "sub-optimally routed" tend to occur "[a]long PSAP boundaries," "[i]n areas having a dense concentration of PSAPs," "[a]round major water features," and "[a]long narrow strips of jurisdictional territory." *ATIS-0500039* at 12.

[60] *ATIS-0700042* at 22. CSRIC is a federal advisory committee subject to the requirements of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, and charged with providing recommendations to the Commission to ensure, among other things, the security and reliability of communications systems. FCC, *Communications Security, Reliability, and Interoperability Council*, https://www.fcc.gov/about-fcc/advisory-committees/communications-security-reliability-and-interoperability-council-0 (last visited Jan. 17, 2023).

[61] *ATIS-0500039* at 1.

[62] *ATIS-0700042*; ATIS, ATIS Standard for Implementation of 3GPP Common IMS Emergency Procedures for IMS Origination and ESInet/Legacy Selective Router Termination, ATIS-0700015.v005, (June 1, 2021) https://www.techstreet.com/standards/atis-0700015-v005?product_id=2226711; CCA NPRM Comments at 7, n.10. CCA also cites to *ATIS-0500039*. *Id.*

[63] CCA NPRM Comments at 7. CCA also states that "3GPP has also addressed how to implement location-based routing, and several 3GPP specifications relate to location services and emergency calling." CCA NPRM Comments at 9. In particular, CCA identifies TS 23.167, entitled "Technical Specification Group Services and System Aspects; IP Multimedia Subsystem (IMS) emergency sessions," as identifying "architectural principles, location information principles, a reference architecture, functional descriptions, procedures for establishing an IMS emergency session, call flows, and related information." *Id.* CCA also notes that other 3GPP specifications, including TS 36.305—"Stage 2 functional specification of User Equipment (UE) positioning in E-UTRAN" and TS 38.305—"NG Radio Access Network (NG-RAN); Stage 2 functional specification of User Equipment (UE) positioning in NG-RAN," provide additional pertinent information regarding the implementation of location services data. *Id*. at 9-10.

NG911.[64] T-Mobile launched location-based routing on its network in the states of Texas and Washington in 2020 and as of December 2023 had deployed location-based routing for wireless 911 voice calls to 1,591 PSAPs with an additional 596 in progress.[65] In December 2023, Verizon reported that it had implemented location-based routing for wireless 911 voice calls to 414 PSAPs with an additional 277 PSAPs in progress.[66]

16. For wireless 911 voice calls, AT&T, T-Mobile, and Verizon have, to date, implemented their own different thresholds to determine whether device location information arriving with the call is sufficiently precise for routing. According to Intrado, AT&T's location-based routing solution uses a threshold with a radius of 165 meters and 90% confidence,[67] which has enabled AT&T to use location-based routing for over 80% of all wireless 911 voice calls on its network.[68] T-Mobile reports that it has implemented "a location estimate uncertainty threshold for LBR currently set to 300 meters with a confidence level of 90%," and reports that more than 95% of location estimates available at call routing fall within these metrics.[69] Verizon reports that it uses "an accuracy threshold of 200 meters maximum horizontal uncertainty with confidence of 90 percent."[70] AT&T, T-Mobile, and Verizon state that they default to legacy E911 routing when device location information arriving with the call exceeds the radius of the providers' respective thresholds.[71]

17. *Text Messaging Platforms.* Since 2014, all CMRS providers and covered text providers

[64] AT&T PN Comments at 4; AT&T NPRM Comments at 1. AT&T notes that a few PSAPs are using unique internal routing solutions and that the company is working to ensure that its implementation of location-based routing meets the needs of these PSAPs. AT&T PN Comments at 4 n.3.

[65] Letter from Eric Hagerson, Government Affairs Director, Public Safety and Security, T-Mobile, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 18-64 at 1 (filed Dec. 21, 2023) (T-Mobile Dec. 21, 2023 *Ex Parte*). T-Mobile reports that it only deploys location-based routing in response to a PSAP's request. *See, e.g.*, T-Mobile Public Notice Comments at 1, 4-7 (rec. July 11, 2022) (T-Mobile PN Comments); T-Mobile PN Reply at 2-4. For context, the latest NENA data indicate that 5,748 PSAPs operate in the United States. NENA, *9-1-1 Statistics*, https://www.nena.org/page/911Statistics (last visited Jan. 17, 2024).

[66] Letter from Robert G. Morse, Associate General Counsel, Federal Regulatory and Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 18-64 at 1 (filed Dec. 7, 2023) (Verizon Dec. 7, 2023 *Ex Parte*).

[67] Intrado PN Comments at 9.

[68] *Id*. at 2, 9.

[69] Letter from Kristine Laudadio Devine, Counsel to T-Mobile USA, Inc., HWG LLP, to Marlene H. Dortch, Secretary, FCC, P.S. Docket Nos. 18-64, 21-479, at 1 (filed July 26, 2023) (T-Mobile July 26, 2023 *Ex Parte*). For purposes of this *Report and Order*, we assume that when commenters specify an uncertainty measurement for an implementation of location-based routing, that they are referring to the radius in meters from the reported position at the same confidence level. This assumption is consistent with prior Commission discussion of confidence and uncertainty data in the *Wireless Location Accuracy* proceeding, i.e., that the uncertainty statistical estimate is expressed as a radius in meters around the reported position, and the confidence level is expressed as a percentage, indicating the statistical probability that the caller is within the area defined by the uncertainty. *See, e.g.*, *Wireless E911 Location Accuracy Requirements*, Fourth Report and Order, PS Docket No. 07-114, 30 FCC Rcd. 1259, 1326-27, para. 182 n.458 (2015) (*E911 Fourth Report and Order*).

[70] Letter from Robert G. Morse, Associate General Counsel, Federal Regulatory and Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, PS Docket Nos. 18-64, 21-479, at 1 (filed July 13, 2023) (Verizon July 13, 2023 *Ex* Parte).

[71] AT&T PN Comments at 4; T-Mobile July 26, 2023 *Ex Parte* at 2; Letter from Robert G. Morse, Associate General Counsel, Federal Regulatory and Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 18-64, at 1 (filed Jan. 16, 2024).

have been required to support delivery of 911 texts to PSAPs that are capable of receiving them.[72] While availability of text-to-911 has increased significantly as more PSAPs become text-capable, the number of 911 texts sent by the public is far smaller than the number of wireless 911 voice calls.[73] The Commission's text-to-911 rules are technology neutral and apply to both SMS and RTT.

18. SMS is the predominant mobile wireless messaging technology in use for 911 texts today.[74] SMS is not an IP-native format, though IP-enabled networks can deliver SMS traffic.[75] All three nationwide CMRS providers report that they are using location-based routing for at least some SMS texts to 911, but this implementation appears to be distinct from and less extensive than the implementation of location-based routing for 911 voice calls. According to Verizon, "SMS still uses call path, routing and device processing methods that are distinct from VoLTE and RTT calls, with architecture configurations that still resembles second- and third-generation networks in some respects."[76] AT&T reports that it provides device-based hybrid location for "the majority of text messages" but does not provide specifics.[77] T-Mobile reports that it is using location-based routing for at least some text-to-911 messages.[78] Verizon indicates that it "has worked with its wireless 911 vendor Comtech to incorporate LBR in Comtech's centralized text control center (TCC) in a manner that supports LBR for 911 text messages nationwide."[79] Moreover, while the nationwide providers appear to be capable of using location-based routing for some SMS texts, NENA and other commenters indicate that standards have not been developed for location-based routing of SMS and that further work on standards is needed.[80]

19. RTT, unlike SMS, is a native IP technology, in which each text character appears on the receiving device at roughly the same time it is typed on the sending device, allowing for a conversational flow of communication.[81] RTT also allows text characters to be sent simultaneously with voice,[82] which allows the PSAP to both see the typed message and hear background noises and potentially the voice of

---

[72] 47 CFR § 9.10(q). *See Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications; Framework for Next Generation 911 Deployment*, PS Docket Nos. 11-153 and 10-255, Second Report and Order and Third Further Notice of Proposed Rulemaking, 29 FCC Rcd 9846 (2014) (*T911 Second Report and Order*).

[73] In the Commission's 2023 annual 911 fee report, respondents reported receiving a combined total of 824,609 texts to 911 in comparison to 157,999,298 wireless 911 voice calls reported by respondents in calendar year 2022. Fifteenth Annual 911 Fee Report at 13-16, Table 3.

[74] CTIA NPRM Comments at 7; BRETSA NPRM Reply at 9-10; *see T911 Second Report and Order*, 29 FCC Rcd at 9872-73, paras. 52-55.

[75] *See* Verizon NPRM Comments at 5.

[76] Verizon NPRM Comments at 5. *Id*.

[77] AT&T PN Comments at 5. AT&T explains that "[w]hen the SMS message arrives at the TCC, [the TCC] queries [AT&T's] wireless network for commercial location estimates to deliver the text message to the appropriate PSAP." *Id.*

[78] T-Mobile July 26, 2023 *Ex Parte* at 3. T-Mobile explains that texts to 911 are routed from T-Mobile's network to its TCC vendor and, "whenever possible," T-Mobile includes device-based hybrid location information with those texts. *Id*.

[79] Verizon Dec. 7, 2023 *Ex Parte* at 1. Verizon states that its location-based routing implementation will support location-based routing for RTT. Verizon NPRM Comments at 5.

[80] NENA NPRM Reply at 9.

[81] *RTT Order*, 31 FCC Rcd at 13576, para. 10; FCC, *Real-Time Text: Improving Accessible Telecommunications* (Jan. 27, 2021), https://www.fcc.gov/consumers/guides/real-time-text-improving-accessible-telecommunications#:~:text=Real%2Dtime%20text%20%E2%80%93%20or%20RTT,or%20other%20types%20of%20texting.

[82] *RTT Order*, 31 FCC Rcd at 13569, para. 1.

the caller.[83] The Commission's rules require that CMRS providers choosing to implement RTT to and from any PSAP served by their network in lieu of text telephone (TTY) technology must do so in a manner that fully complies with all applicable 911 rules.[84] The Commission also requires CMRS providers who choose to support RTT to make RTT backward-compatible with TTY devices.[85] This enables PSAPs without end-to-end RTT capability to use their existing TTY terminals to handle RTT 911 communications.[86]

20. While SMS is used more frequently than RTT for messaging to 911, CMRS providers are beginning to partner with some PSAPs to implement end-to-end RTT capabilities. T-Mobile reports that it is currently operating NG911 RTT technology at a PSAP in Hood County, Texas.[87] Verizon indicates that it now supports RTT for 911 in Livingston Parish, Louisiana, and Logan County, West Virginia.[88] The record does not indicate the degree to which CMRS providers have implemented location-based routing for RTT communications to 911, but the providers and other industry commenters state that location-based routing for RTT communications to 911 is feasible.[89]

III. DISCUSSION

A. Location-Based Routing

1. Wireless 911 Voice Calls

21. We adopt requirements for nationwide and non-nationwide CMRS providers to implement location-based routing as proposed in the *Notice of Proposed Rulemaking* for voice calls,[90] with certain modifications. Specifically, we require all CMRS providers to (1) deploy technology that supports location-based routing on their IP-based networks (i.e., 4G LTE, 5G, and subsequent generations of IP-based networks), and (2) use location-based routing to route all wireless 911 voice calls originating on their IP-based networks when location information meets certain requirements for accuracy and timeliness. We note that nothing in today's decision, including this definition of "location-based routing"

---

[83] *See* Donny Jackson, *APCO speakers say RTT being used operationally, could be key platform for 911 in the future*, IWCE's Urgent Communications (Aug. 8, 2023), https://urgentcomm.com/2023/08/08/apco-speakers-say-rtt-being-used-operationally-could-be-key-platform-for-911-in-the-future/ (Jackson, *APCO speakers*).

[84] *RTT Order*, 31 FCC Rcd at 13591-92, para. 43. This includes the requirement to deliver RTT communications within six months to PSAPs that submit a valid request. *Id*. at 13592-93, para. 45 & n.181.

[85] *RTT Order*, 31 FCC Rcd at 13589, para. 37.

[86] *Id.* at 13590, para. 39. Currently, RTT communications to 911 that are received at many PSAPs are converted to TTY. Letter from AnnMarie Killian, Chief Executive Officer, TDIforAccess, Inc., and Mark Seeger, Policy Coordinator, TDIforAccess, Inc., to Marlene H. Dortch, Secretary, FCC, PS Docket No. 18-64, at 2 (filed Aug. 31, 2023) (TDIforAccess Aug. 31, 2023 *Ex Parte*).

[87] T-Mobile, *T-Mobile and Sinch Deliver NextGen 911 Real-Time Text to Make Fast Access to Public Safety Support Easier for Customers* (Nov. 1, 2022), https://www.t-mobile.com/news/community/t-mobile-and-sinch-deliver-ng911-rtt.

[88] Verizon, *Verizon continues industry leadership with additional NG911 i3 deployment* (June 20, 2023), https://www.verizon.com/about/news/verizon-continues-industry-leadership-additional-ng911-i3-deployment; CISION PR Newswire, *NGA and Verizon deliver Real-Time Text (RTT) in Logan County, W. Va.* (Jan. 3, 2023), https://www.prnewswire.com/news-releases/nga-and-verizon-deliver-real-time-text-rtt-in-logan-county-w-va-301712242.html; *see also* Jackson, *APCO speakers* (noting that the Logan County, West Virginia, PSAP initially adopted RTT with Verizon and later T-Mobile).

[89] Verizon NPRM Comments at 5 ("Verizon's planned LBR implementation for VoLTE will support real-time-text (RTT) 911 calls."); *see also* ATIS NPRM Comments at 3 (urging the Commission "to clarify that only providers of such next generation text solutions [as defined in ATIS and NENA standards] are required to use LBR").

[90] *Notice of Proposed Rulemaking* 37 FCC Rcd at 15192, para. 17.

and other rules we adopt today, authorizes the use of any non-U.S. satellite system in conjunction with the 911 system. CMRS providers seeking to employ foreign satellite navigation systems for 911 should follow the existing approval process.[91]

22. We require nationwide CMRS providers to comply with these location-based routing requirements for voice calls within six months after the effective date of the final rules. We require non-nationwide CMRS providers to comply with these location-based routing requirements for voice calls within 24 months after the effective date of the final rules in recognition of resource constraints faced by these providers. As discussed below, we adopt these requirements in light of record support that location-based routing for wireless 911 voice calls promotes public safety, is technologically feasible at reasonable cost for both nationwide and non-nationwide CMRS providers, and has been deployed by the three nationwide CMRS providers. We find that these requirements are necessary to extend the demonstrated, life-saving benefits of location-based routing to all wireless 911 callers nationwide.

a. Nationwide and Network-Wide Implementation

23. We require all CMRS providers to deploy location-based routing technologies for voice calls across their IP-based networks. In the *Notice of Proposed Rulemaking*, the Commission sought comment on whether CMRS providers should be required to use location-based routing to deliver 911 calls to all PSAPs served by their networks, or whether the requirement should be triggered by PSAP request or limited to certain categories of PSAPs.[92] We find that requiring CMRS providers to implement this technology across their IP network areas is necessary to ensure that wireless 911 callers receive the demonstrated benefits of improved routing, regardless of the caller's geographic location or CMRS provider.

24. We find that nationwide implementation of location-based routing will reduce 911 call transfers and improve wireless 911 service. As wireless 911 voice calls account for the vast majority of communications to 911, we consider it to be particularly important that these calls are routed to the appropriate PSAP.[93] CMRS providers' voluntary deployments of location-based routing have resulted in important and evident improvements to 911 wireless voice call routing. The record indicates that ongoing deployments of location-based routing have significantly reduced the occurrence of transferred wireless 911 voice calls.[94] AT&T estimates that, as a result of its nationwide implementation, 10% of all wireless 911 voice calls on its network received a more optimal route and therefore did not need to be transferred.[95] NASNA states that uniform implementation of location-based routing has the potential to route 911 calls to the right PSAP faster than traditional cell sector-based routing in many cases and, in an

[91] *See Wireless E911 Location Accuracy Requirements; AT&T Services, Inc. Request for Authorization and Waiver*, Order, PS Docket No. 07-114, 35 FCC Rcd 8805, 8808-09, para. 11 (PSHSB 2020); *E911 Fourth Report and Order*, 30 FCC Rcd at 1272-73, para. 40.

[92] *Notice of Proposed Rulemaking*, 37 FCC Rcd at 15193, para. 21.

[93] In the Commission's 2023 annual 911 fee report, respondents reported receiving a combined total of 157,999,298 wireless 911 voice calls in calendar year 2022 out of a total call volume of 217,654,456 from wireless wireline, VoIP, and other providers. Fifteenth Annual 911 Fee Report at 13-16, Table 3.

[94] AT&T NPRM Comments at 2; Texas 9-1-1 Entities Public Notice Comments at 2-4 (rec. July 11, 2022) (Texas 9-1-1 Entities PN Comments) (showing that average percentage of 911 call transfers for two out of three PSAPs in initial beta sites decreased by roughly 4-5% after T-Mobile implemented location-based routing; the remaining PSAP showed a slight increase in transfers of less than 1%); T-Mobile, *T-Mobile First to Roll Out Cutting-Edge 911 Capabilities* (Dec. 17, 2020), https://www.tmobile.com/news/network/tmobile-next-generation-911-location-based-routing (announcing that some areas where T-Mobile implemented location-based routing have experienced up to 40% fewer call transfers).

[95] AT&T PN Comments at 2.

emergency, "seconds can mean the difference between life and death."[96] Public safety commenters emphasize, and we agree, that increasing the implementation of location-based routing will reduce delays and save lives.[97] We find that it is in the public interest that the benefits of location-based routing should extend to all wireless 911 callers, regardless of the CMRS provider or jurisdiction from which the call is made.

25. Further, the public safety community strongly supports requiring CMRS providers to deploy location-based routing on a nationwide basis. Several public safety organizations urge the Commission to require CMRS providers to implement location-based routing.[98] Other public safety commenters and Intrado also support a nationwide location-based routing requirement.[99] The record indicates that the nationwide CMRS providers have implemented location-based routing without increased costs or problems for public safety.[100] In particular, no commenter indicates that AT&T's nationwide implementation of location-based routing, completed to "virtually all" PSAPs in June 2022,[101]

[96] NASNA NPRM Comments at 18.

[97] BRETSA NPRM Comments at 9 ("By eliminating delay in delivery of a 9-1-1 call to the correct PSAP, LBR can improve outcomes."); BRETSA NPRM Reply at 4 ("LBR reduces delay in processing and dispatching 9-1-1 calls even where 9-1-1 [m]isroutes do not occur."); iCERT NPRM Comments at 2 ("The improved location and routing methodology made available with LBR will reduce the potential for 911 voice calls and texts to be directed to Public Safety Answering Points (PSAPs) that are not the ones best able to provide timely and effective response. As a result, the use of LBR technologies should eliminate the delays associated with 911 call transfers, improve emergency response times, and save lives."); Intrado NPRM Comments at 2 ("Requiring LBR for all CMRS and text providers will ensure the availability of this life saving location technology for all 911 callers while increasing the efficiency of Public Safety Answering Points (PSAPs) by eliminating the time and effort to execute call transfers."); DISA NPRM Comments at 2 ("The vast majority of 911 calls from wireless devices destined for DoD PSAPs are currently being misrouted. DoD bases would immediately benefit from the reduction in call delivery time has a direct and immediate impact on emergency incident response."); APCO NPRM Comments at 1 (noting that location-based routing has saved valuable time for PSAPs and callers). In addition, AT&T notes that Kurt Mills, the Executive Director of Snohomish County (Washington) 911, has described location-based routing as a "game changer" that caused the County to experience a "significant decrease in 9-1-1 transfers." AT&T NPRM Comments at 1-2.

[98] NENA NPRM Comments at 2; APCO NPRM Comments at 1; NASNA NPRM Comments at 8; Michigan State 911 NPRM Comments at 1; COPUC NPRM Comments at 2; Loudoun County NPRM Comments at 3; Texas 9-1-1 Entities NPRM Comments at 2; BRETSA NPRM Comments at 10; Adams County et al. NPRM Comments at 1-2; Acadian Ambulance Service NPRM Comments at 1; Joseph Lyons NPRM Comments; Val Sprynczynatyk NPRM Comments; DISA NPRM Comments at 2.

[99] *See, e.g.,* APCO NPRM Comments at 2 (stating that "location-based routing should be required of wireless carriers nationwide"); DISA NPRM Comments at 2 ("CMRS providers should use LBR to deliver 911 calls to ***all*** PSAPs served by their networks." (emphasis in original)); Adams County et al. NPRM Comments at 2 ("The Commission should require location-based routing on a nationwide basis."); Loudoun County NPRM Comments at 3 ("Loudoun strongly supports the proposed rules requiring wireless carriers and covered text providers to implement all available technology options for location-based routing of 911 calls and texts nationwide using the device-based location."); BRETSA NPRM Comments at 10 ("There is no question but that the Commission should require all CMRS providers to implement LBR for wireless voice calls and text messages as soon as possible."); Intrado NPRM Comments at 1 ("Intrado strongly supports the Commission's proposed requirement for nationwide implementation of location-based routing (LBR) of wireless 911 calls and texts.").

[100] Adams County et al. NPRM Comments at 2 (stating that the commenting entities "have not experienced increased costs, adverse impacts, or significant issues with the implementation of location-based routing"); CCOA NPRM Reply at 3 (stating that "deployments [of LBR for at least six Colorado 911 authorities] were successful and without significant issue or additional expense").

[101] AT&T NPRM Comments at 3.

has caused additional cost or other problems for public safety.[102] Given the success of nationwide CMRS providers in voluntarily implementing location-based routing on their IP-based networks, and in particular the success of AT&T's nationwide implementation, we agree with Boulder Regional Emergency Telephone Service Authority (BRETSA), which states that requiring wireless service providers to implement location-based routing at the earliest possible moment is "a no-brainer."[103]

26. We also find that requiring location-based routing to all PSAPs nationwide supports the Commission's goal to promote parity of wireless 911 service across jurisdictions. NASNA states, and we agree, that "[a]ttempting to create areas of exclusive enhanced location accuracy fosters deployment of disparate levels of service; all those who call or text 911 should benefit from LBR."[104] NENA points out, and we agree, that "[i]t would be inequitable to restrict the life-saving benefits of location-based routing only to residents of and visitors to the United States with the good fortune of having an emergency in a convenient location."[105] Commenters also urge the Commission not to limit deployment of this technology to jurisdictions subject to frequent misroutes[106] or to jurisdictions that have deployed NG911 capabilities.[107] Intrado comments that even in low misroute areas, the implementation of location-based routing will result in a significant reduction in misroutes compared to relying exclusively on tower-based routing.[108] Public safety commenters also note that implementation of location-based routing on a nationwide basis will provide technological consistency for PSAPs, which will help them provide better service,[109] and that technological consistency between CMRS providers is important for managing the expectations of 911 callers.[110]

---

[102] We note that AT&T indicated in July of last year that it had "very few exceptions" to its nationwide rollout, and indicated that "a few PSAPs are using unique applications of Emergency Services Numbers to implement internal routing solutions. . . and that [the company was] working with these PSAPs to ensure [its] location-based routing solution meets their unique needs." AT&T PN Comments at 4, n.3. T-Mobile also notes that it is aware of "at least one instance" in which "an emergency calling authority requested that another 911 vendor indefinitely suspend using LBR for 911 calls to its PSAPs because the vendor's LBR implementation resulted in a greater number of 911 calls that required transfer to another PSAP." T-Mobile NPRM Comments at 5. T-Mobile did not provide additional details on this occurrence, including when it occurred or whether or not the issue was resolved.

[103] BRETSA NPRM Comments at 3 (internal quotations omitted). Joseph Lyons, Dispatch Supervisor for the City of Poughkeepsie 911 Communications Center, also states that location-based routing is a "no brainer." Joseph Lyons NPRM Comments at 1.

[104] NASNA NPRM Comments at 11.

[105] NENA NPRM Comments at 5.

[106] Adams County et al. NPRM Comments at 2; COPUC NPRM Comments at 5-6; NASNA NPRM Comments at 11; NENA NPRM Comments at 5; APCO NPRM Comments at 3.

[107] Intrado NPRM Comments at 3; APCO NPRM Comments at 3; BRETSA NPRM Reply at 12; DISA NPRM Comments at 2; NASNA NPRM Comments at 9; COPUC NPRM Comments at 4.

[108] Intrado NPRM Comments at 3, n.6. *See also* COPUC NPRM Comments at 5-6 ("The implementation of location-based routing on all cell tower sectors is the best way to ensure that instances of misrouted calls are minimized to the greatest extent possible.").

[109] Adams County et al. NPRM Comments at 1-2.

[110] Michigan State 911 NPRM Comments at 1 ("[H]aving some [CMRS providers] provide LBR while others do not, creates an expectation for callers that all wireless calls provide this information to 911 centers, and that 911 centers will be able to locate them when they are experiencing an emergency.").

27. Wireless industry commenters oppose a mandatory nationwide approach,[111] arguing instead that CMRS providers should implement location-based routing voluntarily[112] or only in response to individual PSAP requests.[113] These commenters argue that CMRS providers should only be required to use location-based routing for 911 calls to a particular PSAP after receiving a valid request from that PSAP.[114] In addition, they argue that for a PSAP request to be deemed valid, the PSAP should be required to demonstrate that it is "technically ready"[115] to receive calls routed using location-based routing and to provide shapefiles of PSAP boundaries to CMRS providers.[116] As explained below, we find that the concerns of industry commenters are unsupported in the record, contradict the stated preferences of public safety for a nationwide approach to deployment, and would unnecessarily delay the benefits of location-based routing to the public.

28. *Per-PSAP Implementation.* We decline to adopt a per-PSAP deployment approach. Contrary to the assertion of industry commenters, the record does not demonstrate that individual PSAPs must take specific technical steps in order to be ready to receive wireless 911 calls routed using location-based routing. The generation of location-based routing information as contemplated in this proceeding occurs entirely within CMRS provider networks prior to call delivery to the PSAP,[117] and therefore there are no specific actions that PSAPs need to take to be technically ready to receive wireless 911 calls routed by device-based rather than tower-based location.[118] As the Colorado Public Utilities Commission (COPUC) states, "Because LBR is performed before the call is even delivered to the 9-1-1 system service provider for delivery to the PSAP, there is no additional preparation that must be made by the PSAP in

[111] *See, e.g.*, T-Mobile NPRM Comments at 3 ("T-Mobile cautions the Commission from adopting rules that require wireless carriers to do nothing more than turn on location-based routing regardless of PSAP preference."); Verizon NPRM Comments at 2 ("[I]nstead of a blanket flash-cut nationwide implementation deadline, implementation should be based on PSAP requests. . . ."); CTIA NPRM Comments at 4 ("[A]ny obligation for a provider to commence use of LBR to route wireless 9-1-1 voice calls to a PSAP should only be triggered by a 'valid request' from a state or local 9-1-1 authority."). One public safety commenter, the Colorado Council of Authorities (CCOA), also "gives deference to the comments of T-Mobile, Verizon, and CTIA that deployment of LBR for wireless 911 voice calls should be initiated by a valid request from a PSAP or governing 911 authority." CCOA NPRM Reply at 1 (footnote omitted).

[112] CTIA NPRM Comments at 4; Letter from Joely Denkinger, Regulatory Counsel, Federal Affairs, GCI Communication Corp., to Marlene H. Dortch, Secretary, FCC, PS Docket Nos. 18-64, 21-479, at 5 (filed Aug. 7, 2023) (GCI Aug. 7, 2023 *Ex Parte*); RWA Notice of Proposed Rulemaking Comments at 4 (rec. Feb. 16, 2023) (RWA NPRM Comments).

[113] Verizon NPRM Comments at 2; T-Mobile NPRM Comments at 3; iCert NPRM Comments at 2; RWA NPRM Comments at 4; Southern Linc NPRM Reply at 4; *see also* AT&T NPRM Comments at 3 (arguing for either a per-PSAP approach or "a process under which a PSAP could signal that it requires more time to achieve readiness, and that PSAP would be carved out from the six-month requirement.").

[114] T-Mobile NPRM Comments at 4; AT&T NPRM Comments at 3; Verizon NPRM Comments at 2; CTIA NPRM Comments at 4; Southern Linc NPRM Reply at 4; RWA NPRM Comments at 4.

[115] CTIA NPRM Comments at 4 (stating that "[t]o make a valid request, a PSAP should be technically ready to receive 9-1-1 calls routed using LBR"); CCA Notice of Proposed Rulemaking Reply at 6 (rec. Mar. 20, 2023) (CCA NPRM Reply); RWA NPRM Comments at 3.

[116] T-Mobile NPRM Comments at 7 (stating that a valid request must be conditioned on "the provision of accurate shapefiles—and the maintenance and update of those shapefiles").

[117] As Intrado notes, CMRS providers must implement a geospatial routing-capable Gateway Mobile Location Center (GMLC) in order to enable their networks to support location-based routing. Intrado NPRM Comments at 3.

[118] Intrado NPRM Comments at 3; APCO NPRM Comments at 6; BRETSA NPRM Reply at 8; COPUC NPRM Comments at 4.

order for carrier-provided LBR to be of benefit."[119]

29. AT&T's completed rollout of location-based routing on its nationwide network provides additional evidence that location-based routing can be successfully deployed without requiring PSAPs to demonstrate technical readiness. AT&T deployed location-based routing in 2022 on a region-by-region basis and completed its nationwide rollout in less than six months.[120] Moreover, although AT&T supports the Commission adopting a per-PSAP approach in which each PSAP would have to request location-based routing, it is notable that AT&T did not use this approach in its own rollout. Instead, AT&T deployed location-based routing to "virtually all PSAPs" in the U.S. without soliciting PSAP-by-PSAP requests or requiring each PSAP to demonstrate technical readiness.[121] Thus, it does not appear that these are necessary prerequisite steps before CMRS providers implement location-based routing nationwide on their networks.

30. We also do not agree with commenters' assertions that PSAPs are not ready from an operational perspective to manage changes in call distribution or volume resulting from the implementation of location-based routing on a nationwide basis. T-Mobile asserts that "[m]any emergency authorities want to understand the impact LBR will have on operations, call volume, and workflows before deploying it; they often also want the ability to implement reporting and tracking of call transfers prior to enabling LBR in order to understand and see the effects of the new 911 routing."[122] T-Mobile cites its initial implementation of location-based-routing in Minnesota and Texas,[123] where T-Mobile states that 911 authorities required First Office Applications (FOAs) before expanding deployment to more PSAPs.[124] However, T-Mobile's initial deployments in those areas occurred at a time when no other carrier had deployed location-based routing for 911 anywhere in the U.S., which could reasonably lead the first PSAPs receiving location-based routed calls to take a cautious approach.[125] Since then, AT&T has implemented location-based routing nationwide to thousands of PSAPs with no reported adverse operational impacts. To the contrary, the record indicates that PSAPs have reaped operational benefits from implementation of location-based routing in the form of reduced misroutes and call transfers.

31. CMRS providers' assertions about potential adverse operational impacts to PSAPs are

[119] COPUC NPRM Comments at 4.

[120] AT&T Comments at 3. In a news release announcing AT&T's rollout of location-based routing, AT&T stated "The nationwide rollout has started and is available in Alaska, Colorado, Hawaii, Idaho, Montana, Oregon, Washington, Wyoming, Kansas, Illinois, Iowa, Minnesota, North Dakota, Missouri, Nebraska, South Dakota and Guam. Additional regions will be rolled out over the next several weeks. The nationwide rollout is scheduled to be completed by the end of June." Press Release, AT&T, AT&T Launches First-Ever Nationwide Location-Based Routing with Intrado to Improve Public Safety Response for Wireless 9-1-1 Calls (May 10, 2022), at https://about.att.com/story/2022/nationwide-location-based-routing.html.

[121] AT&T NPRM Comments at 3.

[122] T-Mobile NPRM Comments at 5 (emphasis omitted).

[123] *See* Metropolitan Emergency Services Board, Metropolitan Emergency Services Board 9-1-1 Technical Operations Committee July 15, 2021 Draft Meeting Minutes at 7, https://mn-mesb.org/wp-content/uploads/July-TOC-Meeting-Packet-070921.pdf (MESB July 15, 2021 Meeting Minutes) (indicating that at the time of deployment in select counties in Minnesota, no other carriers had deployed or announced future deployment of location-based routing); Metropolitan Emergency Services Board, Metropolitan Emergency Services Board 9-1-1 Technical Operations Committee Agenda at 25 (Jan. 21, 2021), https://mn-mesb.org/wp-content/uploads/January-Meeting-911-TOC-Packet-012121.pdf (MESB Jan 21, 2021 Agenda) (including a presentation from T-Mobile to Greater Harris County, Texas, indicating that "[t]oday, T-Mobile is the only wireless carrier positioned to route 911 calls based on caller location, rather that [sic] cell sector").

[124] T-Mobile NPRM Comments at 5.

[125] *See* MESB July 15, 2021 Meeting Minutes at 7; MESB Jan 21, 2021 Agenda at 25.

also contradicted by virtually all statements of public safety commenters on the record. Despite industry commenters' preference,[126] the vast majority of public safety commenters support a rapid nationwide rollout of location-based routing and specifically oppose the per-PSAP approach advocated by CMRS providers.[127] Only one public safety commenter, the Colorado Council of Authorities, Inc. (CCOA), supports the per-PSAP approach in order to ensure "collaboration" between PSAPs and service providers.[128] We agree that such collaboration is important to the successful implementation of location-based routing, and we encourage PSAPs and 911 authorities to collaborate during the implementation period established by this Order. However, this does not require establishing a process in which every PSAP must affirmatively opt in to location-based routing. In fact, such a process would be far more cumbersome than a uniform nationwide implementation timetable and could lead to fragmented and inconsistent deployment. We agree with APCO that given the immediate feasibility of nationwide implementation, substantial voluntary deployment that has already occurred, and the clear public safety benefits of location-based routing, deployment and use of location-based routing should not be optional or conditional.[129]

32. We are also not persuaded by commenters who compare implementation of location-based routing to past implementation of the Commission's E911 Phase I and Phase II location requirements[130] or text-to-911,[131] which were predicated on individual PSAPs achieving the technical capability to receive E911 location data and 911 texts, respectively.[132] For location-based routing, there is no similar reason to predicate CMRS provider compliance on PSAP technical capability, because AT&T's rollout demonstrates that PSAPs do not need to have any specific technical capabilities in place to receive calls routed using location-based routing.[133] Accordingly, we agree with COPUC that "[t]here is no compelling reason to require PSAPs to opt in to this service or to predicate the use of location-based routing methodology on any sort of 'readiness' of the PSAP."[134] Implementing location-based routing on

[126] T-Mobile NPRM Comments at 5; *see also* iCERT NPRM Comments at 2 (arguing for a per-PSAP approach as location-based routing "may impact a PSAP's operations").

[127] *See* NENA NPRM Comments at 2; APCO NPRM Comments at 1; NASNA NPRM Comments at 8; Michigan State 911 NPRM Comments at 1; COPUC NPRM Comments at 2; Loudoun County NPRM Comments at 3; Texas 9-1-1 Entities NPRM Comments at 2; BRETSA NPRM Comments at 10; Adams County et al. NPRM Comments at 1-2; Acadian Ambulance Service NPRM Comments at 1; Joseph Lyons NPRM Comments; Val Sprynczynatyk NPRM Comments; DISA NPRM Comments at 2.

[128] CCOA NPRM Reply Comments at 1-2.

[129] APCO NPRM Comments at 3.

[130] T-Mobile NPRM Comments at 4; CCOA NPRM Reply Comments at 1-2; *see also* 47 CFR § 9.10(d)(1), (f), (g), (m).

[131] T-Mobile NPRM Comments at 4; CTIA NPRM Comments at 4; *see also* 47 CFR § 9.10(q)(10)(ii)-(iii).

[132] To receive texts, PSAPs must either upgrade their equipment to receive text messages or implement text-to-911 capabilities on existing equipment. *T911 Second Report and Order*, 29 FCC Rcd at 9861, para. 32. To receive Phase I location information, PSAPs must use switches, protocols, and signaling systems that will allow them to obtain the calling party's number from the transmission of ANI. *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, RM-8143, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 18676, 18709, para. 63 n.119 (1996). To receive Phase II location information, PSAPs must "install equipment to determine the geographic coordinates of the caller, transfer that information through the telephone networks, and have a mapping system in place at the PSAP that can display the latitude and longitude coordinates of the caller as a map location for dispatching assistance." General Accounting Office, Uneven Implementation of Wireless Enhanced 911 Raises Prospect of Piecemeal Availability for Years to Come, GAO-04-55, at 9 (Nov. 2003), https://www.gao.gov/assets/gao-04-55.pdf.

[133] APCO NPRM Comments at 3; BRETSA NPRM Reply at 10; COPUC NPRM Comments at 4.

[134] COPUC NPRM Reply at 4.

a per-PSAP basis could lead to uneven and inconsistent implementation of routing approaches between jurisdictions and result in a risk of wireless 911 misroutes for jurisdictions that do not request location-based routing service. We find that this would be contrary to the public interest and the Commission's interest in facilitating improved routing of wireless 911 voice calls.

33. *Voluntary Implementation*. We also decline to permit CMRS providers to deploy location-based routing on a purely voluntary basis. Wireless entities supporting voluntary implementation argue that flexibility in implementation is needed to account for differences in providers' networks and devices and to allow technologies to continue to evolve.[135] However, public safety commenters note that permitting CMRS providers to deploy location-based routing on a purely voluntary basis would require additional and unnecessary coordination and would only delay the implementation of location-based routing as a general matter.[136] The record confirms the Commission's reasoning in the *Notice of Proposed Rulemaking* that relying on voluntary implementation would "result in inconsistent routing of calls to PSAPs and a higher risk of 911 misroutes for subscribers on CMRS networks that did not support location-based routing."[137] Thus, we find that allowing CMRS providers to implement location-based routing on a voluntary basis would undermine our goal of ensuring that this important capability benefits all wireless 911 callers nationwide.

b. Technical Considerations

34. *Technological Feasibility.* We find that implementing location-based routing for wireless 911 voice calls is technologically feasible for nationwide and non-nationwide CMRS providers. The three nationwide CMRS providers have implemented location-based routing for wireless 911 voice calls across or for some part of their networks.[138] CCA, an industry association with membership including non-nationwide CMRS providers, states that "wireless carriers can eventually deploy location-based routing to any PSAP" if provided with adequate time and financial support.[139] iCERT agrees that location-based routing is technologically feasible.[140] NGA 911 also offers support for this conclusion, stating that both Google's Emergency Location Service (ELS) and Apple's Hybridized Emergency Location (HELO) provide a device location estimate, and these mobile operating systems comprise 99.62% of the handset market.[141] NENA states that AT&T's nationwide deployment of location-based routing demonstrates that "transitional location-based routing mechanisms are technically feasible and improve 9-1-1 outcomes, and are in use today."[142] No commenter argues that implementing location-based routing on CMRS provider networks is technologically infeasible.

35. *Calls originating on IP-based networks*. In light of the technical obstacles and ongoing retirement of legacy networks, we apply our location-based routing requirements to IP-based networks but we decline to require location-based routing for 911 calls originating on circuit-switched, time-

[135] CTIA NPRM Reply at 3 (urging the Commission to provide flexibility for wireless providers to implement location-based routing in the manner that meets their "unique network and handset configurations" and is coordinated with public safety); *see also* CCA NPRM Reply at 1-2.

[136] *See*, *e.g.*, BRETSA NPRM Reply at i, 10; COPUC NPRM Comments at 3-4; NASNA NPRM Comments at 8-9.

[137] *Notice of Proposed Rulemaking* 37 FCC Rcd at 15192-93, para. 20; *see* Michigan State 911 NPRM Comments at 1; Adams County et al. NPRM Comments at 2; COPUC NPRM Comments at 5-6; NASNA NPRM Comments at 11; NENA NPRM Comments at 5; APCO NPRM Comments at 3.

[138] *See* AT&T NPRM Comments at 1; T-Mobile July 26, 2023 *Ex Parte* at 1; Verizon July 13, 2023 *Ex Parte* at 1.

[139] CCA NPRM Comments at 2.

[140] iCERT NPRM Comments at 2.

[141] NGA 911, LLC (NGA 911) Notice of Proposed Rulemaking Comments at 2 (rec. Feb. 16, 2023) (NGA 911 NPRM Comments).

[142] NENA NPRM Comments at 5.

division multiplex (TDM) networks. This is consistent with the Commission's proposal in the *Notice of Proposed Rulemaking*[143] and is supported by commenters.[144] For example, the Rural Wireless Association (RWA) agrees that requiring location-based routing for 911 calls originating on TDM networks would be unduly burdensome.[145] CCA asserts that "TDM networks can lack the speed and capacity necessary to transmit and evaluate confidence and uncertainty information and query the location server for PSAP routing instructions prior to the time for a call to commence."[146] ATIS assumes for purposes of *ATIS-0700042* that location-based routing is only supported on originating networks supporting Long Term Evolution (LTE) and beyond.[147]

36. *PSAP Boundary Maps.* Some commenters contend that location-based routing requirements should be conditioned on 911 authorities providing updated maps or shapefiles of PSAP boundaries to CMRS providers.[148] We conclude that such a condition is unnecessary. We recognize that accurately mapping PSAP jurisdictional boundaries is important to the accurate routing of 911 calls.[149] However, the record demonstrates that CMRS providers and the third-party vendors they use to route 911 calls already have maps and shapefile records of PSAP boundaries generated to support earlier E911 deployments and upgrades,[150] and that "numerous companies" maintain PSAP boundary shapefile information to support CMRS 911 call routing.[151] CMRS providers have long used this information to support legacy tower-based routing of 911 voice calls.[152] Moreover, the Commission has never conditioned the 911 routing obligations of CMRS providers on PSAPs or 911 authorities providing mapping data. As NASNA explains, legacy and E911 routing "relies on tabular location databases that are updated by the originating service provider," and 911 authorities may support the maintenance and quality assurance of these databases, but "there are no rules addressing how frequently this data must be updated, nor is there transparency when data updates are operationalized."[153]

37. The record indicates that CMRS providers and their vendors can use existing PSAP

---

[143] *Notice of Proposed Rulemaking*, 37 FCC Rcd at 15195, para. 27.

[144] APCO NPRM Comments at 2, n.7; NENA NPRM Comments at 5; RWA NPRM Comments at 4; DISA NPRM Comments at 2; CCA NPRM Comments at 12.

[145] RWA NPRM Comments at 14.

[146] CCA NPRM Comments at 12.

[147] *ATIS-0700042* at 6. CCA argues that limiting location-based routing to IP-based wireless networks provides "an important increment of regulatory relief" but notes that this relief is limited because many non-nationwide carriers have already retired non IP-based technology. CCA NPRM Comments at 12. CCA also asserts that limiting location-based routing to IP networks does not reduce costs burdens on the wireless sector. *Id.* at 12-13. Nonetheless, we find that this provision will ease burdens for CMRS providers that have not yet transitioned to IP-based networks.

[148] T-Mobile NPRM Comments at 6; CTIA NPRM Reply at 3.

[149] CTIA July 3, 2023 *Ex Parte* at 1.

[150] *See* Verizon July 13, 2023 *Ex Parte* at 1 ("If Verizon has a [s]hapefile of the PSAP's boundaries due to earlier E911 deployments or upgrades, the PSAP may be able to simply confirm that the earlier document remains accurate."); GCI Aug. 7, 2023 *Ex Parte* at 5 ("GCI's network serves geographic areas where the boundaries between PSAP service areas are sparsely populated or unpopulated, in general. Therefore, the existing shapefiles could likely be used to route calls using more precise on-device location as well.").

[151] NENA NPRM Comments at 7-8.

[152] *See* NASNA NPRM Comments at 4 ("Legacy and enhanced 911 relies on tabular location databases that are updated by the originating service providers (OSPs), and maintained by the 911 service provider to act as the authoritative source of location information used to validate the location of the 911 caller." (footnote omitted)).

[153] *Id.*

boundary information to support location-based routing to the same extent that such information has supported tower-based routing. The purpose of this information is to associate a specified location – whether it is the caller's location or the tower location – with the jurisdiction served by a particular PSAP, and CMRS providers are already using this information to support their implementation of location-based routing. If PSAP boundary maps are not updated to reflect current jurisdictional boundaries, it is possible that some calls originated near those boundaries could be misrouted even when location-based routing is used. However, the overall frequency of misroutes is still likely to be lower than with tower-based location because tower-based location routes all calls in a cell sector to the same PSAP regardless of the jurisdiction where the caller is located. For example, GCI states that "existing shapefiles could likely be used to route calls using more precise on-device location" information on its network, although the importance of updated maps may be affected in some locations by factors such as population density near the PSAP boundary area, the number of PSAPs served, and the density of cell sites.[154] BRETSA comments that the record does not indicate whether the provider of the PSAP boundary maps AT&T is relying on "could and would also provide them to non-national providers and on what terms."[155] As noted above, we conclude that it is not necessary for AT&T's provider of PSAP boundary maps to provide them to other CMRS providers, who should be able to use their existing sources of boundary maps.

38. While we do not require PSAPs to provide updated shapefiles as a prerequisite to location-based routing, we recognize that location-based routing is most effective when service providers use up-to-date shapefiles that precisely and accurately identify jurisdictional boundaries for routing purposes.[156] In addition, we recognize that 911 authorities and PSAPs are the most authoritative source for current jurisdictional boundary information.[157] Therefore, we encourage CMRS providers and their third-party vendors to work with 911 authorities and PSAPs to ensure that location-based routing decisions on CMRS provider networks are based on shapefiles that accurately reflect current boundaries. NENA suggests establishment of an "authoritative database for PSAP boundary information"[158] and states that with sufficient funding and appropriate governance, this tool could be expanded to serve as the industry's authoritative reference for location-based routing purposes.[159] We encourage 911 authorities, relevant industry groups, and CMRS providers to consider further whether such a database is needed, what steps to take, and what parties should take them.

39. *NG911 Geospatial Routing*. NASNA and the Texas 9-1-1 Entities suggest that as jurisdictions transition to NG911, location-based routing by CMRS providers may not be necessary and could cause delay in call routing by NG911-capable jurisdictions that will use ESInets and geospatial routing to route calls to individual PSAPs.[160] While these parties are correct that NG911 will introduce new geospatial routing mechanisms, this does not obviate the need for the location-based routing requirements we adopt in this Order, nor will these requirements impede NG911 call routing.

40. First, while many states have already made significant commitments to implementing

[154] GCI Aug. 7, 2023 *Ex Parte* at 5.

[155] BRETSA NPRM Reply at 12.

[156] *See* CCOA NPRM Reply at 3; Intrado NPRM Comments at 3.

[157] *See* NASNA NPRM Comments at 5; NENA NPRM Comments at 7-8.

[158] NENA NPRM Comments at 8.

[159] *See id*.

[160] NASNA NPRM Comments at 11 ("By definition, LBR will introduce delay into the delivery of the 911 call or text to NG911 that is no longer needed with a fully functional NG911 system that is using geospatial routing."); Texas 9-1-1 Entities NPRM Comments at 4 (noting that the NG911 transition in some areas "may potentially make it unnecessary for some CMRS providers to make LBR modifications to their existing legacy 9-1-1 solutions, at least in those areas").

NG911,[161] the NG911 transition remains ongoing, and there are no fully enabled NG911 systems yet operating.[162] As COPUC notes, "most 911 call delivery networks do not have the ability to provide geospatial routing at this time and it is unknown when such technology will be universally deployed. Requiring CMRS providers to deploy LBR in the meantime is essential . . . ."[163] We agree.

41. Second, the provision of location-based routing information by CMRS providers will remain essential in the NG911 environment because NG911 systems will need this information to perform the additional geospatial routing functions necessary to direct 911 calls to the correct PSAP behind the ESInet.[164] APCO notes that "[w]ireless service providers perform routing functions before passing a 9-1-1 call or text to a 9-1-1 network – regardless of whether the 9-1-1 network is legacy or IP-based – and even if such networks are able to perform an additional routing function, carriers should remain responsible for first engaging in location-based routing."[165] BRETSA further notes that location-based routing "is not inconsistent with the eventual transition to full i3 NG9-1-1."[166] Finally, we do not agree that location-based routing implemented on CMRS networks consistent with the proposed rules will introduce delay into NG911 call routing.[167] The location-based routing requirements we adopt in this order expressly apply only when location information meeting the accuracy threshold is available at time of routing. Thus, these requirements will not delay delivery of 911 calls in either the legacy E911 environment or the NG911 environment.[168]

c. Compliance Timelines

42. *Overview.* We require nationwide CMRS providers to comply with the location-based routing requirements within six months after the effective date of the final rules, as proposed in the *Notice of Proposed Rulemaking*.[169] We require non-nationwide CMRS providers to comply with the location-based routing requirements within 24 months after the effective date of the final rules, a time frame which is six months longer than the eighteen months proposed in the *Notice of Proposed Rulemaking*.[170] We also permit a PSAP and a CMRS or covered text provider to set, by mutual consent, alternative deadlines to implement location-based routing in the PSAP's jurisdiction that are different from those otherwise established by the rules.

43. *Nationwide CMRS Providers*. We require nationwide CMRS providers to comply with the location-based routing requirements within six months after the effective date of the final rules, as

---

[161] *NG911 Notice of Proposed Rulemaking* at *7, para. 18.

[162] *Id.* at *5, para. 12.

[163] NASNA NPRM Comments at 6 ("For localities that have deployed any form of NG911 this unrestricted access to 911 call routing data is mission critical. . . .").

[164] *See* Verizon NPRM Comments at 3 (stating that some jurisdictions "have implemented their own form of LBR and prefer that originating service providers not also perform LBR on a call").

[165] APCO NPRM Comments at 6.

[166] BRETSA NPRM Reply Comments at 5; *see also* Intrado PN Comments at 10 n.14 ("Implementing LBR on the carrier side has the added benefit of avoiding any potential adverse consequences to the present transitional NG911 environment and eventual NG911 end state. In fact, LBR (and the enhanced location information behind it) will work hand-in-hand with the PSAPs ongoing NG911 adoption of IP-based, geospatial ESInets.").

[167] NASNA NPRM Comments at 11.

[168] *See* Intrado NPRM Comments at 5 ("[T]he carrier GMLC now has sufficient information and time with 4G/5G to determine, transmit and evaluate confidence and uncertainty of device-based location information and to query the location server for PSAP routing instructions before the time to route.").

[169] *Notice of Proposed Rulemaking*, 37 FCC Rcd at 15195, para. 25.

[170] *Id.* at 15195, para. 26.

proposed in the *Notice of Proposed Rulemaking*.[171] NENA, COPUC, NASNA, DISA, and iCERT support the proposed six-month timeline for nationwide CMRS providers,[172] and no commenter indicates that it would be infeasible or burdensome for nationwide CMRS providers to complete the implementation of location-based routing within six months. The three nationwide CMRS providers have already deployed or are actively working toward deploying location-based routing capabilities on their networks, indicating that they have made substantial progress in implementing this technology at the network level.[173] AT&T has already deployed location-based routing on a nationwide basis.[174] Verizon has indicated that it is "turning up Location-Based Routing for hundreds of PSAPs nationwide" and directs "PSAPs that are interested in deploying Location Based Routing to contact Verizon engineers."[175] This statement indicates Verizon's readiness to deploy location-based routing and that Verizon has made necessary progress to implement the technology at the network level. T-Mobile was the first to deploy this technology on its network in 2020 and as of December 2023 had fully implemented location-based routing for 1,591 PSAPs with an additional 596 PSAPs in progress, which indicates that it has made progress on implementing the technology on a network level.[176]

44. The nationwide CMRS providers do not argue for an implementation timeline that is longer than six months from the effective date of the rules. Instead, T-Mobile, AT&T, Verizon, and CTIA support a six-month timeline for nationwide providers conditioned on each PSAP requesting location-based routing and demonstrating technical and operational readiness.[177] As discussed above, we have determined that a per-PSAP request mechanism would delay the critical benefits of a nationwide deployment of location-based routing and is not a necessary component to ensure PSAP operational continuity during the transition. Industry commenters' arguments nevertheless indicate that nationwide providers are capable, from both a technical and cost perspective, of deploying location-based routing within a six month timeframe. Indeed, if the Commission were to adopt a per-PSAP request mechanism and all or virtually all PSAPs opted in immediately, the nationwide CMRS providers would effectively be required to deploy location-based routing nationwide within six months. Finally, we accord little weight to AT&T's request to condition CMRS provider compliance timelines on PSAP requests, as AT&T deployed location-based routing on a nationwide basis and states that it "was able to deploy location-based routing to virtually all PSAPs within a six-month timeframe," with few exceptions.[178]

45. Some commenters point out that the nationwide CMRS providers had several years to

[171] *Id.* at 15195, para. 25.

[172] NENA NPRM Comments at 1; COPUC NPRM Comments at 3; NASNA NPRM Comments at 11; DISA NPRM Comments at 2; iCERT NPRM Comments at 2.

[173] AT&T completed the rollout of location-based routing on its network in June 2022 and uses location-based routing to deliver wireless 911 voice calls and texts to nearly all PSAPs nationwide. AT&T PN Comments at 4; AT&T NPRM Comments at 1. T-Mobile launched location-based routing on its network in the states of Texas and Washington in 2020 and as of December 2023 has fully implemented location-based routing for 1,591 PSAPs with an additional 596 PSAPs in progress. T-Mobile NPRM Comments at 3-5; T-Mobile PN Reply at 2 n.6. In December 2023, Verizon reported that it had initiated location-based routing for 414 PSAPs with an additional 277 PSAPs in progress. Verizon Dec. 7, 2023 *Ex Parte* at 1.

[174] AT&T NPRM Comments at 1.

[175] Press Release, Verizon, Verizon continues industry leadership with additional NG911 i3 deployment (June 20, 2023), https://www.verizon.com/about/news/verizon-continues-industry-leadership-additional-ng911-i3-deployment.

[176] T-Mobile Dec. 21, 2023 *Ex Parte* at 1; T-Mobile PN Reply at 2 n.6.

[177] AT&T NPRM Comments at 3; Verizon NPRM Comments at 2; CTIA NPRM Comments at 4.

[178] AT&T NPRM Comments at 3.

plan and carry out their voluntary implementation of location-based routing.[179] However, we disagree that this argues in favor of allowing the nationwide providers more than six months to complete nationwide implementation. Location-based routing technology is no longer nascent, unknown to PSAPs, or unproven. Use of location-based routing has expanded significantly since 2020, when T-Mobile first deployed it,[180] technical standards now exist for its implementation,[181] all three nationwide carriers have deployed it on their networks,[182] and public safety is aware of and eager for this improved routing technology.[183] Given the extent of this progress, we believe that six months is more than adequate for nationwide CMRS providers to implement location-based routing nationwide. We therefore find that six months from the effective date of the rules provides adequate time for these providers to complete the implementation on their networks. NENA, COPUC, NASNA, DISA, and iCERT support the proposed six-month timeline for nationwide CMRS providers,[184] and no commenter indicates that it would be infeasible or burdensome for nationwide CMRS providers to complete the implementation of location-based routing within six months.

46. APCO, Adams County et al., and Fenwick support a timeline shorter than six months for nationwide providers to deploy location-based routing.[185] We decline to adopt a shorter mandatory timeline, as it is unclear whether it is feasible for all three nationwide CMRS providers to complete their deployment of location-based routing in fewer than six months. However, nationwide CMRS providers may deploy location-based routing voluntarily prior to the compliance deadline.

47. *Non-Nationwide CMRS Providers.* In the *Notice of Proposed Rulemaking*, the Commission proposed an 18-month timeline for non-nationwide CMRS providers to implement location-based routing.[186] We received mixed comments on this issue. NASNA, iCERT, and COPUC support the proposed 18-month timeline for non-nationwide CMRS providers,[187] while other public safety entities argue for a shorter timeline.[188] On the other hand, CMRS provider commenters generally support a

[179] RWA NPRM Reply at 3; *see also* CCA NPRM Comments at 2, 4-5 (citing AT&T PN Comments at 2-4).

[180] T-Mobile NPRM Comments at 3-5; T-Mobile PN Reply at 2 n.6.

[181] *ATIS-0700042*; *ATIS-0500039*.

[182] AT&T PN Comments at 4; AT&T NPRM Comments at 1; T-Mobile NPRM Comments at 3-5; T-Mobile PN Reply at 2 n.6; Verizon Dec. 7, 2023 *Ex Parte* at 1.

[183] *See, e.g.,* APCO NPRM Comments at 2; DISA NPRM Comments at 2; Adams County et al. NPRM Comments at 2; Loudoun County NPRM Comments at 3; BRETSA NPRM Comments at 10.

[184] NENA NPRM Comments at 1; COPUC NPRM Comments at 3; NASNA NPRM Comments at 11; DISA NPRM Comments at 2; iCERT NPRM Comments at 2.

[185] APCO NPRM Comments at 3; Adams County et al. NPRM Comments at 2; Ronald R. Fenwick Notice of Proposed Rulemaking Comments at 1 (rec. Feb. 15, 2023) (Fenwick NPRM Comments).

[186] *Notice of Proposed Rulemaking*, 37 FCC Rcd at 15195, para. 26.

[187] NASNA NPRM Comments at 11 (agreeing with 18-month timeline for non-nationwide CMRS providers); iCERT NPRM Comments at 2 (supporting 18-month timeline for non-nationwide CMRS providers); COPUC NPRM Comments at 3 (agreeing with the 18-month timeline for non-nationwide CMRS providers); *see also* NENA Comments at 3 (stating, as a general matter, that "the Commission has proposed sufficient compromises to avoid undue burden on the wireless industry, such as a later implementation date for non-nationwide CMRS providers").

[188] Adams County et al. NPRM Comments at 2 (stating that 18-month implementation schedule for non-nationwide CMRS providers is "acceptable," but noting that "[s]ooner is better"); APCO NPRM Comments at 3. BRETSA comments that non-nationwide CMRS providers have not yet determined the actual cost and time required to implement location-based routing, and urges the Commission to require non-nationwide CMRS providers to implement location-based routing within six or twelve months (i.e., rather than eighteen months) and to "grant waivers or extensions upon showings of the actual costs of and impediments to deployment." BRETSA NPRM Reply at ii; *id.* at 13 ("Such an approach would allow providers a reasonable time to implement LBR, while avoiding (continued….)

longer timeline for non-nationwide CMRS providers to implement location-based routing. CTIA states that "non-nationwide providers need more time to deploy LBR capability than the 18 months proposed in the NPRM due to the significant costs and technical modifications necessary to implement LBR."[189] GCI recommends that non-nationwide CMRS providers be given a timeline of at least 24 months or potentially longer.[190] RWA recommends that small rural CMRS providers be given 36 months to implement location-based routing.[191] CCA asserts that non-nationwide providers need at least four years to "select, test, modify, perfect, and deploy" location-based routing, stating that AT&T's deployment took four years and that "[m]ost CCA member companies do not possess anywhere near the scope and scale of resources that AT&T enjoys."[192] Southern Linc agrees with CCA's concerns that non-nationwide CMRS providers may require considerably longer than 18 months.[193]

48. The Commission has previously recognized that non-nationwide CMRS providers can face obstacles that warrant additional time for compliance beyond the time afforded to nationwide CMRS providers during technology transitions.[194] Smaller CMRS providers may have difficulty obtaining necessary commitments from device makers, technology vendors, and software service providers[195] to implement location-based routing within a time frame that would be feasible for nationwide CMRS providers, We therefore adopt a timeline of twenty-four months (two years) from the effective date of the rules for non-nationwide CMRS providers to deploy and begin using location-based routing. This timeline provides an additional 18 months beyond the deadline applicable to nationwide CMRS providers. We adopt this extended timeline in recognition of the obstacles that non-nationwide CMRS providers may encounter in deploying location-based routing on their networks. We also anticipate that the additional time will assist non-nationwide CMRS providers in absorbing capital costs. It is consistent with past Commission decisions to permit non-nationwide CMRS providers additional time to accommodate technology transitions.[196] Based on the progress that nationwide CMRS providers have made and that some non-nationwide CMRS providers advocate for a 24-month timeline, it is our predictive judgment that the 24 months afforded will be sufficient from both technological feasibility and cost perspectives for non-nationwide CMRS providers to implement location-based routing. If individual

unnecessary delay and impacts upon victims of accidents, illnesses, crimes, and fires."). BRETSA also suggests that in rural areas, which generally have a lower incidence of misroutes (e.g., because a single PSAP serves the entire county), regional wireless providers should have an "earlier date for implementation of LBR," with deployment prioritized based on the level of misroutes, and "allowing a longer overall phase-in period." BRETSA NPRM Comments at 7-8.

[189] CTIA NPRM Reply at 5.

[190] GCI Aug. 7, 2023 *Ex Parte* at 5.

[191] RWA NPRM Comments at 1-3. RWA discusses reasons smaller carriers require more time and financial support, including that "many RWA members are in the midst of efforts to 'rip and replace' unsecure Huawei and ZTE equipment in their networks," *id.* at 2, which is a "top priority over regulatory compliance unrelated to national security." *Id.* at 3. RWA requests small rural CMRS providers have 36 months from effective date of final rules to implement, "and then only if the PSAP is capable of handling the call routing." *Id.* at 3.

[192] CCA NPRM Comments at 3-5; *see* CCA NPRM Reply at 5 & n.9.

[193] Southern Linc NPRM Reply at 2-5.

[194] *See*, *e.g.*, *E911 Fourth Report and Order*, 30 FCC Rcd 1259, 1297-98, para. 104 (2015).

[195] RWA NPRM Reply 3.

[196] For example, for horizontal location accuracy requirements, certain benchmarks for non-nationwide CMRS providers are tied to the deployment of specifical technical capabilities, which has permitted additional time for compliance. *See* 47 CFR § 9.10(i)(2)(i)(B)(*3*), (*4*). For vertical location accuracy requirements, certain non-nationwide CMRS providers are permitted an additional year to meet relevant benchmarks. *See* 47 CFR § 9.10(i)(2)(ii)(F).

CMRS providers encounter unique or unusual factual circumstances that support a lengthier timeline, they may seek a waiver under the Commission's waiver rules.[197]

49. We decline to extend the timeline for compliance for non-nationwide CMRS providers to thirty-six months or four years, as advocated by RWA and CCA, respectively. RWA argues that small non-nationwide CMRS providers should have 36 months to comply with location-based routing requirements because they are simultaneously focusing "substantial time and attention" on replacing network equipment under the Secure and Trusted Communications Networks Reimbursement Program (Reimbursement Program), which they assert takes "top priority over regulatory compliance unrelated to national security."[198] We see no basis for extending the 24-month location-based routing timeline for non-nationwide CMRS providers based on their concurrent obligations under the Reimbursement Program. Protecting national security and ensuring effective 911 emergency response are both important regulatory obligations that all CMRS providers must meet. We reject the view that one takes priority over the other. In addition, RWA has failed to show how the timeline for the Reimbursement Program would conflict with non-nationwide provider implementation of location-based routing when Reimbursement Program removal, replacement, and disposal deadlines are determined on an application-specific basis[199] and may be extended pursuant to the conditions set forth in the Secure and Trusted Communications Networks Act and the Commission's rules.[200]

50. RWA also argues that location-based routing should only be required "to the extent that there is federal financial support afforded to small providers for the cost of compliance and additional time afforded for compliance beyond that proposed in the NPRM."[201] The Commission has never conditioned CMRS providers' compliance with 911 obligations on the receipt of federal funding and we decline to do so today. Further, the record does not provide compelling evidence that such funding is necessary. RWA fails to provide any specific estimates as to the actual cost of compliance for its members or to otherwise document a need for federal financial support.[202] Without information on the actual cost of compliance or specific impacts of such compliance on CMRS providers, naked claims that

---

[197] 47 CFR § 1.925.

[198] RWA NPRM Comments at 3.

[199] FCC, *Secure and Trusted Communications Networks Reimbursement Program Second Report* at 4 (July 10, 2023), https://docs.fcc.gov/public/attachments/DOC-395005A1.pdf. *See Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Second Report and Order, 35 FCC Rcd 14284, 14354, para. 170 (2020). The Commission may grant recipients extensions of this term on an individual basis. *See* Secure and Trusted Communications Networks Act of 2019, Pub. L. No. 116-124, § 4(d)(6)(C), 134 Stat. 158, 163 (2020) (Secure Networks Act) (codified at 47 U.S.C. § 1603(d)(6)(C)).

[200] A Reimbursement Program recipient may request and the Commission may grant an individual extension of a recipient's removal, replacement, and disposal term for a period of up to six months after the Bureau finds, 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. 47 CFR § 1.50004(h)(2); *see also* Secure Networks Act § 4(d)(6)(C); *see also, e.g.*, *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Order, DA 23-875, at 1, para. 1 (WCB Sept. 22,2023) (granting Stealth Communications Services, LLC's request for extension from September 29, 2023 until March 29, 2024); *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Order, DA 23-938 (WCB Oct. 10, 2023) (granting extension of time requests by WorldCell Solutions, LLC, Mediacom Communications Corporation, Virginia Everywhere, LLC, James Valley Cooperative Telephone Company, and NE Colorado Cellular, Inc. d/b/a Viaero Wireless); *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Order, DA 23-1016 at 1, para. 1 (WCB Oct. 27, 2023) (granting extension of time requests of Point Broadband Fiber Holding, LLC and SI Wireless, LLC).

[201] RWA NPRM Comments at 1.

[202] RWA NPRM Comments at 1, n.3 (acknowledging that "RWA members have received no specific vendor estimates as to the actual cost of compliance").

federal financial support is necessary in order for CMRS providers to comply with the Commission's 911 requirements lack merit. As noted above, if an individual CMRS provider encounters unique or unusual factual circumstances, it may seek a waiver under the Commission's waiver rules.[203]

51. CCA argues that a four-year timeline is needed to account for "levels of support the nation's smaller wireless carriers typically receive from device makers, technology vendors, and software service providers and with the continued, incremental progress of PSAP systems in all areas of the country to support the location-based routing of emergency communications."[204] However, CCA has not documented the need for a four-year timeline as opposed to twenty-four months to address the specific obstacles faced by these providers. Once nationwide CMRS providers complete their six-month deployment obligation, non-nationwide providers will have 18 months to engage with device makers, vendors, and consultants. In addition, as noted above, the timeline is not dependent on PSAPs making "incremental progress" to support location-based routing because PSAPs do not need to take any specific technical steps to be ready to receive location-based routed calls.

52. CCA and RWA also argue that non-nationwide CMRS providers should be afforded a four-year timeline because "AT&T required four years to deploy location-based routing."[205] We disagree. First, AT&T states that it was able to deploy location-based routing to virtually all PSAPs within six months, not four years as asserted by CCA and RWA.[206] Second, even if AT&T or other nationwide CMRS providers took additional time to plan early implementation of nationwide location-based routing across their networks, it does not follow that non-nationwide CMRS providers need the same amount of time *after* the nationwide CMRS providers have completed their implementations.[207] BRETSA notes that other providers are likely to require less time than AT&T to deploy location-based routing because "AT&T has already developed the solution and provided a roadmap for implementation of LBR."[208] In fact, the nationwide CMRS providers have already done critical work to enable location-based routing by adopting highly accurate handset-based location, which AT&T has confirmed "is available for location-based routing on the vast majority of iOS and Android devices."[209] The nationwide carriers have also validated that location-based routing can be used for the vast majority of wireless 911 calls and that it does not result in additional call delay or an increase in abandoned 911 calls.[210] We agree with iCERT that existing support for location-based routing by nationwide carriers "provides ample evidence that LBR will soon be ready for wider implementation."[211]

53. CCA also argues that non-nationwide CMRS providers need longer timelines to ensure network reliability and quality of service before undertaking network-wide location-based routing implementation.[212] Again, CCA fails to provide specific examples of how non-nationwide CMRS providers' network reliability and quality of service would be compromised by implementing location-based routing within a 24-month timeline. CCA also asserts that non-nationwide CMRS providers may

[203] 47 CFR § 1.925.

[204] CCA NPRM Comments at 3.

[205] RWA NPRM Reply at 3; *see also* CCA NPRM Comments at 2, 4-5 (citing AT&T PN Comments at 2-4).

[206] AT&T NPRM Comments at 3 ("AT&T was able to deploy location-based routing to virtually all PSAPs within a six-month timeframe.")

[207] *See* Intrado PN Comments at 10 ("AT&T's implementation model provides a roadmap to the other carriers.").

[208] BRETSA NPRM Reply at 13.

[209] AT&T PN Comments at 2.

[210] *Id.* at 3-4.

[211] iCERT NPRM Comments at 2.

[212] CCA NPRM Comments at 16, 19.

use "different LTE and 5G-NR network specifications" than the nationwide providers and that it will be challenging for non-nationwide CMRS providers to implement location-based routing given the "array of potentially viable standards any one of which might, over time, fail to achieve scale and fall behind the other standards in features, support, and adoption."[213] We believe a 24 month timeline is sufficient to address these issues. As BRETSA notes, non-nationwide CMRS providers have not provided specific vendor estimates as to the actual cost to implement location-based routing.[214] We agree with BRETSA that nationwide CMRS providers have provided a path for implementing location-based routing, and there is no reason to delay implementation by non-nationwide CMRS providers beyond the two years afforded. We conclude that the considerable benefits of improved 911 routing should extend to all callers, including subscribers to non-nationwide CMRS providers' services, and that delaying improved 911 routing by more than 24 months would be inequitable for these subscribers.

54. Some entities representing non-nationwide CMRS providers argue that location-based routing will provide minimal improvement in the areas which their members serve, and therefore that the Commission either should not require location-based routing or should further delay compliance with location-based routing rules for non-nationwide CMRS providers. CCA asserts that "location-based routing may not provide any meaningful improvement over the status quo at the cost of dangerously longer call set up times" for smaller CMRS providers that tend to serve less densely populated areas.[215] Alaska Telecom notes that Alaska's unique situation of geography and low population areas means fewer misroutes and less benefit from location-based routing, such that "costs that carriers will bear to implement LBR on a short timescale will far outstrip the potential benefits."[216] We acknowledge that the advantages of location-based routing in comparison to legacy E911 routing may not be uniform across all areas or across all CMRS providers. However, we agree with Intrado that "[e]ven in low misroute areas, LBR implementation will result in a significant reduction in misroutes compared to the current system of exclusively relying on tower-based routing."[217] The benefits of improved routing should accrue to all 911 callers nationwide, across jurisdictions and CMRS providers, and 911 authorities have articulated a clear need for consistent routing technology across CMRS providers. We therefore decline to exempt or postpone location-based routing implementation on the basis that it may provide less benefit in some areas than others.

55. *Modification of Deadlines by Agreement*. We recognize that there may be some narrow scenarios in which individual PSAPs need additional time to facilitate location-based routing.[218] AT&T states that while it was able to deploy location-based routing to virtually all PSAPs within six months, "some PSAPs required special attention and more time."[219] To provide flexibility for PSAPs that request it, we adopt a rule allowing a PSAP and a CMRS provider to set, by mutual consent, deadlines to

[213] *Id.* at 10-11.

[214] BRETSA NPRM Reply at 13.

[215] CCA NPRM Comments at 2-3. As discussed in Section III.A.4, the Commission's location-based routing rules require providers to route on precise location information that is available at the network at time of routing, which renders moot the potential need for call holding.

[216] Alaska Telecom NPRM Reply at 2.

[217] Intrado NPRM Comments at 3 n.6.

[218] *See, e.g.*, T-Mobile NPRM Comments at 5 (stating that "in at least one instance, T-Mobile is aware that an emergency calling authority requested that another 911 vendor indefinitely suspend using LBR for 911 calls to its PSAPs because the vendor's LBR implementation resulted in a greater number of 911 calls that required transfer to another PSAP"); AT&T PN Comments at 4 & n.3 (stating that AT&T completed its location-based routing deployment by the end of June 2022 "with very few exceptions" and stating that "[a] few PSAPs are using unique applications of Emergency Services Numbers to implement internal routing solutions")." and that AT&T is "working with these PSAPs to ensure [its] location-based routing solution meets their unique needs").

[219] AT&T NPRM Comments at 3.

implement location-based routing in the PSAP's jurisdiction that are different from those otherwise established by the rules. For example, the parties may mutually agree to extend the provider's timeline for location-based routing implementation in the PSAP's jurisdiction. We emphasize that parties may not use this exception to delay implementation and deployment of location-based routing indefinitely. Accordingly, in the event of any agreement to an alternate time frame for implementing location-based routing, we require the CMRS provider to notify the Commission of the agreed-to dates within 30 days of the parties' agreement or 30 days from the effective date of the final rules, whichever is later.[220] The CMRS provider must subsequently notify the Commission of the actual date by which it comes into compliance with the location-based routing requirements, within 30 days of that actual date of compliance or 30 days from the effective date of the final rules, whichever is later.

2. Text-to-911

56. We require nationwide and non-nationwide CMRS providers to deploy and use location-based routing for RTT communications to 911 within 24 months from the effective date of the final rules adopted in this Order. This is a modification of the rules proposed in the *Notice of Proposed Rulemaking*, which would have required CMRS providers and all other covered text providers to deploy and use location-based routing for all 911 texts within 18 months.[221] We extend the compliance timeline from 18 to 24 months in order to align compliance timelines for RTT communications to 911 with the compliance timelines for non-nationwide providers to implement location-based routing for wireless 911 voice calls. In addition, we limit our rules to the routing of RTT communications to 911 by CMRS providers. We decline at this time to extend location-based routing requirements to SMS text messages to 911, both because industry has not yet developed standards for implementing location-based routing on SMS networks and to avoid requiring providers to retrofit legacy SMS networks. We similarly defer extending location-based routing requirements to interconnected text providers.

57. *Location-Based Routing for RTT.* We find that it is technologically feasible for CMRS providers to enable location-based routing for RTT communications. Because RTT is an IP-native service, RTT communications are processed on IP-based networks similarly to voice calls originating on IP-based networks.[222] According to NENA, an RTT session is "handled and routed the same way as a voice call and delivers location just as a voice call would."[223] We agree with NENA that our rules

---

[220] CMRS providers must file such notifications in PS Docket No. 18-64.

[221] *Notice of Proposed Rulemaking*, 37 FCC Rcd at 15197, para. 33. The term "'covered text provider' includes all CMRS providers as well as all providers of interconnected text messaging services that enable consumers to send text messages to and receive text messages from all or substantially all text-capable U.S. telephone numbers, including through the use of applications downloaded or otherwise installed on mobile phones." 47 CFR § 9.10(q)(1).

[222] T-Mobile NPRM Comments at 11 & n.14.

[223] NENA NPRM Reply at 10. Unlike SMS text-to-911, which uses a Text Control Center for routing, "RTT uses the existing IP-based voice architecture." NENA, NENA PSAP Readiness for Real-Time Text (RTT) Information Document, NENA-INF-042.1-2021 at 10 (Jan. 20, 2021), https://cdn.ymaws.com/www.nena.org/resource/resmgr/standards/nena-inf-042.1-2021_rtt_appv.pdf (*NENA RTT Information Document*). The RTT communication "enters the Common IMS Network via the Proxy/Emergency Call Session Control Functions (P/E-CSCF) which provide the routing functions." *NENA RTT Information Document* at 13. This is also how wireless 911 voice calls originating on IP-based networks are processed. *See ATIS-0700015.v005* ("[The P-CSCF] receives the emergency call from the User Equipment via the Access Network. The P-CSCF detects that the call is an emergency call and forwards it to/toward the E-CSCF."). Then, "[t]he Common IMS Network will acquire location using the Location Retrieval Function (LRF) and Location Server (LS) and determine the routing using the Routing Determination Function (RDF)." *NENA RTT Information Document* at 13. Again, this is also how wireless 911 voice calls originating on IP-based networks are processed. *See ATIS-0700015.v005* at 24 ("The LRF obtains location information associated with the emergency call (by interacting with an LS, if necessary) and uses that location to acquire routing information for the emergency call from the RDF.").

"should reflect this reality."[224] In addition, because RTT resembles voice calling in that it is a real-time, two-way service, the user experience of RTT is likely to be similarly sensitive to the delays associated with misroutes. Given the technical similarities with processing voice calls originating on IP-based networks and strong support for implementing requirements for location-based routing for text-to-911 as a general matter, we adopt a requirement for location-based routing for RTT communications to 911 consistent with the requirements we adopt for wireless 911 voice calls originating on IP-based CMRS networks. In addition, commenters specifically support location-based routing for RTT communications.[225] CMRS providers urge the Commission to incentivize both PSAPs and CMRS providers to move toward next generation texting technologies such as RTT.[226] We find that these requirements will help to ensure that the benefits of location-based routing extend to RTT users as more CMRS providers implement RTT service. We note that this rule is not intended to expand CMRS providers' existing obligations to deploy RTT capabilities to PSAPs beyond what is already required by the Commission.[227]

58. C*ompliance Deadlines for Location*-Based Routing for RTT. We require CMRS providers to implement location-based routing for RTT within 24 months after the effective date of the final rules on location-based routing. This timeline is six months longer than the eighteen-month period the Commission proposed in the Notice of Proposed Rulemaking for all covered text providers to route all texts to 911.[228] Most of the comments received on timelines address 911 texts in general, without specifically addressing issues related to RTT implementation in particular.[229] Some commenters support

[224] NENA NPRM Reply at 10.

[225] T-Mobile NPRM Comments at 11 (stating that "stakeholders should focus their efforts on supporting more robust means of text-based communication with PSAPs, including RTT"); Verizon NPRM Comments at 5 ("Verizon's planned LBR implementation for VoLTE will support real-time-text (RTT) 911 calls."); NENA NPRM Reply at 9 ("The Commission's rules should apply to end-to-end RTT calls regardless of NG9-1-1 capability."); ATIS NPRM Comments at 3 (urging the Commission "to clarify that only providers of such next generation text solutions [as defined in ATIS and NENA standards] are required to use LBR"); *see also* CTIA NPRM Reply at 8.

[226] Verizon NPRM Comments at 6; T-Mobile NPRM Comments at 11.

[227] RTT transition obligations apply to "those entities that are involved in the provision of IP-based wireless voice communication service, and only to the extent that their services are subject to existing TTY technology support requirements under Parts 6, 7, 14, 20, or 64 of the Commission's rules." *RTT Order*, 31 FCC Rcd at 13576-77, para. 12. The Commission requires CMRS providers transmitting over an IP network that choose to enable the transmission and receipt of communications via RTT, in lieu of TTY technology, to and from any PSAP served by their network, to enable such service in a manner that fully complies with all applicable 911 rules. *Id*. at 13591-92, para. 43. PSAPs require special capabilities to receive RTT communications from CMRS providers. *Id.* at 13592, para. 43. We recognize that many PSAPs are not currently capable of supporting RTT communications and remain reliant on TTY technology to receive calls from people with disabilities. Texas 9-1-1 Entities NPRM Comments at 5; *see RTT Order* at 13592, para. 43; FCC, What Public Safety Answering Points Should Know about Real-Time Text at 2 (Oct. 2, 2018), https://www.fcc.gov/sites/default/files/documents/events/fact_sheet_about_real-time_text_for_public_safety_answering_points.pdf.

[228] *See Notice of Proposed Rulemaking*, 37 FCC Rcd at 15197, para. 33.

[229] Verizon does comment on RTT specifically and distinguishes it from other 911 texting, with an indication that it may be easier for Verizon to implement RTT than SMS location-based routing. Verizon states that "[w]hile Verizon's planned LBR implementation for VoLTE will support real-time-text (RTT) 911 calls, LBR for SMS is not feasible using our existing platforms and capabilities, and would require substantial network- and device-level changes and upgrades." Verizon NPRM Comments at 5.

the originally proposed 18-month timeline for text-to 911,[230] while others support a shorter timeline.[231] NASNA suggests that "it may be more appropriate to apply the same implementation timeframes for 911 texts that are being applied to voice 911 calls."[232] Other commenters urge that covered text providers be given a longer timeline to implement location-based routing. For example, Verizon notes that several parties echo its own comments regarding the need for a longer implementation period for 911 texts.[233] Verizon "expects that an implementation period of 18-24 months for a 'best available location' approach could be technically feasible, *provided that* the rules afford wireless providers flexibility in the location query methods and per-call thresholds governing whether precise versus coarse location is used for routing."[234]

59. We conclude that a timeline of 24 months after the effective date of the rules is technically feasible for CMRS providers to implement location-based routing for RTT. We also believe that 24 months will provide sufficient time for both nationwide and non-nationwide CMRS providers to implement location-based routing for RTT. We decline to adopt a shorter timeline for nationwide CMRS providers and instead opt, consistent with the Notice of Proposed Rulemaking,[235] to apply the same timetable to all providers for implementation of location-based routing for RTT communications. Unlike for 911 voice calls, the extent to which nationwide CMRS providers have implemented location-based routing for RTT is not clear, though we note that T-Mobile and Verizon explicitly support this step.[236] In addition, few PSAPs have developed the capability to receive end-to-end RTT communications.[237] Since RTT remains in the early stages of development, we believe that a unified timeline for nationwide and non-nationwide CMRS providers is consistent with the approach in the Commission's existing text-to-911 rules, which do not distinguish between nationwide and non-nationwide CMRS providers.[238] In addition, given that RTT uses call processing similar to that used for voice calls,[239] we anticipate that non-nationwide CMRS providers will be able to implement this capability on the same timeline as location-based routing for voice calls originating on IP-based networks. However, we encourage CMRS providers (nationwide or non-nationwide) to adopt location-based routing for RTT before the 24-month deadline if

---

[230] *See, e.g.*, iCERT NPRM Comments at 2 (supporting 18-month timeline for all covered text providers, "without regard to service area"); NENA NPRM Comments at 1; AT&T NPRM Comments at 6 (supporting 18-month compliance timetable, but conditioned on PSAP request and readiness).

[231] APCO NPRM Comments at 3; NASNA NPRM Comments at 13; COPUC NPRM Comments at 8; APCO NPRM Comments at 3.

[232] NASNA NPRM Comments at 13.

[233] Verizon NPRM Reply at 2.

[234] Verizon NPRM Reply at 2; *see also, e.g.*, RWA NPRM Comments at 3 (indicating smaller providers need more time to comply than larger providers, and requesting small rural providers be given 36 months from the effective date of the rules to implement text-to-911, "and then only if the PSAP is capable of handling the call routing"); Southern Linc NPRM Reply at 6-8 (stating that if Commission requires location-based routing for SMS-based texts to 911, nationwide CMRS providers should have at least 18-24 months from the effective date of the rules and non-nationwide CMRS providers should have an additional 12-18 months beyond that, in recognition of smaller carriers' "additional challenges and resource constraints" and that a CMRS provider's obligation to commence use should only be triggered by a valid request from the PSAP or other relevant authority).

[235] *Notice of Proposed Rulemaking*, 37 FCC Rcd at 15197, para. 33.

[236] *See* T-Mobile Notice of Proposed Rulemaking Reply at 5 (rec. Mar. 20, 2023) (T-Mobile NPRM Reply); Verizon NPRM Reply at 5.

[237] Jackson, *APCO Speakers* (noting 911 officials stress the "nascent operation of RTT for emergency calling, as only a handful of PSAPs are using the technology at the moment").

[238] *See* 47 CFR § 9.10(q)(1), (10).

[239] NENA NPRM Reply at 10.

feasible.

60. *Location-based routing for SMS.* Some public safety commenters urge the Commission to require location-based routing for all texts to 911, including SMS, so that improved text routing is available to individuals who are deaf, hard of hearing, or have speech related disabilities, and to people in situations where the sound of a voice call would place them in peril.[240] We agree with public safety commenters that location-based routing could provide benefits to communities that rely on text messaging to contact 911. However, we decline to require location-based routing for SMS messages at this time because the record indicates that industry has not yet developed standards for implementing location-based routing on SMS networks and because of the potential cost of requiring covered text providers to retrofit legacy SMS networks.

61. In particular, commenters note that enabling location-based routing for SMS would require updates to the relevant technical standard, ATIS/TIA J-STD-110.[241] According to NENA, implementing standards-based SMS solutions would add at least two years for standards development, product development, and deployment.[242] T-Mobile, Alaska Telecom, and Verizon also note that implementing location-based routing for SMS would require potentially costly retrofitting of legacy SMS networks.[243] Verizon argues that enabling location-based routing for SMS "would require substantial upgrades of Short Message Service Center (SMSC) and Text Control Center (TCC) facilities . . . and device changes to enable the device to override security, privacy and other functions to access the caller's device-level location information."[244] In addition, Verizon argues that requiring location-based routing for SMS could impose duplicative cost and implementation burdens that would be unnecessary once a jurisdiction launches i3 NG911 capabilities.[245] We also note that some PSAPs remain incapable of receiving texts and that the volume of 911 texts is far smaller than volume of wireless 911 voice calls.[246] In light of these factors, we find that it would not serve the public interest to require CMRS providers to retrofit legacy SMS networks.

---

[240] COPUC NPRM Comments at 8; BRETSA NPRM Reply at 8; NASNA NPRM Comments at 13. DISA also argues that location-based routing for text-to-911 could also decrease the response time for 911 texts originating outside the three-mile line off U.S. and Territorial shores. DISA NPRM Comments at 1.

[241] Verizon NPRM Comments at 5; Southern Linc NPRM Reply at 7; NENA NPRM Reply at 9, n.41; ATIS NPRM Comments at 3. ATIS/TIA J-STD-110.v002 defines the requirements, architecture, and procedures for text messaging to 911 emergency services using native wireless operator SMS capabilities for the existing and NG911 PSAPs. ATIS and Telecommunications Industry Association (TIA), *Joint ATIS/TIA Native SMS/MMS Text to 9-1-1 Requirements and Architecture Specification – Release 2* at sections 7, 8, and 9 (May 2015), https://webstore.ansi.org/standards/atis/std110 (*ATIS/TIA J-STD-110.v002*). In 2014, the Commission explained that "The scope of the J-STD-110 is limited to text messaging to 9-1-1 for native SMS capabilities, and it does not address support of text-to-911 for interconnected text services using 'over-the-top' SMS." *T911 Second Report and Order*, 29 FCC Rcd at 9864, para. 39 n.106 (citing to a previous version of ATIS/TIA J-STD-110, Section 1.1).

[242] NENA NPRM Reply at 9.

[243] T-Mobile NPRM Reply at 6; Alaska Telecom NPRM Reply at 4; Verizon NPRM Comments at 5-6.

[244] *Id.*

[245] *Id.* at 6.

[246] As of December 2023, the Commission's Text-to-911 Registry lists 3,201 PSAPs as text-capable. *See* FCC, PSAP Text-to-911 Readiness and Certification Registry, https://www.fcc.gov/general/psap-text-911-readiness-and-certification-form. In calendar year 2022, U.S. PSAPs received a combined total of 824,609 texts to 911 in comparison to 157,999,298 wireless 911 voice calls. Fifteenth Annual 911 Fee Report at 13-16, Table 3.

62. We recognize that the three nationwide CMRS providers are using non-standardized location-based routing techniques to route some SMS texts to 911 today.[247] We encourage all CMRS providers to deploy location-based routing for SMS messages voluntarily to the extent that their resources permit, and we intend to monitor the development of standards, products, and other advances affecting location-based routing for SMS text-to-911. However, we agree with NENA that "the Commission's rules should not back the market into adopting non-standardized technologies for a legacy platform that the industry is actively working to phase out."[248]

63. We decline to adopt commenters' alternative proposal to require CMRS providers to route SMS text messages using "best available" location information. Instead of a tiered system, in which CMRS providers would use precise location information within a radius of 165 meters at a 90% confidence level and otherwise default to best available location information, these commenters suggest a requirement to route SMS text messages based on best available location information (i.e., there would be no requirement to use highly precise location information when it is available from the handset).[249] Intrado argues that, unlike wireless 911 voice calls to 911, for SMS "there is no fallback information available for text and no technologic way or need to implement LBR for text differently nor any means to apply a specific uncertainty/confidence requirement . . . ."[250] As with the proposed requirement to route text messages when available location information meets our accuracy and timeliness criteria, solutions that route using "best available" location information are still not standards-based. Therefore, we decline to require CMRS providers to implement non-standard location-based routing solutions for SMS text messages at this time. The Commission may reconsider if applicable standards are developed.

64. Under the Commission's existing text-to-911 rules, "covered text providers must obtain location information sufficient to route text messages to the same PSAP to which a 911 voice call would be routed, unless the responsible local or state entity designates a different PSAP to receive 911 text messages . . . ."[251] The implementation of location-based routing, which uses more precise location information than the tower-based routing method, may change the PSAP to which a 911 voice call would otherwise be routed. We do not interpret this provision to require covered text providers to obtain the same precise location information for SMS or other non-RTT text messages that would be used for a voice call subject to the Commission's location-based routing rules. Instead, this provision would continue to require covered text providers to obtain location information sufficient to route text messages (other than RTT) to the same PSAP to which a wireless 911 voice call would be routed using coarse location or other equivalent means, the routing technology in use at the time of adoption of this rule.[252]

65. *Location-based routing for other text-messaging platforms*. We decline to consider location-based routing for other types of text-messaging platforms, such as MMS platforms, at this time. To the extent that commenters discussed other text messaging platforms, such comments combined

[247] *See* AT&T PN Comments at 5 (describing AT&T's location-based routing for text-to-911 implementation); T-Mobile July 26, 2023 *Ex Parte* at 3; Verizon Dec. 7, 2023 *Ex Parte* at 1. NENA also states "There are non-standards-based mechanisms for supporting location-based routing for interim text 156 which are available and in-use in the market today." NENA NPRM Reply at 9.

[248] NENA NPRM Reply at 9.

[249] CTIA NPRM Comments at 7; Intrado NPRM Comments at 4; Verizon NPRM Reply at 2.

[250] Intrado NPRM Comments at 4.

[251] 47 CFR § 9.10(q)(10)(i).

[252] *T911 Second Report and Order*, 29 FCC Rcd. at 9874, para. 57 ("We require covered text providers to route texts to 911 using coarse location (cell ID and cell sector) or other equivalent means that allows the covered text provider to route a text to the appropriate PSAP.").

arguments regarding SMS and MMS platforms.[253] As discussed in Section II, MMS platforms rely on many of the same functional network elements that would be used to process SMS messages. We therefore decline to consider requirements for location-based routing for MMS for the same reasons discussed in this section for SMS text. We also decline consideration of location-based routing for OTT platforms, as no commenter discussed OTT platforms.

3. Definitions

66. In the *Notice of Proposed Rulemaking*, the Commission proposed to define "location-based routing" as routing based on the location of the calling device rather than the location of network elements such as cell site or sector.[254] The Commission also proposed a definition of "device-based location information" and sought comment on whether the definition adequately encompasses current and future location technologies.[255] We adopt these definitions as proposed and find that they will add clarity to the rules while remaining flexible and allowing for the future evolution of new technologies. We defer consideration of the proposed definitions of other terms relating to IP delivery for NG911 networks to the separate NG911 transition proceeding in PS Docket No. 21-479.[256]

67. *Location-Based Routing.* The *Notice of Proposed Rulemaking* proposed to define "location-based routing" as:

> The use of information on the location of a device, including but not limited to device-based location information, to deliver 911 calls and texts to point(s) designated by the authorized local or state entity to receive wireless 911 calls and texts, such as an Emergency Services Internet Protocol Network (ESInet) or PSAP, or to an appropriate local emergency authority.[257]

Most commenters addressing the issue, including NASNA, NENA, COPUC, and Alaska Telecom, support the proposed definition.[258] Alaska Telecom states that the proposed definition is flexible and "will give carriers, 911 vendors, and public safety entities the ability to invest time and resources into new and improved location technologies."[259]

68. APCO and AT&T suggest that the definition avoid reference to "device-based location information" or to ESInets.[260] APCO states that it does not disagree with the assumption that ESInets may be a potential delivery point for 911 calls, but contends that "a simpler approach that does not

---

[253] *See, e.g.*, GCI July 17, 2023 *Ex Parte* at 1 ("LBR for SMS/MMS text-to-911 would be much more difficult than for IP-originated wireless calls . . . ."); NENA NPRM Reply at 8 (discussing that "interim text uses SMS/MMS for emergency text calls"); Intrado NPRM Comments at 4 (discussing "SMS/MMS design").

[254] *Notice of Proposed Rulemaking*, 37 FCC Rcd at 15198, para. 34.

[255] *Id.* at 15198, paras. 34-35.

[256] *NG911 Notice of Proposed Rulemaking* at *20, para. 51. For example, commenters discussed definitions for the terms "NG911," "'IP-based' 911"and "NG911-capable PSAPs," which we believe would be better addressed in the NG911 proceeding so as to apply to a wider array of 911 originating service providers. *See* APCO NPRM Comments at 5; CTIA NPRM Comments at 8; Southern Linc NPRM Reply at 8-9; NENA NPRM Reply at 4-5, 7-8.

[257] *Notice of Proposed Rulemaking*, 37 FCC Rcd at 15215, Appx. A; *accord id.* at 15198, para. 34.

[258] NASNA NPRM Comments at 14; COPUC NPRM Comments at 8; Alaska Telecom NPRM Reply at 4 (noting also that Alaska Telecom "believes that it is important that 'location' be limited to the autonomous location derived by the device, with accuracy based on what is coming from the device, not information derived by the carrier network").

[259] Alaska Telecom NPRM Reply at 4.

[260] APCO NPRM Comments at 4; AT&T NPRM Comments at 8.

reference ESInets could avoid unintentional limitations."[261] AT&T argues that identifying ESInets as end points that state or local 911 authorities can designate is outside the scope of the proceeding and unnecessary.[262] NENA and Alaska Telecom oppose narrowing the definition, and DISA and COPUC support including ESInets as an illustrative example.[263] Alaska Telecom states that "[t]he Commission's proposed definition allows for technological development and improvement over time, in contrast to the changes suggested by APCO" to define "location-based routing" by reference to uncertainty and confidence metrics.[264]

69. We adopt the proposed definition in order to provide guidance to regulated entities on how to comply with our location-based routing rules. This definition of location-based routing does not extend to tower-based routing methodologies. We disagree with APCO that referring to ESInets in the rules as an illustrative example could unintentionally limit the location-based routing definition. APCO objects to referencing ESInets in the definition because "ESInets may or may not be capable of performing location-based routing."[265] However, the term is used in the definition merely to identify ESInets as a potential delivery point for 911 voice calls and RTT communications, without any reference to the technical capabilities of ESInets. Including ESInets as an illustrative example clarifies that providers can use location-based routing to deliver 911 calls to ESInets, without precluding or limiting use of other network architectures and end points. We similarly disagree with the view that use of the term "device-based location information" in the definition is too limiting. Again, the term is included as an illustrative example rather than a technological restriction. Thus, location technologies that do not use device-based location information may also fall within the scope of the location-based routing definition.

70. *Device-Based Location Information*. The *Notice of Proposed Rulemaking* proposed to define "device-based location information" as "[i]nformation regarding the location of a device used to call or text 911 generated all or in part from on-device sensors and data sources."[266] The Commission noted that this term is used in the existing rule on delivery of 911 text messages and that the proposed definition would also apply to that rule.[267] We conclude that this definition of "device-based location information" provides useful guidance to regulated entities for compliance with the location-based routing rules, while remaining flexible enough to account for future technological development. COPUC supports the definition proposed in the Notice of Proposed Rulemaking.[268] Several other commenters urge the Commission to ensure that the definition is flexible enough to encompass current and future

[261] APCO NPRM Comments at 4. APCO does not specifically identify what such "unintentional limitations" are, but cites to its discussion of "the current state of ESInet capabilities." APCO NPRM Comments at 4, n.20. APCO asserts that "ESInets may or may not be capable of performing location-based routing after receiving the call from a wireless service provider. Thus, the NPRM's consideration of 'NG9-1-1 capabilities' and ESInets as factors for the location-based routing requirements raises concerns. The Commission can and should adopt location-based routing requirements without considering 'NG9-1-1' progress or ESInet deployment." *Id.* at 6.

[262] AT&T NPRM Comments at 8. However, AT&T also states that "individual states and PSAP authorities can designate ESInets as an endpoint for the delivery of 911 calls[,]" and "encourages the Commission . . . to confirm that states and local jurisdictions have this authority." Id.

[263] NENA NPRM Reply at 6-7; Alaska Telecom NPRM Reply at 4; DISA NPRM Comments at 2; COPUC NPRM Comments at 5.

[264] Alaska Telecom NPRM Reply at 4 (footnote omitted).

[265] *See* APCO NPRM Comments at 4, 6.

[266] *Notice of Proposed Rulemaking*, 37 FCC Rcd at 15215, Appx. A; *accord id.* at 15198, para. 34.

[267] *Id.* at 15198, para. 35 (citing 47 CFR § 9.10(q)(10)(i)).

[268] Alaska Telecom NPRM Reply at 4; COPUC NPRM Comments at 8.

technologies.[269] We find that the definition is sufficiently broad and flexible to meet this goal.

71. We also decline to adopt several suggestions from the record to modify the definition of "device-based location information." AT&T supports "a definition of 'device-based location information' that is tied to timeliness and accuracy metrics . . . ."[270] However, the "device-based location information" definition is intended to describe a mechanism for deriving location information rather than determining the timeliness or accuracy of the information. In addition, we separately set forth timeliness and accuracy metrics elsewhere in the rules. DISA suggests adding language to indicate that the location is to be determined "at origination (setup) of [a] voice call."[271] We decline to adopt this suggested change, as the issue of timeliness of the location information used for location-based routing is addressed in other rules we adopt today.[272]

4. Timeliness and Accuracy of Location-Based Routing Information

72. We require CMRS providers to use location-based routing for wireless 911 voice calls and RTT communications to 911 when the location information available to the CMRS provider's network at time of routing is ascertainable within a radius of 165 meters at a confidence level of at least 90%. We anticipate that a substantial percentage of wireless 911 voice calls and RTT communications to 911 will route on location information meeting the accuracy and timeliness threshold under the rules adopted in this Order. If location information meeting this threshold is not available at the time of routing, we require CMRS providers to use the "best available" location information for routing wireless 911 voice calls and RTT communications to 911. Such "best available" location information may include but is not limited to device-based location information that does not meet the accuracy threshold, tower-based location information (e.g., the centroid of the area served by the cell sector that first picks up the call), or other location information. The requirements we adopt today are those proposed in the *Notice of Proposed Rulemaking* with slight definitional modifications.[273]

a. Timeliness Threshold

73. As noted in the Notice of Proposed Rulemaking, location-based routing requires information about the caller's location to be available quickly enough to enable the call to be routed without delaying the normal call set-up process.[274] We adopt the Commission's proposal from the Notice of Proposed Rulemaking to require the use of location-based routing only if caller location information is available to the CMRS provider network at the time that the CMRS provider would otherwise route the call.[275] This timeliness threshold is intended to avoid delay in transmitting wireless 911 voice calls and

---

[269] AT&T NPRM Comments at 3-4 (citing Commission's wording in the *Notice of Proposed Rulemaking*); *see also* Alaska Telecom NPRM Reply at 4 (supporting Commission's proposed definition as allowing for technological development and improvement over time); NENA NPRM Reply at 4 (citing AT&T NPRM Comments at 3-4).

[270] AT&T NPRM Comments at 4.

[271] DISA NPRM Comments at 2.

[272] *See* Section III.A.4.

[273] *Notice of Proposed Rulemaking*, 37 FCC Rcd at 15198-200, paras. 37-42.

[274] *Id.* at 15198-99, para. 38.

[275] For CMRS providers, "all 911 calls" include "those [911 calls CMRS providers] are required to transmit pursuant to subpart C of this part [9]." 47 CFR § 9.3. This definition therefore extends to texts, which are subject to 47 CFR § 9.10(q), a provision which resides in subpart C of part 9 of the Commission's rules. In this *Report and Order*, we distinguish between 911 wireless voice calls, 911 texts, and RTT communications for the sake of precision. However, we preserve the language from the *Notice of Proposed Rulemaking* for the purposes of this paragraph.

RTT communications to PSAPs.[276]

74. The record indicates that currently available technology is routinely capable of delivering location information to CMRS provider networks for wireless 911 voice calls and RTT communications to 911 in time for routing without delay.[277] Nationwide CMRS providers' implementations have demonstrated that obtaining such location in time for routing is feasible. Devices that are capable of producing high accuracy, low latency location for emergency calling are in wide use, and IP network technology supports rapidly obtaining such precise location estimates. The location-based routing deployments of AT&T,[278] T-Mobile,[279] and Verizon[280] demonstrate that precise location information can be made routinely available to CMRS providers' networks in time for routing wireless 911 voice calls. Both Android devices using ELS and iOS devices using HELO are capable of generating high accuracy, low latency location information in time to support 911 call routing.[281] Moreover, iOS and Android devices account for 99.62% of the U.S. device market, meaning that this capability is widely available to consumers.[282] Intrado states that 4G LTE and newer networks can obtain device-based location information, calculate confidence and uncertainty, and query the location server for PSAP routing instructions within the normal call set-up interval.[283] T-Mobile states that the "IP Multimedia Subsystem ('IMS') technology and advancement of device-based hybrid location solutions has enabled the use of a caller's estimated device location for call routing without delaying call set-up."[284]

75. Some commenters suggest that the Commission should require CMRS providers to route 911 calls within five seconds to "prevent a CMRS provider from holding onto a call for eight to ten

[276] *Notice of Proposed Rulemaking*, 37 FCC Rcd at 15199, para. 39.

[277] *See id.* at 15199, para. 38 (citing Intrado PN Comments at 6, 8; Apple Sept. 24, 2019 *Ex Parte* at 2; and Android, *Emergency Location Service – How It Works*, https://www.android.com/safety/emergency-help/emergency-location-service/how-it-works/ (last visited Jan. 17, 2024)); Verizon NPRM Comments at 6 (stating that RTT "will also benefit from the same routing improvements and advantages as i3 voice calls"); NENA NPRM Comments at 12 (stating that an RTT communication in NG911 "requires no special handling compared [to] a 'conventional' voice call").

[278] AT&T has used location-based routing for over 80% of all AT&T wireless calls. Intrado PN Comments at 2. Intrado further notes that AT&T's location-based routing solution provides location-based routing "without any impact to the timeline or call." Intrado PN Comments at 6.

[279] T-Mobile indicates that more than 95% of location estimates available at call routing on T-Mobile's network fall within the company's threshold, i.e. "300 meters with a confidence level of 90%." T-Mobile July 26, 2023 *Ex Parte* at 1.

[280] *See* Verizon July 13, 2023 *Ex Parte* at 1 ("To determine whether device-based hybrid location information provided by the device during a call is adequate for routing, Verizon uses an accuracy threshold of 200 meters maximum horizontal uncertainty with confidence of 90 percent.").

[281] *Notice of Proposed Rulemaking*, 37 FCC Rcd at 15191, para. 16. *See also* Android, Emergency Location Service - How It Works, https://www.android.com/safety/emergency-help/emergency-location-service/how-it-works/ (last visited Jan. 17, 2024) ("On average, ELS is able to get a first location 3-4 seconds after the call has started."); Android, Emergency Location Service - Overview, https://www.android.com/safety/emergency-help/emergency-location-service/ (last visited Jan. 17, 2024) ("ELS works on over 99% of active Android devices running OS4.4 and up, with Google Play Services installed-no new hardware or activation required."); Apple Sept. 24, 2019 *Ex Parte* at 2 (indicating that device-based hybrid location is available from certain devices during call set-up and that location-based routing can be enabled on models 6s and later running iOS 13 and Apple Watch devices running watch OS 6).

[282] NGA 911 NPRM Comments at 2.

[283] Intrado PN Comments at 8.

[284] T-Mobile July 26, 2023 *Ex Parte* at 1.

seconds or even longer waiting for a location fix."[285] We decline to adopt this requirement because doing so could incentivize CMRS providers to hold wireless 911 voice calls and RTT communications to 911 for the full five seconds when location information does not meet the threshold for accuracy, which could result in delays for wireless 911 voice calls and RTT communications to 911. The requirement that location information be available at time of routing, as the Commission stated in the Notice of Proposed Rulemaking, "is intended to avoid delay in transmitting 911 calls and texts because there would be no requirement to hold calls and texts for purposes of obtaining a routing fix."[286] Intrado points out that deploying location-based routing under the Commission's proposed framework "renders moot the potential need for call holding."[287] We agree that the framework as adopted avoids introducing new delays for wireless 911 voice calls and RTT communications to 911. Conversely, if we were to set a maximum five-second time frame for routing, it could incentivize CMRS providers to hold calls and RTT communications at the network for the full five-second window to ensure routing based on "best available" location. This in turn could create delays in connecting callers to a PSAP and cause some callers to terminate their 911 calls. To avoid such adverse impacts, we decline to set a maximum time frame for routing wireless 911 voice calls or RTT communications to 911.

76. We also decline to specify, as suggested by DISA, that the location information used for routing be determined "at origination (setup) of [a] voice call."[288] While we expect that location for most calls will be determined at origination, DISA's proposal could inadvertently be too restrictive, if location were to arrive after the setup of a voice call but before routing. We believe it is sufficient to require only that location information be available at the time of call routing, regardless of when the location is determined.

77. NGA 911 asserts that a timeliness requirement "appears to leave a big gap in the implementation because a carrier may always be able to claim the information was not available at time of call routing."[289] The record indicates, however, that CMRS providers are already deploying technology that routinely provides the required location information at the time of call routing with no delay. For example, Intrado states that in AT&T's network, location information meeting the threshold is available in time to route wireless 911 voice calls 80% of the time, and that routing on the network "requires no call delay."[290] We intend to monitor the deployment and use of location-based routing on CMRS provider networks with reporting requirements discussed in Section III.C. Should we learn that some CMRS providers are not taking full advantage of available technology that provides location-based routing information at the time of the call, we will consider whether additional measures are needed.

b. Accuracy Threshold

78. Turning to the required accuracy threshold for location-based routing, we adopt the requirement that CMRS providers use location-based routing to route wireless 911 voice calls and RTT

[285] NASNA NPRM Comments at 14; see also COPUC NPRM Comments at 6-7; iCERT NPRM Comments at 3 ("[W]e support the FCC's proposal to require use of LBR when the wireless network provider can determine the location of the caller within the recommended five-second window. If the caller's location is not available within this timeframe, the provider should use traditional cell site-based methods."); see also BRETSA NPRM Reply at 14-15 (arguing that minimum hold times might increase the percentage of calls that can be routed on device-based hybrid location information where providers still operate 3G networks, or that 911 authorities may wish to participate in tests to determine whether holding calls would allow for additional calls on IP-based networks to be routed using location-based routing).

[286] *Notice of Proposed Rulemaking*, 37 FCC Rcd at 15199, para. 39.

[287] Intrado NPRM Comments at 3.

[288] DISA NPRM Comments at 2.

[289] NGA 911 NPRM Comments at 4.

[290] Intrado PN Comments at 5, 9.

communications to 911 if the location information available at the time of routing identifies the horizontal location of the device within a radius of 165 meters at a confidence level of at least 90%. This requirement is consistent with the requirement the Commission proposed in the *Notice of Proposed Rulemaking*.[291]

79. We adopt the 165-meter threshold with a confidence level of at least 90% in light of the demonstrated efficacy of location-based routing using such a threshold and because this threshold provides enough flexibility to be compatible with nationwide CMRS providers' existing implementations of location-based routing. We believe that this location accuracy threshold will substantially reduce the number of misroutes associated with legacy E911 routing. AT&T has applied a location accuracy threshold with a radius of 165 meters at a confidence level of 90% in its own network.[292] Intrado states that location information meeting this location accuracy threshold is available to AT&T's network to route calls 80% of the time, and most calls route on information that identifies the location of the device within 50 meters.[293] As a result, AT&T's solution "provid[es] a more optimal route than sector-based routing for approximately 10% of all wireless 911 calls" and "[t]herefore, 10% of calls will be getting to the correct PSAP on the first try and will not require transfers from the neighboring PSAP."[294]

80. We agree with public safety entities and Intrado that it is imperative that we set an accuracy threshold that is realistic in light of existing technology while also providing room for future technological improvement.[295] APCO supports the proposed location accuracy threshold but remains open to an alternative that "strikes an appropriate balance between how often the device's location will be known quickly and accurately enough to use location-based routing rather than cell-sector based routing, and how effective the use of location-based routing will be at delivering the call to the correct ECC."[296] AT&T supports a location accuracy threshold "that the Commission believes would represent a significant improvement over cell-based routing methodologies."[297]

81. Some wireless industry commenters oppose the proposed location accuracy threshold and claim that additional flexibility is needed for providers to set individualized thresholds.[298] Verizon argues that a rigid location accuracy threshold is unnecessary to meet the Commission's public safety objectives and that any particular location accuracy threshold should at most serve as a safe harbor.[299] ATIS asserts that providers should "strive" but not be mandated to produce location information for purposes of

---

[291] *Notice of Proposed Rulemaking*, 37 FCC Rcd at 15199, para. 40.

[292] Intrado PN Comments at 4.

[293] *Id.* at 9.

[294] AT&T PN at 4.

[295] APCO NPRM Comments at 2; Adams County et al. NPRM Comments at 3 ("The proposed confidence levels are acceptable, but ideally, over time, the radiuses and confidence levels in the proposed rule should be tightened so that 911 calls are routed more precisely."); BRETSA NPRM Comments at 8 ("Intrado has found that LBR from hybrid device location information will allow accurate routing of wireless 9-1-1 calls over *80 percent* of the time using thresholds of 165 meters and a 90 percent confidence level. *The Commission should require national and regional wireless providers [to] implement LBR at the earliest possible time*." (footnote omitted, citing Intrado PN Comments at 9)); Intrado NPRM Comments at 5.

[296] APCO NPRM Comments at 2.

[297] AT&T NPRM Comments at 4.

[298] CTIA NPRM Comments at 5; T-Mobile NPRM Comments at 10; Verizon NPRM Comments at 3; ATIS NPRM Comments at 3-4; *see also* Southern Linc NPRM Reply at 5-6 (agreeing with ATIS, T-Mobile, Verizon, and CTIA that it is premature to adopt specific metrics).

[299] Verizon NPRM Comments at 3-4.

routing within a radius of 300 meters or less at a confidence level of 90%.[300] ATIS also asserts that it is developing best practices for carriers to implement location-based routing,[301] and T-Mobile states that the Commission should wait for these best practices before requiring specific distance and confidence metrics for location-based routing.[302] We encourage ATIS to conclude any such efforts on a timeline that is consistent with the requirements adopted in this Order.

82. We conclude that a mandatory threshold is necessary. The accuracy threshold we set ensures that all CMRS providers will use location-based routing nationwide for 911 calls and RTT communications to 911 when location information at the time of routing meets a high accuracy standard. We also disagree that there is a need to wait for the development of best practices, as the location-based routing rules we adopt require CMRS providers to use this methodology when the location information available to the network is highly accurate, and further permit CMRS providers to use location-based routing methodologies in additional scenarios. We observe that the nationwide CMRS providers have all completed or are currently implementing location-based routing on their IP-based networks, and all use location-based routing to route wireless 911 voice calls when available location meets this mandatory threshold for precision.[303] While no best practices have currently been developed, CMRS providers' implementations indicate a practical consensus that location-based routing can consistently be used when location information meets this threshold. We therefore decline to condition compliance with these rules on the completion of best practices by ATIS. We encourage ATIS to develop best practices to promote optimal routing on CMRS providers' networks.

83. While we require CMRS providers to use location-based routing when available location information is within a 165-meter radius at a standardized 90% confidence level, we emphasize that CMRS providers may also use location-based routing when location information available at time of routing is less precise than the accuracy threshold we adopt. To this extent, we agree with Verizon that CMRS providers should have flexibility to identify "provider-optimized threshold range[s] to accommodate individual service providers' vendor capabilities and user device capabilities."[304] We therefore provide flexibility to providers to set their own thresholds for use of location-based routing at a radius exceeding 165 meters at a 90% confidence level. While AT&T uses the 165-meter accuracy threshold, Verizon and T-Mobile have implemented accuracy thresholds of 200 meters and 300 meters, respectively, with a standardized 90% confidence level.[305] This formulation provides flexibility for all three nationwide CMRS providers to continue applying their respective thresholds for determining when to use location-based routing for 911 calls and RTT communications to 911.

84. We confirm that the location accuracy threshold used for location-based routing of a radius of 165 meters at a confidence level of at least 90% would apply equally to both estimated civic address and coordinate-based location. We agree with NENA that a CMRS provider may have access to

[300] ATIS NPRM Comments at 4. We note that a location accuracy threshold with a radius of 300 meters would also be an acceptable location-based routing implementation under the rules we adopt today.

[301] ATIS NPRM Comments at 4.

[302] T-Mobile July 26, 2023 *Ex Parte* at 2; T-Mobile NPRM Reply at 3-4; T-Mobile NPRM Comments at 9; *see also* ATIS NPRM Comments at 4 ("[T]he Commission should defer to the recommendations regarding the feasibility of location accuracy from industry groups such as ATIS ESIF.").

[303] Verizon and T-Mobile also use location-based routing for less precise location estimates.

[304] Verizon NPRM Comments at 3.

[305] Intrado notes that AT&T's threshold is 165 meters at a 90% confidence level. Intrado PN Comments at 9. T-Mobile indicates that its threshold is 300 meters at a 90% confidence level. T-Mobile July 26, 2023 *Ex Parte* at 1. Verizon indicates that its threshold is 200 meters at a 90% confidence level. Verizon July 13, 2023 *Ex Parte* at 1.

an estimated civic address for a calling device that may be used for location-based routing.[306] Many fixed broadband Internet access devices, particularly those provided to the consumer by the broadband service provider, are permanently located at a civic (street) address, which is known to the network provider.[307] If a CMRS provider has access to either an estimated civic address or coordinate-based location that represents a horizontal location uncertainty level of the device within a radius of 165 meters at a confidence level of at least 90% and that location is available at time of routing, the CMRS provider must use such information to comply with the Commission's location-based routing rules.

c. Default to Best Available Location Information

85. In the *Notice of Proposed Rulemaking*, the Commission proposed that when location information does not meet one or both thresholds for accuracy and timeliness under our rules, CMRS and covered text providers would be required to route wireless 911 voice calls and texts to 911 based on the best location information available at the time the call is routed, which may include cell tower coordinates.[308] We adopt this requirement as proposed for CMRS providers' routing of wireless 911 voice calls and RTT communications to 911. We find that this approach allows flexibility for CMRS providers to determine the best available location information for routing when the available location information does not meet the thresholds for timeliness and accuracy.

86. Commenters generally support a flexible fallback approach to routing of calls and texts that do not meet the timeliness and accuracy thresholds for location-based routing.[309] As the Commission stated in the *Notice of Proposed Rulemaking*, a requirement to default to best available location information is consistent with *ATIS-0500039*, which assumes that "the fallback for location-based routing should be cell sector routing 'for cases wherein no position estimate is available in time to be used for [location-based routing] or the position estimates lack requisite accuracy.'"[310] This approach is also consistent with current CMRS provider deployments of location-based routing, which default to legacy E911 routing when location does not meet carriers' individually-set thresholds for accuracy and timely availability.[311] For scenarios in which available location information does not meet the accuracy or timeliness thresholds, we believe that the CMRS provider is best suited to make the determination of the location information that is most likely to support accurate call routing. Defaulting to best available location information when preferred location is unavailable is consistent with other Commission rules regarding the provision of location information with 911 calls. In these rules, the Commission requires

---

[306] NENA NPRM Comments at 3 (arguing that "location-based routing rules should apply equally to geodetic and civic locations known to the originating service provider").

[307] *Amending the Definition of Interconnected VoIP Service in Section 9.3 of the Commission's Rules; Wireless E911 Location Accuracy Requirements; E911 Requirements for IP-Enabled Service Providers*, GN Docket No. 11-117, PS Docket No. 07-114, WC Docket No. 05-196, Notice of Proposed Rulemaking, Third Report and Order, and Second Further Notice of Proposed Rulemaking, 26 FCC Rcd 10074, 10105 para. 92 (2011). Examples of scenarios in which the CMRS provider would have an estimated civic address include a caller connecting to the network using a Wi-Fi access point or femtocell. *See id.*

[308] *Notice of Proposed Rulemaking*, 37 FCC Rcd at 15195-97, 15215-16, paras. 28, 30, Appx. A.

[309] Southern Linc NPRM Reply at 6 (stating that to the extent available location information does not meet the requirements for timeliness or location accuracy for a particular 911 call, CMRS providers are in the best position to determine what kind of location information constitutes the "best available"); CTIA NPRM Comments at 4-5; Verizon NPRM Comments at 4 ("Verizon agrees that network-based routing will remain necessary as a fallback when available location information does not meet the relevant accuracy and confidence/uncertainty threshold. This approach serves 911 callers' needs as a large majority of calls using network-based routing will be as reliable as LBR."); DISA NPRM Comments at 2.

[310] *Notice of Proposed Rulemaking*, 37 FCC Rcd at 15195-96, para. 28 & n.93 (quoting *ATIS-0500039* at 14).

[311] *Notice of Proposed Rulemaking*, 37 FCC Rcd at 15195-96, para. 28; AT&T PN Comments at 4; T-Mobile PN Comments at 4; *see also* Verizon NPRM Comments at 4.

providers to supply highly precise location information when technically feasible but permits reliance on alternative location information when highly precise location information is not available.[312]

87. Some commenters argue that CMRS providers should be required to use tower-based routing when the device-based location information available to the network at the time of routing exceeds the threshold,[313] or that the Commission should limit tower-based routing to scenarios in which "no other option exists."[314] We agree with CTIA and iCERT that location information that is less accurate than the proposed accuracy threshold but more accurate than cell sector, for example, device-based location information that arrives at the network in time for routing but exceeds the 165-meter threshold, could still enhance the likelihood of routing the call to the appropriate PSAP, and the rules we adopt today allow the use of such information for routing if it is the best available.[315]

88. We make minor modifications to the rule to clarify that the "best available location information" to the network at time of routing may take several forms. In the *Notice of Proposed Rulemaking*, the proposed rule stated that best available location information "*may* include the latitude/longitude of the cell tower."[316] We emphasize that the Commission used the latitude/longitude of the cell tower only as an illustrative example and that this language was not intended to limit CMRS providers to only using cell tower coordinates as a default or fallback. Southern Linc states that the most effective way to minimize misroutes is to enable CMRS providers to route calls based on the best location information available at the time of the call, regardless of the technology or solution.[317] We agree. NENA states that the most appropriate geodetic location for each sector would be the centroid of the area served by each cell sector, instead of the coordinates of the cell tower.[318] We revise the proposed rule language to indicate that when information of a device's location does not meet either one or both requirements for timeliness and accuracy, CMRS providers must route the wireless 911 voice calls or RTT communications to 911 based on the best available location information, which may include, but is not limited to, device-based location information that does not meet the timeliness and accuracy requirements, the centroid of the cell sector that first picks up the call, or other location information.

d. Validation

89. In the *Notice of Proposed Rulemaking*, the Commission sought comment on whether to require validation of location information for wireless 911 voice calls and texts to 911 for purposes of location-based routing and, if so, what validation steps CMRS and covered text providers should be required to take.[319] Some commenters support validation, citing concerns that 911 calls can be spoofed or purposefully misrouted for swatting incidents.[320] However, AT&T states that in its experience, invalid

[312] *See, e.g.,* 47 CFR § 9.16(b)(3)(ii) (stating that "an on-premises non-fixed device associated with a multi-line telephone system shall provide to the appropriate PSAP automated dispatchable location, when technically feasible; otherwise, it shall provide dispatchable location based on end user manual update, or alternative location as defined in § 9.3").

[313] Intrado NPRM Comments at 5 ("Intrado recommends that when the location information does not meet these timing/accuracy specifications, the proposed rules require fallback to tower-based routing rather than best available location information consistent with current CMRS deployments of LBR and industry standards."); NASNA NPRM Comments at 12; COPUC NPRM Comments at 6.

[314] NASNA NPRM Comments at 12; COPUC NPRM Comments at 6.

[315] CTIA NPRM Comments at 5; iCERT NPRM Comments at 3.

[316] *Notice of Proposed Rulemaking*, 37 FCC Rcd at 15215-16, Appx. A (emphasis added).

[317] Southern Linc NPRM Reply at 5.

[318] NENA NPRM Comments at 3-4.

[319] *Notice of Proposed Rulemaking*, 37 FCC Rcd at 15200, para. 43.

[320] NGA 911 NPRM Comments at 3; Adams County et al. NPRM Comments at 3.

location under location-based routing is "extremely rare."[321] BRETSA contends that requiring validation would be counterproductive because "[v]alidating caller/device locations against cell-site (Phase I) location would appear to defeat the purpose of device-based LBR."[322]

90. We decline to implement a validation requirement for the location information used by CMRS providers for routing at this time, as validation protocols are still evolving.[323] We will continue to monitor location information validation and will consider validation requirements for CMRS providers if such requirements become necessary. To aid in this monitoring, in the certification and reporting requirements discussed in Section III.C, we adopt requirements for CMRS to collect and report information on validation procedures they use with location-based routing.

B. Delivery of Wireless 911 Calls and Texts to NG911 Networks

91. In the *Notice of Proposed Rulemaking*, the Commission proposed requiring CMRS and covered text providers to deliver 911 calls, texts, and associated routing information in IP format upon request of 911 authorities who have established the capability to accept NG911-compatible IP-based 911 communications.[324] In the subsequent *NG911 Notice of Proposed Rulemaking*, the Commission proposed similar requirements for wireline, interconnected VoIP, and Internet-based TRS providers.[325] Several commenters express support for addressing IP delivery requirements for CMRS and covered text providers as part of a consolidated NG911 proceeding.[326]

92. We agree that consolidating similar issues and aligning requirements for NG911 services across different types of originating service providers will result in more consistent rules and avoid confusion among stakeholders.[327] Accordingly, we defer consideration of IP delivery for CMRS and covered text providers, including all associated proposals and issues raised in the *Notice of Proposed Rulemaking*,[328] to the NG911 transition proceeding, PS Docket No. 21-479. We acknowledge the

[321] AT&T NPRM Comments at 4.

[322] BRETSA NPRM Reply at 10. BRETSA states that "[r]eference to the tower location for verification would simply invalidate the caller location in those cases in which the caller is located in a jurisdiction other than that in which the PSAP to which 9-1-1 calls received by the cell site are default routed. It would result in the very misrouting of the call LBR is being implemented to correct." *Id.* at 11.

[323] Most commenters who address the issue oppose a validation requirement. *See, e.g.*, AT&T NPRM Comments at 4-5; T-Mobile NPRM Comments at 10; T-Mobile NPRM Reply at 4; Verizon NPRM Comments at 4; Verizon NPRM Reply at 2; ATIS NPRM Comments at 4-5; BRETSA NPRM Reply at i, 10-11.

[324] *Notice of Proposed Rulemaking*, 37 FCC Rcd at 15185, 15201-03, paras. 4, 46, 51.

[325] *NG911 Notice of Proposed Rulemaking* at *1, *34-35, para. 2 & Appx. A.

[326] CTIA July 3, 2023 *Ex Parte* at 2; Intrado NPRM Comments at 2, 5-6; Texas 9-1-1 Entities NPRM Comments at 5-6 n.21; NENA NPRM Reply at 5 ("NENA supports Intrado's request to initiate an NG9-1-1 proceeding to refresh the record on NG9-1-1."); Verizon NPRM Reply at 5 ("[C]oupling LBR with a framework for i3-based NG911 implementation would promote more efficient deployment by minimizing redundant implementation of interim and i3 NG911-based LBR while also rewarding wireless providers that have diligently worked to support end-to-end i3-based NG911."); *see also* GCI July 17, 2023 *Ex Parte* at 1 ("[A]ddressing any new requirements for IP delivery of wireless calls to PSAPs as part of the FCC's larger NG911 proceeding will facilitate consistent rules across network types and will make compliance with any new rules more efficient and effective for all service providers."); Alaska Telecom Association NPRM Comments at 8-9 (rec. Aug. 9, 2023) (filed in both PS Dockets 21-497 and 18-64) ("[T]he FCC should address and align any new requirements for IP delivery of wireless calls to PSAPs proposed in the LBR proceeding (PS Docket No. 18-64) with any IP-delivery requirements adopted in this NG911 proceeding.").

[327] CTIA July 3, 2023 *Ex Parte* at 2.

[328] *Notice of Proposed Rulemaking*, 37 FCC Rcd at 15200-04, paras. 44-54.

comments in the record of this proceeding regarding the Commission's proposals on this issue,[329] and we will address those comments in the NG911 proceeding.[330]

C. Certification and Reporting Requirements

93. *Certification and Reporting Requirements*. In the *Notice of Proposed Rulemaking*, the Commission sought comment on whether it should implement any new data collections to assist in monitoring compliance with the proposed location-based routing rules.[331] The Commission also sought comment on what information providers should include and how frequently they should be required to report.[332] In addition, the Commission asked whether it should require providers to certify that they are in compliance with requirements for location-based routing.[333]

94. NASNA and COPUC support an information collection to assess compliance and implementation of location-based routing.[334] To help the Commission monitor compliance with the location-based routing requirements we adopt today, we adopt certain one-time certification and reporting requirements. Specifically, we require that within sixty days after CMRS providers' respective compliance deadlines, they must certify that they are in compliance with the location-based routing requirements applicable to them. As part of the certification, CMRS providers must substantiate compliance by identifying specific network architecture, systems, location validation,[335] and procedures used to comply with the location-based routing requirements. We also require CMRS providers on a one-time basis to collect and report aggregate data on the routing technologies used for live 911 calls in the locations specified for live 911 call location data in section 9.10(i)(3)(ii) of the Commission's rules. CMRS providers must collect these data for a thirty-day period beginning on the applicable compliance date.

95. CTIA requests that we establish a "presumption of confidentiality from disclosure of detailed network information" that is required to be included in the certifications outlined in this *Report and Order*.[336] In support of its request, CTIA states that "wireless providers customarily treat network information as confidential for competitive and security reasons" and cites to a proceeding in which the Commission concluded that outage reports should be routinely treated as confidential information and are presumptively protected from public disclosure under the Freedom of Information Act.[337] Based on the

---

[329] *See, e.g.*, Intrado NPRM Comments at 2, 5-6; NASNA NPRM Comments at 15-16; COPUC NPRM Comments at 9-10; iCERT NPRM Comments at 4; Texas 9-1-1 Entities NPRM Comments at 5-6; NENA NPRM Comments at 1; MSCI NPRM Reply at 2-3; NENA NPRM Reply at 4; APCO NPRM Comments at 6-7; AT&T NPRM Comments at 7; T-Mobile NPRM Comments at 11-13; CTIA NPRM Comments at 3, 8; CTIA NPRM Reply at 2, 9-10; Southern Linc NPRM Reply at 8-9; BRETSA NPRM Reply at 16-17.

[330] Commenters who filed comments on this issue in the docket for this proceeding (PS Docket No. 18-64) do not need to re-file their comments in PS Docket No. 21-479.

[331] *Notice of Proposed Rulemaking*, 37 FCC Rcd at 15204, para. 55.

[332] *Id.*

[333] *Id.*

[334] NASNA NPRM Comments at 16; COPUC NPRM Comments at 3, 9.

[335] As we discuss in Section III.A.4.d, we do not require validation of location information used for location-based routing. However, if providers perform any validation of routing location data, they should identify such practices as part of their certification.

[336] Letter from Christiaan Segura, Director, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 18-64, at 3 (filed Jan. 16, 2024) (CTIA Jan. 16, 2024 *Ex Parte*).

[337] CTIA Jan. 16, 2024 *Ex Parte* at 3 (citing *New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 16830, 16855 para. 45 (2004)).

current state of the record, we decline to establish a presumption of confidentiality for the one-time certification and reporting requirements adopted today. CMRS providers may request confidential treatment under the Commission's existing confidentiality rules[338] for materials submitted pursuant to these new requirements, specifying the information they wish to keep confidential and providing the required justification. We note that the Commission retains the right to release aggregated or anonymized data that would not reveal specific information for which confidential treatment has been sought, including doing so on its website, in order to facilitate transparency and compliance with the rules. In addition, nothing in this *Report and Order* is intended to limit the authority of state and local 911 agencies to publish 911 call data to the extent authorized under state or local law.

96. CTIA requests that the Commission permit providers to submit certifications in the public docket "while separately allowing providers to submit the required network information and live call data directly to Commission staff."[339] We direct the Public Safety and Homeland Security Bureau to issue a Public Notice prior to the deadline for nationwide CMRS providers to file compliance certifications and live call data. Such a Public Notice will include necessary instructions for CMRS providers to file certifications and reports in compliance with the requirements adopted in this *Report and Order*.

97. CMRS providers must file the required certifications and live call data within 60 days after the compliance deadlines applicable to them under the location-based routing rules. This means that for voice calls to 911, a nationwide CMRS provider must file its certification and live call data within 60 days after the six-month deadline for deploying location-based routing technology on its IP-based networks, and a non-nationwide CMRS provider must file its certification and live call within 60 days after the 24-month deadline for deploying location-based routing technology on its IP-based networks. In addition, all CMRS providers that have implemented the capability for RTT communications to 911 must file a certification within 60 days after the 24-month deadline for deploying a technology that supports location-based routing for RTT communications. We do not require live call data reporting for RTT communications to 911.

98. Under the one-time reporting requirement for live 911 calls, CMRS providers must collect and report on (1) the number and percentage of wireless 911 voice calls routed with device-based location information that meets the accuracy threshold we adopt in Section III.A.4 (i.e., within a radius of 165 meters or less at a confidence level of at least 90%); (2) the number and percentage of wireless 911 voice calls routed with device-based location information that exceeds that threshold (i.e., within a radius larger than 165 meters at a confidence level of 90%); and (3) the number and percentage of wireless 911 voice calls routed by tower-based routing. We believe that this information will help us evaluate each CMRS provider's deployment of location-based routing. We also encourage but do not require CMRS providers to include the number of device-based location results being discarded as invalid in their reports filed with the FCC.[340] To minimize the reporting burden on CMRS providers, we require them to collect and report on 911 routing methods for live 911 voice calls only once, only for the areas specified for live 911 call location data in section 9.10(i)(3)(ii) of the rules,[341] and only for a thirty-day period following specified compliance dates. As noted above, we do not require similar reporting for RTT communications to 911.

99. We believe that these limited data collections strike an appropriate balance between the public safety community's interest in greater transparency with respect to compliance and our goal of

[338] *See* 47 CFR § 0.459.

[339] CTIA Jan. 16, 2024 *Ex Parte* at 3.

[340] *See* NGA 911 NPRM Comments at 4.

[341] CMRS providers providing service in any of the Test Cities or portions thereof must collect and report aggregate data on the location technologies used for live 911 calls in those areas. 47 CFR § 9.10(i)(3)(ii). Non-nationwide CMRS providers are required to report from alternative areas as specified in 47 CFR § 9.10(i)(3)(ii)(D)-(E).

limiting the burden of responding to mandatory information collections, particularly for small entities. These limited information collections will promote transparency by ensuring that the public has a clear understanding of timelines for providers' implementations of location-based routing technology and the level of compliance with location-based routing rules. Moreover, they will promote accountability by requiring CMRS providers to show steps they are taking to ensure that wireless 911 voice calls and RTT communications to 911 are routed to the appropriate PSAP.

100. *Recurring Reporting Requirements*. The Commission also sought comment on whether it should adopt recurring or ongoing reporting requirements.[342] NASNA and COPUC support requiring CMRS providers to disclose on a recurring basis to the FCC how many 911 calls are routed by location-based routing and how many are routed using legacy E911 call routing.[343] NASNA and COPUC argue that "[t]his will allow the Commission to determine if certain carriers are resorting to default routing more frequently than others, which may prompt an investigation to determine if those carriers are making sufficient efforts to fully implement LBR."[344] RWA opposes recurring data collection and reporting requirements as "extremely burdensome" for small providers, although it suggests that the Commission could request performance data on a voluntary basis.[345] We believe that the one-time certification and reporting requirements we adopt herein will be sufficient for providers to demonstrate location-based routing implementation without posing an undue burden for providers, particularly small entities. Therefore, we decline to adopt ongoing reporting requirements.

101. *Privacy and Security.* The Electronic Privacy Information Center (EPIC) expresses concern about potential misuse of emergency location data and urges the Commission to clarify that the privacy and security requirements for dispatchable location and z-axis location data also apply to location-based routing data.[346] EPIC also urges the Commission to clarify the data use cases that fall within the scope of "911 purposes" and to allow the use of such data only for routing calls and dispatch assistance.[347] In particular, EPIC urges the Commission "to clarify that law enforcement cannot use 911 location data for investigative leads or for enforcement unrelated to the purpose of the 911 call."[348] EPIC also asks the Commission to clarify that carriers are responsible for their third-party vendors' collection, use, and disclosure of device-based location data.[349]

---

[342] *See Notice of Proposed Rulemaking*, 37 FCC Rcd at 15204, para. 55.

[343] NASNA NPRM Comments at 16; COPUC NPRM Comments at 9.

[344] NASNA NPRM Comments at 16; COPUC NPRM Comments at 9.

[345] RWA NPRM Comments at 4.

[346] *See* Electronic Privacy Information Center (EPIC) Notice of Proposed Rulemaking Comments at 6-7 (rec. Feb. 16, 2023) (EPIC NPRM Comments). The Commission's data privacy and security requirements for dispatchable location and z-axis location information provide that prior to use of dispatchable location information or z-axis location information, respectively, to meet the location accuracy requirements, CMRS providers must certify that neither they nor any third party they rely on to obtain such location information will use such location information or associated data for any non-911 purpose, except with prior express consent or as otherwise required by law. 47 CFR § 9.10(i)(4)(iv)-(v). The certification must state that CMRS providers and any third party they rely on to obtain such location information will implement measures sufficient to safeguard the privacy and security of such location information. *Id*.

[347] EPIC NPRM Comments at 7.

[348] *Id.*

[349] *Id.* EPIC states that "[t]he location data market is a multi-billion-dollar industry. Like many other companies that collect location data, carriers have sold their customers' information to data brokers who have then sold access to anyone willing to buy—from bounty hunters to the government. The disclosure and sale of location data has serious implications for equity because vulnerable people are most likely to be the targets of surveillance." *Id*. at 3 (footnotes omitted).

102. We agree that it is imperative for service providers to ensure the privacy and security of location-based routing information, and we adopt a rule clarifying that the Commission's existing rules on the privacy and security of dispatchable location and z-axis information apply to information used for location-based routing. In particular, we require CMRS providers to certify that neither they nor any third party they rely on to obtain location information or associated data used for compliance with the location-based routing requirements will use such information or associated data for any non-911 purpose, except with prior express consent or as otherwise required by law. The certification also must state that the CMRS providers and any third parties they rely on to obtain location information or associated data used for compliance with the location-based routing requirements have implemented measures sufficient to safeguard the privacy and security of such information.[350] These requirements make clear that CMRS providers who work with third-party vendors in the context of location-based routing are responsible for ensuring that those vendors take appropriate measures to address privacy and security concerns.[351] The privacy and security certifications are due at the same time as the other location-based routing certifications (i.e., within 60 days after the compliance deadlines applicable to the CMRS providers under the location-based routing rules).

103. EPIC also asks the Commission to clarify how its privacy and security rules, including those governing using, disclosing, and permitting access to Customer Proprietary Network Information (CPNI), apply to device-based location data.[352] Section 222 of the Communications Act of 1934, as amended, requires CMRS providers, among others, to protect the confidentiality of location information and prohibits them from using, disclosing, or permitting access to location information without the customer's express prior authorization, but provides an exception for the provision of a customer's call location information to a PSAP or other emergency response authority in connection with a 911 call.[353] To help remove uncertainty for CMRS providers, we clarify that the obligations that apply to dispatchable location data also apply to location information used for location-based routing, including device-based location data.

104. We decline EPIC's request to clarify the definition of "911 purposes." We believe that the Commission's existing privacy protections for 911 location data are sufficiently clear, and that determining whether a particular use of location data is for "911 purposes" is likely to be a fact-specific inquiry best addressed on a case-by-case basis as the need arises. We decline to address the issue of law enforcement's ability to use 911 location data for investigative or law enforcement purposes, as this is an area outside the Commission's regulatory authority. We also decline EPIC's request to require CMRS and covered text providers to delete location data[354] as outside the scope of this proceeding, as the *Notice of Proposed Rulemaking* did not propose or seek comment on requirements for data minimization. We recognize data minimization as an important tool to protect the privacy and security of customers' information, and we encourage providers not to retain 911 location routing data longer than is necessary to fulfill the 911 purpose of the data or comply with applicable law.

105. *Per-Call Disclosure Requirements*. The Commission sought comment on whether to require CMRS providers to disclose to PSAPs or state or local 911 authorities the routing methodology

[350] Under the definition we adopt today, location information used for location-based routing may include, but is not limited to, device-based location information.

[351] *Wireless E911 Location Accuracy Requirements*, PS Docket No. 07-114, Sixth Report and Order and Order on Reconsideration, 35 FCC Rcd. 7752, 7777, at para. 57 (2020).

[352] *See* EPIC NPRM Comments at 5-6. The Commission's privacy rules, including those governing the use, disclosure, and access to CPNI, are at 47 CFR §§ 64.2001-64.2011.

[353] 47 U.S.C. § 222(d)(4)(A).

[354] *See* EPIC NPRM Comments at 7-9.

used for each 911 call, although the Commission declined to propose such a requirement.[355] COPUC and BRETSA urge the Commission to require per-call disclosure. COPUC states that "[n]ot knowing whether the call was routed using LBR technology or default E911 methodology, the PSAP will have to follow up on *every* misrouted call to determine the cause of the misroute."[356] BRETSA states that routing methodology information can allow dispatchers to assess the likelihood that they need to transfer the call and the reliability of the caller location information.[357] However, T-Mobile and NENA argue that such a requirement is unnecessary.[358] T-Mobile asserts that the positioning technology used to route each call is not actionable for PSAPs and that in a full NG911 environment, positioning technology information will be available with each call.[359] NENA similarly states that NG911 system elements already "partly" meet the need for per-call information on routing mechanisms and that additional standards development is under way and should meet this need "in full."[360] In light of the forthcoming development of NG911 standards that will support disclosure of per-call routing methodology, we agree with T-Mobile and NENA that any incremental benefit from requiring such disclosures at this time would not outweigh the potential costs of this requirement.

D. Additional Proposals

106. Several commenters raised additional issues or proposals in response to the Notice of Proposed Rulemaking. We discuss each of these issues or proposals in turn below.

107. *Role of Next Generation Core Services (NGCS) Providers*. NENA and T-Mobile indicate that the proposals in the Notice of Proposed Rulemaking regarding routing obligations and ESInets may leave a regulatory gap with respect to routing functions performed by ESInet administrators and next generation core services (NGCS) providers.[361] T-Mobile notes that once a carrier hands the 911 call over to the NGCS provider at the ESInet ingress point, the carrier cannot control how the call is routed, and the *Notice of Proposed Rulemaking* "does not contemplate that the NGCS provider is *also* required to use LBR when routing to the appropriate PSAP."[362] T-Mobile urges the Commission to ensure that carriers do not "bear the burden of noncompliance" after the carrier routes the 911 call to ESInets.[363] Because the Commission only considered requirements for CMRS and covered text providers in the Notice of Proposed Rulemaking, we decline to consider the role of NGCS providers in routing at this time and defer to the NG911 transition proceeding in PS Docket No. 21-479 the consideration of NGCS providers'

---

[355] *Notice of Proposed Rulemaking*, 37 FCC Rcd at 15196-97, para. 29.

[356] COPUC NPRM Comments at 7 (also stating that if a call "was routed using LBR and still was delivered to the wrong PSAP, that indicates the possibility of an error in the GIS dataset being used by the CMRS provider to determine the proper destination for the 911 call").

[357] BRETSA NPRM Reply at 3.

[358] AT&T NPRM Comments at 5; T-Mobile NPRM Comments at 8; T-Mobile NPRM Reply at 5-6; NENA NPRM Comments at 6 (stating that standards under development make such disclosure requirements unnecessary, but also stating that "[i]t is imperative that the positioning source for the 9-1-1 caller is provided with the call").

[359] T-Mobile NPRM Reply at 5-6.

[360] NENA PN Reply at 5.

[361] NENA NPRM Comments at 11 ("Under the proposal to establish an ESInet as a termination point for location, there may exist a gap in regulatory coverage. There may be a need to apply regulatory coverage to ESInet providers to ensure that calls and location are delivered through the ESInet all the way to the PSAP."); T-Mobile NPRM Comments at 7 (asserting that there is a gap in the NPRM with respect to routing obligations for calls delivered to an ESInet and that "[t]his raises the question of where the burden of compliance rests if a call is misrouted in this scenario").

[362] T-Mobile NPRM Comments at 7.

[363] *Id.*

responsibilities with regard to location-based routing and any related liabilities.

108. 2019 Wireline Forbearance Memorandum Opinion and Order. We received a comment from Mr. Ronald R. Fenwick urging the Commission to revisit and revise a 2019 Memorandum Opinion and Order in another proceeding which granted price cap incumbent Local Exchange Carriers (LECs) forbearance from legacy regulatory obligations.[364] Mr. Fenwick asserts that the Memorandum Opinion and Order resulted in diminishing subscribers to traditional landline services, and that wireless customers are not properly apprised of the advantages of wireline service.[365] We decline to revisit the 2019 Memorandum Opinion and Order, which does not deal with wireless services and is therefore outside the scope of this proceeding.

109. Calls and Texts Originating Outside the United States. We received a comment from staff of the Defense Information Systems Agency (DISA) asking the Commission to consider location-based routing for 911 calls and texts originating outside the United States and its territories.[366] This request raises legal and policy issues that are beyond the scope of this proceeding.

110. Location-Based Routing for VoIP. We received a comment from DISA asking the Commission to apply location-based routing requirements to "landline-based VoIP 9-1-1 calls coming from Ethernet wired end instruments and connecting to the Public Switch Telephone Network using Session Initiation Protocol (SIP) trunks from an IP-PBX."[367] We note that in the Next Generation 911 proceeding (PS Docket. 21-479), the Commission proposed rules requiring interconnected VoIP providers to complete all translation necessary to deliver 911 calls, including associated location information, in the requested IP-based format to an ESInet or other designated point(s) that allow emergency calls to be answered.[368] We defer consideration of this issue to the Next Generation 911 proceeding.

E. Promoting Digital Equity and Inclusion

111. As noted in the *Notice of Proposed Rulemaking*, the Commission is engaged in a continuing effort to advance digital equity for all,[369] 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.[370] The *Notice of Proposed Rulemaking* invited comment on equity-related considerations and benefits, if any, that may be associated

---

[364] Fenwick NPRM Comments at 1 (citing "FCC's Order 19-72a," *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, WC Docket No. 18-141, Memorandum Opinion and Order, 34 FCC Rcd 6503 (2019)).

[365] Fenwick NPRM Comments at 1.

[366] DISA NPRM Comments at 1-2.

[367] *Id.* at 3.

[368] *NG911 Notice of Proposed Rulemaking* at *8, para. 21.

[369] 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.

[370] *Notice of Proposed Rulemaking*, 37 FCC Rcd at 15205-06, para. 59. 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).

with the proposals and issues under consideration.[371] Specifically, the Commission sought comment on how its proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility.[372]

112. Several parties submitted comments on these issues. NENA states that location-based routing should be deployed regardless of a jurisdiction's NG911 status and that "[i]t would be inequitable to restrict the life-saving benefits of location-based routing" only to those "with the good fortune of having an emergency in a convenient location" with NG911 capability.[373] As discussed in Section III.A.1, we are adopting rules today that require CMRS providers to implement location-based routing on their IP-based networks for wireless 911 voice calls nationwide, regardless of whether a particular jurisdiction has NG911 capability. These rules will help to ensure that location-based routing is available for wireless 911 voice calls nationwide and regardless of the service provider the caller has chosen.

113. NASNA notes that in the *Notice of Proposed Rulemaking*, the Commission sought comment not just on equity-related considerations, but also "on the degree to which funding and operating transitional facilities extend the timeline and add to the cost incurred by state and local 911 authorities to transition to NG911."[374] NASNA believes that "these two issues are inextricably linked," and NASNA raises "the issues facing our members in providing equal access to 911 services to all citizens through local NG911 systems."[375] Pointing to the *NG911 Notice of Proposed Rulemaking* comment record as well, NASNA urges that "the equity-access consideration for 911 at this point in time should begin at the network level in which 911 calls themselves are transported."[376] NASNA states, "If all those calling or texting 911 do not have a consistent level of access to network functionality, we believe the gap in digital disparity in effective and reliable access to 911 across the country will widen all the more."[377] Because NASNA's comments regarding equity and access are more closely related to the NG911 proceeding than the instant proceeding, we defer consideration of these points to the NG911 proceeding.

114. COPUC advocates for applying the same implementation time frames for 911 texts that are being applied to wireless 911 voice calls (i.e., six months for nationwide CMRS providers and eighteen months for non-nationwide CMRS providers) as "a matter of equity for 911 users that rely on text-to-911."[378] As discussed in Section III.A.2, at this time we decline to require location-based routing for text-to-911 services other than RTT communications to 911 in the absence of technical standards for location-based routing for SMS. However, we reiterate our commitment to monitoring the development of standards, products, and other advances affecting location-based routing for SMS text-to-911.

115. EPIC states that government entities, carriers, and others have misused location data to target individuals and groups, and says that "the lack of clear privacy and security safeguards would have a disproportionately negative impact on certain vulnerable groups."[379] As discussed in Section III.C and

---

[371] *Notice of Proposed Rulemaking*, 37 FCC Rcd at 15205-06, para. 59.

[372] *Id*.

[373] NENA NPRM Comments at 5.

[374] NASNA NPRM Comments at 17 (quoting *Notice of Proposed Rulemaking*, 37 FCC Rcd at 15202, para. 47).

[375] *Id*.

[376] *Id*. at 18.

[377] *Id*.

[378] COPUC NPRM Comments at 8; *see also* NENA NPRM Reply at 9 (concurring with NASNA's equity comments on supporting location-based routing for text-to-911, but arguing that the Commission's rules "should not back the market into adopting non-standardized technologies for a legacy platform" and encouraging only voluntary deployment of location-based routing for "interim" text-to-911).

[379] EPIC NPRM Comments at 1; *see id.* at 2, 8 (noting that Microsoft also raised similar privacy and security concerns in earlier comments in the instant proceeding).

consistent with certain of EPIC's requests, we adopt a requirement applying the Commission's existing rules on the privacy and security of dispatchable location and z-axis information to location-based routing information.[380]

116. In sum, we acknowledge the importance of the continuing effort to advance digital equity for all. We believe that the rules we adopt today, requiring CMRS providers to implement location-based routing on their IP-based networks for wireless 911 voice calls nationwide and requiring CMRS providers to implement location-based routing where they deploy RTT capabilities, will help to advance those goals.

F. Summary of Benefits and Costs for Location-Based Routing

117. As we discuss below, the implementation of location-based routing has potential annual benefits of over $173 billion in terms of reduced mortality and reduced call transfer burdens to PSAPs. We determine that the rules we adopt today, which will affect CMRS providers, will result in an industry-wide compliance cost of $215 million.

1. Benefits of Location-Based Routing

118. We believe that the Commission's benefit assessment from the *Notice of Proposed Rulemaking* remains valid. The Commission estimated that implementation of location-based routing would save 13,837 lives annually.[381] While the Commission did not attempt to place a value on human life, it relied on the U.S. Department of Transportation's (DOT) valuation of a statistical life (VSL) of $11.8 million from base year 2021.[382] The Commission estimated that the benefit of reduced mortality would be 13,837 x $11.8 million or approximately $163 billion, but stated that this estimate was conservative.[383] We received no comments on the estimated reduced mortality benefit. Using the latest VSL of $12.5 million for base year 2022,[384] our new estimate of reduced mortality benefit is approximately $173 billion for wireless voice calls to 911. At this time, we have no data on the number of RTT communications to 911 to estimate a benefit from this service,[385] but we anticipate that as RTT usage becomes more widespread, significant reduced mortality benefits will accrue.

119. The Commission sought specificity on the time and cost savings to PSAPs and state and local 911 authorities under the proposed rules.[386] While we received no specific figures in the record, BRETSA agrees that misrouting of 911 calls ties up resources at the PSAP to which the call was misrouted and delays receipt of the call at the PSAP that can dispatch first responders, while T-Mobile states that call transfers can delay emergency response and result in the loss of vital incident information,

---

[380] We address EPIC's other requests in Section III.C.

[381] *Notice of Proposed Rulemaking*, 37 FCC Rcd at 15206-07, para. 61 & n.161.

[382] *Id.* at 15207-08, para. 62 & n.162 (citing U.S. Department of Transportation, *Departmental Guidance on Valuation of a Statistical Life in Economic Analysis* (Mar. 4, 2022) (later updated May 1, 2023), https://www.transportation.gov/office-policy/transportation-policy/revised-departmental-guidance-on-valuation-of-a-statistical-life-in-economic-analysis).

[383] *Id.* at 15207-08, para. 62 (stating that the estimate does not include "the value of reduced human suffering and property destruction occurring due to a delayed arrival of first responders" or "the benefits of location-based routing for text messages").

[384] *See* U.S. Department of Transportation, *Departmental Guidance on Valuation of a Statistical Life in Economic Analysis* (effective May 1, 2023), https://www.transportation.gov/office-policy/transportation-policy/revised-departmental-guidance-on-valuation-of-a-statistical-life-in-economic-analysis.

[385] Respondents reported a combined total of 824,609 texts to 911 in 2022. Fifteenth Annual 911 Fee Report at 12-13, para. 14.

[386] *Notice of Proposed Rulemaking*, 37 FCC Rcd at 15208, para. 63.

including caller location.[387] The Commission estimated that with implementation of location-based routing, "1,368,000 calls would avoid the need for a transfer due to a misroute, reducing the response time for these calls by one minute."[388] This would result in a time savings of 22,800 hours annually for PSAPs, although NENA estimates that call transfers consume over 200,000 hours per year of excess 911 professional labor.[389] We estimate the mean wage of 911 call operators to be $25.04 per hour,[390] which leads to an estimated total labor cost of $36.31 per hour after accounting for benefits.[391] We estimate that PSAPs would realize an annual savings benefit range of approximately $0.8 million to $74.3 million per year for wireless 911 voice calls.[392] We do not have sufficient data to estimate such a benefit for RTT, though we similarly anticipate that time and cost savings benefits for PSAPs will accrue for RTT as usage grows.

2. Costs of Implementation

120. In the *Notice of Proposed Rulemaking*, the Commission provided separate cost estimates for materials and labor.[393] The Commission sought comment on, *inter alia*, hardware, software, services, GIS, and testing;[394] provider costs and timelines necessary to work with OS-based location providers; costs for providers to implement the required software, hardware, and service upgrades to comply with

[387] BRETSA NPRM Reply at i; T-Mobile NPRM Comments at 3.

[388] *Notice of Proposed Rulemaking*, 37 FCC Rcd at 15206-07, para. 61 n.161. NENA estimates that 80% or more of the total calls to 911 annually are from wireless devices. NENA, *9-1-1 Statistics*, https://www.nena.org/page/911Statistics (last visited Jan. 17, 2024). According to the National Association of State Emergency Medical Services Officials (NASEMSO), local Emergency Medical Services (EMS) agencies respond to nearly 28.5 million 911 dispatches each year. NASEMSO (Laura French), *National Association of State EMS Officials releases stats on local agencies, 911 Calls* (Apr. 10, 2020), https://www.ems1.com/ambulance-service/articles/national-association-of-state-ems-officials-releases-stats-on-local-agencies-911-calls-LPQTHJrK2oIpxuR1/. Assuming that 80% of these calls are from wireless devices yields an estimate of 22.8 million wireless calls for 911 dispatch annually. The Commission estimated that 12% of the wireless calls for dispatch (or 2,736,000 calls) would be misrouted. *Notice of Proposed Rulemaking*, 37 FCC Rcd at 15206-07, para. 61 n.161 (citing *ATIS-0500039* at 4). The Commission also estimated that location-based routing with a horizontal uncertainty value of 300 meters would resolve approximately 50% of these misroutes. *Id.* (citing *ATIS-0500039* at 13). Accordingly, the Commission estimated that 1,368,000 calls would avoid the need for a transfer due to a misroute, reducing the response time for these calls by one minute. *Id.*

[389] *Notice of Proposed Rulemaking*, 37 FCC Rcd at 15186-87, para. 8 (citing NENA PN Comments at 4).

[390] The mean wage for Public Safety Telecommunicators in May 2022 was $23.74 per hour. U.S. Bureau of Labor Statistics, *Occupational Employment and Wages, May 2022, 43-5031 Public Safety Telecommunicators* (Apr. 25, 2023), https://www.bls.gov/oes/current/oes435031.htm. The average hourly private wage increased by 5.5% according to the Bureau of Labor Statistics between May 2022 and August 2023, so to correct for inflation we increase the wage estimate by 5.5% to $25.04 per hour. Federal Reserve Bank of St. Louis, *Average Hourly Earnings of All Employees, Total Private (CES0500000003)*, https://fred.stlouisfed.org/series/CES0500000003 (last visited Jan. 17, 2024) (*Inflation Adjustment*).

[391] To account for benefits, we mark up wages by 45%, which results in total hourly compensation of $25.04 × 145% = $36.31. According to the Bureau of Labor Statistics, as of June 2023, civilian wages and salaries averaged $29.86/hour and benefits averaged $13.39/hour. Total compensation therefore averaged $29.86 + $13.39, rounded to $43.26. *See* Press Release, Bureau of Labor Statistics, *Employer Costs for Employee Compensation—June 2023* (Sept. 12, 2023), https://www.bls.gov/news.release/pdf/ecec.pdf. Using these figures, benefits constitute a markup of $13.39/$29.86 ~ 45% (*Compensation Benefit Markup*).

[392] PSAPs would realize an annual savings benefit of 1,368,000 calls x 1 minute (0.0166 hours) x $36.31, or over $828,000 per year. Using NENA's estimate, PSAPs would realize a savings benefit of 200,000 hours x $36.31, or approximately $7.3 million per year.

[393] *Notice of Proposed Rulemaking*, 37 FCC Rcd at 15210-12, paras. 71-72.

[394] *Id.* at 15208, para. 64.

proposed rules; and how many work-hours and what kind of workers would be required;[395] and planned or expended costs by providers that have implemented or plan to implement location-based routing.[396] RWA and BRETSA state that non-nationwide and smaller carriers have not determined actual costs.[397] We did not receive specific cost information to better inform the Commission's cost assessments. Commenters provided information about network elements, tasks, and burdens that would factor into costs; however, commenters generally discussed such factors in the context of seeking more time to comply rather than cost aspects.[398] RWA calls for additional time and federal funding to support carrier implementation of location-based routing and alleges that RWA members will not be able to comply with an unfunded mandate.[399] As discussed in Section III.A.1, we are increasing the timelines for non-nationwide CMRS providers to implement location-based routing for wireless 911 voice calls and RTT communications, and deferring consideration of location-based routing requirements for texts to 911 and requirements to deliver 911 calls and texts in IP-based format.

121. *Material Costs*. The Commission tentatively concluded that CMRS providers implement location-based routing at the PSAP level, while CMRS providers incur material costs on a per-PSAP basis.[400] The Commission estimated that the average material cost of software features or component upgrades for each CMRS provider would be $10,000 per PSAP as an upper bound,[401] with an "implied material cost upper bound [of] approximately $106 million."[402] We received no comments to inform the Commission's material cost estimate for CMRS providers to deploy location-based routing to PSAPs they serve. However, commenters identified core network elements necessary to implement location-based routing. Intrado states that carriers will need to implement geospatial routing capable Gateway Mobile Location Centers (GMLCs) so that routing decisions will occur within their networks.[403] CCA states that "[i]ncorporating location-based routing into the wireless ecosystem . . . requires a carefully orchestrated series of changes that affects the wireless carriers' device inventory, transport networks, and several aspects of the core network systems. These potentially include access and mobility management, data

[395] *Id.* at 15208-09, para. 65.

[396] *Id.* at 15209, para. 66.

[397] RWA NPRM Comments at 1 n.3; BRETSA NPRM Reply at ii.

[398] For example, CCA states that location-based routing implementation will be economically and practically infeasible in the proposed eighteen-month timeline for non-nationwide carriers, noting that a nationwide carrier took four years. CCA NPRM Comments at 2.

[399] RWA NPRM Comments at 1-2.

[400] *Notice of Proposed Rulemaking*, 37 FCC Rcd at 15210, para. 70

[401] *Id.*

[402] *Id.* at 15210-11, para. 71. The Commission assumed no material costs for AT&T because it has already deployed location-based routing to its network. *Id*. at 15210, para. 71. The Commission stated (at the time of the *Notice of Proposed Rulemaking*) that it is unclear the extent to which Verizon plans to implement location-based routing, and did not estimate Verizon's material costs. *Id*. at 15210-11, para. 71. The Commission found that T-Mobile has yet to implement location-based routing to 4,896 PSAPs, while non-nationwide CMRS providers collectively must upgrade 5,728 PSAPs, with any PSAP receiving service from usually one non-nationwide CMRS provider along with the nationwide CMRS providers. *Id*. at 15211, para. 71. The Commission found that T-Mobile and non-nationwide CMRS providers need to implement location-based routing for 10,624 PSAPs (4,896 + 5,728), at $10,000 per PSAP, for a cost of approximately $106 million. *Id.*

[403] Intrado NPRM Comments at 3. NENA defines a GMLC as "the point of interface between the GSM [Global Standard for Mobile Communications] wireless network and the Emergency Services Network. The GMLC retrieves, forwards, stores and controls position data associated with wireless callers. This includes the processing of location requests and updates (rebids)." NENA, *GMLC/MLC (Gateway Mobile Location Center)* (Sept. 13, 2021) https://kb.nena.org/wiki/GMLC/MLC_(Gateway_Mobile_Location_Center).

authentication, geospatial data repository functions, session management, and network security."[404] CCA further states that carriers will need to "implement the array of device upgrades and non-standard, proprietary network solutions needed for location-based routing."[405] RWA describes hardware and software modifications needed to implement location-based routing as a "massive expense," and notes that member budgets for capital expenses are "already pared close to the bone."[406]

122. We agree with commenters that providers have certain material costs associated with the network core that are not necessarily dependent on the number of PSAPs they serve. We clarify, however, that the material costs that we calculated on a per-PSAP basis in the *Notice of Proposed Rulemaking* also include other costs that are not necessarily incurred at the PSAP. We agree that implementation costs of upgrading equipment or software can, for instance, involve changes to the network core. We also note that such costs vary with the size of the network that remains to be converted to location-based routing, especially if any equipment needs to be updated. We therefore chose the per-PSAP basis because we find it a convenient proxy of remaining network area. T-Mobile[407] and Verizon[408] report partial implementation of location-based routing based on the number of PSAPs. For providers with no known implementation, the number of their covered PSAPs serves as a proxy for the size of their entire network. We therefore continue to use the per-PSAP basis as a proxy for network size in our current material costs calculations. We note, additionally, that even if the per-PSAP cost that we use below were to double, the aggregate expected costs of our rules would fall well below the expected benefits.

123. The latest NENA data indicate that 5,748 PSAPs operate in the United States.[409] AT&T has already deployed location-based routing nationwide,[410] so our rules impose no additional material costs for AT&T. The Commission did not provide an estimate of T-Mobile's material costs in the *Notice of Proposed Rulemaking*. As of December 2023, T-Mobile states that it has fully implemented location-based routing for 1,591 PSAPs, with an additional 596 PSAPs in progress.[411] Thus, T-Mobile must implement location-based routing to 3,561 remaining PSAPs. The Commission did not provide an estimate of Verizon's material costs in the *Notice of Proposed Rulemaking*, but Verizon states that it has "fully implemented LBR for 414 PSAPs; implementation is in progress for an additional 277 PSAPs."[412] Thus, the rules would impose no additional material costs for existing and planned deployments to Verizon for 691 PSAPs, which leaves 5,057 PSAPs remaining for Verizon to implement location-based routing. The remaining CMRS providers collectively must upgrade the full national set of 5,748 PSAPs, assuming no more than one remaining CMRS provider serving a particular PSAP.[413] Using the Commission's $10,000 per PSAP upper bound in the *Notice of Proposed Rulemaking*, we estimate that

[404] CCA NPRM Comments at 2.

[405] *Id*.

[406] RWA NPRM Comments at 2.

[407] T-Mobile Dec. 21, 2023 *Ex Parte* at 1.

[408] Verizon Dec. 7, 2023 *Ex Parte* at 1.

[409] NENA, *9-1-1 Statistics*, https://www.nena.org/page/911Statistics (last visited Jan. 17, 2024).

[410] *Notice of Proposed Rulemaking*, 37 FCC Rcd at 15189, para. 12 (citing AT&T PN Comments at 4).

[411] T-Mobile Dec. 21, 2023 *Ex Parte* at 1.

[412] Verizon Dec. 7, 2023 *Ex Parte* at 1.

[413] *See Notice of Proposed Rulemaking*, 37 FCC Rcd at 15211, para. 71 (citing FCC, *Mobile Deployment Form 477 Data* (Jul. 29, 2022), https://www.fcc.gov/mobile-deployment-form-477-data, and stating that "[s]taff analysis of Form 477 data suggests that when that when there is a fourth non-nationwide wireless provider in any particular location, it is usually the only one").

CMRS providers collectively need to deploy location-based routing to a total of 14,366 PSAPs,[414] resulting in the implied material cost of approximately $143.7 million.

124. *Labor Costs*. The Commission estimated that the labor cost per CMRS provider is $366,600.[415] The Commission explicitly mentioned the tasks of installing equipment and running trials as part of this labor.[416] Commenters described other tasks such as internal planning, outreach, and testing.[417] Since these tasks do not involve materials but rather involve work burdens, we categorize them as labor costs for the purpose of this analysis.

125. *Labor Costs (i): Internal Planning*. CCA described CMRS providers' internal planning tasks prior to implementation of location-based routing, which we categorize under labor. CCA states that carriers will need to vet and select potentially appropriate technical location-based routing solutions, budget for related required procurements, and make related plans to allocate and prioritize necessary resources to the projects.[418] CCA states that "[t]he proposed rule would require carriers with IP-based networks to make major strategic decisions for their wireless networks" and "stand up project teams [comprised] of senior engineers and business leaders with specialized experience in network operations to assess the needs of the marketplace and review the state of technology development globally, nationally, and with respect to their individual network technologies."[419] CCA states that carriers will need to make "a candid assessment of existing network resources, the purposeful allocation of limited technical and business resources, and a successful matching of technology within the market to the unique features of that carrier's network systems and status within the product evolution lifecycle" and conduct "intensive" decision making.[420]

126. *Labor Costs (ii): Outreach*. Next, CCA described providers' outreach tasks, such as collaboration with network and handset vendors;[421] and work with device makers, technology vendors, and software service providers.[422] However, CCA notes that non-nationwide CMRS providers face challenges attracting attention and assistance from global and national vendors who are more responsive to larger clients.[423]

127. *Labor Costs (iii): Deployment*. Commenters provided few details of labor tasks

---

[414] We count 3,561 PSAPs remaining for T-Mobile, 5,057 PSAPs remaining for Verizon, and 5,748 PSAPs for the CMRS providers that have not yet begun to implement location-based routing.

[415] *Notice of Proposed Rulemaking*, 37 FCC Rcd at 15211-12, para. 72 (estimating that the labor cost of employing software workers would be $35.25 per hour; that the upper bound of the time to implement the upgrades with trials is 6 months (26 weeks), and workers have a forty hour work week, or 1,040 hours per worker; that ten simultaneous workers at a time on average is a generous upper bound, resulting in 10,400 labor hours per CMRS provider; and that the labor cost per CMRS provider is $366,600).

[416] *Id.*

[417] CCA NPRM Comments at 3-5, 17-18; CCA NPRM Reply at 4-5; Letter from Angela Simpson, Senior Vice President & General Counsel, CCA, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 18-64, at 4-5 (filed Sept. 1, 2023); RWA NPRM Reply at 3.

[418] CCA NPRM Reply at 5. The planning costs CCA cites include "identifying acceptance of the technical implementation." CCA NPRM Comments at 11.

[419] CCA NPRM Comments at 4.

[420] *Id.*

[421] *Id.* at 4-5.

[422] *Id.* at 3.

[423] Letter from Angela Simpson, Senior Vice President & General Counsel, CCA, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 18-64, at 3 (filed July 13, 2023); CCA NPRM Comments at 6, 17-18.

associated with deployment, including equipment and device installation and upgrades.

128. *Labor Costs (iv): Testing*. Commenters described CMRS providers' testing tasks involved with location-based routing implementation. RWA states that providers will need to "test, modify, [and] perfect" location-based routing solutions.[424] CCA states that AT&T performed extensive lab testing, performance testing, trials at PSAPs, evaluation of results with its vendor Intrado, and additional PSAP testing.[425] CCA states that AT&T "confirm[ed] the metrics, obtain[ed] feedback from the PSAPs, and implement[ed] several proprietary changes."[426]

129. While the *Notice of Proposed Rulemaking* explicitly mentioned the tasks of installing equipment and running trials as part of its labor calculation, the estimate was not meant to be solely inclusive of all tasks.[427] According to Commission staff experience with typical network upgrades, team members will often work on tasks from multiple of the above categories of internal planning, outreach, deployment, and testing. The *Notice of Proposed Rulemaking* calculation assumes a large team of ten workers over a period of six months to account for the various phases of labor and shifting tasks amongst workers.

130. Absent more specific data in the record on each task category, we rely on the Commission's labor cost estimation methodology per CMRS provider.[428] To better reflect the wide array of complex tasks, including internal network planning, that would need to be undertaken by highly skilled and senior staff, we will assume a higher wage for the workers than that assumed in the *Notice of Proposed Rulemaking* because some of the tasks involved will have to be undertaken by senior staff. To the extent that less senior staff would be necessary to complete any of these tasks, we view the wage that we use as conservatively high. Using the Bureau of Labor Statistics 75th percentile wage for network engineers, we assume worker compensation to be $81.29 per hour.[429] Marking up hourly compensation by 45% to account for benefits results in a total hourly compensation estimate of $117.87.[430] Assuming that work is completed over 26 work-weeks of five, 8 work-hour days, and a team of 10, the aggregate upper bound of work-hours would be 10,400 and the total cost of those work-hours would be $1,225,853. While non-nationwide CMRS providers will have 24 months rather than six to implement location-based routing, smaller CMRS providers have constraints on the number of staff they can assign to any one project. In addition, while non-nationwide CMRS providers may take longer to implement location-based routing, assigning the same amount of work-time as nationwide CMRS providers represents both the spreading out of tasks over a longer period and an overestimate since non-nationwide CMRS providers

[424] RWA NPRM Reply at 3.

[425] CCA NPRM Comments at 4-5.

[426] *Id*. at 5.

[427] *Notice of Proposed Rulemaking*, 37 FCC Rcd at 15211-12, para. 72.

[428] *Id.* (estimating that the labor cost of employing software workers would be $35.25 per hour; that the upper bound of the time to implement the upgrades with trials is 6 months (26 weeks), and workers have a forty hour work week, or 1,040 hours per worker; that ten simultaneous workers at a time on average is a generous upper bound, resulting in 10,400 labor hours per CMRS provider; and that the labor cost per CMRS provider is $366,600).

[429] The Bureau of Labor Statistics considers the title "computer network architect" to be synonymous with "network engineer." U.S. Bureau of Labor Statistics, *Computer Network Architects: What Computer Network Architects Do* (Sept. 12, 2023), https://www.bls.gov/ooh/computer-and-information-technology/computer-network-architects.htm#tab-2. To approximate the wages of senior network engineers, we use the 75th percentile of the hourly wage of computer network architects in May 2022, $77.06 per hour. U.S. Bureau of Labor Statistics, *Occupational Employment and Wages, May 2022, 15-1241 Computer Network Architects* (Apr. 25, 2023), https://www.bls.gov/oes/current/oes151241.htm. After adjusting for wage inflation to August 2023, the wage increases to $81.29 per hour. *See Inflation Adjustment.*

[430] *See Compensation Benefit Markup.*

have much smaller networks. Given that AT&T has already implemented location-based routing, we estimate the labor cost associated with implementation for the networks for the 56 remaining providers, plus T-Mobile and Verizon, to be $71.1 million (≈ $1,225,853 × 58 providers = $71,099,474).[431]

131. In addition to network costs, several commenters indicate that public safety-grade GIS data or shapefiles that precisely define PSAP boundaries should be developed or provided, though they differ on which parties should be responsible.[432] We agree with NENA that it is the responsibility of providers to maintain their own jurisdictional maps.[433] Accordingly, we assign the cost of maps to the providers. We anticipate that map costs will largely be labor to update already existing maps. To come up with a cost ceiling, we assume that every provider will need to update its maps, even though many providers likely have up-to-date maps. We anticipate that updating the map will only entail labor costs for mapping specialists to update maps. In the Supporting Document of Study Area Boundary Data Reporting in Esri Shapefile Format, the Office of Information and Regulatory Affairs estimates that it takes an average of 26 hours for a data scientist to modify a shapefile.[434] We believe that 26 hours would be an upper bound of the time required for a party to update its maps. Given that the average wage rate is $60.44/hour for data scientists in the telecommunications industry,[435] with a 45% markup for benefits,[436] we arrive at $87.63 as the hourly compensation rate for a data scientist. We estimate an upper bound for the cost of map updating to be approximately $134,000 (≈ $87.63 per hour × 26 hours × 59 providers = $134,424.42).

132. In addition, the one-time certification of compliance with our requirements together with the submission of data on call percentages by routing methods will impose a one-time cost on CMRS providers. As this required information should be available to each provider internally, we anticipate work to compile this information to take no longer than a week of five business days. We believe that one network engineer would be sufficient to complete this task in this time frame, resulting in a total provider cost of 40 work-hours. Assuming the same hourly labor cost of network engineers as in the previous cost estimate for network implementation, the total cost of reporting is $280,000 (≈ $117.87 per hour × 40 hours × 59 providers = $278,173.20).

133. *Costs for State and Local 911 Authorities and PSAPs*. The Commission sought comment on costs to state and local 911 authorities.[437] Intrado and APCO state that PSAPs will not need to make

---

[431] To the extent that T-Mobile and Verizon have already begun implementing location-based routing, this cost may be an overestimate.

[432] Intrado NPRM Comments at 3 (suggesting carriers and the PSAPs should develop GIS data); BRETSA NPRM Reply at ii (suggesting state and/or local 911 authorities should develop GIS data); T-Mobile NPRM Comments at 6 (suggesting that PSAPs should provide shapefiles, though some PSAPs may not want to provide shapefiles because they consider such information confidential); *see also* CCOA NPRM Reply at 3; CTIA NPRM Reply at 3, 6-7 (agreeing with T-Mobile regarding the need for accurate shapefiles of PSAP boundaries).

[433] NENA Comments at 7.

[434] *See* Office of Information and Regulatory Affairs, Office of Management and Budget, Executive Office of the President, 2022 Study Area Boundary Data Reporting in Esri Shapefile Format, DA 12-1777 and DA 13-282, Supporting Statement - OMB Control No. 3060-1181, at 5, para. 12 (Feb. 15, 2022), https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202202-3060-009; *see also Wireless Emergency Alerts*; *Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System*, PS Docket Nos. 15-91 and 15-94, Third Report and Order, FCC 23-88, at 37, para. 66 (Oct. 20, 2023).

[435] The mean hourly wage for data scientists in the telecommunications industry in May 2022 is $57.29. U.S. Bureau of Labor Statistics, *May 2022 National Industry-Specific Occupational Employment and Wage Estimates NAICS 517000 – Telecommunications* (Apr. 25, 2023), https://www.bls.gov/oes/current/naics4_517000.htm. After adjusting for wage inflation to August 2023, the wage increases to $60.44 per hour. *See Inflation Adjustment.*

[436] *See Compensation Benefit Markup.*

[437] *Notice of Proposed Rulemaking*, 37 FCC Rcd at 15208, para. 64.

changes to their networks or call handling systems.[438] We agree. Likewise, because we find that providers must maintain their own jurisdictional maps, we do not recognize any costs for state and local 911 authorities and PSAPs.

134. Because we are adopting location-based routing requirements for RTT, we also consider the costs for CMRS providers. Given that CMRS providers process and route RTT communications similarly to voice calls,[439] we assume that CMRS providers' material and labor costs to deploy location-based routing for RTT are included in our cost estimates above. As part of this analysis, we note that as of the release date of this *Report and Order*, we are aware of only a small number of PSAPs that are receiving RTT communications.

135. In sum, we estimate upper bounds of the costs that CMRS providers will bear to be material costs of $143.7 million, network implementation costs of $71.1 million, GIS costs of $134,000, and certification costs of $280,000. Altogether, the upper bound of costs is approximately $215 million. However, we underscore that this cost is far outweighed by the benefits of over $173 billion in terms of reduced mortality and call transfer time eliminated.

IV. PROCEDURAL MATTERS

136. *Regulatory Flexibility Act*. The Regulatory Flexibility Act of 1980, as amended (RFA),[440] 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."[441] Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in this *Report and Order* on small entities. The FRFA is set forth in Appendix B.

137. *Paperwork Reduction Act of 1995 Analysis*. This document contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA.[442] OMB, the general public, and other federal agencies will be invited to comment on the new information collection requirements contained in this proceeding. In addition, we note that, pursuant to the Small Business Paperwork Relief Act of 2002,[443] we previously sought, but did not receive, specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. The Commission does not believe that the new information collection requirements in section 9.10, paragraphs (s)(4) and (s)(5) will be unduly burdensome on small businesses. We describe impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the FRFA in Appendix B.

138. *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 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).

139. *People with Disabilities*. To request materials in accessible formats for people with

---

[438] Intrado NPRM Comments at 3; APCO NPRM Comments at 3-4.

[439] NENA NPRM Reply at 9-10.

[440] *See* 5 U.S.C. § 604. The RFA, 5 U.S.C. §§ 601-612. The RFA was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[441] 5 U.S.C. § 605(b).

[442] 44 U.S.C. § 3507(d).

[443] Pub. L. No. 107-198, 116 Stat. 729 (2002) (codified at 44 U.S.C. § 3506(c)(4)).

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).

140. *Additional Information.* For additional information on this proceeding, contact Rachel Wehr, Rachel.Wehr@fcc.gov or 202-418-1138, or Brenda Boykin, Brenda.Boykin@fcc.gov or 202-418-2062, of the Public Safety and Homeland Security Bureau, Policy and Licensing Division.

V. ORDERING CLAUSES

141. Accordingly, IT IS ORDERED, pursuant to sections 1, 2, 4(i), 10, 201, 214, 222, 251(e), 301, 302, 303, 307, 309, 316, and 332, of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152(a), 154(i), 160, 201, 214, 222, 251(e), 301, 302a, 303, 307, 309, 316, 332; the Wireless Communications and Public Safety Act of 1999, Pub. L. No. 106-81, 47 U.S.C. §§ 615 note, 615, 615a, 615b; and section 106 of the Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 47 U.S.C. § 615c, that this *Report and Order* IS ADOPTED.

142. IT IS FURTHER ORDERED that the amendments to part 9 of the Commission's rules, as set forth in Appendix A, ARE ADOPTED, effective sixty (60) days after publication in the *Federal Register*. Compliance will not be required for paragraphs (s)(4) and (s)(5) of section 9.10 until after approval by the Office of Management and Budget. The Commission delegates authority to the Public Safety and Homeland Security Bureau to publish a document in the *Federal Register* announcing that compliance date and revising paragraph (s)(6) of section 9.10.

143. IT IS FURTHER ORDERED that the Commission's Office of the Secretary, Reference Information Center, SHALL SEND a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

144. IT IS FURTHER ORDERED that the Office of the Managing Director, Performance Program Management, SHALL SEND a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

Appendix A

Final Rules

The Federal Communications Commission amends part 9 of Title 47 of the Code of Federal Regulations as follows:

PART 9 – 911 REQUIREMENTS

1. The authority citation for part 9 continues to read as follows:

Authority: 47 U.S.C. 151–154, 152(a), 155(c), 157, 160, 201, 202, 208, 210, 214, 218, 219, 222, 225, 251(e), 255, 301, 302, 303, 307, 308, 309, 310, 316, 319, 332, 403, 405, 605, 610, 615, 615 note, 615a, 615b, 615c, 615a–1, 616, 620, 621, 623, 623 note, 721, and 1471, and Section 902 of Title IX, Division FF, Pub. L. 116–260, 134 Stat. 1182, unless otherwise noted.

2. Amend § 9.3 by adding the following:

§ 9.3 Definitions.

* * * * *

Device-based location information. Information regarding the location of a device used to call or text 911 generated all or in part from on-device sensors and data sources.

* * * * *

Location-based routing. The use of information regarding the location of a device, including but not limited to device-based location information, to deliver 911 calls and real-time text communications to point(s) designated by the authorized local or state entity to receive wireless 911 voice calls and real-time text communications to 911, such as an Emergency Services Internet Protocol Network (ESInet) or PSAP, or to an appropriate local emergency authority.

* * * * *

3. Amend § 9.10 by revising paragraph (a) and adding paragraph (s) to read as follows:

§ 9.10 911 Service.

(a) *Scope of this section*. Except as described in paragraph (r) of this section, the following requirements of paragraphs (a) through (s) of this section are only applicable to CMRS providers, excluding mobile satellite service (MSS) operators, to the extent that they:

* * * * *

(s) *Location-based routing requirements*--

(1) *Wireless 911 voice calls.*

(i) By [INSERT DATE EIGHT MONTHS AFTER DATE OF FEDERAL REGISTER PUBLICATION], nationwide CMRS providers must deploy a technology that supports location-based routing for wireless 911 voice calls on their Internet Protocol-based networks (4G LTE, 5G, and subsequent generations of Internet Protocol-based networks) nationwide. At that time, nationwide CMRS providers must route all wireless 911 voice calls originating on their Internet Protocol-based networks pursuant to the requirements of paragraph (s)(3) of this section.

(ii) By [INSERT DATE TWENTY-SIX MONTHS AFTER DATE OF FEDERAL REGISTER PUBLICATION], non-nationwide CMRS providers must deploy a technology that supports location-based routing for wireless 911 voice calls on their Internet Protocol-based networks (4G LTE, 5G, and subsequent generations of Internet Protocol-based networks). At that time, non-nationwide CMRS providers must route all wireless 911 voice calls originating on their Internet Protocol-based networks pursuant to the requirements of paragraph (s)(3) of this section.

(2) *Real-time text communications to 911.* By [INSERT DATE TWENTY-SIX MONTHS AFTER DATE OF FEDERAL REGISTER PUBLICATION], CMRS providers must deploy a technology that supports location-based routing for real-time text communications to 911 originating on their Internet-Protocol-based networks (4G LTE, 5G, and subsequent generations of Internet Protocol-based networks). At that time, CMRS providers must route all real-time text communications to 911 originating on their Internet Protocol-based networks pursuant to the requirements of paragraph (s)(3) of this section.

(3) *Timeliness and accuracy threshold.*

(i) Notwithstanding requirements for confidence and uncertainty described in paragraph (j) of this section, CMRS providers must use location information that meets the following specifications for routing wireless 911 voice calls and real-time text communications to 911 under paragraphs (s)(1) and (2) of this

section:

(A) The location information reports the horizontal location uncertainty level of the device within a radius of 165 meters at a confidence level of at least 90%; and

(B) The location information is available to the CMRS provider network at the time of routing the wireless 911 voice call or real-time text communication to 911.

(ii) When the location information does not meet either one or both of the requirements in paragraphs (s)(3)(i)(A) and (B) of this section, CMRS providers must route the wireless 911 voice call or real-time text communication to 911 based on the best available location information, which may include but is not limited to device-based location information that does not meet the requirements in paragraphs (s)(3)(i)(A) and (B), the centroid of the area served by the cell sector that first picks up the call, or other location information.

(4) *Certification and reporting*. Within 60 days after each benchmark specified in paragraphs (s)(1)(i) and (ii) and (s)(2) of this section, CMRS providers must comply with the following certification and reporting requirements.

(i) CMRS providers must:

(A) Certify that they are in compliance with the requirements specified in paragraphs (s)(1)(i) and (ii) and (s)(2) of this section applicable to them;

(B) Identify specific network architecture, systems, and procedures used to comply with paragraphs (s)(1)(i) and (ii) and (s)(2) of this section, including the extent to which the CMRS provider validates location information for routing purposes and the validation practices used in connection with this information; and

(C) Certify that neither they nor any third party they rely on to obtain location information or associated data used for compliance with paragraph (s)(1)(i) or (ii) or (s)(2) of this section will use such location information or associated data for any non-911 purpose, except with prior express consent or as otherwise

required by law. The certification must state that the CMRS provider and any third parties it relies on to obtain location information or associated data used for compliance with paragraph (s)(1)(i) or (ii) or (s)(2) have implemented measures sufficient to safeguard the privacy and security of such location information or associated data.

(ii) CMRS providers also must:

(A) Collect and report aggregate data on the routing technologies used for all live wireless 911 voice calls in the locations specified for live 911 call location data in paragraph (i)(3)(ii) of this section for a thirty-day period which begins on the compliance date(s) specified in paragraphs (s)(1)(i) and (ii) of this section. CMRS providers must retain live wireless 911 voice call data gathered pursuant to this section for a period of 2 years. CMRS providers must collect and report the following data, expressed as both a number and percentage of the total number of live wireless 911 voice calls for which data is collected pursuant to this section:

(*1*) Live wireless 911 voice calls routed with location-based routing using location information that meets the timeliness and accuracy thresholds defined in paragraphs (s)(3)(i)(A) and (B) of this section;

(*2*) Live wireless 911 voice calls routed with location-based routing using location information that does not meet the timeliness or accuracy thresholds defined in paragraphs (s)(3)(i)(A) and (B) of this section; and

(*3*) Live wireless 911 voice calls routed using tower-based routing.

(5) *Modification of deadlines by agreement*. Nothing in this section shall prevent PSAPs and CMRS providers from establishing, by mutual consent, deadlines different from those established for CMRS provider compliance in paragraphs (s)(1)(i) and (ii) and (s)(2) of this section. The CMRS provider must notify the Commission of the dates and terms of the alternate time frame within 30 days of the parties' agreement or [INSERT DATE NINETY DAYS AFTER DATE OF FEDERAL REGISTER PUBLICATION], whichever is later. The CMRS provider must subsequently notify the Commission of the actual date by which it comes into compliance with the location-based routing requirements in

paragraph (s)(1)(i) or (ii) or (s)(2) within 30 days of that date or [INSERT DATE NINETY DAYS AFTER DATE OF FEDERAL REGISTER PUBLICATION], whichever is later. CMRS providers must file such notifications pursuant to this paragraph (s)(5) in PS Docket No. 18-64. The parties may not use this paragraph (s)(5) to delay compliance with paragraph (s)(1)(i) or (ii) or (s)(2) of this section indefinitely.

(6) *Compliance dates.* Paragraphs (s)(4) and (5) of this section contain information collection and recordkeeping requirements. Compliance with paragraphs (s)(4) and (5) will not be required until after approval by the Office of Management and Budget. The Commission will publish a document in the *Federal Register* announcing that compliance date and revising or removing this paragraph (s)(6) accordingly.

Appendix B

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Location-Based Routing for Wireless 911 Calls* Notice of Proposed Rulemaking (*Notice*) adopted in December 2022.[2] The Commission sought written public comment on the proposals in the *Notice*, including comments on the IRFA. No comments were filed addressing the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[3]

A. Need for, and Objectives of, the Final Rules

2. Technical limitations of legacy Enhanced 911 (E911) routing can result in a Commercial Mobile Radio Service (CMRS) provider routing a wireless 911 call to a Public Safety Answering Point (PSAP) other than the one designated by the relevant state or local 911 authority to receive calls from the actual location of the caller.[4] Misroutes can occur for several reasons, including when more than one PSAP is within the coverage area of a cell site or sector.[5] Such legacy tower-based routing results in approximately 12% of wireless 911 calls arriving at the incorrect PSAP for the caller's location.[6] When a 911 call is misrouted, the answering telecommunicator must transfer the call to the PSAP that has jurisdiction to dispatch aid to the 911 caller's location, resulting in confusion and an estimated delay of a minute or more in dispatch and response.[7] This delay can have deadly consequences.[8] In addition, misroutes consume time and resources for both the transferring PSAP and the receiving PSAP.[9] One national public safety organization estimates that these types of call transfers consume over 200,000 hours per year of excess 911 professional labor.[10]

3. In today's *Report and Order*, the Commission adopted rules and procedures to require CMRS providers to implement location-based routing (LBR) for wireless 911 voice calls and real-time

[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] *Location-Based Routing for Wireless 911 Calls,* PS Docket No. 18-64, Notice of Proposed Rulemaking, 37 FCC Rcd 15183 (2022) (*Notice*).

[3] 5 U.S.C. § 604.

[4] *Notice*, 37 FCC Rcd at 15185, para. 7.

[5] *Id.* at 15186, para. 7 (citing Communications Security, Reliability and Interoperability Council (CSRIC) V, Working Group 1, Evolving 911 Services, Final Report – Task 2: 911 Location-Based Routing at 9 (2016), https://transition.fcc.gov/bureaus/pshs/advisory/csric5/WG1_Task2_FinalReport_092016.docx (*CSRIC V LBR Report*)).

[6] Alliance for Telecommunications Industry Solutions (ATIS), Analysis of Predetermined Cell Sector Routing Outcomes Compared to Caller's Device Location, ATIS-0500039 (July 2, 2019), https://access.atis.org/apps/group_public/document.php?document_id=48697 (*ATIS-0500039*).

[7] *See, e.g.*, Association of Public-Safety Communications Officials (APCO) Public Notice Comments at 2 & n.7 (rec. July 11, 2022); NENA: The 9-1-1 Association (NENA) Public Notice Comments at 4 (rec. July 11, 2022) (NENA PN Comments); Peninsula Fiber Network Public Notice Comments at 1 (rec. July 8, 2022).

[8] *Notice*, 37 FCC Rcd at 15187, para. 8 & n.21.

[9] *Id.* at 15186-87, para. 8.

[10] NENA PN Comments at 4; *Notice*, 37 FCC Rcd at 15186-87, para. 8.

text (RTT) communications to 911 nationwide.[11] With location-based routing as implemented under the Commission's rules, CMRS providers will use precise location information to route wireless 911 voice calls and RTT communications to 911 to the appropriate public safety answering point. For the millions of individuals seeking emergency assistance each year by wireless 911 voice call or RTT communication to 911, improving routing for these services will reduce emergency response time and save lives.

4. To facilitate the implementation of location-based routing for wireless 911 voice calls and RTT communications to 911, the Commission took the following actions:

- The Commission required CMRS providers to deploy location-based routing technology for wireless 911 voice calls and RTT communications to 911 on their Internet Protocol (IP)-based networks (i.e., 4G LTE, 5G, and subsequent generations of IP-based networks). The Commission also required CMRS providers to use location-based routing to route wireless 911 voice calls and RTT communications to 911 originating on their IP-based networks when location information meets certain thresholds for accuracy and timeliness.
- The Commission required CMRS providers to use location-based routing for wireless 911 voice calls and RTT communications to 911 when caller location information available to the CMRS provider's network at time of routing is ascertainable within a radius of 165 meters at a confidence level of at least 90%. In the absence of these conditions, CMRS providers must use alternative routing methods based on "best available" location information, which may include but is not limited to device-based or tower-based location information.
- The Commission adopted the proposed six-month timeline for nationwide CMRS providers to implement location-based routing for wireless 911 voice calls and provided twenty-four months for implementation by non-nationwide CMRS providers.[12] In addition, the Commission provided 24 months for all CMRS providers to implement location-based routing for RTT communications to 911.
- The Commission required CMRS providers within 60 days of the applicable compliance deadlines to certify and submit evidence of compliance with location-based routing requirements and to certify the privacy of location information used for location-based routing. At that time, CMRS providers also must submit one-time live call data reporting specifying routing methodologies for calls in live call areas.
- The Commission deferred consideration of proposals in the *Notice* to require CMRS providers and covered text providers[13] to implement location-based routing for Short Message Service (SMS) texts to 911.

---

[11] In the *Report and Order*, the Commission uses the term Commercial Mobile Radio Service (CMRS) provider to refer to providers of CMRS as defined in 47 CFR § 9.3 ("Commercial mobile radio service (CMRS)"). The Commission defines real-time text as "[t]ext communications that are transmitted over Internet Protocol (IP) networks immediately as they are created, *e.g.,* on a character-by-character basis." 47 CFR § 9.3; *see also* 47 CFR pt. 67. In the *Report and Order*, the Commission uses the term "RTT communications" to refer to instances in which an RTT user initiates contact with 911, for consistency with our part 9 and part 67 rules. *See* 47 CFR §§ 9.10(c), 67.1(g), 67.2(c)(2).

[12] The Commission defines a "[n]on-nationwide CMRS provider" for purposes of its part 9 rules as "[a]ny CMRS provider other than a nationwide CMRS provider." 47 CFR § 9.10(i)(1)(v). A "[n]ationwide CMRS provider" for purposes of the Commission's part 9 rules is "[a] CMRS provider whose service extends to a majority of the population and land area of the United States." 47 CFR § 9.10(i)(1)(iv).

[13] The Commission defines "covered text provider" as including "all CMRS providers as well as all providers of interconnected text messaging services that enable consumers to send text messages to and receive text messages

(continued….)

- The Commission deferred consideration of proposals and issues raised in the *Notice* concerning IP-formatted delivery of wireless 911 voice calls, texts, and associated routing information, for consideration in the Commission's pending Next Generation 911 (NG911) Transition docket (PS Docket No. 21-479, Facilitating Implementation of Next Generation 911 Services).[14]

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

5. There were no comments filed that specifically addressed the proposed rules and policies presented in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

6. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.[15] The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

7. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.[16] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[17] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act."[18] A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[19]

8. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein.[20] First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA) Office of Advocacy, in general a

---

from all or substantially all text-capable U.S. telephone numbers, including through the use of applications downloaded or otherwise installed on mobile phones." 47 CFR § 9.10(q)(1).

[14] *See Facilitating Implementation of Next Generation 911 Services (NG911)*, PS Docket No. 21-479, Notice of Proposed Rulemaking, FCC 23-47, 2023 WL 3946685 (June 9, 2023), https://www.fcc.gov/document/fcc-proposes-action-expedite-transition-next-generation-911-0 (*NG911 Notice*).

[15] 5 U.S.C. § 604(a)(3).

[16] *Id.* § 604(a)(4).

[17] *Id.* § 601(6).

[18] *Id.* § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[19] 15 U.S.C. § 632.

[20] *See* 5 U.S.C. § 601(3)-(6).

small business is an independent business having fewer than 500 employees.[21] These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.[22]

9. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[23] The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.[24] Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.[25]

10. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[26] U.S. Census Bureau data from the 2017 Census of Governments[27] indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.[28] Of this number, there were

[21] *See* SBA, Office of Advocacy, "What's New With Small Business?,"

https://advocacy.sba.gov/wp-content/uploads/2023/03/Whats-New-Infographic-March-2023-508c.pdf. (Mar. 2023)

[22] *Id*.

[23] *See* 5 U.S.C. § 601(4).

[24] The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. S*ee* Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), "Who must file,"

https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

[25] *See* Exempt Organizations Business Master File Extract (EO BMF), "CSV Files by Region," https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2020 with revenue less than or equal to $50,000 for Region 1-Northeast Area (58,577), Region 2-Mid-Atlantic and Great Lakes Areas (175,272), and Region 3-Gulf Coast and Pacific Coast Areas (213,840) that includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

[26] *See* 5 U.S.C. § 601(5).

[27] *See* 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with "2" and "7". *See also* Census of Governments, https://www.census.gov/programs-surveys/cog/about.html.

[28] *See* U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02], https://www.census.gov/data/tables/2017/econ/gus/2017-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. CG1700ORG02 Table Notes_Local Governments by Type and State_2017.

36,931 general purpose governments (county,[29] municipal, and town or township[30]) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts[31] with enrollment populations of less than 50,000.[32] Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of "small governmental jurisdictions."[33]

A. Telecommunications Service Providers

1. Wireless Telecommunications Providers

11. Pursuant to 47 CFR § 9.10(a), the Commission's 911 service requirements are only applicable to "CMRS providers, excluding mobile satellite service (MSS) operators, to the extent that they: (1) Offer real-time, two way switched voice service that is interconnected with the public switched network; and (2) Use an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. These requirements are applicable to entities that offer voice service to consumers by purchasing airtime or capacity at wholesale rates from CMRS licensees."

12. Below, for those services subject to auctions, we note 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. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

13. *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.[34] 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.[35] Providers of Internet services (e.g. dial-up ISPs) or Voice over Internet Protocol

---

[29] *See id.* at tbl.5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

[30] *See id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

[31] *See id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 12,040 independent school districts with enrollment populations less than 50,000. *See also* tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2017.

[32] While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

[33] This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations tbls. 5, 6 & 10.

[34] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517919 All Other Telecommunications,*" https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[35] *Id.*

(VoIP) services, via client-supplied telecommunications connections are also included in this industry.[36] The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small.[37] U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.[38] Of those firms, 1,039 had revenue of less than $25 million.[39] Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

14. *Advanced Wireless Services (AWS) - (1710–1755 MHz and 2110–2155 MHz bands (AWS-1); 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands (AWS-2); 2155–2175 MHz band (AWS-3)*; 2000-2020 MHz and 2180-2200 MHz (AWS-4)). Spectrum is made available and licensed in these bands for the provision of various wireless communications services.[40] Wireless Telecommunications Carriers (except Satellite)[41] is the closest industry with a SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[42] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[43] Of this number, 2,837 firms employed fewer than 250 employees.[44] Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

15. According to Commission data as December 2021, there were approximately 4,472 active AWS licenses.[45] The Commission's small business size standards with respect to AWS involve eligibility for bidding credits and installment payments in the auction of licenses for these services. For the auction of AWS licenses, the Commission defined a "small business" as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a "very small business" as an entity with average annual gross revenues for the preceding three years not exceeding $15 million.[46]

---

[36] *Id*.

[37] *See* 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

[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 517919, https://data.census.gov/cedsci/table?y=2017&n=517919&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 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] *See* 47 CFR § 27.1(b).

[41] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers* (*except Satellite*)," https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[42] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[43] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&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] Based on a FCC Universal Licensing System search on December 10, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = AD, AH, AT, AW; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[46] *See* 47 CFR §§ 27.1002, 27.1102, 27.1104, 27.1106.

Pursuant to these definitions, 57 winning bidders claiming status as small or very small businesses won 215 of 1,087 licenses.[47] In the most recent auction of AWS licenses 15 of 37 bidders qualifying for status as small or very small businesses won licenses.48

16. 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.

17. *Competitive Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers.[49] Wired Telecommunications Carriers[50] is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[51] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[52] Of this number, 2,964 firms operated with fewer than 250 employees.[53] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 3,378 providers that reported they were competitive local exchange service providers.[54] Of these providers, the Commission estimates that 3,230 providers have 1,500 or fewer employees.[55] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

18. *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.

---

[47] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 66: Advanced Wireless Services (AWS-1), Summary, Spreadsheets, https://www.fcc.gov/sites/default/files/wireless/auctions/66/charts/66cls2.pdf.

[48] *See Auction of Advanced Wireless Services (AWS-3) Licenses Closes; Winning Bidders Announced for Auction 97*, Public Notice, DA-15-131, Attachments A-B, (Auction No. 97) (January 30, 2015).

[49] Competitive Local Exchange Service Providers include the following types of providers: Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

[50] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[51] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[52] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[53] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[54] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[55] *Id.*

Wired Telecommunications Carriers[56] is the closest industry with an SBA small business size standard.[57] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[58] U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated 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 1,212 providers that reported they were incumbent local exchange service providers.[61] Of these providers, the Commission estimates that 916 providers have 1,500 or fewer employees.[62] 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.

19. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum encompasses services in the 1850-1910 and 1930-1990 MHz bands.[63] The closest industry with a SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (except Satellite).[64] The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[65] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[66] Of this number, 2,837 firms employed fewer than 250 employees.[67] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

20. Based on Commission data as of November 2021, there were approximately 5,060 active licenses in the Broadband PCS service.[68] The Commission's small business size standards with respect to

---

[56] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[57] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[58] *Id.*

[59] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[60] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[61] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[62] *Id.*

[63] *See* 47 CFR § 24.200.

[64] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers* (*except Satellite*)," https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[65] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[66] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&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] Based on a FCC Universal Licensing System search on November 16, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match

(continued….)

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.[69] Winning bidders claiming small business credits won Broadband PCS licenses in C, D, E, and F Blocks.[70]

21. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these, 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. *Narrowband Personal Communications Services.* Narrowband Personal Communications Services *(Narrowband PCS)* are PCS services operating in the 901-902 MHz, 930-931 MHz, and 940-941 MHz bands.[71] PCS services are radio communications that encompass mobile and ancillary fixed communication that provide services to individuals and businesses and can be integrated with a variety of competing networks.[72] Wireless Telecommunications Carriers (*except* Satellite)[73] is the closest industry with a SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[74] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[75] Of this number, 2,837 firms employed fewer than 250 employees.[76] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

23. According to Commission data as of December 2021, there were approximately 4,211 active *Narrowband PCS* licenses.[77] The Commission's small business size standards with respect to

---

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.

[69] *See* 47 CFR § 24.720(b).

[70] *See* Federal Communications Commission, Office of Economics and Analytics, Auctions, Auctions 4, 5, 10, 11, 22, 35, 58, 71 and 78, https://www.fcc.gov/auctions.

[71] *See* 47 CFR § 24.5.

[72] *Id*.

[73] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers* (*except Satellite*)," https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[74] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[75] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[76] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[77] Based on a FCC Universal Licensing System search on December 10, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match

(continued….)

Narrowband PCS involve eligibility for bidding credits and installment payments in the auction of licenses for these services. For the auction of these licenses, the Commission defined a "small business" as an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million.[78] A "very small business" is defined as an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million.[79] Pursuant to these definitions, 7 winning bidders claiming small and very small bidding credits won approximately 359 licenses.[80] One of the winning bidders claiming a small business status classification in these *Narrowband PCS* license auctions had an active license as of December 2021.[81]

24. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

25. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.[82] Wireless Telecommunications Carriers (*except* Satellite)[83] is the closest industry with a SBA small business size standard applicable to this service. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[84] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[85] Of this number, 2,837 firms employed fewer than 250 employees.[86] Thus under the SBA size standard, the

---

only the following radio service(s)", Radio Service = CN; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[78] *See* 47 CFR § 24.321(a)(1)-(2).

[79] *Id.*

[80] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 41: Narrowband PCS, Summary, Closing Charts, License By Bidder, https://www.fcc.gov/sites/default/files/wireless/auctions/41/charts/41cls2.pdf; Auction 50: Narrowband PCS, Summary, Closing Charts, License By Bidder, https://www.fcc.gov/sites/default/files/wireless/auctions/50/charts/50cls2.pdf.

[81] Based on a FCC Universal Licensing System search on December 10, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = CN; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[82] This service is governed by Subpart I of Part 22 of the Commission's Rules. *See* 47 CFR §§ 22.1001-22.1037.

[83] *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.

[84] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[85] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[86] *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.

Commission estimates that a majority of licensees in this industry can be considered small. Additionally, based on Commission data, as of December 2021, there was one licensee with an active license in this service.[87] However, since the Commission does not collect data on the number of employees for this service, at this time we are not able to estimate the number of licensees that would qualify as small under the SBA's small business size standard.

26. *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.[88] 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.[89] The SBA small business size standard for this industry classifies businesses having 1,250 employees or less as small.[90] U.S. Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year.[91] Of this number, 624 firms had fewer than 250 employees.[92] Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

27. *Rural Radiotelephone Service.* Neither the Commission nor the SBA have developed a small business size standard specifically for small businesses providing Rural Radiotelephone Service. Rural Radiotelephone Service is radio service in which licensees are authorized to offer and provide radio telecommunication services for hire to subscribers in areas where it is not feasible to provide communication services by wire or other means.[93] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS).[94] Wireless Telecommunications Carriers (*except* Satellite),[95] is the closest applicable industry with a SBA small business size standard. The SBA small business size standard for Wireless Telecommunications Carriers (*except* Satellite) classifies firms having 1,500 or fewer employees as small.[96] For this industry, U.S. Census Bureau data

---

[87] Based on a FCC Universal Licensing System search on December 10, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = CO; 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.

[88] *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.

[89] *Id*.

[90] *See* 13 CFR § 121.201, NAICS Code 334220.

[91] *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.

[92] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[93] 47 CFR § 22.99.

[94] BETRS is defined in 47 CFR §§ 22.757, 22.759.

[95] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications* Carriers *(except Satellite),"* https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[96] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

for 2017 show that there were 2,893 firms that operated for the entire year.[97] Of this total, 2,837 firms employed fewer than 250 employees.[98] Thus under the SBA size standard, the Commission estimates that the majority of Rural Radiotelephone Services firm are small entities. Based on Commission data as of December 27, 2021, there were approximately 119 active licenses in the Rural Radiotelephone Service.[99] The Commission does not collect employment data from these entities holding these licenses and therefore we cannot estimate how many of these entities meet the SBA small business size standard.

28. *Wireless Communications Services*. Wireless Communications Services (WCS) can be used for a variety of fixed, mobile, radiolocation, and digital audio broadcasting satellite services. Wireless spectrum is made available and licensed for the provision of wireless communications services in several frequency bands subject to Part 27 of the Commission's rules.[100] Wireless Telecommunications Carriers (*except* Satellite)[101] is the closest industry with an SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[102] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[103] Of this number, 2,837 firms employed fewer than 250 employees.[104] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

29. The Commission's small business size standards with respect to WCS involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in WCS. When bidding credits are adopted for the auction of licenses in WCS frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in the designated entities section in Part 27 of the Commission's rules for the specific WCS frequency bands.[105]

---

[97] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[98] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[99] Based on a FCC Universal Licensing System search on December 27, 2021. https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = CR; 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.

[100] *See* 47 CFR §§ 27.1 – 27.1607.

[101] *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.

[102] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[103] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[104] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[105] *See* 47 CFR §§ 27.201 – 27.1601. The Designated entities sections in Subparts D – Q each contain the small business size standards adopted for the auction of the frequency band covered by that subpart.

30. 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.

31. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.[106] 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.[107] The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[108] U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.[109] Of that number, 2,837 firms employed fewer than 250 employees.[110] 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.[111] Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees.[112] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

32. *Wireless Telephony*. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite).[113] The size standard for this industry under SBA rules is that a business is small if it has 1,500 or fewer employees.[114] For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated for the

---

[106] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite),"* https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[107] *Id.*

[108] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[109] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[110] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[111] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[112] *Id.*

[113] *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.

[114] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

entire year.[115] Of this number, 2,837 firms employed fewer than 250 employees.[116] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 331 providers that reported they were engaged in the provision of cellular, personal communications services, and specialized mobile radio services.[117] Of these providers, the Commission estimates that 255 providers have 1,500 or fewer employees.[118] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

33. *700 MHz Guard Band Licensees*. The 700 MHz Guard Band encompasses spectrum in 746-747/776-777 MHz and 762-764/792-794 MHz frequency bands. Wireless Telecommunications Carriers (*except* Satellite)[119] is the closest industry with a SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[120] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[121] Of this number, 2,837 firms employed fewer than 250 employees.[122] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

34. According to Commission data as of December 2021, there were approximately 224 active 700 MHz Guard Band licenses.[123] The Commission's small business size standards with respect to 700 MHz Guard Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For the auction of these licenses, the Commission defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years, and a "very small business" an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[124] Pursuant to these definitions, five winning bidders claiming one of the small business status classifications won 26 licenses, and one winning bidder claiming small business won two

---

[115] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&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.

[117] 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.

[118] *Id.*

[119] *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.

[120] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[121] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[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] Based on a FCC Universal Licensing System search on December 14, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = WX; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[124] *See* 47 CFR § 27.502(a).

licenses.[125] None of the winning bidders claiming a small business status classification in these 700 MHz Guard Band license auctions had an active license as of December 2021.[126]

35. 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.

36. *Lower 700 MHz Band Licenses*. The lower 700 MHz band encompasses spectrum in the 698-746 MHz frequency bands. Permissible operations in these bands include flexible fixed, mobile, and broadcast uses, including mobile and other digital new broadcast operation; fixed and mobile wireless commercial services (including FDD- and TDD-based services); as well as fixed and mobile wireless uses for private, internal radio needs, two-way interactive, cellular, and mobile television broadcasting services.[127] Wireless Telecommunications Carriers (*except* Satellite)[128] is the closest industry with a SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[129] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[130] Of this number, 2,837 firms employed fewer than 250 employees.[131] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

37. According to Commission data as of December 2021, there were approximately 2,824 active Lower 700 MHz Band licenses.[132] The Commission's small business size standards with respect to

---

[125] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 33: Upper 700 MHz Guard Bands, Summary, Closing Charts, Licenses by Bidder, https://www.fcc.gov/sites/default/files/wireless/auctions/33/charts/33cls2.pdf, Auction 38: Upper 700 MHz Guard Bands, Summary, Closing Charts, Licenses by Bidder, https://www.fcc.gov/sites/default/files/wireless/auctions/38/charts/38cls2.pdf.

[126] Based on a FCC Universal Licensing System search on December 14, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = WX; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[127] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auctions 44, 49, 60: Lower 700 MHz Band, Fact Sheet, Permissible Operations, https://www.fcc.gov/auction/44/factsheet, https://www.fcc.gov/auction/49/factsheet, https://www.fcc.gov/auction/60/factsheet.

[128] *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.

[129] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[130] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[131] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[132] 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

(continued….)

Lower 700 MHz Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For auctions of Lower 700 MHz Band licenses the Commission adopted criteria for three groups of small businesses. A very small business was defined as an entity that, together with its affiliates and controlling interests, has average annual gross revenues not exceeding $15 million for the preceding three years, a small business was defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $40 million for the preceding three years, and an entrepreneur was defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $3 million for the preceding three years.[133] In auctions for Lower 700 MHz Band licenses seventy-two winning bidders claiming a small business classification won 329 licenses,[134] twenty-six winning bidders claiming a small business classification won 214 licenses,[135] and three winning bidders claiming a small business classification won all five auctioned licenses.[136]

38. 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.

39. *Upper 700 MHz Band Licenses*. The upper 700 MHz band encompasses spectrum in the 746-806 MHz bands. Upper 700 MHz D Block licenses are nationwide licenses associated with the 758-763 MHz and 788-793 MHz bands.[137] Permissible operations in these bands include flexible fixed, mobile, and broadcast uses, including mobile and other digital new broadcast operation; fixed and mobile wireless commercial services (including FDD- and TDD-based services); as well as fixed and mobile wireless uses for private, internal radio needs, two-way interactive, cellular, and mobile television broadcasting services.[138] Wireless Telecommunications Carriers (*except* Satellite)[139] is the closest industry with a SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer

---

only the following radio service(s)", Radio Service = WY, WZ; 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.

[133] *See* 47 CFR § 27.702(a)(1)-(3).

[134] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 44: Lower 700 MHz Guard Bands, Summary, Closing Charts, Licenses by Bidder, https://www.fcc.gov/sites/default/files/wireless/auctions/44/charts/44cls2.pdf.

[135] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 49: Lower 700 MHz Guard Bands, Summary, Closing Charts, Licenses by Bidder, https://www.fcc.gov/sites/default/files/wireless/auctions/49/charts/49cls2.pdf.

[136] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 60: Lower 700 MHz Guard Bands, Summary, Closing Charts, Licenses by Bidder, https://www.fcc.gov/sites/default/files/wireless/auctions/60/charts/60cls2.pdf.

[137] *See* 47 CFR § 27.4.

[138] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 73: 700 MHz Band, Fact Sheet, Permissible Operations, https://www.fcc.gov/auction/73/factsheet. We note that in Auction 73, Upper 700 MHz Band C and D Blocks as well as Lower 700 MHz Band A, B, and E Blocks were auctioned.

[139] *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.[140] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[141] Of that number, 2,837 firms employed fewer than 250 employees.[142] Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

40. According to Commission data as of December 2021, there were approximately 152 active Upper 700 MHz Band licenses.[143] The Commission's small business size standards with respect to Upper 700 MHz Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For the auction of these licenses, the Commission defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years, and a "very small business" an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[144] Pursuant to these definitions, three winning bidders claiming very small business status won five of the twelve available licenses.[145]

41. 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.

42. *Wireless Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Wireless Resellers. The closest industry with a SBA small business size standard is Telecommunications Resellers.[146] 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.[147] Establishments in this industry resell telecommunications and

---

[140] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[141] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[142] *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.

[143] Based on a FCC Universal Licensing System search on December 14, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = WP, WU; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[144] *See* 47 CFR § 27.502(a).

[145] *See Auction of 700 MHz Band Licenses Closes; Winning Bidders Announced for Auction 73*, Public Notice, DA-08-595, Attachment A, Report No. AUC-08-73-I (Auction 73) (March 20, 2008). The results for Upper 700 MHz Band C Block can be found on pp. 62-63.

[146] *See* U.S. Census Bureau*, 2017 NAICS Definition, "517911 Telecommunications Resellers,*" https://www.census.gov/naics/?input=517911&year=2017&details=517911.

[147] *Id.*

they do not operate transmission facilities and infrastructure.[148] Mobile virtual network operators (MVNOs) are included in this industry.[149] Under the SBA size standard for this industry, a business is small if it has 1,500 or fewer employees.[150] U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services during that year.[151] Of that number, 1,375 firms operated with fewer than 250 employees.[152] Thus, for this industry under the SBA small business size standard, the majority of providers can be considered small entities.

2. Equipment Manufacturers

43. *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.[153] 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.[154] The SBA small business size standard for this industry classifies businesses having 1,250 employees or less as small.[155] U.S. Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year.[156] Of this number, 624 firms had fewer than 250 employees.[157] Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

44. *Semiconductor and Related Device Manufacturing*. This industry comprises establishments primarily engaged in manufacturing semiconductors and related solid state devices.[158] Examples of products made by these establishments are integrated circuits, memory chips, microprocessors, diodes, transistors, solar cells and other optoelectronic devices.[159] The SBA small

---

[148] *Id.*

[149] *Id.*

[150] *See* 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

[151] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517911, https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[152] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[153] *See* 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.

[154] *Id*.

[155] *See* 13 CFR § 121.201, NAICS Code 334220.

[156] *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.

[157] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[158] *See* U.S. Census Bureau, *2017 NAICS Definition, "334413 Semiconductor and Related Device Manufacturing,"* https://www.census.gov/naics/?input=334413&year=2017&details=334413.

[159] *Id.*

business size standard for this industry classifies entities having 1,250 or fewer employees as small.[160] U.S. Census Bureau data for 2017 show that there were 729 firms in this industry that operated for the entire year.[161] Of this total, 673 firms operated with fewer than 250 employees.[162] Thus under the SBA size standard, the majority of firms in this industry can be considered small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

45. The rules adopted in the *Report and Order* to implement location-based routing for wireless 911 voice calls and RTT communications to 911 will impose new or additional reporting, recordkeeping, and/or other compliance obligations on small entities. Small and other CMRS providers are required to certify their compliance with the applicable location-based routing requirements, and inform the Commission of the specific network architecture, systems, and location validation procedures used to comply with the location-based routing requirements. More specifically, the adopted rules require small and other CMRS providers, within 60 days after their respective deadlines, to deploy location-based routing on their IP-based networks, and submit a one-time certification with substantiating evidence of compliance with location-based routing requirements applicable to them as of the deadline. As part of the certification, small and other CMRS providers must: (i) substantiate compliance by identifying specific network architecture, systems, location validation,[163] and procedures used to comply with the location-based routing rules; (ii) collect and report aggregate information on the routing technologies for all live wireless 911 voice calls in the locations specified for live 911 call location data under the Commission's rule at 47 CFR § 9.10(i)(3)(ii);[164] and (iii) certify that location information used for location-based routing by service providers and third parties will only be used for valid 911 purposes.[165] Small and other CMRS providers can request confidential treatment of any information they submit in accordance with the Commission's confidentiality rules.

46. In the *Notice*, the Commission sought comments on the proposals in this proceeding and requested cost and benefit information to help the Commission identify and evaluate relevant matters for small entities. Although several comments filed in response to the *Notice* discussed categories of potential expenses to comply with location-based routing requirements, and any related reporting and recordkeeping requirements, with some asserting that there would be a greater burden on smaller providers, these comments and the record as a whole do not contain detailed information on costs

---

[160] *See* 13 CFR § 121.201, NAICS Code 334413.

[161] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 334413, https://data.census.gov/cedsci/table?y=2017&n=334413&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] As discussed in Section III.C of the *Report and Order*, the Commission requires CMRS providers to elaborate on current location validation practices, if any, and describe the extent to which providers are validating location information for routing.

[164] For more detail on this requirement (e.g., the breakdown of required call routing data and length of time the testing record must be retained), see 47 CFR § 9.10(s)(4)(ii).

[165] Specifically, CMRS providers must certify that neither they nor any third party they rely on to obtain location information used for location-based routing will use such location information or associated data for any non-911 purpose, except with prior express consent or as otherwise required by law. The certification must state that CMRS providers and any third party they rely on to obtain location information used for location-based routing will implement measures sufficient to safeguard the privacy and security of such location information. *See* 47 CFR § 9.10(s)(4)(i)(C).

required for either small or large entities.[166] In fact, the Rural Wireless Association (RWA) and the Boulder Regional Emergency Telephone Service Authority (BRETSA) expressly indicated that neither non-nationwide nor small carriers have determined their implementation costs.[167] Moreover, while stating that "[t]he $366,600 figure referenced in the NPRM may be a conservative estimate," RWA did not provide an alternative to the Commission's estimate and noted that to date, RWA members have not received any specific vendor estimates regarding their actual cost of compliance.[168]

47. In the *Notice*, the Commission proposed an "upper bound" estimate for labor costs of $366,600 per CMRS provider, and for material costs such as software features or component upgrades for each CMRS provider, of $10,000 per PSAP.[169] In response to the comments we received, we clarify that material costs estimated in the NPRM are not limited to those incurred at the PSAP, but also in the network core, and that the per PSAP calculation is a proxy for the size of the network that remains to be converted to location-based routing. Using the Commission's methodology in the *Notice*, we estimate that CMRS providers collectively need to deploy location-based routing to a total of 14,366 PSAPs,[170] resulting in the implied material cost of approximately $143.7 million.

48. Our total labor costs analysis added internal planning, outreach, and testing to the costs for equipment installation and conducting trials the Commission proposed and discussed in the *Notice*.[171] To better reflect the wide array of complex tasks that will be undertaken with highly skilled and senior staff, we will assume a higher wage for the workers than that assumed in the *Notice* because some of the tasks involved will have to be undertaken by senior staff. Using the Bureau of Labor Statistics 75th percentile wage for network engineers, we assume worker compensation to be $81.29 per hour.[172] Marking up hourly compensation by 45% to account for benefits results in a total hourly compensation

---

[166] *See e.g.*, Competitive Carriers Association (CCA) Notice of Proposed Rulemaking Comments at 2 (rec. Feb. 16, 2023) (CCA NPRM Comments); CCA Notice of Proposed Rulemaking Reply at 4-5 & n.8 (rec. Mar. 20, 2023) (CCA NPRM Reply); Rural Wireless Association, Inc. (RWA) Notice of Proposed Rulemaking Comments at 1-2, 4 (rec. Feb. 16, 2023) (RWA NPRM Comments); RWA Notice of Proposed Rulemaking Reply at 2-3 (rec. Mar. 20, 2023).

[167] RWA NPRM Comments at 1 n.3; Boulder Regional Emergency Telephone Service Authority (BRETSA) Notice of Proposed Rulemaking Reply at ii (rec. Mar. 20, 2023) (BRETSA NPRM Reply).

[168] RWA NPRM Comments at 1 & n.3.

[169] *Notice*, 37 FCC Rcd at 15210-12, paras. 70-73.

[170] We count 3,561 PSAPs remaining for T-Mobile, 5,057 PSAPs remaining for Verizon, and 5,748 PSAPs for the CMRS providers that have not yet begun to implement location-based routing.

[171] *Notice*, 37 FCC Rcd at 15211-12, para. 72. The Commission estimated that the labor cost of employing software workers would be $35.25 per hour, and the upper bound of the time to implement the upgrades with trials is 6 months (26 weeks). Work time was based on a 40 hour work week, or 1,040 hours per worker, allotting for ten simultaneous workers at a time on average resulting in generous upper bound of 10,400 labor hours per CMRS provider, at a labor cost per CMRS provider of $366,600. *Id*.

[172] The Bureau of Labor Statistics considers the title "computer network architect" to be synonymous with "network engineer." U.S. Bureau of Labor Statistics, *Computer Network Architects: What Computer Network Architects Do* (Sept. 12, 2023), https://www.bls.gov/ooh/computer-and-information-technology/computer-network-architects.htm#tab-2. To approximate the wages of senior network engineers, we use the 75th percentile of the hourly wage of computer network architects in May 2022, $77.06 per hour. U.S. Bureau of Labor Statistics, *Occupational Employment and Wages, May 2022, 15-1241 Computer Network Architects* (Apr. 25, 2023), https://www.bls.gov/oes/current/oes151241.htm. After adjusting for wage inflation to August 2023, the wage increases to $81.29 per hour. *See* Federal Reserve Bank of St. Louis, *Average Hourly Earnings of All Employees, Total Private (CES0500000003)*, https://fred.stlouisfed.org/series/CES0500000003 (last visited Jan. 17, 2024) (*Inflation Adjustment*).

estimate of $117.87.[173] Assuming that work is completed over 26 work-weeks of five, 8 work-hour days, and a team of 10, the aggregate upper bound of work-hours would 10,400 and the total cost of those work-hours would be $1,225,853. While non-nationwide CMRS providers will have 24 months rather than six to implement location-based routing, smaller CMRS providers have constraints on the number of staff they can assign to any one project. In addition, while non-nationwide CMRS providers may take longer to implement location-based routing, assigning the same amount of work-time as nationwide CMRS providers represents both the spreading out of tasks over a longer period and an overestimate since non-nationwide CMRS providers have much smaller networks. Given that AT&T has already implemented location-based routing, we estimate the labor cost associated with implementation for network for the 56 remaining providers, plus T-Mobile and Verizon, to be $71 million (≈ $1,225,853 × 58 providers = $71,099,474).

49. In addition to network costs, several commenters indicate that public safety-grade GIS data or shapefiles that precisely define PSAP boundaries should be developed or provided, though they differ on which parties should be responsible.[174] We agree with NENA that it is the responsibility of providers to maintain their own jurisdictional maps.[175] Accordingly, we assign the cost of maps to the providers. We anticipate that map costs will largely be labor to update already existing maps. To come up with a cost ceiling, we assume that every provider will need to update its maps, even though many providers likely have up-to-date maps. We anticipate that updating the map will only entail labor costs for mapping specialists to update maps. In the Supporting Document of Study Area Boundary Data Reporting in Esri Shapefile Format, the Office of Information and Regulatory Affairs estimates that it takes an average of 26 hours for a data scientist to modify a shapefile.[176] We believe that 26 hours would be an upper bound of the time required for a party to update its maps. Given that the average wage rate is $60.44/hour for data scientists in the telecommunications industry,[177] with a 45% markup for benefits,[178] we arrive at $87.63 as the hourly compensation rate for a data scientist. We estimate an upper bound for

[173] According to the Bureau of Labor Statistics, as of June 2023, civilian wages and salaries averaged $29.86/hour and benefits averaged $13.39/hour. *See* Press Release, Bureau of Labor Statistics, *Employer Costs for Employee Compensation—June 2023* (Sept. 12, 2023), https://www.bls.gov/news.release/pdf/ecec.pdf. Total compensation therefore averaged $29.86 + $13.39, rounded to $43.26. *Id.* Using these figures, benefits constitute a markup of $13.39/$29.86, or about 45%. We therefore mark up wages by 45% to account for benefits. In the *Report and Order*, we refer to the 45% markup as *Compensation Benefit Markup*.

[174] Intrado Notice of Proposed Rulemaking Comments at 3 (rec. Feb. 16, 2023) (suggesting carriers and the PSAPs should develop GIS data); BRETSA NPRM Reply at ii (suggesting state and/or local 911 authorities should develop GIS data); T-Mobile Notice of Proposed Rulemaking Comments at 6 (rec. Feb. 16, 2023) (suggesting that PSAPs should provide shapefiles, though some PSAPs may not want to provide shapefiles because they consider such information confidential); *see also* Colorado Council of Authorities, Inc. (CCOA) Notice of Proposed Rulemaking Reply at 3 (rec. Mar. 20, 2023); CTIA Notice of Proposed Rulemaking Reply at 3, 6-7 (rec. Mar. 20, 2023) (CTIA NPRM Reply) (agreeing with T-Mobile regarding the need for accurate shapefiles of PSAP boundaries).

[175] NENA: The 9-1-1 Association (NENA) Notice of Proposed Rulemaking Comments at 7 (rec. Feb. 15, 2023).

[176] *See* Office of Information and Regulatory Affairs, Office of Management and Budget, Executive Office of the President, 2022 Study Area Boundary Data Reporting in Esri Shapefile Format, DA 12-1777 and DA 13-282, Supporting Statement - OMB Control No. 3060-1181, at 5, para. 12 (Feb. 15, 2022), https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202202-3060-009; *see also Wireless Emergency Alerts*; *Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System*, PS Docket Nos. 15-91 and 15-94, Third Report and Order, FCC 23-88, at 37, para. 66 (Oct. 20, 2023).

[177] The mean hourly wage for data scientists in the telecommunications industry in May 2022 is $57.29. U.S. Bureau of Labor Statistics, *May 2022 National Industry-Specific Occupational Employment and Wage Estimates NAICS 517000 – Telecommunications* (Apr. 25, 2023), https://www.bls.gov/oes/current/naics4_517000.htm. After adjusting for wage inflation to August 2023, the wage increases to $60.44 per hour. *See Inflation Adjustment.*

[178] *See Compensation Benefit Markup.*

the cost of map updating to be approximately $134,000 (≈ $87.63 per hour × 26 hours × 59 providers = $134,424.42).

50. In addition, the one-time certification of compliance with our requirements together with the submission of data on call percentages by routing methods will impose a one-time cost on CMRS providers. As this required information should be available to each provider internally, we anticipate work to compile this information to take no longer than a week of five business days. We believe that one network engineer would be sufficient to complete this task in this time frame, resulting in a total provider cost of 40 work-hours. Assuming the same hourly labor cost of network engineers as in the previous cost estimate for network implementation, the total cost of reporting is $280,000 (≈ $117.87 per hour × 40 hours × 59 providers = $278,173.20).

51. Because we are adopting location-based routing requirements for RTT communications to 911, we also consider the costs for CMRS providers. Given that CMRS providers process and route RTT communications to 911 similarly to voice calls,[179] we assume that CMRS providers' material and labor costs to deploy location-based routing for RTT are included in our cost estimates above. As part of this analysis, we note that as of the release date of the *Report and Order*, we are aware of only a small number of PSAPs that are receiving RTT communications.

52. In sum, we estimate upper bounds of the costs that CMRS providers will bear to be material costs of $143.7 million, network implementation costs of $71.1 million, GIS costs of $134,000, and certification costs of $280,000. Altogether, the upper bound of costs is approximately $215 million. We note that the three major CMRS providers (AT&T, T-Mobile, and Verizon) have already implemented location-based routing for wireless 911 voice calls nationwide, or are in the process of implementing it. Although some commenters argue that this progress by three major carriers will not necessarily translate into reduced costs and greater efficiency for smaller providers to implement location-based routing,[180] it appears that this progress by larger providers may have at least some measure of positive impact on implementation by smaller providers, such as by demonstrating potential implementation technologies and strategies, although they may be required to hire professionals to fulfill their compliance obligations.

53. The important public safety benefits that will result from the requirements the Commission adopted in the *Report and Order* outweigh the associated implementation and compliance burdens for CMRS providers. The rule changes to implement nationwide location-based routing will significantly decrease misrouted wireless 911 calls and RTT communications to 911, reduce emergency response time, save lives, and save many PSAP personnel hours and resources lost in 911 transfers. Accordingly, these rule changes serve the public interest.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

54. 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."[181]

55. In the previous section we described the significant public safety benefits to be achieved from requiring all CMRS providers to implement location-based routing for wireless 911 voice calls and RTT messages originating on IP-based networks on a nationwide basis. From the record in this

[179] NENA Notice of Proposed Rulemaking Reply at 9-10 (rec. Mar. 20, 2023).

[180] *See e.g.*, CCA NPRM Comments at 6, 10-11, 17-18.

[181] 5 U.S.C. § 604(a)(6).

proceeding, it appears to be technologically feasible for CMRS providers to implement location-based routing for a significant percentage of wireless 911 voice calls and RTT messages.[182] In the Report and Order we expressly found that it is technologically feasible for all CMRS providers, nationwide and non-nationwide, to support location-based routing for a significant percentage of wireless 911 voice calls. The Commission considered comments advocating for a voluntary location-based routing approach to allow providers the flexibility which would take into account the differences in providers' networks, configurations and devices.[183] We found, however, that implementing location-based routing on a voluntary basis is not consistent with the Commission's goal of ensuring that location-based routing is available to all wireless 911 callers on a nationwide basis. Accordingly, the rules we adopt today in the *Report and Order* require both nationwide and non-nationwide CMRS providers to implement location based routing consistent with the proposals in the *Notice*.[184]

56. The Commission also considered a per-PSAP approach to implement location-based routing but determined that there could be uneven and inconsistent implementation in routing approaches between jurisdictions, and there was also a risk of 911 misroutes for jurisdictions that do not request location-based routing service. The Commission found that a per-PSAP approach was not consistent with its interest in facilitating improved routing of 911 voice calls, and was not in the public interest. Additionally, we determined this approach would impose unnecessary cost burdens on PSAPs to affirmatively request such service. The rules we adopted in the *Report and Order* were intended to be cost effective and minimally burdensome for small and other entities impacted by the rules. Below we discuss the specific steps the Commission has taken to minimize costs and reduce the economic impact for small entities, as well as various alternatives considered.

57. *Location-Based Routing Requirements*. Consistent with the Commission's proposal in the *Notice* and to reduce potential cost burdens for small and other wireless providers, our location-based routing rules apply only to wireless 911 voice calls and RTT communications originating on IP-based networks (i.e., 4G LTE, 5G, and subsequent generations of IP-based networks). The record indicated that while nationwide CMRS providers are in the process of retiring or have completed the retirement of circuit-switched, time-division multiplex (TDM) 2G and 3G networks, and some non-nationwide providers announced dates to sunset their 3G networks in 2022, the transition from these networks that are less compatible with location-based routing has not been fully completed. In the *Notice,* the Commission tentatively concluded that requiring location-based routing for 911 calls or texts originating on TDM-based networks would be unduly burdensome, especially for non-nationwide providers who would bear the greatest burden, even if given additional time to comply with such a requirement.[185] Moreover, although the Commission considered requiring location-based routing for all 911 calls, the Commission in the *Notice* ultimately proposed to require location-based routing only for 911 calls originating on IP-based networks, i.e., 4G LTE, 5G, and subsequently deployed IP-based networks. Today in the *Report and Order,* the Commission adopted this proposed rule which will minimize some burdens and economic impact for small entities, particularly those that are non-nationwide providers, due to the limited scope of the requirement.

---

[182] *Notice,* 37 FCC Rcd at 15236, para. 53 (IRFA); *see also id*. at 15184-85, 15190-92, paras. 3, 14-16, 18-19.

[183] CTIA NPRM Reply at 3; *see also* CCA NPRM Reply at 1-2.

[184] *Notice*, 37 FCC Rcd at 15192, para. 17.

[185] RWA NPRM Comments at 14. RWA concurs that requiring location-based routing for 911 calls originating on TDM networks would be unduly burdensome.

58. Rather than imposing a rigid location-based routing requirement, the rules the Commission adopted today provide flexibility to small and other entities to route wireless 911 voice calls or RTT communications based on the best available location information (which may include cell tower coordinates or other information) when the location information available at time of routing does not meet either one or both of the rules' requirements for accuracy and timeliness. The Commission recognized the continued need for legacy E911 routing, at least as a fallback method, because accurate device location information is not available in all scenarios. Further, the Commission's requirement to default to best available location is consistent with the *ATIS-0500039* standard for location-based routing, which assumes that the fallback for location-based routing should be cell-sector routing for cases where no position estimate is available in time to be used for location-based routing, or the position estimates lack requisite accuracy.[186] Our requirement is also consistent with current CMRS provider deployments of location-based routing, which default to legacy E911 routing when location does not meet CMRS providers' standards of accuracy and timeliness.[187]

59. The *Report and Order* also adopted baseline requirements involving the accuracy and timeliness of location information used for location-based routing that are consistent with industry standards. Under the rules adopted, CMRS providers must use location-based routing only if the location information is available to the provider network at the time the wireless 911 voice call or RTT communication is routed, and the information identifies the caller's horizontal location with a radius of 165 meters at a confidence level of at least 90%. These metrics are consistent with AT&T's successful nationwide implementation of location-based routing, and received support as a model for other wireless carriers to implement location-based routing.[188] In addition, the rule's confidence metric is consistent with ATIS's recommendation that uncertainty values for location-based routing "be standardized to a 90% confidence for effective call handling."[189] When location information does not meet the baseline accuracy and timeliness requirements, the adopted requirements allow CMRS providers to instead route based on best available location information, which may include device-based location information that does not meet the accuracy threshold, the centroid of the area served by the cell sector that first picks up the call, or other location information. This will help to minimize any significant economic impact on small entities and other CMRS providers.

60. *Compliance Timelines*. The rules adopted in the *Report and Order* provide small and other providers flexibility in the compliance timelines to implement the location-based routing requirements, which should reduce the economic burden for small entities. The compliance timelines differ from those the Commission proposed in the *Notice*, which provided different deadlines for nationwide CMRS providers and non-nationwide CMRS providers to implement location-based routing on their IP-based networks when available location information meets requirements for accuracy and timeliness. To further reduce the burden on small entities in the rules adopted today, the Commission granted longer compliance timelines to non-nationwide CMRS providers than those proposed in the *Notice* and eliminated the requirements for covered text providers that are not CMRS providers. Specifically, non-nationwide CMRS providers (which includes a substantial number of small entities) are

[186] *ATIS-0500039* at 14-15.

[187] AT&T Public Notice Comments at 4 (rec. July 11, 2022) (stating that "[w]hen location was not available, the process defaults to using sector-based routing so that calls may be completed without excessive delay"); T-Mobile Public Notice Comments at 4 (rec. July 11, 2022) (stating that "T-Mobile's policy is to route a 911 call based on the cell-sector location if a routable, non-Phase I location estimate is not generated quickly enough").

[188] Intrado Life & Safety, Inc. (Intrado) Public Notice Comments at 2, 9 (rec. July 11, 2022).

[189] *ATIS-0500039* at 15.

required to implement location-based routing for wireless 911 voice calls within 24 months from the effective date of the final rules, rather than 18 months as proposed in the *Notice*. Nationwide CMRS providers are required to implement location-based routing for wireless 911 voice calls within six months from the effective date of the final rules. For RTT, all CMRS providers are required to implement location-based routing for RTT messages where they implement RTT capability within 24 months from the effective date of the final rules, rather than the 12 months proposed in the *Notice*.

61. The Commission has also minimized any significant economic impact on small entities by limiting the requirement to implement location-based routing to operators of IP-based networks only when certain requirements are met. Small entities are not required to comply with the location-based routing requirement if they do not operate an IP-based network, or if the location information available on the IP-based network does not meet either one or both of the requirements for timeliness and accuracy, in which case, small entities may use the best available location information for routing. Small entities will further benefit from the Commission's adoption of provisions that allow PSAPs and CMRS providers to enter into agreements that establish an alternate timeframe for meeting the location-based routing requirements. The flexibility to negotiate an alternative timeframe that meets a CMRS provider's business and financial needs is a significant step by the Commission that could minimize the economic impact for small entities.

62. *Reporting and Certification Requirements*. The Commission considered the level of data collection, reporting, and certification, if any, that should be required from CMRS providers on location-based routing issues,[190] weighing the potential burden of such requirements on small and other entities against the need to ensure compliance with the rules. The Commission also considered not adopting a certification requirement. However, absent a certification requirement, the Commission and the public would have no insight into providers' implementation of location-based routing. Furthermore, the Commission's ability to easily determine whether carriers are in compliance would be limited. Another alternative the Commission evaluated was adopting periodic reporting requirements. However, such ongoing reporting requirements have the potential to overburden providers, particularly small entities. Therefore, the rules adopted today do not contain any periodic reporting requirements. We believe the one-time certification and live call data reporting requirement we adopt today will be sufficient for providers to demonstrate location-based routing implementation.[191] This limited data collection best balances the need for transparency on compliance with the limited ability of some providers, particularly small entities, to respond to mandatory data collections. The adopted certification requirement will also help provide important privacy and security protections, which we believe greatly outweigh any minor burden that this requirement might impose on small or other entities.

63. *Deferral of Certain Proposed Rules and Removal From This Rulemaking Proceeding.* In the *Report and Order*, the Commission deferred taking action on certain rules that were proposed in the *Notice*. Specifically, in the *Notice* the Commission proposed requiring covered text providers to implement location-based routing for all 911 texts originating on their IP-based networks when location information meets certain accuracy and timeliness requirements. In the *Report and Order* we required CMRS providers to deploy and use location-based routing only for RTT communications. We deferred action on requiring covered text providers to deploy and use location-based routing for other types of text messages to 911, such as Short Message Service (SMS). The Commission also proposed requiring CMRS and covered text providers to deliver 911 calls, texts, and associated routing information in IP format upon request of 911 authorities that have established the capability to accept NG911-compatible

[190] *See Notice*, 37 FCC Rcd at 15204-05, paras. 55-56.

[191] For details on the one-time certification and live call data reporting requirements, see 47 CFR § 9.10(s)(4).

IP-based 911 communications. To align requirements for NG911 services amongst providers and avoid confusion among stakeholders,[192] we deferred consideration of CMRS and covered text provider NG911 IP delivery requirements to the pending NG911 transition proceeding in PS Docket No. 21-479. Our deferral of the two proposed requirements above eliminated consideration of these rules from the current rulemaking proceeding. By eliminating these rules from the proceeding, the Commission has reduced the compliance costs for small entities and any related implementation burdens small entities may have incurred.

G. Report to Congress

64. 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.[193] In addition, the Commission will send a copy of the *Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Report and Order* and FRFA (or summaries thereof) will also be published in the Federal Register.[194]

[192] Letter from Christiaan Segura, Director, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 18-64, at 2 (filed July 3, 2023).

[193] 5 U.S.C. § 801(a)(1)(A).

[194] 5 U.S.C. § 604(b).

Appendix C

Entities Filing Comments, Replies, and *Ex Partes* to the 2022 Notice of Proposed Rulemaking

Adams County E-911 Emergency Telephone Service Authority, Arapahoe County 911 Authority, and Jefferson County Emergency Communications Authority (Adams County et al.)

Alaska 9-1-1 Advisory Board

Alaska Telecom Association (Alaska Telecom)

Alliance for Telecommunications Industry Solutions (ATIS)

American Trauma Society (ATS)

Acadian Ambulance Service Inc.

Association of Public-Safety Communications Officials-International, Inc. (APCO)

AT&T Services, Inc (AT&T)

Boulder Regional Emergency Telephone Service Authority (BRETSA)

Colorado Council of Authorities, Inc. (CCOA)

Colorado Public Utilities Commission (COPUC)

Competitive Carriers Association (CCA)

Comtech Telecommunications Corp. (Comtech)

CTIA

Electronic Privacy Information Center (EPIC)

GCI Communications, Corp. (GCI)

Industry Council for Emergency Response Technologies, Inc. (iCERT)

Intrado Life & Safety (Intrado)

Jon Marcy, Kevin Brown, and John Holloway, Defense Information Systems Agency (DISA)

Joseph Lyons (Lyons)

Keith Johnson, System Chief, Loudoun County Combined Fire and Rescue System (LC-CFRS) and Nicole Pickrell, Deputy Chief, Loudoun County Fire-Rescue (LCFR) (Loudoun County)

Michigan State 911 Committee (Michigan State 911)

Motorola Solutions Connectivity, Inc.

National Association of State 911 Administrators (NASNA)

NENA: The 9-1-1 Association (NENA)

NGA 911, LLC (NGA 911)

Ronald R. Fenwick, Esq. (Fenwick)

Rural Wireless Association, Inc. (RWA)

Southern Communications Services, Inc. (Southern Linc)

Texas 9-1-1 Alliance, Texas Commission on State Emergency Communications, and Municipal

Emergency Communications Districts Association (Texas 9-1-1 Entities)

TDIforAccess, Inc. (TDI)

T-Mobile USA, Inc. (T-Mobile)

Val Sprynczynatyk

Verizon

Voice on the Net Coalition (VON)

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *Location-Based Routing for Wireless 911 Calls*, PS Docket No. 18-64, Report and Order (January 25, 2024)

If you have ever dialed 911, you know seconds matter. You want that call answered by someone who can send help fast and to the right place.

As simple as that sounds, it doesn't always work that way. I know because I have seen this system fall short. Years ago—and I have told this story before but I am going to tell it again because it crystalizes this problem like nothing else—I was in Little Rock. I visited the 911 call center downtown. While I was there the professional staff showed me how dialing 911 on a wireless phone while standing in the building would not get answered in Little Rock. Instead, it would be answered by a call center in North Little Rock, on the other side of the Arkansas River. That's because the call was routed based on the location of the closest cell tower—and not the actual location of the person dialing. This slows emergency response because it requires transferring the call to get to the right public safety officials who can send the right response.

What I saw in Arkansas is not that uncommon. In fact, based on the latest estimates as many as 23 million wireless calls each year may be misrouted to the wrong public safety answering point. Every one of those calls results in delay. It slows response to emergencies.

We are changing that today. We are adopting rules requiring all wireless carriers to implement location-based routing nationwide for calls and real-time texts to 911 call centers. This means that when a call travels on IP-based networks, public safety officials will receive emergency calls based on the location of the person calling, not the closest cell tower. It means that back in Arkansas, that call I made to 911 in Little Rock would get answered in Little Rock and not in the town across the river.

Some of our largest carriers have already started using location-based routing technology in their networks. So we know it works. Now we look forward to having it work everywhere.

Thank you to the staff who worked on this effort to improve 911 and emergency response, including Debra Jordan, David Furth, John Evanoff, Brenda Boykin, Jill Coogan, Zachary DiLeo, Thomas Eng, Jay English, Barbara Kunkel, Rasoul Safavian, and Rachel Wehr from the Public Safety and Homeland Security Bureau; Suzy Rosen Singleton and Bill Wallace from the Consumer and Governmental Affairs Bureau; Jeremy Marcus, Shannon Lipp, Elizabeth Mumaw, and Matthew Gibson from the Enforcement Bureau; Joy Ragsdale and Chana Wilkerson from the Office of Communications Business Opportunities; Anjali Singh, Doug Klein, Keith McCrickard, and Elliot Tarloff from the Office of General Counsel; Behzad Ghaffari, Paulo Lopes, Ken Lynch, Patrick Sun, Craig Stroup, Emily Talaga, Stephen Tolbert, and Aleksandr Yankelevich from the Office of Economics and Analytics; Cameron Duncan from the Wireless Telecommunications Bureau; and Elizabeth Drogula, Christi Shewman, Jodie May, Callie Coker, Ty Covey, and Brian Cruikshank from the Wireline Competition Bureau.

STATEMENT OF
COMMISSIONER GEOFFREY STARKS

Re: *Location-Based Routing for Wireless 911 Calls,* Notice of Proposed Rulemaking, PS Docket No. 18-64.

I am thrilled to see us move forward on location-based routing for wireless calls.

As I remarked when we made our proposal, 911 routing accuracy is an area where, for a time, new technologies actually risked bringing us *backward*. Here's what I mean. In the early days, our phone networks reliably connected us to the right 911 operator. But after a mobile revolution, the vast majority of 911 calls are now wireless. While our wireless networks, on the whole, have made it much easier to get help when and where we need it, many of them continue to use unreliable tower-based routing to figure out which PSAP should receive our emergency. That has led to millions of 911 calls each year going to the wrong jurisdiction.

In fact, the record shows that tower-based misroute percentages hover around a startling 11 or 12 percent—and that's just an average. Some jurisdictions report that 3 in 10, or more, of the 911 calls they receive should have gone elsewhere, and we've heard of even higher rates if you have the misfortune of calling from an area right along the lines of a PSAP boundary. I've visited a number of PSAPs across the country, and this ranks at the top of the concerns I've heard.

The good news is that new technologies have also given us much better ways of determining a caller's location than simply assuming they're located at the cell tower handling the call. So let's make sure we use them—as much as we possibly can, and across the country.

I'd like to thank the Chair and the Public Safety and Homeland Security Bureau for quickly moving this proceeding along from a record refresh, to a proposal, and today, to concrete new rules. It has my full support.

STATEMENT OF
COMMISSIONER ANNA GOMEZ

Re: *Location-Based Routing for Wireless 911 Calls*, PS Docket No. 18-64, Report and Order (January 24, 2024).

Today, we require mobile phone providers to use location-based technology to route 911 calls to the correct PSAP so that emergency responders can go to the right place in an emergency. This could save lives.

I am encouraged that one of the nationwide providers has already transitioned its entire network to using location-based 911 routing because it demonstrates that better 911 call routing is a feasible technical solution for carriers. Today's Report and Order simply sets a deadline for the remaining nationwide providers that have already begun successfully deploying location-based 911 routing in portions of their networks to keep going and to get it done. I am also pleased to see that smaller carriers are allotted a little more time to catch up given the limited resources at their disposal.

Thank you to the Public Safety and Homeland Security Bureau for their important work of encouraging the industry to improve the accuracy of 911 call routing with this Report and Order. I approve this item.

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

In the Matter of	)	
	)	
Resilient Networks	)	PS Docket No. 21-346
	)	
Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications	)	PS Docket No. 15-80
	)	
New Part 4 of the Commission's Rules Concerning Disruptions to Communications	)	ET Docket No. 04-35

SECOND REPORT AND ORDER AND SECOND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: January 25, 2024 **Released: January 26, 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 Starks issuing separate statements.

TABLE OF CONTENTS

Heading Paragraph #

I. INTRODUCTION 1
II. BACKGROUND 6
III. SECOND REPORT AND ORDER 10
A. Mandating DIRS Reporting for Cable Communications, Wireless, Wireline and VoIP Providers 11
B. Codifying the NORS Reporting Waiver When DIRS Is Activated 25
C. Final DIRS Reports Upon Deactivation 27
D. Cost-Benefit Analysis 32
E. Timelines for Compliance 36
IV. SECOND FURTHER NOTICE OF PROPOSED RULEMAKING 39
A. Outage Reporting by Broadcast Entities 41
B. Outage Reporting by Satellite Providers 53
C. Outage Reporting by FirstNet 60
D. Reporting By Broadband Internet Access Service Providers 64
E. Reporting Mobile Recovery Assets in DIRS 72
F. After Action Reporting 77
V. PROCEDURAL MATTERS 81
VI. ORDERING CLAUSES 91
APPENDIX A FINAL RULES
APPENDIX B FINAL REGULATORY FLEXIBILITY ANALYSIS
APPENDIX C INITIAL REGULATORY FLEXIBILITY ANALYSIS

I. INTRODUCTION

1. The nation's communications networks play a vital role in economic growth and national security and serve as critical links for consumers and public safety response personnel during emergencies

and disaster response. The reliability and availability of these networks has become even more relevant as the impacts of climate change have increased the severity and frequency of natural disasters, global instability has increased the value of communications networks as targets, and the exponential growth of smart technology has the potential for every device to be a "connected device," with the associated increase in vulnerability and potential vectors by which an attack may be perpetrated. When disasters strike communities, whether natural or man-made, it is the obligation of the Federal Communications Commission (Commission) to ensure timely and reliable public safety and emergency alerting, promote service connectivity where needed, and monitor and provide information on the operational status of communications services and infrastructure in support of Federal, state, and local restoration efforts.[1] To improve network reliability and resiliency and operational transparency both during and in the aftermath of disasters and outages, in this *Second Report and Order* we require enumerated service providers (referred to herein as "subject providers") to report on their infrastructure status during emergencies and crises in the Disaster Information Reporting System (DIRS) when activated and to submit a final report to the Commission within 24 hours of DIRS deactivation.[2] These rule changes will improve network reliability and resiliency and operational transparency, both during and in the aftermath of disasters and outages.

2. Last summer's wildfires in Maui, Hawai'i make us particularly mindful of the Commission's responsibility to support restoration of communications services and to ensure a prompt response to emergencies by providing direct operational support, tracking restoration progress through daily public communications status reports, and working closely with Federal, state, local, Tribal and territorial partners to help families and residents to respond, recover, and rebuild. While progress has already been made by both the Commission and the communications sector as a whole in that particular context, further response and restoration efforts are necessary to ensure that networks support critical lifelines during future emergencies. The Commission initially adopted the DIRS system as a disaster response information tool in 2007, but we have not revisited the voluntary nature of the system in almost two decades even as the disaster and emergency landscape continues to change and technology continues to advance. By way of example, since DIRS was adopted on a voluntary basis, the Commission has adopted rules pursuant to the Warning, Alert and Response Network (WARN) Act to implement Wireless Emergency Alerts (WEAs),[3] creating a valuable tool used by emergency response officials to

[1] *See* 47 U.S.C. § 151 (specifying "promoting safety of life and property through the use of wire and radio communications" as a purpose of the creation of the Federal Communications Commission); *Mozilla Corp. v. FCC*, 940 F.3d 1, 59-60 (D.C. Cir. 2019) ("The Commission is required to consider public safety ... by its enabling act." (cleaned up)); *id.* at 63 (holding a Commission decision arbitrary and capricious in part for the Commission's failure to analyze its impact on public safety).

[2] As detailed further below in the *Second Report and Order*, the FCC encourages reporting in the Disaster Information Reporting System (DIRS) generally, but for the sake of this mandate, we will specifically require daily reports and a final report within 24 hours of deactivation at a minimum. Providers can report more frequently if they so choose.

[3] FCC, *Wireless Emergency Alerts (WEA)*, https://www.fcc.gov/consumers/guides/wireless-emergency-alerts-wea (Sept. 25, 2023) ("The Wireless Emergency Alerts system is an essential part of America's emergency preparedness. Since its launch in 2012, the WEA system has been used more than 84,000 times to warn the public about dangerous weather, missing children, and other critical situations – all through alerts on compatible cell phones and other mobile devices. WEA is a public safety system that allows customers who own compatible mobile devices to receive geographically targeted, text-like messages alerting them of imminent threats to safety in their area. WEA enables government officials to target emergency alerts to specific geographic areas."). *See also* FCC, *Wireless Emergency Alerts Consumer Guide,* https://www.fcc.gov/sites/default/files/Wireless_Emergency_Alerts_wea.pdf (Sept. 25, 2023); FCC, *Multilingual Alerting for the Emergency Alert System and Wireless Emergency Alerts,* https://www.fcc.gov/MultilingualAlerting_EAS-WEA (May 30, 2023); FCC, *Wireless Emergency Alert Enhancements FAQs for Authorized Alert Originators*, https://www.fcc.gov/wireless-emergency-alert-enhancements-faqs-authorized-alert-originators (last visited Dec. 19, 2023); FCC, *Emergency Alerting Roundtable,* https://www.fcc.gov/news-events/events/2018/05/emergency-alerting-roundtable (May 15, 2018); FCC, *Public Safety and Homeland Security Bureau Announces Limited Ex Parte Exemption for Multilingual WEA,*

(continued….)

leverage mobile communications networks to provide timely alerts to consumers in disaster situations. Since becoming operational in 2012, WEA has been used more than 84,000 times to warn the public about dangerous weather, missing children, and other critical situations – all through alerts on compatible cell phones and other mobile devices. The Commission also implemented a program to share this information directly with eligible Federal, state, Tribal and territorial emergency response agencies providing a direct route for officials to obtain data relevant to them in an emergency or other outage situation.[4] As such, the use and value of the data reported in these systems has evolved, and accordingly, we must consider the means to maximize its utility in the public interest.

3. As such, while a voluntary system like DIRS is beneficial, we believe in the current regulatory, technological and interconnected network environment it cannot work to its fullest potential unless we expand the aperture of who reports in the system, and enhance the fidelity of the data to allow for more effective decision making in response to disaster environments by requiring filings be made in emergency contexts. As the Commission evaluates the best approaches to support better outcomes for consumers in these challenging situations in the accompanying *Second Further Notice of Proposed Rulemaking* (*Second Further Notice*), input from industry, public safety, public interest groups, as well as individuals who deal directly with these issues, will play a crucial role in determining how to effectively streamline disaster reporting while addressing individual entities' specific operational challenges.

4. Based on the record developed in response to the *2021 Resilient Networks Notice*,[5] we adopt this *Second Report and Order* (*Order*) and *Second Further Notice of Proposed Rulemaking* (*Second Further Notice*) to advance the lines of inquiry particularly concerning the Network Outage Reporting System (NORS) and DIRS.[6] As detailed below, the *Order* adopts rules to:

- require cable communications, wireline, wireless, and interconnected Voice over Internet Protocol (VoIP) providers (i.e., "subject providers") to report their infrastructure status information in DIRS daily when the Commission activates DIRS in geographic areas in

https://www.fcc.gov/document/pshsb-announces-limited-ex-parte-exemption-multilingual-wea (Nov. 9, 2023); FCC, *FEMA and FCC Plan Nationwide Emergency Alert Test for Oct. 4*, https://www.fcc.gov/document/fema-and-fcc-plan-nationwide-emergency-alert-test-oct-4 (Oct. 3, 2023); *and see generally* 47 CFR part 10 (explaining the basis, purpose, definitions, and specifics associated with WEA).

[4] FCC, *Wireless Emergency Alert Enhancements FAQs for Authorized Alert Originators,* https://www.fcc.gov/wireless-emergency-alert-enhancements-faqs-authorized-alert-originators (last visited Dec. 18, 2023).

[5] *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, 15-80, ET Docket No. 04-35, Notice of Proposed Rulemaking, FCC 21-99, 36 FCC Rcd 14802 (2021) (*2021 Resilient Networks Notice*).

[6] The *2021 Resilient Networks Notice* sought comment on three distinct topics: (i) enhancements to NORS and DIRS to improve situational awareness around disasters and outage events (which is the subject of this *Report and Order* and *Second Further Notice*); (ii) improving implementation of the industry-developed Wireless Resiliency Cooperative Framework (which was addressed in the *2022 Report and Order* and *Further Notice of Proposed Rulemaking* with the Mandatory Disaster Response Initiative (MDRI)); and (iii) developing communications resilience strategies for power outages (i.e., backup power). *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, 15-80, ET Docket No. 04-35, Report and Order and Notice of Proposed Rulemaking, FCC 22-50, 37 FCC Rcd 8059 (2022) (*2022 Resilient Networks Order*). The Commission has received forty-two comments and eighteen reply comments in response to the *2021 Resilient Networks Notice* reflecting a wide range of feedback from wireless service providers, utility and equipment providers, broadcasters, public safety entities, public interest groups, consumer groups, trade associations, emergency responders and individuals in the communications industry.

which they provide service, even when their reportable infrastructure status has not changed compared to the prior day;[7]

- codify, in Part 4 of the Commission's outage reporting rules, the current practice that a subject provider's NORS reporting obligations are waived while they report in DIRS;[8] and
- require that subject providers who report in DIRS provide a single, final DIRS report to the Commission, within 24 hours of the Commission's deactivation of DIRS, that provides the status of their infrastructure identified to the Commission during the DIRS reporting period that has not yet been fully restored at the time of the deactivation.

5. In addition, the *Second Further Notice* seeks to more fully develop the record and seeks comment to support future Commission action on select NORS- and DIRS-specific follow-up matters. More precisely, the Commission seeks input concerning:

- whether to require TV and radio broadcasters to report in NORS and DIRS subject to simplified reporting processes that reflect the limited resources available to these entities and seeks comment on the scope of any such simplified reporting processes;
- whether to require satellite providers to report in DIRS, whether modifications to existing DIRS satellite forms are warranted in a mandated state, and whether the NORS reporting thresholds for satellite providers should be modified to reflect changes in that technology;
- the extent to which FirstNet should be subject to NORS and/or DIRS reporting requirements;
- the extent to which broadband Internet access service (BIAS) providers should be required to report in NORS and/or DIRS and the appropriate thresholds for such reporting;
- whether subject providers should be required to supply the Commission with "after action" reports detailing how their networks fared during the emergency or disaster event leading to the Commission's DIRS activation and the timing, duration and effectiveness of their pre-disaster response plans within 60 days of when the Commission's Public Safety and Homeland Security Bureau (PSHSB or Bureau), under delegated authority, issues a Public Notice announcing such reports must be filed; and
- whether subject providers should be required to provide the location of mobile recovery assets during a disaster response, as well other specifications of those assets.

We discuss each of these topics in more detail below.

II. BACKGROUND

6. Resilient communications networks are crucial to the American economy, keeping the nation secure, and ensuring access to help during disaster and emergency events in a timely manner. With the advancement of technology comes the evolution and adaptation of threats and threat actors, and due to those changes, the Commission is compelled to take action by updating and expanding rules to ensure the nation's communications providers are maintaining the resiliency of networks, advancing their ability to enhance network reliability, and supporting the tools necessary to mitigate and eliminate threats

[7] The Commission has chosen to focus on cable communications, wireless, wireline, and VoIP providers (i.e., "subject providers") in this *Second Report and Order*. Broadcasters, broadband, satellite, and broadband Internet access service (BIAS) providers expressed varying concerns and unique comments compared to those of the subject providers addressed herein which we believe are better addressed in a separate proceeding which seeks more narrow comments pertaining to those providers specifically as is previewed in the *Second Further Notice* below.

[8] This exemption is codified as a revision to the Commission's Part 4 rules stating that NORS reporting requirements do not apply when the Commission requires DIRS reporting. *See* 47 CFR § 4.1 *et seq*.; Appx. A, *infra.*

to their systems. Our authority to require reporting of outage information across a wide range of communications platforms is well established. In this respect, the Commission has adopted rules for cable communications, wireline, wireless, satellite, interconnected VoIP, and Signaling System 7 (SS7) providers (currently reporting entities)[9] requiring them to submit reports in NORS for service outages that exceeded specified durations and magnitude thresholds.[10] This effort was advanced further in 2007 in response to Hurricane Katrina when the Commission established DIRS, a voluntary reporting system for currently reporting entities to provide their communications infrastructure status, restoration information, and situational awareness information during Commission-identified times of crisis (whether or not NORS reporting requirements would otherwise be triggered).[11] Since DIRS was created initially in 2007, the United States has experienced an increasing amount of flooding, hurricanes, winter storms, tornadoes, and wildfires necessitating the more regular activation of DIRS and demonstrably impacting the nation's communications infrastructure.[12] Global instability has also increased the potential for malicious threats to vital communications systems and services.[13] As such, the Commission also recognizes that DIRS

[9] *See, e.g. Notification by Common Carriers of Service Disruptions*, CC Docket No. 91-273, *Report and Order*, 7 FCC Rcd 2010 (1992); *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 8 FCC Rcd 8517 (1993); *Second Report and Order*, 9 FCC Rcd 3911 (1994); *Order on Reconsideration of Second Report and Order*, 10 FCC Rcd 11764 (1995) (establishing outage reporting for wireline providers); *see also, New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, ET Docket No. 04-35, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 16830 (2004) (2004 Part 4 Order and FNPRM) (extending outage reporting requirements to wireless, cable communications and satellite communications); *Proposed Extension of Part 4 of the Commission's Rules Regarding Outage Reporting To Interconnected Voice Over Internet Protocol Service Providers and Broadband Internet Service Providers,* PS Docket No. 11-82, *Report and Order*, 27 FCC Rcd 2650, 2656 (2012) (extending outage reporting obligations to interconnected VoIP providers). Throughout this *Second Report and Order* and *Second Further Notice*, we refer to two separate groups of providers. "Currently reporting entities" consist of the cable communications, wireline, wireless, satellite, interconnected Voice over Internet Protocol (VoIP), and Signaling System 7 (SS7) providers of which report in NORS under the current rules. "Subject providers" consist of the cable communications, wireline, wireless, and interconnected VoIP providers who are subject to today's *Order* regarding DIRS reporting, and who also may be currently reporting entities in NORS. A number of other incumbent providers are addressed in the *Second Further Notice* portion of this item.

[10] 47 CFR § 4.9.

[11] *See Public Safety and Homeland Security Bureau Launches Disaster Information Reporting System (DIRS)*, Public Notice, 22 FCC Rcd 16757 (PSHSB 2007); *Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks*, EB Docket No. 06-119 et al., Order, 22 FCC Rcd 10541,10547-49, paras. 19-21 (2007) (directing the Public Safety and Homeland Security Bureau to continue its work to activate a system and process for communications companies serving areas affected by disasters to voluntarily submit information regarding among other things, the status of their operations, restoration efforts, power availability, and fuel). The Commission recently required a subset of service providers that receive Stage 2 funding from the Uniendo a Puerto Rico Fund or the Connect USVI Fund to report in DIRS when it is activated in their respective territories. *See The Uniendo a Puerto Rico Fund and the Connect USVI Fund, et al.*, WC Docket No. 18-143, et al., Report and Order and Order on Reconsideration, 34 FCC Rcd 9109, 9174, 9176-77, paras. 133, 138-40 (2019) (*Puerto Rico & USVI USF Fund Report and Order*).

[12] *See* FCC, *Incident Management and Investigations*, https://www.fcc.gov/incident-management-and-investigations (last visited Dec. 19, 2023).

[13] *See* Cybersecurity and Infrastructure Security Agency (CISA), *CISA Urges Increased Vigilance One Year After Russia's Invasion of Ukraine*, (Feb. 23, 2023), https://www.cisa.gov/news-events/alerts/2023/02/23/cisa-urges-increased-vigilance-one-year-after-russias-invasion-ukraine ("CISA assesses that the United States and European nations may experience disruptive and defacement attacks against websites in an attempt to sow chaos and societal discord . . . in response to the heightened geopolitical tensions resulting from Russia's full-scale invasion of Ukraine, CISA maintains [these] public cybersecurity resources . . . to increase organizational vigilance and keep the public informed about current cybersecurity threats."). *See also* Chris Riotta, NextGov, *US cyber agencies in 'very close contact' with Israel after unprecedented Hamas attacks,* (Oct. 12, 2023), https://www.nextgov.com/cybersecurity/2023/10/us-cyber-agencies-very-close-contact-israel-after-unprecedented-hamas-attacks/391156/ ("The Cybersecurity and Infrastructure Security Agency is in 'very close contact' with the

(continued….)

could be used in response to man-made disasters including cyber and kinetic attacks against communications network infrastructure.

7. The Commission utilizes NORS filings to assess the magnitude and impact of major network outages for specific providers and to identify network reliability trends over time. This regular and detailed examination, coupled with direct engagement with providers, aids Commission staff in determining whether the outages likely could have been prevented or mitigated had the service providers involved followed certain network reliability best practices, and whether such practices are employed broadly in the industry.[14] The Commission uses DIRS filings for specific disasters in designated geographies to assess critical situational awareness across providers in the area to inform restoration efforts by Federal, state, Tribal, and territorial partners and the Commission's own assessments of communications reliability during specific disasters and emergencies.[15] Whereas NORS provides Commission staff with a notice, initial report, and final report at specified intervals related to a specific network event for a specific provider, DIRS provides a regular daily reporting cadence for all providers in a specified area, providing a more detailed and prompt look at impacts of a specific disaster on communications infrastructure across all affected providers. Providers participating in DIRS have the option to report in narrative form or provide statistics for their current infrastructure status, or to merely select that there are no updates if their current status remains the same as their previous reporting information.[16]

8. In the *2021 Resilient Networks Notice*, the Commission sought comment on potential enhancements to both NORS and DIRS that could further promote public safety and boost harm prevention by improving the Commission's situational awareness around disasters, emergencies, and other outage events.[17] The Commission received numerous comments, replies and *ex parte* communication from a variety of parties including individuals, trade associations, wireless companies,

---

Israeli National Cyber Directorate after Hamas launched an unprecedented attack on Israel . . . CISA has expanded its partnership and operational collaboration with Ukrainian cyber agencies throughout the Russian invasion, from conducting cybersecurity training and joint services to critical infrastructure security technical exchanges and enhanced information sharing initiatives.").

[14] *See, e.g.*, FCC, Public Safety and Homeland Security Bureau (PSHSB), *December 27, 2018 CenturyLink Network Outage Report* (Dec. 27, 2018), https://docs.fcc.gov/public/attachments/DOC-359134A1.pdf; FCC, PSHSB, *March 8th, 2017 AT&T VoLTE 911 Outage Report and Recommendations*, PS Docket No. 17-68 (Mar. 8, 2017), https://docs.fcc.gov/public/attachments/DOC-344941A1.pdf; FCC, PSHSB, *April 2014 Multistate 911 Outage: Cause and Impact, Report and Recommendations*, PS Docket No. 14-72 (Apr. 2014), https://docs.fcc.gov/public/attachments/DOC-330012A1.pdf; FCC, PSHSB, *Impact of the June 2012 Derecho on Communications Networks and Services, Report and Recommendations* (2013), https://docs.fcc.gov/public/attachments/DOC-318331A1.pdf; FCC, *Network Outage Reporting System (NORS)*, https://www.fcc.gov/general/disaster-information-reporting-system-dirs-0 (last visited Dec. 19, 2023).

[15] *See, e.g.*, FCC, PSHSB, *October 2018 Hurricane Michael's Impact on Communications: Preparation, Effect, and Recovery*, PS Docket No. 18-339, Report and Recommendations at 6 (May 2019), https://docs.fcc.gov/public/attachments/DOC-357387A1.pdf (noting the Commission's use of DIRS data to monitor communication outages) (*Hurricane Michael Report*); Press Release, FEMA, States Impacted by Ida Receive Full Backing of Federal Force in Relief and Recovery Efforts (Sept. 3, 2021), https://www.fema.gov/press-release/20210903/states-impacted-ida-receive-full-backing-federal-force-relief-and-recovery (noting Commission coordination with several partners in support of restoration efforts and daily reporting on operational status); FCC, *Disaster Information Reporting System*, (Dec. 4, 2023), https://www.fcc.gov/general/disaster-information-reporting-system-dirs-0.

[16] While DIRS is a system of its own, the Commission also has information pages and a user guide available to the public through the Commission's government website. *See* FCC, *Disaster Information Reporting System (DIRS)*, (Dec. 4, 2023), https://www.fcc.gov/general/disaster-information-reporting-system-dirs-0. *See also Disaster Information Reporting System (DIRS) User Guide Version 2.1,* (Dec. 2023), https://www.fcc.gov/sites/default/files/DIRS-UserGuide-122023.docx.

[17] *2021 Resilient Networks Notice* at paras. 27-33.

wireline companies, telecommunications associations, state and local 911 services and other emergency associations.[18]

9. When DIRS is activated by the Commission, currently reporting entities ("service providers") submit outage information in DIRS on a voluntary basis, and the Commission typically grants these providers an accompanying waiver of their NORS reporting requirements while they report in DIRS.[19] In 2005, a voluntary reporting approach worked, but over the ensuing two decades, the Commission has observed that while the nation's large providers typically elect to voluntarily report in DIRS, smaller providers often do not. This not only reduces the total number of DIRS filings available to inform the Commission's analysis of network reliability, but also reduces the Commission's situational awareness, including awareness of the availability of 911, emergency alerting and other emergency services in locations served by smaller providers, which are often located in rural or other hard to access areas and may also serve otherwise vulnerable or underserved constituencies. Additionally, the Commission typically releases a Public Notice requesting that providers report in DIRS daily, but only on days in which the provider has experienced a reportable change to its infrastructure status. This current voluntary reporting regime results in ambiguity as to whether a filing provider's lack of DIRS filings on a given day (or days) means: 1) its network infrastructure actually remains undamaged or unchanged from its last report, 2) it is choosing voluntarily not to participate in DIRS, or 3) it is unable to file (e.g., due to operational damage).

III. SECOND REPORT AND ORDER

10. In this *Second Report and Order*, we adopt rules to: (i) require cable communications, wireline, wireless, and interconnected VoIP providers (subject providers) to report their infrastructure status information in DIRS daily when the Commission activates DIRS in geographic areas in which they provide service, even when their reportable infrastructure status has not changed compared to the prior day, unless they are unable to file (e.g., due to operational damage);[20] (ii) formally codify, in the Commission's outage reporting rules, the Commission's current practice that a subject provider's NORS reporting obligations are waived while they are required to report in DIRS; and (iii) require that subject providers who report in DIRS supply a single, final DIRS report to the Commission, within 24 hours of the Commission's deactivation[21] of DIRS, that provides the status of their affected infrastructure identified to the Commission during the DIRS reporting period that has not yet been fully restored at the time of the deactivation. We find that these actions will advance the ability of the Commission and its Federal, state, local, Tribal, and territorial partners, as well as the public more generally, to effectively manage and mitigate the short-term and long-term impacts of disasters on communications networks, ultimately increasing network resiliency and availability during and after disasters to enable viable access

[18] *Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications*, PS Docket No. 15-80, FCC 21-34 (Mar. 18, 2021) (Appx. E).

[19] This waiver applies in the geographic area where the Commission has activated DIRS and applies for as long as the Commission keeps DIRS activated. Certain providers operating in the U.S. Virgin Island and Puerto Rico are already required to report in DIRS when DIRS is activated in their service areas pursuant to Commission rules. *See* FCC, *The Uniendo a Puerto Rico Fund and the Connect USVI Fund; Connect America Fund*, Report and Order and Order on Review, Docket No. 18-143, 10-90, FCC 23-32 (2023) at paras. 133, 138-40 (*Connect USVI Fund Order*). Nothing in this *Report and Order* is intended to disturb those established rules. Rather, the rules and proposals in this *Report and Order* and *Second Further Notice* would apply to these providers to the extent that the providers are not already required to take the described actions.

[20] As reiterated below, where it may be impracticable or impossible to file due to operational damage the Commission will allow for flexibility in reporting methods.

[21] The "deactivation" of DIRS specifically refers to when the Commission has decided that the emergency or disaster event has surpassed the period necessary for consistent, daily updates regarding the event. This does not mean that subject providers will no longer be able to access the system. The "activation" of DIRS begins the expected reporting period, and the "deactivation" of DIRS ends the expected reporting period. However, once DIRS has been deactivated for the particular event, providers will still have access to the reporting system and should utilize such for mandated actions like "after-action" reporting.

to emergency communications. We also believe that relief from NORS reporting requirements when DIRS is activated meaningfully reduces the potential overall burden associated with mandated DIRS reporting. Recognizing that DIRS reporting will be new for some entities, the Commission is providing a corresponding reduction in NORS reporting, and is providing focused reporting in DIRS that is relevant for near term disaster scenarios and response.

A. Mandating DIRS Reporting for Cable Communications, Wireless, Wireline, and Interconnected VoIP Providers

11. In the *2021 Resilient Networks Notice*, the Commission proposed requiring cable, wireless, wireline, Direct Broadcast Satellite (DBS), Satellite Digital Audio Radio Service (SDARS), interconnected VoIP providers, and TV and radio broadcasters to report their infrastructure status information in DIRS when the Commission activates DIRS in geographic areas in which they provide service.[22] In this respect, the Commission proposed to shift the reporting obligation from voluntary to mandatory for these providers and expand the categories of providers subject to DIRS reporting. In support of this proposal, the Commission noted that smaller providers often did not elect to voluntarily participate in DIRS reporting, reducing the Commission's situational awareness.[23] The size of the provider a consumer uses should not affect a consumer's right to public safety and potentially life-saving information, nor should small rural communities be less entitled to functioning networks that provide alerts and 911 capability than communities served by large providers. The Commission also sought comment on ways to resolve ambiguity about whether a subject provider's lack of DIRS filings means that its network infrastructure remains fully operational or it is unable to file, and whether it cannot access DIRS due to disruption of its Internet access or other exigencies.[24] Based on the record, in this *Second Report and Order*, the Commission requires DIRS reporting only as to cable communications,[25] wireline, wireless and interconnected VoIP providers, and provides that such reports must be filed on a daily basis until the Commission deactivates DIRS.[26] On days when a subject provider has no otherwise reportable changes in its infrastructure status, the report would take the form of a simplified "check in" report. In the accompanying *Second Further Notice,* we seek further comment to build a more robust record regarding the inclusion of satellite, broadband, and broadcast providers in a mandatory DIRS environment.

12. DIRS provides pertinent daily information that the Commission provides to a variety of public safety entities through information sharing, collaborative disaster response efforts, and to the public. The information in DIRS reports also enables the Bureau's Operations and Emergency Management Division (OEM) to manage its disaster response activities, such as visiting sites and validating communications restoration status, supporting vital search and rescue operations, and

[22] *2021 Resilient Networks Notice* at para. 29.

[23] *Id.* at para. 27.

[24] *Id.* at paras. 27, 29.

[25] *See ,* Letter from Steven F. Morris, Vice President and Deputy General Counsel, NCTA-The Internet and Television Association, to Marlene H. Dortch, Secretary, FCC, PS Docket Nos. 21-346, 15-18 and ET Docket No. 04-35, at 1-2 (filed Jan. 18, 2024) (NCTA *ex parte*) (requesting that rule applicability conform to the definition of "cable communications providers" consistent with Part 4 of the Commission's rules, 47 CFR § 4.3).

[26] We note that in some instances, and where warranted based on circumstances during extended activations, the Bureau has required reporting less frequently than daily. *See, e.g., The Public Safety and Homeland Security Bureau Announces Amended Schedule for Filing Hurricane Maria Reports in the Disaster Information Reporting System,* DA 12-1122 (Nov. 27, 2021). While we find daily reporting the best cadence norm, we delegate authority to PSHSB to amend the reporting schedule to a less frequent cadence where warranted. For instance, the Bureau may waive, *sua sponte*, the daily reporting time. In this regard, we also decline to provide more specificity as to the time daily reporting should occur as requested by NCTA, in that DIRS reporting may inform other time-sensitive disaster coordination activities across the Federal government and that Commission staff must respond to those coordination activities by specifying reporting times in each DIRS activation PN on a case-by-case basis. *See* NCTA *ex parte* at 1-2.

performing eyes-on assessments of disaster impacts and damages to prioritize and allocate response and recovery resources. At their core, DIRS reports, in combination with operational spectrum surveys and other direct engagement, serve as an impetus for open lines of communication between communications carriers and emergency management officials.

13. In response to the *2021 Resilient Networks Notice*, several public interest and public safety-focused commenters opine that mandating DIRS reporting would increase the value of the situational awareness information that the Commission collects and will result in meaningful improvements to public safety.[27] For example, Next Century Cities (NCC) remarks that DIRS data from smaller-sized subject providers would allow the Commission to have a more granular look at how infrastructure and service has been disrupted on the ground, which would critically aid disaster response.[28] Public Knowledge notes similarly that, in the current voluntary regime, the value of DIRS information is diminished as it is unclear if a non-reporting subject provider is unable to report due to severe damage or is simply electing not to file DIRS reports.[29] Free Press states that more robust DIRS information will allow customers and impacted individuals to assess all communications options that may be available to them in the immediate aftermath of disaster and during a subsequent rebuilding phase; Public Knowledge further notes that having more DIRS information will allow the Commission to better hold providers accountable for failures.[30]

14. Conversely, several parties representing industry, like ACA Connects—America's Communications Association (ACA), oppose mandating DIRS on grounds that it would be too burdensome or would only provide a limited benefit when it comes to requiring compliance from small providers.[31] NTCA—The Rural Broadband Association (NTCA) believes that small operators will likely lack the personnel, time, or physical resources to make such reports in the midst of a disaster and states that DIRS reports may not actually be useful in disaster scenarios because the Department of Homeland Security's National Coordinating Center for Communications (DHS-NCC) and the Communications Information Sharing and Analysis Center (Comms-ISAC) provide a forum for industry stakeholders "to share real-time information and collaborate with government partners on network restoration efforts [so] [a]ny new information sharing commitments would likely duplicate, and potentially conflict with, these established, well-defined processes, creating unnecessary burden and undermining rather than strengthening network resiliency."[32] AT&T argues that, to manage burdens, mandatory reporting should be based on a "best efforts" standard and that there should be no penalty for failure to meet any deadlines established for particular events.[33] NTCA also argues, "it is currently unclear whether filing the [DIRS] reports lead to greater coordination between government and industry or offers a benefit to a company or community in crisis."[34]

15. We find that mandatory DIRS reporting will yield substantial public safety benefits. DIRS provides situational awareness of communications operational status and actionable information to public safety entities assisting in disaster response, thus promoting public safety. Additionally, the Commission's information sharing program provides direct read-only access to government agencies,

---

[27] The Association of Public-Safety Communications Officials International, Dec. 16, 2021, Comments at 4 (APCO Comments).

[28] Next Century Cities, Dec. 16, 2021, Comments at 5-6 and 11 (NCC Comments).

[29] Public Knowledge, Dec. 16, 2021, Comments at 27.

[30] Free Press, Jan. 14, 2022, Reply at 9-10; Public Knowledge, Jan. 14, 2022, Reply at 2-3.

[31] *See, e.g.*, ACA Connects—America's Communications Association, Dec. 16, 2021, Comments at 9-11 (ACA Connects Comment); *see also* ACA Connects—America's Communications Association, Jan. 14, 2022, Reply at 8 (ACA Connects Reply).

[32] NTCA—The Rural Broadband Association, Dec. 16, 2021, Comments at 9 (NTCA Comments).

[33] AT&T Services, Inc., Dec. 16, 2021, Comments at 18 (AT&T Comments).

[34] NTCA Comments at 9.

providing a direct benefit to emergency response, and providing complete and accurate information to these sharing partners will provide actionable data to those making decisions in disaster and reliability contexts. DIRS exists "to report communications infrastructure status and situational awareness information during times of crises" and enables "the Commission [to] disseminate DIRS information to other Federal agencies" to "facilitate Federal restoration efforts," as well as efforts from state, local, Tribal, and territorial governments, and get boots on the ground in the locations requiring urgent assistance.[35] Public Knowledge asserts that "[t]he FCC must require all wireless . . . providers to perform basic measures that reflect the lessons it has gleaned from recent post-disaster reports [as] [i]n these reports, the FCC has outlined straight-forward and obvious procedures that, if performed, would undoubtedly improve disaster responses."[36] However, in its current voluntary state, DIRS provides the Commission with an incomplete picture of infrastructure status and other important emergency information and cannot reliably be used to determine whether entities are merely not reporting by choice or if they have lost the ability to report and are in need of aid and collaboration. Mandating DIRS reporting provides a more consistent picture of status during and after disasters and emergencies since there is a wider sampling of providers recording how an event has affected their infrastructure and capabilities. Requiring DIRS reporting will identify clearly for the Commission and other emergency response agencies of any possible issues and signals for needed aid and assistance and will make apparent when a provider does not or cannot report that there is an issue with their system or reporting capabilities. APCO International agrees that "improving the information in these important systems will be helpful for situational awareness and ongoing efforts to improve network resiliency."[37] Public Knowledge stresses the importance of "better, timelier, and more detailed outage and service-quality reporting to ensure accountability [and] . . . needs to make this data available to the public in a way that balances the twin imperatives of transparency and information security."[38] We agree that mandating reporting in DIRS will improve situational awareness through daily status updates during emergencies and serve the public interest by providing vital information regarding the operational status of communications networks the Commission and emergency response entities need to effectively manage communications needs during and after disasters occur.[39]

16. Mandating DIRS is especially important in today's disaster climate as the quantity of disasters has increased since DIRS was first formulated. 2023 was recorded as the worst year on record for billion-dollar weather and climate disasters, passing the National Oceanic and Atmospheric Administration's (NOAA) prior record of 22 events in 2020 within the first eight months of 2023.[40] DIRS data associated with an impacted area is of particular importance, since it provides a preliminary understanding of both the impact and scope of damages, enables the optimization of the allocation, prioritization, and deployment of response and restoration personnel and resources. Further, the analysis of DIRS data enables the identification of reliability trends and challenges associated with infrastructure in rural, underserved, and underprivileged communities. In addition, given the rise in the utilization of communications infrastructure by emergency response officials as a tool for alerting both through WEA and through more established EAS channels, as well as the advent of Next-Generation 911 and text-to-911, the need for relevant and comprehensive information related to the availability of the infrastructure

[35] FCC, *Disaster Information Reporting System (DIRS) User Guide Version 2.1*, (Dec. 4, 2023), https://www.fcc.gov/sites/default/files/DIRS-UserGuide-122023.docx.

[36] Public Knowledge Comments at 12-13.

[37] APCO Comments at 4.

[38] Public Knowledge Comments at ii.

[39] *See also,* Letter from Michael Mullinix, Vice President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, PS Docket Nos. 21-346, 15-18 and ET Docket No. 04-35 (filed Jan. 17, 2024) (CTIA *ex parte*) (asking the Commission and the Bureau to keep DIRS stakeholders apprised of technical changes to the DIRS system).

[40] Rebecca Falconer, AXIOS, *NOAA: 2023 worst year on record for billion-dollar disasters,* (Sept. 12, 2023), https://www.axios.com/2023/09/12/disasters-weather-climate-record-2023-noaa.

for communication from and with the public provides added urgency for the reformation of our information collection efforts in the DIRS context in particular.

17. While commenters argue that reporting in this context is a burden particularly for small entities, we disagree with those who surmise that mandating participation in DIRS will be *unduly* burdensome for subject providers and that the benefits of such reporting and information garnered do not outweigh the detriments, especially in the matter of preserving life and public safety. For example, NCTA—The Internet and Television Association (NCTA) says that "[w]hile outreach to customers during emergencies is vital, 'prescriptive requirements for specific modes of communication or unrealistic levels of precision and detail—as proposed by some in the record—are impractical under emergency conditions and would divert limited resources away from maintenance and restoration of service."[41] Commenters making such assertions opposing mandatory DIRS reporting, however, fail to adequately counter the benefits it will provide, and overlook the efficiencies associated with the proposal. While opposing commenters identify some burdens associated with filing in DIRS, they fail to take into account that providers would benefit from a simultaneous reduction of burdens due to the waiver of NORS filing requirements that we codify below. For instance, under NORS, a provider may have to file multiple reports for outages across a geographic area (even within counties for areas like cities and towns) dependent on the number of components involved. Under DIRS, while providers are filing daily, they are submitting DIRS reports for the entirety of the affected area. Further, the DIRS reporting content is less burdensome than NORS in terms of requirements. We agree with Free Press' observation that the Commission can also manage burdens as it has the authority to waive mandatory DIRS requirements on a case-by-case basis where appropriate, such as for extraordinary circumstances.[42] In this respect, non-filing due to such circumstances will be examined on a case-by-case basis. In those instances where extraordinary circumstances prevent filing due to operational limitations, providers should: (1) use the Operations Center or otherwise notify the Commission if they are unable to file; and (2) make a filing as soon as they are capable, but no later than the final report due upon deactivation of DIRS, described below.

18. We also disagree with NTCA's contention that DIRS reports may not be useful because there are other avenues, including through the work of the DHS-NCC, for emergency managers and first responders to obtain real-time situational awareness information.[43] NCTA's similar argument that mandating DIRS filings is not warranted because it does not result in active participation by stakeholders at the state and local level is also unpersuasive.[44] First, the systematic, mandatory collection of information in DIRS would not overlap with other Federal, state, local, Tribal, and territorial government efforts, and this non-duplicative information would be made available in real-time to both DHS and other participating public safety entities pursuant to the Commission's information sharing rules to further enhance their efforts.[45] Such information could also be available to local entities through permitted downstream sharing,[46] and is shared with the public on an aggregated basis via communications status

[41] NCTA—The Internet and Television Association, Jan. 14, 2022, Reply at 18 (NCTA Reply).

[42] Free Press Reply at 9-10.

[43] NTCA Comments at 8-9.

[44] NCTA Reply at 8-9 and 16.

[45] *Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications,* PS Docket No. 15-80, Second Report and Order, FCC 21-34, 2021 WL 1086309 (2021). The mandated collection of information associated with DIRS would be non-duplicative and lacking in overlap with state, local, Tribal, and territorial governments as the information they receive comes from the Department of Homeland Security (DHS) and its Emergency Support Function #2 (ESF-2) and/or its state public utility system. Local response officials would be lacking this information unless a state or local entity has a relationship with a specific carrier, which is not common.

[46] "The Commission's rules allow Participating Agencies to share NORS and DIRS information with first responders, emergency communications centers, and other local government agencies who play a vital public safety role during crises and have a need to know this information (Downstream Agencies)." FCC, *Outage Information Sharing*, (Sept. 30, 2022), https://www.fcc.gov/outage-information-sharing. *See also* FCC, *Rules and*

(continued….)

reports published daily by the Commission when DIRS is activated,[47] providing valuable public information on available avenues for communications during emergencies. Additionally, mandating reporting in DIRS for all subject providers would ensure full participation of service providers in each affected area and therefore present the Commission and other entities with a comprehensive insight as to infrastructure status and reporting capabilities of such entities through regular updates. The contentions of NTCA and NCTA are contradicted by a significant factual record identified in the *2021 Resilient Networks Notice* and in the Commission's Disaster Communications Fall 2021 Field Hearing.[48] As Public Knowledge underscores, the importance of information regarding the status of communications networks during and after disasters, especially in providing real-time updates and emergency alerts to the public as well as to emergency response personnel, is critical, particularly as it provides more geographically and infrastructure-specific information to those affected by outages.[49]

19. We also reject the assertions of ACA Connects and NTCA that the burden for small providers with limited resources is too substantial to justify mandatory reporting, particularly in the midst of the need to effectuate repairs. Small providers, including many recipients of Universal Service Funds (USF), are often a crucial link for alerting and 911 in rural and underserved communities. The lack of visibility into the operational status of these networks when disaster response officials are performing vital tasks like determining how to effectuate outreach to communities that may involve evacuation instructions, shelter in place, or other emergency directives does a significant disservice to these populations, and may place them at increased risk. While timely restoration is crucially important, the minimal time and burden associated with notifying the Commission of infrastructure status is necessary to ensure timely emergency response activity. Moreover, we clarify that submissions made in DIRS under the rule adopted today shall be based on information known by the provider at the time.[50] In those instances where extraordinary circumstances prevent filing due to operational limitations, providers should: (1) use the FCC Operations Center or otherwise notify the Commission if they are unable to file; and (2) make a filing as soon as they are capable, but no later than the final report due upon deactivation of DIRS, described herein.

20. It has been sixteen years since the Commission launched DIRS, and the time is ripe to take steps to improve the efficacy of the system. While the National Association of Broadcasters (NAB) argues that nothing has changed since the Commission's 2007 determination that a voluntary process for DIRS reporting proved adaptable to the unique circumstances of various crises,[51] we disagree. The state of natural disasters, frequencies of emergencies, and the emergence of advanced technology has changed

---

Responsibilities for Accessing, Using, Sharing and Protecting NORS and DIRS Information: Network Outage Reporting System (NORS) and Disaster Information Reporting System (DIRS) User Guide Version 2.1, (Dec. 4, 2023) https://www.fcc.gov/sites/default/files/DIRS-UserGuide-122023.docx ("Before sharing outside your agency, your agency must instruct downstream recipients to keep NORS and DIRS information they receive as confidential.").

[47] FCC, *Past Response Efforts,* https://www.fcc.gov/past-response-efforts (archive of daily communications status reports online) (last visited Dec. 19, 2023).

[48] *2021 Resilient Networks Notice* at paras 8-12; *see also,* Testimony of Harold Feld, Senior Vice President, Public Knowledge, FCC Field Hearing on Network Resiliency, PS Docket Nos. 21-346, 15-80, ET Docket No. 04-35 (Oct 26. 2021), at 3-4. *See also generally* FCC, Disaster Communications Field Hearing, (Oct. 26, 2021), https://www.fcc.gov/disaster-communications-field-hearing.

[49] Testimony of Harold Feld, Senior Vice President, Public Knowledge, FCC Field Hearing on Network Resiliency, PS Docket Nos. 21-346, 15-80, ET Docket No. 04-35 (Oct 26. 2021), at 1-3.

[50] We further recognize that in circumstances where DIRS is activated subject providers are necessarily operating in a disaster environment, and that submissions must be provided with a reasonable basis for believing the information therein is accurate. *See ,* Letter from Michael J. Jacobs, Assistant General Counsel, Lumen Technologies, Inc., to Marlene H. Dortch, Secretary, FCC, PS Docket Nos. 21-346, 15-18 and ET Docket No. 04-35, at 2-3 (filed Jan. 18, 2024) (Lumen *ex parte*).

[51] National Association of Broadcasters, Dec. 16, 2021, Comments at 4-5 (NAB Comments).

remarkably over the last almost two decades.[52] The evolution of alerting through the advent of WEA, the associated implementation of FEMA's Integrated Public Alert and Warning System (IPAWS) gateway for the dissemination of WEAs and EAS alerts, as well as the launch of the Commission's own information sharing program for NORS and DIRS have altered the regulatory landscape as well. NAB's position similarly fails to consider the results of a Government Accountability Office (GAO) report noting a sharp increase in the number of wireless outages attributed to a physical incidents, and its recommendation that the Commission improve its monitoring of industry efforts to strengthen wireless network resilience, as well as the Commission's own previous determinations, as a result of inquiries and investigations of the infrastructure status and capabilities of providers during and after disasters, that there is a need for a more comprehensive monitoring of situational awareness information.[53] Like the recently adopted Mandatory Disaster Response Initiative (MDRI),[54] DIRS is another valuable tool that can aid the Commission in its resiliency and restoration efforts. While the MDRI focuses on improving the resiliency and reliability of mobile wireless networks before, during, and after emergencies,[55] DIRS provides the means to identify where the reparation, replacement, and restoration of communications infrastructure is vital.

21. DIRS also provides important information regarding which and how many Public Safety Answering Points (PSAPs) are unable to receive incoming emergency information from consumers in need. In regard to PSAPs, while NORS and DIRS serve similar purposes (reporting network outages), they collect different types of data. PSAP impact data is specifically collected by DIRS and not NORS. Once DIRS is activated, the Commission gets more fidelity as to PSAP status that it would not ordinarily get if only NORS were utilized, as no PSAP-specific information is collected in NORS at all. DIRS further provides information such as how many cell sites have been affected, where damaged power infrastructure is impacting communications, and other status information.[56] Rather than waiting for the next emergency—be it natural or man-made—to strike and remind us, again, of the importance of comprehensive situational awareness to ensure the public safety and expedite the restoration of

---

[52] *See* United States Department of the Interior, *United States Geological Survey: How can climate change affect natural disasters?,* https://www.usgs.gov/faqs/how-can-climate-change-affect-natural-disasters (last visited Dec. 19, 2023) ("With increasing global surface temperatures the possibility of more droughts and increased intensity of storms will likely occur."). *See also* Adam B. Smith, National Oceanic and Atmospheric Association (NOAA), *Climate.Gov: 2022 U.S. billion-dollar weather and climate disasters in historical context,* (Jan. 10, 2023), https://www.climate.gov/news-features/blogs/beyond-data/2022-us-billion-dollar-weather-and-climate-disasters-historical ("The NOAA National Centers for Environmental Information (NCEI) has released the final update to its 2022 Billion-dollar disaster report (www.ncei.noaa.gov/access/billions), confirming another intense year of costly disasters and extremes throughout much of the country. 2022 tied 2017 and 2011 for the third highest number of billion-dollar disasters. 2022 was also third highest in total costs (behind 2017 and 2005), with a price tag of at least $165.0 billion. . . . In 2022, the U.S. experienced 18 separate weather and climate disasters costing at least 1 billion dollars. That number puts 2022 into a three-way tie with 2017 and 2011 for the third-highest number of billion-dollar disasters in a calendar year, behind the 22 events in 2020 and the 20 events in 2021. It was another year with a high diversity of destructive disasters. . . . The U.S. losses from billion-dollar disasters over the last seven years (2015-2022) are more than $1 trillion and have further skewed the total distribution of extreme weather costs.").

[53] *See 2021 Resilient Networks Notice* at 5-7, paras. 8-12; *see also* Government Accountability Office (GAO), *FCC Should Improve Monitoring of Industry Efforts to Strengthen Wireless Network Resiliency* at 36 (2017), https://www.gao.gov/assets/gao-18-198.pdf (GAO Report). The report recommended that the Commission develop specific and measurable objectives for the Framework and a plan to monitor and document the outputs and outcomes of the Framework to evaluate its effectiveness.

[54] *See* FCC, *Wireless Network Resiliency During Disasters: The Mandatory Disaster Response Initiative*, (Sept. 25, 2023), https://www.fcc.gov/wireless-network-resiliency-during-disasters. *See also* FCC, *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, Report and Order and Further Notice of Proposed Rulemaking (July 6, 2022) (*2022 Report and Order*).

[55] *See* FCC, *FCC Improves Resiliency and Reliability of Mobile Wireless Networks,* (July 7, 2022) https://www.fcc.gov/fcc-improves-resiliency-and-reliability-mobile-wireless-networks.

[56] *2021 Resilient Networks Notice* at 5-6, paras. 9-10.

communications, we are relying on our experience and the record before us to adopt mandatory DIRS requirements now.

22. In considering the scope of reporting entities, we limit our determination at this time to cable communications, wireless, wireline, and interconnected VoIP providers. In this respect, we find that the record supports adoption of mandatory DIRS reporting for these providers because this group of providers should already have information like points of contact, roaming agreements, coordination and response plans, and restoration plans of action in place due to the general course of business. This was echoed in the record by Public Knowledge.[57] Wireless providers especially should already have these ideals for resiliency and restoration in place given the 2016 Wireless Network Resiliency Cooperative Framework[58] that has recently been mandated as the MDRI, which requires wireless providers to establish and share with the Commission (upon request) elements like roaming arrangements and mutual aid agreements.[59] However, we note the concerns raised by satellite (DBS and SDARS) and broadcast (television and radio) providers seeking to differentiate their services in terms of impact to their specific technology in disaster contexts, operational restrictions, and the types of information that is likely relevant for disaster response relative to these particular services that may impact the specific data needs to be collected from these entities. For example, certain types of technology, like satellite, may have limited terrestrial components impacted by a disaster such that a more nuanced approach for outage reporting may be appropriate. In this respect, we also note that these services, while crucial to distribute information during disasters, may not serve the same function as the other services for which we require DIRS reporting today – namely, the use by consumers to seek help by communicating with emergency responders and loved ones. The Satellite Industry Association (SIA) requests more detail regarding proposals for mandatory DIRS reporting for that sector,[60] and NAB raises arguments about the burdens of reporting, especially for smaller broadcasters who experience disruptions in the services they provide as well as underlying telephone, Internet, or power services on which broadcasters rely to provide service.[61] Further, these emergencies and "disasters often lead to power outages and the loss of telephone and Internet access, making it difficult if not impossible for smaller stations without a corporate support infrastructure to file a DIRS report."[62] To build a more complete record about the impact of our proposals on the satellite and broadcast sectors, we seek further comment pertaining to satellite and broadcast, as well as broadband, providers whose comments share different concerns and views than the subject providers included under this *Order*, in the *Second Further Notice*.[63]

23. By mandating DIRS reporting for subject providers, we expect that there will be an increase in both the volume and clarity of situational awareness information collected, and the Commission will be able to share this information with Federal, state, Tribal, and territorial partners. Additional DIRS information will be helpful during disaster events and can help improve public safety

[57] *See* Public Knowledge Comments at 12-13.

[58] FCC, *Wireless Network Resiliency During Disasters*, (Sept. 25, 2023), https://www.fcc.gov/wireless-network-resiliency-during-disasters.

[59] *Id*. *See also 2022 Resilient Networks Order.*

[60] Satellite Industry Association, Dec. 16, 2021, Comments at 1, 5 (SIA Comments).

[61] NAB Comments at 5.

[62] *Id*. at 5-6.

[63] *See also* Letter from Nicholas Reese, Co-Founder and Chief Operating Officer and Matthew Zuccaro, Director, Enterprise IT and Cybersecurity, Frontier Foundry Corp., to Marlene H. Dortch, Secretary, FCC, PS Docket Nos. 21-346 and 15-18, at 2 (filed Jan. 9, 2024) (Frontier Foundry *ex parte*) *ex parte* letter, (concurring with DirecTV, Dec. 16, 2021 Comments and advocating for the Commission to "consider the role of each satellite operator in supporting National Critical Functions (NCF) and sub-functions as defined by DHS, and otherwise collaborating with stakeholders to address what NCFs and critical infrastructure sectors would be disrupted or whose risk profile would be substantially changed by the denial or disruption of specific satellites, constellations, and providers"). *See id.* at 3-4. While we recognize Frontier Foundry's concerns, we decline to expand our consideration beyond the Part 4 context.

planning and response efforts. DIRS provides decision-making public safety officials and emergency managers with an invaluable tool for assessing where communications services and infrastructure are impacted by disasters, as well as insights into the speed and scope of communications restoration. Particularly, DIRS information is a key performance indicator and serves as a primary input to the FEMA Lifelines report[64] and Senior Leaders Interagency Briefings,[65] which enables decision makers to concentrate their personnel and resources on areas presumed to have been impacted the hardest. Requiring this information to be reported by subject providers will assist with general situational awareness, the deployment of disaster and recovery logistics, and applications of infrastructure grants and insurance claims.

24. Confidentiality. Several commenters raise concerns regarding the protection of information that entities would be providing in DIRS on a mandatory basis. For instance, NCTA urges the Commission to maintain its presumption of confidentiality for DIRS information submitted by subject providers, while the California Public Utilities Commission (CPUC) alternatively argues that "it is critical for people to acquire as much information about outages, disasters, and service restoration efforts before relocating to another, presumably safer location."[66] Public Knowledge similarly argues that public disclosure of outage information would enhance market incentives to provide more reliable service.[67] While we shift from voluntary to mandatory reporting, we find no compelling reason at this time to alter the existing presumption of confidentiality for any reporting information received merely by virtue of this change, and decline to amend that presumption here.[68] Particularly in the DIRS context, we note that public disclosures are already made on an aggregated basis, providing a level of transparency to consumers to effectuate the primary purpose of DIRS – the collection and dissemination of disaster-specific outage impact information. While driving the market to more reliability is an important goal, we do not find that disclosure in this context is appropriate at this time.

---

[64] *See* Federal Emergency Management Agency (FEMA), *Community Lifelines* (July 27, 2023), https://www.fema.gov/emergency-managers/practitioners/lifelines ("FEMA created Community Lifelines to reframe incident information, understand and communicate incident impacts using plain language, and promote unity of effort across the whole community to prioritize efforts to stabilize the lifelines during incident response. While lifelines were developed to support response planning and operations, the concept can be applied across the entire preparedness cycle, efforts to protect lifelines, prevent and mitigate potential impacts to them, and building back stronger and smarter during recovery will drive overall resilience of the nation. Community lifelines were tested and validated by federal, state, local, Tribal, and territorial partners in the aftermath of hurricanes Michael (Oct. 2018), Florence (Sept. 2018) and Dorian (Aug. 2019), Super Typhoon Yutu (Oct. 2018), the Alaska earthquake (Dec. 2018) and the coronavirus (COVID-19) pandemic (2020). They were formalized in the National Response Framework, 4th Edition.").

[65] *See* FEMA, *Senior Leader Toolkit,* (July 16, 2020), https://www.fema.gov/emergency-managers/nims/components/senior-leader-toolkit ("The Senior Leader Toolkit includes quick reference guides and a NIMS senior leader briefing template to help emergency management and senior leaders understand their role and responsibility during incidents."). *See also* FEMA, *Briefing Guide: Senior Leadership Briefing,* https://www.fema.gov/sites/default/files/2020-08/fema_senior-leadership-briefing_073119.pdf (last visited Dec. 2019, 2023) (guide includes multiple case studies from recent disasters and emergencies, Federal continuity directives 1 & 2, the National Response Framework guide for all-hazard response conducting, essential functions, and fundamental missions of agencies and organizations).

[66] *See* NCTA Comments at 4; *see also* California Public Utilities Commission, Jan. 14, 2022, Reply at 11-12 (CPUC Reply).

[67] Public Knowledge Comments at 27.

[68] The Commission acknowledges that the CPUC filed a Petition for Reconsideration in regard to information sharing. The determination here discussing confidentiality and the treatment of information is not a pre-judgment of the Petition in that context. *See* Petition of California Public Utilities Commission for Reconsideration of Action in Rulemaking Proceeding, PS Docket No. 15-80 (released July 19, 2021), https://www.govinfo.gov/content/pkg/FR-2021-07-29/pdf/2021-16126.pdf (CPUC Petition).

B. Codifying the NORS Reporting Waiver When DIRS Is Activated

25. In the *2021 Resilient Networks Notice*, the Commission sought comment on whether to codify the Commission's typical practice of granting subject providers a waiver of their NORS reporting requirements when they report in DIRS.[69] Under the Commission's current voluntary DIRS reporting approach, the Bureau typically waives NORS reporting obligations for subject providers who elect to report in DIRS for the duration of its activation period.[70] The Bureau has routinely issued this *sua sponte* waiver when DIRS has been activated and has found success with this approach. In this *Second Report and Order,* we adopt this proposal and give it effect by revising the Commission's Part 4 rules to suspend all NORS reporting obligations pertaining to outages that arise when DIRS reporting is activated and outages are timely reported in DIRS.[71] More specifically, the Commission will waive NORS filings that would be due while DIRS is activated. Further, and as discussed more below in the following sections, once an outage has been filed under DIRS per this *Order*, a provider need not file the same outage in NORS.

26. USTelecom—The Broadband Association (USTelecom), NCTA and AT&T support this proposal expressly, and no commenters oppose it.[72] Accordingly, we conclude that formally codifying this practice would give providers more clarity on their obligations and both streamline and formalize existing practices with no detrimental impact on the Commission's current public safety efforts. Because of the long and successful practice of granting waivers, the Bureau and the industry should easily transition to this permanent solution. Moreover, the codification of this practice will be beneficial for subject providers as this waiver will reduce burdens for DIRS filers during emergency conditions when the system is activated. As proposed, this shift between reporting mechanisms also mitigates the burden of potentially duplicative reporting for subject providers by only requiring reporting in one system during and after disasters instead of a dual requirement. This will also provide administrative efficiency by eliminating the need for the Bureau to determine and issue waivers on an activation-by-activation basis.

C. Final DIRS Reports Upon Deactivation

27. In the *2021 Resilient Networks Notice*, the Commission sought comment on how to maintain situational awareness as to the status of providers' services when a provider has not yet fully restored its service at the time that the Commission deactivates DIRS.[73] The *2021 Resilient Networks Notice* asked whether providers with ongoing outages at the time of DIRS being deactivated should be required to report those outages in NORS; the Commission proposed resolving this issue by requiring that subject providers with ongoing outages at the time of DIRS deactivation provide a final report that describes their current infrastructure status at the time the system was deactivated to be submitted within 24 hours of deactivation.[74] This would allow the Commission to see what remains unresolved immediately following deactivation of DIRS, and provide to the Commission an estimate of when the subject provider believes the issue(s) can be resolved.[75] We adopt that proposal here; the final report shall be provided as input to a free form text field in the current DIRS interface, where a subject provider will be able to describe in detail the identity and status of outstanding infrastructure equipment and issues and the estimated dates by which these issues shall be resolved.

---

[69] *2021 Resilient Networks Notice* at para. 31.

[70] This decision is announced through the release of a Public Notice on an activation-by-activation basis. *See,* e.g., *Public Safety & Homeland Security Bureau Announces the Activation of the Disaster Information Reporting System for Hurricane Zeta*, Public Notice, DA 20-1273 (PSHSB Oct. 28, 2020) (*Hurricane Zeta Public Notice*).

[71] 47 CFR part 4.

[72] USTelecom Comments at 2; NCTA Comments at 34; AT&T Comments at 18.

[73] *2021 Resilient Networks Notice* at para. 32.

[74] *Id.*

[75] *Id.*

28. Under the Commission's current rules, there may be instances in which DIRS is deactivated but some providers have not yet fully restored service. In these instances, the Commission no longer has situational awareness as to the status of those subject providers' services because updates are no longer being filed in DIRS and the outage would have never been filed in NORS (as the Commission typically suspends NORS reporting obligations for subject providers who elect to report in DIRS, and we adopt that practice by rule today). This has resulted in an information gap where the Commission loses situational awareness of subject providers' status in restoring services after DIRS is deactivated. No commenter directly addresses whether providers with ongoing outages at the time of DIRS deactivation should be required to report those outages in NORS, but AT&T opines that any such report should be provided in DIRS rather than NORS.[76]

29. We find that a final deactivation report, filed in DIRS within 24 hours of the Commission deactivating DIRS, will close a significant gap that currently occurs at the conclusion of the DIRS reporting period, and therefore adopt such a reporting requirement. Bridging this informational divide will also enable Commission staff to conduct follow-up inquiries on an as-needed basis based on the information gathered, increase provider accountability, and provide needed opportunities for analysis associated with recovery. While this minor additional filing to close out issues presented though the course of a DIRS activation is only a minimal burden, we find the minor burden outweighed by the anticipated benefits and efficiencies associated with more directed staff engagement with incident resolution. We also find that this close-out report obviates the need for any additional filings in NORS as related to the same outage and clarify that once an outage is filed in DIRS, the event need not be filed in NORS.

30. We also agree with AT&T that it would be most effective for providers to supply a final report in DIRS since the report relates to a provider's previous filings in DIRS.[77] Moreover, filing such reports in DIRS will promote efficiency and reduce confusion, both for those who file reports and for those who review them. This would include subject providers, participating entities who take part in the Commission's NORS and DIRS information sharing program, and Commission staff. Final reports will promote clarity by continuing to associate such reports with the initiating incident in the same system.

31. While the *2021 Resilient Networks Notice* did not posit a specific implementation for the reporting format, and no commenter proposed a specific implementation, we clarify here that the report should be completed by filling in a free form text field in DIRS where a subject provider shall provide, in a text field, a short summary of the identity and status of its outstanding infrastructure equipment and estimated dates by which any and all issues will be resolved. This format will allow maximum flexibility for subject providers to include effective descriptions to the Commission given the wide range of issue types and related circumstances that may occur in the aftermath of DIRS activation. We require, however, that a part of that free form input include estimated resolution dates, which will both create accountability on the part of providers and allow the Commission staff to promptly and effectively follow-up with the providers as necessary.

D. Cost-Benefit Analysis

32. In the *2021 Resilient Networks Notice*, the Commission generally sought information on the costs and benefits specific to promoting situational awareness during disasters, noting that "a proposed requirement to file in DIRS must be balanced against additional burdens on providers, particularly as DIRS reports are filed in the midst of disasters and other emergencies."[78] The Commission asked commenters to explore the costs and benefits associated with mandatory reporting, but the record was lacking in response to this request. However, ACA Connects states that the Commission "should not

[76] AT&T Comments at 18-19.

[77] *Id.*

[78] *2021 Resilient Networks Notice* at 13, para. 29.

adopt any requirements to participate in DIRS without undertaking a cost-benefit analysis that addresses such questions when it comes to considering mandatory reporting for smaller providers."[79]

33. We are cognizant of the fact that, as a general matter, it is impossible to assign precise dollar values to the improvement in public safety, life and health resulting from changes to the DIRS reporting requirements. Nevertheless, we believe that these proposals will result in benefits in terms of lives saved and injuries and property damages prevented. Expanded reporting will improve situational awareness of outages during disasters and aid in emergency response and recovery coordination.[80] Improved information on outages makes communications options clearer for the individual responding in disasters.[81] Improved data on outages can also help the government hold providers accountable for failures to timely respond to outages.[82] Data collected can help with future disasters through improved planning for support and mitigation strategies. According to NOAA, natural disasters have caused annually in excess of $118 billion in economic damages and 564 deaths for the last 10 years.[83] We believe that the mandatory DIRS filing obligation will result in a reduction of these harms to a degree that results in a significant social and public safety benefit.

34. In considering the costs associated with a mandatory DIRS filing obligation, we expect that subject providers will enter emergency contact information and critical information as necessary (i.e., related to infrastructure damage and restoration) in DIRS. Responses, and DIRS reports generally, will differ and appear unique for each emergency or disaster due to differing events, geographic areas (e.g., a network covers several affected counties and submits one DIRS report for each county), and varieties of service provided. We estimate that the average cost of the mandatory DIRS reporting for cable communications, wireless, wireline, and interconnected VoIP providers is less than $1.6 million per year.[84] We do not account for the cost arising from assessing the network availability during DIRS

[79] ACA Comments at 9-10.

[80] FCC, *Disaster Information Reporting System (DIRS) User Guide Version 2.1*, (Dec. 4, 2023), https://www.fcc.gov/sites/default/files/DIRS-UserGuide-122023.docx. *See also* NCC Comments at 11; Public Knowledge Comments at 27.

[81] Free Press Reply at 9-10.

[82] *See* Public Knowledge, Jan. 14, 2022, Reply Comments at 2-3 (Public Knowledge Reply).

[83] NOAA estimates economic damages and deaths for each national disaster with over $1 billion in damages since 1980. NOAA, *Weather and Climate Billion-Dollar Disasters to affect the U.S. from 1980-2023 (CPI-Adjusted)*, https://www.ncei.noaa.gov/access/billions/events-US-1980-2023.csv (last visited Dec. 19, 2023). $118 billion in economics damages and 564 deaths are the annual 10-year averages over all disasters in the NOAA dataset from August 11, 2013, to August 11, 2023, which excludes Hurricane Idalia, for which NOAA is still estimating damages. Actual economic damages and deaths are in excess of these amounts as the dataset only includes natural disaster above $1 billion dollars in economics damages. Economic damages also do not include losses to "natural capital or environmental degradation; mental or physical healthcare related costs, the value of a statistical life (VSL); or supply chain, contingent business interruption costs." NOAA, *FAQ*, https://www.ncei.noaa.gov/access/billions/faq (last visited Dec. 19, 2023).

[84] Between 2017 and 2023, based on DIRS activation and deactivation notices, Commission staff calculated that on average 339 counties were affected by DIRS activations each year. Summing over the number of days that each county was affected and dividing it by the number of affected counties, the average duration of days one county was affected was about 14 days. *See* FCC, *Past Response Effort*, https://www.fcc.gov/past-response-efforts (last visited Dec. 19, 2023) (DIRS was activated for Hurricane Lee, Hurricane Idalia, Tropical Storm Hilary, Super Typhoon Mawar in 2023; Hurricane Nicole, Hurricane Ian, Hurricane Fiona, New Mexico Wildfires – May 2022, PR Power Outage 2022, Winter Storm – January 2022 in 2022; Kentucky Tornadoes, Hurricanes Ida and Nicholas, Tropical Storm Henri, Winter Storm Uri in 2021; Hurricane Zeta, Hurricane Delta, Hurricane Sally, Tropical Storm Laura – Puerto Rico, USVI Impact, Midwest Derecho, Tropical Storm Isaias, Puerto Rico Earthquakes in 2020; California Power Shutoffs, Hurricane Corian, and Tropical Storm Barry in 2019; Hurricane Michael, Hurricane Florence, and Hurricane Lane in 2018; Hurricane Nate, Hurricane Maria, Hurricane Irma, and Hurricane Harvey in 2017). There are an average of 54 cable communications, wireline, interconnected VoIP, and wireless service providers per county. There are approximately 50 non-duplicated fixed voice providers, including switched access wireline, cable

(continued….)

activations because, as part of normal business operations, service providers would have made these assessments without the reporting requirement when a disaster strikes. As a result, the assessment cost is not considered separately in the cost estimate. The cost estimate of $1.6 million is likely an overestimate because it includes service providers that are currently voluntarily participating and already incurring the reporting costs without the changes in rules for mandated subject providers.

35. While it would be impossible to quantify the precise financial value of these health and safety benefits, we believe that the value of these benefits will significantly outweigh the annual cost of $1.6 million. In light of the record reflecting large benefits to communications providers, agencies, and other industry stakeholders,[85] we find that the total incremental costs imposed on the nation's subject providers by these new requirements will be minimal in many instances and, even when significant, will be far outweighed by the nationwide benefits. While DIRS provides vital information pertaining to infrastructure status, it can only be beneficial if as many providers as possible participate in reporting. This level of participation has yet to be achieved in a voluntary reporting state, causing the need to transition to mandatory reporting.

E. Timelines for Compliance

36. We set a single date for compliance by all subject providers for implementing today's rules at the later of (i) 30 days after the Commission issues a Public Notice announcing that OMB has completed review of any new information collection requirements associated with today's *Second Report and Order* or (ii) November 30, 2024.[86] We anticipate that by November 2024 new filers will have sufficient time to prepare for filing and the Commission will be able to make any changes required in the

VoIP, and non-cable interconnected VoIP providers per county according to staff calculations based on the FCC Form 477 data. We assume that the average number of facility-based wireless voice providers in each county is four, including the three nationwide wireless providers plus an average of a local service provider (staff analysis of Form 477 data suggests that when there is a fourth non-nationwide wireless provider in any particular location, it is usually the only one. FCC, *Mobile Deployment Form 477 Data* (Jul. 29, 2022), https://www.fcc.gov/mobile-deployment-form-477-data). Assuming each provider has one administrative support person with an hourly wage of $21.90 plus a 45% cost for benefits ($9.86/hour) to spend 10 minutes to enter initial contact information, 10 minutes to enter daily updates on its system status, and 10 minutes to file the final report per affected county, we arrive at an approximately $1.6 million annual cost of mandating these providers to file in DIRS. This is calculated as follows: 1 office and administrative support worker × ($21.90 + $9.86) × 105.5% per hour × [(10/60) hours for the initial entry + (10/60) hours for daily updates x 14 days + (10/60) hours for the final report] × 339 counties × 54 service providers = $1,635,668, which we round to $1.6 million. *See* Bureau of Labor Statistics, *Occupational Employment and Wage Statistics, Occupational Employment and Wages*, May 2022, *43-0000 Office and Administrative Support Occupations*, https://www.bls.gov/oes/current/oes430000.htm (last visited Dec. 19, 2023) (*Office and Administrative Support Wage*) (stating that the mean hourly wage for an office and administrative support occupation worker is $21.90/hour in May 2022). According to the Bureau of Labor Statistics, as of June 2023, civilian wages and salaries averaged $29.86/hour and benefits averaged $13.39/hour. Total compensation therefore averaged $29.86 + $13.39, rounded to $43.26. *See* Press Release, Bureau of Labor Statistics, Employer Costs for Employee Compensation—June 2023 (Sept. 12, 2023), https://www.bls.gov/news.release/pdf/ecec.pdf. Using these figures, benefits constitute a markup of $13.39/$29.86 ~ 45% (*Compensation Benefit Mark-up*). We therefore markup wages by 45% to account for benefits. We calculate the benefit markup as follows: $21.90 × 45% = $9.86/hour. The 105.5% multiplier represents our adjustment for inflation. *See* Federal Reserve Bank of St. Louis, *Average Hourly Earnings of All Employees, Total Private (CES0500000003]*, https://fred.stlouisfed.org/series/CES0500000003 (last visited Dec. 19, 2023) (*Inflation Adjustment*) (showing that according to Bureau of Labor Statistics data the average hourly private wage increased by 5.5% between May 2022 and August 2023).

[85] *See* NCC Comments at 11; Public Knowledge Comments at 27; Free Press Reply at 9-10; Public Knowledge Reply at 2-3.

[86] The Commission has selected November 30, 2024, as the effective date for mandated DIRS reporting to go into effect as this gives subject providers a number of months to comply and ensures that mandated DIRS reporting is in place for the entirety of the 2025 hurricane season (based on the 2023 current hurricane season that runs from June 1, 2023, to November, 30, 2023).

DIRS system. This date will also provide reasonable assurance that any necessary transitions do not occur during the height of hurricane season, which typically ends by late November.[87]

37. We also find that subject providers will require only a modest amount of time to adjust their processes to comply with today's rules because, as noted above, many subject providers already voluntarily report in DIRS or have similar reporting or recording practices for disasters in place. We believe that the compliance timing provided grants sufficient time for subject providers, including small entities, to implement any changes to their reporting methods and work with Bureau staff to resolve any concerns about the DIRS reporting process.

38. Once the compliance date has been established, we will require that cable communications, wireless, wireline, and interconnected VoIP subject providers report their infrastructure status information in DIRS whenever the Commission activates DIRS in geographic areas where such entities provide service. To resolve previous ambiguity as to whether a subject provider was failing to report because 1) its network infrastructure remained fully operational; 2) the entity was unable to file; or 3) the entity cannot access DIRS due to disruption of its Internet access or other exigencies, the Commission requires entities to file reports on a daily basis until the Commission has deactivated DIRS.[88] In this respect, non-filing due to such circumstances will be examined on a case-by-case basis. In those instances where extraordinary circumstances prevent filing due to operational limitations, providers should: (1) use the Operations Center or otherwise notify the Commission if they are unable to file; and (2) make a filing as soon as they are capable, but no later than the final report due upon deactivation of DIRS. We direct the Bureau to issue a Public Notice that announces the compliance dates for all subject providers upon the completion of any necessary OMB review of the new information collection requirements associated with today's *Second Report and Order*.

IV. SECOND FURTHER NOTICE OF PROPOSED RULEMAKING

39. In establishing a mandatory DIRS reporting obligation for subject providers in the *Second Report and Order,* we remain cognizant that a complete picture of the available means of communication and dissemination of critical emergency information necessitates that we evaluate whether additional reporting segments are appropriate. While we previously sought comment on the inclusion of mandatory DIRS reporting obligations for television broadcasters,[89] radio broadcasters, and satellite providers,[90] the ensuing record convinces us that these potential reporting entities are sufficiently different in kind and resources from subject providers in the *Second Report and Order* that additional information is needed.[91] In addition, we note the growing presence of the First Responder Network (FirstNet) as a provider of critical public safety communications services in a variety of disaster contexts and seek comment on whether information on FirstNet's status should be permitted or required in DIRS, and whether NORS reporting should also be extended to encompass its services. While the Commission previously sought comment on the inclusion of BIAS providers in our reporting regimes, in light of the Commission's recently released *Open Internet Notice* in which the Commission proposes re-classifying BIAS providers

[87] *See also* NOAA, *NOAA Releases Updated 2023 Atlantic Hurricane Season Outlook,* (Aug. 11, 2023), https://www.nesdis.noaa.gov/news/noaa-releases-updated-2023-atlantic-hurricane-season-outlook.

[88] *See* Appx. A.

[89] "Broadcast" providers refer to all broadcast providers who are contained in Title 47 of the CFR, Part 73, which includes AM, FM, LPFM and TV and Part 74, which includes low power TV and translator stations as governed by the procedural rules in Title 47 CFR, Part 1. *See* FCC, *The Public and Broadcasting,* (Sept. 13, 2022), https://www.fcc.gov/media/radio/public-and-broadcasting.

[90] *See* 47 CFR § 4.3(d) ("Satellite communications providers use space stations as a means of providing the public with communications, such as telephony and paging. Also included are affiliated and non-affiliated entities that maintain or provide communications networks or services used by the provider in offering such communications. 'Satellite operators' refer to entities that operate space stations but do not necessarily provide communications services directly to end users.").

[91] While we seek additional comment some issues here, we do not foreclose action on these or any other issues outstanding in the underlying dockets for which we have already sought comment.

as a telecommunications service under Title II of the Communications Act of 1934, as amended (Communications Act), we find it prudent to revisit this issue, and refresh the record on this topic.[92]

40. Through this *Second Further Notice*, we propose additional enhancements to DIRS in order to further improve communications and network resilience during emergencies specific to these segments of the communications network ecosystem and in response to the considerations raised by parties in the previous comment period. In addition, we seek comment on targeted expansions of the NORS system to advance similar goals for network reliability in non-disaster contexts and to address technological platforms providing essential components of an evolving and highly integrated network ecosystem supporting public safety and other critical services. For example, since the Commission issued its *Resilient Networks* NPRM in 2021, outage reporting and notification requirements were also adopted for covered 988 service providers.[93] Should we extend mandatory DIRS reporting to this class of providers?

A. Outage Reporting by Broadcast Entities

41. As broadcast providers, as well as satellite and broadband providers, have varying needs and differing responsibilities from the subject providers addressed in the *Order*, we find it vital to explore the elements and current workings of both the NORS and DIRS systems in accordance with these specific providers. Particularly, we examine reporting requirements for NORS and DIRS, consider and compare the varying infrastructures of different providers, and determine whether there should be unique or modified reporting standards. We propose requiring TV and radio broadcasters report in both NORS and DIRS based on the type and modality of certain broadcast infrastructures, and seek comment on this proposal. We seek comment on the classes of broadcasters that should be included as mandatory filers, whether a simplified reporting process would be appropriate, and what reporting elements should be included for such a purpose in NORS and/or DIRS.

42. Unlike the providers that are the otherwise discussed herein, broadcasters do not currently report in NORS. They may, however, voluntarily file reports in DIRS if they so choose. Broadcasters, however, play a crucial role in keeping the public updated on the status of public infrastructure and emergency response efforts as within the EAS distribution chain and provide for critical information including, for example, evacuation orders, real-time guidance from public safety organizations, and the availability of other public services. Broadcasters play a particularly important role in ensuring that non-English-speaking and rural communities have access to up-to-date emergency information during times of exigency, both on a localized basis and during widespread disasters.

43. In the *2021 Resilient Networks Notice*, the Commission sought comment on whether it should require TV and radio broadcasters to report their infrastructure status information in DIRS when the Commission activates DIRS in geographic areas in which they provide service.[94] In staff's experience, broadcasters voluntarily provide information in DIRS for between 20% and 35% of the stations in most activations. This, however, leaves gaps in the ability to adequately gauge the available communications pathways to disseminate information during emergencies.[95] Beyond the disaster context, the Commission generally lacks timely insight into the resiliency of segments of the broadcast ecosystem. For example, the Commission's rules only require TV broadcast stations to notify the Commission within 10 days of discontinuing operations.[96] The Commission, therefore, as well as other emergency response

[92] FCC, *Safeguarding and Securing the Open Internet*, Notice of Proposed Rulemaking, WC Docket No. 23-320, released Sept. 28, 2023, https://docs.fcc.gov/public/attachments/DOC-397309A1.pdf (*Open Internet NPRM*).

[93] *See Ensuring the Reliability and Resiliency of the 988 Suicide & Crisis Lifeline; Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications; Implementation of the National Suicide Hotline Improvement Act of 2018,* PS Docket Nos. 23-5 and 15-80; WC Docket No. 18-336, Report and Order, FCC 23-57 (PSHSB 2023) (*988 2023 Order*).

[94] *2021 Resilient Networks Notice* at para. 29.

[95] These statistics are based on DIRS data collected for Hurricane Lee, Hurricane Idalia, and Hurricane Ida.

[96] 47 CFR §§ 73.1740(a)(4) and 74.763(b).

officials, may be unaware that a broadcast station that might otherwise be transmitting emergency, weather, or other timely government notices, is off air, and that its listeners are not receiving relevant information. As such, the Commission has limited ability to know or understand on a timely basis when broadcast stations' facilities are impacted by infrastructure, equipment, or power failures, cybersecurity incursions or other issues that impact their ability to disseminate a signal. We believe this to be a particular deficiency in light of the broadcast community's critical role in the EAS and the need for emergency officials and the Commission to be able to have information on, and insight into, the operational readiness of this system at a moment's notice. We seek comment on this analysis.

44. In response to the *2021 Resilient Networks Notice,* broadcasters generally oppose mandatory DIRS reporting and provide additional arguments to distinguish broadcast operations from other types of service providers. National Public Radio (NPR), for example, states that broadcasters do not use DIRS because it does not assist them since they do not experience many outages, and further states that requiring them to report in DIRS "may detract from essential news operations that support the public."[97] REC Networks, representing low power FM stations, expresses concerns about the burden of mandatory DIRS reporting for smaller broadcasters during emergencies, which could hinder their ability to provide immediate community information.[98] REC Networks recognizes DIRS' importance but stresses the priority of delivering emergency information, suggesting communication improvements instead.[99] The Colorado Broadcasters Association (CBA) and Puerto Rico Broadcasters Association (PRBA) echo concerns about mandatory DIRS participation straining limited broadcaster resources during disasters, diverting attention from maintaining operations.[100] CBA and PRBA emphasize maintaining DIRS' voluntary nature was appropriate to support emergency information efforts, and note logistical challenges for smaller stations.[101] NAB similarly advocates for voluntary DIRS participation, citing broadcasters' primary role in delivering news during emergencies.[102] They question DIRS' benefits and highlighted burdens, particularly for smaller stations.[103] NAB states that "nothing has changed since 2007 to warrant a reversal of the voluntary approach" as "reversing the long-standing voluntary nature of DIRS reporting for broadcasters will not address the FCC's concerns regarding 911 service because broadcasters do not provide telephone service. [R]equiring DIRS reporting would impose 'additional burdens on service providers, particularly as DIRS reports are filed in the midst of disasters and other emergencies.'"[104]

45. We believe mandatory DIRS reporting for broadcasters could ensure a standardized and coordinated approach among entities potentially impacted by disasters, allowing authorities to make informed decisions about emergency response activities and avenues to communicate with the public during emergency situations. We seek comment on this belief. We believe this could be of particular significance given broadcasters' role in the EAS, as well as the continued reliance on broadcast communications by underserved and non-English-speaking communities for the dissemination of emergency and weather-related information. Objections to mandatory DIRS reporting for the broadcast community may overlook the fact that disasters often come with uncertainty and unpredictability. In such situations, as the Commission has experienced, a voluntary system does not guarantee comprehensive and accurate information for response officials, potentially leading to gaps in emergency response. While we understand REC Networks' concerns about the potential burden of mandatory reporting for smaller

[97] National Public Radio, Dec. 6, 2021, Comments at 7 (NPR Comments).

[98] REC Networks, Dec. 10, 2021, Comments at 6-9.

[99] *Id*.

[100] Colorado Broadcasters Association and the Puerto Rico Broadcasters Association, Dec. 16, 2021, Comments at 3-4 (CBA and PRBA Comments).

[101] *Id.*

[102] NAB Comments at 5.

[103] *Id.*

[104] *Id.*

broadcasters, it is important to recognize that emergencies demand a coordinated effort to disseminate information quickly and effectively, or to provide follow up information to constituents over the course of a disasters as conditions change.[105] We seek comment on whether, by participating in mandatory DIRS reporting, even smaller broadcasters can contribute to a broader emergency response network, ultimately benefiting the communities they serve, and if the benefits of requiring such reporting outweigh any burden on such broadcasters. In light of concerns expressed for smaller providers, however, we seek comment on whether we should consider adopting different reporting requirements for small and large broadcasters and, if so, how should those lines be drawn? What specific challenges do small broadcasters experience, and how can the Commission require DIRS reporting while addressing these challenges? We also seek comment on whether low power broadcast stations should be excluded from this proposed mandate.[106] Would this exemption disproportionately impact underserved or non-English speaking communities? Does the potential overlap in broadcast stations' coverage areas mitigate concerns regarding any exclusion low power broadcast stations? Conversely, should booster or translator stations, which we do not propose to subject to our reporting requirement, be included?

46. DIRS serves as a foundational tool for ensuring that the right information reaches the right people at the right time. Additionally, we believe that CBA and PRBA's concerns about mandatory DIRS participation straining limited resources during disasters should be considered against the backdrop of Federal, state, local, Tribal, and territorial emergency response needs and invite comment on this balance. We believe a unified mandatory reporting system could minimize duplication of efforts and enable authorities to allocate resources efficiently as the Commission could instead collect data on behalf of all such entities and share it with these government entities in real-time (or as close to real-time as possible given the particular disaster or emergency situation) rather than multiple governments collecting the same information. Maintaining DIRS as a voluntary system for some segments of the communications ecosystem could lead to incomplete data during critical times, hindering the effectiveness of disaster response. Finally, we believe that NAB's advocacy for voluntary DIRS participation, based on the 2007 assessment of Hurricane Katrina, overlooks the advancements in technology across communications platforms, the growth in DIRS as an informational resource since that time, changes to the alerting environment to include the advent of WEA and IPAWS, as well as the changing landscape of emergency response as the frequency and severity of disasters increase.[107] As an alternative, NAB proposes a government-funded automated system that identifies which broadcast

[105] REC notes that small broadcasters may not comply even with a mandatory requirement, which could make them subject to enforcement but would not ensure the Commission has complete outage information. According to REC, the fines assigned by the Enforcement Bureau could potentially be too high for the small business to afford and could potentially put them out of business. *See also* REC Comments at 7 and 9 (discussing the burden DIRS might cause and the threat of enforcement as hardships to small radio broadcast stations). *See also* NAB Comments at 2-3 ("Many smaller stations simply lack the bandwidth to log in, assess their operational status, and complete DIRS reports in the midst of an emergency. Mandating DIRS filings would force stations to redirect their already-strained staff away from trying to maintain or restore service to fill out a government form. Thus, requiring DIRS reporting could undermine the FCC's overriding goal of improving public safety by disrupting stations' efforts to provide the critical emergency information on which American's rely.").

[106] In this respect, we note that low power television and low power FM radio do not serve as Primary Entry Point (PEP) stations or Local Primary (LP) stations within the EAS daisy chain. *See, e.g.*. 47 CFR §11.51(e) (exempting these stations from having equipment necessary to generate EAS codes and attention signals).

[107] While the voluntary state of DIRS may have been suitable back in 2007, the state of DIRS has not been reevaluated in almost *two decades* and the state of emergencies and disasters has significantly changed in the interim, as have advances in technology and resiliency solutions. *See* Adam B. Smith, Climate.Gov, *2022 U.S. billion-dollar weather and climate disasters in historical context,* (Jan. 10, 2023), https://www.climate.gov/news-features/blogs/beyond-data/2022-us-billion-dollar-weather-and-climate-disasters-historical ("2022 tied 2017 and 2011 for the third highest number of billion-dollar disasters. 2022 was also third highest in total costs (behind 2017 and 2005), with a price tag of at least $165.0 billion . . . the U.S. experienced 18 separate weather and climate disasters costing at least 1 billion dollars. That number puts 2022 into a three-way tie with 2017 and 2011 for the third-highest number of billion-dollar disasters in a calendar year, behind the 22 events in 2020 and the 20 events in 2021.").

stations are operating during a disaster using "specialized spectrum observation equipment to determine the radio spectrum and identify disaster-related communications outages . . . [and] studying the radio frequency spectrum 'Pre-disaster' and 'Post-disaster' and comparing those results to each other and to licensee databases to determine which critical infrastructure systems are down."[108] While this approach could be useful, this more complex solution is beyond the scope of this proceeding as we are focused, and believe that, the shift from voluntary to mandated reporting could provide the Commission, other agencies, and the providers themselves with a larger scope of infrastructure status during and after disasters without the need for funding and creating specific systems beyond DIRS. Instead, the rules we propose here would merely require those to report who have not in the past but have the capacity to do so and would mandate reporting for a system that already has existed for years and will improve from including more participants for a wider view. We seek comment on this analysis.

47. While we acknowledge the position that some broadcasters may have unique limitations on their number of employees and the technical and legal expertise of those employees in addressing regulatory matters compared to the subject providers addressed in the *Second Report and Order* who report in NORS and DIRS, we believe that there is a significant public interest in ensuring that broadcasters' facilities are operational and that the Commission has an accounting of when these facilities are offline, as broadcasters are often a principal way in which some communities, including certain rural, minority and non-English speaking, and elderly communities, receive critical emergency information.[109] Without information on the operational status of broadcasters' facilities, the Commission and its partners only have an incomplete picture of available resources which could stunt the Commission's public safety initiatives and its ability to direct resources to certain communities or share emergency information, especially as there is no NORS requirement for broadcasters. We seek comment on these views. We also seek comment on the specific limitations and challenges of small broadcasters and the way in which the Commission can assist or encourage cooperation with larger broadcasters who have more resources and funding and/or easier ways that small broadcasters can file. For small broadcasters that lack the ability to coordinate with larger broadcasters, what limitations or challenges do they face? Should the Commission consider relief to reduce the burden of reporting on these small broadcasters? How should we define small broadcasters?

48. Beyond the disaster context, the Commission generally lacks timely insight into the resiliency of segments of the broadcast ecosystem. For example, the Commission's rules only require TV broadcast stations to notify the Commission within 10 days of discontinuing operations.[110] The Commission, therefore, as well as other emergency response officials, may be unaware that a broadcast station that might otherwise be retransmitting emergency, weather, or other timely government notices, is off air, and that its listeners are not receiving relevant information. As such, the Commission has limited ability to know or understand on a timely basis when broadcast stations' facilities are impacted by infrastructure, equipment, or power failures, cybersecurity incursions or other issues that impact their ability to disseminate a signal. We believe this to be a particular deficiency in light of the broadcast community's critical role in the EAS and the need for emergency officials and the Commission to be able to have information on, and insight into, the operational readiness of this system at a moment's notice regardless of whether there is a declared disaster that would otherwise trigger DIRS.

49. As such, we propose requiring TV and radio broadcasters report in both NORS and DIRS subject to a simplified reporting process based on the type and modality of certain broadcast infrastructures. Both NORS and DIRS provide distinct information serve distinct purposes and requiring

[108] NAB Comments at 7-8.

[109] FCC, *Broadcasting and Localism: FCC Consumer Facts*, https://transition.fcc.gov/localism/Localism_Fact_Sheet.pdf, (last visited Dec. 19, 2023). *See also* FCC, *The Public and Broadcasting: How to Get the Most Service from Your Local Station,* (Sept. 13, 2022), https://www.fcc.gov/media/radio/public-and-broadcasting.

[110] *See* FCC, *Low Power Television (LPTV),* (June 15, 2021), https://www.fcc.gov/media/television/low-power-television-lptv.

reporting for both systems would help the Commission see outages across a geographic area via NORS, including so-called "sunny day" outages, while DIRS reports are submitted for the affected area during a specific activation. We seek comment on this proposal. We also seek comment on the scope of such simplified reporting, the ability of broadcasters to provide it during events where DIRS is activated, and the burdens of doing so. Alternatively, would a simplified reporting requirement be preferable if the Commission could craft the requirement so that it would not hinder restoration efforts? If so, what could such a requirement entail? For instance, should simplified reporting in DIRS merely require a broadcaster to identify whether it is "on-air" or "off-air," (i.e., unable to operate or broadcast regularly) or provide details on any necessary restoration? Should we also require broadcasters to notify us within 24 hours of going silent when DIRS has been activated and within 24 hours of resuming service after DIRS activation has been lifted?[111] What alternative NORS or DIRS reporting intervals would be appropriate? Should NORS or DIRS filings specify if alerting capabilities are impacted, including whether the broadcaster's access to FEMA's IPAWS is operational? Should we require notice when a broadcaster's ability to access IPAWS is disrupted regardless of the operational status of the transmitter? Should the DIRS filing requirement apply to translators and boosters that merely pass along programming from other stations without generating their own? We propose that reporting in NORS or DIRS would not supplant the ongoing requirement to notify the Commission about going silent in the Licensing and Management System (LMS); does this create duplication in effort? Further, a broadcast station can go silent for numerous reasons and reasons unrelated to disasters and emergencies at times. NORS puts these broadcast stations in a specific outage light and a direct path to a public safety specific view of what broadcast stations are experiencing outages and which are not. A silent station is not necessarily synonymous with a station experiencing an outage and should be reported distinctly from each other. We seek comment on ways that this information can be shared with the Commission.

50. What estimated costs would be part of the new reporting requirements? How would such reporting improve mortality or other measures of welfare? How does broadcasting differ in both cost and benefit from the subject providers mandated in the *Second Report and Order* based on technology and/or how the technology is used? As some broadcasters may receive an automated alert when their facilities are "down," to what extent could broadcasters use automated alerting to provide operational status directly to DIRS/NORS?

51. We estimate that the proposed filing rules would incur no more than $33.7 million total per year to broadcasters, including $33.5 million for NORS filing and $212,000 for DIRS reporting. Among the 21,392 broadcast stations (which does not include 12,055 FM translators & boosters, UHF translators, and VHF translators),[112] we estimate that approximately an average of 2,755 stations will have to file reports in NORS per year under the proposed rules.[113] Per NORS data, each provider files an average of 2,175 reports in a 12-month period.[114] Assuming that each report takes 10 minutes to file, we estimate that the total cost is approximately $33.5 million per year for broadcasters to comply with the

[111] *Id.*

[112] *Broadcast Station Totals as of September 30, 2023*, Public Notice, DA 23-921, https://docs.fcc.gov/public/attachments/DA-23-921A1.pdf (released Oct. 3, 2023) (*October 2023 Broadcast Station Totals PN*).

[113] Per staff calculation based on the NORS database, out of 994 telecommunications service providers in the NORS database, 128 providers (128/994 ~ 12.9%) submitted a report in the 12-month window between August 2022 and July 2023. Multiplying 21,392 broadcast stations by 12.9%, we estimate that approximate 2,755 broadcast stations will submit reports through NORS each year. We seek comment on this estimate.

[114] There were 128 providers filing a total of 325,553 NORS reports filed through NORS between August 2022 and July 2023, excluding 47,112 reports that were subsequently withdrawn, the average number of reports filed per filing provider is 2,175 ((325,553 – 47,112)/128 ~ 2,175). Staff calculation using data filed between August 2022 and July 2023 in the NORS database.

NORS reporting obligation.[115] For DIRS reporting, we assume broadcast stations are evenly distributed across counties, and there would be about 7 broadcast stations per county.[116] Given that an average of 339 counties were affected by DIRS activations for an average of 14 days per year,[117] we estimate that the total cost of complying with DIRS reporting rules is approximately $212,000 per year for broadcasters.[118] We treat the cost estimate as an upper bound because it does not account for the cost savings from the waiver of NORS reporting obligation during DIRS activations, the potentially simplified reporting processes for broadcasters, or voluntary DIRS filings already being submitted by stations. We seek comment on our cost estimates for broadcasters to comply with the NORS and DIRS filing rules.[119] We note, in particular, that the record indicates that the average number of outages, or 2,175, which we use for our NORS reporting cost estimates, may be too high, resulting in a corresponding overestimate of costs.[120] We seek comment on the average number of annual outages that broadcast stations experience.

52. With respect to NORS reporting,[121] should we require that NORS filings provide more detail than that proposed for DIRS, particularly with respect to final reports filed within 30 days? What

[115] We calculate the cost as follows: 2,755 broadcast stations × (10/60) hours per report × 2,175 reports × ($21.90 + $9.86) × 105.5% per hour = $33,462,822, which we round to $33.5 million. *See Office and Administrative Support Wage*, *Compensation Benefit Mark-up* and *Inflation Adjustment*. Alternatively, if we were instead, to exclude the 3,867 (= 1,889 + 1,978; see *October 2023 Broadcast Station Totals PN*) low power broadcast stations, this would decrease the 2,755 broadcast stations in our calculation above to 2,257 (= 12.9% × (21,392 – 3,867)) and decrease the cost to approximately $27.4 million.

[116] Dividing 21,392 broadcast stations by 3,144 counties, there are 6.8 stations per county, which we round up to 7. *See* U.S. Census Bureau, *County Population Totals and Components of Change: 2020-2022, Vintage 2022* (there are a total of 3,144 counties Tables Annual Estimates of the Resident Population for Counties: April 1, 2020, to July 1, 2022 (CO-EST2022-POP) through the link of "United States") (last visited Oct. 1, 2023).

[117] Staff calculation based on DIRS data between 2017 and 2023. *Supra* note 80.

[118] We calculate the cost of DIRS reporting for broadcasters as follows: 1 office and administrative support worker × ($21.90 + $9.86) × 105.5% per hour × [(10/60) hours for the initial entry + (10/60) hours for daily updates × 14 days + (10/60) hours for the final report] × 339 counties × 7 service providers = $212,031, which we round to $212,000. *See Office and Administrative Support Wage*, *Compensation Benefit Mark-up* and *Inflation Adjustment*. Alternatively, if we were instead, to exclude the 3,867 (= 1,889 + 1,978; *see October 2023 Broadcast Station Totals PN*) low power broadcast stations, this would decrease the stations per county to approximately 6 and decrease the cost to approximately $182,000. We seek comment on this calculation.

[119] The estimate may also be overstated because we rely on the average number of reports from all types of providers, including wireless providers which tend to file more reports than other types of providers.

[120] Our average outage estimate is based on reports filed through NORS between August 2022 and July 2023, but, in particular, given broadcasters' relatively small size and efforts that they take to avoid outages, this may be too high. *See, e.g.*, NPR Comments at 7 ("Most stations do not experience extended service outages, primarily because of the extraordinary measures they take to maintain broadcast operations in the wake of a disaster").

[121] NORS is a "cloud, workflow-based application, [which] gives users the capability to report telecommunications outages directly to the FCC. Through NORS, users can submit notifications and reports, update reports, and complete administrative actions. Users perform these core activities through the modules in the navigator." *See* FCC*, Network Outage Reporting System User Manual Version 3,* https://www.fcc.gov/file/21988/download (Oct. 28, 2021). When it comes to Silent AM and FM Broadcast stations, "[s]tations that go silent must file a notice of suspension of operations request in the LMS application filing system within 10 days of ceasing operation. The filing should include an attachment with a brief explanation of the reason for ceasing operation and include a projected date for the station's return to licensed operation (if possible). Short periods of discontinued operation (less than 10 days) need not be reported but should be entered in the station's log . . . [i]f the station's silent period is expected to last beyond 30 days, Special Temporary Authority is necessary . . . [and] [a]fter review, the [Media Bureau] may grant Special Temporary Authority for a period not exceeding 180 days, but extensions may be approved upon the submission of a new STA extension request." *See* FCC, *Special Temporary Authority Licensing,* (Mar. 30, 2017), https://www.fcc.gov/research-reports/guides/special-temporary-authority-licensing. The Broadcast-specific outage reports are filed in the Licensing and Management System (LMS) but do not constitute any sort of public safety or infrastructure status log, which NORS would provide.

would the appropriate thresholds be to trigger broadcast reporting obligations? Is a simple duration standard sufficient? Satellite providers are required to file a notification in NORS within 120 minutes of an outage's discovery – is the same standard appropriate here?[122] Why or why not? Should initial reports at 72 hours and final reports in 30 days also follow? How should an outage be defined for broadcast services? We seek comment on the costs and benefits of these options.

B. Outage Reporting by Satellite Providers

53. We seek comment on whether to require DBS providers, SDARS providers, Fixed Satellite Service (FSS) providers, and Mobile Satellite Service (MSS) providers report in DIRS, and if so, what fields should be included in mandatory DIRS reporting as to these providers. We further seek comment on whether these or other categories of satellite providers should be required to file in NORS or DIRS, and how the existing NORS reporting thresholds for satellite providers should be modified to reflect technological changes to these networks that have occurred since the initial adoption of the rules.

54. While it is a small measure of burden to require an additional type of reporting, we believe that the public safety benefits outweigh the cost burden to satellite providers by providing the Commission and therefore consumers with potentially life-saving information. We seek comment on this belief. All satellite providers are currently required to report in NORS and are able to voluntarily report in DIRS.[123] Yet the Commission has observed that satellite providers supply only a very small number of NORS reports, and we currently lack comprehensive insight as to why satellite providers file so few mandatory NORS reports. Satellite providers similarly provide very few voluntary DIRS reports. The Commission's original 2004 NORS outage reporting thresholds for satellite providers remain in place today, despite changes that have occurred to the status of satellite provider network operations since that time. Specifically, outage reporting in NORS for satellite providers is triggered for outages meeting the 30 minute duration threshold and manifesting as "a failure of any of the following key system elements: One or more satellite transponders, satellite beams, inter-satellite links, or entire satellites."[124] For MSS satellite operators, reporting is triggered where the outage "manifests itself as a failure of any gateway earth station, except in the case where other earth stations at the gateway location are used to continue gateway operations within 30 minutes of the onset of the failure."[125] Certain satellite infrastructure used for internal networks and one-way distribution of audio or video are also excluded from reporting obligations in NORS.[126] As discussed with subject providers in the *Second Report and Order*, a voluntary state for reporting makes it difficult for the Commission to know whether entities are electing not to report because reporting is voluntary or whether they do not physically have the capacity to report because of infrastructure damages or the disaster event itself.

55. In response to the proposal regarding the requirement for satellite providers to report in DIRS, we received several industry comments. DirecTV does not opine on whether service providers should report on infrastructure status through DIRS post-emergencies, but suggests that if such a requirement is imposed on DBS systems like theirs, reporting should be confined to key infrastructure under the provider's control.[127] They advocate for reporting limited to transmitting earth stations supporting the DBS system.[128] Iridium, an MSS provider, asserts that satellite services like theirs, which do not rely on ground infrastructure for user links, remain largely unaffected by terrestrial disasters and

---

[122] The Commission is aware that some satellite providers, such as DIRECTV or DISH, may have more resources nationwide to do these filings while generally, most broadcasters are often more local in nature and have far fewer employees, especially smaller-sized broadcasters.

[123] 47 CFR § 4.9(c).

[124] *Id.* at § 4.9(c)(1).

[125] *Id.*

[126] 47 CFR § 4.9(c)(5).

[127] DirecTV, Dec. 16, 2021, Comments at 1 (DirecTV Comments).

[128] *Id*.

should not be required to submit DIRS reports at all.[129] In alignment with DirecTV's viewpoint, SDARS provider SiriusXM agrees that any DIRS reporting requirement for satellite networks should be limited to "key infrastructure under the provider's control," citing the difficulty of determining subscriber receiver functionality during disasters and the lack of location information for SDARS receivers in vehicles or mobile devices.[130]

56. Based on the responses to the proposal regarding the requirement for satellite providers to report in DIRS, we received several industry comments that raise issues we believe merit additional inquiry. DirecTV and Iridium express concerns that any mandatory DIRS reporting for satellite providers should only include information on key infrastructure equipment within a satellite provider's control (e.g., excluding equipment installed at customers' homes) that, if compromised, could affect the ability of the satellite provider to offer service.[131] However, Iridium itself says that "[s]atellite services provide essential connectivity in disaster response and recovery, including voice and data services, satellite imagery, and satellite for cellular backhaul. Iridium [says they] play[] an important role in enabling critical communications before, during, and after disasters. [The] demand for and use of Iridium's MSS devices spikes and government agencies and consumers use Iridium devices more extensively."[132] In cases where a terrestrial component is involved, reporting in DIRS could help authorities gauge the extent of disruption and fill-in informational gaps daily filing updates for an entire affected area, which NORS does not do. Finally, we acknowledge that SiriusXM, Iridium, and DirecTV share the view that they do not have all the location information that current DIRS forms request as some of their equipment is located in customers' vehicles or in other mobile facilities.[133] We seek comment on these concerns. Are there satellite providers that do not have any terrestrial components that could be affected by natural disasters, or should we limit reporting to include only specific types of terrestrial network components? We note, however, that a better understanding of network operations of various satellite technologies would give the Commission insight into the reliability of connectivity for customers located in remote or rural areas, who may disproportionately rely on satellite-based communications for broadband connectivity or where rural communications companies may more heavily rely on satellite capabilities for backhaul. We believe that knowledge of impacts to satellite communications capabilities, particularly in disaster contexts, could also provide situational awareness for emergency response personnel in some of the most potentially dire circumstances where impacts to solely terrestrial based infrastructure may be more severe. We seek comment on these views.

57. We also seek comment on whether and how the NORS reporting thresholds for satellite providers should be modified to reflect technological changes to these networks since the Commission's original 2004 reporting rules were effectuated. Do the definitions currently used in Part 4 remain the most salient way to capture impactful outages?[134] If not, what alternative thresholds should be utilized? Is 120 minutes the appropriate time threshold for outage notifications for all satellite providers? Are there additional data elements specific to some or all satellite reporting entities that should be added to or eliminated from the existing notification, initial report or final report templates? Should the scope of reporting satellite providers be amended, or exclusions re-examined? Are there estimates of how the reporting would improve public safety or other measures of welfare? What are the estimated costs of the

[129] Iridium, Dec. 16, 2021, Comments at 8-9 (Iridium Comments).

[130] SiriusXM, Jan. 14, 2022, Reply at 2-3 (SiriusXM Reply).

[131] DirecTV Comments at 1-2; Iridium Comments at 8-9.

[132] Iridium Comments at 3.

[133] SiriusXM Reply at 2-3.

[134] *See* 47 CFR § 4.3(d); *see also id*. §§ 4.5, 4.9(c)(1-5); *and see id*. § 4.11 (Part 4 rules describing satellite communications providers as communications providers covered by the requirements of this part, definitions of outage, outage reporting requirements and threshold criteria for satellite, and notification and initial and final communications outage reports that must be filed by communications providers).

proposed reporting requirements? How do satellites differ in cost and benefits from the subject providers mandated in the *Second Report and Order* based on their difference in technology and use?

58. Although these satellite providers were not addressed in the *Second Report and Order* we seek comment on whether the Commission should require satellite BIAS providers and satellite broadcast providers to report in DIRS as the subject providers in the *Second Report and Orde*r have been mandated.[135] If adopted, we seek comment on potential modification of the types of information requested in DIRS forms pertaining to satellite providers and seek comment on how to best capture information relevant to satellite network status and availability in potential disaster scenarios. We seek comment on the types of satellite equipment that are relevant to ensuring operation during exigencies and on whether DIRS forms need to be revised to include or exclude certain pieces of infrastructure equipment. Should our rules, as some commenters suggest, differentiate more completely between types of infrastructure within the satellite providers network and how it may be impacted? What are the costs and benefits of the proposed reporting?

59. According to an analysis of operational licensee and ownership data, there are a total of 18 satellite service providers, including six FSS providers, six MSS providers, two DBS providers and one SDARS provider.[136] If all 18 providers are subject to the DIRS reporting mandate, we estimate that the total cost would not exceed $545,000 per year.[137] We seek comment on our cost estimate.

C. Outage Reporting by FirstNet

60. We seek comment on whether FirstNet should be subject to reporting requirements in NORS, DIRS, or in both systems. FirstNet is not currently subject to NORS or DIRS outage reporting obligations and has never participated in NORS or DIRS on a voluntary basis. However, the Commission believes that the information collected through these reports will provide us with a more complete picture of the overall health and resiliency of the nation's communications infrastructure, particularly during disasters during which FirstNet is specifically designed to provide more robust public safety communications. Thus, the Commission is now considering whether outage reporting of FirstNet operations is necessary and appropriate given its importance to the public safety community and the unique customer base it serves.

61. FirstNet[138] serves as a high-speed, nationwide wireless broadband network for first responders. FirstNet was established as an independent authority within the Department of Commerce

---

[135] We note that the *Open Internet Notice* includes a proposal to include satellite broadband (fixed and mobile) within the definition of BIAS. We included satellite broadband in this section as well ensure adequate comment. *See Open Internet NPRM* at para. 61. *See also,* Section IV.D, *infra.*

[136] The 18 satellite service providers include nine FSS providers: EchoStar/Hughes, Eutelsat, Intelsat, Kepler, Kuiper (not launched at time of writing), SES/O3b, SpaceX, Telesat, and Viasat; six MSS providers: Globalstar, Iridium, Ligado, ORBCOMM, Spire Global, and Swarm Technologies; two DBS providers: DIRECTV and DISH Network; and one SDAR provider: SiriusXM. *See Assessment and Collection of Regulatory Fees for Fiscal 2023, Review of the Commission's Assessment and Collection of Regulatory Fees*, MD Docket Nos. 23-159, 22-301, Report and Order, Appendix F (Aug. 10, 2023); *Communications Marketplace Report*, FCC 22-103, 2022 Communications Marketplace Report, at 128-29, 132, 134, 136 (Dec. 30, 2022).

[137] We calculate the cost of DIRS reporting for DBS and SDARS as follows: 1 office and administrative support worker × ($21.90 + $9.86) × 105.5% per hour × [(10/60) hours for the initial entry + (10/60) hours for daily updates x 14 days + (10/60) hours for the final report] × 339 counties × 18 service providers = $545,223, which we round to $545,000. We seek comment on this calculation. *See Office and Administrative Support Wage*, *Compensation Benefit Mark-up* and *Inflation Adjustment*.

[138] The First Responder Network Authority (FirstNet) is an independent authority within the National Telecommunications and Information Administration (NTIA). Its mission is to deploy, operate, maintain, and improve the first high-speed, nationwide wireless broadband network for first responders. *See generally* FirstNet, *More agencies trust FirstNet to reliably communicate than any other network,* https://www.firstnet.com/ (last visited Dec. 19, 2023).

with the responsibility of standing up and managing the network.[139] After a competitive Request for Proposal process, AT&T won a 25-year contract to deploy, operate, and maintain the network and use the company's telecommunications network assets (in addition to the 20 MHz of FirstNet spectrum) to connect FirstNet users.[140] While FirstNet is required to provide an annual report to Congress and holds monthly public meetings informing its Board of FirstNet's operations, these reports do not supply near real-time information on FirstNet outages and infrastructure status.[141] Moreover, while FirstNet's operations partner, AT&T, is subject to the Commission's reporting rules (and so some information on FirstNet may be inferred as to network health and operation through AT&T's filings) information on FirstNet specific infrastructure and services is not available to the Commission, or to the public safety personnel the network serves. In 2013, the Commission last sought comment on whether to institute reporting obligations on FirstNet.[142] FirstNet opposed this proposal on grounds that FirstNet already had Congressionally created obligations to consult with stakeholders and report to Congress on its network.[143] The Commission did not draw conclusions on FirstNet's arguments or make final determinations on the merits of a reporting requirement, deferring any action for future consideration.[144] Since that time, however, parties have expressed concern regarding the lack of information with FirstNet's operations and the performance of its network during times of crisis. For example, parties to the proceeding addressing FirstNet's recent license renewal process and participating in the Commission's hearing following Hurricane Ida each expressed frustration in this regard.[145]

62. To ensure that we have a fuller picture of the health of all public safety networks and that our first responders have the information they need, we seek comment on whether FirstNet, or AT&T, should file outage reports with the Commission in NORS with respect to FirstNet infrastructure and services.[146] As the related *Second Report and Order* adopts a mandatory obligation for subject providers to file in DIRS, we seek comment in this *Further Notice* on whether this obligation should be extended with regard to FirstNet. Given the importance of the clients served by FirstNet,[147] we seek comment on this position. Alternatively, we seek comment on whether one or both of these obligations should be

---

[139] *See* First Responder Network Authority, *History: FirstNet: The History of our Nation's Public Safety Network,* https://firstnet.gov/about/history (last visited Jan. 22, 2024).

[140] *See* First Responder Network Authority, *FirstNet Partners with AT&T to Build Wireless Broadband Network for America's First Responders,* (Mar. 30, 2017), https://2014-2018.firstnet.gov/news/firstnet-partners-att-build-wireless-broadband-network-americas-first-responders.

[141] Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156 (2012), at § 6210 (requiring FirstNet annual reports to Congress).

[142] *Implementing Public Safety Broadband Provisions of the Middle Class Tax Relief and Job Creation Act of 2012 et al.*, PS Docket No. 12-94, et al., Notice of Proposed Rulemaking, 28 FCC Rcd 2715, 2728-29, paras. 42-46 (2013).

[143] Comments of the National Telecommunications and Information Administration (NTIA) on Behalf of the First Responder Network Authority (FirstNet), PS Docket No. 12-94, et al., at 2 (rec. Aug. 2, 2013).

[144] *Implementing Public Safety Broadband Provisions of the Middle Class Tax Relief and Job Creation Act of 2012 et al.*, PS Docket No. 12-94, et al., Second Report and Order, 28 FCC Rcd 15174, 15174, n. 1 (2013).

[145] *See, e.g.*, T-Mobile, Opposition to FirstNet Renewal Application, ULS File No. 0010176495 (Oct. 3, 2022) (citing United States Government Accountability Office, Public Safety Broadband Network: Network is Progressing but FirstNet Could Strengthen Its Oversight at (Jan. 2020), https://www.gao.gov/assets/gao-20-346.pdf, suggesting that state, local and tribal stakeholders lacked insight into operational status and cell site location for FirstNet, and urging the submission of materials needed to assess FirstNet's performance); Statement of Jack Varnado, Captain, Livingston Parish Sheriff's Office, FCC Field Hearing on Network Resiliency, PS Docket Nos. 21- 346, 15-80, ET Docket No. 04-35 (Oct 26, 2021), at 2-3.

[146] *See, e.g.*, 47 CFR § 4.9(e).

[147] *See* AT&T Comments at 3 ("Through FirstNet, public safety agencies have access to a nationwide, dedicated fleet of 100+ land-based and airborne portable cell sites, including 3 Flying COWs – which are cell sites on drones – and the FirstNet One aerostat 'blimp.'").

voluntary. Consistent with the purpose of NORS and DIRS reporting in other contexts, timely situational awareness on the part of the Commission and its Federal, state, Tribal, and territorial information sharing partners could allow more nimble decision making when public safety may need alternative communications paths or operational support.

63. In considering this issue, we remain cognizant of FirstNet's unique status as a Congressionally-created entity with statutory reporting requirements. Due to its preexisting reporting requirements, we seek comment on providing the Commission with this type of reporting in addition to the FirstNet reporting already required by statute and on the Commission's authority to request that of FirstNet as a Commission licensee. Do the Commission's general Title III authorities, coupled with section 6003(a) of the Public Safety Spectrum Act, support our ability to seek information beyond FirstNet's statutorily mandated reports? What other provisions might support such reporting? What quantitative estimates of potential costs and benefits of this integration are available? What would be additional improvements to public safety and other measures of welfare due to specifically reporting about the FirstNet network? How would the magnitude of these benefits compare to the benefits estimated in the *Second Report and Order*?

D. Reporting By Broadband Internet Access Service Providers

64. In the *2021 Resilient Networks Notice*, the Commission sought comment on the inclusion of broadband providers within the mandatory reporting rules for NORS.[148] Currently, while BIAS providers may voluntarily report their status in DIRS when activated, they are not required to report their status in NORS. The Commission sought input on the public interest benefits and the costs of reporting of broadband service outages, as well as whether the inclusion of broadband reporting in NORS reporting would improve emergency managers' situational awareness during disasters, help identify broadband outage trends, and/or support first response and network reliability efforts. Since issuing that *Notice*, the FCC released the *Open Internet Notice* in 2023, which seeks comment on reestablishing the framework the Commission adopted in 2015 to classify BIAS as a telecommunications service and to classify mobile BIAS as a commercial mobile service.[149] The *Open Internet Notice* posits that restoration of Title II authority will allow the Commission to prevent BIAS providers from engaging in harmful consumer practices, strengthen the Commission's ability to secure communications networks and critical infrastructure against national security threats, and better enable the Commission to protect public safety during disasters and other emergencies including by preventing blocking and discrimination of Internet traffic.[150]

65. In response to the *2021 Resilient Networks Notice,* proponents of a NORS/DIRS filing requirement for BIAS providers agree with the Commission's premise that "improving the information in these important systems will be helpful for situational awareness and ongoing efforts to improve network resiliency," although APCO also notes that even more specific information is typically required by emergency personnel.[151] The National Association of State Utility Consumer Advocates (NASUCA)

---

[148] *See 2021 Resilient Networks Notice* at para. 30. *See also* note 54.

[149] *Open Internet NPRM* at para. 16.

[150] *Id.*; *see also Open Internet NPRM* at para. 21. Prior to 2021, the Commission considered the issue of broadband outage reporting on several occasions. In 2016, for example, the Commission proposed various outage reporting for broadband services, specifically as to "hard down" and "significant degradation" outages experienced by BIAS services. The Commission posited its authority in this context included Section 615a-1, the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), Title II, Title III, Section 706, and Section 254. *See, e.g.*, *Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications, New Part 4 of the Commission's Rules Concerning Disruption to Communications, The Proposed Extension of Part 4 of the Commission's Rules Regarding Outage Reporting to Interconnected Voice Over Internet Protocol Service Providers and Broadband Internet Service Providers*, PS Docket No. 15-80, ET Docket No. 04-35, PS Docket No. 11-82, Report and Order, Further Notice of Proposed Rulemaking and Order on Reconsideration, 31 FCC Rcd 5817, at paras. 102-59 (2016).

[151] APCO Comments at 4.

similarly supports outage filings by BIAS providers, noting that BIAS is used to provide emergency information to the public about emergency situations.[152] For DIRS in particular, NCC notes that "[r]equiring providers to include broadband data can fill information gaps for areas that lack DIRS reporting" which "may be due to nonparticipation by providers or a lack of broadband connection."[153] Public Knowledge states, "[o]ne of the most significant problems when discussing network reliability and resiliency is that there is no meaningful way to measure it other than 'is the network operating today?' This is why Public Knowledge called on the Commission for years to evaluate end-user technologies based on objective metrics, which are consistent with the FCC's latest proposals for reform, including: network capacity under stress; call quality; device interoperability; service and support for users with disabilities; system availability; service to 911 entities and PSAPs; cybersecurity; call persistence; call functionality; and wireline coverage."[154]

66. Commenters against broadband reporting argue that it is duplicative or otherwise unnecessary. T-Mobile, for example, asserts that wireless providers should not be required to separately report BIAS outages as such reporting requirement "would be duplicative of other outage reporting requirements that CMRS providers are already subject to."[155] T-Mobile further states that "[e]very commenter in the prior proceeding that addressed whether distinct outage reporting rules should apply to BIAS offered by CMRS providers opposed such a requirement" and shares that "CMRS providers long have been subject to the Commission's network outage reporting rules and that subjecting the CMRS industry to BIAS outage reporting will increase costs, cause confusion, and produce little if any benefits."[156] Verizon argues that some of the Commission's reporting proposals "would constitute reporting for its own sake without consumer benefit" and that "[w]ith respect to broadband services . . . existing outage reporting requirements already capture most significant broadband outages since broadband and voice services increasingly use the same IP-enabled networks, so additional rules would be duplicative."[157] SIA suggests that the Commission should "issue a supplemental public notice in this proceeding that provides a clear definition of a 'broadband outage' and include potential thresholds that would require providers to file a report in NORS."[158] NCTA "urges the Commission not to significantly alter [DIRS] and [NORS] . . . [as] DIRS can be valuable in providing emergency managers with facts on the ground during major disasters, and NORS can play a valuable role in identifying trends in network reliability, provided that appropriate protections are in place for sensitive network information with serious competitive and national security implications. As the Commission considers potential expansion of these programs, it should be sensitive to the burdens that reporting places on providers during disaster situations and take care not to duplicate other information sharing that is already occurring at the state and local level or to impose burdensome reporting requirements that divert resources away from maintaining and restoring service to customers."[159]

67. Consistent with an objective of the *Second Report and Order* to provide a more complete and comprehensive snapshot of the status of critical communications networks,[160] we believe that reported data to NORS and DIRS should also encompass disruptions to BIAS, including mobile and fixed wireless

[152] National Association of State Utility Consumer Advocates, Jan. 14, 2022, Reply at 11 (NASUCA Reply).

[153] NCC Comments at 11.

[154] Public Knowledge Comments at 29 (internal citations omitted). *See also* Comments of Public Knowledge, et al., PS Docket No. 14-174, at 9 (filed Feb. 5, 2015).

[155] T-Mobile, Dec. 16, 2021, Comments at 17.

[156] *Id*.

[157] Verizon, Dec. 16, 2021, Comments at 19-20.

[158] Satellite Industry Association, Dec. 16, 2021, Comments at 2 (SIA Comments).

[159] NCTA Comments at 4; *see also* AT&T Comments at 19 (with similar "duplicative" concerns).

[160] *See Second Report and Order* at 10-11, para. 16.

BIAS service.[161] In light of the Commission's pending consideration of the regulatory classification of BIAS as a telecommunications service under the Communications Act and the increasing importance of BIAS to a host of uses by consumers, public safety officials, and others, particularly during times of disaster,[162] we renew our inquiry into whether BIAS providers should be required to submit outage reports in NORS. We also seek comment on whether participation in DIRS when activated should also be mandatory.

68. The *Open Internet Notice* seeks comment on whether Title II classification would enhance the Commission's authority to impose reporting requirements on BIAS providers for BIAS outages should the Commission classify BIAS as a Title II service.[163] We seek comment on the impact of Title II classification on our authority to require BIAS providers to file NORS and/or DIRS reports. We also renew our assertion that the statutory provisions cited in the 2016 *Notice* considering outage reporting for BIAS provide the Commission with authority to require such reporting and seek comment on additional authority that may be relevant.[164] Among other considerations, we seek comment on how outage reporting might support the Commission's obligations under, and implementation of, the digital discrimination provisions of the 2021 Infrastructure Investment and Jobs Act.[165]

69. We estimate that the proposed filing rules would incur no more than $3.9 million total cost per year to BIAS providers, including $3.5 million for NORS filing and $394,000 for DIRS reporting. Among the 2,234 BIAS providers,[166] we estimate that approximately an average of 288 BIAS providers will have to file reports in NORS per year under the proposed rules.[167] Per NORS data, each

[161] *See 2021 Resilient Networks Notice* at para. 30.

[162] *See generally Open Internet Notice* at para. 39.

[163] *See generally Open Internet Notice.*

[164] *See Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications, Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration*, PS Docket Nos. 15-80, 11-82, ET Docket No. 04-35, *Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration*, 31 FCC Rcd 5817, paras. 193-212 (2016) (2016 Notice) (citing, e.g., statutory authority under the NET 911 Improvement Act, 47 U.S.C. §615a-1, Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (2010) (codified in various sections of Title 47 of the United States Code), various provisions of Title III of the Communications Act, as amended, Section 706 of the Telecommunications Act, 47 U.S.C. § 1302, and 47 U.S.C. § 254 where applicable). While no commenter addressed the Commission's authority to require broadband reporting in response to the *2021 Resilient Networks Notice*, commenters previously objected in response to the *2016 Notice* as to the Commission's ability to implement broadband outage reporting requirements under several of the cited provisions.

[165] *See Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination,* GN Docket No. 22-69, Report and Order and Further Notice of Proposed Rulemaking, FCC 23-100, (Nov. 20, 2023); *see also*, Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429, § 60506 (2021) (codified at 47 U.S.C. §1754) (Infrastructure Act).

[166] Staff calculation based on BDC filings as of June 30, 2022, which were certified by August 4, 2023. As of June 30, 2022, there were a total of 2,234 unique fixed BIAS providers that offered BIAS via various technologies, including coaxial cable, copper wire, fixed wireless, optical, and satellite. We exclude mobile broadband service providers in our cost estimate because they also provide voice services, requiring them to report outages in NORS and, once the *Second Report and Order* is in effect, DIRS. We believe that the marginal costs of reporting broadband outages while the service providers report outages of their voice service would be minimal. We also anticipate that mobile voice service would be operational during a mobile broadband outage only in unusual circumstances. As a result, we tentatively conclude that the additional cost of reporting outages of mobile broadband services is negligible. We seek comment on our assessment.

[167] Per staff calculation based on the NORS database, out of 994 telecommunications service providers in the NORS database, 128 providers (128/994 ~ 12.9%) submitted a report in the 12-month window between August 2022 and July 2023. Multiplying 2,234 broadband service providers by 12.9%, we estimate that approximate 288 broadband service providers will submit reports through NORS each year (2,234 × 12.9% = 288). We seek comment on this estimate.

provider filed an average of 2,175 reports in a 12-month period.[168] Assuming that each report takes 10 minutes to file, we estimate that the total cost is approximately $3.5 million per year for BIAS providers to comply with the NORS reporting obligation.[169] For DIRS reporting, we estimate that on average there are 13 BIAS providers in each county.[170] Given that an average of 339 counties were affected by DIRS activations for an average of 14 days per year,[171] we estimate that the total cost of complying with DIRS reporting rules is approximately $394,000 per year for BIAS providers.[172] We treat the cost estimate as an upper bound because it does not subtract the cost savings from the waiver of NORS reporting obligation during DIRS activations and the potentially simplified reporting processes for BIAS providers. We seek comment on our cost estimates for broadband service providers to comply with the NORS and DIRS filing rules.[173]

70. With respect to reporting obligations of BIAS providers, we seek comment on how to define an "outage" within the context of BIAS provision. Is the current threshold of 900,000 user minutes appropriate in this context?[174] What other ways should the Commission measure "impact" for BIAS outage reporting purposes? Is the current 30-minute threshold otherwise utilized in Part 4 appropriate, coupled with a scope metric?[175] Should the duration metric be higher or lower? Should reporting be required based on significant degradation in throughput and, if so, how should that be measured? Should the definition consider redundant or alternate pathways for data already being reported to the Commission

[168] There were 128 providers filing a total of 325,553 NORS reports filed through NORS between August 2022 and July 2023, excluding 47,112 reports that were subsequently withdrawn, the average number of reports filed per filing provider is 2,175 ((325,553 – 47,112)/128 ~ 2,175). Staff calculation using data filed between August 2022 and July 2023 in the NORS database.

[169] We calculate the cost as follows: 288 broadband service providers × (10/60) hours per report × 2,175 reports × ($21.90 + $9.86) × 105.5% per hour = $3,498,109, which we round to $3.5 million. *See Office and Administrative Support Wage, Compensation Benefit Mark-up and Inflation Adjustment*. We seek comment on this calculation.

[170] Staff calculation of fixed (including coaxial cable, copper wire, fixed wireless, optical, and satellite) broadband service providers as of June 30, 2022 based on Form 477 filings certified as of July 24, 2023 and BDC filings certified as of August 4, 2023. Taking a simple average of unique fixed broadband service providers across counties, we estimate that an average county has 13.1 unique fixed broadband service providers, which we round to 13. This estimate may overstate the cost because many fixed BIAS providers are required to report outages of their voice services through NORS and DIRS, and we believe that the marginal cost of simultaneously reporting the broadband outage is minimal. Mobile BIAS providers are not included in our cost estimate because they also provide voice services, requiring them to report outages in NORS and, once the *Second Report and Order* is in effect, DIRS. *Supra* note 164..

[171] Staff calculation based on DIRS data between 2017 and 2023. *Supra* note 80.

[172] We calculate the cost of DIRS reporting for broadcasters as follows: 1 office and administrative support worker × ($21.90 + $9.86) × 105.5% per hour × [(10/60) hours for the initial entry + (10/60) hours for daily updates x 14 days + (10/60) hours for the final report] × 339 counties × 13 service providers = $393,772, which we round to $394,000. We seek comment on this calculation.

[173] The estimate may also be overstated because we rely on the average number of reports from all types of providers, including wireless providers which tend to file more reports than other types of providers.

[174] The 900,000-user minute threshold is taken from 47 CFR § 4.9 which speaks to outage reporting requirements and threshold criteria. More specifically, the 900,000 refers to affected user minutes. User minutes is defined as, "assigned telephone number minutes . . . for telephony, including non-mobile interconnected VoIP telephony, and for those paging networks in which each individual user is assigned a telephone number" and "The mathematical result of multiplying the duration of an outage, expressed in minutes, by the number of end users potentially affected by the outage, **for all other forms of communications** (emphasis added)." *See* 47 CFR § 4.7(e)(1)-(2).

[175] The 30-minute threshold is taken from 47 CFR § 4.9, which speaks to outage reporting requirements and threshold criteria. More specifically, the 30 minutes refers to the minimum amount of time an outage must last to become reportable to the Commission. Any outage that lasts at least 30 minutes duration would have to be reported to the commission if the outage also affects specific instances like user minutes affected, special offices and facilities affected, or affects a 911 special facility. *See* 47 CFR § 4.9.

pursuant to some other requirement? We seek comment on how an appropriate threshold would support the ability of the Commission to discern when outages or significant network degradation stemming from issues such as cybersecurity breaches, wire cuts, infrastructure damages from natural disasters, and/or operator errors or misconfigurations in support of its public safety obligations, and what those thresholds should be.

71. In considering the record to date, parties objecting to the inclusion of BIAS in reporting obligations argued that such reporting would be redundant, as many providers in this space already report outages under different provisions of Part 4. We do not believe, however, that requiring the Commission or other emergency response personnel to infer when a BIAS outage occurs from an outage report made by a communications provider as to a related service is a tenable way to mitigate the impact of a network outages, or promptly and clearly provide emergency managers with an understanding of how they can communicate with the public and how the public can communicate with them. We seek comment on this view, and more generally on the costs and benefits of our proposal. We also seek comment on any other service categories that might be included in order to gain a relevant picture of network outage impact on the call/data transmission chain; for example, should SS7 providers or other transport providers be required to report in DIRS? Are there other classes of broadband providers that should be reporting in NORS and/or DIRS? We also seek comments on ways to mitigate any perceived burden for filers that would otherwise be obligated, in whole or in part, to report outages on services already subject to the Commission's Part 4 rules.

E. Reporting Mobile Recovery Assets in DIRS

72. We seek comment on whether current or future providers who are subject to DIRS reporting requirements should be required to supply the Commission with information concerning the location of their mobile recovery assets, and specifically whether providers should be required to supply the Commission with information on the location of their Cells on Wheels (COWs) and Cells on Light Truck (COLTs) or comparable assets, either as a component of their daily DIRS reporting or through alternate means. Additionally, we seek comment on whether subject providers should be required to quantify the traffic load provided by those assets. For example, could providers report on select metrics such as the number of texts, voice minutes, broadband data provided by a recovery asset over the last 24 hours as well as the total data provided since that recovery asset was incorporated into that location, or other metrics? We note, for example, that these types of metrics may help with understanding the use of such assets on a long-term basis, gauging the speed of transition of traffic back to permanent network assets, and the utility of placement emergency uses such as 911 calling and distribution of emergency information. We seek comment on this position.

73. The Commission does not currently systematically collect information regarding the location of mobile recovery assets, although staff experience in providing disaster response support indicates to the Commission that public safety organizations and first responders critically need this information in the aftermath of disaster events to improve situational awareness and assist in coordinating on the ground recovery efforts. Currently, the Bureau's OEM Division will contact providers for this information on an event-by-event basis, with varying degrees of responsiveness to OEM's (non-compulsory) request.

74. We tentatively conclude that if information regarding the location of mobile recovery assets were required to be supplied in DIRS, the Commission would obtain this information more efficiently and uniformly across providers than is currently the case, likely leading to better public safety outcomes. We seek comment on this conclusion. Should we require such reporting? If so, which subject providers should be required to provide such information?

75. If reporting is adopted, we seek comment on what types of mobile assets should be reported (including COWs and COLTs) based on provider type, the level of granularity for which location information should be reported (e.g., on a zip code or street address basis) and on whether this information should be reported directly in existing DIRS forms or through other means. Should information on the time of deployment, coverage, or available power for such assets be reported as well? We further seek comment on whether the reporting should indicate whether the mobile recovery assets

support WEAs, as we note in particular the ability to disseminate WEAs in disaster environments may be of critical importance for evacuation, safety of life, or other disaster mitigation and response efforts.

76. We also seek comment on the logistics and parameters of these submissions. How frequently should this information be reported? We note that in some instances mobile assets are repositioned at the request of state or local emergency managers; should such repositioning be reported? Should this information be available to those entities that have access to DIRS under the Commission's information sharing framework? Should this information be treated as presumptively confidential? We further seek comment on the costs and benefits of adopting a reporting requirement for mobile recovery assets. What would be additional improvements to public safety and other measures of welfare due to improved information to the Commission about mobile recovery assets? How would the magnitude of these benefits compare to the benefits estimated in the *Second Report and Order*?[176]

F. After Action Reporting

77. In the *Second Report and Order*, we establish a mandate for subject providers to furnish the Commission with a conclusive status report within 24 hours following the deactivation of DIRS.[177] This report will serve as a crucial source of information concerning the restoration of communication infrastructure that may still be offline in the aftermath of a disaster. However, it is important to note that this report alone will not offer a comprehensive overview of how networks performed throughout the disaster. For that reason, we seek comment as to whether providers subject to DIRS reporting requirements should be required to supply the Commission with "after action" reports detailing more specifically how their networks fared after the event or exigency and the nature, timing, duration, and effectiveness of their pre-disaster response plans after the Commission's deactivation of DIRS and within 60 days of when the Bureau, under delegated authority, issues a Public Notice announcing such reports must be filed. We seek comment as to whether providers would prefer an after action report template to complete or if the flexibility of a free-text document would be better suited to an entity's individual needs for reporting.

78. The Commission does not currently collect qualitative information on how a provider's efforts and preparation may have impacted the resiliency of its networks over the duration of a DIRS event. The Commission recently adopted a related rule, however, that requires facilities-based mobile wireless providers to submit a report detailing the timing, duration, and effectiveness of their implementation of the Commission's MDRI provisions within 60 days of when the Bureau, under delegated authority, issues a Public Notice announcing such reports must be filed.[178]

79. We believe that the collection of this "after action" information could better inform the Commission's analysis and any subsequent assessment or action that the Commission may take in the aftermath of disaster events.[179] Further, we believe that this approach could complement the MDRI reports required of facilities-based mobile wireless providers by detailing additional aspects of a provider's network resiliency plans and actions. We seek comment on this belief, and on whether these reports should be required of all DIRS filers, or just a subset, and seek comment on how to address potential overlap between reports filed pursuant to the MDRI and under the proposal herein. Are there ways to minimize such overlap, or to incorporate MDRI related filings such that burden is minimized for this class of filers? Should subject providers be held to these after action reports? Should such reports be confidential, or should they be shared, for example, with the Federal, state, local, Tribal and territorial

[176] *See Second Report and Order* at paras. 40-80.

[177] *Supra* paras. 4 and 10.

[178] *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, 15-80, ET Docket No. 04-35, Report and Order and Further Notice of Proposed Rulemaking, FCC 22-50 (2022). The MDRI is activated by the Commission in response to real-world exigencies and requires that providers take steps to further network resiliency. *Id.*

[179] Free Press, Jan. 14, 2022, Reply Comments at 8-9.

public response agencies that managed a particular disaster pursuant to which such reports are filed? We have proposed that these after action reports be filed 60 days the Bureau issues a PN announcing such a requirement; should the trigger be tied to the event? Is 60-days too much or too little of a timeframe?

80. We also seek estimates on the benefits and costs of this proposal for mandatory after-action reports. How much would public safety and other measures of welfare improve due to additional information to the Commission caused by this proposal? How would the magnitude of these benefits compare to the benefits estimated in the *Second Report and Order*?[180]

V. PROCEDURAL MATTERS

81. *Ex Parte Rules*. The proceeding initiated by the *Second Further 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). 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.

82. *Comment Period and Filing Requirements*. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS. http://www.fcc.gov/ecfs.
- *Paper Filers:* Parties that choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and

[180] *See Second Report and Order* at paras. 40-80.

safety of individuals, and to mitigate the transmission of COVID-19. *See* FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, 35 FCC Rcd 2788, 2788-89 (OS 2020), http://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.

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

84. *Regulatory Flexibility Act*. The Regulatory Flexibility Act of 1980, as amended (RFA),[181] requires that a regulatory flexibility analysis be prepared for notice and comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."[182] Accordingly, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) concerning potential rule and policy changes contained in this *Second Report and Order* on small entities. The FRFA is set forth in Appendix B.

85. We have also prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the potential impact of rule and policy change proposals contained in the *Second Further Notice*. The IRFA is set forth in Appendix C. Written public comments are requested on the IRFA. Comments must be filed by the deadline for comments on the Second Further Notice indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA.

86. *Paperwork Reduction Act Analysis*. Today's rules may constitute new or modified information collection requirements. 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 Paperwork Reduction Act of 1995 (PRA).[183] OMB, the general public, and other Federal agencies are invited to comment on any new or modified information collection requirements contained in this proceeding. In addition, we note that, pursuant to the Small Business Paperwork Relief Act of 2002,[184] the Commission previously sought, but did not receive, specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. The Commission does not believe that any new information collection requirements will be unduly burdensome on small businesses. Applying these new information collection requirements will promote public safety response efforts, to the benefit of all size governmental jurisdictions, businesses, equipment manufacturers, and business associations by providing better situational information related to the nation's network outages and infrastructure status. We describe impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the FRFA in Appendix B.

87. The *Second Further Notice* may contain proposed new or modified information collection requirements related to providers' reporting of their roaming measures to the Commission. 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 such information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

88. *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 adopted in the *Second Report and Order* is "non-major" under the Congressional Review Act, 5

[181] 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).

[182] *Id*. § 605(b).

[183] 44 U.S.C. § 3507(d).

[184] Pub. L. No. 107-198, 116 Stat. 729 (2002) (codified at 44 U.S.C. § 3506(c)(4)).

U.S.C. § 804(2). The Commission will send a copy of this *Second Report and Order* to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

89. *Providing Accountability Through Transparency Act*. The Providing Accountability Through Transparency Act requires each agency, in providing notice of a rulemaking, to post online a brief plain-language summary of the proposed rule.[185] Accordingly, the Commission will publish the required summary of this *Second Further Notice* on https://www.fcc.gov/proposed-rulemakings.

90. *Further Information*. For further information regarding the *Second Further Notice*, contact Logan S. Bennett, Attorney Advisor, Public Safety and Homeland Security Bureau at 202-418-7790 or Logan.Bennett@fcc.gov, or John M. Blumenschein, Attorney Advisor, Public Safety and Homeland Security Bureau at 202-418-1490 or John.Blumenschein@fcc.gov.

VI. ORDERING CLAUSES

91. Accordingly, IT IS ORDERED that, pursuant to the authority contained in Sections 1, 4(i), 4(j), 4(n), 201, 214, 218, 251(e)(3), 301, 303(b), 303(g), 303(j), 303(r), 307, 309, 316, 332, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i)-(j) & (n), 201, 214, 218, 251(e)(3), 301, 303(b), 303(g), 303(j), 303(r), 307, 309(a), 309(j), 316, 332, 403; sections 2, 3(b), and 6-7 of the Wireless Communications and Public Safety Act of 1999, 47 U.S.C. §§ 615 note, 615, 615a-1, 615b, section 106 of the Twenty First Century Communications and Video Accessibility Act of 2010, 47 U.S.C. § 615c, section 506(a) of the Repack Airways Yielding Better Access for Users of Modern Services Act of 2018 (RAY BAUM'S Act), and section 6206 of the Middle Class Tax Relief and Job Creation Act of 2012, 47 U.S.C. § 1426, this *Second Report and Order* and *Second Further Notice of Proposed Rulemaking* in PS Docket Nos. 21-346 and 15-80 and ET Docket No. 04-35 IS ADOPTED and Part 4 of the Commission's Rules, 47 CFR Part 4, IS AMENDED as set forth in Appendix A. The *Second Report and Order* shall become effective the later of (i) 30 days after the Commission issues a Public Notice announcing that OMB has completed review of any new information collection requirements associated with today's *Second Report and Order* or (ii) November 30, 2024.

92. IT IS FURTHER ORDERED that the Office of the Secretary, Reference Information Center, SHALL SEND a copy of this *Second Report and Order* and *Second Further Notice of Proposed Rulemaking*, including the Final Regulatory Flexibility Analysis and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

93. IT IS FURTHER ORDERED that the Office of Managing Director, Performance Program Management, SHALL SEND a copy of this *Second Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[185] 5 U.S.C. § 553(b)(4). The Providing Accountability Through Transparency Act, Pub. L. No. 118-9 (2023), amended section 553(b) of the Administrative Procedure Act.

APPENDIX A

Final Rules

For the reasons discussed in the document above, the Federal Communications Commission amends 47 CFR part 4 as follows:

PART 4 – DISRUPTION TO COMMUNICATIONS

1. The authority citation for part 4 continues to read as follows:

> **Authority:** 47 U.S.C. 34-39, 151, 154, 155, 157, 201, 251, 307, 316, 615a-1, 1302(a), and 1302(b); 5 U.S.C. 301, and Executive Order no. 10530.

2. Add § 4.18 to read as follows:

> **§ 4.18 Mandatory Disaster Information Reporting System (DIRS) Reporting for Cable Communications, Wireless, Wireline, and VoIP providers**
>
> (a) Cable Communications, Wireline, Wireless, and Interconnected VoIP providers shall be required to report their infrastructure status information each day in the Disaster Information Reporting System (DIRS) when the Commission activates DIRS in geographic areas in which they provide service, even when their reportable infrastructure has not changed compared to the prior day. Cable Communications, Wireless, Wireline and Interconnected VoIP providers are subject to mandated reporting in the Disaster Information Reporting System (DIRS) and shall:
>
> (1) provide daily reports on their infrastructure status from the start of DIRS activation until DIRS has been deactivated.
>
> (2) provide a single, final report to the Commission within 24 hours of the Commission's deactivation of DIRS and the termination of required daily reporting, detailing the state of their infrastructure at the time of DIRS deactivation and an estimated date of resolution of any remaining outages.
>
> (b) Cable Communications, Wireline, Wireless, and Interconnected VoIP providers who provide a DIRS report pursuant to paragraph (a) of this section are not required to make submissions in the Network Outage Reporting System (NORS) under this chapter pertaining to any incidents arising during the DIRS activation and that are timely reported in DIRS. Subject providers shall be notified that DIRS is activated and deactivated pursuant to Public Notice from the Commission and/or the Public Safety and Homeland Security Bureau.
>
> (c)(1) This section may contain information collection and/or recordkeeping requirements. Compliance with this section will not be required until this paragraph (c) is removed or contains compliance dates, which will not occur until the later of:

(i) 30 days after the Office of Management and Budget completes review of such requirements pursuant to the Paperwork Reduction Act or the Public Safety and Homeland Security Bureau determines that such review is not required; or

(ii) November 30, 2024.

(2) The Commission directs the Public Safety and Homeland Security Bureau to announce compliance dates for this section by subsequent Public Notice and notification in the Federal Register and to cause this section to be revised accordingly.

APPENDIX B

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *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* Notice of Proposed Rulemaking (*2021 Resilient Networks Notice*) released in October 2021.[2] The Commission sought written public comment on the proposals in the *2021 Resilient Networks Notice*, including comment on the IRFA. No comments were filed addressing the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[3]

A. Need for, and Objectives of, the Final Rules

2. In today's *Second Report and Order* (*Order*), the Commission adopts rules based on the record developed in response to the *2021 Resilient Networks Notice* that require all cable communications, wireless, wireline and interconnected VoIP providers to comply with Mandatory Disaster Information Reporting System (DIRS) reporting. The Order requires these providers to report on a daily basis when the Commission has activated DIRS. To avoid duplicative reporting and ease the burden on providers subject to the reporting requirements, the Commission adopts a rule waiving the requirement for these providers to report in the Network Outage Reporting System (NORS) when DIRS has been activated. Additionally, the *Order* requires providers to send a final report to the Commission providing information on their infrastructure and restoration status of their equipment within 24 hours of the deactivation of DIRS. These new requirements and actions will improve the reliability, resiliency and continuity of communications networks during emergencies, and further provide the Commission and other partners with timely restoration effort updates and consistent reporting in times of crisis.

3. Recent events including wildfires in Hawaii, Hurricane Ida, earthquakes in Puerto Rico, severe winter storms in Texas, and hurricane and wildfire seasons continue to demonstrate how the United States' communications infrastructure remains susceptible to disruption during disaster events. These events led the Commission to create the Mandatory Disaster Response Initiative (MDRI) which requires facilities-based mobile wireless providers to implement roaming agreements, mutual aid arrangements, and performance reporting requirements in times of emergency. In addition to these efforts, it is equally important for the Commission and communications providers to receive up-to-date information about the state of infrastructure and what efforts are being made by providers in terms of restoration status for equipment. Mandating DIRS reports will ensure that all providers subject to the reporting requirements are providing timely and critical information to the Commission both during crises and in the immediate aftermath so providers and the Commission can be aware of shortcomings, need for aid and assistance, and track progress of resiliency and restoration efforts amongst providers.

4. The rules in today's *Order* also further address findings of the Government Accountability Office (GAO) concerning wireless network resiliency addressed in the *2021 Resilient Networks Notice,* and subsequently in the *2022 Resilient Networks Report and Order and Further Notice*.[4]

---

[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] *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, 15-80, ET Docket No. 04-35, Notice of Proposed Rulemaking, FCC 21-99 (2021) (*Resilient Networks Notice*).

[3] 5 U.S.C. § 604.

[4] *See Resilient Networks Notice; see also Resilient Networks; Amendments to Part 4 of the Commission's Rules Concerning Disruption to Communications; New Part 4 of the Commission's Rules Concerning Disruptions to Communications;* PS Dockets No. 21-346 and 15-80; ET Docket No. 04-35, Report and Order and Further Notice of Proposed Rulemaking, FCC 22-50 (July 6, 2022) (*Resilient Networks 2022 Order and Further Notice*).

In 2017, the GAO, in conjunction with its review of federal efforts to improve the resiliency of wireless networks during natural disasters and other physical incidents, released a report recommending that the Commission improve its monitoring of industry efforts to strengthen wireless network resiliency.[5] The GAO found that the number of wireless outages attributed to a physical incident—a natural disaster, accident, or other manmade event, such as vandalism—increased from 189 in 2009 to 1,079 in 2016. The GAO concluded that more robust measures and a better plan to monitor the MDRI Framework would help the FCC collect information on the Framework and evaluate its effectiveness, and that such steps could help the FCC decide if further action is needed.

5. In light of prolonged outages during several emergency events in 2017 and 2018, and in parallel with the GAO recommendations, the Public Safety and Homeland Security Bureau (Bureau) conducted several inquiries[6] and investigations[7] to better understand and track the output and effectiveness of the Framework and other voluntary coordination efforts that promote wireless network resiliency and situational awareness during and after these hurricanes and other emergencies. The Commission continues to build on these efforts and in the *Order* moves from a voluntary reporting approach to a mandated one in order to narrow the gap in information and ensure the small and rural providers are also sharing crucial information. Where the MDRI took the voluntary Framework of 2016 and expanded its activation triggers and required the coordination of roaming and mutual aid agreements, mandating DIRS reporting for subject providers will ensure that the Commission is receiving crucial information and timely status updates during emergencies and disasters in real time and that the Commission can see the resolution of these issues upon deactivation or see where providers may need aid or assistance from other providers.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

6. There were no comments filed that specifically address the proposed rules and policies in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business

[5] Government Accountability Office (GAO), *FCC Should Improve Monitoring of Industry Efforts to Strengthen Wireless Network Resiliency* at 36 (Dec. 2017), https://www.gao.gov/assets/gao-18-198.pdf (GAO Report). The report recommended that the Commission develop specific and measurable objectives for the Framework and a plan to monitor and document the outputs and outcomes of the Framework to evaluate its effectiveness.

[6] *See Public Safety and Homeland Security Bureau Seeks Comment on the Effectiveness of the Wireless Network Resiliency Cooperative Framework and for the Study on Public Access to 911 Services during Emergencies,* PS Docket No. 11-60, Public Notice, 33 FCC Rcd 5997 (Jun 13, 2018) (*Framework Effectiveness Public Notice*); News Release, FCC, *FCC Launches Re-Examination of Wireless Resiliency Framework in Light of Recent Hurricanes, Agency Sends Letters to Framework Signatories Asking Them to Provide Post-Disaster Action Reports* (Nov. 6, 2018), https://docs.fcc.gov/public/attachments/DOC-354963A1.pdf. The Bureau also issued three Public Notices seeking comment on improvements to the Framework. *See Public Safety and Homeland Security Bureau Seeks Comment on Improving Wireless Network Resiliency to Promote Coordination through Backhaul Providers*, PS Docket No. 11-60, Public Notice, DA 18-1238 (Dec. 10, 2018) (*Backhaul Public Notice*); *Public Safety and Homeland Security Bureau Seeks Comment on Improving Wireless Network Resiliency Through Encouraging Coordination with Power Companies*, PS Docket No. 11-60, Public Notice, DA 19-13 (Jan. 3, 2019) (*Power Public Notice*); *Public Safety and Homeland Security Bureau Seeks Comment on Improving the Wireless Network Resiliency Cooperative Framework*, PS Docket No. 11-60, Public Notice, DA 19-242 (Apr. 1, 2019) (*Effectiveness Public Notice*). In February 2020, following a series of PSHSB staff coordination meetings with wireless, backhaul and electric service providers to discuss the gaps identified in the above record, CTIA and the Edison Electric Institute (EEI) formed the Cross-Sector Resiliency Forum on February 27, 2020 and released a 12-stepaction plan to improving wireless resiliency.

[7] Following Hurricane Michael, for example, the Bureau issued a report on the preparation and response of communications providers finding three key reasons for prolonged outages during that event: insufficiently resilient backhaul connectivity; inadequate reciprocal roaming arrangements; and lack of coordination between wireless service providers, power crews, and municipalities. *See Hurricane Michael Report* at 4, para. 6.

Administration

7. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.[8]

8. 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

9. 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.[9] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[10] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[11] A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[12]

10. The rules adopted in the *Order* apply only to cable communications, wireless, wireline and interconnected VoIP providers which include small entities as well as larger entities. The Commission has not developed a small business size standard directed specifically toward these entities. As described below, these entities fit into larger industry categories that provide these facilities or services for which the SBA has developed small business size standards.

1. Total Small Entities

11. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein.[13] First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.[14] These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.[15]

---

[8] 5 U.S.C. § 604(a)(3).

[9] 5 U.S.C. § 604(a)(4).

[10] 5 U.S.C. § 601(6).

[11] 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."

[12] 15 U.S.C. § 632.

[13] *See* 5 U.S.C. § 601(3)-(6).

[14] *See* SBA, Office of Advocacy, *What's New With Small Business?,*

https://advocacy.sba.gov/wp-content/uploads/2023/03/Whats-New-Infographic-March-2023-508c.pdf (Mar. 2023).

[15] *Id*.

12. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[16] The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.[17] Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.[18]

13. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[19] U.S. Census Bureau data from the 2017 Census of Governments[20] indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.[21] Of this number, there were 36,931 general purpose governments (county,[22] municipal, and town or township[23]) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts[24] with enrollment

[16] *See* 5 U.S.C. § 601(4).

[17] The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. S*ee* 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.

[18] *See* Exempt Organizations Business Master File Extract (EO BMF), "CSV Files by Region," https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2020 with revenue less than or equal to $50,000 for Region 1-Northeast Area (58,577), Region 2-Mid-Atlantic and Great Lakes Areas (175,272), and Region 3-Gulf Coast and Pacific Coast Areas (213,840) that includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

[19] *See* 5 U.S.C. § 601(5).

[20] *See* 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with "2" and "7". *See also* Census of Governments, https://www.census.gov/programs-surveys/cog/about.html.

[21] *See* U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02], https://www.census.gov/data/tables/2017/econ/gus/2017-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. CG1700ORG02 Table Notes_Local Governments by Type and State_2017.

[22] *See id.* at tbl.5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

[23] *See id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

[24] *See id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 12,040 independent school districts with enrollment populations less than 50,000. *See also* tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2017.

populations of less than 50,000.[25] Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of "small governmental jurisdictions."[26]

2. Interconnected VoIP services

14. *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.[27] The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small.[28] 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.[29] Of those firms, 1,039 had revenue of less than $25 million.[30] Consequently, under the SBA size standard a majority of firms in this industry can be considered small.

15. *Wired Broadband Internet Access Service Providers (Wired ISPs).*[31] 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.[32] Wired broadband Internet services fall in the Wired Telecommunications Carriers industry.[33] The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small.[34] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[35] Of this number, 2,964 firms

---

[25] While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

[26] This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations Tbls. 5, 6 & 10.

[27] *See* U.S. Census Bureau, *2017 NAICS Definition, "517919 All Other Telecommunications,"* https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[28] *See* 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

[29] *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.

[30] *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.

[31] Formerly included in the scope of the Internet Service Providers (Broadband), Wired Telecommunications Carriers and All Other Telecommunications small entity industry descriptions.

[32] *See* 47 CFR § 1.7001(a)(1).

[33] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[34] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[35] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

operated with fewer than 250 employees.[36]

16. 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.[37] 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*,[38] we believe that the majority of wireline Internet access service providers can be considered small entities.

17. *Wireless Broadband Internet Access Service Providers (Wireless ISPs or WISPs)*.[39] 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[.]"[40] 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.[41] 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).[42] The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[43] U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.[44] Of that number, 2,837 firms employed fewer than 250 employees.[45]

18. 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

---

[36] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[37] *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.

[38] *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*).

[39] Formerly included in the scope of the Internet Service Providers (Broadband), Wireless Telecommunications Carriers (except Satellite) and All Other Telecommunications small entity industry descriptions.

[40] 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.

[41] *See* 47 CFR § 1.7001(a)(1).

[42] *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.

[43] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[44] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&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.

connections over 200 kbps in at least one direction.[46] 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,[47] as well as on terrestrial fixed wireless broadband providers in general,[48] we believe that the majority of wireless Internet access service providers can be considered small entities.

3. Wireline Providers

19. *Wired Broadband Internet Access Service Providers (Wired ISPs)*.[49] 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.[50] Wired broadband Internet services fall in the Wired Telecommunications Carriers industry.[51] The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small.[52] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[53] Of this number, 2,964 firms operated with fewer than 250 employees.[54]

20. 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.[55] 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*

---

[46] *See IAS Status 2019,* Fig. 30.

[47] *See Communications Marketplace Report*, GN Docket No. 22-203, 2022 WL 18110553 at 27, paras. 64-68. (2022) (*2022 Communications Marketplace Report*).

[48] *Id.* at 8, para. 22.

[49] Formerly included in the scope of the Internet Service Providers (Broadband), Wired Telecommunications Carriers and All Other Telecommunications small entity industry descriptions.

[50] *See* 47 CFR § 1.7001(a)(1).

[51] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[52] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[53] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[54] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[55] *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.

Marketplace Report,[56] we believe that the majority of wireline Internet access service providers can be considered small entities.

21. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers[57] is the closest industry with an SBA small business size standard.[58] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[59] U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.[60] Of this number, 2,964 firms operated with fewer than 250 employees.[61] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 1,212 providers that reported they were incumbent local exchange service providers.[62] Of these providers, the Commission estimates that 916 providers have 1,500 or fewer employees.[63] Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

22. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers[64] is the closest industry with a SBA small business size standard.[65] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[66] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[67] Of this number, 2,964 firms operated with fewer than 250 employees.[68] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 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

---

[56] *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*).

[57] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[58] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[59] *Id.*

[60] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[61] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[62] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Tbl. 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[63] *Id.*

[64] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[65] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[66] *Id.*

[67] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Tbl. ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[68] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

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.

23. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The closest applicable industry with a SBA small business size standard is Wired Telecommunications Carriers.[70] The SBA small business size standard 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 3,054 firms in this industry that operated for the entire year.[72] Of this number, 2,964 firms operated with fewer than 250 employees.[73] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 20 providers that reported they were engaged in the provision of operator services.[74] Of these providers, the Commission estimates that all 20 providers have 1,500 or fewer employees.[75] Consequently, using the SBA's small business size standard, all of these providers can be considered small entities.

4. Wireless Providers – Fixed and Mobile

24. To the extent the wireless services listed below are used by wireless firms for fixed and mobile broadband Internet access services, the Notice's proposed rules may have an impact on those small businesses as set forth above and further below. Accordingly, for those services subject to auctions, we note that, as a general matter, the number of winning bidders that claim to qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments and transfers or reportable eligibility events, unjust enrichment issues are implicated.

25. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.[76] 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.[77] The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[78] U.S. Census Bureau data for 2017 show that there were 2,893 firms in this

[69] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Tbl. 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[70] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[71] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[72] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[73] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[74] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Tbl. 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf. https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf

[75] *Id.*

[76] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite),"* https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[77] *Id.*

[78] *See* 13 CFR § 121.201, NAICS Code 517312 (as of Oct. 1, 2022, NAICS Code 517112).

industry that operated for the entire year.[79] Of that number, 2,837 firms employed fewer than 250 employees.[80] 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.[81] Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees.[82] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

26. *Wireless Communications Services*. Wireless Communications Services (WCS) can be used for a variety of fixed, mobile, radiolocation, and digital audio broadcasting satellite services. Wireless spectrum is made available and licensed for the provision of wireless communications services in several frequency bands subject to Part 27 of the Commission's rules.[83] Wireless Telecommunications Carriers (*except* Satellite)[84] is the closest industry with an SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[85] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[86] Of this number, 2,837 firms employed fewer than 250 employees.[87] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

27. The Commission's small business size standards with respect to WCS involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in WCS. When bidding credits are adopted for the auction of licenses in WCS frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in the designated entities section in Part 27 of the Commission's rules for the specific WCS frequency bands.[88]

28. 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

---

[79] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[80] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[81] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Tbl. 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[82] *Id.*

[83] *See* 47 CFR §§ 27.1 – 27.1607.

[84] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers* (*except Satellite*)," https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[85] *See* 13 CFR § 121.201, NAICS Code 517312 (as of Oct. 1, 2022, NAICS Code 517112).

[86] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[87] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[88] *See* 47 CFR §§ 27.201 – 27.1601. The Designated entities sections in Subparts D – Q each contain the small business size standards adopted for the auction of the frequency band covered by that subpart.

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.

29. *1670–1675 MHz Services*. These wireless communications services can be used for fixed and mobile uses, except aeronautical mobile.[89] Wireless Telecommunications Carriers (except Satellite)[90] is the closest industry with an SBA small business size standard applicable to these services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[91] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[92] Of this number, 2,837 firms employed fewer than 250 employees.[93] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

30. According to Commission data as of November 2021, there were three active licenses in this service.[94] The Commission's small business size standards with respect to 1670–1675 MHz Services involve eligibility for bidding credits and installment payments in the auction of licenses for these services. For licenses in the 1670-1675 MHz service band, a "small business" is defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $40 million for the preceding three years, and a "very small business" is defined 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.[95] The 1670-1675 MHz service band auction's winning bidder did not claim small business status.[96]

31. 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.

32. *Wireless Telephony*. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable industry with an SBA

---

[89] *See* 47 CFR § 27.902.

[90] *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.

[91] *See* 13 CFR § 121.201, NAICS Code 517312 (as of Oct. 1, 2022, NAICS Code 517112).

[92] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&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] Based on a FCC Universal Licensing System search on November 8, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = BC; 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.

[95] *See* 47 CFR § 27.906(a).

[96] *See 1670–1675 MHz Band Auction Closes; Winning Bidder Announced*; *FCC Form 600s Due May 12,2003,* Public Notice, DA-03-1472, Report No. AUC-03-46-H (Auction No.46) (May 2, 2003).

small business size standard is Wireless Telecommunications Carriers (except Satellite).[97] The size standard for this industry under SBA rules is that a business is small if it has 1,500 or fewer employees.[98] For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated for the entire year.[99] Of this number, 2,837 firms employed fewer than 250 employees.[100] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 331 providers that reported they were engaged in the provision of cellular, personal communications services, and specialized mobile radio services.[101] Of these providers, the Commission estimates that 255 providers have 1,500 or fewer employees.[102] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

33. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum encompasses services in the 1850-1910 and 1930-1990 MHz bands.[103] The closest industry with a SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (except Satellite).[104] The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[105] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[106] Of this number, 2,837 firms employed fewer than 250 employees.[107] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

34. Based on Commission data as of November 2021, there were approximately 5,060 active licenses in the Broadband PCS service.[108] 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

---

[97] *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.

[98] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[99] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[100] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[101] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[102] *Id.*

[103] *See* 47 CFR § 24.200.

[104] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers* (*except Satellite*)," https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[105] *See* 13 CFR § 121.201, NAICS Code 517312 (as of Oct. 1, 2022, NAICS Code 517112).

[106] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[107] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[108] Based on an FCC Universal Licensing System search on November 16, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = CW; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

$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.[109] Winning bidders claiming small business credits won Broadband PCS licenses in C, D, E, and F Blocks.[110]

35. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

36. *Specialized Mobile Radio Licenses.* Special Mobile Radio (SMR) licenses allow licensees to provide land mobile communications services (other than radiolocation services) in the 800 MHz and 900 MHz spectrum bands on a commercial basis including but not limited to services used for voice and data communications, paging, and facsimile services, to individuals, Federal Government entities, and other entities licensed under Part 90 of the Commission's rules. Wireless Telecommunications Carriers (except Satellite)[111] is the closest industry with a SBA small business size standard applicable to these services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[112] For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.[113] Of this number, 2,837 firms employed fewer than 250 employees.[114] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 95 providers that reported they were of SMR (dispatch) providers.[115] Of this number, the Commission estimates that all 95 providers have 1,500 or fewer employees.[116] Consequently, using the SBA's small business size standard, these 119 SMR licensees can be considered small entities.[117]

37. *Lower 700 MHz Band Licenses*. The lower 700 MHz band encompasses spectrum in the 698-746 MHz frequency bands. Permissible operations in these bands include flexible fixed, mobile, and broadcast uses, including mobile and other digital new broadcast operation; fixed and mobile wireless commercial services (including FDD- and TDD-based services); as well as fixed and mobile wireless uses for private, internal radio needs, two-way interactive, cellular, and mobile television broadcasting

[109] *See* 47 CFR § 24.720(b).

[110] *See* Federal Communications Commission, Office of Economics and Analytics, Auctions, Auctions 4, 5, 10, 11, 22, 35, 58, 71 and 78, https://www.fcc.gov/auctions.

[111] *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.

[112] *See* 13 CFR § 121.201, NAICS Code 517312 (as of Oct. 1, 2022, NAICS Code 517112).

[113] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[114] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[115] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf. https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf

[116] *Id.*

[117] We note that there were also SMR providers reporting in the "Cellular/PCS/SMR" classification, therefore there are maybe additional SMR providers that have not been accounted for in the SMR (dispatch) classification.

services.[118] Wireless Telecommunications Carriers (*except* Satellite)[119] is the closest industry with a SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[120] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[121] Of this number, 2,837 firms employed fewer than 250 employees.[122] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

38. According to Commission data as of December 2021, there were approximately 2,824 active Lower 700 MHz Band licenses.[123] The Commission's small business size standards with respect to Lower 700 MHz Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For auctions of Lower 700 MHz Band licenses the Commission adopted criteria for three groups of small businesses. A very small business was defined as an entity that, together with its affiliates and controlling interests, has average annual gross revenues not exceeding $15 million for the preceding three years, a small business was defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $40 million for the preceding three years, and an entrepreneur was defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $3 million for the preceding three years.[124] In auctions for Lower 700 MHz Band licenses seventy-two winning bidders claiming a small business classification won 329 licenses,[125] twenty-six winning bidders claiming a small business classification won 214 licenses,[126] and three winning bidders claiming a small business classification won all five auctioned licenses.[127]

39. 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

---

[118] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auctions 44, 49, 60: Lower 700 MHz Band, Fact Sheet, Permissible Operations, https://www.fcc.gov/auction/44/factsheet, https://www.fcc.gov/auction/49/factsheet, https://www.fcc.gov/auction/60/factsheet.

[119] *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.

[120] *See* 13 CFR § 121.201, NAICS Code 517312 (as of Oct. 1, 2022, NAICS Code 517112).

[121] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[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] Based on a FCC Universal Licensing System search on December 14, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = WY, WZ; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[124] *See* 47 CFR § 27.702(a)(1)-(3).

[125] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 44: Lower 700 MHz Guard Bands, Summary, Closing Charts, Licenses by Bidder, https://www.fcc.gov/sites/default/files/wireless/auctions/44/charts/44cls2.pdf.

[126] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 49: Lower 700 MHz Guard Bands, Summary, Closing Charts, Licenses by Bidder, https://www.fcc.gov/sites/default/files/wireless/auctions/49/charts/49cls2.pdf.

[127] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 60: Lower 700 MHz Guard Bands, Summary, Closing Charts, Licenses by Bidder, https://www.fcc.gov/sites/default/files/wireless/auctions/60/charts/60cls2.pdf.

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.

40. *Upper 700 MHz Band Licenses*. The upper 700 MHz band encompasses spectrum in the 746-806 MHz bands. Upper 700 MHz D Block licenses are nationwide licenses associated with the 758-763 MHz and 788-793 MHz bands.[128] Permissible operations in these bands include flexible fixed, mobile, and broadcast uses, including mobile and other digital new broadcast operation; fixed and mobile wireless commercial services (including FDD- and TDD-based services); as well as fixed and mobile wireless uses for private, internal radio needs, two-way interactive, cellular, and mobile television broadcasting services.[129] Wireless Telecommunications Carriers (*except* Satellite)[130] is the closest industry with a SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[131] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[132] Of that number, 2,837 firms employed fewer than 250 employees.[133] Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

41. According to Commission data as of December 2021, there were approximately 152 active Upper 700 MHz Band licenses.[134] The Commission's small business size standards with respect to Upper 700 MHz Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For the auction of these licenses, the Commission defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years, and a "very small business" an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[135] Pursuant to these definitions, three winning bidders claiming very small

[128] *See* 47 CFR § 27.4.

[129] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 73: 700 MHz Band, Fact Sheet, Permissible Operations, https://www.fcc.gov/auction/73/factsheet. We note that in Auction 73, Upper 700 MHz Band C and D Blocks as well as Lower 700 MHz Band A, B, and E Blocks were auctioned.

[130] *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.

[131] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[132] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[133] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[134] Based on an FCC Universal Licensing System search on Dec. 14, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = WP, WU; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[135] *See* 47 CFR § 27.502(a).

business status won five of the twelve available licenses.[136]

42. 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.

43. *700 MHz Guard Band Licensees*. The 700 MHz Guard Band encompasses spectrum in 746-747/776-777 MHz and 762-764/792-794 MHz frequency bands. Wireless Telecommunications Carriers (*except* Satellite)[137] is the closest industry with a SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[138] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[139] Of this number, 2,837 firms employed fewer than 250 employees.[140] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

44. According to Commission data as of December 2021, there were approximately 224 active 700 MHz Guard Band licenses.[141] The Commission's small business size standards with respect to 700 MHz Guard Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For the auction of these licenses, the Commission defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years, and a "very small business" an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[142] Pursuant to these definitions, five winning bidders claiming one of the small business status classifications won 26 licenses, and one winning bidder claiming small business won two

[136] *See Auction of 700 MHz Band Licenses Closes; Winning Bidders Announced for Auction 73*, Public Notice, DA-08-595, Attachment A, Report No. AUC-08-73-I (Auction 73) (Mar. 20, 2008). The results for Upper 700 MHz Band C Block can be found on pp. 62-63.

[137] *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.

[138] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[139] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[140] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[141] Based on an FCC Universal Licensing System search on Dec. 14, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = WX; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[142] *See* 47 CFR § 27.502(a).

licenses.[143] None of the winning bidders claiming a small business status classification in these 700 MHz Guard Band license auctions had an active license as of December 2021.[144]

45. 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.

46. *Air-Ground Radiotelephone Service*. Air-Ground Radiotelephone Service is a wireless service in which licensees are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.[145] A licensee may provide any type of air-ground service (i.e., voice telephony, broadband Internet, data, etc.) to aircraft of any type, and serve any or all aviation markets (commercial, government, and general). A licensee must provide service to aircraft and may not provide ancillary land mobile or fixed services in the 800 MHz air-ground spectrum.[146]

47. The closest industry with an SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (*except* Satellite).[147] The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[148] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[149] Of this number, 2,837 firms employed fewer than 250 employees.[150] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

48. Based on Commission data as of December 2021, there were approximately four licensees with 110 active licenses in the Air-Ground Radiotelephone Service.[151] The Commission's small

---

[143] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 33: Upper 700 MHz Guard Bands, Summary, Closing Charts, Licenses by Bidder, https://www.fcc.gov/sites/default/files/wireless/auctions/33/charts/33cls2.pdf, Auction 38: Upper 700 MHz Guard Bands, Summary, Closing Charts, Licenses by Bidder, https://www.fcc.gov/sites/default/files/wireless/auctions/38/charts/38cls2.pdf.

[144] Based on a FCC Universal Licensing System search on Dec. 14, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = WX; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[145] 47 CFR § 22.99.

[146] *See* Federal Communications Commission, Economics and Analytics, Auctions, Auction 65: 800 MHz Air-Ground Radiotelephone Service, Fact Sheet, Permissible Operations, https://www.fcc.gov/auction/65/factsheet.

[147] *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.

[148] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[149] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[150] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[151] Based on a FCC Universal Licensing System search on Dec. 20, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = CG, CJ; Authorization Type = All; Status = Active. We note

(continued….)

business size standards with respect to Air-Ground Radiotelephone Service involve eligibility for bidding credits and installment payments in the auction of licenses. For purposes of auctions, 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.[152] In the auction of Air-Ground Radiotelephone Service licenses in the 800 MHz band, neither of the two winning bidders claimed small business status.[153]

49. 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, the Commission does not collect data on the number of employees for licensees providing these services therefore, 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.

50. *Advanced Wireless Services (AWS) - (1710–1755 MHz and 2110–2155 MHz bands (AWS-1); 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands (AWS-2); 2155–2175 MHz band (AWS-3); 2000-2020 MHz and 2180-2200 MHz (AWS-4)).* Spectrum is made available and licensed in these bands for the provision of various wireless communications services.[154] Wireless Telecommunications Carriers (except Satellite)[155] is the closest industry with a SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[156] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[157] Of this number, 2,837 firms employed fewer than 250 employees.[158] Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

51. According to Commission data as of December 2021, there were approximately 4,472 active AWS licenses.[159] The Commission's small business size standards with respect to AWS involve

---

that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[152] *See* 47 CFR § 22.223(b).

[153] *See* FCC, Economics and Analytics, Auctions, Auction 65: 800 MHz Air-Ground Radiotelephone Service, Summary, Closing Charts, Licenses by Bidder, https://www.fcc.gov/sites/default/files/wireless/auctions/65/charts/65cls2.pdf.

[154] *See* 47 CFR § 27.1(b).

[155] *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.

[156] *See* 13 CFR § 121.201, NAICS Code 517312 (as of Oct. 1, 2022, NAICS Code 517112).

[157] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[158] *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.

[159] Based on a FCC Universal Licensing System search on Dec. 10, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = AD, AH, AT, AW; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

eligibility for bidding credits and installment payments in the auction of licenses for these services. For the auction of AWS licenses, the Commission defined a "small business" as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a "very small business" as an entity with average annual gross revenues for the preceding three years not exceeding $15 million.[160] Pursuant to these definitions, 57 winning bidders claiming status as small or very small businesses won 215 of 1,087 licenses.[161] In the most recent auction of AWS licenses 15 of 37 bidders qualifying for status as small or very small businesses won licenses.[162]

52. 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.

53. *3650–3700 MHz band*. Wireless broadband service licensing in the 3650-3700 MHz band provides for nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3650 MHz band (i.e., 3650–3700 MHz).[163] Licensees are permitted to provide services on a non-common carrier and/or on a common carrier basis.[164] Wireless broadband services in the 3650-3700 MHz band fall in the Wireless Telecommunications Carriers (*except* Satellite)[165] industry with an SBA small business size standard that classifies a business as small if it has 1,500 or fewer employees.[166] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[167] Of this number, 2,837 firms employed fewer than 250 employees.[168] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

54. The Commission has not developed a small business size standard applicable to 3650–3700 MHz band licensees. Based on the licenses that have been granted, however, we estimate that the majority of licensees in this service are small Internet Access Service Providers (ISPs). As of November 2021, Commission data shows that there were 902 active licenses in the 3650–3700 MHz band.[169]

---

[160] *See* 47 CFR §§ 27.1002, 27.1102, 27.1104, 27.1106.

[161] *See* FCC, Economics and Analytics, Auctions, Auction 66: Advanced Wireless Services (AWS-1), Summary, Spreadsheets, https://www.fcc.gov/sites/default/files/wireless/auctions/66/charts/66cls2.pdf.

[162] *See Auction of Advanced Wireless Services (AWS-3) Licenses Closes; Winning Bidders Announced for Auction 97*, Public Notice, DA-15-131, Attachments A-B, (Auction No. 97) (Jan. 30, 2015).

[163] *See* 47 CFR §§ 90.1305, 90.1307.

[164] *See id.* § 90.1309.

[165] *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.

[166] *See* 13 CFR § 121.201, NAICS Code 517312 (as of Oct. 1, 2022, NAICS Code 517112).

[167] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[168] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[169] Based on a FCC Universal Licensing System search on November 19, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = NN; 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.

However, 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.

55. *Fixed Microwave Services.* Fixed microwave services include common carrier,[170] private-operational fixed,[171] and broadcast auxiliary radio services.[172] They also include the Upper Microwave Flexible Use Service (UMFUS),[173] Millimeter Wave Service (70/80/90 GHz),[174] Local Multipoint Distribution Service (LMDS),[175] the Digital Electronic Message Service (DEMS),[176] 24 GHz Service,[177] Multiple Address Systems (MAS),[178] and Multichannel Video Distribution and Data Service (MVDDS),[179] where in some bands licensees can choose between common carrier and non-common carrier status.[180] Wireless Telecommunications Carriers (*except* Satellite)[181] 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.[182] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[183] Of this number, 2,837 firms employed fewer than 250 employees.[184] Thus under the SBA size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

56. 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

---

[170] *See* 47 CFR Part 101, Subparts C and I.

[171] *See id*. Subparts C and H.

[172] 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.

[173] *See* 47 CFR Part 30.

[174] *See* 47 CFR Part 101, Subpart Q.

[175] *See id*. Subpart L.

[176] *See id*. Subpart G.

[177] *See id*.

[178] *See id.* Subpart O.

[179] *See id*. Subpart P.

[180] *See* 47 CFR §§ 101.533, 101.1017.

[181] *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.

[182] *See* 13 CFR § 121.201, NAICS Code 517312 (as of Oct. 1, 2022, NAICS Code 517112).

[183] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[184] *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.

bands.[185]

57. 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.

58. *Local Multipoint Distribution Service.* A Local Multipoint Distribution Service (LMDS) System is a fixed point-to-point or point-to-multipoint radio system consisting of Local Multipoint Distribution Service Hub Stations and their associated Local Multipoint Distribution Service Subscriber Stations.[186] LMDS is capable of offering subscribers a variety of one and two-way broadband services, such as video programming distribution; video teleconferencing; wireless local loop telephony; and high speed data transmission, e.g. Internet access.[187] Wireless Telecommunications Carriers (*except* Satellite)[188] is the closest industry with a SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[189] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[190] Of this number, 2,837 firms employed fewer than 250 employees.[191] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

59. According to Commission data as of December 2021, there were approximately 524 active LMDS licenses.[192] The Commission's small business size standards with respect to LMDS involve eligibility for bidding credits and installment payments in the auction of licenses for these services. For the auction of LMDS licenses, the Commission defined a "small business" as an entity that, together with its affiliates and controlling interests, has average gross revenues for the three preceding years of more than $15 million but not more than $40 million, and a very small business as an entity that, together with its affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million.[193] Pursuant to these definitions, 93 small and very small businesses won

---

[185] *See* 47 CFR §§ 101.538(a)(1)-(3), 101.1112(b)-(d), 101.1319(a)(1)-(2), and 101.1429(a)(1)-(3).

[186] *See* 47 CFR § 101.3.

[187] *See* FCC, Economics and Analytics, Auctions, Auction 17: Local Multipoint Distribution System (LMDS), Fact Sheet, Permissible Operations, https://www.fcc.gov/auction/17/factsheet; *see also* Auction 23: Local Multipoint Distribution System (LMDS) Re-Auction, Fact Sheet, Permissible Operations, https://www.fcc.gov/auction/23/factsheet.

[188] *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.

[189] *See* 13 CFR § 121.201, NAICS Code 517312 (as of Oct. 1, 2022, NAICS Code 517112).

[190] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[191] *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.

[192] Based on an FCC Universal Licensing System search on Dec. 8, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = LD; 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.

[193] *See* 47 CFR § 101.1112(b)-(c).

approximately 277 A Block licenses and 387 B Block licenses.[194] In the re-auction of LDMS licenses 74% of the licenses were won by small businesses.[195]

60. 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.

61. *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,"[196] 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)).[197] 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.[198]

62. In light of the use of wireless frequencies by BRS and EBS services, the closest industry with a SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (*except* Satellite).[199] The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[200] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[201] Of this number, 2,837 firms employed

---

[194] *See LMDS Auction Closes; Winning Bidders in the Auction of 986 Licenses in the Local Multipoint Distribution Service (LMDS*), Public Notice, DA-98-572, Attachment A, Report No. AUC-17-I (Auction No. 17) (Mar. 26, 1998).

[195] *See* Press Release, FCC, *LMDS Re-Auction Closes, Auction of Wireless Communications Licenses Raises $45,064,450* (May 12, 1999), https://wireless.fcc.gov/auctions/23/releases/lmdscls.pdf; *see also Local Multipoint Distribution Service Auction Closes; Winning Bidders in the Auction of 161 Licenses in the Local Multipoint Distribution Service (LMDS*), DA-99-927, Attachment A, Report No. AUC-23-E (Auction No. 23) (May 14, 1999).

[196] The use of the term "wireless cable" does not imply that it constitutes cable television for statutory or regulatory purposes.

[197] *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).

[198] 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.

[199] *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.

[200] *See* 13 CFR § 121.201, NAICS Code 517312 (as of Oct. 1, 2022, NAICS Code 517112).

[201] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

fewer than 250 employees.[202] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

63. According to Commission data as December 2021, there were approximately 5,869 active BRS and EBS licenses.[203] The Commission's small business size standards with respect to BRS involves eligibility for bidding credits and installment payments in the auction of licenses for these services. For the auction of BRS licenses, the Commission adopted criteria for three groups of small businesses. A very small business is an entity that, together with its affiliates and controlling interests, has average annual gross revenues exceed $3 million and did not exceed $15 million for the preceding three years, a small business is an entity that, together with its affiliates and controlling interests, has average gross revenues exceed $15 million and did not exceed $40 million for the preceding three years, and an entrepreneur is an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $3 million for the preceding three years.[204] Of the ten winning bidders for BRS licenses, two bidders claiming the small business status won 4 licenses, one bidder claiming the very small business status won three licenses and two bidders claiming entrepreneur status won six licenses.[205] One of the winning bidders claiming a small business status classification in the BRS license auction has an active licenses as of December 2021.[206]

64. 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.[207] 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.

5. Cable Service Providers

65. *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

---

[202] *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.

[203] Based on a FCC Universal Licensing System search on Dec. 10, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service =BR, ED; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[204] *See* 47 CFR § 27.1218(a).

[205] *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.

[206] Based on a FCC Universal Licensing System search on Dec. 10, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service =BR; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[207] *See* 47 CFR § 27.1219(a).

wired communications networks.[208] 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.[209] By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.[210] Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.[211]

66. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[212] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[213] Of this number, 2,964 firms operated with fewer than 250 employees.[214] 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.[215] Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.[216] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

67. *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.[217] Based on industry data, there are about 420 cable companies in the U.S.[218] Of these, only seven have more than 400,000 subscribers.[219] In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.[220] Based on industry data, there are about 4,139 cable systems (headends) in

---

[208] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[209] *Id.*

[210] *Id.*

[211] 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.

[212] *See* 13 CFR § 121.201, NAICS Code 517311 (as of Oct. 1, 2022, NAICS Code 517111).

[213] *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.

[214] *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.

[215] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Tbl. 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf. https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf

[216] *Id.*

[217] 47 CFR § 76.901(d).

[218] S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

[219] S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited May 26, 2022); S&P Global Market Intelligence, Multichannel Video Subscriptions, Top 10 (April 2022).

[220] 47 CFR § 76.901(c).

the U.S.[221] Of these, about 639 have more than 15,000 subscribers.[222] Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

68. *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."[223] 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.[224] Based on industry data, only six cable system operators have more than 498,000 subscribers.[225] 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.[226] 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.

6. Other Telecommunications

69. *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.[227] 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.[228] 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.[229] The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small.[230] U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry

[221] S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

[222] S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q (*last visited May 26, 2022).

[223] 47 U.S.C. § 543(m)(2).

[224] *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).

[225] 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).

[226] 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).

[227] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517919 All Other Telecommunications,*" https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[228] *Id.*

[229] *Id*.

[230] *See* 13 CFR § 121.201, NAICS Code 517919 (as of Oct. 1, 2022, NAICS Code 517810).

that operated for the entire year.[231] Of those firms, 1,039 had revenue of less than $25 million.[232] Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

70. The requirements in the *Order* will impose new or modified reporting, recordkeeping and/or other compliance obligations on small entities. The rules adopted in the *Order* require all cable communications, wireless, wireline and interconnected VoIP providers to make adjustments to their reporting practices. Providers previously had the option to report in DIRS, but now will be required to do so. More specifically, small and other providers will be required to report each day that DIRS is activated as well as file a final report with 24 hours of deactivation of DIRS. The mandatory reporting in DIRS requiring providers to create reports and share them with the Commission on a daily basis, and to share a subsequent report upon deactivation, may be a reporting process that some small providers may not have been doing previously since DIRS reporting was voluntary. While adopting this mandatory DIRS reporting requirement, the Commission simultaneously codified its practice of waiving of NORS reporting requirements for providers while reporting in DIRS, which should help minimize the burden for some small providers. Small and rural providers that may not have previously reported in DIRS under the voluntary reporting framework are likely to already engage in the production of some type of report(s) or reporting to track emergency events, and therefore the Commission does not expect that small providers will have to hire professionals to comply with the DIRS reporting requirement. In the final DIRS deactivation report that must be completed within 24 hours of DIRS deactivation, the Commission offers small and other providers flexibility by allowing providers to submit detailed written information that identifies and provides the status of its outstanding infrastructure equipment, and its estimated dates for resolving all outstanding issues remaining at the time of deactivation, in a free form text box.

71. Small and other regional and local cable communications, wireless, wireline and VoIP providers that are not currently reporting their infrastructure status in DIRS will incur one-time implementation costs to transition from their exiting reporting processes or lack thereof to new reporting processes to comply with this Order. The Commission estimates that the nation's regional and local cable communications, wireless, wireline and VoIP providers as a whole will experience costs related to initial entry of contact information and initial entry of critical information. Based on our previous analyses we know that provider responses, and DIRS reports generally, will differ and appear unique for each emergency or disaster due to differing events, geographic areas and the types of services being provided. As a result, we estimate that each provider subject to the DIRS reporting requirement will enter approximately 37 unique reports of critical information over an average of five DIRS activations per year.[233] We believe that critical information will be input initially, and each unique entry of critical information subsequently updated an average of approximately six times. We estimate a time requirement for initial entry of contact information of 0.1 hours, for initial entry of critical information of 0.5 hours, and 0.1 hours for updates of critical information.[234]

72. Impacted providers may also incur an annual recurring cost, imposed by the new reporting requirements, but the Commission has determined that these costs are likely to be mitigated for

---

[231] *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.

[232] *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.

[233] FCC, *3060-1003 – DIRS Supporting Statement for Communications Disaster Information Reporting System (DIRS)*, (Aug. 2023), https://omb.report/icr/202307-3060-031/doc/134173500.

[234] *Id.*

a number of reasons. The incremental costs of reporting are lessened to the extent that providers already engage in voluntarily reporting in DIRS or similarly reporting in NORS with the Commission or produce internal reports already to keep track of and learn from emergency events. Moreover, these cost increases will be substantially offset, over the long term, by the lowering of administrative costs. Under our new rules, a provider will only need to report in DIRS upon activation and not have to use time or resources for dual reporting in NORS. They will have a reporting system in place after their first time reporting in DIRS thereby lowering the cost of subsequent reporting, decreasing staff time spent on reporting, and having more staff familiar with the reporting process.

73. Based on the record, the Commission concluded that the benefits of participation by small entities and other providers likely will exceed the costs for affected providers to comply with the rules adopted in today's *Order*. The benefits attributable to improving resiliency in the context of emergency situations are substantial and may have significant positive effects on the abilities of these entities to promote the health and safety of residents during times of natural disaster or other unanticipated events that impair telecommunications and communications infrastructure.

G. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

74. 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."[235]

75. The actions taken by the Commission in the *Order* were considered to be the least costly and minimally burdensome for small and other entities impacted by the rules. The Commission took a number of actions in the *Order* to minimize any significant economic impact on small entities and considered several alternatives. Specifically, the *Order's* requirements are only applicable to cable communications, wireless, wireline and interconnected VoIP providers, and thus modifies our proposal in the *2021 Resilient Networks Notice* which included Direct Broadcast Satellite (DBS), Satellite Digital Audio Radio Service (SDARS), and TV and radio broadcasting small entity providers in the scope of the mandatory reporting requirements. While we considered mandating DIRS reporting for the satellite and broadcast industries, factors relevant to these industries during a disaster such as the impact to the specific technology, the impact of operational restrictions such as the loss the underlying telephone, Internet, or power services relied upon to provide service, and the types of information that is likely relevant for disaster response as it pertains to these groups that may impact what data needs to be collected from these entities, led us to limit the scope of DIRS reporting at this time, and in the *Second Further Notice of Proposed Rulemaking* included with *Order* we seek further information to build a more complete record.

76. Several of the adopted requirements are based on, or incorporate industry-developed standards, and utilize and are consistent with existing Commission requirements which should lessen the reporting burden for small entities. Moreover, in developing the requirement that cable communications, wireless, wireline and interconnected VoIP providers must report in DIRS daily upon activation, we do not unnecessarily require excess reports in the normal course of business when there is no ongoing disaster or emergency, and we only focus on times where reporting is crucial for public safety and wellbeing. The Commission's mandate of DIRS reporting in a system that already exists and is utilized voluntarily by providers while eliminating the need for providers to report in a second system – NORS, when DIRS reporting is activated and outages are timely reported in DIRS, should increase the likelihood that small entities are familiar with the reporting system and already have processes and procedures in place to facilitate compliance with the rules we adopt in today's *Order*. Our decision to remove the burden of a dual reporting requirement in DIRS and NORS should be a significant benefit for small entities.

[235] 5 U.S.C. § 604(a)(6).

77. Further, Cable Communications, Wireline, Wireless, and Interconnected VoIP providers who provide a DIRS report pursuant to paragraph (a) of this section are not required to make submissions in the Network Outage Reporting System (NORS) under this chapter pertaining to any incidents arising during the DIRS activation and that are timely reported in DIRS. Subject providers shall be notified that DIRS is activated and deactivated pursuant to Public Notice from the Commission and/or the Public Safety and Homeland Security Bureau. This section may contain information collection and/or recordkeeping requirements. Compliance with this section will not be required until this paragraph (c) is removed or contains compliance dates, which will not occur until the later of: (i) 30 days after the Office of Management and Budget completes review of such requirements pursuant to the Paperwork Reduction Act or the Public Safety and Homeland Security Bureau determines that such review is not required; or (ii) November 30, 2024.

78. The Commission considered the arguments put forth by commenters that mandatory reporting should not be adopted because small entities may not be able to submit the required reports during an ongoing disaster and questioning the usefulness of DIRS reports during a disaster.[236] However, we moved forward to adopt a mandatory DIRS reporting requirement in light of the Commission's ability to address any significant or unusual burden small providers may encounter on a case-by-case basis pursuant to its authority to waive mandatory DIRS requirements, the offsetting benefits to small and other providers from our waiver of the NORS reporting requirement when providers are reporting in DIRS, and the evidence in the record in the *2021 Resilient Networks Notice,* and in the Commission's Disaster Communications Field Hearing, providing information regarding the value of DIRS data to improving public safety and ensuring network reliability. [237]

H. Report to Congress

79. The Commission will send a copy of the *Second Report and Order and Second Further Notice of Proposed Rulemaking*, including this FRFA, in a report to Congress pursuant to the Congressional Review Act.[238] In addition, the Commission will send a copy of the Second *Report and Order and Second Further Notice of Proposed Rulemaking*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Second Report and Order and Second Further Notice of Proposed Rulemaking* and FRFA (or summaries thereof) will also be published in the *Federal Register*.[239]

[236] NTCA—The Rural Broadband Association, Dec. 16, 2021, Comments at 9 (NTCA Comments).

[237] *2021 Resilient Networks Notice* at paras 8-12; Testimony of Harold Feld, Senior Vice President, Public Knowledge, FCC Field Hearing on Network Resiliency, PS Docket Nos. 21-346, 15-80, ET Docket No. 04-35 (Oct. 26. 2021), at 3-4.

[238] 5 U.S.C. § 801(a)(1)(A).

[239] 5 U.S.C. § 604(b).

APPENDIX C
Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *Second Further Notice of Proposed Rulemaking* (*Second Further Notice*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Second Further Notice*. The Commission will send a copy of the *Second Further 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 *Second Report and Order (Order*) preceding the *Second Further Notice,* the Commission adopts rules requiring cable communications, wireless, wireline and interconnected VoIP providers to report network outages in the Commission's Disaster Information Reporting System (DIRS) when it is activated, suspends Network Outage Reporting System (NORS) reporting obligations when DIRS reporting is in effect, and a mandates final report within 24 hours of the deactivation of DIRS for those subject providers.

3. The *Second Further Notice* further explores potential expansion of the reporting requirements of the *Order*. We propose additional providers to consider for mandated DIRS reporting including broadcast, satellite, and broadband providers, as well as specific types of reporting requirements. We further inquire whether FirstNet should be subject to NORS and/or DIRS reporting, and whether FirstNet and all other relevant providers should be required to send "after action" reports to the Commission after an emergency. In the *Second Further Notice* we seek comment on:

- A proposal to require TV and radio broadcasters to report in NORS and DIRS subject to simplified reporting processes and the scope of these simplified reporting processes;
- A proposal to require satellite providers to report in DIRS, and information on whether modifications to existing DIRS satellite forms are warranted in a mandatory regime and whether the NORS reporting thresholds for satellite providers should be modified to reflect technological changes;
- The extent to which FirstNet should be subject to NORS and/or DIRS reporting requirements;
- The extent to which BIAS providers should be required to report in NORS and/or DIRS;
- Reporting mobile recovery assets;
- The extent to which covered 988 service providers should be subject to mandated DIRS reporting requirements;
- Whether providers subject to DIRS reporting requirements should be required to supply the Commission with "after action" reports detailing how their networks fared and the timing, duration and effectiveness of their pre-disaster response plans;
- The extent to which DIRS reporting providers should be required to provide the location of mobile recovery assets deployed in support of an incident, as well as information on other

[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] *See id.*

specifications of those assets; and

- Specific cost and benefit estimates for the proposal and matters discussed in the *Second Further Notice.*

4. Our proposals and the matters upon which we seek comment in the *Second Further Notice* are intended to build upon today's *Order* by expanding the list of applicable providers for required DIRS reporting, explore how to further expand today's rule in terms of "after action" reports and advances in technology, provide transparency and insight into FirstNet and its reporting, and creating a more complete record for DIRS and NORS reporting requirements.

B. Legal Basis

5. The proposed action is authorized pursuant to sections 1, 4(i), 4(j), 4(n), 201, 214, 218, 251(e)(3), 301, 303(b), 303(g), 303(j), 303(r), 307, 309316, 332, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i)-(j) & (n), 201, 214, 218, 251(e)(3), 301, 303(b), 303(g), 303(j), 303(r), 307, 309(a), 309(j), 316, 332, 403; sections 2, 3(b), and 6-7 of the Wireless Communications and Public Safety Act of 1999, 47 U.S.C. §§ 615 note, 615, 615a-1, and 615b.

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, and 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 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).[7]

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

[4] 5 U.S.C. § 603(b)(3).

[5] 5 U.S.C. § 601(6).

[6] 5 U.S.C. § 601(3) (incorporating by reference the definition of ""small business concern" in 15 U.S.C. § 632(a)).)).). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[7] 15 U.S.C. § 632.

[8] *See* 5 U.S.C. § 601(3)-(6).

[9] *See* SBA, Office of Advocacy, "What's New With Small Business?,"

https://advocacy.sba.gov/wp-content/uploads/2023/03/Whats-New-Infographic-March-2023-508c.pdf (Mar. 2023).

[10] *Id*.

[11] *See* 5 U.S.C. § 601(4).

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 2020, there were approximately 447,689 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 2017 Census of Governments[15] indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.[16] Of this number, there were 36,931 general purpose governments (county,[17] municipal, and town or township[18]) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts[19] with enrollment populations of less than 50,000.[20] Accordingly, based on the 2017 U.S. Census of Governments data, we

---

[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. S*ee* 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 2020 with revenue less than or equal to $50,000 for Region 1-Northeast Area (58,577), Region 2-Mid-Atlantic and Great Lakes Areas (175,272), and Region 3-Gulf Coast and Pacific Coast Areas (213,840) that includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

[14] *See* 5 U.S.C. § 601(5).

[15] *See* 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with "2" and "7". *See also* Census of Governments, https://www.census.gov/programs-surveys/cog/about.html.

[16] *See* U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02], https://www.census.gov/data/tables/2017/econ/gus/2017-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. CG1700ORG02 Table Notes_Local Governments by Type and State_2017.

[17] *See id.* at tbl.5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 2,105 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: 2017 [CG1700ORG06], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 18,729 municipal and 16,097 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: 2017 [CG1700ORG10], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 12,040 independent school districts with enrollment populations less than 50,000. *See also* tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2017.

[20] While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments (continued….)

estimate that at least 48,971 entities fall into the category of "small governmental jurisdictions."[21]

10. *Wired Broadband Internet Access Service Providers (Wired ISPs)*.[22] 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.[23] Wired broadband Internet services fall in the Wired Telecommunications Carriers industry.[24] The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small.[25] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[26] Of this number, 2,964 firms operated with fewer than 250 employees.[27]

11. 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.[28] 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*,[29] we believe that the majority of wireline Internet access service providers can be considered small entities.

---

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 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations tbls. 5, 6 & 10.

[22] Formerly included in the scope of the Internet Service Providers (Broadband), Wired Telecommunications Carriers and All Other Telecommunications small entity industry descriptions.

[23] *See* 47 CFR § 1.7001(a)(1).

[24] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[25] *See* 13 CFR § 121.201, NAICS Code 517311 (as of Oct. 1, 2022, NAICS Code 517111).

[26] *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.

[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.

[28] *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 (Mar. 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.

[29] *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*).

12. *Wireless Broadband Internet Access Service Providers (Wireless ISPs or WISPs)*.[30] 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[.]"[31] 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.[32] 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).[33] The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[34] U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.[35] Of that number, 2,837 firms employed fewer than 250 employees.[36]

13. 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.[37] 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,[38] as well as on terrestrial fixed wireless broadband providers in general,[39] we believe that the majority of wireless Internet access service providers can be considered small entities.

14. *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."[40] Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business

---

[30] Formerly included in the scope of the Internet Service Providers (Broadband), Wireless Telecommunications Carriers (except Satellite) and All Other Telecommunications small entity industry descriptions.

[31] 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.

[32] *See* 47 CFR § 1.7001(a)(1).

[33] *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.

[34] *See* 13 CFR § 121.201, NAICS Code 517312 (as of Oct. 1, 2022, NAICS Code 517112).

[35] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[36] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[37] *See IAS Status 2019,* Fig. 30.

[38] *See Communications Marketplace Report*, GN Docket No. 22-203, 2022 WL 18110553 at 27, paras. 64-68. (2022) (*2022 Communications Marketplace Report*).

[39] *Id.* at 8, para. 22.

[40] *See* U.S. Census Bureau, *2017 NAICS Definition, "517410 Satellite Telecommunications,"* https://www.census.gov/naics/?input=517410&year=2017&details=517410.

with $38.5 million or less in annual receipts as small.[41] U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year.[42] Of this number, 242 firms had revenue of less than $25 million.[43] 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.[44] Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees.[45] Consequently, using the SBA's small business size standard, a little more than half of these providers can be considered small entities.

15. *Direct Broadcast Satellite (DBS) Service*. DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic "dish" antenna at the subscriber's location. DBS is included in the Wired Telecommunications Carriers industry which comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks.[46] Transmission facilities may be based on a single technology or combination of technologies.[47] 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.[48] By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.[49]

16. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[50] U.S. Census Bureau data for 2017 show that 3,054 firms operated in this industry for the entire year.[51] Of this number, 2,964 firms operated with fewer than

[41] *See* 13 CFR § 121.201, NAICS Code 517410.

[42] *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.

[43] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. 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.

[44] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[45] *Id.*

[46] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[47] *Id.*

[48] *See id*. Included in this industry are: broadband Internet service providers (*e.g.*, cable, DSL); local telephone carriers (wired); cable television distribution services; long-distance telephone carriers (wired); closed-circuit television (CCTV) services; VoIP service providers, using own operated wired telecommunications infrastructure; direct-to-home satellite system (DTH) services; telecommunications carriers (wired); satellite television distribution systems; and multichannel multipoint distribution services (MMDS).

[49] *Id*.

[50] *See* 13 CFR § 121.201, NAICS Code 517311 (as of Oct. 1, 2022 NAICS Code 517111).

[51] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

250 employees.[52] Based on this data, the majority of firms in this industry can be considered small under the SBA small business size standard. According to Commission data however, only two entities provide DBS service - DIRECTV (owned by AT&T) and DISH Network, which require a great deal of capital for operation.[53] DIRECTV and DISH Network both exceed the SBA size standard for classification as a small business. Therefore, we must conclude based on internally developed Commission data, in general DBS service is provided only by large firms.

17. *Radio Stations*. This industry is comprised of "establishments primarily engaged in broadcasting aural programs by radio to the public."[54] Programming may originate in their own studio, from an affiliated network, or from external sources.[55] The SBA small business size standard for this industry classifies firms having $41.5 million or less in annual receipts as small.[56] U.S. Census Bureau data for 2017 show that 2,963 firms operated in this industry during that year.[57] Of this number, 1,879 firms operated with revenue of less than $25 million per year.[58] Based on this data and the SBA's small business size standard, we estimate a majority of such entities are small entities.

18. 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 11,122 commercial radio stations.[59] 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 noncommercial (NCE) FM radio stations, 1,978 low power FM (LPFM) stations, and 8,928 FM translators and boosters.[60] 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.

---

[52] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[53] *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Eighteenth Report,* Table III.A.5*,* 32 FCC Rcd 568, 595 (Jan. 17, 2017).

[54] *See* U.S. Census Bureau, *2017 NAICS Definition, "515112 Radio Stations*," https://www.census.gov/naics/?input=515112&year=2017&details=515112.

[55] *Id.*

[56] *See* 13 CFR § 121.201, NAICS Code 515112 (as of Oct. 1, 2022 NAICS Code 516110).

[57] *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.

[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. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in the individual categories for less than $100,000, and $100,000 to $249,999 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in these categories). Therefore, the number of firms with revenue that meet the SBA size standard would be higher that noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[59] *Broadcast Station Totals as of September 30, 2023*, Public Notice, DA 23-921 (released Oct. 3, 2023) (*October 2023 Broadcast Station Totals PN*), https://docs.fcc.gov/public/attachments/DA-23-921A1.pdf.

[60] *Id*.

19. We note, however, that in assessing whether a business concern qualifies as "small" under the above definition, business (control) affiliations[61] 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.

20. *Television Broadcasting.* This industry is comprised of "establishments primarily engaged in broadcasting images together with sound."[62] These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.[63] 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.[64] 2017 U.S. Census Bureau data indicate that 744 firms in this industry operated for the entire year.[65] Of that number, 657 firms had revenue of less than $25,000,000.[66] Based on this data we estimate that the majority of television broadcasters are small entities under the SBA small business size standard.

21. As of September 30, 2023, there were 1,377 licensed commercial television stations.[67] Of this total, 1,258 stations (or 91.4%) had revenues of $41.5 million or less in 2022, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on October 4, 2023, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates as of September 30, 2023, there were 383 licensed noncommercial educational (NCE) television stations, 380 Class A TV stations, 1,889 LPTV stations and 3,127 TV translator stations.[68] 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

[61] "[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).

[62] *See* U.S. Census Bureau, *2017 NAICS Definition, "515120 Television Broadcasting,"* https://www.census.gov/naics/?input=515120&year=2017&details=515120.

[63] *Id.*

[64] *See* 13 CFR § 121.201, NAICS Code 515120 (as of Oct. 1, 2022, NAICS Code 516120).

[65] *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.

[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. 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.

[67] *Broadcast Station Totals as of September 30, 2023*, Public Notice, DA 23-921 (released Oct. 3, 2023) (*October 2023 Broadcast Station Totals PN*), https://docs.fcc.gov/public/attachments/DA-23-921A1.pdf.

[68] *Id*.

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.

22. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.[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.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

23. The proposed requirements in the *Second Further Notice* if adopted, will impose new or modified reporting, recordkeeping and/or other compliance obligations on small entities. Specifically, we have proposed mandatory requirements implementing (1) a simplified DIRS reporting process for TV and radio broadcasters report in NORS and DIRS; (2) DIRS reporting for satellite providers, and potentially modifying existing DIRS satellite forms, and NORS reporting thresholds for satellite providers to reflect technological changes; (3) NORS and DIRS reporting obligations for BIAS providers; and (4) a reporting requirement for all providers subject to DIRS reporting that would require these providers to submit "after action" reports to the Commission with detailed information on how their networks performed, as well as on the timing, duration, and effectiveness of their pre-disaster response plans within 60 days of the Public Safety and Homeland Security Bureau (Bureau) providing public notice that such reports must be filed.

24. The *Second Further Notice* seeks comment on a number of aspects mentioned above in section A, relating to our proposals and the matters we discuss, including on the extent to which DIRS reporting providers should be required to report the location of mobile recovery assets deployed in support of an incident, as well as information on other specifications of those assets. In assessing the cost of compliance for small entities, at this time the Commission is not in a position to determine whether, if adopted, the proposals and matters upon which we seek comment in the *Second Further Notice* will require small entities to hire professionals to comply, and we cannot quantify the cost of compliance with any of the potential rule changes that may be adopted. We expect the comments we receive in response to the *Second Further Notice* to include information which should help the Commission further identify, and

---

[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 Oct. 1, 2022, 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.

evaluate relevant issues and burdens for small entities, including compliance costs, before adopting final rules.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

25. 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 (among others) the following four alternatives: (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.[75]

26. The Commission has taken specific steps to address some of the costs for providers subject to the potential rules discussed in the *Second Further Notice*. We seek to give small and other providers maximum flexibility and reduce potential costs of compliance, with for example, our proposal to implement simplified reporting for TV and radio broadcasters. These entities would simply report whether their operations were on air or off air, any issues affecting their operations, and the time estimate to fully restore its operations. While we propose to apply DIRS reporting to TV and radio broadcasters in the *Second Further Notice,* the Commission considered not mandating DIRS reporting for TV and radio broadcasters and seeks comment on both approaches, seeks comment on exempting low power broadcasters, and proposes to exempt translator and booster stations. However, we note that because of the critical role that broadcasters play in informing the public during emergency situations, we believe it is in the public interest for the Commission to have information on broadcasters' networks during emergencies. We also recognize, however, that in some instances filing in NORS and/or DIRS by small providers, including those providing BIAS or other broadband services, may be supported by the public interest benefits ensuring prompt access to, or restoration of, these services when they are disabled. Nevertheless, we seek comment on ways to minimize burdens on these entities while ensuring the fulfillment of the stated public safety purposes. For example, we seek comment on how to minimize burdens where a BIAS provider may already be subject to reporting for another service they provide.

27. Recognizing the challenges that mandatory DIRS reporting may present for satellite providers, the Commission considered and seeks comment in the *Second Further Notice,* on making modifications to the types of information that satellite providers would submit with mandatory DIRS reporting. Additionally, we considered and inquired whether, and if so, how to modify NORS reporting thresholds to reflect technological network changes which could benefit small satellite providers. Finally, with our proposal to require providers subject to mandated DIRS reporting to submit an "after action" report described in the previous section, we considered and seek comment on whether to apply this requirement to all DIRS filers, or in the alternative, only to a subset of DIRS filers.

28. We expect to consider the economic impact more fully on small entities following our review of comments filed in response to the *Second Further Notice* and this IFRA. 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

29. None.

[75] 5 U.S.C. § 603(c)(1)-(4).

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *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 (January 25, 2024)

We live in a world with wild weather. Dramatic fires, floods, hurricanes, and blizzards are occurring more frequently and doing more damage than ever before. When these storms reach us we reach for the phone, a screen, a radio, anyone or anything who can tell us what is going on and provide help when conditions are truly dire.

In short, when disaster strikes, you want communications to work. That is why for more than a decade and a half the Federal Communications Commission has had something called the Disaster Information Reporting System, or DIRS for short. Through DIRS, communications providers voluntarily share with the FCC information about the operational status of their networks. This data is absolutely vital. When a storm hits, it means we have information that we can share with other federal agencies as well as state and local first responders to assist those on the ground with facts about where disconnections have occurred, where operations are vulnerable, and where restoration efforts are required.

But there are gaps in this data. Not every provider files this data with us. Not every technology is covered by our rules. I think these gaps are unacceptable. Everyone needs communications to work in crisis. So we need to close them.

Today we start that process. We make it mandatory for voice and cable providers to report their network operational status daily when DIRS is being used during a disaster. In order to avoid duplication, we make clear that when DIRS is activated, providers will not also have to file the same information in our required system for outage reporting, known as the Network Outage Reporting System, or NORS. But because we know that every storm is an opportunity to learn about what we can do better to keep communications up and running in disaster, we also require a final report on network operational status after DIRS is deactivated.

This is a terrific first step. But we need to go further. Because when the unthinkable occurs, we reach for a range of communications not covered by our rules. That is why we also include a rulemaking with our decision today.

My hope is that with this order and rulemaking we are on course to keep more people connected in disaster. Now is not a moment too soon. Hurricane season starts in less than six months and in the intervening time it is a good bet that other storms are headed our way. One thing we know for sure is that Mother Nature's wrath will visit us again and again. So we have to continue to update our policies on network resiliency so that communications are available when we need them most.

I want to share my appreciation for staff who worked on this effort, including Logan Bennett, John Blumenschein, Michael Caiafa, Justin Cain, Shawn Cochran, John Evanoff, David Furth, Bill Kang, Nikki McGinnis, and Erika Olsen from the Public Safety and Homeland

Security Bureau; Deborah Broderson, Doug Klein, Anjali Singh, and Chin Yoo from the Office of General Counsel; Steve Kaufman, Cher Li, Patrick Sun, Emily Talaga, and Aleks Yankelevich from the Office of Economics and Analytics; Stephen Duall, Kerry Murray, Troy Tanner, and Patrick Webre from the Space Bureau; Evan Baranoff, Steven Broeckaert, Mark Columbo, Hillary DeNigro, Barbara Kreisman, Sean Mirzadegan, Evan Morris, Maria Mullarky, Brendan Murray, and Albert Shuldiner from the Media Bureau; Matthew Gibson, Jason Koslofsky, Shannon Lipp, Jeremy Marcus, Ryan McDonald, and Elizabeth Mumaw from the Enforcement Bureau; Cameron Duncan and Kari Hicks from the Wireless Telecommunications Bureau; Adam Copeland, Melissa Kirkel, and Chris Laughlin from the Wireline Competition Bureau; and Joy Ragsdale and Chana Wilkerson from the Office of Communications Business Opportunities. Finally, I want to thank Commissioner Gomez for her thoughtful contributions to the rulemaking regarding FirstNet and public safety.

STATEMENT OF
COMMISSIONER GEOFFREY STARKS

Re: *Resilient Networks*, PS Docket No 21-346; *Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications*, PS Docket No. 15-80; *New Part 4 of the Commission's Rules Concerning Disruptions to Communications*, ET Docket No. 04-35, Second Report and Order and Second Further Notice of Proposed Rulemaking

When the Commission created the Disaster Information Reporting System in 2007, more commonly known as DIRS, the nation was dealing with the aftermath of Hurricane Katrina. We watched, shocked and terrified, at what we saw in New Orleans, Louisiana, and the surrounding communities. And then we got to work. We realized that the lack of information about network operation and repair status was hampering recovery efforts and that by working together the Commission and network providers could do more. Carriers could report—voluntarily—their operational status and restoration information during and after major disasters which the Commission could use and share with relevant authorities to benefit Americans.

DIRS was a good start, but it wasn't perfect. Even now, quite simply, too many providers decline to participate, blunting its effectiveness and restricting the availability of information necessary to determine the status of the repair, replacement, and restoration of communications infrastructure. And, as it turns out, these gaps in knowledge during disasters and recovery can lead to big problems. Our federal partners, such as FEMA, and state and local governments and authorities, rely on the FCC to help inform their decisions on how to best serve their communities. Without the full picture of communications network status in affected communities, authorities are limited in their efforts to help impacted Americans. Severe weather events that harm communications networks and cause outages, like the wildfires in Hawaii or Hurricane Ian, are becoming more common.[1] It is time to act.

Our decision today to require cable, wireline, wireless, and interconnected VoIP providers to report their infrastructure status information in DIRS when the Commission activates it is timely and will support consumers. I also support seeking comment on expanding our DIRS filing obligations to other communications networks, including TV and radio broadcasters, satellite providers, and broadband Internet access service providers. These communications providers play integral roles in providing access to information for local communities. It makes sense to consider including them in DIRS, while at the same time seeking comment on what modifications may be necessary to ensure that their participation is consistent with the unique challenges inherent in their transmission technologies.

I thank the FCC staff for their hard work. I approve.

[1] U.S. Struck with Historic Number of Billion-dollar Disasters in 2023, National Oceanic and Atmospheric Administration, Jan. 9, 2024, https://www.noaa.gov/news/us-struck-with-historic-number-of-billion-dollar-disasters-in-2023.

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

In the Matter of	)	
	)	
Mitigation of Orbital Debris in the New Space Age	)	IB Docket No. 18-313

ORDER ON RECONSIDERATION

Adopted: January 25, 2024 **Released: January 26, 2024**

By the Commission: Chairwoman Rosenworcel and Commissioner Simington issuing separate statements.

TABLE OF CONTENTS

Heading Paragraph #

I. INTRODUCTION 1
II. BACKGROUND 3
III. DISCUSSION 4
A. Combined Petition Issues 5
1. Relationship to Other USG Technical and Policy Documents 5
2. Burden on Applicants 8
3. Maneuverability 9
4. Large System Disposal Reliability 15
5. Deployment Devices 18
6. Persistent Liquids 22
7. "Case-by-Case" Approach 24
B. SpaceX Petition - Market Access and Orbital Debris Mitigation Showings 27
C. Kuiper Petition - Orbital Separation of Large NGSO Systems 31
IV. ORDERING CLAUSES 36

I. INTRODUCTION

1. In this *Order on Reconsideration*, we address the issues raised in a combined petition for reconsideration filed by the Boeing Company (Boeing), EchoStar Satellite Services, LLC (EchoStar), Hughes Network Services, LLC (Hughes), Planet Labs, Inc. (Planet), Spire Global, Inc. (Spire), and Telesat Canada (Telesat)[1] in response to the Commission's *2020 Orbital Debris Mitigation Report and Order* (*Order*) which comprehensively updated the Commission's existing rules regarding orbital debris

[1] Petition for Reconsideration of the Boeing Company, EchoStar Satellite Services, LLC, Hughes Network Services, LLC, Planet Labs, Inc., Spire Global, Inc., and Telesat Canada, IB Docket No. 18-313 (Sept. 24, 2020), https://www.fcc.gov/ecfs/filing/10924662771139 (Combined Petition).

mitigation.[2] Space Exploration Technologies Corp. (SpaceX),[3] and Kuiper Systems LLC (Kuiper)[4] also filed petitions for reconsideration. The Combined Petition asks the Commission to reconsider information disclosure requirements that were adopted by the Commission in the *Order* relating to satellite maneuverability, large system disposal reliability, the use of deployment devices, and the use of certain types of persistent liquids.[5] SpaceX seeks reconsideration or clarification of the Commission's orbital debris mitigation rules as applied to non-U.S.-licensed satellite systems seeking U.S. market access. Finally, Kuiper seeks adoption of a new rule addressing issues related to the orbital separation of large non-geostationary orbit (NGSO) constellations.

2. As discussed in further detail below, we decline to modify, withdraw, or otherwise change the information collection requirements adopted in the *Order*. We also decline to change our rules as applicable to non-U.S.-licensed systems seeking U.S. market access, or to adopt new rules governing the orbital separation of large NGSO constellations. After reviewing the petitions, we find that the petitioners failed to show any material errors or omissions in the *Order* or raise any new or additional facts that would warrant reconsideration under the Commission's rules.[6] However, we provide some clarification or guidance as appropriate on some of the issues raised in the petitions for reconsideration.

II. BACKGROUND

3. On November 19, 2018, the Commission released a *Notice of Proposed Rulemaking* (*2018 NPRM*) in IB Docket No. 18-313 concerning the mitigation of Orbital Debris in the New Space Age.[7] It represented the first comprehensive look at the Commission's orbital debris rules since their adoption in 2004 and was intended to improve and clarify these rules based on the experiences gained in the satellite licensing process and various improvements in mitigation guidelines, practices, and technologies. After reviewing the record and public comments filed in response to the *2018 NPRM*, including individual comments filed by some of the parties involved in the petitions for reconsideration, the Commission adopted the *Orbital Debris Order* on April 23, 2020.[8] At the same time, the Commission also adopted a *Further Notice of Proposed Rulemaking* (*FNPRM*), which sought further comment on adopting rules concerning the probability of accidental explosions, the total probability of collisions with large objects, maneuverability above a certain altitude in low-Earth orbit (LEO), post-mission orbital lifetime, casualty risk, indemnification, and performance bonds for successful disposal.[9] On September

[2] *See Mitigation of Orbital Debris in the New Space Age,* IB Docket No. 18-313, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 4156 (2020) (*Order* or *Orbital Debris Order or FNPRM*).

[3] Petition for Reconsideration of Space Exploration Technologies Corp., IB Docket No. 18-313 (Sept. 24, 2020) (SpaceX Petition).

[4] Petition for Reconsideration of Kuiper Systems LLC, IB Docket No. 18-313 (Sept. 24, 2020) (Kuiper Petition).

[5] The parties to the Combined Petition did not all join in each of the specific requests for reconsideration. Telesat joined only with respect to the disclosure requirement concerning the 0.99 satellite disposal reliability for large constellations. EchoStar and Hughes joined with respect to the use of deployment devices and certain types of liquids.

[6] Pursuant to § 1.429 of the Commission's rules, parties may petition for reconsideration of the final orders in a rulemaking proceeding. Reconsideration is generally appropriate only where the petitioner shows either a material error or omission in the original order or raises additional facts not known or not existing until after the petitioner's last opportunity to respond. Under § 1.429(b) of the Commission's rules, petitions for reconsideration that rely on facts or arguments that have not been previously presented to the Commission will be considered only under certain limited circumstances. *See* 47 CFR § 1.429.

[7] *See Mitigation of Orbital Debris in the New Space Age,* IB Docket No. 18-313, Notice of Proposed Rulemaking, 33 FCC Rcd 11352 (2018) (*2018 NPRM*).

[8] *See Orbital Debris Order*, 35 FCC Rcd 4156.

[9] *See Orbital Debris FNPRM*, 35 FCC Rcd 4226.

24, 2020, the petitioners filed their timely petitions for reconsideration[10] and by November 24, 2020, five oppositions and comments to the petitions were filed.[11]

III. DISCUSSION

4. In the discussion that follows, we first address the issues raised in the Combined Petition. Among those issues, we first address the relationship of the rules adopted to other U.S. government policy and technical documents, then issues raised with respect to each of the specific disclosure rules, and finally the petitioners' general concerns about case-by-case review of the information disclosed, as well as burdens on applicants from providing disclosure. Next, we address SpaceX's request that we reconsider our decision to maintain a rule that allows non-U.S.-licensed space station operators to satisfy orbital debris mitigation showing requirements by demonstrating that the satellite(s) requesting U.S. market access are subject to direct and effective regulatory oversight by its national licensing authority as it pertains to their debris mitigation plans. Lastly, we address Kuiper's request that the Commission reconsider its decision to not establish orbital separation requirements. After reviewing the Combined Petition, oppositions, and comments, we conclude that the petitioners have not offered any substantive issues that would warrant reconsideration of our rules and have not provided an explanation as to how revising our rules as they request would be consistent with the Commission's public interest mandate, which requires that we evaluate the orbital safety implications of the satellites and satellite systems for which we issue authorizations.

A. Combined Petition Issues

1. Relationship to Other USG Technical and Policy Documents

5. The petitioners raise concerns about the consistency of the rules adopted with policies and guidelines developed by expert federal agencies, noting in particular the U.S. Government Orbital

[10] The *Orbital Debris Order and FNPRM* were published in the Federal Register on Aug. 25, 2020. 85 FR 52422 (2020).

[11] On November 9, 2020, the Commission published a notice announcing the filing of all of the petitions for reconsideration and setting November 24, 2020 as the deadline for submitting oppositions. Petitions for Reconsideration of Action in Proceedings, 85 FR 71296 (2020). Consolidated Opposition to Petitions for Reconsideration of Viasat, Inc, IB Docket No. 18-313, (filed Nov. 24, 2020), https://www.fcc.gov/ecfs/search/search-filings/filing/11242734224280 (Viasat Opposition); Opposition and Response of OneWeb, IB Docket No. 18-313 (filed Nov. 23, 2020), https://www.fcc.gov/ecfs/search/search-filings/filing/1125914700201 (OneWeb Opposition); Comments of Maxar Technologies Inc., IB Docket No. 13-313 (filed Nov. 24, 2020), https://www.fcc.gov/ecfs/search/search-filings/filing/1124796316914 (Maxar Comments); Comments of Kepler Communications Inc., IB Docket No. 13-313 (filed Nov. 24, 2020), https://www.fcc.gov/ecfs/search/search-filings/filing/1125185066832 (Kepler Comments); Comments of Astrodynamics, Space Robotics, and Controls Laboratory, IB Docket No. 13-313 (filed Nov. 23, 2020), https://www.fcc.gov/ecfs/search/search-filings/filing/1124897502153 (ARCLab Comments).

Debris Mitigation Standard Practices (ODMSP)[12] and Space Policy Directive-3 (SPD-3),[13] and allege that the disclosure rules "[diverge] substantially from the recommendations of other expert federal agencies, including, in some cases, disregarding the findings of the recently updated multi-agency Orbital Debris Mitigation Standard Practices."[14] Both Viasat and OneWeb challenge this assertion.[15]

6. The petitioners have failed to identify any respect in which the Commission's actions in adopting the *Order* are fundamentally inconsistent with the policies, goals, and guidelines identified in SPD-3 and the ODMSP. To the extent they are relying on the fact that the specific technical matters addressed in the Commission's rules are not addressed at the same level of specificity in SPD-3 and the ODMSP, these arguments are not well-founded, and do not establish a "divergence." As noted by Viasat and OneWeb,[16] both of these documents invite further action including through the development of additional standards and best practices.[17] The ODMSP expressly states that it may be appropriate to "consider the benefits of going beyond the standard practices and tak[ing] additional steps to limit the generation of orbital debris."[18] Furthermore, and as discussed in greater detail below, the petitioners have in some instances alleged divergence from these documents only by ignoring other relevant provisions of those documents.[19]

7. Even if we were to accept the petitioner's unsupported allegation of divergence, the Commission observed in adopting these rules that the ODMSP "applies, by its terms, only to government missions that are procured and operated by government agencies for governmental purposes…rather than in the context of regulatory review," and for that reason "some tailoring" of the ODMSP was necessary to

[12] U.S. Government Orbital Debris Mitigation Standard Practices, https://orbitaldebris.jsc.nasa.gov/library/usg_orbital_debris_mitigation_standard_practices_november_2019.pdf (revised Nov. 2019) (ODMSP). The ODMSP were established in 2001 to address the increase in orbital debris in the near-Earth space environment. As noted in the ODMSP Preamble, the goal of the ODMSP is to limit the generation of new, long-lived debris by the control of debris released during normal operations, by minimizing debris generated by accidental explosions, by the selection of safe flight profiles and operational configurations to minimize accidental collisions, and by post-mission disposal of space structures. The ODMSP were updated in 2019, with participation of both USG agencies that operate satellites, and agencies that regulate non-governmental space activities, including the FCC. As stated in the Preamble, the ODMSP provide guidelines for U.S Government activities, while also providing a reference to promote efficient and effective space safety practices for other domestic and international operators.

[13] Space Policy Directive-3, National Space Traffic Management Policy, Presidential Memorandum (Jun. 18, 2018), https://trumpwhitehouse.archives.gov/presidential-actions/space-policy-directive-3-national-space-traffic-management-policy/ (SPD-3). SPD-3 provides a policy framework for Executive Branch agencies to address increasing space activity. It includes specific tasking for those agencies, in some instances in consultation with the Commission, in areas such as collection and dissemination of data about space objects, prediction of possible collisions between space objects, and orbital debris mitigation.

[14] Combined Petition at 7.

[15] Viasat Opposition at 5-7; OneWeb Opposition at 7-8.

[16] *Id.* at 5-7; OneWeb Opposition 7-9; ; *see also* Letter from Laura Cummings, Regulatory Affairs Counsel, Astroscale U.S., LLC, to Marlene H. Dortch, Secretary, FCC, IB Docket No. 18-313, at 1 (filed Jan. 18, 2024) (Astroscale *Ex Parte*).

[17] *See, e.g.,* SPD-3 at Sec. 6(f) (identifying a Commission role in the development of space traffic standards and best practices); Sec. 5(b)(i) (discussing how the U.S. should incorporate appropriate standards and best practices into Federal law and regulation through appropriate rulemaking or licensing actions); Sec. 4(f) (discussing how regulatory agencies should adopt the standards and best practices identified for development by SPD-3 into domestic regulatory frameworks and use them to inform and help shape international practices and standards). SPD-3 also specifically addresses mitigation of orbital debris through "effective collision avoidance." *See* Sec. 5(c)(i).

[18] ODMSP, Preamble.

[19] *See infra* III.A.5.

fit into the Commission's existing regulatory structure.[20]

2. Burden on Applicants

8. Throughout the Combined Petition, petitioners argue that the regulations adopted in the *Order* will be overly burdensome on applicants. Viasat and Maxar challenge this claim.[21] In raising concerns with burdens on applicants, the petitioners rely on generalized concerns that regulation will be "overly stringent,"[22] or that applicants will experience difficulties because of "staff conclusions that the substance of the disclosed information was insufficient or inconsistent with what they thought should be required."[23] These speculative concerns about possible errors in Commission decision-making do not provide a basis for reconsideration. In any event, and in an effort to assist applicants in preparing applications, we offer below additional discussion with respect to some aspects of the specific disclosure requirements adopted.

3. Maneuverability

9. In the *Order*, the Commission adopted a rule requiring applicants to disclose the extent of maneuverability of planned space stations, noting that most commenters addressing this topic, including NASA, agreed with the adoption of this disclosure.[24] The Commission provided some examples of the type of information that applicants could include in their disclosure statements, as suggested by NASA in its comments on the topic.[25]

10. The Commission also revised a separate rule provision on avoiding collisions with large objects to require applicants to state whether the probability that their spacecraft will collide with a large object during the orbital lifetime of the spacecraft is less than 0.001 (1 in 1,000), in line with the ODMSP. As part of that rule, the Commission adopted a presumption that the collision risk with large objects could be assumed zero or near zero during the period of time when the space station is able to conduct avoidance maneuvers, absent evidence to the contrary.[26] The Commission noted that in individual cases where there is evidence that a particular system or operator is unable to effectively maneuver or is only maneuvering at a risk threshold that raises reasonable questions about its ability to meet the 0.001 collision risk threshold even with some degree of maneuverability, this assumption would not be applied and further analysis would be necessary.[27] The Commission did not adopt a definition of "effective maneuverability" but sought comment in the *FNPRM* on a definition, as well as on whether to adopt a requirement that spacecraft must be maneuverable.[28]

11. Boeing, Planet, and Spire argue that the Commission should withdraw its "requirements" regarding effective maneuverability until this term is adequately defined.[29] These petitioners do not distinguish between the two distinct portions of the rule, and instead argue generally that without a more detailed metric for effective maneuverability, such as the ability to alter the course of a spacecraft by a

---

[20] *Orbital Debris Order* at para. 24 n.74.

[21] *Id.* at 7-8; *see also* Maxar Comments at 5, 7 (discussing how the disclosures concerning maneuverability and disposal reliability are not excessively burdensome for satellite operators).

[22] Combined Petition at 12

[23] *Id.* at 10.

[24] *Orbital Debris Order*, 35 FCC Rcd at 4179, para 51.

[25] *Id.* at 4179-80, para 52.

[26] *Id.* at 4171-72, para 35. We note Boeing, one of the parties of this petition, initially supported the inclusion of this assumption in its comments. *See id*. at n.98.

[27] *Orbital Debris Order*, 35 FCC Rcd at 4171-72, para 35.

[28] *Orbital Debris FNPRM*, 35 FCC Rcd at 4233-34, paras. 164-167.

[29] Combined Petition at 13.

certain distance in a particular time period, the FCC rules cannot be administered fairly. However, they do not take issue with the assumption of zero or near zero risk for maneuverable spacecraft. Viasat, OneWeb, and Maxar oppose this request, noting, in effect, that pending development of a comprehensive definition, disclosure of maneuverability information serves a valid public interest objective and provides supporting evidence for addressing the Commission's collision risk rule.[30]

12. As observed in the *Order*, factual information regarding a satellite or system's maneuverability is useful not only to the Commission when it is assessing applications, but to other operators as it helps interested parties to better understand how operators plan to handle predicted collision risks.[31] Moreover, details about spacecraft maneuverability enhance the Commission's grasp of other data presented in an applicant's orbital debris mitigation plan and are essential information for the administration of our rules in several key areas. For example, the satellite's expected lifespan in orbit can be significantly influenced by its maneuverability and impact an operator's ability to comply with Commission rules. Additionally, the information provided by applicants in these disclosures can also be drawn upon as the Commission works to further refine its rules through rulemaking. As noted by opposing parties, "facilitating a thorough understanding of other operators' ability to maneuver in-orbit is fundamental to responsible orbital stewardship"[32] and disclosure fosters a "transparent" and "predictable" operating environment.[33]

13. Although the petitioners' request appears to focus on any disclosure concerning maneuverability, to the extent the petition seeks only removal of the "not effectively maneuverable" exception to the zero or near zero collision risk assumption in the Commission's large object collision risk rule, the petitioners have provided no valid arguments in support of this approach. We decline to adopt an approach that could maintain an assumption of zero or near zero risk even in the face of evidence suggesting that such an assumption is not warranted because collision avoidance capabilities are minimal. We expect the precedent that evolves from a case-by-case approach in evaluating factual information regarding a satellite or system's maneuverability will guide applicants and will address petitioners' concerns with subjective and inconsistent licensing determinations. The petitioners have not provided any evidence of a material error, omission, or reasoning that would warrant reconsideration under the Commission's rules.[34] Therefore, we decline to modify our rules pertaining to maneuverability.

14. *Additional Resources for Applicants.* During the pendency of this proceeding, NASA developed the "NASA Spacecraft Conjunction Assessment and Collision Avoidance Best Practices Handbook" and issued a revised version in February of 2023.[35] The Handbook is a useful resource that applicants may find helpful in developing and documenting conjunction assessment and collision avoidance capabilities, including for maneuverable spacecraft. The Handbook makes some specific recommendations on conjunction assessment and collision avoidance, including

- Designing spacecraft with capabilities to facilitate conjunction assessment and mitigation.[36]
- Provide ephemeris for conjunction screening at adequate intervals and covering adequate

[30] Combined Petition at 15-16; Viasat Opposition at 3-4; OneWeb Opposition at 9-10; Maxar Comments at 5-6.

[31] *Orbital Debris Order*, 35 FCC Rcd at 4179-80, para 52.

[32] OneWeb Opposition at 9.

[33] Combined Petition at iv; *see also* OneWeb Opposition at 9-10.

[34] *See* 47 CFR § 1.429.

[35] NASA Spacecraft Conjunction Assessment and Collision Avoidance Best Practices Handbook, (Rev 1, updated February 2023), https://nodis3.gsfc.nasa.gov/OCE_docs/OCE_51.pdf. ("NASA Handbook").

[36] *Id.* at 22.

duration.[37]

- When the probability of collision (Pc) estimated for a conjunction exceeds the mitigation threshold (recommended to be 1E-4) at the mitigation action commitment point, pursue a mitigation action that will reduce Pc by at least 1.5 orders of magnitude from the remediation threshold, and ensure that the mitigation action does not create any additional conjunctions with a Pc value above the mitigation threshold.[38]

4. Large System Disposal Reliability

15. In the *Order*, the Commission adopted a rule requiring applicants to provide a statement demonstrating that the probability of success for their chosen disposal method is 0.9 or greater for any individual space station.[39] The rule also requires that for space station systems consisting of multiple space stations, the demonstration should include additional information regarding efforts to achieve a higher probability of successful disposal, with a goal, for large systems, of a probability of success for any individual station of 0.99 or better.[40] Drawing on provisions in the ODMSP, the Commission also stated in the *Order* that additional scrutiny will be given to larger deployments, including consideration of factors such as mass, collision probability, and orbital location.[41]

16. Boeing, Planet, Spire, and Telesat raise a concern that the rule will result in the 0.99 probability goal for satellites that are part of large systems becoming in effect an enforceable requirement.[42] They also object to providing "sensitive" commercial considerations, such as satellite mass and orbital location, as part of the Commission's assessment.[43]

17. The petitioners have provided no valid basis for reconsideration. With respect to concerns that the 0.99 disposal reliability goal described in the adopted rule is in effect a firm requirement for all large deployments, these concerns are neither justified nor supported by any new information. Since the adoption of this rule, the Commission has authorized several large system deployments, and in doing so has addressed reliability together with other relevant factual considerations, such as collision risk for satellites that are not reliably disposed.[44] While it appears to be the case based on both authoritative studies[45] and the experience gained in these decisions that the largest systems will require very high disposal reliability in order to avoid unacceptably high collision risks, the approach to disposal reliability

[37] *Id.* at 9, 33, 35.

[38] *Id.* at 38, 41.

[39] *Orbital Debris Order*, 35 FCC Rcd at 4201, para 94.

[40] *Id.*. The rule adopted defined successful post-mission disposal for spacecraft in LEO as re-entry into the Earth's atmosphere within 25 years or less following completion of the mission. Subsequently the Commission has adopted a new rule lowering this benchmark to five years. *See* Second Report and Order, IB Docket Nos. 18-313, 22-271, 37 FCC Rcd 11818 (2022).

[41] *Orbital Debris Order*, 35 FCC Rcd at 4201, para 94.

[42] Combined Petition at 16.

[43] *Id.* at 17. We note that information such as satellite mass and orbital location are routinely provided as part of an application. To the extent that such information is sensitive as the petitioners suggest, applicants can request this information be treated confidentially under our current rules. *See* 47 CFR § 0.459.

[44] *See, e.g.,* Space Exploration Holdings, LLC, Application for Approval for Orbital Deployment and Operating Authority for the SpaceX NGSO Satellite System, Memorandum Opinion, Order and Authorization, 33 FCC Rcd 3391 (2018) (SpaceX Gen1 Authorization); Kuiper Systems, LLC, Application for Authority to Deploy and Operate a Ka-band Non-Geostationary Satellite Orbit System, Order and Authorization, 35 FCC Rcd 8324 (2020).

[45] *See* J.-C. Liou, et. al., "NASA ODPO's Large Constellation Study" NASA Orbital Debris Quarterly News, Volume 22, Issue 3 at 4-7 (Sept. 2018), https://www.orbitaldebris.jsc.nasa.gov/quarterly-news/pdfs/odqnv22i3.pdf (assuming constellations totaling approximately 8,000 spacecraft at operational altitudes above 1,000 kilometers maintained over multiple years, post-mission disposal reliability should be no less than 0.99).

discussed in the *Order* does not foreclose in individual cases the authorization of systems of satellites with individual satellite disposal reliability of less than 0.99. With respect to concerns raised about examination of "sensitive" information, we note that information such as orbital location and satellite mass (as a component of the area-to-mass ratio of the satellite, necessary for calculating residual orbital lifetime and related collision risk) are routinely provided as part of applications, and this information is routinely publicly available in the Commission's files. Orbital location is included in all licenses. To the extent examination of the orbital debris risks presented by a large constellation requires examination of information for which confidential treatment can be justified, the Commission's rules provide for such treatment.[46] We therefore do not consider these concerns as justifying reconsideration.

5. Deployment Devices

18. In the *Order*, the Commission modified a rule requiring applicants to provide a statement that the space station operator has assessed and limited the amount of debris released in a planned manner during normal operations to specifically require an orbital debris mitigation disclosure for any separate or "free-flying" deployment devices, distinct from the space launch vehicle, that may become a source of debris.[47] The Commission also discussed in the *Order* the scope of any such disclosure, noting that it should address facts such as the orbital lifetime of the device and collision risks associated with the device itself, including an evaluation of collision risk specifically associated with the deployment of multiple satellites from a deployment device (e.g., re-contact analysis).[48] The Commission stated that such disclosures would be largely assessed on a case-by-case basis, reasoning that this approach provides the flexibility necessary to address new developments in space station design and addresses the difficulty of designing specific disclosure rules for each different type of device that may be used.[49]

19. Boeing, Planet, Spire, EchoStar, and Hughes argue that this disclosure requirement should be replaced with the ODMSP standard, which specified that "[f]or all planned released debris larger than 5mm in any dimension, the total debris object-time product in low-Earth orbit . . . should be less than 100 object-years . . . per spacecraft."[50] They also argue that the Commission should not require re-contact risk analyses because no consensus exists on what is considered an adequate re-contact risk analysis, it was not proposed for comment in the *2018 NPRM*, and there is not enough guidance as to how to conduct a re-contact analysis or how it would be used in the application review process.[51]

20. The petitioners' argument concerning the ODMSP provisions on operational debris relies on a selective reading of those provisions and does not justify reconsideration of the adopted rule. The sentence in the ODMSP immediately preceding the sentence that petitioners rely on states that "[e]ach instance of planned release of debris larger than 5 mm in any dimension that remains in orbit for more than 25 years *should be evaluated and justified*."[52] This additional wording would not be necessary if the rationale for this guideline is that any release of operational debris of less than 100 object-years should be routinely considered acceptable. Instead, as a condition precedent to applying the 100 object-year metric, this guideline contemplates a determination that the release is evaluated and justified. The approach adopted by the Commission is in no way inconsistent with this approach, which identifies a need, for example, to consider whether alternative methods for deployment might be utilized that do not result in the potential for debris generation

[46] *See* 47 CFR § 0.459.

[47] *See Orbital Debris Order*, 35 FCC Rcd at 4191-95, paras 77-82.

[48] *See id.* at 4194-5, paras 80-81.

[49] *See id.* at 4194-5, para 80.

[50] Combined Petition at 19.

[51] *Id.* at 18, 21.

[52] ODMSP 1-1 (emphasis added).

21. With respect to the concerns raised about re-contact analysis,[53] we note that since adopting the *Order*, the Commission has authorized multiple deployers on a case-by-case basis.[54] Applicants provided information detailing the ways in which they plan to mitigate recontact and Commission assessment of each application took into account the specific re-contact mitigation measures and overall mission facts that were unique to each mission in order to condition the licenses accordingly. For example, one applicant provided a report using a high-fidelity approach based on a Monte Carlo analysis of deployment sequence in its application, using the current manifest as the worst-case scenario and incorporating the worst possible change in manifest subsequent to filing to demonstrate that the applicant had taken the relevant re-contact risks into account and the Commission conditioned their license to require the operator to utilize a deployment sequence that will reduce the probability of re-contact and ensure that the risk of re-contact specified in its application does not increase based on this analysis.[55] Another applicant stated in its Orbital Debris Assessment Report (ODAR) that it would support at least three re-contact mitigation strategies for deployments from the spacecraft, including ensuring that each deployment group will be spaced apart by at least 90 minutes, or one full orbit, optimize deployment orientation and sequence to minimize re-contact, and use on-board propulsion as necessary to use for maneuvers to minimize the risk of re-contact, and the Commission conditioned the license to require the applicant to optimize customer spacecraft deployment orientation and sequency to minimize re-contact and utilize on-board propulsion as necessary for maneuvers to minimize the risk of re-contact as a result.[56] Each analysis referenced here provides varying levels of specificity and detail concerning their respective re-contact analyses, but still offers important context for mission characteristics unique to each application. As these examples demonstrate, applicants have been able to address these concerns by drawing on available information, and in some instances involving additional analysis and modeling. We anticipate, based on this experience, that this case-by-case approach will continue to provide a flexible and workable framework for applicants. Accordingly, we conclude that the petitioners' assertions about potential difficulties in the licensing process have not been realized and do not justify reconsideration of this particular rule.

6. Persistent Liquids

22. In the *Order*, the Commission updated its rules to require operators to submit a "statement that the space station operator has assessed and limited the probability, during and after completion of mission operations . . . of release of liquids that will persist in droplet form."[57] The Commission proposed this rule change in response to increasing interest in use by satellites (including small satellites) of alternative propellants and coolants, some of which due to their physical properties

---

[53] We reject the petitioners' contention that there was insufficient notice to require a re-contact analysis. Combined Petition at 21. The *2018 NPRM* sought comment on the issue of the use of deployment devices and specifically proposed to require "information regarding the planned orbital debris mitigation measures specific to the deployment device, including the *probability of collision associated with the deployment device itself*." *2018 NPRM*, 33 FCC Rcd 11352, para. 21 (emphasis added). A re-contact analysis addresses "the probability of collision associated with the deployment device itself."

[54] Momentus Space LLC, ICFS File No. SAT-LOA-20220504-00047 (filed May 4, 2022) (Application for authority to deploy and operate the Vigoride-5, a non-geostationary orbit, in-orbit services vehicle) (Momentus VR-5 Application); Momentus Space LLC, ICFS File No. SAT-LOA-20221009-00131 (filed Oct. 9, 2022) (Application for authority to deploy and operate the Vigoride-6, a non-geostationary orbit, in-orbit services vehicle) (Momentus VR-6 Application); Spaceflight, Inc, ICFS File No. SAT-STA-20210812-00098 (filed Aug. 12, 2021) (Application for special temporary authority to deploy and operate the Sherpa-LTC1 for a period not to exceed 180 days) (Spaceflight Sherpa-LTC1 Application).

[55] Spaceflight Sherpa-LTC1 Application, Attachment 1, Exhibit C, at 91-94; *see also* Spaceflight Sherpa-LTC1 Application, Attachment to Grant at condition 6.

[56] Momentus VR-5 Application, Orbital Debris Assessment Report (ODAR) at 11; *see also* Momentus VR-5 Application, Attachment to Grant at condition 14.

[57] *Orbital Debris Order*, 35 FCC Rcd at 4195-96, para 83.

might persist in droplet form. The Commission noted specifically ionic liquids that would persist if released in droplet form by a deployed satellite and the substantial debris cloud that resulted from release of such droplets by Soviet-era satellite operation.[58] At orbital speeds, such droplets can damage active spacecraft. The Commission noted its expectation that the orbital debris mitigation plan for any system using persistent liquids should address the measures taken, including design and testing, to eliminate the risk of release of liquids and to minimize risk from any unplanned release of liquids in droplet form.[59]

23. The Combined Petition asserts that no evidence exists that the use of such liquids is growing in the United States' space industry while at the same time raising a concern that the Commission did not provide enough guidance on how information about persistent liquids will be assessed.[60] The petitioners have not provided a basis for reconsideration of the rule adopted or demonstrated how the current rule is unworkable. Contrary to their assertions, there have been license requests involving spacecraft that would utilize the types of ionic liquids that could persist in space if released in droplet form.[61] Ionic liquids offer some benefits such as ease of on-ground handling as compared to the toxic volatiles often used for spacecraft propulsion, and so it is also possible that they may be more frequently utilized in the future.[62] With respect to criteria to be applied in addressing instances in which use of ionic liquids is disclosed, the *Order* identified some considerations.[63] In addition, under a case-by-case approach, we may consider whether, if released, these debris objects would remain in orbit for only a short time, perhaps due to deployment and operation at low altitudes such as those below inhabitable space stations, or whether there are other natural processes that result in dispersion of the droplets.[64] Other potentially relevant considerations include whether containment of the liquid can be expected to be effective, established as appropriate by design, testing data, or flight heritage, and whether the propulsion system is shielded from micrometeoroid and debris strikes that might result in leakage. These considerations provide some examples of the types of information that might support a favorable public interest finding with respect to individual applications but are not intended as an exhaustive list.

7. "Case-by-Case" Approach

24. Petitioners raise concerns about a "case-by-case" approach for reviewing the information provided in response to disclosure requirements, and request that all information disclosure requirements be "coupled with guidance provided by the Commission regarding the manner in which the information can be used and any minimum operation or performance requirements that must be demonstrated in the disclosed information to warrant the grant of a satellite system authorization."[65] SpaceX argues a "case-by-case" approach sets an inconsistent baseline for assessing orbital debris risk, and imposes inconsistent

[58] *Id.* at 11360, para. 22.

[59] *Id.* at 11361, para. 23.

[60] Combined Petition 22-23.

[61] *See, e.g.,* California Polytechnic State University, W12XPH, File No. 0042-EX-CN-2016 (filed Sept. 2, 2016) (Irvine 01 CubeSat); California Polytechnic State University, WJ2XLP, File No. 0254-EX-CN-2018 (filed Mar. 16, 2018) (Irvine 02 CubeSat).

[62] *See, e.g.,* Beth Ridgeway, NASA's Green Propellant Infusion Mission Nears Completion (Aug. 20, 2020), https://www.nasa.gov/missions/tech-demonstration/nasas-green-propellant-infusion-mission-nears-completion/.

[63] *Orbital Debris Order*, 35 FCC Rcd at 4196-97, para 85.

[64] *See* John D. Desain, John H. Schilling, Andrea G. Hsu Schouten, Thomas J. Curtiss, and Brian B. Brady, Preliminary Calculations to Determine the Potential of the Release of Ionic Liquids in Space to Form Space Debris, AEROSPACE REPORT NO. ATR-2016-01730 (May 10, 2016) (erosion by atomic oxygen lowers risk from ionic liquids in LEO, particularly around the ISS altitude and below). A copy of this report is available in IB Docket No. 18-313.

[65] Combined Petition at 4.

rules of the road.[66] Viasat and OneWeb, in opposition, support the use of case-by-case analysis. Viasat notes that case-by-case analysis is an indispensable part of the Commission's licensing process and that it would "make little sense for the Commission to 'withdraw' its existing information disclosure requirements pending completion of its further work" on additional orbital debris safety standards because doing so "would deprive the Commission of critical information necessary to evaluate the orbital safety implications of NGSO systems."[67] Viasat argues that the Commission is obligated to consider the information elicited by these rules in order to make a finding that the proposed operations are in the public interest, and that eliminating the information disclosure requirements adopted in the *Order* would be counter-productive by removing from the Commission's rules useful guidance for applicants about information that is relevant in seeking a license, thereby increasing uncertainty.[68] OneWeb supports case-by-case review, observing that in circumstances involving complex and quickly evolving technological debris mitigation capabilities, such review is necessary in order to facilitate a safe space environment, but at the same time affords operators flexibility and avoids overly prescriptive regulations.[69]

25. As observed by Viasat, the added disclosure requirements provide factual information that is relevant in assessing an application and supporting a public interest determination.[70] The petitioners do not allege that the factual information elicited by the new disclosure requirements would never reveal a substantial or disqualifying concern related to orbital debris, and we disagree with the petitioners' contention that incorporating such disclosure requirements in our rules will lead to "subjective" or "discretionary" decision-making. The characteristics of satellites or satellite systems can significantly vary across applications. We maintain that these rules serve to ensure that the Commission has sufficient information to only grant those applications that would serve the public interest, and while we recognize the potential benefits of identifying specific metrics or including the same blanket requirements on all operators for various aspects of debris mitigation plans, such as providing certainty to applicants, the development of a specific, one-size-fits-all metric on a particular point or including blanket requirements that do not make sense in conjunction with specific satellite or satellite system characteristics, may in certain cases slow innovation by being overly prescriptive or otherwise fail to account for innovative aspects of a particular system design.

26. Moreover, for certain metrics, we do not have a sufficient record to support a "one-size-fits-all" metric on this issue at this time. But, the absence of a specific metric on a particular point does not foreclose the need to gather information and evaluate mitigation plans in light of the larger and well-recognized goals of U.S. government policy in this area—ensuring the future of the commercial space industry by limiting the release of operational debris and avoiding fragmentation events, whether caused by explosions or collisions. The development of metrics and refinement of criteria for evaluating orbital

[66] *See* Letter from Jameson Dempsey, Director of Satellite Policy, SpaceX to Marlene H. Dortch, Secretary, FCC, IB Docket No. 18-313 at 3-4 (filed Jan. 18, 2024) (SpaceX *Ex Parte*). We note that SpaceX's January 18, 2024 *ex parte* filing raised several arguments that SpaceX did not make in its Petition, including this one, therefore amounting to a late-filed petition for reconsideration. *See* 47 CFR § 1.429(d). Nonetheless, we find the public interest in ensuring a complete record warrants consideration of the arguments.

[67] Viasat Opposition at 3; *see also* Letter from Jarrett S. Taubman, Vice President & Deputy Chief Government Affairs and Regulatory Officer, and Christopher D. Bair, Associate General Counsel, Viasat, Inc., to Marlene H. Dortch, Secretary, FCC, IB Docket No. 18-313 at 1 (filed Jan. 18, 2024) (Viasat *Ex Parte*) (further discussing how case-by-case review is necessary for a thorough review of the particulars of a proposed satellite system or network, which vary on a case-by-case basis).

[68] Viasat Opposition at 3-4. Viasat also observes that even without the adoption of these disclosure requirements, the Commission could still seek relevant information from applicants on an *ad hoc* basis and the Commission's public interest mandate compels it to do so. *Id.* at 4.

[69] OneWeb Opposition at 7.

[70] Viasat Opposition at 4 (arguing that withdrawing the information disclosure requirements would force the Space Bureau to request information on an *ad hoc* basis, which would be less transparent and consistent than the approach adopted in the *Order*).

debris mitigation plans is an active and ongoing process. While consideration of the development of a metric or comprehensive assessment method continues, we elect to proceed incrementally and make fact-based decisions on individual applications on a case-by-case basis.[71] As noted above in connection with several of the specific disclosure requirements to which petitioners object, the case-by-case approach has successfully permitted the Commission to proceed with review and authorization in individual cases. Contrary to SpaceX's argument that the case-by-case approach threatens space sustainability by imposing inconsistent rules of the road,[72] experience with these cases, along with parallel developments in standards development, will inform future decision-making. In applying this case-by-case approach, we are committed to ensuring consistency in application of our rules and to working with applicants to gather additional information as necessary to ensure that applicants are not penalized without a prior opportunity to address potential concerns. We expect the precedent that evolves from a case-by-case approach will provide contours to guide applicants regarding the extent to which metrics or comprehensive methods may aid in facilitating a favorable Commission determination on pending applications. Finally, as part of the Space Bureau's Transparency Initiative,[73] we direct the Space Bureau to highlight any developments arising from this case-by-case approach, providing additional guidance on orbital debris mitigation information disclosures.[74]

B. SpaceX Petition - Market Access and Orbital Debris Mitigation Showings

27. In its petition, SpaceX requests that we reconsider allowing non-U.S.-licensed space stations to satisfy the orbital debris mitigation showing requirement by demonstrating that debris mitigation plans for the space station(s) for which U.S. market access is requested are subject to direct and effective regulatory oversight by the national licensing authority.[75] Alternatively, SpaceX says the Commission should explicitly delineate the information an applicant must submit with its application in support of such a demonstration, or disclose where that information may be easily and publicly found. In particular, SpaceX urges the Commission to require applicants to include:

- All materials related to orbital debris mitigation submitted to the foreign regulator in connection with an application for a space station authorization; and
- All authorizations that include conditions related to orbital debris mitigation.[76]

28. In support, SpaceX argues that allowing non-U.S.-licensed systems to rely on the orbital debris mitigation requirements of other countries to meet our requirements creates a "loophole" that could undermine the Commission's space safety objectives by allowing operators to evade oversight by choosing forums with less stringent rules and little input from other affected satellite operators.[77] In response, Kepler Communications Inc., OneWeb, and Viasat submitted oppositions and comments to the

---

[71] In addition to aiding the Commission in evaluating applications, this process will help inform whether additional rulemaking or policy guidance would be feasible and helpful.

[72] SpaceX *Ex Parte* at 2. SpaceX argues that conditions on its 7,500-satellite second generation system license should be applied equally on all operators. *Id.* at 4. SpaceX has made similar arguments in individual application proceedings, and license grants have in several instances included certain conditions similar to those in the SpaceX license, but in those cases other conditions on the SpaceX license have been found not applicable to the applicant system based on differences in the systems' characteristics. *See, e.g.,* Planet Labs PBC, Order, DA 23-799, ICFS File No. SAT-MOD-20220421-00042 (SB, SPPD) (Aug. 31, 2023).

[73] *See Expediting Initial Processing of Satellite and Earth Station Applications*, Report and Order and Further Notice of Proposed Rulemaking, FCC 23-73 at paras 10-14. (Sept. 22, 2023) (*Application Streamlining Order*).

[74] *See also* Astroscale *Ex Parte* at 1-2 (requesting more guidance on orbital debris mitigation disclosures and case-by-case review as part of the Transparency Initiative).

[75] *See* 47 CFR § 25.114(d)(14)(v).

[76] SpaceX Petition at 7.

[77] SpaceX Petition at 2*; see also,* SpaceX *Ex Parte at 3.*

SpaceX petition, stating that there is no "loophole" in the Commission's rules and in fact, based on their own experience as non-U.S.-licensed market access applicants, they have been subject to the same level of regulatory scrutiny as U.S.-licensed systems.[78] We agree that the end result is the same whether a market access applicant makes an orbital debris mitigation showing under section 25.114(d)(14)(i)-(iv) or 25.114(d)(14)(v) prior to gaining U.S. market access, the applicant will have had its orbital debris mitigation plan subject to a rigorous review to ensure space safety.[79]

29. While our rules allow market access applicants to satisfy the requirement to describe the design and operational strategies to minimize orbital debris risk by demonstrating that their debris mitigation plans are subject to direct and effective regulatory oversight by the national authority that licensed their space station operations, such a showing requires market access applicants to provide supporting documentation and respond to inquiries from Commission staff in order for the staff to compare the non-U.S. regulatory regime, including its rules and ongoing oversight, and determine whether there is an effective regulatory regime in place. This information, when filed with the Commission, becomes a part of the record, and other interested parties are able to review it too. If the Commission finds additional information is necessary to complete its review, that information also becomes part of the record and available for review. In either case, interested parties will have access to the same information the Commission relies on to determine whether a grant of market access is in the public interest, the only exception being if the applicant is able to demonstrate an overriding public interest need to keep some of the information confidential.

30. Having a one size fits all disclosure requirement as proposed by SpaceX can be more burdensome than necessary for the Commission to determine whether an applicant's debris mitigation plan has been thoroughly reviewed and whether the applicant will be subject to effective regulatory oversight. Using a case-by-case approach provides more flexibility and can serve the public interest better by being less burdensome. For instance, as Commission staff become familiar with the requirements and review process of a particular non-U.S. regulator, they can tailor their information request based on knowledge of how that regulator conducts an orbital debris mitigation review, and what regulatory requirements it imposes. The staff may ask for more information in an area that they have found the regulator does not require the same level of detail as the Commission, or may likewise ask for less information in another area where the Commission has already found sufficient regulatory oversight. In either case, if another party believes that circumstances have changed with a particular non-U.S. regulatory oversight process, or has reason to believe that an applicant is not subject to sufficient regulatory oversight, they can raise those concerns with the Commission and the Commission will factor that in as part of its overall review process. Ultimately, if the Commission finds after its review of either the applicant's mitigation plan or the non-U.S. regulatory regime under which it is licensed, that additional conditions are necessary to ensure space safety, the Commission can so condition the grant of market access, similar to what it does for U.S. licensees in similar situations. We also note that while the Commission does accept "direct and effective" regulatory oversight showings under section 25.114(d)(14)(v), that rule does not preclude applicants from providing the same basic orbital debris mitigation information provided by U.S. licensees, which are detailed in section 25.114(d)(14)(i)-(iv) of the Commission's rules. In fact, the provision of such information can support a showing of direct and effective regulatory oversight, particularly in instances where the information is provided to but not routinely made publicly available by the non-U.S. regulator. And, except for a few cases, applicants have generally found it preferable to just provide the Commission with a description of the design and

[78] Viasat Opposition at 10; OneWeb Opposition at 2-4; *see also* Kepler Comments.

[79] We are unaware of any case where a non-U.S. licensed satellite system was authorized based on a lower standard as a result of the Commission accepting a showing that the non-U.S. operator was subject to direct and effective regulatory oversight of another administration. For instance, in the case SpaceX cites in its *ex parte* filing involving Kepler Communications Inc. (SpaceX *Ex Parte* at 3, n. 9), Commission staff reviewed Kepler's full orbital debris mitigation plan, including several rounds of informational inquiries, prior to acting on Kepler's modification request. *See generally* Kepler Communications Inc., ICFS File No. SAT-MPL-20200904-00104.

operational strategies for orbital debris mitigation instead of presenting all of the showings necessary to demonstrate the effective regulatory oversight of another national authority.[80] Accordingly, we find SpaceX has not demonstrated a need for elimination or changes to section 25.114(d)(14)(v).

C. Kuiper Petition - Orbital Separation of Large NGSO Systems

31. In the *2018 NPRM* the Commission sought comment on whether it should adopt an upper limit for variances in orbit for NGSO systems.[81] After reviewing an extensive record on the issue, including comments on the related topic of whether, and how, the Commission should assign orbital altitude ranges for large constellations of NGSO satellites, in 2020 the Commission said it would not adopt a maximum orbital variance for NGSO systems, nor a required separation between orbital locations, and will instead continue to address these issues on a case-by-case basis.[82] The Commission found that there were a wide range of considerations in such cases, and while it was concerned about the risk of collisions between the space stations of NGSO systems operating at similar orbital altitudes, it found that these concerns are best addressed in the first instance through inter-operator coordination.[83]

32. Kuiper petitioned the Commission to reconsider its decision to not establish an orbital separation requirement, including for large NGSO constellations, and associated limits.[84] Kuiper states that the Commission should expressly require a later-filed large NGSO constellation to maintain sufficient orbital separation from an earlier-filed large NGSO constellation.[85] In support, Kuiper states that since adoption of the *Order*, the Commission has received a number of applications and license modifications for large NGSO constellations to operate in orbits that are already occupied, or proposed to be occupied, by other large NGSO constellations.[86] Therefore, the Commission's "expectation that applicants' own desire for space safety would lead them to voluntarily choose non-overlapping orbits" has proven false, and these new applications constitute facts that did not exist at the time the Commission adopted its *Order* and therefore warrant reconsideration.[87]

33. OneWeb, ARCLab, and Maxar filed comments in support of Kuiper's petition. OneWeb argues that the time is ripe for the Commission to reconsider the potential for orbital separation rules to help ensure a safe space environment.[88] ARCLab argues that operating large constellations with overlapping orbits sharply increases systemic risk, and if those orbits are not explicitly designed for compatibility it would result in sharp increases in conjunctions and collision avoidance maneuvers.[89] Maxar adds that since adoption of the *Order*, the increase of large constellations with overlapping orbital variances has become an issue of broad applicability and therefore ripe for Commission consideration.[90]

34. Both Viasat and Kepler oppose Kuiper's petition, arguing that Kuiper's proposed rule would undermine the incentive for an operator to engage in the type of inter-system coordination

---

[80] *See also Application Streamlining Order* at para 73.

[81] *2018 NPRM*, 33 FCC Rcd at 11365, para. 35.

[82] *Orbital Debris Order,* 35 FCC Rcd 4156 at para. 47-48.

[83] *Id.*

[84] Kuiper Petition at 1.

[85] *Id.* at 2 (Kuiper defines a constellation as a group of satellites that are synchronized and under common control, including those groups that are composed of more than one nominal constellation authorized under the Commission's rules.).

[86] *Id.* at 5.

[87] *Id.* at 3-4.

[88] OneWeb Opposition at 5.

[89] ARCLab Comments at 2.

[90] Maxar Comments at 4.

anticipated by the *Order* and in essence create a first-come, first-serve priority system for orbital regions in LEO, which would advantage the largest, most established satellite operators, and potentially lead to a monopolization of certain sections of LEO.[91] Viasat also states that Kuiper has not established that an orbital overlap rule is necessary to promote space safety, and that there are alternative approaches the Commission could consider.[92]

35. The Commission continues to take space safety issues seriously, and the *Order* recognized that issues may arise with respect to large NGSO systems, and the orbits at which they operate. Notably, the *Order* advises that applicants for large systems may be asked to provide specific information about their planned orbital variance as well as how their system operations would accommodate other spacecraft traveling through or operating in the same region.[93] While Kuiper supports its petition with the "new" fact that applications for large NGSO systems with competing orbits have been filed since adoption of the *Order,* this circumstance alone is not sufficient justification for the Commission to revisit its decision to allow in the first instance parties to work on an inter-operator coordination agreement. At the time the Commission adopted its *Order* it had already considered that parties may want to use similar orbits, but it also found that inter-operator coordination could resolve any space safety concerns, and no party has introduced evidence that any such concerns remain unresolved. We have continued to monitor the situation since adoption of the *Order* and continue to believe that the best solution for maintaining space safety is for operators to have the flexibility to coordinate in a manner that works best for their situation, rather than have the Commission dictate how that coordination should proceed. In addition, we review closely applications for new licenses or modifications that may raise overlapping orbital shell issues, and work with the applicants and other interested parties to ensure that either coordination has occurred to minimize space safety issues, or changes are made to the proposed operating parameters to address any remaining concerns.[94] We will continue to monitor the overall orbital separation environment, and to the extent we see a breakdown in the coordination process or other space safety issues, we will consider at that time whether new general rules are needed to either improve the coordination process or address space safety concerns. Accordingly, the Commission declines to establish an orbital separation requirement, including for large NGSO constellations.

IV. ORDERING CLAUSES

36. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 4(j), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 405, and section 1.429(b) of the Commission's rules, 47 CFR § 1.429(b), that the petitions for reconsideration filed by Boeing, EchoStar, Hughes, Planet, Spire, Telesat, SpaceX, and Kuiper in IB Docket No. 18-313, are DENIED.

37. IT IS FURTHER ORDERED that this ORDER SHALL BE EFFECTIVE upon publication in the *Federal Register*.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[91] Viasat Opposition at 9, Kepler Comments at 2.

[92] Viasat Opposition at 9-10.

[93] *Orbital Debris Order* at para. 48.

[94] *See, e.g.,* Space Exploration Holdings, LLC, 36 FCC Rcd 7995, 8032-8033 (Apr. 27, 2021) (establishing orbital tolerance levels based on the facts of the situation).

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *Mitigation of Orbital Debris in the New Space Age*, IB Docket No. 18-313

Today we take the next step in our Space Innovation agenda. We make clear we are supporting sustainable skies and a growing space economy.

Both of these things matter—and to understand why, a little history helps. It was roughly six decades ago that the first space age took off. Since that time, humanity has put more than 10,000 satellites into our skies. More than half of those satellites are now defunct. Many of them were launched with the understanding that the heavens were vast and we could just abandon these devices circumnavigating the globe. At the time, we thought it was cheaper to do that than take this debris out of orbit. But we were wrong.

We know this now because the second space age is here—and it is an opportunity to get this right. At the moment, we have applications for more than 56,000 satellites pending before this agency. That is more than five times the number launched since the beginning of the first space age. So if we want space activity to continue to grow, we need to care for our skies and make sure operators clean up after themselves. This is because when defunct devices are left up in orbit, it increases the risk of collision and malfunction in every system that counts on satellites. Orbital debris degrades the environment for all future space activity. So the policies we put in place to address it matter.

To demonstrate this, let me offer an example of just how dangerous it is to leave debris in our skies. Consider the story of a single screwdriver. Four decades ago, a screwdriver slipped out of an astronaut's grasp. It has been circling in low earth orbit at up to 21,600 miles an hour ever since. That is ten times faster than a bullet with the punch of a hand grenade. So even an innocuous screwdriver in our skies can wreak havoc.

At the FCC, we address satellites and not screwdrivers. But the example is still potent. It makes clear that if we are in the business of authorizing space activity with satellites, we need to do so in a way that decreases the risk of collision and increases opportunities in space.

This is why as part of our Space Innovation agenda, the FCC put in place rules that reduce by 80 percent the amount of time satellite operators have to deorbit retired satellites. To understand what this means in practice, it used to be that operators of low-earth orbiting satellites could just leave them in our skies for 25 years after their useful life. We have cut that time down to five years. This is big because it helps reduce the risk of collisions that can cause space communications failures.

It is also why as part of our Space Innovation agenda, the FCC is holding operators accountable when they do not comply with our orbital debris policies. In fact, last year we announced the first-ever enforcement action against a company for its failure to comply with a satellite de-orbiting plan.

It is also why we are taking this action today. In this decision we reaffirm the updates we made earlier to our orbital debris mitigation rules and offer additional guidance for satellite operators deploying their systems. Among other things, we provide clear examples to assist with compliance with reporting requirements for maneuverability and the use of detachable deployment devices. In short, we are reinforcing our commitment to space sustainability. That is because it is a fundamental part of our Space Innovation agenda.

But we are not stopping here. We recognize supporting the second space age means more than just addressing future satellite debris, it requires cleaning up existing debris. That is why yesterday I

shared with my colleagues a new proposal for licensing space stations engaged in in-space servicing, assembly, and manufacturing. This framework will include support for a range of new technologies, including ones that will help collect and remove space debris. I look forward to working with them on its adoption.

Thank you to staff behind this effort, including Julie Kearney, Troy Tanner, Karl Kensinger, Scott Mackoul, Jeanette Kennedy, Merissa Velez, Guillermo Belt, Jeanine Poltronieri, Alexandra Horn, Samuel Karty, and Sankar Persaud from the Space Bureau; Jason Koslofsky, Josh Zeldis, and Neal McNeil from the Enforcement Bureau; and Anjali Singh, Chin Yoo, David Konczal, and Deborah Broderson from the Office of General Counsel.

STATEMENT OF
COMMISSIONER NATHAN SIMINGTON

Re: *Mitigation of Orbital Debris in the New Space Age*, IB Docket No. 18-313

While I support today's item, I would be remiss if I did not restate my conviction that the FCC should apply the same orbital debris rules to both U.S-licensed providers and market access licensees authorized in other countries. The FCC must move in this direction as a high-priority policy goal.

Our current process allows non-U.S.-licensed space stations to satisfy orbital debris rules by showing that debris mitigation plans for the space stations for which U.S. market access is requested are subject to direct oversight by the licensing country. While in principle such an approach may be sound, in practice it often places U.S.-licensed providers, and ultimately the U.S. as a policy leader, at a disadvantage. American companies should not be penalized for complying with a rigorous and advanced domestic regime that takes contemporary realities into account. The American government should not tolerate behavior from market access licensees that it would not accept from domestic corporations. The current process implicitly approves debris mitigation regimes that are typically not as robust as the U.S's, or as clear cut—disadvantaging U.S-licensed providers.

This is why I have advocated for extending the FCC's orbital debris rules to market access providers. This not only levels the playing field for U.S.-licensed providers, but also acts as a regulatory hook for creating default rules for *all* commercial operators. We can create a unitary set of clear and flexible rules for safe commercial space operation for all countries, which only makes sense because in space there are no borders.

I therefore, once again, call upon the FCC to reconsider the current approach so that we can firm up the U.S's global leadership on orbital debris mitigation policy and incentivize responsible, modern stewardship of the space debris environment. As for today's item—thank you to the Space Bureau staff for all of their hard work, as always.

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

In the Matter of	)	
	)	
Wilfrid Salomon	)	File No.: EB-FIELDSCR-23-00034827
Lauderdale Lakes, Florida	)	NAL/Acct. No.: 202432020005
	)	FRN: 0034791301

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: January 25, 2024 **Released: January 26, 2024**

By the Commission: Chairwoman Rosenworcel issuing a statement.

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we propose a penalty of $358,665 against Wilfrid Salomon (Salomon) for operating an unauthorized radio station on 87.9 MHz in Lauderdale Lakes, Florida, by which Salomon apparently willfully and knowingly did or caused pirate radio broadcasting during the period from February 5, 2023 to March 5, 2023, resulting in three days of apparent violations. Salomon has engaged in the longstanding illicit operation of an unauthorized radio station known as "Radio Ideal." Operating an unauthorized, or pirate, radio station is illegal under the Communications Act of 1934, as amended (Communications Act or Act)[1] and undermines the primary mission of the Federal Communications Commission (FCC or Commission) to manage radio spectrum. Such illegal operations can interfere with licensed communications, including authorized broadcasts and communications by public safety entities. Moreover, such illegal operations pose a danger to the public because they interfere with licensed stations that inform their listeners of important public safety messages, including Emergency Alert System transmissions that provide vital information regarding weather events and other dangers to the public.[2] Accordingly, enforcement action here is essential.

II. BACKGROUND

A. Legal Framework

2. On January 24, 2020, the Preventing Illegal Radio Abuse Through Enforcement Act (PIRATE Act) became law and was subsequently codified as section 511 of the Communications Act.[3] Section 511 states that any person who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting shall be subject to a fine of not more than $2,000,000 and not more than $100,000 for each day during which such offense occurs.[4] Both of these figures are subject to annual

[1] 47 U.S.C. § 511.

[2] *See Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, Report and Order, PS Docket No. 15-94, FCC 22-75, para. 3 (rel. Sept. 30, 2022).

[3] *Preventing Illegal Radio Abuse Through Enforcement Act,* Pub. L. No. 116-109, 134 Stat. 3 (2020) (codified at 47 U.S.C. § 511).

[4] 47 U.S.C. § 511(a)-(b). Prior to the passage of the PIRATE Act, the maximum monetary penalty for pirate radio transmissions was $151,005. *See* 47 CFR § 1.80(b)(9)(ii) (2019); *see also Acerome Jean Charles*, Notice of Apparent Liability for Forfeiture, 34 FCC Rcd 12744 (2019) (proposing a penalty of $151,005), consent decree

(continued….)

inflation adjustments.[5] Section 511 defines pirate radio broadcasting as "the transmission of communications on spectrum frequencies between 535 and 1705 kilohertz, inclusive, or 87.7 and 108 megahertz, inclusive, without a license issued by the Commission, but does not include unlicensed operations in compliance with part 15 of title 47, Code of Federal Regulations."[6] Part 15 of the Commission's rules, among other requirements, states that unlicensed operators in the FM band must not transmit over a certain low-power limit.[7]

B. Factual Background

1. Pre-PIRATE Act Investigation

3. Salomon has been directly involved in the operation of a pirate radio station (Station) on frequency 107.1 MHz and later on 87.9 MHz in Broward County, Florida, for years. The Station is known as "Radio Ideal,"[8] and Enforcement Bureau (Bureau) field agents (Agents) have confirmed that the Station has regularly identified itself on the air as Radio Ideal since at least 2017.

4. On July 11 and July 18, 2017, Agents from the Bureau's Miami Field Office (Miami Office) monitored 107.1 MHz in Broward County, and, using direction-finding techniques, traced the source of radio transmissions to an FM transmitter antenna on the roof of a two-story commercial building located at 2700 West Oakland Park Boulevard in Oakland Park, Florida (Oakland Park Boulevard Site). The Agents, on each day, took field strength measurements of the Station's signal and determined that the transmissions exceeded the limits for operation under part 15 of the Commission's rules.[9] The Agents listened to and recorded the audio programming on 107.1 MHz, and heard the Station identify as Radio Ideal.[10] A review of Commission records revealed no authorization for any FM broadcast station to operate at or near the Oakland Park Boulevard site on any frequency. Agents also took photographs of the rooftop antenna, and the building manager of the Oakland Park Boulevard Site provided Agents with photographs of the interior of a suite directly below the antenna which matched photographs on the Radio Ideal Facebook page of Salomon operating the Station.[11]

(Continued from previous page)
adopted, Order, 35 FCC Rcd 6878 (2020). In 2020, that maximum limit was increased to $2,000,000. *See* 47 U.S.C. § 511(a).

[5] *See* 47 CFR § 1.80(b)(6) (setting the current inflation adjusted statutory maximum for a violation of 47 U.S.C. § 511(a) at $2,391,097 and 47 U.S.C. § 511(b) at $119,555); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 23-1198, 2023 WL 8889597 (EB Dec. 22, 2023); *see also* Annual Adjustment of Civil Monetary Penalties to Reflect Inflation, 89 Fed. Reg. 2148 (Jan. 12, 2024) (setting Jan. 15, 2024 as the effective date for the increases).

[6] 47 U.S.C. § 511(h).

[7] 47 CFR § 15.239(b) (stating that the field strength of any emissions in the 88-108 MHz band shall not exceed 250 microvolts per meter at three meters).

[8] See Radio Ideal, www.radioidealfm.com (last visited July 14, 2023).

[9] Section 15.239 of the Commission's rules provides that non-licensed broadcasting in the 88-108 MHz band is permitted only if the field strength of the transmission does not exceed 250 microvolts per meter ("μV/m") at three meters. 47 CFR § 15.239(b). Measurements showed that the field strength of the Station's signal exceeded the permissible level for a non-licensed part 15 transmitter.

[10] See July 11, 2017 and July 18, 2017 recordings of Radio Ideal (on file in EB-FIELDSCR-17-00024576). A domain name search of Radio Ideal's website indicated that "Wilfrid Salomon" was the registrant. His telephone number listed in the contact information of the website registration is a contact number listed on Radio Ideal's website (on file in EB-FIELDSCR-17-00024576).

[11] E-mail from Building Manager, 2700 W. Oakland Park Blvd., Oakland Park, FL 33311, to Field Agent, Office of the Field Director, FCC Enforcement Bureau (Aug. 18, 2017, 9:36 EDT) (on file in EB-FIELDSCR-23-00034827); Facebook, Radio Ideal, https://facebook.com/radioideal.plus (on file in EB-FIELDSCR-17-00024576); Agents later
(continued….)

5. On August 16, 2017, and October 25, 2017, Agents from the Miami Office again monitored the frequency 107.1 MHz in Broward County, and, using direction finding techniques, traced the source of the signal to 3850 NW 4th Court in Lauderhill, Florida (4th Court Site). Agents took field strength measurements of the Station's signal and determined that the transmissions exceeded the limits for operation under part 15 of the Commission's rules.[12] Agents listened to and recorded the audio programming on 107.1 MHz and heard the Station identify itself as "Radio Ideal."[13] A review of Commission records revealed no authorization for any FM broadcast station to operate at or near the 4th Court Site on any frequency.[14] On five additional dates, Agents again traced the signal to the 4th Court site but determined that the Station had changed frequency to 87.9 MHz.[15]

6. In response to these violations, the Bureau issued two Notices of Unlicensed Operation (NOUOs) to Salomon on August 24, 2017 and December 8, 2017, for operating an unlicensed radio station on 107.1 MHz and 87.9 MHz from the Oakland Park Boulevard site and the 4th Court Site.[16] The NOUOs stated that the unauthorized operation of the Station was illegal, that continued operation of the Station could result in further enforcement action, and that unlicensed operation of the Station must be discontinued immediately.[17] The Bureau did not receive a response to the NOUOs.

7. As a consequence of Salomon ignoring prior enforcement actions, on June 14, 2018, the U.S. Attorney's Office for the Southern District of Florida filed a Verified Complaint *In Rem* (Complaint *In Rem*) in the U.S. District Court for the Southern District of Florida.[18] The Complaint *In Rem*[19] alleged that pursuant to 47 U.S.C. § 510,[20] seizure and forfeiture of radio station equipment associated with, or used in connection with, any radio transmissions on the frequencies 87.9 and 107.1 MHz in violation of 47 U.S.C. § 301 from the residence located at 3850 Northwest 4th Court, Lauderhill, Florida 33311, was necessary to prevent continuing violations of the Communications Act. To confirm the Station's location for the *in rem* proceeding, Agents monitored 87.9 MHz in Lauderhill, Florida, on July 25, September 11, and October 16, 2018, and found that the Station was still transmitting on 87.9 MHz from the 4th Court

(Continued from previous page)
confirmed Salomon's identity in the photographs through Florida driver's license records (on file in EB-FIELDSCR-23-00034827).

[12] 47 CFR § 15.239(b).

[13] *See* August 24, 2017 and October 25, 2017 recordings of Radio Ideal (on file in EB-FIELDSCR-17-00024576). On August 27, 2017, Agents observed that the audio programming on frequency 107.1 MHz exactly matched the audio of the Station "Radio Ideal 107.1 FM Stereo" on TuneIn.com. *See* Radio Tele Ideal FM Plus, https://tunein.com/radio/RADIO-TELE-IDEAL-FM-PLUS-1071-s157751/ (last visited on Aug. 27, 2017).

[14] The Commission does not license radio broadcast stations in the FM broadcast band to operate below 88 MHz. *See* 47 CFR § 73.201.

[15] The five dates include November 8, 2017, December 19, 2017, January 11, 2018, March 24, 2018, and May 3, 2018. On November 8, 2017, and March 24, 2018, Agents made audio recordings of the Station's broadcasts on 87.9 MHz which confirmed that the Station continued to identify itself as "Radio Ideal." *See* November 8, 2017 and March 24, 2018 recordings of Radio Ideal (on file in EB-FIELDSCR-17-00024576).

[16] *Wilfrid Salomon,* Notice of Unlicensed Operation (EB Aug. 24, 2017), https://www.fcc.gov/document/wilfid-salomon-lauderdale-lakes-florida; *Wilfrid Salomon,* Notice of Unlicensed Operation (EB Dec. 8, 2017), https://www.fcc.gov/document/wilfrid-salomon-lauderdale-lakes-florida.

[17] *Id.*

[18] *See U.S. v. Any and All Radio Station Transmission Equipment, et al*., Verified Complaint *In Rem*, Case No. 18-CV-61354-UU (S.D. Fla. June 14, 2018) (on file in EB-FIELDSCR-17-00024576).

[19] *Id.* at paras. 1, 3, 58.

[20] "Any electronic, electromagnetic, radio frequency, or similar device, or component thereof, used . . . with willful and knowing intent to violate section 301 . . . may be seized and forfeited to the United States." 47 U.S.C. § 510(a).

site.[21] On October 22, 2018, the U.S. Marshals Service, assisted by two Agents from the Miami Office and police officers from the Lauderhill Police Department, executed a warrant issued by the U.S. District Court for the Southern District of Florida at the 4th Court Site and seized the radio station equipment.[22]

2. PIRATE Act Investigation

8. The PIRATE Act provides the Commission with authority to issue significant penalties against pirate radio broadcasters and extended the Commission's enforcement authority to encompass acts beyond pirate radio broadcasting. Section 511 provides the Commission with authority to assess forfeitures against any person who permits the operation of pirate radio broadcasting, such as those willing to assist pirate radio broadcasters, including landlords and property owners and other persons or entities that knowingly facilitate continued pirate radio broadcasting.[23]

9. On February 5, February 25, and March 5, 2023, Agents from the Miami Office monitored the frequency 87.9 MHz in Broward County and, using direction-finding techniques, traced the source of the signal to an FM transmitter antenna mounted on the roof of a condominium building located at {[redacted]} NW 21st Street in Lauderdale Lakes, Florida (21st Street Site). On each of these dates, Agents took field strength measurements of the Station's signal and determined that the transmissions exceeded the limits for operation under part 15 of the Commission's rules.[24] Agents listened and heard the Station identify as Radio Ideal (Salomon's Station).[25] A review of Commission records revealed no authorization for any FM broadcast station to operate at or near the 21st Street Site at any time relevant to this NAL. An Agent subsequently searched the Broward County property records and determined that Wilfrid Salomon is the owner of a condominium, Unit 404, at the 21st Street Site.[26] Driver's license records confirm that the 21st Street Site is Salomon's residence.[27] Agents also determined that Salomon's Unit 404 is located on the top floor, almost directly below the transmitting antenna that was first observed on February 5, 2023. Further, an Agent from the Miami Office confirmed that Salomon is the identified

[21] Agents also took field strength measurements on these dates and determined that Radio Ideal continued to operate above the part 15 power limits without authorization. *See* 47 CFR § 15.239(b). On September 11 and October 16, 2018, the Agents made audio recordings and heard the audio on 87.9 MHz identified as "Radio Ideal." *See* September 11, 2018 and October 16, 2018 recordings of Radio Ideal (on file in EB-FIELDSCR-17-00024576 and EB-FIELDSCR-23-00034827).

[22] On July 11, 2019, the Court entered a Final Default Judgment in favor of the United States and against Any and All Radio Station Transmission Equipment. *See U.S. v. Any and All Radio Station Transmission Equipment, et al*., Final Default Judgment, Case No. 18-CV-61354-UU (S.D. Fla. July 11, 2019) (on file in EB-FIELDSCR-23-00034827).

[23] 47 U.S.C. § 511(a) and (b). *See* S. Rep. No. 116-178, 116th Cong., 1st Sess., at 7 (Dec. 17, 2019) (stating that penalties associated with the PIRATE Act are intended to extend "to those persons or entities who willfully and knowingly violate these sections through facilitating, supporting, causing, or permitting pirate radio broadcasting.")

[24] 47 CFR § 15.239(b).

[25] On March 5, 2023, an Agent listened to the audio from two Radio Ideal streaming sites and determined that the audio exactly matched simultaneous over-the-air audio on 87.9 MHz. The streaming sites included "Radio Ideal" at https://tunein.com/Radio-Ideal-s9624/ and "Radio TeleIdeal FM Plus" at https://tunein.com/radio/RADIO-TELE-IDEAL-FM-PLUS-1071-s157751/.

[26] *See* Broward County Property Appraiser, Property Summary, {[redacted]} NW 21st Street Unit 404, Lauderdale Lakes, FL 33311, https://web.bcpa.net/bcpaclient/#/Record-Search?fnumber={[redacted]} (last visited July 5, 2023).

[27] *See* Wilfred Salomon, Florida driver's license records (on file in EB-FIELDSCR-23-00034827).

subscriber (i.e., owner) of a telephone number associated with the Station as listed on Radio Ideal's website.[28]

III. DISCUSSION

A. Salomon Apparently Violated Section 511 of the Act

10. We find that Salomon apparently willfully and knowingly violated section 511 of the Act[29] by operating a pirate radio station on 87.9 MHz on February 5, February 25, and March 5, 2023.[30] On each of these dates, Agents observed Salomon's Station operating on 87.9 MHz at the 21st Street site. Agents performed field strength measurements and determined that these transmissions exceeded the limits for operation under part 15 of the Commission's rules.[31] A review of Commission records does not reveal an authorization existed for any FM broadcast station to operate at or near the 21st Street site at any time relevant to the violations discussed in this NAL. Evidence collected by the Agents shows that Salomon is the operator of the unauthorized radio station on 87.9 MHz, as property and driver's license records confirm that Salomon is the owner and resident of Unit 404 at the 21st Street Site. Accordingly, the Commission finds that Salomon's actions on February 5, February 25, and March 5, 2023, constituted pirate radio broadcasting in apparent violation of section 511 of the Act.[32]

B. Proposed Forfeiture

11. Section 511 of the Act authorizes the Commission to impose a forfeiture against any person "who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting."[33] In exercising our forfeiture authority, we consider the "nature, circumstances, extent and gravity of the violations and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."[34] We may adjust a forfeiture downward for minor violations, good faith or voluntary disclosure, a history of overall compliance, or an inability to pay.[35]

12. Section 511 of the Act and section 1.80 of the Commission's rules authorize enhanced penalties for pirate radio broadcasting.[36] Under these sections, any person who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting shall be subject to a fine of not more than $119,555 for each day during which the offense occurs, but not more than $2,391,097 in total.[37]

---

[28] *See* records produced in response to a subpoena (July 2023) (on file in EB-FIELDSCR-23-00034827). *See* www.radioidealfm.com, listing Salomon's telephone number as a Station contact (visited Mar. 28, 2023).

[29] 47 U.S.C. § 511.

[30] *See supra* para. 9.

[31] 47 CFR §§ 15.209(a), 15.239(b); *see also* 47 U.S.C. § 511(h) (stating that pirate radio broadcasting "does not include unlicensed operations in compliance with part 15 of title 47, Code of Federal Regulations").

[32] 47 U.S.C. § 511(a), (h).

[33] 47 U.S.C. § 511(a).

[34] 47 CFR § 1.80(b)(11).

[35] *Id.*

[36] 47 U.S.C. § 511; 47 CFR § 1.80(b)(6).

[37] 47 U.S.C. § 511(a)-(b); See 47 CFR § 1.80(b)(6) (setting the current inflation adjusted statutory maximum for a violation of 47 U.S.C. § 511(a) at $2,391,097 and 47 U.S.C. § 511(b) at $119,555); Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation, Order, DA 23-1198, 2023 WL 8889597 (EB Dec. 22, 2023); see also Annual Adjustment of Civil Monetary Penalties to Reflect Inflation, 89 Fed. Reg. 2148 (Jan. 12, 2024) (setting Jan. 15, 2024 as the effective date for the increases).

13. The primary intent of the PIRATE Act is to increase financial penalties for pirate radio broadcasting.[38] Accordingly, as explained in two recent notices of apparent liability for forfeiture under the PIRATE Act, we impose a base forfeiture of $20,000[39] (twice the pre-PIRATE Act base forfeiture level) for each of the three days that Salomon apparently willfully and knowingly violated section 511 of the Act, for a total proposed base forfeiture of $60,000.[40]

14. Moreover, given the particular facts of this case, and consistent with the *Forfeiture Policy Statement*,[41] we conclude that a significant upward adjustment is warranted based on Salomon's history of prior violations of the Act in 2017 and 2018.[42] We also find that Salomon's conduct was intentional. Salomon had been warned multiple times in 2017 that his conduct was illegal[43] and had his equipment seized by the U.S. Marshals Service in 2018,[44] but he nonetheless chose to continue to operate without authorization. Based on these factors, we propose the maximum penalty of $119,555[45] for each of the three days which Salomon operated his Station in 2023 for a total penalty of $358,665. In applying the applicable statutory factors, we also consider whether there is any basis for a downward adjustment of the proposed forfeiture. Here, we find none. After applying section 1.80 of the Commission's rules and the statutory factors, and consistent with the *Forfeiture Policy Statement*, Salomon is apparently liable for a proposed total monetary forfeiture of $358,665.[46]

IV. CONCLUSION

15. We have determined that Wilfrid Salomon apparently willfully and knowingly did or caused pirate radio broadcasting in violation of section 511 of the Act. As such, Wilfrid Salomon is apparently liable for a forfeiture of $358,665.

V. ORDERING CLAUSES

16. Accordingly, **IT IS ORDERED** that, pursuant to section 511 of the Communications Act of 1934, as amended, 47 U.S.C. § 511, and section 1.80 of the Commission's rules, 47 CFR § 1.80, Wilfrid Salomon is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the

[38] *See* S. Rep. No. 116-178, 1 (2019) ("The purpose of S. 1228, the Preventing Illegal Radio Abuse Through Enforcement Act or PIRATE Act, is to increase the financial penalties for pirate radio broadcasting.").

[39] The Commission first used this base forfeiture amount in two prior Notices of Apparent Liability for Forfeiture. *See César Ayora and Luis Angel Ayora, Queens, New York,* Notice of Apparent Liability for Forfeiture, FCC 23-17, 2023 WL 2560017, at *5 (Mar. 15, 2023); *Thomas Barnes, La Grande, Oregon,* Notice of Apparent Liability for Forfeiture, FCC 23-16, 2023 WL 2560016, at *4 (Mar. 15, 2023).

[40] *See* 47 U.S.C. § 511.

[41] *See The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines,* Report and Order, 12 FCC Rcd 17087, 17101, para. 27 (1997) (*Forfeiture Policy Statement*), recons. denied, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b)(11).

[42] *See supra* paras. 4-7.

[43] *See supra* para. 6.

[44] *See supra* para. 7.

[45] 47 U.S.C. § 511(a)-(b); See 47 CFR § 1.80(b)(6) (setting the current inflation adjusted statutory maximum for a violation of 47 U.S.C. § 511(a) at $2,391,097 and 47 U.S.C. § 511(b) at $119,555); Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation, Order, DA 23-1198, 2023 WL 8889597 (EB Dec. 22, 2023); see also Annual Adjustment of Civil Monetary Penalties to Reflect Inflation, 89 Fed. Reg. 2148 (Jan. 12, 2024) (setting Jan. 15, 2024 as the effective date for the increases).

[46] 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.

amount of three hundred fifty eight thousand six hundred sixty five dollars ($358,665) for willful and knowing violation of section 511 of the Act. 47 U.S.C. § 511.

17. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules,[47] within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Wilfrid Salomon **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 20 below.

18. In order for Wilfrid Salomon to pay the proposed forfeiture, he shall notify the Office of the Field Director at field@fcc.gov of his intent to pay, whereupon an invoice will be posted in the Commission's Registration System (CORES) at https://apps.fcc.gov/cores/userLogin.do. Upon payment, Wilfrid Salomon shall send electronic notification of payment to the Office of the Field Director, Enforcement Bureau, Federal Communications Commission, at field@fcc.gov on the date said payment is made. Payment of the forfeiture must be made by credit card using CORES at https://apps.fcc.gov/cores/userLogin.do, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:[48]

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned above and the letters "FORF". In addition, a completed Form 159[49] or printed CORES form[50] must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 or CORES may result in payment not being recognized as having been received. When completing FCC Form 159 or CORES, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).[51] For additional detail and wire transfer instructions, go to https://www.fcc.gov/licensing-databases/fees/wire-transfer.
- Payment by credit card must be made by using CORES at https://apps.fcc.gov/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.

[47] 47 CFR § 1.80.

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

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

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

[51] 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.

19. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer – Financial Operations, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554.[52] Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

20. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Commission's rules.[53] The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554, ATTN: Enforcement Bureau – Office of the Field Director, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to the Office of the Field Director at field@fcc.gov.

21. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits the following documentation: (1) federal tax returns for the past three years; (2) financial statements for the past three years prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status.[54] Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we retain the discretion to decline reducing or canceling the forfeiture if other prongs of 47 U.S.C. § 503(b)(2)(E) support that result.[55]

[52] *See* 47 CFR § 1.1914.

[53] *Id.* §§ 1.16, 1.80(g)(3).

[54] 47 U.S.C. § 503(b)(2)(E).

[55] *See, e.g.*, *Ocean Adrian Hinson, Surry County, North Carolina*, Forfeiture Order, 34 FCC Rcd 7619, 7621, para. 9 & n.21 (2019); *Vearl Pennington and Michael Williamson*, Forfeiture Order, 34 FCC Rcd 770, paras. 18–21 (2019); *Fabrice Polynice, Harold Sido and Veronise Sido, North Miami, Florida*, Forfeiture Order, 33 FCC Rcd 6852, 6860–62, paras. 21–25 (2018); *Adrian Abramovich, Marketing Strategy Leaders, Inc., and Marketing Leaders, Inc.*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018); *Purple Communications, Inc.*, Forfeiture Order, 30 FCC Rcd 14892, 14903-904, paras. 32-33 (2015); *TV Max, Inc., et al.*, Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014).

22. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail, return receipt requested, to Wilfrid Salomon at {[[redacted]]} NW 21st Street, Unit 404, in Lauderdale Lakes, Florida 33311.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *In the Matter of Wilfrid Salomon, Lauderdale Lakes, Florida*, Notice of Apparent Liability for Forfeiture, File No.: EB-FIELDSCR-23-00034827 (January 25, 2024)

In this series of enforcement actions, we propose fines against five unauthorized radio operators in Florida. These operators were not just using the public airwaves unlawfully, they were increasing the risk for harmful interference of authorized users. That is unacceptable.

I want to thank the Field Regional Management and Agents in our Miami Field Office for their work on these investigations. This is a team on the front lines of enforcing our rules governing the public airwaves. I am grateful for their efforts, which have been boosted in a big way by congressional action in the PIRATE Act. I also want to thank those in Washington who took up their work and converted it into what we have here today, including Loyaan Egal, Jeremy Marcus, Matthew Gibson, Ryan McDonald, Michael Rhodes, David Marks, Robert Keller, and Reggie Breshears from the Enforcement Bureau; and William Dever and David Konczal from the Office of General Counsel.

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

In the Matter of	)	
	)	
Fabrice Polynice	)	File No.: EB-FIELDSCR-23-00034825
North Miami, Florida	)	NAL/Acct. No.: 202432020004
	)	FRN: 0022240279

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: January 25, 2024 **Released: January 26, 2024**

By the Commission: Chairwoman Rosenworcel issuing a statement.

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we propose a penalty of $2,391,097 against Fabrice Polynice a/k/a DJ Paz (Polynice), for operating an unauthorized radio station on 90.1 MHz in North Miami, Florida, by which Polynice apparently willfully and knowingly did or caused pirate radio broadcasting during a period from February 5, 2023 to March 5, 2023, resulting in twenty-two (22) days of apparent violations. Since at least 2012, Polynice has engaged in the longstanding illicit operation of an unauthorized radio station known as "Radio Touche Douce." Operating an unauthorized, or pirate, radio station is illegal under the Communications Act of 1934, as amended (Communications Act or Act)[1] and undermines the primary mission of the Federal Communications Commission (FCC or Commission) to manage radio spectrum. Such illegal operations can interfere with licensed communications, including authorized broadcasts and communications by public safety entities. Moreover, such illegal operations pose a danger to the public because they interfere with licensed stations that inform their listeners of important public safety messages, including Emergency Alert System transmissions that provide vital information regarding weather events and other dangers to the public.[2] Some of the most egregious pirate radio operations are run by individuals who have ignored prior enforcement actions by the Commission. This is one such case. As such, it merits enforcement measures to the fullest extent of the law.

II. BACKGROUND

A. Legal Framework

2. On January 24, 2020, Congress passed the Preventing Illegal Radio Abuse Through Enforcement Act (PIRATE Act), which was subsequently codified as section 511 of the Communications Act.[3] Section 511 states that any person who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting shall be subject to a fine of not more than $2,000,000 and not more than

[1] 47 U.S.C. § 511.

[2] *See Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, Report and Order, PS Docket No. 15-94, FCC 22-75, para. 3 (rel. Sept. 30, 2022).

[3] *Preventing Illegal Radio Abuse Through Enforcement Act*, Pub. L. 116-109, 134 Stat. 3 (2020) (codified at 47 U.S.C. § 511).

$100,000 for each day during which such offense occurs.[4] Both of these figures are subject to annual inflation adjustments.[5] Section 511 defines pirate radio broadcasting as "the transmission of communications on spectrum frequencies between 535 and 1705 kilohertz, inclusive, or 87.7 and 108 megahertz, inclusive, without a license issued by the Commission, but does not include unlicensed operations in compliance with part 15 of title 47, Code of Federal Regulations."[6] Part 15, among other requirements, states that unlicensed operators in the FM band must not transmit over a certain low-power limit.[7] Moreover, under part 15, intentional radiators, such as FM transmitters, must be designed to ensure that no antenna other than that furnished by the responsible party shall be used with the device (e.g., a permanently attached antenna or an antenna that uses a unique coupling to the intentional radiator).[8]

B. Factual Background

1. Pre-PIRATE Act Investigation

3. Polynice has been directly involved in the operation of a pirate radio station (Station) on 90.1 MHz in the Miami, Florida area for years. Enforcement Bureau (Bureau) field agents (Agents) have confirmed that the Station—known as Radio Touche Douce—has continually identified itself on-air since at least 2012. The Commission has a long history of enforcement actions against Polynice for illegal operation of Radio Touche Douce from different locations. Since 2012, Polynice and his past accomplices Harold Sido and Veronise Sido (Sidos) have received numerous Commission warnings that operation of the unlicensed Station was illegal and that continued operation of it could result in further enforcement action.[9] These warnings included Notices of Unauthorized Operation (NOUOs) that each contained the directive, "unlicensed operation of this radio station must be discontinued immediately."[10]

4. Polynice and the Sidos were also subject to more significant sanctions. In July 2012, after an initial NOUO had been issued to the Sidos, U.S. Marshals executed a warrant *in rem* sought by the Commission to seize pirate radio station equipment located on the Sidos' property. Agents from the

[4] 47 U.S.C. § 511(a)-(b). Prior to the passage of the PIRATE Act, the maximum monetary penalty for pirate radio transmissions was $151,005. *See* 47 CFR §1.80(b)(9)(ii) (2019); *see also Acerome Jean Charles*, Notice of Apparent Liability for *Forfeiture*, 34 FCC Rcd 12744 (2019) (proposing a penalty of $151,005), consent decree adopted, Order 35 FCC Rcd 6878 (2020). In 2020, that maximum limit was increased to $2,000,000. *See* 47 U.S.C. § 511.

[5] *See* 47 CFR § 1.80(b)(6) (setting the current inflation adjusted statutory maximum for a violation of 47 U.S.C. § 511(a) at $2,391,097 and 47 U.S.C. § 511(b) at $119,555); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 23-1198, 2023 WL 8889597 (EB Dec. 22, 2023); *see also* Annual Adjustment of Civil Monetary Penalties to Reflect Inflation, 89 Fed. Reg. 2148 (Jan. 12, 2024) (setting Jan. 15, 2024 as the effective date for the increases).

[6] 47 U.S.C. § 511(h).

[7] 47 CFR § 15.239(b) (stating that the field strength of any emissions in the 88-108 MHz band shall not exceed 250 microvolts/meter at 3 meters).

[8] *Id.* § 15.203.

[9] Harold and Veronise Sido provided Mr. Polynice free access to their property as well as electrical power and the internet connection necessary to broadcast the Station. Accordingly, past warnings, notices and enforcement actions name the Sidos as co-Respondents with Polynice. *See Fabrice Polynice, Harold Sido and Veronise Sido*, Notice of Apparent Liability for Forfeiture, 32 FCC Rcd 7949, 7954 (2017) (*2017 Polynice NAL*).

[10] *Harold Sido, Veronise Sido*, Notice of Unlicensed Operation (EB Mar. 14, 2012) (on file in EB-FIELDSCR-12-00001351); *Harold Sido, Veronise Sido, Fabrice Polynice*, Notice of Unlicensed Operation (EB Mar. 6, 2015) (on file in EB-FIELDSCR-15-00018596); *Harold Sido, Veronise Sido*, Notice of Unlicensed Operation (EB Aug. 17, 2015) (on file in EB-FIELDSCR-15-00018596); *Harold Sido, Veronise Sido*, Notice of Unlicensed Operation (EB Dec. 13, 2016) (on file in EB-FIELDSCR-15-00018596).

Commission's Miami Field Office (Miami Office) who accompanied the U.S. Marshals observed a laptop computer with an audio play list with "Radio Touche Douce" in the name. They also observed computer file folders with MP3 files with the name "Paz." The Miami Agents determined that Mr. Polynice referred to his unauthorized Station as "Radio Touche Douce," and referred to himself as "Paz" during the illegal broadcasts.[11] Later in 2012 and in 2013, the Bureau issued an NAL and a Forfeiture Order, respectively, that imposed a $25,000 forfeiture on Polynice for operating the unlicensed Station.

5. Notwithstanding the seizure of the pirate radio equipment and the issuance of these sanctions, Agents from the Miami Office detected Polynice's unauthorized Radio Touche Douce transmissions from the Sidos' property on seven additional occasions between 2013 and 2016.[12] Five of these occasions occurred after the Bureau issued him an additional NOUO for unauthorized radio station operation in March 2015.[13] Each time, Agents took field strength measurements of the Station's signal and determined that it exceeded the limits for operation under part 15 of the Commission's rules.[14] A review of Commission records revealed no authorization for any FM broadcast station to operate at or near the Sidos' property on any frequency.

6. In 2017-2018, the Bureau issued another NAL and a Forfeiture Order finding Polynice and the Sidos jointly and severally liable for their longstanding operation of a pirate radio station.[15] The NAL contained facts demonstrating that Polynice was the operator of the Station, including: (a) Polynice provided programming, promoted the Station, and made public and commercial contact possible by advertising his personal phone number as the number of the Station; (b) Agents recognized that the audio programming Radio Touche Douce on the illegal Station on 90.1 MHz FM in North Miami, Florida was a brand that Polynice previously admitted was his brand; (c) Polynice had previously admitted he is "DJ Paz," the name of the on-air personality of Radio Touche Douce; (d) Agents had found public evidence that Polynice said he owned Radio Touche Douce; (e) Polynice had posted pictures of himself on the Facebook page for Radio Touche Douce; and (f) Polynice announced that he was "live on the air" on 90.1 FM and encouraged people to "tune in," which are statements consistent with over-the-air broadcasts.[16]

---

[11] *See Fabrice Polynice*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd at 15080-81, paras. 3-4 (EB 2012) (*2012 Polynice NAL*), *Fabrice Polynice*, Forfeiture Order, 28 FCC Rcd 4297 (EB 2013) (*2013 Polynice Forfeiture Order*) (imposing a $25,000 forfeiture for unlicensed radio station operation in 2012), *recon. denied*, *Fabrice Polynice*, Memorandum Opinion and Order, 31 FCC Rcd 9625 (EB 2016). To date, Polynice has not paid the forfeiture.

[12] Recordings of the unauthorized Radio Touche Douce transmissions were made on January 22, July 21, August 17 and 26, 2015, and June 7, 2016 (on file EB-FIELDSCR-15-00018596). Agents also observed and measured these unauthorized operations on December 4, 2013, and December 6, 2016. *2017 Polynice NAL*, 32 FCC Rcd at 7951, n.11.

[13] *Harold Sido, Veronise Sido, Fabrice Polynice*, Notice of Unlicensed Operation (EB Mar. 6, 2015) (on file in EB-FIELDSCR-15-00018596).

[14] 47 CFR § 15.239(b).

[15] *2017 Polynice NAL*, 32 FCC Rcd at 7949; *Fabrice Polynice, Harold Sido and Veronise Sido*, Forfeiture Order, 33 FCC Rcd 6852 (EB 2018) (*2018 Polynice Forfeiture Order*) (imposing a $144,344 forfeiture for unlicensed radio station operation from September to December 2016). To date, Polynice has not paid any of the forfeiture. Upon an entry of a default final judgment against the Sidos in U.S. District Court (*United States v. Fabrice Polynice, Harold Sido and Veronise Sido*, CA No. 21-cv-24243-BLOOM/Otazo-Reyes, Slip Copy, 2022 WL 2341184 [S.D. Fla. June 29, 2022]), they were enrolled in the Treasury Offset Program, which authorizes seizure of federal payments to pay delinquent debts; under this program, the Sidos' 2022 federal income tax refund was seized to reduce their debt.

[16] *2017 Polynice NAL*, 32 FCC Rcd at 7953, para. 12. The facts presented in the *2017 Polynice NAL* are incorporated herein by reference, as neither Mr. Polynice nor the Sidos provided any evidence to the contrary in their responses to the *2017 Polynice NAL*.

7. In the 2017 *NAL*, the Commission found Polynice and the Sidos apparently jointly and severally liable for a total proposed base forfeiture amount of $710,000, which was then reduced to $144,344, the statutory maximum permitted at that time under section 503(b)(2)(D) of the Act for a continuing violation. It also found that because the violations in that case were egregious, intentional, and repeated, a significant increase to the base forfeiture would have been warranted if the proposed forfeiture amount had not already reached the statutory maximum. In 2018, the Commission rejected the arguments raised by Polynice and the Sidos in their respective responses to the 2017 *NAL*, and affirmed the *NAL's* findings in full in the *2018 Polynice Forfeiture Order*.[17]

8. Despite these enforcement actions which were based on observations from 2016 and earlier, Agents determined that Polynice continued to illegally operate Radio Touche Douce on the 90.1 MHz frequency at three different locations between 2017 and 2019. In each case, Agents traced the unauthorized signal, confirmed it exceeded part 15 limits,[18] and warned the owners/occupants to cease all further assistance to the pirate operator. On October 24, 2017, Agents from the Miami Office monitored the frequency 90.1 MHz in North Miami, Florida, and, using direction-finding techniques, traced the source of the signal to a residential property located at 865 NE 149th St., Miami, Florida. The resident admitted to Agents that he knowingly allowed a friend known as "DJ Paz" to install radio station equipment on the rented property, and the phone number the resident called to ask for the equipment to be removed was traced to Radio Touche Douce.[19] On March 24, 2018, Agents from the Miami Office monitored the frequency 90.1 MHz in North Miami, Florida, and, using direction-finding techniques, traced the source of the signal identified as Radio Touche Douce to a private residence located at 1362 NE 148th St., Miami, Florida. After the Agents located the source of the signal, the residents removed the Station's equipment.[20] On October 19, 2019, Agents from the Miami Office monitored the frequency 90.1 MHz in North Miami, Florida, and, using direction-finding techniques, traced the source of the signal identified as Radio Touche Douce emanating from a rental property located at 670 NE 143rd St., Miami, Florida. Following conversations with the Agents, the tenants agreed to remove the Station's equipment.[21]

2. PIRATE Act Investigation

9. The PIRATE Act, among other provisions, codified the definition of pirate radio,[22] increased fines for pirate radio operators,[23] and granted the Commission new enforcement authority to assess forfeitures against any person who permits the operation of pirate radio broadcasting, such as the property owners whose property is used for pirate radio broadcasting.[24]

10. On February 5, 2023, Agents from the Miami Office monitored the frequency 90.1 MHz in North Miami, Florida, and, using direction-finding techniques, traced the source of the signal to 755 NE 140th Street, North Miami, Florida (140th Street Site). The Agents observed a "Dominator" type FM

[17] *See 2018 Polynice Forfeiture Order* at 6583, paras. 9-20 (rejecting Defendants' responses to the *2017 Polynice NAL*); *id.* at 6583 paras. 21-25 (affirming NAL findings in full).

[18] 47 CFR § 15.239(b).

[19] *Jerome Moultrie*, Notice of Unlicensed Operation (EB Mar. 28, 2018) (on file in EB-FIELDSCR-18-00026127).

[20] *Claude and Edma Saintilmar*, Notice of Unlicensed Operation (EB Apr. 18, 2018) (on file in EB-FIELDSCR-18-00026127).

[21] *Lanette Octelus and Anson Boscico*, Notice of Unlicensed Operation (EB Dec. 12, 2019) (on file in EB-FIELDSCR-19-00030195).

[22] 47 U.S.C. § 511(h).

[23] *Id.* § 511(a)-(b).

[24] *See* 47 U.S.C. § 511(a) ("Any person who willfully and knowingly does or causes *or suffers to be done* any pirate radio broadcasting shall be subject to a fine of not more than $2,000,000.") (emphasis added).

broadcast antenna at a private residence located at the 140th Street Site.[25] The Agents took field strength measurements of the Station's signal and determined that it exceeded the limits for operation under part 15 of the Commission's rules.[26] The Agents also took photographs of the antenna used to broadcast the signal and determined that it used a standard coaxial connector and was not compliant with the part 15 rules.[27] A review of Commission records revealed no authorization for any FM broadcast station to operate at or near the 140th Street Site on any frequency.[28]

11. On February 25, 2023, Agents from the Miami Office monitored the 90.1 MHz frequency in North Miami, Florida, and, using direction-finding techniques, traced the source of the signal to the same antenna mounted at the 140th Street Site. The Agents took field strength measurements of the Station's signal and determined that it exceeded the limits for operation under part 15 of the Commission's rules.[29] The Agents also photographed the equipment and determined that it was the same non-part 15 compliant antenna used to broadcast the signal on February 5, 2023.[30] They listened to and recorded the audio programming on 90.1 MHz, heard the Station identify itself as Radio Touche Douce, and heard an announcement of an upcoming sponsored event with "Halftime by DJ Paz."

12. On March 4, 2023, Agents from the Miami Office monitored the 90.1 MHz frequency in North Miami, Florida, and, using direction-finding techniques, traced the source of the signal to the same antenna mounted at the 140th Street Site. The Agents took field strength measurements of the Station's signal and determined that it exceeded the limits for operation under part 15 of the Commission's rules.[31] The Agents also photographed the equipment and determined that it was the same non-part 15 compliant antenna used to broadcast the signal since February 5, 2023.[32] They listened to and recorded the audio programming on 90.1 MHz, and heard the Station identify itself as Radio Touche Douce. The Agents also conducted an inspection of the Station with a self-identified lessee of the 140th Street Site. The lessee living at the 140th Street Site admitted to the Agents that she allowed an unnamed person to install and operate the Station at the 140th Street Site for a fee. During their inspection, the Agents observed a cabinet containing FM transmitting equipment powered by electric cabling running into the onsite residence. Another resident at the 140th Street Site stated the Station belonged to Fabrice Polynice, and identified Polynice as DJ Paz. The Agents left documents at the 140th Street Site explaining why pirate radio broadcasting was illegal and must be immediately halted.

13. On March 5, 2023, Agents from the Miami Office monitored the 90.1 MHz frequency in North Miami, Florida, and, using direction-finding techniques, traced the source of the signal to the same antenna mounted at the 140th Street Site. The Agents took field strength measurements of the Station's signal and determined that it exceeded the limits for operation under part 15 of the Commission's rules.[33] The Agent also photographed the antenna and determined that it was the same non-part 15 compliant antenna used to broadcast the signal since February 5, 2023.[34] They listened to and recorded the audio

[25] A so-called "Dominator" antenna is favored by many pirate radio station operators because its design offers greater range and a larger signal coverage area as compared to other types of antennas.

[26] 47 CFR § 15.239(b).

[27] *Id.* § 15.203.

[28] There is no evidence the Sidos are connected to the 140th Street Site, or that they are continuing to support Polynice's current pirate radio broadcasting activities.

[29] 47 CFR § 15.239(b).

[30] *Id.* § 15.203.

[31] *Id.* § 15.239(b).

[32] *Id.* § 15.203.

[33] *Id.* § 15.239(b).

[34] *Id.* § 15.203.

programming, heard the Station identify itself as Radio Touche Douce, and heard the on-air DJ announce the name "DJ Paz" related to upcoming live area events connected to the Station.

14. Investigative work by the Agents from the Miami Office confirms that DJ Paz and Polynice are the same person. An April 21, 2023 Facebook post by "PazTouchedouce" containing a flyer advertising a local club event, which reads "Touche Douce Music & Ent. Presents FRIDAY MAY 19, 2023...DJ PAZ BIRTHDAY BASH Music by...DJ Paz For More Infos: (305) 901-7700 – (786) 277-10{[■]}." The flyer had a photo of DJ Paz (Polynice) next to the text on the flyer. The date advertised as DJ Paz's birthday, May 19, matches Polynice's date of birth, as determined by investigators.[35] A resident of the 140th Street Site positively identified Polynice as DJ Paz to Agents on March 4, 2023. Finally, Polynice admitted to Agents that he was DJ Paz in the course of the investigation culminating in the 2017 NAL and 2018 Forfeiture Order against him.[36]

15. Additional investigative work by the Agents from the Miami Office located an extensive social media presence that connects Polynice to Radio Touche Douce. The Station has its own Facebook page advertising upcoming radio programs and sponsored events.[37] The site also contains numerous posts from August 2022 through July 2023 stating "Radio Touche Douce 90.1 Fm was live." These "live" video recordings show the individual previously identified as Polynice announcing "live" on-air in a studio with background signage reading "90.1 FM Radio Touche Douce"; more recent videos show Polynice broadcasting from the same studio with a foreground label of "DJ Paz."[38] Another Facebook page connected to the Station—Touchedouce Paz—prominently displays a photograph of Polynice together with many of the same "live" broadcast videos.[39] The YouTube channel "DJ Paz Touchedouce" also contains videos showing DJ Paz (Polynice) announcing the Radio Touche Douce program "live" on-air in a radio station studio with the same background signage advertising the Station's 90.1 MHz frequency.[40] The "About" section of Radio Touche Douce's Facebook page lists the Station's address as 13920 NE 12th Ave., North Miami, FL 33161, and its telephone number as (786) 277-10{[■]}. Additional investigative work by the Agents revealed that Polynice is the identified subscriber (i.e., owner) of the Station's telephone number. Publicly available corporate records also identify Polynice as the registered agent for three corporate entities bearing the "Touchedouce" name—Touche Douche Inc., Touchedouce Ent., Inc., and Touche Douce Entertainment Inc.—all of which list the 13920 NE 12th Ave. address for mailing.[41]

16. The Radio Touche Douce broadcasts appear to occur at least five days each week as evidenced by weekly recurring programming[42] including (i) "Hot Topic" broadcast on Mondays[43]; (ii)

---

[35] *See* Facebook, *Paz Touchedouce*, https://www.facebook.com/paz.touchedouce (last visited July 3, 2023).

[36] *See 2017 Polynice NAL*, 32 FCC Rcd at 7953, para. 12.

[37] Facebook, *Radio Touche Douce*, https://www.facebook.com/Radiotouchedouce90.1/ (last visited July 3, 2023).

[38] *See, e.g.*, Facebook, *Radio Touche Douce*, https://www.facebook.com/Radiotouchedouce90.1/videos/217566037594016; https://www.facebook.com/Radiotouchedouce90.1/videos/603445604455369; and https://www.facebook.com/Radiotouchedouce90.1/videos/478087310800432/ (last visited July 28, 2023).

[39] Facebook, *Touchedouce Paz*, https://www.facebook.com/touche.douce (last visited July 27, 2023).

[40] YouTube, *DJ Paz Touchedouce*, https://www.youtube.com/@djpaztouchedouce1841 (last visited July 3, 2023).

[41] Florida Department of State, Division of Corporations, https://search.sunbiz.org/Inquiry/CorporationSearch/SearchResults/EntityName/Touchedouce/Page1?searchNameOrder=TOUCHEDOUCE (last visited July 3, 2023).

[42] Agents found the Station operating on Sunday as well, but did not find evidence that it operated on every Sunday. *See supra* paras. 10, 13.

[43] Facebook, *Radio Touche Douce*, https://www.facebook.com/watch/live/?ref=watch_permalink&v=910417910274391 (last visited July 28, 2023).

"Wednesday nite Vayb" Broadcast on Wednesdays;[44] (iii) "Trow Back Thursday" show broadcast on Thursdays.[45] (iv) "Friday Night Live" show broadcast on Fridays[46]; (v) "Saturday Jam with DJ Paz" show broadcast on Saturdays[47]; and (vi) "DJ Paz and DJ Jay live" broadcast on Saturdays.[48]

III. DISCUSSION

17. We find that Polynice apparently willfully and knowingly violated section 511 of the Act[49] by operating a pirate radio station, Radio Touche Douce, on 90.1 MHz from February 5, 2023 to March 5, 2023. On both of those dates, as well as on February 25, 2023 and March 4, 2023, Agents observed Polynice's Station operating at the 140th Street Site on 90.1 MHz. Agents performed field strength measurements and determined that these transmissions exceeded the limits for operation under part 15 of the Commission's rules.[50] In addition, evidence shows Radio Touche Douce aired weekly programming Monday, Wednesday, Thursday, Friday, and Saturday during the period between February 5, 2023 and March 5, 2023, totaling at least eighteen (18) additional apparent violations.[51] Agents determined that the antenna used to broadcast Radio Touche Douce from the 140th Street Site prior to and during the subject period was not compliant with the part 15 requirements.[52] Therefore, all transmissions from the 140th Street Site during this period failed to comply with part 15 of the Commission's rules.[53] A review of Commission records reveals no authorization for any FM broadcast station to operate at or near the 140th Street Site on any frequency.

18. Considering the totality of the circumstances and facts before us, including the multiple violations documented during at least five days each week, the numerous apparent violations during the PIRATE Act investigation, including advertised weekday and weekend programming, the non-Part 15 compliant antenna used to broadcast the Radio Touche Douce signal, and the abundant evidence showing that Polynice owned and operated Radio Touche Douce,[54] we find that Polynice operated a pirate radio station and apparently willfully and knowingly did or caused pirate radio broadcasting between February 5, 2023 and March 5, 2023 for a minimum of twenty-two (22) days of apparent violations. Accordingly, the Commission finds that Polynice's actions constituted pirate radio broadcasting in apparent violation of section 511 of the Act.[55]

---

[44] Facebook, *Radio Touche Douce*, https://www.facebook.com/watch/live/?ref=watch_permalink&v=5676203412458605 (last visited July 28, 2023).

[45] YouTube, *DJ Paz Touchedouce*, https://www.youtube.com/watch?v=hgYKNXZmAHQ (last visited July 28, 2023).

[46] Facebook, *Radio Touche Douce*, https://www.facebook.com/Radiotouchedouce90.1/videos/1327680001486510; YouTube, *Radio Touche Douce*, https://www.youtube.com/watch?v=2m65ftrDpiQ (last visited July 28, 2023).

[47] Facebook, *Radio Touche Douce*, https://www.facebook.com/watch/live/?ref=watch_permalink&v=409908610574282 (last visited July 28, 2023).

[48] Facebook, *Radio Touche Douce*, https://x.facebook.com/watch/live/?ref=watch_permalink&v=1296276557553478 (last visited July 28, 2023).

[49] 47 U.S.C. § 511.

[50] 47 CFR §§ 15.209(a), 15.239(b); *see also* 47 U.S.C. § 511(h) (stating that pirate radio broadcasting "does not include unlicensed operations in compliance with part 15 of title 47, Code of Federal Regulations").

[51] *See* para. 16**Error! Reference source not found.**.

[52] 47 CFR § 15.203.

[53] *Id.*; *see also* 47 U.S.C. § 511(h).

[54] *See* paras. 14-16.

[55] 47 U.S.C. § 511(a), (h).

A. Proposed Forfeiture

19. Section 511 of the Act authorizes the Commission to impose a forfeiture against any person "who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting."[56] In exercising our forfeiture authority, we consider the "nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."[57] We may adjust a forfeiture downward for minor violations, good faith or voluntary disclosure, a history of overall compliance, or an inability to pay.[58]

20. Section 511 of the Act and section 1.80 of the Commission's rules authorize enhanced penalties for pirate radio broadcasting.[59] Under these sections, any person who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting shall be subject to a fine of not more than $119,555 for each day during which the offense occurs, but not more than $2,391,097 in total.[60]

21. The primary intent of the PIRATE Act is to increase financial penalties for pirate radio broadcasting.[61] Accordingly, as explained in two recent NALs under the PIRATE Act,[62] we impose a base forfeiture amount of $20,000 (twice the pre-PIRATE Act base forfeiture level) for each of the twenty-two days that Polynice apparently willfully and knowingly violated section 511 of the Act, for a total proposed base forfeiture of $440,000.[63]

22. Moreover, given the particular facts of this case, and consistent with the *Forfeiture Policy Statement*,[64] we conclude that significant upward adjustments are warranted. First, we find that Polynice's conduct was intentional. Polynice had been warned multiple times since 2012 that his conduct was illegal, including having multiple forfeiture orders issued against him and having his transmission equipment seized,[65] but he nonetheless chose to continue to operate without authorization. Second, we find that an upward adjustment is warranted based on Polynice's history of prior violations of the Act discovered by Commission Agents from 2012 to 2019.[66] Based on the severity of the facts underlying

[56] *Id*. § 511(a).

[57] 47 CFR § 1.80(b)(11).

[58] *Id*.

[59] 47 U.S.C. § 511; 47 CFR § 1.80(b)(6).

[60] 47 U.S.C. § 511(a)-(b); *see* 47 CFR § 1.80(b)(6) (setting the current inflation adjusted statutory maximum for a violation of 47 U.S.C. § 511(a) at $2,391,097 and 47 U.S.C. § 511(b) at $119,555); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 23-1198, 2023 WL 8889597 (EB Dec. 22, 2023); *see also* Annual Adjustment of Civil Monetary Penalties to Reflect Inflation, 89 Fed. Reg. 2148 (Jan. 12, 2024) (setting Jan. 15, 2024 as the effective date for the increases).

[61] *See* S. Rep. No. 116-178, 1 (2019) ("The purpose of S. 1228, the Preventing Illegal Radio Abuse Through Enforcement Act or PIRATE Act, is to increase the financial penalties for pirate radio broadcasting.").

[62] *Thomas Barnes, La Grande, Oregon*, Notice of Apparent Liability for Forfeiture, 2023 WL 2560016, at *4, para. 12 (Mar. 15, 2023); *Cesar Ayora and Luis Angel Ayora, Queens, New York*, Notice of Apparent Liability for Forfeiture, 2023 WL 2560017, at *5, para. 15. (Mar. 15, 2023).

[63] *See* 47 U.S.C. § 511.

[64] *See The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, Report and Order*, 12 FCC Rcd 17087, 17101, para. 27 (1997) (Forfeiture Policy Statement), recons. denied, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b)(11).

[65] *See* paras. 4-7.

[66] *See* paras. 3-8.

these factors, we propose the maximum penalty of $119,555[67] for each day of the twenty-two days during which Polynice operated his pirate radio station in 2023, for a total penalty of $2,630,210. In applying the applicable statutory factors, we also consider whether there is any basis for a downward adjustment of the proposed forfeiture. We find none. Finally, we reduce the proposed penalty from $2,630,210 to $2,391,097 based on the statutory limits imposed by section 511(a) of the Act.[68] After applying section 1.80 of the Commission's rules and the statutory factors, and consistent with the *Forfeiture Policy Statement*, Polynice is apparently liable for a proposed total monetary forfeiture of $2,391,097.[69]

IV. CONCLUSION

23. We have determined that Fabrice Polynice apparently willfully and knowingly did or caused pirate radio broadcasting in violation of section 511 of the Act. As such, Fabrice Polynice is apparently liable for a forfeiture of $2,391,097.

V. ORDERING CLAUSES

24. Accordingly, **IT IS ORDERED** that, pursuant to section 511 of the Communications Act of 1934, as amended, 47 U.S.C. § 511, and section 1.80 of the Commission's rules, 47 CFR § 1.80, Fabrice Polynice is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of two million three hundred ninety one thousand and ninety seven dollars ($2,391,097) for willful and knowing violation of section 511 of the Act. 47 U.S.C. § 511.

25. **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, Fabrice Polynice **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 28.

26. In order for Fabrice Polynice to pay the proposed forfeiture, he shall notify the Office of the Field Director at field@fcc.gov of his intent to pay, whereupon an invoice will be posted in the Commission's Registration System (CORES) at https://apps.fcc.gov/cores/userLogin.do. Upon payment, Polynice shall send electronic notification of payment to the Office of the Field Director, Enforcement Bureau, Federal Communications Commission, at field@fcc.gov on the date said payment is made. Payment of the forfeiture must be made by credit card using CORES at https://apps.fcc.gov/cores/user Login.do, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank

[67] 47 U.S.C. § 511(a); *See* 47 CFR § 1.80(b)(6) (setting the current inflation adjusted statutory maximum for a violation of 47 U.S.C. § 511(a) at $2,391,097 and 47 U.S.C. § 511(b) at $119,555); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 23-1198, 2023 WL 8889597 (EB Dec. 22, 2023); *see also* Annual Adjustment of Civil Monetary Penalties to Reflect Inflation, 89 Fed. Reg. 2148 (Jan. 12, 2024) (setting Jan. 15, 2024 as the effective date for the increases).

[68] 47 U.S.C. § 511(a). Section 511(a) limits the maximum forfeiture for pirate radio broadcasting to $2,000,000, which has subsequently been adjusted for inflation to $2,391,097. *See* 47 CFR § 1.80(b)(6) (setting the current inflation adjusted statutory maximum for a violation of 47 U.S.C. § 511(a) at $2,391,097 and 47 U.S.C. § 511(b) at $119,555); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 23-1198, 2023 WL 8889597 (EB Dec. 22, 2023); *see also* Annual Adjustment of Civil Monetary Penalties to Reflect Inflation, 89 Fed. Reg. 2148 (Jan. 12, 2024) (setting Jan. 15, 2024 as the effective date for the increases).

[69] 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.

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:[70]

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned above and the letters "FORF". In addition, a completed Form 159[71] or printed CORES form[72] 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).[73] 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.

27. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554.[74] 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.

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

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

[72] 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.

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

[74] *See* 47 CFR § 1.1914.

28. 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.[75] The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554, ATTN: Enforcement Bureau – Office of the Field Director, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to the Office of the Field Director at field@fcc.gov.

29. 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.[76] 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.[77]

30. **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 Fabrice Polynice at 13920 NE 12th Ave., North Miami, Florida 33161.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[75] *Id.* §§ 1.16, 1.80(g)(3).

[76] 47 U.S.C. § 503(b)(2)(E).

[77] *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, 14903-904, 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 Fabrice Polynice, North Miami, Florida*, Notice of Apparent Liability for Forfeiture, File No.: EB-FIELDSCR-23-00034825 (January 25, 2024)

In this series of enforcement actions, we propose fines against five unauthorized radio operators in Florida. These operators were not just using the public airwaves unlawfully, they were increasing the risk for harmful interference of authorized users. That is unacceptable.

I want to thank the Field Regional Management and Agents in our Miami Field Office for their work on these investigations. This is a team on the front lines of enforcing our rules governing the public airwaves. I am grateful for their efforts, which have been boosted in a big way by congressional action in the PIRATE Act. I also want to thank those in Washington who took up their work and converted it into what we have here today, including Loyaan Egal, Jeremy Marcus, Matthew Gibson, Ryan McDonald, Michael Rhodes, David Marks, Robert Keller, and Reggie Breshears from the Enforcement Bureau; and William Dever and David Konczal from the Office of General Counsel.

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

In the Matter of	)	
	)	
Brindley Marshall	)	File No.: EB-FIELDSCR-23-00034973
Miami, Florida	)	NAL/Acct. No.: 202432020003
	)	FRN: 0034792283

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: January 25, 2024 **Released: January 26, 2024**

By the Commission: Chairwoman Rosenworcel issuing a statement.

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we propose a penalty of $358,665 against Brindley Marshall (Marshall) for operating an unauthorized radio station on 97.7 MHz in Miami, Florida, by which Marshall apparently willfully and knowingly did or caused pirate radio broadcasting February 5, February 25, and March 4, 2023, resulting in three days of apparent violations. As far back as 2016, Marshall has engaged in the longstanding illicit operation of an unauthorized radio station known as "Hot 97.7 FM" (Station). Operating an unauthorized, or pirate, radio station is illegal under the Communications Act of 1934, as amended (Communications Act or Act)[1] and undermines the primary mission of the Federal Communications Commission (FCC or Commission) to manage radio spectrum. Such illegal operations can interfere with licensed communications, including authorized broadcasts and communications by public safety entities. Moreover, such illegal operations pose a danger to the public because they interfere with licensed stations that inform their listeners of important public safety messages, including Emergency Alert System transmissions that provide vital information regarding weather events and other dangers to the public. Accordingly, enforcement action here is essential.

II. BACKGROUND

A. Legal Framework

2. On January 24, 2020, Congress passed the Preventing Illegal Radio Abuse Through Enforcement Act (PIRATE Act), which was subsequently codified as section 511 of the Communications Act.[2] Section 511 states that any person who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting shall be subject to a fine of not more than $2,000,000 and not more than $100,000 for each day during which such offense occurs.[3] Both of these figures are subject to annual

[1] 47 U.S.C. § 511.

[2] *Preventing Illegal Radio Abuse Through Enforcement Act*, Pub. L. 116-109, 134 Stat. 3 (2020) (codified at 47 U.S.C. § 511).

[3] 47 U.S.C. § 511(a)-(b). Prior to the passage of the PIRATE Act, the maximum monetary penalty for pirate radio transmissions was $151,005. *See* 47 CFR §1.80(b)(9)(ii) (2019*); see also Acerome Jean Charles*, Notice of Apparent Liability for Forfeiture, 34 FCC Rcd 12744 (2019) (proposing a penalty of $151,005), consent decree adopted, Order 35 FCC Rcd 6878 (2020). In 2020, that maximum limit was increased to $2,000,000. *See* 47 U.S.C. § 511.

inflation adjustments.[4] Section 511 defines pirate radio broadcasting as "the transmission of communications on spectrum frequencies between 535 and 1705 kilohertz, inclusive, or 87.7 and 108 megahertz, inclusive, without a license issued by the Commission, but does not include unlicensed operations in compliance with part 15 of title 47, Code of Federal Regulations."[5] Part 15, among other requirements, states that unlicensed operators in the FM band must not transmit over a certain low-power limit.[6] Moreover, under part 15, intentional radiators, such as FM transmitters, must be designed to ensure that no antenna other than that furnished by the responsible party shall be used with the device (*e.g.*, a permanently attached antenna or an antenna that uses a unique coupling to the intentional radiator).[7]

B. Factual Background

1. Pre-PIRATE Act Investigation

3. Marshall has been directly involved in the operation of a pirate radio station in Miami, Florida, for years. The Station is known as Hot 97.7 FM, and Enforcement Bureau (Bureau) field agents (Agents) have confirmed that the Station has regularly identified itself on-air as Hot 97.7 FM since at least 2016.[8] Additional evidence indicates that Marshall has been operating the Station for many years prior to that.[9]

4. On March 24, 2016, using direction-finding techniques, Agents from the Bureau's Miami Field Office (Miami Office) traced the source of transmissions on 97.7 MHz to a single-story commercial building located at 5749 NW 22nd Avenue in Miami.[10] The Agents took field strength measurements and determined that the signal strength exceeded the limits for operation under part 15 of the Commission's rules.[11] Agents listened to and recorded the audio programming on 97.7 MHz and hear the operator identify as "Bo."[12] A review of Commission records revealed no authorization for any FM broadcast station to operate at or near this location on any frequency.

5. Between March 2016 and October 2019, Agents from the Miami Office monitored the frequency 97.7 MHz, and, using direction finding techniques, traced the source of the signal to various

[4] *See* 47 CFR § 1.80(b)(6) (setting the current inflation adjusted statutory maximum for a violation of 47 U.S.C. § 511(a) at $2,391,097 and 47 U.S.C. § 511(b) at $119,555); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 23-1198, 2023 WL 8889597 (EB Dec. 22, 2023); *see also* Annual Adjustment of Civil Monetary Penalties to Reflect Inflation, 89 Fed. Reg. 2148 (Jan. 12, 2024) (setting Jan. 15, 2024 as the effective date for the increases).

[5] 47 U.S.C. § 511(h).

[6] 47 CFR § 15.239(b) (stating that the field strength of any emissions in the 88-108 MHz band shall not exceed 250 microvolts/meter at 3 meters).

[7] *Id*. § 15.203.

[8] *See* agents' notes and audio recording of transmissions on file in EB-FIELDSCR-16-00021268.

[9] Marketing materials for the Hot 97.7 FM posted on Marshall's Facebook page state that the station has been "Serving the Community for 30 Years" Facebook, Brindley Marshall (brindleybothelover.marshall), https://www.facebook.com/brindleybothelover.marshall/posts/pfbid02aRzCdVinRMpMRNSbimARfPRBhb3qphek659EKvW4k1xafCVt8Mh5CStM6z6BTGH5l.

[10] Audio recordings of segments of the transmission are on file in EB-FIELDSCR-16-00021268.

[11] Section 15.239 of the Commission's rules provides that non-licensed broadcasting in the 88-108 MHz band is permitted only if the field strength of the transmission does not exceed 250 microvolts per meter ("μV/m") at three meters. 47 CFR § 15.239(b). Measurements showed that the field strength of the station's signal exceeded the permissible level for a non-licensed part 15 transmitter.

[12] The DJ also promoted the services of Pure Funk DJs, a party DJ service with which Marshall was known to have been affiliated, and announced the station's website as hot97fmmiami.com.

locations in Miami, Florida, including: (1) 5749 NW 2nd Avenue on March 24, 2016; (2) 14525 NW 12th Avenue on June 7, 2016; (3) 2146 NW 58th Street on June 29, 2017; (4) 1270 NW 62nd Street on September 2, 2017; and (5) 2179 NW 65th Street on seven dates.[13] Each time, Agents took field strength measurements and determined that the signal strength exceeded the limits for operation under part 15 of the Commission's rules.[14] Agents listened to[15] and recorded the audio programming on 97.7 MHz and heard the operator refer to himself as "Bo," "Bo da Lover," or "Bo the Lover," which are aliases for Marshall.[16] A review of Commission records revealed no authorization for any FM broadcast station to operate at or near any of these locations on any frequency. In response to these violations, the Bureau issued a Notice of Unlicensed Operation (NOUO) to Marshall on four separate occasions.[17]

6. PIRATE Act Investigation

7. The PIRATE Act, among other provisions, codified the definition of pirate radio,[18] increased fines for pirate radio operators,[19] and granted the Commission new enforcement authority to assess forfeitures against any person who permits the operation of pirate radio broadcasting, such as the property owners whose property is used for pirate radio broadcasting.[20]

8. On February 7, 2020, Agents from the Miami Office monitored the frequency 97.7 MHz, and, using direction-finding techniques, traced the source of transmissions to 2179 NW 65th Street in Miami, Florida.[21] The Agents took field strength measurements and determined that the signal strength exceeded the limits for operation under part 15 of the Commission's rules.[22] A review of Commission records revealed no authorization for any FM broadcast station to operate at or near this location on any frequency at any time relevant to this NAL.

---

[13] Agents traced the signal to 2179 NW 65th Street in Miami Florida on December 2, 2017; May 3, 2018; June 6, 2018; July 28, 2018; November 7, 2018; February 13, 2019; and October 15, 2019.

[14] 47 CFR § 15.239(b).

[15] Agents heard the operator on Hot 97.7 FM identify himself as Bo or Bo the Lover on several dates, including March 2, 2016; June 29, 2017; October 24, 2017; and October 25, 2017; December 2, 2017, and June 11, 2018. On two of these occasions (March 24, 2016, and December 2, 2017) Agents also made recordings of 97.7 MHz that include the operator of the station identifying himself as Bo the Lover (audio recordings on file in EB-FIELDSCR-16-00021268 and EB-FIELDSCR-17-00024510).

[16] Marshall refers to himself by the nickname "Bo The Lover." *See e.g.*, Facebook, Brindley Marshall (brindleybothelover.marshall), Facebook, Bo The Lover, https://www.facebook.com/BoeTheLover/; https://www.facebook.com/brindleybothelover.marshall./; Instagram,bodalover977, https://www.instagram.com/bodalover977; *see also BEST OF MIAMI ARTS & ENTERTAINMEN 2012 BEST FM RADIO PERSONALITY Bo the Lover*, Miami New Times, June 12, 2012, (naming Brindley "Bo the Lover" Marshall as best radio personality), https://www.miaminewtimes.com/best-of/2012/arts-and-entertainment/best-fm-radio-personality-6403063.

[17] *Brindley Marshall Miami, Florida*, Notice of Unlicensed Operation, 2016 WL 1645241 (Miami Office Apr. 21, 2016); *Brindley Marshall Miami, Florida*, Notice of Unlicensed Operation (Miami Office July 13, 2016) (available at https://docs.fcc.gov/public/attachments/DOC-340361A1.pdf); *Brindley Marshall Miami, Florida*, Notice of Unlicensed Operation, 2017 WL 4571151 (Miami Office Oct. 4, 2017); and *Brindley Marshall Miami, Florida*, Notice of Unlicensed Operation, 2017 WL 6048586 (Miami Office Dec. 5, 2017).

[18] 47 U.S.C. § 511(h).

[19] *Id.* § 511(a)-(b).

[20] *See id*. § 511(a) ("Any person who willfully and knowingly does or causes *or suffers to be done* any pirate radio broadcasting shall be subject to a fine of not more than $2,000,000.") (emphasis added).

[21] Agents had previously observed operation of the Hot 97.7 FM station from this location on seven occasions from December 2, 2017 to October 15, 2018. *See supra* note 13.

[22] 47 CFR § 15.239(b).

9. On March 4, 2020, Agents from the Miami Office again monitored the frequency 97.7 MHz and, using direction finding techniques, traced the signal to a mixed-use commercial and residential building at 6829 NW 15th Avenue, in Miami (15th Avenue Site). The Agents took field strength measurements and determined that the signal strength exceeded the limits for operation under part 15 of the Commission's rules.[23] A review of Commission records revealed no authorization for any FM broadcast station to operate at or near this location on any frequency. COVID-19 travel restrictions prevented further onsite inspections at that time.

10. On February 5, 2023, after these restrictions were lifted, Agents from the Miami Office again monitored the frequency 97.7 MHz, and, using direction finding techniques, traced the signal to the 15th Avenue Site. The Agents took field strength measurements on February 5, February 25, and March 4, 2023, and determined that the signal strength exceeded the limits for operation under part 15 of the Commission's rules.[24] Agents also observed that the antenna at the 15th Avenue Site, a dual bay FM antenna, was mounted on a tower behind the building with coaxial cable leading from the antenna down the tower and into the building. Because the antenna was attached via a standard coaxial cable, this configuration renders the station noncompliant with part 15 of the Commission's rules.[25]

11. Following their investigation, Agents conducted online research and uncovered several social media accounts that show Marshall to be the operator of Hot 97.7 FM.[26] For example, Agents discovered that Marshall's Facebook account contained multiple postings in 2023 detailing the cost charged for artists to have their music played on Hot 97.7 FM and for businesses to advertise on the Station.[27] One post, titled "Radio Advertisement for Your Business," included weekly and monthly rates for having music played 20 times a day, as well as monthly rates for 20 radio advertisements per day.[28] On June 23 2023, Marshall reposted a 2021 video commercial for Hot 97.7 FM in which he solicited both

[23] *Id*.

[24] *Id*.

[25] *See id*. § 15.203 (stating that to be part 15 compliant a device must use an antenna permanently affixed or with a unique coupling). Agents observed that the antenna used at the 15th Avenue site, a dual bay FM antenna, is mounted on a tower with coaxial cable leading from the antenna to inside the building. This is not an antenna permanently affixed by the manufacturer, nor is the use of coaxial cable between transmitter and antenna a "unique coupling" within the meaning of the rule. Photographs of the antenna and support structure are on file in EB-23-FIELDSCR-00034973.

[26] *See, e.g.*, Facebook, Brindley Marshall (brindleybothelover.marshall), https://www.facebook.com/brindleybothelover.marshall/; Instagram, bodalover977, https://www.instagram.com/bodalover977; https://www.facebook.com/hot977/; https://twitter.com/boe977; www.tiktok.com/@bodalover977.

[27] *See, e.g.*, Facebook, Brindley Marshall (brindleybothelover.marshall), https://www.facebook.com/brindleybothelover.marshall/posts/pfbid02aRzCdVinRMpMRNSbimARfPRBhb3qphek659EKvW4k1xafCVt8Mh5CStM6z6BTGH5l; https://www.facebook.com/brindleybothelover.marshall/posts/pfbid02XcPZkfVHtC2T1G7SY68KE6g3aU5kQjWqdwf9XvezoTpxGYrxxrKeo3T3ShNixhacl; https://www.facebook.com/brindleybothelover.marshall/posts/pfbid0pm5RF29rkDodXMJZvo53mE8vycViaSw8D34NpJwkcyEDq4cBuzuY31oQYLyMEkr3l; https://www.facebook.com/brindleybothelover.marshall/posts/pfbid02xVAVz7Hta8zQLUzLhsqhHmofRUdkUqxE47piLeewBfM2kCCUnjWbbSXT14LamEPdl.

[28] Facebook, Brindley Marshall (brindleybothelover.marshall), https://www.facebook.com/brindleybothelover.marshall/posts/pfbid02aRzCdVinRMpMRNSbimARfPRBhb3qphek659EKvW4k1xafCVt8Mh5CStM6z6BTGH5l.

businesses and artists.[29] Multiple videos posted in 2023 also show Marshall operating the Station in the Hot 97.7 FM studio.[30]

III. DISCUSSION

12. We find that Marshall apparently willfully and knowingly violated section 511 of the Act by operating a pirate radio station on 97.7 MHz on February 5, February 25, and March 4, 2023. On each of these dates, Agents observed Marshall's pirate radio station operating on 97.7 MHz at the 15th Avenue Site. Agents performed field strength measurements and determined that these transmissions exceeded the limits for operation under part 15 of the Commission's rules. Moreover, the Agents also took photographs of the antenna used to broadcast the signal on each date and determined that it used a standard coaxial connector and, therefore, was not compliant with the part 15 rules.[31] A review of Commission records does not reveal an authorization for any FM broadcast station to operate at or near the 15th Avenue Site at any time relevant to the violations discussed in this NAL. Evidence collected by the Agents shows that Marshall is the operator of the Station.[32] Accordingly, the Commission finds that Marshall's actions on February 5, February 25, and March 4, 2023, constituted pirate radio broadcasting in apparent violation of section 511 of the Act.[33]

A. Proposed Forfeiture

13. Section 511 of the Act authorizes the Commission to impose a forfeiture against any person "who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting."[34] In exercising our forfeiture authority, we consider the "nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."[35] We may adjust a forfeiture downward for minor violations, good faith or voluntary disclosure, a history of overall compliance, or an inability to pay.[36]

14. Section 511 of the Act and section 1.80 of the Commission's rules authorize enhanced penalties for pirate radio broadcasting.[37] Under these sections, any person who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting shall be subject to a fine of not more than $119,555 for each day during which the offense occurs, but not more than $2,391,097 in total.[38]

---

[29] Facebook, Brindley Marshall (brindleybothelover.marshall), https://www.facebook.com/brindleybothelover.marshall/posts/pfbid02cNh5gecCVwBG3nHfSEuptDm8RDwnQwa4r6JsLXoNut2fiQdXFutUvNZV9MLSS8LEl.

[30] *See e.g.*, Facebook, Brindley Marshall (brindleybothelover.marshall), https://www.facebook.com/brindleybothelover.marshall/videos/1035740181138019; https://www.facebook.com/brindleybothelover.marshall/videos/265035086132002; https://www.facebook.com/brindleybothelover.marshall/videos/307414554969778; https://www.facebook.com/brindleybothelover.marshall/videos/3455420834787051. Many additional such videos can be found in the videos section of Marshall's Facebook account. *See* https://www.facebook.com/brindleybothelover.marshall/videos.

[31] *See supra* note 25.

[32] *See supra* paras. 5, 11.

[33] 47 U.S.C. § 511(a), (h).

[34] *Id.* § 511(a).

[35] 47 CFR § 1.80(b)(11).

[36] *Id.*

[37] 47 U.S.C. § 511; 47 CFR § 1.80(b)(6).

[38] 47 U.S.C. § 511(a)-(b); *see* 47 CFR § 1.80(b)(6) (setting the current inflation adjusted statutory maximum for a (continued….)

15. The primary intent of the PIRATE Act is to increase financial penalties for pirate radio broadcasting.[39] Accordingly, as explained in two recent notices of apparent liability for forfeiture under the PIRATE Act, we impose a base forfeiture of $20,000[40] (twice the pre-PIRATE Act base forfeiture level) for each of the three days that Marshall apparently willfully and knowingly violated section 511 of the Act within the one-year statute of limitations, for a total proposed base forfeiture of $60,000.[41]

16. Moreover, given the particular facts of this case, and consistent with the *Forfeiture Policy Statement*,[42] we conclude that a significant upward adjustment is warranted based on Marshall's long history of prior violations of the Act, including specifically engaging in pirate radio broadcasting, discovered by Commission Agents from 2016 to 2020.[43] We also find that Marshall's conduct was intentional. Marshall had been warned multiple times since 2016 that his conduct was illegal, but he nonetheless chose to continue to operate without authorization. Based on the severity of the facts underlying these factors, we propose the maximum penalty of $119,555[44] for each day of the three days during which Marshall operated his pirate radio station in 2023 for a total penalty of $358,665. In applying the applicable statutory factors, we also consider whether there is any basis for a downward adjustment of the proposed forfeiture. We find none. After applying section 1.80 of the Commission's rules and the statutory factors, and consistent with the *Forfeiture Policy Statement*, we therefore propose a total monetary forfeiture of $358,665, for which Marshall is apparently liable.[45]

IV. CONCLUSION

17. We have determined that Brindley Marshall apparently willfully and knowingly did or caused pirate radio broadcasting in violation of section 511 of the Act. As such, Brindley Marshall is apparently liable for a forfeiture of $358,665.

V. ORDERING CLAUSES

18. Accordingly, **IT IS ORDERED** that, pursuant to section 511 of the Communications Act of 1934, as amended, 47 U.S.C. § 511, and section 1.80 of the Commission's rules, 47 CFR § 1.80,

(Continued from previous page)
violation of 47 U.S.C. § 511(a) at $2,391,097 and 47 U.S.C. § 511(b) at $119,555); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 23-1198, 2023 WL 8889597 (EB Dec. 22, 2023); *see also* Annual Adjustment of Civil Monetary Penalties to Reflect Inflation, 89 Fed. Reg. 2148 (Jan. 12, 2024) (setting Jan. 15, 2024 as the effective date for the increases).

[39] *See* S. Rep. No. 116-178, 1 (2019) ("The purpose of S. 1228, the Preventing Illegal Radio Abuse Through Enforcement Act or PIRATE Act, is to increase the financial penalties for pirate radio broadcasting.").

[40] *Thomas Barnes, La Grande, Oregon*, Notice of Apparent Liability for Forfeiture, 2023 WL 2560016, at *4, para. 12 (Mar. 15, 2023); *Cesar Ayora and Luis Angel Ayora, Queens, New York*, Notice of Apparent Liability for Forfeiture, 2023 WL 2560017, at *5, para. 15. (Mar. 15, 2023).

[41] *See* 47 U.S.C. § 511.

[42] *See The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, Report and Order*, 12 FCC Rcd 17087, 17101, para. 27 (1997) (Forfeiture Policy Statement), recons. denied, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b)(11).

[43] *See supra* paras. 3-8.

[44] 47 U.S.C. § 511(a); *See* 47 CFR § 1.80(b)(6) (setting the current inflation adjusted statutory maximum for a violation of 47 U.S.C. § 511(a) at $2,391,097 and 47 U.S.C. § 511(b) at $119,555); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 23-1198, 2023 WL 8889597 (EB Dec. 22, 2023); *see also* Annual Adjustment of Civil Monetary Penalties to Reflect Inflation, 89 Fed. Reg. 2148 (Jan. 12, 2024) (setting Jan. 15, 2024 as the effective date for the increases).

[45] 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.

Brindley Marshall is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of three hundred fifty eight thousand six hundred sixty five dollars ($358,665) for willful and knowing violation of section 511 of the Act. 47 U.S.C. § 511.

19. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules, 47 CFR § 1.80, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Brindley Marshall **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 22.

20. In order for Brindley Marshall to pay the proposed forfeiture, he shall notify the Office of the Field Director at field@fcc.gov of his intent to pay, whereupon an invoice will be posted in the Commission's Registration System (CORES) at https://apps.fcc.gov/cores/userLogin.do. Upon payment, Marshall shall send electronic notification of payment to the Office of the Field Director, Enforcement Bureau, Federal Communications Commission, at field@fcc.gov on the date said payment is made. Payment of the forfeiture must be made by credit card using CORES at https://apps.fcc.gov/cores/user Login.do, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. The Commission no longer accepts Civil Penalty payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:[46]

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned above and the letters "FORF". In addition, a completed Form 159[47] or printed CORES form[48] 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).[49] For additional detail and wire transfer instructions, go to https://www.fcc.gov/licensing-databases/fees/wire-transfer.
- Payment by credit card must be made by using CORES at https://apps.fcc.gov/cores/user Login.do. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (*e.g.*, NAL 1912345678 would be associated with FCC Bill Number 12345678). After selecting the bill for payment, choose the "Pay by Credit Card" option. Please note that there is a $24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using CORES at https://apps.fcc.gov/cores/userLogin.do. To pay by ACH, log in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" on the CORES Menu, then select FRN Financial and the

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

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

[48] 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.

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

view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (*e.g.*, NAL 1912345678 would be associated with FCC Bill Number 12345678). Finally, choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

21. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554.[50] Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

22. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Commission's rules.[51] The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554, ATTN: Enforcement Bureau – Office of the Field Director, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to the Office of the Field Director at field@fcc.gov.

23. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits the following documentation: (1) federal tax returns for the past three years; (2) financial statements for the past three years prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status.[52] 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.[53]

[50] *See* 47 CFR § 1.1914.

[51] *Id.* §§ 1.16, 1.80(g)(3).

[52] 47 U.S.C. § 503(b)(2)(E).

[53] *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, 14903-904, paras. 32-33 (2015); *TV Max, Inc., et al.*, Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014).

24. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail, return receipt requested, to Brindley Marshall at {[ ]} NW 143rd St, Opa Locka, FL 33054.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *In the Matter of Brindley Marshall, Miami, Florida*, Notice of Apparent Liability for Forfeiture, File No.: EB-FIELDSCR-23-00034973 (January 25, 2024)

In this series of enforcement actions, we propose fines against five unauthorized radio operators in Florida. These operators were not just using the public airwaves unlawfully, they were increasing the risk for harmful interference of authorized users. That is unacceptable.

I want to thank the Field Regional Management and Agents in our Miami Field Office for their work on these investigations. This is a team on the front lines of enforcing our rules governing the public airwaves. I am grateful for their efforts, which have been boosted in a big way by congressional action in the PIRATE Act. I also want to thank those in Washington who took up their work and converted it into what we have here today, including Loyaan Egal, Jeremy Marcus, Matthew Gibson, Ryan McDonald, Michael Rhodes, David Marks, Robert Keller, and Reggie Breshears from the Enforcement Bureau; and William Dever and David Konczal from the Office of General Counsel.

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

In the Matter of	)	
	)	
Abdias Datis	)	File No.: EB-FIELDSCR-22-00033786
Miami, Florida	)	NAL/Acct. No.: 202432020002
	)	FRN: 0034792267

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: January 25, 2024 **Released: January 26, 2024**

By the Commission: Chairwoman Rosenworcel issuing a statement.

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we propose a penalty of $120,000 against Abdias Datis (Datis) for operating an unauthorized radio station on 91.7 MHz in Miami, Florida, by which Datis apparently willfully and knowingly did or caused pirate radio broadcasting on February 5, 2023, February 25, 2023, and March 4, 2023, resulting in three days of apparent violations. Operating an unauthorized, or pirate, radio station is illegal under the Communications Act of 1934, as amended (Communications Act or Act)[1] and undermines the primary mission of the Federal Communications Commission (FCC or Commission) to manage radio spectrum. Such illegal operations can interfere with licensed communications, including authorized broadcasts and communications by public safety entities. Moreover, such illegal operations pose a danger to the public because they interfere with licensed stations that inform their listeners of important public safety messages, including Emergency Alert System transmissions that provide vital information regarding weather and other dangers to the public.[2] Accordingly, enforcement action here is essential.

II. BACKGROUND

A. Legal Framework

2. On January 24, 2020, Congress passed the Preventing Illegal Radio Abuse Through Enforcement Act (PIRATE Act) which was subsequently codified as section 511 of the Communications Act.[3] Section 511 states that any person who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting shall be subject to a fine of not more than $2,000,000 and not more than $100,000 for each day during which such offense occurs.[4] Both of these figures are subject to annual

[1] 47 U.S.C. § 511.

[2] *See Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, Report and Order, PS Docket No. 15-94, FCC 22-75, para. 3 (rel. Sept. 30, 2022).

[3] *Preventing Illegal Radio Abuse Through Enforcement Act*, Pub. L. 116-109, 134 Stat. 3 (2020) (codified at 47 U.S.C. § 511).

[4] *See* 47 CFR § 1.80(b)(6) (setting the current inflation adjusted statutory maximum for a violation of 47 U.S.C. § 511(a) at $2,391,097 and 47 U.S.C. § 511(b) at $119,555); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 23-1198, WL 8889597 (EB Dec. 22, 2023); *see also* Annual Adjustment of Civil Monetary Penalties to Reflect Inflation, 89 Fed. Reg. 2148 (Jan. 12, 2024) (setting Jan. 15, 2024 as the effective date for the increases).

inflation adjustments.[5] Section 511 defines pirate radio broadcasting as "the transmission of communications on spectrum frequencies between 535 and 1705 kilohertz, inclusive, or 87.7 and 108 megahertz, inclusive, without a license issued by the Commission, but does not include unlicensed operations in compliance with part 15 of title 47, Code of Federal Regulations."[6] Part 15, among other requirements, states that unlicensed operators in the FM band must not transmit over a certain power limit.[7] Moreover, under part 15, intentional radiators, such as FM transmitters, must be designed to ensure that no antenna other than that furnished by the responsible party shall be used with the device (*e.g.*, a permanently attached antenna or an antenna that uses a unique coupling to the intentional radiator).[8]

B. Factual Background

1. Pre-PIRATE Act Investigation

3. Datis has been directly involved in the operation of a pirate radio station (Station) on 91.7 MHz in Miami, Florida, for years. The Station is known as "Unique FM," and Enforcement Bureau (Bureau) field agents (Agents) have confirmed that the Station has identified itself on-air as Unique FM since at least 2018.

4. The Bureau first became aware of Datis's pirate radio station on May 3, 2018, when, in response to a complaint, Agents from the Bureau's Miami Field Office (Miami Office) traced the source of radio transmissions on 91.7 MHz to an office suite leased by Datis's wife at 20295 NW 2nd Avenue, Miami Gardens, Florida (First Transmission Site). The Agents took field strength measurements of the Station's signal and determined that it exceeded the limits for operation under part 15 of the Commission's rules.[9] A review of Commission records revealed no authorization for any FM broadcast station to operate at or near the First Transmission site on any frequency. Agents returned to the First Transmission Site on July 8, 2018, and again found an unauthorized broadcast station on 91.7 MHz exceeding the part 15 power limits.[10]

5. On September 18, 2018, using direction-finding techniques, an Agent from the Miami Office again traced the source of radio transmissions on 91.7 MHz to the First Transmission Site. The Agents took field strength measurements of the Station's signal and determined that it exceeded the limits for operation under part 15 of the Commission's rules.[11] Agents also listened to the Station and heard the operator identify the Station as "Unique FM." On September 20, 2018, the Agents met with building maintenance staff on the roof of the First Transmission Site and traced a coaxial cable from an antenna transmitting on 91.7 MHz to suite 217E. The building owner confirmed that suite 217E was leased to

[5] *See* 47 CFR § 1.80(b)(6) (setting the current inflation adjusted statutory maximum for a violation of 47 U.S.C. § 511(a) at $2,391,097 and 47 U.S.C. § 511(b) at $119,555); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 23-1198, 2023 WL 8889597 (EB Dec. 22, 2023); *see also* Annual Adjustment of Civil Monetary Penalties to Reflect Inflation, 89 Fed. Reg. 2148 (Jan. 12, 2024) (setting Jan. 15, 2024 as the effective date for the increases).

[6] 47 U.S.C. § 511(h).

[7] 47 CFR § 15.239(b)(stating that the field strength of any emissions in the 88-108 MHz band shall not exceed 250 microvolts/meter at 3 meters).

[8] *Id.* § 15.203.

[9] Section 15.239 of the Commission's rules provides that non-licensed broadcasting in the 88-108 MHz band is permitted only if the field strength of the transmission does not exceed 250 microvolts per meter ("μV/m") at three meters. *Id.* § 15.239(b).

[10] *Id.*

[11] *Id.*

Datis's wife. On September 22, 2018, the owner of the building contacted the Agents to inform them that building maintenance had removed the cable leading to the antenna on the roof.

6. On November 15, 2018, using direction finding techniques, Agents from the Miami Office traced the source of radio transmissions on 91.7 MHz to an antenna on the roof of a building located at 18350 NW 2nd Avenue, Miami Gardens, Florida (Second Transmission Site). The Agents took field strength measurements of the Station's signal and determined that it exceeded the limits for operation under part 15 of the Commission's rules.[12] A review of Commission records revealed no authorization for any FM broadcast station to operate at or near the Second Transmission Site on any frequency. On December 6, 2018, building staff at the Second Transmission Site informed the agents that they had removed the antenna from the roof of the building but could not determine where the coaxial cable leading from the antenna terminated. The Agents met with building maintenance staff on December 7, 2018, on the roof of the Second Transmission Site and traced a coaxial cable from the former antenna location to a hallway shared by several suites. One of the suites was leased to Datis's wife, who had signed the lease on October 5, 2018,[13] just weeks after building personnel had removed the antenna cable at the First Transmission Site.

7. On February 27, 2019, using direction-finding techniques, an Agent from the Miami Office traced the source of radio transmissions on 91.7 MHz to a building located at 160 NW 176th, Miami Gardens, Florida (Third Transmission Site). The Agents took field strength measurements of the Station's signal and determined that it exceeded the limits for operation under part 15 of the Commission's rules.[14] A review of Commission records revealed no authorization for any FM broadcast station to operate at or near the Third Transmission site on any frequency. On April 1, 2019, a representative of the owner of the building at the Third Transmission Site contacted the agents and told them that she had traced a coaxial cable from an antenna on the roof of the Third Transmission Site to a suite leased by Datis's wife.[15] On April 19, 2019, the representative informed the Agents that the occupants of the suite had moved out. As of this date, Agents had yet to identify the operator of the Station. Beginning in March 2020, COVID-19 travel restrictions prevented onsite inspections until 2022.

2. PIRATE Act Investigation

8. The PIRATE Act, among other provisions, codified the definition of pirate radio,[16] increased fines for pirate radio operators,[17] and granted the Commission new enforcement authority to assess forfeitures against any person who permits the operation of pirate radio broadcasting,[18] such as the owners or managers of property whose property is used for pirate radio broadcasting.

9. On May 17, 2022, in response to a complaint, Agents from the Miami Office traced the source of radio transmissions on 91.7 MHz to an antenna on the roof a building located at 1175 NE 125th Street in North Miami Florida (Fourth Transmission Site). The Agents took field strength measurements of the Station's signal and determined that it exceeded the limits for operation under part 15 of the Commission's rules.[19] Agents listened to and recorded the audio programming on 91.7 MHz, and heard

[12] *Id.*

[13] *See* Lease for Unit 616, 18350 NW 2nd Avenue, Miami Gardens, Florida (on file EB-FIELDSCR-18-00027923).

[14] 47 CFR § 15.239(b).

[15] *See* Lease for Unit 413, 160 NW 176th, Miami Gardens, Florida (on file EB-FIELDSCR-19-00028564).

[16] 47 U.S.C. § 511(h).

[17] *Id.* § 511(a)-(b).

[18] *See id.* § 511(a) ("Any person who willfully and knowingly does or causes *or suffers to be done* any pirate radio broadcasting shall be subject to a fine of not more than $2,000,000.") (emphasis added).

[19] 47 CFR § 15.239(b).

the Station identify as "Unique FM" and its operator identify as DJ AJ.[20] A review of Commission records revealed no authorization for any FM broadcast station to operate at or near the Fourth Transmission Site on any frequency. The Agents accompanied by building staff documented a rooftop antenna with a coaxial cable running from the antenna to a rooftop air vent.

10. The following day, Agents from the Miami Office and building staff at the Fourth Transmission Site located the coaxial cable exiting from an air vent near suite 421 and entering that suite through a drop ceiling. Building management identified the lessee of suite 421 as Datis's wife.[21] Before the Agents could knock on the door, Datis[22] exited the suite into the hallway where the Agents and building staff had discovered the coaxial cable. An Agent asked Datis if he had removed the transmitter above the drop ceiling tiles, to which he replied, "Yes I did" before leaving the area. After Datis left the area, building staff removed ceiling tiles in the hallway next to suite 421. Above the ceiling tiles just outside of suite 421, the Agents discovered an FM transmitter and two small fans. Building staff informed the Agents they had previously investigated noise emanating from the ceiling just outside of suite 421 and took photographs of the equipment. They also entered the suite and took photos of a laptop and audio mixer near the door, with audio and power cords running up into ceiling in the area where the transmitter was observed. Photos taken from inside the suite show a laptop with audio streaming software running along with the program title that included the name "DJ AJ Unique."[23]

11. On September 15, 2022, Agents from the Miami Office again monitored the frequency 91.7 MHz in North Miami, Florida, and, using direction-finding techniques, traced the source of the signal to an antenna on the roof of a building located at {[ ]} NW 147th Street, Miami, Florida (Fifth Transmission Site). The Agents took field strength measurements of the Station's signal and determined that it exceeded the limits for operation under part 15 of the Commission's rules.[24] Agents listened to and recorded the audio programming on 91.7 MHz and heard the Station as Unique FM and its operator identify as DJ AJ. A review of Commission records revealed no authorization for any FM broadcast station to operate at or near the Fifth Transmission Site on any frequency. The Fifth Transmission Site is listed on Datis's driver's license records as his residence, and property records list his deceased mother as the owner. Driver's license record photographs and photographs on DJ AJ's Facebook and Instagram accounts show that "DJ AJ" and Datis are the same person.[25]

12. On September 19, 2022, February 5, 2023, February 25, 2023, and March 4, 2023, Agents from the Miami Office again monitored the frequency 91.7 MHz in North Miami, Florida, and, using direction-finding techniques, traced the source of the signal to Datis's residence at the Fifth Transmission Site. The Agents took field strength measurements of the Station's signal and on each of these dates determined that it exceeded the limits for operation under part 15 of the Commission's rules.[26] On September 19, 2022, February 25, 2023, and March 4, 2023, the agents listened to and recorded the

[20] *See* May 17, 2022 recording of Unique FM (on file EB-FIELDSCR-22-00033786).

[21] *See* Lease for Suite 421, 1175 NE 125th Street, North Miami, Florida, (on file EB-FIELDSCR-22-00033786).

[22] Agents later identified the man who had exited the suite as Datis from driver license records. *See* Abdias Datis, driver's license records (on file EB-FIELDSCR-22-00033786).

[23] *See* photographs of suite 421 (on file EB-FIELDSCR-22-00033786).

[24] 47 CFR § 15.239(b).

[25] *See* Abdias Datis, driver's license records (on file EB-FIELDSCR-22-00033786); Facebook, DJ AJ Unique (DJ AJ Miami), https://www.facebook.com/DJAJ305/, Instagram, djad305, https://www.instagram.com/djaj305. Datis also posted a video on his Facebook account in which he is introduced both as "AJ" and "Abdias Datis". Facebook, DJ AJ Unique (DJ AJ Miami), https://www.facebook.com/DJAJ305/, https://www.facebook.com/watch/?v=2456853104490469 (last visited July 10, 2023).

[26] 47 CFR § 15.239(b).

audio programming on 91.7 MHz and heard the Station identify as Unique FM.[27] On September 19, 2022, Agents heard the operator of 91.7 MHz identify himself as DJ AJ.[28]

III. DISCUSSION

13. We find that Abdias Datis apparently willfully and knowingly violated section 511 of the Act by operating a pirate radio station on 91.7 MHz on February 5, 2023, February 25, 2023, and March 4, 2023.[29] On each of these dates, Agents observed Datis's Station operating at his residence at the Fifth Transmission Site. Agents performed field strength measurements and determined that these transmissions exceeded the limits for operation under part 15 of the Commission's rules.[30] A review of Commission records does not reveal an authorization for any FM broadcast station to operate at or near the Fifth Transmission Site at any time relevant to this NAL. Evidence collected by Agents show that Datis is DJ AJ, the operator of the Station.[31] Accordingly, the Commission finds that Datis's actions on February 5, 2023, February 25, 2023, and March 4, 2023, constituted pirate radio broadcasting in apparent violation of section 511 of the Act.[32]

A. Proposed Forfeiture

14. Section 511 of the Act authorizes the Commission to impose a forfeiture against any person "who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting."[33] In exercising our forfeiture authority, we consider the "nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."[34] We may adjust a forfeiture downward for minor violations, good faith or voluntary disclosure, a history of overall compliance, or an inability to pay.[35]

15. Section 511 of the Act and section 1.80 of the Commission's rules authorize enhanced penalties for pirate radio broadcasting.[36] Under these sections, any person who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting shall be subject to a fine of not more than $119,555 for each day during which the offense occurs, but not more than $2,391,097 in total.[37]

---

[27] *See* September 19, 2023, February 25, 2023, and March 4, 2023 recordings of Unique FM (on file EB-FIELDSCR-22-00033786).

[28] *See* September 19, 2023 recording of Unique FM (on file EB-FIELDSCR-22-00033786).

[29] 47 U.S.C. § 511.

[30] 47 CFR § 15.239(b).

[31] *See supra* notes 22, 25.

[32] *See* 47 U.S.C. § 511.

[33] *Id.* § 511(a).

[34] 47 CFR § 1.80(b)(11).

[35] *Id.*, Table 4 to paragraph (b)(11).

[36] *See* 47 U.S.C. § 511(a)-(b); 47 CFR § 1.80 (b)(6); *see* 47 CFR § 1.80(b)(6) (setting the current inflation adjusted statutory maximum for a violation of 47 U.S.C. § 511(a) at $2,391,097 and 47 U.S.C. § 511(b) at $119,555); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 23-1198, WL 8889597 (EB Dec. 22, 2023); *see also* Annual Adjustment of Civil Monetary Penalties to Reflect Inflation, 89 Fed. Reg. 2148 (Jan. 12, 2024) (setting Jan. 15, 2024 as the effective date for the increases).

[37] *See id.*

16. The primary intent of the PIRATE Act is to increase financial penalties for pirate radio broadcasting.[38] Accordingly, as explained in two recent notices of apparent liability for forfeiture under the PIRATE Act, we propose a base forfeiture of $20,000[39] (twice the pre-PIRATE Act base forfeiture level) for each of the three days that Datis apparently willfully and knowingly violated section 511 of the Act, for a total proposed base forfeiture of $60,000.[40]

17. Moreover, given the particular facts of this case, and consistent with the *Forfeiture Policy Statement*,[41] we conclude that a significant upward adjustment is warranted. In this regard, we are particularly mindful that Datis's unauthorized operation occurred over at least five years from 2018 to 2023.[42] Accordingly, we propose an upward adjustment of $20,000 for each of the three days during which Datis operated his pirate radio station on February 5, 2023, February 25, 2023, and March 4, 2023, for a total penalty of $120,000. In applying the applicable statutory factors, we also consider whether there is any basis for a downward adjustment of the proposed forfeiture. Based on the facts of this case, we find none. After applying section 1.80 of the Commission's rules, and the statutory factors, and consistent with the *Forfeiture Policy Statement*, Datis is apparently liable for a proposed total monetary forfeiture of $120,000.[43]

IV. CONCLUSION

18. We have determined that Abdias Datis apparently willfully and knowingly did or caused pirate radio broadcasting in violation of section 511 of the Act. As such, Datis is apparently liable for a forfeiture of $120,000.

V. ORDERING CLAUSES

19. Accordingly, **IT IS ORDERED** that, pursuant to section 511 of the Communications Act of 1934, as amended, 47 U.S.C. § 511, and section 1.80 of the Commission's rules, 47 CFR § 1.80,

---

[38] *See* S. Rep. No. 116-178, 1 (2019) ("The purpose of S. 1228, the Preventing Illegal Radio Abuse Through Enforcement Act or PIRATE Act, is to increase the financial penalties for pirate radio broadcasting.").

[39] The Commission first used this base forfeiture amount in two prior Notices of Apparent Liability for Forfeiture. *See César Ayora and Luis Angel Ayora, Queens, New York,* Notice of Apparent Liability for Forfeiture 2023 WL 2560017, at *5 (Mar. 15, 2023); *Thomas Barnes, La Grande, Oregon,* Notice of Apparent Liability for Forfeiture 2023 WL 2560016, at *4 (Mar. 15, 2023).

[40] *See* 47 U.S.C. § 511. We note that had this been a continuing violation, we would have imposed a $20,000 base forfeiture for each day of the continuing violation.

[41] *See The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, Report and Order,* 12 FCC Rcd 17087, 17101, para. 27 (1997) (Forfeiture Policy Statement), recons. denied, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b)(11).

[42] *See supra* paras. 4-12. While Section 503(b)(6) of the Act generally bars the Commission from proposing a forfeiture for violations that occurred more than a year prior to the issuance of an NAL, we may consider the fact that Datis' apparent misconduct occurred over an extended period to place "the violations in context, thus establishing the licensee's degree of culpability and the continuing nature of the violations." *See Roadrunner Transportation Inc. et al.*, Forfeiture Order, 15 FCC Rcd 9669, 9671-72, para. 8 (2000) (quoting *Cate Communications Corporation*, Memorandum Opinion and Order, 60 RR 2d 1386 (1986)); *see also IOU Acquisitions, Inc.; Air-Tel, LLC,* 33 FCC Rcd 8919, 8931, para. 27 (2018) (upward adjustment for two-year and four-year periods of unauthorized operations) *Midessa Television Limited Partnership*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 13247 13250-51, para. 11 (2014) (upward adjustment for four-year period of unauthorized operations); *Union Oil Company of California, Notice of Apparent Liability for Forfeiture*, 27 FCC Rcd 13806, 13810-11, para. 10, n.32 (2012) (upward adjustment for six- and eight-year periods of unauthorized operations) (forfeiture paid).

[43] 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.

Abdias Datis is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of one hundred twenty thousand dollars ($120,000) for willful and knowing violation of section 511 of the Act. 47 U.S.C. § 511.

20. **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, Abdias Datis **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 23 below.

21. In order for Abdias Datis to pay the proposed forfeiture, Abdias Datis shall notify the Office of the Field Director at field@fcc.gov of his intent to pay, whereupon an invoice will be posted in the Commission's Registration System (CORES) at https://apps.fcc.gov/cores/userLogin.do. Upon payment, Abdias Datis shall send electronic notification of payment to the Office of the Field Director, Enforcement Bureau, Federal Communications Commission, at field@fcc.gov on the date said payment is made. Payment of the forfeiture must be made by credit card using CORES at https://apps.fcc.gov/cores/userLogin.do, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. The Commission no longer accepts Civil Penalty payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:[44]

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned above and the letters "FORF". In addition, a completed Form 159[45] or printed CORES form[46] 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).[47] 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

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

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

[46] 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.

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

must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL Acct. No. The bill number is the NAL Acct. No. with the first two digits excluded (*e.g.*, NAL 1912345678 would be associated with FCC Bill Number 12345678). Finally, choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

22. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554.[48] 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.

23. 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.[49] The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554, ATTN: Enforcement Bureau – Office of the Field Director, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to the Office of the Field Director at field@fcc.gov.

24. 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.[50] 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.[51]

[48] *See* 47 CFR § 1.1914.

[49] *Id.* §§ 1.16, 1.80(g)(3).

[50] 47 U.S.C. § 503(b)(2)(E).

[51] *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, 14903-904, paras. 32-33 (2015); *TV Max, Inc., et al.*, Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014).

25. **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 Abdias Datis at {[ ]} NW 147th Street, Miami, Florida 33168.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *In the Matter of Abdias Datis, Miami, Florida*, Notice of Apparent Liability for Forfeiture, File No.: EB-FIELDWR-22-00033786 (January 25, 2024)

In this series of enforcement actions, we propose fines against five unauthorized radio operators in Florida. These operators were not just using the public airwaves unlawfully, they were increasing the risk for harmful interference of authorized users. That is unacceptable.

I want to thank the Field Regional Management and Agents in our Miami Field Office for their work on these investigations. This is a team on the front lines of enforcing our rules governing the public airwaves. I am grateful for their efforts, which have been boosted in a big way by congressional action in the PIRATE Act. I also want to thank those in Washington who took up their work and converted it into what we have here today, including Loyaan Egal, Jeremy Marcus, Matthew Gibson, Ryan McDonald, Michael Rhodes, David Marks, Robert Keller, and Reggie Breshears from the Enforcement Bureau; and William Dever and David Konczal from the Office of General Counsel.

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

In the Matter of	)	
	)	
Cameron Brown	)	File No.: EB-FIELDSCR-23-00034972
North Miami, Florida	)	NAL/Acct. No.: 202432020001
	)	FRN: 0034792200

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: January 25, 2024 **Released: January 26, 2024**

By the Commission: Chairwoman Rosenworcel issuing a statement.

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we propose a penalty of $358,665 against Cameron Brown (Brown) for operating an unauthorized radio station on 89.5 MHz in Miami-Dade County in Florida, by which Brown apparently willfully and knowingly did or caused pirate radio broadcasting during the period from February 10, 2023 to March 4, 2023, resulting in three days of apparent violations. As far as back as 2016, Brown has engaged in the longstanding illicit operation of an unauthorized radio station known as "The Plug." Operating an unauthorized, or pirate, radio station is illegal under the Communications Act of 1934, as amended (Communications Act or Act)[1] and undermines the primary mission of the Federal Communications Commission (FCC or Commission) to manage radio spectrum. Such illegal operations can interfere with licensed communications, including authorized broadcasts and communications by public safety entities. Moreover, such illegal operations pose a danger to the public because they interfere with licensed stations that inform their listeners of important public safety messages, including Emergency Alert System transmissions that provide vital information regarding weather events and other dangers to the public. Accordingly, enforcement action here is essential.

II. BACKGROUND

A. Legal Framework

2. On January 24, 2020, Congress passed the Preventing Illegal Radio Abuse Through Enforcement Act (PIRATE Act), which was subsequently codified as section 511 of the Communications Act.[2] Section 511 states that any person who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting shall be subject to a fine of not more than $2,000,000 and not more than $100,000 for each day during which such offense occurs.[3] Both of these figures are subject to annual

[1] 47 U.S.C. § 511.

[2] *Preventing Illegal Radio Abuse Through Enforcement Act*, Pub. L. 116-109, 134 Stat. 3 (2020) (codified at 47 U.S.C. § 511).

[3] 47 U.S.C. § 511(a)-(b). Prior to the passage of the PIRATE Act, the maximum monetary penalty for pirate radio transmissions was $151,005. *See* 47 CFR §1.80(b)(9)(ii) (2019); *see also Acerome Jean Charles*, Notice of Apparent Liability for Forfeiture, 34 FCC Rcd 12744 (2019) (proposing a penalty of $151,005), consent decree adopted, Order, 35 FCC Rcd 6878 (2020). In 2020, that maximum limit was increased to $2,000,000. *See* 47 U.S.C. § 511.

inflation adjustments.[4] Section 511 defines pirate radio broadcasting as "the transmission of communications on spectrum frequencies between 535 and 1705 kilohertz, inclusive, or 87.7 and 108 megahertz, inclusive, without a license issued by the Commission, but does not include unlicensed operations in compliance with part 15 of title 47, Code of Federal Regulations."[5] Part 15, among other requirements, states that unlicensed operators in the FM band must not transmit over a certain low-power limit.[6]

B. Factual Background

1. Pre-PIRATE Act Investigation

3. Brown has been directly involved in the operation of a pirate radio station (Station) on 89.5 MHz in the Miami, Florida area for years. The Station is known as "The Plug"[7] and Enforcement Bureau (Bureau) field agents (Agents) have confirmed that the Station has continually identified itself on-air as The Plug since at least 2017.

4. The Bureau first became aware of Brown's Station on April 23, 2016, based on a consumer complaint of a pirate radio station on 89.5 MHz in the Miami area. Agents from the Bureau's Miami Field Office (Miami Office) traced the source of radio transmissions on 89.5 MHz to {[ ]} NW 12th Ct., Miami, Florida (12th Court Site). The Agents took field strength measurements of the Station's signal and determined that it exceeded the limits for operation under part 15 of the Commission's rules.[8] A review of Commission records revealed no authorization for any FM broadcast station to operate at or near the 12th Court Site on any frequency. Agents also consulted public records and determined that Brown resided at the 12th Court Site.

5. Between April 23, 2016, and October 19, 2019, using direction-finding techniques, Agents from the Miami Office traced the source of the 89.5 MHz transmissions multiple times to various locations in the Miami, Florida area.[9] Each time, Agents took field strength measurements and determined that the signal strength exceeded the limits for operation under part 15 of the Commission's rules.[10] A review of Commission records revealed no authorization for any FM broadcast station to

[4] *See* 47 CFR § 1.80(b)(6) (setting the current inflation adjusted statutory maximum for a violation of 47 U.S.C. § 511(a) at $2,391,097 and 47 U.S.C. § 511(b) at $119,555); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 23-1198, 2023 WL 8889597 (EB Dec. 22, 2023); *see also* Annual Adjustment of Civil Monetary Penalties to Reflect Inflation, 89 Fed. Reg. 2148 (Jan. 12, 2024) (setting Jan. 15, 2024 as the effective date for the increases).

[5] 47 U.S.C. § 511(h).

[6] 47 CFR § 15.239(b) (stating that the field strength of any emissions in the 88-108 MHz band shall not exceed 250 microvolts/meter at 3 meters).

[7] The Station has also been referred to as The Plug FM.

[8] Section 15.239 of the Commission's rules provides that non-licensed broadcasting in the 88-108 MHz band is permitted only if the field strength of the transmission does not exceed 250 microvolts per meter ("μV/m") at three meters. 47 CFR § 15.239(b).

[9] Agents traced the source to the following locations: {[ ]} NW 12th Ct., Miami, Florida (April 23, 2016; August 24, 2017; October 28, 2017; July 21, 2019; and October 19, 2019); 17200 NW 37th Avenue, Miami Gardens, Florida (June 12, 2017; July 19, 2017; and July 22, 2017); 20001 N.W. 39th Ct., Miami Gardens, Florida (December 5, 2017; February 10, 2018; June 14, 2018; July 26, 2018; November 27, 2018; and February 27, 2019); 9900 N.W. 8th Avenue, Miami, Florida (May 3, 2018); and 1351 NE Miami Gardens Drive, Miami, Florida (September 8, 2018; September 18, 2018; October 3, 2018; and November 5, 2018).

[10] 47 CFR § 15.239(b).

operate at or near any of those locations on any frequency. In response to these violations, the Bureau issued three Notices of Unlicensed Operation to Brown.[11]

6. During the course of their investigation, on July 22, 2017, Agents spoke with Brown, who admitted that he was known as "DJ Fresh" and that he operated the radio station on 89.5 MHz. He stated that he knew it was illegal, but said he wanted "to do something for the community." The Agents warned Brown that it was a violation to operate an unlicensed station, advised him to remove the radio transmitting equipment they had located, and not to operate the Station from there or anywhere else in the future. Throughout their investigation, Agents listened to and recorded[12] the audio programming on frequency 89.5 MHz, heard the station identified as The Plug,[13] heard the operator identify himself as DJ Fresh,[14] and heard the station's phone number announced as 561-600-87{[■]}.[15] Agents confirmed that Brown was DJ Fresh and the operator of the Station operating on 89.5 MHz based on numerous webpages that contained photos of Brown showing that he was DJ Fresh and the operator of The Plug, as well as photos of Brown with the Station's phone number, 561-600-87{[■]}.[16]

2. PIRATE Act Investigation

7. The PIRATE Act, among other provisions, codified the definition of pirate radio,[17] increased fines for pirate radio operators,[18] and granted the Commission new enforcement authority to assess forfeitures against any person who permits the operation of pirate radio broadcasting, such as the property owners whose property is used for pirate radio broadcasting.[19]

8. On February 20 and 24, 2020, Agents from the Miami Office monitored the frequency 89.5 MHz in Miami, Florida, and, using direction-finding techniques, traced the source of the signal to 3230 NW 82nd St., Miami, Florida (82nd Street Site). The Agents, on each day, took field strength measurements of the Station's signal and determined that it exceeded the limits for operation under part 15 of the Commission's Rules.[20] Agents listened to and recorded the audio on 89.5 MHz and heard the

[11] Cameron Brown, Hand Delivered - Notice of Unlicensed Operation (Miami Office, July 22, 2017) (on file EB-FIELDSCR-17-00024574); *Cameron K. Brown, Miami, Florida*, 2017 WL 3485141 (Atlanta Office, Aug. 11, 2017); *Cameron K. Brown, Miami, Florida*, 2018 WL 2393178 (Atlanta Office, May 22, 2018).

[12] Audio recordings on file EB-FIELDSCR-17-00024574.

[13] The dates the Station announced as The Plug include: June 29, 2017; July 22, 2017; October 28, 2017; November 15, 2017; December 5, 2017; January 25, 2018; February 10, 2018; May 3, 2018; June 13, 2018; June 14, 2018; July 26, 2018; September 8, 2018; September 18, 2018; October 3, 2018; November 5, 2018; November 27, 2018; and October 19, 2019.

[14] The dates the operator identified himself as DJ Fresh include: June 29, 2017; November 15, 2017; January 25, 2018; May 3, 2018; June 13, 2018; February 27, 2019; July 21, 2019; and October 19, 2019.

[15] The dates the Station's phone number was announced as 561-600-87{[■]} include: June 29, 2017; May 3, 2018; September 8, 2018; September 18, 2018; October 3, 2018; and November 5, 2018.

[16] Images on file EB-FIELDSCR-17-00024574. For example, Brown's Facebook page contained several posts by Brown from Friday, July 5, 2019 to Sunday, July 7, 2019, indicating that his station, The Plug FM, was on the air on 89.5 MHz during those dates and asking listeners to tune in. Additionally, June 26, 2017 and November 1, 2017, posts on the Facebook page of The Plug contained overlay text of the Station's phone number over the face of Brown. *See also*, Cameron Brown (followdjfresh), Facebook, https://www.facebook.com/followdjfresh, and The Plug, Facebook, https://www.facebook.com/ThePlugFMMiami.

[17] 47 U.S.C. § 511(h).

[18] *Id.* § 511(a)-(b).

[19] *See* 47 U.S.C. § 511(a) ("Any person who willfully and knowingly does or causes *or suffers to be done* any pirate radio broadcasting shall be subject to a fine of not more than $2,000,000.") (emphasis added).

[20] 47 CFR § 15.239(b).

Station identify as 89.5 Plug FM. A review of Commission records revealed no authorization for any FM broadcast station to operate at or near the 82nd Street site on any frequency. COVID-19 travel restrictions prevented further investigation at that time.

9. On January 14, 2023, Agents from the Miami Office monitored the frequency 89.5 MHz in Miami, Florida. Agents listened to and heard the Station continue to identify itself as "The Plug."

10. On February 10, 2023, Agents from the Miami Office monitored the frequency 89.5 MHz in Miami, Florida, and, using direction-finding techniques, traced the source of the signal to 1041 NW 135th St., North Miami, Florida (135th Street Site). The Agents took field strength measurements of the Station's signal and determined that it exceeded the limits for operation under part 15 of the Commission's Rules.[21] A review of Commission records revealed no authorization for any FM broadcast station to operate at or near the 135th Street Site on any frequency.

11. On February 25, and March 4, 2023, Agents from the Miami Office monitored the frequency 89.5 MHz, and, using direction-finding techniques, traced the source of the signal to the 135th Street Site. The Agents took field strength measurements of the Station's signal and determined that it exceeded the limits for operation under part 15 of the Commission's rules.[22]

12. In April 2023, an Agent from the Miami Office searched the internet for websites and social media related to Brown, DJ Fresh, and The Plug FM. This search revealed multiple identical photographs of Brown posted on the Instagram account of DJ Fresh and the Facebook page of The Plug, as well as text of Brown promoting the Station on 89.5 MHz on the Facebook page of The Plug.[23] On June 2, 2023, Brown posted on his Facebook page celebrating the nine-year anniversary of his pirate radio station and indicating that the Station's current studio is in Miami Gardens, Florida.[24]

III. DISCUSSION

13. We find that Brown apparently willfully and knowingly violated section 511 of the Act[25] by operating a pirate radio station, the Plug FM, on 89.5 MHz on February 10, February 25, and March 4, 2023. On each of these dates, Agents observed Brown's Station operating at the 135th Street site on 89.5 MHz. Agents performed field strength measurements and determined that these transmissions exceeded the limits for operation under part 15 of the Commission's rules.[26] A review of Commission records does not reveal an authorization for any FM broadcast station to operate at or near the 135th Street Site at any time relevant to the violations discussed in this NAL. Evidence collected by the Agents shows that Brown is DJ Fresh, the operator of the Station.[27] Accordingly, the Commission finds that

[21] *Id.*

[22] *Id.*

[23] *See e.g.*, The Plug FM, Facebook, https://www.facebook.com/photo/?fbid=595721442559995 (last visited July 3, 2023); https://www.facebook.com/photo/?fbid=588205566644916 (last visited July 3, 2023); https://www.facebook.com/photo/?fbid=463522532446554 (last visited July 3, 2023); DJ Fresh (followdjfresh), Instagram, https://www.instagram.com/p/CmostCpLKCW/ (last visited July 3, 2023); https://www.instagram.com/p/CmUCc39LFXl/, https://www.instagram.com/p/CgtL11pOC-0/ (last visited July 3, 2023).

[24] Cameron Brown (followdjfresh), Facebook, https://www.facebook.com/followdjfresh/posts/pfbid0fPXvfzSXrYoZcXJ3FEnBBq5QCe6VRFS2hsNze6DJBFEnDsqG7mB1jk9BgjegWFsel (last visited July 3, 2023).

[25] 47 U.S.C. § 511.

[26] 47 CFR §§ 15.209(a), 15.239(b); *see also* 47 U.S.C. § 511(h) (stating that pirate radio broadcasting "does not include unlicensed operations in compliance with part 15 of title 47, Code of Federal Regulations").

[27] *See supra* para. 12.

Brown's actions on February 10, February 25, and March 4, 2023, constituted pirate radio broadcasting in apparent violation of section 511 of the Act.[28]

A. Proposed Forfeiture

14. Section 511 of the Act authorizes the Commission to impose a forfeiture against any person "who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting."[29] In exercising our forfeiture authority, we consider the "nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."[30] We may adjust a forfeiture downward for minor violations, good faith or voluntary disclosure, a history of overall compliance, or an inability to pay.[31]

15. Section 511 of the Act and section 1.80 of the Commission's rules authorize enhanced penalties for pirate radio broadcasting.[32] Under these sections, any person who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting shall be subject to a fine of not more than $119,555 for each day during which the offense occurs, but not more than $2,391,097 in total.[33]

16. The primary intent of the PIRATE Act is to increase financial penalties for pirate radio broadcasting.[34] Accordingly, as explained in two recent notices of apparent liability for forfeiture under the PIRATE Act, we impose a base forfeiture of $20,000[35] (twice the pre-PIRATE Act base forfeiture level) for each of the three days that Brown apparently willfully and knowingly violated section 511 of the Act for a total proposed base forfeiture of $60,000.[36]

17. Moreover, given the particular facts of this case, and consistent with the *Forfeiture Policy Statement*,[37] we conclude that a significant upward adjustment is warranted. First, we find that Brown's conduct was intentional. Brown had been warned three times since 2017 that his conduct was illegal,[38] but he nonetheless chose to continue to operate without authorization. In addition, we find that an upward adjustment is warranted based on Brown's history of prior violations of the Act discovered by

---

[28] 47 U.S.C. § 511(a), (h).

[29] 47 U.S.C. § 511(a).

[30] 47 CFR § 1.80(b)(11).

[31] *Id*.

[32] 47 U.S.C. § 511; 47 CFR § 1.80(b)(6).

[33] 47 U.S.C. § 511(a)-(b); see 47 CFR § 1.80(b)(6) (setting the current inflation adjusted statutory maximum for a violation of 47 U.S.C. § 511(a) at $2,391,097 and 47 U.S.C. § 511(b) at $119,555); Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation, Order, DA 23-1198, 2023 WL 8889597 (EB Dec. 22, 2023); see also Annual Adjustment of Civil Monetary Penalties to Reflect Inflation, 89 Fed. Reg. 2148 (Jan. 12, 2024) (setting Jan. 15, 2024 as the effective date for the increases).

[34] See S. Rep. No. 116-178, 1 (2019) ("The purpose of S. 1228, the Preventing Illegal Radio Abuse Through Enforcement Act or PIRATE Act, is to increase the financial penalties for pirate radio broadcasting.").

[35] The Commission first used this base forfeiture amount in two prior Notices of Apparent Liability for Forfeiture. *See César Ayora and Luis Angel Ayora, Queens, New York*, Notice of Apparent Liability for Forfeiture 2023 WL 2560017, at *5 (Mar. 15, 2023); *Thomas Barnes, La Grande, Oregon*, Notice of Apparent Liability for Forfeiture 2023 WL 2560016, at *4 (Mar. 15, 2023).

[36] *See* 47 U.S.C. § 511.

[37] *See The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, Report and Order*, 12 FCC Rcd 17087, 17101, para. 27 (1997) (Forfeiture Policy Statement), recons. denied, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b)(11).

[38] *See supra* note 11.

Commission Agents from 2016 to 2023.[39] Based on the severity of the facts underlying these factors, we propose the maximum penalty of $119,555[40] for each day of the three days during which Brown operated his pirate radio station in February and March 2023 for a total penalty of $358,665. In applying the applicable statutory factors, we also consider whether there is any basis for a downward adjustment of the proposed forfeiture. We find none. After applying section 1.80 of the Commission's rules and the statutory factors, and consistent with the *Forfeiture Policy Statement*, Brown is apparently liable for a proposed total monetary forfeiture of $358,665.[41]

IV. CONCLUSION

18. We have determined that Cameron Brown apparently willfully and knowingly did or caused pirate radio broadcasting in violation of section 511 of the Act. As such, Cameron Brown is apparently liable for a forfeiture of $358,665.

V. ORDERING CLAUSES

19. Accordingly, **IT IS ORDERED** that, pursuant to section 511 of the Communications Act of 1934, as amended, 47 U.S.C. § 511, and section 1.80 of the Commission's rules, 47 CFR § 1.80, Cameron Brown is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of three hundred fifty eight thousand six hundred sixty five dollars ($358,665) for willful and knowing violation of section 511 of the Act. 47 U.S.C. § 511.

20. **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, Cameron Brown **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 23.

21. In order for Cameron Brown to pay the proposed forfeiture, he shall notify the Office of the Field Director at field@fcc.gov of his intent to pay, whereupon an invoice will be posted in the Commission's Registration System (CORES) at https://apps.fcc.gov/cores/userLogin.do. Upon payment, Brown shall send electronic notification of payment to the Office of the Field Director, Enforcement Bureau, Federal Communications Commission, at field@fcc.gov on the date said payment is made. Payment of the forfeiture must be made by credit card using CORES at https://apps.fcc.gov/cores/user Login.do, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. The Commission no longer accepts Civil Penalty payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:[42]

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned above and the letters "FORF". In addition, a completed Form 159[43] or printed CORES form[44]

[39] *See supra* paras. 4–11.

[40] 47 U.S.C. § 511(a); see 47 CFR § 1.80(b)(6) (setting the current inflation adjusted statutory maximum for a violation of 47 U.S.C. § 511(a) at $2,391,097 and 47 U.S.C. § 511(b) at $119,555); Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation, Order, DA 23-1198, WL 8889597 (EB Dec. 22, 2023); see also Annual Adjustment of Civil Monetary Penalties to Reflect Inflation, 89 Fed. Reg. 2148 (Jan. 12, 2024) (setting Jan. 15, 2024 as the effective date for the increases).

[41] 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.

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

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

must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 or CORES may result in payment not being recognized as having been received. When completing FCC Form 159 or CORES, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).[45] 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.

22. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554.[46] 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.

23. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Commission's rules.[47] The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554, ATTN: Enforcement Bureau – Office of the Field Director, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to the Office of the Field Director at field@fcc.gov.

(Continued from previous page)

[44] 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.

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

[46] *See* 47 CFR § 1.1914.

[47] *Id.* §§ 1.16, 1.80(g)(3).

24. 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.[48] 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.[49]

25. **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 Cameron Brown at {[ ]} NW 12TH Ct., Miami, Florida, 33167-4045.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[48] 47 U.S.C. § 503(b)(2)(E).

[49] *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, 14903-904, 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 Cameron Brown, North Miami, Florida*, Notice of Apparent Liability for Forfeiture, File No.: EB-FIELDSCR-23-00034972 (January 25, 2024)

In this series of enforcement actions, we propose fines against five unauthorized radio operators in Florida. These operators were not just using the public airwaves unlawfully, they were increasing the risk for harmful interference of authorized users. That is unacceptable.

I want to thank the Field Regional Management and Agents in our Miami Field Office for their work on these investigations. This is a team on the front lines of enforcing our rules governing the public airwaves. I am grateful for their efforts, which have been boosted in a big way by congressional action in the PIRATE Act. I also want to thank those in Washington who took up their work and converted it into what we have here today, including Loyaan Egal, Jeremy Marcus, Matthew Gibson, Ryan McDonald, Michael Rhodes, David Marks, Robert Keller, and Reggie Breshears from the Enforcement Bureau; and William Dever and David Konczal from the Office of General Counsel.

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

In the Matter of	)	
	)	
Comparative Consideration of Six Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations	)	NCE MX Group Numbers 51, 54, 76, 122, 152, 200

MEMORANDUM OPINION AND ORDER

Adopted: January 23, 2024 **Released: January 23, 2024**

By the Commission:

TABLE OF CONTENTS

Heading Paragraph #

I. INTRODUCTION....1
II. BACKGROUND....3
III. GENERAL NCE COMPARATIVE PROCEDURES....6
A. 307(b) --Threshold Fair Distribution Study....7
B. Point System Selection Process....11
C. Tie-Breakers....19
D. Timely Documentation of Comparative Qualifications....21
IV. NEW POINT SYSTEM ANALYSIS....23
A. NCE MX Group 152....24
V. BEST TECHNICAL PROPOSAL CHALLENGES....26
A. NCE MX Group 54....27
B. NCE MX Group 76....34
C. NCE MX Group 200....40
VI. TIE-BREAKER CHALLENGE....49
A. NCE MX Group 51....51
VII. GENERAL POINT CLAIM CHALLENGE....58
A. NCE MX Group 122....58
VIII. NEXT STEPS....68
IX. ORDERING CLAUSES....73

I. INTRODUCTION

1. The Commission has before it for comparative consideration and review six groups of mutually exclusive (MX) applications for new noncommercial educational (NCE) FM station construction permits.[1] By this Memorandum Opinion and Order (Order), we use a point system to

[1] On November 29, 2021, the Media Bureau (Bureau) issued a public notice identifying 231 groups of mutually exclusive NCE FM applications. *See Media Bureau Identifies Groups of Mutually Exclusive Applications Submitted* (continued….)

tentatively select a new application for grant in several groups. Petitions to deny the application of any of these tentative selectees must be filed within 30 days of the date of release of this Order.[2]

2. In each group addressed in this Order, the Bureau or Commission previously resolved the conflicting NCE proposals by applying the comparative procedures codified in Part 73, Subpart K, of the Commission's rules (rules)[3] and tentatively selected applications for grant. These actions now require additional analysis as a result of subsequent challenges, filings, or events.

II. BACKGROUND

3. The applications addressed in this Order were filed in November 2021, during the most recent filing window for new NCE FM applications.[4] Each application was MX with at least one other application, and the applicants had an opportunity to enter into settlement agreements among themselves to resolve mutual exclusivity.[5] The Bureau and the Commission subsequently resolved all of the MX groups addressed herein, along with over 165 other MX groups, comprising hundreds of NCE FM applications,[6] by applying the NCE comparative procedures, which include (1) threshold fair distribution criteria for applications proposing to serve different communities,[7] and (2) an NCE point system,[8] which is a simplified, "paper hearing" process for selecting among mutually exclusive NCE applications.[9] The Commission's comparative review of MX applications is based on applicant-provided information. To expedite the licensing of new NCE FM stations, the Bureau and the Commission rely on applicant certifications and documentation and do not independently confirm their accuracy during the review process. Rather, the Bureau and the Commission rely on the petition to deny process to verify the accuracy of the points claimed and certifications.[10]

(Continued from previous page)
in the November 2021, Filing Window for New Noncommercial Educational Stations, Public Notice, 36 FCC Rcd 16452 (MB rel. Nov. 29, 2021) (*NCE MX Public Notice*). Each of the groups analyzed herein was included in the *NCE MX Public Notice*.

[2] *See* 47 CFR § 73.7004(b).

[3] 47 CFR §§ 73.7000 – 73.7005.

[4] *See Media Bureau Announces NCE FM New Station Application Filing Window; Window Open from November 2, 2021, to November 9, 2021*, MB Docket No. 20-343, Public Notice, 36 FCC Rcd 7449 (MB rel. April 21, 2021). The window was available for FM reserved band (channels 201-220) proposals. *See* 47 CFR § 73.501.

[5] *See NCE MX Public Notice,* 34 FCC Rcd at 16452. The NCE FM applicants had an opportunity to enter into and file settlement agreements and to submit technical amendments to resolve conflicts and expedite the grant of applications filed in the NCE FM window.

[6] *See, e.g., Threshold Fair Distribution Analysis of 13 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, 37 FCC Rcd 5702 (MB May 2, 2022); *Comparative Consideration of 27 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, 37 FCC Rcd 9869 (Aug. 2, 2022) (*First Comparative Order*).

[7] *See* 47 U.S.C. § 307(b); 47 CFR § 73.7002(a).

[8] *See* 47 CFR § 73.7003 (point system selection procedures).

[9] *See Reexamination of the Comparative Standards for Noncommercial Educational Applicants,* Report and Order, 15 FCC Rcd 7386 (2000) (*2000 NCE Order)*, *clarified*, Memorandum Opinion and Order, 16 FCC Rcd 5074 (2001) (*2001 NCE MO&O*), *recon. denied*, Memorandum Opinion and Second Order on Reconsideration, 17 FCC Rcd 13132 (2002). *See also Reexamination of the Comparative Standards and Procedures for Licensing Noncommercial Educational Broadcast Stations and Low Power FM Stations*, MB Docket No. 19-3, Report and Order, 34 FCC Rcd 12519 (2019) (*NCE LPFM Order)* (amending the comparative rules and procedures), *aff'd,* Order on Reconsideration, FCC 20-121, 35 FCC Rcd 10180 (2020) (*NCE Order on Reconsideration).*

[10] *See 2001 NCE MO&O*, 16 FCC Rcd at 5104, para. 87.

4. After applying these procedures, the Bureau or Commission tentatively selected applications for grant from each MX group and initiated a 30-day period for filing petitions to deny against the applicants tentatively selected.[11] In this Order, we address several outstanding, unresolved challenges from the November 2021, NCE FM window. The pleadings addressed herein include multiple petitions to deny[12] the tentative selectee applications from prior Commission decisions regarding the subject MX groups, several petitions for reconsideration, and an application for review. In many of the petitions to deny, a petitioner has challenged the inclusion or exclusion of claimed points, thus potentially altering the outcome of the particular NCE MX group. Accordingly, the Bureau has referred these groups to the Commission.[13] Although the groups we resolve in this Order involve a broad range of fact patterns, they also involve many common issues arising from our NCE comparative process. We therefore believe that organizing this Order primarily by topic and consolidating these decisions as a single order will provide guidance on the application of many of the NCE comparative criteria.

5. Section III of this Order provides an introductory overview of each NCE comparative criterion. In Section IV we use the point system to re-analyze one MX group. Section V is devoted to challenges to the Commission's prior best technical proposal analyses in three MX groups. In Section VI we address a challenge to our tie-breaker criteria. Finally, in Section VII we address an application for review regarding whether the Commission should award points to an applicant that initially certified it did not qualify for localism and diversity points, but submitted exhibits to support affirmative certifications.

III. GENERAL NCE COMPARATIVE PROCEDURES

6. Given the finite nature of and high demand for spectrum, the Commission cannot grant a construction permit to every qualified NCE applicant. Due to the noncommercial nature of the NCE service, MX[14] applications for new station construction permits are not subject to auction, but are resolved by applying comparative procedures.[15] Specifically, the Commission's comparative analysis of MX NCE applications generally consists of three main components. First, when NCE FM applicants in an MX group propose service to different communities, the Commission performs a threshold fair distribution analysis under section 307(b) of the Communications Act of 1934, as amended (the Act).[16] Second, application conflicts that are not resolved under this "fair distribution" analysis are compared by the Commission under an NCE point system,[17] which is a simplified, "paper hearing" process.[18] Third, if

[11] *See* 47 CFR § 73.7004(b).

[12] In cases involving a petition to deny, the Commission applies a two-step analysis under the public interest standard. The Commission must first determine whether the petition contains specific allegations of fact sufficient to show that granting the application would be *prima facie* inconsistent with the public interest. 47 U.S.C. § 309(d)(1); *Astroline Communications Co., Ltd. v. FCC*, 857 F.2d 1556 (D.C. Cir. 1988) (*Astroline*). If the petition meets this first step, the Commission must determine whether "on the basis of the application, the pleadings filed, or other matters which [the Commission] may officially notice," the petitioner has raised a substantial and material question of fact as to whether the application would serve the public interest. *Astroline*, 857 F.2d at 1561; 47 U.S.C. § 309(e).

[13] The Commission directed the Bureau to refer only those issues where the exclusion or inclusion of challenged or claimed points could alter the outcome of a particular NCE MX group, or where a new or novel question exists. *See, e.g., First Comparative Order, supra* note 6, at para.87 (standards for staff evaluation of petitions).

[14] Conflicting NCE applications, which cannot all be granted consistent with the Commission's technical rules, are considered mutually exclusive. An MX group consists of all applications which are MX to at least one other application in the group.

[15] *See supra* note 9.

[16] 47 U.S.C. § 307(b) (Section 307(b)).

[17] *See* 47 CFR § 73.7003 (point system selection procedures).

[18] *See supra* note 9.

necessary, the Commission makes a tie-breaker determination, based on applicant-provided data and certifications. Each of these steps is described in greater detail below.[19]

A. 307(b) --Threshold Fair Distribution Study.

7. Section 307(b) states that the Commission must "provide a fair, efficient, and equitable distribution" of broadcast service among the states and communities.[20] In accordance with this directive, the Commission considers the fair distribution of service as a first, or threshold, issue in its NCE FM comparative review process[21] in order to ascertain whether grant of any of the applications would best further the Section 307(b) objective.[22] The first step of the Section 307(b), or fair distribution, analysis, is to determine whether any of the applicants in the MX group is a federally recognized Native American Tribe or Alaska Native Village proposing to serve Tribal Lands[23] and claims the Tribal Priority.[24]

8. If there is no Tribal Applicant in the MX group,[25] the second step in the Section 307(b) analysis is to determine whether any applicant would provide a first or second reserved band channel NCE aural service to a substantial population (the First or Second NCE Service Preference) by comparing population coverage totals.[26] Specifically, during this step, an NCE FM applicant is eligible to receive a fair distribution preference (or Section 307(b) preference)[27] if it would provide a first or second reserved band channel NCE aural service to at least 10% of the population (in the aggregate), within the proposed station's service area, provided that the population served is at least 2,000 people. If only one applicant in

[19] In advance of the November 2021 filing window, the Commission amended its rules and procedures for filing NCE FM applications and selecting and licensing competing NCE FM applications. *See NCE LPFM Order*, *supra note 9*. The changes were designed to improve the comparative selection procedures, reduce confusion among future applicants, expedite the initiation of new service to the public, and eliminate unnecessary applicant burdens. *See also Media Bureau Announces October 30, 2020, Effective Date of New NCE and LPFM Rules*, Public Notice, 35 FCC Rcd 12694 (Nov. 2, 2020).

[20] 47 U.S.C. § 307(b).

[21] *See* 47 CFR § 73.7002; *2000 NCE Order,* 15 FCC Rcd at 7396 (2000) (concluding that "fair distribution of stations to communities should remain a threshold issue"); *2001 NCE MO&O*, 16 FCC Rcd at 5077 ("when competing FM applications propose to serve different communities, a proposal would be considered best, as a threshold matter, if it would provide service to a significant unserved or underserved population").

[22] *See* 47 U.S.C. § 307(b) ("In considering applications for licenses . . . when and insofar as there is demand for the same, the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same."); 47 CFR § 73.7002(a). Applicants' Form 2100, Schedule 340, Fair Distribution of Service certifications enable the Commission to consider whether service to one community over the other would best achieve the Commission's directive to distribute radio service fairly among communities.

[23] *See* 47 CFR §§ 73.7000, 73.7002(b).

[24] An NCE FM applicant is eligible to receive a fair distribution preference, and ultimately be awarded the construction permit, if it identifies itself as a Tribal Applicant, proposes Tribal Coverage, and proposes the first reserved channel NCE service owned by any Tribal Applicant at a community of license located on Tribal Lands (the Tribal Priority). *See* 47 CFR § 73.7000 (defining a "Tribal Applicant" and "Tribal Coverage"); *see also* 47 CFR § 73.7002(b).

[25] None of the MX groups addressed in this Order contain a Tribal Applicant. Accordingly, the first step of the Section 307(b) analysis, the Tribal Priority analysis, is inapplicable herein.

[26] *See* 47 CFR § 73.7002(b).

[27] The terms "fair distribution preference" and "Section 307(b) preference" are used interchangeably to refer to the preference given to an MX application that is deemed to substantially further the fair distribution of service goals enunciated in Section 307(b).

an MX group qualifies for the First or Second NCE Service Preference, its "fair distribution" (Section 307(b)) preference is dispositive,[28] and that applicant will be awarded the construction permit.

9. If more than one applicant in the MX group claims a First or Second NCE Service Preference, the applicant proposing to provide the greatest number of people with the highest level of service will be awarded a construction permit, if it will provide such service to at least 10% of the people within the station's 60 dBu contour *and* to at least 5,000 more people than the next best applicant.[29] First service will be preferred over second service.[30] Accordingly, the Commission first examines the applicants' first service levels alone to determine whether one of the proposals is superior and should receive a decisive preference. If such applicants are equivalent with respect to first service, or no applicant qualifies for a first service preference, the Commission considers combined first and second NCE aural service population totals. At each stage of the Section 307(b) analysis, any applicant that is comparatively disfavored in terms of Section 307(b) eligibility or service totals is eliminated. The process ends when the Commission determines that one applicant is entitled to a Section 307(b) preference, or that either (1) none of the remaining applicants can be selected or eliminated based on a Section 307(b) preference, or (2) each remaining applicant proposes to serve the same community. Any remaining MX applicants proposing equivalent service overall, or proposing the same community, proceed to a point system analysis.[31]

10. Each applicant claiming a First or Second NCE Service Preference must support its fair distribution claim with an exhibit identifying the population residing within the proposed station's 60 dBμ service contour and the number of people that would receive a new first or second NCE aural service.[32] Further, any applicant which receives a decisive Section 307(b) preference is required to construct and operate technical facilities substantially as proposed, and cannot downgrade service to the area on which the preference was based for a period of four years of on-air operations.[33]

B. Point System Selection Process.

11. The Commission compares mutually exclusive groups of NCE FM applications, which cannot be decided pursuant to the Section 307(b) analysis, under the point system set forth in section 73.7003 of the rules.[34] The NCE point system awards a maximum of seven merit points, based on four

[28] As noted, in the case of an MX group with a Tribal Applicant, an applicant qualifying for a Tribal Priority, however, will prevail over any MX applicant claiming a First or Second NCE Service Preference.

[29] 47 CFR § 73.7002(b).

[30] *Id.*

[31] *See* 47 CFR § 73.7003 (point system selection procedures).

[32] *See id*. § 73.7002(b). Applicants were required to use the most recently available, *i.e.,* 2010 Census, population data. *See Media Bureau Announces NCE FM New Station Filing Procedures and Requirements for November 2-9, 2021, Window,* DA 21-885, 36 FCC Rcd 11458, 11463, n.24 (MB rel. July 23, 2021) (*NCE Filing Procedures Public Notice*); FCC Form 2100, Schedule 340, Instructions for Fair Distribution of Service at 12-14. An applicant's fair distribution showing must be computed as of the time of filing (close of the filing window for applications filed prior to the window) and cannot be enhanced thereafter. *See* 47 CFR § 73.7003(e) and (f)(3); *NCE Filing Procedures Public Notice* at 11468; *2001 NCE MO&O,* 16 FCC Rcd at 5082-83. However, an applicant that subsequently makes engineering changes that would diminish its fair distribution position must amend its application to reflect that diminished position. *See* 47 CFR §§ 1.65 and 73.7003(e).

[33] *See* 47 CFR § 73.7005(b); *see also* 47 CFR § 73.7002(c). During this period, such applicant may make minor modifications to its authorized facilities, provided that "(i) the modification does not downgrade service to the area on which the preference was based, or (ii) any potential loss of first and second NCE service is offset by at least equal first and, separately, combined first and second NCE service population gain(s), and the applicant would continue to qualify for a decisive Section 307(b) preference."). *Id.*

[34] *See* 47 CFR § 73.7003. Unlike the 307(b) analysis, the point system selection process cannot be performed by the Bureau on delegated authority. *See 2000 NCE Order*, 15 FCC Rcd at 7420.

distinct criteria, described below.[35] When MX NCE FM applications proceed to a point system analysis, the Commission reviews the applicants' point submissions[36] to compare the MX applications and tentatively select the application with the highest point total from each MX group for grant.[37]

12. First, we award three points to applicants certifying that they have been local and established for at least two years. To qualify for the three points as an "established local applicant"[38] an applicant must certify that it has been local and established in the community to be served continuously for at least two years immediately prior to the application filing.[39] To be considered local, a non-governmental applicant must have a physical headquarters, campus, or 75% of its governing board members residing within 25 miles of the reference coordinates of the proposed community of license.[40] A governmental unit is considered local within its jurisdictional boundaries.[41]

13. If an applicant certifies that it is an "established local applicant" it must submit substantiating documentation with its application to illustrate how it qualifies as local and established.[42] Examples of acceptable documentation include corporate material from the secretary of state, lists of names, addresses, and length of residence of board members and copies of governing documents requiring a 75% local governing board, or course brochures indicating that classes have been offered at a local campus for the preceding two years.[43] Any applicant awarded localism points in this Order has provided support for its certification.

14. Second, we award two points for local diversity of ownership if no party to the application holds an attributable interest in any other station or authorized construction permit whose principal community (city grade) contour overlaps that of the applicant's proposed station.[44] To qualify

[35] *See* 47 CFR § 73.7003(b).

[36] Each NCE FM applicant was required to complete the "Point System Factors/Tie Breakers" Section of FCC Form 2100, Schedule 340, Noncommercial Educational Station for Reserved Channel Construction Permit Application (Schedule 340) in the Bureau's Licensing and Management System (LMS) by the November 9, 2021, filing deadline.

[37] The Commission has reaffirmed its longstanding one-grant policy. *See NCE Order on Reconsideration, supra* note 9. The one-grant policy provides that only one application should be granted out of each mutually exclusive group, while providing the remaining competing applicants the opportunity to file again in the next filing window. *Id*. The Commission will not authorize "secondary grants" in MX NCE FM groups after the initial resolution of the MX applications. A secondary grant process would allow non-winning applicants that are not mutually exclusive with the tentative selectee to proceed to a second round of analysis by the Commission. *Id. See also NCE LPFM Order*, 34 FCC Rcd at 12528, n.68 (reaffirming the established one-grant policy and declining to pursue a secondary application grant practice).

[38] *See* 47 CFR § 73.7000.

[39] *See id.* § 73.7003(b)(1).

[40] A local headquarters or residence must be a primary place of business or residence and not, for example, a post office box, lawyer's office, branch office, or vacation home, which are more easily feigned and/or present less of an opportunity for meaningful contact with the community. *See 2000 Order*, 15 FCC Rcd at 7410, para. 54.

[41] For example, a state government is considered local throughout the state; a City Board of Education is considered local throughout the city; a state university is considered local throughout the state.

[42] An applicant claiming points as an established local applicant must also pledge to maintain localism characteristics during the period from grant of the construction permit until the station has achieved at least four years of on-air operations. *See* 47 CFR § 73.7005(c); *see also NCE LPFM Order*, 34 FCC Rcd at 12523, para 8.

[43] *See NCE Filing Procedures Public Notice*, 36 FCC Rcd at 11465.

[44] *See* 47 CFR § 73.7003(b)(2). Parties with attributable interests are defined as the applicant, its parent, subsidiaries, their officers, and members of their governing boards. *See* 47 CFR § 73.7000. Interests of certain entities providing more than 33% of the applicant's equity and/or debt are also attributable. *Id.*

for the diversity of ownership points, an applicant must submit either a contour map showing no overlap with the proposed NCE FM station, a statement that the applicant holds no attributable interests in any nearby radio stations, or a certification that it holds no attributable interests in any broadcast stations.[45] Any applicant awarded diversity of ownership points in this Order has either satisfied this requirement or submitted a divestiture pledge, as detailed below.

15. We note that an NCE FM applicant with an overlapping attributable interest, however, can still qualify for diversity of ownership points if it commits to divest the broadcast interest or resign from the attributable positional interest.[46] The applicant must submit the divestiture pledge with the application by the close of the filing window. We do not require the applicant to divest or resign by the close of the filing window. Rather, if we award that applicant a construction permit based on points, the applicant must complete the actual divestiture or resignation by the time the new NCE FM station commences program test operations.[47]

16. Third, we award two points for certain state-wide networks providing programming to accredited schools. These points are available only to applicants that cannot claim a credit for local diversity of ownership.[48] The state-wide network credit is an alternative for applicants that use multiple stations to serve large numbers of schools and, therefore, do not qualify for the local diversity of ownership credit. Applicants claiming points as a state-wide network must submit supporting documentation as an application exhibit.[49]

17. Fourth, an applicant that proposes the best technical proposal in the group (*i.e.,* proposes service to the largest population and area, excluding substantial areas of water) may receive up to two points. The applicant receives one point if its proposed service area *and* population are 10% greater than those of the next best area and population proposals, or two points if both are 25% greater than those of the next best area and population proposals, as measured by each proposed station's predicted 60 dBu signal strength contour.[50] If the best technical proposal does not meet the 10% threshold, no applicant is awarded points under this criterion. In considering this criterion, we have accepted applicants' coverage and population claims.[51]

---

[45] *See* Attributable Interests, Other Authorizations, of Schedule 340. An applicant claiming points for diversity of ownership must also pledge to comply with the restrictions on station modifications and acquisitions during the period from grant of the construction permit until the station has achieved at least four years of on-air operations. *See* 47 CFR § 73.7005(c); *see also NCE LPFM Order*, 34 FCC Rcd at 12524, para. 12.

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

[47] *Id.*

[48] *See* 47 CFR § 73.7003(b)(3).

[49] *See* Form 2100, Schedule 340 Instructions at page 16 (detailing preferred documentation to support this point claim).

[50] *Id.* § 73.7003(b)(4). *See NCE Omnibus,* 22 FCC Rcd at 6121-22, paras. 50-51. If there is one top applicant in terms of area and population, that applicant will receive one point even if there is no single next best applicant for both factors. The Commission will compare the top applicant's proposed area to the proposed area of the applicant with the next best area proposal and the top applicant's population to the proposed population of the applicant with the next best population proposal.

[51] Our procedures for this November 2021 NCE FM filing window required applicants to measure area in square kilometers and exclude significant areas of water, *e.g.*, oceans and lakes, and measure population using the 2010 Census Block Data available from the Census Bureau. *See* Form 2100, Schedule 340 Instructions at page 16.

18. Finally, the Commission tallies the total number of points awarded to each applicant. The applicant with the highest score in a group is designated the "tentative selectee." All other applicants are eliminated.

C. Tie-Breakers.

19. In the event MX applicants are tied with the highest number of points, the tied applicants proceed to a tie-breaker round.[52] The first tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant.[53] The applicant with the fewest attributable authorizations prevails and becomes the tentative selectee. If the tie is not broken by this first factor, we apply a second tie-breaker: the number of pending radio station applications attributable to each applicant.[54] The tentative selectee will be the applicant with the fewest pending new and major change applications in the same service.

20. If a tie remains after the second tie-breaker, applicants are considered under a third and final tie-breaker criterion – prior NCE applications.[55] The tentative selectee will be the applicant that can demonstrate that: (1) it applied in a previous filing window, and had its application accepted for filing and processed, but subsequently dismissed in favor of an applicant possessing superior points or a tie-breaker showing; (2) it was in continuous existence as a legal entity at all times from the date of the previous NCE window filing until the present; and (3) it does not hold any NCE construction permit or license.[56] If this third factor fails to break the tie, we use time-sharing as the tie-breaker of last resort. Specifically, we designate the remaining tied applicants in the MX group as the tentative selectees and direct the tentative selectees to submit, within 90 days of the release of the Order identifying the tentative selectees, a voluntary time-sharing agreement.[57]

D. Timely Documentation of Comparative Qualifications.

21. The NCE FM application, Schedule 340, is certification-based, but requires applicants to document certain of their claims by submitting supporting information.[58] Applicants must submit timely-filed exhibits supporting their point claims. We will not give credit to certifications which require the applicant to submit documentation, but which are not supported with any such timely submitted documentation. While there is some flexibility in the type of documentation an applicant may provide, an applicant that does not submit timely support cannot have made a valid certification and will not receive

[52] *See* 47 CFR § 73.7003(c).

[53] *Id.* § 73.7003(c)(1). Applicants are required to count all attributable full service commercial and NCE radio stations (licenses and construction permits) and any FM translator stations providing non-fill-in service. An applicant may exclude fill-in translators, any translator which the applicant seeks to replace with its applied for full-service NCE FM station, and any station, which it pledges to divest. *See 2001 NCE MO&O*, 16 FCC Rcd at 5102-03, para. 85; *see also* Form 2100, Schedule 340 Instructions at page 17.

[54] *See* 47 CFR § 73.7003(c)(2). When reporting pending applications, applicants were required to include new and major change radio applications, including the subject application and all other applications filed in the window by the November 9, 2021 deadline. Applicants should not have included any requests to participate in an auction filed on Schedule 175 and other applications such as voluntary assignment of license, license renewal, and minor change in existing facilities. *See NCE Filing Procedures Public Notice*, 36 FCC Rcd at 11467.

[55] *See NCE LPFM Order*, 34 FCC Rcd at 12527-28, para. 19; 47 CFR § 73.7003(c)(3).

[56] *Id.* Applicants were required to submit an attachment demonstrating their qualifications under this third tie-breaker criterion.

[57] *See* 47 CFR § 73.7003(c)(4). If the tentative selectees do not agree on a voluntary time sharing arrangement within 90 days, we will impose mandatory time sharing, granting all tentative selectees "equal, concurrent, non-renewable" licenses. 47 CFR § 73.7003(c)(5).

[58] *See 2000 NCE Report and Order*, 15 FCC *Rcd* at 7423, para. 89.

the claimed points.[59] Similarly, we will not consider documentation to support a claimed comparative point if it was submitted in an amendment after the November 2021, filing deadline. In such cases, we adjust the points of such applicants downward.

22. Finally, the NCE FM applicant's qualifications for points are initially determined "as of the closing of the filing window" *i.e.,* the November 9, 2021, filing deadline.[60] For example, NCE organizations are considered "established" if they have operated as local entities since November 9, 2019, *i.e.*, for at least two years prior to the November 9, 2021, Application Deadline. These "snap shot" applicant characteristics establish an applicant's maximum points and its maximum position in the event of a tie-breaker. This common reference date ensures a level competitive field for applicants, with their qualifications all compared as of the same time.[61] In order to prevent gamesmanship, any changes made after the filing deadline may potentially diminish, but cannot enhance, an applicant's comparative position and point total. Therefore, we have taken into account any amendments that adversely affect an applicant's point total and comparative position. We have not considered any amendments, filed after the filing deadline, which improve an applicant's comparative position.[62]

IV. NEW POINT SYSTEM ANALYSIS

23. This Section contains our new point system analysis for NCE MX Group 152. The Commission previously considered the group and named a tentative selectee, but subsequent filings ensued, which now necessitate a new analysis. Every component of the analysis is based on information provided by each of the respective applicants.[63] The applicants were required to report their qualifications as of the filing window closing date.[64] Any changes made thereafter may potentially have diminished, but could not enhance, an applicant's comparative position.

A. NCE MX Group 152

24. This group originally consisted of three applications to serve different communities in Arizona and New Mexico. Good News Broadcasting Network, Inc. (Good News) and New Hope Baptist Church – Gallup (New Hope) each proposed to serve Gallup, New Mexico.[65] Gallup Public Radio (GPR)

---

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

[60] *See* 47 CFR § 73.7003(e).

[61] *See, e.g., 2001 NCE MO&O*, 16 FCC Rcd at 5082-83, paras. 23-26; *see also id.* at 5083, para. 26 ("Of overall concern to us in this area is that we are comparing applications that use the same data. Reliance on information as of the close of the window will ensure that applicants have essentially a common reference date. With a common reference date and a common method of calculating population, the staff will analyze applicants on a similar basis.").

[62] *See* 47 CFR § 73.7003(e). For example, an applicant may lose claimed points, such as the diversity of ownership points, as a result of acquiring an overlapping station after the November 2021, filing deadline. In contrast, if an applicant certifies that it does not qualify for one of the point factors, it cannot later amend its application to claim such points. This is the case even if the applicant actually would have qualified for the point it is seeking at the time it filed the application.

[63] *See* FCC Form 2100, Schedule 340, Fair Distribution of Service certifications and Point System Factors/Tiebreakers certifications.

[64] *See NCE Filing Procedures Public Notice,* 36 FCC Rcd at 11467-68.

[65] Application File Nos. 0000167858 and 0000167524. The Good News application was dismissed due to a violation of section 73.509 of the Commission's rules, 47 CFR § 73.509. *See* Actions, Public Notice, Report No. 2-231010-01 (MB Oct. 10, 2023). Good News subsequently amended its application to address the deficiency, and the application was reinstated on November 9, 2023. *See* Application File No. 0000167858 (amended Nov. 8, 2023).

proposed to serve Saint Michaels, Arizona.[66] In the *Second Comparative Order*,[67] because no applicant claimed eligibility for a fair distribution preference, the Commission conducted a point system analysis, and identified the GPR Application as the tentative selectee.[68] On October 3, 2023, the Bureau granted a petition to deny the GPR Application filed by Good News, rescinded the tentative selection of the GPR Application, dismissed the GPR Application, and referred the two remaining applicants—Good News and New Hope—to the Commission for a new point system analysis.[69]

25. Neither Good News nor New Hope claims points as an established local applicant or state-wide network. Each applicant claims two points for diversity of ownership. However, because Good News did not timely submit a contour map to support this claim or a statement that it holds no attributable interests in any nearby radio stations,[70] we cannot award Good News diversity points. With respect to technical parameters, Good News's proposed 60 dBu contour would encompass 1,306 square kilometers with a population of 35,351.[71] New Hope's proposed 60 dBu contour would encompass 499 square kilometers with a population of 28,903. Good News qualifies for one point for the best technical proposal because it proposes to serve at least 10% more area and population than New Hope.

---

[66] Application File No. 0000166062 (GPR Application).

[67] *Comparative Consideration of 32 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, FCC 22-78 (Oct. 25, 2022) (*Second Comparative Order*).

[68] *Id*. at 18, paras. 76-77. As noted in the *Second Comparative Order*, GPR was previously identified as the tentative selectee of the group, based on a fair distribution analysis, but GPR filed a technical amendment on May 31, 2022, withdrawing its fair distribution of service claim. *See* GPR Application. *See also Threshold Fair Distribution Analysis of 13 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, 37 FCC Rcd 5702, para. 18 (MB May 2, 2022) (identifying GPR as the tentative selectee of NCE MX Group 152 based on a fair distribution analysis).

[69] *NCE MX Group 152*, Letter Order, DA 23-924 (MB Oct. 3, 2023). The Bureau dismissed the GPR Application due to a violation of the Signature Rule. 47 CFR § 73. 3513(a)(3). This dismissal was not challenged, and the decision is now final.

[70] In its original application, Good News provided a list of its attributable interests in other broadcast stations. Good News, however, neglected to submit a contour map demonstrating that there is no overlap with the proposed NCE FM station or a statement that it holds no attributable interests in any nearby radio stations. *See NCE Filing Procedures Public Notice*, 36 FCC Rcd at 11465 ("[t]o qualify for the diversity of ownership points, an applicant must submit either a contour map showing no overlap with the proposed NCE FM station, or a statement that the applicant holds no attributable interests in any nearby radio stations."); *NCE MX Group 60*, Letter Order, 37 FCC Rcd 12269 (MB 2022) (*NCE MX Group 60 Letter*) (finding applicant's documentation insufficient to justify awarding diversity points where the applicant provided only a listing of its attributable interests in other broadcast stations). Good News amended its application on March 24, 2022, over four months after the filing deadline, to include the required contour map. Good News's amendment enhanced its comparative points position after the filing deadline, and therefore is not considered. *See* 47 CFR § 73.7003(e); *see also First Comparative Order*, 37 FCC Rcd at 9875, para. 18 ("Applicants must submit timely filed exhibits supporting their point claims."); *Comparative Consideration of Seven Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, 30 FCC Rcd 5135, 5144, para. 22 (2015) ("it is well established that an NCE applicant's qualifications for points are established at the close of the filing window and cannot be enhanced after that time.") (*Seven Group Comparative Order*); *NCE MX Group 60 Letter*, 37 FCC Rcd at 12271 (contour map submitted after close of filing window was a prohibited attempt at enhancing comparative position). We note that on November 17, 2023, Albert Adam David filed an Informal Objection (Objection) to the Good News application. *See* Pleading No. 0000226852. Based on our finding herein, we dismiss the Objection as moot.

[71] Good News amended its Application on November 8, 2023, to increase its proposed area from 1,306 to 1,314 square kilometers, and decrease its population from 35,351 to 35,231. This amendment does not alter the outcome of the technical points analysis.

Accordingly, Good News is credited with one point, and New Hope is credited with two points. New Hope is, therefore, the new tentative selectee in Group 152.

V. BEST TECHNICAL PROPOSAL CHALLENGES

26. As noted previously, an applicant receives one point if its proposed service area *and* population are 10% greater than those of the next best area and population proposals, or two points if both are 25% greater than those of the next best area and population proposals, as measured by each proposed station's predicted 60 dBu signal strength contour.[72] If the best technical proposal does not meet the 10% threshold, no applicant is awarded points under this criterion. In considering this criterion, the Commission has accepted applicants' coverage and population claims.[73] In NCE MX Groups 54 and 76 , applications contained population and coverage area calculation errors, which resulted in inaccurate best technical proposal comparisons, therefore impacting the outcome of the point system analysis. Accordingly, we rescind the Commission's initial tentative selections and conduct new point system analyses. In NCE MX Group 200, we affirm the grant of the initial tentative selectee.

A. NCE MX Group 54

27. *Background.* This group initially consisted of four applications filed by Call Communications Group, Inc. (CCGI), Ethree Group, Inc. (EGI), New Media Humanity Association Inc. (NMHA), and Central Baptist Church of Ocala Inc. (CBCO) to serve the community of Weeki Wachee, Florida.[74] In the *Third Comparative Order*,[75] the Commission analyzed the applications under the point system.[76] Each applicant received a total of two points, and therefore, proceeded to a tie-breaker analysis.[77] CCGI and CBCO were eliminated under the first tie-breaker, and NMHA prevailed over EGI under the second tie-breaker.[78] Thus, the Commission identified NMHA as the tentative selectee.[79]

28. On February 16, 2023, CCGI filed a Petition to Deny the NMHA Application,[80] asserting that the Group 54 comparative points analysis was based on inaccurate and unsupported information due

[72] 47 CFR § 73.7003(b)(4). *See also supra* note 50.

[73] Applicants were required to measure area in square kilometers and exclude significant areas of water, *e.g.*, oceans and lakes, and measure population using the 2010 Census Block Data available from the Census Bureau. *See* Form 2100, Schedule 340 Instructions at page 16.

[74] *See* Application File Nos. 0000166731 (NMHA Application); 0000166338 (CBCO Application); 0000167753 (CCGI Application); and 0000167131 (EGI Application).

[75] *Comparative Consideration of 34 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations*, Memorandum Opinion and Order, FCC 23-5, at 12-13, paras. 39-41 (Jan. 24, 2023) (*Third Comparative Order*).

[76] *Id.* at 12, para. 39.

[77] *Id.* at 12, para. 40. The Commission awarded each applicant two points for diversity of ownership; no applicant received points under the best technical proposal criterion.

[78] *Id.* at 12-13, para. 41. CCGI certified that it has attributable interests in nine radio authorizations, and CBCO certified that it has attributable interests in two radio authorizations. EGI and NMHA each certified that it has no attributable interest in any radio authorization. CCGI and CBCO were therefore eliminated, and EGI and NMHA proceeded to the second tie-breaker – the number of pending radio applications attributable to each applicant. EGI certified it has no pending applications, and NMHA certified it has one pending application. EGI's count, however, was inaccurate because it did not include the instant application and its six other pending applications. After accounting for this error and adjustment, NMHA prevailed on the basis of this second tie-breaker and was identified as the tentative selectee in Group 54.

[79] *Id.*

[80] *See* Petition to Deny, Pleading File No. 0000210915 (CCGI Group 54 Petition). NMHA did not file an opposition to the CCGI Group 54 Petition.

to CBCO's improper inclusion of significant areas of water in its coverage area calculation.[81] Specifically, CCGI stated that it estimates the actual CBCO coverage area is approximately 715.7 square kilometers, or 32% less than the 944.8 square kilometers CBCO claimed in its application.[82] CCGI also asserted that by excluding the CBCO Application from the Group 54 comparative analysis, CCGI is eligible for one point under the best technical proposal criterion because it would serve 10% more area and population than the next best application, that of NMHA. Thus, CCGI claimed that with this additional point, it should be the new tentative selectee.[83]

29. On March 28, 2023, the Bureau released a decision[84] in which it granted in part and denied in part the CCGI Petition.[85] Specifically, the Bureau held that since no party refuted CCGI's claims that CBCO had erroneously calculated its proposed new coverage area, and Bureau staff independently verified that the CBCO Application incorrectly included significant areas of water in its calculation, it granted the CCGI Petition in part. However, the Bureau clarified that accepting CCGI's calculation would not automatically render the CCGI Application the new tentative selectee, as CCGI proclaimed, nor would it exclude CBCO altogether from the best technical proposal calculation. Rather, the Bureau reanalyzed the four applicants' technical proposals using CCGI's revised figures.[86] Accepting CCGI's undisputed figures regarding CBCO's actual coverage area, the Bureau found that there was still no applicant eligible for points under the best technical proposal criterion because no applicant proposed to serve 10% more area *and* population than the next best application.[87] CCGI did not challenge any other points claim or calculation. Accordingly, the points total was unchanged, NMHA remained the tentative selectee, and the Bureau granted the NMHA Application and dismissed the CCGI, EGI, and CBCO Applications.[88]

30. In the CCGI Petition for Reconsideration,[89] filed on April 18, 2023, CCGI repeats a number of the arguments from its previous CCGI Group 54 Petition.[90] CCGI also argues that its proposal

[81] CCGI Group 54 Petition at 1-2 and attached map.

[82] *Id.*

[83] *Id.* at 2.

[84] *See NCE MX Group 54*, Letter Order, DA 23-260 (MB Mar. 28, 2023) (*MX Group 54 Letter*).

[85] In the *Third Comparative Order*, the Commission directed Bureau staff to "consider any petitions, comments, and objections to determine whether there is any substantial and material question of fact concerning whether grant of the tentatively selected application would serve the public interest." *Third Comparative Order* at 26, para. 108. The Commission delegated authority to the Bureau staff "to act on any routine matter that may be raised, including whether the applicant is eligible, as certified, for the points awarded herein, and whether the application complies with all relevant Commission rules and policies." *Id.* at 26, para. 108.

[86] *See, e.g., Comparative Consideration of 18 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations*, Memorandum Opinion and Order, 26 FCC Rcd 803, 809, para. 16 (2011) (*18 Group Comparative Order*) (using objector's population figures where it claims a competing applicant's application had incorrect area figures because it erroneously included large area of water and applicant did not provide corrected figures).

[87] *Third Comparative Order* at 12, para. 40. CCGI's proposed 60 dBu contour would encompass 847 square kilometers with a population of 110,411; EGI's proposed 60 dBu contour would encompass 693 square kilometers with a population of 88,689; and NMHA's proposed 60 dBu contour would encompass 668 square kilometers with a population of 97,594. Using CCGI's calculations, CBCO's proposed 60 dBu contour would encompass 715.7 square kilometers with a population of 105,470.

[88] *See MX Group 54 Letter* at 3.

[89] Pleading File No. 0000213997 (CCGI Group 54 Recon Petition). Pursuant to Section 1.106(a)(1) of the Commission's rules, 47 CFR § 1.106(a)(1), the Media Bureau has referred the Petition for Reconsideration to the Commission. As of the date of this Order, neither NMHA nor CBCO has filed an opposition to the CCGI Group 54 Recon Petition.

exceeds the other applicants' proposals by more than 10% in area coverage and population because CBCO's claimed population figure of 105,470 people is also overstated and is actually only 99,581.[91]

31. *Discussion.* The Commission will consider a petition for reconsideration when the petitioner shows either a material error in the Commission's original order, or raises additional facts or arguments, not known or existing at the time of the petitioner's last opportunity to present such matters.[92] Petitions for reconsideration which rely on facts or arguments not previously presented to the Commission but which were known or existing at the time of the petitioner's last opportunity to present such matters may nonetheless be granted if the Commission determines that consideration of the facts and arguments relied on is required in the public interest.[93] Here, CBCO's population figure was ascertainable prior to the filing of CCGI's Group 54 Petition, and therefore, should have been raised in the initial CCGI Group 54 Petition. However, due to the important public interest in ensuring that our comparative point system is administered efficiently, accurately, and fairly, rather than dismissing the CCGI Group 54 Recon Petition to the extent it relies on the argument for the first time on reconsideration, we find it would serve the public interest to consider the merits of the argument.[94]

32. CCGI has now provided undisputed evidence that CBCO's population claim was erroneous and overstated, just as it had previously demonstrated that CBCO's coverage area claims were erroneous.[95] CCGI's allegations regarding CBCO's population and area claims are uncontested, and Bureau staff has also independently verified CBCO's calculations and determined that both its coverage area and population claims were significantly overstated. The miscalculated numbers, utilized in our original point analysis, led to an inaccurate award of points and ultimate designation of the tentative selectee. Accordingly, we find that it is in the public interest to re-analyze the group using the revised figures CCGI provided.[96] Accordingly, we grant the CCGI Group 54 Recon Petition and conduct a new point system analysis.[97]

(Continued from previous page)

[90] These arguments are now moot as CCGI is the new tentative selectee.

[91] CCGI Group 54 Recon Petition at 7-8.

[92] *See* 47 CFR § 1.106(c) and (d). *See also WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966).

[93] *See* 47 CFR § 1.106(c)(2). *See also Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations*, Memorandum Opinion and Order, 4 FCC Rcd 2366 (MB 1989).

[94] *See* 47 CFR § 1.106(c)(2).

[95] *See MX Group 54 Letter.*

[96] CCGI continues to argue that CBCO should be excluded completely from the best technical proposal analysis. We disagree. The Commission has excluded applicants from the MX group's best technical proposal analysis when an applicant neglected to provide any, or provided incomplete, technical data, thus making the comparison impossible. *See, e.g., Comparative Consideration of 76 Groups of Mutually Exclusive Applications for Permits to Construct New or Modified Noncommercial Educational FM Stations*, Memorandum Opinion and Order, 22 FCC Rcd 6101, 6121, para. 49 (2007) (excluding applicant, which submitted no technical data, from the best technical proposal analysis); *Third Comparative Order* at para. 28 (excluding applicant, which neglected to specify its proposed area, from the best technical proposal comparison). In contrast, in cases where an applicant has timely provided area and population data, but the data is subsequently found to be inaccurate, the Commission has not excluded the application from the best technical proposal analysis because of the error. Rather, the Commission re-analyzes the applicant's technical proposal using corrected data, independently verified by Bureau staff. *See, e.g., 18 Group Comparative Order*, 26 FCC Rcd at 809, para. 16 (using objector's population figures where it claims a competing applicant specified incorrect area figures because it erroneously included large area of water and applicant did not provide corrected figures).

[97] At the time of the *Third Comparative Order*, NCE MX Group 54 consisted of four applications. The CBCO Application, EGI Application and CCGI Application were subsequently dismissed as non-tentative selectees in the *MX Group 54 Letter*. CCGI sought reconsideration of its dismissal and reconsideration of the Group 54 point

(continued….)

33. As noted in the *Third Comparative Order*, no applicant claims that it qualifies for points as an established local applicant or state-wide network. Each applicant claims two points for diversity of ownership, with NMHA's claim based on a pledge to divest its LPFM station, WYPW-LP, Brandon, Florida. With respect to technical parameters, CCGI's proposed 60 dBu contour would encompass 847 square kilometers with a population of 110,411; EGI's proposed 60 dBu contour would encompass 693 square kilometers with a population of 88,689; and NMHA's proposed 60 dBu contour would encompass 668 square kilometers with a population of 97,594.[98] Using CCGI's calculations (verified by Bureau staff), CBCO's proposed 60 dBu contour would encompass 715.7 square kilometers with a population of 99,581. Thus, CCGI proposes to serve at least 10% more area and population than CBCO, and receives one point under the best technical proposal criterion. Accordingly, NMHA, EGI, and CBCO are each credited with a total of two points, and CCGI with a total of three points. CCGI becomes the new tentative selectee in Group 54.

B. NCE MX Group 76

34. *Background.* This group consists of two applications filed by Heritage Baptist Church (HBC) and Sound in Spirit Broadcasting, Inc. (SSBI) to serve the community of Burlington, Iowa.[99] In the *Second Comparative Order*,[100] the Commission analyzed the HBC and SSBI Applications under the point system.[101] The Commission awarded HBC a total of five points — three points as an established local applicant and two points for diversity of ownership.[102] It awarded SSBI a total of three points—two points for diversity of ownership and one point for the best technical proposal.[103] Thus, the Commission identified HBC, the applicant with the most points, as the tentative selectee.[104] SSBI subsequently filed a Petition to Deny the HBC Application (SSBI Petition), arguing that HBC was not entitled to three points as an established local applicant.[105]

35. In the *Fourth Comparative Order*, the Commission found that HBC was not entitled to points as an established local applicant and granted the SSBI Petition.[106] Accordingly, the Commission rescinded the three localism points awarded to HBC and identified SSBI as the new tentative selectee in NCE MX Group 76.[107]

(Continued from previous page)
system analysis. Although CBCO and EGI did not seek reconsideration of their respective dismissals, we will include the CBCO Application and the EGI Application in our new point analysis in order to allow a complete and accurate new analysis of the entire MX group.

[98] *Third Comparative Order* at 12, para. 40.

[99] *See* Application File Nos. 0000167422 (HBC Application) and 0000166214 (SSBI Application). HBC amended its application on August 19, 2022 (Amended HBC Application).

[100] *See Second Comparative Order* at 14-15, paras. 55-56.

[101] *Id*. at 14, para. 55.

[102] *Id.* at 15, para. 56.

[103] *Id*.

[104] *Id*.

[105] Pleading File No. 0000203828 (filed Nov. 21, 2022). SSBI did not file an opposition to the HBC Petition.

[106] *See Comparative Consideration of 10 Groups of Mutually Exclusive Applications for Permits to Construct New Noncommercial Educational FM Stations,* Memorandum Opinion and Order, FCC 23-45 at 14-16, paras. 39-43 (Jun. 5, 2023) (*Fourth Comparative Order*) (finding that HBC failed to timely and sufficiently document its eligibility for points as an established local applicant).

[107] *Fourth Comparative Order* at 15-16, paras. 42-43.

36. On June 19, 2023, HBC filed a Petition to Deny the SSBI Application (HBC Petition),[108] arguing that the Group 76 best technical proposal comparative analysis was based on inaccurate technical information because SSBI claimed inflated population totals, which are not at least 10% greater than HBC's population total.[109] HBC, therefore, asserts that no applicant should be awarded points under the best technical proposal criterion, and the HBC Application and the SSBI Application should proceed to a tie-breaker analysis, under which HBC would prevail because it has fewer existing radio authorizations.[110]

37. *Discussion.* HBC submits four technical studies using various software methods, each of which concludes that SSBI's proposal does not serve at least a 10% greater population than HBC.[111] Based on the evidence submitted, and our independent verification,[112] and absent any opposition from SSBI, we find HBC's claim to have merit. Accordingly, we find that SSBI was not entitled to one point under the best technical proposal criterion and grant the HBC Petition.

38. Our finding that SSBI should not have been awarded one point for the best technical proposal alters the outcome of the point system analysis for this MX Group. Specifically, without the one best technical proposal point, SSBI's total points are reduced from three to two. Because HBC's points were also previously reduced to two,[113] SSBI and HBC proceed to a tie-breaker analysis.

39. The first tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant.[114] The applicant with the fewest attributable authorizations prevails. SSBI certifies that it has attributable interests in three radio authorizations, and HBC certifies that it does not have an attributable interest in any existing radio authorization. Accordingly, HBC prevails on the first tie-breaker and is the new tentative selectee in Group 76.

C. NCE MX Group 200

40. This group originally consisted of four applications filed by Vida Ministry Inc. (VMI), CCGI, Christian Ministries of the Valley, Inc. (CMV), and CCS Radio, Inc. (CCSR) to serve different communities in Texas.[115] In the *Third Comparative Order*,[116] the Commission analyzed the applications under the point system.[117] Neither CMV nor CCSR received any points.[118] CCGI and VMI received a

[108] *See* HBC Petition to Deny, Pleading File No. 0000216870.

[109] *Id.* at 1-2, 3-4. HBC submitted four technical studies to support its claim. *Id.* at Attachs.

[110] *Id*. at 4.

[111] Using its own software, Broadcast Technical Partners concludes SSBI would serve 55,301 people, or 4.7% greater than HBC; using V-soft Commander software, it concludes SSBI would serve 55,772 people, or 2.3% greater than HBC. Using V-Soft Probe 5 software, Doug Vernier concludes SSBI would serve 55,295 people, or 3.7% greater than HBC. Using RadioSoft Commstudy 2.0, RadioSoft concludes SSBI would serve 55,703, or 2.8% greater than HBC.

[112] Bureau staff independently verified that SSBI's population totals were overstated.

[113] *Fourth Comparative Order* at 16, para. 43.

[114] 47 CFR § 73.7003(c)(1).

[115] *See* Application File Nos. 0000167104 (VMI Application), 0000167747 (CCGI Application); 0000166728 (CMV Application); and 0000166698 (CCSR Application).

[116] *Third Comparative Order* at 22, paras. 89-91.

[117] *Id.* at 22, paras. 90-91. No applicant claimed a fair distribution of service preference.

[118] *Id.* at para. 90.

total of two points each,[119] and therefore, proceeded to a tie-breaker analysis. VMI prevailed on the first tie-breaker,[120] and the Commission identified VMI as the tentative selectee.

41. On February 16, 2023, CCGI filed a Petition to Deny (CCGI Group 200 Petition) the VMI Application.[121] CCGI argued that the Group 200 comparative analysis was based on inaccurate and unsupported calculations, due to CMV and CCSR's improper inclusion of areas of water in their coverage area calculations.[122] Specifically, CCGI stated that the coverage area of CMV's proposal is approximately 1,321 square kilometers, or 42.6% less than the 1,881.6 square kilometers it originally claimed,[123] and CCSR's proposal is approximately 806.23 square kilometers, or 73.2% less than the 1,402.2 square kilometers it originally claimed.[124] CCGI asserted that excluding the CMV and CCSR Applications, CCGI is eligible for two points for the best technical proposal because it would serve 25% more area and population than the remaining application, that of VMI, and thus CCGI should be the new tentative selectee.[125]

42. On April 27, 2023, the Bureau released a decision[126] in which it granted in part and denied in part the CCGI Group 200 Petition, granted the VMI Application, and dismissed the CCGI, CMV, and CCSR Applications. The Bureau held that because no party refuted CCGI's claims that CMV and CCSR each erroneously calculated its proposed new area, and Bureau staff independently verified that the CMV and CCSR Applications incorrectly included significant areas of water in the calculations, it granted the CCGI Group 200 Petition in part.[127] However, the Bureau clarified that accepting CCGI's new calculation would not automatically render the CCGI application the new tentative selectee, as CCGI proposed, nor would it result in dismissal of the CMV and CCSR Applications.[128] Rather, the Bureau reanalyzed the applicants' technical proposals using CCGI's revised figures.[129] Accepting CCGI's undisputed new calculations, the Bureau found that there was still no applicant eligible for points under the best technical proposal criterion.[130] CCGI did not challenge any other points claim or calculation. Accordingly, the points total was unchanged, with VMI remaining the tentative selectee.[131]

---

[119] *Id.* at paras. 90-91. The Commission awarded CCGI and VMI two points each for diversity of ownership; no applicant received points under the best technical proposal criterion.

[120] *Id.* at para. 91. VMI certified that it had no attributable interests in any radio authorization, and CCGI certified that it had attributable interests in nine radio authorizations.

[121] *See* Pleading File No. 0000210918. *See also* Motion for Extension of Time, Pleading File No. 0000212271 (filed Mar. 8, 2023); Opposition to CCGI Group 200 Petition, Pleading File No. 0000212563 (filed Mar. 15, 2023); Reply to Opposition to CCGI Group 200 Petition, Pleading File No. 0000212735 (filed Mar. 20, 2023).

[122] CCGI Group 200 Petition at 1-2. The CCGI Group 200 Petition included two maps explaining CCGI's analysis.

[123] *Id.*

[124] *Id.*

[125] *Id.* at 2.

[126] *See NCE MX Group 200*, Letter Order, DA 23-358 (MB Apr. 27, 2023) (*MX Group 200 Letter*).

[127] *MX Group 200 Letter* at 4.

[128] *Id.* at 4.

[129] *See, e.g., 18 Group Comparative Order*, 26 FCC Rcd at 809, para. 16 (using objector's coverage area calculations for a competing applicant in the best technical proposal analysis after determining applicant erroneously included large area of water and did not provide corrected figures).

[130] *Third Comparative Order* at 22, para. 90. CCGI's proposed 60 dBu contour would encompass 1,157 square kilometers with a population of 218,225, and VMI, 539 square kilometers and 114,876 people. Using CCGI's calculations, CMV's proposed 60 dBu contour would encompass 1,321 square kilometers with a population of 221,770, and CCSR, 806.23 square kilometers and 108,218 people.

43. In the CCGI Group 200 Recon Petition,[132] CCGI repeats a number of arguments from the CCGI Group 200 Petition, and related new claims. CCGI also alleges, for the first time, that CMV and CCSR's population claims are likely inaccurate because CMV and CCSR's area coverage claims were overstated, and their population claims are unsupported.[133]

44. In its Opposition to the CCGI Group 200 Recon Petition, VMI states that while CCGI correctly established that the CMV and CCSR coverage calculations were overstated, even accepting CCGI's new calculations, it remains the applicant with the highest points total, and therefore, the *MX Group 200 Letter* should be affirmed.[134]

45. In its Reply to the Opposition to the CCGI Group 200 Recon Petition, CCGI claims that it has never provided revised population data calculations, and VMI does not otherwise dispute the arguments in its Petition.[135]

46. Also before us is a Supplemental Petition for Reconsideration (CCGI Supplement),[136] filed by CCGI on July 6, 2023, and related responsive pleadings.[137] We dismiss the supplement as untimely.[138]

47. *Discussion*. CCGI repeats a number of the arguments already addressed in the *MX Group 200 Letter*, but challenges CMV and CCSR's population claims for the first time.[139] The allegedly inaccurate population calculations were ascertainable prior to the filing of the CCGI Group 200 Recon Petition, and therefore, should have been raised in the initial CCGI Group 200 Petition.[140] However, due to the important public interest in ensuring that our comparative point system is administered efficiently, accurately, and fairly, rather than dismissing the CCGI Group 200 Recon Petition to the extent it relies on the argument for the first time on reconsideration, we find it would serve the public interest to consider the merits of the argument.[141]

48. CCGI now alleges that CMV's and CCSR's population claims are likely erroneous and overstated. CCGI, however, does not provide any concrete data or adjusted population calculations to support its supposition. Rather, CCGI infers that because it previously demonstrated that CMV's and

(Continued from previous page)

[131] *MX Group 200 Letter* at 4.

[132] Pleading File No. 0000215256 (filed May 26, 2023) (CCGI Group 200 Recon Petition). Pursuant to section 1.106(a)(1) of the Commission's rules, 47 CFR § 1.106(a)(1), the Media Bureau has referred the Petition for Reconsideration to the Commission.

[133] CCGI Group 200 Recon Petition at 2.

[134] Opposition to the CCGI Group 200 Recon Petition at 1-2.

[135] Reply to the Opposition to the CCGI Group 200 Recon Petition at 1-2.

[136] Pleading File No. 0000217627 (filed July 6, 2023).

[137] Opposition to CCGI Supplement, Pleading File No. 0000217639 (filed July 7, 2023); Reply to Opposition to CCGI Supplement, Pleading File No. 0000217695 (filed July 7, 2023); Second Supplemental Petition for Reconsideration, Pleading No. 0000219106 (filed Aug. 9, 2023).

[138] "[T]he petition for reconsideration *and any supplement thereto* shall be filed within thirty days from the date of public notice of the final Commission action." *See* 47 CFR § 1.106(f) (emphasis added). Here, the *MX Group 200 Letter* was issued on April 27, 2023, the 30 day period ran until Saturday, May 27, 2023, and the supplement was due on the next business day, which, because of the Memorial Day holiday, was Tuesday, May 30, 2023. 47 CFR § 1.4(e); *see also Holy Family Communications, Inc.*, Letter Order, 28 FCC Rcd 15687, 15687, n.5 (MB, 2013) (dismissing untimely filed supplement to petition for reconsideration).

[139] *See supra* para. 31 (articulating the standard of review for petitions for reconsideration).

[140] *See* 47 CFR § 1.106.

[141] *See* 47 CFR § 1.106(c)(2).

CCSR's area calculations were incorrect, "applicant's population claims may be overstated as well."[142] We find no basis to re-analyze Group 200,[143] based on CCGI's unsupported claim of a hypothetical error. Accordingly, we deny the CCGI Group 200 Recon Petition. 144

VI. TIE-BREAKER CHALLENGE

49. As noted earlier, our rules provide for a system of tie-breakers if more than one application receives the same number of points.[145] With regard to applications for NCE radio facilities, the applicant with the fewest existing radio authorizations (licenses and construction permits, commercial and NCE) prevails on the first tie-breaker. The applicant with the fewest pending new and major change radio applications prevails on the second tie-breaker.[146] Finally, if a tie remains after the second tie-breaker, the Commission analyzes the applications under the third and final tie-breaker – prior NCE applications.[147]

50. After the close of the filing window, each applicant must continue to maintain the accuracy and completeness of the information in its application and notify the Commission of any substantial changes that may be of decisional significance to the application.[148] Specifically, an NCE FM applicant is required, pursuant to section 1.65 of the rules, to update its number of authorizations within the Tiebreaker Section of its application if/when one of its pending applications is granted.[149] In NCE MX Group 51, the tentative selectee did not update its number of authorizations to reflect a recent grant. Accordingly, we conduct a new tie-breaker analysis based on each applicant's current and accurate number of authorizations.

A. NCE MX Group 51

51. *Background.* This group consists of two applications proposing service to the same community in Florida. Teleamerica Communications West Palm Beach Corp. (TCW) and Newland Broadcasters Incorporated (NBI) each proposes service to Key West.[150] In the *Third Comparative Order*, the Commission analyzed the two applications under the point system.[151]

---

[142] CCGI Group 200 Recon Petition at 2.

[143] In contrast, if CCGI had provided tangible data to support its allegation, we would independently verify the revised calculations, and re-analyze the entire MX Group, including the CMV and CCSR Applications. *See supra* MX Group 54 at paras. 32-33.

[144] CCGI continues to argue that the CMV and CCSR Applications should have been excluded from the best technical proposal analysis because they did not provide sufficient documentation explaining their population calculations. CCGI, however, again cites to no instance where we have dismissed an application on this basis. Moreover, although the Commission has denied applicants their claimed points based on insufficient supporting documentation, it has not dismissed an application, thus excluding an applicant from our comparative analysis, due to incomplete documentation. Further, although, unlike CCGI, CMV and CCSR did not include the label "2010 Census Block Centroids" on their accompanying maps to explain their population calculations, each applicant certified in their respective applications that they calculated their populations to be served based on the most recent Census block data, as directed. *See* Application File Nos. 0000166728 and 0000166698.

[145] *See supra* paras. 19-20.

[146] *See* 47 CFR § 73.7003(c)(1),(2).

[147] *Id.* at § 73.7003(c)(3).

[148] *See* 47 CFR § 1.65; *NCE Filing Procedures Public Notice*, 36 FCC Rcd at 11468-69.

[149] *Id*.; *see, e.g., 2001 NCE MO&O,* 16 FCC Rcd at 5083, para. 25.

[150] *See* File Nos. 0000167478 (TCW Application) and 0000166303 (NBI Application).

[151] *See Third Comparative Order, supra* note 75, at paras. 36-38.

52. The Commission awarded two points to TCW and NBI,[152] and the applicants proceeded to the tie-breaker analysis. TCW certified that it has no attributable interests in any radio authorization; NBI certified that it has an attributable interest in one radio authorization. TCW, therefore, prevailed based on the first tie-breaker criterion, and the Commission identified TCW as the tentative selectee of Group 51, accepted the application for filing, and established a 30-day period for filing petitions to deny.[153]

53. NBI subsequently filed a Petition for Reconsideration (Objection)[154] of the TCW Application.[155] In its Objection, NBI argues that the tentative selection of TCW, based on TCW's certification that it has no attributable radio authorizations, was made in error. Specifically, NBI asserts that TCW's application for a construction permit for a new NCE FM station in Deming, New Mexico, granted on December 9, 2022, should have been considered in the Commission's tie-breaker analysis, "thus creating parity between the two MX applicants."[156] NBI, therefore, urges the Commission to reconsider its tentative selection of the TCW Application.[157]

54. In its Opposition, TCW argues that section 73.7003(c) of the Commission's rules specifies that tied applicants' number of attributable authorizations are compared "as of the time of application."[158] Accordingly, TCW asserts that its Deming Authorization, granted a year after filing the TCW Application, was properly not considered or counted in the Commission's tie-breaker analysis.[159]

---

[152] *Id.* at para. 37. TCW and NBI each received two points for diversity of ownership.

[153] *Id.* at paras. 38, 117.

[154] Section 1.106(a)(1) of the Commission's rules prohibits petitions for reconsideration of interlocutory orders. 47 CFR § 1.106(a)(1). In the *Third Comparative Order* the Commission explained that "a disappointed applicant that believes the tentative selectee should have received fewer points would make such an argument in a petition to deny. Parties should not raise such matters as petitions for reconsideration of the instant Order because the point hearings herein take no final action on any application, and petitions for reconsideration do not lie against such interlocutory decisions." *Third Comparative Order* at para. 106. We, therefore, dismiss the NBI Petition for Reconsideration as premature and procedurally improper. We will, however, treat the NBI Petition for Reconsideration as an informal objection and consider the merits. *See* 47 CFR § 73.3587.

[155] Pleading File No. 0000208923 (filed January 23, 2023). On March 20, 2023, TCW filed an Opposition. *See* Pleading File No. 0000212718 (Opposition). Between December 20, 2021, and November 15, 2022, prior to the tentative selection of the TCW Application, NBI also filed several petitions to deny the TCW Application, arguing that TCW failed to inform the Commission of negative character issues. *See* Pleading File Nos. 0000177507, 0000186288, 0000190458, and 0000199943. TCW filed an opposition to these petitions on November 21, 2022, and a supplement to this opposition on July 3, 2023. *See* Pleading File Nos. 0000204136 and 0000217518. In the *Third Comparative Order,* the Commission explained that because the TCW Application had not yet been accepted for filing, the NBI petitions were premature and would not be considered at this preliminary stage. The Commission stated that it would review the merits of the NBI petitions after the TCW application is accepted for filing. In light of our action on NBI's January 23, 2023, Objection, we dismiss these earlier petitions as moot. Finally, on August 15, 2023, NBI filed a "Petition to Dismiss," reiterating arguments from its previous pleadings. *See* Pleading No. 0000219339. We also dismiss this pleading as moot.

[156] Objection at 1. *See also* File No. 0000167859 (Deming Authorization). In its Objection, NBI also argues that TCW specified an inconsistent channel and coordinates in its Application and subsequent amendments. In light of our action herein, we need not consider these technical allegations.

[157] On October 13, 2023, Albert Adam David (David) filed an Informal Objection to the TCW Application. *See* Pleading File No. 0000223003 (David Objection). David similarly argues that TCW neglected to amend its application to reflect its recent grants of new NCE FM radio authorizations, as required, and that NBI should be the tentative selectee. *Id.* at 1-2.

[158] Opposition at 3 (*citing* 47 CFR § 73.7003(c)(1)).

[159] *Id.* at 4.

55. *Discussion.* We find that TCW was improperly favored in the first tie-breaker analysis. FCC Form 2100, Schedule 340, requires an applicant to certify the number of attributable interests it holds in broadcast station authorizations "as of the date of filing."[160] The Commission, however, has repeatedly clarified that although an applicant's maximum point eligibility and tie-breaker standing is established as of the close of the filing window, it can be reduced by subsequent events.[161] Specifically, in the context of the tie-breaker process, the Commission explained that "the applicant's best position is established at the time of application, but can be reduced. . . . Thus, an applicant with no existing stations at the time of application will benefit from its 'zero' stations in tie breakers *only until such time as it receives a first authorization*. It will be required, pursuant to 47 CFR § 1.65, to update its pending applications and so will not be able to continue claiming zero authorizations, when it has, in fact, already had applications granted in several proceedings, perhaps now surpassing a tied competing applicant in terms of stations authorized."[162]

56. At the time TCW filed its Application, TCW certified that it had no attributable interests in any broadcast authorization. TCW's status under the first tie-breaker, however, changed upon receipt of its Deming Authorization. TCW was obligated to update its number of authorizations, but neglected to do so. We, therefore, grant the NBI Objection and David Objection, rescind our tentative selection of the TCW Application, and conduct a new tie-breaker analysis considering each applicant's correct and current attributable interests in radio authorizations.

57. The first issue considered in a tie-breaker for NCE FM applicants is the number of radio station authorizations attributable to each applicant. TCW certifies that it has no attributable interests in any radio authorization, and NBI certifies that it has an attributable interest in two radio authorizations.[163] As noted, TCW's count is inaccurate because it does not include its Deming Authorization. Further, TCW's count does not reflect its recently granted application for a new NCE FM station at Alamogordo, New Mexico.[164] After accounting for this error and adjustment, TCW and NBI are tied with two attributable radio authorizations and proceed to the second tie-breaker – the number of pending radio applications attributable to each applicant. The applicant with the fewest applications prevails. NBI certifies it has two pending applications, and TCW certifies it has 10 pending applications. Accordingly, NBI is the new tentative selectee in group 51.

VII. GENERAL POINT CLAIM CHALLENGE

A. NCE MX Group 122

58. *Background.* This group consists of two applications filed by Bible Broadcasting Network, Inc. (BBNI) and Grand Forks Bible Study Group (GFBS) to serve the community of Grand Forks, North Dakota.[165] In the *Second Comparative Order*,[166] the Commission analyzed the BBNI and

[160] Form 2100, Schedule 340, "Existing Authorizations."

[161] *See, e.g., 2001 NCE MO&O*, 16 FCC Rcd at 5082-5083; *Third Comparative Order* at para. 19. Our rules require applicants to inform us of material changes in their applications after the time of filing. 47 CFR § 1.65. An applicant's maximum points, and its standing in a tie breaker, can go down, but not up, as a result of changes made after filing. *See also* 47 CFR § 73.7003(e) (explaining that an applicant's maximum qualifications "will be reduced for any post-application changes that negatively affect any evaluation criterion.").

[162] *2001 NCE MO&O*, 16 FCC Rcd at 5083 (emphasis added).

[163] NBI initially certified it had an attributable interest in one radio authorization. On August 17, 2023, NBI amended its application to reflect its attributable interest in two existing radio authorizations. *See* Application File No. 0000166303 at "Amendment Exhibit Attributable Interest 2023.doc."

[164] *See* Application File No. 0000167835 (granted September 19, 2023).

[165] *See* Application File Nos. 0000167299 (BBNI Application) and 0000167114 (GFBS Application). GFBS amended its application on January 28, 2022 (Amended GFBS Application).

[166] *Second Comparative Order, supra* note 67, at 18, paras. 74-75.

GFBS Applications under the point system.[167] The Commission awarded GFBS a total of five points — three points as an established local applicant and two points for diversity of ownership.[168] It awarded BBNI a total of two points for diversity of ownership.[169] Thus, the Commission identified GFBS as the tentative selectee.[170]

59. In the *Fourth Comparative Order*,[171] however, the Commission granted a Petition to Deny the GFBS Application, filed by BBNI (BBNI Petition),[172] and designated BBNI as the new tentative selectee. Specifically, the Commission found that because GFBS did not certify that it qualified for established local applicant or diversity of ownership points by the close of the filing window, it was improperly awarded points under those criteria.[173] The Commission reiterated the previous directive that every NCE FM applicant claiming points must certify, *at the time it files its application*, that it qualifies for those points.[174] Lastly, the Commission rejected GFBS's attempt to enhance its comparative position with its post-filing window amendment.[175] Without the points awarded to GFBS under those criteria, GFBS's awarded points were reduced from five to zero, and BBNI, with two points, prevailed as the new tentative selectee.[176]

60. GFBS subsequently filed a Petition to Deny the BBNI Application (GFBS Petition),[177] arguing that: 1) it was improperly denied localism and diversity of ownership points because, despite initially certifying that it was ineligible for those points, it included supporting exhibits in its original application;[178] 2) its amended application with updated certifications should be considered because none of the cases the Commission relied on to demonstrate comparative position enhancement involved applicants, such as GFBS, that timely-filed supporting exhibits;[179] 3) BBNI was improperly awarded points for diversity of ownership because its contour map exhibit includes a statement that the "contour of the proposed station overlaps the principal community contour of another authorized station;"[180] and 4) once BBNI's diversity of ownership points are rescinded, even if GFBS is not awarded any points, the parties, each with zero points, proceed to a tie breaker in which GFBS would prevail.[181]

---

[167] *Id*. at 18, para. 74.

[168] *Id.* at para. 75.

[169] *Id*.

[170] *Id*.

[171] *Fourth Comparative Order, supra* note 106, at 23-25, paras. 67-72.

[172] Pleading File No. 0000204160 (filed Nov. 22, 2022). BBNI argued that GFBS was not entitled to either localism or diversity points because it certified in the original GFBS Application that it did not qualify for points under either criterion, and the Amended GFBS Application, in which GFBS first claimed those points, cannot be considered because it was filed after the close of the filing window and enhanced GFBS's comparative status.

[173] *Id.* GFBS answered the certification questions for Established Local Applicant and Diversity of Ownership on its initial Application with "No". *See* GFBS Application at Point System Factors/Tie Breakers.

[174] *Id.* at para 71 (citing *NCE Filing Procedures Public Notice,* 36 FCC Rcd 11458).

[175] *See Fourth Comparative Order* at 23-25, paras. 67-72.

[176] *Id.*

[177] Pleading File No. 0000217583 (filed July 5, 2023).

[178] GFBS Petition at 2-4.

[179] *Id.* at 4-8.

[180] *Id.* at 8-9.

[181] *Id.* at 9.

61. On August 8, 2023, the Bureau released a decision,[182] in which it denied the GFBS Petition, granted the BBNI Application, and dismissed the GFBS Application. Specifically, the Bureau held that GFBS did not identify any case in which an applicant failed to timely certify that it qualified for points, despite submission of related exhibits, and was later allowed to amend its application to certify eligibility, thereby enhancing its comparative position.[183] The Bureau also reiterated that applicants are responsible for submitting accurate, complete, and timely applications, and affirmed the Commission's finding that even if the exhibits in the original GFBS Application demonstrated its eligibility for localism and diversity points, GFBS's conflicting certifications precluded reliance upon the exhibits.[184] The Bureau also held that BBNI timely and sufficiently demonstrated it qualified for diversity points.[185]

62. On September 7, 2023, GFBS filed an Application for Review[186] reiterating its arguments that: 1) it was incorrectly denied points for its claim as an established local applicant and for diversity of ownership because, although it failed to certify and claim the points in its application, it attached exhibits to support the claims,[187] 2) the Amended GFBS Application, which certified that it qualified for these points after the filing deadline, should have been accepted because it was not an enhancement of its application,[188] and 3) the Bureau should not have determined BBNI was eligible for points for its diversity of ownership claim because one of its three exhibits included an erroneous statement.[189] GFBS also claims that grant of the BBNI Application would force its current LPFM station, KEQQ-LP, off the air.[190]

63. The BBNI Opposition counters that: 1) the *NCE Filing Procedures Public Notice* clearly states that applicants which do not certify their eligibility for points cannot later claim such points, even if eligible, and therefore the GFBS late-filed amendment was an impermissible application enhancement;[191] 2) GFBS has not identified any error in the *MX Group 122 Letter*, and the cases GFBS relies on are inapposite to its position and consistent with the *MX Group 122 Letter*,[192] and 3) denial of the GFBS AFR would not force station KEQQ-LP off the air, as GFBS claims, because GFBS filed a modification application which would allow it to stay on the air via a new channel.[193]

---

[182] *See NCE MX Group 122*, Letter Order, DA 23-666 (MB Aug. 8, 2023) (*MX Group 122 Letter*).

[183] *MX Group 122 Letter* at 5.

[184] *Id.*; *Fourth Comparative Order* at 24-25, paras. 71 and 72.

[185] *MX Group 122 Letter* at 5-6.

[186] Pleading File No. 0000220588 (filed Sept. 7, 2023) (GFBS AFR). BBNI filed an opposition on September 22, 2023. Pleading File No. 0000221271 (BBNI Opposition). GFBS filed a reply on October 5, 2023. Pleading File No. 0000222173 (GFBS Reply).

[187] GFBS AFR at 4-7.

[188] *Id.* at 7-10. GFBS also argues that this is a novel issue because it has not identified any case in which an applicant initially certified "No" as to whether it qualified for points under the Established Local Applicant and Diversity of Ownership criterion, despite submission of related exhibits, and subsequently amended to certify eligibility, as initially intended.

[189] *Id.* at 7.

[190] *Id.* at 2 and 9.

[191] BBNI Opposition at 3-4 and 6.

[192] *Id.* at 4-6.

[193] *Id.* at 6-7; *see also* Application File No. 0000220193 (filed Aug. 31, 2023). We dismiss this new GFBS argument on procedural grounds because it was not presented to the Bureau. *See* 47 CFR § 1.115(c) ("No application for review will be granted if it relies on questions of fact or law upon which the designated authority has been afforded no opportunity to pass.").

64. The GFBS Reply repeats that the AFR involves novel questions of law and policy,[194] including whether the Commission should consider certifications made in timely-filed exhibits,[195] and whether the amendment of the application certifications after the close of the filing window should be considered an enhancement of GFBS's application.[196]

65. *Discussion*. We affirm the Commission's conclusion in the *Fourth Comparative Order*, and the Bureau's findings in the *MX Group 122 Letter*, and reject GFBS's arguments that it was incorrectly denied points for its claims as an established local applicant and for diversity of ownership, and that BBNI should not have received points for diversity of ownership.

66. We again reject GFBS's claim that its untimely certification and claim for diversity of ownership and established local applicant points should be considered. Certifications of point claims are not merely a cursory practice, as GFBS suggests. Rather, reliance on certifications is essential to the Commission's licensing process, and streamlines application review.[197] Further, we reiterate the Commission's previous finding that an applicant that fails to timely certify that it qualified for points, despite submission of related exhibits, cannot amend its application to certify eligibility after the filing deadline.[198] Any such amendment would constitute a prohibited enhancement to its comparative position. We also note GFBS had ample notice of the need to certify its eligibility for points prior to the close of the filing window. The Bureau's *NCE Filing Procedures Public Notice* explicitly stated that "if an applicant certifies that it does not qualify for one of the point factors, it cannot later amend its application to claim such points. This is the case even if the applicant actually would have qualified for the point it is seeking at the time it filed the application."[199] For the same reasons outlined in the *Fourth Comparative Order* and the *MX Group 122 Letter*, we affirm that GFBS is not entitled to established local applicant or diversity of ownership points.

67. We also affirm the Bureau's conclusion in the *MX Group 122 Letter* that BBNI's diversity of ownership claim was timely and sufficient because: 1) its contour map refuted the erroneous statement and illustrated no overlap, 2) BBNI submitted a declaration signed under penalty of perjury from its technical consultant, which confirmed the statement was an error, and 3) BBNI's two affirmative statements included with its application eliminate any ambiguity and support its claim for diversity of ownership.[200] BBNI's claim for diversity of ownership points was never ambiguous, because—unlike GFBS—it certified that it was eligible for such points in its initial application, and submitted three supporting exhibits, only one of which included an inadvertent, erroneous statement. Accordingly, we deny the GFBS AFR.

---

[194] GFBS Reply at 1-2.

[195] *Id.* at 2.

[196] *Id.* at 2-4.

[197] In eliminating governing documentation requirements for established local applicant and diversity of ownership claims, the Commission included additional questions and certifications to Form 2100, Schedule 340, as safeguards for accurate point claims. *See NCE LPFM Order,* 34 FCC Rcd at 12532 ("the clarifications we make to section 73.7005, along with the certification and application changes we will implement to further safeguard our localism and diversity goals, will ensure that our selection process is meaningful and that successful applicants live up to their promises").

[198] *Fourth Comparative Order* at 24-25, paras. 71-72 and *MX Group 122 Letter* at 4-5.

[199] *NCE Filing Procedures Public Notice*, 36 FCC Rcd at 11464-65 and 11468. We note that the Bureau also repeatedly reminded applicants to carefully review their applications before filing and that each applicant "bears full responsibility for submitting an accurate, complete, and timely application." *Id.* at 11460.

[200] *MX Group 122 Letter* at 5.

VIII. NEXT STEPS

68. **Acceptability Studies and Filing of Petitions.** Once the Bureau or Commission identifies a tentative selectee pursuant to the fair distribution analysis or point system, the next step is to consider whether the selectee's application has defects.[201] The Commission has studied the application of each new tentative selectee identified herein for application defects. The tentative selectees identified in this Order appear to be fully qualified to become the licensee of the new NCE FM station it has proposed. We tentatively conclude that the grant of these applications would serve the public interest, convenience and necessity. Accordingly, upon the release of this Order, these tentative selectees are accepted for filing. This triggers a 30-day period for the filing of petitions to deny.[202]

69. Any argument that a specified tentatively selected application should not be granted should be raised in such a petition, even if the objection relates only indirectly to the tentative selectee's qualifications. For example, an applicant that concedes that the tentative selectee is qualified for the points received but believes its own proposal should have received a greater number of points than the tentative selectee's would make its argument in a petition to deny. Likewise a disappointed applicant that believes the tentative selectee should have received fewer points would make such an argument in a petition to deny. Parties should not raise such matters as petitions for reconsideration of the instant Order because the point system analyses herein take no final action on any application, and petitions for reconsideration do not lie against such interlocutory decisions.[203]

70. **Forthcoming Staff Action.** We direct the Bureau staff, once the petition to deny period has run, to conduct a final study of each tentatively selected application in accordance with its routine processing procedures. The staff studies should consider any petitions, comments, and objections to determine whether there is any substantial and material question of fact concerning whether grant of the tentatively selected application would serve the public interest. If the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there are no substantial and material questions of fact, and that a grant of the application would be consistent with the public interest, convenience, and necessity, it shall make the grant on the basis of the point system determinations made herein, dismiss all competing applications, deny any petition to deny, and issue a concise statement of the reasons for denying such petition and disposing of all substantial issues raised by the petition.[204]

71. With the exception of issues that are novel or require Commission consideration as specified below, the staff shall act on the tentatively selected applications pursuant to delegated authority. We delegate to the staff authority to act on any routine matter that may be raised, including whether the applicant is eligible, as certified, for the points awarded herein, and whether the application complies with all relevant Commission rules and policies.[205] The staff need not refer such matters to the full

---

[201] If a tentative selectee's application is found unacceptable for filing, it is dismissed. The applicant then has one opportunity to submit a curative amendment and a petition for reconsideration requesting reinstatement *nunc pro tunc* within 30 days, provided that the amendment is minor and does not alter the fair distribution or point system analysis. *See* 47 CFR § 73.3522(b)(1). A tentative selectee that is unable to cure the defect is disqualified. 47 CFR § 73.7004(d).

[202] 47 CFR § 73.7004.

[203] *See NCE Order on Reconsideration,* 35 FCC Rcd 10180, para. 13 ("A tentative selection is not final until the entire administrative process of resolving petitions to deny, and any subsequent pleadings, is complete"); 47 CFR § 1.106 (a)(1). *See also Patrick J. Vaughn, Esq.,* Letter, 22 FCC Rcd 11165 (MB 2007).

[204] 47 U.S.C. § 309(d).

[205] *See, e.g., Central Florida Educational Foundation, Inc.,* Letter, 23 FCC Rcd 1695 (MB 2008) (staff dismissal of defective application tentatively selected in a point hearing, and staff award of permit on a non-comparative basis to only remaining acceptable applicant).

Commission unless the staff determines that the issues are new or novel, or raise a substantial and material question regarding the award of points. Generally, the staff should refer issues to the Commission where the exclusion or inclusion of challenged or claimed points could alter the outcome in the particular NCE group, or where a new or novel question or substantial and material question of fact otherwise exists.[206] In such cases, the staff would refer the mutually exclusive group to the Commission for resolution of the novel issue and/or the determination of a successor tentative selectee.

72. **Severance for Purposes of Petitions, Appeals and Finality.** We are including a provision in the ordering clauses herein that each decision involving a mutually exclusive group is to be considered distinct and separate for purposes of petitions to deny, petitions for reconsideration, review on the Commission's own motion, and appeals. The timing of any action disposing of a petition or appeal affecting a particular group will not delay the finality of our decision for purposes of administrative or judicial review under section 1.103(b) of our rules with respect to any other group.[207]

IX. ORDERING CLAUSES

73. Accordingly, IT IS ORDERED, that each decision involving a mutually exclusive group in this *Memorandum Opinion and Order* shall be deemed a distinct and separate decision for purposes of petitions to deny, subsequent petitions for reconsideration and reconsideration by the Commission or Bureau on its own motion, applications for review and review on the Commission's own motion, and appeals.[208] If any decision in this *Memorandum Opinion and Order* is declared invalid for any reason, the remaining portions shall be severable from the invalid part and SHALL REMAIN in full force and effect to the fullest extent permitted by law.

74. **NCE MX GROUP 152.** Accordingly, IT IS ORDERED, that the Application filed by New Hope Baptist Church – Gallup (Application File No. 0000167524) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Gallup, New Mexico, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application, and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive application of Good News Broadcasting Network, Inc. (Application File No. 0000167858), and TO GRANT the application of New Hope Baptist Church – Gallup (Application File No. 0000167524) CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions.

75. IT IS FURTHER ORDERED, that the Informal Objection, filed on November 17, 2023, by Albert Adam David (Pleading File No. 0000226852) IS DISMISSED AS MOOT.

---

[206] *See generally NCE Omnibus,* 22 FCC Rcd at 6162, n.230 (2007) ("If the Bureau finds that there are no new or novel questions, or material questions that would cause the tentative selectee to have fewer than or the same number of points as another applicant in the group, the staff would act on the petition(s) to deny, and by public notice grant the application of the tentative selectee and dismiss the competing mutually exclusive application. This function is consistent with the Bureau's delegated authority. See 47 C.F.R. §§ 0.61(h), 0.283.").

[207] *See* 47 CFR § 1.103(b).

[208] *See* 5 U.S.C. §§ 702, 704, 706; 47 U.S.C. §§ 309(d), 402(b), 405; 47 CFR §§ 1.106-08, 1.113, 1.115, 1.117 73.7004. In cases that involve separate mutually exclusive groups, but present common issues, the petitions or appeals may be filed jointly or may be consolidated at the discretion of the Commission or the court. *See, e.g.,* FED. R. APP. P. 3(b).

76. **NCE MX GROUP 54.** Accordingly, IT IS ORDERED, that the Petition for Reconsideration, filed on April 18, 2023, by Call Communications Group, Inc. (Pleading No. 0000213997) IS GRANTED. IT IS FURTHER ORDERED, that the tentative selection and subsequent grant of the application of New Media Humanity Association Inc. (Application File No. 0000166731), for a construction permit for a new NCE FM station at Weeki Wachee, Florida, ARE RESCINDED.

77. IT IS FURTHER ORDERED, that the Application filed by Call Communications Group, Inc. (Application File No. 0000167753) is REINSTATED and TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Weeki Wachee, Florida, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application, and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive application of New Media Humanity Association Inc. (Application File No. 0000166731), and TO GRANT the application of Call Communications Group, Inc. (Application File No. 0000167753) CONDITIONED UPON the selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions.

78. **NCE MX GROUP 76.** Accordingly, IT IS ORDERED, that the Petition to Deny, filed on June 19, 2023, by Heritage Baptist Church (Pleading File No. 0000216870), IS GRANTED.

79. IT IS FURTHER ORDERED, that the tentative selection of the application of Sound in Spirit Broadcasting, Inc. (Application File No. 0000166214), for a construction permit for a new NCE FM station in Burlington, Iowa, IS RESCINDED.

80. IT IS FURTHER ORDERED, that the Application filed by Heritage Baptist Church (Application File No. 0000167422) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Burlington, Iowa, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application, and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive application of Sound in Spirit Broadcasting, Inc. (Application File No. 0000166214), and TO GRANT the application of Heritage Baptist Church (Application File No. 0000167422), CONDITIONED UPON the selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions.

81. **NCE MX GROUP 200.** Accordingly, IT IS ORDERED, that the Petition for Reconsideration, filed on May 26, 2023, by Call Communications Group, Inc. (Pleading No. 0000215256) IS DENIED.

82. **NCE MX GROUP 51.** Accordingly, IT IS ORDERED, that the Petition for Reconsideration, filed on January 23, 2023, by Newland Broadcasters Incorporated (Pleading File No. 0000208923), IS DISMISSED as procedurally defective, and when considered as an Informal Objection, IS GRANTED. IT IS FURTHER ORDERED that the Petitions to Deny, filed between December 20, 2021, to August 15, 2023, by Newland Broadcasters Incorporated (Pleading File Nos. 0000177507, 0000186288, 0000190458, 0000199943, and 0000219339) ARE DISMISSED AS MOOT. IT IS FURTHER ORDERED that the Informal Objection, filed on October 13, 2023, by Albert Adam David (Pleading File No. 0000223003) IS GRANTED.

83. IT IS FURTHER ORDERED, that the tentative selection of the application of Teleamerica Communications West Palm Beach Corp. (Application File No. 0000167478) for a construction permit for a new NCE FM station in Key West, Florida, IS RESCINDED. IT IS FURTHER ORDERED, that the Application filed by Newland Broadcasters Incorporated (Application File No. 0000166303) is TENTATIVELY SELECTED to be awarded a construction permit for a new NCE FM station in Key West, Florida, and its application IS ACCEPTED FOR FILING, establishing a deadline thirty (30) days hereafter for the filing of petitions to deny. If, after the petition to deny period has run, the Bureau finds on the basis of the application, the pleadings filed, or other matters which it may officially notice that there is no substantial and material question concerning the grantability of the tentative selectee's application, and it is determined that grant of the application serves the public interest, we direct the Media Bureau, by public notice, TO DISMISS the mutually exclusive application of Teleamerica Communications West Palm Beach Corp. (Application File No. 0000167478), and TO GRANT the application of Newland Broadcasters Incorporated (Application File No. 0000166303), CONDITIONED UPON that selectee's compliance with section 73.7005 of the Commission's rules, 47 CFR § 73.7005, which sets forth a four-year period in which an applicant, that is awarded a permit by use of the point system, must maintain the comparative qualifications for which it received points, and must comply with the restrictions on station modifications and acquisitions.

84. **NCE MX GROUP 122.** Accordingly, IT IS ORDERED, that, pursuant to section 1.115 of the Commission's rules,[209] the Application for Review filed on September 7, 2023, by Grand Forks Bible Study Group (Pleading File No. 0000220588), IS DISMISSED IN PART AND OTHERWISE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[209] 47 CFR § 1.115.

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

In the Matter of	)	
	)	
City Communications, Inc.	)	File No.: EB-FD-22-00034222
	)	NAL/Acct. No.: 202432200001
	)	FRN: 0023589245

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER INITIATING REMOVAL PROCEEDING

Adopted: January 23, 2024 **Released: January 26, 2024**

By the Commission:

TABLE OF CONTENTS

Heading Paragraph #

I. INTRODUCTION 1
II. BACKGROUND 6
A. Legal Framework 6
B. Relevant Entities 23
C. Relationships Among the Relevant Entities 31
D. City Communications' Application History to Participate in EBB and ACP 35
III. THE BUREAU'S INVESTIGATION 38
A. Subscribers Enrolled Using Duplicate Non-Subscriber BQP Information 41
B. Subscribers Enrolled Using Fake or False Addresses 46
C. City's Reimbursement Requests 53
D. Inaccurate Company Address and Contact Information 55
E. City Communications' Failure to Send Transfer Notices 61
IV. DISCUSSION 63
A. City Communications Enrolled Ineligible Subscribers Using the Same Non-Subscriber BQPs and Fake or False Addresses 64
B. City Communications Commited Wire Fraud 66
C. City Communications Certified False Reimbursement Requests 71
D. City Communications' Untruthful, Inaccurate, and Incomplete Statements in Submissions to the Commission 75
V. PROPOSED FORFEITURE 82
A. Proposed Forfeiture Amount for City Communications' Apparent Violations of Commission Rules by Improperly Enrolling Subscribers in ACP 85
B. Proposed Forfeiture Amount for City Communications' Apparent Violations of the Federal Wire Fraud Statute 88
C. Proposed Forfeiture Amount for City Communications' Apparent Violations of Commission Rules through Repeated Inaccurate and Untruthful Statements 89
D. Proposed Forfeiture Amount for City Communications' Apparent Violations of Commission Orders 90
E. Total Proposed Forfeiture 91
VI. CONCLUSION 92

VII. ORDER INITIATING REMOVAL PROCEEDING 93
VIII. ORDERING CLAUSES 98
APPENDIX A – Service Provider Reimbursement Request EBB Certifications
APPENDIX B – Service Provider Reimbursement Request ACP Certifications

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order Initiating Removal Proceeding (NAL), we propose a penalty of $16,971,253 against City Communications, Inc. (City Communications, City, or the Company) for apparently willfully and repeatedly violating Federal Communications Commission (FCC or Commission) rules relating to the Emergency Broadband Benefit Program (EBB), the Affordable Connectivity Program (ACP), and the federal wire fraud statute.[1] The apparent violations for which the Commission proposes forfeiture amounts occurred from March 16, 2022 to the present.[2]

2. EBB was established by the FCC on February 25, 2021[3] at the direction of Congress through the Consolidated Appropriations Act of 2021.[4] The purpose of the program was to facilitate the provision of broadband services and devices to eligible households[5] so that they could stay connected during the COVID-19 pandemic. Efforts to slow the spread of COVID-19 resulted in the closure of businesses and schools across the country for extended periods, which in turn caused millions of Americans to become newly unemployed or unable to find work. In addition, these closures caused Americans to turn to virtual learning, telemedicine, and telework, which increased every household's need for access to broadband services. The cost of broadband services, however, is a barrier to access for many families, and the support provided by EBB was designed to alleviate some of that burden.[6] By the end of 2021, more than nine million American households had benefited from EBB subsidies for broadband services and connected devices,[7] including students accessing virtual classrooms, adults working remotely, and people providing and receiving critical healthcare services.[8]

3. Although EBB ended on December 31, 2021, Congress, pursuant to the Infrastructure Investment and Jobs Act (Infrastructure Act),[9] built upon EBB by appropriating new funding for ACP to provide discounted broadband service and connected devices to low-income households. To ensure the

[1] 47 CFR §§ 54.1600-54.1612, 54.1800-54.1814; 18 U.S.C. § 1343.

[2] *See* Tolling Agreements executed by Fraud Division, FCC Enforcement Bureau, and Andre Trufelli, City Communications (Mar. 15, 2023 and Apr. 14, 2023) (Tolling Agreements) (on file in Investigation Number EB-FD-22-00034222).

[3] 47 CFR §§ 54.1600-54.1612; *Emergency Broadband Benefit Program*, WC Docket No. 20-445, Report and Order, 36 FCC Rcd 4612 (2021) (*Emergency Broadband Benefit Program Order*).

[4] Consolidated Appropriations Act, Pub. L. No. 116-260, 134 Stat. 1182, 2129-63 (2020) (codified at 47 U.S.C. § 1752), *available at* https://www.congress.gov/bill/116th-congress/house-bill/133/text (Consolidated Appropriations Act).

[5] *See infra* para. 7.

[6] *See Emergency Broadband Benefit Program Order*, 36 FCC Rcd at 4613, para. 1.

[7] *See* Universal Service Administrative Co., About, Emergency Broadband Benefit Program, Emergency Broadband Benefit Program Enrollments and Claims Tracker, https://www.usac.org/about/emergency-broadband-benefit-program/emergency-broadband-benefit-program-enrollments-and-claims-tracker/ (last visited Dec. 1, 2023).

[8] *See* Fed. Commc'ns Comm'n, Home, Consumer, Emergency Broadband Benefit, https://www.fcc.gov/broadbandbenefit (last visited Dec. 1, 2023).

[9] Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (2021) (codified at 47 U.S.C. § 1752, as modified by the Infrastructure Act), https://www.govinfo.gov/content/pkg/BILLS-117hr3684enr/pdf/BILLS-117hr3684enr.pdf; *see also Affordable Connectivity Program*, WC Docket No. 21-450, Report and Order and Further Notice of Proposed Rulemaking, 37 FCC Rcd 484 (2022) (*Affordable Connectivity Program Order*).

integrity and effectiveness of EBB, and then ACP, Congress and the Commission authored a regulatory framework which imposed responsibilities and obligations on participating service providers, including requiring service providers to determine a customer's eligibility to participate in these programs prior to enrolling the customer for service.[10] By the end of 2022, more than 15.4 million American households were enrolled in ACP.[11]

4. From at least January 2022 through August 2023, City sought and received EBB and ACP funding for subscribers that were improperly enrolled in these programs. The Company enrolled these subscribers with fake or false identifying information by either using an address to which the purported subscriber had no connection or repeatedly using the same benefit qualifying person (BQP)[12] to enroll multiple subscribers. As a result of this conduct, City apparently violated 47 CFR §§ 54.1605, 54.1606(b),[13] 54.1608(e)(3), 54.1805, 54.1806(b),[14] 54.1808(e)(3), and 54.1810(i)[15] and apparently improperly received more than $3.1 million from EBB and ACP. Despite these apparent violations, from January 2022 to August 2023, City falsely and repeatedly certified in its reimbursement requests[16] to the FCC and the Universal Service Administrative Company (USAC) that it was in compliance with the Commission's rules; based on these misrepresentations, made under penalty of perjury, City received funding from EBB and ACP. City submitted these reimbursement requests via interstate wires in apparent violation of the federal wire fraud statute.[17]

5. The investigation by the Commission's Enforcement Bureau (Bureau) further identified apparent violations of ACP rules governing the transfer of subscriber benefits from one provider to

[10] 47 CFR §§ 54.1800-54.1814.

[11] *See* Universal Service Administrative Co., About, Affordable Connectivity Program, ACP Enrollment and Claims Tracker, https://usac.org/about/affordable-connectivity-program/acp-enrollment-and-claims-tracker/ (last visited Dec. 1, 2023).

[12] Generally, a benefit qualifying person is the member of the household who meets the requirements to receive ACP benefits. In the case of a non-subscriber BQP, that person is someone in the applicant's household other than the applicant, often times a dependent child. *See* 47 CFR § 54.1800(j), (l); *Emergency Broadband Benefit Program Order*, *supra* note 3, at 4643-45, paras. 66, 68 and n.222; *Wireline Competition Bureau Announces Additional Program Integrity Measures for Affordable Connectivity Program Enrollments Based on a Benefit Qualifying Person*, Public Notice, 37 FCC Rcd 10211 (WCB 2022); Advisory, FCC OIG, *Advisory Regarding Provider Enrollments of Multiple ACP Households Based on the Same Child/Dependent* (Sept. 8, 2022), https://www.fcc.gov/document/oig-advisory-regarding-acp-enrollment-fraud.

[13] 47 CFR § 54.1606(b) restricts a provider from providing "a consumer with service that it represents to be Emergency Broadband Benefit-supported service or seek reimbursement for such service, unless and until it has: (1) Confirmed that the household is an eligible household pursuant to 47 CFR 54.1605; (2) Completed any other necessary enrollment steps, and; (3) Securely retained all information and documentation it receives related to the eligibility determination and enrollment, consistent with 47 CFR 54.1611."

[14] 47 CFR § 54.1806(b) restricts a provider from providing "a consumer with service that it represents to be Affordable Connectivity Program-supported service or seek reimbursement for such service, unless and until it has: (1) Confirmed that the household is an eligible household pursuant to § 54.1805(a) and (b); (2) Completed any other necessary enrollment steps, and; (3) Securely retained all information and documentation it receives related to the eligibility determination and enrollment, consistent with § 54.1811."

[15] 47 CFR § 54.1810(i)(1) prohibits participating providers "from engaging in unjust and unreasonable acts or practices that would undermine the purpose, intent, or integrity of the Affordable Connectivity Program."

[16] *See* 47 CFR §§ 54.1608, 54.1808.

[17] While the Bureau finds that City Communications apparently committed wire fraud by submitting reimbursement requests for December 2021, January 2022, and February 2022 service months; those months are not included in the forfeiture section below because they fall outside the statute of limitations.

another, in apparent violation of section 54.1810(b)(2).[18] The Bureau also found that City Communications apparently willfully and repeatedly made misrepresentations to the Commission in its applications and election notices to participate in EBB and ACP, and to the Bureau in the course of its investigation, all in violation of Rule 1.17. City also failed to respond fully to two Letters of Inquiry from the Bureau, which are Commission orders. We find that the proposed $16,971,253 forfeiture penalty reflects the scope, duration, seriousness, and egregiousness of City Communications' numerous apparent violations and resulting harm to ACP.

II. BACKGROUND

A. Legal Framework

1. Emergency Broadband Benefit Program

6. The Consolidated Appropriations Act became law on December 27, 2020.[19] Among other Congressional actions intended to provide relief during the COVID-19 pandemic, the Consolidated Appropriations Act established an Emergency Broadband Connectivity Fund of $3.2 billion in the Treasury of the United States,[20] to remain available until expended. The Consolidated Appropriations Act directed the Commission to use these funds to establish EBB, under which eligible households could receive a monthly discount on the cost of broadband service and a one-time discount on eligible connected devices during an emergency period relating to the COVID-19 pandemic, and participating service providers could receive a reimbursement for providing these discounts.[21]

7. The Consolidated Appropriations Act directed, and our rules provide, that a household would be eligible for the Emergency Broadband Benefit if at least one member of the household: (i) met the qualifications for participation in the Lifeline Program (household income is at or below 135% of the federal poverty guidelines or a household member participated in the Supplemental Nutrition Assistance Program, Medicaid, Supplemental Security Income, Federal Public Housing Assistance, Veterans Pension/Survivors Benefit, or certain Tribal assistance programs); (ii) applied for and been approved to receive benefits under the free and reduced price lunch program or the school breakfast program; (iii) experienced a substantial loss of income since February 29, 2020 that was documented by layoff or furlough notice, application for unemployment insurance benefits, or similar documentation or that is otherwise verifiable; (iv) received a Federal Pell Grant in the current award year; or (v) met the eligibility criteria for a participating provider's existing low-income or COVID-19 program, subject to approval by the Commission.[22] Additionally, to receive the EBB benefit, the rules make clear that no member of a household could have already been receiving an EBB benefit.[23] The Commission determined that the National Lifeline Eligibility Verifier (National Verifier), which is operated by USAC to verify certain

[18] 47 CFR § 54.1810(b)(2) requires participating service providers to provide "written notice to the transferred subscriber" within five business days of completing a subscriber transfer in NLAD.

[19] Consolidated Appropriations Act, Pub. L. No. 116-260, 134 Stat. 1182, 2129-63 (2020) (codified at 47 U.S.C. § 1752), https://www.congress.gov/bill/116th-congress/house-bill/133/text (Consolidated Appropriations Act).

[20] *Id.* § 904(i).

[21] *Id.* § 904(b)(1). Under section 904, the emergency period "ends on the date that is 6 months after the date on which the determination by the Secretary of Health and Human Services pursuant to section 319 of the Public Health Service Act (42 U.S.C. 247d) that a public health emergency exists as a result of COVID-19, including any renewal thereof, terminates." *Id*. § 904(a)(8); *see Emergency Broadband Benefit Program Order*, *supra* note 3, at 4613, para. 2. The emergency period ended on November 11, 2023, and the program continues under the ACP.

[22] Consolidated Appropriations Act, § 904(a)(6); 47 CFR § 54.1605(a).

[23] 47 CFR § 54.1605(b).

eligibility criteria for household participation in the Commission's Universal Service Lifeline Program, should also be used for EBB.[24]

8. A participating service provider was required to verify household eligibility in one of three ways under EBB. It could use the National Verifier, it could seek Wireline Competition Bureau (WCB) approval to use an alternative verification process, or it could rely on a school to verify the household's eligibility through a household member's participation in the reduced price lunch program or school breakfast program.[25]

9. Providers participating in EBB were required to "implement policies and procedures for ensuring that their Emergency Broadband Benefit Program households [we]re eligible to receive the Emergency Broadband Benefit."[26] In particular,

> [a] provider [could] not provide a consumer with service that it represent[ed] to be Emergency Broadband Benefit-supported service or seek reimbursement for such service, unless and until it ha[d]: (1) Confirmed that the household [wa]s an eligible household pursuant to 47 CFR 54.1605; (2) Completed any other necessary enrollment steps, and; (3) Securely retained all information and documentation it receive[d] related to the eligibility determination and enrollment, consistent with 47 CFR 1611.[27]

10. Broadband providers were not required to participate in EBB; instead, they could voluntarily choose to participate by filing an election notice, which had to be certified and submitted to USAC, along with supporting documentation to show the provider was qualified to offer broadband services and/or discounted connected devices.[28] Eligible Telecommunications Carriers (ETCs) needed only to file an election notice with USAC, while non-ETCs were required to apply and receive authorization from WCB before submitting their elections.[29] Broadband providers had to have been providing broadband services as of December 1, 2020 to participate in EBB.[30] ETCs and approved non-ETC providers were required to file an election notice with USAC stating, among other things, the jurisdictions in which they would participate in the program.[31]

11. Participating providers that also supplied an eligible household with a connected device (defined in the Consolidated Appropriations Act as a laptop, desktop computer, or tablet) could receive a single reimbursement of up to $100 for the connected device, if the charge to the eligible household for

[24] *Emergency Broadband Benefit Program Order*, *supra* note 3, at 4638, para. 54; Consolidated Appropriations Act, §§ 904(a)(6), (b)(2). The National Verifier was used in EBB and is available for use in the successor ACP to automatically check and confirm a household's eligibility electronically against state and federal eligibility databases, followed by manual review of eligibility documentation for applicants whose eligibility cannot be verified using an automated data source. *See Emergency Broadband Benefit Program Order*, *supra* note 3, at 4635, para. 50.

[25] 47 CFR § 54.1606(a)(1)-(3); 47 U.S.C. § 1752(b)(2).

[26] 47 CFR § 54.1606(b).

[27] *Id.*

[28] *Emergency Broadband Benefit Program Order*, *supra* note 3, at 4616, para. 10.

[29] 47 CFR § 54.1601(a)-(c).

[30] *Emergency Broadband Benefit Program Order*, *supra* note 3, at 4622, para. 22; EBB Provider Approval & Alternative Eligibility Verification Application Filing Instructions, at 5 (Mar. 2021).

[31] *See* 47 CFR § 54.1601(c).

that device was more than $10 but less than $50.[32] A participating provider could receive reimbursement for only one supported device per eligible household.[33]

12. On May 12, 2021, EBB providers began enrolling consumers in the program.[34] Consumers could check for program eligibility and search for participating providers in their states in a number of ways. Consumers could visit the FCC website directly to find a list of EBB providers in their state, use USAC's "Companies Near Me" tool, or visit various state or nonprofit websites advertising EBB and be directed to the FCC list.[35] Consumers could begin their search on the webpage containing the list of participating providers and then could click the link to a specific provider and be directed to the provider's website for information on its EBB offerings.[36]

13. Additional relevant EBB rule provisions include:

a. Definitions for household and economic unit:

> A 'household' is any individual or group of individuals who are living together at the same address as one economic unit. A household may include related and unrelated persons. An 'economic unit' consists of all adult individuals contributing to and sharing in the income and expenses of a household. An adult is any person eighteen years or older. If an adult has no or minimal income, and lives with someone who provides financial support to him/her, both people shall be considered part of the same household. Children under the age of eighteen living with their parents or guardians are considered to be part of the same household as their parents or guardians.[37]

b. "All participating providers in the Emergency Broadband Benefit Program must make available the Emergency Broadband Benefit Program to qualifying low-income consumers."[38]

c. "If the prospective household shares an address with one or more existing Emergency Broadband Benefit Program subscribers according to the National Lifeline Accountability Database or National Verifier, the prospective subscriber must complete a form certifying compliance with the one-per-household rule prior to initial enrollment."[39]

d. Participating providers "must require that enrollment representatives register with the Administrator before the enrollment representative can provide information directly or indirectly to the National Lifeline Accountability Database or the National Verifier." As part of the registration process, enrollment representatives must include their first and last name, date of birth, last four digits of their social security number, email address, and residential address. Enrollment representatives will then be assigned a unique identifier, which they will use to access the National Lifeline Accountability Database (NLAD), the

[32] Consolidated Appropriations Act, § 904(b)(5), 134 Stat. 1182; 47 CFR § 54.1603(b).

[33] Consolidated Appropriations Act, § 904(b)(5), 134 Stat. 1182; 47 CFR § 54.1603(b).

[34] *Wireline Competition Bureau Announces Emergency* Broadband *Benefit Program Launch Date*, WC Docket No. 20-445, Public Notice, 36 FCC Rcd 7614 (WCB 2021).

[35] *Id.* at 7615.

[36] The Affordable Connectivity Program uses the same format to identify providers participating in that program. *See, e.g.*, Fed. Commc'ns Comm'n, https://www.fcc.gov/affordable-connectivity-program-providers; https://data.usac.org/publicreports/CompaniesNearMe/Download/Report (last visited May 23, 2022).

[37] 47 CFR § 54.1600(l).

[38] *Id.* § 54.1604(a).

[39] *Id.* § 54.1606(c).

National Verifier, any eligibility database, and to complete any EBB enrollment or verification forms.[40]

e. To receive EBB reimbursement, an officer of the participating provider must certify, as part of each request for reimbursement—which typically occurs monthly—that, among other things, (1) the participating provider is in compliance with all EBB rules, (2) the participating provider has obtained valid certification and applications forms for each of the subscribers for whom it is seeking reimbursement, and (3) the provider has retained all necessary documentation for no less than the six full preceding calendar years.[41]

2. Affordable Connectivity Program

14. The Infrastructure Act extended EBB's objectives, and left much of EBB's basic framework in place but made "changes to the benefit amount, rules regarding plan and subscriber eligibility, and providers' public promotion obligations, among other changes."[42] With these new changes, the Infrastructure Act transitioned EBB to ACP. Provisions that carried over from EBB to ACP include, but are not limited to:

a. Definitions such as "participating provider," "broadband provider," "broadband internet access service," and "household."

b. The three eligibility verification processes being the National Verifier, an alternative verification process, or relying on a school to verify the household's eligibility based on the household's participation in the free and reduced price lunch program or school breakfast program.[43]

c. The process for participating providers to register enrollment representatives with USAC.[44]

d. A participating provider's officer certifications in connection with the provider's reimbursement requests.[45]

e. The requirement that, in addition to meeting one of the eligibility qualifications, "neither the eligible household nor any member of the household may already be receiving another affordable connectivity benefit from that participating provider or any other participating provider."[46]

f. Participating providers shall make available the affordable connectivity benefit to eligible households.[47]

15. Provisions that changed or were removed in the transition from EBB to ACP include, but are not limited to:

[40] *Id.* § 54.1607(a)(1)-(4).

[41] *Id.* §§ 54.1608(e), 54.1611.

[42] *Affordable Connectivity Program Order*, *supra* note 9, at 486, para. 4; *see also* Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (2021), https://www.govinfo.gov/content/pkg/BILLS-117hr3684enr/pdf/BILLS-117hr3684enr.pdf.

[43] *See* 47 CFR §§ 54.1606(a)(1)-(3), 54.1806(a)(1)-(3).

[44] *See id.* §§ 54.1607(a)(1)-(4), 54.1807(a)(1).

[45] *See id.* §§ 54.1608(e), 54.1611, 54.1808(e), 54.1811.

[46] *See id.* §§ 54.1605(b), 54.1805(b).

[47] *See id.* §§ 54.1604(a), 54.1804(a).

a. The standard non-tribal monthly broadband benefit decreased from $50 to $30.[48]

b. The eligibility criterion based on a household having experienced a substantial loss of income since February 29, 2020 was removed.

c. The eligibility criterion based on income was adjusted from at or below 135% of the Federal Poverty Guidelines to at or below 200% of the Federal Poverty Guidelines.[49]

16. Finally, express provisions that are new to ACP include, but are not limited to:

a. An additional eligibility criterion based on a consumer's participation in Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).[50]

b. A participating provider must annually certify, under penalty of perjury, that it has policies in place to comply with all ACP rules and procedures. In addition, the participating provider must acknowledge that it "is liable for violations of the Affordable Connectivity Program rules and that its liability extends to violations by its agents, contractors, and representatives[.]"[51]

c. USAC shall recertify subscribers' eligibility using the National Verifier where the subscriber's eligibility was initially determined by the National Verifier.[52]

d. Participating providers are prohibited from offering to enrollment representatives, their direct supervisors, or entities operating on the providers' behalf, any form of compensation that is (1) based on the number of consumers or households that apply for or are enrolled in ACP with the provider, (2) based on revenues the provider received in connection with ACP, including payments for connected devices, (3) based on the provider permitting the retention of cash payments received from a subscriber in connection with a connected device, or (4) characterized as paid in connection with a non-ACP activity that is actually based on ACP applications, enrollments, or revenues.[53]

e. Participating providers are prohibited from engaging in unjust or unreasonable acts or practices that would undermine the purpose, intent, or integrity of ACP, including violating any ACP rule.[54]

f. The Commission's rules limit ACP subscribers to one benefit transfer between participating providers per service month.[55] There are four limited exceptions to this rule: (1) the subscriber's benefit was improperly transferred, (2) the subscriber's service provider ceases operations or fails to provide service, (3) the service provider is found to be in violation of ACP rules and the violation impacts the subscriber for whom the

[48] *Compare id.* § 54.1603(a) *with id.* § 54.1800(b).

[49] *Compare id.* § 54.1605(a)(1) *with id.* § 54.1800(j)(2).

[50] 47 CFR § 54.1800(j)(6). *See also Affordable Connectivity Program Order*, *supra* note 9, at 487, para. 5.

[51] 47 CFR § 54.1801(f).

[52] *Id.* § 54.1806(f)(1).

[53] *Id.* § 54.1807(b)(1)-(4).

[54] *Id.* § 54.1810(i).

[55] *See id.* § 54.1810(b)(3) ("Participating subscribers can only transfer their affordable connectivity benefit between providers once in a given service month, with the following limited exceptions: (i) The subscriber's benefit was improperly transferred; (ii) The subscriber's service provider ceases operations or fails to provide service; (iii) The subscriber's current service provider is found to be in violation of affordable connectivity program rules, and the violation impacts the subscriber for which the exception is sought; (iv) The subscriber changes its location to a residential address outside of the provider's service area for the Affordable Connectivity Program.").

exception is sought, and (4) the subscriber changes his/her location to a residential address outside the provider's ACP service area.[56]

17. Service providers use the Affordable Connectivity Claims System (ACCS) to claim subscribers for reimbursement and to certify reimbursement requests. The ACCS is available through USAC's "one portal" system.[57] This process is completed entirely online.[58]

18. In order to claim a subscriber, a service provider must download a new filing template to review the list of subscribers eligible for reimbursement. This filing template includes subscriber data from the NLAD subscriber snapshot report, which is taken on the first of the month. A service provider then populates and submits the reimbursement request template with the necessary information (such as the reimbursement amount sought) for each subscriber. Finally, the Company's certifying officer certifies[59] and transmits the reimbursement request to USAC electronically.[60]

3. Untruthful and Inaccurate Statements

19. Section 1.17 of the Commission's rules prohibits any person, including applicants for Commission authorizations, in any written statement of fact in connection with any investigatory or adjudicatory matter within the Commission's jurisdiction, from intentionally providing "material factual information that is incorrect or intentionally omit[ting] material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading[.]"[61] The courts and the Commission have consistently highlighted the importance of applicants for Commission authorizations submitting complete and truthful information in their applications. A "lack of candor in an applicant's dealings with the Commission" constitutes a "serious breach[] of trust,"[62] and is exhibited when an applicant makes an affirmative misrepresentation or fails to disclose relevant facts of "decisional significance."[63] Proving a violation of section 1.17 requires a showing of evidence that the applicant "inten[ded] to deceive" the Commission.[64] Intent to deceive is generally found in cases where a false statement is "coupled with proof that the party . . . [knew] of its falsity[,]"[65] or where evidence allows intent to be derived "from a motive" to deceive.[66]

---

[56] *Id.* § 54.1810(b)(3).

[57] Universal Service Administrative Co., *Affordable Connectivity Program Claims Process Overview* (Apr. 21, 2022), https://www.usac.org/wp-content/uploads/about/documents/acp/Training-Slides/ACP-Claims_April-21.pdf.

[58] City Communications submitted its reimbursement requests from its place of business in Georgia to USAC in Washington, D.C./Virginia.

[59] *See infra* paras. 44-45.

[60] Universal Service Administrative Co., *Affordable Connectivity Program Claims Process Overview* (Apr. 21, 2022), https://www.usac.org/wp-content/uploads/about/documents/acp/Training-Slides/ACP-Claims_April-21.pdf.

[61] *See* 47 CFR § 1.17(a)(1).

[62] *Swan Creek Commc'ns, Inc. v. FCC*, 39 F.3d 1217, 1221-22 (D.C. Cir. 1994) (quoting *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1211 (1986)).

[63] *Fox Television Stations, Inc.*, Memorandum Opinion and Order, 10 FCC Rcd 8452, 8478 (1995) (quoting *Swan Creek Communication v. FCC*, 39 F.3d 1217, 1222 (D.C. Cir. 1994) and *RKO General, Inc. v. FCC*, 670 F.2d 215, 229 (D.C. Cir. 1981)); *and see, e.g.*, *Acumen Communications*, Order of Revocation, 33 FCC Rcd 4 (EB 2018) (revoking licenses after hearing for, *inter alia*, misrepresentation in application); *Application of Riverside Youth & Rehabilitation*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 10360 (MB 2008) (issuing NAL for apparent misrepresentations in application after application grant was final).

[64] *See Century Cellunet of Jackson*, Memorandum Opinion and Order, 6 FCC Rcd 6150 (1991).

[65] *David Ortiz Radio Corp. v. FCC*, 941 F.2d 1253, 1260 (D.C. Cir. 1991) (quoting *Leflore Broadcasting Co. v. FCC*, 636 F.2d 454, 462 (D.C. Cir. 1980)).

[66] *Joseph Bahr*, Memorandum Opinion and Order, 10 FCC Rcd 32, 33 (1994).

4. Wire Fraud

20. Congress has authorized the Commission to assess a forfeiture penalty for violations of the federal wire fraud statute under Title 18, United States Code, Section 1343. Specifically, section 503(b)(1)(D) of the Communications Act of 1934, as amended (the Act), states that the Commission may propose a forfeiture against a person that the Commission has determined violated "any provision of section . . . 1343 . . . of title 18."[67] The Commission's rules further provide that a "forfeiture penalty may be assessed against any person found to have . . . [v]iolated any provision of section . . . 1343 . . . of Title 18, United States Code[.]"[68] Section 1343 provides that a violation of the wire fraud statute occurs when a person:

> having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice[.][69]

21. A finding that wire fraud under section 1343 has occurred "requires proof of (1) a scheme to defraud; and (2) the use of an interstate wire communication to further the scheme."[70] Moreover, "[t]he essence of a scheme is a plan to deceive persons as to the substantial identity of the things they are to receive in exchange[,]" and "[a] pattern of deceptive conduct may show the existence of a plan, scheme or artifice."[71] Where one scheme involves several wire communications or mailings, "the law is settled that each mailing [or wire communication] constitutes a violation of the statute."[72] The use of mail or interstate wires to effectuate the fraudulent scheme "need not be an essential element of the scheme[;]" instead, it is "sufficient for the mailing [or the use of the interstate wire] to be incident to an essential part of the scheme or a step in the plot."[73] One need not have used the wires themselves in the scheme to defraud; instead, culpability may arise from having caused the wires to be used.[74] Use of the Internet, such as by perpetrating a scheme to defraud through online websites, constitutes use of interstate wires for purposes of section 1343.[75]

---

[67] 47 U.S.C. § 503(b)(1)(D).

[68] 47 CFR § 1.80(a)(5).

[69] 18 U.S.C. § 1343.

[70] *United States v. Maxwell*, 920 F.2d 1028, 1035 (D.C. Cir. 1990); *see also United States v. Pollack*, 534 F.2d 964, 971 (D.C. Cir. 1976).

[71] *United States v. Brien*, 617 F.2d 299, 307 (1st Cir. 1980) (citations omitted).

[72] *United States v. Philip Morris USA, Inc.*, 566 F.3d 1095, 1116 (D.C. Cir. 2009) (citations omitted); *see also United States v. Sum of $70,990,605*, 4 F. Supp. 3d 189, 201 n.9 (D.D.C. 2014).

[73] *Schmuck v. United States*, 489 U.S. 705, 710-11 (1989) (citations, quotations, and punctuation omitted).

[74] *See Pereira v. United States*, 347 U.S. 1, 8 (1954) ("To constitute a violation of these provisions, it is not necessary to show that petitioners actually mailed or transported anything themselves; it is sufficient if they caused it to be done."); *United States v. Lemire*, 720 F.2d 1327, 1334, n.6 (D.C. Cir. 1983) (*Lemire*) ("[C]ases construing mail fraud apply to the wire fraud statute as well.").

[75] *United States v. Dinh*, No. 8-20-CV-1794 (KKM-AAS), 2021 WL 5867221 (M.D. Fla. Dec. 10, 2021) (granting permanent injunction against defendants that defrauded customers by operating online websites that appear to sell goods but did not ship the goods after purchase); *United States v. Collick*, 611 Fed. Appx. 553, 556 (11th Cir. 2015) ("Given that [defendant] testified that [he and co-defendant] used the internet to perpetrate their scheme, his testimony also established that [co-defendant] committed wire fraud."); *Kyle Traxler and Cleo Commc'ns*, Notice of Apparent Liability for Forfeiture, 37 FCC Rcd 8151 (2022) (*Cleo NAL*).

22. A scheme to defraud requires the specific intent to make a misrepresentation or omission that is material to the scheme.[76] An intent to defraud includes an act undertaken "willfully and with specific intent to deceive or cheat, ordinarily for the purpose of either causing some financial loss to another or bringing about some financial gain to one's self."[77] "The requisite intent under the federal mail and wire fraud statutes may be inferred from the totality of the circumstances and need not be proven by direct evidence."[78] Fraudulent intent may be "shown if a representation is made with reckless indifference to its truth or falsity[,]"[79] as well as a victim's reliance on the misrepresentations made by the perpetrator.[80]

B. Relevant Entities

1. City Communications

23. City Communications, Inc. (City Communications) was incorporated in the state of Georgia on February 24, 2014.[81] City is in the business of providing telecommunications services.[82] This includes providing internet service, tablets, and cellphones as part of the ACP program.[83] City is a reseller of AT&T service.[84]

24. City Communications has apparently provided EBB and ACP service in Alabama, Arkansas, California, Florida, Georgia, Kentucky, Louisiana, Maryland, Michigan, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Wisconsin.[85] It is unclear who presently owns City Communications—documents reviewed by the Bureau reference Ashar Syed, Pobish Ashar,

[76] *Neder v. United States*, 527 U.S. 1, 25 (1999).

[77] *Lemire*, 720 F.2d at 1341.

[78] *United States v. O'Connell*, 172 F.3d 921 (D.C. Cir. 1998); *see also United States v. Alston*, 609 F.2d 531, 538 (D.C. Cir. 1979).

[79] *United States v. Cusino*, 694 F.2d 185, 187 (9th Cir. 1982); *see also United States v. Kennedy*, 714 F.3d 951, 958 (6th Cir. 2013); *United States v. Jackson*, 524 F.3d 532 (4th Cir. 2008); *United States v. DeRosier*, 501 F.3d 888, 897-98 (8th Cir. 2007).

[80] *United States v. Wynn*, 684 F.3d 473 (4th Cir. 2012).

[81] Response to Letter of Inquiry, from City Communications, to Fraud Division, FCC Enforcement Bureau, at Doc. 20, Certificate of Incorporation, Response to Question 41 (Mar. 30, 2023) (on file in EB-FD-22-00034222) (LOI Response). In multiple Orders, the Consumer and Governmental Affairs Bureau found that City Communications, Inc. changed a complainant's telecommunications service provider without obtaining authorization and verification from the complainant in violation of section 258 of the Commissions Act of 1934 (as amended), which prohibits slamming. *City Communications, Inc.*, Order, 35 FCC Rcd 467 (CGB 2020); *City Communications, Inc.*, Order, 35 FCC Rcd 611 (CGB 2020); *City Communications, Inc.*, Order, 35 FCC Rcd 1858 (CGB 2020); *City Communications, Inc.*, Order, 36 FCC Rcd 13488 (CGB 2021).

[82] Strategic Alliance Agreement, July 12, 2021 (on file in EB-FD-22-00034222).

[83] City Communications, *Broadband & Wireless Home Phone*, https://citycom.co/index.php/broadband-wireless-home-phone/ (last visited Nov. 22, 2023).

[84] Office of Regulatory Staff of South Carolina, *City Communications Customers Could be Without Telephone Service After August 13, 2021* (Aug. 9, 2021), https://ors.sc.gov/news/2021-08/city-communications-customers-could-be-without-telephone-service-after-august-13-2021. Toll resellers are common carriers for penalty purposes. *See, e.g.*, *Cardinal Broadband, LLC*, Forfeiture Order, 27 FCC Rcd 7985 (2012); *Cardinal Broadband LLC*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 12233 (EB 2008); *Telrite Corp.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 7231 (2008); *Enhanced Communications Group, LLC*, Notice of Apparent Liability for Forfeiture, FCC 23-54, 2023 WL 4587311 (July 13, 2023).

[85] LOI Response at Doc. 8.

and Faraz Syed (also apparently known as Faraz Mobeen) as owners at different times.[86] City's current executives include Pobish Ashar (CEO) and Faraz Mobeen (CEO), while prior executives include Suzane Anderson (Officer)[87] and Patrick Hardy (Manager).[88] Faraz Mobeen was President of City from May 2014 to January 2020.[89] One of City's reported name variations is Cathect Communications.[90]

25. The bank account City Communications has on record with the Commission to receive ACP payments is owned by Tele Circuit Network Corporation (Tele Circuit).[91] When asked directly to explain City Communications' relationship with Tele Circuit Network Corp., City's response was that the two companies "shared backend operations[.]"[92] Tele Circuit's annual registration for 2020 in Georgia was submitted by Ashar Syed (Officer).[93] Pobish Ashar has been an authorized signatory on at least one of Tele Circuit's bank accounts[94] and is apparently currently Tele Circuit's Treasurer.[95] A LexisNexis report regarding Tele Circuit includes a section listing connected businesses; this list includes City Communications and North Forsyth Equity, LLC.[96] Tele Circuit's current CEO is Ashar Syed;[97] it lists its business address as 1815 Satellite Boulevard, Suite 504 in Duluth, Georgia.[98]

[86] Response to second subpoena, from {[ ]}to Fraud Division, FCC Enforcement Bureau (Apr. 24, 2023) (on file in EB-FD-22-00034222) (Second Subpoena Response). Material set off by double brackets {[ ]} is confidential and is redacted from the public version of this document.

[87] Information on file in Investigation Number EB-FD-22-00034222.

[88] Patrick Hardy is listed on City Communications' bank signature card as a manager of City Communications. Response to first subpoena, from {[ ]}to Fraud Division, FCC Enforcement Bureau (Oct. 28, 2022) (on file in EB-FD-22-00034222) (First Subpoena Response); {[ ]} First Subpoena Response at Signature Card 4. Patrick Hardy was also the agent identified by Tone Communication as enrolling all one hundred fifty two subscribers who used the three non-subscriber duplicate BQPs. Response to Letter of Inquiry, from Tone Communication, to Fraud Division, FCC Enforcement Bureau, at DOC-03-Master File spreadsheet, Response to Question 15 (Mar. 30, 2023) (on file in EB-FD-22-00034228) (Tone LOI Response).

[89] Application for Cathect Communications for Michigan Final Application PSC, Case No. U-20830 (filed Apr. 3, 2020). According to Mobeen's resume, Mobeen stepped down as President of City in January 2020 and became CEO of Cathect then. *Id.* Based on the Bureau's email exchanges with "fmobeen@citycom.co", it appears Mobeen is still working at City in some capacity.

[90] Information on file in Investigation Number EB-FD-22-00034222.

[91] {[ ]}First Subpoena Response, Second Subpoena Response. The Commission issued an NAL against Tele Circuit Network Corp in 2018 for slamming and cramming, *i.e.*, changing a consumer's preferred service provider to itself without the consumer's authorization and adding unauthorized charges to the consumer's bill. *Tele Circuit Network Corp*, Notice of Apparent Liability for Forfeiture, 33 FCC Rcd 4379 (Apr. 27, 2018). The NAL findings were adopted in a Forfeiture Order against Tele Circuit Network Corp in 2021 and imposed a forfeiture of $4,145,000 against Tele Circuit. *Tele Circuit Network Corp*, Forfeiture Order, 36 FCC Rcd 7664 (2021) (concurring statements issued by then-Acting Chairwoman Jessica Rosenworcel and Commissioner Geoffrey Starks). The Tele Circuit Network Corp NAL and Forfeiture Order note that Ashar Syed is the President of the company and Syed's then-wife, Pobish Khan (sometimes referred to as Pobish Ashar) is the company's CEO.

[92] Response to Supplemental Letter of Inquiry, from City Communications, to FCC Enforcement Bureau, at Doc. 3, Response to Question 10 (June 28, 2023) (on file in EB-FD-22-00034222) (SLOI Response).

[93] Georgia Corporations Division, State of Georgia, *Secretary of State Annual Registration, Tele Circuit Network Corporation* (filed Jan. 24, 2020), https://ecorp.sos.ga.gov/BusinessSearch/BusinessFilings.

[94] {[ ]} Second Subpoena Response.

[95]Information on file in Investigation Number EB-FD-22-00034222.

[96] *Id.*

[97] *Id.*

[98] {[ ]}First Subpoena Response.

2. Tone Communication Services LLC

26. Tone Communication Services LLC (Tone Communication) is a limited liability company formed in the state of Texas on July 30, 2019.[99] Tone Communication is authorized to offer ACP fixed and mobile broadband service in Alabama, Alaska, Arizona, Arkansas, Connecticut, Delaware, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.[100] When asked directly to describe City Communications' relationship with Tone Communication, City Communications stated the companies "shared CSR[101] Portal (*sic*)."[102]

27. Ashar Syed is the Owner of Tone Communication.[103] Both Roselba Bartolini and Ashar Syed have held themselves out in submissions to USAC as CEO;[104] prior executives include Suzane Anderson (former President).[105]

28. The bank account Tone Communication has on record with the Commission to receive ACP reimbursement payments is titled in the name of North Forsyth Equity, LLC (North Forsyth Equity).[106] North Forsyth Equity was organized in the state of Georgia in August 2008 by Ashar Syed.[107] When asked directly to characterize City Communications' relationship with North Forsyth Equity, City Communications stated "there is no relationship."[108] North Forsyth Equity's owner is Ashar Syed.[109] Pobish Ashar was previously a registered agent for North Forsyth Equity.[110] North Forsyth Equity's current address is 2375 Lexington Lane in Cumming, Georgia,[111] which is also reported to be a prior

[99] Letter from Tone Communication Services LLC (Oct. 10, 2022) (on file in Case No. EB-FD-22-00034228). Note: While the letter is dated October 10, 2022, the Bureau did not receive it via email until October 16, 2022.

[100] Fed. Commc'ns Comm'n, *Affordable Connectivity Program Providers*, fcc.gov/affordable-connectivity-program-providers (last visited Sept. 27, 2023).

[101] CSR is an abbreviation for Customer Service Representative.

[102] Tone LOI Response at Doc. 3.

[103] Response to Supplemental Letter of Inquiry, from Tone Communication, to FCC Enforcement Bureau, at Supplemental LOI EB-FD-22-00034228, Response to Question 12 (June 1, 2023) (on file in EB-FD-22-00034228); Response to first subpoena to Tone Communication from {[ ]}to Fraud Division, FCC Enforcement Bureau (Nov. 7, 2022) on file in Investigation Number EB-FD-22-00034228) (Tone First Subpoena Response).

[104] Information on file in Investigation Number EB-FD-22-00034222.

[105] Information on file in Investigation Number EB-FD-22-00034228.

[106] *Id.*

[107] Georgia Corporations Division, State of Georgia, *Secretary of State Business Formation, North Forsyth Equity LLC* (filed Aug. 20, 2008), https://ecorp.sos.ga.gov/BusinessSearch/BusinessFilings.

[108] Tone LOI Response at Doc. 3.

[109] {[ ]} Tone First Subpoena Response.

[110] Information on file in Investigation Number EB-FD-22-00034228. It appears Pobish Ashar is also known as Pobish Khan and was previously married to Ashar Syed. *See Pobish Ashar v. Ashar Syed*, Civil Action No. 17-1-6780-48, Motion for Contempt (Ga. Super. Ct., Cobb Cnty. Oct. 5, 2017), https://trellis.law/doc/80975225/ (last visited Dec. 1, 2023) (Pobish Ashar filed for divorce from Ashar Syed on September 5, 2017).

[111] Georgia Corporations Division, State of Georgia, *Secretary of State 2023 Annual Registration, North Forsyth Equity LLC* (filed Mar. 13, 2023), https://ecorp.sos.ga.gov/BusinessSearch/BusinessFilings.

residence of Ishrat Jahan.[112] Another address that North Forsyth Equity is associated with is 1815 Satellite Boulevard in Duluth, Georgia.[113]

3. Cathect Communications Inc.

29. Cathect Communications Inc. (Cathect Communications or Cathect) was created on June 27, 2019 in Texas.[114] Cathect is authorized to participate in ACP in Alabama, Arkansas, California, Florida, Georgia, Idaho, Illinois, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana, Nevada, North Carolina, Ohio, South Carolina, South Dakota, Tennessee, Texas, and Wisconsin.[115] When asked directly to characterize City Communications' relationship with Cathect Communications, City Communications stated that the companies "were associated through the same warehouse for ACP Dispatchment."[116]

30. Cathect's current executives include Suzane Anderson (Secretary) and Ishrat Jahan (CEO);[117] prior executives include Faraz Mobeen (former CEO).[118] When Cathect filed its incorporation paperwork in Georgia in 2020, Faraz Mobeen was the Incorporator.[119] Cathect lists 2160 Lexington Lane in Cumming, Georgia as its office address,[120] which is a two-bedroom house purchased in 2018 by Ishrat Jahan and Ashar Syed.[121]

C. Relationships Among the Relevant Entities

31. As discussed above, City has a relationship with at least two other entities that participate in ACP—Cathect Communications and Tone Communication.[122] City also has a relationship with Tele Circuit and North Forsyth Equity. For example:

- In response to the Supplemental Letter of Inquiry (LOI), City produced at least one audio consent to transfer services to Cathect Communications.[123]

[112] Information on file in Investigation Number EB-FD-22-00034228.

[113] *Id.*

[114] *Id*.

[115] *Affordable Connectivity Program Providers*, https://www.fcc.gov/affordable-connectivity-program-providers (last visited Dec. 1, 2023).

[116] Tone LOI Response at Doc. 3.

[117] Information on file in Investigation Number EB-FD-22-00034228 According to her resume, Suzane Anderson worked as Operations Manager at City Communications in 2018-2019. 12064-2020 – FL PSC application form – Cathect Communications (filed Nov. 16, 2020).

[118] Information on file in Investigation Number EB-FD-22-00034228.

[119] Attachments to Application Part I – LA – Cathect Communications (filed Apr. 3, 2020) (on file in EB-FD-22-00034228).

[120] Application for Cathect Communications for Michigan Final Application PSC, Case No. U-20830 (filed Apr. 3, 2020). According to Mobeen's resume, Mobeen stepped down as President of City in January 2020 and became CEO of Cathect then. *Id.* Based on the Bureau's email exchanges with "fmobeen@citycom.co," it appears Mobeen is still working at City in some capacity.

[121] Information on file in Investigation Number EB-FD-22-00034222.

[122] The Bureau sent an LOI to Tone Communication Services LLC on September 16, 2022, which was substantially similar to the LOI the Bureau sent to City Communications on September 16, 2022

[123] SLOI Response at 10.41.54PM.avi.

- In response to the Supplemental LOI, City produced a customer chat checking on a Tone Communication data issue.[124]
- In response to the Supplemental LOI, City produced chat files that mentioned City and Cathect Communications.[125]
- The bank account City has on record with the Commission to receive ACP payments is titled in the name of Tele Circuit.[126]
- In responding to separate LOIs from the Bureau, both City and Tone Communication produced documents describing their ACP enrollment process. These documents are identical.[127]

32. The Bureau reviewed City's bank records and those for companies the Bureau identified as having some financial, personal, or personnel-related link to City. A review of City and Cathect Communications' bank records indicated a commingling of funds between the two companies. On one occasion City wired Cathect $30,000.[128] Cathect Communications sent City Communications a total of $125,000 by various checks.[129] These checks were either signed by Pobish Ashar or Ashar Syed.[130] Both individuals are affiliated with City Communications, Tone Communication, and Cathect Communications.[131]

33. The Bureau's review revealed other transfers of funds among the various companies, including:

- During the period from May 27, 2022 to April 29, 2023, Tele Circuit transferred approximately $920,600 to Cathect Communications.
- A $15,000 check dated December 16, 2021 from Cathect Communications to Tone Communication. This check was signed by Ashar Syed and endorsed by Ashar Syed.
- During the period from October 31, 2022 to December 30, 2022, Tone Communication transferred approximately $1,015,450 to City.
- During the period from March 8, 2021 to December 30, 2022, Tone Communication transferred approximately $859,100 to Cathect Communications.
- A $132,000 check on March 28, 2022 from a Tone Communication account to Tele Circuit.

34. Bank records further show large amounts of money going from City Communications' and related companies' accounts to the following individuals; the Bureau was unable to determine a clear business purpose for any of these transactions:

- During the period from July 23, 2021 to March 31, 2023, North Forsyth Equity transferred $1,203,000 to Ashar Syed. During the period from May 6, 2022 to March 31, 2023, Tele Circuit transferred $189,000 to Ashar Syed. Additionally, Ashar Syed

[124] SLOI Response at City 1.

[125] SLOI Response at C22, City 20.

[126] {[ ]}First Subpoena, Second Subpoena.

[127] Tone LOI Response at Doc-04 ACP enrollment Process; City LOI Response at ACP enrollment Process.

[128] Information on file in Investigation Number EB-FD-22-00034222.

[129] *Id.*

[130] *Id.*

[131] *Id.*

endorsed checks made out to other entities and individuals in the amount that totaled approximately $297,000 from December 16, 2021 to October 8, 2022. Ashar Syed is the CEO of Tele Circuit and is also affiliated with Tone Communication.[132]

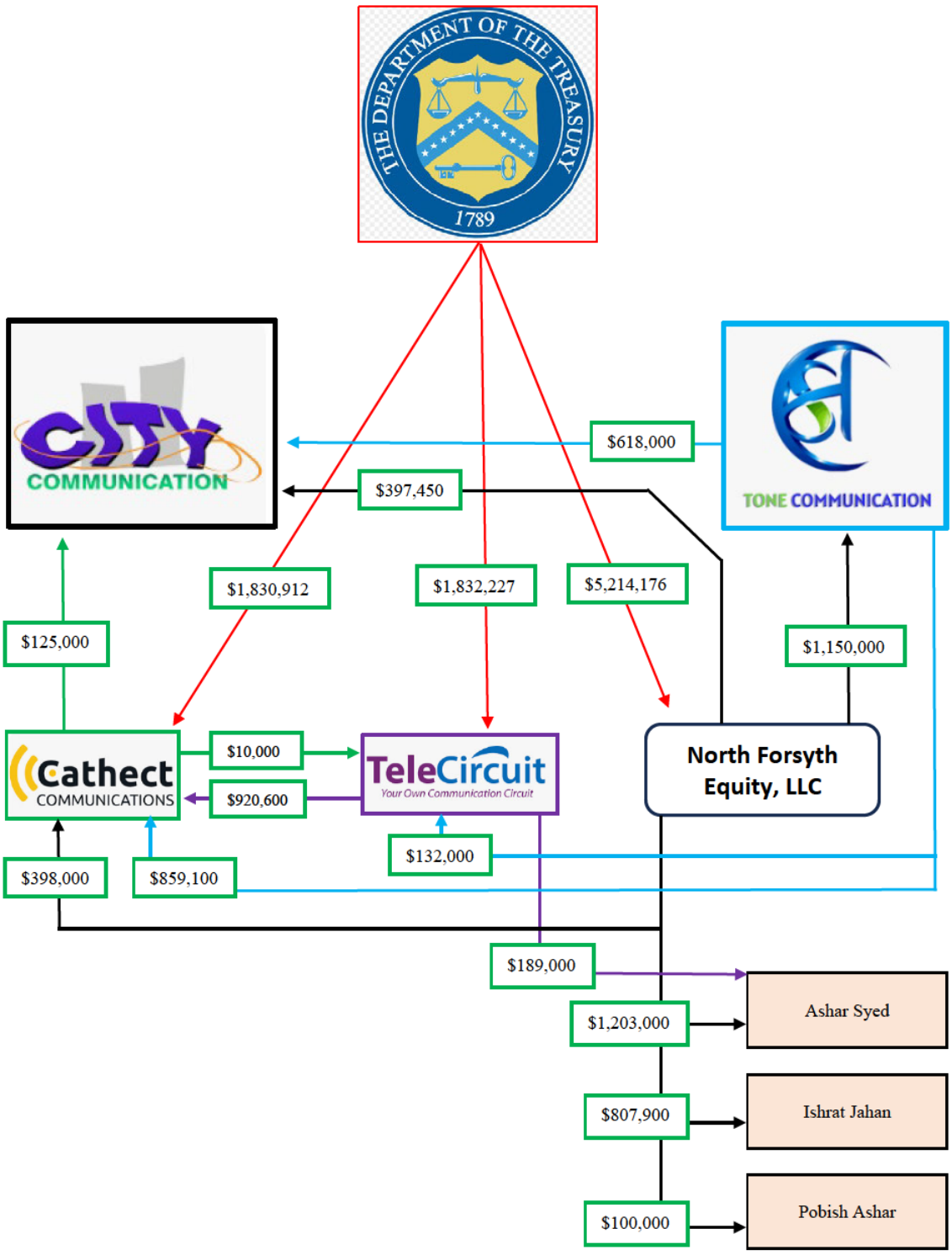
- During the period from September 6, 2022 to March 13, 2023, North Forsyth Equity sent a total of $807,900 to Ishrat Jahan in a series of transactions; additionally, some of these transactions are those noted above where Ashar Syed, not Jahan, endorsed the check. Ishrat Jahan is the CEO of Cathect Communications.[133]
- On February 27, 2023, North Forsyth Equity sent $100,000 to Pobish Ashar, who is the Secretary of City Communications, CFO of Tele Circuit, and apparent ex-wife of Ashar Syed.[134]

On the next page is a diagram of the cash flows among the relevant entities that reflects transactions detailed in the entities' financial statements from March 2021 to May 2023:

[132] Information on file in Investigation Number EB-FD-22-00034228.

[133] *Id.*

[134] *Id.* Pobish Ashar was also the notary public on affidavits submitted to the Commission by both Tone Communication and City Communications in response to Commission inquiries. *See* Affidavit (Tone submitted by Ashar Syed, CEO of Tone, on June 1, 2023); Affidavit (City submitted by Emma Wilson, Operational Manager of City, on July 13, 2023).


THE DEPARTMENT OF THE TREASURY
1789
CITY COMMUNICATION
TONE COMMUNICATION
$618,000
$397,450
$1,830,912
$1,832,227
$5,214,176
$125,000
$1,150,000
Cathect COMMUNICATIONS
$10,000
$920,600
TeleCircuit
Your Own Communication Circuit
North Forsyth Equity, LLC
$132,000
$398,000
$859,100
$189,000
$1,203,000
Ashar Syed
$807,900
Ishrat Jahan
$100,000
Pobish Ashar

D. City Communications' Application History to Participate in EBB and ACP

35. Because City Communications is a non-ETC, it had to be approved by WCB to be a provider in EBB.[135] City Communications' EBB approval automatically transitioned to ACP.[136] City Communications submitted applications to WCB seeking to be an EBB provider on May 9, 2021, June 8, 2021, and October 11, 2021, respectively; WCB approved these applications on May 10, 2021, June 8, 2021, and October 12, 2021.[137] In its second and third applications, City added states and territories to the jurisdictions in which the Company sought to be authorized to provide EBB services. In the applications, City listed its address as 300 Village Center Drive, Suite 103, Woodstock, GA 30188 and provided suzane@citycom.co and fmobeen@citycom.co as contact email addresses.[138]

36. Separate from these applications,[139] City submitted three EBB election notices to USAC on May 19, 2021,[140] June 9, 2021,[141] and October 18, 2021,[142] respectively, seeking to provide fixed and mobile broadband service as well as connected devices. In each election notice, City listed its address as "300 Village Center Drive, Suite 103, Woodstock, GA 30188," and the email addresses to contact as "suzane@citycom.co" or "fmobeen@citycom.co".[143] All three election forms were signed by Faraz Mobeen.[144]

37. City participated in both EBB and ACP and has sought monthly reimbursement from EBB and/or ACP since August 2021.[145] For its participation in both programs, City received $3,162,893.23 from August 2021 to October 2023 service months.

III. THE BUREAU'S INVESTIGATION

38. On September 8, 2022, the FCC Office of Inspector General (OIG) issued an advisory warning that participating ACP providers had been enrolling multiple households based on a single BQP even though the Commission's rules prohibit the use of a single BQP to qualify multiple households for ACP support simultaneously.[146] Also on September 8, 2022, in response to concerns that USAC had separately flagged for the Commission, WCB released a public notice detailing immediate action to

[135] 47 CFR § 54.1601(b).

[136] *Affordable Connectivity Program Order*, *supra* note 9, at 492, para. 14.

[137] City Communications Application (filed May 9, 2021) (on file in EB-FD-22-00034222); City Communications Application (filed June 8, 2021) (on file in EB-FD-22-00034222); City Communications Application (filed Oct. 11, 2021) (on file in EB-FD-22-00034222).

[138] City Communications Application (filed May 9, 2021) (on file in EB-FD-22-00034222); City Communications Application (filed June 8, 2021) (on file in EB-FD-22-00034222); City Communications Application (filed Oct. 11, 2021) (on file in EB-FD-22-00034222).

[139] The application was an application for FCC approval to participate in the program. *See* Universal Service Administrative Co., About, Affordable Connectivity Program, Participate in ACP, https://www.usac.org/about/affordable-connectivity-program/participate-in-acp/ (last visited Dec. 1, 2023). Separately, the EBB election form was an election notice submitted to USAC; submitting an election notice to USAC allowed USAC to register the company to participate in the program and to create the necessary system accesses. *Id.*

[140] City Communications EBB Election Form (May 19, 2021) (on file in EB-FD-22-00034222).

[141] City Communications EBB Election Form (June 9, 2021) (on file in EB-FD-22-00034222).

[142] City Communications EBB Election Form (Oct. 18, 2021) (on file in EB-FD-22-00034222).

[143] Information on file in Investigation Number EB-FD-22-00034222.

[144] *Id.*

[145] *Id.*

[146] Advisory, FCC OIG, *Advisory Regarding Provider Enrollments of Multiple ACP Households Based on the Same Child/Dependent* (Sept. 8, 2022), https://www.fcc.gov/document/oig-advisory-regarding-acp-enrollment-fraud.

prevent this type of improper enrollments and reminding providers of their obligation to implement policies and procedures for enrolling ACP households that are eligible to receive the benefit.[147]

39. The Bureau sent an LOI to City Communications on September 16, 2022 in connection with potential violations of EBB and ACP rules.[148] The LOI was sent to 300 Village Center Drive, Suite 103, Woodstock, GA 30188 by both certified and regular mail.[149] The LOI sought information and documents related to the Company's participation in EBB and ACP, with a focus on information related to subscribers who enrolled in ACP based on the eligibility of a non-subscriber BQP. City Communications responded to the LOI on October 18, 2022, April 30, 2023, and May 11, 2023.

40. The Bureau issued a supplemental LOI (SLOI) to City Communications on April 20, 2023.[150] The SLOI was sent via email to fmobeen@citycom.co, suzane@citycom.co, and valery@citycom.co after Bureau staff met with City Communications representatives and confirmed the best way to send the SLOI. The SLOI sought information and documents regarding the relationship between City Communications and Tone Communication and other related entities, and information related to transfers of customers. City Communications responded to the SLOI on June 2, 2023, June 28, 2023, and July 17, 2023.

A. Subscribers Enrolled Using Duplicate Non-Subscriber BQP Information

41. Based on information obtained from the OIG, from December 10, 2021 through July 29, 2022, City Communications enrolled 1,837 subscribers in Oklahoma and Texas using only four non-subscriber BQPs[151]—28 subscribers used BQP A, 778 subscribers used BQP B, 37 subscribers used BQP C, and 994 subscribers used BQP D.[152] In the case of a non-subscriber BQP, that person is someone in the applicant's household other than the applicant—often times a dependent child. Often, City Communications used the same non-subscriber BQP to enroll multiple subscribers on the same day; for example:

- on December 25, 2021, non-subscriber BQP D was used to enroll 30 subscribers,

[147] *Wireline Competition Bureau Announces Additional Program Integrity Measures for Affordable Connectivity Program Enrollments Based on a Benefit Qualifying Person*, WC Docket No. 21-450, Public Notice, 37 FCC Rcd 10211 (2022). The FCC and USAC adopted several safeguards to stop duplicate non-subscriber BQP enrollments: (1) USAC identified and de-enrolled households that enrolled in ACP based on a duplicate BQP and USAC continued to conduct regular program integrity checks to identify enrollments based on a duplicate BQP, (2) USAC modified the National Verifier to prevent multiple households from enrolling in ACP using a duplicate BQP, and (3) USAC instituted a process to hold payments to limit the amount of potentially improper payments disbursed to providers that claim households enrolled with a duplicate BQP. Moreover, USAC reminded service providers participating in ACP to implement policies and procedures that included measures to check for intracompany duplicate subscribers. *See* USAC, *FCC Announces Additional Program Integrity Measures for ACP Enrollments Based on a Benefit Qualifying Person* (Sept. 14, 2022), https://www.usac.org/wp-content/uploads/about/documents/acp/bulletins/FCC-Announces-Additional-Program-Integrity-Measures-for-BQP-Enrollments.pdf; USAC, *ACP October Newsletter* (Oct. 28, 2022), https://www.usac.org/wp-content/uploads/about/documents/acp/bulletins/ACP-October-Newsletter.pdf.

[148] Letter of Inquiry from the Fraud Division to City Communications (Sept. 16, 2022) (on file in EB-FD-22-00034222) (LOI). The LOI also contained questions related to the Lifeline program in which City Communications stated it does not participate.

[149] *Id.*

[150] Supplemental Letter of Inquiry from the Fraud Division to City Communications (Apr. 20, 2023) (on file in EB-FD-22-00034222) (SLOI).

[151] In this NAL, we protect their identities and label the four non-subscriber BQPs as "BQP A," "BQP B," "BQP C," and "BQP D."

[152] Information on file in Investigation Number EB-FD-22-00034222. Only nine of the subscribers enrolled were purported to be in Texas, the remaining 1,828 were purported to be located in Oklahoma. *Id*.

- on January 13, 2022, non-subscriber BQP D was used to enroll 82 subscribers, and
- on May 15, 2022, non-subscriber BQP D was used to enroll 45 subscribers.[153]

42. Of the 1,837 subscribers City Communications enrolled in 2021 and 2022 using only four non-subscriber BQPs, the Bureau's analysis showed there were only 957 unique addresses used for the 1,837 subscribers.[154] Additionally, the Bureau's analysis of a sample of 185 of those subscribers was only able to verify that one of the 185 subscribers had an address that matched the address listed in the enrollment information. Extrapolating this low verification rate to the remaining subscribers, the Bureau estimates that 1,827 of the 1,837 subscribers enrolled using the four non-subscriber BQPs were enrolled using an address that was not associated with the subscribers. In connection with the 1,837 improperly enrolled subscribers, City Communications claimed a total of $677,567.98 in reimbursement from EBB and ACP for both monthly service and connected devices for the December 2021 through August 2022 service months.[155] During the same time period, City Communications received more than $2.5 million total from EBB and ACP for both monthly service and device reimbursement.[156]

43. Furthermore, in response to the Bureau's LOI, City Communications sent a list of ACP subscribers in May 2023, which included approximately 4,000 subscribers enrolled through January 2023.[157] The subscriber list shows that prior to July 2022, 22 subscribers enrolled using non-subscriber BQP A, 457 enrolled using non-subscriber BQP B, 18 subscribers using non-subscriber BQP C, and 498 enrolled using non-subscriber BQP D. All of these subscribers were enrolled by agent Patrick Hardy, who is identified in bank documents as serving as manager for City Communications.[158] City Communications' list of ACP subscribers showed no subscribers enrolled using these four non-subscriber BQPs after July 2022.[159]

44. City Communications electronically submitted reimbursement requests to USAC, typically one each month,[160] from August 2021 through August 2023, and in doing so, the certifying officer, Faraz Mobeen (CEO/Director), certified to the accuracy and truthfulness of certain statements as required by the programs.[161] For the EBB reimbursement requests, City Communications certified to the following relevant statements:

> I certify, under penalty of perjury, that:
>
> - I am an officer authorized to submit the reimbursement request on behalf of the participating provider;
> - I have read the instructions relating to the reimbursements and the funds sought in the reimbursement request are for services and/or devices that were

[153] *Id.*

[154] Information on file in Investigation Number EB-FD-22-00034222. Among other resources, the Bureau used web resources including Google and LexisNexis.

[155] Information on file in Investigation Number EB-FD-22-00034222.

[156] Information on file in Investigation Number EB-FD-22-00034222.

[157] LOI Response at Doc. 8 Inquiry 15 ACP Master File Revised.

[158] *Id.* Patrick Hardy is listed on City Communications' bank signature card as a manager of City Communications. {[ ]} First Subpoena Response at Signature Card 4.

[159] LOI Response at Doc. 8 Inquiry 15 ACP Master File Revised. At this point, the Commission and USAC had introduced safeguards to prevent improper BQP enrollments. *See supra* para. 38.

[160] City Communications submitted reimbursement requests on two different days in each of March 2022, April 2022, and May 2022, and reimbursement requests on one day in each of the other months from August 2021 to August 2023. Information on file in Investigation Number EB-FD-22-00034222.

[161] *Id.*

provided in accordance with the Emergency Broadband Benefit Program rules and requirements;

- The participating provider is in compliance with all of the rules in 47 CFR Part 54, Subpart P;[162]
- The participating provider has obtained valid certification and application forms as required by the rules in 47 CFR Part 54, Subpart P for each of the subscribers for whom it is seeking reimbursement;
- All documentation associated with the reimbursement form, including all records for services and/or connected devices provided, will be retained for a period of at least six years after the last date of delivery of the supported services and/or connected devices provided through the Emergency Broadband Benefit Program, and are subject to audit;
- The information contained in this form is true, complete, and accurate to the best of the officer's knowledge, information, and belief, and is based on information known to the officer or provided to officer by employees responsible for the information being submitted;
- The officer is aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject the officer to criminal, civil, or administrative penalties for fraud, false statements, false claims, or otherwise. (18 U.S.C. §§ 286-287, 1000, 1341, 31 U.S.C. §§ 3729-3720, 3801-3812); and No service costs or devices sought for reimbursement have been waived, paid, or promised to be paid by another entity, including any federal program.[163]

45. For ACP reimbursement requests, City Communications certified to the following relevant statements:

- I am an officer authorized to submit the reimbursement request on behalf of the participating provider;
- I have read the instructions relating to the reimbursements and the funds sought in the reimbursement request are for services and/or devices that were provided in accordance with the purposes and objectives set forth in the statute, rules, requirements, and orders governing the Affordable Connectivity Program;
- The participating provider is in compliance with and satisfied all of the rules set forth in 47 CFR Part 54, Subpart R,[164] the statute, requirements, and orders governing the Affordable Connectivity Program reimbursement, and the provider acknowledges that failure to be in compliance and remain in compliance with Affordable Connectivity Program statutes, rules, and orders may result in the denial of reimbursement, cancellation of funding commitments, and/or recoupment of past disbursements;
- The participating provider has obtained valid certification and application forms as required by the rules in 47 CFR Part 54, Subpart R for each of the subscribers for whom it is seeking reimbursement;
- All documentation associated with the reimbursement form, including all records for services and/or connected devices provided, will be retained for a period of at least six years after the last date of delivery of the supported

[162] The rules in Subpart P relate to EBB, 47 CFR §§ 54.1600-54.1612.

[163] Information on file in Investigation Number EB-FD-22-00034222. The complete list of EBB certifications is attached as Appendix A.

[164] The rules in Subpart R relate to ACP, 47 CFR §§ 54.1800-54.1814.

services and/or connected devices provided through Affordable Connectivity Program, and are subject to audit, inspection, or investigation and will be made available at the request of any representative (including any auditor) appointed by the Commission and its Office of Inspector General, or any local, state, or Federal agency with jurisdiction over the provider;

- The information contained in this form is true, complete, and accurate to the best of the officer's knowledge, information, and belief, and is based on information known to the officer or provided to officer by employees responsible for the information being submitted;
- The officer is aware that any false, fictious, or fraudulent information, or the omission of any material fact on this request for reimbursement or any other document submitted by the provider, may subject the provider and the officer to punishment by fine or forfeiture under the Communications Act (47 U.S.C. §§ 502, 503(b), or 1606), or fine or imprisonment under Title 18 of the United States Code (18 U.S.C. §§ 1001, 286-87, 1343), or can lead to liability under the False Claims Act (31 U.S.C. §§ 3729-3733, 3801-3812); and
- All enrollments and transfers completed by the provider were bona fide, requested and consented by the subscriber household after receiving the disclosures required under § 54.1810(a) and (b), and made pursuant to program rules.[165]

B. Subscribers Enrolled Using Fake or False Addresses

46. The Bureau's investigation identified numerous subscribers apparently enrolled in EBB and ACP by City Communications using fake or false addresses that have no connection to the subscribers to whom they purport to relate. Of the 1,837 subscribers City Communications enrolled using only 4 non-subscriber BQPs, the Bureau's analysis of a sample of 185 of those subscribers was only able to verify that 1 of the 185 subscribers had an address that matched the address listed in the enrollment information.[166] The Bureau was unable to locate 2 of the 185 subscribers in searches (meaning the subscribers could not be found using the name, date of birth, and Social Security number provided in the enrollment data).[167] The remaining 182 subscribers apparently were enrolled with fake or false address information.[168] The Bureau found that 1 of the 185 purported subscribers never lived in the state of Oklahoma while another of the 185 subscribers never lived in Texas even though those were their respective states of residence listed in the enrollment information. Twenty-five of the purported subscribers lived a different state than was listed in the enrollment information. The Bureau was unable to locate recent addresses for two of the purported subscribers – for one person the most recent address the Bureau could find was from 2011, while the most recent address for another was from 2020 in a different state than the enrollment information showed.[169] Additionally, there were only 957 unique addresses associated with the 1,837 subscribers.[170]

[165] Universal Service Administrative Co., Lifeline Claims System Certifications for the Affordable Connectivity Program; Affordable Connectivity Program Claims Process Overview (Apr. 21, 2022). The complete list of ACP certifications is attached as Appendix B.

[166] Information on file in Investigation Number EB-FD-22-00034222.

[167] *Id.*

[168] *Id.*

[169] *Id.*

[170] *Id.*

47. In addition to analyzing subscribers enrolled using 4 non-subscriber BQPs, the Bureau also analyzed other groups of subscribers: 122 subscribers who were associated with duplicate addresses but who were not enrolled using any of the 4 non-subscriber BQPs; 50 subscribers with unique addresses who were not enrolled using any of the 4 non-subscriber BQPs; and 50 subscribers with unique addresses to whom City reported providing a connected device. In an attempt to get information directly from City's subscribers, the Bureau reached out via email and telephone to more than 200 City subscribers. Below is the Bureau's analysis of the three additional groups of subscribers and a summary of the Bureau's attempts to contact subscribers.

48. The Bureau reviewed a sample of 122 subscribers associated with duplicate addresses who were not associated with the above duplicate non-subscriber BQP issue. Specifically, the Bureau reviewed 122 subscribers that were associated with 36 unique addresses; there were 8 subscribers associated with 1 address, 7 subscribers with another address, and the remaining 34 addresses had either 3 or 4 subscribers associated with each of them. Of those 122 subscribers, 31 were not associated currently or previously with the addresses listed.[171] The Bureau could not locate two of the purported subscribers in searches of commonly used investigative databases and was unable to locate a street listed in connection with one of the purported subscribers. The Bureau found that 10 of the purported subscribers lived 10 or more miles from the address listed in the enrollment information, including 3 who lived more than 100 miles from the address listed in the enrollment information.[172]

49. The Bureau reviewed an additional sample of 50 subscribers with unique addresses who were not associated with the duplicate non-subscriber BQPs. Of those 50 subscribers, 44 were associated currently or previously with the addresses listed, but the remaining 6 were not.[173] The Bureau found that 1 of the purported subscribers lives nearly 400 miles away from the address listed in the enrollment information list while another lives nearly 100 miles away.[174]

50. The Bureau further looked at a sample of 50 subscribers with unique addresses who are associated with having received a connected device. Of those 50 subscribers, the Bureau could not locate 1 purported subscriber in searches of commonly used investigative databases; only 38 subscribers matched the addresses listed while the other 11 subscribers appear to have no current or past connection to the address listed in their enrollments.[175] Five of the 11 subscribers live 15 miles or more from the address listed in the enrollment information, including 1 who lives more than 120 miles from their supposed enrollment address.[176]

51. To further confirm subscriber information, the Bureau attempted to contact a sample of 15 City Communications subscribers by phone who had non-duplicate mailing addresses. Out of the 15 subscribers, the Bureau was unable to reach any purported subscribers, and 6 of the cellular phone numbers were no longer in service.[177]

52. The Bureau also attempted to contact more than 200 purported City Communications subscribers via email. Only one subscriber responded, stating that they had begun the application process

[171] *Id.*

[172] *Id.*

[173] *Id.*

[174] *Id.*

[175] *Id.*

[176] *Id.*

[177] *Id.*

with City Communications, but never completed it.[178] City Communications claimed this individual as a subscriber in reimbursement requests and received $159.01 in ACP reimbursement over two months.[179]

C. City's Reimbursement Requests

53. City Communications submitted or caused to be submitted apparently fake or false information to USAC in its reimbursement requests in order to obtain payments from ACP. The Bureau's investigation found that City Communications electronically transmitted certified documents containing fake or false subscriber information by interstate wire to USAC.[180] At least once each month, City Communications certified to the accuracy of the information contained in its reimbursement requests and transmitted them to USAC electronically via this "one portal" system, ACCS.[181]

54. Specifically, from April 2022 to August 2023, City Communications electronically uploaded reimbursement requests to USAC's portal 19 times. With each reimbursement request, City's CEO, Faraz Mobeen, certified to the accuracy and truthfulness of the information contained in the requests.[182] By transmitting these reimbursement requests containing fake or false information electronically via the internet, City Communications used interstate wires.[183]

D. Inaccurate Company Address and Contact Information

55. City Communications repeatedly used 300 Village Center Drive, Suite 103, Woodstock, GA 30188 on all required forms submitted to the FCC.[184] When the Bureau attempted to serve the LOI, it was mailed to the foregoing address via first class and certified mail on September 16, 2022. On October 3, 2022, the first class mail was returned as "return to sender, not deliverable as addressed, unable to forward."[185] The certified mail addressed to City Communications at another one of City's addresses, "P.O Box 2307 225 Parkway 575, Woodstock, GA" was signed for by "Lauren Seyver."[186] Lauren Seyver is not a name that has appeared as an employee of City Communications during the Bureau's investigation.

56. The Bureau also emailed the LOI to email addresses City Communications provided in its EBB applications—"suzane@citycom.co" and "fmobeen@citycom.co"—on October 6, 2022.[187] Because of the lack of response to these emails and the returned mailings, the Bureau sent another copy of the LOI on October 7, 2022 to City Communications' resident agent, Fas Tek Corporate Services at "1725 Windward Concourse Ste 150, Alpharetta, GA 30005-3971" and to the mailing address listed on

[178] *Id.*

[179] Information on file in Investigation Number EB-FD-22-00034222.

[180] Information on file in Investigation Number EB-FD-22-00034222. *See also United States v. Collick*, 611 Fed. Appx. 553, 556 (11th Cir. 2015) ("Given that [defendant] testified that [he and co-defendant] used the internet to perpetrate their scheme, his testimony also established that [co-defendant] committed wire fraud."); *Cleo NAL*, *supra* note 75.

[181] Information on file in Investigation Number EB-FD-22-00034222.

[182] City Communications certified its reimbursement requests on April 7, 2022, April 15, 2022, May 6, 2022, May 11, 2022, June 8, 2022, July 5, 2022, August 3, 2022, September 7, 2022, October 7, 2022, November 3, 2022, December 5, 2022, January 4, 2023, February 3, 2023, March 2, 2023, April 4, 2023, May 3, 2023, June 2, 2023, July 2, 2023, and August 2, 2023. Information on file in Investigation Number EB-FD-22-00034222.

[183] *See, e.g.*, *United States v. Dinh*, No. 8-20-CV-1794 (KKM-AAS), 2021 WL 5867221 (M.D. Fla. Dec. 10, 2021).

[184] Information on file in Investigation Number EB-FD-22-00034222.

[185] Email from FCC Digital Mail to Fraud Division, FCC Enforcement Bureau (Oct. 5, 2022, 11:35 AM EDT).

[186] Email from FCC Digital Mail to Fraud Division, FCC Enforcement Bureau (Oct. 18, 2022, 7:12 AM EDT).

[187] Email from Fraud Division, FCC Enforcement Bureau, to Suzane Anderson and Faraz Mobeen, City Communications (Oct. 6, 2022, 12:23 EDT).

the Company's website, P.O. Box 2307, 225 Parkway 575, Woodstock, GA.[188] While the Bureau received a signed certified green card from Fas Tek Corporate Services on October 17, 2022, the certified mailing to the Company's P.O. Box was returned to sender on November 8, 2022 as "not deliverable as addressed."[189] Beyond the signed green card, the Bureau did not receive any response from Fas Tek Corporate Services or any indication that the Company had received the LOI through its agent.

57. Because of the difficulty in serving the LOI and the lack of communication from City Communications, the Bureau engaged a process server to serve the LOI. On October 14, 2022, an employee of Sparre Process Serving attempted to serve Faraz Mobeen, CEO, City Communications, Inc., at the address listed on all of the Company's EBB and ACP forms, 300 Village Center Drive, Suite 103, Woodstock, GA 30188. The process server was unable to serve the LOI because, according to its report, the location is a "Sidelines Grille. Per manager, they expanded and bought [suite] 103 over 8 months ago, which was a T Mobile store."[190]

58. In City Communications' narrative response to the LOI, the Company continually used 300 Village Center Drive, Suite 103, Woodstock, GA 30188 as its address in its response.[191] Based on internet research, it appears that 300 Village Center Drive, Suite 103, Woodstock, GA 30188 was previously the Company's address but that address has belonged to "Sidelines Grille" since early 2022.[192]

59. Additionally, during the investigation, the Bureau relied upon the mailing address City Communications previously listed on its website and in documents produced by the Company – P.O. Box 2307, 225 Parkway 575, Woodstock, GA.[193] The Bureau's certified mailing to this P.O. Box was returned as "not deliverable as addressed."[194] Therefore, City Communications used a second address in communications with the Bureau that the Bureau was unable to confirm was connected to the Company.

60. In January 2023, emails sent to the email addresses "suzane@citycom.co" and "fmobeen@citycom.co" began bouncing back when the Bureau attempted to email the Company's listed contact persons. The message received when the email bounced back was that the user's email box was full.[195] Despite the email bounce back messages, City Communications personnel sometimes, though inconsistently, continued to answer emails from the Bureau.

E. City Communications' Failure to Send Transfer Notices

61. City Communications transferred subscribers from other providers to its ACP service. The rules require participating providers to "provide written notice to the transferred subscriber" within five days of completing a subscriber transfer in NLAD.[196] The written notice must include the name of

[188] Email from FCC Digital Mail to Fraud Division, FCC Enforcement Bureau (Oct.7, 2022, 13:56 EDT); https://www.citycom.co/about-city-communications (last visited Dec. 1, 2023).

[189] Email from FCC Digital Mail to Fraud Division, FCC Enforcement Bureau (Nov. 23, 2022, 7:13 EDT).

[190] Email from Sparre Process Serving, to Fraud Division, FCC Enforcement Bureau (Oct. 14, 2022, 14:52 EDT).

[191] Information on file in Investigation Number EB-FD-22-00034222.

[192] *See* Riverwood Properties LLC, Weatherstone Promenade, https://riverwoodproperties.com/property/weatherstone-promenade/ (last visited Dec. 1, 2023).

[193] Email from FCC Digital Mail to Fraud Division, FCC Enforcement Bureau (Oct. 7, 2022, 13:56 EDT); City Communication, About US, https://citycom.co/index.php/about-us/ (last visited Dec. 1, 2023); Affidavit (City submitted by Emma Wilson, Operational Manager of City, on July 13, 2023).

[194] Email from FCC Digital Mail to Fraud Division, FCC Enforcement Bureau (Nov. 23, 2022, 7:13 AM).

[195] Information on file in Investigation Number EB-FD-22-00034222.

[196] 47 CFR § 54.1810(b)(2).

the transfer-in provider to which the subscriber's ACP benefit was transferred, the date the transfer was initiated, and an explanation of the dispute process if the subscriber believes the transfer was improper.[197]

62. The Bureau's SLOI requested "all notices to consumers of transfer of benefits issued pursuant to Commission rule 47 CFR § 54.1810(b)(2) and proof of delivery for each such notice."[198] Bureau staff followed up numerous times with City Communications personnel regarding providing the requested transfer notices. The Company failed to provide to the Bureau any written notice it purportedly sent to subscribers after transferring them to its service or any evidence that the Company has a policy or procedure in place to do so.

IV. DISCUSSION

63. We find that City Communications apparently willfully and repeatedly violated numerous Commission rules and the federal wire fraud statute: (i) by repeatedly using the same non-subscriber BQP to enroll multiple subscribers;[199] (ii) by enrolling subscribers using fake or false addresses;[200] (iii) by failing to implement policies and procedures to prevent the improper enrollment of hundreds of subscribers;[201] (iv) when the Company's certifying officer, Faraz Mobeen, falsely certified that the Company was in compliance with EBB and ACP rules when it submitted reimbursement requests to USAC;[202] (v) for transmitting, via interstate wires, certified reimbursement requests containing fake or false information;[203] (vi) by failing to provide written notice to transfer-in subscribers within five business days of the completed transfer in NLAD;[204] (vii) by City Communications' continuous use of false addresses;[205] and (viii) for failing to respond wholly and completely to the Bureau's two LOIs.[206]

A. City Communications Enrolled Ineligible Subscribers Using the Same Non-Subscriber BQPs and Fake or False Addresses

64. A non-subscriber BQP may only be used once to qualify a household to receive EBB or ACP benefits. By repeatedly using the same four non-subscriber BQPs to enroll a total of 1,837 subscribers in 2021-2022 before the Commission and USAC adopted additional safeguards, City Communications apparently violated Commission rules because that non-subscriber BQP member of a household had already been used to authorize a different household to receive EBB or ACP benefits. City Communications' own subscriber spreadsheet that it produced to the Bureau showed the repeated use of these same non-subscriber BQPs to enroll multiple purported customers, indicating that City Communications was well aware of the improper enrollments. City Communications also apparently used fake or false addresses to enroll subscribers in addition to the enrollments that improperly used duplicate non-subscriber BQPs. The Bureau was unable to confirm that any of the purported customers apparently enrolled using fake or false information were actually receiving services from City Communications. The Bureau reached out to purported customers via email and telephone and was unable to reach anyone who reported they received service from City Communication that apparently had

[197] *Id.*

[198] SLOI, *supra* note 150.

[199] 47 CFR §§ 54.1605, 54.1805.

[200] *Id.* §§ 54.1606, 54.1806, 54.1810(i).

[201] *Id.* §§ 54.1606(b), 54.1806(b).

[202] *Id.* §§ 54.1808(e)(3), 54.1810(i).

[203] 18 U.S.C. § 1343.

[204] 47 CFR § 54.1810(b)(2).

[205] *Id.* § 1.17.

[206] 47 U.S.C. § 503(b)(1)(B).

been enrolled using fake or false information. Therefore, City Communications apparently violated sections 54.1605, 54.1606, 54.1805, and 54.1806 of the Commission's rules.[207]

65. City apparently repeatedly and knowingly used the same non-subscriber BQP to enroll multiple subscribers and received funding for these improperly enrolled individuals. For example, City's own records showed the Company enrolled dozens of subscribers on a single day using the same non-subscriber BQP. This enrollment practice was then repeated multiple times. As discussed above, on December 25, 2021, non-subscriber BQP D was used to enroll 30 subscribers, on January 13, 2022, non-subscriber BQP D was used to enroll 82 subscribers, and on May 15, 2022, non-subscriber BQP D was used to enroll 45 subscribers.[208] Furthermore, between December 10, 2021 to July 29, 2022, City Communications enrolled 1,837 subscribers in Oklahoma and Texas using only four non-subscriber BQPs: 28 subscribers used BQP A, 778 subscribers used BQP B, 37 subscribers used BQP C, and 994 subscribers using BQP D.[209]

B. City Communications Committed Wire Fraud

66. The Bureau's investigation found that City Communications electronically submitted reimbursement requests containing fake or false information by interstate wire to USAC. These submissions were in furtherance of a scheme to defraud that resulted in the Commission (the Office of the Managing Director, responsible for EBB and ACP payments) disbursing funds from the U.S. Treasury to which City Communications was not entitled. City submitted 19 such reimbursement requests apparently containing fake or false information for the March 2022 through July 2023 service months.

67. A finding that wire fraud has occurred "requires proof of (1) a scheme to defraud; and (2) the use of an interstate wire communication to further the scheme."[210] In order to be deemed a "scheme to defraud," the misrepresentation or omission must be material to the scheme.[211] In other words, the wrongdoer must have intended the misrepresentation or omission to induce the victim to part with property or influence the victim to undertake an action that he or she would not have otherwise undertaken were it not for the misrepresentation.[212] City Communications developed a scheme in which agents enrolled subscribers into EBB and ACP using fake or false addresses or improper duplicate non-subscriber BQP information. City Communications certified the accuracy of the subscriber information and compliance with program rules in connection with its claims that it provided internet service and/or devices to the subscribers. These actions were apparently taken in furtherance of City's scheme to obtain payments from the Commission for customers improperly enrolled in EBB or ACP.

68. City's own subscriber list largely matched the subscriber list provided by the OIG to the Bureau in connection with the OIG September 8, 2022 advisory, which identified repeated use of only four non-subscriber BQPs to support hundreds of subscriber enrollments.[213] Thus, the Company apparently was aware that multiple enrollments used the same non-subscriber BQPs, which EBB and ACP rules prohibit, but City claimed reimbursement for these subscribers anyway.[214] Between December

[207] 47 CFR §§ 54.1605, 54.1606, 54.1805, and 54.1806.

[208] Information on file in Investigation Number EB-FD-22-00034222.

[209] *Id.* Only nine of the subscribers enrolled were purported to be in Texas, the remaining 1,828 were purported to be located in Oklahoma. *Id*.

[210] *United States v. Maxwell*, 920 F.2d 1028, 1035 (D.C. Cir. 1990); *see also United States v. Pollack*, 534 F.2d 964, 971 (D.C. Cir. 1976).

[211] *See United States v. Daniel*, 329 F.3d 480, 485-89 (6th Cir. 2003).

[212] *See id.*

[213] LOI Response at Doc. 8.

[214] *See United States v. Daniel*, 329 F.3d 480, 487 (6th Cir. 2003) ("To convict a defendant of wire fraud the government must prove specific intent, which means not only that a defendant must knowingly omit a material fact,

(continued…)

10, 2021 and July 29, 2022, City Communications enrolled 1,837 subscribers in Oklahoma and Texas using only 4 non-subscriber BQPs and certified reimbursement requests for these customers using interstate wires.[215] In addition to enrolling persons using the same non-subscriber BQPs, City Communications enrolled persons using fake or false addresses and certified reimbursement requests for these purported customers.[216]

69. To violate the federal wire fraud statute, the wrongdoer must use "wire, radio, or television communication" to further the fraudulent scheme.[217] City Communications used interstate wires when transmitting its false certified reimbursement requests via the ACCS to USAC. The investigation determined that on at least 19 occasions, for the March 2022 through July 2023 service months, City Communications certified reimbursement requests based on false subscriber information and submitted this information to USAC via interstate wires.[218]

70. We find that City Communications apparently knowingly, willfully, and with reckless indifference to the truth violated the wire fraud statute when it falsely certified compliance with program rules in each of its reimbursement requests for service months March 2022 through July 2023, which, as discussed above, included numerous subscribers the Company had improperly enrolled in 2021 and 2022, and in at least some cases as determined by the Bureau, for subscribers who were not receiving any service from the Company.[219] Therefore, pursuant to section 503(b)(1)(D), the Commission finds that City Communications apparently violated the wire fraud statute.

C. City Communications Certified False Reimbursement Requests

71. Sections 54.1808(e)(3) and 54.1608(e)(3) require an officer of the participating provider to certify, under penalty of perjury, as part of each request for reimbursement, that the "participating provider is in compliance with and satisfied all requirements in the statute, rules, and orders governing the Affordable Connectivity Program reimbursement[.]"[220] Section 54.1810(i) prohibits participating providers from engaging in unjust and unreasonable acts or practices that would undermine the purpose, intent, or integrity of ACP; violating any ACP rule is an unjust and unreasonable practice.[221]

72. As discussed above, City apparently violated Commission rules in connection with repeatedly using the same non-subscriber BQPs to enroll subscribers in EBB and ACP and also using fake or false addresses to enroll subscribers in EBB and ACP. This did not prevent the Company, as it should have, from submitting requests for monthly reimbursement from EBB and ACP for a total of more than $3.1 million including more than $675,000 in connection with subscribers enrolled using the same non-subscriber BQPs.

73. Each and every time City Communications submitted an EBB or ACP reimbursement, certifications by the certifying officer, Faraz Mobeen, under penalty of perjury included that Mobeen was unaware of any fake or false information in the reimbursement requests and that the company was in compliance with all program rules. It is apparent from the Bureau's investigation that this was not

---

but also that the misrepresentation or omission must have the purpose of inducing the victim of the fraud to part with property or undertake some action that he would not otherwise do absent the misrepresentation or omission.").

[215] Information on file in Investigation Number EB-FD-22-00034228; USAC Reimbursement Request Data: December 2021-July 2022 service months.

[216] Information on file in Investigation Number EB-FD-22-00034222.

[217] *United States v. Gray*, 96 F.3d 769, 771 n.4 (5th Cir. 1996).

[218] City's place of business (Georgia) would have required it to submit its reimbursement requests to USAC in Washington, D.C./Virginia using interstate wires.

[219] Information on file in Investigation Number EB-FD-22-00034222.

[220] 47 CFR § 54.1808(e)(3); *see also* 47 CFR § 54.1608(e)(3).

[221] *Id.* § 54.1810(i)(1) & (i)(2)(vii).

true. Contrary to its certifications of compliance, City had enrolled purported customers using duplicate non-subscriber BQPs and fake or false addresses and failed to retain required documents such as transfer notices.

74. With each reimbursement request for March 2022 to July 2023 service months submitted by the certifying officer under penalty of perjury but containing duplicate non-subscriber BQP enrollments or fake or false addresses, City Communications apparently violated sections 54.1608(e)(3) and 54.1808(e)(3) of the Commission's rules.[222] By willfully and repeatedly apparently violating the Commission's rules designed to safeguard ACP, City Communications' actions undermined the purpose, intent, and integrity of the program in apparent violation of section 1810(i) of the Commission's rules because the purpose and intent of ACP is to only provide support to persons who are eligible.[223] By receiving money it was not entitled to, City Communications took funds that could have instead been used to make broadband service more affordable for low-income Americans.

D. City Communications' Untruthful, Inaccurate, and Incomplete Statements in Submissions to the Commission

75. Rule 1.17 requires applicants for Commission authorization to provide fully truthful and accurate statements and ensure that any material factual written statements are correct and not misleading. On EBB and ACP forms that City Communications submitted to the Commission to participate in the programs, the Company consistently used the same business address – 300 Village Center Drive, Suite 103, Woodstock, GA 30188.[224] City Communications' March 30, 2023 LOI response to the Bureau was multiple pages. Each and every page of City Communications' March 2023 response to the Bureau's LOI similarly listed the company address as 300 Village Center Drive, Suite 103, Woodstock, GA 30188.[225] In responding to one particular inquiry, City Communications specifically answered that its "location" was 300 Village Center Drive, Suite 103, Woodstock, GA 30188.[226] Based on the Bureau's attempts to contact City Communications and the report received from the process server engaged to serve the Bureau's LOI, City Communications apparently does not do business at this address. Instead, since early 2022, the restaurant "Sidelines Grill" has been in operation at that location; to the Bureau's knowledge, Sidelines Grill is in no way affiliated with City Communications. City Communications certified on its applications to the Commission that all material statements made in the application, attachments, and supporting documents were "true, complete, correct, and made in good faith."[227] They were not. City Communications certified on its election notices that its filings were "true, accurate and complete."[228] They were not.

76. The primary focus of Rule 1.17 in its current form is to "enhance the effectiveness of investigatory and adjudicatory proceedings."[229] City Communications' omissions and misrepresentations have harmed the effectiveness of both the adjudication of its authorization and the Bureau's investigation into its conduct. City Communications' misrepresentations made it more difficult to reach it and to serve the Bureau's LOI. To date, City Communications has not cured its misrepresentations and lack of candor by revising or withdrawing its application or election notice or otherwise correcting its mailing address

[222] *Id.* §§ 54.1608(e)(3), 54.1808(e)(3).

[223] *Id.* § 1810(i).

[224] Information on file in Investigation Number EB-FD-22-00034222.

[225] Information on file in Investigation Number EB-FD-22-00034222.

[226] LOI Response at Doc-1 Inquiry 1.

[227] EBB Provider Approval & Alternative Eligibility Verification Application Filing Instructions, at 19 (Mar. 2021) (on file in EB-FD-00034222).

[228] City Communications EBB Election Form (May 19, 2021) (on file in EB-FD-00034222).

[229] *Amendment of Section 1.17 of the Commission's Rules Concerning Truthful Statements to the Commission*, Report and Order, 18 FCC Rcd 4016, 4022, para. 16 (2003).

with the Commission. All of these submissions appear to be misrepresentations to the Commission in violation of section 1.17 of the Commission's rules.[230]

77. It is long settled that a Commission licensee's failure to respond to an LOI from the Bureau violates a Commission order.[231] Such violations might not always entail a party's total failure to respond; numerous decisions recognize that parties may violate Commission orders by providing, as here, incomplete responses to Bureau inquiries.[232] Here, the Company's LOI and SLOI responses were woefully incomplete because they failed to include, among other things, complete narrative responses to the inquiries, all of the communications requested, all of the complaints received related to the Company's participation in EBB or ACP, the criteria used to verify subscribers' eligibility for EBB and ACP, and written notices provided to subscribers after completion of service transfers.

78. A participating provider must implement "policies and procedures for ensuring that their Affordable Connectivity Program households are eligible to receive the affordable connectivity benefit."[233] Despite multiple requests from the Bureau, the Company produced no relevant policies or procedures that it has in place to ensure it enrolls only eligible households in ACP. Additionally, given the flagrant nature of repeated use of the same non-subscriber BQP and enrollment of subscribers using fake or false addresses, it is apparent that the Company does not have sufficient policies and procedures in place to prevent this type of abuse by employees and agents responsible for enrolling subscribers in the programs.

---

[230] *See, e.g.*, *Purple Communications, Inc.*, Forfeiture Order, 30 FCC Rcd 14892 (2015); *Purple Communications, Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 5491, 5506, n.87 (2014); *VCI Company*, Notice of Apparent Liability for Forfeiture and Order, 22 FCC Rcd 15933, 15933, para. 20 (2007); *see also Truphone, Inc.*, Notice of Apparent Liability for Forfeiture, 37 FCC Rcd 5393, 5402-03, para. 22 (2022); *Cleo NAL*, *supra* note 75.

[231] *See* 47 U.S.C. § 503(b)(l)(B); *see also ABC Fulfillment Services LLC D/B/A HobbyKing USA LLC and Hobbyking,com; and Indubitably, Inc. D/B/A HobbyKing Corp., HobbyKing USA LLC, HobbyKing, and HobbyKing.com*, Notice of Apparent Liability for Forfeiture, 33 FCC Rcd 5530, 5538, para. 16 (2018) ("Companies that receive LOIs must timely file complete and accurate responses to the Bureau's questions. Failure to timely and fully respond to the Bureau's inquiries violates the Act. The Commission has repeatedly taken enforcement action against entities that disregard orders to provide information related to potential violations of the Act or the Commission's rules." (internal cites omitted)), *aff'd*, Forfeiture Order, 35 FCC Rcd 7441 (2020); *Net One Int'l, Net One, LLC, Farrahtel Int'l, LLC*, Forfeiture Order, 29 FCC Rcd 264, 267, para. 9 (EB 2014) (imposing a $25,000 penalty for failure to respond to LOI); *Conexions, LLC d/b/a Conexion Wireless*, Notice of Apparent Liability for Forfeiture and Order, 28 FCC Rcd 15318, 15325, para. 22 (2013) (proposing a $300,000 forfeiture for failure to provide timely and complete responses to an LOI); *Technical Commc 'n Network, LLC*, Notice of Apparent Liability for Forfeiture and Order, 28 FCC Rcd 1018, 1020, para. 8 (EB 2013) (proposing a $25,000 forfeiture for failure to provide a complete response to an LOI); *Google, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 4012 (EB 2012) (proposing $25,000 penalty for failure to respond fully to LOI) (forfeiture paid); *SBC Commc'ns, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7600, para. 28 (2002) (imposing a $100,000 penalty for failing to submit a sworn written response).

[232] *See, e.g.*, *Communications Options, Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 13680, 13686, paras. 16, 17 (EB 2007) (forfeiture proposed for, inter alia, failure to submit an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer with personal knowledge of the representation provided in the LOI response, verifying the truth and accuracy of the information submitted), *aff'd*, Forfeiture Order, 23 FCC Rcd 3969, 3972-73, paras. 8, 9 (EB 2008) (failure to file prompt sworn responses represents misconduct that "inhibits [the Commission's] ability to adequately detect and deter potential rule violations in areas of critical importance to the Commission"); *Digital Antenna, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 23 FCC Rcd 7600, 7600-02, paras. 3, 5, 7 (EB 2008) (holding that a manufacturer of cellular and PCS boosters was apparently liable for violation of a Commission order when it failed to provide complete responses to Bureau LOIs, including by failing to submit the required sworn statements).

[233] 47 CFR § 54.1806(b). Section 54.1606(b) contains similar language for EBB.

79. Participating providers must "provide written notice to the transferred subscriber" within five days of completing a subscriber transfer in NLAD.[234] Despite numerous emails and phone calls with City Communications staff to follow up on the SLOI requests for information and documents regarding subscriber transfers and required notices, City Communications produced no evidence showing the Company had a policy or procedure in place to send written notices to transfer-in subscribers and no evidence showing any such written notices ever were sent to transfer-in subscribers. Thus, City Communications failed to provide the written notices to subscribers after transferring them to its service for ACP.

80. The Bureau attempted to contact City Communications by email numerous times to discuss these and other documents requested by the LOIs; often, the Bureau's emails would receive a bounce back that the email was undeliverable. The Bureau also held several conference calls with City Communications personnel and explained, in detail, what was missing from their LOI responses. City Communications was given more time to supplement the document productions but additional responses and documents productions were still incomplete, and sometimes incomprehensible. Other times documents could not be read due to formatting issues, and were not corrected even after conversations with City Communications.

81. Throughout the duration of this investigation, the Bureau has yet to receive all the information that it requested through its LOIs and City has yet to correct its inaccurate business addresses. We therefore find that City Communications has failed to respond to two Commission orders in violation of section 503(b)(1)(B) of the Act[235] and made misrepresentations in violation of section 1.17 of the Commission's rules.[236]

V. PROPOSED FORFEITURE[237]

82. The "Commission is permitted to impose forfeiture penalties to enforce compliance" with program rules.[238] 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[.]"[239] Here, section 503(b)(2)(B) of the Act authorizes us to assess a forfeiture against City Communications 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.[240] 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."[241] In addition, the Commission has established forfeiture guidelines that establish base forfeiture amounts for certain violations and identify criteria that

[234] *Id.* § 54.1810(b)(2).

[235] 47 U.S.C. § 503(b)(1)(B).

[236] 47 CFR § 1.17.

[237] The statute of limitations period for the Commission to impose a forfeiture penalty for violations of the Act and the Commission rules discussed herein is one year from the date of the violation. *Id.* In this case, City Communications agreed to toll the statute of limitations period such that violations remain viable if they occurred on or after March 16, 2022.

[238] *Affordable Connectivity Program Order*, *supra* note 9, at 558, para. 154.

[239] 47 U.S.C. § 503(b).

[240] *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 (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). City is a toll reseller, see *supra* para. 23.

[241] 47 U.S.C. § 503(b)(2)(E).

we consider when determining the appropriate penalty in any given case.[242] 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.[243]

83. The Commission's forfeiture guidelines do not establish a base forfeiture for violations of EBB and ACP rules. We have therefore looked to the base forfeitures proposed in analogous cases for guidance. For example, in both the American Broadband NAL[244] and Total Call Mobile NAL,[245] the Commission proposed a per subscriber penalty, which is relevant here because although both cases involve the Commission's Lifeline program, each matter also involved enrolling apparently ineligible subscribers. In addition, we have looked to the Commission's recent Q Link Wireless LLC NAL,[246] which involved apparent violations of EBB rules and included a proposed forfeiture amount of treble the loss to the program.

84. We find that City Communications apparently willfully and repeatedly violated multiple Commission rules and the federal wire fraud statute: (i) by repeatedly using the same non-subscriber BQP to enroll multiple subscribers;[247] (ii) by enrolling subscribers using fake or false addresses;[248] (iii) by falsely certifying that the Company was in compliance with ACP rules when it submitted reimbursement requests to USAC;[249] (iv) by transmitting via interstate wires, certified reimbursement requests containing fraudulent information;[250] (v) by its continuous use of false business addresses;[251] and (vi) by failing to respond fully to the Bureau's two LOIs.[252] As further described below, we propose a total forfeiture penalty of $16,971,253 for these apparent violations.

A. Proposed Forfeiture Amount for City Communications' Apparent Violations of Commission Rules by Improperly Enrolling Subscribers in ACP

85. City Communications repeatedly used the same non-subscriber BQP to enroll multiple households in 2021 and 2022 and received payment from the program for these apparently improper enrollments. EBB and ACP rules allow a household to receive only one monthly service benefit.[253] A non-subscriber BQP may only be used to qualify one household. City received funds to which it was not entitled and prevented those funds from benefitting qualified ACP subscribers.

86. City Communications received payments from ACP in connection with at least 1,875 improper enrollments that involved duplicate non-subscriber BQPs and/or fake or false addresses. The Commission proposes a base forfeiture of $5,000 for each of the 1,875 apparently improper enrollments[254]

[242] 47 CFR § 1.80(b)(11), Note 2 to paragraph (b)(11).

[243] *Id.*

[244] *Am. Broadband & Telecomms. Co.; Jeffrey S. Ansted*, Notice of Apparent Liability for Forfeiture and Order, 33 FCC Rcd 10308 (2018) (*Am. Broadband NAL*).

[245] *Total Call Mobile, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 31 FCC Rcd 4191 (2016) (*Total Call Mobile NAL*).

[246] *Q Link Wireless LLC*, Notice of Apparent Liability for Forfeiture and Order, 2023 WL 345342 (Jan. 17, 2023).

[247] 47 CFR § 54.1805.

[248] *Id.* §§ 54.1806, 54.1810(i).

[249] *Id.* §§ 54.1808(e)(3), 54.1810(i).

[250] 18 U.S.C. § 1343.

[251] 47 CFR § 1.17.

[252] 18 U.S.C. § 503(b)(l)(B).

[253] 47 CFR §§ 54.1605, 54.1805.

[254] *See, e.g.*, *Am. Broadband NAL*, *supra* note 244; *Total Call Mobile NAL*, *supra* note 245.

in violation of sections 54.1805 and 54.1806 of the Commission's rules for a total base forfeiture amount of $9,375,000.[255]

87. Through 19 reimbursement requests, submitted from March 2022 through July 2023, City Communications requested and received $2,069,298 from ACP in connection with improperly enrolled subscribers. Each of these 19 reimbursement requests certified that City was in compliance with the Commission's ACP rules. It was not. Each of these reimbursement requests made false representations and included false certifications to USAC, and on the basis of these apparently false representations and false certifications the U.S. Treasury paid City millions of dollars in connection with its ACP participation. That funding represents a substantial loss to ACP. In light of the egregiousness of City's conduct, we propose an upward adjustment of $2,542,051 to the base forfeiture. This is calculated as treble the loss to the Treasury for City's three highest payment months in the programs, which totaled $847,350.[256] We therefore propose a total forfeiture of $11,917,051 for City's apparent violation of the Commission's ACP rules in connection with its enrollment of customers.

B. Proposed Forfeiture Amount for City Communications' Apparent Violations of the Federal Wire Fraud Statute

88. In accordance with section 503(b)(1)(D) of the Act, the Commission may assess a base forfeiture of $5,000 for each wire fraud violation. In light of the egregiousness of City's conduct in using duplicate non-subscriber BQPs and fake or false address information in furtherance of its scheme to defraud via City's reimbursement requests that contained apparent false representations and false certifications, a substantial upward adjustment to the wire fraud base forfeiture is warranted. Therefore, we propose an upward adjustment to the statutory maximum of $244,958 [257] for each of City's 19 apparent wire fraud violations, for a forfeiture amount of $4,654,202.

C. Proposed Forfeiture Amount for City Communications' Apparent Violations of Commission Rules through Repeated Inaccurate and Untruthful Statements

89. The Company made false statements to the Bureau during this investigation. Specifically, City Communications repeatedly falsely reported its business addresses. The Bureau's investigation found no evidence to support the Company's claim that either address was accurate. We propose a forfeiture of $100,000 for each of the two false addresses City Communications used.[258] Accordingly, the total proposed forfeiture amount for the Company's apparent violation of section 1.17 of the Commission's rules is $200,000.

[255] 47 CFR §§ 54.1805, 54.1806.

[256] Within the statute of limitations, service months April 2022, May 2022, and June 2022 were City's highest payment months.

[257] *See* 47 U.S.C. § 503(b)(2)(B); 47 CFR § 1.80(b)(2).

[258] *See, e.g.*, *Cleo NAL*, *supra* note 75.

D. Proposed Forfeiture Amount for City Communications' Apparent Violations of Commission Orders

90. City failed to respond fully to two LOIs, which are Commission orders.[259] We propose a forfeiture of $100,000 for each of the two LOIs to which City did not fully respond and apparently violated Commission orders, for a forfeiture amount of $200,000.[260]

E. Total Proposed Forfeiture

91. Therefore, we propose a total forfeiture penalty of $16,971,253 related to these apparent violations: $11,917,051 for City's apparent violations related to improper enrollments of ACP subscribers ($9,375,000 base forfeiture plus a $2,542,051 upward adjustment), $4,654,202 for City's 19 apparent wire fraud violations, $200,000 for repeated use of false business addresses, and $200,000 for apparent violations of two Commission orders related to City's failure to respond fully to the Bureau's LOIs.[261]

VI. CONCLUSION

92. We have determined that City Communications apparently willfully and repeatedly violated several of the Commission's ACP rules, section 1.17 of the Commission' rules, two Commission orders, and the wire fraud statute. As such, City Communications is apparently liable for a forfeiture of $16,971,253.

VII. ORDER INITIATING REMOVAL PROCEEDING

93. This NAL finds City Communications apparently liable for significant and egregious misconduct in the ACP. City's apparently improper enrollments of subscribers and claims for reimbursement for those subscribers resulted in serious harm to the program and undermined the intent of the ACP to provide critical broadband service to eligible consumers.

94. Section 54.1801(e)(2)(ii) of the Commission's ACP rules permits removal of a participating provider from the ACP for, among other reasons, based on "[v]iolations of program rules of the Affordable Connectivity Program [or] the EBB Program . . . [or] for committing any action that indicates a lack of business integrity or business honesty that seriously and directly affects the provider's responsibilities under the Affordable Connectivity Program, that undermines the integrity of the Affordable Connectivity Program, or that harms or threatens to harm prospective or existing program

---

[259] *See* 47 U.S.C. § 503(b)(l)(B); *see also*, *e.g.*, *ABC Fulfillment Services LLC D/B/A HobbyKing USA LLC and Hobbyking,com; and Indubitably, Inc. D/B/A HobbyKing Corp., HobbyKing USA LLC, HobbyKing, and HobbyKing.com*, Notice of Apparent Liability for Forfeiture, 33 FCC Rcd 5530, 5538, para. 16 (2018) ("Companies that receive LOIs must timely file complete and accurate responses to the Bureau's questions. Failure to timely and fully respond to the Bureau's inquiries violates the Act. The Commission has repeatedly taken enforcement action against entities that disregard orders to provide information related to potential violations of the Act or the Commission's rules." (internal cites omitted)), *aff'd*, Forfeiture Order, 35 FCC 7441 (2020); *Net One Int'l, Net One, LLC, Farrahtel Int'l, LLC*, Forfeiture Order, 29 FCC Rcd 264, 267, para. 9 (EB 2014) (imposing a $25,000 penalty for failure to respond to LOI); *Conexions, LLC d/b/a Conexion Wireless*, Notice of Apparent Liability for Forfeiture and Order, 28 FCC Rcd 15318, 15325, para. 22 (2013) (proposing a $300,000 forfeiture for failure to provide timely and complete responses to an LOI); *Technical Commc'n Network, LLC*, Notice of Apparent Liability for Forfeiture and Order, 28 FCC Rcd 1018, 1020, para. 8 (EB 2013) (proposing a $25,000 forfeiture for failure to provide a complete response to an LOI); *Google, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 4012 (EB 2012) (proposing $25,000 penalty for failure to respond fully to LOI) (forfeiture paid); *SBC Commc'ns, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7600, para. 28 (2002) (imposing a $100,000 penalty for failing to submit a sworn written response).

[260] 47 U.S.C. § 503(b)(l)(B).

[261] 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.

participants, including without limitation fraudulent enrollments."[262] The Enforcement Bureau and/or the Wireline Competition Bureau may initiate a removal proceeding "[i]f the Commissions develops information from Commission-led or sponsored investigations . . . or from other credible sources that yields credible allegations of misconduct."[263] Based on the findings in the Bureau's investigation, as described in this NAL, the Commission finds that it has substantial evidence showing City violated ACP rules and took actions indicating a lack of business integrity and business honesty that seriously and directly affects the company's responsibilities under the ACP and that harms prospective and existing program participants.

95. Specifically, as described in this NAL, the Bureau's investigation has developed evidence that City enrolled subscribers with fake or false identifying information, conduct that apparently violated EBB and ACP rules (including but not limited to 47 CFR §§ 54.1605, 54.1606(b), 54.1608(e)(3), 54.1805, 54.1806(b), 54.1808(e)(3), and 54.1810(i)). As also described in this NAL, the Bureau's investigation has developed evidence that City misrepresented that it was in compliance with the Commission's rules. As a result, City improperly received more than $3.1 million from the EBB and ACP, as described in the NAL. Fraudulent enrollments and misrepresentations, and resulting improper reimbursement, seriously and directly affect City's responsibilities under the ACP and undermine the ACP's integrity, and harm or threaten to harm program participants. Accordingly, the evidence warrants removal for violation of ACP rules, and for lack of business integrity and honesty. The Commission is therefore **ORDERING** the initiation of a proceeding to remove City Communications from the ACP.

96. This NAL and Order, a copy of which is being sent to City Communications by email, serves as immediate notice that the Commission is commencing removal proceedings against City Communications under section 54.1801(e)(2)(iii) of the Commission's rules. As provided in section 54.1801(e)(2)(iii), the Commission has delegated to the Chief of the Wireline Competition Bureau and/or the Chief of the Enforcement Bureau authority to complete removal proceedings in accordance with that section. This Order shall serve as notice to City that, as a result of the findings in the Bureau's investigation as described in this NAL and summarized in the paragraph above, the Wireline Competition Bureau and/or the Enforcement Bureau will take interim measures as provided in section 54.1801(e)(2)(iii)(B), including removal of City from the Commission's list of providers and from the Administrator's Companies Near Me tool; suspension of City's ability to enroll or transfer in new subscribers; and an interim funding hold during the pendency of the removal proceeding. Such actions may be taken under section 54.1801(e)(2)(iii)(B) where "based upon adequate evidence of willful misconduct that would warrant removal under paragraph (e)(2)(ii)" and where "necessary to protect the public interest."

97. City Communications **SHALL RESPOND** in writing to this **ORDER INITIATING REMOVAL PROCEEDING** within thirty (30) calendar days with any relevant evidence demonstrating that a rule violation or other conduct warranting removal has not in fact occurred and that City should not be removed from the ACP.[264] Within thirty (30) calendar days of receiving City's response, the Wireline Competition Bureau and/or the Enforcement Bureau will make a determination and issue an order providing detailed explanation for the determination.[265] If the Wireline Competition Bureau and/or Enforcement Bureau determines that a preponderance of the evidence fails to demonstrate that there has been conduct warranting removal, then any interim measures taken under section 54.1801(e)(2)(iii)(B) will be discontinued immediately.[266] If the Wireline Competition Bureau and/or Enforcement Bureau determines by a preponderance of the evidence that there has been

[262] 47 CFR § 54.1801(e)(2)(ii)(A)-(B).

[263] *Id.* § 54.1801(e)(2); *Affordable Connectivity Program Order*, *supra* note 9, at 113, para. 242.

[264] 47 CFR § 54.1801(e)(2)(iii)(C).

[265] *Id.* § 54.1801(e)(2)(iii)(D).

[266] *Id*.

conduct warranting removal, City's authorization to participate in the ACP will be revoked, and City shall be immediately removed from the program.[267] Failure to respond to this Order or to provide evidence in a timely manner will result in a finding against City, removal from the program, and revocation of City's authorization to participate in the ACP.[268] Responses to this Order shall be sent by email to Meghan Ingrisano at Meghan.Ingrisano@fcc.gov, Jodi Schulz at Jodi.Schulz@fcc.gov, and Sarah McNally at Sarah.McNally@fcc.gov of the Enforcement Bureau and Jessica.Campbell@fcc.gov of the Wireline Competition Bureau and filed in WC Docket No. 21-450.

VIII. ORDERING CLAUSES

98. 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, City Communications, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of Sixteen Million Nine Hundred Seventy One Thousand Two Hundred Fifty Three dollars ($16,971,253) for willful and repeated violations of section 904 of the Consolidated Appropriations Act, 47 U.S.C. § 1752; sections 1.17, 54.1605, 54.1606(b), 54.1608(e)(3), 54.1805, 54.1806(b), 54.1808(e)(3), and 54.1810(i) of the Commission's rules; Title 18, United States Code, section 1343; and the Emergency Broadband Benefit Program Report and Order and Affordable Connectivity Program Report and Order and associated rules.[269]

99. **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, City 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 102 below.

100. In order for City Communications, Inc. to pay the proposed forfeiture, City Communications, Inc. shall notify Meghan Ingrisano at Meghan.Ingrisano@fcc.gov, Jodi Schulz at Jodi.Schulz@fcc.gov, and Sarah McNally at Sarah.McNally@fcc.gov, Enforcement Bureau, Federal Communications Commission, 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, City Communications, Inc. shall send electronic notification of payment to Meghan Ingrisano at Meghan.Ingrisano@fcc.gov, Jodi Schulz at Jodi.Schulz@fcc.gov, and Sarah McNally at Sarah.McNally@fcc.gov, Enforcement Bureau, Federal Communications Commission, 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:[270]

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned above and the letters "FORF". In addition, a completed Form 159[271] or printed CORES form[272]

[267] *Id*.

[268] *Id.* § 54.1801(e)(2)(iii)(C).

[269] *Emergency Broadband Benefit Program Order*, *supra* note 3; *Affordable Connectivity Program Order*, *supra* note 9.

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

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

[272] 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.

must be faxed to the Federal Communications Commission at 202-418-2843 or emailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 or CORES may result in payment not being recognized as having been received. When completing FCC Form 159 or CORES, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).[273] 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.

101. 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.[274] Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by email, ARINQUIRIES@fcc.gov.

102. 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.[275] 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 – Fraud Division, and must include the NAL/Account Number referenced in the caption. The statement must also be emailed to Meghan Ingrisano at Meghan.Ingrisano@fcc.gov, Jodi Schulz at Jodi.Schulz@fcc.gov, and Sarah McNally at Sarah.McNally@fcc.gov, Enforcement Bureau, Federal Communications Commission.

103. 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

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

[274] *See* 47 CFR § 1.1914.

[275] *Id.* §§ 1.16, 1.80(g)(3).

accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status.[276] 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.[277]

104. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order Initiating Removal Proceeding shall be sent by first class mail and certified mail, return receipt requested, to Faraz Mobeen, City Communications, Inc., 300 Village Center Drive, Suite 103, Woodstock, GA 30188, 225 Parkway 575, Woodstock, GA 30188, and c/o Fas Tek Corporate Services at 1725 Windward Concourse Ste 150, Alpharetta, GA 30005-3971, and by email to fmobeen@citycom.co, suzane@citycom.co, and valery@citycom.co.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[276] 47 U.S.C. § 503(b)(2)(E).

[277] *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, 14903-904, paras. 32-33 (2015); *TV Max, Inc., et al*., Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014).

APPENDIX A

Service Provider Reimbursement Request EBB Certifications

1) I am an officer authorized to submit the reimbursement request on behalf of the participating provider;
2) I have read the instructions relating to the reimbursements and the funds sought in the reimbursement request are for services and/or devices that were provided in accordance with the Emergency Broadband Benefit Program rules and requirements;
3) The participating provider is in compliance with all of the rules in 47 CFR Part 54, Subpart P;
4) The participating provider has obtained valid certification and application forms as required by the rules in 47 CFR Part 54, Subpart P for each of the subscribers for whom it is seeking reimbursement;
5) The amount for which the participating provider is seeking reimbursement from the Emergency Broadband Connectivity Fund is not more than the standard rate;
6) Each eligible household for which the participating provider is seeking reimbursement for providing an Internet service offering has not been or will not be charged for 1) such offering, if the standard rate for such offering is less than or equal to the amount of the emergency broadband benefit for such household; or 2) more for such offering than the difference between the standard rate for such offering and the amount of the emergency broadband benefit for such household;
7) Each eligible household for which the participating provider is seeking reimbursement for providing an Internet service offering 1) will not be required to pay an early termination fee if such eligible household elects to enter into a contract to receive such Internet service offering if such household later terminates such contract; 2) was not, after December 27, 2020, subject to a mandatory waiting period for such Internet service offering based on having previously received broadband Internet access service from such participating provider; and 3) will otherwise be subject to the participating provider's generally applicable terms and conditions as applied to other customers;
8) Each eligible household that is receiving a supported service offering at a standard rate that does not require the participating provider to assess and collect a monthly fee from the household has used the supporting service, as usage is defined by 47 CFR § 54.407(c)(2), [at] least once during the service month being claimed;
9) Each eligible household for which the participating provider is seeking reimbursement for supplying such household with a connected device was charged by the provider more than $10.00 but less than $50.00 for such connected device, and that no such household had already received a reimbursable connected device from the participating provider or any other participating provider when the connected device was distributed to the household;
10) The connected device meets the Commission's requirements, that the reimbursement claim amount reflects the market value of the device, and the connected device has been delivered to the household;
11) For each household whose eligibility was verified using an alternative verification process, such verification process was designed to avoid waste, fraud, and abuse;
12) The provider has retained the relevant supporting documents that demonstrate the connected devices requested are eligible for reimbursement;
13) All documentation associated with the reimbursement form, including all records for services and/or connected devices provided, will be retained for a period of at least six years after the last date of delivery of the supported services and/or connected devices provided through the Emergency Broadband Benefit Program, and are subject to audit;
14) The provider neither received nor paid kickbacks, as defined by 41 U.S.C. § 8701,

in connection with the Emergency Broadband Benefit Program;

15) The information contained in this form is true, complete, and accurate to the best of the officer's knowledge, information, and belief, and is based on information known to the officer or provided to officer by employees responsible for the information being submitted;

16) The officer is aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject the officer to criminal, civil, or administrative penalties for fraud, false statements, false claims, or otherwise. (18 U.S.C. §§ 286-287, 1000, 1341, 31 U.S.C. §§ 3729-3720, 3801-3812); and No service costs or devices sought for reimbursement have been waived, paid, or promised to be paid by another entity, including any federal program;

17) No service costs or devices sought for reimbursement have been waived, paid, or promised to be paid by another entity, including any federal program; and

18) 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 previously purchased, rented, leased, or otherwise obtained, as required by 47 CFR § 54.10.

Appendix B

Service Provider Reimbursement Request ACP Certifications

1) I am an officer authorized to submit the reimbursement request on behalf of the participating provider;
2) I have read the instructions relating to the reimbursements and the funds sought in the reimbursement request are for services and/or devices that were provided in accordance with the purposes and objectives set forth in the statute, rules, requirements, and orders governing the Affordable Connectivity Program;
3) The participating provider is in compliance with and satisfied all of the rules set forth in 47 CFR Part 54, Subpart R, the statute, requirements, and orders governing the Affordable Connectivity Program reimbursement, and the provider acknowledges that failure to be in compliance and remain in compliance with Affordable Connectivity Program statutes, rules, and orders may result in the denial of reimbursement, cancellation of funding commitments, and/or recoupment of past disbursements;
4) The participating provider has obtained valid certification and application forms as required by the rules in 47 CFR Part 54, Subpart R for each of the subscribers for whom it is seeking reimbursement;
5) The amount for which the participating provider is seeking reimbursement from the Affordable Connectivity Fund is not more than the amount charged to the eligible household and the discount has already been passed through to the household;
6) Each eligible household for which the participating provider is seeking reimbursement for providing an Internet service offering discounted by the affordable connectivity benefit has not been and will not be charged for the amount the provider is seeking for reimbursement;
7) Each eligible household for which the participating provider is seeking reimbursement for providing an Internet service offering discounted by the affordable connectivity benefit 1) will not be required to pay an early termination fee if such eligible household elects to enter into a contract to receive such Internet service offering if such household later terminates such contract; 2) was not, after the date of the enactment of the Consolidated Appropriations Act, 2021, as amended by the Infrastructure Investment and Jobs Act, subject to a mandatory waiting period for such Internet service offering based on having previously received broadband Internet access service from such participating provider; and 3) will otherwise be subject to the participating provider's generally applicable terms and conditions as applied to other customers;
8) Each eligible household that is receiving a supported service offering that does not require the participating provider to assess and collect a monthly fee from the household has used the supported service, as usage is defined by 47 CFR § 54.407(c)(2), at least once during the service month being claimed;
9) Each eligible household for which the participating provider is seeking reimbursement for supplying such household with a connected device was charged by the provider and paid more than $10.00 but less than $50.00 for such connected device, and that no such household had already received a reimbursable connected device from the participating provider or any other participating provider when the connected device was distributed to the household;
10) If seeking reimbursement for a connected device, the connected device meets the Commission's requirements, the representations regarding the devices made on the provider's website and promotional materials are true and accurate, that the reimbursement claim amount reflects the market value of the connected device less the amount charged to and paid by the eligible household, and the connected device has been delivered to the household;
11) If seeking reimbursement for a connected device, the provider has retained the relevant supporting documents that demonstrate the connected devices requested are eligible

for reimbursement and submitted the required information;

12) For each household whose eligibility was verified using an alternative verification process, such verification process was designed to avoid waste, fraud, and abuse;

13) All documentation associated with the reimbursement form, including all records for services and/or connected devices provided, will be retained for a period of at least six years after the last date of delivery of the supported services and/or connected devices provided through Affordable Connectivity Program, and are subject to audit, inspection, or investigation and will be made available at the request of any representative (including any auditor) appointed by the Commission and its Office of Inspector General, or any local, state, or Federal agency with jurisdiction over the provider;

14) The provider has not offered, promised, received, or paid kickbacks, as defined by 41 U.S.C. § 8701, in connection with the Affordable Connectivity Program;

15) The information contained in this form is true, complete, and accurate to the best of the officer's knowledge, information, and belief, and is based on information known to the officer or provided to officer by employees responsible for the information being submitted;

16) The officer is aware that any false, fictious, or fraudulent information, or the omission of any material fact on this request for reimbursement or any other document submitted by the provider, may subject the provider and the officer to punishment by fine or forfeiture under the Communications Act (47 U.S.C. §§ 502, 503(b), or 1606), or fine or imprisonment under Title 18 of the United States Code (18 U.S.C. §§ 1001, 286-87, 1343), or can lead to liability under the False Claims Act (31 U.S.C. §§ 3729-3733, 3801-3812);

17) No service costs or devices sought for reimbursement have been waived, paid, or promised to be paid by another entity, including any federal or state program;

18) 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 previously purchased, rented, leased, or otherwise obtained, as required by 47 CFR § 54.10;

19) For each ACP claim, the provider certifies it did not require enrollment in the ACP as a condition for enrolling in Lifeline or some other purpose, or imply such a condition existed. Evidence that a household claimed for ACP reimbursement was enrolled without the household's consent or as a requirement of receiving Lifeline service may lead to denial of support claims, as well as other penalties and referral to law enforcement;

20) All enrollments and transfers completed by the provider were bona fide, requested and consented by the subscriber household after receiving the disclosures required under § 54.1810(a) and (b), and made pursuant to program rules; and

21) The provider used the National Lifeline Accountability Database as a tool for enrollment, reimbursement calculations, and duplicate checks in all states, territories, and the District of Columbia, and checked their records in accordance with § 54.1806(a)(4).

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

In the Matter of	)	
	)	
Tone Communication Services LLC	)	File No.: EB-FD-22-00034228
	)	NAL/Acct. No.: 202432200002
	)	FRN: 0028948834

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER INITIATING REMOVAL PROCEEDING

Adopted: January 23, 2024 **Released: January 26, 2024**

By the Commission:

TABLE OF CONTENTS

Heading Paragraph #

I. INTRODUCTION 1
II. BACKGROUND 6
A. Legal Framework 6
B. Relevant Entities 23
C. Relationships Among the Relevant Entities 32
D. Tone Communication's Application History to Participate in EBB and ACP 35
III. THE BUREAU'S INVESTIGATION 38
A. Subscribers Enrolled Using Duplicate Non-Subscriber BQP Information 42
B. Subscribers Enrolled Using Fake or False Addresses 46
C. Tone Communication's Reimbursement Requests 51
D. Inaccurate Company Address and Contact Information 53
E. Tone Communication's Failure to Send Transfer Notices 58
IV. DISCUSSION 60
A. Tone Communication Enrolled Ineligible Subscribers Using the Same Non-Subscriber BQPs and Fake or False Addresses 61
B. Tone Communication Committed Wire Fraud 64
C. Tone Communication Certified False Reimbursement Requests 69
D. Tone Communication's Untruthful, Inaccurate, and Incomplete Statements in Submissions to the Commission 73
V. PROPOSED FORFEITURE 80
A. Proposed Forfeiture Amount for Tone Communication's Apparent Violations of Commission Rules by Improperly Enrolling Subscribers in ACP 83
B. Proposed Forfeiture Amount for Tone Communication's Apparent Violations of the Federal Wire Fraud Statute 86
C. Proposed Forfeiture Amount for Tone Communication's Apparent Violations of Commission Rules through Repeated Inaccurate and Untruthful Statements 87
D. Proposed Forfeiture Amount for Tone Communication's Apparent Violations of Commission Orders 88
E. Total Proposed Forfeiture 89

VI. CONCLUSION 90
VII. ORDER INITIATING REMOVAL PROCEEDING 91
VIII. ORDERING CLAUSES 96
APPENDIX - Service Provider Reimbursement Request ACP Certifications

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture and Order Initiating Removal Proceeding (NAL), we propose a penalty of $14,021,293 against Tone Communication Services LLC (Tone Communication, Tone, or the Company) for apparently willfully and repeatedly violating Federal Communication Commission (FCC or Commission) rules relating to the Affordable Connectivity Program (ACP) and the federal wire fraud statute.[1] The apparent violations for which the Commission proposes forfeiture amounts occurred from March 7, 2022 to the present.[2]

2. The Emergency Broadband Benefit Program (EBB) was established by the Commission on February 25, 2021[3] at the direction of Congress through the Consolidated Appropriations Act of 2021.[4] The purpose of the program was to facilitate the provision of broadband services and devices to eligible households[5] so that they could stay connected during the COVID-19 pandemic. Efforts to slow the spread of COVID-19 resulted in the closure of businesses and schools across the country for extended periods, which in turn caused millions of Americans to become newly unemployed or unable to find work. In addition, these closures caused Americans to turn to virtual learning, telemedicine, and telework, which increased every household's need for access to broadband services. The cost of broadband services, however, is a barrier to access for many families, and the support provided by EBB was designed to alleviate some of that burden.[6] By the end of 2021, more than nine million American households had benefited from EBB subsidies for broadband services and connected devices,[7] including students accessing virtual classrooms, adults working remotely, and people providing and receiving critical healthcare services.[8]

3. Although EBB ended on December 31, 2021, Congress, pursuant to the Infrastructure Investment and Jobs Act (Infrastructure Act),[9] built upon EBB by appropriating new funding for ACP to

[1] 47 CFR §§ 54.1800-54.1814; 18 U.S.C. § 1343.

[2] *See* Tolling Agreements executed by Fraud Division, FCC Enforcement Bureau, and Ephraat Michael, Tone Communication (Mar. 6, 2023 and Apr. 20, 2023) (Tolling Agreements) (on file in Investigation Number EB-FD-22-00034228).

[3] 47 CFR §§ 54.1600-54.1612; *Emergency Broadband Benefit Program*, WC Docket No. 20-445, Report and Order, 36 FCC Rcd 4612 (2021) (*Emergency Broadband Benefit Program Order*).

[4] Consolidated Appropriations Act, Pub. L. No. 116-260, 134 Stat. 1182, 2129-63 (2020) (codified at 47 U.S.C. § 1752), *available at* https://www.congress.gov/bill/116th-congress/house-bill/133/text (Consolidated Appropriations Act).

[5] *See infra* para. 7.

[6] *See Emergency Broadband Benefit Program Order*, 36 FCC Rcd at 4613, para. 1.

[7] *See* Universal Service Administrative Co., About, Emergency Broadband Benefit Program, Emergency Broadband Benefit Program Enrollments and Claims Tracker, https://www.usac.org/about/emergency-broadband-benefit-program/emergency-broadband-benefit-program-enrollments-and-claims-tracker/ (last visited Dec. 4, 2023).

[8] *See* Fed. Commc'ns Comm'n, Home, Consumer, Emergency Broadband Benefit, https://www.fcc.gov/broadbandbenefit (last visited Dec. 4, 2023).

[9] Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (2021) (codified at 47 U.S.C. § 1752, as modified by the Infrastructure Act), https://www.govinfo.gov/content/pkg/BILLS-117hr3684enr/pdf/BILLS-

provide discounted broadband service and connected devices to low-income households. To ensure the integrity and effectiveness of EBB, and then ACP, Congress and the Commission authored a regulatory framework which imposed responsibilities and obligations on participating service providers, including requiring service providers to determine a customer's eligibility to participate in these programs prior to enrolling the customer for service.[10] By the end of 2022, more than 15.4 million American households were enrolled in ACP.[11]

4. From at least July 2022 through June 2023, Tone sought and received ACP funding for subscribers that were improperly enrolled in the program. The Company enrolled these subscribers with fake or false identifying information by either using an address to which the purported subscriber had no connection or repeatedly using the same non-subscriber benefit qualifying person (BQP)[12] to enroll multiple subscribers. As a result of this conduct, Tone apparently violated sections 54.1805, 54.1806(b), 54.1808(e)(3), and 54.1810(i) of the Commission's rules and apparently improperly received millions of dollars of ACP support. Despite these apparent violations, from July 2022 through June 2023, Tone falsely and repeatedly certified in its reimbursement requests[13] to the FCC and the Universal Service Administrative Company (USAC) that it was in compliance with the Commission's rules; based on these misrepresentations made under penalty of perjury, Tone received funding from ACP. Tone submitted these reimbursement requests via interstate wires in apparent violation of the federal wire fraud statute.

5. The investigation by the Commission's Enforcement Bureau (Bureau) further identified apparent violations of ACP rules governing the transfer of subscriber benefits from one provider to another, in apparent violation of section 54.1810(b)(2).[14] The Bureau also found that Tone apparently willfully and repeatedly made misrepresentations to the Commission in it applications and election notice to participate in EBB and ACP, and to the Bureau in the course of its, investigation, all in violation of section 1.17. Tone also failed to respond fully to two Letters of Inquiry from the Bureau, which are Commission orders. We find that the proposed $14,021,293 forfeiture penalty reflects the scope, duration, seriousness, and egregiousness of Tone's numerous apparent violations and resulting harm to ACP.

117hr3684enr.pdf; *see also Affordable Connectivity Program*, WC Docket No. 21-450, Report and Order and Further Notice of Proposed Rulemaking, 37 FCC Rcd 484 (2022) (*Affordable Connectivity Program Order*).

[10] 47 CFR §§ 54.1800-54.1814.

[11] *See* Universal Service Administrative Co., About, Affordable Connectivity Program, ACP Enrollment and Claims Tracker, https://usac.org/about/affordable-connectivity-program/acp-enrollment-and-claims-tracker/ (last visited Dec. 4, 2023).

[12] Generally, a benefit qualifying person is the member of the household who meets the requirements to receive ACP benefits. In the case of a non-subscriber BQP, that person is someone in the applicant's household other than the applicant, often times a dependent child. *See* 47 CFR § 54.1800(j), (l); *Emergency Broadband Benefit Program Order*, *supra* note 3, at 4643-45, paras. 66, 68 and n.222; *Wireline Competition Bureau Announces Additional Program Integrity Measures for Affordable Connectivity Program Enrollments Based on a Benefit Qualifying Person*, Public Notice, 37 FCC Rcd 10211 (WCB 2022); Advisory, FCC OIG, *Advisory Regarding Provider Enrollments of Multiple ACP Households Based on the Same Child/Dependent* (Sept. 8, 2022), https://www.fcc.gov/document/oig-advisory-regarding-acp-enrollment-fraud.

[13] *See* 47 CFR §§ 54.1608, 54.1808.

[14] 47 CFR § 54.1810(b)(2) requires participating providers to provide "written notice to the transferred subscriber" within five business days of completing a subscriber transfer in NLAD.

II. BACKGROUND

A. Legal Framework

1. Emergency Broadband Benefit Program

6. The Consolidated Appropriations Act became law on December 27, 2020.[15] Among other Congressional actions intended to provide relief during the COVID-19 pandemic, the Consolidated Appropriations Act established an Emergency Broadband Connectivity Fund of $3.2 billion in the Treasury of the United States,[16] to remain available until expended. The Consolidated Appropriations Act directed the Commission to use these funds to establish EBB, under which eligible households could receive a monthly discount on the cost of broadband service and a one-time discount on eligible connected devices during an emergency period relating to the COVID-19 pandemic, and participating service providers could receive a reimbursement for providing these discounts.[17]

7. The Consolidated Appropriations Act directed, and our rules provide, that a household would be eligible for the Emergency Broadband Benefit if at least one member of the household: (i) met the qualifications for participation in the Lifeline Program (household income is at or below 135% of the federal poverty guidelines or a household member participated in the Supplemental Nutrition Assistance Program, Medicaid, Supplemental Security Income, Federal Public Housing Assistance, Veterans Pension/Survivors Benefit, or certain Tribal assistance programs); (ii) applied for and been approved to receive benefits under the free and reduced price lunch program or the school breakfast program; (iii) experienced a substantial loss of income since February 29, 2020 that was documented by layoff or furlough notice, application for unemployment insurance benefits, or similar documentation or that is otherwise verifiable; (iv) received a Federal Pell Grant in the current award year; or (v) met the eligibility criteria for a participating service provider's existing low-income or COVID-19 program, subject to approval by the Commission.[18] Additionally, to receive the EBB benefit, the rules make clear that no member of a household could have already been receiving an EBB benefit.[19] The Commission determined that the National Lifeline Eligibility Verifier (National Verifier), which is operated by USAC to verify certain eligibility criteria for household participation in the Commission's Universal Service Lifeline Program, should also be used for EBB.[20]

8. A participating service provider was required to verify household eligibility in one of three ways under EBB. It could use the National Verifier, it could seek Wireline Competition Bureau (WCB) approval to use an alternative verification process, or it could rely on a school to verify the

[15] Consolidated Appropriations Act, Pub. L. No. 116-260, 134 Stat. 1182, 2129-63 (2020) (codified at 47 U.S.C. § 1752), https://www.congress.gov/bill/116th-congress/house-bill/133/text (Consolidated Appropriations Act).

[16] *Id.* § 904(i).

[17] *Id.* § 904(b)(1). Under section 904, the emergency period "ends on the date that is 6 months after the date on which the determination by the Secretary of Health and Human Services pursuant to section 319 of the Public Health Service Act (42 U.S.C. 247d) that a public health emergency exists as a result of COVID-19, including any renewal thereof, terminates." *Id*. § 904(a)(8); *see Emergency Broadband Benefit Program Order*, *supra* note 3, at 4613, para. 2. The emergency period ended on November 11, 2023, and the program continues under the ACP.

[18] Consolidated Appropriations Act, § 904(a)(6); 47 CFR § 54.1605(a).

[19] 47 CFR § 54.1605(b).

[20] *Emergency Broadband Benefit Program Order*, *supra* note 3, at 4638, para. 54; Consolidated Appropriations Act, §§ 904(a)(6), (b)(2). The National Verifier was used in EBB and is available for use in the successor ACP to automatically check and confirm a household's eligibility electronically against state and federal eligibility databases, followed by manual review of eligibility documentation for applicants whose eligibility cannot be verified using an automated data source. *See Emergency Broadband Benefit Program Order*, *supra* note 3, at 4635, para. 50.

household's eligibility through a household member's participation in the reduced price lunch program or school breakfast program.[21]

9. Providers participating in EBB were required to "implement policies and procedures for ensuring that their Emergency Broadband Benefit Program households [we]re eligible to receive the Emergency Broadband Benefit."[22] In particular,

> [a] provider [could] not provide a consumer with service that it represent[ed] to be Emergency Broadband Benefit-supported service or seek reimbursement for such service, unless and until it ha[d]: (1) Confirmed that the household [wa]s an eligible household pursuant to 47 CFR 54.1605; (2) Completed any other necessary enrollment steps, and; (3) Securely retained all information and documentation it receive[d] related to the eligibility determination and enrollment, consistent with 47 CFR 1611.[23]

10. Broadband providers were not required to participate in EBB; instead, they could voluntarily choose to participate by filing an election notice, which had to be certified and submitted to USAC, along with supporting documentation to show the provider was qualified to offer broadband services and/or discounted connected devices.[24] Eligible Telecommunications Carriers (ETCs) needed only to file an election notice with USAC, while non-ETCs were required to apply and receive authorization from WCB before submitting their elections.[25] Broadband providers had to have been providing broadband services as of December 1, 2020 to participate in EBB.[26] ETCs and approved non-ETC providers were required to file an election notice with USAC stating, among other things, the jurisdictions in which they would participate in the program.[27]

11. Participating providers that also supplied an eligible household with a connected device (defined in the Consolidated Appropriations Act as a laptop, desktop computer, or tablet) could receive a single reimbursement of up to $100 for the connected device, if the charge to the eligible household for that device was more than $10 but less than $50.[28] A participating provider could receive reimbursement for only one supported device per eligible household.[29]

12. On May 12, 2021, EBB providers began enrolling consumers in the program.[30] Consumers could check for program eligibility and search for participating providers in their states in a number of ways. Consumers could visit the FCC website directly to find a list of EBB providers in their state, use USAC's "Companies Near Me" tool, or visit various state or nonprofit websites advertising EBB and be directed to the FCC list.[31] Consumers could begin their search on the webpage containing

[21] 47 CFR § 54.1606(a)(1)-(3); 47 U.S.C. § 1752(b)(2).

[22] 47 CFR § 54.1606(b).

[23] *Id.*

[24] *Emergency Broadband Benefit Program Order*, *supra* note 3, at 4616, para. 10.

[25] 47 CFR § 54.1601(a)-(c).

[26] *Emergency Broadband Benefit Program Order*, *supra* note 3, at 4622, para. 22; EBB Provider Approval & Alternative Eligibility Verification Application Filing Instructions, at 5 (Mar. 2021).

[27] *See* 47 CFR § 54.1601(c).

[28] Consolidated Appropriations Act, § 904(b)(5), 135 Stat. 1182; 47 CFR § 54.1603(b).

[29] Consolidated Appropriations Act, § 904(b)(5), 135 Stat. 1182; 47 CFR § 54.1603(b).

[30] *Wireline Competition Bureau Announces Emergency Broadband Benefit Program Launch Date*, WC Docket No. 20-445, Public Notice, 36 FCC Rcd 7614 (WCB 2021).

[31] *Id.* at 7615.

the list of participating providers and then could click the link to a specific provider and be directed to the provider's website for information on its EBB offerings.[32]

13. Additional relevant EBB rule provisions included:

a. Definitions for household and economic unit:

> A 'household' is any individual or group of individuals who are living together at the same address as one economic unit. A household may include related and unrelated persons. An 'economic unit' consists of all adult individuals contributing to and sharing in the income and expenses of a household. An adult is any person eighteen years or older. If an adult has no or minimal income, and lives with someone who provides financial support to him/her, both people shall be considered part of the same household. Children under the age of eighteen living with their parents or guardians are considered to be part of the same household as their parents or guardians.[33]

b. "All participating providers in the Emergency Broadband Benefit Program must make available the Emergency Broadband Benefit Program to qualifying low-income consumers."[34]

c. "If the prospective household shares an address with one or more existing Emergency Broadband Benefit Program subscribers according to the National Lifeline Accountability Database or National Verifier, the prospective subscriber must complete a form certifying compliance with the one-per-household rule prior to initial enrollment."[35]

d. Participating providers "must require that enrollment representatives register with the Administrator before the enrollment representative can provide information directly or indirectly to the National Lifeline Accountability Database or the National Verifier." As part of the registration process, enrollment representatives must include their first and last name, date of birth, last four digits of their social security number, email address, and residential address. Enrollment representatives will then be assigned a unique identifier, which they will use to access the National Lifeline Accountability Database (NLAD), the National Verifier, any eligibility database, and to complete any EBB enrollment or verification forms.[36]

e. To receive EBB reimbursement, an officer of the participating provider must certify, as part of each request for reimbursement—which typically occurs monthly—that, among other things, (1) the participating provider is in compliance with all EBB rules, (2) the participating provider has obtained valid certification and applications forms for each of the subscribers for whom it is seeking reimbursement, and (3) the provider

[32] The Affordable Connectivity Program uses the same format to identify providers participating in that program. *See, e.g.*, Fed. Commc'ns Comm'n, https://www.fcc.gov/affordable-connectivity-program-providers; Universal Service Administrative Co., *Companies Near Me*, https://data.usac.org/publicreports/CompaniesNearMe/Download/Report (last visited Dec. 1, 2023).

[33] 47 CFR § 54.1600(l).

[34] *Id.* § 54.1604(a).

[35] *Id.* § 54.1606(c).

[36] *Id.* § 54.1607(a)(1)-(4).

has retained all necessary documentation for no less than the six full preceding calendar years.[37]

2. Affordable Connectivity Program

14. The Infrastructure Act extended EBB's objectives and left much of EBB's basic framework in place but made "changes to the benefit amount, rules regarding plan and subscriber eligibility, and providers' public promotion obligations, among other changes."[38] With these new changes, the Infrastructure Act transitioned EBB to ACP. Provisions that carried over from EBB to ACP include, but are not limited to:

a. Definitions such as "participating provider," "broadband provider," "broadband internet access service," and "household."

b. The three eligibility verification processes being (1) the National Verifier, (2) an alternative verification process, or (3) relying on a school to verify the household's eligibility based on the household's participation in the free and reduced price lunch program or school breakfast program.[39]

c. The process for participating providers to register enrollment representatives with USAC.[40]

d. A participating provider's officer certifications in connection with the provider's reimbursement requests.[41]

e. The requirement that, in addition to meeting one of the eligibility qualifications, "neither the eligible household nor any member of the household may already be receiving another affordable connectivity benefit from that participating provider or any other participating provider."[42]

f. Participating providers shall make available the affordable connectivity benefit to eligible households.[43]

15. Provisions that changed or were removed in the transition from EBB to ACP include, but are not limited to:

a. The standard non-tribal monthly broadband benefit decreased from $50 to $30.[44]

b. The eligibility criterion based on a household having experienced a substantial loss of income since February 29, 2020 was removed.

[37] *Id.* §§ 54.1608(e), 54.1611.

[38] *Affordable Connectivity Program Order*, *supra* note 9, at 486, para. 4; *see also* Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (2021), https://www.govinfo.gov/content/pkg/BILLS-117hr3684enr/pdf/BILLS-117hr3684enr.pdf.

[39] *See* 47 CFR §§ 54.1606(a)(1)-(3), 54.1806(a)(1)-(3).

[40] *See id.* §§ 54.1607(a)(1)-(4), 54.1807(a)(1).

[41] *See id.* §§ 54.1608(e), 54.1611, 54.1808(e), 54.1811.

[42] *See id.* §§ 54.1605(b), 54.1805(b).

[43] *See id.* §§ 54.1604(a), 54.1804(a).

[44] *Compare id.* § 54.1603(a) *with id.* § 54.1800(b).

c. The eligibility criterion based on income was adjusted from at or below 135% of the Federal Poverty Guidelines to at or below 200% of the Federal Poverty Guidelines.[45]

16. Finally, express provisions that are new to ACP include, but are not limited to:

a. An additional eligibility criterion based on a consumer's participation in Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).[46]

b. A participating provider must annually certify, under penalty of perjury, that it has policies in place to comply with all ACP rules and procedures. In addition, the participating provider must acknowledge that it "is liable for violations of the Affordable Connectivity Program rules and that its liability extends to violations by its agents, contractors, and representatives[.]"[47]

c. USAC shall recertify subscribers' eligibility using the National Verifier where the subscriber's eligibility was initially determined by the National Verifier.[48]

d. Participating providers are prohibited from offering to enrollment representatives, their direct supervisors, or entities operating on the providers' behalf, any form of compensation that is (1) based on the number of consumers or households that apply for or are enrolled in ACP with the provider, (2) based on revenues the provider received in connection with ACP, including payments for connected devices, (3) based on the provider permitting the retention of cash payments received from a subscriber in connection with a connected device, or (4) characterized as paid in connection with a non-ACP activity that is actually based on ACP applications, enrollments, or revenues.[49]

e. Participating providers are prohibited from engaging in unjust or unreasonable acts or practices that would undermine the purpose, intent, or integrity of ACP, including violating any ACP rule.[50]

f. The Commission's rules limit ACP subscribers to one benefit transfer between participating providers per service month.[51] There are four limited exceptions to the rule: (1) the subscriber's benefit was improperly transferred, (2) the subscriber's service provider ceases operations or fails to provide service, (3) the service provider is found to be in violation of ACP rules and the violation impacts the subscriber for whom the exception is sought, and (4) the subscriber changes his/her location to a residential address outside the provider's ACP service area.[52]

---

[45] *Compare id.* § 54.1605(a)(1) *with id.* § 54.1800(j)(2).

[46] 47 CFR § 54.1800(j)(6). *See also Affordable Connectivity Program Order*, *supra* note 9, at 487, para. 5.

[47] 47 CFR § 54.1801(f).

[48] *Id.* § 54.1806(f)(1).

[49] *Id.* § 54.1807(b)(1)-(4).

[50] *Id.* § 54.1810(i).

[51] *See id.* § 54.1810(b)(3) ("Participating subscribers can only transfer their affordable connectivity benefit between providers once in a given service month, with the following limited exceptions: (i) The subscriber's benefit was improperly transferred; (ii) The subscriber's service provider ceases operations or fails to provide service; (iii) The subscriber's current service provider is found to be in violation of affordable connectivity program rules, and the violation impacts the subscriber for which the exception is sought; (iv) The subscriber changes its location to a residential address outside of the provider's service area for the Affordable Connectivity Program.").

[52] *Id.* § 54.1810(b)(3).

17. Service providers use the Affordable Connectivity Claims System (ACCS) to claim subscribers for reimbursement and to certify reimbursement requests. The ACCS is available through USAC's "one portal" system.[53] This process is completed entirely online.[54]

18. In order to claim a subscriber, a service provider must download a new filing template to review the list of subscribers eligible for reimbursement. This filing template includes subscriber data from the NLAD subscriber snapshot report, which is taken on the first of the month. A service provider then populates and submits the reimbursement request template with the necessary information (such as the reimbursement amount sought) for each subscriber. Finally, the Company's certifying officer certifies[55] and transmits the reimbursement request to USAC electronically.[56]

3. Untruthful and Inaccurate Statements

19. Section 1.17 of the Commission's rules prohibits any person, including applicants for Commission authorizations, in any written statement of fact in connection with any investigatory or adjudicatory matter within the Commission's jurisdiction, from intentionally providing "material factual information that is incorrect or intentionally omit[ting] material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading[.]"[57] The courts and the Commission have consistently highlighted the importance of Commission authorization applicants submitting complete and truthful information in their applications. A "lack of candor in an applicant's dealings with the Commission" constitutes a "serious breach[] of trust,"[58] and is exhibited when an applicant makes an affirmative misrepresentation or fails to disclose relevant facts of "decisional significance."[59] Proving a violation of section 1.17 requires a showing of evidence that the applicant "inten[ded] to deceive" the Commission.[60] Intent to deceive is generally found in cases where a false statement is "coupled with proof that the party . . . [knew] of its falsity[,]"[61] or where evidence allows intent to be derived "from a motive" to deceive.[62]

---

[53] Universal Service Administrative Co., *Affordable Connectivity Program Claims Process Overview* (Apr. 21, 2022), https://www.usac.org/wp-content/uploads/about/documents/acp/Training-Slides/ACP-Claims_April-21.pdf.

[54] Tone Communication submitted its reimbursement requests from its place of business in Georgia or Texas to USAC in Washington, D.C./Virginia.

[55] *See infra* para. 45.

[56] Universal Service Administrative Co., *Affordable Connectivity Program Claims Process Overview* (Apr. 21, 2022), https://www.usac.org/wp-content/uploads/about/documents/acp/Training-Slides/ACP-Claims_April-21.pdf.

[57] *See* 47 CFR § 1.17(a)(1).

[58] *Swan Creek Commc'ns, Inc. v. FCC*, 39 F.3d 1217, 1221-22 (D.C. Cir. 1994) (quoting *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1211 (1986)).

[59] *Fox Television Stations, Inc.*, Memorandum Opinion and Order, 10 FCC Rcd 8452, 8478 (1995) (quoting *Swan Creek Communication v. FCC*, 39 F.3d 1217, 1222 (D.C. Cir. 1994) and *RKO General, Inc. v. FCC*, 670 F.2d 215, 229 (D.C. Cir. 1981)); *see also, e.g.*, *Acumen Communications*, Order of Revocation, 33 FCC Rcd 4 (EB 2018) (revoking licenses after hearing for, *inter alia*, misrepresentation in application); *Application of Riverside Youth & Rehabilitation*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 10360 (MB 2008) (issuing an NAL for apparent misrepresentations in an application after the application grant was final).

[60] *See Century Cellunet of Jackson*, Memorandum Opinion and Order, 6 FCC Rcd 6150 (1991).

[61] *David Ortiz Radio Corp. v. FCC*, 941 F.2d 1253, 1260 (D.C. Cir. 1991) (quoting *Leflore Broadcasting Co. v. FCC*, 636 F.2d 454, 462 (D.C. Cir. 1980)).

[62] *Joseph Bahr*, Memorandum Opinion and Order, 10 FCC Rcd 32, 33 (1994).

4. Wire Fraud

20. Congress has authorized the Commission to assess a forfeiture penalty for violations of the federal wire fraud statute under Title 18, United States Code, Section 1343. Specifically, section 503(b)(1)(D) of the Communications Act of 1934, as amended (the Act), states that the Commission may propose a forfeiture against a person that the Commission has determined violated "any provision of section . . . 1343 . . . of title 18."[63] The Commission's rules further provide that a "forfeiture penalty may be assessed against any person found to have . . . [v]iolated any provision of section . . . 1343 . . . of Title 18, United States Code[.]"[64] Section 1343 provides that a violation of the wire fraud statute occurs when a person:

> having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice[.][65]

21. A finding that wire fraud under section 1343 has occurred "requires proof of (1) a scheme to defraud; and (2) the use of an interstate wire communication to further the scheme."[66] Moreover, "[t]he essence of a scheme is a plan to deceive persons as to the substantial identity of the things they are to receive in exchange[,]" and "[a] pattern of deceptive conduct may show the existence of a plan, scheme or artifice."[67] Where one scheme involves several wire communications or mailings, "the law is settled that each mailing [or wire communication] constitutes a violation of the statute."[68] The use of mail or interstate wires to effectuate the fraudulent scheme "need not be an essential element of the scheme[;]" instead, it is "sufficient for the mailing [or the use of the interstate wire] to be incident to an essential part of the scheme or a step in the plot."[69] One need not have used the wires themselves in the scheme to defraud; instead, culpability may arise from having caused the wires to be used.[70] Use of the Internet, such as by perpetrating a scheme to defraud through online websites, constitutes use of interstate wires for purposes of section 1343.[71]

---

[63] 47 U.S.C. § 503(b)(1)(D).

[64] 47 CFR § 1.80(a)(5).

[65] 18 U.S.C. § 1343.

[66] *United States v. Maxwell*, 920 F.2d 1028, 1035 (D.C. Cir. 1990); *see also United States v. Pollack*, 534 F.2d 964, 971 (D.C. Cir. 1976).

[67] *United States v. Brien*, 617 F.2d 299, 307 (1st Cir. 1980) (citations omitted).

[68] *United States v. Philip Morris USA Inc.*, 566 F.3d 1095, 1116 (D.C. Cir. 2009) (citations omitted); *see also United States v. Sum of $70,990,605*, 4 F. Supp. 3d 189, 201 n.9 (D.D.C. 2014).

[69] *Schmuck v. United States*, 489 U.S. 705, 710-11 (1989) (citations, quotations, and punctuation omitted).

[70] *See Pereira v. United States*, 347 U.S. 1, 8 (1954) ("To constitute a violation of these provisions, it is not necessary to show that petitioners actually mailed or transported anything themselves; it is sufficient if they caused it to be done."); *United States v. Lemire*, 720 F.2d 1327, 1334 n.6 (D.C. Cir. 1983) (*Lemire*) ("[C]ases construing mail fraud apply to the wire fraud statute as well.").

[71] *See, e.g.*, *United States v. Dinh*, No. 8-20-CV-1794 (KKM-AAS), 2021 WL 5867221 (M.D. Fla. Dec. 10, 2021) (granting permanent injunction against defendants that defrauded customers by operating online websites that appear to sell goods but did not ship the goods after purchase); *United States v. Collick*, 611 Fed. Appx. 553, 556 (11th Cir. 2015) ("Given that [defendant] testified that [he and co-defendant] used the internet to perpetrate their scheme, his testimony also established that [co-defendant] committed wire fraud."); *Kyle Traxler and Cleo Commc'ns*, Notice of Apparent Liability for Forfeiture, 37 FCC Rcd 8151 (2022) (*Cleo NAL*).

22. A scheme to defraud requires the specific intent to make a misrepresentation or omission that is material to the scheme.[72] An intent to defraud includes an act undertaken "willfully and with specific intent to deceive or cheat, ordinarily for the purpose of either causing some financial loss to another or bringing about some financial gain to one's self."[73] "The requisite intent under the federal mail and wire fraud statutes may be inferred from the totality of the circumstances and need not be proven by direct evidence."[74] Fraudulent intent may be "shown if a representation is made with reckless indifference to its truth or falsity[,]"[75] as well as a victim's reliance on the misrepresentations made by the perpetrator.[76]

B. Relevant Entities

1. Tone Communication

23. Tone is a limited liability company formed in the state of Texas on July 30, 2019.[77] Tone is a telecommunications company that provides internet, tablets, and cellphones to customers through the ACP.[78] Tone is a reseller of AT&T services.[79]

24. Tone is authorized to offer ACP fixed and mobile broadband service in Alabama, Alaska, Arizona, Arkansas, Connecticut, Delaware, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.[80] Tone stated it was "operating under no other names" besides Tone Communication Services LLC.[81]

---

[72] *Neder v. United States*, 527 U.S. 1, 25 (1999).

[73] *Lemire*, 720 F.2d at 1341.

[74] *United States v. O'Connell*, 172 F.3d 921 (D.C. Cir. 1998); *see also United States v. Alston*, 609 F.2d 531, 538 (D.C. Cir. 1979).

[75] *United States v. Cusino*, 694 F.2d 185, 187 (9th Cir. 1982); *see also United States v. Kennedy*, 714 F.3d 951, 958 (6th Cir. 2013); *United States v. Jackson*, 524 F.3d 532 (4th Cir. 2008); *United States v. DeRosier*, 501 F.3d 888, 897-98 (8th Cir. 2007).

[76] *United States v. Wynn*, 684 F.3d 473 (4th Cir. 2012).

[77] Letter from Tone Communication Services LLC(Oct. 10, 2022) (on file in Case No. EB-FD-22-00034228) (Tone Letter). Note: While the letter is dated October 10, 2022, the Bureau did not receive it via email until October 16, 2022.

[78] Tone Communications, *Affordable Connectivity Program Home*, https://tonecomms.com/ (last visited Dec. 1, 2023).

[79] Agreement Between Bellsouth Telecommunications, LLC D/B/A AT&T Florida and Tone Communication Services LLC (Apr. 6, 2021). The Commission considers toll resellers to be common carriers for purposes of assessing a forfeiture. *See, e.g.*, *Cardinal Broadband, LLC*, Forfeiture Order, 27 FCC Rcd 7985 (2012); *Cardinal Broadband LLC*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 12233 (EB 2008); *Telrite Corp.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 7231 (2008); *Enhanced Communications Group, LLC*, Notice of Apparent Liability for Forfeiture, FCC 23-54, 2023 WL 4587311 (July 13, 2023).

[80] *See* Fed. Commc'ns Comm'n, *Affordable Connectivity Program Providers*, https://www.fcc.gov/affordable-connectivity-program-providers (last visited Dec. 1, 2023).

[81] *See* Tone Letter, *supra* note 77.

25. Ashar Syed is the owner of Tone Communication.[82] Both Roselba Bartolini and Ashar Syed have held themselves out in submissions to USAC as CEO;[83] prior executives include Suzane Anderson (former President).[84]

26. The bank account Tone Communication has on record with the Commission to receive ACP reimbursement payments is titled in the name of North Forsyth Equity, LLC (North Forsyth Equity).[85] North Forsyth Equity was organized in the state of Georgia in August 2008 by Ashar Syed.[86] When asked to characterize Tone's relationship with North Forsyth Equity, Tone told the Bureau that the two entities share the same owner,[87] Ashar Syed.[88] Pobish Ashar was previously a registered agent for North Forsyth Equity.[89] North Forsyth Equity's current address is 2375 Lexington Lane in Cumming, Georgia,[90] which is also reported to be a prior residence of Ishrat Jahan.[91] Another address that North Forsyth Equity is associated with is 1815 Satellite Boulevard in Duluth, Georgia.[92]

2. City Communications, Inc.[93]

27. City Communications, Inc. (City Communications or City) was incorporated in the state of Georgia on February 24, 2014.[94] City is authorized to participate in ACP in Alabama, California,

[82] Response to Supplemental Letter of Inquiry from Tone Communication at Supplemental LOI EB-FD-22-00034228, Response to Question 12 (June 1, 2023) (on file in EB-FD-22-00034228) (SLOI Response); Response to first subpoena to Tone Communication from {[ ]} to Fraud Division, FCC Enforcement Bureau (Nov. 7, 2022) (on file in Investigation Number EB-FD-22-00034228) (Tone First Subpoena Response). Material set off by double brackets {[ ]} is confidential and is redacted from the public version of this document.

[83] Information on file in Investigation Number EB-FD-22-00034228.

[84] *Id.*

[85] *Id.*

[86] Georgia Corporations Division, State of Georgia, *Secretary of State Business Formation, North Forsyth Equity LLC* (filed Aug. 20, 2008), https://ecorp.sos.ga.gov/BusinessSearch/BusinessFilings

[87] SLOI Response at Summary LOI EB-FD-22-00034228.

[88] {[ ]} First Subpoena Response.

[89] Information on file in Investigation Number EB-FD-22-00034228. It appears Pobish Ashar is also known as Pobish Khan and was previously married to Ashar Syed. *See Pobish Ashar v. Ashar Syed*, Civil Action No. 17-1-6780-48, Motion for Contempt (Ga. Super. Ct., Cobb Cnty. Oct. 5, 2017), https://trellis.law/doc/80975225/ (last visited Sept. 27, 2023) (Pobish Ashar filed for divorce from Ashar Syed on September 5, 2017).

[90] Georgia Corporations Division, State of Georgia, *Secretary of State 2023 Annual Registration, North Forsyth Equity LLC* (filed Mar. 13, 2023), https://ecorp.sos.ga.gov/BusinessSearch/BusinessFilings.

[91] Information on file in Investigation Number EB-FD-22-00034228.

[92] *Id.*

[93] In multiple Orders, the Consumer and Governmental Affairs Bureau found that City Communications, Inc. changed a complainant's telecommunications service provider without obtaining authorization and verification from the complainant in violation of section 258 of the Commissions Act of 1934, as amended, which prohibits slamming. *City Communications, Inc.*, Order, 35 FCC Rcd 467 (CGB 2020); *City Communications, Inc.*, Order, 35 FCC Rcd 611 (CGB 2020); *City Communications, Inc.*, Order, 35 FCC Rcd 1858 (CGB 2020); *City Communications, Inc.*, Order, 36 FCC Rcd 13488 (CGB 2021).

[94] Response to Letter of Inquiry, from City Communications, to Fraud Division, FCC Enforcement Bureau, at Doc. 20, Certificate of Incorporation, Response to Question 41 (Mar. 30, 2023) (on file in EB-FD-22-00034222) (City LOI Response).

Florida, Kentucky, Louisiana, Michigan, Mississippi, North Carolina, Pennsylvania, and Tennessee.[95] It is unclear who presently owns City—documents reviewed by the Bureau reference Ashar Syed, Pobish Ashar, and Faraz Syed (also apparently known as Faraz Mobeen) as owners at different times.[96] City's current executives include Pobish Ashar (CEO) and Faraz Mobeen (CEO), while prior executives include Suzane Anderson (Officer)[97] and Patrick Hardy (Manager).[98] Faraz Mobeen was President of City from May 2014 to January 2020.[99]

28. One of City's reported name variations is Cathect Communications.[100] When asked directly what Tone Communication's relationship is with City Communications, Tone's response was that it "used" City Communications' "CSR[101] Portal in the past (*sic*)."[102]

29. The bank account City Communications has on record with the Commission to receive ACP payments is owned by Tele Circuit Network Corporation (Tele Circuit).[103] When asked directly to characterize Tone Communication's relationship with Tele Circuit, Tone's response was that it "used Tele Circuit as shipment fulfillment carrier."[104] Tele Circuit's annual registration for 2020 in Georgia was submitted by Ashar Syed (Officer).[105] Pobish Ashar has been an authorized signatory on at least one of

[95] Fed. Commc'ns Comm'n, *Affordable Connectivity Program Providers*, fcc.gov/affordable-connectivity-program-providers (last visited Dec. 1, 2023).

[96] Response to second subpoena, from {[ ]} Document Production to Fraud Division, FCC Enforcement Bureau (Apr. 24, 2023) (on file in EB-FD-22-00034222) (Second Subpoena Response).

[97] Information on file in Investigation Number EB-FD-22-00034222.

[98] Patrick Hardy is listed on City Communications' bank signature card as a manager of City Communications. Response to first subpoena, from {[ ]}to Fraud Division, FCC Enforcement Bureau (Oct. 28, 2022) (on file in EB-FD-2200034222) (City First Subpoena Response). {[ ]} City First Subpoena Response at Signature Card 4. Patrick Hardy was also the agent identified by Tone Communication as enrolling all 152 subscribers who used the three non-subscriber duplicate BQPs. Response to Letter of Inquiry, from Tone Communication, to FCC Enforcement Bureau, at DOC-03-Master File spreadsheet, Response to Question 15 (Mar. 30, 2023) (on file in EB-FD-22-00034228) (LOI Response).

[99] Application for Cathect Communications for Michigan Final Application PSC, Case No. U-20830 (filed Apr. 3, 2020). According to Mobeen's resume, Mobeen stepped down as President of City in January 2020 and became CEO of Cathect then. *Id.* Based on the Bureau's email exchanges with "fmobeen@citycom.co," it appears Mobeen is still working at City in some capacity.

[100] Information on file in Investigation Number EB-FD-22-00034222.

[101] CSR is an abbreviation for Customer Service Representative.

[102] SLOI Response at Summary LOI EB-FD-22-00034228.

[103] {[ ]} First Subpoena Response, Second Subpoena Response. The Commission issued an NAL against Tele Circuit Network Corp. in 2018 for slamming and cramming, *i.e.*, changing a consumer's preferred service provider to itself without the consumer's authorization and adding unauthorized charges to the consumer's bill. *Tele Circuit Network Corp.*, Notice of Apparent Liability for Forfeiture, 33 FCC Rcd 4379 (2018). The NAL findings were adopted in a Forfeiture Order against Tele Circuit Network Corp. in 2021 and imposed a forfeiture of $4,145,000 against Tele Circuit. *Tele Circuit Network Corp.*, Forfeiture Order, 36 FCC Rcd 7664 (2021) (concurring statements issued by then-Acting Chairwoman Jessica Rosenworcel and Commissioner Geoffrey Starks). The Tele Circuit Network Corp. NAL and Forfeiture Order note that Ashar Syed is the President of the company and Syed's then-wife, Pobish Khan (sometimes referred to as Pobish Ashar) is the company's CEO.

[104] SLOI Response at Summary LOI EB-FD-22-00034228.

[105] Georgia Corporations Division, State of Georgia, *Secretary of State Annual Registration, Tele Circuit Network Corporation* (filed Jan. 24, 2020), https://ecorp.sos.ga.gov/BusinessSearch/BusinessFilings.

Tele Circuit's bank accounts[106] and is apparently currently Tele Circuit's Treasurer.[107] A LexisNexis report regarding Tele Circuit includes a section listing connected businesses; this list includes City Communications and North Forsyth Equity, LLC.[108] Tele Circuit's current CEO is Ashar Syed;[109] it lists its business address as 1815 Satellite Boulevard, Suite 504 in Duluth, Georgia.[110]

3. Cathect Communications Inc.

30. Cathect Communications Inc. (Cathect Communications or Cathect) was created on June 27, 2019 in Texas.[111] Cathect is authorized to participate in ACP in Alabama, Arkansas, California, Florida, Georgia, Idaho, Illinois, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana, Nevada, North Carolina, Ohio, South Carolina, South Dakota, Tennessee, Texas, and Wisconsin.[112] When asked directly to characterize Tone Communication's relationship with Cathect Communications, Tone responded that it "shared back-office Operations Company (*sic*) in the past[.]"[113]

31. Cathect's current executives include Suzane Anderson (Secretary) and Ishrat Jahan (CEO);[114] prior executives include Faraz Mobeen (former CEO).[115] When Cathect filed its incorporation paperwork in Georgia in 2020, Faraz Mobeen was the Incorporator.[116] Cathect lists 2160 Lexington Lane in Cumming, Georgia as its office address,[117] which is a two-bedroom house purchased in 2018 by Ishrat Jahan and Ashar Syed.[118]

C. Relationships Among the Relevant Entities

32. As discussed above, Tone has a relationship with at least two other entities that participate in ACP—City Communications and Cathect Communications[119] Tone also has a relationship with Tele Circuit and North Forsyth Equity. For example:

[106] {[ ]} Second Subpoena Response.

[107] Information on file in Investigation Number EB-FD-22-00034222.

[108] *Id.*

[109] *Id.*

[110] {[ ]} First Subpoena Response.

[111] Information on file in Investigation Numbers EB-FD-22-00034222 and EB-FD-22-00034228.

[112] *Affordable Connectivity Program Providers*, https://fcc.gov/affordable-connectivity-program-providers (last visited Dec. 1, 2023).

[113] SLOI Response at Summary LOI EB-FD-22-00034228.

[114] Information on file in Investigation Number EB-FD-22-00034228. According to her resume, Suzane Anderson worked as Operations Manager at City Communications in 2018-2019. 12064-2020 – FL PSC application form – Cathect Communications (filed Nov. 16, 2020).

[115] Information on file in Investigation Number EB-FD-22-00034228.

[116] Attachments to Application Part I – LA – Cathect Communications (filed Apr. 3, 2020) (on file in EB-FD-22-00034228).

[117] Application for Cathect Communications for Michigan Final Application PSC, Case No. U-20830 (filed Apr. 3, 2020).

[118] Information on file in Investigation Number EB-FD-22-00034228.

[119] The Bureau sent an LOI to City Communications, Inc. on September 16, 2022, which was substantially similar to the LOI the Bureau sent to Tone Communication on September 16, 2022.

- Tone's response to the Bureau's request for ACP revenue included revenue information for City Communications (as apparently paid to Tele Circuit) and Cathect Communications.[120]
- According to an invoice produced by Tone from Prepaid Wireless Wholesale, the invoice was billed to Tone Communication at P.O. Box 2307, 225 Parkway 557, Woodstock, GA 30188 but the order was to be shipped to City Communications at the same address.[121]
- Tone produced an email from the Arizona Corporation Commission that related to an application filed by Cathect Communications.[122] Tone also produced consent forms where the customer agreed that they were selecting the Company as their "Wireless Broadband Service provider" and later states their "ACP services will be switched to Cathect Communications."[123]
- In its 2019 application to transact business in Florida, one of the addresses Tone used as its business address was the address City Communications uses as its business address.[124]
- Tone's Ephraat Michael wrote in an email that the Company would be paying for a SIM card order "through [the] Cathect account."[125]
- In responding to separate Letters of Inquiry (LOIs) from the Bureau, both City Communications and Tone produced documents describing their ACP enrollment process. These documents are identical.[126]

33. The Bureau reviewed Tone's bank records and those for companies the Bureau identified as having some financial, personal, or personnel-related link to Tone.[127] This review revealed transfers and payments among the various companies, including:

- During the period from May 27, 2022 to April 29, 2023, Tele Circuit transferred approximately $920,600 to Cathect Communications.
- A $15,000 check dated December 16, 2021 from Cathect Communications to Tone Communication. This check was signed by Ashar Syed and endorsed by Ashar Syed.
- During the period from October 31, 2022 to December 30, 2022, Tone Communication transferred approximately $1,015,450 to City Communications.
- During the period from March 8, 2021 to December 30, 2022, Tone Communication transferred approximately $859,100 to Cathect Communications.
- A $132,000 check on March 28, 2022 from a Tone Communication account to Tele Circuit.

[120] *See* LOI Response at DOC-02 ACP Revenue.

[121] LOI Response at PWW-ToneCommunications062022.

[122] Letter (sent via email) from Arizonia Corporation, Corporations Divisions, Commissioners, to Suzane Anderson, Cathect Communications (Dec. 16, 2022).

[123] SLOI Response at 1683829171599552877, 1683829293106040689.

[124] LOI Response at Florida SOS. The address is 300 Village Center Drive, Suite 103, Woodstock, GA 30188.

[125] LOI Response at Communications.

[126] LOI Response at Doc-04 ACP enrollment Process; City LOI Response at ACP enrollment Process.

[127] Information on file in Investigation Number EB-FD-22-00034228.

34. Bank records further show large payments going from Tone Communication's and related companies' accounts to various individuals; the Bureau was unable to determine a clear business purpose for any of these payments:

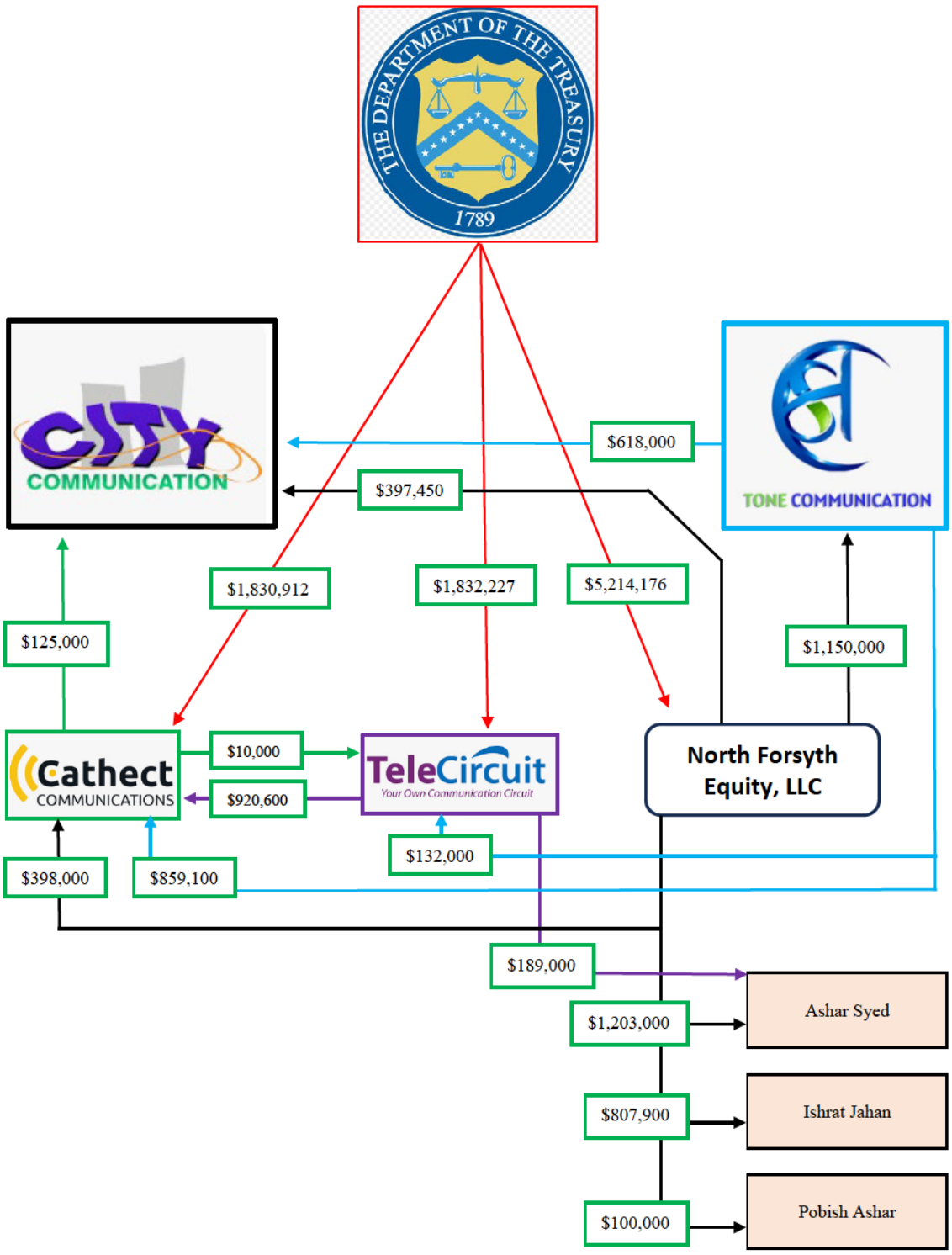
- During the period from July 23, 2021 to March 31, 2023, North Forsyth Equity transferred $1,203,000 to Ashar Syed. During the period from May 6, 2022 to March 31, 2023, Tele Circuit transferred $189,000 to Ashar Syed. Additionally from the period from December 16, 2021 to October 8, 2022, Ashar Syed endorsed checks made out to other entities and individuals in amounts that totaled approximately $297,000. Ashar Syed is the CEO of Tele Circuit and is also affiliated with Tone Communication.[128]
- During the period from September 6, 2022 to March 13, 2023, North Forsyth Equity sent a total of $807,900 to Ishrat Jahan in a series of transactions; additionally, some of these payments are those noted above where Ashar Syed, not Jahan, endorsed the check. Ishrat Jahan is the CEO of Cathect Communications.[129]
- On February 27, 2023, North Forsyth Equity sent $100,000 to Pobish Ashar, who is the Secretary of City Communications, CFO of Tele Circuit, and apparent ex-wife of Ashar Syed.[130]

On the next page is a diagram of the cash flows among the relevant entities that reflects transactions detailed in the entities' financial statements from March 2021 to May 2023:

[128] *Id.*

[129] *Id.*

[130] *Id.* Pobish Ashar was also the notary public on affidavits submitted to the Commission by both Tone Communication and City Communications in response to Commission inquiries. *See* Affidavit (Tone submitted by Ashar Syed, CEO of Tone, on June 1, 2023); Affidavit (City submitted by Emma Wilson, Operational Manager of City, on July 13, 2023).


THE DEPARTMENT OF THE TREASURY
1789
CITY COMMUNICATION
TONE COMMUNICATION
$618,000
$397,450
$1,830,912
$1,832,227
$5,214,176
$125,000
$1,150,000
Cathect COMMUNICATIONS
$10,000
$920,600
TeleCircuit
Your Own Communication Circuit
North Forsyth Equity, LLC
$132,000
$398,000
$859,100
$189,000
$1,203,000
Ashar Syed
$807,900
Ishrat Jahan
$100,000
Pobish Ashar

D. Tone Communication's Application History to Participate in EBB and ACP

35. Because Tone Communication is a non-ETC, it had to be approved by WCB to be a provider in EBB.[131] Tone's EBB approval automatically transitioned to ACP.[132] Tone submitted applications to WCB seeking to be an EBB provider on October 4, 2021, November 22, 2021, and December 30, 2021; WCB approved these applications on October 6, 2021, November 29, 2021, and January 11, 2022, respectively.[133] In its second and third applications, Tone added states and territories to the jurisdictions in which the Company sought to be authorized to provide EBB/ACP services. Tone used two different business addresses on its applications: 401 S. Hunting Lodge Lane, Bastrop, TX 78602 and 9925 Haynes Bridge Rd, Suite 200, PMB 210, Alpharetta, GA 30022.[134] In all three applications, Tone listed its contact email address as info@tonecomms.com.[135]

36. Separate from these three applications,[136] Tone Communication submitted an EBB election form to USAC on October 13, 2021 to provide fixed and mobile broadband service as well as connected devices. On the form, the Company listed "401 S Hunting Lodge Ln, Bastrop, TX 78602" as the "provider" address and "9925 Haynes Bridge Road, Suite 200, PMB 210, apharetta, GA 30022 (*sic*)" as the "contact" address. The form lists two email addresses: "info@tonecomms.com" and "antoniob@tonecomms.com."[137] Tone's election form was approved on November 5, 2021.[138] In subsequent communications with USAC in December 2021, Tone used the "antoniob@tonecomms.com" email address and the "9925 Haynes Bridge Rd., Suite 200, PMB 210, Alpharetta, GA 30022" mailing address.[139]

37. While Tone Communication applied to participate in EBB, it did not begin participating until the successor program, ACP, was in place, with its enrollment of subscribers beginning in February

[131] 47 CFR § 54.1601(b).

[132] *Affordable Connectivity Program Order*, *supra* note 9, at 492, para. 14.

[133] Tone Communication Application (filed Oct. 4, 2021) (on file at EB-FD-22-00034228); Tone Communication Application (filed Nov. 22, 2021) (on file at EB-FD-22-00034228); Tone Communication Application (filed Dec. 30, 2021) (on file at EB-FD-22-00034228).

[134] Tone Communication Application (filed Oct. 4, 2021) (on file at EB-FD-22-00034228); Tone Communication Application (filed Nov. 22, 2021) (on file at EB-FD-22-00034228); Tone Communication Application (filed Dec. 30, 2021) (on file at EB-FD-22-00034228).

[135] Tone Communication Application (filed Oct. 4, 2021) (on file at EB-FD-22-00034228); Tone Communication Application (filed Nov. 22, 2021) (on file at EB-FD-22-00034228); Tone Communication Application (filed Dec. 30, 2021) (on file at EB-FD-22-00034228).

[136] The application was an application for FCC approval to participate in the program. *See* USAC, About, Affordable Connectivity Program, Participate in ACP, https://www.usac.org/about/affordable-connectivity-program/participate-in-acp/ (last visited Dec. 1, 2023). Separately, the EBB election form was an election notice submitted to USAC; submitting an election notice to USAC allowed USAC to register the company to participate in the program and to create the necessary system accesses. *Id.*

[137] Tone Communication EBB Election Form (Oct. 7, 2021) (on file at EB-FD-22-00034228).

[138] E-mail from Antonio, Antoniob@tonecomms.com, to Abbey T., EBB Election Support, EBBElection@usac.org (Nov. 23, 2021, 12:47 EDT).

[139] E-mail from Antonio, Antoniob@tonecomms.com, to Abbey T., EBB Election Support, EBBElection@usac.org (Dec. 7, 2021, 12:44 EDT).

2022.[140] For service months March 2022 through October 2023, Tone Communication received a total of $15,656,581.55 in payments.[141]

III. THE BUREAU'S INVESTIGATION

38. On September 8, 2022, the FCC Office of Inspector General (OIG) issued an advisory warning that participating ACP providers had been enrolling multiple households based on a single BQP even though the Commission's rules prohibit the use of a single BQP to qualify multiple households for ACP support simultaneously.[142] Also on September 8, 2022, in response to concerns that USAC had separately flagged for the Commission, WCB released a public notice detailing immediate action to prevent this type of improper enrollments and reminding providers of their obligation to implement policies and procedures for enrolling ACP households that are eligible to receive the benefit.[143]

39. The Bureau sent an LOI to Tone Communication on September 16, 2022 in connection with potential violations of EBB and ACP rules.[144] The LOI was sent to 401 S. Hunting Lodge Lane, Bastrop, Texas 78602, the address Tone Communication listed in two of its program applications and its election notice, by both certified and regular mail.[145] The LOI sought information and documents related to the Company's participation in EBB and ACP with a focus on information related to subscribers who enrolled in ACP based on the eligibility of a non-subscriber BQP. Tone Communication responded to the LOI on October 16, 2022, January 23, 2023, and March 9, 2023.[146]

40. In response to the Bureau's LOI, Tone Communication stated it had received a list of 1,162 ACP customers from USAC whom USAC had de-enrolled from ACP, but Tone did not explain why USAC had de-enrolled those customers and did not provide documents related to the de-enrollment.[147] In addition, Tone was notified by USAC in June 2022, August 2022, and September 2022 that the Company had enrolled subscribers with various BQP problems, including that: (1) Tone was not

[140] Information on file in Investigation Number EB-FD-22-00034228.

[141] *Id.*

[142] Advisory, FCC OIG, *Advisory Regarding Provider Enrollments of Multiple ACP Households Based on the Same Child/Dependent* (Sept. 8, 2022), https://www.fcc.gov/document/oig-advisory-regarding-acp-enrollment-fraud.

[143] *Wireline Competition Bureau Announces Additional Program Integrity Measures for Affordable Connectivity Program Enrollments Based on a Benefit Qualifying Person*, WC Docket No. 21-450, Public Notice, 37 FCC Rcd 10211 (WCB 2022). The FCC and USAC adopted several safeguards to stop duplicate non-subscriber BQP enrollments: (1) USAC identified and de-enrolled households that enrolled in ACP based on a duplicate BQP and USAC continued to conduct regular program integrity checks to identify enrollments based on a duplicate BQP, (2) USAC modified the National Verifier to prevent multiple households from enrolling in ACP using a duplicate BQP, and (3) USAC instituted a process to hold payments to limit the amount of potentially improper payments disbursed to providers that claim households enrolled with a duplicate BQP. Moreover, USAC reminded service providers participating in ACP to implement policies and procedures that included measures to check for intracompany duplicate subscribers. *See* USAC, *FCC Announces Additional Program Integrity Measures for ACP Enrollments Based on a Benefit Qualifying Person* (Sept. 14, 2022), https://www.usac.org/wp-content/uploads/about/documents/acp/bulletins/FCC-Announces-Additional-Program-Integrity-Measures-for-BQP-Enrollments.pdf; USAC, *ACP October Newsletter* (Oct. 28, 2022), https://www.usac.org/wp-content/uploads/about/documents/acp/bulletins/ACP-October-Newsletter.pdf.

[144] Letter of Inquiry from the Fraud Division to Tone Communication (Sept. 16, 2022) (on file in EB-FD-22-00034228) (LOI). The LOI also contained questions related to the Lifeline Program, in which Tone Communication stated it does not participate. *See* Tone Letter, *supra* note 77.

[145] LOI.

[146] Information on file in Investigation Number EB-FD-22-00034228.

[147] *See* Tone Letter, *supra* note 77.

allowed to receive reimbursement for devices provided to certain subscribers because other companies had already received reimbursement for devices provided to those subscribers, (2) certain subscribers Tone enrolled or the BQP used to enroll those subscribers matched the records of already existing subscribers in NLAD, and (3) members of Tone subscribers' households were already receiving ACP benefits.[148]

41. Subsequently, the Bureau issued a supplemental LOI (SLOI) to Tone Communication on April 20, 2023.[149] The SLOI was sent via email to "ephraatmichael@tonecomms.com," "info@tonecomms.com," and "noellewilkinson@tonecomms.com" after the Bureau met with Tone representatives and confirmed the best way to send the SLOI. The SLOI sought information and documents regarding the relationship between Tone and City Communications and other related entities, and information related to transfers of customers. Tone responded to the SLOI on May 19, 2023, May 31, 2023, and June 1, 2023.

A. Subscribers Enrolled Using Duplicate Non-Subscriber BQP Information

42. Based on information obtained from the OIG, from June 24, 2022, through August 7, 2022, Tone Communication submitted 154 enrollments to NLAD for ACP service[150] for subscribers purportedly living in Oklahoma using only three non-subscriber BQPs[151]—four enrollments used BQP A, 114 enrollments used BQP B, and 36 enrollments used BQP C.[152] In the case of a non-subscriber BQP, that person is someone in the applicant's household other than the applicant—often times a dependent child. Tone repeatedly used the same non-subscriber BQP to enroll multiple subscribers on the same day; for example:

- on July 15, 2022, non-subscriber BQP C was used to enroll six subscribers;
- on July 16, 2022, non-subscriber BQP C was used to enroll seven subscribers and non-subscriber BQP B was used to enroll eight subscribers;
- on July 17, 2022, non-subscriber BQP B was used to enroll 41 subscribers;
- on July 25, 2022, non-subscriber BQP C was used to enroll eight subscribers; and
- on July 31, 2022, non-subscriber BQP B was used to enroll 20 subscribers.[153]

43. Of the 154 enrollments Tone submitted using only three non-subscriber BQPs, the Bureau was only able to verify that two of the subscribers had an address that matched the address listed in the enrollment information.[154] Additionally, the Bureau's analysis showed there were only 39 unique addresses used for the 154 enrollments.[155] In connection with these 154 enrollments, Tone submitted

[148] LOI Response at DOC-10 ACP Notices-USAC.

[149] Supplemental Letter of Inquiry from the Fraud Division to Tone Communication (Apr. 20, 2023) (on file in EB-FD-22-00034228) (SLOI).

[150] There are 152 subscribers connected with these 154 enrollments; two subscribers were enrolled twice in different months.

[151] In this NAL, we protect their identities and label the three non-subscriber BQPs as "BQP A," "BQP B," and "BQP C."

[152] Information on file in Investigation Number EB-FD-22-00034228.

[153] *Id.*

[154] Among other resources, the Bureau used web resources including Google and LexisNexis.

[155] Information on file in Investigation Number EB-FD-22-00034228.

reimbursement requests from July 2022 to December 2022, and received a total of $23,158.08 in reimbursement from ACP for both monthly service and devices.[156]

44. Furthermore, in response to the Bureau's LOI, Tone Communication produced a list of ACP subscribers, which included approximately 11,000 subscriber entries.[157] The ACP subscriber list provided by Tone largely mirrors the information the Bureau obtained from the OIG regarding the duplicate non-subscriber BQPs; the Company's subscriber list shows that prior to August 2022, four subscribers enrolled using non-subscriber BQP A, 113 subscribers enrolled using non-subscriber BQP B, and 35 subscribers enrolled using non-subscriber BQP C.[158] All 152 of these subscribers were enrolled by the same agent, Patrick Hardy.[159] Tone's list of ACP subscribers showed no subscribers enrolled using these four non-subscriber BQPs after August 2022.[160]

45. Tone Communication's officers, Roselba Bartolini (CEO) or Ashar Syed (CEO), electronically submitted the Company's reimbursement requests to USAC each month from April 2022 through August 2023.[161] In doing so, they certified to the accuracy and truthfulness of the following statements for ACP. Below are relevant portions of the certification:

- I am an officer authorized to submit the reimbursement request on behalf of the participating provider;
- I have read the instructions relating to the reimbursements and the funds sought in the reimbursement request are for services and/or devices that were provided in accordance with the purposes and objectives set forth in the statute, rules, requirements, and orders governing the Affordable Connectivity Program;
- The participating provider is in compliance with and satisfied all of the rules set forth in 47 CFR Part 54, Subpart R,[162] the statute, requirements, and orders governing the Affordable Connectivity Program reimbursement, and the provider acknowledges that failure to be in compliance and remain in compliance with Affordable Connectivity Program statutes, rules, and orders may result in the denial of reimbursement, cancellation of funding commitments, and/or recoupment of past disbursements;
- The participating provider has obtained valid certification and application forms as required by the rules in 47 CFR Part 54, Subpart R for each of the subscribers for whom it is seeking reimbursement;
- All documentation associated with the reimbursement form, including all records for services and/or connected devices provided, will be retained for a period of at least six years after the last date of delivery of the supported services and/or connected devices provided through Affordable Connectivity Program, and are subject to audit, inspection, or investigation and will be made available at the request of any representative (including any auditor) appointed by the Commission and its Office of

[156] *Id.*

[157] LOI Response at DOC-03-Master File spreadsheet.

[158] *Id.*

[159] *Id.*

[160] *Id.* At this point, the Commission and USAC had introduced safeguards to prevent improper BQP enrollments. *See supra* para. 38.

[161] Information on file in Investigation Number EB-FD-22-00034228.

[162] The rules in Subpart R relate to ACP, 47 CFR §§ 54.1800-54.1814.

Inspector General, or any local, state, or Federal agency with jurisdiction over the provider;

- The information contained in this form is true, complete, and accurate to the best of the officer's knowledge, information, and belief, and is based on information known to the officer or provided to officer by employees responsible for the information being submitted;
- The officer is aware that any false, fictious, or fraudulent information, or the omission of any material fact on this request for reimbursement or any other document submitted by the provider, may subject the provider and the officer to punishment by fine or forfeiture under the Communications Act (47 U.S.C. §§ 502, 503(b), or 1606), or fine or imprisonment under Title 18 of the United States Code (18 U.S.C. §§ 1001, 286-87, 1343), or can lead to liability under the False Claims Act (31 U.S.C. §§ 3729-3733, 3801-3812); and
- All enrollments and transfers completed by the provider were bona fide, requested and consented by the subscriber household after receiving the disclosures required under § 54.1810(a) and (b), and made pursuant to program rules.[163]

B. Subscribers Enrolled Using Fake or False Addresses

46. The Bureau's investigation identified numerous subscribers apparently enrolled in ACP by Tone Communication using fake or false addresses that have no connection to the subscribers to whom they purport to relate. The Bureau reviewed the 154 enrollments associated with the 3 duplicate non-subscriber BQPs described above and found these subscribers were associated with only 39 unique subscriber addresses.[164] The Bureau was able to identify 150 of the subscribers, confirming that they are real people (meaning the Bureau verified that their name, date of birth, and Social Security number match), the majority of whom live in Oklahoma, but only 2 of the 154 enrollments had an address that matched the address listed in ACP enrollment information.[165] The Bureau's analysis found that 1 of the purported subscribers resides in North Carolina more than 1,100 miles from his/her purported enrollment address in Oklahoma, 2 of the purported subscribers reside in Texas more than 250 miles from their purported enrollment addresses in Oklahoma, and another 59 purported subscribers live more than 150 miles from their purported enrollment addresses in Oklahoma.[166]

47. The Bureau also reviewed a sample of 50 subscribers with unique addresses who were not associated with the duplicate non-subscriber BQP issue. Of those 50 subscribers, 8 did not match the address used for enrollment and 3 of those 8 were found to reside more than 20 miles from their purported enrollment addresses.[167]

48. The Bureau looked at 100 additional subscribers who are associated with having received a connected device as part of ACP. Of those 100 subscribers, 12 were not associated currently or recently

[163] Universal Services Administrative Co., Lifeline Claims System Certifications for the Affordable Connectivity Program; Affordable Connectivity Program Claims Process Overview (Apr. 21, 2022). The complete list of ACP certifications is attached as the Appendix.

[164] Information on file in Investigation Number EB-FD-22-00034228.

[165] *Id.*

[166] *Id.*

[167] *Id.*

with the addresses listed and 6 of those 12 were found to reside more than 5 miles from their purported enrollment addresses.[168]

49. To further confirm subscriber information, the Bureau attempted to contact a sample of 15 Tone Communication ACP subscribers by phone for whom Tone submitted claim reimbursement and received funds from ACP. Out of the 15 subscribers, at least half of the numbers had been disconnected or were not in service at the time of the Bureau's calls. The Bureau was able to reach one person who indicated they had never heard of Tone Communication, were not participating in ACP, and received service from another telecommunications provider. Tone claimed this individual as a subscriber in reimbursement requests and received a total of $489.01 in ACP reimbursement for that subscriber over 13 months.[169] The Bureau spoke with another purported customer of Tone Communication who said they signed up with Tone to participate in ACP and submitted their consent, but that they never received a SIM card or device from Tone as promised, never received service from the Company, and had been unable to get a response when attempting to contact Tone via email. Tone also claimed this individual as a subscriber in reimbursement requests and received $400 in ACP reimbursement for that subscriber over 10 months.[170]

50. The Bureau also attempted to contact approximately 200 purported Tone subscribers via email. While most either did not respond or the emails bounced back stating the email address was invalid, six respondents definitively stated in emails to the Bureau that they were not participating in ACP with Tone Communication:

- Person A stated they had not participated in ACP with Tone Communication; however, Tone claimed this individual as a subscriber for eight months and received $600 from the program.
- Person B stated they had not participated in ACP with Tone Communication; however, Tone claimed this individual as a subscriber for 12 months, claimed it provided this subscriber with a connected device, and received $459.99 from the program.
- Person C stated they had not participated in ACP with Tone Communication; however, Tone claimed this individual as a subscriber for five months, claimed it provided this subscriber with a connected device, and received $249.99 from the program.
- Person D stated they had not participated in ACP with Tone Communication; however, Tone claimed this individual as a subscriber for four months and received $219.01 from the program.
- Person E stated they had not participated in ACP with Tone Communication; however, Tone claimed this individual as a subscriber for three months, claimed it provided this subscriber with a connected device, and received $189.99 from the program.
- Person F stated they had not participated in ACP with Tone Communication; however, Tone claimed this individual as a subscriber for five months, claimed it provided this subscriber with a connected device, and received $249.01 from the program.[171]

[168] *Id.*

[169] *Id.*

[170] *Id.*

[171] *Id.*

C. Tone Communication's Reimbursement Requests

51. Tone Communication submitted or caused to be submitted apparently fake or false information to USAC in its reimbursement requests in order to obtain payments from ACP. The Bureau's investigation found that Tone electronically transmitted certified documents containing fake or false subscriber information by interstate wire to USAC.[172] Once each month, Tone certified to the accuracy of the information contained in its reimbursement requests and transmitted them to USAC electronically via USAC's "one portal" system, ACCS.[173]

52. Specifically, from August 2022 to July 2023, Tone electronically uploaded reimbursement requests to USAC's portal 12 times. With each reimbursement request, Ashar Syed or Roselba Bartolini, CEOs of the Company, certified to the accuracy and truthfulness of the information contained in the requests.[174] By transmitting these reimbursement requests containing fake or false subscriber information electronically via the internet, Tone used interstate wires.[175]

D. Inaccurate Company Address and Contact Information

53. The Bureau had difficulty serving the LOI on Tone Communication. Tone repeatedly used "401 S. Hunting Lodge Lane, Bastrop, TX 78602" as its business address when submitting required program forms to the Commission. When the Bureau attempted to serve the LOI, it was mailed first class and certified mail to 401 S. Hunting Lodge Lane on September 16, 2022. On October 6, 2022, the Bureau mailed the LOI to Tone's alternate address, "9925 Haynes Bridge Road, Suite 200, PMB 210, Alpharetta GA, 30022," which was sometimes listed on Tone's program forms. The Bureau also emailed the LOI to "info@tonecomms.com" and "antoniob@tonecomms.com," email addresses provided in Tone's applications, on October 6, 2022.[176]

54. On October 11, 2022, the first class mailing sent to "401 S. Hunting Lodge Lane, Bastrop, TX 78602" was returned to the Bureau with a notation "unable to forward for review."[177] The Bureau received one certified signed green card from the "9925 Haynes Bridge Road, Suite 200, PMB 210, Alpharetta GA, 30022" address. The card was signed by "Victor."[178] The Bureau has not identified any Tone Communication employee or associate using the name "Victor."

55. Because of the difficulty in serving the LOI and the lack of communication from Tone Communication in response to the mailings, the Bureau engaged a process server to serve the LOI. The process server was unable to serve the LOI at the "401 S. Hunting Lodge Lane, Bastrop, TX 78602" address because Tone was not located there. The process server reported the following to the Bureau:

> I s/w Denise, Caucasian female in her 60's (*sic*) and she told me that she has lived her (*sic*) for 3 years now but that defendant was here along with

[172] Information on file in Investigation Number EB-FD-22-00034228. *See also United States v. Collick*, 611 Fed. Appx. 553, 556 (11th Cir. 2015) ("Given that [defendant] testified that [he and co-defendant] used the internet to perpetrate their scheme, his testimony also established that [co-defendant] committed wire fraud."); *Cleo NAL*, *supra* note 71.

[173] Information on file in Investigation Number EB-FD-22-00034228.

[174] Tone Communication certified its reimbursement requests on August 3, 2022, September 2, 2022, October 7, 2022, November 3, 2022, December 5, 2022, January 4, 2023, February 2, 2023, March 2, 2023, April 4, 2023, May 3, 2023, June 2, 2023, and July 2, 2023. Information on file in Investigation Number EB-FD-22-00034228.

[175] *See, e.g.*, *United States v. Dinh*, No. 8-20-CV-1794 (KKM-AAS), 2021 WL 5867221 (M.D. Fla. Dec. 10, 2021).

[176] Information on file in Investigation Number EB-FD-22-00034228.

[177] Email from FCC Digital Mail to Fraud Division, FCC Enforcement Bureau (Oct. 12, 2022, 7:27 EDT).

[178] Email from FCC Digital Mail to Fraud Division, FCC Enforcement Bureau (Oct. 18, 2022, 7:15 EDT).

> the company, and that she still receives junk mail for Tone Communications. Denise also told me she is renting this property from defendant and Denise believes defendant currently lives in the vicinity of Hwy 21 where it meets Hwy 812 .[179]

Despite the process server reporting that 401 S. Hunting Lodge Lane is not Tone's place of business, Tone's letterhead in its response to the Bureau's LOI listed its address as "401 S. Hunting Lodge Lane, Bastrop, Texas 78602."[180]

56. Similarly, the process server was unable to serve the LOI at the "9925 Haynes Bridge Road, Suite 200, PMB 210, Alpharetta GA, 30022" address. Regarding this attempt, the process server reported that the "Location is a Pak Mail store. Per staff the box 210 has been closed for quite sometime now."[181] While attempts to serve Tone at a physical business address were unsuccessful, the Commission's service of the LOI was accomplished via email.[182]

57. In January 2023, emails sent to the addresses Tone Communication provided, "info@tonecomms.com" and "antoniob@tonecomms.com," began bouncing back when the Bureau attempted to email Tone personnel. The message received when the email bounced back was that the user's email box was full.[183] Despite the email bounce back messages, Tone personnel sometimes, though inconsistently, continued to answer these emails from the Bureau.

E. Tone Communication's Failure to Send Transfer Notices

58. Tone Communication performed at least 34,574 transfers of subscribers from other providers to its ACP service.[184] The Commission's rules require participating providers to "provide written notice to the transferred subscriber" within five days of completing a subscriber transfer in NLAD.[185] The written notice must include the name of the transfer-in provider to which the subscriber's ACP benefit was transferred, the date the transfer was initiated, and an explanation of the dispute process if the subscriber believes the transfer was improper.[186]

59. The Bureau's SLOI requested "all notices to consumers of transfer of benefits issued pursuant to Commission rule 47 CFR § 54.1810(b)(2) and proof of delivery for each such notice."[187] The Bureau followed up numerous times with Tone personnel regarding providing the requested transfer notices. The Company failed to provide to the Bureau any written notice it purportedly sent to subscribers after transferring them to its service or any evidence that the Company has a policy or procedure in place to do so.

---

[179] Email from Sparre Process Serving, to Fraud Division, FCC Enforcement Bureau (Oct. 13, 2022, 23:01 EDT).

[180] Tone Letter, *supra* note 77. Additionally, in its LOI response, Tone listed its location and corporate headquarters as "410 Hunting Lodge L.N., Bastrop, TX 78602."

[181] Email from Sparre Process Serving, to Fraud Division, FCC Enforcement Bureau (Oct. 17, 2022, 17:38 EDT).

[182] Email from Antonio, Antoniob@tonecomms.com to Fraud Division, FCC Enforcement Bureau, and info@tonecomms.com (Oct. 16, 2022, 4:36 EDT).

[183] Information on file in Investigation Number EB-FD-22-00034228.

[184] *Id.*

[185] 47 CFR § 54.1810(b)(2).

[186] *Id.*

[187] SLOI, *supra* note 149.

IV. DISCUSSION

60. We find that Tone Communication apparently willfully and repeatedly violated numerous Commission rules and the wire fraud statute, including: (i) by repeatedly using the same non-subscriber BQP to enroll multiple subscribers;[188] (ii) by enrolling subscribers using fake or false addresses;[189] (iii) by failing to implement policies and procedures to prevent the improper enrollment of hundreds of subscribers;[190] (iv) when the Company's certifying officers, Ashar Syed and Roselba Bartolini, falsely certified that the Company was in compliance with ACP rules when it submitted reimbursement requests to USAC;[191] (v) for transmitting via interstate wires, certified reimbursement requests containing fake or false information;[192] (vi) by failing to provide written notice to a transfer-in subscriber within five business days of the completed transfer in NLAD;[193] (vii) by Tone Communication's continuous use of false addresses;[194] and (viii) for failing to respond wholly and completely to the Bureau's two LOIs.[195]

A. Tone Communication Enrolled Ineligible Subscribers Using the Same Non-Subscriber BQPs and Fake or False Addresses

61. A non-subscriber BQP may only be used once to qualify a household to receive ACP benefits. By repeatedly using the same three non-subscriber BQPs to support a total of 154 ACP enrollments, Tone Communication apparently violated Commission rules because that non-subscriber BQP member of a household had already been used to authorize a different household to receive ACP benefits. This occurred in 2022 before the Commission and USAC adopted additional safeguards. Tone's own subscriber spreadsheet that it produced to the Bureau showed the repeated use of the these same non-subscriber BQPs to enroll multiple purported customers, indicating that Tone was well aware of the improper enrollments.

62. Tone Communication's own subscriber list showed that Tone enrolled 29 persons using an address in Tulsa, Oklahoma, and another 40 persons using a different address in Tulsa; both residences are single-family homes that someone working for Tone could not reasonably believe could house 69 eligible households between them.[196] Tone's own records showed the Company enrolled dozens of subscribers on a single day using the same non-subscriber BQP.[197] This enrollment practice was then repeated multiple times. As discussed above, on July 15, 2022, non-subscriber BQP C was used to enroll six subscribers; on July 16, 2022, non-subscriber BQP C was used to enroll seven subscribers and non-subscriber BQP B was used to enroll eight subscribers; on July 17, 2022, non-subscriber BQP B was used to enroll 41 subscribers; on July 25, 2022, non-subscriber BQP C was used to enroll eight subscribers; and on July 31, 2022, non-subscriber BQP B was used to enroll 20 subscribers.[198] By enrolling numerous people in ACP who lived at the same address or numerous people using the same non-subscriber BQP, Tone apparently took advantage

[188] 47 CFR §§ 54.1605, 54.1805.

[189] *Id.* §§ 54.1606, 54.1806, 54.1810(i).

[190] *Id.* §§ 54.1606(b), 54.1806(b).

[191] *Id.* §§ 54.1808(e)(3), 54.1810(i).

[192] 18 U.S.C. § 1343.

[193] 47 CFR § 54.1810(b)(2).

[194] *Id.* § 1.17.

[195] 47 U.S.C. § 503(b)(1)(B).

[196] LOI Response at DOC-03 ACP Master File.

[197] *Id.*

[198] Information on file in Investigation Number EB-FD-22-00034228.

of the program by either failing to verify that a member of a subscribing person's household was not already being claimed by another household that was receiving program benefits or by committing outright fraud in order to increase the Company's profits.

63. Of the eight people described above whom the Bureau reached via telephone or email that Tone claimed to provide ACP service to and for whom Tone received more than $2,800 from the program, all denied having actually enrolled with or received any service from the Company. By claiming it had enrolled these people in ACP, Tone Communication took advantage of low-income consumers who apparently qualified for the ACP benefit and abused the ACP enrollment process so that it could increase its revenue. Tone's actions prevented those funds from being used instead to make broadband service more affordable for low-income Americans. Therefore, we find Tone Communication apparently willfully and repeatedly violated sections 54.1805 and 54.1806 of the Commission's rules.[199]

B. Tone Communication Committed Wire Fraud

64. The Bureau's investigation found that Tone Communication electronically submitted reimbursement requests containing fake or false information by interstate wire to USAC. These submissions were in furtherance of a scheme to defraud that resulted in the Commission (the Office of the Managing Director, responsible for ACP payments) disbursing funds from the U.S. Treasury to which Tone was not entitled. Tone submitted 12 such reimbursement requests apparently containing fake or false information from July 2022 through June 2023.

65. A finding that wire fraud has occurred "requires proof of (1) a scheme to defraud; and (2) the use of an interstate wire communication to further the scheme."[200] In order to be deemed a "scheme to defraud," the misrepresentation or omission must be material to the scheme.[201] In other words, the wrongdoer must have intended the misrepresentation or omission to induce the victim to part with property or influence the victim to undertake an action that he or she would not have otherwise undertaken were it not for the misrepresentation.[202] Tone Communication developed a scheme in which agents enrolled subscribers into ACP using fake or false information or improper duplicate BQP information. Tone certified the accuracy of the subscriber information in connection with its claims that it provided internet service and/or devices to the subscribers. These actions were apparently taken in furtherance of Tone's scheme to obtain payments from the Commission for customers improperly enrolled in ACP.

66. Tone's own subscriber list largely matched the subscriber list provided to the Bureau by the OIG in connection with the OIG September 8, 2022 advisory, which identified repeated use of only three non-subscriber BQPs to support 154 enrollments.[203] Thus, the Company apparently was aware that multiple enrollments used the same non-subscriber BQPs, which ACP rules prohibit, but claimed reimbursement for these subscribers anyway.[204] Between June 24, 2022 and August 7, 2022, Tone

[199] 47 CFR §§ 54.1805, 54.1806.

[200] *United States v. Maxwell*, 920 F.2d 1028, 1035 (D.C. Cir. 1990); *see also United States v. Pollack*, 534 F.2d 964, 971 (D.C. Cir. 1976).

[201] *See United States v. Daniel*, 329 F.3d 480, 485-89 (6th Cir. 2003).

[202] *See id.*

[203] LOI Response at DOC-03 ACP Master File.

[204] *See United States v. Daniel*, 329 F.3d 480, 487 (6th Cir. 2003) ("To convict a defendant of wire fraud the government must prove specific intent, which means not only that a defendant must knowingly make a material misrepresentation or knowingly omit a material fact, but also that the misrepresentation or omission must have the purpose of inducing the victim of the fraud to part with property or undertake some action that he would not otherwise do absent the misrepresentation or omission.").

submitted 154 enrollments in Oklahoma using only 3 non-subscriber BQPs and certified reimbursement requests for these customers using interstate wires.[205] In addition to enrolling persons using the same non-subscriber BQPs, Tone enrolled persons using fake or false addresses and certified reimbursement requests for these purported customers.[206]

67. To violate the federal wire fraud statute, the wrongdoer must use "wire, radio or television communication" to further the fraudulent scheme.[207] Tone Communication used interstate wires when transmitting its false certified reimbursement requests via the ACCS to USAC.[208] The investigation determined that on at least 12 occasions, from July 2022 through June 2023, Tone Communication certified reimbursement requests based on false subscriber information and submitted this information to USAC via interstate wires.[209]

68. We find that Tone Communication apparently knowingly, willfully, and with reckless indifference to the truth violated the wire fraud statute when it falsely certified compliance with program rules in each of its reimbursement requests in July 2022 through June 2023, which, as discussed above, included numerous subscribers enrolled in 2022 for whom the Company had not properly determined ACP eligibility, and in at least some cases as determined by the Bureau, for subscribers who were not receiving any service from the Company.[210] Therefore, pursuant to section 503(b)(1)(D), the Commission finds that Tone Communication apparently violated the wire fraud statute.

C. Tone Communication Certified False Reimbursement Requests

69. Section 54.1808(e)(3) requires an officer of the participating provider to certify, under penalty of perjury, as part of each request for reimbursement, that the "participating provider is in compliance with and satisfied all requirements in the statute, rules, and orders governing the Affordable Connectivity Program reimbursement[.]"[211] Section 54.1810(i) prohibits participating providers from engaging in unjust and unreasonable acts or practices that would undermine the purpose, intent, or integrity of ACP; violating any ACP rule is an unjust an unreasonable practice.[212]

70. As discussed above, Tone Communication apparently violated Commission rules in connection with repeatedly using the same non-subscriber BQPs to enroll subscribers in ACP and also using fake or false addresses to enroll subscribers in ACP. The Bureau confirmed that certain persons claimed by Tone as ACP subscribers were never Tone customers, had never signed up for ACP through Tone, and had never received service in connection with the purported enrollment. In one example, Tone submitted for and received $240 in ACP payments for an individual that had no knowledge of the Company whatsoever. The Bureau also received confirmation via email that for at least six purported customers, Tone submitted repeatedly for reimbursement for these six customers that either never participated in ACP or were never Tone customers.

---

[205] Information on file in Investigation Number EB-FD-22-00034228.

[206] *Id.*

[207] *United States v. Gray*, 96 F.3d 769, 771 n.4 (5th Cir. 1996).

[208] Information on file in Investigation Number EB-FD-22-00034228.

[209] Tone Communication's places of business (Georgia or Texas) would have required it to submit its reimbursement requests to USAC in Washington, D.C./Virginia using interstate wires.

[210] Information on file in Investigation Number EB-FD-22-00034228.

[211] 47 CFR § 54.1808(e)(3).

[212] *Id.* § 54.1810(i)(1) & (i)(2)(vii).

71. Each and every time Tone Communication submitted an ACP reimbursement request, the certifications by the certifying officers, Roselba Bartolini and Ashar Syed, under penalty of perjury, included that they were unaware of any fake or false information in the reimbursement requests and that the company was in compliance with all ACP rules. It is apparent from the Bureau's investigation that this was not true. Contrary to its certifications of compliance, Tone Communication had enrolled purported customers using duplicate non-subscriber BQPs and fake or false addresses and failed to retain required documents such as transfer notices

72. With each monthly reimbursement request in July 2022 through June 2023 submitted by the certifying officer under penalty of perjury but containing duplicate non-subscriber BQP enrollments or fake or false addresses, Tone Communication apparently violated section 54.1808(e)(3) of the Commission's rules.[213] By willfully and repeatedly apparently violating the Commission's rules designed to safeguard ACP, Tone Communication's actions undermined the purpose, intent, and integrity of the program in apparent violation of section 1810(i) of the Commission's rules because the purpose and intent of ACP is to only provide support to persons who are eligible.[214]

D. Tone Communication's Untruthful, Inaccurate, and Incomplete Statements in Submissions to the Commission

73. Section 1.17 of the Commission's rules requires applicants for Commission authorization to provide fully truthful and accurate statements and ensure that any material factual written statements are correct and not misleading.[215] As discussed above, Tone Communication applied to the Commission to participate in EBB, and subsequently participated in ACP, and submitted an election notice to USAC. In these filings, Tone regularly used two addresses—"401 S. Hunting Lodge Lane, Bastrop, TX 78602" and "9925 Haynes Bridge Road, Suite 200, PMB 210, Alpharetta, GA 30022." Based on the Bureau's attempts to contact Tone and reports received from the process server engaged to serve the Bureau's LOI, Tone apparently does not do business at either address. Tone Communication certified repeatedly on its applications to the Commission for participation in EBB and ACP that all the material statements made in the applications, attachments, and supporting documents were "true, complete, correct, and made in good faith."[216] They apparently were not. Tone certified on its election notice that its filing was "true, accurate and complete."[217] It apparently was not. In addition to providing false addresses in its applications and election notice, the Company continued to use these false addresses in its communications with the Bureau throughout the investigation.[218]

74. The primary focus of section 1.17 in its current form is to "enhance the effectiveness of investigatory and adjudicatory proceedings."[219] Tone Communication's omissions and misrepresentations have harmed the effectiveness of both the adjudication of its authorization and the Bureau's investigation into its conduct. Tone's misrepresentations made it more difficult to reach it and to serve the Bureau's LOI. To date, Tone has not cured its misrepresentations and lack of candor by

[213] *Id.* § 54.1808(e)(3).

[214] *Id.* § 54.1810(i).

[215] *Id.* § 1.17.

[216] EBB Provider Approval & Alternative Eligibility Verification Application Filing Instructions, at 19 (Mar. 2021) (on file at EB-FD-22-00034228).

[217] Tone Communication EBB Election Form (Oct. 7, 2021) (on file at EB-FD-22-00034228).

[218] Tone Letter, *supra* note 77.

[219] *Amendment of Section 1.17 of the Commission's Rules Concerning Truthful Statements to the Commission*, Report and Order, 18 FCC Rcd 4016, 4022, para. 16 (2003).

revising or withdrawing its applications or election notice to correct its address. All of these submissions appear to be misrepresentations to the Commission in apparent violation of section 1.17 of the Commission's rules.[220]

75. It is long settled that a Commission licensee's failure to respond to an LOI from the Bureau violates a Commission order.[221] Such violations might not always entail a party's total failure to respond; numerous decisions recognize that parties may violate Commission orders by providing, as here, incomplete responses to Bureau inquiries.[222] Here, the Company's LOI and SLOI responses were woefully incomplete because they failed to include, among other things, all communications among employees or contractors, the criteria used to verify subscribers' eligibility for ACP, and written notices provided to subscribers after completion of service transfers.

76. A participating provider must implement "policies and procedures for ensuring that their Affordable Connectivity Program households are eligible to receive the affordable connectivity benefit."[223] Despite multiple requests from the Bureau, the Company produced no relevant policies or procedures that it has in place to ensure it enrolls only eligible households in ACP. Additionally, given the flagrant nature of repeated use of the same non-subscriber BQP and enrollment of subscribers using fake or false addresses, it is apparent that Tone does not have sufficient policies and procedures in place to prevent this type of abuse by employees and agents responsible for enrolling subscribers in the program.

---

[220] *See, e.g.*, *Purple Communications, Inc.*, Forfeiture Order, 30 FCC Rcd 14892 (2015); *Purple Communications, Inc.*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 5491, 5506, n.87 (2014); *VCI Company*, Notice of Apparent Liability for Forfeiture and Order, 22 FCC Rcd 15933, 15933, para. 20 (2007); *see also Truphone, Inc.*, Notice of Apparent Liability for Forfeiture, 37 FCC Rcd 5393, 5402-03, para. 22 (2022); *Cleo NAL*, *supra* note 71.

[221] *See* 47 U.S.C. § 503(b)(l)(B); *see also ABC Fulfillment Services LLC D/B/A HobbyKing USA LLC and Hobbyking,com; and Indubitably, Inc. D/B/A HobbyKing Corp., HobbyKing USA LLC, HobbyKing, and HobbyKing.com*, Notice of Apparent Liability for Forfeiture, 33 FCC Rcd 5530, 5538, para. 16 (2018) ("Companies that receive LOIs must timely file complete and accurate responses to the Bureau's questions. Failure to timely and fully respond to the Bureau's inquiries violates the Act. The Commission has repeatedly taken enforcement action against entities that disregard orders to provide information related to potential violations of the Act or the Commission's rules." (internal cites omitted)), *aff'd*, Forfeiture Order, 35 FCC Rcd 7441 (2020); *Net One Int'l, Net One, LLC, Farrahtel Int'l, LLC*, Forfeiture Order, 29 FCC Rcd 264, 267, para. 9 (EB 2014) (imposing a $25,000 penalty for failure to respond to LOI); *Conexions, LLC d/b/a Conexion Wireless*, Notice of Apparent Liability for Forfeiture and Order, 28 FCC Rcd 15318, 15325, para. 22 (2013) (proposing a $300,000 forfeiture for failure to provide timely and complete responses to an LOI); *Technical Commc'n Network, LLC*, Notice of Apparent Liability for Forfeiture and Order, 28 FCC Rcd 1018, 1020, para. 8 (EB 2013) (proposing a $25,000 forfeiture for failure to provide a complete response to an LOI); *Google, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 4012 (EB 2012) (proposing a $25,000 penalty for failure to respond fully to LOI) (forfeiture paid); *SBC Commc'ns, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7600, para. 28 (2002) (imposing a $100,000 penalty for failing to submit a sworn written response).

[222] *See, e.g.*, *Communications Options, Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 13680, 13686, paras. 16, 17 (EB 2007) (forfeiture proposed for, inter alia, failure to submit an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer with personal knowledge of the representation provided in the LOI response, verifying the truth and accuracy of the information submitted), *aff'd*, Forfeiture Order, 23 FCC Rcd 3969, 3972-73, paras. 8, 9 (EB 2008) (failure to file prompt sworn responses represents misconduct that "inhibits [the Commission's] ability to adequately detect and deter potential rule violations in areas of critical importance to the Commission"); *Digital Antenna, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 23 FCC Rcd 7600, 7600-02, paras. 3, 5, 7 (EB 2008) (holding that a manufacturer of cellular and PCS boosters was apparently liable for violation of a Commission order when it failed to provide complete responses to Bureau LOIs, including by failing to submit the required sworn statements).

[223] 47 CFR § 54.1806(b).

77. Participating providers must "provide written notice to the transferred subscriber" within five days of completing a subscriber transfer in NLAD.[224] Despite numerous emails and phone calls with Tone staff to follow up on the LOI requests for information and documents regarding subscriber transfers and required notices, Tone produced no evidence showing the Company had any policy or procedure in place to send written notices to transfer-in subscribers and no evidence showing any such written notices were ever sent to transfer-in subscribers. Thus, Tone Communication failed to provide the written notices to subscribers after transferring them to its service for ACP.

78. The Bureau attempted to contact Tone Communication by email numerous times to discuss these and other documents requested by the LOIs; often, the Bureau's emails would receive a bounce back that the email was undeliverable. The Bureau also held several conference calls with Tone personnel and explained, in detail, what was missing from their LOI responses. Tone was given more time to supplement their document productions but additional responses and documents productions were still incomplete, and sometimes incomprehensible. Despite repeated requests for missing and incomplete items, Tone failed to provide most of the items asked for in the LOIs.

79. Throughout the duration of this investigation, the Bureau has yet to receive all the information that it requested through its LOIs and Tone has yet to correct its inaccurate business addresses. We therefore find that Tone Communication has failed to respond to two Commission orders in apparent violation of section 503(b)(1)(B) of the Act[225] and made misrepresentation in violation of section 1.17 of the Commission's rules.[226]

V. PROPOSED FORFEITURE[227]

80. The "Commission is permitted to impose forfeiture penalties to enforce compliance" with program rules.[228] 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[.]"[229] Here, section 503(b)(2)(B) of the Act authorizes us to assess a forfeiture against Tone Communication 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.[230] 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."[231] In addition, the Commission has established forfeiture guidelines that establish base forfeiture amounts for certain violations and identify criteria that

[224] *Id.* § 54.1810(b)(2).

[225] 47 U.S.C. § 503(b)(1)(B).

[226] 47 CFR § 1.17

[227] The statute of limitations period for the Commission to impose a forfeiture penalty for violations of the Act and the Commission rules discussed herein is one year from the date of the violation. *Id.* § 503(b)(6). In this case, Tone Communication agreed to toll the statute of limitations period such that violations remain viable if they occurred on or after March 7, 2022.

[228] *Affordable Connectivity Program Order*, *supra* note 9, at 558, para. 154.

[229] 47 U.S.C. § 503(b).

[230] *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*, DA-23-1198 (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). Tone is a toll reseller, see *supra* para. 23.

[231] 47 U.S.C. § 503(b)(2)(E).

we consider when determining the appropriate penalty in any given case.[232] 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.[233]

81. The Commission's forfeiture guidelines do not establish a base forfeiture for violations of EBB and ACP rules. We have therefore looked to the base forfeitures proposed in analogous cases for guidance. For example, in both the American Broadband NAL[234] and Total Call Mobile NAL,[235] the Commission proposed a per subscriber penalty, which is relevant here because although both cases involve the Commission's Lifeline Program, each matter also involved enrolling apparently ineligible subscribers. In addition, we have looked to the Commission's recent Q Link Wireless LLC NAL,[236] which involved apparent violations of EBB rules and included a proposed forfeiture amount of treble the loss to the program.

82. We find that Tone Communication apparently willfully and repeatedly violated multiple Commission rules and the federal wire fraud statute: (i) by repeatedly using the same non-subscriber BQP to enroll multiple subscribers;[237] (ii) by enrolling subscribers using fake or false addresses;[238] (iii) by falsely certifying that the Company was in compliance with ACP rules when it submitted reimbursement requests to USAC;[239] (iv) by transmitting via interstate wires, certified reimbursement requests containing fraudulent information;[240] (v) by its continuous use of false business addresses;[241] and (vi) by failing to respond fully to the Bureau's two LOIs.[242] As further described below, we propose a total forfeiture penalty of $14,021,293 for these apparent violations.

A. Proposed Forfeiture Amount for Tone Communication's Apparent Violations of Commission Rules by Improperly Enrolling Subscribers in ACP

83. Tone Communication repeatedly used the same non-subscriber BQP to enroll multiple households in 2022 and received payment from the program for these apparently improper enrollments. EBB and ACP rules allow a household to receive only one monthly service benefit.[243] A non-subscriber BQP may only be used to qualify one household. Tone received funds to which it was not entitled and prevented those funds from benefitting qualified ACP subscribers.

84. Tone Communication received payments from ACP in connection with at least 174 improper enrollments that involved duplicate non-subscriber BQPs and/or fake or false addresses. The

[232] 47 CFR § 1.80(b)(11), Note 2 to paragraph (b)(11).

[233] *Id.*

[234] *Am. Broadband & Telecomms. Co.; Jeffrey S. Ansted*, Notice of Apparent Liability for Forfeiture and Order, 33 FCC Rcd 10308 (2018) (*Am. Broadband NAL*).

[235] *Total Call Mobile, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 31 FCC Rcd 4191 (2016) (*Total Call Mobile NAL*).

[236] *Q Link Wireless LLC*, Notice of Apparent Liability for Forfeiture and Order, FCC 23-2, 2023 WL 345342 (Jan. 17, 2023) (*Q Link NAL*).

[237] 47 CFR § 54.1805.

[238] *Id.* §§ 54.1806, 54.1810(i).

[239] *Id.* §§ 54.1808(e)(3), 54.1810(i).

[240] 18 U.S.C. § 1343.

[241] 47 CFR § 1.17.

[242] 18 U.S.C. § 503(b)(l)(B).

[243] 47 CFR §§ 54.1605 and 54.1805.

Commission proposes a base forfeiture of $5,000 for each of the 174 apparently improper enrollments[244] in violation of sections 54.1805 and 54.1806 of the Commission's rules for a total base forfeiture amount of $870,000.[245]

85. Through 12 monthly reimbursement requests submitted from July 2022 through June 2023, Tone Communications requested and received $8,794,129.97 from ACP in connection with improperly enrolled subscribers. Each of these 12 reimbursement requests certified that Tone was in compliance with the Commission's ACP rules. It was not. Each of these reimbursement requests made false representations and included false certifications to USAC, and on the basis of these apparently false representations and false certifications, the U.S. Treasury paid Tone millions of dollars in connection with its ACP participation. That funding represents a substantial loss to ACP. In light of the egregiousness of Tone's conduct, we propose an upward adjustment of $9,811,797 to the base forfeiture. This is calculated as treble the loss to the Treasury from Tone's three highest payment months in the program,[246] which totaled $3,270,599.[247] We therefore propose a total forfeiture of $10,681,797 for Tone's apparent violation of the Commission's ACP rules in connection with its enrollment of customers.

B. Proposed Forfeiture Amount for Tone Communication's Apparent Violations of the Federal Wire Fraud Statute

86. In accordance with section 503(b)(1)(D) of the Act, the Commission may assess a base forfeiture of $5,000 for each wire fraud violation. In light of the egregiousness of Tone's conduct in using duplicate non-subscriber BQPs and fake or false address information in furtherance of its scheme to defraud via Tone's reimbursement requests that contained apparent false representations and false certifications, a substantial upward adjustment to the wire fraud base forfeiture is warranted. Therefore, we propose an upward adjustment to the statutory maximum of $244,958[248] for each of Tone's 12 apparent wire fraud violations, for a forfeiture amount of $2,939,496.

C. Proposed Forfeiture Amount for Tone Communication's Apparent Violations of Commission Rules through Repeated Inaccurate and Untruthful Statements

87. The Company made false statements to the Bureau during this investigation. Specifically, Tone Communication repeatedly falsely reported its business addresses. The Bureau's investigation found no evidence to support the Company's claim that either address was accurate. We propose a forfeiture of $100,000 for each of the two false addresses Tone Communications used.[249] Accordingly, the total proposed forfeiture amount for the Company's apparent violations of section 1.17 of the Commission's rules is $200,000.

[244] *See, e.g.*, *Am. Broadband NAL*, *supra* note 234; *Total Call Mobile, Inc. NAL*, *supra* note 235.

[245] 47 CFR §§ 54.1805, 54.1806

[246] *Q Link NAL*, *supra* note 236.

[247] Within the statute of limitations, service months April 2023, May 2023, and June 2023 were Tone's highest payment months.

[248] *See* 47 U.S.C. § 503(b)(2)(B); 47 CFR § 1.80(b)(2).

[249] *See Cleo NAL*, *supra* note 71.

D. Proposed Forfeiture Amount for Tone Communication's Apparent Violations of Commission Orders

88. Tone failed to respond fully to two LOIs, which are Commission orders.[250] We propose a forfeiture of $100,000 for each of the two LOIs to which Tone did not fully respond and apparently violated Commission orders for a forfeiture amount of $200,000.[251]

E. Total Proposed Forfeiture

89. Therefore, we propose a total forfeiture penalty of $14,021,293 related to these apparent violations: $10,681,797 for Tone's apparent violations related to improper enrollments of ACP subscribers ($870,000 base forfeiture plus a $9,811,797 upward adjustment), $2,939,496 for Tone's 12 apparent wire fraud violations, $200,000 for repeated use of false businesses addresses, and $200,000 for apparent violations of two Commission orders related to Tone's failure to respond fully to the Bureau's LOIs.[252]

VI. CONCLUSION

90. We have determined that Tone Communication apparently willfully and repeatedly violated the Commission's ACP rules, section 1.17 of the Commission's rules, two Commission orders, and the federal wire fraud statute. As such, Tone Communication is apparently liable for a forfeiture of $14,021,293.

VII. ORDER INITATING REMOVAL PROCEEDING

91. This NAL finds Tone Communication apparently liable for significant and egregious misconduct in the ACP. Tone's apparently improper enrollments of subscribers and claims for reimbursement for those subscribers resulted in serious harm to the program and undermined the intent of the ACP to provide critical broadband service to eligible consumers.

92. Section 54.1801(e)(2)(ii) of the Commission's ACP rules permits removal of a participating provider from the ACP for, among other reasons, based on "[v]iolations of program rules of the Affordable Connectivity Program [or] the EBB Program . . . [or] for committing any action that indicates a lack of business integrity or business honesty that seriously and directly affects the provider's responsibilities under the Affordable Connectivity Program, that undermines the integrity of the

---

[250] *See* 47 U.S.C. § 503(b)(l)(B); *see also, e.g.*, *ABC Fulfillment Services LLC D/B/A HobbyKing USA LLC and Hobbyking,com; and Indubitably, Inc. D/B/A HobbyKing Corp., HobbyKing USA LLC, HobbyKing, and HobbyKing.com*, Notice of Apparent Liability for Forfeiture, 33 FCC Rcd 5530, 5538, para. 16 (2018) ("Companies that receive LOIs must timely file complete and accurate responses to the Bureau's questions. Failure to timely and fully respond to the Bureau's inquiries violates the Act. The Commission has repeatedly taken enforcement action against entities that disregard orders to provide information related to potential violations of the Act or the Commission's rules." (internal cites omitted)), *aff'd*, Forfeiture Order, 35 FCC Rcd 7441 (2020); *Net One Int'l, Net One, LLC, Farrahtel Int'l, LLC*, Forfeiture Order, 29 FCC Rcd 264, 267, para. 9 (EB 2014) (imposing a $25,000 penalty for failure to respond to LOI); *Conexions, LLC d/b/a Conexion Wireless*, Notice of Apparent Liability for Forfeiture and Order, 28 FCC Rcd 15318, 15325, para. 22 (2013) (proposing a $300,000 forfeiture for failure to provide timely and complete responses to an LOI); *Technical Commc'n Network, LLC*, Notice of Apparent Liability for Forfeiture and Order, 28 FCC Rcd 1018, 1020, para. 8 (EB 2013) (proposing a $25,000 forfeiture for failure to provide a complete response to an LOI); *Google, Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 4012 (EB 2012) (proposing $25,000 penalty for failure to respond fully to LOI) (forfeiture paid); *SBC Commc'ns, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7600, para. 28 (2002) (imposing a $100,000 penalty for failing to submit a sworn written response).

[251] 47 U.S.C. § 503(b)(l)(B).

[252] 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.

Affordable Connectivity Program, or that harms or threatens to harm prospective or existing program participants, including without limitation fraudulent enrollments."[253] The Enforcement Bureau and/or the Wireline Competition Bureau may initiate a removal proceeding "[i]f the Commissions develops information from Commission-led or sponsored investigations . . . or from other credible sources that yields credible allegations of misconduct."[254] Based on the findings in the Bureau's investigation, as described in this NAL, the Commission finds that it has substantial evidence showing Tone violated ACP rules and took actions indicating a lack of business integrity and business honesty that seriously and directly affects the company's responsibilities under the ACP and that harms prospective and existing program participants.

93. Specifically, as described in this NAL, the Bureau's investigation has developed evidence that Tone enrolled subscribers with fake or false identifying information, conduct that apparently violated ACP rules (including but not limited to 47 CFR §§ 54.1805, 54.1806(b), 54.1808(e)(3), and 54.1810(i)). As also described in this NAL, the Bureau's investigation has developed evidence that Tone misrepresented that it was in compliance with the Commission's rules. As a result, Tone improperly received more than $15.6 million from the ACP, as described in the NAL. Fraudulent enrollments and misrepresentations, and resulting improper reimbursement, seriously and directly affect Tone's responsibilities under the ACP and undermine the ACP's integrity, and harm or threaten to harm program participants. Accordingly, the evidence warrants removal for violation of ACP rules, and for lack of business integrity and honesty. The Commission is therefore **ORDERING** the initiation of a proceeding to remove Tone Communication from the ACP.

94. This NAL and Order, a copy of which is being sent to Tone Communication by email, serves as immediate notice that the Commission is commencing removal proceedings against Tone Communication under section 54.1801(e)(2)(iii) of the Commission's rules. As provided in section 54.1801(e)(2)(iii), the Commission has delegated to the Chief of the Wireline Competition Bureau and/or the Chief of the Enforcement Bureau authority to complete removal proceedings in accordance with that section. This Order shall serve as notice to Tone that, as a result of the findings in the Bureau's investigation as described in this NAL and summarized in the paragraph above, the Wireline Competition Bureau and/or the Enforcement Bureau will take interim measures as provided in section 54.1801(e)(2)(iii)(B), including removal of Tone from the Commission's list of providers and from the Administrator's Companies Near Me tool; suspension of Tone's ability to enroll or transfer in new subscribers; and an interim funding hold during the pendency of the removal proceeding. Such actions may be taken under section 54.1801(e)(2)(iii)(B) where "based upon adequate evidence of willful misconduct that would warrant removal under paragraph (e)(2)(ii)" and where "necessary to protect the public interest."

95. Tone Communication **SHALL RESPOND** in writing to this **ORDER INITIATING REMOVAL PROCEEDING** within thirty (30) calendar days with any relevant evidence demonstrating that a rule violation or other conduct warranting removal has not in fact occurred and that Tone should not be removed from the ACP.[255] Within thirty (30) calendar days of receiving Tone's response, the Wireline Competition Bureau and/or the Enforcement Bureau will make a determination and issue an order providing detailed explanation for the determination.[256] If the Wireline Competition Bureau and/or Enforcement Bureau determines that a preponderance of the evidence fails to demonstrate that there has been conduct warranting removal, then any interim measures taken under section 54.1801(e)(2)(iii)(B) will be discontinued immediately.[257] If the Wireline Competition

[253] 47 CFR § 54.1801(e)(2)(ii)(A)-(B).

[254] *Id.* § 54.1801(e)(2); *Affordable Connectivity Program Order*, *supra* note 9 at 113, para. 242.

[255] 47 CFR § 54.1801(e)(2)(iii)(C).

[256] *Id.* § 54.1801(e)(2)(iii)(D).

[257] *Id*.

Bureau and/or Enforcement Bureau determines by a preponderance of the evidence that there has been conduct warranting removal, Tone's authorization to participate in the ACP will be revoked, and Tone shall be immediately removed from the program.[258] Failure to respond to this Order or to provide evidence in a timely manner will result in a finding against Tone, removal from the program, and revocation of Tone's authorization to participate in the ACP.[259] Responses to this Order shall be sent by email to Meghan Ingrisano at Meghan.Ingrisano@fcc.gov, Jodi Schulz at Jodi.Schulz@fcc.gov, and Sarah McNally at Sarah.McNally@fcc.gov of the Enforcement Bureau and Jessica.Campbell@fcc.gov of the Wireline Competition Bureau and filed in WC Docket No. 21-450.

VIII. ORDERING CLAUSES

96. 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, Tone Communication Services LLC is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of Fourteen Million Twenty One Thousand Two Hundred Ninety Three Dollars ($14,021,293) for willful and repeated violations of section 904 of the Consolidated Appropriations Act, 47 U.S.C. § 1752; sections 1.17, 54.1805, 54.1806, 54.1806(b), 54.1808(e)(3), 54.1810(b)(2), and 54.1810(i) of the Commission's rules; Title 18, United States Code, section 1343; and the Affordable Connectivity Program Report and Order and associated rules.[260]

97. **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, Tone Communication Services 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 100 below.

98. In order for Tone Communication Services LLC to pay the proposed forfeiture, Tone Communication Services LLC shall notify Meghan Ingrisano at Meghan.Ingrisano@fcc.gov, Jodi Schulz at Jodi.Schulz@fcc.gov, and Sarah McNally at Sarah.McNally@fcc.gov, Enforcement Bureau, Federal Communications Commission, 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, Tone Communication Services LLC shall send electronic notification of payment to Meghan Ingrisano at Meghan.Ingrisano@fcc.gov, Jodi Schulz at Jodi.Schulz@fcc.gov, and Sarah McNally at Sarah.McNally@fcc.gov, Enforcement Bureau, Federal Communications Commission, 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:[261]

- 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

[258] *Id.*

[259] *Id.* § 54.1801(e)(2)(iii)(C).

[260] *Affordable Connectivity Program*, *supra* note 9.

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

above and the letters "FORF". In addition, a completed Form 159[262] or printed CORES form[263] must be faxed to the Federal Communications Commission at 202-418-2843 or emailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 or CORES may result in payment not being recognized as having been received. When completing FCC Form 159 or CORES, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).[264] 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.

99. 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.[265] Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by email, ARINQUIRIES@fcc.gov.

100. 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.[266] The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, D.C. 20554,

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

[263] 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.

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

[265] *See* 47 CFR § 1.1914.

[266] *Id.* §§ 1.16, 1.80(g)(3).

ATTN: Enforcement Bureau – Fraud Division, and must include the NAL/Account Number referenced in the caption. The statement must also be emailed to Meghan Ingrisano at Meghan.Ingrisano@fcc.gov, Jodi Schulz at Jodi.Schulz@fcc.gov, and Sarah McNally at Sarah.McNally@fcc.gov, Enforcement Bureau, Federal Communications Commission.

101. 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.[267] 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.[268]

102. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture and Order Initiating Removal Proceeding shall be sent by first class mail and certified mail, return receipt requested, to Roselba Bartolini, CEO, Tone Communication Services LLC, 401 S. Hunting Lodge Lane, Bastrop, TX 78602, 410 Hunting Lodge Ln, Bastrop, TX 78602, and 9925 Haynes Bridge Rd, Suite 200, PMB 210, Alpharetta, GA 30022, and by email to info@tonecomms.com and antoniob@tonecomms.com.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[267] 47 U.S.C. § 503(b)(2)(E).

[268] *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, 14903-904, paras. 32-33 (2015); *TV Max, Inc., et al*., Forfeiture Order, 29 FCC Rcd 8648, 8661, para. 25 (2014).

APPENDIX

Service Provider Reimbursement Request ACP Certifications

1) I am an officer authorized to submit the reimbursement request on behalf of the participating provider;

2) I have read the instructions relating to the reimbursements and the funds sought in the reimbursement request are for services and/or devices that were provided in accordance with the purposes and objectives set forth in the statute, rules, requirements, and orders governing the Affordable Connectivity Program;

3) The participating provider is in compliance with and satisfied all of the rules set forth in 47 CFR Part 54, Subpart R, the statute, requirements, and orders governing the Affordable Connectivity Program reimbursement, and the provider acknowledges that failure to be in compliance and remain in compliance with Affordable Connectivity Program statutes, rules, and orders may result in the denial of reimbursement, cancellation of funding commitments, and/or recoupment of past disbursements;

4) The participating provider has obtained valid certification and application forms as required by the rules in 47 CFR Part 54, Subpart R for each of the subscribers for whom it is seeking reimbursement;

5) The amount for which the participating provider is seeking reimbursement from the Affordable Connectivity Fund is not more than the amount charged to the eligible household and the discount has already been passed through to the household;

6) Each eligible household for which the participating provider is seeking reimbursement for providing an Internet service offering discounted by the affordable connectivity benefit has not been and will not be charged for the amount the provider is seeking for reimbursement;

7) Each eligible household for which the participating provider is seeking reimbursement for providing an Internet service offering discounted by the affordable connectivity benefit 1) will not be required to pay an early termination fee if such eligible household elects to enter into a contract to receive such Internet service offering if such household later terminates such contract; 2) was not, after the date of the enactment of the Consolidated Appropriations Act, 2021, as amended by the Infrastructure Investment and Jobs Act, subject to a mandatory waiting period for such Internet service offering based on having previously received broadband Internet access service from such participating provider; and 3) will otherwise be subject to the participating provider's generally applicable terms and conditions as applied to other customers;

8) Each eligible household that is receiving a supported service offering that does not require the participating provider to assess and collect a monthly fee from the household has used the supported service, as usage is defined by 47 CFR § 54.407(c)(2), at least once during the service month being claimed;

9) Each eligible household for which the participating provider is seeking reimbursement for supplying such household with a connected device was charged by the provider and paid more than $10.00 but less than $50.00 for such connected device, and that no such household had already received a reimbursable connected device from the

participating provider or any other participating provider when the connected device was distributed to the household;

10) If seeking reimbursement for a connected device, the connected device meets the Commission's requirements, the representations regarding the devices made on the provider's website and promotional materials are true and accurate, that the reimbursement claim amount reflects the market value of the connected device less the amount charged to and paid by the eligible household, and the connected device has been delivered to the household;

11) If seeking reimbursement for a connected device, the provider has retained the relevant supporting documents that demonstrate the connected devices requested are eligible for reimbursement and submitted the required information;

12) For each household whose eligibility was verified using an alternative verification process, such verification process was designed to avoid waste, fraud, and abuse;

13) All documentation associated with the reimbursement form, including all records for services and/or connected devices provided, will be retained for a period of at least six years after the last date of delivery of the supported services and/or connected devices provided through Affordable Connectivity Program, and are subject to audit, inspection, or investigation and will be made available at the request of any representative (including any auditor) appointed by the Commission and its Office of Inspector General, or any local, state, or Federal agency with jurisdiction over the provider;

14) The provider has not offered, promised, received, or paid kickbacks, as defined by 41 U.S.C. § 8701, in connection with the Affordable Connectivity Program;

15) The information contained in this form is true, complete, and accurate to the best of the officer's knowledge, information, and belief, and is based on information known to the officer or provided to officer by employees responsible for the information being submitted;

16) The officer is aware that any false, fictious, or fraudulent information, or the omission of any material fact on this request for reimbursement or any other document submitted by the provider, may subject the provider and the officer to punishment by fine or forfeiture under the Communications Act (47 U.S.C. §§ 502, 503(b), or 1606), or fine or imprisonment under Title 18 of the United States Code (18 U.S.C. §§ 1001, 286-87, 1343), or can lead to liability under the False Claims Act (31 U.S.C. §§ 3729-3733, 3801-3812);

17) No service costs or devices sought for reimbursement have been waived, paid, or promised to be paid by another entity, including any federal or state program;

18) 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 previously purchased, rented, leased, or otherwise obtained, as required by 47 CFR § 54.10;

19) For each ACP claim, the provider certifies it did not require enrollment in the ACP as a condition for enrolling in Lifeline or some other purpose, or imply such a condition existed. Evidence that a household claimed for ACP reimbursement was enrolled without the household's consent or as a requirement of receiving Lifeline service may lead to denial of support claims, as well as other penalties and referral to law enforcement;

20) All enrollments and transfers completed by the provider were bona fide, requested and consented by the subscriber household after receiving the disclosures required under § 54.1810(a) and (b), and made pursuant to program rules; and

21) The provider used the National Lifeline Accountability Database as a tool for enrollment, reimbursement calculations, and duplicate checks in all states, territories, and the District of Columbia, and checked their records in accordance with § 54.1806(a)(4).

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

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Federal-State Joint Board on Jurisdictional Separations	)	CC Docket No. 80-286
	)	
Federal-State Joint Conference on Advanced Telecommunications Services	)	CC Docket No. 99-294
	)	

ORDER

Adopted: January 24, 2024 **Released: January 25, 2024**

By the Commission:

1. Pursuant to sections 254(a)(1) and 410 of the Communications Act of 1934, as amended,[1] the Commission appoints the Honorable Nathan Simington and the Honorable Anna Gomez, Commissioner of the Federal Communications Commission, to serve on the Federal-State Joint Board on Universal Service (Universal Service Joint Board) and the Federal-State Joint Board on Jurisdictional Separations (Separations Joint Board). In addition, the Honorable Nathan Simington and the Honorable Anna Gomez are members of the Federal-State Joint Conference on Advanced Services (Advanced Services Joint Conference) by virtue of their positions on the Commission.[2] Commissioner Gomez shall further serve as the federal chair of the Universal Service Joint Board and the Advanced Services Joint Conference. Her terms as federal chair shall begin upon adoption of this Order. Commissioner Geoffrey Starks shall further serve as the federal chair of the Separations Joint Board. His term as federal chair shall begin upon adoption of this Order. The Commission acknowledges and is grateful to former Commissioner Michael O'Rielly for his contributions as chair of the Universal Service Joint Board, the Separations Joint Board, and the Advanced Services Joint Conference and to Commissioner Brendan Carr for his contributions as a member of the Universal Service Joint Board and the Separations Joint Board.

2. Henceforth, a copy of all filings in Universal Service Joint Board and Separations Joint Board proceedings[3] shall be served on Commissioners Starks, Simington and Gomez at the following addresses:

The Honorable Geoffrey Starks
Commissioner
Federal Communications Commission

[1] 47 U.S.C. §§ 254(a)(1), 410.

[2] 47 U.S.C. § 410(b); *Federal-State Joint Conference on Advanced Telecommunications Services*, CC Docket No. 99-294, Order, 14 FCC Rcd 17622, 17625, para. 9 (1999)(specifying that all commissioners may serve on the Advanced Services Joint Conference).

[3] Any filing in Advanced Services Joint Conference proceedings shall be served on the Chairwoman and all four commissioners.

45 L Street, N.E., Room: 10.265
Washington, D.C. 20554

The Honorable Nathan Simington
Commissioner
Federal Communications Commission
45 L Street, N.E., Room: 10.245
Washington, D.C. 20554

The Honorable Anna Gomez
Commissioner
Federal Communications Commission
45 L Street, N.E., Room: 10.275
Washington, D.C. 20554

3. Accordingly, IT IS ORDERED that, pursuant to sections 254(a)(1) and 410 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 254(a)(1), 410, this order IS ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

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

In the Matter of	)	
Modernizing and Expanding Access to the 70/80/90 GHz Bands	)	WT Docket No. 20-133

REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: January 24, 2024 **Released: January 26, 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 Starks issuing separate statements; Commissioner Gomez not participating.

TABLE OF CONTENTS

Heading Paragraph #

I. INTRODUCTION 1
II. BACKGROUND 3
III. REPORT AND ORDER 9
A. Enabling Point-to-Point Communications to Aircraft and Ships 10
1. Authorization and Framework 13
2. Technical and Operational Rules 24
a. Transmissions Between Aircraft and Ground Stations 31
b. Transmissions Between Aircraft In Flight 43
c. Transmissions Between Ships, Shore, and Aerostat Stations 53
B. Facilitating Use of the Bands for Backhaul 56
C. Improving the Link Registration System 68
1. Construction and Operational Status 69
2. De Minimis Modifications to Registrations 77
D. Other Issues 80
IV. FURTHER NOTICE OF PROPOSED RULEMAKING 85
V. PROCEDURAL MATTERS 92
VI. ORDERING CLAUSES 102
APPENDIX A—FINAL RULES
APPENDIX B—FINAL REGULATORY FLEXIBILITY ANALYSIS
APPENDIX C—INITIAL REGULATORY FLEXIBILITY ANALYSIS

I. INTRODUCTION

1. The Federal Communications Commission (FCC) continues to play a leading role in fostering innovation in the provisioning of broadband, including through novel technological solutions as well as fifth-generation wireless technology (5G). Meeting the non-stop growth in demand for wireless broadband connectivity is more important than ever due to the outsized impact the Internet has on our work, education, health care, and personal connections. Recognizing this reality, and to help close the

digital divide, in the *Report and Order* portion of this item we adopt new rules and update preexisting ones for the 71–76 GHz, 81–86 GHz, 92–94 GHz, and 94.1–95 GHz bands (collectively, the 70/80/90 GHz bands). And in the *Further Notice of Proposed Rulemaking* (*Further Notice*) portion, we seek comment on other possible changes to the rules to accommodate additional services. These actions will promote the efficient use of this spectrum and provide opportunities for new broadband service options to be developed.

2. Specifically, based on the record and following extensive consultation with federal stakeholders, in this *Report and Order* we authorize certain point-to-point links to endpoints in motion in the 71–76 GHz (the 70 GHz band) and 81–86 GHz (the 80 GHz band) bands under our part 101 rules to facilitate the use of these frequencies for access to broadband services on aircraft and ships. We also update our rules to permit the use of smaller and lower-cost antennas to facilitate the provision of backhaul service in the 70 GHz and 80 GHz bands and mandate a channelization plan in those bands. And we further adopt changes to the link registration process in the 70/80/90 GHz bands to require certification of construction of registered links, which will promote more efficient use of this spectrum and improve the accuracy of the link registration database. Finally, in the *Further Notice*, we seek comment on the potential inclusion of ship-to-aerostat transmissions as part of maritime operations otherwise authorized in this *Report and Order* and of Fixed Satellite Service (FSS) earth stations in our light-licensing regime for the 70 GHz and 80 GHz bands.

II. BACKGROUND

3. In the United States, the 70/80/90 GHz bands are allocated on a co-primary basis for federal and non-federal use, as follows.[1]

Band	Non-Federal Use	Federal Use
71–74 GHz	Fixed, Fixed Satellite, Mobile, and Mobile Satellite	Fixed, Fixed Satellite, Mobile, and Mobile Satellite
74–76 GHz[2]	Fixed, Fixed Satellite, Mobile, Broadcasting, and Broadcasting Satellite	Fixed, Fixed Satellite, and Mobile
81–84 GHz[3]	Fixed, Fixed Satellite, Mobile, Mobile Satellite, and Radio Astronomy	Fixed, Fixed Satellite, Mobile, Mobile Satellite, and Radio Astronomy
84–86 GHz	Fixed, Fixed Satellite, Mobile, and Radio Astronomy	Fixed, Fixed Satellite, Mobile, and Radio Astronomy
92–94 GHz, 94.1–95 GHz	Fixed, Mobile, Radio Astronomy, and Radiolocation	Fixed, Mobile, Radio Astronomy, and Radiolocation

In the 70 GHz band and 80 GHz band, Fixed, Mobile, and Broadcasting services must not cause harmful interference to, nor claim protection from, Federal Fixed-Satellite Service operations located at 28 military installations.[4] In addition, in the 80 GHz band, and in the 92–94 GHz and 94.1–95 GHz bands (collectively, the 90 GHz band), licensees proposing to register links located near 18 radio astronomy

[1] 47 CFR § 2.106.

[2] *Id*. Additional allocations for federal and non-federal use for Space Research are on a secondary basis.

[3] *Id*.

[4] *See id*. § 2.106(c)(389).

observatories must coordinate their proposed links with those observatories.[5] The 94–94.1 GHz frequencies are allocated for federal use for Earth Exploration Satellite (active), Radiolocation, and Space Research (active) and for non-federal use for Radiolocation.[6] Additionally, the adjacent 86–92 GHz band is allocated for Federal and non-Federal Earth Exploration-Satellite (passive), Space Research (passive), and Radio Astronomy services and is subject to footnote US246.[7]

4. In 2003, the Commission established service rules for non-federal use of the 70/80/90 GHz bands through a two-step, non-exclusive licensing regime.[8] Users first obtain a nationwide, non-exclusive license for the entire 12.9 gigahertz of the 70/80/90 GHz bands and then register individual links in a database administered by third-party database managers.[9] In order for a link to be registered, it must be coordinated successfully with federal operations—typically through the National Telecommunications and Information Administration's (NTIA's) online, automated mechanism.[10] Also, the licensee must provide an analysis to the third-party database manager demonstrating that the proposed link will neither cause harmful interference to, nor receive harmful interference from, any previously registered non-government link.[11] Licensees are afforded first-in-time priority for successfully registered links relative to links that are successfully registered at a later point in time.[12] Registered links must be constructed within 12 months of their registration. Under part 101, non-federal licensees may use the 70/80/90 GHz bands for any point-to-point, non-broadcast service.[13]

5. In June 2020, the Commission adopted a Notice of Proposed Rulemaking (*70/80/90 GHz NPRM*) in this proceeding, seeking comment on both adopting new rules and updating preexisting rules to further enable non-federal uses of the 70/80/90 GHz bands.[14] Among a range of issues and proposals—which the Commission said it would work with NTIA to evaluate[15]—the *70/80/90 GHz NPRM* sought comment on proposals to authorize point-to-point links to endpoints in motion in the 70 GHz and 80 GHz bands to facilitate broadband service to ships and aircraft in motion, as well as on whether to classify

[5] *See id*. § 2.106(c)(161).

[6] *Id*. § 2.106.

[7] *See id*. § 2.106(c)(74), (246).

[8] *Allocations and Service Rules for 71–76 GHz, 81–86 GHz and 92–95 GHz Bands*, WT Docket No. 02-146, Report and Order, 18 FCC Rcd 23318, 23322, para. 5 (2003) (*70/80/90 GHz Report and Order*).

[9] Since 2004, the Wireless Telecommunications Bureau (WTB) has designated four entities to be database managers but there are currently two database managers: Comsearch and Micronet Communications, Inc. *See*, *e.g.*, FCC, *Millimeter Wave 70/80/90 GHz Service* (Sept. 26, 2022), https://www.fcc.gov/millimeter-wave-708090-ghz-service.

[10] *See* 47 CFR § 101.1523(b)(3), (c). If a proposed link does not interfere with existing federal operations then it is given a "green light;" if it may interfere with existing federal operations, then it is given a "yellow light," indicating that the licensee must file a registration application for the link with the FCC for coordination with NTIA. *See id*. § 101.1523(b)(3), (c); *70/80/90 GHz Report and Order*, 18 FCC Rcd at 23342–43, para. 54. The "green light" / "yellow light" system protects the sensitive nature of the locations of military installations.

[11] *See* 47 CFR § 101.1523(b)(2); *Allocations and Service Rules for 71–76 GHz, 81–86 GHz and 92–95 GHz Bands*, WT Docket No. 02-146, Memorandum Opinion and Order, 20 FCC Rcd 4889, 4895–96, paras. 11–14 (2005) (Commission adopted an interference-analyses requirement for registering non-Federal Government licensees).

[12] *See* 47 CFR § 101.1523(b)(3); *70/80/90 GHz Report and Order*, 18 FCC Rcd at 23339–40, para. 45. *See also Wireless Telecommunications Bureau Announces Permanent Process for Registering Links in the 71–76 GHz, 81–86 GHz and 92–95 GHz Bands*, Public Notice, 20 FCC Rcd 2261 (WTB 2005).

[13] 47 CFR § 101.1507.

[14] *Modernizing and Expanding Access to the 70/80/90 GHz Bands*, WT Docket No. 20-133, Notice of Proposed Rulemaking, 35 FCC Rcd 6039 (2020) (*70/80/90 GHz NPRM*).

[15] *Id.* at 6040, para. 1.

those links as "mobile" service.[16] Noting that the 70/80/90 GHz bands could provide a "unique spectrum resource" for "the provisioning of broadband services to airplanes, ships, and other antennas in motion,"[17] the Commission sought comment on technical and operational rules to allow these new service offerings in the 70 GHz and 80 GHz bands and to mitigate interference to incumbents and other proposed users of these bands and adjacent bands.[18]

6. The *70/80/90 GHz NPRM* also proposed several changes to the antenna standards for the 70 GHz and 80 GHz bands to provide greater flexibility in deploying 5G wireless backhaul, noting industry's assessment of its needs.[19] The *70/80/90 GHz NPRM* sought comment as well on whether adopting a channelization plan would promote more efficient use of the 70 GHz and 80 GHz bands.[20] In addition, the *70/80/90 GHz NPRM* asked about whether the Commission should make changes to the link registration rules for the 70, 80, and 90 GHz bands.[21] Parties including aeronautical and satellite companies,[22] radio astronomy interests,[23] equipment manufacturers,[24] fixed and mobile wireless entities,[25] and organizations focused on meteorology[26] filed in response to the *70/80/90 GHz NPRM*. Commenters discussed Aeronet's proposals, the suitability of the bands for backhaul, and a range of ways to improve the bands' overall functionality (such as channelization and updates to the relevant antenna standards and link registration process).

7. Following the *70/80/90 GHz NPRM*, in October 2021, the Wireless Telecommunications Bureau (WTB) issued a Public Notice seeking to further develop the record on the use of High Altitude Platform Stations (*HAPS Public Notice*) or other stratospheric-based platform services in the 70/80/90 GHz bands.[27] Fifteen Comments and five Reply Comments were filed in response to the *HAPS Public*

---

[16] *Id.* at 6043–44, para. 7 (citing Petition for Rulemaking of Aeronet Global Communications Inc., RM-11824 (filed Feb. 6, 2019) (Aeronet Aeronautical Petition); Petition for Rulemaking of Aeronet Global Communications Inc., RM-11825 (filed Feb. 6, 2019) (Aeronet Maritime Petition) (collectively, the Aeronet Petitions)). Although the Aeronet Petitions proposed that endpoints in motion operations be permitted in the 70, 80 and 90 GHz bands, several parties that commented on the Aeronet Petitions expressed concerns about co-existence with other services in the 90 GHz band. *See id.* at 6044–45, para. 8. The Commission did not propose to authorize endpoints in motion in the 90 GHz band. *Id.* at 6049–50, paras. 22, 26, n.78.

[17] *Id.* at 6050, para. 25.

[18] *Id.* at 6056–58, paras. 42–45.

[19] *Id.* at 6045–47, paras. 10–15.

[20] *Id.* at 6058–99, paras. 46–48.

[21] *Id.* at 6048–49, paras. 18–21.

[22] *See, e.g.*, AIRBUS Comments; Boeing Company Comments; L3 Technologies Comments; SIA Comments; Moog, Inc. Comments. One satellite interest in particular, SpaceX, made numerous filings in this proceeding. Although SpaceX initially opposed the Aeronet Petitions, it subsequently expressed support for Aeronet's proposed operations. *Compare, e.g.*, SpaceX Reply Comments at 5–7 *with* Letter from David Goldman, Director, Satellite Policy, Space Exploration Technologies Corp., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 20-133 (filed Oct. 12, 2021) (SpaceX Oct. 12, 2021 *Ex Parte*). We discuss SpaceX's FSS-specific advocacy in Section III.D of this *Report and Order*, and in the *Further Notice* portion of this item, Section IV, *infra*.

[23] *See, e.g.*, MIT Haystack Observatory Comments; NRAO Comments; CORF Comments.

[24] *See, e.g.*, Ericsson Comments; Nokia Comments; Qualcomm Comments.

[25] *See, e.g.*, CTIA Comments; WISPA Comments; Verizon Comments; AT&T Comments; CCA Comments.

[26] *See, e.g.*, American Geophysical Union et al. Comments; EUMETSAT Comments; European Centre for Medium Range Weather Forecasts Comments; World Meteorological Organization Comments.

[27] *Wireless Telecommunications Bureau Seeks to Supplement the Record on 70/80/90 GHz Notice of Proposed Rulemaking*, WT Docket No. 20-133, Public Notice, 36 FCC Rcd 14375 (WTB 2021) (*HAPS Public Notice*). The (continued….)

Notice, with participants ranging from past commenters on the original *70/80/90 GHz NPRM* to additional governmental entities[28] and public interest groups,[29] among others.

8. In the *70/80/90 GHz NPRM*, the Commission committed to coordinate with NTIA prior to adopting any rules in this proceeding that would affect federal users, given that allocations for the 70 GHz and 80 GHz bands include both federal and non-federal use.[30] In response to the *70/80/90 GHz NPRM*, NTIA established a technical interchange group (TIG) with representatives from the affected federal agencies, including National Aeronautics and Space Administration, the National Oceanic and Atmospheric Administration, the National Science Foundation, the Department of the Air Force, and NTIA itself (collectively, the Federal Agencies).[31] Commission staff participated in regular information exchange meetings with the TIG. The Federal Agencies, through NTIA, submitted a summary of their analyses and a set of proposed interference mitigation measures to the record.[32] On October 18, 2023, the Bureau issued a Public Notice seeking to refresh the overall record in this proceeding and seeking comment, in particular, on the Federal Agencies' proposals.[33] Nine parties—eight of which had already participated in the record to date—filed comments in response to the *Refresh Public Notice*.[34]

III. REPORT AND ORDER

9. After reviewing the record, we adopt rules to allow for point-to-point links to endpoints in motion—specifically, links on aircraft and on ships—in the 70 GHz and 80 GHz bands under our part 101 rules. We also adopt changes to our rules to facilitate the use of the 70 and 80 GHz bands for backhaul, including through the use of smaller antennas, and to improve the accuracy of the link registration database for the 70/80/90 GHz bands. Specifically, we adopt proposals to increase maximum antenna beamwidth from 1.2 degrees to 2.2 degrees; reduce minimum antenna gain from 43 dBi to 38 dBi while retaining the proportional EIRP reduction requirement; eliminate the co-polar and relax the cross-polar discrimination requirements at angles less than 5 degrees; revise the co-polar and cross-polar discrimination requirements at angles between 5 degrees and 180 degrees; and allow minor modifications to registrations in the 70/80/90 GHz bands without the loss of first-in-time rights.[35] We further adopt a channelization plan consistent with Recommendation ITU-R F.2006. Finally, we adopt a requirement that licensees certify that each link is constructed and operating within 12 months of successful registration in the link registration system (LRS) administered by third-party database managers.

A. Enabling Point-to-Point Communications to Aircraft and Ships

10. Pursuant to Aeronet's two Petitions for Rulemaking—one addressing aeronautical service, the other maritime service[36]—the *70/80/90 GHz NPRM* proposed to authorize point-to-point links

(Continued from previous page)
Commission's rules define a "High Altitude Platform Station" as a "station located on an object at an altitude of 20 to 50 km and at a specified, nominal, fixed point relative to the earth." *Id.* at 14376 (citing 47 CFR § 2.1(c)).

[28] *See, e.g.*, NTIA Reply Comments; NASA et al. Comments.

[29] *See, e.g.*, New America's Open Technology Institute and Public Knowledge Comments.

[30] *70/80/90 GHz NPRM*, 35 FCC Rcd at 6041, para. 2.

[31] Letter from Charles Cooper, Associate Administrator, Office of Spectrum Management, NTIA, to Ronald T. Repasi, Chief, OET, FCC, and Joel Taubenblatt, Chief, WTB, FCC, WT Docket No. 20-133, at 2 (filed Oct. 17, 2023) (Federal Agencies Letter).

[32] *See generally id*.

[33] *Wireless Telecommunications Bureau Seeks to Refresh the Record in 70/80/90 GHz Bands Proceeding*, WT Docket No. 20-133, Public Notice, DA 23-988 (WTB 2023) (*Refresh Public Notice*).

[34] *See* Almagest Space Corp. Refresh Public Notice Comments (first-time proceeding filer Almagest Space Corp. describing itself as a "new satellite operator" with plans to begin deployment in 2024).

[35] *70/80/90 GHz NPRM*, 35 FCC Rcd at 6045–46, 6048–49, paras. 11–12, 18–21.

to endpoints in motion on aircraft and on ships in the 70 GHz and 80 GHz bands.[37] The *70/80/90 GHz NPRM* sought comment on this proposal, with a focus on potential impacts on other services, including radio astronomy service (RAS), Earth Exploration-Satellite Service (passive) (EESS), FSS, and terrestrial fixed point-to-point links in the Fixed Service (FS).[38]

11. As noted above, in the *70/80/90 GHz NPRM*, the Commission committed to coordinate with NTIA prior to adopting any rules in this proceeding that would affect federal users;[39] this coordination ultimately resulted in the work of NTIA's TIG and the submission of the Federal Agencies Letter, which was one of the topics specifically noted in our *Refresh Public Notice*. Both the Federal Agencies Letter and the responsive filings in the record have advanced our efforts to enable innovative new uses of this band in both the aeronautical and the maritime contexts, while ensuring adequate interference protection for incumbents and other authorized services in these and adjacent bands.

12. In order to facilitate increased provision of broadband service and enhanced competition in the aviation and maritime markets, we adopt rules authorizing point-to-point links to endpoints in motion on aircraft and on ships, pursuant to specifications and restrictions described below. These rules will permit increased broadband access in this space while protecting important incumbent and federal operations.

1. Authorization and Framework

13. *Classification of Services.* In its two original Petitions for Rulemaking, Aeronet requested that the Commission categorize its proposed services as fixed services.[40] In the *70/80/90 GHz NPRM*, however, the Commission instead proposed to classify service to endpoints in motion as a mobile service, because our rules define "fixed service" as a "radiocommunication service between specified fixed points," which endpoints in motion inherently are not.[41] Several commenters supported our approach, including Boeing, the Fixed Wireless Communications Coalition (FWCC), and Loon, which also requested that we make sure any definition of "mobile" include mobile components of HAPS systems as well.[42] The Wireless Internet Service Providers Association (WISPA) alone opposed mobile classification, on the grounds that one endpoint of the transmission is fixed, and therefore the service does not reach "full mobility," and also because the appropriate comparison is with the Fixed Satellite Service, which may provide service to Earth Stations in Motion (ESIMs) without being reclassified as "Mobile-Satellite Services."[43] WISPA also argued that if we do classify services to endpoints in motion as mobile, we should classify them as aeronautical mobile and maritime mobile specifically, as those terms are defined in our existing rules.[44]

14. We find WISPA's arguments unpersuasive. Other mobile services, for example cellular service, ubiquitously involve transmissions from one fixed point (the base station) to a variety of mobile points (the cell phone), without risking reclassification as a fixed service. As between "mobile" and "aeronautical mobile," we note that a classification as simply "mobile" encompasses aeronautical use.

(Continued from previous page)

[36] Aeronet Aeronautical Petition; Aeronet Maritime Petition.

[37] *70/80/90 GHz NPRM*, 35 FCC Rcd at 6049–50, para. 22.

[38] *Id.* at 6049–50, para. 22; *id.* at 6056–58, paras. 42–45.

[39] *Id.* at 6041, para. 2.

[40] Aeronet Aeronautical Petition at 28; Aeronet Maritime Petition at 26–27.

[41] 47 CFR § 2.1(c); *70/80/90 GHz NPRM*, 35 FCC Rcd at 6052, para. 30.

[42] Boeing Comments at 6; FWCC Comments at 6–7; Loon Comments at 9–10.

[43] WISPA Comments at 7–8.

[44] *Id*. at 9.

Similarly, as between "mobile" and "maritime mobile," a classification as simply "mobile" encompasses maritime use. Given the otherwise favorable record, and our existing rules, we conclude that the service we authorize today, involving transmissions to and from aeronautical endpoints in motion, is a mobile service.

15. As noted in the *70/80/90 GHz NPRM*, our authorization of a mobile service in the 70 GHz and 80 GHz bands constitutes a revisiting of the Commission's previous actions in the Spectrum Frontiers proceeding.[45] At that time, the Commission declined to authorize mobile use in the 70 GHz and 80 GHz bands, but reserved the right to revisit the issue of possible methods of promoting coexistence between fixed links and mobile operations as mobile deployments increased in other millimeter-wave bands, as technology developed, and as additional options or frameworks for coexistence of fixed and mobile services in the same band were brought forth.[46] In the six years since the *2017 Spectrum Frontiers Order*, there have been considerable advances in both technology and sharing paradigms—and Aeronet and other parties have continued to submit new analyses on possible coexistence.[47] We therefore conclude that revisiting the Commission's previous stance on this matter is warranted and appropriate. We note that the mobile services that we permit pursuant to our decisions in this *Report and Order* are subject to significantly different rules and requirements than the part 30 rules we contemplated in 2017.[48]

16. *Limitation to 70 GHz and 80 GHz Bands*. In the *70/80/90 GHz NPRM*, we noted various concerns already in the record regarding potential harmful interference to Enhanced Flight Vision Systems (EFVS) and Foreign Object Detection (FOD) systems from Aeronet's proposed service in the 90 GHz band and, on that basis, proposed to allow endpoint-in-motion operations only in the 70 GHz and 80 GHz bands, while continuing to seek comment on the issue.[49] Since then, additional concerns have been raised by numerous other entities regarding proposed aeronautical use of the 90 GHz band, due to both potential incompatibility with proposed use by EFVS and FOD systems,[50] and potential harmful interference to radio astronomy and remote sensing receivers in the 86–92 GHz band and at 94.0–94.1 GHz.[51] Given the many concerns raised in the record, and the relatively greater interest expressed in expanding use of the 70 GHz and 80 GHz bands, we conclude that the risk of harmful interference to incumbent and adjacent services outweighs the benefit to consumers of allowing service to aeronautical endpoints-in-motion in the 90 GHz band. As proposed in the *70/80/90 GHz NPRM*, we therefore authorize endpoint-in-motion service only in the 70 and 80 GHz bands. At this juncture, the new service

---

[45] *70/80/90 GHz NPRM*, 35 FCC Rcd at 6053, para. 33 (citing *Use of Spectrum Bands Above 24 GHz for Mobile Radio Services*, Second Report and Order, Second Further Notice of Proposed Rulemaking, Order on Reconsideration, and Memorandum Opinion and Order, 32 FCC Rcd 10988, 11054, para. 200 (2017) (*2017 Spectrum Frontiers Order*)).

[46] *2017 Spectrum Frontiers Order*, 32 FCC Rcd at 11054, paras. 200–01. Indeed, the Commission noted that companies such as Aeronet, Google, and The Elefante Group had filed comments in the Spectrum Frontiers proceeding that "proposed different uses for these bands which neither fit the traditional mobile broadband nor fixed link models." *Id.* (note omitted). *See also 70/80/90 GHz NPRM*, 35 FCC Rcd at 6053, para. 33.

[47] Letter from Samuel L. Feder, Counsel to Aeronet Global Communications Inc., to Marlene H. Dortch, Secretary, FCC, RM-11824, RM-11825 (filed May 10, 2019) (attaching a study by Comsearch entitled "Aeronet Aviation and Maritime Communications Systems: Compatibility with Incumbent E-Band Fixed Services and Link Registration System" (Comsearch Report)).

[48] *See generally* 47 CFR pt. 30.

[49] *70/80/90 GHz NPRM*, 35 FCC Rcd at 6050, para. 26; Sierra Nevada Corp. Comments at 2–3; Moog Reply Comments at 7.

[50] Airbus Comments at 1; Boeing Comments at 5; Moog Comments at 5; Sierra Nevada Corp. Comments at 2.

[51] American Geophysical Union/American Meteorological Society/National Weather Association Comments at 6; CORF Comments at 2; ETA/EUMETSAT Reply Comments at 2; European Centre for Medium Range Weather Forecasts Reply Comments at 1; IEEE-GRSS FARS Reply Comments at 1–2; NRAO Comments at 3.

covers: (1) in the aeronautical space, ground-to-air and air-to-ground transmissions between ground stations and aircraft, and air-to-air transmission between aircraft in flight; and (2) in the maritime space, ship-to-shore, shore-to-ship, shore-to-aerostat, aerostat-to-ship, aerostat-to-shore, and ship-to-ship transmissions.[52]

17. *Coordination, Licensing, and Registration*. In the *70/80/90 GHz NPRM*, the Commission sought comment generally on what changes to the 70/80/90 GHz coordination, licensing, and registration framework might be necessary in order to facilitate the operation of endpoints in motion under part 101.[53] The Commission also proposed to incorporate such operations, to the extent ultimately authorized, into the current framework of non-exclusive, nationwide licensing used for fixed point-to-point operations in these bands.[54] The record is fairly thin on the specifics of the appropriate licensing framework; most commenters focused on whether we should authorize this service as an initial matter. However, several commenters did voice support for including any new service in the existing third-party database management system.[55]

18. In order to allow service to aeronautical and maritime endpoints in motion to deploy efficiently and without causing harmful interference to incumbent operations and other services in these bands, the applicable licensing mechanism must support adequate coordination with those other services without being unduly burdensome on both incumbent and new operators. To this end, we will require prospective operators of service to aeronautical and maritime endpoints in motion to first apply for and receive a nationwide, non-exclusive license. This license will establish the prospective operator's qualification to be a licensee and will serve as a blanket license for: (1) on the aeronautical side, air-to-air operations, and as a prerequisite to register ground-to-air (GTA) stations and associated air-to-ground (ATG) transmission; and (2) on the maritime side, as a prerequisite to register ship-to-shore, shore-to-ship, shore-to-aerostat, aerostat-to-ship, and aerostat-to-shore transmissions. We clarify that as of the effective date of the rules we are adopting today, all nationwide, non-exclusive licenses for the 70/80/90 GHz service will include the service areas set forth in section 101.1501 as revised today.[56]

19. In the matter of coordinating and registering individual aeronautical stations and links, we proposed in the *70/80/90 GHz NPRM* to require coordination and registration for not only GTA stations and ATG transmissions, but also air-to-air links between two aircraft in motion.[57] We also sought comment on how all types of links should be represented or described in their registrations, as the current system, designed for fixed point-to-point links on the ground, does not account for potential differences in altitude or the varying orientation of links to endpoints in motion.[58] Several commenters noted the potential difficulty of coordinating air-to-air links, due not only to these different characteristics, but also their temporary and transient nature.[59] Aeronet proposed coordinating three-dimensional polyhedrons for air-to-air links, which DSA supports, within a horizontal altitude band from 10,000 to 50,000 feet.[60]

---

[52] For purposes of both the *Report and Order* and *Further Notice*, we consider the term "aerostat" to mean an airborne transmitter operating within a small specified area, below 1,000 feet of elevation, regardless of method of propulsion.

[53] *70/80/90 GHz NPRM*, 35 FCC Rcd at 6054, para. 35.

[54] *Id.*

[55] DSA Reply Comments at 2–3, SIA Comments at 8, Letter from David Goldman, Director, Satellite Policy, Space Exploration Technologies Corp., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 20-133, at 1 (filed Nov. 8, 2021) (SpaceX Nov. 8, 2021 *Ex Parte*).

[56] *See infra* Appx. A. at 47 CFR § 101.1501.

[57] *70/80/90 GHz NPRM*, 35 FCC Rcd at 6054, para. 36.

[58] *Id.* at 6055, para. 37.

[59] CORF Comments at 2.

[60] Aeronet Aeronautical Petition at 14; DSA Comments at 4.

However, concerns in the record about potential harmful interference from air-to-air transmissions stem mainly from such transmissions' specific angle, direction, or distance from specific sites (most of which would not be addressed by registration of polyhedrons) that can be addressed directly with specific limitations.[61] Due to the difficulties of adequately representing the potential interference from these links in the existing database structure,[62] and in light of the various interference mitigation measures we also adopt (discussed below) to answer those concerns, we will not require registration or coordination of individual air-to-air links.

20. In the matter of coordinating and registering individual maritime stations and links, the Commission proposed in the *70/80/90 GHz NPRM* to require coordination and registration for not only ship-to-shore and shore-to-ship transmissions, but also ship-to-ship and ship-to-node (i.e., as described in this item ship-to-aerostat).[63] The Commission also sought comment on how all types of links should be represented or described in their registrations, as the current system—designed for two-dimensional fixed point-to-point links on the ground—does not account for potential differences in three-dimensional space-to-endpoints in motion.[64] As explained immediately above, commenters focused on the potential difficulty of coordinating air-to-air links, and Aeronet proposed a system of three-dimensional polyhedrons for the same. Similar in-depth discussion around maritime-related links did not develop in the record.

21. After receiving the nationwide license, aeronautical operators will coordinate with federal operators and register GTA stations and associated ATG transmissions, and must not operate such facilities until registration has successfully been completed. Air-to-air operations will not be separately registered but may only operate under a nationwide license if the communication is associated with a registered GTA or ATG registration. All GTA and ATG operations, including operations transmitting to or from aeronautical endpoints in motion and associated ground stations, will be afforded protection from other operations on a first-in-time basis, and must afford those other operations the relevant first-in-time protections in turn.[65]

22. After receiving the nationwide license, maritime operators will coordinate with federal operators and register shore-to-ship transmitters, shore-to-aerostat transmitters, ship-to-shore transmitters, and aerostat relay stations. As with GTA and ATG transmissions, all such maritime operators must not operate any facilities until registration has successfully been completed. All such maritime operations will be afforded protection from other operations on a first-in-time basis and must afford those other operations the relevant first-in-time protections in turn.

23. We delegate authority to WTB to establish specific procedures to be followed for coordinating and registering aeronautical and maritime stations and their associated transmissions, to be

---

[61] *See*, *e.g.*, Federal Agencies Letter.

[62] *See* Comsearch HAPS Public Notice Comments at 2 (citing Comsearch Comments at 17: "[A]ny concept of recording polyhedrons, cones, or polygons to represent mobile operations, or likewise any other approach to database information to describe these operations would constitute a major change to the current registration database structure and process.").

[63] *70/80/90 GHz NPRM*, 35 FCC Rcd at 6054, para. 36.

[64] *Id.* at 6055, para. 37.

[65] We note the request of CTIA and others that we grant priority to fixed service in these bands over new uses. CTIA Refresh Public Notice Comments at 6; *see also, e.g.*, AT&T Refresh Public Notice Comments at 3–4. Fixed service in these bands has been co-primary with other services, including mobile service, for some time. *See* 47 CFR § 2.106. Adopting new service rules for these existing allocations does not change the co-primary status of the fixed service. Additionally, incorporating these new aeronautical and maritime services into the existing registration regime with first-in-time protection effectively protects all existing operations, including fixed operations, from all deployments in these services. That subsequent deployments will be protected from each other on a first in time basis is also consistent with the co-primary nature of the allocations.

set forth in a future publication or publications. We note, in relation to technical discussion raised by certain parties in the docket,[66] that validation of new aeronautical and maritime systems' ability to not cause interference may involve processes beyond the third-party database system.[67] Additionally, we delegate authority to WTB and the Office of Engineering and Technology (OET) to establish a process, in coordination with NTIA, for demonstrating that technologies for point-to-endpoint-in-motion communications to aircraft and ships are capable of meeting the specific technical and operating requirements adopted in this *Report and Order*. We instruct WTB and OET to take such actions as authorized by sections 0.241(l) and 0.331(g) of our rules, which we adopt today, and to do so expeditiously.

2. Technical and Operational Rules

24. In the *70/80/90 GHz NPRM* we sought comment on what changes to our current rules might be necessary to facilitate the contemplated aeronautical and maritime services, while protecting incumbent and federal operations.[68] We also sought comment generally on any interference mitigation measures not specifically mentioned that might be necessary to protect other operations.[69]

25. In response to the *70/80/90 GHz NPRM*, some commenters argued—focusing on the aeronautical context in particular—that a more developed record would be necessary to support the authorization of aeronautical mobile service along the lines proposed by Aeronet, given the potential for interference to incumbent and other potential services.[70] Other commenters disagreed.[71] Maritime service was largely unaddressed in the record. A small number of parties—including SpaceX, T-Mobile, and Verizon[72]—raised more specific, albeit still highly generalized, objections to the *70/80/90 GHz* NPRM's proposed maritime authorizations, citing in part concerns over potential impacts on fixed wireless backhaul, among other issues. Others generally endorsed the adoption of the proposed maritime regime.[73]

26. Since the initial comment period to the *70/80/90 GHz NPRM*, additional submissions to the record, including detailed contributions from NTIA and other federal agencies, have enhanced the

---

[66] *See, e.g.*, Comsearch Refresh Public Notice Comments at 1–2 (articulating, consistent with past filings from the same party, how certain changes might "require major modifications to the databases or most likely entirely new structures" (internal quotations, citation omitted)).

[67] *See generally 70/80/90 GHz Report and Order*, 18 FCC Rcd at 23341–45, paras. 48–60 (detailing the coordination and registration regime for the 70/80/90 GHz bands, including the use of third-party database managers); *Allocations and Service Rules for 71–76 GHz, 81–86 GHz and 92–95 GHz Bands*, WT Docket No. 02-146, Order, 19 FCC Rcd 20524 (WTB 2004) (designating three entities as database Managers "tasked with jointly developing and managing databases of link registrations by FCC licensees in the 71–76 GHz, 81–86 GHz and 92–95 GHz bands (collectively, link registration system)").

[68] *70/80/90 GHz NPRM*, 35 FCC Rcd at 6055–58, paras. 40–46.

[69] *Id.* at 6057, para. 45.

[70] Letter from Gregory Coutros, Associate Corporate Counsel, Regulatory Affairs, Hughes Network Systems, LLC, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 20-133, at 1–2 (filed Feb. 26, 2021) (Hughes Feb. 26, 2021 *Ex Parte*); Letter from Jennifer Manner, Senior Vice President, Regulatory Affairs, Hughes Network Systems, LLC, and David Goldman, Director, Satellite Policy, Space Exploration Technologies Corp., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 20-133, at 2 (filed Dec. 7, 2020).

[71] Letter from Dowel V. King, Sr. Manager, Contracts, L3 Technologies, Inc. Communications Systems West, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 20-133, at 2 (filed May 18, 2021) (L3Harris May 18, 2021 *Ex Parte*).

[72] SpaceX Reply Comments at 2; T-Mobile Comments at 2–3 and 10–11; Verizon Comments at 2–3.

[73] *See, e.g.*, SIA Comments at 7–8; Nokia Reply Comments at 3; L3 Technologies Comments at 1–2.

depth of the record.[74] Our increased understanding of potential interactions between Aeronet's proposed service and incumbent, adjacent, and other potential operations, including sensitive operations such as weather satellites in the EESS, now allows us to set forth a series of technical and operational rules calculated to protect all services within the 70/80 GHz bands, and adjacent to them, from harmful interference.

27. Except as noted below, the aeronautical and maritime mobile services we authorize today will be governed by part 101 of our rules. Though part 101 currently encompasses only fixed services, we find it appropriate to place the service rules governing aeronautical and maritime mobile services in the 70 and 80 GHz bands within the same rule part. In addition, operators of these new services must coordinate with operators in the existing FS, and part 101 is the logical home for rules related to that coordination. The technical and operational rules we set forth below are sufficient to accommodate the different technical characteristics of these aeronautical and maritime transmissions.

28. *Guard Bands.* We did not specifically seek comment in the *70/80/90 GHz NPRM* on the potential use of guard bands as means of protecting services in adjacent bands from harmful interference. Several commenters suggest them, particularly to protect both EESS satellites and RAS facilities in the 86–92 GHz band.[75] However, the analysis submitted by the Federal Agencies, which includes NASA and NOAA, instead relies upon specified out of band emissions (OOBE) limits to protect EESS.[76] Because the Federal Agencies' analysis supports coexistence between the new aeronautical and maritime services and services in adjacent bands without the use of a guard band, no commenters objected to the lack of guard bands in response to the *Refresh Public Notice*, and based on our engineering analysis of the Federal Agencies' recommendations, we decline to adopt guard bands as an interference protection measure here.

29. *Transmission Power Levels.* In the *70/80/90 GHz NPRM*, we sought comment on Aeronet's request to increase the maximum allowable mobile equivalent isotropically radiated power (EIRP) for the 70 and 80 GHz bands from +55 dBW to +57 dBW.[77] CORF and satellite operators objected to this proposal, on the grounds that an increased power level would unacceptably increase the risk of harmful interference to FSS and RAS operations.[78] Qualcomm supported the increase, arguing that atmospheric attenuation in these bands should be sufficient to mitigate interference concerns.[79] Aeronet argues that the proposed increase is minimal and that the highly directional nature of transmissions in its proposed service will work to avoid incidents of harmful interference.[80] The Federal Agencies' analysis of potential interference into federal operations assumes +57 dBW, and suggests that the recommended interference mitigation measures in its report would be sufficient to protect federal

[74] *See* Federal Agencies Letter; Letter from Roger Sherman, Counsel to Aeronet Global Communications Inc., to Marlene H. Dortch, Secretary, FCC, WT 20-133 (filed May 12, 2022); Letter from Jameson Dempsey, Principal, Satellite Policy, Space Exploration Technologies Corp., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 20-133 (filed May 23, 2022) (SpaceX May 23, 2022 *Ex Parte*); Letter from Jameson Dempsey, Principal, Satellite Policy, Space Exploration Technologies Corp., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 20-133 (filed July 25, 2022) (SpaceX July 25, 2022 *Ex Parte*). The Federal Agencies Letter in particular contains detailed analysis and specific actionable recommendations for interference mitigation. *See* Federal Agencies Letter, Attach. B; *id.*, Attach. C.

[75] Letter from Dan DePodwin, Manager of Forecasting Operations, AccuWeather, Inc. et al., to Marlene H. Dortch, Secretary, FCC, WT 20-133, at 2–3 (filed Sept. 17, 2020); CORF Comments at 2; American Astronomical Society Comments at 2; IEEE-GRSS Reply Comments at 1–2; NRAO Comments at 3.

[76] Federal Agencies Letter, Attach. A at 1.

[77] *70/80/90 GHz NPRM*, 35 FCC Rcd at 5056, para. 42.

[78] Hughes Feb. 26, 2021 *Ex Parte*; CORF Comments at 2; SIA Comments at 5–6.

[79] Qualcomm Comments at 10.

[80] Aeronet Comments at 1–2; Aeronet Reply Comments at 2.

operations from an aeronautical mobile service operating at that power level.[81]

30. We acknowledge the concerns of satellite operators and the RAS community about potential interference from the services that this item contemplates, as discussed in more detail below. However, the Federal Agencies' analysis addresses potential harmful interference to both RAS and FSS operations, and we find it persuasive based on our review of the record and our independent analysis. As we also adopt the interference mitigation measures recommended in that report, we adopt a maximum EIRP level of +57 dBW for transmissions in these new aeronautical and maritime mobile services.

a. Transmissions Between Aircraft and Ground Stations

31. In introducing a new aeronautical mobile service to these bands, care must be taken to ensure compatibility with existing and other authorized services, both in the 70 GHz and 80 GHz bands, and adjacent to them. The record reflects a variety of concerns about the potential impact on these other services. To address these concerns, we adopt a number of interference mitigation measures specifically related to transmissions between ground stations and aircraft in flight, described below. Ground-to-air and air-to-ground transmissions are limited to the 80 GHz and 70 GHz bands, respectively; ground stations must be located a minimum distance away from RAS facilities, fixed stations, and FSS earth stations; specific OOBE limits above 86 GHz must be observed; and minimum and maximum elevation angles for ground-to-air transmissions are required.

32. Several commenters expressed concern regarding air-to-ground transmissions in the 80 GHz band, due to the potential for such transmissions to cause harmful interference to RAS operations.[82] No party, including Aeronet, has argued that downlink transmissions in the 80 GHz band are necessary to provide aeronautical service, provided that the 70 GHz band is available for that purpose. AT&T notes in its comments that a channel plan that designates different parts of the 70 GHz or 80 GHz bands for uplink versus downlink signals would be beneficial to reduce self-interference to air-to-ground and ground-to-air mobile systems.[83] In addition, having air-to-ground transmissions in the 70 GHz band and ground-to-air transmissions in the 80 GHz band creates directional consistency with the bands designated for space-to-Earth (71–76 GHz) and Earth-to-space (81–86 GHz) in the FSS service. Aeronet's technical study indicates compatibility with the FSS services while assuming air-to-ground transmissions in the 70 GHz band and ground-to-air transmissions in the 80 GHz band.[84] SpaceX supported Aeronet's study.[85] We therefore authorize air-to-ground transmissions only in the 70 GHz band.

33. Many commenters suggested that some separation distance between aeronautical ground stations and operations of other services, including RAS stations, FSS earth stations, and fixed point-to-point links, would be either advisable or necessary to reduce the risk of harmful interference.[86] The Federal Agencies' analysis provides specific values for such separation distances: greater than 10 km for licensed FSS earth stations, 10 km for fixed point-to-point transmitters, and 150 km for RAS operations.[87] That analysis also asserts that in order to protect RAS operations, ground stations should not transmit in

[81] *See* Federal Agencies Letter at 2; *id.*, Attach. B at 2.

[82] CORF Comments at 2; NRAO Comments at 8; Federal Agencies Letter, Attach. C at 1.

[83] AT&T Comments at 10.

[84] Letter from Roger Sherman, Counsel to Aeronet Global Communications Inc., to Marlene H. Dortch, Secretary, FCC, WT 20-133, Attach. at 4 (filed Oct. 4, 2021) (Aeronet Oct. 4, 2021 *Ex Parte*) (filing attaching a September 2021 study entitled "Aviation-Satellite Coexistence in the 70 and 80 GHz bands").

[85] SpaceX Oct. 12, 2021 *Ex Parte* at 1.

[86] DSA Comments at 3–4; Letter from Martin L. Stern and E. Barlow Keener, Counsel to Sceye Inc., to Marlene H. Dortch, Secretary, FCC, WT 20-133, at 3 (filed Apr. 19, 2022); SpaceX HAPS Public Notice Comments at 4; NSF HAPS Public Notice Comments at 2.

[87] Federal Agencies Letter, Attach. A at 1–2; *id.*, Attach. B at 4, 11.

the direction of an RAS facility, or receive transmissions from aircraft in that direction, such that the transmission enters the appropriate "zone of avoidance" around the facility.[88] In response to the *Refresh Public Notice*, NRAO raised concerns that this 150 km separation distance may be inadequate to protect RAS operations in the 76–81 GHz band specifically.[89]

34. We find the conclusions of the Federal Agencies' analysis persuasive. No other party has submitted alternative suggestions for separation distances with respect to federal operations. With regard to NRAO's concerns, we note that as the Technical Interchange Group that produced the Federal Agencies Letter specifically considered interference into the 76–81 GHz band, and as NSF, with which NRAO is affiliated, participated in the TIG and endorsed its output, we will defer to the expertise of NSF in this matter.[90] Accordingly, we adopt a minimum separation distance of 150 km between RAS facilities and aeronautical ground stations.

35. With respect to FS and FSS, although the 10 km distances were calculated specifically with federal operations in mind, we find that a 10 km distance separation should apply with respect to non-federal operations in these services. With respect to FSS, the record generally supports the 10 km separation distance without objection. For example, Aeronet's study showing compatibility between its system and FSS concluded that a 10 km separation distance would be sufficient to prevent interference[91] and SpaceX supports this conclusion.[92] With respect to FS, Aeronet contends that applying a 10 km separation requirement for ground stations is unnecessary and possibly counterproductive given that Aeronet expects to, in some cases, be able to co-locate with backhaul links.[93] FWCC and CTIA, on the other hand, assert that the 10 km separation distance is necessary to protect non-Federal FS stations.[94] Based on our assessment of the record, we do not find any technical reason to adopt a different separation distance between ground stations and non-Federal FS stations than we adopt for the separation between ground stations and Federal FS stations. Moreover, in response to Aeronet's concern that a 10 km separation distance could preclude co-location of ground stations with backhaul links, we note that ground stations can be separated less than 10 km from backhaul links pursuant to coordination agreements, and we encourage all parties to explore more efficient interference protection parameters in the context of those discussions. We find that a 10 km coordination requirement strikes the appropriate balance for sharing between the longstanding use of the bands under the fixed allocation and the new uses under the co-primary mobile allocation—including ground stations with antennas that are not static.

36. While Comsearch assumed a larger coordination area around FS stations than 10 km, we note that its analysis uses conservative assumptions to calculate an area on the ground that could be illuminated by an aircraft antenna.[95] This worst-case calculation does not take into account a number of

[88] Federal Agencies Letter, Attach. B at 4.

[89] NRAO Refresh Public Notice Comments at 1.

[90] *See* Federal Agencies Letter, Attach. A at 1 (separate entries for mitigating adjacent band interference into both 86–92 GHz and 76–81 GHz), Federal Agencies Letter at 1 (listing participating agencies, including NSF); *see also* NSF, *Master Government List of Federally Funded R&D Centers* (Feb. 2023), https://www.nsf.gov/statistics/ffrdclist/ (enumerating all Federally Funded Research and Development Centers and their sponsors—including, for NRAO, NSF).

[91] Aeronet Oct. 4, 2021 *Ex Parte*, Attach. at 2.

[92] SpaceX Oct. 12, 2021 *Ex Parte* at 1 ("SpaceX supports Aeronet's 'very conservative' conclusion that a coordination area of 10 kilometers would prevent harmful interference between its ground stations and FSS gateways in the 70/80 GHz bands.").

[93] Aeronet Jan. 11, 2023 *Ex Parte* at 2–3.

[94] Letter from Seth L. Williams, Counsel, FWCC, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 20-133, at 2 (filed Jan. 18, 2024); Letter from Michael Mullinix, Vice President—Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 20-133, at 2–3 (filed Jan. 18, 2024).

factors that would reduce the interference potential, most notably the directional nature of transmissions from the aircraft. Considering the relative potential interference between ground stations and FSS versus FS, we note the following: (1) the elevation angle of FSS earth station receive antennas makes them more likely to be co-linear with the air-to-ground link; (2) due to the long path from space-to-Earth, the desired signal at a satellite earth station from a satellite would typically be weaker than the desired signal at an FS receiver from its transmitter (in other words, the C in the C/I ratio would be higher for any FS station); and (3) the Federal FSS study assumed an interference threshold of I/N = -12.2 dB would be required to protect FSS, whereas the typical interference threshold for FS is 1.0 dB of degradation of the static threshold of the protected receiver,[96] which equates to an I/N of -6 dB. These factors all indicate that FS would be less susceptible to interference from air-to-ground or ground-to-air links than FSS. We therefore conclude that there is no need for the separation distance between ground stations and FS stations to be any greater than the separation distance between ground stations and FSS stations. Accordingly, we adopt a minimum separation distance 10 km between proposed aeronautical ground stations and any registered fixed point-to-point transmitter or FSS earth station, Federal or non-Federal, in the absence of a coordination agreement with the fixed station or FSS earth station operator.

37. Commenters in the record evidenced significant concern regarding protection of EESS sensors above 86 GHz from harmful interference due to spurious emissions from the 80 GHz band.[97] We sought comment on what interference mitigation measures might be necessary to protect EESS services operating in the 86–92 GHz band.[98] CORF, ESA/EUMETSAT, and the World Meteorological Organization suggest that the OOBE limits in our rules should be updated to conform to the standard set forth in ITU-R Resolution 750.[99] The Federal Agencies, based on an independent analysis incorporating specific details of Aeronet's proposed system, recommend an OOBE limit of -38.5 dBW in any 100 megahertz of the passive band 86–92 GHz for ground-to-air transmissions.[100]

38. We find the recommendation of the Federal Agencies to be persuasive. We acknowledge that this OOBE limit is slightly more lenient than that urged by CORF and others. However, the Federal Agencies' analysis takes into account specific characteristics of Aeronet's proposed system. We are therefore confident that their resulting conclusions are sufficient to adequately protect EESS operations. We adopt an OOBE limit of -38.5 dBW in any 100 megahertz of the passive band 86–92 GHz for ground-to-air transmissions.

39. *Minimum and Maximum Elevation Angles.* In the *70/80/90 GHz NPRM*, we sought comment on a minimum elevation angle of five degrees for transmissions from ground stations, consistent with the parameters in Aeronet's initial petition.[101] Some commenters suggest that lower elevation angles, such as three or even 1.5 degrees, would be sufficient to prevent harmful interference.[102] Hughes argues

(Continued from previous page)

[95] For example, the Comsearch analysis assumes an aircraft altitude of 50,000 ft—*see* Comsearch Report at 22—whereas most commercial aircraft typically fly between 31,000 and 38,000 feet.

[96] 47 CFR § 101.105; TIA-10-A, Interference Criteria for Microwave Systems (TIA 2023), https://tiaonline.org/standardannouncement/tia-issues-new-interference-criteria-for-microwave-systems-standard/.

[97] AGU/AMS/NWA Comments at 6; CORF Comments at 2; ESA/EUMETSAT Reply Comments at 1; European Centre for Medium Range Weather Forecasts Comments at 1; World Meteorological Organization Reply Comments at 2.

[98] *70/80/90 GHz NPRM*, 35 FCC Rcd at 6056, para. 42.

[99] CORF Comments at 2; ESA/EUMETSAT Reply Comments at 1; World Meteorological Organization Reply Comments at 2.

[100] *See* Letter from Charles Cooper, Associate Administrator, Office of Spectrum Management, NTIA, to Ronald T. Repasi, Chief, OET, FCC, and Joel Taubenblatt, Chief, WTB, FCC, WT Docket No. 20-133, at 1–2 (filed Dec. 29, 2023) (Federal Agencies Clarification Letter); *see also* Federal Agencies Letter, Attach. A at 1; *id.*, Attach. B at 8–9.

[101] *70/80/90 GHz NPRM*, 35 FCC Rcd at 6056, para. 43; Aeronet Aeronautical Petition at 14.

that lower elevation angles might require larger separation distances between these aeronautical ground stations and FSS ground stations, thereby hampering future deployment of FSS service.[103] Geneva Communications is generally supportive of some minimum elevation angle in order to protect incumbent Fixed users,[104] and FWCC supports a five degree minimum specifically.[105] Loon argues that any minimum elevation angle would favor some systems or business models over others, and thereby restrict competition.[106] Comsearch's analysis of the potential impact of Aeronet's proposed service on other services in the 70/80/90 GHz bands concludes that a minimum elevation angle of five degrees significantly mitigates the potential for interference into fixed point-to-point links.[107] Aeronet subsequently indicated that a minimum elevation angle of five degrees could impact deployment timing and costs compared to a lower angle such as three degrees.[108]

40. We adopt a minimum elevation angle of five degrees for ground stations in this aeronautical service. This is consistent with Aeronet's initial petition and with the record before us.[109] We find Loon's argument against any minimum elevation angle unpersuasive. Elevation angle is routinely an area of potential concern in bands where terrestrial service coexists with services operating at altitude; for example, part 25 of our rules, which provides the default rules for satellite operations, requires that satellite earth stations not transmit at elevation angles below five degrees in any band shared with a terrestrial radio service.[110] Adopting a similar restriction on aeronautical services is motivated by similar interference protection concerns and remains a technology-neutral requirement. Given the concerns raised in the record about lower elevation angles, we conclude that five degrees is the most appropriate value. That said, we recognize the benefits to efficient spectrum use, and ultimately consumers, of permitting parties to agree to less stringent interference mitigation measures than required under our rules. Accordingly, WTB will consider any request for waiver of this rule through our existing regulatory processes,[111] subject to coordination with NTIA to ensure that federal incumbents are protected

(Continued from previous page)

[102] L3Harris May 18, 2021 *Ex Parte* at 2; Letter from John W. Kuzin, Vice President and Regulatory Counsel, Qualcomm Incorporated, to Marlene H. Dortch, Secretary, FCC, WT 20-133, at 1 (filed Jan. 8, 2021).

[103] Hughes Feb. 26, 2021 *Ex Parte* at 2.

[104] Letter from Wesley K. Wright, Counsel to McKay Brothers, LLC, to Marlene H. Dortch, Secretary, FCC, WT 20-133, at 2 (filed June 2, 2022).

[105] FWCC Comments at 6–7.

[106] Loon Reply Comments at 3.

[107] Comsearch Report at 3.

[108] *See* Aeronet Jan. 10, 2024 *Ex Parte* at 1 (seeking "an expedited process for Commission staff or the future database administrator to adjust the minimum angle after appropriate coordination with potentially impacted parties based on real-world data").

[109] We note that the Federal Agencies Clarification Letter stated that one study initially conducted by the Federal Agencies assumed 3 degree minimum elevation angles. Federal Agencies Clarification Letter at 1–2. However, in the record before us Aeronet has only proposed a 5 degree minimum elevation angle, both in its own Petition and in studies that Aeronet commissioned. *See, e.g.*, Aeronet Aeronautical Petition at 14; Comsearch Report at 3–4, 21–22. The OOBE limit of -38.5 dBW in any 100 megahertz of the passive band 86–92 GHz for ground-to-air transmissions, as recommended in the Federal Agencies Clarification Letter, accounts for a 5 degree minimum elevation angle.

[110] 47 CFR § 25.205.

[111] 47 CFR § 1.925(b)(3) (grant of a waiver request requires a showing that "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 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").

from harmful interference and, as Aeronet suggests, "coordination with other potentially impacted parties based on real-world data."[112]

41. We also adopt a maximum elevation angle of forty-five degrees for aeronautical ground stations. Though this parameter was not included in Aeronet's petition, it is the maximum elevation angle used by the Federal Agencies in their analysis of potential harmful interference to federal operations, and these assumptions about likely operational parameters were based on input from Aeronet.[113] Because this analysis shows that elevation angles of up to forty-five degrees can (under certain other parameters) coexist successfully with federal operations, and because we lack evidence in the record that transmissions above that angle of elevation will not cause harmful interference to federal or other satellite operations, we adopt a maximum elevation angle of forty-five degrees.

42. Together, these technical parameters and interference mitigation measures will ensure that operators in this aeronautical mobile service will be able to successfully operate, while also protecting operators in other services.

b. Transmissions Between Aircraft In Flight

43. Air-to-air transmissions present a unique set of characteristics in terms of the potential for interaction with other services, in both the same and adjacent bands, and accordingly, considerable attention has been paid to how harmful interference from such transmissions might be avoided. In the *70/80/90 GHz NPRM*, the Commission sought comment generally on potential interference mitigation measures.[114] Many commenters raised concerns about the potential for harmful interference into other services, particularly RAS sites above 86 GHz.[115] In response to these concerns, Aeronet, Comsearch, and other commenters suggested a variety of potential mitigation measures.[116] In particular, the Federal Agencies submitted a report with both suggested interference mitigation measures and underlying analysis supporting them, which they suggest would be sufficient to protect federal operations both in the 70/80 GHz bands and in adjacent bands from harmful interference from air-to-air transmissions.

44. After reviewing the record, and as discussed in more detail below, we adopt the following technical and operational restrictions on transmissions between aircraft in flight, in order to reduce the risk of harmful interference to other services. Air-to-air transmissions will be authorized in both the 70 GHz and 80 GHz bands. We establish an OOBE limit of -29.7 dBW in any 100 megahertz of the passive band 86–92 GHz, to protect EESS (passive) operations. In the 80 GHz band, we set a maximum allowed EIRP signal level towards any of a specified list of RAS sites, varying by transmission frequency and distance from the site. In the 70 GHz band, we adopt a similar limit on EIRP signal levels toward specified military installations. Finally, we adopt both altitude restrictions and a minimum slant path distance requirement in order to reduce the risk of harmful interference to in-band services, particularly fixed point-to-point links.

45. Several commenters raised concerns in the record that air-to-air transmissions in the 80 GHz band might produce unwanted emissions into the band above 86 GHz that might cause harmful interference to services in that band, particularly RAS observatories and EESS operations.[117] We agree

[112] Aeronet Jan. 10, 2024 *Ex Parte* at 1.

[113] Federal Agencies Letter, Attach. B at 7.

[114] *70/80/90 GHz NPRM*, 35 FCC Rcd at 6057, para. 45.

[115] American Geophysical Union et al. Comments at 6; CORF Comments at 2; ETA/EUMETSAT Reply Comments at 2; European Centre for Medium Range Weather Forecasts Reply Comments at 1; IEEE-GRSS FARS Reply Comments at 1–2; NRAO Comments at 3.

[116] *See e.g.*, Aeronet Comments at 1–2, 3; Comsearch Report at 42–44; Federal Agencies Letter, Attach. A.

[117] American Astronomical Society Comments at 2; CORF Comments at 2, MIT Haystack Observatory Comments at 1–2, NRAO Comments at 8.

with commenters on the importance of protecting RAS and EESS operations in the 86–92 GHz band. However, based on the analysis by the Federal Agencies, we conclude that the interference mitigation measures we adopt today, which include restrictions on transmissions in the direction of RAS sites, are sufficient to allow air-to-air transmissions in both the 70 GHz and 80 GHz bands.

46. In the *70/80/90 GHz NPRM*, we sought general comment on what interference mitigation measures might be necessary to protect EESS and RAS services operating in the 86–92 GHz band.[118] Among the measures proposed by commenters relating to air-to-air transmissions were limiting those transmissions to the 70 GHz band[119] and updating the OOBE limits to reflect recent ITU standards.[120] Several commenters also discussed the need for any air-to-air transmissions to avoid pointing directly at an RAS receiver.[121] The Federal Agencies' analysis recommends an OOBE limit of -29.7 dBW in any 100 megahertz of the passive band 86–92 GHz for air-to-air transmissions in order to protect EESS sensors, and a set of restrictions on EIRP levels toward any RAS site depending on the distance of the transmitter to the site.[122] Aeronet has represented both in our record and to the Federal Agencies that their proposed system has the capability to automatically avoid transmission towards specified stationary areas or coordinates corresponding to RAS sites, which would enable them to comply with such a requirement.[123]

47. We adopt an OOBE limit of -29.7 dBW in any 100 megahertz of the passive band 86–92 GHz for air-to-air transmissions, as suggested by the Federal Agencies.[124] We also adopt a requirement that air-to-air transmissions, in both the 70 GHz and 80 GHz bands, not take place within the main beam of an RAS observatory, and that if this cannot be assured, no transmissions should take place within the radio horizon of the observatory. This restriction was also suggested by the Federal Agencies.[125] We adopt these requirements in order to protect passive services in the adjacent bands (i.e., 76–81 GHz, and above 86 GHz). The Federal Agencies' analysis uses ITU recommendations as their starting point, and comprehensively considers various factors that may influence both harmful interference from aeronautical operations specifically, and aggregate interference from those operations, in addition to previously authorized services.[126] Accordingly, we conclude that the resulting recommendations will be sufficient to protect EESS operations.

48. We take protection of RAS operations very seriously, and accordingly assign significant weight to the concerns expressed in the record, and especially in the Federal Agencies' analysis, which discusses protection of RAS operations in detail.[127] In order to safeguard these operations, we will follow the recommendations of the Federal Agencies in requiring the following interference protection measures. First, as a general matter no transmissions may occur within the main beam of an RAS station.[128] In

[118] *70/80/90 GHz NPRM*, 35 FCC Rcd at 6056, para. 42.

[119] American Astronomical Society Comments at 2; CORF Comments at 2; MIT Haystack Observatory Comments at 1–2; NRAO Comments at 8.

[120] CORF Comments at 2; World Meteorological Organization Reply Comments at 2.

[121] CORF Comments at 2; NRAO Comments at 4.

[122] Federal Agencies Letter, Attach. A at 1; *id.*, Attach. C at 1–2.

[123] Letter from Roger Sherman, Counsel to Aeronet Global Communications Inc., to Marlene H. Dortch, Secretary, FCC, WT 20-133 (filed July 19, 2023); Federal Agencies Letter, Attach. C at 1, fn. 1.

[124] Federal Agencies Letter, Attach. C at 1.

[125] *Id.*, Attach. B at 4–5; *id.*, Attach. C at 1–2. The list of RAS facilities will be specified in our rules, and may be found in App. A below. *See id.*, Attach. A at 2.

[126] *Id.*, Attach. B at 8–9.

[127] *Id.*, Attach. A at 1; *id.*, Attach. B at 1–6; *id.*, Attach. C at 1–2.

addition, aircraft within the radio horizon of any RAS station must limit the EIRP level towards the RAS stations of any air-to-air transmission, as set forth in Fig. 1.[129]

Fig. 1: List of Maximum Allowable EIRP levels toward RAS sites, in dBW

Frequency (GHz)	Horizontal Distance (km)									
	150	175	200	225	250	275	300	325	350	375
81	-11.2	-8.8	-6.5	-4.2	-1.5	1.1	3.9	6.7	10	13.5
82	-11.5	-9.2	-6.9	-4.6	-2	0.5	3.2	6	9.2	12.6
83	-11.7	-9.5	-7.3	-5	-2.4	0	2.7	5.4	8.6	11.9
84	-11.9	-9.7	-7.5	-5.3	-2.8	-0.4	2.3	4.9	8	11.3
85	-12.1	-9.9	-7.8	-5.5	-3	-0.7	1.9	4.5	7.6	10.8
86	-12.2	-10	-7.9	-5.7	-3.3	-0.9	1.7	4.2	7.3	10.5

49. In addition to concerns regarding adjacent band services, the Federal Agencies also raised concerns about potential harmful interference to co-primary services in the 70 GHz band.[130] Protection of fixed point-to-point links, both federal and non-federal, is addressed below. For protection of Federal FSS operations, the Federal Agencies suggest that, similar to protections for RAS stations, EIRP levels from air-to-air transmissions within 375 km of a specified military installation should not exceed 20 dBW/1000 megahertz toward that installation, unless the aeronautical operator has coordinated some other allowable level with the Department of Defense.[131] In response to the *Refresh Public Notice*, no commenter objects to these interference mitigations measures, nor argues that they are insufficient to protect co-primary services in the 70 GHz band. As with protections for RAS operations, we find the Federal Agencies' analysis on this point persuasive, particularly since no other commenter touches on the interest of Federal FSS operations. Accordingly, we adopt the suggested requirement that air-to-air transmitters within 375 km of any of the specified military installations[132] must limit the EIRP of their transmissions to 20 dBW toward the military installation site.

50. *Altitude Restrictions*. In its petition for rulemaking, Aeronet specified that its proposed service would operate only with aircraft at altitudes between 10,000 and 50,000 feet.[133] We did not seek specific comment in the *70/80/90 GHz NPRM* on this point. DSA suggested that altitude restrictions are unnecessary because the risk of interference into other services is already low, while Loon argued against any altitude caps on the theory that they would be harmful to potential competition.[134] Geneva Communications suggests that altitude restrictions are unnecessary so long as links are adequately and dynamically coordinated.[135] FWCC supports a restriction to between 10,000 and 50,000 feet of altitude.[136]

(Continued from previous page)

[128] *See id.*, Attach. B at 4; *id.*, Attach. C at 1. The list of RAS facilities will be specified in our rules, and may be found in Appendix A below. *See id.*, Attach. A at 2.

[129] *See id.*, Attach. B at 3.

[130] *Id.*, Attach. B at 9–11.

[131] *Id.*, Attach. C at 2.

[132] This list, which includes specific coordinates for each site, may be found in Appendix A at 47 CFR § 101.1528(c) below. *See also* Federal Agencies Letter, Attach. C at 5; Federal Agencies Clarification Letter at 2. The Department of Navy also seeks to add an additional FSS site in Miramar, CA, which is not currently reflected in US389, to the list of protected sites in our part 101 rules. Federal Agencies Clarification Letter at 2. We are not taking any action in this proceeding to modify US389, and thus defer on this request at this time.

[133] Aeronet Aeronautical Petition at 14.

[134] DSA Reply Comments at 5.

[135] Geneva HAPS Public Notice Reply Comments at 1–2.

[136] FWCC Comments at 6–7.

51. We reject Loon's assertion that altitude restrictions favor certain technologies or business models over others. The record demonstrates that, together with other restrictions, air-to-air transmissions between 10,000 and 50,000 feet may be accomplished without harmful interference to incumbent and adjacent operations; it does not demonstrate that transmissions at higher or lower altitudes would be similarly successful. As we are unpersuaded that mandating dynamic coordination of all air-to-air links is necessary, we reject Geneva Communications' argument as well. Consistent with Aeronet's petition, we adopt a minimum altitude of 10,000 feet for all air-to-air transmissions in these bands, and a maximum altitude of 50,000 feet. Together with the minimum slant path distance requirement that we also today adopt, these altitude restrictions will reduce the risk of harmful interference into other services by limiting the area on the ground with line of sight to the airborne transmitter, restricting the angle at which air-to-air transmissions may enter receivers on the ground, and setting a minimum vertical distance (and therefore a minimum amount of atmospheric attenuation) between air-to-air transmissions and both terrestrial and satellite services.

52. *Minimum Slant Path Distance.* In the *70/80/90 GHz NPRM*, we asked what mitigation measures might be necessary to address the risk of harmful interference from air-to-air transmissions between aircraft of significantly different altitudes.[137] That risk of interference arises from the resulting steep angle of the signal, and therefore the increased risk that the transmission ultimately illuminates a receiver in another service, especially a fixed point-to-point receiver along the boresight. Aeronet and Comsearch suggest that a minimum slant path distance would reduce any potential harmful interference from air-to-air links.[138] Qualcomm argues that a minimum horizontal distance between aircraft would be sufficient to render potential harmful interference into fixed links negligible.[139] No commenters argue against adopting a minimum separation between aircraft. Given the state of the record on this point, we adopt a minimum slant path distance of 50 kilometers between aircraft involved in air-to-air transmissions.

c. Transmissions Between Ships, Shore, and Aerostat Stations

53. The record generally supports technical and operational restrictions on transmissions to and from ship, shore, and aerostat stations that are parallel to those adopted for airborne transmissions.[140]

---

[137] *70/80/90 GHz NPRM*, 35 FCC Rcd at 6057, para. 45.

[138] Aeronet Comments at 3; Comsearch Report at 28–32.

[139] Qualcomm HAPS Public Notice Comments at 8.

[140] Sceye Comments at 12 ("Sceye also supports the use of a unified light-licensing framework to allow fixed terrestrial, satellite, fixed aerostat, and aviation/maritime to register their respective 70/80/90 GHz links"); Comsearch Comments at 1–2; L3Harris May 18, 2021 *Ex Parte* at 1 (Aeronet's proposed "deployment of SDDL technology will dramatically reduce network costs and provide enhanced security for . . . maritime operators"); Loon Comments at 2 ("Loon appreciates the importance of robust in-flight and maritime connectivity. . . . By adopting flexible, technology-neutral rules and setting a path toward dynamic coordination for all services in the bands, the Commission can ensure simultaneous technological innovation on land, at sea, in the sky, and in space."); WISPA Comments at 7 ("In general, the services contemplating fixed transmissions to moving terminals in . . . maritime environments should pose a low risk of interference to more conventional fixed uses."); FWCC Comments at 2 ("the FWCC has no objection to Aeronet's proposal to operate a mobile aviation and maritime communications network, provided the Commission protects incumbent users" (internal citations omitted)); DSA Comments at 4 ("[W]e see no technical reason why the 70/80 GHz database could not serve as a comprehensive repository of all non-federal links, whether they are traditional fixed point-to-point links; links to, from, and between antennas in motion on ships or aircraft . . . ."). *See also* SIA Comments at 7 ("Maritime operations do not pose the same risk to co-primary users of the 70, 80, and 90 GHz bands . . . because the characteristics of maritime operations are not like those of aeronautical operations."). *But see* SIA Comments at 7–8 ("Nevertheless, to the extent the FCC decides to authorize maritime uses of these bands, it should take appropriate steps to integrate those uses into the current regulatory regime, including ensuring that interference issues are addressed in a way that does not have an unnecessary impact on other users.").

Shore-to-ship transmissions are only permitted in the 70 GHz band, and ship-to-shore transmissions are only permitted in the 80 GHz band. Shore-to-aerostat transmissions and aerostat-to-ship transmissions are only permitted in the 70 GHz band. Aerostat-to-shore transmissions are only permitted in the 80 GHz band. We adopt an OOBE limit of -29.7 dBW in any 100 megahertz of the passive band 86–92 GHz for ship-to-shore and aerostat-to-shore transmissions in order to protect EESS (passive) operations.[141]

54. Ship-to-ship communications are limited to ships located more than 30 km offshore, or closer only where the main beam of the transmit antenna is oriented at least 15 degrees away from any point on the shore. Ship stations and aerostat stations must only operate when there is a minimum separation of 150 km to the federal facilities listed in section 101.1528(c)(1) – Table 3 in Appendix A in this *Report and Order*, absent a coordination agreement with the federal operator. Shore-to-ship, shore-to-aerostat, aerostat-to-shore, and ship-to-shore transmission must only occur between stations that are located at least 10 km from the federal military installations listed in section 101.1528(c)(2) – Table 4 in Appendix A in this *Report and Order*, absent a coordination agreement with the federal operator. Ship-to-shore, shore-to-ship, shore-to-aerostat, aerostat-to-ship, and aerostat-to-shore operations must coordinate with Federal FS operations using the NTIA web-based coordination mechanism to prevent interference.[142] We note that ship-to-aerostat operation has not been sufficiently studied, and thus is not permitted at this time, although we seek comment in the *Further Notice* below on its potential implementation. Aeronet, through filings submitted in the record, has outlined the important role of bidirectional transmissions between ships and aerostats to the two-way maritime broadband services otherwise authorized in this *Report and Order*.[143] During the pendency of the *Further Notice*, WTB will consider requests for waiver with respect to specific ship-to-aerostat implementation deployment proposals through our existing regulatory processes,[144] subject to coordination with NTIA to ensure that federal incumbents are protected from harmful interference and coordination with any other potentially impacted parties.

55. The same engineering principles that underpin our adoption of technical and operational restrictions for transmissions between aircraft and ground stations and aircraft in flight serve as a baseline in the maritime context as well, subject to certain modifications as set forth herein and in Appendix A in this *Report and Order*.[145] Opponents of transmissions between ships, shore, and aerostat stations predominantly assert the need for further examination of whether incumbent or future operations in the bands might suffer interference from by maritime operations.[146] The exhaustive TIG process led by the

[141] *See supra* paras. 46–47.

[142] *See supra* para. 23.

[143] *See* Letter from Roger Sherman, Counsel to Aeronet Global Communications Inc., to Marlene H. Dortch, Secretary, FCC, WT 20-133 (filed Jan. 19, 2024) (Aeronet Jan. 19, 2024 *Ex Parte*); Comsearch Report at Section 3.2.3, 20, 43–44; *see generally* Aeronet Maritime Petition at 10–11, 13 & Figure 1, 17, 18 & Figure 2.

[144] 47 CFR § 1.925(b)(3). *See supra* note 111.

[145] For example, we clarify that Appendix A does not establish a minimum elevation angle in the maritime context. *See* Aeronet Jan. 10, 2024 *Ex Parte* at 2.

[146] *See, e.g.*, T-Mobile Comments at 4–5 & n.14 ("maritime use of the 70 GHz and 80 GHz bands should not preclude existing and future point-to-point use of the bands"); Verizon Comments at 8 ("[T]he Commission should delay acting on its proposal to authorize point-to-point links to endpoints in motion until it determines whether mobile aeronautical and maritime deployments pose an interference risk to use of the band for fixed wireless 5G backhaul."); Nokia Comments at 8–9 ("Nokia recommends that this new service [referencing both mobile aerial and maritime endpoints] not be added at this time, but we would not oppose testing of such services for potential inclusion on a non-interference basis at a later date subject to successful co-existence trials"); Moog Comments at 8 (stating that "without knowing if there will be restraints on the location and orientation of land stations using SDDLs, whether maritime or aviation . . . there is potential for interference to other co-band operations at airfields that might fall within the changing pointing direction of SDDL land station transmitters"). *See also* SIA Comments at 7–8.

Federal Agencies provides the requested examination.[147] Each of the restrictions described above finds specific support in the collective Federal Agencies Letter, reflecting extensive interagency collaboration—collaboration focused in part on ensuring non-interference with current and future uses of the bands in question—as promised by the Commission in the *70/80/90 GHz NPRM*.[148] No parties objected to adopting the proposed maritime regime we describe above following the solicitation of comment on the Federal Agencies Letter in our *Refresh Public Notice*.[149] We find that the combination of the: (1) Commission's own engineering expertise; (2) initial general support for a maritime regime found in responses to the *70/80/90 GHz NPRM*; (3) further examination of specific analyses undertaken in the Federal Agencies Letter, and the studies underpinning it; and (4) silence on maritime issues in particular in the *Refresh Public Notice* comment cycle, demonstrate that the above-described regime for transmissions between ships, shore, and aerostats will protect current and future operations both in the 70 GHz and 80 GHz bands, and in adjacent bands.

B. Facilitating Use of the Bands for Backhaul

56. To promote more intensive use of spectrum in the 70 GHz and 80 GHz bands, including use for backhaul for high-capacity 5G service, we adopt several changes to our antenna standards that will allow licensees to use smaller, lower-cost antennas in these bands, and we adopt a channelization plan for the band.

57. *Antenna Standards*. The *70/80/90 GHz NPRM* proposed several changes to the antenna standards for the 70 and 80 GHz band to promote flexibility. In particular, the *70/80/90 GHz NPRM* proposed to reduce minimum antenna gain from 43 dBi to 38 dBi while retaining the requirement to proportionally reduce maximum EIRP in a ratio of 2 dB of power per 1 dB of gain. It also proposed to reduce the co-polar and cross-polar discrimination requirements applicable to 70 GHz and 80 GHz band antennas. Further, the *70/80/90 GHz NPRM* sought comment on whether to allow +/- 45 degree polarization (also known as slant polarization) and whether to adopt a second, more flexible set of antenna standards in these bands. Commenters generally supported reducing antenna gain and co-polar and cross-polar discrimination requirements.

58. Although the Commission does not regulate the size of antennas directly, minimum antenna size is constrained by technical factors including the intended operating bands and requirements governing beamwidth, gain, and polarization discrimination. Based on our analysis of the record, we determine to relax those requirements for the 70 GHz and 80 GHz bands to standards more in line with the requirements for point-to-point operations for other part 101 bands. We acknowledge Fiberless Networks' concern that "[a]ny reduction in antenna sizes must ultimately impact the number of wireless links using the 71–76 and 81–86 GHz bands that may be deployed in any metro area,"[150] but we are persuaded by the FWCC's long-stated advocacy that such changes "will allow for the use of smaller, lighter, lower cost, less susceptible to pole sway, and more visually attractive antennas" that may enable more intensive use of the 70 GHz and 80 GHz bands for point-to-point backhaul services.[151] Additionally, commenters agree that relaxing these antenna standards will also enable the use of smaller antennas for backhaul that will be needed to facilitate densified 5G networks.[152] Accordingly, we raise

[147] Federal Agencies Letter at 1–2; *see also id.*, Attach. B; *id.*, Attach. C.

[148] *Id.* at 1–2; *id.*, Attach. B; *70/80/90 GHz NPRM*, 35 FCC Rcd at 6040, para. 1; *id.* at 6055–52, paras. 40, 42–45.

[149] While a small number of filers did call for the Commission to prioritize certain services over others—*see, e.g.*, CTIA Refresh Public Notice Comments at 3–5; AT&T Refresh Public Notice Comments at 3–4—we address these filings in Section III.D, *infra*.

[150] Fiberless Networks Corporation Comments at 12.

[151] Letter from Donald J. Evans, Counsel to FWCC, to Marlene H. Dortch, Secretary, FCC (filed June 10, 2021); *see also* FWCC Refresh Public Notice Comments at 1–3; CTIA Refresh Public Notice Comments at 6–9.

the maximum beamwidth to 2.2 degrees and reduce the minimum antenna gain to 38 dBi for antennas in the 70 GHz and 80 GHz bands.[153] In order to maintain consistency and minimize the risk of interference, the proportional power reduction requirement will continue to be applicable to antennas in these bands with a gain less than 50 dBi down to the new minimum antenna gain of 38 dBi.[154]

59. We also adopt our proposal to remove the co-polar discrimination requirement below 5 degrees and modify the cross-polar discrimination requirements below 5 degrees to 21 dB.[155] Some commenters argue that both the co-polar and cross-polar discrimination requirements are obsolete and propose eliminating those requirements entirely.[156] FWCC contends that some of the smaller, lighter antennas its members contemplate using cannot meet the existing co-polar requirement.[157] In order to maximize the flexibility we seek to achieve by relaxing the antenna standards, we eliminate the co-polar discrimination requirement at angles less than 5 degrees. However, we decline to eliminate the cross-polar discrimination requirements below 5 degrees in their entirety. We agree with commenters, including the third-party database manager Comsearch, that cross-polar discrimination requirements are proven to be effective in maximizing frequency reuse in the 70 GHz and 80 GHz bands.[158] The Commission agrees with Comsearch that reducing the cross-polar discrimination requirement for angles less than 5 degrees to 21 dB brings our rules closer to conformity with international standards without sacrificing the frequency reuse advantages of having some cross-polar requirement.[159] We agree with Comsearch that a cross-polar discrimination requirement of 21 dB is not "difficult to meet[.]"[160]

60. Further, we adopt corresponding changes to the co-polar and cross-polar discrimination requirements at angles between 5 degrees and 180 degrees. Physics dictates that smaller antennas will have less sidelobe suppression. Therefore, corresponding adjustments to the discrimination requirements between 5 and 180 degrees are also necessary to facilitate the use of smaller antennas. FWCC proposed antenna standards for this band that are consistent with our proposed minimum gain of 38 dbi and maximum beamwidth of 2.2 degrees and also proposed co-polar and cross-polar discrimination values for angles between 5 degrees and 180 degrees.[161] FWCC's proposals are consistent with ESTI Class 3 antenna standards,[162] and are supported by the 5G Wireless Backhaul Advocates[163] and Comsearch.[164]

(Continued from previous page)

[152] *See, e.g.*, Nokia Comments at 1; 5G Americas Comments at 2; Verizon Comments at 1; FWCC Comments at 3; T-Mobile Comments at 3; Letter from Kara Graves, Assistant Vice President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 20-133 (filed May 8, 2020).

[153] *70/80/90 GHz NPRM*, 35 FCC Rcd at 6045–46, para. 11. *See also* 47 CFR § 101.115(b)(2). Some parties suggested that the Commission go further and adopt a minimum antenna gain of 35 dBi or lower. *See, e.g.*, Qualcomm Comments at 7–8.

[154] *See, e.g.*, Comsearch Reply Comments at 1. *See also* 47 CFR § 101.115(b)(2) n.14. Lower-gain antennas have more energy in their sidelobes as compared to a higher-performance antenna, so imposing a proportional reduction in EIRP for antennas with a gain less than 50 dB helps to compensate for the additional power in the sidelobes—thereby ensuring that a lower-performance antenna does not create any greater risk of off-axis interference than a higher-performance antenna.

[155] *70/80/90 GHz NPRM*, 35 FCC Rcd at 6046, para. 12. *See also* 47 CFR § 101.115(b)(2) n.14.

[156] *See, e.g.*, Verizon Comments at 5–6.

[157] FWCC Comments at 2 n.3 (enumerating past advocacy by FWCC, including on this issue).

[158] Comsearch Reply Comments at 3.

[159] *Id. See also* European Telecommunications Standards Institute (ETSI), Standard ETSI EN 302 217-4-2 (V1.5.1), "Fixed Radio Systems; Characteristics and Requirements for Point-to-Point Equipment and Antennas" (2010), https://www.etsi.org/deliver/etsi_en/302200_302299/3022170402/01.05.01_60/en_3022170402v010501p.pdf (ETSI Standard).

[160] *See* Comsearch Reply Comments at 3–4.

[161] *See* FWCC Comments at 6,WT Docket No. 10-153 (rec. Oct. 5, 2012).

Comsearch emphasizes that it is appropriate to provide antenna performance requirements between 5 and 180 degrees, as proposed by FWCC.[165] We believe that the changes proposed by FWCC and the 5G Backhaul Advocates strike a balance, allowing for the use of smaller antennas which will promote and expedite backhaul deployment,[166] while also preserving an appropriate co-polar and cross-polar advantage between paths to promote frequency re-use.[167]

61. In the *70/80/90 GHz NPRM*, we sought comment on a proposal to allow +/- 45 degree polarization (slant polarization) in the 70 GHz and 80 GHz bands.[168] At this time, we decline to modify our rules to adopt slant polarization because we agree with most commenters that slant polarization will increase the risk of interference and make the coordination of links more difficult.[169] As Comsearch notes, allowing slant polarization would "take away the cross-polarization advantage between paths" which has "proven to be effective in maximizing frequency reuse in the 70 and 80 GHz bands . . . ."[170]

62. We also decline to adopt a second category of antenna standards for the 70 GHz and 80 GHz bands. The Commission's rules for some other services regulated under part 101 allow for two categories of antennas, Category A and Category B; Category A performance standards are more stringent than Category B.[171] In the *70/80/90 GHz NPRM*, we sought comment on whether to adopt a similar framework for the 70 GHz and 80 GHz bands by designating the existing antenna standards the "Category A" standards and adopting new, less restrictive "Category B" standards.[172] Although some commenters, including Scientel Solutions and T-Mobile, support adding a Category B standard that does not exist for these bands in the current rules, others, including 5G Americas, Ericsson, and Nokia, do not believe a Category B standard is necessary.[173] Comsearch argues that there is no reason to define two categories of antennas because database managers would not be able to compel antenna upgrades based on predicted interference. We also agree with commenters that adding a Category B standard is

(Continued from previous page)

[162] *See* ETSI Standard.

[163] *See* Letter from Jeffrey A. Marks, Vice President, Regulatory Affairs, North America, Nokia, to Marlene H. Dortch, Secretary, FCC, WT 20-133, at 12 (filed June 22, 2021).

[164] *See* Comsearch Comments at 7–9.

[165] *See* Comsearch Reply Comments at 2–3.

[166] *See, e.g.*, Nokia Comments at 2; AT&T Comments at 4.

[167] *See* Comsearch Reply Comments at 3–4.

[168] *70/80/90 GHz NPRM*, 35 FCC Rcd at 6046–47, para. 13.

[169] *See, e.g.*, Nokia Comments at 5; AT&T Comments at 2; Ericsson Comments at 7; Comsearch Comments at 10; AT&T Refresh Public Notice Comments at 2–3.

[170] Comsearch Reply Comments at 3 ("In instances where there are multiple links between the same two structures, using the opposite polarization assists with frequency reuse.").

[171] *See* 47 CFR § 101.115(b); *see also Amendment of Part 101 of the Commission's Rules to Facilitate the Use of Microwave for Wireless Backhaul and Other Uses and to Provide Additional Flexibility to Broadcast Auxiliary Services and Operational Fixed Microwave Licensees, et al.,* Second Report and Order, Second Further Notice of Proposed Rulemaking, Second Notice of Inquiry, Order on Reconsideration, and Memorandum Opinion and Order, 27 FCC Rcd 9735, 9741, para. 9 (2012). Category B antennas may be used in areas not subject to frequency congestion. 47 CFR § 101.115(b). Category B antennas must be replaced if they are shown to cause interference to (or receive interference from) any other authorized station where a higher performance antenna is not likely to cause such interference. *Id.* § 101.115(c).

[172] *70/80/90 GHz NPRM*, 35 FCC Rcd at 6047, para. 14.

[173] *Compare* Scientel Comments at 6; T-Mobile Comments at 6–7 (arguing that less restrictive Category B standards would further promote deployment); *with* 5G Americas Comments at 6; Ericsson Comments at 8; Nokia Comments at 6 (arguing that relaxing the current standard is sufficient and adopting a second standard is unnecessary).

unnecessary, given our decision in this *Report and Order* to allow smaller antennas in these bands.[174]

63. *Channelization Plan*. The *70/80/90 GHz NPRM* sought comment on whether adopting a channelization plan would promote more efficient use of the 70 GHz and 80 GHz bands.[175] It further asked about what channel plan should be considered, noting the existence of the plan contained in ITU Recommendation F.2006, which we describe in greater detail below.[176] The *70/80/90 GHz NPRM* also solicited comment on a range of issues including the impact of a channel plan on existing equipment, whether to continue to apply the standard emission limit rules in section 101.1011, whether any specific channel plan and direction of service would be particularly conducive to protecting the other co-primary services from interference, and the costs and benefits of channelization.[177]

64. We are persuaded that we should adopt a channelization plan consistent with Recommendation ITU-R F.2006.[178] We acknowledge that the Commission decided in 2003 that a specific channel plan was unnecessary in the context of adopting new rules to facilitate greater use of the bands by nascent fixed services.[179] Given the development of these fixed services since 2003 and our adoption today of rules to permit additional services into the band, we agree with commenters that a standardized channel plan will make interference mitigation between licensees easier to manage. Adopting the ITU F.2006 plan will also harmonize our rules with international standards, and is consistent with a majority of commenters' recommendations.[180]

65. After reviewing the record, including responses to the *HAPS Public Notice* and *Refresh Public Notice*, while some commenters are neutral on the issue of channelization others specifically state that if the Commission introduces new services into the band—such as the services contemplated by Aeronet—there will be a greater need to have a standardized channel plan in order to make interference mitigation between licensees more manageable.[181] On balance, most commenters support adopting a standardized plan specifically if new services are introduced into the band.[182] Moreover, Aeronet supports the adoption of a standardized channel plan.[183]

66. There is near-unanimous agreement among commenters that if the Commission adopts a channel plan, we should adopt a plan consistent with Recommendation ITU-R F.2006, which provides

---

[174] *See* Nokia Comments at 2 ("Nokia believes that a 'Class B' antenna category in the 70/80 GHz band would have limited utility in the near-term because of the already very-small size of the proposed 38 dBi antennas in the 70/80 GHz band compared to the larger antennas used in other bands.").

[175] *70/80/90 GHz NPRM*, 35 FCC Rcd at 6058–59, paras. 46–48.

[176] *Id.* at 6058–59, para. 46, n.129. *See also* International Telecommunications Union (ITU), Recommendation ITU-R F.2006, "Radio-Frequency Channel and Block Arrangements for Fixed Wireless Systems Operating in the 71–76 and 81–86 GHz Bands" (2012), https://www.itu.int/dms_pubrec/itu-r/rec/f/R-REC-F.2006-0-201203-I!!PDF-E.pdf (ITU Recommendation).

[177] *70/80/90 GHz NPRM*, 35 FCC Rcd at 6058–59, paras. 46–48.

[178] *See* ITU Recommendation.

[179] *70/80/90 GHz Report and Order*, 18 FCC Rcd at 23333, para. 32; *see also Allocations and Service Rules for the 71–76 GHz, 81–86 GHz, and 92–95 GHz Bands*, WT Docket No. 02-146, Memorandum Opinion and Order, 20 FCC Rcd 4889, 4899–90, paras. 19–20 (2005) (*70/80/90 GHz Reconsideration Order*). *See generally Allocations and Service Rules for the 71–76 GHz, 81–86 GHz and 92–95 GHz Bands*, WT Docket No. 02-146, RM-10288, Notice of Proposed Rulemaking, 17 FCC Rcd 12182, 12220, para. 97 (2002).

[180] *See* Geneva Communications Comments at 11; Ericsson Comments at 9–10; AT&T Comments at 3; Nokia Comments at 7–8; AT&T Refresh Public Notice Comments at 4.

[181] CORF Comments at 2; Qualcomm Comments at 12.

[182] *See* 5 U.S.C. § 801(a)(1)(A).

[183] Aeronet Comments at 22.

different channel sizes from 250 megahertz up to 5 gigahertz, and includes a plan for 1.25 gigahertz segmentation.[184] This channelization plan is consistent with what the Commission proposed, but ultimately did not codify in the original 70–80 GHz rulemaking. Comsearch notes that a majority of licensees already conform with the ITU-R F.2006 channel plan.[185] Even commenters that advocate against adopting a standardized channel plan, such as WISPA, support adopting the ITU F.2006 channel plan if the Commission decides that it should adopt a standardized plan.[186]

67. To provide adequate lead time for manufacturers to modify their equipment lines to comply with the new channel plan,[187] we will make the new channel plan effective on September 1, 2024. Considering that there are incumbents in the band who have deployed under the current rules and may not be operating consistent with a channel plan that we adopt, we will permit licensees that are registered prior to the effective date of the new channel plan to continue to operate under nonconforming channel plans as long as their pre-existing operations remain in good standing. With the exception of de minimis modifications to registered links discussed below,[188] all links registered on or after September 1, 2024 will be required to comply with the new channel plan.

C. Improving the Link Registration System

68. In the *70/80/90 GHz NPRM*, the Commission solicited input on whether it should make changes to the link registration rules for the 70/80/90 GHz bands.[189] Specifically, the Commission sought comment on how to amend its rules to improve the accuracy of the link registration database.[190] The Commission also asked whether it should require licensees in these bands to certify that their links have been timely constructed—and, if so, how an efficient and effective certification process would operate.[191] The Commission also sought comment on whether to allow de minimis modifications to certain information filed in the registration database.[192]

1. Construction and Operational Status

69. To promote the efficient use of the high-capacity 70/80/90 GHz bands, in this *Report and Order* we adopt a requirement that licensees certify that each link is constructed and operating within 12 months of successful registration in the link registration system (LRS) administered by third-party database managers. Under the Commission's rules in place since 2003, licensees must construct their links within 12 months of registering them in the LRS and failure to timely begin operation means the authorization cancels automatically.[193] Under the hybrid license/registration approach adopted for these

[184] Loon Reply Comments at 21–22; Geneva Communications Comments at 11–12.

[185] *See* Comsearch Comments at 18.

[186] WISPA Reply Comments at 7–8.

[187] *See* CTIA Reply Comments at 4; AT&T Comments at 6.

[188] *See infra* Section III.C.2 ("De Minimis Modifications to Registrations").

[189] The 90 GHz band has different antenna rules, but the same link registration process as the 70 GHz and 80 GHz bands. Although in this *Report and Order* we do not modify the antenna rules in the 90 GHz band, in our consideration of changes to the link registration process, we do include the 90 GHz band to maintain a harmonized approach to link registration for all of the bands included in the link registration system. *See* 47 CFR §§ 101.115(b), 101.1523.

[190] *70/80/90 GHz NPRM*, 35 FCC Rcd at 6048, para. 18.

[191] *Id.* at 6048–49, para. 19. Among other things, the Commission asked whether "certifications should be filed when the links become operational, at any time prior to the construction deadline, or whenever a licensee seeks to renew its license?" *Id.*

[192] *Id.* at 6049, para. 21.

[193] *See* 47 CFR § 101.63(b), (c).

bands, however, the Commission decided "at [that] time" not to require licensees to affirmatively report link construction and instead relied on licensees to ask a database manager to remove unconstructed links from the database.[194] As such, the Commission instructed the database managers to remove a link from the registry if it is found to be unconstructed after the required timeframe.[195] We note that in 2003 the bands were "essentially undeveloped and available for new uses" and that the Commission reserved the discretion to revisit this issue if experience indicated that additional measures were necessary.[196]

70. Today, as in 2003, the overarching purpose of the Commission's requirements concerning link construction, as well as modification and discontinuance, is to ensure that spectrum is put to use and to maintain the "integrity of the information in the relevant databases by correctly reflecting the actual record concerning these issues."[197] Based on the Commission's experience, including the development of the bands since 2003, and the record before us, we find that requiring licensees to certify in the LRS that each link is timely constructed will significantly improve the accuracy of the database, thereby increasing opportunities for additional, efficient use of the bands. Failure to begin operations in a timely manner pursuant to a part 101 authorization results in the automatic cancelation of an authorization.[198]

71. In the 70/80/90 GHz bands, the nationwide license serves as a prerequisite to registering links, each registration in the LRS is the licensee's authorization to operate the individual link,[199] and the 12-month construction period commences on the registration date of each individual link.[200] Under the current rules, "[f]ailure to timely begin operation means the authorization cancels automatically" as of the construction deadline.[201] Similar to the timeline for construction notifications filed in ULS, however, we will allow 70/80/90 GHz licensees 15 days after the 12-month construction deadline for each link to certify in the LRS that the link was timely constructed and operating.[202] Accordingly, if a 70/80/90 GHz licensee does not certify in the LRS within 15 days after the 12-month construction deadline for a link, the link will be deemed to be unconstructed and the licensee's authority to operate the link shall be terminated automatically without further Commission action as of the 12-month construction deadline for the link. We also agree with commenters that after the certification requirement becomes effective, it should apply to all uncertified links even if the 12-month construction deadline date occurred prior to the effective date of the certification requirement. For uncertified links registered 12 months or longer before the effective date, licensees will have until 15 days after the effective date to certify that their links were constructed on or before the effective date. Thus, for uncertified links registered less than 12 months before the effective date, licensees will have to file a certification within 15 days from the end of the 12-month construction period following registration.

---

[194] *70/80/90 GHz Report and Order*, 18 FCC Rcd at 23349, para. 80.

[195] *See id.* at 23349, para. 80.

[196] *See id.* at 23322, 23349, paras. 5, 80.

[197] *Id.* at 23351, para. 80.

[198] 47 CFR § 101.63(c).

[199] *See id.* § 101.1501; *70/80/90 GHz Report and Order*, 18 FCC Rcd at 23340, para. 46 (Commission explained that applicant-qualification for non-exclusive licenses would be assessed on FCC Form 601 and Commission rules while operations would be authorized through the registration and coordination process).

[200] 47 CFR § 101.63(b). Because 70/80/90 GHz links are registered in the LRS, the provision in paragraph (f) stating that "construction of any authorized facility or frequency must be completed by the date specified in the license" is inapplicable to 70/80/90 links.

[201] *Id.* § 101.63(c).

[202] *See id.* § 1.946(d) ("A licensee who commences service or operations within the construction period . . . must notify the Commission by filing FCC Form 601. The notification must be filed within 15 days of the expiration of the applicable construction . . . period.").

72. Once the certification requirement is in effect, we instruct the third-party database managers, as a matter of database accuracy and integrity, to remove uncertified registrations from the LRS that have terminated automatically under the Commission's rules. Because licensees will have until 15 days after the 12-month construction deadline to certify in the LRS that a link is constructed and operating, we instruct database managers to remove a link from the LRS on the 16th day after the 12-month construction deadline for a link if the licensee has not certified in the LRS that the link was timely constructed and operating.

73. Imposing the certification requirement on licensees and having the third-party database managers update the LRS accordingly will allow all licensees, and the Commission, to track link cancellations through the LRS. Parties considering the 70/80/90 GHz bands and licensees seeking to register links after implementation of this requirement will have a more accurate database to use to judge spectrum availability.[203]

74. There is broad support in the record for implementing the certification requirement. FWCC argues that construction certifications will help maintain a reliable database at a low cost to licensees.[204] Commenters broadly agree that the database should consist only of links that are actually constructed or that have been successfully registered but are within their one-year construction period, and that requiring construction certifications would be an effective way to maintain an accurate database and promote efficient access to the bands.[205] Other commenters, including Comsearch, agree that the existing database managers are well suited to administer the certification requirement.[206]

75. Although some parties would have the Commission manage construction certifications through ULS, we believe that the hybrid license/registration approach that has governed these bands since the database managers developed and began operating the LRS in 2005 has worked reasonably well and should not be displaced.[207] Industry members are already accustomed to working with the database managers on spectrum management matters and have established access to the database managers' platforms. The Commission agrees with FWCC and Comsearch that using ULS for certification would add unnecessary complexity to the link registration process.[208] We agree, however, with commenters who suggest that additional measures are warranted to ensure that registered links remain operational on an ongoing basis long after satisfaction of the 12-month construction deadline.[209] Accordingly, when a

[203] In this setting, if a licensee's authority to operate a link is automatically terminated because the construction requirement was not met, the licensee will not be barred from attempting to register the link again, and if successful, constructing it later. The licensee, however, will lose the original registration date for the purpose of interference protection procedures.

[204] FWCC Comments at 5.

[205] *See, e.g.*, AT&T Comments at 6; Geneva Communications Comments at 6; WISPA Comments at 6.

[206] *See* FWCC Comments at 6; Comsearch Reply Comments at 5. Micronet's database provides information about links that have been registered and not constructed, but there is no requirement that Micronet provide this information and there is no requirement that licensees inform Micronet when links are built. Therefore, links that appear in Micronet's database as unconstructed may be constructed. *See* Micronet Database, https://www.micronetcom.com/MOS/.

[207] CTIA Comments at 6; Scientel Comments at 14.

[208] *See* FWCC Comments at 6; Comsearch Reply Comments at 5.

[209] *See, e.g.*, Verizon Comments at 7 (incumbent licensees must certify that their links have been constructed at the time of renewal and all registrations must certify that their links are in regular use at the time of renewal); Geneva Communications Comments at 8 (links in the database that are no longer operational should be deleted); Scientel Comments at 14–16 (no need to wait until license renewal to require a licensee to certify that it is making efficient use of its spectrum, but favors requiring such certifications to be filed in ULS). *But see* AT&T Comments at 2–3 (adopting requirements that are novel, such as identifying or certifying links at license renewal, would merely impose unnecessary burdens, uncertainty and delays).

70/80/90 GHz band licensee seeks to renew its nationwide license, we will require the licensee to certify as part of the license renewal application that each link registered under the license more than twelve months prior to the filing date of the renewal application is constructed and operating on an ongoing basis as of the filing date of the license renewal application. We disagree with AT&T that requiring licensees to certify every ten years that they are still operating their registered links is unnecessary given that we are requiring licensees to certify each link shortly after the 12-month construction deadline.[210] We clarify, however, that we are not requiring renewal applicants to "list links, whether constructed or not, in renewal applications for 70/80/90 GHz licenses."[211]

76. *Implementation Matters.* We authorize and direct WTB to consult each database manager on the timing of modifications to the LRS necessary to accommodate today's rule changes.[212] WTB will also announce by public notice the details and dates for implementing a construction certification requirement. Additionally, we understand that each database manager periodically sends its registrants e-mail reminders of their upcoming and recently past construction deadlines and that each database manager plans to send e-mail alerts to its relevant registrants about these rule changes. We applaud the database managers' past efforts to improve the accuracy of the database and encourage them to continue sending e-mail alerts to licensees. We emphasize, however, that each licensee is responsible for timely filing its construction certifications in the LRS regardless of whether a courtesy reminder e-mail may have been sent or received.[213] Finally, we remind licensees that they should only certify as constructed links that are operational, and that non-operational links should be deleted from the database.[214]

2. De Minimis Modifications to Registrations

77. The *70/80/90 GHz NPRM* sought comment on whether licensees should be allowed to amend their registered links without losing first-in-time status—i.e., on what date should a link be considered registered and given protected status for purposes of these rule—and what amendments, if any, should be allowed without losing first-in-time status.[215] We find support in the record for allowing de minimis modifications to registrations that are exclusively for the purpose of repairing or replacing installed and operating equipment, provided that there are no changes to any registered technical

[210] AT&T Comments at 2–3, 7.

[211] *Id.* at 7.

[212] *See generally* Comsearch Comments at 12 (Comsearch supports rule changes to "improve[] processes for removing old registrations, unconstructed links, or links that are no longer operating from the 70/80/90 GHz bands database . . . . The Commission, however, would need to provide adequate notice of the new certification requirement to third-party database managers, as Comsearch would need to implement minor changes to its link registration system to add a page with appropriate language that the licensee can certify that the link is constructed.").

[213] *Accord Biennial Regulatory Review—Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services*, Report and Order, WT Docket No. 98-20, 13 FCC Rcd 21027, 21071, para. 96 (1998) (although the Commission sends letters to remind licensees of pending expiration dates, the renewal reminder is merely a courtesy and non-receipt by the licensee is not sufficient justification for a failure to file a timely renewal application). *See generally* FCC, *Construction/Coverage Requirements* (Sept. 29 2023), https://www.fcc.gov/constructioncoverage-requirements; FCC, *ULS Automated Termination Process Frequently Asked Questions* (Oct. 4, 2016), https://www.fcc.gov/wireless/support/universal-licensing-system-uls-resources/uls-automated-termination-process.

[214] Licensees are reminded that links that are not actually constructed by the construction deadline cancel automatically on the date of the construction period expires and are not entitled to first-in-time protection regardless of whether they may appear in the registration database. 47 CFR § 1.946(c).

[215] *70/80/90 GHz NPRM*, 35 FCC Rcd at 6049, para. 21.

parameters that would change the potential for a link to cause or receive interference.[216] Modifications that are consistent with these requirements can be implemented without affecting a registrant's first-in-time rights for the particular link. Such modifications may be implemented if the modified registration is successful without affecting a registrant's first-in-time rights for the particular link. By allowing these de minimis modifications to registrations without changing the interference-protection date, we allow licensees to maintain the existing operation of their links without sacrificing either the accuracy of the database or the licensee's interference-protection rights.[217] We emphasize that "de minimis" modifications to registrations that commenters discuss in this proceeding are distinct from the Commission's part 1 rules that govern major or minor modifications to station authorizations.[218] To avoid confusion, we refer to modifications to registrations that licensees can make without losing first-in-time status as de minimis. Most parties support de minimis modifications to the extent that they will not change the interference landscape, though parties' ideas of what would constitute a de minimis modification differ.[219] Some parties argue that de minimis modifications should include changes to some technical specifications.[220] For example, WISPA argues that minor modifications should include changes to geographic coordinates within +/- 15 meters of latitude or longitude and +/- 3 meters of elevation.[221] Others, however, believe that de minimis modifications should be only those changes that do not affect any technical parameters relevant for coordination.[222] We agree with commenters that modifications that change "interference potential" should not be treated as de minimis modifications and will result in a new date for first-in-time purposes.[223]

78. We find that many of the proposals by commenters, such as those involving changes to location, could change the interference landscape and therefor are not de minimis.[224] In addition, changes to parameters that typically would not be considered major in other contexts,[225] like increases to receive antenna height, could make an existing link more susceptible to interference. Given the sensitivity of the first-in-time rights to changes in the interference environment, we believe that it is prudent to define de minimis modifications in this context very narrowly. Based on our analysis of the comments in the record we will define de minimis modifications as those that meet all of the following criteria:

- The modification is necessary to repair or replace registered, constructed, and operating equipment;

---

[216] Comsearch Reply Comments at 9 (quoting Scientel Comments at 14–15, and agreeing that "a licensee should be allowed to amend the associated link registration without losing its first-in-time priority rights, provided that the amendment is submitted for purpose of repairing or replacing installed and operating equipment due to end-of-life conditions, and does not change the registered EIRP, transmit power, frequency, antenna height or location, or receive sensitivity").

[217] *See* SIA Comments at 3.

[218] *See* 47 CFR § 1.947 ("Modification of licenses"), which cross-references to 47 CFR § 1.929 ("Classification of filings as major or minor").

[219] *See e.g.*, AT&T Comments at 2; Geneva Communications Comments at 10; Scientel Comments at 10; T-Mobile Comments at 9; SIA Comments at 3; WISPA Comments at 6; Comsearch Reply Comments at 7.

[220] *See, e.g.*, Geneva Communications Comments at 10; WISPA Comments at 6.

[221] WISPA Comments at 6.

[222] Comsearch Reply Comments at 9 (quoting Scientel Comments at 14–15).

[223] *Id.* ("Comsearch observes that the following modifications should not increase the interference potential: EIRP and/or emission bandwidth reductions, provided that the power density is the same or reduced, and antenna upgrades that have the same or better radiation suppression specifications at all angles.").

[224] *See* WISPA Reply Comments at 6.

[225] *See* 47 CFR § 1.929.

- The modification does not increase the EIRP of a digital system or change the EIRP of an analog system;[226]
- The modification does not increase the channel bandwidth;
- The modification does not change the power density;
- The modification does not increase the receiver sensitivity;
- The modification does not increase the antenna beamwidth;
- The modification does not increase the antenna gain, except where there is a corresponding reduction transmitter power so that there is no increase in EIRP;
- The modification does not involve a change to antenna with less off-axis attenuation at any angle; and
- The modification does not change any other technical parameters not mentioned above.

79. Under the definition adopted above, any modification to a registration that could make a link more susceptible to interference or more likely to cause interference will result in a new date for first-in-time coordination purposes.[227] We find that the limited definition of a de minimis modification adopted in this *Report and Order* will minimize the risk of harmful interference and promote efficient access to these bands.

D. Other Issues

80. We do not take action at this time on several other issues raised in the Commission's inquiries in this proceeding, or by commenters in the record owing to absence of notice, an inadequate record, or lack of consensus on a path forward. To wit, in the *70/80/90 GHz NPRM* we sought comment on a proposal relating to authorizing mobile operations on a non-interference basis to fixed operations along the United States' international borders with Canada and Mexico, subject to future international agreements.[228] This specific issue was not addressed by any filers. In the absence of a developed record on this issue, we do not address it at this time.

81. Separately, in the *HAPS Public Notice* WTB sought to supplement the record on the possibility of bringing HAPS and/or other stratospheric-based platform services into the 70/80/90 GHz bands.[229] The record, including analysis provided by the Federal Agencies, contains highly divergent claims regarding the possibility of integrating HAPS operations into the 70/80/90 GHz bands,[230] with

[226] For analog systems the interference criteria in rule section 101.105 is specified as a C/I ratio, so decreases in EIRP could change the C/I ratio and potentially make a link more susceptible to interference. Therefore, for analog systems any modification that changes the EIRP will not be considered de minimis, and a new date will be applied for first-in-time purposes.

[227] *See* SIA Comments at 3.

[228] *70/80/90 GHz NPRM*, 35 FCC Rcd at 6059, para. 52.

[229] *HAPS Public Notice*, 36 FCC Rcd at 14375.

[230] *Compare, e.g.*, NASA et al. HAPS Public Notice Comments at 5 ("The record is unclear as to the specific requirement for additional spectrum access into the 70/80/90 GHz bands to support HAPS, and whether existing allocations are either congested or unsuitable. . . . The PN does note that 'several advocates for HAPS are no longer pursuing their planned operations' in certain bands and are seeking access into 70/80 GHz. . . . Any additional usages for active services should be based on sound engineering studies to determine the limitations on unwanted emission levels to protect EESS (passive), EESS (active) and SRS (passive) operations prior to allowing HAPS systems to operate" in these bands.) *with* HAPS Alliance HAPS Public Notice Comments at 1–2. *See also, e.g.*, T-Mobile HAPS Public Notice Comments at 3 ("There is no reason for the Commission to modify its rules to accommodate HAPS or similar services in the 70/80/90 GHz bands. There is little current documented interest in those services and, unlike 5G, no deployment.").

limited actual data to support such action.[231] We therefore decline at this time to adopt rules for HAPS operations in the 70/80/90 GHz bands. We do note that any party—including HAPS providers—can engage in operations consistent with the rules of general applicability for aeronautical services adopted in this *Report and Order*.

82. Beginning in *ex parte* presentations, and later in other filings in this docket, SpaceX requested that we amend our rules to allow the registration of FSS earth stations in the third-party link registration database for the 70 GHz and 80 GHz bands.[232] While FSS has a co-primary shared allocation, the Commission has not yet developed service rules for FSS operations in these bands.[233] As FSS operations differ in significant ways from the FS operations that the third-party database system was originally designed to accommodate, adding FSS to this system would likely require development of different coordination parameters, and possibly additional interference mitigation techniques to protect federal operations in the bands.[234] Moreover, SpaceX notes that the interference mitigations proposed in the Federal Agencies Letter, which inform the rules to accommodate airborne and maritime point-to-endpoints-in-motion in the third-party database system that we adopt today, would not be appropriate for FSS operations in the 70 GHz and 80 GHz bands.[235] Without the development of a record on the specifics required to include FSS earth stations in the third-party database, or federal inter-agency discourse on this prospect, we are not in a position today to take this step. However, we seek further input on these issues in the *Further Notice* portion of this item immediately below.

[231] The only advocate for HAPS inclusion in 70/80/90 GHz to provide a detailed technical study in the record, Loon LLC, shuttered in early 2021. *See* Astro Teller, *Loon's Final Flight*, Medium (Jan. 21, 2021), https://blog.x.company/loons-final-flight-e9d699123a96 (official company blog); *see also* Letter from Julie M. Kearney, Global Head of Communications Regulation and Policy, Loon, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 20-133 (filed Jan. 14, 2021) (attaching a study by Comsearch entitled "Loon E-Band Backhaul: Analysis of Compatibility with Incumbent Fixed Services, Use of the Link Registration System, and Review Versus Passive Services.").

[232] *See, e.g.*, SpaceX Nov. 8, 2021 *Ex Parte* at 1–4; Letter from Jameson Dempsey, Principal, Satellite Policy, Space Exploration Technologies Corp., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 20-133, at 1–2 (filed Jan. 31, 2022) (SpaceX Jan. 31, 2022 *Ex Parte*); *see also, e.g.*, SpaceX HAPS Public Notice Comments; SpaceX HAPS Public Notice Reply Comments; SpaceX Refresh Public Notice Comments at 1–5.

[233] As SpaceX has previously itself noted, for "the E-band . . . the Commission has not yet adopted service rules or licensed other satellite operators." *See Space Exploration Holdings, LLC*, Application for Orbital Deployment and Operating Authority for the SpaceX Gen2 NGSO Satellite System, IBFS File No. SAT-LOA-20200526-00055, Attach. Narrative App. at 6 (filed May 26, 2020) (SpaceX Gen2 Application).

[234] We note that the Commission's rules for authorization of proposed non-federal fixed terrestrial links in the 71.0–76.0 GHz and 81.0–86.0 GHz bands do not address co-band, non-Federal FSS Earth stations and thus non-federal terrestrial licensees are not required to analyze the potential for harmful interference to or from a proposed link to non-federal gateway Earth stations previously authorized or pending in ICFS under the default service rules.

[235] SpaceX Refresh Public Notice Comments at 5 ("While NTIA's specific technical proposals may be appropriate to assess interference from Aeronet's 70/80 GHz links into other federal and non-federal users—and SpaceX does not comment on the appropriateness of those values for Aeronet—they are not well-tailored to fixed-satellite service operations in the 70/80 GHz band.").

83. The fact that we are not adding FSS to the third-party database registration system does not impair the ability of FSS operators to continue to deploy and operate new earth stations in the 70/80/90 GHz bands,[236] subject to prior coordination with existing incumbents.[237]

84. In response to certain concerns raised in the record,[238] we emphasize that the allocations in the 70/80/90 GHz bands have not changed. FSS and FS remain co-primary, and the Commission continues to have policies in place that allow for coexistence. First-in-time priority rights serve as the foundation for such coexistence in the 70/80/90 GHz bands, as they do in other spectrum bands shared by FS and FSS; nothing we adopt today disturbs this status quo.[239]

IV. FURTHER NOTICE OF PROPOSED RULEMAKING

85. In this *Further Notice*, we seek comment on two issues for which the record in this proceeding is not sufficient for us to make a determination at this time: (1) whether to permit ship-to-aerostat transmissions as part of the maritime service otherwise authorized in the *Report and Order*; and (2) whether to include FSS earth stations in the existing third-party database registration regime modified in the *Report and Order*.[240]

86. *Inclusion of Ship-to-Aerostat Transmissions in the Maritime Service*. In the *Report and Order*, we declined to permit ship-to-aerostat transmissions at this time. We note that Aeronet has expressed concern that ship-to-aerostat links are critical to the operation of its maritime system and that the maritime broadband services otherwise authorized in the *Report and Order* depend on the availability of a return link.[241] We seek comment on whether to authorize such transmissions, including input on the potential impact on federal and other non-federal operations.

87. *Inclusion of FSS in Third-Party Database Registration System*. In the *Report and Order*, we declined to include FSS earth stations in the third-party database registration system because of lack of notice, and a record insufficient to address this issue. SpaceX has advocated for the inclusion of FSS into the existing light-licensing regime for the 70/80/90 GHz bands.[242] To date, few parties have addressed the feasibility of these proposals, and those that have mentioned the issue have suggested that operational limitations and/or further technical study would be needed.[243] As SpaceX contends and others support,[244]

---

[236] We note, for example, that SpaceX has filed earth and space station applications to authorize its operations in the 70/80/90 GHz bands pursuant to the part 25 default service rules, and is currently operating under special temporary authorizations (STAs) pending completion of federal coordination on its applications for final authorization.

[238] *See* Almagest Space Corp. Refresh Public Notice Comments at 2–3; Sierra Nevada Corp. Refresh Public Notice Comments at 1–2.

[239] *Cf, e.g.*, FWCC Refresh Public Notice Comments at 4–5 (seeking preferential treatment for FS); AT&T Refresh Public Notice Comments at 3–4 (same); CTIA Refresh Public Notice Comments at 3–6 (same).

[240] *See* Sections III.A.2.c and III.D, *supra*.

[241] *See* Aeronet Jan. 19, 2024 *Ex Parte* at 1–2; *see also* Aeronet Jan. 10, 2024 *Ex Parte* at 2.

[242] *See* SpaceX Oct. 12, 2021 *Ex Parte*; SpaceX Nov. 8, 2021 *Ex Parte* at 2; SpaceX HAPS Public Notice Comments at 6–8; SpaceX HAPS Public Notice Reply Comments at 1–4; Letter from David Goldman, Director, Satellite Policy, Space Exploration Technologies Corp., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 20-133, at 1 (filed Jan. 6, 2022); SpaceX Jan. 31, 2022 *Ex Parte* at 1; SpaceX May 23, 2022 *Ex Parte* at 1–2; Letter from Jameson Dempsey, Principal, Satellite Policy, Space Exploration Technologies Corp., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 20-133, at 1–2 (filed May 31, 2022); SpaceX July 25, 2022 *Ex Parte* at 1–2; Letter from Jameson Dempsey, Principal, Satellite Policy, Space Exploration Technologies Corp., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 20-133, at 1 (filed Aug. 22, 2022).

[243] For example, Comsearch, one of the two third-party database providers, does not reference FSS in its comments responding to the *Refresh Public Notice* or in most of its other entries in the docket. *Cf., e.g.*, Comsearch Refresh Public Notice Comments; Letter from Joseph N. Marzin, Director, Technology Group, Comsearch, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 20-133 (filed June 2, 2022); Letter from Peter S. Young, Principal

(continued….)

incorporating earth station gateways in the third-party database would enable the light-licensing approach currently used for operations under subpart Q of part 101 to serve as a unified portal for operations in the 70 GHz and 80 GHz bands that are licensed under a nationwide, non-exclusive license. We recognize that a unified database may provide efficiencies for the use of these bands and may offer other benefits.

88. Accordingly, we seek comment on the potential inclusion of FSS earth stations in the third-party database registration regime in the 70 GHz and 80 GHz bands. As a general matter, would it be feasible to include FSS in the database registration process? Would doing so have any negative effects on incumbent services? What changes would be necessary to the database system to accommodate FSS registrations, and would those changes be feasible? We note that in response to the aeronautical and maritime rules we adopt today, at least one party has articulated how "major modifications to the databases or most likely entirely new structures" may be necessary, and that "[m]aking [these] changes . . . and developing enhanced analysis methods to cover coordination zones . . . would have to be supported by the proponents" of the newly included operations in the bands.[245] We seek comment on whether analogous concerns exist for the changes that may be necessary to permit FSS into the regime, and on the allocation of costs for such changes.

89. If we do incorporate FSS earth stations into the third-party database system, under what protection criteria should they be included? SpaceX argues that the limits set forth in the Federal Agencies Letter, which we today adopt for aeronautical operations in these bands, are inappropriate for FSS, and urges us to instead adopt the rules found in part 25 as a guide to the appropriate operational restrictions for FSS in this context.[246] The part 25 rules, however, contemplate individual coordination of earth stations, and therefore may not be a good fit for LRS, the third-party database system that is used to coordinate operations in these bands.[247] The EIRP limit for earth stations in part 25 is much more generous than the EIRP limits for fixed and aeronautical services in these bands.[248] For earth stations that

(Continued from previous page)
Engineer. Comsearch, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 20-133 (filed Aug. 20, 2021); Comsearch Reply Comments; Commscope and Comsearch Comments. *But see* Comsearch HAPS Public Notice Comments at 1–2 (discussing in one paragraph the inclusion of FSS earth stations in the current ecosystem). Further, at least one other satellite-specific interest objected to SpaceX's proposals. Letter from Jennifer Manner, Senior Vice President, Regulatory Affairs, Hughes Network Systems, LLC, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 20-133, at 2–3 (filed June. 29, 2022) ("The Commission also should reject SpaceX's proposed new technical limits for FSS earth stations in the 80 GHz band. Such technical limits are outside the scope of this proceeding, which is limited to proposed changes to the Part 101 rules applicable to terrestrial services only. . . . SpaceX's proposal unfairly favors NGSO over GSO FSS earth stations, and provides no basis to extend technical limits on terrestrial operations to FSS earth stations not otherwise subject to those limits. . . . [T]he Commission should reject . . . SpaceX's proposed application of a unified light-licensing framework, including technical limits otherwise applicable to terrestrial services only, to satellite operations in the bands.").

[244] *See, e.g.*, Dynamic Spectrum Alliance Comments at 4 ("we see no technical reason why the 70/80 GHz database could not serve as a comprehensive repository of all non-federal links, whether they are traditional fixed point-to-point links; links to, from, and between antennas in motion on ships or aircraft; or gateway links in a nongeostationary satellite network"); SIA Comments at 4 ("the registration system should, on a going-forward basis, account for both terrestrial and satellite users"); Geneva Communications LLC Comments at 2; New America's Open Technology Institute and Public Knowledge Comments at 4; *see generally* Letter from Jameson Dempsey, Director, Satellite Policy, SpaceX, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 20-133 (filed Jan. 17, 2024).

[245] Comsearch Refresh Public Notice Comments at 1.

[246] *See, e.g.*, SpaceX Refresh Public Notice Comments at 5.

[247] *See, e.g.*, 47 CFR § 25.251 ("Special requirements for coordination").

[248] 47 CFR § 25.204(b) (+ 64 dBW in any 1 megahertz band); *id.* § 101.113 (+55 dBW). Because the part 25 limit is expressed as a power density, while the part 101 limit is not, this is not a direct comparison. Converting the part 25 limit to 70/80 GHz channel sizes, which are at minimum 1.25 gigahertz, yields an equivalent EIRP of, at minimum, (continued….)

are individually coordinated, this higher-powered limit may be modified to suit the specific circumstances and satisfy all potentially affected parties. For database coordination, however, the EIRP limit must be such that coexistence with other operators and services is possible without such individual attention. The EIRP limits we adopt today for aeronautical service are the product of significant attention, analysis and input from a variety of parties and perspectives, including those operators and services most likely to be affected by any harmful interference.[249] We seek similar comment on appropriate EIRP limits for FSS earth stations in the 70 GHz and 80 GHz bands. What limits would best enable meaningful FSS service, while adequately protecting incumbent operations? In a similar vein, we seek comment on the appropriate OOBE limits for FSS earth stations in these bands, given the importance of protecting adjacent band operations. We also seek comment generally on any other operational limits or restrictions that might be required to meaningfully enable database registration for FSS earth stations without risking harmful interference to incumbent and adjacent services.

90. We seek comment on the appropriate criteria for the protection of FSS from other services. The rules that we adopt today are designed in part to protect FSS operations, both Federal and non-Federal, from the newly established aeronautical service. However, there are currently no rules requiring fixed links to protect FSS operations. What criteria could be implemented for this purpose? Current part 101 rules include an interference protection threshold for fixed services.[250] Is there a similar appropriate threshold for satellite earth stations? Are there any other protection criteria that might be necessary to ensure that other services in these bands do not cause harmful interference to FSS operations? Consistent with the Commission's statement when it adopted service rules for FS use of the band,[251] we propose to require registrations for new FS links submitted on or after the release date of this *Further Notice* to demonstrate protection of FSS earth stations with a final authorization prior to the submission date of the new FS registration.

91. Finally, we seek comment on any changes that would be necessary to our rules or procedures to accommodate FSS in the third-party database system as a logistical matter. Currently, terrestrial and aeronautical operators must first obtain a nationwide license from the Commission before registering individual sites with a database administrator.[252] What would be the equivalent for a satellite operator? Should a satellite operator also be required to obtain a nationwide license from the Commission before registering individual sites with a database administrator? If so, what changes would be required to the part 25 earth station licensing rules? We also seek comment on any changes necessary for federal to non-federal coordination in the FSS context. For fixed services in these bands, this coordination is accomplished by the database administrators querying an automated green light/yellow light system operated by NTIA, with a yellow light result leading to more individual coordination.[253] Could this system accommodate FSS operations as well? What changes would be necessary to support such inclusion? We seek comment generally on these and any other issues raised by the possibility of including FSS earth stations in the 70/80 GHz database registration system.

(Continued from previous page)
+94.96 dBW toward the horizon, or 39.96 dB higher than the part 101 limit, while for a 4.5 gigahertz channel the part 25 limit would allow an EIRP 45.53 dB higher than the part 101 limit.

[249] *See, e.g.*, Federal Agencies Letter at 1–2 (detailing in part incumbent federal operations in and adjacent to the 70 GHz and 80 GHz bands); *id.*, Attach. B at 1–11; Comsearch Report at 24–32.

[250] 47 CFR § 101.105(a).

[251] *See supra* note 237.

[252] *See supra* para. 18; *see also infra* App. A; 47 CFR § 101.1501.

[253] 47 CFR § 101.1523; *70/80/90 GHz Report and Order*, 18 FCC Rcd at 23342–43, para. 54; *Wireless Telecommunications Bureau Announces Licensing and Interim Link Registration Process, Including Start Date for Filing Applications for Non-Exclusive Nationwide Licenses in the 71–76 GHz, 81–86 GHz, and 92–95 GHz Bands*, WT Docket No. 02-146, Public Notice, 19 FCC Rcd 9439, 9447 (WTB 2003).

V. PROCEDURAL MATTERS

92. *Regulatory Flexibility Act*. The Regulatory Flexibility Act of 1980, as amended (RFA),[254] 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."[255] Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in this *Order* on small entities. The FRFA is set forth in Appendix B.

93. The Commission has also prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the potential impact of rule and policy changes in the *Further Notice* on small entities. The IRFA is set forth in Appendix C. Written public comments are requested on the IRFA. Comments must be filed by the deadlines for comments on the *Further Notice* indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA.

94. *Paperwork Reduction Act*. This document contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13.[256] It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. We have described impacts that might affect small businesses, which include most businesses with fewer than 25 employees, in the FRFA, attached as Appendix B.

95. The *Further Notice* also may contain proposed new and revised information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C § 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

96. *Congressional Review Act.* The Commission will submit this draft *Report and Order* to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for concurrence as to whether this rule is "major" or "non-major" under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this *Report and Order* to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

97. *Providing Accountability Through Transparency Act*: The Providing Accountability Through Transparency Act requires each agency, in providing notice of a rulemaking, to post online a brief plain-language summary of the proposed rule.[257] Accordingly, the Commission will publish the required summary of this *Further Notice* on https://www.fcc.gov/proposed-rulemakings.

98. *Ex Parte Presentations—Permit-But-Disclose.* The proceeding this *Further Notice* initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex*

[254] 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).

[255] 5 U.S.C. §§ 605(b).

[256] 44 U.S.C. §§ 3501–20.

[257] 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.

parte rules.[258] Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission's rules. In proceedings governed by section 1.49(f) of the Commission's rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.[259]

99. *Comment Filing Procedures.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing ECFS: 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.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. *See* FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20-304 (March 19, 2020). https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.

100. *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).

[258] 47 CFR §§ 1.1200 *et seq.*

[259] *Id.* § 1.49(f).

101. *Further Information.* For additional information on this proceeding, contact Jeffrey Tignor of the Wireless Telecommunications Bureau, Broadband Division, at Jeffrey.Tignor@fcc.gov or 202-418-0774.

VI. ORDERING CLAUSES

102. **IT IS ORDERED** that, pursuant to sections 4(i), 301, 302, 303(c), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 301, 302a, 303(c), 303(f), and 303(r), that this *Report and Order* **IS ADOPTED** as set forth above.

103. **IT IS FURTHER ORDERED** that, pursuant to sections 4, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154, 303, 307, that this *Further Notice of Proposed Rulemaking* **IS ADOPTED** as set forth above.

104. **IT IS FURTHER ORDERED** that the amendments of the Commission's rules as set forth in Appendix A ARE ADOPTED, effective thirty days from the date of publication in the Federal Register, except for: (1) section 101.147(z)(3), which will take effect on September 1, 2024; and (2) sections 101.63(b), 101.1523(a), (e), and 101.1528 (a)(11), (b)(10), and (d), which contain new or modified information collection requirements that requires approval by the Office of Management and Budget under the Paperwork Reduction Act and will take effect after the Commission publishes a notice in the Federal Register announcing such approval and the relevant effective date(s).

105. **IT IS FURTHER ORDERED** that the Commission's Office of the Secretary, **SHALL SEND** a copy of this *Report and Order and Further Notice of Proposed Rulemaking*, including the Final Regulatory Flexibility Analysis and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

106. **IT IS FURTHER ORDERED** that the Office of the Managing Director, Performance and Program Management, **SHALL SEND** a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Final Rules

For the reasons discussed in the document above, the Federal Communications Commission amends 47 CFR parts 0 and 101 as follows:

PART 0 – COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, and 409, unless otherwise noted.

2. Section 0.241 is amended by adding paragraph (l) to read as follows:

§ 0.241 Authority delegated.

* * * * *

(l) The Chief of the Office of Engineering and Technology is delegated authority, jointly with the Chief of the Wireless Telecommunications Bureau, to establish and administer a process for review of proposed technologies for point-to-endpoint-in-motion communications to aircraft and ships in the 71–76 GHz and 81–86 GHz bands to ensure compliance with the requirements adopted by the Commission.

3. Section 0.331 is amended by revising the introductory text and adding paragraph (g) to read as follows:

§ 0.331 Authority delegated.

The Chief, Wireless Telecommunications Bureau, is hereby delegated authority to perform all functions of the Bureau, described in § 0.131, subject to the exceptions and limitations in paragraphs (a) through (d) of this section, and also the functions described in paragraphs (e) through (g) of this section.

* * * * *

(g) *Authority concerning review of certain proposed technologies in the 71–76 and 81–86 GHz bands.* The Chief of the Wireless Telecommunications Bureau is delegated authority, jointly with the Chief of the Office of Engineering and Technology, to establish and administer a process for review of proposed technologies for point-to-endpoint-in-motion communications to aircraft and ships in the 71–76 GHz and 81–86 GHz bands to ensure compliance with the requirements adopted by the Commission. The Chief of the Wireless Telecommunications Bureau is also delegated authority to establish and administer specific procedures to be followed for coordinating and registering aeronautical and maritime stations and their associated transmissions.

PART 101 – FIXED MICROWAVE SERVICES

4. The authority citation for part 101 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

5. Section 101.63 is amended by revising paragraph (b) to read as follows:

§ 101.63 Period of construction; certification of completion of construction.

* * * * *

(b) For the 70 GHz, 80 GHz, and 90 GHz bands, the 12-month construction period will commence on the date of each registration of each individual link; adding links will not change the overall renewal period of the license. For each individual link, a licensee who commences operations within the construction period must certify in the third-party link registration database, such as those established pursuant to section 101.1523, that the link is constructed and operational. The certification must be filed within 15 days of the expiration of the applicable construction period for each individual link. If operations have begun using some, but not all, of the authorized transmitters, the certification must show to which specific transmitters it applies. After 15 days of the end of the construction period for each individual link, if the licensee has not certified that the link is constructed and operational, the third-party database managers will delete the registration from the database.

* * * * *

6. Section 101.111 is amended by adding paragraph (a)(2)(vi) to read as follows:

§ 101.111 Emission limitations.

(a) * * *

(2) * * *

(vi)(A) In order to protect Federal Earth Exploration-Satellite Service (passive), aeronautical and maritime endpoints in motion operating in the 70 and 80 GHz bands must comply with the following limits:

(*1)* Ground-to-air transmissions shall not exceed an unwanted emission level of -38.5 dBW per 100 MHz in any portion of the 86–92 GHz passive band;

(2) Air-to-air, ship-to-shore, and aerostat-to-shore transmissions shall not exceed an unwanted emission level of -29.7 dBW per 100 MHz in any portion of the 86–92 GHz passive band.

(B) Any changes to system specifications, operations, or deployment scenarios for aeronautical or maritime end points in motion shall be pre-coordinated with NTIA and affected Federal agencies, and licensees of aeronautical or maritime end points in motion must cooperate fully with any updates to the required unwanted emission limits that may result from these modifications.

* * * * *

7. Section 101.113 is amended by adding footnote 14 to the entries of "71,000 to 76,000" and "81,000 to 86,000" in the table of paragraph (a) to read as follows:

§ 101.113 Transmitter power limitations.

(a) * * *

\14\ The EIRP limit for fixed and mobile stations used for aeronautical and maritime endpoints in motion is 57 dBW.

* * * * *

8. Section 101.115 is amended in the table in paragraph (b)(2) by revising the entries for "71,000 to 76,000 (co-polar)", "71,000 to 76,000 (cross-polar)", "81,000 to 86,000 (co-polar)", and "81,000 to 86,000 (cross-polar)" to read as follows:

§ 101.115 Directional antennas.

* * * * *

(b) * * *

(2) * * *

ANTENNA STANDARDS

Frequency (MHz)	Category	Maximum beamwidth to 3 dB points[1] (included angle in degrees)	Minimum antenna gain (dBi)	Minimum radiation suppression to angle in degrees from centerline of main beam in decibels						
				5° to 10°	10° to 15°	15° to 20°	20° to 30°	30° to 100°	100° to 140°	140° to 180°
* * * * * * *										
71,000 to 76,000 (co-polar)[14]	N/A	2.2	38	22	28	32	35	37	55	55
71,000 to 76,000 (cross-polar)[14]	N/A	2.2	38	35	35	40	42	47	55	55
81,000 to 86,000 (co-polar)[14]	N/A	2.2	38	22	28	32	35	37	55	55
81,000 to 86,000 (cross-polar)[14]	N/A	2.2	38	35	35	40	42	47	55	55
* * * * * * *										

* * * * *

\14\ Antenna gain less than 50 dBi (but greater than or equal to 38 dBi) is permitted only with a proportional reduction in maximum authorized EIRP in a ratio of 2 dB of power per 1 dB of gain, so that the maximum allowable EIRP (in dBW) for antennas of less than 50 dBi gain becomes + 55-2(50-G), where G is the antenna gain in dBi. In addition, antennas in these bands must meet the following additional standard for minimum radiation suppression: At angles of less than 5 degrees from the centerline of main beam, cross-polar discrimination must be at least 21 dB.

* * * * *

9. Effective September 1, 2024, section 101.147 is amended by adding paragraph (z)(3) to read as follows:

§ 101.147 Frequency assignments.

* * * * *

(z) * * *

(3) The following channel plans apply to the 71,000–76,000 MHz and 81,000–86,000 MHz bands:

(i) *250 MHz authorized bandwidth.*

Transmit (receive) (MHz)	Receive (transmit) (MHz)
71250	81250
71500	81500
71750	81750
72000	82000
72250	82250
72500	82500
72750	82750
73000	83000
73250	83250
73500	83500
73750	83750
74000	84000
74250	84250
74500	84500
74750	84750
75000	85000
75250	85250
75500	85500
75750	85750

(ii) *500 MHz authorized bandwidth.*

Transmit (receive) (MHz)	Receive (transmit) (MHz)
71375	81375
71875	81875
72375	82375
72875	82875
73375	83375

73875	83875
74375	84375
74875	84875
75375	85375

(iii) *750 MHz authorized bandwidth.*

Transmit (receive) (MHz)	Receive (transmit) (MHz)
71500	81500
72250	82250
73000	83000
73750	83750
74500	84500
75250	85250

(iv) *1 GHz authorized bandwidth.*

Transmit (receive) (MHz)	Receive (transmit) (MHz)
71625	81625
72625	82625
74125	84125
75125	85125

(v) *1.25 GHz authorized bandwidth.*

Transmit (receive) (MHz)	Receive (transmit) (MHz)
71750	81750
73000	83000
74250	84250

(vi) *1.5 GHz authorized bandwidth.*

Transmit (receive) (MHz)	Receive (transmit) (MHz)
71875	81875
74375	84375

(vii) *1.75 GHz authorized bandwidth.*

Transmit (receive) (MHz)	Receive (transmit) (MHz)
72000	82000
74500	84500

(viii) *2.0 GHz authorized bandwidth.*

Transmit (receive) (MHz)	Receive (transmit) (MHz)
72125	82125
74625	84625

(ix) *2.25 GHz authorized bandwidth.*

Transmit (receive) (MHz)	Receive (transmit) (MHz)
72250	82250
74750	84750

(x) *2.5 GHz authorized bandwidth.*

Transmit (receive) (MHz)	Receive (transmit) (MHz)
72375	82375

(xi) *2.75 GHz authorized bandwidth.*

Transmit (receive) (MHz)	Receive (transmit) (MHz)
72500	82500

(xii) *3 GHz authorized bandwidth.*

Transmit (receive) (MHz)	Receive (transmit) (MHz)
72625	82625

(xiii) *3.25 GHz authorized bandwidth.*

Transmit (receive) (MHz)	Receive (transmit) (MHz)
72750	82750

(xiv) 3.5 GHz authorized bandwidth.

Transmit (receive) (MHz)	Receive (transmit) (MHz)
72875	82875

(xv) *3.75 GHz authorized bandwidth.*

Transmit (receive) (MHz)	Receive (transmit) (MHz)
73000	83000

(xvi) *4 GHz authorized bandwidth.*

Transmit (receive) (MHz)	Receive (transmit) (MHz)

73125	83125

(xvii) *4.25 GHz authorized bandwidth.*

Transmit (receive) (MHz)	Receive (transmit) (MHz)
73250	83250

(xviii) *4.5 GHz authorized bandwidth.*

Transmit (receive) (MHz)	Receive (transmit) (MHz)
73375	83375

10. Section 101.1501 is revised to read as follows:

§ 101.1501 Service areas.

The 70/80/90 GHz bands are licensed on the basis of non-exclusive nationwide licenses. There is no limit to the number of non-exclusive nationwide licenses that may be granted for these bands, and these licenses will serve as a prerequisite for registering individual point-to-point links. In the 71–76 GHz and 81–86 GHz bands, nationwide non-exclusive licenses also serve as a blanket license for air-to-air and ship-to-ship operations, and as a prerequisite to register ground-to-air (GTA) stations and to operate associated GTA and air-to-ground (ATG) transmissions; and as a prerequisite to register shore stations and aerostat relay stations and to operate associated ship-to-shore, shore-to-ship, shore-to-aerostat, aerostat-to-ship, and aerostat-to-shore transmissions.

11. Section 101.1507 is revised to read as follows:

§ 101.1507 Permissible operations.

Licensees may use the 70 GHz, 80 GHz, and 90 GHz bands for any point-to-point, non-broadcast service. Licensees may use the 70 GHz and 80 GHz bands for aeronautical and maritime service as set forth in § 101.1528. The segments may be unpaired or paired, but pairing will be permitted only in a standardized manner (*e.g.*, 71–72.25 GHz may be paired only with 81–82.25 GHz, and so on). The segments may be aggregated without limit.

12. Section 101.1523 is amended by revising paragraph (a), and adding paragraph (e) to read as follows:

§ 101.1523 Sharing and coordination among non-government licensees and between non-government and government services.

(a) Each individual point-to-point link must be registered in a third-party database. Registration of aeronautical ground stations, maritime shore stations, and aerostats for operation of aeronautical or maritime links to end points in motion in the 71–76 GHz and 81–86 GHz bands will be in a third-party database after the Wireless Telecommunications Bureau announces by public notice the details of the implementation of a third-party database for such links to endpoints in motion.

* * * * *

(e) A licensee must successfully complete the requirements of this section prior to modifying the technical parameters of a registered link. Except for de minimis modifications, any change to the

technical data on a link registration will result in a new interference protection date. A modification to link registration in the 71–76 GHz and 81–86 GHz bands is de minimis, and the registration will retain its existing interference protection date and not lose its existing first-in-time rights, if the modification meets all of the following criteria:

(1) The licensee certifies that the modification is necessary to repair or replace equipment specified in the registration that was constructed and operating under the registration;

(2) The modification does not increase the EIRP of a digital system or change the EIRP of an analog system;

(3) The modification does not increase the channel bandwidth;

(4) The modification does not change the power density;

(5) The modification does not increase the receiver sensitivity;

(6) The modification does not increase the antenna beamwidth;

(7) The modification does not increase the antenna gain, except where there is a corresponding reduction transmitter power so that there is no increase in EIRP;

(8) The modification does not involve a change to antenna with less off-axis attenuation at any angle; and

(9) The modification does not change any other technical parameters not mentioned in paragraphs (e)(1) through (e)(8) of this section.

13. Section 101.1528 is added to subpart Q to read as follows:

§ 101.1528 Requirements for aeronautical and maritime links to, from, or between endpoints in motion.

(a) *Requirements for aeronautical ground stations and endpoints in motion.*

(1) Air-to-ground transmissions are permitted only in the 71–76 GHz band.

(2) Ground-to-air transmissions are permitted only in the 81–86 GHz band.

(3) Air-to-air transmissions are permitted only between aircraft that are separated by a minimum slant path distance of 50 km.

(4) Transmissions are only permitted to and from aircraft at altitudes between 10,000 ft and 50,000 ft.

(5) Ground stations must operate with a minimum elevation angle of 5 degrees and a maximum elevation angle of 45 degrees.

(6) Ground stations must be located at least 10 km from any existing Non-Federal FSS earth station or Federal facility listed in table 4 to paragraph (c)(2) of this section, absent a coordination agreement with the FSS operator.

(7) Ground stations must be located at least 150 km from the specific Federal facilities and not within the areas listed in table 3 to paragraph (c)(1) of this section, absent a coordination agreement with the Federal operator.

(8) Ground stations must be located at least 10 km from any existing Federal or non-Federal fixed station receiver, absent a coordination agreement with the fixed station operator.

(9) Air-to-air transmissions are permitted in 81–86 GHz subject to the following limitations;

(i) EIRP signal levels radiated along a line between the airborne transmitter and the latitude and longitude of the observatories in table 3 to paragraph (c)(1) of this section, which must be maintained as the airborne transmitter moves, cannot exceed the levels shown in table 1 to this paragraph (a)(9)(i). Within the range of 150 km and 375 km, the maximum allowable EIRP levels for horizontal distances not listed in table below may be approximated by linear interpolation.

Table 1 to Paragraph (a)(9)(i) - List of Maximum Allowable EIRP levels, in dBW

Frequency (GHz)	Horizontal Distance (km)									
	150	175	200	225	250	275	300	325	350	375
81	-11.2	-8.8	-6.5	-4.2	-1.5	1.1	3.9	6.7	10	13.5
82	-11.5	-9.2	-6.9	-4.6	-2	0.5	3.2	6	9.2	12.6
83	-11.7	-9.5	-7.3	-5	-2.4	0	2.7	5.4	8.6	11.9
84	-11.9	-9.7	-7.5	-5.3	-2.8	-0.4	2.3	4.9	8	11.3
85	-12.1	-9.9	-7.8	-5.5	-3	-0.7	1.9	4.5	7.6	10.8
86	-12.2	-10	-7.9	-5.7	-3.3	-0.9	1.7	4.2	7.3	10.5

(ii) A licensee of aeronautical end points in motion must have a capability to target specific areas which can be added to a "block list" as part of a dynamic link management system. If air-to-air transmission within the main beam of the radio astronomy receiver cannot be avoided, air-to-air transmissions within the radio horizon of the radio astronomy site (as specified in table 2 to this paragraph (a)(9)(ii)) should not occur.

Table 2 to Paragraph (a)(9)(ii) - Approximate Radio Horizon, in Horizontal Distance (km)

Altitude (m)	Approximate Radio Horizon (km) (horizontal distance)
10,360	375
8,000	315
6,000	260
5,000	220
4,000	180
3,000	125

(iii) The list of radio astronomy sites may be periodically updated by the NTIA and the FCC. This rule may be superseded by a coordination agreement between the licensee and NSF, in which case the coordination agreement will specify the technical restrictions.

(10) Air-to-air transmissions in the 71–76 GHz band are subject to the following restrictions:

(i) EIRP signal levels shall be limited to 20 dBW/1000 MHz towards each military installation listed in table 4 to paragraph (c)(2) of this section that is within 375 km of the airborne transmitter. This 20 dBW/1000 MHz EIRP applies to the power radiated along a line between the airborne transmitter and the latitude and longitude of the military installations in table 4 to paragraph (c)(2) of this section and must be maintained as the airborne transmitter moves. An EIRP of 57 dBW/1000 MHz is allowed in other directions. The list of military installations in table 4 to paragraph (c)(2) of this section may be periodically updated by the NTIA and the FCC. This rule may be superseded by a coordination agreement between the licensee and the Department of Defense (DoD), in which case the coordination agreement will specify the technical restrictions and allow the licensee and DoD to update the list of protected installations in the agreement. The locations of all aeronautical end-point-in-motion ground stations will be provided to NTIA and DoD as part of the coordination process.

(ii) A licensee of aeronautical end points in motion must have a capability to target specific areas which can be added to a "block list" as part of a dynamic link management system. If air-to-air transmission within the main beam of the radio astronomy receivers associated with the observatories in table 3 to paragraph (c)(1) of this section cannot be avoided, air-to-air transmissions within the radio horizon of the radio astronomy site (as specified in table 2 to paragraph (a)(9)(ii) of this section) should not occur.

(iii) The list of radio astronomy sites may be periodically updated by the NTIA and the FCC. This rule may be superseded by a coordination agreement between the licensee and NSF, in which case the coordination agreement will specify the technical restrictions.

(11) Aeronautical operators must coordinate with Federal operators and register ground-to-air stations, and must not operate such facilities or any associated air-to-ground transmissions until registration has successfully been completed.

(b) *Requirements for maritime shore stations, aerostats, and endpoints in motion.*

(1) Ship-to-shore transmissions are only permitted in the 81–86 GHz band.

(2) Shore-to-ship transmissions are only permitted in the 71–76 GHz band.

(3) Shore-to-aerostat transmissions are only permitted in the 71–76 GHz band.

(4) Aerostat-to-ship transmissions are only permitted in the 71–76 GHz band.

(5) Aerostat-to-shore transmissions are only permitted in the 81–86 GHz band.

(6) Aerostat must not operate above an altitude limit of 1000 ft.

(7) Ship-to-ship communications are limited to ships located more than 30 km offshore, or closer only where the main beam of the transmit antenna is oriented at least 15 degrees away from any point on the shore.

(8) Ship stations and aerostat stations must only operate when there is a minimum separation of 150 km to the specific Federal facilities and not within the areas listed in table 3 to paragraph (c)(1) of this section, absent a coordination agreement with the federal operator.

(9) Shore-to-ship and ship-to-shore transmission must only occur between stations that are located at least 10 km from the Federal military installations listed in table 4 to paragraph (c)(2) of this section, absent a coordination agreement with the Federal operator.

(10) Maritime operators must coordinate with Federal operators and register shore and aerostat transmitters, and must not operate such facilities or any associated ship-to-shore transmissions until registration has successfully been completed.

(c) *Protected Federal sites.*

(1) RAS and VLBA sites:

Table 3 to Paragraph (c)(1)

RAS Station Name	North Latitude	West Longitude
Arizona Radio Observatory (ARO) 12-meter	31° 57' 11.9"	111° 36' 53.6"
Green Bank Observatory	38° 25' 59"	79° 50' 23"
Very Large Array (VLA), Socorro, NM	34° 04' 44"	107° 37' 06"
Owens Valley Radio Observatory (OVRO), Big Pine, CA	37° 14′ 02″	118° 16′ 55″
Haystack Observatory, Westford, MA	42° 37' 24"	071° 29' 18"
National Radio Astronomy Observatory, Very Long Baseline Array Stations		
Brewster, WA	48° 07' 52"	119° 41' 00"
Fort Davis, TX	30° 38' 06"	103° 56' 41"
Hancock, NH	42° 56' 01"	71° 59' 12"
Kitt Peak, AZ	31° 57' 23"	111° 36' 45"
Los Alamos, NM	35° 46' 30"	106° 14' 44"
Mauna Kea, HI	19° 48' 05"	155° 27' 20"
North Liberty, IA	41° 46' 17"	91° 34' 27"
Owens Valley, CA	37° 13' 54"	118° 16' 37"
Pie Town, NM	34° 18' 04"	108° 07' 09"
Saint Croix, VI	17° 45' 24"	64° 35' 01"
National Radio Quiet Zone	Rectangular area between latitudes 37°30' N and 39°15' N, and longitudes 78°30' W and 80°30' W.	
Next-generation Very Large Array (ngVLA)	Rectangular area between latitudes 31°22'1.9" N and 34°23'10" N, and longitudes 109°1'53.4" W and 103°4'39" W	

(2) Military installations:

Table 4 to Paragraph (c)(2)

Military Installation	Latitude	Longitude
Redstone Arsenal, AL……	34° 41' 42" N	086° 39' 04" W
Fort Huachuca, AZ…….	31° 33 '18" N	110° 20' 59" W
Yuma Proving Ground, AZ……	33° 01' 02" N	114° 15' 05" W
Beale AFB, CA……...	39° 06' 41" N	121° 21' 36" W
Camp Parks Reserve Forces Training Area, CA……	34° 43' 00" N	121° 54' 08" W
China Lake Naval Air Weapons Station, CA…….	35° 41' 05" N	117° 41' 19" W
Edwards AFB, CA……..	34° 54′ 58″ N	117° 56′ 07″ W
Fort Irwin, CA……	35° 16' 22" N	116° 41' 05" W
Marine Corps Air Ground Combat Center, CA……..	34° 13' 54" N	116° 03' 42"W
Buckley AFB, CO……...	39° 42' 36" N	104° 45' 29"W
Schriever AFB, CO……	38° 48' 12" N	104° 31' 32" W
Fort Gordon, GA……	33° 25' 14" N	082° 09' 09" W

Naval Satellite Operations Center, GU……..	13° 34' 55" N	144° 50' 50" E
Naval Computer and Telecomm Area Master Station, Pacific, HI…	21° 31' 16" N	157° 59' 57" W
Fort Detrick, MD……	39° 26' 08" N	077° 25' 38" W
Nellis AFB, NV……..	36° 14' 29" N	115° 03' 03" W
Nevada Test Site, NV…….	38° 33' 41" N	116° 42' 30" W
Tonapah Test Range Airfield, NV……..	37° 47' 56" N	116° 46' 51" W
Cannon AFB, NM……..	34° 23' 23" N	103° 19' 06" W
White Sands Missile Range, NM……	32° 56' 38" N	106° 25 '11" W
Dyess AFB, TX……..	31° 10' 10" N	099° 41' 01" W
Fort Bliss, TX……	31° 48' 45" N	106° 25' 17" W
Fort Sam Houston, TX……	29° 26' 34" N	098° 26' 33" W
Goodfellow AFB, TX…….	31° 26' 05" N	100° 24' 11" W
Kelly AFB, TX……..	29° 22' 51" N	098° 34' 40" W
Utah Test and Training Range, UT……	40° 12' 00" N	112° 54' 00" W
Fort Belvoir, VA…….	38° 43' 08" N	077° 09' 15" W
Naval Satellite Operations Center, VA……..	36° 34' 00" N	076° 14' 00" W

(d) *Review of certain proposed technologies in the 71–76 and 81–86 GHz bands.* Prior to registration of any aeronautical or maritime links—to, from, or between endpoints in motion—each licensee must demonstrate, in accordance with the process to be established by the Wireless Telecommunications Bureau and Office of Engineering and Technology, *see* 47 CFR §§ 0.241(l), 0.331(g) of this title, that its technologies for point-to-endpoint-in-motion communications to aircraft and ships are capable of meeting specific technical and operating requirements set forth in this section.

APPENDIX B

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Modernizing and Expanding Access to the 70/80/90 GHz Bands, Notice of Proposed Rulemaking (NPRM)* released in June 2020.[2] The Federal Communications Commission (Commission) sought written public comment on the proposals in the *NPRM*, including comments on the IRFA. No comments were filed addressing the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[3]

A. Need for, and Objectives of, the Report and Order

2. In the *Report and Order*, the Commission seeks to further its goals of fostering innovation in provisioning broadband and on meeting the rapidly increasing demand for its related services by small and other entities through the adoption of new rules and modernizing current rules for the 71–76 GHz, 81–86 GHz, 92–94 GHz, and 94.1–95 GHz bands (collectively, the 70/80/90 GHz bands).

3. The adopted rules take several approaches towards achieving these goals. One approach is authorizing certain point-to-point links to endpoints in motion in the 70 GHz and 80 GHz bands under our Part 101 rules to further the use of these frequencies for access to broadband services on aircraft and ships. In the *Report and Order*, the Commission authorizes certain point-to-point links to endpoints in motion in the 71–76 GHz (the 70 GHz band) and 81–86 GHz (the 80 GHz band) bands under its part 101 rules. Another approach is updating the Commission's rules to permit the use of smaller and lower-cost antennas to facilitate the provisioning of backhaul service in the 70 GHz and 80 GHz bands, and mandates a channelization plan in those bands. Finally, the *Report and Order* adopted changes to the link registration process in the 70/80/90 GHz bands to promote prompt construction of registered links, thereby fostering more efficient use of this spectrum and improving the accuracy of the link registration database.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

4. There were no comments filed that specifically addressed the proposed rules and policies presented in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

5. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.[4] The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

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 rules adopted herein.[5] The RFA generally

---

[1] *See* 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601–12, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996, (SBREFA) Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[2] *Modernizing and Expanding Access to the 70/80/90 GHz Bands*, WT Docket No. 20-133, Notice of Proposed Rulemaking, 35 FCC Rcd 6039 (2020).

[3] *See* 5 U.S.C. § 604.

[4] 5 U.S.C. § 604(a)(3).

defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[6] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act."[7] A "small business concern" is one 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]

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.[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]

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."[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 2020, there were approximately 447,689 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]

(Continued from previous page)

[5] 5 U.S.C. § 604(a)(4).

[6] 5 U.S.C. § 601(6).

[7] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[8] 15 U.S.C. § 632.

[9] *See* 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] *See* 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. S*ee* 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 2020 with revenue less than or equal to $50,000 for Region 1-Northeast Area (58,577), Region 2-Mid-Atlantic and Great Lakes Areas (175,272), and Region 3-Gulf Coast and Pacific Coast Areas (213,840) that includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

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."[15] U.S. Census Bureau data from the 2017 Census of Governments[16] indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.[17] Of this number, there were 36,931 general purpose governments (county,[18] municipal, and town or township[19]) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts[20] with enrollment populations of less than 50,000.[21] Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of "small governmental jurisdictions."[22]

10. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.[23] 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.[24] The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[25] U.S. Census Bureau data for 2017 show that there were 2,893 firms in this

[15] *See* 5 U.S.C. § 601(5).

[16] *See* 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with "2" and "7". *See also* Census of Governments, https://www.census.gov/programs-surveys/cog/about.html.

[17] *See* U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02], https://www.census.gov/data/tables/2017/econ/gus/2017-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. CG1700ORG02 Table Notes_Local Governments by Type and State_2017.

[18] *See id.* at tbl.5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 2,105 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: 2017 [CG1700ORG06], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 18,729 municipal and 16,097 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: 2017 [CG1700ORG10], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 12,040 independent school districts with enrollment populations less than 50,000. *See also* tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2017.

[21] While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

[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 (36,931) and the number of special purpose governments—independent school districts with enrollment populations of less than 50,000 (12,040)—from the 2017 Census of Governments - Organizations tbls. 5, 6 & 10.

[23] *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.

[24] *Id.*

[25] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

industry that operated for the entire year.[26] Of that number, 2,837 firms employed fewer than 250 employees.[27] 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.[28] Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees.[29] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

11. *Fixed Microwave Services.* Fixed microwave services include common carrier,[30] private-operational fixed,[31] and broadcast auxiliary radio services.[32] They also include the Upper Microwave Flexible Use Service (UMFUS),[33] Millimeter Wave Service (70/80/90 GHz),[34] Local Multipoint Distribution Service (LMDS),[35] the Digital Electronic Message Service (DEMS),[36] 24 GHz Service,[37] Multiple Address Systems (MAS),[38] and Multichannel Video Distribution and Data Service (MVDDS),[39] where in some bands licensees can choose between common carrier and non-common carrier status.[40] Wireless Telecommunications Carriers (*except* Satellite)[41] is the closest industry with a SBA small business size standard applicable to these services. The SBA small size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[42] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[43] Of this number, 2,837

---

[26] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[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.

[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* 47 CFR Part 101, Subparts C and I.

[31] *See id*. Subparts C and H.

[32] 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.

[33] *See* 47 CFR Part 30.

[34] *See* 47 CFR Part 101, Subpart Q.

[35] *See id*. Subpart L.

[36] *See id*. Subpart G.

[37] *See id*.

[38] *See id.* Subpart O.

[39] *See id*. Subpart P.

[40] *See* 47 CFR §§ 101.533, 101.1017.

[41] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers* (*except Satellite*)," https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[42] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[43] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312,

(continued….)

firms employed fewer than 250 employees.[44] Thus under the SBA size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

12. 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.[45]

13. 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.

14. *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."[46] 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.[47] U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year.[48] Of this number, 242 firms had revenue of less than $25 million.[49] 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.[50] Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees.[51] Consequently, using the SBA's small business size

(Continued from previous page)
https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&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] *See* 47 CFR §§ 101.538(a)(1)–(3), 101.1112(b)–(d), 101.1319(a)(1)–(2), 101.1429(a)(1)–(3).

[46] *See* U.S. Census Bureau, *2017 NAICS Definition, "517410 Satellite Telecommunications,"* https://www.census.gov/naics/?input=517410&year=2017&details=517410.

[47] *See* 13 CFR § 121.201, NAICS Code 517410.

[48] *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.

[49] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. 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.

[50] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[51] *Id.*

standard, a little more than half of these providers can be considered small entities.

15. *All Other Telecommunications*. This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.[52] 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.[53] 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.[54] The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small.[55] U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.[56] Of those firms, 1,039 had revenue of less than $25 million.[57] Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

16. *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.[58] 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.[59] The SBA small business size standard for this industry classifies businesses having 1,250 employees or less as small.[60] U.S. Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year.[61] Of this number, 624 firms had fewer than 250 employees.[62] Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

---

[52] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517919 All Other Telecommunications,*" https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[53] *Id.*

[54] *Id*.

[55] *See* 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

[56] *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.

[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. 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.

[58] *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.

[59] *Id*.

[60] *See* 13 CFR § 121.201, NAICS Code 334220.

[61] *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.

[62] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

17. The rule changes adopted in the *Report and Order* will impose some new and/or additional reporting, recordkeeping, or other compliance requirements on small entities who obtain licenses in the 70/80/90 GHz bands. These requirements are consistent with the requirements the Commission has adopted for other mmW bands; as a result, small entities will potentially have less of a learning curve in their efforts to comply with the adopted rules.

18. In 2003, the Commission established service rules for non-federal use of the 70/80/90 GHz bands through a two-step, non-exclusive licensing regime.[63] Small entities and other applicants obtain a nationwide, non-exclusive license for the entire 12.9 gigahertz of the 70/80/90 GHz bands, and then register individual links in a database administered by third-party database managers.[64] In order for a link to be registered, it must be coordinated successfully with federal operations, typically through through the National Telecommunications and Information Administration's (NTIA) online, automated mechanism.[65] Also, the licensee must provide an analysis to the third-party database manager demonstrating that the proposed link will neither cause harmful interference to, nor receive harmful interference from, any previously registered non-government link.[66] Licensees are afforded first-in-time priority for successfully registered links relative to links that are successfully registered at a later point in time.[67] Registered links must be constructed within 12 months of their registration. Under part 101, non-federal licensees may use the 70/80/90 GHz bands for any point-to-point, non-broadcast service.[68]

19. Many of the rule changes adopted in the *Report and Order* are consistent with and mirror existing Commission policies and requirements used in other part 101 spectrum bands, which we expect will help minimize some of the compliance burdens associated with the adopted rules. For example, while we do add a construction certification requirement that licensees certify that each link is constructed and operating within 12 months of successful registration in the link registration system (LRS) administered by third-party database managers, small entities with existing licenses in other bands may already be familiar with similar policies and requirements and have the processes and procedures already in place to facilitate compliance, resulting in minimal incremental costs to comply with our requirements for the 70/80/90 GHz bands. We also adopt de minimis modifications to link registrations, which allow licensees to amend their registered links without losing their first-in-time rights for those links. Adopting this rule allows small and other licensees to maintain the existing operation of their links without sacrificing either the accuracy of the database or the licensee's interference-protection rights.

---

[63] *Allocations and Service Rules for 71–76 GHz, 81–86 GHz and 92–95 GHz Bands*, WT Docket No. 02-146, Report and Order, 18 FCC Rcd 23318, 23322, para. 5 (2003) (*70/80/90 GHz Report and Order*).

[64] Since 2004, the Wireless Bureau has designated four entities to be database managers but there are currently two database managers: Comsearch and Micronet Communications, Inc. *See*, *e.g.*, https://www.fcc.gov/millimeter-wave-708090-ghz-service.

[65] *See* 47 CFR § 101.1523(b). If a proposed link does not interfere with existing federal operations then it is given a "green light;" if it may interfere with existing federal operations, then it is given a "yellow light," indicating that the licensee must file a registration application for the link with the FCC for coordination with NTIA. *See* 47 CFR § 101.1523(b)(3),(c); *70/80/90 GHz Report and Order*, 18 FCC Rcd at 23342–43, para. 54. The "green light" / "yellow light" system protects the sensitive nature of the locations of military installations.

[66] *See* 47 CFR § 101.1523(b)(2); *Allocations and Service Rules for 71–76 GHz, 81–86 GHz and 92–95 GHz Bands*, WT Docket No. 02-146, Memorandum Opinion and Order, 20 FCC Rcd 4889, 4895–96, paras. 11–14 (2005) (Commission adopted an interference-analyses requirement for registering non-Federal Government licensees).

[67] *See* 47 CFR § 101.1523(b)(3); *70/80/90 GHz Report and Order*, 18 FCC Rcd at 23339–40, para. 45. *See also Wireless Telecommunications Bureau Announces Permanent Process for Registering Links in the 71–76 GHz, 81–86 GHz and 92–95 GHz Bands*, Public Notice, 20 FCC Rcd 2261 (WTB 2005).

[68] 47 CFR § 101.1507.

Additionally, the Commission believes small entities will continue to benefit from their ability to obtain more information than was previously available to them, such as access to the third-party databases and FCC rulemakings, but with improvements to the data within the database that will result from the construction certification requirement.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

20. 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."[69]

21. In the *Report and Order*, the Commission adopts measures to meet the great demand for wireless broadband connectivity in an efficient and effective manner. While doing so, the Commission is mindful that small licensees and service providers will incur some new and/or additional compliance requirements that may also result in increased costs. In adopting the proposed rules, we weighed the impact of these obligations on small entities against the public interest benefits gained from them and have determined that the benefits outweigh the costs. Both the specific steps the Commission has taken to minimize costs and reduce the economic impact for small entities and the alternatives considered are discussed below.

22. For example, through the adopted rules, the Commission took the step of changing our antenna standards to allow licensees, some of which are small entities, to use smaller, lower-cost antennas in the 70 GHz and 80 GHz bands for 5G backhaul. Taking this approach will allow for more intensive use of these bands by small and other entities, thus allowing them to further develop and expand their businesses. Alternatively, we considered not utilizing this approach, due to a concern that reducing antenna size would impact the number of links using the 71–76 and 81–86 GHz bands in metro areas.[70] However, the benefit of allowing for greater use of the bands outweighed this concern. The Commission also minimized the economic impact on small and other entities through our adoption of the de minimis modification requirement, which ensures that licensees can amend their registrations and not lose their first-in-time status for their registered links, as long as their modifications are consistent with the adopted requirements. The adopted de minimis standard for modifications will be a particular boon to small entities, who may already have limited resources and would likely be disproportionately burdened if their need to repair or replace installed and operating equipment did not change the potential risk of a link causing or receiving interference, yet still caused them to "lose their place in line." We considered, but declined to adopt, proposals from commenters that we determined were beyond a de minimis modification, such as those that would change the interference landscape.

23. The Commission also considered but rejected arguments requiring construction certifications be filed in the Universal Licensing System (ULS). The Commission instead focused on targeted changes to improve efficiency in high-capacity bands critical to accelerating the deployment of 5G services nationwide. We expect our approach of opting to modify existing rules as minimally as possible instead of creating numerous new and/or additional rules, should minimize the economic impact for small entities and promote greater use of the band among all providers.

24. To the extent the cost of complying with these burdens is relatively greater for smaller entities than for large ones, the Commission believes equal application of the rules is necessary to effectuate the purpose of the Communications Act, namely, to further the efficient use of spectrum and to prevent spectrum warehousing. Likewise, equal application of compliance with our technical rules and

[69] 5 U.S.C. § 604(a)(6).

[70] Fiberless Networks Corporation Comments at 12.

coordination requirements for all licensees is necessary for the furtherance of the Commission's goals of protecting the public while facilitating the provision of interference-free services by licensees.

G. Report to Congress

25. The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to Congress pursuant to the Congressional Review Act.[71] In addition, the Commission will send a copy of the *Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Report and Order*, and FRFA (or summaries thereof) will also be published in the *Federal Register*.[72]

[71] *See* 5 U.S.C. § 801(a)(1)(A).

[72] *See* 5 U.S.C. § 604(b).

APPENDIX C

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Federal Communications Commission (Commission) has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies proposed in the *Further Notice of Proposed Rulemaking* (*Further Notice*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the *Further Notice*. The Commission will send a copy of the *Further Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the *Further Notice* and the IRFA (or summaries thereof) will be published in the Federal Register.[3]

A. Need for, and Objectives of, the Proposed Rules

2. In the *Further Notice*, the Commission considers and seeks comment on whether—and if so, how—it might include Fixed Satellite Service (FSS) earth stations in the third-party database registration regime currently used for operations in the 70 GHz and 80 GHz bands. Included in the Commission's discussion of potential rule changes and requests for comments in the *Further Notice* are repeated requests from the Space Exploration Technology Corporation (SpaceX), which has advocated for the inclusion of FSS into the existing light-licensing regime for the 70/80/90 GHz bands.[4] The *Further Notice* seeks comment on issues including whether it would be feasible to include FSS in the database regime process, and whether doing so would have any negative effects on incumbent services. The Commission also solicits comment on what changes to the database system might be needed, whether such changes are feasible, how costs for any changes should be allocated and if those costs would have a significant economic impact on small entities either currently operating, or seeking to operate, in those bands. Lastly, the item also asks commenters to address what protection criteria should be adopted if FSS earth stations are incorporated into the third-party database system, on the appropriate criteria for the protection of FSS from other service, and on any changes that might be necessary to our rules or procedures as a logistical matter. In addition, in the *Further Notice*, the Commission seeks comment on whether to permit ship-to-aerostat transmissions as part of the maritime service otherwise authorized in the *Report and Order*.

B. Legal Basis

3. The proposed action is authorized pursuant to sections 4, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154, 303, and 307.

C. Description and Estimate of the Number of Small Entities to Which the 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. §§ 601–12, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[2] 5 U.S.C. § 603(a).

[3] *Id*.

[4] *See, e.g.*, Comments of Space Exploration Technologies Corp., WT Docket No. 20-133 et al. (filed Dec. 2, 2021); Reply Comments of Space Exploration Technologies Corp., WT Docket No. 20-133 et al. (filed Jan. 3, 2022); Comments of Space Exploration Technologies Corp., WT Docket No. 20-133 et al. (filed Nov. 8, 2023).

[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 (SBA)."[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, 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 2020, there were approximately 447,689 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 districts, with a population of less than fifty thousand."[15] U.S. Census Bureau data from the 2017 Census

[6] 5 U.S.C. § 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] *See* 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] *See* 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. S*ee* 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 2020 with revenue less than or equal to $50,000 for Region 1-Northeast Area (58,577), Region 2-Mid-Atlantic and Great Lakes Areas (175,272), and Region 3-Gulf Coast and Pacific Coast Areas (213,840) that includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

of Governments[16] indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.[17] Of this number, there were 36,931 general purpose governments (county,[18] municipal, and town or township[19]) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts[20] with enrollment populations of less than 50,000.[21] Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of "small governmental jurisdictions."[22]

8. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.[23] 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.[24] The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[25] U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.[26] Of that number, 2,837 firms employed fewer than 250

(Continued from previous page)

[15] *See* 5 U.S.C. § 601(5).

[16] *See* 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with "2" and "7". *See also* Census of Governments, https://www.census.gov/programs-surveys/cog/about.html.

[17] *See* U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02], https://www.census.gov/data/tables/2017/econ/gus/2017-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. CG1700ORG02 Table Notes_Local Governments by Type and State_2017.

[18] *See id.* at tbl.5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 2,105 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: 2017 [CG1700ORG06], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 18,729 municipal and 16,097 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: 2017 [CG1700ORG10], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 12,040 independent school districts with enrollment populations less than 50,000. *See also* tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2017.

[21] While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

[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 (36,931) and the number of special purpose governments—independent school districts with enrollment populations of less than 50,000 (12,040)—from the 2017 Census of Governments - Organizations tbls. 5, 6 & 10.

[23] *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.

[24] *Id.*

[25] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[26] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312,

(continued….)

employees.[27] 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.[28] Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees.[29] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

9. *Fixed Microwave Services.* Fixed microwave services include common carrier,[30] private-operational fixed,[31] and broadcast auxiliary radio services.[32] They also include the Upper Microwave Flexible Use Service (UMFUS),[33] Millimeter Wave Service (70/80/90 GHz),[34] Local Multipoint Distribution Service (LMDS),[35] the Digital Electronic Message Service (DEMS),[36] 24 GHz Service,[37] Multiple Address Systems (MAS),[38] and Multichannel Video Distribution and Data Service (MVDDS),[39] where in some bands licensees can choose between common carrier and non-common carrier status.[40] Wireless Telecommunications Carriers (*except* Satellite)[41] is the closest industry with a SBA small business size standard applicable to these services. The SBA small size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[42] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[43] Of this number, 2,837

(Continued from previous page)
https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[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.

[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* 47 CFR Part 101, Subparts C and I.

[31] *See id*. Subparts C and H.

[32] 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.

[33] *See* 47 CFR Part 30.

[34] *See* 47 CFR Part 101, Subpart Q.

[35] *See id*. Subpart L.

[36] *See id*. Subpart G.

[37] *See id*.

[38] *See id.* Subpart O.

[39] *See id*. Subpart P.

[40] *See* 47 CFR §§ 101.533, 101.1017.

[41] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers* (*except Satellite*)," https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[42] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[43] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

firms employed fewer than 250 employees.[44] Thus under the SBA size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

10. 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.[45]

11. 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.

12. *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."[46] 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.[47] U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year.[48] Of this number, 242 firms had revenue of less than $25 million.[49] 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.[50] Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees.[51] Consequently, using the SBA's small business size standard, a little more than half of these providers can be considered small entities.

---

[44] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[45] *See* 47 CFR §§ 101.538(a)(1)–(3), 101.1112(b)–(d), 101.1319(a)(1)–(2), 101.1429(a)(1)–(3).

[46] *See* U.S. Census Bureau, *2017 NAICS Definition, "517410 Satellite Telecommunications,"* https://www.census.gov/naics/?input=517410&year=2017&details=517410.

[47] *See* 13 CFR § 121.201, NAICS Code 517410.

[48] *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.

[49] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. 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.

[50] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[51] *Id.*

13. *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.[52] 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.[53] 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.[54] The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small.[55] U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.[56] Of those firms, 1,039 had revenue of less than $25 million.[57] Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

14. *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.[58] 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.[59] The SBA small business size standard for this industry classifies businesses having 1,250 employees or less as small.[60] U.S. Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year.[61] Of this number, 624 firms had fewer than 250 employees.[62] Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance

---

[52] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517919 All Other Telecommunications,*" https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[53] *Id.*

[54] *Id*.

[55] *See* 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

[56] *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.

[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. 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.

[58] *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.

[59] *Id*.

[60] *See* 13 CFR § 121.201, NAICS Code 334220.

[61] *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.

[62] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

Requirements for Small Entities

15. The proposals contemplated in the *Further Notice* may impose new or additional reporting, recordkeeping, and/or other compliance obligations on small entities, as well as on other licensees and applicants if adopted. In particular, there may be new recordkeeping or compliance obligations created if changes are made to the Commission's part 101 technical and/or operational rules in order to accommodate the potential inclusion of FSS earth stations in the third-party database registration regime in the 70 GHz and 80 GHz bands or in order to permit ship-to-aerostat transmissions as part of the maritime service otherwise authorized in the *Report and Order*.

16. At this time, Commission is not currently in a position to determine whether, if adopted, the proposed rules and associated requirements raised in the *Further Notice* would require small entities to hire attorneys, engineers, consultants, or other professionals and cannot quantify the cost of compliance with the potential rule changes and compliance obligations raised herein. In our discussion of these proposals in the *Further Notice*, we have sought comments from the parties in the proceeding, and requested costs and benefits analyses, which may help the Commission identify and evaluate relevant matters for small entities, including any compliance costs and burdens that may result from any matters discussed in the *Further Notice*, or from any proposed rules in the proceeding, should they be adopted.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

17. 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.[63]

18. In the *Further Notice*, the Commission has sought to minimize the economic impact on small entities, as well as considered significant alternatives and weigh their potential impact to those entities. For example, in response to SpaceX's advocacy for including FSS into the existing light-licensing regime for the 70/80/90 GHz bands, we considered whether it was feasible to alter the third-party database registration regime to include FSS earth stations as well as what compliance obligations could be adopted to minimize the economic impact to small entities. In addition, in response to Aeronet's advocacy for permitting ship-to-aerostat transmissions in the maritime service otherwise authorized in the *Report and Order*, we considered whether it was feasible to authorize such links as well as what compliance obligations could be adopted to minimize the economic impact on small entities. In order to provide proper notice for potential commenters and to allow for a technical record that will better assist the Commission in adopting rules that will minimize burdens to small and other entities as much as possible, we seek comment on FSS-specific issues and issues related to ship-to-aerostat links.

19. Additionally, we considered what types of changes to the database system would be needed for FSS registrations and if any changes, if adopted, would cause major modifications to the databases, or alternatively, if entirely new database structures would be required. We seek comment from small entities as to what economic or compliance-related challenges they would encounter as a result of adopting such changes. We also considered what protection criteria should be included as part of incorporating FSS earth stations into the third-party database system. For example, the Commission could adopt, as SpaceX prefers, the rules found in part 25 as a framework for appropriate FSS operational restrictions, as opposed to using the limits set forth in the Federal Agencies Letter, which was adopted by the Commission for aeronautical operations in these bands. We seek comment on any other operational

[63] 5 U.S.C. § 604(a)(6).

limits or restrictions that might be required to meaningfully enable database registration for FSS earth stations without risking harmful interference to incumbent and adjacent services. Lastly, we also considered what types of changes to our rules or procedures intended to accommodate FSS in the third-party database system would be necessary, what licensing requirements for satellite operators would be required and what changes would be needed for federal to non-federal coordination in the FSS context.

20. To assist with the Commission's evaluation of the significant economic impact on small entities, and to better evaluate options and alternatives should the proposals in the *Further Notice* be adopted, the Commission has sought comment from the parties. The proposals in this proceeding to accommodate the potential inclusion of FSS earth stations in the third-party database registration regime in the 70 GHz and 80 GHz bands are predicated on requests from SpaceX for the same. The proposals in this proceeding to include ship-to-aerostat transmissions as part of the maritime service otherwise authorized in the *Report and Order* are predicated on requests from Aeronet for the same. In light of these requests, the *Further Notice* seeks comment on how to weigh the inherent public interest considerations involved. The Commission expects to more fully consider the economic impact and alternatives for small entities following the review of comments and costs and benefits analyses filed in response to the *Further Notice*. The Commission's evaluation of this information will shape the final alternatives it considers, the final conclusions in reaches, and any final actions it ultimately takes in this proceeding to minimize any significant economic impact that may occur on small entities.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

21. None.

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *Modernizing and Expanding Access to the 70/80/90 GHz Bands*, Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 20-133 (January 24, 2024)

It doesn't seem that long ago that many of us were in lockdown, passing the time by making plans for post-pandemic life, including the places we would go and the friends and family we would visit. Now people across the country are flying again and in record numbers. In fact, last year, over 858 million passengers passed through our airports. That's an increase of nearly 100 million passengers from the year before.

Even before this surge in passengers, the demand for Wi-Fi in-flight often outstripped what many airlines could provide. The same was true for broadband connections onboard passenger ships like ferries and cruises. Connections while in transit fail consumers when too many passengers compete for the same signal and backhaul capacity struggles to keep up.

The good news is that we are taking steps today to keep us all connected—even at 30,000 feet in the air or miles out in the ocean. We are opening up underutilized spectrum in the 70, 80, and 90 GHz bands to provide more innovative ways to provide and use broadband in aviation and maritime settings. But that's not all. We are maximizing the use of these bands by allowing them to also be used for small, lower-cost antennas that can assist with 5G backhaul. So on top of expanding the opportunities for connection in transit, we are growing the opportunities for the use of these bands in places where other backhaul efforts have proved challenging. This approach is smart—because in our post-pandemic world we expect to be connected everywhere and our approach to airwaves like these must keep up.

STATEMENT OF
COMMISSIONER GEOFFREY STARKS

Re: *Modernizing and Expanding Access to the 70/80/90 GHz Bands*, Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 20-133 (January 24, 2024)

In wireless, much of our recent attention appropriately has focused on mid-band spectrum. But over the long term, I wouldn't be surprised if the very short wavelengths all the way up in the 70/80/90 GHz bands also end up serving as a backbone of U.S. communications networks.

These bands are already being deployed on terra firma for 5G backhaul links that step in where carriers can't deploy fiber—and that perform well enough to ensure fiber backhaul isn't missed. Up in space, satellite operators see real potential for these bands to expand the capacity of our satellite broadband networks. And in the area in between, companies have been eyeing these bands to power faster and cheaper alternatives to satellite on planes, ships, and offshore platforms. All of this could translate into higher speeds, lower prices, and more choice for the everyday consumer, whether they're logging in from a city, suburb, or rural community or connecting to an in-flight Wi-Fi network on the go.

This item modernizes our rules to ensure that these services can develop and expand, and that's why I'm proud to support it. And while several steps remain for us, along with our federal partners, to stand up and fully implement the framework, I know that completing the job will remain a top priority. I'm especially glad that, as I urged, we made the framework more efficient for smaller innovators. There are so many important interests at play in these wireless proceedings, and that can make the regulatory process hard to navigate, especially for small businesses trying out something new. But our hard work can facilitate real progress and open up new possibilities for consumers.

I'd like to thank the Wireless Telecommunications Bureau, Office of Engineering and Technology, and staff elsewhere in the Commission who worked on this complex and cross-cutting item. It has my full support.