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Federal Communications Commission Record

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PUBLIC NOTICE

Federal Communications Commission
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DA 24-176
Released: March 1, 2024

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

CC Docket No. 02-6
WC Docket No. 21-93
WC Docket No. 06-122
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 for Failure to Comply with the Commission's Basic Filing Requirements[3]

[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] The Bureau will not consider requests for review or waiver without reference to the relevant FCC Form 471 application number and supporting documentation. *See* 47 CFR § 54.721 (setting forth general filing requirements for requests for review of decisions issued by the Administrator, including the requirement to provide supporting documentation); *see also Wireline Competition Bureau Reminds Parties of Requirements for Request for Review of Decisions by the Universal Service Administrative Company*, CC Docket Nos. 96-45, 02-6, WC Docket Nos. 02-60, 06-122, 10-90, 11-42, 13-184, 14-58, Public Notice, 29 FCC Rcd 13874 (WCB 2014) (reminding parties submitting appeals to the Bureau of the general filing requirements contained in the Commission's rules which, along with a proper caption and reference to the applicable docket number, require (1) a statement setting forth the party's

(continued….)

Tempe Preparatory Academy, AZ, No Application No. Given, CC Docket No. 02-6 (filed Oct. 31, 2023)

Dismissed on Reconsideration[4]

Columbus City Schools, OH, Application No. 221031913, Petition for Reconsideration, CC Docket No. 02-6 (filed Jan. 31, 2024)

Dismissed to Allow Appeal USAC to Make a Determination in the First Instance[5]

Net56, Inc. (Wheeling School District 21), IL, Application No. 606327, Request for Waiver, CC Docket No. 02-6 (filed Dec. 3, 2013)

Granted[6]

Appeal Filing Not Untimely[7]

(Continued from previous page)
interest in the matter presented for review; (2) a full statement of relevant, material facts with supporting affidavits and documentation; (3) the question presented for review, with reference, where appropriate, to the relevant Commission rule, order or statutory provision; and (4) a statement of the relief sought and the relevant statutory or regulatory provision pursuant to which such relief is sought); *Universal Service Contribution Methodology; Request for Review by Alternative Phone, Inc. and Request for Waiver*, WC Docket No. 06-122, Order, 26 FCC Rcd 6079 (WCB 2011) (*Alternative Phone, Inc. Order*) (dismissing without prejudice a request for review that failed to meet the requirements of section 54.721 of the Commission's rules).

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

[5] *See Petitions for Reconsideration by Little Falls Township School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order on Reconsideration, DA 23-110, para. 10 (WCB Feb. 8, 2023) (*Little Falls Township Order*) (dismissing without prejudice appeals that are filed with the Commission before being reviewed at USAC).

Parties seeking review of USAC decisions must first file an appeal with USAC. *See* 47 CFR § 54.719(a). Although Net56, Inc. appealed to USAC in the first instance, USAC denied its appeal on new and unrelated grounds that the petitioner did not have the opportunity to address with USAC. As a result, Net56, Inc. had no choice but to file its appeal with the Commission. Because this is an appeal that USAC has not had an opportunity to review, we now direct USAC on remand to review Net56, Inc.'s appeal and make a determination in the first instance.

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

[7] *See, e.g., Requests for Review of the Decision of the Universal Service Administrator by Calhoun School*, CC Docket Nos. 96-45 and 97-21, Order, 18 FCC Rcd 356, para. 8-9 (WCB 2003) (*Calhoun School Order*) (finding that an appeal was not untimely because petitioner was seeking review of a different decision than the one USAC was basing the 60-day appeal deadline clock from); *Request for Review of a Decision of the Universal Service Administrator by Sundale Elementary School District; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 29 FCC Rcd 4124 (WCB 2014) (*Sundale Elementary School District Order*) (remanding an appeal to USAC that was timely filed); 47 CFR § 54.720(a). We make no finding on the underlying
(continued….)

La Paloma Academy, AZ, Application No. 449071, Request for Review, CC Docket No. 02-6 (filed Mar. 24, 2021)[8]

Yeled Vyalda Early Childhood Center, NY, Application No. 181024801, Request for Waiver, CC Docket No. 02-6 (filed May 22, 2020)

Contract Agreement in Place[9]

Union Elementary School District, CA, Application No. 201009772, Request for Waiver, CC Docket No. 02-6 (filed Mar. 19, 2021)

Eligible Services[10]

Burt Township School District, MI, Application No. 211039613, Request for Review, CC Docket No. 02-6 (filed June 4, 2021, supplemented Aug. 23, 2021)

Incorrect Service Start Date on FCC Form 486[11]

Rutland Township Community Consolidated School District #230, IL, Application No. 201005287, Request for Waiver, CC Docket No. 02-6 (filed Apr. 26, 2021)

Ministerial and/or Clerical Errors[12]

Montgomery County Public Schools, MD, Application No. 191027905, Request for Waiver, CC Docket No. 02-6 (filed Mar. 30, 2021)

(Continued from previous page)
issues in these appeals and remand these applications to USAC to make a determination on the merits. *See supra* note 6.

[8] On remand, we instruct USAC to review La Paloma Academy's appeal with respect to the merits of the original Commitment Adjustment Letter dated March 5, 2020.

[9] *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*) (granting on the merits when petitioners submitted evidence to the Commission demonstrating that they had a valid, signed contract in place).

[10] *See, e.g., Requests for Waiver and Review of Decisions of the Universal Service Administrator by Aberdeen School District 5 et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 2080 (WCB 2012) (*Aberdeen School District 5 Order*) (finding that USAC erred in its eligibility determination regarding the services petitioners sought for funding).

[11] *Request for Review and/or Waiver by Glendale Unified School District, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 21 FCC Rcd 1040 (WCB 2006) (*Glendale Unified School District Order*); *see also Request for Waiver by Harvey Public Library District, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 23 FCC Rcd 15419 (WCB 2008) (*Harvey Public library District Order*) (both orders granting waiver requests when the applicants inadvertently listed the wrong service start date on their FCC Forms 486).

[12] *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, n.20 (WCB 2010) (*Ann Arbor Public Schools Order*) (granting waivers where the applicant selected the wrong category of service in its FCC Form 471); *Requests for Review of Decisions of the Universal Service Administrator by Archer Public Library et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 23 FCC Rcd 15518, 15521 n.19 (WCB 2008) (*Archer Public Library Order*) (permitting applicant to correct a pre-discount price on its FCC Form 471 to conform to the price on the source document).

North Royalton City School District, OH, Application No. 191019677, Request for Waiver, CC Docket No. 02-6 (filed Mar. 29, 2021)

St. Helen School, OH, Application No. 191035087, Request for Waiver, CC Docket No. 02-6 (filed Apr. 6, 2021)

Tarrytown Union Free School District, NY, Application No. 201018167, Request for Waiver, CC Docket No. 02-6 (filed Mar. 25, 2021)

Ministerial and/or Clerical Errors – Competitive Bidding[13]

Jurupa Unified School District, CA, Application No. 201021538, Request for Waiver, CC Docket No. 02-6 (filed Mar. 29, 2021)

Ministerial and/or Clerical Errors – Invoicing[14]

Phonscope Inc. (New Caney Independent School District), TX, Application No. 191028808, Request for Waiver, CC Docket No. 02-6 (filed Apr. 8, 2021)

The Collegiate School of Memphis, TN, Application No. 221031311, Request for Waiver, CC Docket No. 02-6 (filed Jan. 4, 2024)

Permissible Service Implementation Delay[15]

Sumner-Bonney Lake School District, WA, Application No. 221026636, Request for Waiver, CC Docket No. 02-6 (filed Jan. 26, 2024)

Service Chosen Within Scope of FCC Form 470[16]

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[13] *See, e.g., Requests for Waiver and Review of Decisions of the Universal Service Administrator by Aberdeen School District et al.; Schools and Libraries Universal Service Support Mechanism,* CC Docket No. 02-6, Order, 27 FCC Rcd 1941, 1941-42, para. 1 (WCB 2012) (*Aberdeen School District Order*) (finding good cause to waive sections 54.504 and 54.511 of the Commission's rules because the competitive bidding errors made on their applications were ministerial or clerical and do not warrant a complete rejection of their applications).

[14] *See Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by Accomack County Public School et al.; Schools and Libraries Universal Service Support Mechanism,* CC Docket No. 02-6, Order, DA 23-48, paras. 8-10 (WCB Jan. 19, 2023) (*Accomack County Public School Order*) (permitting applicants to correct clerical errors related to invoicing, including where petitioners' invoice filing deadline extension requests were not processed because petitioners inadvertently requested an invoice filing deadline extension for the wrong funding year or left off one or more funding request numbers from a timely-filed invoice filing deadline extension request due to a clerical or computer error).

[15] *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, 13652-53, 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).

[16] Jackson Hinds Library System sought bids on 1 Gbps connections for its 15 libraries, but also noted that it would "like to explore various bandwidth options" and that "[a]lternative proposals and upgrade paths will be considered." It chose the most cost effective option which offered 1 Gbps service to 14 library locations and 100 Mbps at the 15th location. USAC reduced funding to the Jackson Hinds Library System because of the one library receiving a 100

(continued….)

Jackson Hinds Library System, MS, Application No. 201024820, Request for Review, CC Docket No. 02-6 (filed Apr. 12, 2021)

Granted in Part/Denied in Part

Considering Price of Ineligible Items as Primary Factor[17]

Saddleback Valley Unified School District, CA, Application Nos. 201022787, 201022937, Request for Waiver, CC Docket No. 02-6 (filed May 3, 2021)

Denied

Competitive Bidding Violation[18]

Flint City School District, MI, Application No. 899468, Request for Review and/or Waiver, CC Docket No. 02-6 (filed May 9, 2014)

Cost-Effectiveness[19]

(Continued from previous page)
Mbps connection "because the 100 Mbps internet service was not requested on the FCC Form 470 and RFP that established the competitive bidding process for this FRN."

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 disagree with USAC's conclusion and find that the winning bid was properly selected with the terms of service within the scope of the FCC Form 470. *See, e.g., Request for Review of a Decision of the Universal Service Support Mechanism by Grand Rapids Public Schools*, CC Docket No. 06-6, Order, 23 FCC Rcd 15413, 15416, para. 6 (WCB 2008) (*Grand Rapids Public Schools Order*) (conducting de novo review of the facts and circumstances to determine that USAC's decision was in error).

[17] We grant Saddleback Valley Unified School District's waiver request with respect to application number 201022787. We find that the applicant would have selected the same vendor if it had excluded the price of ineligible items from the "cost" criterion. In this instance, the E-Rate eligible cost and the E-Rate ineligible cost were both lower than the next closest bid. We deny Saddleback Valley Unified School District's waiver request with respect to application number 201022937 because the applicant selected a vendor where the E-Rate eligible cost was higher than the next closest bid. *See, e.g., Requests for Review of Decisions of the Universal Service Administrator by Coolidge Unified School District 21; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 28 FCC Rcd 16907 (WCB 2013) (*Coolidge Unified School District 21 Order*) (waiving sections 54.504 and 54.511 of the Commission's rules only in instances where the record demonstrated that the applicant would have selected the same vendor if it had excluded the price of ineligible items from the "cost" criterion because the E-Rate eligible cost and the E-Rate ineligible cost were both lower than the next closest bid).

[18] *See, e.g., Aberdeen School District Order*, 22 FCC Rcd at 8763, para. 10 (2007) (denying appeal where applicant failed to file a new FCC Form 470 and solicit bids in the year for which it sought services, thereby circumventing the competitive bidding process).

[19] *See, e.g., Request for Review of A Decision of the Universal Service Administrator by Truth or Consequences Municipal Schools*, CC Docket No. 02-6, Order, 27 FCC Rcd 10078 (WCB 2012) (*Truth or Consequences Municipal Schools Order*) (denying appeal where applicant failed to evaluate all the bids it received); *Requests for Review of Decisions of the Universal Service Administrator by Central Islip Free Union School District et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 8630, 8636, paras. 11-12 (WCB 2011) (*Central Islip Free Union School District Order*) (denying appeal where there is no documentation showing how bids were evaluated, scored, or ranked).

Cincinnati City School District, OH, Application Nos. 868322, 930434, Request for Review, CC Docket No. 02-6 (filed Dec. 1, 2014)

Late-Filed Invoice or Invoice Deadline Extension[20]

Bettendorf Community School District, IA, Application Nos. 221023467, 221023482, Request for Waiver, CC Docket No. 02-6 (filed Feb. 6, 2024)

Fort Morgan School District RE 3, CO, Application No. 221016282, Request for Waiver, CC Docket No. 02-6 (filed Jan. 29, 2024)

North Butler School District, IA, Application No. 221039482, Request for Waiver, CC Docket No. 02-6 (filed Feb. 5, 2024)

Red Light Rule Violation Prevented Timely Invoicing[21]

Robert Treat Academy, NJ, Application No. 191016177, Request for Waiver, CC Docket No. 02-6 (filed Mar. 26, 2021)

Relying on FCC Form 470 That Did Not Seek Bids on Types of E-Rate Services Later Requested[22]

Bristol School District #1, WI, Application No. 201028163, Request for Waiver, CC Docket No. 02-6 (filed Apr. 16, 2021)

College Place Public Schools, WA, Application No. 191013289, Request for Waiver, CC Docket No. 02-6 (filed Dec. 12, 2022)

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[20] 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).

[21] Petitioners are seeking a waiver of the invoice deadline because a debt owed to USAC prevented the entities from having their invoices approved for payment ("red light rules"). We find that USAC properly denied the petitioners invoices because the entities were on red light at the time of the invoice filings. *See, e.g., Requests for Review of Decisions of the Universal Service Administrator by Net56, Inc., Wheeling School District 21, Schools and Libraries Support Mechanism*, CC Docket No. 02-6, Order, 28 FCC Rcd 13122, 13126, para. 6 (WCB 2013) (*Net56 Order*) (denying a request for review because the E-Rate applicant owed a debt to USAC). Commission rules specify that entities must pay debts within 30 days of receiving notice of the debt and that failing to do so results in the dismissal of applications or requests for authorization ("red light rules"). *See* 47 CFR § 1.1910(b)(3). We note that subsequent repayment of the delinquent amount that is in violation of the red light rule does not reverse the dismissal of the petitioner's request. *See id.* (denying funding of applications for E-Rate funding even though the red light debt had been satisfied). We also find that a waiver of the invoice deadline is not merited under these circumstances. *See* 47 CFR § 54.514. *See also, e.g., Ada School District Order,* 31 FCC Rcd at 3836, para. 8 (denying requests for waiver of the Commission's invoice filing deadline rule for petitioners that failed to demonstrate extraordinary circumstances justifying a waiver).

[22] *See, e.g., Request for Review of a Decision of the Universal Service Administrator by Albert Lea Schools et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 24 FCC Rcd 4533, 4541, para. 14 (WCB 2009) (*Albert Lea Schools Order*); *Petition for Reconsideration by Chicago Public Schools; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 29 FCC Rcd 9289, 9289-90, para. 5 (WCB 2014) (*Chicago Public Schools Order*) (denying appeals of applicants that filed FCC Forms 470 that did not include the types of services for which the applicants later requested E-Rate funding).

Hamilton County Community Unit District No. 10, IL, Application No. 201013688, Request for Waiver, CC Docket No. 02-6 (filed Apr. 29, 2021)

Untimely Filed Appeals or Waiver Requests[23]

Adelphoi Education School District, PA, Application No. 211018229, Request for Waiver, CC Docket No. 02-6 (filed Jan. 24, 2024)

Beth Rochel School, NY, Application No. 763927, Request for Waiver, CC Docket No. 02-6 (filed Jan. 8, 2024)

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

Sweetser, ME, Application No. 221008000, Request for Waiver, CC Docket No. 02-6 (filed Dec. 12, 2023)

Warren Township Schools, NJ, Application No. 221010538, Request for Waiver, CC Docket No. 02-6 (filed Dec. 27, 2023)

Emergency Connectivity Fund Program
WC Docket No. 21-93

Dismissed as Moot – USAC Took Action Requested[24]

Lodi School District, WI, Application No. ECF202201820, Request for Waiver, WC Docket No. 21-93 (filed Feb. 9, 2024)[25]

Granted[26]

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[23] *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).

[24] *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).

[25] To the extent a waiver for early delivery is needed, we grant Lodi School District a waiver for the early delivery of the equipment. *See infra* note 27.

[26] We remand these applications to USAC and direct USAC to complete its review of the applications and issue a funding decision based on a complete review and analysis, no later than 90 calendar days from the release date of this Public Notice. In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the services or the petitioners' applications. We also waive sections 54.1711(d) and (e) of the Commission's rules and direct USAC to waive any procedural deadline that might be necessary to effectuate our ruling. *See* 47 CFR § 54.1711(d)-(e) (codifying the invoice filing deadline and establishing the service delivery dates for equipment, other non-recurring services, and recurring services).

Early Delivery[27]

County of Woodford Schools, IL, Application No. ECF202201820, Request for Waiver, WC Docket No. 21-93 (filed Feb. 9, 2024)

St. Mary's Elementary School, MN, Application No. ECF202107744, Request for Waiver, WC Docket No. 21-93 (filed Jan. 24, 2024)

Responsible Party for Recovery of Improperly Disbursed Funds[28]

Quality Education & Development (Magen Israel Gan Israel Center), NY, Application No. ECF202104588, Request for Review and/or Waiver, WC Docket No. 21-93 (filed Dec. 14, 2023)[29]

Waiver of Appeal Filing Deadline[30]

Rhode Island Mayoral Academy Blackstone Valley, RI, Application No. ECF202114948, Request for Waiver, WC Docket No. 21-93 (filed Feb. 1, 2024)

Waiver of the ECF Invoice Filing Deadline[31]

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[27] *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).

[28] *See Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45 et al., Order on Reconsideration and Fourth Report and Order, 19 FCC Rcd 15252, 15257, para. 15 (2004) (providing that the recovery action is to be directed to the party or parties that committed the rule or statutory violation in question). Consistent with the Commission's decision to adopt the similar appeal and waiver rules that govern all of the Universal Service Fund programs, including the E-Rate program, and to leverage existing E-Rate processes and forms in the Emergency Connectivity Fund program, we rely on E-Rate program precedent to resolve these petitions for waiver of the Emergency Connectivity Fund program rules. *See* 47 CFR § 54.1710 (a)(1)(xiii) (stating that failure to comply with ECF program rules may result in recovery of funding).

[29] Today's decision is limited to the issue of who is a responsible party for the recovery action that was raised in Quality Education & Development's appeal. We note that there is also a request for review and/or waiver filed by the applicant, Magen Israel Gan Israel Center, appealing the administrator's decision to recover funding for application no. ECF202104588, which remains pending before the Bureau. To the extent Quality Education & Development's filing is also appealing the administrator's decision to recover funding, we make no finding herein and that issue remains pending before us.

[30] *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 26.

[31] *See, e.g., Requests for Waiver by Bluum USA Inc et al.; Establishing Emergency Connectivity Fund to Close the Homework Gap*, WC Docket No. 21-93, Order, DA 24-109, paras. 6, 9 (WCB Feb. 6, 2024) (extending the ECF program's invoice filing deadline for first and second application filing window funding requests by 60 days because the applicant or service provider was unable to timely file due to administrative issues). We waive the petitioners' invoice filing deadline and provide 60 days from the release date of this Public Notice to file invoices with USAC.

Freer Independent School District, TX, Application No. ECF202105651, Request for Waiver, WC Docket No. 21-93 (filed Jan. 15, 2024)

Jones Academy, OK, Application No. ECF202109516, Request for Waiver, WC Docket No. 21-93 (filed Feb. 6, 2024)

Mineral Springs Public Schools, Application No. ECF202113556, Request for Waiver, WC Docket No. 21-93 (filed Dec. 15, 2023)

Contribution Methodology
WC Docket No. 06-122

Dismissed Without Prejudice

Request for Waiver of Form 499-A Late Filing Fees[32]

MOATiT, LLC, Request for Waiver, WC Docket No. 06-122 (filed Nov. 13, 2023)

Dismissed as Moot

Request for Waiver of Form 499-A Late Filing Fees[33]

Ontario Systems LLC, Letter of Appeal, WC Docket No. 06-122 (filed Dec. 11, 2023)

Request for Waiver of Form 499-Q Revision Deadline and Expungement of Debt[34]

Kingsburg Media Foundation, Letter of Appeal, WC Docket No. 06-122 (filed Nov. 1, 2023)

Rural Health Care Program
WC Docket No. 02-60

Granted

Competitive Bidding – Ministerial and/or Clerical Error[35]

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[32] 47 CFR § 54.721. *See, e.g.*, *Universal Service Contribution Methodology, Request for Review of Decision of Universal Service Administrator and Request for Waiver by CML Communications LLC*, WC Docket No. 06-122, Order, 26 FCC Rcd 335 (WCB 2011); *Universal Service Contribution Methodology, Request for Review of Decision of Universal Service Administrator and Request for Waiver by Alternative Phone, Inc.*, WC Docket No. 06-122, Order, 26 FCC Rcd 6079 (WCB 2011); *Universal Service Contribution Methodology, Request for Review of Decision of Universal Service Administrator by Dorial Telecom LLC*, WC Docket No. 06-122, Order, 26 FCC Rcd 3799 (WCB 2011) (all finding requests procedurally defective for failure to comply with 47 C.F.R. § 54.721).

[33] *See Universal Service Contribution Methodology, Requests for Waiver of Decisions of the Universal Service Administrator by Ambess Enterprises Inc., et al.*, WC Docket No. 06-122, Order, 25 FCC Rcd 3722 (WCB 2010) (*Ambess Enterprises Order*) (dismissing several petitions for waiver of USAC decisions because subsequent USAC action has provided relief sought by petitioners).

[34] *See id.* (dismissing several petitions for waiver of USAC decisions because subsequent USAC action has provided relief sought by petitioners).

[35] *See Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, New Orleans, LA, et al.*, CC Docket No. 02-6, Order, 21 FCC Rcd 5316, 5320 (2006) (granting appeals of decisions by USAC due to minor clerical or ministerial errors in the applications). When Compass submitted its FCC Form
(continued….)

Compass Health, Inc., MO, Request for Review, WC Docket No. 02-60, Funding Request No. RHC20230021890 (filed Nov. 16, 2023)

Service Provider Identification Number Change Request[36]

Palmetto State Providers Network, SC, Petition for Reconsideration, WC Docket No. 02-60, Funding Request No. RHC20220012612 (filed Jan. 31, 2024)

Waiver of Appeal Filing Deadline[37]

(Continued from previous page)
462, it mistakenly selected the competitive bidding exemption of "Annual Undiscounted Cost of $10,000 or less" when in fact no competitive bidding exemption applied. *See* 47 CFR § 54.622(a). Compass received no bids in response to its request for Healthcare Connect Fund Program supported services to its Osceola site for funding year 2023. Compass then selected a service provider of its choosing. Accordingly, we find that Compass properly selected a service provider according to program rules, and that the mistaken indication of a bidding exemption amounts to a harmless error. We therefore grant Compass' appeal and remand the funding request to USAC for further action. *See Promoting Telehealth in Rural America*, WC Docket No. 17-310, Report and Order, 34 FCC Rcd 7335, 7376, n.186 (*Promoting Telehealth Report and Order*) (stating that, when no bids are received, the health care provider has the option to "(1) repost the [Request for Services] for an additional 28 days to solicit bids; (2) use a current contract as a 'standing bid' to obtain the requested service or equipment; or (3) select a service provider of its choosing.").

[36] *See Requests for Review of Decisions of the Universal Service Administrator by Bay Shore Union Free School District, et al.*, Schools and Libraries Universal Service Support Mechanism, et al., CC Docket No. 02-6, Order, 23 FCC Rcd 15537, 15540, para. 8 (WCB 2008) (permitting a service provider change in the E-rate program when the original service provider was unable to provide the requested services and all other program requirements were met.). We find on reconsideration that the petitioner's request meets the RHC Program requirements for a service provider identification number (SPIN) change. *See* 47 CFR § 54.625(b)(1) – (2) (permitting a SPIN change when "[t]he 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."). Palmetto State Providers Network (PSPN) received no bids in response to its Request for Services to its Stonewall Jackson Memorial Hospital site for funding year 2022 and selected its original service provider, CDW Government, LLC (CDW), to provide the equipment. PSPN accepted equipment pricing that was then available pursuant to an existing contractual relationship with CDW. USAC issued a Funding Commitment Letter ("FCL") to PSPN, approving funding for eligible equipment to be provided by CDW. After issuance of the FCL, CDW no longer could provide the equipment at the contracted price. Because there were no bids for Healthcare Connect Fund services, PSPN then selected a service provider of its own choosing that could provide the equipment. *See Promoting Telehealth Report and Order*, 34 FCC Rcd at 7376, n.186 (stating that, when no bids are received, the health care provider has the option to "(1) repost the [Request for Services] for an additional 28 days to solicit bids; (2) use a current contract as a 'standing bid' to obtain the requested service or equipment; or (3) select a service provider of its choosing."). Accordingly, we find that PSPN has a legitimate reason for an operational SPIN change because the service provider was unable to perform, and PSPN properly selected a new service provider.

[37] *See Rural Health Care Support Mechanism; Promoting Telehealth in Rural America*, WC Docket Nos. 02-60 and 17-310, Order, 36 FCC Rcd 7051, 7063, para. 32 (WCB 2021) (noting that "[a] petitioner may seek a waiver of the deadline to file an appeal or waiver request if it reasonably attempted to meet the deadline but was unable to do so due to the COVID-19 pandemic and it filed within a reasonable amount of time after the deadline."); *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket Nos. 06-122, 21-93, 02-60, and 18-213, Public Notice, DA 23-557, 2023 WL 4318190, at *10 & n.36 (WCB 2023) (granting 60-day appeal deadline waiver because the petitioner faced unprecedented challenges caused by the COVID-19 pandemic). We grant Parkview's request for waiver of the 60-day appeal filing deadline because Parkview's failure to appeal the funding end date in the Funding Commitment Letter dated August 12, 2021 occurred during its peak COVID-19 hospital admissions and its severe staffing shortage related to the COVID-19 pandemic. We make no finding on the underlying substantive issues in this appeal and remand to USAC to
(continued….)

Parkview Consortium, IN, Request for Review and Waiver, WC Docket No. 02-60, Funding Request No. 20869671 (filed May 6, 2022)

Waiver of Competitive Bidding Rules – Evergreen Contract Requirements[38]

Rural Nebraska Healthcare Network, NE, Request for Review or Waiver, WC Docket No. 02-60, Funding Request No. 20748761 (filed Nov. 29, 2021)

Waiver of Invoice Filing Deadline[39]

Board of Public Utilities (HCMC Surgery Center, Henry County Medical Center & Henry County Medical Center – Eagle Creek Clinic), TN, Request for Waiver, WC Docket No. 02-60, Funding Request Nos. RHC20220001310, RHC20220002825, RHC20220002826 (filed Feb. 23, 2024)

Coldwater Board of Public Utilities (PMHS – Promedica Coldwater Regional Hospital), MI, Request for Waiver, WC Docket No. 02-60, Funding Request No. RHC 20220006124 (Filed Feb. 23, 2024)

Colorado Hospital Association Broadband Services, CO, Request for Waiver, WC Docket No. 02-60, All Funding Request Numbers for Funding Year 2022 (filed Feb. 23, 2024)

Cutting Edge Communications, Inc. (Shoshone Medical Center), ID; Health Group Telecommunications (Lecom – Northwestern Area Health Center, Lecom Health, Lecom – Waterford Family Practice & Corry Memorial Hospital), PA; MNW Telecom, Inc. (Goshen Health Hospital, Anglemeyer Family Clinic, Milford Family Physicians, Primecare, Shipshewana Family Medicine & Goshen Physicians – Syracuse Family Medicine), IN, Request for Waiver, WC Docket No. 02-60, Funding Request Nos. RHC20220006259, RHC20220007487, RHC20220007582, RHC20220007582, RHC20220007587, RHC20220007587, RHC20220007587, RHC20220007587, RHC20220007587, RHC20220007587, RHC20220007664, RHC20220010963, RHC20220010966, RHC20220010968, RHC20220007487, RHC20220007582, RHC20220007582, RHC20220007587, RHC20220007587, RHC20220007587, RHC20220007587, RHC20220007587, RHC20220007587, RHC20220007587, RHC20220007664, RHC20220010963, RHC20220010966, RHC20220010968, RHC20220000702, RHC20220001253, RHC20220001254, RHC20220001255, RHC20220001257, RHC20220001258, RHC20220005761, RHC20220007392 & RHC20220010978 (filed Feb. 26,

(Continued from previous page)
determine whether the funding end date in the Funding Commitment Letter was erroneous based on the arguments and information that Parkview submitted in this appeal to the Commission. We direct USAC to conduct outreach to Parkview if additional information is required.

[38] *See Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 35 FCC Rcd 2922, 2925, para. 8 (WCB 2020) (waiving section 54.622(i)(3)(iii)(A) of the Commission's rules to permit health care providers whose evergreen contracts expire in funding year 2019 to elect to extend the terms of these contracts to cover funding year 2020, even if those contracts do not provide an option for another voluntary extension).

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

2024)[40]

Electric Plant Board of the City of Franklin (Medical Center Primary Care – Franklin & Medical Center – Franklin), KY, Request for Waiver, WC Docket No. 02-60, Funding Request Nos. RHC20220001596, RHC20220002755 (filed Feb. 22, 2024)

First Communications, Inc. (Morris Hospital, IL & Trinity Health Consortium, MI), Request for Waiver, WC Docket No. 02-60, Funding Request Nos. RHC20220012802, RHC20220010305 (filed Feb. 2, 2024)

Florida Broadband, Inc. (The Cleveland Clinic Foundation Consortium), FL, Request for Waiver, WC Docket No. 02-60, Funding Request No. RHC20220007399 (filed Feb. 26, 2024)[41]

Guadalupe Valley Electric Cooperative, Inc. (GCMH – Sievers Medical Clinic – Shiner, Gonzales County Memorial Hospital – Sievers Medical Clinic & Connally Urgent Care Center), TX, Request for Waiver, WC Docket No. 02-60, Funding Request Nos. RHC20220001252, RHC20220001250, RHC20220001006 (filed Feb. 22, 2024)

Guttenberg Municipal Hospital & Humboldt County Memorial Hospital, IA, Request for Waiver, WC Docket No. 02-60, Funding Request Nos. RHC 202200029991, RHC20220002992, RHC20220002993, RHC 20220002994, RHC 20220003494 (filed Feb. 23, 2024)

Health Group Telecommunications, Inc. (Corry Memorial Hospital, Lecom Health, Lecom - Northwestern Area Health Center & Lecom - Waterford Family Practice), PA, Request for Waiver, WC Docket No. 02-60, All Funding Request Numbers for Funding Year 2022 (filed Feb. 25, 2024)

HNc Services (Guttenberg Municipal Hospital & Humboldt County Memorial Hospital), IA, Request for Waiver, WC Docket No. 02-60, Funding Request Nos. RHC20220003491, RHC20220003492, RHC20220002993, RHC20220002994, RHC20220003494 (filed Feb. 26, 2024)

Kinetix Broadband (Lasalle Hospital Service District #1 d/b/a Hardtner Medical Center), LA, Request for Waiver, WC Docket No. 02-60, Funding Request No. RHC20220012376 (filed Feb. 23, 2024)

MNW Telecom Inc (Goshen Health Hospital), IN, Request for Waiver, WC Docket No. 02-60, All Funding Request Numbers for Funding Year 2022 (filed Feb. 20, 2024)

New England Telehealth Consortium, NH, Request for Waiver, WC Docket No. 02-60, Funding Request No. RHC20220010853 (Feb. 26, 2024)

Panhandle Telephone Cooperative, Inc. (Ochiltree General Hospital), TX, Request for Waiver, WC Docket No. 02-60, Funding Request No. 2221787 (filed Feb. 20, 2024)

[40] In addition to the funding requests listed in this entry, the petitioner's filing sought waiver for other funding requests that received a waiver of the invoice filing deadline in other entries in this Public Notice.

[41] In addition to the funding requests listed in this entry, the petitioner's filing sought waiver for other funding requests that received a waiver of the invoice filing deadline in other entries in this Public Notice.

River Hills Community Health Center, IA, Request for Waiver, WC Docket No. 02-60, Funding Request No. RHC20220009136 (filed Feb. 23, 2024)

Denied

Competitive Bidding[42]

Lakes Regional Community Center, TX, Request for Review, WC Docket No. 02-60, Funding Request No. 19620971 (filed Aug. 30, 2021)

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

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[42] *See Request for Review, Franciscan Skemp Waukon Clinic, Waukon, Iowa, Rural Health Care Universal Service Support Mechanism*, WC Docket No. 02-60, Order, 29 FCC Rcd 11714, 11717 (WCB 2014) (holding that, under the *Kalamazoo* precedent, an applicant failed to comply with the Commission's competitive bidding requirements where the agreement with its selected service provider was entered into before the Allowable Contract Selection Date (ACSD) but provided for new services that were not a continuation of services from the previous funding year). *See also Request for Review of the Decision of the Universal Service Administrator by Kalamazoo Public Schools, Kalamazoo, Michigan, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order on Reconsideration, 17 FCC Rcd 22154, 22157-58 (WCB 2002) (*Kalamazoo*) (holding that an applicant may use a contract entered into before the ACSD as a standing bid if: (1) the applicant is choosing to continue service under an existing contract; (2) the applicant competitively bid the services for the new funding year; and (3) the applicant decides, after reviewing the competitive bids, to continue with the existing contract). Lakes Regional Community Center (LRCC) filed an FCC Form 461 requesting bids for funding year 2019 services. The request was posted on February 25, 2019, thereby establishing an ACSD of March 26, 2019. Three bids were received, to which LRCC added as a "standing bid" a service agreement that it signed in June 2018 for services set to commence in April 2019 at the earliest. LRCC selected the service provider with the standing bid, but because this agreement was entered into before the ACSD and because LRCC was not continuing services under this agreement because the services had not commenced, the agreement may not serve as a standing bid consistent with the Commission's competitive bidding rules.

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

In the Matter of	)	
	)	
Maine Family Broadcasting, Inc.	)	File No.: EB-TCD-21-00033078
	)	CD Acct. No.: 202432170001
Licensee of WBGR-LD	)	FRN: 0005004064
Bangor/Dedham, Maine	)	
Facility ID Number: 33959	)	

ORDER

Adopted: March 14, 2024 **Released: March 14, 2024**

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) has entered into a Consent Decree to resolve its investigation into whether Maine Family Broadcasting, Inc. (MFB), licensee of WBGR-LD, Bangor/Delham, Maine, violated section 79.1(c) by failing to pass through closed captioning on video programming received with captions and section 1.17 for failing to provide complete and timely answers to the Bureau's inquiries. Closed captioning on programming provides individuals who are deaf or hard-of-hearing vital access to news, entertainment, and information. The closed captioning rules ensure that video programming distributors take the necessary measures to make closed captioning in programming available to consumers. To settle this matter, MFB admits that it failed to pass through captioning on video programming, will implement a compliance plan to ensure that captioning is passed through to consumers intact, and will pay a $2,500 civil penalty, which can become a $15,000 civil penalty in the event that MFB violates provisions of the Consent Decree.

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 MFB's compliance with section 79.1 of the Commission's rules.[1]

3. In the absence of material new evidence relating to this matter, we do not set for hearing the question of MFB's basic qualifications to hold or obtain any Commission license or authorization.[2]

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

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

[1] 47 CFR § 79.1.

[2] *See id.* § 1.93(b).

6. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to James W. McLeod, President, Maine Family Broadcasting, LLC, 2881 Ohio St., Suite 6, Bangor, ME 04401.

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Chief
Enforcement Bureau

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

In the Matter of	)	
	)	
Maine Family Broadcasting, Inc.	)	File No.: EB-TCD-21-00033078
Licensee of WBGR-LD	)	
Bangor/Dedham, Maine	)	CD Acct. No.: 202432170001
	)	
	)	FRN: 0005004064
	)	

CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission (FCC or Commission) and Maine Family Broadcasting, Inc. (MFB), licensee of low power television station WBGR-LD (WBGR), Bangor/Maine, by their authorized representatives hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into WBGR's violation of the Commission's rules related to video programming. The Enforcement Bureau has determined that WBGR engaged in practices that violate section 79.1(c) of the Commission's rules (Rules). MFB also failed to provide complete and timely answers to the Bureau's inquiries in violation of section 1.17 of the Rules. To resolve this matter, MFB agrees to implement a compliance plan that ensures closed captioning is transmitted to consumers intact and pay a $2,500 civil penalty, which can become a $15,000 civil penalty in the event that MFB violates provisions of this Consent Decree.

I. DEFINITIONS

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

(a) "Act" means the Communications Act of 1934, as amended.[1]

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

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

(d) "CD Acct No." means account number 202432170001, associated with payment obligations described in paragraph 20 of this Consent Decree.

(e) "Closed Captioning" shall have the same meaning as the term is defined in section 79.1(a)(2) of the Rules.[2]

(f) "Closed Captioning Rules" means section 79.1 of the Rules and any other rules the Commission adopts governing the Closed Captioning of televised video programming.

(g) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.

(h) "Communications Laws" means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which WBGR is

[1] 47 U.S.C. § 151 *et seq.*

[2] 47 CFR § 79.1(a)(2).

subject by virtue of its business activities, including but not limited to the Closed Captioning Rules.

(i) "Complaint" means any communications MFB or WBGR receives, whether written or oral, resulting from a person or entity contacting the Commission, MFB, WBGR, or a third-party to raise issue(s) or comment(s) about Closed Captioning issues on WBGR.

(j) "Compliance Plan" means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 17.

(k) "Covered Employees" means all employees and agents of MFB and WBGR who perform, supervise, oversee, or manage the performance of, duties that relate to MFB's and WBGR's responsibilities under the Communications Laws, including the Closed Captioning Rules.

(l) "Effective Date" means the date by which both the Bureau and MFB have signed the Consent Decree and the Bureau has released an Adopting Order.

(m) "Investigation" means the investigation commenced by the Bureau in EB-TCD-21-00033078 regarding whether MFB/WBGR violated the Closed Captioning Rules.

(n) "Letter of Inquiry" or "LOI" means the Letter of Inquiry issued by the Bureau to WBGR on December 8, 2021, in File No. EB-TCD-21-00033078.

(o) "MFB" or Company" means Maine Family Broadcasting, Inc., licensee of WBGR-LD, and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.

(p) "Multichannel Video Programming Distributor" or "MVPD" shall have the same meaning as the term is defined in section 76.1200(b).

(q) "Operating Procedures" means the standard internal operating procedures and compliance policies established by MFB and WBGR to implement the Compliance Plan.

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

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

(t) "Supplemental LOI" means the Letter of Inquiry issued by the Bureau to MFB on April 7, 2022 in File No. EB-TCD-21-00033078.

(u) "Video Programmer" shall have the same meaning as the term is defined in section 79.1(a)(9) of the Rules.[3]

(v) "Video Programming" shall have the same meaning as the term is defined in section 79.1(a)(10).[4]

(w) "Video Program Distributor" or "VPD" shall have the same meaning as the term is defined in section 79.1(a)(11).[5]

(x) "WBGR-LD" means the broadcast station assigned Facility ID 33959.

[3] *Id.* § 79.1(a)(9).

[4] *Id.* § 79.1(a)(10).

[5] *Id.* § 79.1(a)(11).

II. BACKGROUND

3. Closed Captioning is designed to ensure that Video Programming is accessible to individuals with hearing disabilities.[6] In adding section 713 to the Act, Congress noted that the Commission should ensure Closed Captioning is "an integral part of Video Programming as soon as possible to provide persons with hearing disabilities with the same opportunity to share in the benefits provided by television programming that is available to others."[7] The Commission adopted rules that, among other things, required Video Programming Distributors (VPDs) to: (1) pass through Closed Captions received from Video Programmers to receiving television households with the original Closed Captioning data intact;[8] (2) monitor and maintain their equipment and signal transmissions;[9] and (3) maintain records of their monitoring and maintenance activities.[10]

4. A Letter of Inquiry (LOI) issued by the Bureau constitutes a Commission order directing the recipient to provide specified information and documents, in the manner directed, within the stated response period. Any failure to respond in a complete, diligent, or timely manner to an LOI constitutes a violation of a Commission order and, thus, a violation of the Act.[11] Additionally, Section 1.17 of the Rules requires Commission licensees to be responsive to Commission inquiries.

5. MFB is licensee of WBGR-LD, a low power TV station (Bangor/Dedham, Maine) that broadcasts MeTV network programming and religious programming.[12] As a broadcaster, WBGR-LD is a VPD, and, as described above, is required to comply with the Closed Captioning Rules.[13]

6. In June of 2021, a WBGR viewer discovered that MeTV programming shown on the station failed to contain Closed Captioning.[14] The complainant contacted the complainant's cable provider, which informed the complainant that MeTV programming was not captioned because WBGR failed to include Closed Captioning in its signal transmissions to them.[15] On July 5, 2021, the complainant contacted WBGR to report the lack of Closed Captioning on MeTV programming, and was told that WBGR was getting new equipment that would allow it to include Closed Captioning in its signal to the cable provider.[16] After three months, WBGR's programming continued to lack Closed Captioning, and

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[6] *See generally*, *Implementation of Section 305 of the Telecommunications Act of 1996 – Video Programming Accessibility*, MM Docket No. 95-176, Report, 11 FCC Rcd 19214 (1996); *Implementation of Section 305 of the Telecommunications Act of 1996 – Video Programming Accessibility*, MM Docket No. 95-176, Notice of Proposed Rulemaking, 12 FCC Rcd 1044 (1997).

[7] H.R. Report 104-204, 104th Cong., 1st Sess. ("House Report") at 113-14 (1995).

[8] 47 CFR § 79.1(c)(1).

[9] *Id.* § 79.1(c)(2)

[10] *Id.* § 79.1 (c)(3).

[11] *See, e.g.*, *Neon Phone Service, Inc*., Notice of Apparent Liability for Forfeiture, 32 FCC Rcd 7964, 7970, para. 16 (2017) ("It is well established that a failure to respond to a Bureau LOI [letter of inquiry] constitutes a violation of a Commission Order."); *Technical Communication Network, LLC*, Notice of Apparent Liability for Forfeiture and Order, 28 FCC Rcd 1018, 1019, para. 5 (2013) ("The LOI the Bureau directed to TCN served as a legal order of the Commission to produce the requested documents and information.").

[12] MFB has been the licensee of WBGR-LD since 1996. *See* Fed. Commc'ns Comm'n, CDBS, Station Search Details, http://licensing.fcc.gov/cgi-bin/ws.exe/prod/cdbs/pubacc/prod/sta_det.pl?Facility_id=33959 (reflecting community of license and licensee of WBGR-LD).

[13] 47 CFR § 79.1(c)(1).

[14] Complaint No. 5084910 (Oct. 18, 2021).

[15] *Id.*

[16] *Id.*

no one at the station answered or responded to the complainant's calls.[17] The complainant subsequently filed a complaint with the Commission's Consumer and Governmental Affairs Bureau (CGB) on October 18, 2021. On November 18, 2021, MFB's president, James W. McLeod, responded to the Commission by stating, "[w]e have identified the problem and are waiting for a quote on replacing the failed equipment. This equipment should be replaced and in place in about six weeks if shipping times are not on covid delay."[18] On December 6, 2021, CGB referred the matter to the Bureau for further action.

7. The Bureau issued an LOI to MFB on December 8, 2021; the LOI was sent to MFB's address of record.[19] MFB failed to respond by the due date. Commission staff subsequently communicated with MFB's representatives by phone; both representatives advised that they were not aware of the LOI. The Bureau forwarded the LOI to MFB on January 26, 2022, and issued a supplemental LOI to WBGR on April 7, 2022. WBGR responded in part to both LOIs.[20]

8. The Bureau's Investigation determined that WBGR failed in adequately passing through Closed Captioning to receiving television households for at least eight months. MFB could not determine when the equipment failed and captioning ceased to be transmitted because WBGR staff did not monitor its equipment or signal transmissions and did not maintain records of maintenance.

9. Despite representations made to CGB in MFB's response to the informal complaint, MFB had a quote for a replacement solution as early as July 14, 2021.[21] MFB ultimately placed the order to obtain replacement equipment on January 21, 2022.[22] WBGR began transmitting Closed Captioning in programming on March 4, 2022. The Bureau ultimately determined that MFB violated the Closed Captioning Rules.

10. MFB's failure to be fully responsive to WBGR's viewers, the Commission's inquiries during CGB's informal complaint process, and the Bureau's Investigation, delayed resolution of this matter. Most importantly, the extended period in which WBGR failed to transmit Closed Captioning had a detrimental effect on WGBR's viewers who require Closed Captioning. To resolve the Bureau's Investigation into WBGR's failures, MFB and the Bureau enter into this Consent Decree and agree to the following terms and conditions.

III. TERMS OF AGREEMENT

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

12. **Jurisdiction**. MFB 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.

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[17] *Id.*

[18] *Id.*

[19] Letter of Inquiry from Kristi Thompson, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau, to James W. McLeod, President of Maine Family Broadcasting (Dec. 8, 2021) (on file in EB-TCD-21-00033078) (LOI).

[20] WBGR provided partial responses to the LOIs on February 10, 2022, and April 21, 2022.

[21] *See* Response to Letter of Inquiry, from James W. McLeod, President, WBGR (Feb.10, 2022) (on file in EB-TCD-21-00033078) (LOI Response); *see also* Complaint No. 5084910 (Oct. 18, 2021). On November 12, 2021, in its response to the informal complaint, MFB noted that it was "waiting for a quote on replacing the failed equipment. This equipment should be replaced and in place in about six weeks if shipping times are not on covid delay." E-mail from James W. McLeod, President, WBGR, to Sherita Kennedy, Telecommunications Accessibility Specialist, CGB, FCC (Nov. 18, 2021, 15:18 EDT).

[22] MFB offered no explanation to the Bureau for the delay in getting the replacement solution ordered.

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

14. **Termination of Investigation**. In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, MFB 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 MFB concerning the matters that were the subject of the Investigation, or to set for hearing the question of MFB's basic qualifications to be a Commission licensee or hold Commission licenses or authorizations based on the matters that were the subject of the Investigation.[23]

15. **Admission of Liability**. MFB admits for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 14 herein, that the actions of MFB and WBGR described in paragraphs 7-9 of this Consent Decree, violated the Closed Captioning Rules.

16. **Compliance Officer**. Within thirty (30) calendar days after the Effective Date, MFB shall designate a senior manager with the requisite corporate and organizational authority to serve as a Compliance Officer and to discharge the duties set forth below. The person designated as the Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that MFB complies with the terms and conditions of the Compliance Plan and this Consent Decree.

17. **Compliance Plan**. For purposes of settling the matters set forth herein, MFB agrees that it shall, within one hundred and twenty (120) calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the Communications Laws and with the terms and conditions of this Consent Decree. With respect to the Closed Captioning Rules, MFB will implement, at a minimum, the following procedures:

(a) **Operating Procedures**. Within ninety (90) calendar days after the Effective Date, MFB shall establish Operating Procedures that all Covered Employees must follow to help ensure MFB's compliance with the Closed Captioning Rules. MFB's Operating Procedures shall be specifically designed to ensure that WBGR:

i. Monitors incoming and outgoing feeds to ensure compliance with the Closed Captioning Rules;

ii. Monitors its equipment used in receiving and passing through Closed Captioning in Video Programming;

iii. Maintains records documenting maintenance of equipment used in receiving and passing through Closed Captioning;

iv. Addresses indicators of Closed Captioning problems;

v. Maintains a system that allows WBGR and/or MFB to be responsive to consumers and its Multichannel Video Programming Distributors (MVPDs), and promptly address Closed Captioning issues; and

vi. Maintains routine station coverage.

(b) **Compliance Checklist.** Within thirty (30) calendar days after the Effective Date, MFB shall develop and implement a Compliance Checklist that describes the steps that

[23] *See* 47 CFR § 1.93(b).

Covered Employees must follow to ensure compliance with the Closed Captioning Rules.

(c) **Complaints**. Within fifteen (15) calendar days of the Effective Date, MFB shall establish and utilize procedures to enable WBGR to be responsive to parties who file Complaints involving Closed Captioning and maintain records associated with such Complaints for a minimum of two (2) years. Records maintained shall include the nature of the Complaint, WBGR's response to the Complaint, and the final disposition of the Complaint.

18. **Implementation Requirements.** Within six (6) months of the Effective Date, MFB shall establish the necessary station coverage and implement procedures required to:

(a) Monitor equipment and transmission signals to readily identify any Closed Captioning issues;

(b) Routinely conduct technical equipment checks;

(c) Ensure equipment used in the pass through of Closed Captioning is operational and repaired in a timely manner;

(d) Communicate with WBGR's MVPD(s) to ensure that issues related to the pass through of Closed Captioning or captioning issues are documented, diagnosed, and resolved;

(e) Acknowledge and address Closed Captioning complaints from consumers;

(f) Provide complete and timely response to Commission inquiries within the designated timeframe provided.

19. **Reporting Noncompliance**. MFB shall report any noncompliance with the Closed Captioning Rules, including any pass-through requirements, and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of: (a) each instance of noncompliance; (b) the steps that WBGR has taken or will take to remedy such noncompliance; (c) the schedule on which such remedial actions will be taken; and (d) the steps that WBGR has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to Jennifer.Mensah@fcc.gov, with a copy submitted electronically to fccebaccess@fcc.gov.

20. **Compliance Reports**. WBGR shall file compliance reports with the Commission ninety (90) calendar days after the Effective Date, twelve (12) months after the Effective Date, and twenty-four (24) months after the Effective Date.

(a) Each Compliance Report shall include a detailed description of WBGR's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Closed Captioning Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of WBGR, stating that the Compliance Officer has personal knowledge that WBGR: (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 18 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.[24]

(c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of WBGR, 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 WBGR 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 WBGR has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.

(d) All Compliance Reports shall be submitted via email to Sharon Lee, Deputy Chief, TCD, Enforcement Bureau, FCC, at sharon.lee@fcc.gov and Jennifer Mensah, Attorney Advisor, TCD, Enforcement Bureau, FCC, at jennifer.mensah@fcc.gov, with a copy submitted electronically to fccebaccess@fcc.gov.

21. **Termination Date**. Unless stated otherwise, the requirements set forth in paragraphs 16 through 18 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

22. **Civil Penalty**. MFB will pay a Civil Penalty to the United States Treasury in the amount of two thousand five hundred dollars ($2,500). Such a payment shall be made in 3 installments (each an Installment Payment). The first Installment Payment in the amount of one thousand five hundred dollars ($1500.00) is due on March 15, 2024. Thereafter, the subsequent 2 Installment Payments of five hundred dollars ($500.00) will be due no later than the 15th of the month, specifically by April 15, 2024, and May 15, 2024.

MFB 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).[25] Upon an Event of Default, all procedures for collection as permitted by law may, at the Commission's discretion, be initiated. MFB shall send electronic notification of payment to Jennifer.Mensah@fcc.gov and fccebaccess@fcc.gov on the date said payment is made. Payment of the Civil Penalty must be made by credit card using the Commission's Registration System (CORES) at https://apps.fcc.gov/cores/userLogin.do, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. The Commission no longer accepts Civil Penalty payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:[26]

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned above and the letters "FORF". In addition, a completed Form 159[27] or printed CORES form[28] must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 or CORES may result in payment not being

[24] *Id.* § 1.16.

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

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

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

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

recognized as having been received. When completing FCC Form 159 or CORES, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).[29] For additional detail and wire transfer instructions, go to https://www.fcc.gov/licensing-databases/fees/wire-transfer.

- Payment by credit card must be made by using CORES at https://apps.fcc.gov/cores/userLogin.do. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the 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.

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

24. **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, 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 WBGR.

25. **Conditional Civil Penalty.** MFB agrees that if WBGR is determined to have failed to comply with paragraph 18 of this Consent Decree, MFB agrees to pay an additional civil penalty of twelve thousand five hundred dollars ($12,500). This further civil penalty shall be in addition to, and not in lieu of, any forfeiture penalty the Commission may impose for the violation(s). The Conditional Civil Penalty shall also become a "Claim" or "Debt" as defined in 31 U.S.C. § 3701(b)(1). The Bureau will impose a civil penalty under paragraph 25 through the following process:

26. The Bureau will notify MFB, in writing, of any applicable violation, including noncompliance with paragraph 18 of this Consent Decree. The notification shall describe the basis for the Bureau's finding and propose a civil penalty.

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

27. MFB will have thirty (30) days from the date of any such notification to provide a response.

28. The Bureau will evaluate any such response, and notify MFB within thirty (30) days of its final determination, including whether a civil penalty will be assessed through a Demand for Payment. The civil penalty shall become a "Claim" or "Debt" as defined in 31 U.S.C. § 3701(b)(1). All procedures for collection as permitted by law may, at the Commission's discretion, be initiated.

29. MFB shall pay any civil penalty assessed against the Company within thirty (30) calendar days of the date of a Demand for Payment unless otherwise agreed to by the Bureau.

30. An Event of Default shall occur upon MFB's failure to pay the full amount of the civil penalty on or before the date specified in the Bureau's notification and/or Demand for Payment. Should an Event of Default occur, interest may be applied and all other procedures for collection as permitted by law and as described in paragraph 24 above may, at the Commission's discretion, be initiated.

31. **Waivers**. As of the Effective Date, MFB 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. MFB shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent Decree or the Adopting Order, neither MFB nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and MFB shall waive any statutory right to a trial *de novo*. MFB hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act[30] relating to the matters addressed in this Consent Decree.

32. **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.

33. **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.

34. **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 WBGR does not expressly consent) that provision will be superseded by such Rule or order.

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

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

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

38. **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.

39. **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

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

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.

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

_____
Loyaan A. Egal
Chief
Enforcement Bureau

_____
Date

_____
James W. McLeod
President
Maine Family Broadcasting, Inc.

_____
Date

Federal Communications Commission
Washington, D.C. 20554

February 29, 2024

DA 24-190

SMALL ENTITY COMPLIANCE GUIDE

Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010

FCC 23-82
MB Docket No. 11-43
Adopted October 17, 2023

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

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

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

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I. OBJECTIVES OF THE PROCEEDING

Audio description makes video programming more accessible to individuals who are blind or visually impaired through "[t]he insertion of audio narrated descriptions of a television program's key visual elements into natural pauses between the program's dialogue."[1] To access audio description, consumers generally switch from the main program audio to the secondary audio stream on which audio description is typically provided.

The Commission's audio description rules currently require certain television broadcast stations and multichannel video programming distributors (MVPDs) to provide audio description for a portion of the video programming they distribute to consumers. The rules apply to commercial television broadcast stations that are affiliated with one of the top four commercial television broadcast networks (ABC, CBS, Fox, and NBC) and are located in certain designated market areas (DMAs). Audio description is required in DMAs 1 through 60, pursuant to an order the Commission adopted in 2011. In 2020, the Commission expanded the audio description requirements to DMAs 61 through 100 on a phased schedule that was completed on January 1, 2024.

In the *Second Report and Order* (*Order*) in MB Docket No. 11-43, the Commission took the unopposed action of expanding its audio description requirements by phasing them in for an additional 10 designated market areas (DMAs) each year until all 210 DMAs are included. Consistent with the requirements of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA),[2] the Commission found that the costs of expanding the audio description regulations to DMAs 101 through 210 are reasonable for program owners, providers, and distributors. The Commission's action will help ensure that a greater number of individuals who are blind or visually impaired can be connected, informed, and entertained by television programming.

II. COMPLIANCE REQUIREMENTS

A. The Schedule to Phase-in the Additional Designated Market Areas.

The *Order* modifies 47 CFR § 79.3(b)(1), which will phase in the existing audio description requirements for an additional 10 DMAs each year until all 210 DMAs are covered. The substance of the audio description requirements will not change, but rather, expands the DMAs in which broadcast television stations in the additional markets must comply with the requirements. The DMAs will be phased in the following time frames:

- Expansion to DMAs 101 through 110 on January 1, 2025
- Expansion to DMAs 111 through 120 on January 1, 2026
- Expansion to DMAs 121 through 130 on January 1, 2027
- Expansion to DMAs 131 through 140 on January 1, 2028
- Expansion to DMAs 141 through 150 on January 1, 2029
- Expansion to DMAs 151 through 160 on January 1, 2030
- Expansion to DMAs 161 through 170 on January 1, 2031
- Expansion to DMAs 171 through 180 on January 1, 2032
- Expansion to DMAs 181 through 190 on January 1, 2033
- Expansion to DMAs 191 through 200 on January 1, 2034
- Expansion to DMAs 201 through 210 on January 1, 2035

[1] 47 CFR § 79.3(a)(3).

[2] Pub. L. No. 111-260, § 202(a); 47 U.S.C. § 613(f)(4)(C)(iv).

B. Updated Nielsen Determination of Market Rankings.

The revised rules utilize DMA rankings "as determined by The Nielsen Company as of January 1, 2023," rather than the January 1, 2020, date used in the previous rules. This change extended the audio description requirements to DMAs 91 through 100 as of January 1, 2024. Utilizing the updated Nielsen market rankings resulted in certain DMAs falling into different categories than they were prior to this change, which impacted corresponding dates for compliance prior to January 1, 2024.

- **Paducah-Cape Girardeau-Harrisburg DMA and Cedar Rapids-Waterloo-Iowa City and Dubuque DMA**. Utilizing the updated Nielsen market rankings, these two DMAs were required to comply with the deadline for DMAs 91 through 100 utilizing the Nielsen figures as of January 1, 2023.[3]
- **Chattanooga DMA and Charleston, SC DMA**. Conversely, utilizing the updated Nielsen market rankings, these two DMAs were required to comply with the earlier deadline for DMAs 81 through 90 utilizing the Nielsen figures as of January 1, 2023.[4]

C. Exemptions and Waivers of the Audio Description Rules.

Section 79.3 of the Commission's rules will continue to govern any petitions for exemption due to economic burden, and section 1.3 will continue to govern waivers of the Commission's rules generally.

III. RECORDKEEPING AND REPORTING REQUIREMENTS

The Commission's actions in the *Order* did not create any additional recordkeeping or other reporting requirements.

IV. IMPLEMENTATION DATE

The amended rules in the *Order* became effective November 27, 2023.

V. INTERNET LINKS

A copy of the *Second Report and Order*, FCC 23-82, MB Docket No. 11-43, is available at: https://www.fcc.gov/document/fcc-expands-audio-description-requirements-all-television-markets

A copy of the Federal Register Summary of the *Second Report and Order* is available at: https://www.govinfo.gov/content/pkg/FR-2023-10-27/pdf/2023-23760.pdf

[3] Paducah-Cape Girardeau-Harrisburg moved from DMA 84 to DMA 92, and Cedar Rapids-Waterloo-Iowa City and Dubuque moved from DMA 90 to DMA 93.

[4] Chattanooga moved from DMA 92 to DMA 84, and Charleston, SC moved from DMA 91 to DMA 88.

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 24-192
Released: March 1, 2024

COMMENTS INVITED ON SECTION 214 APPLICATION(S) TO GRANDFATHER DOMESTIC NON-DOMINANT CARRIER TELECOMMUNICATIONS AND/OR INTERCONNECTED VOIP SERVICES

WC Docket No(s). 24-65

Comments Due: March 18, 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 **April 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. *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.").

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 **March 18, 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

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[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. 24-65, Comp. Pol. File No. 1897
Link – https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2224-65*%22))
Affected Service(s) – AT&T Phone Service and AT&T Phone for Business (VOIP services)
Service Area(s) – service areas within certain wire centers in Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Michigan, Missouri, Mississippi, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas, and Wisconsin, as specified in the application
Authorized Date(s) – on or after April 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 April 1, 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.

[9] BellSouth Telecommunications, LLC, d/b/a AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, AT&T Louisiana, AT&T Mississippi, AT&T North Carolina, AT&T South Carolina and AT&T Tennessee; Illinois Bell Telephone, LLC, d/b/a AT&T Illinois; Indiana Bell Telephone Company, Incorporated, 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; Wisconsin Bell Telephone Company, d/b/a AT&T Wisconsin; Southwestern Bell Telephone Company, d/b/a AT&T Arkansas, AT&T Missouri, AT&T Oklahoma, and AT&T Texas (AT&T)

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. 24-193

Report No. SAT-01803 **Friday March 1, 2024**

Satellite Licensing Division and Satellite Programs and Policy Division Information

Actions Taken

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

SAT-MPL-20230417-00090 E S2592 Intelsat License LLC
Modification to PDR/PPL
Grant of Authority Effective Date: 02/29/2024

Nature of Service: Fixed Satellite Service

On February 29, 2024, the Satellite Programs and Policy Division reissued the license conditions for the Galaxy 23 space station to specify operations of Galaxy 23 at the 120.9° W.L. orbital location instead of 121.0° W.L. This relocation was made pursuant to section 25.117(h)(1) of the Commission's rules and became effective on June 16, 2023, without further authorization by the Commission.

SAT-STA-20240108-00007 E Lynk Global, Inc.
Special Temporary Authority
Grant of Authority Effective Date: 02/29/2024

On February 29, 2024, the Satellite Programs and Policy Division granted, with conditions, Lynk Global, Inc.'s request for special temporary authority, for a period of up to 60 days, to operate Lynk's Tower 1, 3, and 4 satellites, with orbital parameters for Lynk Tower 1 at altitudes between 479 km and 490 km and a 97.4 degrees inclination; for Lynk Tower 3 at altitudes between 513 km and 532 km and a 97.5 degrees inclination; and for Lynk Tower 4 at altitudes between 514 km and 532 km and a 97.5 degrees inclination.

INFORMATIVE

SAT-LOA-20190617-00048 S3050 Viasat, Inc.

The Satellite Programs and Policy Division has determined that Viasat, Inc. has met the launch and begin operations milestone associated with its grant of authority to construct, deploy, and operate a geostationary orbit space station, VIASAT-89US at 88.9° W.L., and may release the bond associated with this authorization. See 47 CFR §§ 25.164(a),(f), and 25.165(d).

SAT-LOI-20140204-00013 S2917 Viasat, Inc.

The Satellite Programs and Policy Division has determined that Viasat, Inc. has met the launch and begin operations milestone set forth in its grant of U.S. market access to launch and operate its geostationary orbit space station, ViaSat-3 at 88.9° W.L., and may release the bond associated with this grant. See 47 CFR §§ 25.164(b)(1) and (f) and 25.165(d). This action recognizes that Viasat met its May 15, 2023, performance milestone and renders moot Viasat's request for an extension in SAT-MOD-20230531-00128.

SAT-MOD-20230824-00210 S3087 Lynk Global, Inc.

The Actions Taken public notice, SAT-01802, for the above captioned file number is corrected to reflect a grant date of February 23, 2024, rather than February 22, 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 St., N.E.
Washington, D.C. 20554

News Media Information 202 / 418-0500
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DA 24-194
Released: March 1, 2024

DOMESTIC SECTION 214 APPLICATION FILED FOR THE TRANSFER OF CONTROL OF MONON TELEPHONE COMPANY INC. TO PULASKI-WHITE RURAL TELEPHONE COOPERATIVE INC. D/B/A LIGHTSTREAM

NON-STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 24-13

Comments Due: March 8, 2024
Reply Comment Due: March 15, 2024

By this Public Notice, the Wireline Competition Bureau seeks comment from interested parties on an application filed by Monon Telephone Company Inc. (Monon) and Pulaski-White Rural Telephone Cooperative Inc. d/b/a LightStream (LightStream) (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 of control of Monon to LightStream.[2]

Monon, a privately-held Indiana corporation, provides local exchange services as an incumbent local exchange carrier (LEC) as well as broadband services to residential consumers and business customers in Jasper, Pulaski, and White Counties, Indiana.[3]

[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 Monon Telephone Company Inc. to Pulaski-White Rural Telephone Cooperative, Inc., d/b/a LightStream, WC Docket No. 24-13 (filed Jan. 11, 2024) (Application). Applicants filed supplements to the Application on January 31, 2024, February 19, 2024, and February 28, 2024. Letter from Aleasha J. Boling, Counsel for Pulaski-White Rural Telephone Cooperative Inc. d/b/a LightStream, and Robert A. Silverman, Counsel for Monon Telephone Company Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 24-13 (filed Feb. 28, 2024) (Feb. 28 Supplement); Letter from Aleasha J. Boling, Counsel for Pulaski-White Rural Telephone Cooperative Inc. d/b/a LightStream, and Robert A. Silverman, Counsel for Monon Telephone Company Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 24-13 (filed Feb. 19, 2024) (Feb. 19 Supplement); Letter from Aleasha J. Boling, Counsel for Pulaski-White Rural Telephone Cooperative Inc. d/b/a LightStream, and Robert A. Silverman, Counsel for Monon Telephone Company Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 24-13 (filed Jan. 31, 2024) (Jan. 31 Supplement). Applicants also filed an application for the transfer of authorizations associated with international authorizations and wireless authorizations. Any action on this domestic section 214 application is without prejudice to Commission action on other related, pending applications.

[3] Application at 1-2. Monon participates in the Lifeline program and the Affordable Connectivity Program (ACP) and will continue to comply with all of the Commission's obligations and the ACP wind-down procedures post-transaction. Jan. 31 Supplement at 1.

LightStream, an Indiana nonprofit corporation, provides facilities-based local exchange, interexchange, Internet protocol-enabled services, and broadband services in Cass, Fulton, Pulaski, and White Counties, Indiana.[4] LightStream is owned by its members, none of which holds a 10% or greater interest, and is governed by its Board of Directors and key personnel.[5] Each member of LightStream is a United States citizen.[6] Applicants state that LightStream does not have any affiliates that provide domestic telecommunications services.[7]

Pursuant to the terms of the proposed transaction, the Applicants entered into a Stock Purchase Agreement, whereby LightStream will purchase all of the outstanding shares of stock from the shareholders of Monon.[8] Upon consummation of the proposed transaction, Monon will be wholly-owned and controlled by LightStream and its members.[9]

Applicants request streamlined treatment of the transaction and assert that a grant of the application would serve the public interest, convenience, and necessity.[10] Applicants state that Monon's incumbent LEC service area and LightStream's incumbent LEC services are adjacent to each other and serve an overlap area of "approximately 0.05 square miles."[11] Because the transaction is more complex than usual, and in order to analyze whether the proposed transaction would serve the public interest, the application will not be streamlined.[12]

> Domestic Section 214 Application Filed for the Transfer of Control of Monon Telephone Company Inc. to Pulaski-White Rural Telephone Cooperative, Inc., d/b/a LightStream
> WC Docket No. 24-13 (filed Jan. 11, 2024).

GENERAL INFORMATION

The application identified herein has been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies.

Interested parties may file comments **on or before March 8, 2024**, and reply comments **on or before March 15, 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

[4] *Id.* at 2, Jan. 31 Supplement at 1.

[5] *Id*. at 2.

[6] *Id.*

[7] Feb. 28 Supplement at 1.

[8] *Id*. at 6.

[9] *Id.*

[10] *Id*. at 10-11.

[11] Feb. 19 Supplement at 1.

[12] 47 CFR § 63.03(c)(1)(v).

number.

- Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail.[13] 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) Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, dennis.johnson@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.[14] 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

[13] 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).

[14] *See* 47 CFR § 1.45(c).

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-

PUBLIC NOTICE

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DA 24-195
Released: March 4, 2024

WIRELINE COMPETITION BUREAU ANNOUNCES THE FINAL MONTH OF THE AFFORDABLE CONNECTIVITY PROGRAM

WC Docket No. 21-450

In this Public Notice, due to the lack of additional funding for the Affordable Connectivity Program (ACP), the Wireline Competition Bureau (WCB) of the Federal Communications Commission (Commission) announces that the last fully funded month for the ACP benefit is April 2024.[1] Absent additional funding from Congress, the ACP can only provide a partial reimbursement for May 2024, and ACP providers have the option to claim and pass on that partial reimbursement amount to enrolled households. After May 2024, the ACP will no longer support any benefits to enrolled households. This Public Notice also (1) provides guidance on the May 2024 partial reimbursement month; (2) reminds participating providers of the notices they must send to ACP households; and (3) provides guidance on the consumer protections for ACP households during wind-down and after the ACP ends. The instructions and guidance in this Public Notice further the goal set forth in the *ACP Wind-Down Order* of keeping as many households as possible connected to broadband service after the end of the ACP.[2]

Partial Reimbursement in May 2024

The *ACP Wind-Down Order* stated that if reimbursement claims were to 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 for one month after the last announced fully funded month.[3] This Public Notice confirms that April 2024 is the last fully funded service month where providers will receive reimbursement for passing on the full ACP benefit to enrolled ACP households eligible to receive the benefit. Based on our current forecast, funds are insufficient to pay all provider claims in full through the May 2024 service month.[4] Therefore, providers that choose to provide a benefit in May should plan to pass through only a reduced benefit to households that have opted-in to continue to receive broadband service after the end of the full ACP benefit. May 2024 will be the last month for which providers will be able to seek reimbursement for ACP benefits passed through to subscribers.[5] Reimbursements to

[1] *Affordable Connectivity Program*, WC Docket No. 21-450, Order, DA 24-23 (WCB Jan. 11, 2024) (*ACP Wind-Down Order*).

[2] *ACP Wind-Down Order* at 1, para. 1.

[3] *ACP Wind-Down Order* at 11-12, para. 30; *see also Affordable Connectivity Program,* WC Docket No. 21-450, Report and Order and Further Notice of Proposed Rulemaking, 37 FCC Rcd 484, at 592, para. 233 (2022) (*ACP Order*).

[4] *ACP Wind-Down Order* at 4, para. 7 (explaining the forecast of the depletion of funding).

[5] As stated in the *ACP Wind-Down Order*, providers will have two months from the relevant snapshot to submit claims for benefits passed through to eligible ACP households. May 2024 is the last data month for which providers

(continued….)

providers for May 2024 will be on a reduced pro-rata basis.

For the partial May 2024 reimbursement, providers will not be able to claim more than the discount that was passed through to the subscriber.[6] We understand that ACP participating providers are likely to be considering the discounts they intend to apply to broadband bills in May. To help providers determine the amount they will be able to seek reimbursement for service provided in May 2024, we intend to release in March 2024 more information regarding the reimbursement rate available to providers for service provided in May 2024. The Bureau will also provide additional information to providers at that time about notifying USAC of their intention to seek reimbursement for May 2024 discounts.

Required Provider Notices to ACP Households

The Bureau's *ACP Wind-Down Order* set out procedures for the efficient wind-down of the ACP and for notifying the over 23 million households enrolled in the ACP about the end of the program and impact on their bill.[7] By January 25, 2024, providers were required to have sent an initial notice to their ACP subscribers advising them of the possibility of the program ending.[8] As previewed in the *ACP Wind-Down Order*, USAC is also sending notices to enrolled households,[9] and the Commission and USAC have revised the ACP websites to provide up-to-date information to consumers about the status of the ACP.

As set out in the *ACP Wind-Down Order*, by March 19, 2024 providers must send their ACP households a written notice that advises that the program is ending and states the impact on the households' broadband service and bills.[10] Providers must also send another notice to ACP households that coincides with the last bill or billing cycle in which the full ACP benefit is applied.[11] We remind providers that, while we do not prescribe a specific format or wording for these consumer notices, certain key pieces of information must be included in the notices to ensure the notices meaningfully inform consumers about the impact of the end of the ACP on their broadband bills.[12] Specifically, these next required consumer notices must indicate that the ACP is ending and include (1) the date of the last bill on which the full ACP benefit will be applied and (2) the amount that the household will be billed for the service once the full ACP benefit is no longer available or that the household will be subject to the

(Continued from previous page)
will be able to seek reimbursement for benefits passed through to eligible ACP households. *See also Affordable Connectivity Program,* WC Docket No. 21-450, Report and Order and Further Notice of Proposed Rulemaking, 37 FCC Rcd 484, at 592, para. 232 (2022).

[6] 47 CFR § 54.1803(a).

[7] USAC, *ACP Enrollment and Claims Tracker,* https://www.usac.org/about/affordable-connectivity-program/acp-enrollment-and-claims-tracker/ (last visited Mar. 4, 2024).

[8] *ACP Wind-Down Order* at 5, para. 12.

[9] *See also* USAC, *ACP Newsletter - January 2024 (Jan 30, 2024),* https://www.usac.org/wp-content/uploads/about/documents/acp/bulletins/ACP-Newsletter-January-2024.pdf.

[10] *See ACP Wind-Down Order* at 5, para. 12 (indicating that the second required provider notice to ACP households shall be sent as soon as practicable, but no later than 15 days after the last fully funded month of the ACP is announced). March 19, 2024 is 15 days after the release of this Public Notice announcing the last fully funded month of the ACP.

[11] *ACP Wind-Down Order* at 5-6, para. 12. Providers must ensure that households that transfer their benefit after the notice deadlines set out in the *ACP Wind-Down Order* receive notices from the provider regarding the end of the program and the impact of the end of the benefit on the household's broadband bill and service, consistent with the requirements in *ACP Wind-Down Order*.

[12] *ACP Wind-Down Order* at 5, para. 11.

provider's undiscounted rates and general terms and conditions after the end of the ACP.[13] These consumer notices must also remind ACP households of their right to change their service or opt out of continuing their service at the end of the ACP.[14]

In this Public Notice, we also establish requirements for notifying consumers about any partial ACP benefit that is applied for service provided for May 2024. Providers that intend to claim and pass through a partial benefit to ACP households for May 2024, where the household has opted in to continue to receive and pay for broadband service after the full ACP benefit is no longer applied, must provide written notice to those households that the benefit amount applied to the May bill may be less than the full ACP benefit the household has been receiving. Such written notices must also state that the household will be subject to the provider's fully undiscounted rates and general terms and conditions after the last bill that any partial benefit is applied. This information may be included in the other required notices or sent separately.

We strongly encourage providers to include in these required consumer notices information about their lower cost offerings and low-income programs, or a phone number or link to a website where ACP households may obtain such information.[15] Providing this information will further the Commission's goal of keeping as many households as possible connected to internet service after the end of the ACP benefit, as set out in the *ACP Wind-Down Order*.[16] Providers are also not limited in the number of notices they may send to their ACP households and we encourage providers to correspond more frequently with their ACP households should the provider believe that such additional outreach is necessary or beneficial.[17] We also remind providers that these notices must be sent to ACP households in writing and in a manner that is accessible to persons with disabilities.[18] Providers are encouraged to send the required consumer notices in a format and language that is consistent with any consumer-expressed preferences.[19]

Consumer Protections

We emphasize that ACP providers remain subject to the consumer protection requirements in the ACP rules[20] during wind-down, except for those related to new ACP enrollments,[21] and that some requirements will remain applicable after subscribers cease receiving the ACP benefit. The ACP was not intended to place additional financial burdens on eligible households and these consumer protection requirements are among the core components that protect consumers from financial harm.[22] Providers can also mitigate additional financial burdens on consumers after the end of the ACP by offering to move consumers to low-cost internet service plans that they already offer or that they newly adopt as an offering to low-income consumers.

[13] *ACP Wind-Down Order* at 5-6, para. 12.

[14] *ACP Wind-Down Order* at 5-6, para. 12.

[15] *ACP Wind-Down Order* at 5-6, para. 12.

[16] *See ACP Wind-Down Order* at 1, 5, 8, paras. 1, 12, 20.

[17] *ACP Wind-Down Order* at 5-6, para. 12.

[18] *ACP Wind-Down Order* at 6, para. 13.

[19] *ACP Wind-Down Order* at 6, para. 13.

[20] 47 CFR § 54.1810.

[21] *E.g.*, 47 CFR § 54.1810(a); 47 CFR § 54.1810(c)(1)(i); 47 CFR § 54.1810(e)(2)(i); 47 CFR § 54.1810(i)(2)(iv).

[22] *ACP Order*, 37 FCC Rcd at 559, paras. 158-59 (noting that consumer protection requirements are among the core components of the ACP and their immediate implementation was required to protect low-income consumers from harm).

Providers are reminded that during the wind-down period they remain subject to most consumer protection requirements in section 54.1810 of the Commission's rules. For instance, because eligible households may continue to transfer their ACP benefits during wind-down, participating providers transferring households must comply with transfer-related consumer protection provisions.[23] The only consumer protection requirements that would not apply are those relating specifically to newly enrolling eligible households in the ACP.[24] New enrollment-related consumer protections were rendered moot when the Commission instituted the ACP enrollment freeze on February 8, 2024.[25] The remaining consumer protection requirements[26] will continue to apply for as long as a subscriber receives any ACP benefit for the ACP-supported service, and in some instances beyond that, after which time the provider's relevant general terms and conditions would apply, to the extent those terms and conditions are not inconsistent with applicable Commission rules and statutory requirements.[27]

We note particularly that, under ACP rules, a participating provider may not terminate an eligible household's ACP-supported service on the grounds that the household has failed to pay the charges set forth on a bill for such service until 90 days have passed since the bill payment due date.[28] This rule remains in effect as long as a household continues to receive ACP-supported service. We remind providers that should a household enter a delinquent status after the bill due date, a provider is permitted to mitigate the financial harm to the household by switching the household to a lower-cost plan, with advance notice to the household.[29]

Moreover, the prohibition on charging early termination fees to eligible households who purchase and apply the ACP benefit to service plans subject to extended service contracts continues to apply after the end of the ACP.[30] If a household entered into a service plan with an extended service contract and applied their ACP benefit to that service plan, the provider cannot charge the household an early

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[23] *See* 47 CFR § 54.1810(b); *ACP Wind-Down Order* at 8-9, para. 22.

[24] *See*, *e.g.*, 47 CFR § 54.1810(a) (requirements governing disclosures and consents for enrollment); 47 CFR § 54.1810(c)(1)(i) (prohibiting participating providers from considering the results of a credit check as a condition of ACP enrollment); 47 CFR § 54.1810(e)(2)(i) (prohibiting participating providers from conditioning ACP application or enrollment on a household selecting a new service, bundled plan, or equipment); 47 CFR § 54.1810(i)(2)(iv) (prohibiting as an "unjust and unreasonable" practice "[f]ailing to enroll an eligible household as soon as practicable once the provider receives the household's affirmative consent to enroll with that provider").

[25] *Cf. ACP Wind-Down Order* at 10, para. 26 (waiving requirement in 47 CFR § 54.1804(b) that providers publicize the availability of the ACP due to enrollment freeze). Enrollment-related consumer protections are moot as long as enrollments are frozen. .

[26] Consumer protection requirements applicable until the ACP ends include 47 CFR § 54.1810(b) (transfers); 47 CFR § 54.1810(c)(1)(ii), (iii) (credit check prohibitions not related to enrollment); 47 CFR § 54.1810(d)(2) (90-day non-payment provision); 47 CFR § 54.1810(e)(1), (2)(ii)(prohibitions on inappropriate upselling and downselling); 47 CFR § 54.1810(f)(3) (prohibition on early termination fees); 47 CFR § 54.1810(g) (prohibitions on restrictions on switching service offerings); 47 CFR 54.1810(h) (prohibitions on restrictions on switching providers); 47 CFR § 54.1810(i)(1), (2)(ii). (iii), (v), (vi), (vii) (certain unjust and unreasonable practices).

[27] *See*, *e.g.*, 47 CFR § 54.1810(a)(1)(v) (requiring providers to disclose to consumers prior to enrollment that a "household will be subject to the provider's undiscounted rates and general terms and conditions if the Affordable Connectivity Program ends").

[28] 47 CFR § 54.1810(d)(2). This provision implements 47 U.S.C. § 1752(b)(7)(B), which provides that "[n]othing in subparagraph (A) shall prevent a participating provider from terminating the provision of broadband internet access service to a subscriber after 90 days of nonpayment."

[29] *ACP Order*, 37 FCC Rcd at 554, para. 145 ("We find that providers may downgrade a household to a lower-priced service plan once the consumer enters a delinquent status after the bill due date to mitigate the non-payment amount upon advance notice to the household of the change in service.").

[30] *See* 47 U.S.C. § 1752(b)(6)(A)(i); 47 CFR § 54.1810(f)(3).

termination fee for terminating that service contract early, even after the household stops receiving the ACP benefit. A household's statutory right not to pay an early termination fee for ending an extended service contract early (*e.g.*, because the household wanted to change service or opt out of continuing service) remains in place after the ACP benefit stops being applied to the service.[31] Providers are also reminded that they may not engage in unjust and unreasonable acts or practices that would undermine the purpose, intent, or integrity of the ACP and this would continue to be the case after households no longer receive the ACP benefit due to the wind-down of the program.[32] For example, even after, the ACP benefit is no longer being applied to broadband bills, it would undermine the purpose, intent, and integrity of the ACP, and FCC programs more generally, for a provider to hold itself out as an ACP participating provider, engage in false or misleading advertising of the ACP, or violate any remaining applicable program rules.[33]

Finally, we acknowledge that the *Broadband Label Order* requires providers to display, at the point of sale, labels that indicate, among other things, whether they participate in the ACP.[34] With the upcoming end of the ACP, providers will not be required to include information on the ACP in their labels.[35] This guidance is subject to change should the funding status of the ACP change.

Compliance and Further Program Updates

As a reminder, providers must continue to de-enroll subscribers when de-enrollment is required under the Commission's rules.[36] Moreover, providers cannot claim subscribers that are not eligible to be claimed and cannot claim reimbursement for more than the amount passed through to eligible households.[37] The Commission is committed to ensuring the integrity of the ACP, including during the wind-down period, and non-compliance will be addressed using all available tools and investigatory procedures. Consumers who have concerns about provider compliance with ACP rules and wind-down requirements may file a complaint with the Commission by visiting ConsumerComplaints.fcc.gov.

Providers and consumers are encouraged to visit AffordableConnectivity.gov and fcc.gov/acp for more information and further updates regarding the ACP. Providers seeking further assistance regarding ACP wind-down requirements should contact USAC via their support email address for providers. Providers are also encouraged to visit USAC.org to sign up for the ACP bulletin and future webinars and to view past webinars and information sessions. Households with questions may contact the ACP Support Center at (877) 384-2575 or acpinfo@fcc.gov. Consumers who are Deaf or Hard of Hearing may use the ASL Hotline at (844) 432-2275.

For further information about this Public Notice, contact Benjamin Nashed, Telecommunications Access Policy Division, Wireline Competition Bureau at Benjamin.Nashed@fcc.gov.

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[31] *See* 47 U.S.C. § 1752(b)(6)(A)(i).

[32] *See* 47 CFR § 54.1810(i)(1).

[33] *See* 47 CFR § 54.1810(i)(2), (i), (ii), (vii).

[34] *Empowering Broadband Consumers Through Transparency*, CG Docket No. 22-2, Report and Order and Further Notice of Proposed Rulemaking, 7 FCC Rcd 13686 (2022) (*Broadband Label Order*). This Order was required by the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429, § 60504(a) (2021).

[35] *Broadband Label Order* at 13704, para. 55.

[36] 47 CFR § 54.1809.

[37] 47 CFR § 54.1803.

PUBLIC NOTICE

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DA 24-196
Released: March 4, 2024

MEDIA BUREAU ANNOUNCES MARCH 4, 2024 EFFECTIVE DATE FOR ALL REVISIONS TO PART 73 COMMISSION RULES FOR FULL POWER AND CLASS A TELEVISION STATIONS

MB Docket No. 22-227

On September 19, 2023, the Commission released a Report and Order (*Report and Order*) in its proceeding to update the Commission's part 73 rules for full power and Class A television services to reflect the current operating environment.[1] The *Report and Order* adopted rules to reflect the transition from analog to digital-only operations and the completion of the post-incentive auction transition to a smaller television band with fewer channels, and made other updates to ensure the rules reflect the Commission's requirements and are understandable for our licensees and the public.

The Media Bureau hereby announces that all rule changes adopted in the *Report and Order* are effective as of March 4, 2024.[2] Those rules in the *Report and Order* that may have contained new or modified information collection requirements[3] have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act and are also effective as of March 4, 2024.[4]

For further information, contact Emily Harrison, Media Bureau, Video Division at Emily.Harrison@fcc.gov or Mark Colombo, Media Bureau, Video Division at Mark.Colombo@fcc.gov.

- FCC -

[1] *Amendment of Part 73 of the Commission's Rules to Update Television and Class A Television Broadcast Station Rules, and Rules Applicable to All Broadcast Stations*, MB Docket No. 22-227, Report and Order, FCC 23-72 (Sept. 19, 2023) (*Report and Order*).

[2] The *Report and Order* was published in the Federal Register on February 1, 2024, and therefore, with the exception of those rules listed *infra* in n.3, the amendments in the *Report and Order* become effective 30 days thereafter, on March 4, 2024. Because the 30th day after the date the summary was published in the Federal Register is Saturday, March 2, 2024, the effective date is the next business day, Monday, March 4, 2024. *See Establishing Rules for Full Power Television and Class A Television Stations*, 89 Fed. Reg. 7224 (Feb. 1, 2024); *see also* 47 CFR § 1.4.

[3] *See* 47 CFR §§ 73.619, 73.625, 73.1250, 73.1350, 73.1560, 73.1615, 73.1620, 73.1635, 73.1675, 73.1690, 73.1740, 73.1750, 73.2080, 73.3540, 73.3544, 73.3549, 73.3550, 73.3598, 73.5006, 73.6024, and 73.6025.

[4] The OMB has approved the Commission's Paperwork Reduction Act submissions associated with the revisions to those rules in *supra* n.3. *See Establishing Rules for Full Power Television and Class A Television Stations*, 89 Fed. Reg. 14775 (Feb. 29, 2024) (announcing OMB approval and that the associated rule changes are effective on March 4, 2024); *Information Collection Being Reviewed by the Federal Communications Commission*, 88 Fed. Reg. 70980 (Oct. 13, 2023).

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: March 4, 2024 **Released: March 4, 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) modifies the Order granting the Huron County (OH) Emergency Management Agency (Huron County) a waiver of the Commission's Wireless Emergency Alerts (WEA) rules to permit Participating Commercial Mobile Service (CMS) Providers[1] to participate in a WEA test that the public will receive by default.[2]

II. BACKGROUND

2. On February 2, 2024, Huron County requested a waiver of the Commission's WEA rules to permit Participating CMS Providers to participate in an end-to-end WEA test received by the public by default, to be held on March 19, 2024 at 12:15 p.m.[3] On February 20, 2024, PSHSB granted Huron County's request with conditions.[4] On February 29, 2024, Huron County requested that PSHSB modify the *Waiver* Order to change the day and time for its test to March 20, 2024 at 9:45 a.m.[5]

3. Huron County requests that PSHSB modify the date on which it has authorized Huron County and Participating CMS Providers to conduct this test because their original test date, March 19, 2024, is Election Day in the State of Ohio and because on March 20, 2024, the State of Ohio, in conjunction with the National Weather Service (NWS), will be conducting its annual Statewide Tornado

[1] 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.*

[2] *Wireless Emergency Alerts, Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System*, PS Docket Nos. 15-91, 15-94, Order, DA 24-151, https://docs.fcc.gov/public/attachments/DA-24-151A1.pdf, (PSHSB Feb. 20, 2024) (*Waiver Order*).

[3] *See* from Letter Kye Stevens, EMA Administrative Assistant, Huron County Emergency Management Agency, to Federal Communications Commission (Feb. 2, 2024) (on file in Docket Nos. 15-91 and 15-94) (Huron County Letter or Letter).

[4] *See Waiver Order* at 4-5.

[5] *See* from Letter Kye Stevens, EMA Administrative Assistant, Huron County Emergency Management Agency, to Nicole McGinnis, Deputy Chief, Public Safety and Homeland Security Bureau, Federal Communications Commission (Feb. 29, 2024) (on file in Docket Nos. 15-91 and 15-94) (Huron County Modification Letter).

Drill as part of Ohio Severe Weather Awareness Week.[6] On March 20, 2024, the Ohio Department of Emergency Management (ODEM) will test the Emergency Alert System (EAS) statewide, while the National Weather Service will test National Oceanic and Atmospheric Administration (NOAA) Weather Radios statewide.[7] Huron County states that delaying WEA test by one day will enable it to better coordinate with ODEM and the National Weather Service on the Statewide Tornado Drill.[8]

III. DISCUSSION

4. 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."[9] 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."[10]

5. We conclude that there remains good cause to grant Huron County's request for waiver as modified by the Huron County Modification Letter. This will allow Huron County to delay their previously-approved WEA test by one day and test on March 20, 2024 instead of March 19, 2024. This date change is in the public interest because it will enable Huron County to conduct its WEA test in conjunction with the EAS and NOAA Weather Radio tests that ODEM and NWS, respectively, plan to conduct on March 20, 2024 as part of a Statewide Tornado Drill. Considering the new facts that Huron County presents, it would no longer be in the public interest for Huron County to conduct their WEA test on March 19, 2024 pursuant to the waiver that PSHSB initially granted. We now understand that, if Huron County were to conduct its WEA test on March 19, 2024, it would result in Huron County residents receiving test alerts on consecutive days, which would result in a less cohesive Drill and could contribute to alert fatigue for county residents. We therefore modify the Waiver Order by changing the date of the WEA test from March 19, 2024 to March 20, 2024. All conditions pursuant to which PSHSB granted the Waiver Order apply to this rescheduled test.[11]

6. We continue to encourage Huron County to report its test results in electronic format to the Bureau. We also 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

7. Accordingly, 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, IT IS ORDERED that Huron County's request to change the date of its previously-approved WEA test from March 19, 2024 IS GRANTED consistent with the terms of this Order. This action is effective upon release of this Order.

FEDERAL COMMUNICATIONS COMMISSION

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[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] 47 CFR § 1.3.

[10] *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)).

[11] *See Waiver Order* at 4-5, paras. 13-15.

Nicole McGinnis
Deputy Chief
Public Safety and Homeland Security Bureau
Federal Communications Commission

Federal Communications Commission
Washington, D.C. 20554

DA 24-198
***In Reply Refer to*:**
1800B3-CEG
Released March 5, 2024

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In re: WMVP(AM), Chicago, Illinois
Facility ID No. 73303
Application File No. 219464

Informal Objection

Dear Counsel and Objector:

We have before us the above-referenced application to modify the facilities of AM station WMVP, Chicago, Illinois (WMVP), filed by Good Karma Broadcasting, LLC (Good Karma) on August 16, 2023 (Application). We also have an informal objection to the Application filed by Albert Adam David (David) on November 23, 2023 (Informal Objection).[1] For the reasons stated below, we deny the Informal Objection and grant the Application.

Background. In the Application, Good Karma proposes to relocate the WMVP facility approximately 31 kilometers to the currently licensed nighttime transmitter site of WCPT(AM), Willow Springs, Illinois.[2] Good Karma proposes to retain WMVP's Class A designation, operating frequency (1000 kHz), and 50 kW daytime operating power, but reduce nighttime operating power to 37 kW while diplexing nighttime transmissions with WCPT (WCPT broadcasts at 1.5 kW on a different frequency).[3] Good Karma states that the proposed operation complies with all of the Commission's rules, including the community coverage and signal strength contour overlap requirements.[4]

In the Informal Objection and Reply, David argues that grant of the Application is not in the public interest because Good Karma's proposed nighttime power reduction from 50 kW to 37 kW would not provide "the levels of secondary service that clear-channel status is intended to protect" and would not meet the technical requirements for Class A stations set out in sections 73.21(a)(1) and 73.182(a)(1) of the

[1] Pleading File No. 227653. On December 5, 2023, Good Karma filed an opposition to the Informal Objection (Opposition) (Pleading File No. 231364). On December 23, 2023, David filed reply to the Opposition (Reply) (Pleading File No. 233737).

[2] See Application, Attach. "Engineering Packet" (Engineering Statement) at 1-2.

[3] Engineering Statement at 4.

[4] *Id*. at 7-11.

rules.[5] David alleges that the proposed nighttime power reduction would create a significant skywave contour pattern null over "areas of the country that are most dependent on such coverage, such as sparsely populated areas of Appalachian Virginia and West Virginia."[6] David urges that if the proposed changes are approved, WMVP should be reclassified as a Class B station and lose protection to its secondary coverage areas so that other stations on the same frequency could add or increase their own nighttime service.[7]

In the Opposition, Good Karma states that the proposed power reduction complies with the Commission's rules and that two other Class A stations operate with less than 50 kW nighttime power levels.[8]

Discussion. An informal objection must provide properly supported allegations of fact which, if true, would establish a substantial and material question of fact regarding whether grant of the application in question would be consistent with the public interest, convenience and necessity.[9] David has failed to meet this burden.

Most Class A AM stations assigned to clear channels must operate at 50 kW, which the Commission has explained is "a power level best suited for stations intended to provide wide-area service in the most efficient manner."[10] However, when the Commission reclassified all Class 1-A and 1-B clear channel stations to a single Class A category in 1991,[11] it grandfathered former Class 1-B stations—which had long been authorized to operate at less than 50 kW—to continue to or apply for a future modification to operate at a lower power, provided that the proposed power level was sufficient to generate a secondary service contour—i.e., a skywave signal of at least 0.5 mV/m for 50% of the time that extends beyond the groundwave service contour.[12]

WMVP was classified as a Class 1-B station prior to 1991 and is therefore permitted, as a grandfathered station, to operate at less than 50 kW power if it is otherwise compliant with the Commission's rules. Because the public interest implications of former Class 1-B stations operating at

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[5] Informal Objection at 1 (citing 47 CFR §§ 73.21(a)(1), 73.182(a)(1)).

[6] Informal Objection at 1-2. Groundwaves, also known as surface waves, propagate along the surface of the earth and depend on currents flowing in the ground, as opposed to skywaves, which propagate through the earth's ionosphere. *See generally*, International Telecommunications Union, Handbook on Ground Wave Propagation 1 (2014) (*available at* https://www.itu.int/dms_pub/itu-r/opb/hdb/R-HDB-59-2014-PDF-E.pdf) (last visited Feb. 27, 2024).

[7] Informal Objection at 2, Reply at 1-2. Class A stations located in the continental United States are protected during the day to their 0.1 mV/m groundwave contour by co-channel stations, and to their 0.5 mV/m groundwave contour by adjacent channel stations. 47 CFR § 73.182(a)(1)(i)(A). At night, these stations are protected to their 0.5 mV/m-50 percent skywave contour by co-channel stations, and to their 0.5 mV/m groundwave contour by adjacent channel stations. 47 CFR §§ 73.182(a)(1)(i)(B); 73.182(q). All Class A stations are protected to their 0.1 mV/m groundwave contour during critical hours. 47 CFR § 73.187(a)(1).

[8] Opposition at 1-2.

[9] *See, e.g., WWOR-TV, Inc.,* Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986).

[10] *See Review of the Technical Assignment Criteria for the AM Broadcast Service,* Memorandum Opinion and Order, 8 FCC Rcd 3250, 3258, para. 62 (1993) (*Reconsideration Order*).

[11] *See Review of the Technical Assignment Criteria for the AM Broadcast Service,* Report and Order, 6 FCC Rcd 6273 (1991).

[12] *Reconsideration Order*, 8 FCC Rcd at 3258, para. 63.

less than 50 kW power were thoroughly considered as part of the notice-and-comment rulemaking process leading up to the grandfathering exception, we deny David's argument that reduced power in this case is against the public interest. Moreover, we note that the exception applies to a very small number of stations and that most Class A stations are still required to operate at 50 kW.[13]

Conclusion/Actions. For the reasons set forth above, IT IS ORDERED that the informal objection filed by Albert Adam David on December 23, 2023 (Pleading File No. 227653) IS DENIED and the modification application for AM station WMVP, Chicago, Illinois (WMVP), filed by Good Karma Broadcasting, LLC on August 16, 2023 (Application File No. 219464), IS GRANTED.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

[13] *See* 47 CFR §§ 73.182(a)(1)(i), 73.25(a).

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

In the Matter of	)	
	)	
Amendment of Section 73.622(j),	)	MB Docket No. 23-406
Table of Allotments, Television Broadcast	)	RM-11969
Stations (Greenville, South Carolina)	)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: March 4, 2024 **Released: March 4, 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 Carolina Christian Broadcasting, Inc. (Petitioner), the licensee of WGGS-TV (Station or WGGS), channel 2, Greenville, South Carolina (Greenville).[2] The Petitioner requests the substitution of channel 29 for channel 2 at Greenville in the Table of TV Allotments,[3] and filed comments in support of the Petition, as required by the Commission's rules (rules),[4] reaffirming its interest in the proposed channel substitution and that it will promptly file an application to construct the facility and operate on channel 29 at Greenville if allotted.[5] No other comments were received.[6]

2. We conclude that the public interest would be served by substituting channel 29 for channel 2 at Greenville. Petitioner states that its proposed channel substitution would serve the public interest by resolving reception challenges currently experienced by viewers in the WGGS service area, and substantially improving access to the Station's programming.[7] The Petitioner notes that the Commission has recognized that VHF channels have certain characteristics that pose challenges for their use in providing digital television service, including a large variability in the performance of indoor

[1] *Amendment of Section 73.622(j), Table of Allotments, Television Stations (Greenville, South Carolina)*, MB Docket No. 23-406, Notice of Proposed Rulemaking, DA 23-1107 (rel. Nov. 27, 2023) (*NPRM*).

[2] Petition of Carolina Christian Broadcasting, Inc. for Rulemaking (filed Sept. 27, 2023), LMS File No. 0000221497 (Petition).

[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] Comments of Carolina Christian Broadcasting, Inc. in MB Docket No. 23-406 (filed Jan. 4, 2024) (Comments).

[6] In its Comments, the Petitioner notes that "a one-word comment was filed December 13, 2023 by Michelle Henderson using the Express Comment function of ECFS" and that sole word in that comment was the word "diversity." *Id*. at n.6. This one word comment was filed under this docket's rulemaking number, RM-11969, and there is no indication that it was served on the Petitioner as required by 47 CFR § 1.420(c) ("Comments and reply comments shall be accompanied by a certificate of service."). We agree with the Petitioner that the meaning or purpose of the one-word comment in the context of this rulemaking proceeding to substitute channel 29 for channel 2 at Greenville in the Table of TV Allotments cannot be determined and thus, we give it no consideration.

[7] *NPRM* at para. 2. According to the Petitioner, the Station regularly receives phone calls and emails from viewers no longer able to receive the Station's signal, *id.*, and submitted a number of complaints from viewers regarding reception issues. Petition at Exhibit A.

antennas available to viewers, with most antennas performing very poorly on VHF channels.[8] The Petitioner proposes to operate the Station on channel 29 with a 3-node Distributed Transmission System (DTS) facility, and all viewers within the Station's community of license will continue to be served by the Station.[9] An analysis using the Commission's *TVStudy* software indicates that the Station's move to channel 29 would result in a loss of service to 946,964 persons, mostly located around the edge of the channel 2 noise limited service contour (NLSC).[10] All but 417 persons of those persons, however, would remain well-served by continuing to receive at least five full power or Class A stations,[11] and those 417 persons would continue to receive service from at least four such stations, a number of persons that the Commission has found to be *de minimis*.[12]

3. As proposed, channel 29 can be substituted for channel 2 at Greenville in compliance with the principal community coverage requirements of section 73.625(a) of the rules,[13] at coordinates 34° 56' 26.4" N. and 82° 24' 40.4" W. Although the Petitioner's proposal would result in a loss of programming to a number of viewers on the fringes of the Station's NLSC, all but a *de minimis* number of viewers will remain well-served and we conclude that the overall benefits of the proposed channel change in resolving reception issues outweighs any possible harm to the public interest.[14] In addition, we find that this channel change meets the technical requirements set forth in sections 73.616 and 73.623 of the rules with the following specifications:[15]

[8] *NPRM* at para. 2.

[9] *Id.* at para. 3. The proposed DTS-1 transmitter site is the Station's presently authorized site, *id*. at 2, and the other two proposed sites are located near Hartwell and Hollingsworth, Georgia. *Id*. at n.6.

[10] *Id.* at para. 3. We also note that many viewers who are predicted to lose service as a result of the proposed channel substitution are unlikely to be receiving service from the Station's current channel 2 facility due to known viewer reception issues with low-VHF signals.

[11] *Id*., citing *Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 07-91, Notice of Proposed Rulemaking, 22 FCC Rcd 9478, 9493, para. 38 (2007) (concluding that the Commission is generally most concerned where the loss results in an area becoming less than well served, i.e., served by fewer than five full-power or Class A over-the-air signals).

[12] *NPRM* at para. 4, n.11, citing *WSET, Inc.*, 80 FCC 2d 233, 246 (1980) (finding that loss of service to approximately 550 persons is *de minimis*).

[13] 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 Part 73 Amendment R&O* at para. 37. The amended rule is not effective as of the date of release of this *Report and Order*, and, as such, we continue to make reference to the rule as currently numbered. *See* 89 Fed. Reg. 7224 (Feb. 1, 2024).

[14] In reaching this conclusion, we give no weight to the Petitioner's arguments concerning ATSC 3.0 reception. The Bureau has consistently refused to consider this as a factor in channel substitution rulemaking proceedings since ATSC 3.0 is still in the early stages of deployment and the availability of consumer devices remains limited. *See NPRM* at n.5, citing *Amendment of Section 73.622(j), Table of Allotments, Television Broadcast Stations (Las Vegas, Nevada)*, MB Docket No. 21-221, Report and Order, DA 23-990 (MB rel. Oct. 18, 2023); *Amendment of Section 73.622(j), Table of Allotments, Television Broadcast Stations (Kalispell, Montana)*, MB Docket No. 23-79, Report and Order, DA 23-583 (MB rel. July 5, 2023).

[15] 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. The amended rules are not effective as of the date of release of this *Report and Order,* and, as such, we continue to make reference to the rules as currently numbered. *See* 89 Fed. Reg. 7224 (Feb. 1, 2024).

City and State	Channel	Power (kW)	Antenna HAAT (m)	Service Pop.
Greenville, South Carolina	29	125	354	1,802,843

4. We also conclude that good cause exists to make this channel change effective immediately upon publication in the Federal Register, pursuant to section 553(d)(3) of the Administrative Procedure Act.[16] An expedited effective date is necessary in this case to ensure that WGGS-TV can operate with improved service to its viewers as quickly as possible.

5. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303(g), (r) and 307(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c)(1), 303(g), (r), and 307(b), and sections 0.61, 0.204(b), and 0.283 of the rules, 47 CFR §§ 0.61, 0.204(b), and 0.283, **IT IS ORDERED**, That effective immediately upon the date of publication in the Federal Register, the Table of TV Allotments, section 73.622(j) of the Commission's rules, 47 CFR § 73.622(j), **IS AMENDED**, with respect to the community listed below, to read as follows:

City and State	Channel No.
Greenville, South Carolina	*8, 17, 29, 30

6. **IT IS FURTHER ORDERED**, That within 10 days of the effective date of this R*eport and Order*, Carolina Christian Broadcasting, Inc. shall submit to the Commission a minor change application for a construction permit (Form 2100, Schedule A) specifying channel 29.

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 *Report and 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. 23-406 and RM-11969 **SHALL BE TERMINATED** and its docket closed.

9. For further information concerning the proceeding listed above, contact Joyce L. Bernstein, Video Division, Media Bureau, Joyce.Bernstein@fcc.gov.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

[16] 5 U.S.C. § 553(d)(3).

Federal Communications Commission
Washington, DC 20554

March 5, 2024

DA 24-200

SMALL ENTITY COMPLIANCE GUIDE

Amendment of Parts 1, 2, 15, 90, and 95 of the Commission's Rules
To Permit Radar Services in the 76-81 GHz Band

FCC 17-94
ET Docket No. 15-26
Adopted July 13, 2017

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

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties, or damages. Interested parties are free to file comments regarding this Guide 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

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I. OBJECTIVES OF THE PROCEEDING

The Federal Communications Commission (Commission) has long prioritized the objectives of ensuring the efficient and effective utilization of spectrum, while also providing flexibility and growth opportunities for small and other entities providing services in frequency bands. In keeping with these objectives, the *Report and Order* in ET Docket No. 15-26[1] established an efficient regulatory framework for radar applications operating in the 76-81 GHz band, while also promoting more effective use of spectrum, fostering technological innovation, and providing a consistent set of technical rules and policies for vehicular radars and airport operations areas radars operating within the band. Under the Commission's rules, any person is eligible to operate a radar in the 76-81 GHz band without an individual license; however, such operations must comply with all applicable rules in part 95, subpart M of the Commission's rules.[2]

The *Report and Order* became effective on October 20, 2017, and provided protection from harmful interference for vehicular radars and certain radars that are used exclusively for ground use only in airport air operations areas[3] (such as foreign object debris (FOD) detection radars) or are aircraft-based (for example, wingtip-mounted radars) that operate in the 76-81 GHz band. In addition, the *Report and Order* allocated the 77.5-78 GHz band to the Radiolocation Service (RLS) on a primary basis in the U.S. Table of Frequency Allocations, adding this allocation to the existing primary RLS allocations in the 76-77.5 GHz and 78-81 GHz bands, in order to provide a contiguous five-gigahertz band at 76-81 GHz for vehicular and airport air operations areas radar operations under the primary RLS allocation. As a result, vehicular radars and non-vehicular fixed and mobile radars used exclusively in airport air operations areas, including but not limited to FOD detection radars and aircraft-mounted radars for ground use only, may operate in the entire 76-81 GHz band.[4] Fixed radar systems in the 76-81 GHz band are limited to airport air operations areas and are prohibited from operating outside of airport air operations areas;[5] operation of 76-81 GHz band radars is prohibited aboard aircraft (including helicopters) in flight.[6] No specific spectrum blocks or bandwidths are designated or required within the 76-81 GHz frequency range for any particular radar operations in this band.

The Commission also adopted a consolidated set of rules to govern these 76-81 GHz radar operations. Vehicular radars and non-vehicular fixed and mobile radars used exclusively for ground use in airport air operations areas that operate in the 76-81 GHz range are now governed by subpart M, The 76-81 GHz Radar Service, in part 95 of the Commission's rules (sections 95.3301-95.3385),[7] to be

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[1] *Amendment of Parts 1, 2, 15, 90 and 95 of the Commission's Rules to Permit Radar Services in the 76-81 GHz Band*; ET Docket No. 15-26, Report and Order, 32 FCC Rcd 8822 (2017) (*Report and Order*).

[2] *See* 47 CFR § 95.3305, Radar operator eligibility in the 6-81 GHz Band, https://www.ecfr.gov/current/title-47/chapter-I/subchapter-D/part-95/subpart-M/subject-group-ECFRc74eda7bff11a91/section-95.3305. The part 95, subpart M rules are available at https://www.ecfr.gov/current/title-47/chapter-I/subchapter-D/part-95/subpart-M?toc=1.

[3] "Air operations areas" are all airport areas where aircraft can operate, either under their own power or while in tow. The airport operations area includes runways, taxiways, apron areas, and all unpaved surfaces within the airport's perimeter fence. An apron area is a surface in the air operations area where aircraft park and are serviced (refueled, loaded with cargo, and/or boarded by passengers). *See* 47 CFR § 87.5, Definitions, https://www.ecfr.gov/current/title-47/chapter-I/subchapter-D/part-87/subpart-A/section-87.5.

[4] *See* 47 CFR § 95.3331, Permissible 76-81 GHz Radar Band Service uses, https://www.ecfr.gov/current/title-47/chapter-I/subchapter-D/part-95/subpart-M/subject-group-ECFR25ec71a3b2e7cb7/section-95.3331.

[5] *Id*.

[6] *See* 47 CFR § 95.3333, Airborne use of 76-81 GHz Radar Service is prohibited, https://www.ecfr.gov/current/title-47/chapter-I/subchapter-D/part-95/subpart-M/subject-group-ECFR25ec71a3b2e7cb7/section-95.3333.

[7] The part 95, subpart M, The 76-81 GHz Radar Service, rules are available at https://www.ecfr.gov/current/title-47/chapter-I/subchapter-D/part-95/subpart-M?toc=1.

licensed-by-rule and protected from interference.[8] The *Report and Order* also removed unlicensed vehicular radar operations from the 16.2-17.7 GHz and 46.7-46.9 GHz bands, and established that the Commission would no longer consider licensing FOD detection radars designed to operate in the 78-81 GHz band under section 90.103.[9]

The part 95, subpart M rules contain technical parameters (e.g., maximum average and peak effective isotropic radiated power (EIRP) limits, and unwanted (i.e., out-of-band) emissions limits) for vehicular and airport air operation areas radars (ground use only) in the 76-81 GHz band that mirror the parameters previously specified in the Commission's part 15 rules for vehicular and FOD detection radars that operate in the 76-77 GHz band. Consistent with interpretations of sections 15.252 and 15.515 of the rules, which specify technical requirements for vehicular radar systems and which permit the use of sensors mounted in "terrestrial transportation vehicles," devices certified under part 15 and part 95, subpart M for use on vehicles may be deployed on automobiles; trucks; railroad train locomotives; train cars; monorails or trams; construction vehicles; farming vehicles, such as tractors and harvesters; motorcycles; scooters and motorbikes; mobile scissor-lifts and mobile work platforms; and boats and ships operated within territorial waters of the United States.[10] The overall installation must comply with all the conditions of the grant of certification and the relevant technical rules for such operation.[11] It is not necessary to obtain a new grant of certification for approved sensors to be used on different types of vehicles.[12]

Additionally, the *Report and Order* adopted provisions to phase out unlicensed 24 GHz wideband and ultra-wideband (UWB) vehicular radars operations and transition these radar operations to the 76-81 GHz band. However, phasing out use of the 23.12-29 GHz and 22-29 GHz bands for unlicensed 24 GHz wideband and UWB vehicular radars, respectively, was not intended to apply to unlicensed radars that operate at 24.075-24.175 GHz under section 15.245 and at 24.0-24.25 GHz under section 15.249. These rules, which were not modified, authorize a wide variety of narrowband devices that include, but are not limited to, vehicular-specific radars. As such, devices that operate under these rules will continue to be certified and may continue to be used in vehicular radar applications under part 15 of the rules. Moreover, the part 95, subpart M rules do not apply to Level Probing Radars (LPRs). These specialized radars operate in a variety of frequency ranges, including the 75-85 GHz band, under section 15.256 of the rules, and will remain authorized to operate on an unlicensed basis under part 15 of the rules.[13]

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[8] "Licensed-by-rule" means that an authorized user can access the entire available spectrum without an individual station license document and is instead authorized to operate as long as the operations are in accordance with the applicable service rules. *See* 47 U.S.C. § 307(e). Thus, while all spectrum use is shared among users who meet the eligibility and technical qualifications and no one has exclusive rights to any portion of the spectrum, those users are collectively afforded interference protection *vis-à-vis* other services, based on the allocation status under which they operate.

[9] 47 CFR § 90.103, Radiolocation service.

[10] *See* Knowledge Database (KDB) publication Equipment Authorization Guidance for 76-81 GHz Radar Devices, 653005 76-81 GHz Radars, available at https://apps.fcc.gov/oetcf/kdb/forms/FTSSearchResultPage.cfm?id=230830&switch=P (last visited May 22, 2023). The Commission's KDB is best accessed using an Internet browser other than Mozilla Firefox (e.g., Chrome).

[11] Certification is an equipment authorization approved by the Commission or issued by a Telecommunication Certification Body (TCB) and authorized under the authority of the Commission, based on representations and test data submitted by the applicant. *See* 47 CFR § 2.907, Certification, https://www.ecfr.gov/current/title-47/chapter-I/subchapter-A/part-2/subpart-J?toc=1.

[12] *See* KDB 653005, *supra* note 10.

[13] Unlike part 95 services, which are afforded interference protection rights based on the associated frequency allocation, unlicensed operations may not cause harmful interference and must accept any interference received, including interference that may cause undesired operation. *See* 47 CFR §§ 2.105(c)(2)(i), 15.5(b).

In short, the actions taken in the *Report and Order* harmonize the Commission's rules with international efforts to create a global allocation for vehicular radars, while promoting efficient use of spectrum by consolidating those radar operations into a single band. Further, these actions will facilitate and encourage the development and deployment of new safety devices, along with new and innovative radar applications that can provide important public benefits while also ensuring that the authorized radar operations can coexist with one another and with incumbent users in the 76-81 GHz and adjacent bands.

II. COMPLIANCE REQUIREMENTS

In addition to these rules changes, the *Report and Order* also provides clear direction to small businesses and other entities on how best to comply with the adopted rules. An overview of these compliance requirements is provided below.

A. Transition Provisions for Compliance with the Rules (47 CFR § 15.37)

Parties may certify equipment and operate vehicular radars and non-vehicular fixed and mobile radars used exclusively in airport air operations areas for ground use only in the 76-81 GHz band in accordance with part 95, subpart M of the Commission's rules.

Existing vehicular radars and fixed radar systems used in airport air operations areas operating in the 76-77 GHz band that are already installed or in use may continue to operate in accordance with their previously obtained certification. However, the certification under part 15 of new radars and fixed radar systems used in airport air operations areas that are designed to operate in the 76-77 GHz band has not been permitted since October 20, 2017. Any future certification or any change of already issued certification and operation of such equipment shall be under part 95, subpart M of the rules.

Unlicensed 24 GHz wideband and UWB vehicular radars that are already installed or in use may continue to operate in accordance with their previously obtained certification. However, certification of such radars were not permitted after September 20, 2018 and Class II permissive changes[14] for previously-certified radars have not been permitted since January 1, 2022.

While the manufacture, importation, marketing, sale, and installation of unlicensed 24 GHz wideband or UWB vehicular radars have not been permitted since January 1, 2022, the sale and installation for the repair/replacement of defective, damaged, or malfunctioning equipment already installed in a vehicle on or before January 1, 2022 continue to be permitted indefinitely, but only when it is not possible to repair or replace the radar equipment designed to operate in the 24 GHz band with radar equipment designed to operate in the 76-81 GHz band.

1. This exception is further limited to the repair and replacement of unlicensed 24 GHz wideband and UWB vehicular radar equipment that has been certified for operation in the 24 GHz band.
2. The Commission expects manufacturers to draw on existing stock of equipment approved before January 1, 2022 and will address requests for additional relief (e.g., manufacture, importation, or product redesign) on a case-by-case basis.

The *Report and Order* deleted the references to vehicular radar operations in the 16.2-17.7 GHz and 46.7-46.9 GHz bands from part 15 of the Commission's rules and ceased accepting applications for equipment certification of such devices effective July 13, 2017.

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[14] A Class II permissive change includes those modifications which degrade the performance characteristics as reported to the Commission at the time of the initial certification. Such degraded performance must still meet the minimum requirements of the applicable rules. When a Class II permissive change is made by the grantee, the grantee shall provide complete information and the results of tests of the characteristics affected by such change. The modified equipment shall not be marketed under the existing grant of certification prior to acknowledgement that the change is acceptable. *See* 47 CFR § 2.1043(b)(2), Changes in certificated equipment, https://www.ecfr.gov/current/title-47/chapter-I/subchapter-A/part-2/subpart-J/subject-group-ECFR55475dd0ca1a058.

1. The continued manufacture, importation, marketing, sale, and installation for use in the United States of such equipment in the 16.2-17.7 GHz band under the sole existing equipment authorization for such a device in that band, FCC ID No. L2C0004TR, is prohibited.
2. Any vehicular radars that are already installed or in use under this authorization are grandfathered for the life of the vehicle, thus allowing such systems to continue operating in accordance with their previously-obtained certification for the life of the vehicle or until the supply of existing equipment necessary for maintenance is exhausted. Class II changes will not be permitted for such equipment.

B. Radar Operator Eligibility in the 76-81 GHz Band (47 CFR § 95.3305)

In order to reduce unnecessary compliance burdens and promote increased spectrum efficiency, the *Report and Order* provides that subject to the requirements of sections 95.305 and 95.307 of the Commission's rules, any person is eligible to operate a radar in the 76-81 GHz band without an individual license. Any such operation, however, must comply with all applicable rules in part 95, subpart M.

C. Permissible 76-81 GHz Band Radar Service Uses (47 CFR § 95.3331)

Radar systems operating in the 76-81 GHz band may operate as vehicular radars, or as fixed or mobile radars in airport air operations areas, including but not limited to FOD detection radars and aircraft-mounted radars for ground use only.

The part 95, subpart M rules maintain the restriction that fixed radar operations in the 76-81 GHz band may only operate in airport air operations areas that do not illuminate public roadways. Operation of fixed radars outside of airport areas is not permitted. Fixed airport area radars do not need to be coordinated with other licensed services.

D. Airborne Use of 76-81 GHz Band Radar Service Is Prohibited (47 CFR § 95.3333)

The Commission has prohibited airborne use due to concerns of possible interference with Radio Astronomy Service (RAS) operations in the 76-81 GHz band. Further, aircraft-mounted radars must include an automatic shut-off capability that discontinues all 76-81 GHz radar functions while the aircraft (including helicopters) is airborne. The inclusion of an automatic shut-off mechanism provides greater assurance of compliance with the Commission's ground-based use restrictions.

E. Automatic Control for 76-81 GHz Band Radar Service (47 CFR § 95.3347)

While section 95.347 prohibits the operation of Personal Radio Services stations under automatic control, the *Report and Order* allows for exceptions for a few specified services. Under this section, 76-81 GHz Band Radar Service operations may be conducted under manual or automatic control.

F. Equipment Certification (47 CFR § 95.3361)

Radar equipment operating in the 76-81 GHz band shall be certified in accordance with part 95, subpart M and part 2, subpart J of the Commission's rules.

The general technical parameters to be measured and provided in an application for equipment certification are listed in sections 2.1046 through 2.1057, along with sections 95.3367 and 95.3379 of the Commission's rules.

Application for Equipment Authorization FCC Form 731 should include applicable emission designators. Concerning the section 2.1047 modulation characteristics requirement, the following information should be provided:

1. Radar: Pulse width and pulse repetition frequency (PRF) (if the PRF is variable, then report maximum and minimum values).

2. Non-Pulsed Radar (e.g., Frequency Modulated Continuous-Wave (FMCW): modulation type (i.e., sawtooth, sinusoid, triangle, or square wave) and sweep characteristics (sweep bandwidth, sweep rate, sweep time).

Vehicular and FOD detection radars currently certified under part 15 to operate in the 76-77 GHz band need not be re-certified under part 95 to continue to operate in that band. These devices may continue their operations, but will now do so on a licensed-by-rule basis and be entitled to interference protection from amateur operations in the 76-77 GHz band. However, any changes for such previously certified devices and any new equipment designed to operate in the 76-81 GHz band will need to comply with and be certified under the applicable part 95 rules.

G. 76-81 GHz Band Radar Service Radiated Power Limits (47 CFR § 95.3367)

The radiated emissions limits associated with the fundamental emissions of radars intended for operation within the 76-81 GHz frequency band under part 95 of the Commission's rules, including but not limited to short-range vehicular radars, are specified in section 95.3367 as:

> (a) The maximum power (EIRP) within the 76-81 GHz band shall not exceed 50 dBm based on measurements employing a power averaging detector with a 1 MHz Resolution Bandwidth (RBW).
>
> (b) The maximum peak power (EIRP) within the 76-81 GHz band shall not exceed 55 dBm based on measurements employing a peak detector with a 1 MHz RBW.

The requirement in (a) specifies an average EIRP limit of 50 dBm, which is applicable over the total emission bandwidth (occupied or necessary bandwidth) of the transmission. For example, if the occupied bandwidth (OBW) of the radiated fundamental emission is 10 MHz, then this average power limit is to be interpreted as an EIRP density of 50 dBm/10 MHz. Similarly, if the OBW is 20 MHz, then the applicable output power limit is 50 dBm/20 MHz. The requirement further specifies that measurement of the output power to demonstrate compliance with the limit be performed using a 1 MHz RBW, and then integrated over the full OBW (10 MHz or 20 MHz in the above examples).[15]

The requirement in (b) specifies an EIRP limit of 55 dBm that cannot be exceeded in any 1 MHz resolution bandwidth, measured using a peak detector (i.e., a peak EIRP spectral density limit of 55 dBm/MHz). The compliance measurement is to be performed by sweeping the transmitted OBW with a positive peak power detector, with peak hold activated, using a 1 MHz RBW. Power integration is not to be used in performing this measurement.[16]

Further specific compliance measurement guidance for both pulsed and frequency-modulated continuous-wave (FMCW) radar operations under part 95, subpart M are under development by the FCC Laboratory[17] in collaboration with ASC C63.[18] In the interim, the measurement procedures such as those specified in ANSI C63.10-2013 may continue to be used.

When performing average and peak power and power density measurements on part 95, subpart M 76-81 GHz radars using FMCW modulation techniques, there is no requirement to stop the FM sweep

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[15] *See* KDB 653005, *supra* note 10.

[16] *Id*.

[17] The FCC Laboratory has received several technical comments with regards to measurement procedures for different types of radars. These comments are under review and will be used to further develop the measurement procedures. Any questions about alternate test procedures should be submitted through the KDB inquiry system (www.fcc.gov/labhelp).

[18] Accredited Standards Committee (ASC) C63®—Electromagnetic Compatibility (EMC); accredited by the American National Standards Institute, Inc.; Secretariat: Institute of Electrical and Electronics Engineers, Inc.; www.c63.org.

(or step) as had previously been specified by section 15.31(c). However, when a swept spectrum/signal analyzer is used to perform power measurements on a swept (or stepped) frequency transmitter operating in a normal mode, care must be taken in setting the sweep rate of the measurement instrument to ensure that the entire transmitted sweep (or hop) frequency range is fully examined.[19]

H. 76-81 GHz Band Radar Service Unwanted Emissions Limits (47 CFR § 95.3379)

In the *Report and Order*, the Commission addressed concerns of potential harmful interference in the band by setting unwanted emissions limits low enough for incumbent services in the band to operate without experiencing harmful interference. This section requires that the power density of any unwanted emissions outside of the 76-81 GHz band shall consist solely of spurious emissions and shall not exceed the limits specified in section 95.3379 of the rules.

I. 76-81 GHz Band Radar Service Radiofrequency (RF) Exposure Evaluation (47 CFR § 95.3385)

Mobile and portable radar devices that operate in the 76-81 GHz band are subject to routine environmental evaluation for radiofrequency exposure prior to equipment authorization or use, per sections 2.1091 and 2.1093 of the Commission's rules. Applications for equipment authorization of 76-81 GHz Band Radar Service devices must contain a statement confirming compliance with these requirements for both fundamental emissions and unwanted emissions. Additionally, section 95.3385 of the rules requires that, upon request, any existing technical information providing support for this statement must be submitted to the Commission.

III. RECORDKEEPING AND REPORTING REQUIREMENTS

The Commission's actions in the *Report and Order* did not create any new recordkeeping or reporting requirements.

IV. IMPLEMENTATION DATE

The rules in the *Report and Order* became effective October 20, 2017, with the exception for ceasing application acceptance for equipment certification of vehicular radars designed to operate in the 16.2-17.7 GHz and 46.7-46.9 GHz bands, which became effective July 13, 2017.

V. INTERNET LINKS

A copy of the *Report and Order* is available at: https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-94A1.docx.

A copy of the Federal Register Summary of the *Report and Order*, 82 FR 43865, is available at: https://www.federalregister.gov/documents/2017/09/20/2017-18463/permitting-radar-services-in-the-76-81-ghz-band.

The Commission's rules (Title 47 Code of Federal Regulations (47 CFR)) are available at: https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title47/47tab_02.tpl.

[19] *See* KDB 653005, *supra* note 10.

PUBLIC NOTICE

Federal Communications Commission
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DA 24-201
Released: March 5, 2024

CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU ANNOUNCES COMMENT DATES FOR TCPA CONSENT FURTHER NOTICE OF PROPOSED RULEMAKING

CG Docket No. 02-278

Comment Date: April 4, 2024
Reply Comment Date: April 19, 2024

On February 16, 2024, the Federal Communications Commission (Commission) released the *TCPA Consent Report and Order and Further Notice of Proposed Rulemaking*, in which the Commission adopted new rules to strengthen consumers' ability to revoke consent to receive both robocalls and robotexts.[1] In addition, the Commission sought comment on whether the TCPA applies to robocalls and robotexts from wireless providers to their own subscribers and whether to require an automated opt-out mechanism on every call that contains an artificial or prerecorded voice.[2] On March 5, 2024, a summary of the *TCPA Consent FNPRM* was published in the Federal Register.[3]

The *TCPA Consent FNPRM* sets deadlines for filing comments and reply comments at 30 days and 45 days after publication in the Federal Register, respectively.[4] Accordingly, comments must be filed by **April 4, 2024**, and replies must be filed by **April 19, 2024**.[5]

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

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

- FCC -

[1] *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order and Further Notice of Proposed Rulemaking, FCC 24-24 (Feb. 16, 2024) (*TCPA Consent Order/FNPRM*), FCC-24-24A1.pdf.

[2] *Id.* at paras. 35-45.

[3] Federal Communications Commission, Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Proposed Rule, 89 Fed. Reg. 15802 (Mar. 5, 2024).

[4] *See TCPA Consent Order/FNPRM* at para. 52.

[5] We also note that new rule section 47 CFR § 64.1200(a)(12) adopted in the *TCPA Consent Order/FNPRM* will go into effect on April 4, 2024. The remaining rules adopted in the *TCPA Consent Order/FNPRM* will not be effective until six months following review by Office of Management and Budget.

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DA 24-202
Released: March 5, 2024

WIRELINE COMPETITION BUREAU SEEKS COMMENT ON LETTER SEEKING RDOF AND CAF II AMNESTY FROM 69 INTERNET SERVICE PROVIDERS, TRADE ASSOCIATIONS, STATE AND LOCAL OFFICIALS, SCHOOL DISTRICTS, UNIONS, AND CIVIL SOCIETY ORGANIZATIONS

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

Comment Date: March 26, 2024
Reply Comment Date: April 9, 2024

The Wireline Competition Bureau (Bureau) seeks comment on a letter from 69 Internet Service Providers, Trade Associations, State and Local Officials, School Districts, Unions, and Civil Society Organizations.[1] The letter requests that the Commission provide "[Rural Digital Opportunity Fund] and [Connect America Fund Auction] awardees who cannot or do not intend to build their networks a very short and expedited amnesty period of no more than a month that allows them to relinquish all or part of their winning areas without being penalized to the full extent that the Commission's rules provide."[2]

Filing Requirements. Interested parties may file comments on or before the dates indicated above.[3] All filings must refer to Letter From 69 Internet Service Providers, Trade Associations, State and Local Officials, School Districts, Unions, and Civil Society Organizations and must be submitted to **WC Docket Nos. 10-90, 19-126, and AU Docket No. 20-34**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).[4]

- Electronic Filers: Comments may be filed electronically using the Internet by accessing ECFS: https://www.fcc.gov/ecfs/.

- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.

[1] *See* Letter from 69 Internet Service Providers, Trade Associations, State and Local Officials, School Districts, Unions, and Civil Society Organizations, to Jessica Rosenworcel, Chairwoman, Federal Communications Commission, WC Docket Nos. 10-90, 19-126, AU Docket No. 20-34 (filed Feb. 28, 2024), https://www.fcc.gov/ecfs/document/1022830318048/1.

[2] *Id.*

[3] *See* 47 CFR §§ 1.2, 1.405, and 1.419.

[4] *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

- 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.[5]

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

Ex Parte Rules. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[6] Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the 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).[7] Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

For further information regarding this proceeding, please contact Audra Hale-Maddox of the Telecommunications Access Policy Division, Wireline Competition Bureau at Audra.Hale-Maddox@fcc.gov.

- FCC -

[5] *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (Mar. 19, 2020), https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.

[6] *See* 47 CFR §§ 1.1200 *et seq.*

[7] *Id.* § 1.1206(b).

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DA 24-203
Released: March 7, 2024

WIRELESS TELECOMMUNICATIONS BUREAU GRANTS 900 MHZ BROADBAND SEGMENT APPLICATION

WT Docket No. 17-200

By this Public Notice, the Wireless Telecommunications Bureau (Bureau) announces the grant of one 900 MHz broadband segment license application (see Appendix). On May 13, 2020, the Commission realigned the 900 MHz band to make available six megahertz of low-band spectrum for the development of critical wireless broadband technologies and services, while reserving the remaining four megahertz of spectrum for continued narrowband operations.[1] In accordance with the *900 MHz Report and Order*,[2] acceptance of 900 MHz broadband segment applications began on May 27, 2021.[3]

The Bureau finds the 900 MHz broadband segment application listed in the Appendix to be complete and in conformance with the Commission's rules. No petitions to deny this application were filed, and the application sufficiently demonstrates conformance with the eligibility conditions (Eligibility Certification) and requirements for transitioning the 900 MHz band in the particular county requested (Transition Plan).[4] Furthermore, the Commission has received full anti-windfall payment for the license listed in the Appendix, as required by section 27.1503(c)(2). Therefore, the Bureau finds that granting the application for the 900 MHz broadband segment license listed in the Appendix serves the public interest, convenience, and necessity.

Accordingly, by this Public Notice, we announce the grant of the license listed in the Appendix. We grant this license pursuant to section 309(a) of the Communications Act, 47 U.S.C. § 309(a), and sections 0.131 and 0.331 of the Commission's rules, 47 CFR §§ 0.131, 0.331. This new 900 MHz broadband licensee may begin operation in the applicable counties, subject to protection of covered incumbents.[5]

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[1] *Review of the Commission's Rules Governing the 896–901/935–940 MHz Band*, WT Docket No. 17-200, Report and Order, Order of Proposed Modification, and Order, 35 FCC Rcd 5183 (2020) (*900 MHz Report and Order*).

[2] *Id.* at para. 113.

[3] *See Wireless Telecommunications Bureau to Accept 900 MHz Broadband Segment Applications Beginning May 27, 2021*, WTB Docket No. 17-200, Public Notice, 36 FCC Rcd 7377 (WTB 2021) (*900 MHZ Broadband Segment Applications Public Notice*).

[4] 47 CFR § 27.1503; *see also 900 MHz Broadband Segment Applications Public Notice, Attachment A*.

[5] A Covered Incumbent is any 900 MHz site-based licensee in the broadband segment that is required under section 90.621(b) to be protected by a broadband licensee with a base station at any location within the county, or any 900 MHz geographic-based SMR licensee in the broadband segment whose license area completely or partially overlaps the county. 47 CFR § 27.1501(g).

We remind licensees that they should review the Commission's part 27 rules and all Commission orders and public notices establishing rules and policies for the 900 MHz band.[6] Each licensee is solely responsible for complying with all FCC rules and regulations associated with these licenses.

This Public Notice includes one appendix, which is included at the end of this document:

Appendix – 900 MHz Broadband Segment Licenses Granted – Sorted by Licensee

Applicants who have questions concerning this Public Notice may contact Morgan Mendenhall of the Wireless Telecommunications Bureau, Mobility Division, (202) 418-0154, morgan.mendenhall@fcc.gov.

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

[6] *See* 47 CFR pt. 27; *see also 900 MHz Report and Order*, 35 FCC Rcd 5183; *900 MHz Broadband Segment Applications Public Notice*.

APPENDIX

900 MHZ BROADBAND SEGMENT LICENSES

APPLICATIONS GRANTED

SORTED BY LICENSEE

Licensee Name	File Number	FRN	Market/County Number (FIPS)	Market Description	Mandatory Relocation[7]
PDV Spectrum Holding Company, LLC	0010739600	0023948573	D27163	Washington County, MN	N/A

[7] Section 27.1504 permits a broadband licensee to relocate mandatorily certain incumbents from the 900 MHz broadband section. Incumbent licensees identified for mandatory relocation by new licensees will appear in this column. When there are no incumbent licensees identified for mandatory relocation, N/A will appear.

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Washington, DC 20554

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Internet: www.fcc.gov
TTY: 888-835-5322

DA 24-205
Released: March 5, 2024

ARMIS RECORDS FROM 2006 AND 2007 TO BE MADE PUBLICLY AVAILABLE ABSENT A RENEWED REQUEST FOR CONFIDENTIAL TREATMENT

By this Public Notice, the Office of Economics and Analytics (OEA) announces that it will inform the National Archives that the National Archives may publicly release certain Automated Reporting Management Information System (ARMIS) reports in its possession unless the entity that submitted such reports concurrently submitted a request for confidential treatment under section 0.459 of the Commission's rules and notifies OEA no later than **April 15, 2024** that it continues to request confidential treatment.

ARMIS is an automated system established by the Commission in 1987 to collect financial and operating data from certain carriers in order to administer the Commission's accounting, joint cost, separations, rate base disallowance, and access charges rules.[1] Further reporting obligations were enacted in the 1990s, although many of the ARMIS reporting requirements are no longer required due to subsequent Commission action.[2] Some of the ARMIS reports were submitted to the Commission along with requests for confidential treatment under section 0.459, but the Commission has not ruled on any such requests.

ARMIS records are typically sent to the National Archives five years after the filing date. Recently, the National Archives asked OEA whether it can publicly release the following ARMIS reports from 2006 and 2007:

- 43-02 Uniform System of Accounts Report
- 43-03 Joint Cost Report
- 43-04 Separation and Access Report
- 495B Actual Usage Investment Report

Those entities that filed such reports are available online.[3]

Consistent with the process established to address a similar earlier request from the National Archives,[4] OEA will inform the National Archives that it may proceed with the public release of such reports unless (i) a request for confidential treatment was submitted at the time of each report's filing, and

[1] *See Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies*, Report and Order, 2 FCC Rcd 5770 (1987), *recon*. 3 FCC Rcd 6375 (1988).

[2] For further information pertaining to the history of ARMIS and its obligations, see https://www.fcc.gov/economics-analytics/industry-analysis-division/armis/armis-instructions-data.

[3] *See* https://transition.fcc.gov/wcb/armis/documents/2006PDFs/cosa06.pdf; https://transition.fcc.gov/wcb/armis/documents/2007PDFs/cosa07.pdf.

[4] *See Commission Will Notify the National Archives that it May Remove the Designation of Confidentiality from Ten-Year Old ARMIS Records*, Public Notice, DA 01-1392 (CCB 2001).

(ii) the entity (or its successor in interest) notifies OEA no later than **April 15, 2024** that it continues to request confidential treatment. This notification should include the prior request for confidential treatment as an attachment and must provide the specific reasons why such treatment is still appropriate, as required by section 0.459(b).[5] OEA will not consider broad or conclusory statements of confidentiality that do not meet the requirements of section 0.459(b). Entities must submit such notifications to Suzanne Mendez, Associate Chief of OEA's Industry Analysis Division, via email to Suzanne.Mendez@fcc.gov.

For further information, contact Suzanne Mendez at 202-418-0941 or the email address stated above.

–FCC–

[5] *See* 47 CFR 0.459(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 24-206
Released: March 7, 2024

CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON THE ACCESSIBILITY OF COMMUNICATIONS TECHNOLOGIES FOR THE 2024 BIENNIAL REPORT REQUIRED BY THE TWENTY-FIRST CENTURY COMMUNICATIONS AND VIDEO ACCESSIBILITY ACT

Pleading Cycle Established
CG Docket No. 10-213

Comment Date: May 6, 2024

I. INTRODUCTION

1. The Consumer and Governmental Affairs Bureau (CGB or Bureau) of the Federal Communications Commission (FCC or Commission) seeks comment in connection with its biennial report required by the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA).[1] The biennial report must be submitted to Congress by October 8, 2024.[2] In this Public Notice, we invite comment on compliance with statutory mandates for telecommunications and advanced communications services (ACS), equipment used with these services, and Internet browsers built into mobile phones, to be accessible to and usable by people with disabilities. Furthermore, we seek comment on the extent to which accessibility barriers still exist with respect to new communications technologies and the effect of CVAA recordkeeping and enforcement requirements on the development and deployment of new communications technologies.[3]

II. BACKGROUND

2. The CVAA requires the Commission to submit a biennial report to Congress on (1) the level of compliance with the CVAA's communications accessibility obligations found in sections 255, 716, and 718 of the Communications Act of 1934, as amended (the Act); (2) the extent to which accessibility barriers still exist with respect to new communications technologies; (3) the effect of the recordkeeping and enforcement requirements on the development and deployment of new communications technologies; and (4) information about complaints received by the Commission alleging violations of sections 255, 716, and 718.[4] The Commission has submitted biennial reports to Congress

[1] Pub. L. No. 111-260, 124 Stat. 2751 (2010) (as codified in various sections of 47 U.S.C.); Pub. L. No. 111-265, 124 Stat. 2795 (2010). The Bureau is preparing this biennial report pursuant to delegated authority. 47 CFR § 0.361.

[2] *See* 47 U.S.C. § 618(b)(1).

[3] *Id*.

[4] *Id.*; *see also* 47 U.S.C. §§ 255, 617, 619.

since 2012.[5] After we receive comments in response to this Notice, the Bureau will prepare and seek comment on its tentative findings for the 2024 report.[6]

3. Section 255 and the Commission's implementing regulations require telecommunications and interconnected voice over Internet protocol (VoIP) service providers and equipment manufacturers to make their services and equipment accessible to and usable by people with disabilities, if "readily achievable".[7] The Commission has defined services covered under section 255 to include local and long distance telephone service, call waiting, speed dialing, call forwarding, computer-provided directory assistance, call monitoring, caller identification, call tracing, and repeat dialing.[8] Equipment covered under section 255 includes, but is not limited to, customer premises equipment such as wireline, cordless, and wireless telephones, fax machines, and answering machines.[9] In addition, rules adopted pursuant to section 255 cover voicemail and interactive voice response systems.[10]

4. Section 716 requires ACS providers and equipment manufacturers to make their services and equipment accessible to and usable by people with disabilities, unless doing so is "not achievable."[11] These requirements apply to providers of non-interconnected VoIP services, electronic messaging services, interoperable video conferencing services, and any audio or video communications service used by inmates for the purpose of communicating with individuals outside the correctional institution where the inmate is held, regardless of technology used, and to manufacturers of equipment used with these services.[12] Section 718 requires Internet browsers built into mobile phones to be accessible to and usable

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[5] *See, e.g., Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010, Biennial Report to Congress as Required by the Twenty-First Century Communications and Video Accessibility Act of 2010*, 37 FCC Rcd 11360 (2022) (*2022 CVAA Biennial Report*). All *CVAA Biennial Reports* are located at www.fcc.gov/cvaa.

[6] *See* 47 U.S.C. § 618(b)(2).

[7] 47 U.S.C. § 255; 47 CFR Parts 6, 7. When accessibility to these services is not readily achievable (defined as "easily accomplishable and able to be carried out without much difficulty or expense"), covered entities must ensure that their services and equipment are compatible with existing peripheral devices or specialized equipment commonly used by people with disabilities to achieve access, if readily achievable. 47 U.S.C. § 255(d); 42 U.S.C. § 12181(9) (defining "readily achievable").

[8] *Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996: Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities*, Report and Order and Further Notice of Inquiry, 16 FCC Rcd 6417, 6449, para. 77 (1999) (*Section 255 Order*). *See also* 47 CFR Part 6.

[9] 47 U.S.C. § 153(52) (definition of "telecommunications equipment); id., Sec. 153(16) (definition of "customer premises equipment").

[10] *Section 255 Order*, 16 FCC Rcd at 6455-62, paras. 93-108; 47 CFR Part 7.

[11] 47 U.S.C. § 617. Section 716 of the Act defines "achievable" to mean with reasonable effort or expense, listing four factors the Commission must consider when making such determinations. 47 U.S.C. § 617(g). Although the Act's definition of ACS also includes interconnected VoIP service, the accessibility obligations of interconnected VoIP service providers and equipment manufacturers are governed by the requirements of section 255 of the Act. *See* 47 U.S.C. §§ 255, 617(f).

[12] *See* 47 U.S.C. § 617(a)-(b), (g). The Commission adopted Part 14 of its rules to implement the accessibility and usability requirements of Section 716. *Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010*; *Amendments to the Commission's Rules Implementing Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996*, CG Docket Nos. 10-213 10-415, and WC Docket No. 96-198, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 14557 (2011) (*ACS Report and Order and ACS FNPRM*). At present, providers and equipment manufacturers of interconnected VoIP services, non-interconnected VoIP services, and electronic messaging services must comply with the accessibility and usability requirements of

(continued….)

by people who are blind or visually impaired, if achievable.[13] Section 717 requires covered entities to keep records of their efforts to implement sections 255, 716, and 718.[14] Section 717 also requires the Commission to investigate informal complaints alleging violations of these provisions and to issue orders on the outcomes of these investigations within 180 days of their filing.[15] Before filing an informal complaint under this section, a consumer must submit a "request for dispute assistance" (RDA) with the FCC's Disability Rights Office, which works with the consumer and the service provider or equipment manufacturer for a minimum of 30 days to resolve the accessibility problem.[16]

III. COMPLIANCE WITH SECTIONS 255, 716, AND 718

5. *Accessibility.* We seek comment on the current level of compliance with sections 255 and 716 to make telecommunications and advanced communications services and equipment accessible to and usable by people with disabilities.[17] Which products or services are not accessible or usable and how does that impact advanced communications or telecommunications? For the specific product or service at issue, are the input, control, and mechanical functions of telecommunications and advanced communications services and equipment locatable, identifiable, and operable (1) without vision, hearing, speech, or color perception; (2) with limited vision, hearing, color perception, manual dexterity, reach and strength, or cognitive skills; (3) with prosthetic devices; and (4) without time-dependent controls?[18] Where services and devices are not natively accessible, do service providers and manufacturers make them compatible with peripheral devices and specialized customer premises equipment commonly used

(Continued from previous page)

Part 14. *Id*. Providers and equipment manufacturers of interoperable video conferencing services must comply with the requirements of Part 14 by September 3, 2024. *See Access to Video Conferencing; Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010*, CG Docket No. 23-161, Report and Order, Notice of Proposed Rulemaking, Order, FCC 23-50, para. 41 (2023) (*IVCS Order and NPRM*) (requiring compliance with Part 14 one year from the effective date of the *IVCS Order*). In 2022, Congress amended "advanced communications services" to include audio and video communications services that are provided to people who are incarcerated (IPCS). Martha Wright-Reed Just and Reasonable Communications Act of 2022, Pub. L. No. 117-338, 136 Stat. 6156 (Martha Wright-Reed Act); 47 U.S.C. §§ 152(b), 153(1)(E), 276(b)(1)(A), (d); *see also FCC Seeks Comment On Its Expanded Authority To Ensure Just And Reasonable Rates And Charges For Incarcerated People's Communications Services*, WC Docket Nos. 23-62 and 12-375, Notice of Proposed Rulemaking, FCC 23-19, paras. 75-79 (2023). The Commission has sought comment on extending Part 14 requirements to providers and equipment manufacturers of audio and video communications services used by incarcerated persons. *FCC Seeks Comment On Its Expanded Authority To Ensure Just And Reasonable Rates And Charges For Incarcerated People's Communications Services*, WC Docket Nos. 23-62 and 12-375, Notice of Proposed Rulemaking, FCC 23-19, paras. 75-79 (2023).

[13] 47 U.S.C. § 619; *see also Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010; Amendments to the Commission's Rules Implementing Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996*, Second Report and Order, 28 FCC Rcd 5957 (2013) (*ACS Second Report and Order*).

[14] 47 U.S.C. § 618(a)(5)(A). These records must include information about their efforts to consult with people with disabilities, descriptions of the accessibility features of their products and services, and information about the compatibility of these products and services with peripheral devices or specialized customer premises equipment commonly used by people with disabilities to achieve access. *Id.*; *see also* 47 CFR § 13.41(a).

[15] 47 U.S.C. § 618(a)(3)(B).

[16] *See* 47 CFR § 14.32.

[17] *See* 47 CFR §§ 6.3(a), 7.3(a), 14.21(b).

[18] *Id.*

by people with disabilities to achieve access?[19] If services and devices are sold with a range of different features, functions, and prices, are these devices and services accessible to people with disabilities?

6. We also seek input on the level of compliance with the obligations of section 718 to make Internet browsers built into mobile phones accessible for people who are blind or visually impaired.[20] Are the input, control, and mechanical functions of Internet browsers built into mobile phones locatable, identifiable, and operable by people without vision or with limited vision? Are accessible Internet browsers offered in mobile phones across a range of low-end and high-end features, functions, and prices? How easy is it to find such phones?

7. We also seek comment on the issues and conclusions that the Bureau considered in the *2022 CVAA Biennial Report* regarding accessibility obligations contained in sections 255, 716, and 718. In that report, the Bureau noted that "[c]ommenters discuss new technologies that provide improved access to telecommunications and advanced communications services and equipment, and they also identify technologies that have accessibility gaps. Commenters show continuing accessibility interface improvements for people with mobility disabilities. However, the comments also indicate that people who use braille readers have limited accessibility for at least some types of advanced communications services. There have been new developments in apps that permit some people who are deaf, hard of hearing, or have speech disabilities to make voice calls and in smart home devices that include voice and text messaging capabilities."[21] Have there been improvements or new developments in these areas since 2022?

8. *Inclusion of People with Disabilities in Product and Service Design and Development.* We seek comment on the extent to which manufacturers and service providers have included people with disabilities and consumer disability organizations in their market research, product design, testing, pilot demonstrations, and product trials. In the *2022 CVAA Biennial Report,* the Bureau found that "covered entities have continued to include people with disabilities in product and service design and development,"[22] and we seek comment on any new developments since then.

9. *Usability: Information, Documentation, and Training.* In addition to requiring accessibility, sections 255, 716, and 718 require telecommunications, ACS, and Internet browsers built into mobile phones to be *usable by* people with disabilities, i.e., to provide accessible information and documentation for the product or service, including instructions, product or service information (including information on accessibility features), customer service, and technical support.[23] In the *2022 CVAA Biennial Report*, the Bureau found that "while usability improved for some covered services and equipment, there is still room for improvement."[24]

10. We seek updated information on the extent to which telecommunications and advanced communications services providers and manufacturers are ensuring the usability of their offerings through, for example, accessible user guides, bills, installation guides, and product support communications.[25] To what extent are service providers and equipment manufacturers covered under section 718 ensuring access to information and documentation about the Internet browsers that are built

[19] *See* 47 CFR §§ 6.3(b), 7.3(b), 14.20(a)(3).

[20] *See* 47 CFR § 14.21(b)(1)(i)-(iii), (b)(2)(i)-(iii), (b)(2)(vii).

[21] *2022 CVAA Report*, 37 FCC Rcd 11364-65, para. 10.

[22] *2022 CVAA Biennial Report*, 37 FCC Rcd at 11368, para. 20.

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

[24] *2022 CVAA Biennial Report*, 37 FCC Rcd at 11367, para. 16.

[25] *See* 47 CFR §§ 6.11, 7.11, 14.21(c).

into their mobile phones?[26] Are companies providing user guides, documentation, and other information in braille and other alternate formats? Are companies training their customer service representatives, technical support personnel, sales personnel, and others having direct contact with the public on the accessibility of their products and services?

11. Finally, we seek comment on any other issues relevant to assessing the level of compliance with sections 255, 716, and 718 and the Commission's implementing rules governing the accessibility and usability of telecommunications and advanced communications services and equipment, and Internet browsers built into mobile phones.

IV. ACCESSIBILITY BARRIERS TO NEW COMMUNICATIONS TECHNOLOGIES

12. The CVAA requires the Commission to include, in its biennial report, an evaluation of the extent to which any accessibility barriers exist with respect to "new communications technologies."[27] In the *2022 CVAA Biennial* Report, commenters focused primarily on the importance of accessible video conferencing services for people with disabilities in light of the COVID-19 pandemic.[28] Since issuance of the 2022 report, the Commission affirmed that interoperable video conferencing services are ACS and, by September 3, 2024, will be covered by the FCC's Part 14 rules, and issued a Notice to explore additional issues with respect to the accessibility of these services.[29] Commenters in that proceeding identified accessibility barriers to those services that are the subject of an ongoing rulemaking proceeding. For the upcoming report, we invite comment on developments in the accessibility of these and any new products and services.

13. Are there accessibility barriers to other new communications technologies? For example, are there new devices or services that incorporate telecommunications, ACS, and web browsing features that have accessibility barriers? For ACS products and services that are in the pipeline, what steps are being undertaken to ensure their accessibility and usability?

V. EFFECT OF ACCESSIBILITY RECORDKEEPING AND ENFORCEMENT REQUIREMENTS

14. As required by the CVAA, we seek comment on the effect of the accessibility recordkeeping and enforcement requirements, which apply to entities that are subject to sections 255, 716, or 718, on the development and deployment of new communications technologies.[30] In 2022, no comments were filed on this issue, and the Bureau found that there has been no effect on the development and deployment of new communications technologies.[31]

VI. PROCEDURAL MATTERS

15. *Ex Parte Rules*. The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[32] 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

[26] *See* 47 CFR § 14.60(b)(4)-(5).

[27] 47 U.S.C. § 618(b)(1)(B).

[28] *2022 CVAA Biennial Report*, 37 FCC Rcd 11369, para. 21.

[29] *See generally IVCS Order and NPRM.*

[30] *See* 47 U.S.C. § 618(b)(1)(G).

[31] *2022 CVAA Biennial Report*, 37 FCC Rcd 11376, para. 43.

[32] 47 CFR §§ 1.1200 *et seq.*

summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

16. *Filing Requirements.* Interested parties may file comments on or before the date indicated on the first page of this document.[33] Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).[34] All comments should refer to **CG Docket No. 10-213**. Please title comments responsive to this Notice as "Public Notice Comments – Accessibility of Communications Technologies." Further, we strongly encourage parties to develop responses to this Notice that adhere to the organization and structure of the questions in this Notice.

- 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.

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

18. *Additional Information.* For further information regarding this Notice, contact Suzy Rosen Singleton, Disability Rights Office, Consumer and Governmental Affairs Bureau, at 202-510-9446 or by e-mail to Suzanne.Singleton@fcc.gov.

- FCC -

[33] 47 CFR §§ 1.415, 1.419.

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

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

In the Matter of	)	
	)	
City of Quincy, Massachusetts	)	File No. 0010397178
	)	
Requests for Waiver of Sections 22.621, 90.307(d), and 90.311 of the Commission's Rules	)	

ORDER

Adopted: March 6, 2024 **Released: March 6, 2024**

By the Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. On March 3, 2023, the City of Quincy, Massachusetts, on behalf of its Fire Department, (Quincy, or the Department) filed an application to use, for public safety communications purposes, two frequencies interleaved between the allocations in part 22 and part 90 of the Commission's rules, accompanied by a waiver request.[1] The Department seeks waivers of sections 22.7, 22.501, 22.621, 22.623, 90.303, and 90.311 of the Commission's rules.[2] For the reasons below, we grant the requested waiver as conditioned herein.

II. BACKGROUND

2. Quincy currently operates a T-Band public safety radio system under call sign WQKM366 on frequencies in the 470-512 MHz Band (T-Band). Quincy seeks to add non-public safety frequencies 470.3000 MHz and 473.3000 MHz to the system for public safety radio operations.[3] The requested frequencies are considered interleaved because they are situated in between part 22 and part 90-designated spectrum bands, but they are not assignable to users under either part.[4] Specifically, in the Boston, Massachusetts area, section 22.621 permits point-to-multipoint use on channels in the TV Channel 14 band (470-476 MHz) up to the highest center frequencies 470.2875 MHz and 473.2875

[1] *See* File No. 0010397178 (filed Jan. 30, 2023, amended Mar. 3, 2023), attached Revised Request for Waiver (Revised Waiver Request).

[2] *See* 47 CFR §§ 22.7 (any entity, other than those precluded by section 310 of the Communications Act of 1934, as amended, 47 U.S.C. § 310, is eligible to hold a license under part 22); 22.501 (the rules in part 22 subpart E govern the licensing and operation of public mobile paging and radiotelephone stations); 22.621 (designating certain frequencies for point-to-multipoint transmitters that support transmitters that provide public mobile service), 22.623 (requiring that the channels in the 470-512 MHz band listed in § 22.621 may be assigned in an unpaired configuration only to control base stations in the public mobile service, and that the FCC selects and assigns channels when granting authorizations); 90.303 (Frequencies in the TV Channel 14 and 16 bands (470-476 and 482-488 MHz) are designated for land mobile and paging assignment in the Boston area); and 90.311 (designating certain frequency ranges for land mobile radio assignment); *see also* Revised Waiver Request at 1.

[3] Revised Waiver Request at 1.

[4] *See Public Safety and Homeland Security Bureau Seeks Comment on Request for Waiver Filed by The City of Westchester, New York to Use Two Frequencies Interleaved Between the Part 22 and Part 90 Allocations for Public Safety Communications*, Public Notice, 24 FCC Rcd 3704, 3705 (PSHSB 2009).

MHz.[5] Section 90.311 permits private land mobile use, which includes public safety, in the TV Channel 14 band on frequencies no lower than 470.30625 MHz and 473.30625 MHz.[6] These allocations eliminate licensing frequencies 470.3000 MHz and 473.3000 MHz for either part 22 or part 90 use.

3. Quincy states that "there has been a significant increase in new buildings in the city. The Department indicates that the additional channels 470.3000/473.3000 MHz will give Quincy added channel capacity for use as a fireground channel to address emergencies in the new buildings, or for use as an operations channel to coordinate evacuation of residents, or as a rapid intervention team channel to deal with a firefighter "MAYDAY."[7] Quincy states that close to 50 bi-directional amplifiers (BDAs) are deployed throughout the city to satisfy Massachusetts State Building Code requirements.[8] The Department argues that it needs a T-Band channel that can be passed by the BDAs so property owners will not have to incur the additional cost of having to update such systems.

4. On February 1, 2023, the Public Safety and Homeland Security Bureau (Bureau) issued a public notice[9] seeking comment on the applications and waiver requests. We received no comments or replies.

III. DISCUSSION

A. Section 337(c) of the Act

5. Section 337(c) of the Act states that the Commission shall grant an application by an entity seeking to provide public safety services to the extent necessary to permit the use of unassigned frequencies, if the Commission makes five specific findings: (1) no other spectrum allocated for public safety use is immediately available; (2) there will be no harmful interference to other spectrum users entitled to protection; (3) public safety use of the frequencies is consistent with other public safety spectrum allocations in the geographic area in question; (4) the unassigned frequencies were allocated for their present use not less than two years prior to the grant of the application at issue; and (5) the grant of the application is consistent with the public interest.[10] "Public safety services" are defined by 47 U.S.C. § 337(f) as services the sole or principal purpose of which is to protect the safety of life, health, or property, that are provided by the governmental entities or by non-governmental entities authorized by the governmental entity whose primary mission is the provision of such services, and that are not made commercially available to the public by the provider.[11]

6. As an initial matter, the Act defines public safety services as "services – (A) the sole or principal purpose of which is to protect the safety of life, health, or property; (B) that are provided – (i) by State or local government entities; or (ii) by nongovernmental organizations that are authorized by a governmental entity whose primary mission is the provision of such services; and (C) that are not made commercially available to the public by the provider."[12] First, the Department states that it "provides fire

[5] 47 CFR § 22.921. The listed channels are "allocated for assignment to transmitters utilized within point-to-multipoint systems that support transmitters that provide public mobile service." *Id*.

[6] 47 CFR § 90.311.

[7] Revised Waiver Request at 2.

[8] *Id*. citing Massachusetts State Building Code, 780 CMR, 2015 International building Code as Amended, Section 916.2.

[9] *See Public Safety And Homeland Security Bureau Seeks Comment on Requests for Waiver Filed by the City of Quincy, Massachusetts to Operate a Public Safety Paging System on Part 22 Spectrum*, Public Notice, DA 23-732 (PSHSB Aug. 21, 2023).

[10] 47 U.S.C. § 337(c)(1).

[11] 47 U.S.C. § 337(f).

[12] 47 U.S.C. § 337(f)(1).

and rescue services to the City of Quincy, Massachusetts."[13] Second, we find that Quincy is a local government entity. Finally, Quincy states that "[t]his system will be used solely to provide public safety services and will not be made commercially available to the public"[14] Based on the information before us, we conclude that Quincy is an "entity seeking to provide public safety services" as required by section 337(f) of the Act.[15]

7. However, we find that the Department has not demonstrated that "no other spectrum allocated to public safety services is immediately available to satisfy the requested public safety service use," as required by subsection 337(c)(1)(A) of the Act.[16] The Department claims that its frequency coordinator conducted "comprehensive review of available public safety spectrum in the UHF and T-bands (see attached)."[17] Quincy states that "[d]espite these efforts, APCO was unable to identify any available public safety spectrum that would serve the City of Quincy Fire Department needs."[18] The Department provides no frequency availability analysis with regard to other public safety spectrum bands such as the VHF, 700 MHz, and 800 MHz bands.

8. While we recognize the Department's need for radio capacity and its specific request for T-Band channels to ensure compatibility with BDAs deployed throughout the City of Quincy, we do not find its section 337 argument persuasive. The Commission has previously apprised section 337 applicants that "the statute requires that there be no unassigned public safety spectrum, or not enough for the proposed public safety use, in any band in the geographic area in which the section 337 applicant seeks to provide public safety services."[19] In light of this guidance, both the Bureau and the Wireless Telecommunications Bureau have consistently rejected the argument that an applicant can satisfy section 337(c) of the Act merely by showing either the unavailability of frequencies in its preferred public safety band or, conversely, the unsuitability of frequencies in other public safety bands.[20] Because Quincy has failed to satisfy one of the five criteria; specifically, that "no other spectrum allocated to public safety services is immediately available to satisfy the requested public safety service use," we need not and do not address its arguments regarding the remaining four criteria in finding that the Department cannot obtain waiver relief pursuant to section 337 of the Act.[21]

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[13] Revised Waiver Request at 4.

[14] *Id*.

[15] 47 U.S.C. § 337(f).

[16] 47 U.S.C. § 337(c)(1)(A).

[17] Revised Waiver Request at 4.

[18] *Id*.

[19] In the Matter of Implementation of Sections 309(j) and 337 of the Communications Act of 1934, as amended, WT Docket No. 99-87, *Report and Order and Further Notice of Proposed Rule Making*, 15 FCC Rcd 22709, 22769 para. 132 (2000) (*Balanced Budget Act Report and Order*) (footnotes omitted). *See also* H.R. Conf. Rep. No. 105-217, 105th Cong., 1st Sess., at 579-80 (1997) ("spectrum must not be immediately available on a frequency already allocated to public safety services.").

[20] *See* County of Marin, California, *Order*, 22 FCC Rcd 9165, 9167-68 para. 6 (2007); State of Ohio, *Memorandum Opinion and Order*, 17 FCC Rcd 439, 446-47 para. 15 (2002) (*Ohio*); State of Tennessee Department of Transportation, *Order on Reconsideration*, 15 FCC Rcd 24645, 24648-49 para. 9 (2000) (*Tennessee DOT*).

[21] *See, e.g.,* Hennepin County, *Order*, 14 FCC Rcd 19418 (1999) (having noted failure of Hennepin County to meet one of the criteria, Bureau did not address remainder); New Hampshire Department of Transportation (NHDOT), *Memorandum Opinion and Order*, 14 FCC Rcd 19438, 19442 (1999) (*New Hampshire DOT*) (after having determined that New Hampshire failed to demonstrate that no other spectrum allocated to public safety service was immediately available, Bureau noted that it "need not address whether NHDOT has submitted evidence that would allow us to make the other findings required by Section 337(c)(1) of the Act.").

9. However, our finding that Quincy does not warrant waiver relief under section 337 does not foreclose consideration of Quincy's alternative request for waiver relief pursuant to section 1.925 of the Commission's rules.[22] Rather, our ability to undertake a waiver analysis pursuant to that section rests on the Commission's plenary authority under the Act to make rules and regulations necessary to achieve the Commission's over-arching statutory purposes, including "promoting safety of life and property through the use of radio communication."[23] From our review of the record in this case, we find that, despite its failure to meet the first criterion for receiving Section 337 waiver relief, Quincy has provided us with sufficient information for us to consider whether waiver relief is justified under section 1.925.

B. Section 1.925 of the Commission's Rules

10. Section 1.925 of the Commission's rules provides that to obtain a waiver of the Commission's rules, a petitioner must demonstrate either that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.[24] An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.[25]

11. Quincy seeks a waiver of sections 22.7, 22.501, 22.621, 22.623, 90.303, and 90.311 to provide public safety Public Land Mobile Radio (PLMR) service on frequencies 470.3000 and 473.3000 MHz. At the outset, we find that the Department does not require waiver of sections 22.7, 22.501, 22.623 and 90.303. Section 22.7, which generally precludes foreign-owned entities from eligibility per section 310 of the Communications Act of 1934, as amended, does not otherwise exclude Quincy, a domestic governmental entity, from eligibility.[26] Section 22.501 indicates that the rules in part 22 subpart E govern the licensing and operation of public mobile paging and radiotelephone stations; otherwise the rule is not germane to the instant case.[27] Next, we find that the requirements of section 22.623 requirements applicable to "channels listed in" section 22.621 do not apply to the instant case because requested frequencies 470.3000 and 473.3000 MHz are not listed in section 22.621.[28] Finally, section 90.303

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[22] *Balanced Budget Act Report and Order* at 22769 para. 132 n.366, *citing* 47 CFR § 1.925. *See also* Letter to Alan S. Tilles, Esq., 22 FCC Rcd 13577, 13581 & fn.30 (2007) (noting that "[i]n addition to the Section 337 process, [public safety] entities can also seek a conventional waiver under Section 1.925 of rules."). *See* County of Ocean, New Jersey, *Order*, 24 FCC Rcd 11299 (PSHSB PD 2009). *See also* Baldwin Fire District, New York, *Order*, 24 FCC Rcd 11857 (PSHSB PD 2009).

[23] County of Granite, Montana, *Order,* 24 FCC Rcd 5704, 5712 para. 17 (2009) *citing* 47 U.S.C. § 151. However, consideration of a Section 1.925 waiver request does not predetermine that we will grant relief. *See*, *e.g.*, *Tennessee DOT* at 24650 para. 12 (finding that applicant had not met its burden of showing that Section 1.925 waiver relief is justified); *New Hampshire DOT* at 19442-43 paras. 10-11 (making similar findings). Generally, we have not proceeded to consider whether waiver relief is warranted under Section 1.925 when public safety entities have submitted vague and insufficiently specific information. *See Cinnaminson* at 4585-86 para. 7 (applicant did not make any assertions specific to the requested frequency pair); City of Richmond, Virginia, *Order*, 21 FCC Rcd 14384, 14390 para. 15 (2006) (granting limited waiver relief under Section 337 but further finding that the applicant did not provide sufficient information about all of its proposed sites or implementation schedule to evaluate its request concerning the entire economic area).

[24] 47 CFR § 1.925(b)(3)(i-ii).

[25] *WAIT Radio v. FCC*, 413 F.2d 1153, 1157 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (1973), *cert. denied*, 409 U.S. 1027 (1972) (*citing Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968))*; Birach Broad. Corp.,* Memorandum Opinion and Order, 18 FCC Rcd 1414, 1415 (2003).

[26] 47 CFR § 22.7, 47 U.S.C. § 310.

[27] 47 CFR § 22.501.

[28] 47 CFR §§ 22.623, 22.621.

designates the channel 14 band (470-476 MHz), which contains the proposed frequencies, for land mobile use in the Boston area. Because Quincy's proposed land mobile use of the requested frequencies complies with section 90.303, we conclude that a waiver of this rule is not necessary.

12. We determine that Quincy requires waiver of sections 22.621 and 90.311. Quincy's proposed operation on the requested frequencies at 11.25 kHz bandwidth spectrally overlaps with 20 kHz bandwidth channels 470.2875 and 473.2875 MHz, respectively, which are "allocated for assignment to transmitters utilized within point-to-multipoint systems that support transmitters that provide public mobile service," (part 22 use).[29] The Department also seeks a waiver of section 90.311, which provides the specific frequency ranges available for PLMR use under section 90.303. In particular, section 90.311 excludes Channel 14 band frequencies below 470.30625 MHz for base and mobile, and frequencies below 473.30625 MHz for mobile, in the Boston urbanized area from PLMR assignment,[30] since section 22.621 allocates such frequencies for part 22 use.[31]

13. We find that the Department satisfies the first prong of the waiver standard, in that they have shown that the underlying purposes of the rules would not be served or would be frustrated by application to the present case. In particular, we find that no stations are licensed on adjacent section 22.621 channels 470.2875 and 473.2875 MHz in the Boston area. While the Commission would typically assign a point-to-multipoint channel listed under section 22.621 to a part 22 applicant if that channel was previously unoccupied in that urban area,[32] we find that continuing to let the requested frequencies remain fallow is not in the public interest.

14. We also find that Quincy's proposal for the unused frequencies entails substantial public safety benefits for preserving the life and property of Quincy's population that outweigh reserving the frequencies for part 22 use.[33] The Department has shown that a waiver is in the public interest by improving the Department's radio capacity for first responders, allowing continued use of a spectrally-efficient shared radio system, and maintaining interoperability with other T-Band public safety agencies in the greater Boston metropolitan area.

15. Finally, we note that the Department has considered and adequately addressed potential interference to co-channel and adjacent channel licensees. Quincy has letters of concurrence from co-channel licensee City of Lincoln, Rhode Island Station WQAL412, and adjacent channel licensee Essex County Sheriff's Department Station WRAD238 on frequencies 470/473.3375 MHz.[34] Moreover, Quincy's proposed narrow 11.25 kHz bandwidth operations on 470.3000 and 473.3000 MHz will not spectrally overlap County Communications, Kensington, New Hampshire two-way radio system

[29] 47 CFR § 22.621. Quincy indicates that its transmitters would provide PLMR service rather than public mobile service. *See* File No. 0010397178 (indicating Radio Service Code PW, one of the part 90 Private Land Mobile Radio service codes).

[30] 47 CFR § 90.311.

[31] 47 CFR § 22.621.

[32] *See City of Morris, New Jersey*, Order, 24 FCC Rcd 12492, 12496-97 para. 13 n.51 (PSHSB PD 2009).

[33] *See Gateway Telecom LLC*, Order, 22 FCC Rcd 15789, 15795 para. 13 (2007) (finding that "no current licensee that would be negatively impacted by granting a waiver" and that "if a waiver is denied, . . . frequencies will lay fallow until the Commission makes the spectrum available through auctions or other means."); *see also City of Marin, California*, Order, 26 FCC Rcd 6677, 6683 para.16 (PSHSB PLD 2011). *Cf. Fresno City and City Housing Authorities*, Order on Reconsideration, 15 FCC Rcd 10998, 11001 para. 9 (WTB PSPWD 2000) (weighing the competing public interests and finding that waiver proponent did not demonstrate that the public interest in not allowing a channel temporarily to lie fallow outweighed the public interest in fairness of application process).

[34] Letter from Brian Sullivan, Chief of Police, Lincoln Police, to City of Quincy (dated Dec. 7, 2021); Letter from David Spinosa, Asst. Superintendent I, Dir. of Telecommunications, Essex County Sheriff's Department, to City of Quincy (dated Jan. 10, 2023).

operating on frequency pair 470/473.2875 MHz in narrowband mode or City of Cambridge, Massachusetts public safety radio system operating on frequency pair 470/473.3125 MHz in narrowband mode.[35] Based on the foregoing, we find that the Department has sufficient mutual agreements mitigate interference to, or will not cause interference to, co-channel or adjacent channel licensees. Accordingly, we grant the Department's Waiver Request.

IV. CONCLUSION

16. Based on the information before us, we conclude that the Department has satisfied the criteria set forth under section 1.925, and that grant of the request for waiver of Commission rules to enable it to operate its public safety radio system on frequencies interleaved between the allocations in part 22 and part 90 as proposed is warranted. We therefore grant the request for waiver.

V. ORDERING CLAUSES

17. Accordingly, **IT IS ORDERED** that, pursuant to sections 4(i) and 337(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 337(c), that the Mar. 3, 2023 Revised Waiver Request, associated with File No. 0010397178 filed by the City of Quincy Fire Department, IS DENIED to the extent that the Department seeks relief under section 337(c) of the Act.

18. **IT IS FURTHER ORDERED** that, pursuant to sections 1, 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), and 303(r), and section 1.925 of the Commission's rules, 47 CFR § 1.925, the Mar. 3, 2023 Revised Waiver Request, associated with File No. 0010397178 filed by the City of Quincy Fire Department, IS GRANTED to the extent indicated herein.

19. **IT IS FURTHER ORDERED**, that the applications, File No. 0010397178, SHALL BE PROCESSED in accordance with this Order and the Commission's rules.

20. This action is taken under delegated authority pursuant to sections 0.191(f) and 0.392 of the Commission's rules, 47 CFR §§ 0.191(f) and 0.392.

FEDERAL COMMUNICATIONS COMMISSION

John A. Evanoff
Chief, Policy and Licensing Division
Public Safety and Homeland Security Bureau

[35] *See* call signs WPMG276, KEF716, respectively.

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

In the Matter of	)	
	)	
Lifeline and Link Up Reform and Modernization	)	WC Docket No. 11-42
	)	
Telecommunications Carriers Eligible for Universal Service Support	)	WC Docket No. 09-197
	)	
	)	
Amended Petition of NHEC for Designation as an Eligible Telecommunications Carrier for Lifeline-Only Support in the State of New Hampshire	)	

ORDER

Adopted: March 6, 2024 **Released: March 6, 2024**

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) grants the Amended Petition of the New Hampshire Electric Cooperative, Inc. (NHEC) for limited designation as an eligible telecommunications carrier (ETC) for the purpose of providing Lifeline services in the state of New Hampshire[1] in certain census block groups.[2] Petitioner received authorization by the Bureau on June 8, 2021 for a high-cost/Lifeline ETC designation in Rural Digital Opportunity Fund (RDOF)-supported areas.[3] At the time, the Bureau did not act on the petitioner's request for a Lifeline-only ETC designation in certain other areas of New Hampshire, as the Bureau needed additional information concerning certain requirements that the Bureau has now received in the Amended Petition.[4] In making this designation, the Bureau finds that the petitioner meets the eligibility requirements to receive universal service support, as set forth in section 214(e)(6) of the Communications Act of 1934, as amended (Act), and related Commission rules.[5]

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[1] *See* New Hampshire Electric Cooperative, Inc. Amended Petition for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(6) of the Telecommunications Act for Lifeline Support Only, WC Docket No. 09-197 (filed May 23, 2023), https://www.fcc.gov/ecfs/document/10523547811387/1 (NHEC Amended ETC Petition).

[2] *See* NHEC Amended ETC Petition at Exhibit 1.

[3] *See Telecommunications Carriers Eligible for Universal Service Support et al.,* WC Docket No. 09-197 et al., Order, 36 FCC Rcd 9384, 9395 (WCB 2021) (*NHEC RDOF Order*).

[4] *See NHEC RDOF Order* at 9388, para. 11 & n.41 (noting that certain Lifeline-only ETC designations will be addressed subsequently); *see also* NHEC Amended ETC Petition (supplementing its original petition concerning certain requirements).

[5] 47 U.S.C. § 214(e)(6); 47 CFR § 54.202.

II. BACKGROUND

A. Rural Digital Opportunity Fund Auction (Auction 904)

2. On January 30, 2020, the Commission adopted the framework for the RDOF, to award support through a reverse descending clock auction.[6] At the conclusion of Auction 904, there were 180 winning bidders including NHEC.[7] To become authorized to receive support each winning bidder was required to ensure that they are technically and financially qualified to offer supported services and have met all regulatory prerequisites and conditions for receiving Universal Service Fund (USF) support.[8] Applicants were required to submit documentation of ETC designation(s) and a letter certifying that the designations cover all relevant census blocks in a state.[9]

B. Lifeline Program

3. The Lifeline program provides support to reimburse providers for offering supported services at discounted prices to qualifying low-income households, with more support directed at such households on Tribal lands.[10] Services eligible for reimbursement include voice and broadband Internet access service meeting certain requirements.[11] In a given geographic area, a carrier may be designated as an ETC and become eligible to receive funding from both the high-cost and low-income components of the USF, or it may be designated as a Lifeline-only ETC that is only eligible to receive USF support from the Lifeline program (Lifeline-only ETC designation).[12] Where a petitioner indicates that it is seeking an ETC designation in areas not eligible for high-cost support, as does NHEC, the Commission considers such areas for a Lifeline-only ETC designation.[13] ETCs are generally obligated to offer Lifeline-supported services throughout their designated service areas.[14]

A. C. Requirements for FCC ETC Designation

4. Section 254(e) of the Communications Act of 1934, as amended (the Act), provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive

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[6] *See Rural Digital Opportunity Fund et al.,* WC Docket No. 19-126 et al., Report and Order, 35 FCC Rcd 686 (2020) at 689-90, para. 8 (*Auction 904 Report and Order*); *see also Rural Digital Opportunity Fund*, WC Docket No. 19-126, Order on Reconsideration, 35 FCC Rcd 10820 (2020).

[7] *See Rural Digital Opportunity Fund Phase I Auction (Auction 904) Closes; Winning Bidders Announced; FCC Form 683 Due January 29, 2021,* WC Docket No. 19-126 et al., Public Notice, 35 FCC Rcd 13888 (RBATF, OEA, WCB 2020) (*Auction 904 Closing Public Notice*).

[8] 47 CFR § 1.21004; *Auction 904 Report and Order*, 35 FCC Rcd at 696, para. 22. Winning bidders had the opportunity to assign some or all their winning bids to one or more related entities. *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, 6164-65, paras. 288-93 (2020) (*Auction 904 Procedures Public Notice*).

[9] 47 CFR § 54.804(b)(5); *Auction 904 Closing Public Notice*, 35 FCC Rcd at 13894, 13900-01.

[10] *See Lifeline and Link Up Reform and Modernization et al*., WC Docket Nos. 11-42 et al., Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6663, para. 14 (2012).

[11] *See* 47 CFR § 54.401.

[12] 47 CFR § 54.201(a)(1); *id*. § 54.101(d).

[13] *Auction 904 Closing Public Notice*, 35 FCC Rcd at 13901 n.72 (explaining that petitioners may, in addition to seeking a high-cost designation in winning bid areas, seek a Lifeline-only ETC designation in areas not eligible for high-cost support for the limited purpose of becoming eligible to receive only Lifeline support in such areas and requiring these petitioners to submit with their ETC application a map or other information delineating these Lifeline-only areas, and other information specifically required by the Commission's Lifeline rules).

[14] *See* 47 U.S.C. § 214(e)(1)(A); 47 CFR § 54.101(a) (providing that voice service is the supported service); 47 CFR § 54.403(a) (setting forth Lifeline support eligibility requirements).

specific federal universal service support."[15] Congress gives primary authority for ETC designations to state commissions.[16] The Commission has authority only when "a common carrier [is] providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission."[17] The petitioning carrier must demonstrate that the Commission has jurisdiction and may do so by submitting an "affirmative statement from the state commission or a court of competent jurisdiction that the carrier is not subject to the state commission's jurisdiction."[18] The Bureau has also stated, as to all ETC designations, that "[i]f a state law expressly articulates that it does not have jurisdiction over a relevant type of technology, Commission staff would consider such a statute relevant in its determination of Commission jurisdiction."[19] The Commission has delegated authority to the Bureau to consider appropriate ETC designation requests.[20]

5. A petition for ETC designation by the Commission must include: (1) a certification that the petitioner offers or intends to offer all services designated for support by the Commission pursuant to section 254(c) of the Act; (2) a certification that the petitioner offers or intends to offer the supported services either using its own facilities or a combination of its own facilities and resale of another carrier's services;[21] (3) a description of how the petitioner advertises the availability of the supported services and the charges therefor using media of general distribution;[22] (4) a detailed description of the geographic service area for which the petitioner requests to be designated as an ETC;[23] and (5) a certification that neither the petitioner, nor any party to the application, is subject to a denial of federal benefits pursuant to the Anti-Drug Abuse Act of 1988.[24]

6. In addition, a petitioner must demonstrate its ability to meet certain service standards. A petitioner seeking an ETC designation must: (1) certify that it will comply with the service requirements applicable to the support that it receives; (2) demonstrate its ability to remain functional in emergency situations; and (3) demonstrate its ability to satisfy applicable consumer protection and service quality standards.[25] An ETC seeking Lifeline-only designation must also: (1) demonstrate its financial and technical capability to provide Lifeline-supported services in accordance with applicable Commission rules; and (2) submit information describing the terms and conditions of any voice telephony plans offered to Lifeline subscribers.[26]

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[15] 47 U.S.C. § 254(e).

[16] *Id.* § 214(e)(2).

[17] *Id.* § 214(e)(6).

[18] *See Federal-State Joint Board on Universal Service et al*., CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12267, para. 120 (2000); 47 U.S.C. § 214(e)(6).

[19] *WCB Reminds Connect America Fund Phase II Auction Applicants of the Process for Obtaining a Federal Designation as an Eligible Telecommunications Carrier*, WC Docket Nos. 09-197 and 10-90, Public Notice, 33 FCC Rcd 6696, 6697 (WCB 2018) (*Auction 903 ETC Public Notice*).

[20] *See Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, CC Docket No. 96-45, Public Notice, 12 FCC Rcd 22947, 22948 (1997).

[21] 47 U.S.C. § 214(e)(1); 47 CFR § 54.201(d)(1).

[22] 47 U.S.C. § 214(e)(1); 47 CFR § 54.201(d)(2).

[23] An ETC's "service area" is set by the designating authority and is the geographic area within which an ETC has universal service obligations and may receive universal service support. 47 U.S.C. § 214(e)(5); 47 CFR § 54.207(a).

[24] 21 U.S.C. § 862; 47 CFR § 1.2002(a)–(b).

[25] 47 CFR §§ 54.202(a)(1)(i) & (a)(3).

[26] *Id*. § 54.202(a)(4)-(6).

7. NHEC is not required to submit a five-year service plan, but need only demonstrate its ability to meet applicable consumer protection and service quality standards for Lifeline-supported services in Lifeline-only eligible areas.[27] Prior to designating a carrier as an ETC pursuant to section 214(e)(6) of the Act, the Commission must determine whether such designation is in the public interest.[28] When making a public interest determination, the Commission historically has considered the benefits of increased consumer choice and the unique advantages and disadvantages of the applicant's service offering.[29] Because the petitioner that is the subject of this Order seeks expanded designation in areas which are not eligible for high-cost support, petitioner must demonstrate that Lifeline-only ETC designations in those areas would serve the public interest.[30]

B. D. Petitions for ETC Designation

8. NHEC previously sought and was granted an ETC designation to become eligible to receive RDOF support.[31] Its current petition is meant to amend and supplement that original petition.[32] In its description of its service areas, the petitioner included areas adjacent to its RDOF support areas that were not eligible for RDOF support.[33] In these adjacent areas, the petitioner can only receive a Lifeline-only designation. The Bureau released a public notice soliciting comments on NHEC's petition that is the subject of this Order.[34] No comments addressing the merits of the subject petition or the associated ETC designation were filed.

III. DISCUSSION

9. We find that the petitioner satisfies the Commission's requirements for a Lifeline-only ETC designation. We previously designated the petitioner as a high-cost ETC in New Hampshire, conditioned upon and limited to the high-cost areas where the Commission authorizes the petitioner to receive RDOF support and effective only upon such authorization.[35] In these areas, petitioner must meet Auction 904 requirements, Lifeline requirements, and other service obligations attendant to its high-cost designation, as specified in the Act and the Commission's rules.[36] In other areas included in NHEC's petitions that are not eligible for high-cost support and where the petitioner has demonstrated its ability to meet Lifeline requirements, we designate NHEC as a Lifeline-only ETC.[37] In these areas, petitioner must

[27] *See* 47 CFR §§ 54.202(a)(ii); *see also Auction 904 Closing Public Notice*, 35 FCC Rcd at 13901, n.71 (extending to Auction 904 long-form applicants the same waivers of 54.202 requirements as provided to Auction 903 long-form applicants under the same rationales); *WCB Reminds Connect America Fund Phase II Auction Applicants of the Process for Obtaining a Federal Designation as an Eligible Telecommunications Carrier*, WC Docket Nos. 09-197 and 10-90, Public Notice, 33 FCC Rcd 6696, 6699-6700 (WCB 2019).

[28] 47 U.S.C. § 214(e)(6); 47 CFR § 54.202(b).

[29] *See, e.g.*, *Virgin Mobile ETC Designation Order in the States of Alabama, Connecticut, Delaware, New Hampshire and the District of Columbia*, WC Docket 09-197, Order, 25 FCC Rcd 17797, 17799, para. 6 (WCB 2010).

[30] *See* 47 CFR § 54.202(b).

[31] *See NHEC RDOF Order* at 9388, para.11 & 9395-98.

[32] NHEC Amended ETC Petition at 1-3.

[33] *See* Attachment A; *see also* NHEC Amended ETC Petition at Exhibit 1.

[34] *Wireline Competition Bureau Seeks Comment on Petition Filed by New Hampshire Electric Cooperative, Inc.,* Docket No. 09-197, Public Notice, DA 23-955 (WCB 2023).

[35] *See NHEC RDOF Order* at 9388, para. 11; *see also* Petition of New Hampshire Electric Cooperative, Inc. for Designation as an Eligible Telecommunications Carrier, WC Docket No. 09-197 at 1 (filed Jan. 4, 2021), https://www.fcc.gov/ecfs/search/search-filings/filing/10104000546055 (NHEC Original ETC Petition).

[36] 47 CFR § 54.202(a)(1)(i); *id*. § 54.101.

[37] *See* Attachment A; *see also* NHEC Amended ETC Petition at Exhibit 1.

offer Lifeline-supported services to low-income consumers consistent with the requirements of the Act and the Commission's rules and in accordance with all representations and commitments made in its amended ETC petition.[38]

A. Commission Authority

10. The petitioner demonstrates that the Commission has the requisite authority to designate it as an ETC pursuant to section 214(e)(6) of the Act. The petitioner has submitted an affirmative statement of the relevant state authority declining to assert jurisdiction[39] and/or relevant state regulations specifically excluding from state regulatory authority the services offered by the petitioner.[40] Accordingly, we find that the Bureau, acting under the Commission's delegation of authority, may designate the petitioner as an ETC for purposes of eligibility for Lifeline-only support.

B. Eligibility Requirements

11. *Offering the Services Supported by the Universal Service Support Mechanisms*. We find that the petitioner establishes through the required certifications and related filings that it will offer the services supported by the federal universal service support mechanisms.[41] Specifically, the petitioner has committed to offering services on a common carrier basis and has specified that its voice service meets the requirements of section 54.101(a) of the Commission's rules.[42]

12. *Compliance with Service Requirements Applicable to Lifeline Services.* The petitioner commits to offering Lifeline discounts to qualifying low-income consumers, consistent with the Commission's rules.[43] The petitioner is seeking a Lifeline-only designation in Lifeline-only eligible areas and specifically commits to meeting Lifeline consumer enforcement and certification standards and describes how it intends to meet such standards.[44] We emphasize that all ETCs receiving Lifeline support must report certain information to the Commission, USAC, and the local regulatory authority, pursuant to section 54.422 of the Commission's rules.[45]

13. *Offering the Supported Services Using a Carrier's Own Facilities*. The petitioner certifies that it will offer supported services using its own facilities or a combination of its own facilities and resale of another carrier's services.[46] Facilities are the ETC's "own" if the ETC has an exclusive right to use the facilities to provide the supported services or when service is provided by any affiliate within

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[38] *See* NHEC Original ETC Petition at 14-16; *see also* NHEC Amended ETC Petition at 6-8.

[39] *See* NHEC Original ETC Petition at Exhibit C (providing a letter from Debra A. Howland, Executive Director, New Hampshire Public Utilities Commission, to Paul J. Phillips, Primmer, Piper, Eggleston & Cramer PC dated Dec. 18, 2020 and confirming that the New Hampshire Public Utility Commission lacks authority to designate VoIP and IP-enabled services as eligible telecommunications carriers under New Hampshire law).

[40] *See* NHEC Amended ETC Petition at 4-5 (citing N.H. Rev. Stat. Ann. § 362:7(II) (2013) and stating that the New Hampshire Public Utilities Commission will not assert jurisdiction over broadband or VoIP services).

[41] 47 U.S.C. § 214(e)(1)(A); 47 CFR § 54.201(d)(1).

[42] 47 U.S.C. § 214(e)(1), (6); 47 CFR § 54.101(a) (eligible voice telephony service must provide voice grade access to the public switched network or its functional equivalent); *see* NHEC Original ETC Petition at 8-9 (committing to offer services on a common carrier basis); *see also* NHEC Amended ETC Petition at Exhibit 2 (stating that it will "provide its Lifeline subscribers with voice-grade access to the Public Switched Telephone Network through its provision of interconnected Voice over Internet Protocol (VoIP) service").

[43] *See* 47 CFR § 54.400 et seq.; *see also* NHEC Amended ETC Petition a 6-8.

[44] 47 CFR § 54.410 (setting forth the Commission's rules on subscriber eligibility determination and certification); *see* NHEC Amended ETC Petition at 6-8.

[45] *See* 47 CFR § 54.422; *see also id*. § 54.410.

[46] 47 U.S.C. § 214(e)(1)(A); 47 CFR § 54.201(d)(1); NHEC Amended ETC Petition at 4.

the holding company structure.[47] An ETC may satisfy its obligation to "offer" supported voice service (or its functional equivalent, including VoIP) through a third-party vendor but cannot simply rely on the availability of over-the-top voice options.[48] Instead, the ETC must remain legally responsible, through a managed service solution, that ensures that the service meets consumer protection and service quality standards.[49]

14. *Advertising Supported Services.* The petitioner commits to advertising the availability of the supported services and related charges using media of general distribution.[50] We emphasize that, as part of this commitment, an ETC must advertise the availability of its services and charges in a manner reasonably designed to reach Lifeline-eligible consumers.[51]

15. *Ability to Remain Functional in Emergency Situations*. The petitioner states that it can remain functional in emergency situations.[52] The petitioner also states that it has sufficient back-up power to ensure functionality in the designated service areas without an external power source, can re-route traffic around damaged facilities, and can manage traffic spikes resulting from emergency situations.[53]

16. *Anti-Drug Abuse Act Certification*. The petitioner submits a certification that satisfies the requirements of the Anti-Drug Abuse Act of 1988, as codified in sections 1.2001-1.2003 of the Commission's rules.[54]

17. *Consumer Protection and Service Quality Standards in Lifeline-Only Eligible Areas*. The petitioner seeking a Lifeline-only designation in Lifeline-only eligible areas commits to abiding by all applicable state and federal consumer protection and service quality standards, including specific obligations under the Act and its implementing rules, in Lifeline-only eligible areas.[55]

18. *Technical and Financial Ability to Offer Lifeline Services in Lifeline-Only Eligible Areas*. The petitioner is seeking a Lifeline-only designation in Lifeline-only eligible areas and demonstrates the technical and financial ability to offer Lifeline-supported voice and broadband Internet access services in Lifeline-only eligible areas.[56]

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[47] *Auction 903 ETC Public Notice*, 33 FCC Rcd at 6698; *see also* 47 U.S.C. § 153(2) (defining an affiliate as "a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person").

[48] *Auction 903 ETC Public Notice*, 33 FCC Rcd at 6699 (citing *Connect America Fund et al*., WC Docket Nos. 10-90, 14-58, 14-259, Order on Reconsideration, 33 FCC Rcd 1380, 1387-88, para. 20 (2018) (rejecting arguments contending that "because VoIP is provided over broadband networks and over-the-top voice options are available, broadband service providers need only offer broadband as a standalone service," and requiring carriers to "offer VoIP over their broadband network on a standalone basis"); *cf. Phase II Challenge Process Order*, 28 FCC Rcd 7224, n.21 (explaining that a broadband provider would be considered to be providing voice service if it did so through an affiliated competitive local exchange company or "through a managed voice solution obtained from a third party vendor … , so long as the broadband provider is the entity responsible for dealing with any customer problems, and it provides quality of service guarantees to end user customers")).

[49] *Auction 903 ETC Public Notice*, 33 FCC Rcd at 6699.

[50] 47 U.S.C. § 214(e)(1)(B); 47 CFR § 54.201(d)(2); NHEC Original ETC Petition at 10-11.

[51] 47 CFR § 54.405.

[52] NHEC Original ETC Petition at 13-14.

[53] 47 CFR § 54.202(a)(2); NHEC Original ETC Petition at 13-14.

[54] 47 CFR § 1.2002; *see* NHEC Original Petition at 19; *see also* NHEC Amended ETC Petition at 10.

[55] 47 CFR § 54.202(a)(3); NHEC Original ETC Petition at 12-13.

[56] 47 CFR § 54.202(a)(4); NHEC Original Petition at 11-12.

19. *Terms and Conditions of Service Plans in Lifeline-only Eligible Areas.* NHEC sufficiently describes the terms and conditions of service plans that it will make available to the public in Lifeline-only eligible areas.[57]

A. C. Public Interest Analysis

20. We conclude that the petitioner's participation in universal service programs would be in the public interest and would provide numerous benefits to consumers. The petitioner will offer advanced services to underserved areas at competitive prices.[58] Pursuant to the grant of its Lifeline-only designation, the petitioner commits to offering Lifeline-supported services and to meeting or exceeding Lifeline requirements.[59] Given these commitments and all associated representations made in the petition, granting the Lifeline-only ETC designations will help ensure increased consumer choice, affordability, and improved quality of service in these areas. Accordingly, based on the information, representations, and certifications in its petition, we find that the petitioner has met all applicable conditions and prerequisites for ETC designation and that granting this petition serves the public interest.

B. D. Regulatory Oversight

21. Under section 254(e) of the Act, the petitioner must use universal service support "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."[60] Under section 214(e) of the Act, the petitioner must provide supported services throughout the service area for which it receives an ETC designation.[61] An ETC receiving Lifeline support uses that support as intended when it reduces the price of its services by the amount of the support for the eligible consumer.[62] In addition, the ETC must file annual reports that include, among other things, a certification of compliance with applicable minimum service standards, service quality standards, and consumer protection rules.[63]

22. We find that reliance on petitioner's representations and commitments to meet these and other regulatory requirements made in its petition is reasonable and consistent with the public interest and the Act. We conclude that fulfillment of these additional reporting requirements will further the Commission's goal of ensuring that the petitioner satisfies its obligation under section 214(e) of the Act to provide supported services throughout its designated service areas.

23. The Commission may initiate an inquiry on its own motion to examine any ETC's records and documentation to ensure that the universal service support the ETC receives is being used "only for the provision, maintenance, and upgrading of facilities and services" in the areas in which it is designated as an ETC.[64] Petitioner must provide such records and documentation to the Commission and USAC upon request.[65] If a petitioner fails to fulfill the requirements of the Act, the Commission's rules, and the terms of this Order after it begins receiving universal service support, the Commission has

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[57] 47 CFR § 54.202(a)(5), (6); NHEC Amended ETC Petition at Exhibits 2 & 3.

[58] *See* NHEC Amended ETC Petition at Exhibits 2 & 3; *see also* Attachment A.

[59] *See* NHEC Amended ETC Petition at 6-8.

[60] 47 U.S.C. § 254(e).

[61] *Id*. § 214(e).

[62] *See Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, 20 FCC Rcd 15095, 15105-06, para. 26 (2005).

[63] 47 CFR § 54.422(b)(3); *see also id*. §§ 54.416, 54.422 (requiring an officer of the company to certify that the ETC has policies and procedures in place to ensure that its Lifeline subscribers are eligible to receive Lifeline services and that it will comply with all federal Lifeline certification procedures).

[64] 47 U.S.C. §§ 220, 403.

[65] 47 CFR § 54.417.

authority to revoke the petitioner's ETC designation.[66] The Commission also may assess forfeitures for violations of Commission rules and orders.[67]

24. As the Bureau has previously explained, a carrier that cannot appropriately use universal service support must relinquish its ETC designation pursuant to section 214(e)(4) of the Act and section 54.205 of the Commission's rules.[68] For ETCs designated by the Commission, the ETC must file a notice of relinquishment in WC Docket No. 09-197, Telecommunications Carriers Eligible for Universal Service Support, using the Commission's Electronic Comment Filing System (ECFS). The Bureau will release an order approving the relinquishment if the relinquishing ETC demonstrates that the affected area will continue to be served by at least one ETC.[69] The ETC must then send a copy of its relinquishment notice and a copy of the relinquishment order (within one week of its release) to USAC. A carrier that intends to discontinue service must first seek authorization to discontinue service under section 63.71 of the Commission's rules.[70] In addition, ETCs seeking to transfer control of their domestic authorizations to operate pursuant to section 214 of the Act or to engage in the sale of assets under section 214 must first receive approval from the Commission in accordance with sections 63.03 and 63.04 of the Commission's rules governing the procedures for domestic transfer of control/asset applications.[71] Transfers of control and assignments of international section 214 authorizations are separately subject to section 63.24 of the Commission's rules.[72] Except where the Commission has forborne from the application of section 214, this requirement applies to all transfers of control or asset acquisitions involving ETCs.

IV. ORDERING CLAUSES

25. Accordingly, IT IS ORDERED that, pursuant to the authority contained in section 214(e)(6) of the Communications Act of 1934, as amended, 47 U.S.C. § 214(e)(6), and the authority delegated in sections 0.91 and 0.291 of the Commission's rules, 47 CFR §§ 0.91, 0.291, that New Hampshire Electric Cooperative, Inc. IS DESIGNATED AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER ELIGIBLE ONLY FOR LIFELINE SUPPORT IN AREAS NOT ELIGIBLE FOR HIGH-COST SUPPORT, to the extent described in this Order.

26. IT IS FURTHER ORDERED that a copy of this Order SHALL BE TRANSMITTED to the relevant state commission and to the Universal Service Administrative Company.

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[66] *Federal-State Joint Board on Universal Service; Western Wireless Corp. Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket No. 96-45, Declaratory Ruling, 15 FCC Rcd 15168, 15174, para. 15 (2000).

[67] *See* 47 U.S.C. § 503(b).

[68] 47 U.S.C. § 214(a); 47 CFR § 54.205.

[69] 47 U.S.C. § 214(e)(4).

[70] 47 CFR § 63.71.

[71] 47 U.S.C. § 214; 47 CFR §§ 63.03; 63.04.

[72] 47 CFR § 63.24.

27. 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

ATTACHMENT A

Census Block Groups for which NHEC is Granted a Lifeline-Only ETC Designation

Census Block Group	State	Applicant	FRN
33-005-9702001	New Hampshire	NHEC	0003666435
33-019-9757004	New Hampshire	NHEC	0003666435
33-015-0038022	New Hampshire	NHEC	0003666435
33-015-0037031	New Hampshire	NHEC	0003666435
33-015-9800111	New Hampshire	NHEC	0003666435
33-015-0038011	New Hampshire	NHEC	0003666435
33-015-0038021	New Hampshire	NHEC	0003666435
33-015-0039012	New Hampshire	NHEC	0003666435
33-015-0039021	New Hampshire	NHEC	0003666435
33-015-0039022	New Hampshire	NHEC	0003666435
33-015-0036012	New Hampshire	NHEC	0003666435
33-015-0036014	New Hampshire	NHEC	0003666435
33-015-0039011	New Hampshire	NHEC	0003666435
33-015-0038012	New Hampshire	NHEC	0003666435
33-015-0036011	New Hampshire	NHEC	0003666435
33-015-0034003	New Hampshire	NHEC	0003666435
33-015-0033021	New Hampshire	NHEC	0003666435
33-015-0035001	New Hampshire	NHEC	0003666435
33-015-0033012	New Hampshire	NHEC	0003666435
33-015-0033022	New Hampshire	NHEC	0003666435
33-015-0037032	New Hampshire	NHEC	0003666435
33-015-0034001	New Hampshire	NHEC	0003666435
33-015-0034004	New Hampshire	NHEC	0003666435
33-015-0033023	New Hampshire	NHEC	0003666435
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33-015-0038013	New Hampshire	NHEC	0003666435
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33-015-0036023	New Hampshire	NHEC	0003666435
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33-015-0034002	New Hampshire	NHEC	0003666435
33-015-0035002	New Hampshire	NHEC	0003666435
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33-015-0530002	New Hampshire	NHEC	0003666435
33-015-0520003	New Hampshire	NHEC	0003666435
33-015-0520002	New Hampshire	NHEC	0003666435
33-015-1051002	New Hampshire	NHEC	0003666435

Census Block Group	State	Applicant	FRN
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33-015-1051001	New Hampshire	NHEC	0003666435
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33-019-9756003	New Hampshire	NHEC	0003666435
33-019-9755003	New Hampshire	NHEC	0003666435
33-019-9759023	New Hampshire	NHEC	0003666435
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Census Block Group	State	Applicant	FRN
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33-015-0510001	New Hampshire	NHEC	0003666435
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Census Block Group	State	Applicant	FRN
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33-009-9601002	New Hampshire	NHEC	0003666435
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33-007-9501001	New Hampshire	NHEC	0003666435
33-007-9501002	New Hampshire	NHEC	0003666435

PUBLIC NOTICE

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DA 24- 209
Released: March 6, 2024

WIRELINE COMPETITION BUREAU APPROVES FURTHER REVISED COMPLIANCE PLAN OF AIRVOICE WIRELESS, LLC

WC Docket Nos. 11-42 and 09-197

The Wireline Competition Bureau (Bureau) hereby approves the further revised compliance plan[1] of AirVoice Wireless, LLC (AirVoice) filed pursuant to the requirements for the continued provision of Lifeline service.[2]

The Act provides that a carrier be designated as an eligible telecommunications carrier (ETC) to receive universal service support.[3] The Commission has required that all non-facilities based telecommunications carriers seeking Lifeline-only ETC designation must meet the following conditions: (1) compliance with certain 911 and enhanced 911 (E911) public safety requirements; and (2) Bureau approval of a compliance plan providing specific information regarding the carrier and its service offerings and outlining the measures the carrier will take to implement its obligations.[4]

The Bureau has clarified that any transfer of ownership or control of an ETC with an approved Lifeline compliance plan requires Commission approval in advance of the transaction.[5] This includes renewing compliance plan approval for changes in the corporate ownership and control of the ETC.[6]

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[1] *See* AirVoice Wireless, LLC Second Revised Compliance Plan, WC Docket Nos. 09-197 and 11-42 (filed Jan. 26, 2024) (AirVoice 2nd Revised Compliance Plan), https://www.fcc.gov/ecfs/document/101262771222352/1; *see also* AirVoice Wireless, LLC Revised Compliance Plan, WC Docket Nos. 09-197, 11-42 (filed May 17, 2021) (AirVoice Revised Compliance Plan), https://www.fcc.gov/ecfs/document/10518342614357/1; *Wireline Competition Bureau Approves the Revised Compliance Plan of AirVoice Wireless, LLC*, WC Docket Nos. 11-42 and 09-197, Public Notice, DA 21-1641 (rel. December 23, 2021), https://docs.fcc.gov/public/attachments/DA-21-1641A1.pdf.

[2] *See Lifeline and Link Up Reform and Modernization et al*., 27 FCC Rcd 6656, 6816, paras. 379-380 (2012) (*2012 Lifeline Reform Order*); *In the Matter of Lifeline & Link Up Reform & Modernization*, 30 FCC Rcd 7818 (2015) (*2015 Lifeline Order*).

[3] 47 U.S.C. § 214(e)(1)(A).

[4] *See 2012 Lifeline Reform Order*, 27 FCC Rcd at 6814, 6819, paras. 373 and 389. Subsequently, the Bureau provided guidance for carriers submitting compliance plans pursuant to the *2012 Lifeline Reform Order*. *See Wireline Competition Bureau Provides Guidance for the Submission of Compliance Plans Pursuant to the Lifeline Reform Order*, Public Notice, 27 FCC Rcd 2186 (WCB 2012).

[5] *Wireline Competition Bureau Reminds Carriers of Eligible Telecommunications Carrier Designation and Compliance Plan Approval Requirements for Receipt of Federal Universal Service Support*, Public Notice, 29 FCC Rcd 9144, 9145 (WCB 2014).

[6] *Id.*

In accordance with this requirement, AirVoice submitted a modification to its most recently approved compliance plan[7] to reflect an internal reorganization and to otherwise update AirVoice's Compliance Plan.[8] The reorganization regards AirVoice's acquisition out of bankruptcy of TAG Mobile, which was previously approved by the Bureau.[9] The Bureau has reviewed AirVoice's further modification for conformance with the relevant requirements and approves this update. AirVoice must continue to comply with any future additions to or amendments of the Lifeline program rules unless it has relinquished its relevant designation(s) pursuant to section 214(e)(4) of the Act.[10]

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-7400 or TTY (202) 418-0484.

For further information, please contact Denise Golumbaski, Telecommunications Access Policy Division, Wireline Competition Bureau at denise.golumbaski@fcc.gov.

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[7] *See Wireline Competition Bureau Approves the Revised Compliance Plan of AirVoice Wireless, LLC*, WC Docket Nos. 11-42 and 09-197, Public Notice, DA 21-1641 (rel. December 23, 2021), https://docs.fcc.gov/public/attachments/DA-21-1641A1.pdf.

[8] AirVoice 2nd Revised Compliance Plan at 3.

[9] *See id.*; *see also Wireline Competition Bureau Approves the Amended Compliance Plan of TAG Mobile, LLC,* WC Docket Nos. 11-42 and 09-197, Public Notice, DA 22-992 (rel. Sept. 21, 2022), https://docs.fcc.gov/public/attachments/DA-22-992A1_Rcd.pdf.

[10] *See* 47 U.S.C. § 214(e)(4).

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 24-210
Released: March 6, 2024

FCC TO HOLD WEBINAR ABOUT WIND DOWN OF AFFORDABLE CONNECTIVITY PROGRAM

On March 4, 2024, the FCC issued a Public Notice confirming that absent additional funding from Congress, April 2024 is the last fully funded month for the Affordable Connectivity Program (ACP). April will be the final month that households receiving the benefit will see it applied to their monthly internet bill and, without renewed funding from Congress, the ACP will only be able to provide a partial reimbursement for May 2024. ACP service providers are required to send notices about the program's end no later than 15 days after the release of the March 4, 2024 Public Notice.

As part of its continued consumer education, the Consumer and Governmental Affairs Bureau (CGB) will host a webinar on **March 13, 2024, at 1:00 p.m. Eastern Daylight Time**. The briefing will be streamed live on **https://www.fcc.gov/live and** recorded and archived for public viewing available at fcc.gov/acp.

Please join CGB's Consumer Affairs and Outreach Division leadership to hear the latest updates regarding the ACP Wind-Down, the release of new consumer education materials, a review of the program's consumer protections, and how to solicit support from the agency's outreach and engagement teams to minimize consumer confusion.

The ACP 60-day notice webinar will be webcast with open captioning and sign language interpreting at https://www.fcc.gov/live. Other reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need and tell us how to contact you if we need more information. Make your request as early as possible. Last minute requests will be accepted but may be impossible to fill. Send an e-mail to FCC504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice).

Registration is not required for this public event.

For more information about the ACP Wind-Down, visit https://www.fcc.gov/acp. The Order released on January 11, 2024, providing requirements and guidance for the ACP Wind-Down is available here.

- FCC -

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

In the Matter of	)	
	)	
Vexus Fiber, LLC	)	File No.: EB-IHD-23-00035043
	)	CD Acct. No.: 202432080008
	)	FRN: 0004266938
	)	
	)	

ORDER

Adopted: March 15, 2024 **Released: March 15, 2024**

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) has entered into a Consent Decree to resolve its investigation into whether Vexus Fiber, LLC (Vexus) engaged in impermissible downselling of its broadband services to households eligible for reimbursement under the Affordable Connectivity Program. To settle this matter, Vexus admits that it violated the Commission's rules as described, will implement a compliance plan, and will pay a $100,000 civil penalty.

2. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the referenced investigation regarding Vexus's compliance with section 1752(b) of the Communications Act of 1934, as amended (Act),[1] and sections 54.1802(b), 54.1810(a), (e), and (i), and 54.1811 of the Commission's rules.[2]

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

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

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

[1] 47 U.S.C. § 1752(b).

[2] 47 CFR §§ 54.1802(b), 54.1810(a), (e), (i), 54.1811.

[3] *See id.* § 1.93(b).

6. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Keith Davidson, Chief Financial Officer, Vexus Fiber, LLC, 4006 West Loop 289, Lubbock, TX 79407, and to Frank Lamancusa, Esq., Morgan, Lewis & Bockius, LLP, 1111 Pennsylvania Ave NW, Washington, DC 20004.

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Chief
Enforcement Bureau

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

In the Matter of	)	
	)	
Vexus Fiber, LLC	)	File No.: EB-IHD-23-00035043
	)	NAL/CD Acct. No.: 202432080008
	)	FRN: 0004266938
	)	
	)	

CONSENT DECREE

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) and Vexus Fiber, LLC (Vexus or Company),[1] by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau's investigation, as defined below, into whether Vexus, as a participating provider in the Affordable Connectivity Program (ACP) complied with section 1752(b) of the Communications Act of 1934, as amended (Act),[2] and sections 54.1802(b), 54.1810(a), (e), and (i), and 54.1811 of the Commission's rules.[3] Specifically, the Bureau investigated whether Vexus engaged, among other things, in impermissible downselling of its broadband services to ACP-eligible households by preventing customers from applying the ACP benefit to any residential broadband internet access service plan they selected. To resolve this matter, Vexus admits that it violated the provisions of the Act and the Commission's rules as described herein and agrees to implement a Compliance Plan and pay a one hundred thousand dollar ($100,000) civil penalty.

I. DEFINITIONS

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

(a) "Act" means the Communications Act of 1934, as amended.[4]

(b) "ACP Rules" means sections 54.1802(b), 54.1810(a), (e), and (i) of the Commission's rules, and other Communications Laws related to the ACP.

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

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

(e) "CD Acct No." means account number 20243208008, associated with payment obligations described in paragraph 21 of this Consent Decree.

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

[1] 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.

[2] 47 U.S.C. § 1752(b).

[3] 47 CFR §§ 54.1802(b), 54.1810(a), (e), (i), 54.1811.

[4] 47 U.S.C. § 151 *et seq.*

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

(h) "Compliance Plan" means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 16.

(i) "Covered Employees" means all employees and agents of Vexus who perform, supervise, oversee, or manage the performance of, duties that relate to Vexus's responsibilities under the Communications Laws, including the ACP Rules.

(j) "Effective Date" means the date by which both the Bureau and Vexus have signed the Consent Decree and the Bureau has released an Adopting Order.

(k) "Investigation" means the investigation commenced by the Bureau in EB-IHD-23-00035043 regarding whether Vexus violated the ACP and Lifeline Rules.

(l) "LOI" means the Letter of Inquiry issued by the Bureau to Vexus on March 29, 2023, in EB-IHD-23-00035043.

(m) "Operating Procedures" means the standard internal operating procedures and compliance policies established by Vexus to implement the Compliance Plan.

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

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

(p) "Vexus" or "Company" means Vexus Fiber, LLC, and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.

II. BACKGROUND

3. *Legal Background*. In the 2021 Infrastructure Investment and Jobs Act (Infrastructure Act), Congress appropriated $14.2 billion to implement a broadband internet access affordability program known as the ACP.[5] Under the ACP, eligible low-income households may apply a discount of up to $30 per month to broadband service offered by participating providers, who in turn can seek reimbursement for the discount from the Affordable Connectivity Fund created by the Infrastructure Act.

4. Among the numerous regulations imposed on the ACP, participating providers must allow eligible customers to apply the ACP benefits to any of the broadband services they offer to the general public.[6] Both the Act and the Commission's Rules prohibit the practice of "downselling" in connection with the ACP, which the Commission has defined as "any business practice that pressures a subscriber to lower the quality of broadband service . . . to the benefit of the provider rather than the consumer."[7] Specifically, section 1752(b)(7)(A)(i) of the Act states that "[a] participating provider . . . shall allow an eligible household to apply the affordable connectivity benefit to any internet service offering of the participating provider at the same terms available to households that are not eligible households."[8]

5. Under the Commission's Rules, "[a] participating provider may allow an eligible household to apply the affordable connectivity benefit to any residential service plan selected by the

[5] Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (2021), https://www.govinfo.gov/content/pkg/BILLS-117hr3684enr/pdf/BILLS-117hr3684enr.pdf. The statute as modified by the Infrastructure Act is codified at 47 U.S.C. § 1752, *Benefit for broadband service*.

[6] *See* 47 U.S.C. § 1752(b)(7)(A)(i).

[7] *Affordable Connectivity Program; Emergency Broadband Benefit Program*, WC Docket Nos. 21-450, 20-445, Report and Order, 37 FCC Rcd 484, 562, para. 163 (2022).

[8] 47 U.S.C. § 1752(b)(7)(A)(i).

eligible household that includes broadband internet access."[9] To protect consumers, providers must inform them that, among other things, "[t]he household may apply the affordable connectivity benefit to any broadband service offering of the participating provider at the same terms available to households that are not eligible for [ACP]-supported service."[10] Finally, the Rules explicitly prohibit providers from "exert[ing] pressure on an eligible household to induce the purchase of a broadband internet access service or bundled plan that is . . . less costly, . . . provides higher or lower speed or bandwidth, [or] is subject to higher or lower data caps . . . than the service or plan that the household is already purchasing or has inquired about purchasing through the [ACP]."[11] Violating any of these Rules constitutes an unjust and unreasonable act or practice that undermines the purpose, intent, or integrity of the ACP.[12]

6. *Factual Background*. Vexus Fiber is a limited liability company organized in Delaware that provides integrated communications services, including voice, video, and data in Arizona, Louisiana, Missouri, New Mexico, and Texas.[13] Vexus has been designated an eligible telecommunications carrier (ETC) in Texas and Louisiana, where it provides Lifeline services.[14] Vexus was originally authorized to provide services under the Emergency Broadband Benefit (EBB) Program in Texas and Louisiana in March 2021, which were transferred to the ACP when that program launched.[15] As of June 2023, Vexus had over 8,000 ACP customers.[16]

7. In January 2023, the Bureau received a complaint alleging that Vexus had an established policy of only offering a 150/150 Mbps broadband plan, its slowest and lowest-cost broadband plan to customers seeking to take advantage of the ACP discount.[17] This complaint prompted the Bureau to initiate an investigation into the precise nature of Vexus's policies and practices with respect to the ACP and to determine the extent of any potential violations. On March 29, 2023, the Bureau issued a letter of inquiry (LOI) to Vexus.[18] Vexus partially responded to the LOI on April 28, 2023, and submitted a supplemental response on May 31, 2023.[19]

8. In its May 31, 2023 LOI Response, Vexus admitted that beginning in January 2023, its customer service representatives began informing new ACP-eligible customers that they could only sign up for its 150/150 Mbps broadband plan—the slowest plan it offered—and did not offer other broadband-only service plans to those customers.[20] This practice continued through the end of April 2023, when

[9] 47 CFR § 54.1802(b).

[10] *Id.* § 54.1810(a)(1)(iii).

[11] *Id.* § 54.1810(e)(1).

[12] *Id.* § 54.1810(i)(1), (2)(vii).

[13] *See* Letter from Frank G. Lamancusa, Morgan, Lewis & Bockius, LLP, Counsel for Vexus, to Pamela Gallant, Acting Chief, Investigations & Hearings Division, FCC Enforcement Bureau at Responses to Inquiries 1, 4 (Apr. 28, 2023) (on file in EB-IHD-23-00035043) (April 28, 2023 LOI Response).

[14] April 28, 2023 LOI Response to Inquiry 8.

[15] *Id.*

[16] *See* USAC, Vexus Claims Data (July 5, 2023) (on file in EB-IHD-23-00035043).

[17] *See* Complaint Concerning Vexus Fiber (Jan. 4, 2023) (on file in EB-IHD-23-00035043).

[18] Letter from Pamela Gallant, Acting Chief, Investigations & Hearings Division, FCC Enforcement Bureau, to James Gleason, President, Vexus Fiber, LLC (Mar. 29, 2023) (on file in EB-IHD-23-00035043) (LOI).

[19] Letter from Frank G. Lamancusa, Morgan, Lewis & Bockius, LLP, Counsel for Vexus Fiber, LLC, to Pamela Gallant, Acting Chief, Investigations & Hearings Division, FCC Enforcement Bureau (Apr. 28, 2023) (on file in EB-IHD-23-00035043) (May 31, 2023 LOI Response).

[20] May 31, 2023 LOI Response at Response to Inquiry 15.

Vexus eliminated the foregoing restrictions and adopted an extensive retraining program regarding the ACP for its employees.[21]

9. These actions undermine the purpose, intent, and integrity of the ACP by potentially dissuading eligible low-income households from obtaining access to broadband internet and by limiting consumer choice against the express intent of Congress. To resolve these matters, the Parties enter into this Consent Decree and agree to the following terms and conditions.

III. TERMS OF AGREEMENT

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

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

12. **Effective Date; Violations**. The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Parties agree that this Consent Decree shall have the same force and effect as any other order of the Commission. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission Order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission Order.

13. **Termination of Investigation**. In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, Vexus 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 Vexus concerning the matters that were the subject of the Investigation, or to set for hearing the question of Vexus's basic qualifications to be a Commission licensee or hold Commission licenses or authorizations based on the matters that were the subject of the Investigation.[22]

14. **Admission of Liability**. Vexus admits for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 13 herein, that its actions described in paragraph 8 violated the ACP Rules.

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

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

(a) **Operating Procedures**. Within thirty (30) calendar days after the Effective Date, Vexus shall establish Operating Procedures that all Covered Employees must follow to help ensure Vexus's compliance with the ACP Rules. Vexus's Operating

[21] *Id.*

[22] *See* 47 CFR § 1.93(b).

Procedures shall include internal procedures and policies specifically designed to ensure that it does not engage in downselling to ACP-eligible customers. Vexus shall also develop a Compliance Checklist that describes the steps that a Covered Employee must follow to ensure compliance with the ACP Rules.

(b) **Compliance Manual**. Within sixty (60) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered Employees. The Compliance Manual shall explain the ACP Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure Vexus's compliance with the ACP Rules. Vexus shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. Vexus shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.

(c) **Compliance Training Program**. Vexus shall establish and implement a Compliance Training Program on compliance with the ACP Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of Vexus's obligation to report any noncompliance with the ACP Rules under paragraph 17 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. In any period during which the Commission is accepting reimbursement requests or providing monetary support for service providers participating in ACP, all Covered Employees shall be trained pursuant to the Compliance Training Program within sixty (60) calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after the initial Compliance Training Program shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee, provided that any Covered Employee must be trained prior to soliciting any customer to enroll in ACP. Vexus shall repeat compliance training on an annual basis during any period during which the Commission is accepting reimbursement requests or providing monetary support for service providers participating in ACP, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.

17. **Reporting Noncompliance**. Vexus shall report any noncompliance with the ACP Rules and with the terms and conditions of this Consent Decree within thirty (30) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of: (i) each instance of noncompliance; (ii) the steps that Vexus 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 Vexus has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to Patrick McGrath at Patrick.McGrath@fcc.gov, Kalun Lee at Kalun.Lee@fcc.gov, Georgina Feigen at Georgina.Feigen@fcc.gov, Mindy Littell at Mindy.Littell@fcc.gov and Ryan Mitchell at Ryan.Mitchell@fcc.gov, with an electronic copy to EnforcementBureauIHD@fcc.gov.

18. **Compliance Reports**. Vexus shall file compliance reports with the Commission ninety (90) calendar days after the Effective Date, twelve (12) months after the Effective Date, twenty-four (24) months after the Effective Date, and thirty-six (36) months after the Effective Date.

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

Decree, including the reporting obligations set forth in paragraph 17 of this Consent Decree.

(b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and shall comply with section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.[23]

(c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Vexus, 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 Vexus 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 Vexus has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.

(d) All Compliance Reports shall be submitted to Patrick McGrath at Patrick.McGrath@fcc.gov, Kalun Lee at Kalun.Lee@fcc.gov, Georgina Feigen at Georgina.Feigen@fcc.gov, Mindy Littell at Mindy.Littell@fcc.gov and Ryan Mitchell at Ryan.Mitchell@fcc.gov, with an electronic copy to EnforcementBureauIHD@fcc.gov.

19. **Termination Date**. Unless stated otherwise, the requirements set forth in paragraphs 16 through 18 of this Consent Decree shall expire thirty-six (36) months after the Effective Date. All obligations thereunder are waived for any period during which the Commission is not accepting reimbursement requests or providing monetary support for service providers participating in ACP.

20. **Section 208 Complaints; Subsequent Investigations**. Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to section 208 of the Act[24] against Vexus or its affiliates for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaint will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by Vexus with the Communications Laws.

21. **Civil Penalty**. Vexus will pay a civil penalty to the United States Treasury in the amount of one hundred thousand dollars ($100,000) within thirty (30) calendar days of the Effective Date. Vexus acknowledges and agrees that upon execution of this Consent Decree, the Civil Penalty shall become a "Claim" or "Debt" as defined in 31 U.S.C. § 3701(b)(1).[25] Upon an Event of Default, all procedures for collection as permitted by law may, at the Commission's discretion, be initiated. Vexus shall send electronic notification of payment to at Patrick.McGrath@fcc.gov and EnforcementBureauIHD@fcc.gov on the date said payment is made. Payment of the Civil Penalty must be made by credit card using the Commission's Registration System (CORES) at https://apps.fcc.gov/cores/userLogin.do, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. The Commission no longer accepts Civil Penalty payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:[26]

[23] 47 CFR § 1.16.

[24] 47 U.S.C. § 208.

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

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

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. In the OBI field, enter the FRN(s) captioned above and the letters "FORF". In addition, a completed Form 159[27] or printed CORES form[28] 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).[29] For additional detail and wire transfer instructions, go to https://www.fcc.gov/licensing-databases/fees/wire-transfer.
- Payment by credit card must be made by using CORES at https://apps.fcc.gov/cores/userLogin.do. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the 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.

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

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

24. **Waivers**. As of the Effective Date, Vexus 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

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

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

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

validity of this Consent Decree and the Adopting Order. Vexus shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent Decree or the Adopting Order, neither Vexus nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Vexus shall waive any statutory right to a trial *de novo*. Vexus hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act[30] relating to the matters addressed in this Consent Decree.

25. **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.

26. **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.

27. **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 Vexus does not expressly consent) that provision will be superseded by such Rule or order.

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

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

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

31. **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.

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

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

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

_____
Loyaan A. Egal
Bureau Chief
Enforcement Bureau

_____
Date

_____
Keith Davidson
Chief Financial Officer
Vexus Fiber, LLC

_____
Date

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

In the Matter of	)	
	)	
Amendment of Section 73.622(j),	)	MB Docket No. 24-4
Table of TV Allotments, Television Broadcast	)	RM-11974
Stations (Waynesboro, Virginia)	)	

REPORT AND ORDER
(PROCEEDING TERMINATED)

Adopted: March 7, 2024 **Released: March 7, 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 (Petition) filed by VPM Media Corporation (Petitioner). The Petitioner requests the allotment of reserved noncommercial educational (NCE) television channel *12 to Waynesboro, Virginia (Waynesboro), in the Table of TV Allotments as the community's first local television service and its first NCE television service.[2] The Petitioner filed comments in support of the Petition, as required by the Commission's rules (rules),[3] reaffirming its commitment to apply for channel *12 and if authorized, to promptly construct the facility.[4] No other comments were received.

2. We find the public interest would be served by allotting channel *12 at Waynesboro, which, as of the 2020 Census, has a population of 22,196 and clearly qualifies for community of license status for allotment purposes.[5] Waynesboro has its own ZIP Code, two post offices, city council, public school system, police department, and library.[6] The proposal would also result in a first local service to Waynesboro under the Commission's second allotment priority.[7]

3. The Petitioner demonstrates, and a staff engineering analysis confirms, that channel *12 can be allotted to Waynesboro consistent with the minimum geographic spacing requirements for new

[1] *Amendment of Section 73.622(j), Table of TV Allotments, Television Broadcast Stations (Waynesboro, Virginia)*, MB Docket No. 24-4, Notice of Proposed Rulemaking, DA 24-30 (MB Jan. 11, 2024) (*NPRM*); 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 of TV Allotments by an asterisk to indicate they are reserved for noncommercial educational use. 47 CFR §73.622(a).

[3] 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).

[4] Comments of VPM Media Corporation at 1-2 (filed Jan. 19, 2024).

[5] *See NPRM* at para. 2.

[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, 167-73 (1952) (emphasis added).

DTV allotments in section 73.622(k) of the rules,[8] at 37° 38' 24" N and 78° 27' 11" W (allotment point). In addition, the allotment point complies with section 73.618 of the rules as the entire community of Waynesboro is encompassed by the 43 dBμ contour.[9]

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c)(1), 303(g), (r), and 307(b), and sections 0.61, 0.204(b) and 0.283 of the Commission's rules, 47 CFR §§ 0.61, 0.204(b), and 0.283, **IT IS ORDERED**, that effective thirty (30) days from the date of publication in the Federal Register, the Table of TV Allotments, section 73.622(j) of the Commission's rules, 47 CFR § 73.622(j), **IS AMENDED**, with respect to the community listed below, to read as follows:

City and State	Channel No.
Waynesboro, Virginia	*12

5. **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.

6. **IT IS FURTHER ORDERED,** That should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 24-4, RM-11974, **SHALL BE TERMINATED** and its docket closed.

7. **IT IS FURTHER ORDERED**, That the newly allotted channel *12 at Waynesboro, Virginia, **SHALL BE AUTHORIZED** pursuant to the Commission's application and selection procedures for reserved noncommercial educational television channels, 47 CFR §§ 73.7000 *et seq*.

8. For further information concerning the proceeding listed above, contact Emily Harrison, Video Division, Media Bureau, Emily.Harrison@fcc.gov.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

[8] 47 CFR § 73.622(k). The Commission recently amended its rules to relocate the text from prior 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 effective as of March 4, 2024, and the revised paragraph numbers are reflected herein. *See Media Bureau Announces March 4, 2024 Effective Date for All Revisions to Part 73 Commission Rules for Full Power and Class A Television Stations,* Public Notice, DA 24-196 (MB Mar. 4, 2024) (*Part 73 Effective Date Public Notice*).

[9] *See* 47 CFR § 73.618. 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 prior section 73.625(a) (DTV coverage of principal community and antenna system). *See Part 73 Amendment R&O* at para. 37. The amended rules are effective as of March 4, 2024, and the revised paragraph numbers are reflected herein. *See Part 73 Effective Date Public Notice*.

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

In the Matter of	)	
	)	
Southeastern Pennsylvania Transportation Authority	)	File No. 0010042288
	)	
	)	
Request for Extension for Call Sign WQZG612	)	

ORDER

Adopted: March 7, 2024 **Released: March 7, 2024**

By the Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. This Order addresses a request by the Southeastern Pennsylvania Transportation Authority (SEPTA) for a waiver of section 90.551 of the Commission's rules to extend the construction completion date for call sign WQZG612, an authorization in the 700 MHz band, until May 10, 2025.[1] For the reasons discussed below, we grant the request.

II. BACKGROUND

2. WQZG612 had an original extended implementation buildout deadline of May 10, 2022, however, in advance of that deadline, SEPTA informed the Public Safety and Homeland Security Bureau (the Bureau) that its progress for completing its new radio system, consistent with SEPTA's extended implementation schedule, was delayed due to disruptions caused by COVID-19.[2]

3. Specifically, SEPTA noted that the pandemic constrained project staffing resources and reduced collaboration efforts, thereby delaying the projected schedule benchmarks.[3] SEPTA provided that it issued a Request For Proposal for the new 700 MHz radio system, addressed comments and inquiries from prospective bidders, and prepared the transition to the next stage of evaluation of bids for selection and contract award.[4] SEPTA also certified that the construction of the proposed 700 MHz radio system was approved and fully funded, and that it planned to seek approval to award a contract from its Board of Directors at its June 2022 meeting and proceed with system design and construction.[5] SEPTA also stated that due to the size of the planned system, which includes both a new radio system and a Computer Aided Dispatch and Vehicle Location, a period of three years was anticipated to complete the

[1] *See* Universal Licensing System (ULS) File No. 0010042288 (filed May 9, 2022 and amended Jul 8, 2022, Jul. 31, 2022, Oct. 10, 2022 and Nov 8, 2023) and Waiver Request Letter attached to the applications (Waiver Request). *See also* 47 C.F.R. § 90.551.

[2] *See* Extended Implementation Progress Notification, filed May 11, 2021; Waiver Request at 1-2.

[3] Waiver Request at 1.

[4] *Id*. at 2.

[5] *Id*. This process would also include integrating SEPTA's digital distributed antenna system, which provides critical interoperable radio communications between SEPTA transit police and the City of Philadelphia Police Department.

project.[6]

4. On July 31, 2022, SEPTA informed the Bureau that the SEPTA Board of Directors formally approved the contract for the new 700 MHz radio system which was awarded to Motorola Solutions.[7] On October 10, 2022 SEPTA provided the Bureau a construction schedule detailing how it would meet a buildout deadline of May 10, 2025.[8]

5. On November 8, 2023, SEPTA provided the Bureau with copies of the two state and local government orders pertaining to the COVID-19 pandemic that SEPTA claimed restricted SEPTA's ability to effectively collaborate, which resulted in significant delays relative to the design and construction of the new 700 MHz radio system.[9] First was the "PROCLAMATION OF DISASTER EMERGENCY" issued by Pennsylvania Governor Tom Wolf in March 2020, which notes, "this threat of imminent disaster and emergency has the potential to cause significant adverse impacts upon the population throughout the Commonwealth."[10] Second was list of regulations and preventative measures adopted in April 2020 by The City of Philadelphia Department of Public Health to limit the spread of disease in an epidemic emergency.[11] SEPTA also provided a copy of its own 2020 internal safety guidelines for managers and employees to minimize exposure within the transit agency.[12]

6. SEPTA argues that these monitoring, mitigation and containment restrictions significantly impacted the availability of personnel and limited collaboration on transit engineering projects and its ability to meet its original extended implementation buildout deadline of May 10, 2022.[13] SEPTA argues that would be in the public interest for the Commission to grant this extension of time and allow SEPTA to implement its new 700 MHz digital radio network supporting emergency communications in SEPTA's service area consisting of the Philadelphia Metropolitan area and surrounding five counties, noting that this communication system is vital to support the over 200 million rides provided on an annual basis.[14]

III. DISCUSSION

7. To obtain a waiver of the Commission's rules, a petitioner must demonstrate either that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the requested waiver would be in the public interest;[15] or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable

[6] *Id.*

[7] *See* July 31, 2022 amendment.

[8] *See* October 10, 2022 amendment.

[9] *See* November 8, 2023 amendment.

[10] *Id.* Attachment A. "PROCLAMATION OF DISASTER EMERGENCY". Pennsylvania Governor Tom Wolf, dated March 6, 2020.

[11] *Id.* Attachment B. CITY OF PHILADELPHIA DEPARTMENT OF PUBLIC HEALTH, dated Apr. 8, 2020.

[12] *Id.* Attachment C. SEPTA Agency Guidelines related to the COVID-19 pandemic issued Apr. 5, 2020, updated Dec. 7, 2020.

[13] *Id.* at 1.

[14] *Id.*at 3.

[15] 47 CFR § 1.925(b)(3)(i).

alternative.[16] An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.[17]

8. We find that SEPTA has demonstrated an unusual set of factual circumstances satisfying the second prong of the Commission's waiver standard. Specifically, the various constraints placed on its operation by the state, the city, and its own prophylactic measures to address the pandemic, significantly impacted the availability of personnel and limited collaboration on transit engineering projects. In light of these facts, we find that strict enforcement of the prior construction deadlines would be both inequitable and contrary to the public interest in that it would result in a waste of monies, strand investment in facilities already under construction, and, most importantly, deprive its customers a critical public safety communications system.[18] SEPTA has shown substantial progress in implementing its system and demonstrated that the delays it has encountered were due to forces outside of its control. In addition, we are further assured by the fact that SEPTA will continue to be subject to annual reporting requirements.[19] Accordingly, we grant SEPTA's extension requests and extend the construction deadline to May 10, 2025 for WQZG612 and its associated application.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and sections 1.925, 90.155, and 90.551 of the Commission's rules, 47 CFR §§ 1.925, 90.55, 90.551, that the request for waiver filed by Southeastern Pennsylvania Transportation Authority filed May 9, 20223 and amended July 8, 2022, July 31, 2022, November 10, 2022 and November 21, 2023 in connection with application File No. 0010042288 IS GRANTED, and the application SHALL BE PROCESSED consistent with this Order and the Commission's rules.

10. IT IS FURTHER ORDERED pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and sections 1.925, 90.155, and 90.551 of the Commission's rules, 47 CFR §§ 1.925, 90.155, 90.551, that the construction deadline for the facilities represented by call sign WQZG612 IS HEREBY EXTENDED to May 10, 2025.

11. This action is taken under delegated authority pursuant to sections 0.191 and 0.392 of the Commission's rules, 47 CFR §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

John A. Evanoff
Chief, Policy and Licensing Division
Public Safety and Homeland Security Bureau

[16] 47 CFR § 1.925(b)(3)(ii).

[17] *WAIT Radio v. FCC*, 413 F.2d 1153, 1157 (D.C. Cir. 1969) (*WAIT Radio*), *aff'd*, 459 F.2d 1203 (1973), *cert. denied*, 409 U.S. 1027 (1972) (*citing Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir.1968)); *Birach Broad. Corp*., Memorandum Opinion and Order, 18 FCC Rcd 1414, 1415 (2003).

[18] *See Metropolitan Transportation Authority Police Department*, Order, 18 FCC Rcd 1164 (PSHSB 2018).

[19] *See* 47 CFR § 90.629(c).

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

In the Matter of	)	
	)	
Rural Health Care Support Mechanism	)	WC Docket No. 02-60
	)	
Promoting Telehealth in Rural America	)	WC Docket No. 17-310
	)	

ORDER

Adopted: March 7, 2024 **Released: March 7, 2024**

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) waives on our own motion section 54.621(a)(1) of the Commission's rules and extends the close of the funding year 2024 application filing window for the Rural Health Care (RHC) Program until May 1, 2024. We find that an extension of the application filing window for funding year 2024 is necessary due to two instances of outages of a program form that delayed some program participants' ability begin competitive bidding.

II. BACKGROUND

2. The Commission's RHC Program consists of two component programs: (1) the Telecommunications (Telecom) Program and (2) the Healthcare Connect Fund (HCF) Program.[1] Under the RHC Program, eligible health care providers and consortia that include eligible rural health care providers may apply for discounts for eligible services.[2] To receive support, an applicant must first solicit bids for eligible services by posting an FCC Form 465 in the Telecom Program or an FCC Form 461 in the HCF Program to USAC's website for service providers to review.[3] Applicants must review all bids submitted in response to the FCC Form 465 or FCC Form 461 and wait at least 28 days before entering into a service agreement with the selected service provider.[4] Competitive bidding for funding year 2024 began July 1, 2023, and applicants were encouraged, though not required, to submit their FCC Forms 465 and 461 by February 10, 2024, to ensure that they would be posted early enough for the 28-day competitive bidding period.[5] Once an applicant has selected a provider and entered into a service

[1] *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 34 FCC Rcd 4136, 4136, para. 2 (2019) (*Funding Year 2018 Demand Order*).

[2] *See* 47 CFR § 54.603(b); 54.612.

[3] 47 CFR §§ 54.622; FCC Form 465, Rural Health Care Universal Service Mechanism, Description of Services Requested and Certification Form, OMB 3060-0804 (July 2014) (FCC Form 465); FCC Form 461, Rural Health Care Universal Service Healthcare Connect Fund, Request for Services, OMB 3060-0804 (July 2014) (FCC Form 461).

[4] 47 C.F.R. § 54.622(a), (g).

[5] *See* USAC, Rural Health Care, July 2023 RHC Monthly Newsletter, (July 6, 2023), https://www.usac.org/wp-content/uploads/rural-health-care/documents/monthly-newsletter/2023-newsletter/RHC-Newsletter-July-2023.pdf; USAC, Rural Health Care, February 2024 RHC Monthly Newsletter, (Feb. 1, 2024), https://www.usac.org/wp-content/uploads/rural-health-care/documents/monthly-newsletter/2024-newsletter/RHC-Newsletter-February-2024.pdf (USAC February 2024 RHC Monthly Newsletter).

contract, the applicant must submit its funding request to USAC by filing an FCC Form 466 or FCC Form 462 during the application filing window.[6]

3. Section 54.621(a)(1) of the Commission's rules directs USAC to open an application filing window with an end date no later than 90 days prior to the start of the funding year (i.e., no later than April 1).[7] The Commission established an April 1 end date for the application filing window to provide more certainty to applicants by creating a consistent application filing window close date each year, to give USAC time to begin processing submitted RHC Program applications before the funding year begins, and to give USAC sufficient time to publish a gross demand estimate prior to the start of the funding year.[8] In establishing a consistent application filing window close each year, the Commission also directed USAC to publish a gross demand estimate 30 days before the start of the applicable funding year and allowed the Bureau to require a demand estimate to be filed at a different time if warranted by new circumstances.[9] In addition, the Bureau, in conjunction with the Office of the Managing Director, must determine the amount of unused funding from previous funding years available to be used in the current funding year by the end of the second quarter of each calendar year.[10] On June 1, 2023, USAC announced that the funding year 2024 application filing window would close on April 1, 2024.[11]

4. In June 2022, USAC launched RHC Connect, a new application filing platform to replace the legacy My Portal platform.[12] Since then, USAC has gradually migrated program forms to RHC Connect. The FCC Form 465 is the only continuing RHC Program form that still exists in USAC's legacy My Portal system.[13] USAC plans to migrate the FCC Form 465 to RHC Connect to complete the transition.

5. During the competitive bidding period for funding year 2024, there were two instances of outages of the FCC Form 465 which affected Telecom Program applicants' ability to submit the FCC Form 465. The first instance occurred from December 27, 2023, through January 23, 2024 and the second occurred from February 16, 2024, through February 23, 2024.[14] Due to technical difficulties related to submitting the form, program participants had been unable to submit their FCC Form 465 and

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[6] FCC Form 466, Rural Health Care Universal Service Mechanism, Funding Request and Certification Form, OMB 3060-0804 (July 2014) (FCC Form 466); FCC Form 462 Instructions, Rural Health Care Universal Service Healthcare Connect Fund, Request for Funding, OMB 3060-0804 (July 2014) (FCC Form 462 Instructions). *See Funding Year 2018 Demand Order*, 34 FCC Rcd at 4139, para. 10; *WCB Provides a Filing Window Period Schedule for Funding Requests under the Telecom Program and the Healthcare Connect Fund*, WC Docket No. 02-60, Public Notice, 31 FCC Rcd 9588, 9589, 9592 (WCB 2016).

[7] 47 CFR § 54.621(a)(1); *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Report and Order, 34 FCC Rcd 7335, 7416, 7433, para. 176 (2019) (*Promoting Telehealth Report and Order*).

[8] *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7416, para. 176.

[9] *Id*. at 7416, para. 176 & n.532.

[10] *See* 47 CFR § 54.619(a)(5).

[11] *See* USAC, Rural Health Care, June 2023 RHC Monthly Newsletter, (June 1, 2023), https://www.usac.org/wp-content/uploads/rural-health-care/documents/monthly-newsletter/2023-newsletter/RHC-Newsletter-June-2023.pdf.

[12] *See* USAC, Rural Health Care, June 2022 RHC Monthly Newsletter (June 2, 2022), https://www.usac.org/wp-content/uploads/rural-health-care/documents/monthly-newsletter/2022-newsletters/RHC-Newsletter-June-2022.pdf.

[13] *See* USAC February 2024 RHC Monthly Newsletter. The Telecom Program Invoice Form, which is being sunset after funding year 2023, also exists in My Portal. *See generally Promoting Telehealth in Rural America*, WC Docket No. 17-310, Order on Reconsideration, Second Report and Order, Order, and Second Further Notice of Proposed Rulemaking, FCC 23-6, paras. 55-59 (Jan. 27, 2023) (reforming the Telecom Program invoicing process effective funding year 2024).

[14] *See* USAC February 2024 RHC Monthly Newsletter.

subsequently may have experienced delays in starting the 28-day bidding period, making compliance with the April 1, 2024, application deadline difficult.

III. DISCUSSION

6. We waive section 54.621(a)(1) of the Commission's rules,[15] which requires that the RHC Program application filing window close no later than April 1, and direct USAC to extend the end date of the funding year 2024 initial filing window to May 1, 2024. Generally, the Commission's rules may be waived for good cause shown.[16] The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.[17] In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy.[18]

7. We find that technical issues affecting applicants' ability to submit the FCC Form 465 over two separate periods of time spanning several weeks is good cause for an extension of the application filing window until May 1, 2024. The Bureau has previously found good cause to waive the Commission's rules and grant an extension of a program deadline when technical issues affected an applicant's ability to meet a program's process deadline.[19] We have granted individual waivers of RHC Program deadlines where technical issues beyond the applicants' or service providers' control prevented them from meeting the invoice filing deadline[20] and have granted program-wide waivers of the application filing deadline due to the COVID-19 pandemic, which was beyond applicants' or service providers' control.[21] Consistent with this precedent, we find that granting a waiver of the application filing deadline is appropriate in this circumstance. Due to technical issues with USAC's legacy filing system, some applicants experienced difficulties and delays in submitting their FCC Forms 465. An extension of the application filing window will provide applicants with sufficient time to undergo the 28-

[15] 47 CFR § 54.621(a)(1).

[16] 47 CFR § 1.3.

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

[18] *Id*.

[19] *See Application for Review of a Decision by the Wireline Competition Bureau by Pribilof School District; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 33 FCC Rcd 8378, 8381, para. 9 (2018) (granting waivers of the E-Rate Program application filing deadline due to technical difficulties associated with the rollout of a new application filing system). *See also Wireline Competition Bureau Extends E-Rate Program Deadlines During E-Rate Productivity Center (EPC) Blackout Period,* CC Docket No. 02-6, Public Notice, DA 23-1019, 2023 WL 7212261 (WCB 2023) (granting an extension of any form or program process deadline for E-Rate participants due to a blackout period of USAC's systems during a transition from the legacy invoicing system to a new system); *Wireline Competition Bureau Extends Deadline for E-Rate Participants to Request Invoice Deadline Extension*, CC Docket No. 02-6, Public Notice, 31 FCC Rcd 11924, 11925 (WCB 2016) (granting additional time for program participants to submit invoices because USAC's systems stopped accepting invoice filings prior to the deadline).

[20] *See Requests for Waiver or Review of Decision of the Universal Service Administrator by Indiana Telehealth Network*, WC Docket No. 02-60, Order, 33 FCC Rcd 12341, 12342, para. 4 (WCB 2018) *(Indiana Telehealth Network Order*) (granting one request for review and waiver where the petitioner demonstrated that it was unable to file the Healthcare Connect Fund Program invoice form on a timely basis due to a USAC technical system issue that prevented the filing of the invoice form); *Rural Health Care Support Mechanism*, WC Docket 02-60, Order, 30 FCC Rcd 1063, 1064- 65, paras. 4-5 (WCB 2015) (*Healthcare Connect Fund Invoice Deadline Order*) (granting a limited waiver of the Healthcare Connect Fund Program invoice filing deadline due to USAC filing system deficiencies beyond the control of some applicants and service providers that prevented them from meeting the invoice deadline).

[21] *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 35 FCC Rcd 2922, 2924, para. 6 (WCB 2020); *Rural Health Care Support Mechanism; Promoting Telehealth in Rural America*, WC Docket Nos. 02-60 and 17-310, Order, 36 FCC Rcd 1604, 1604, para. 1 (WCB 2021).

day competitive bidding process, enter into a service agreement with a service provider, and submit a Request for Funding for funding year 2024. By providing this waiver, we also ensure that eligible health care providers receive the funding they need to obtain the advanced telecommunications and information services, network equipment, and/or facilities necessary for the provision of health care. While the outage only impacted the Telecom Program, we also extend the application filing window end date for the HCF Program until May 1, 2024, to maintain consistency of deadlines for the RHC Program. We expect that technical issues with the FCC Form 465 will be resolved after the form migrates from USAC's legacy system to the new RHC Connect system.

8. Additionally, we direct USAC to file the RHC Program gross demand estimate by July 1, 2024. The delay of the close of the application filing window until May 1, 2024, makes it impracticable for USAC to provide a demand estimate 30 days before the start of funding year 2024, the deadline contemplated in the *Promoting Telehealth Report and Order*.[22] Requiring USAC to file its gross demand estimate by July 1, 2024, will give it approximately the same amount of time to prepare the estimate as it would have had without an extension of the close of the application filing window.[23] We also waive the requirement in section 54.619(a)(5) of the Commission's rules requiring that the determination of the amount of unused funding from previous funding years available to carry forward to the current funding year be made in the second quarter.[24] To align this deadline with the window close and gross demand estimate deadline, we now require that determination to be made in the third quarter of 2024.[25]

IV. ORDERING CLAUSES

9. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 USC §§ 151-154 and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, that section 54.621(a)(1) of the Commission's rules, 47 CFR § 54.621(a)(1), is waived to the extent provided herein.

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

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau

[22] *Promoting Telehealth Report and Order*, 34 FCC Rcd at 7416, para. 176 & n.532 (requiring that USAC provide a "gross demand estimate 30 days prior to the start of the pertinent funding year.").

[23] Thirty days prior to the start of the funding year is June 1. See 47 CFR § 54.600(a). If the application filing window closed on April 1, USAC would have two months to provide a gross demand estimate.

[24] *See* 47 CFR § 54.619(a)(5).

[25] When the Commission adopted section 54.619(a)(5), it also directed the Bureau to announce a specific amount of unused funds from prior funding years to be carried forward to increase available funding for future funding years in the second quarter. *See Promoting Telehealth in Rural America*, WC Docket No. 17-310, Report and Order, 33 FCC Rcd 6574, 6584-85, para. 27 (2018) ("The Bureau will announce the availability and amount of carryover funds during the second quarter of the calendar year."). We require the announcement of the availability and amount of carryover funds to be made in the third quarter of 2024.

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-215
Released: March 7, 2024

WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON WAYS TO FACILITATE ACCESS TO CURRENTLY UNASSIGNED AUCTION INVENTORY SPECTRUM FOR WIRELESS RADIO SERVICES IN LIGHT OF THE ONGOING LAPSE OF AUCTION AUTHORITY

WT Docket No. 24-72

Comments Due: April 8, 2024
Reply Comments Due: April 22, 2024

I. INTRODUCTION

1. This *Public Notice* seeks comment on how the Commission should fulfill its responsibility to make spectrum resources available for use in the public interest,[1] in light of the ongoing lapse of the Commission's auction authority.[2] The Commission typically uses exclusive, geographic-area licensing to facilitate nationwide wireless broadband coverage, and auctions have been the most effective mechanism to resolve mutually exclusive applications for geographic-area licenses in a manner that yields the most benefits to the public. Given the ongoing lapse of the Commission's auction authority, the Commission now faces a unique and historic challenge of how to facilitate the deployment of advanced wireless services across the country without using auctions to resolve mutually exclusive applications.

2. To that end, unless and until Congress decides to restore the Commission's auction authority, the Wireless Telecommunications Bureau (WTB) is compelled to explore how its existing regulatory tools could be used to provide the public with access to spectrum that would otherwise lie fallow. Specifically, in this *Public Notice*, WTB seeks comment on how the Commission, if necessary, could use its current statutory authority to provide the public with access to its inventory of currently unassigned spectrum in bands previously licensed for wireless services through auctions (hereafter, Inventory Spectrum). The record compiled in this proceeding will help WTB, in coordination with the Office of Economics and Analytics and the Office of Engineering and Technology, to develop options for Commission consideration of these issues. We note that additional spectrum may also be affected by the

[1] *See, e.g.*, 47 U.S.C. §§ 151, 301, 303(g), 309(a), 1507.

[2] On March 9, 2023, the Commission's authority to issue licenses through systems of competitive bidding (i.e., auction authority) expired. 47 U.S.C. § 309(j)(11) ("The authority of the Commission to grant a license or permit under this subsection shall expire March 9, 2023, except that, with respect to the electromagnetic spectrum identified under section 1004(a) of the Spectrum Pipeline Act of 2015, such authority shall expire on September 30, 2025, and with respect to the electromagnetic spectrum identified under section 90008(b)(2)(A)(ii) of the Infrastructure Investment and Jobs Act, such authority shall expire on the date that is 7 years after November 15, 2021."). Since the lapse of general authority on March 9, 2023, Congress has provided a 90-day window for the Commission to grant licenses "in the band of frequencies between 2496 megahertz and 2690 megahertz, inclusive" not granted prior to the 5G SALE Act and applied for based on competitive bidding held prior to March 9, 2023. *See* 5G Spectrum Authority Licensing Enforcement Act (5G SALE Act), P.L. 118-27, 137 Stat. 132 (2023). Congress has not otherwise changed the Commission's auction authority since it lapsed.

lack of auction authority where, but for the current statutory limitations, the Commission might otherwise adopt rules for geographic area licensing and auctions to resolve mutual exclusivity.

3. This *Public Notice* identifies three broad approaches that the Commission could use to make Inventory Spectrum available for public use in the absence of auction authority. These options include: (1) providing access through dynamic spectrum sharing techniques; (2) providing access through non-exclusive site-based licensing; and (3) leasing spectrum inventory licenses. We seek comment on each approach, as well as combinations of approaches (e.g., leasing inventory licenses and dynamic spectrum sharing) and any other methods that could be used to make Inventory Spectrum available to the public.

II. BACKGROUND

4. The Commission uses a wide variety of frameworks to authorize the use of spectrum resources throughout the country. For example, the Commission may provide for the initial licensing of spectrum through geographic-area licensing, site-based licensing, and license-by-rule mechanisms, or may provide for unlicensed access to spectrum. The Commission's secondary market policies permit the assignment, transfer, partitioning, or disaggregation of geographic-area or site-based licenses.

5. In developing frameworks for assigning licenses for spectrum access, the Commission must address the potential for mutually exclusive applications for the licensed use of that spectrum, either by designing an authorization framework that avoids mutual exclusivity or by exercising its statutory authority to resolve mutually exclusive applications.[3] With respect to resolving mutually exclusive applications, the statutory options available to the Commission have evolved over time.

6. The Commission previously used comparative hearings to assign licenses subject to mutually exclusive applications.[4] Comparative hearings were highly cumbersome processes that required the Commission to evaluate applicants' competing claims regarding the value of their spectrum use to the public interest. These proceedings tended to result in numerous appeals, which delayed assignment of the licenses. As a result of these deficiencies, Congress authorized random selection as an alternative to comparative hearings for the assignment of licenses.[5] However, random selection oftentimes resulted in windfalls for speculators and the Commission's authority to conduct assignment by random selection was subsequently terminated.[6] Congress' subsequent grant of auction authority to the FCC in 1993 provided a substantially more effective mechanism for resolving mutually exclusive applications for spectrum licenses. Since the first spectrum auction in July 1994, over 3,300 winning bidders (of over 5,700

[3] Generally, the Commission "shall grant" an application for a license "when the public interest convenience and necessity would be served by granting" the application. 47 U.S.C. § 309(a). The Communications Act originally provided that, when the Commission did not grant an application, the Commission "shall afford such applicant an opportunity to be heard." U.S.C. § 309(a) (1934). The United States Supreme Court subsequently determined that when there are mutually exclusive applications pending, this statutory right to a hearing required that an applicant must be given an opportunity for a hearing prior to action on its application because "the grant of one [application] effectively precludes the other." *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327, 330 (1945). Though Congress subsequently limited the right to a hearing to circumstances in which "a substantial and material question of fact is presented," 47 U.S.C. § 309(e), it seems likely that mutually exclusive applications often will give rise to such questions, given that the grant is to be determined by whether granting the respective applications will service "the public interest, convenience and necessity." 47 U.S.C. § 309(a). Of course, the Commission retains its authority to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity. *See generally* 47 U.S.C. § 309(j)(6)(E).

[4] *See generally Ashbacker Radio Corp.*, 326 U.S. 327.

[5] Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, 95 Stat. 736-37, *amended*, Communications Amendment Act of 1982, Pub. L. No. 97-259 § 115, 96 Stat. 1087, 1094–95.

[6] *See* Balanced Budget Act of 1997, Pub. L. No. 105-33 § 3002, 111 Stat. 251, 260 (1997) (amending 47 U.S.C. § 309(i)).

qualified bidders) have won nearly 103,000 licenses or permits in 100 spectrum auctions.[7] The Commission has raised over $233.5 billion for statutorily mandated uses, including: $39.8 billion for the Public Safety Trust Fund; $45.2 billion to the Spectrum Relocation Fund; and over $100 billion for the General Fund. These auctions have helped to fuel competition, to provide consumers with a vast array of wireless technologies and services, and to increase the likelihood that the Nation's scarce spectrum resources are put to their highest and best use.

7. The Commission's current Inventory Spectrum includes numerous exclusive-use, geographic area-based licenses across multiple wireless services that were previously made available via competitive bidding but were either not acquired at auction or returned to the Commission after issuance. These include licenses capable of supporting broadband services (e.g., 600 MHz, 700 MHz, 800 MHz Cellular, AWS-3, PCS, BRS, MVDDS) as well as those supporting narrowband services (e.g., 220 MHz, VHF/UHF Paging, 800 MHz SMR). As a result of the ongoing lapse of the Commission's auction authority, the Commission has limited statutory mechanisms to resolve mutually exclusive applications for Inventory Spectrum. Accordingly, in developing frameworks for assigning Inventory Spectrum, the Commission could explore options that would avoid mutual exclusivity, or could resolve mutual exclusivity through a suboptimal mechanism like comparative hearings. Notwithstanding this unique challenge, the Commission nonetheless has an obligation to consider opportunities for making Inventory Spectrum available for wireless communications through alternative means consistent with its current statutory authority.

III. DISCUSSION

A. Potential Approaches for Making Inventory Spectrum Available to the Public

8. *Dynamic Spectrum Sharing.* In recent years, the Commission has successfully used dynamic spectrum sharing frameworks to make spectrum available for flexible wireless use across multiple bands, including licensed use in the Citizens Broadband Radio Service in the 3.55–3.7 GHz band (3.5 GHz band) and unlicensed use in portions of the 5.925–7.125 GHz band (6 GHz band).[8] WTB seeks comment on whether similar dynamic spectrum sharing approaches could be used to facilitate access to Inventory Spectrum. For example, one or more dynamic frequency coordinators could facilitate access to Inventory Spectrum for multiple users within particular spectrum bands and geographic areas. These dynamic systems could be used to minimize harmful interference between operators and promote co-existence between and among various spectrum users. Access to these bands and geographic areas could

[7] *See* Federal Communications Commission, *Auctions Summary*, https://www.fcc.gov/auctions-summary (last visited Mar. 5, 2024).

[8] The Commission has deployed dynamic frequency coordination models in certain contexts, including Spectrum Access Systems (SAS) for the 3.5 GHz band, and Automated Frequency Coordination (AFC) Systems for the 6 GHz band. *See Amendment of the Commission's Rules with Regard to Commercial Operations in the 3550–3650 MHz Band*, GN Docket No. 12-354, Report and Order and Second Further Notice of Proposed Rulemaking, 30 FCC Rcd 3959, 4048–69, paras. 301–78 (2015) (*3.5 GHz Report and Order*) (adopting requirements for SAS and SAS Administrators); *Unlicensed Use of the 6 GHz Band*, ET Docket No. 18-295, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 3852 (2020) (*6 GHz Report and Order*). SASs coordinate operations between three tiers of authorized users (Incumbents, Priority Access Licensees, and General Authorized Access users) in the 3.5 GHz band. *3.5 GHz Report and Order*, 30 FCC Rcd at 4051, para. 311. They set and enforce maximum permissible power levels in accordance with the applicable rules, and SASs must act quickly as needed to ensure co-existence between the various categories of authorized users. *Id.* at 4052, paras. 314–15. For standard-power operations, standard-power access points and fixed client devices operate under the control of AFC systems in two portions of the 6 GHz band—the U-NII-5 band (5.925–6.425 GHz) and the U-NII-7 band (6.525–6.875 GHz). 47 CFR § 15.407(k)(1); *6 GHz Report and Order*, 35 FCC Rcd at 3860, 3862, 3923, paras. 17–18, 22, 192. AFCs establish exclusion zones in the 6 GHz band, and they permit unlicensed access to the band only on frequencies and in locations that AFCs determine will protect incumbent operations—including fixed microwave operations and radio astronomy observatories—from harmful interference. *6 GHz Report and Order*, 35 FCC Rcd at 3862, para. 22.

be driven by the existing service rules for the bands to protect existing users and provide a predictable framework for new entrants to the band. Guidelines, optimized for each band, could be developed to help dynamic frequency coordinators facilitate co-existence among a variety of stakeholders and use cases. Are there aspects of the SAS or AFC models that could be incorporated into a dynamic spectrum sharing system to provide access to Inventory Spectrum? How could the Commission leverage existing frequency coordination capabilities to more rapidly implement a dynamic spectrum sharing approach in these bands? What would be the expected time and resources required to develop both the sensing and end-user equipment necessary to implement such dynamic sharing? We also encourage commenters to address the specific questions posed in subpart B, below.

9. *Non-Exclusive Site-Based Licensing.* For decades, the Commission has issued non-exclusive wireless radio service licenses to entities to use spectrum in specific locations, consistent with existing allocations and service rules governing wireless services in those spectrum bands.[9] Non-exclusive site-based licensees are typically required to coordinate with one another—either licensee-to-licensee or via a third-party frequency coordinator—to minimize harmful interference between operators in the band. WTB seeks comment on whether such a non-exclusive site-based licensing approach—with or without a third-party spectrum coordinator—could be used to provide the public with access to Inventory Spectrum. Under such an approach, stakeholders could seek individual, non-exclusive authorizations and promote co-existence through either a spectrum coordinator or licensee-to-licensee coordination of technical parameters. In addition, to facilitate co-existence in a shared-use environment, the Commission could issue guidelines to promote licensee best practices in coordinating frequency use between and among licensees to avoid harmful interference. Are there situations where the relatively simple non-exclusive site-based licensing approach would be preferable to a dynamic spectrum sharing approach? If so, under what circumstances, and in which bands, would such an approach be advantageous? Commenters should also address the questions posed in subpart B, below.

10. *Leasing Spectrum Inventory Licenses.* In recent years, the Commission has taken steps to implement innovative approaches to spectrum leasing to facilitate more flexible and efficient access to spectrum resources.[10] Could the Commission position Inventory Spectrum licenses so that they could be leased to the public, even if they have not yet been initially licensed? If so, what guidelines could the Commission develop to govern lessee selection, leasing arrangements, resolution of mutually exclusive applications, and other parameters? Are there benefits to such a leasing approach as compared to making spectrum available using either dynamic spectrum sharing techniques or site-based licensing as described above? As with the other approaches, we invite commenters to respond to the questions in subpart B, below.

11. *Special Temporary Authority (STA).* We also note that the public already has access to Inventory Spectrum under limited circumstances and for limited purposes, specifically via grants of STAs.[11] For example, WTB issued over 165,000 new licenses last year, of which more than 1,000 were

[9] *See, e.g.*, 47 CFR § 1.907 (defining "Covered Site-based Licenses"); 47 CFR § 90.173(b) ("All applicants and licensees shall cooperate in the selection and use of frequencies in order to reduce interference and make the most effective use of the authorized facilities. . . . [T]he use of any frequency may be restricted as to specified geographical areas, maximum power, or such other operating conditions, contained in this part or in the station authorization.").

[10] *See, e.g.*, *Amendment of the Commission's Rules with Regard to Commercial Operations in the 3550–3650 MHz Band*, GN Docket No. 12-354, Order on Reconsideration and Second Report and Order, 31 FCC Rcd 5011, 5066–74, paras. 199–223 (2016); *Amendment of Part 90 of the Commission's Rules*, WP Docket No. 07-100, Seventh Report and Order and Ninth Further Notice of Proposed Rulemaking, 38 FCC Rcd 704, 721–23, 737–45, paras. 44–49, 94–134 (2023).

[11] The Commission may grant applications for Special Temporary Authority (STA) in certain circumstances (including emergency requests), and for periods of up to 180 days. Applications for STA are typically granted to permit immediate, temporary operation of certain radio facilities during emergencies or other temporary circumstances where warranted. *See* 47 CFR § 1.931.

STAs. Given that this well-established access mechanism provides for non-interfering use of the spectrum, it will remain available to users irrespective of any other approaches that the Commission might propose in the future. Are there changes to STA that might serve the public interest during this period of lapsed auction authority? As with the other approaches, we invite commenters to respond to the questions in subpart B, below.

12. *Other Options.* We invite commenters to consider other assignment options for providing access to the Commission's spectrum inventory. For example, would it be advantageous to create experimental innovation zones in some or all geographic areas where the Commission has Inventory Spectrum? Under such an approach, users could experiment with different technical approaches, especially as it relates to dynamic spectrum sharing techniques, and information gained could then be applied to other geographic areas and spectrum bands to facilitate public access to Inventory Spectrum. We also seek comment on whether aspects of any of the approaches discussed above could be combined to take advantage of the unique benefits of each access mechanism.

B. General Questions Regarding Access to Inventory Spectrum

13. To facilitate the consideration of alternative approaches to providing the public with access to Inventory Spectrum, WTB seeks comment on the questions below. These questions apply to each of the approaches discussed herein, as well as any alternative approaches proposed by commenters. Commenters are encouraged to address these questions for each approach and are also encouraged to provide appropriate technical and cost benefit analyses in support of their proposals. This valuable stakeholder input will inform the Bureau as it develops access options for Commission consideration.

- What are the potential benefits and drawbacks for each spectrum access mechanism? For each access mechanism, what framework or guidelines could the Commission provide to ensure robust and efficient spectrum use, ensure a level playing field, prevent harmful interference, and promote co-existence among spectrum users?
- To the extent that any of these mechanisms results in a change in the use of spectrum or in the service or technical rules for the spectrum, how should these mechanisms address potential co-channel and adjacent band interference issues?
- How might the Commission adjust any of the mechanisms to better incentivize network investment and robust use of the Inventory Spectrum in the public interest?
- Are any of these mechanisms more appropriate for use in particular Inventory Spectrum bands? If so, what factors should we consider in studying whether to use a particular approach in a particular band?
- For what term should access allowed under these mechanisms remain valid? Should authorizations have a defined expiration? Should the mechanisms authorize service only until auction authority is restored and, if so, how could these mechanisms facilitate the transition to use of the spectrum by entities who ultimately are assigned licenses through auction?
- How might the Commission address issues related to mutually exclusive applications, including its statutory authority to "use engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity" to facilitate access to Inventory Spectrum?[12]
- What, if any, impact would each mechanism have on the Commission's Mobile Spectrum Holdings policies? How would the Mobile Spectrum Holdings policies be applied in the applicable bands for each proposed mechanism?

[12] *See* 47 U.S.C. § 309(j)(6)(E).

IV. PROCEDURAL MATTERS

14. *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.[13] *Ex parte* presentations to or from Commission decision-making personnel are permissible and need not be disclosed.

15. *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).

- 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.[14]

16. *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).

17. *Additional Information*. For further information regarding this *Public Notice*, please contact Andrew McArdell, Mobility Division, Wireless Telecommunications Bureau, at Andrew.McArdell@fcc.gov.

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[13] 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).

[14] *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.

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

In the Matter of	)	
	)	
Clear Rate Communications	)	Complaint No. 6775078
	)	
Complaint Regarding	)	
Unauthorized Change of	)	
Subscriber's Telecommunications Carrier	)	

ORDER

Adopted: March 7, 2024 **Released: March 7, 2024**

By the Associate Division Chief, Consumer Policy Division, Consumer and Governmental Affairs Bureau:

1. In this Order, we consider a complaint alleging that Clear Rate Communications (Clear Rate) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant as required by the Commission's rules.[1] We find that Clear Rate's actions did not result in an unauthorized change in Complainant's telecommunications service provider, and we deny Complainant's complaint.

2. Section 258 of the Communications Act of 1934, as amended (the Act), prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.[2] The Commission's implementing rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.[3] Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that satisfies our rules; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an appropriately qualified independent third party to verify the order.[4] The Commission has also adopted rules to limit the liability of subscribers when an unauthorized carrier change occurs, and to require carriers involved in slamming practices to compensate subscribers whose carriers were changed without authorization.[5]

3. We received Complainant's complaint alleging that Complainant's telecommunications

[1] *See* Informal Complaint No. 6775078 (filed Feb. 12, 2024); *see also* 47 CFR §§ 64.1100 – 64.1190.

[2] 47 U.S.C. § 258(a).

[3] *See* 47 CFR § 64.1120.

[4] *See id*. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. *Id.* § 64.1130.

[5] These rules require the unauthorized carrier to absolve the subscriber where the subscriber has not paid his or her bill. If the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change. *See id.* §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.* Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150 percent of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50 percent of all charges paid by the subscriber to the unauthorized carrier. *See id.* §§ 64.1140, 64.1170.

service provider had been changed without Complainant's authorization.[6] Pursuant to our rules, we notified Clear Rate of the complaint.[7] Clear Rate responded to the complaint, stating that authorization was received and confirmed through a third-party verification (TPV) recording.[8] We have reviewed the TPV recording Clear Rate submitted with its response and find that the TPV complies with the verification requirements in the slamming rules.[9] Therefore, we conclude that Clear Rate's actions did not result in an "unauthorized change" in Complainant's telecommunications service provider, as defined in the rules.[10]

4. Accordingly, IT IS ORDERED that, pursuant to section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 CFR §§ 0.141, 0.361, 1.719, the complaint filed against Clear Rate Communications IS DENIED.

5. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Dana Bowers
Associate Division Chief
Consumer Policy Division
Consumer and Governmental Affairs Bureau

[6] *See* Informal Complaint No. 6775078.

[7] 47 CFR § 1.719 (Commission procedure for informal complaints filed pursuant to section 258 of the Act); *id*. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

[8] *See* Clear Rate Response to Informal Complaint No. 6775078 (filed Feb 14, 2024) (*Clear Rate Response*).

[9] *See* 47 CFR § 64.1120(c)(3)(iii).

[10] *See id.* § 64.1100(e). If Complainant is unsatisfied with the resolution of its complaint, Complainant may file a formal complaint with the Commission pursuant to section 1.721 of the Commission's rules, *id*. § 1.721. Such filing will be deemed to relate back to the filing date of Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. *See id.* § 1.719.

PUBLIC NOTICE

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

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

DA 24-217
Released: March 8, 2024

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES FILING DEADLINES FOR COMMENTS AND REPLY COMMENTS REGARDING THE EMERGENCY ALERT SYSTEM (EAS) MULTILINGUAL ALERTING NOTICE OF PROPOSED RULEMAKING (FCC 24-23)

PS Docket No. 15-94

Comments Due: April 8, 2024
Reply Comments Due: May 6, 2024

On February 15, 2024, the Federal Communications Commission adopted a Notice of Proposed Rulemaking (NPRM), FCC 24-23, that proposes and seeks comment on implementing a multilingual alert processing model for the Emergency Alert System (EAS) to promote the distribution of EAS alerts in non-English languages.[1] The proposed processing model would create pre-scripted ("template") alert messages in English as well as Arabic, Chinese, French, German, Haitian Creole, Hindi, Italian, Korean, Portuguese, Russian, Spanish, Tagalog, and Vietnamese for select emergencies (such as wildfires).[2] TV and radio broadcasters, cable service providers, and other services that make up the EAS public alert distribution system would be required to transmit template alerts in the language that matches their programming content.[3] The NPRM also seeks comment a wide range of specific technical, operational, cost and implementation timing issues related to the template alert distribution model.

A summary of the NPRM was published in the Federal Register on March 7, 2024, stating that comments on these proposed rules would be due 30 days after the date on which the Federal Register publication occurred, and that reply comments would be due 60 days after such Federal Register publication.[4] Accordingly, by this Public Notice, the Public Safety and Homeland Security Bureau notifies interested parties that comments on the proposed rules are due on **April 8, 2024**, and reply comments are due on **May 6, 2024**.

Filing Instructions. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS), or by filing paper copies.[5] Comments and reply comments should refer to PS Docket No. 15-94.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the

[1] *Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, PS Docket No. 15-94, Notice of Proposed Rulemaking, FCC 24-23 (Feb. 15, 2024).

[2] *See id*., para. 15-16.

[3] *See id*.

[4] *See* Federal Communications Commission, The Emergency Alert System, 89 Fed. Reg. 16504 (March 7, 2024).

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

ECFS: https://www.fcc.gov/ecfs.

- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, D.C., 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (OMD 2020), https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.

Ex Parte Presentations – Permit-But-Disclose. The proceeding this *Notice of Proposed Rulemaking* initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[6] Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

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 additional information on this proceeding, contact David Munson, Attorney Advisor, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau at David.Munson@fcc.gov or 202-418-2921, or George Donato, Associate Division Chief, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, at George.Donato@fcc.gov or 202-418-0729.

– FCC –

[6] 47 CFR § 1.1200 *et seq.*

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-219
Released: March 7, 2024

THE OFFICE OF MANAGING DIRECTOR ANNOUNCES IMPLEMENTATION OF ADDITIONAL SECURITY SAFEGUARDS FOR USERS OF FCC'S COMMISSION REGISTRATION SYSTEM (CORES)

To strengthen existing cybersecurity measures and safeguard user accounts, starting on March 29, 2024, users of the FCC's Commission Registration System (CORES) will be required to undergo a two-step login authentication process each time a user logs into CORES or its associated FCC User Registration System (https://apps2.fcc.gov/fccUserReg/pages/login.htm). All applicants and licensees are required to access CORES to pay any application or regulatory fees, manage or reset a password on an existing FRN, or request a new FRN. When accessing the system, users will be prompted to request a six-digit secondary verification code, which will be sent to the email address(es) associated with each username. The user will then need to enter the code into CORES before they can continue. This additional layer of security will further safeguard against unauthorized access, thereby enhancing the overall integrity of information contained within the CORES system and improving the security of user data.

We recommend registrants confirm they have access to their Username Account E-mail and add a secondary e-mail address, if appropriate. Please consult the article Updating Your Username Account for detailed instructions.

Going forward, the FCC is in the process of adopting new technology to meet the "high confidence" Authenticator Assurance Level standard for identity proofing in order for a user to create or access an account within the CORES system.

For inquiries or assistance regarding the implementation of multi-factor authentication on CORES, please submit a help request at https://www.fcc.gov/wtbhelp or call 877-480-3201 (Mon.-Fri. 8 a.m.-6 p.m. ET). For further information, please contact Warren Firschein (warren.firschein@fcc.gov), Counsel, Office of Managing Director, (202) 418-2653.

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PUBLIC NOTICE

Federal Communications Commission
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DA 24-220
Released: March 8, 2024

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

WC Docket No(s). 24-46

Comments Due: March 25, 2024

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

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

In accordance with section 63.71(f) of the Commission's rules, the Section 214 Discontinuance Application(s) listed in the Appendix will be deemed granted automatically on **April 8, 2024**, the 31st day after the release date of this public notice, unless the Commission notifies any applicant(s) that their grant will not be automatically effective.[4] We note that the date on which an application for Commission authorization is deemed granted may be different from the date on which applicants are authorized to discontinue, reduce, or impair service ("Authorized Date"). Any applicant whose application has been deemed granted may discontinue, reduce or impair their Affected Service(s) in their Service Area(s) on or after the authorized date(s) specified in the Appendix, in accordance with their filed representations. Accordingly, pursuant to section 63.71(f), and the terms outlined in each application, absent further Commission action, each applicant may discontinue, reduce or impair the Affected Service(s) in the Service Area(s) described in their application on or after the authorized discontinuance date(s) listed in the Appendix for that application. For purposes of computation of time when filing a petition for reconsideration, application for review, or petition for judicial review of the Commission's decision(s), the date of "public notice" shall be the later of the auto grant date stated above in this Public Notice, or the release date(s) of any further public notice(s) or order(s) announcing final Commission action, as

[1] 47 CFR § 63.71.

[2] 47 U.S.C. § 214.

[3] 47 CFR § 63.71.

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

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

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

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[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.

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Appendix

1) **Applicant(s): TDS Metrocom, LLC**
WC Docket No. 24-46, Comp. Pol. File No. 1894
Link – https://www.fcc.gov/ecfs/search/search-filings/results?q=(proceedings.name:(%2224-46*%22))
Affected Service(s) – all retail voice and data services provided over Unbundled Network Elements to commercial customers
Service Area(s) – Brookfield and New Berlin, Wisconsin.
Authorized Date(s) – on or after April 8, 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
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WASHINGTON D.C. 20554

News media information 202-418-0500
Internet: http://www.fcc.gov (or ftp.fcc.gov)
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DA No. 24-221

Report No. SCL-00453 **Friday March 8, 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-20240202-00004 Edge Cable Holdings USA, LLC

On March 7, 2024, we granted the request for special temporary authority (STA) filed by Edge Cable Holdings USA, LLC (Edge USA) to construct, connect, and test at its own risk those portions of the Anjana cable system in U.S. territory prior to the Commission's action of the pending cable landing license application for the Anjana cable system (SCL-LIC-20230429-00012). Edge USA acknowledges that grant of the STA will not prejudice action by the Commission on the underlying application and that the STA is subject to cancellation or modification upon notice. Further, Edge USA acknowledges that such STA can be revoked by the Commission on its own motion without a hearing.

The STA expires on September 3, 2024.

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

In the Matter of	)	
	)	
Space Exploration Holdings, LLC	)	ICFS File Nos.:
	)	SAT-LOA-20200526-00055
Request for Orbital Deployment and Operating	)	SAT-AMD-20210818-00105
Authority for the SpaceX Gen2 NGSO Satellite	)	SAT-AMD-20221216-00175
System	)	
	)	Call Sign: S3069

ORDER AND AUTHORIZATION

Adopted: March 8, 2024 **Released: March 8, 2024**

By the Deputy Chief, Space Bureau, Chief, Wireless Telecommunications Bureau, and Chief, Office of Engineering and Technology:

I. INTRODUCTION

1. In this Order and Authorization (Order), we grant in part, with conditions, and defer in part the amended application of Space Exploration Holdings, LLC (SpaceX) to construct, deploy, and operate a constellation of non-geostationary orbit (NGSO) satellites, to be known as its "second-generation" Starlink constellation (Gen2 Starlink), to provide fixed-satellite service (FSS).[1] Specifically, our grant here is limited to authorizing SpaceX to conduct communications in the 71.0-76.0 GHz (space-to-Earth) and 81.0-86.0 GHz (Earth-to-space) frequency bands (collectively, E-band), with the 7,500 Gen2 Starlink satellites that the Commission previously authorized in the first partial grant of this application.[2] This Order does not authorize SpaceX to construct, deploy, or operate any additional satellites beyond those authorized to date. Grant of this portion of SpaceX's request will serve the public interest by allowing SpaceX to utilize the full capacity of its more advanced Gen2 Starlink satellites, which will improve the broadband service that SpaceX is bringing to U.S. customers, including those in unserved and underserved areas of the country. We continue to defer consideration of the remainder of SpaceX's request, including SpaceX's ongoing use of emergency beacons, which is the subject of a

[1] *See* Space Exploration Holdings, LLC, Application for Orbital Deployment and Operating Authority for the SpaceX Gen2 NGSO Satellite System, ICFS File No. SAT-LOA-20200526-00055 (filed May 26, 2020) (SpaceX Gen2 Application); Space Exploration Holdings, LLC, Amendment to Pending Application for the SpaceX Gen2 NGSO Satellite System, ICFS File No. SAT-AMD-20210818-00105 (dated Aug. 18, 2021) (SpaceX Gen2 First Amendment); Space Exploration Holdings, LLC, Amendment to Pending Application for the SpaceX Gen2 NGSO Satellite System, ICFS File No. SAT-AMD-20221216-00175 (filed Dec. 16, 2022) (SpaceX Gen2 Second Amendment).

[2] *See Space Exploration Holdings, LLC, Request for Orbital Deployment and Operating Authority for the SpaceX Gen2 NGSO Satellite System*, Order and Authorization, 37 FCC Rcd 14882 (2022) (*SpaceX Gen2 First Partial Grant*), *appeals pending sub nom International Dark-Sky Association v. FCC*, No. 22-1337 (D.C. Cir. filed Dec. 29, 2022), *Dish Network Corp. v. FCC*, No. 23-1001 (D.C. Cir. filed Jan. 3, 2023). Two parties have also filed petitions for reconsideration regarding the *SpaceX Gen2 First Partial Grant*. *See* Petition for Reconsideration of LeoLabs, Inc., ICFS File Nos. SAT-LOA-20200526-00055 and SAT-AMD-20210818-00105 (filed Dec. 30, 2022); Petition for Clarification of Viasat, Inc., ICFS File Nos. SAT-LOA-20200526-00055 and SAT-AMD-20210818-00105 (filed Jan. 3, 2023).

second amendment to SpaceX's application,[3] as well as the remaining 22,488 satellites SpaceX proposed in its application, as amended.

II. BACKGROUND

2. On May 26, 2020, SpaceX filed its application[4] as part of the processing round initiated by the Satellite Division[5] for the 10.7-12.7 GHz, 12.75-13.25 GHz, 13.85-14.5 GHz, 17.7-18.6 GHz, 18.8-20.2 GHz, and 27.5-30 GHz bands by NGSO FSS systems (the 2020 Ku/Ka-band Processing Round).[6] On August 18, 2021, SpaceX amended its application to modify the configuration of Gen2 Starlink.[7] The Satellite Division found the SpaceX application, as amended, acceptable for filing and placed it on public notice on December 23, 2021,[8] and the SpaceX application, as amended, has generated an expansive and complex record of petitions, comments, letters, and ex parte filings from interested parties, including other government agencies, other satellite operators, environmental groups, astronomers, students, and members of the general public.[9] In its application, as amended, SpaceX proposes to operate a total constellation of 29,988 Gen2 Starlink satellites operating between 340 km and 614 km.[10] SpaceX proposes operations in the 10.7-12.75 GHz, 17.8-18.6 GHz, 18.8-19.3 GHz, 19.7-20.2 GHz, and 71.0-76.0 GHz (space-to-Earth) and 12.75-13.25 GHz, 14.0-14.5 GHz, 27.5-29.1 GHz, 29.5-30.0 GHz, and 81.0-86.0 GHz (Earth-to-space) bands.[11] SpaceX also proposes telemetry, tracking, and command (TT&C) operations in the 12.15-12.25 GHz (space-to-Earth), 18.55-18.60 GHz (space-to-Earth), and 13.85-14.0 GHz (Earth-to-space) bands.[12] On December 16, 2022, SpaceX filed a second amendment to the pending portion of its Gen2 Starlink application, seeking authorization to operate tracking beacons on some of its satellites, which would communicate in the 137.00-138.00 MHz (Earth-to-space) and 148.00-150.05 MHz (space-to-Earth) bands.[13] During the public comment cycle and on the

[3] *See* SpaceX Gen2 Second Amendment.

[4] *See generally* SpaceX Gen2 Application.

[5] On January 4, 2023, the Commission adopted an Order that established the Space Bureau to handle the policy and licensing matters related to satellite communications and other in-space activities formerly handled by the International Bureau, which the Order eliminated. *See Establishment of the Space Bureau and the Office of International Affairs and Reorganization of the Consumer and Governmental Affairs Bureau and the Office of the Managing Director*, MD Docket No. 23-12, Order, 38 FCC Rcd 608, paras. 1-2 (2023). The Space Bureau officially launched on April 11, 2023. *See* Press Release, FCC, FCC Space Bureau & Office of International Affairs to Launch Next Week (April 7, 2023), https://docs.fcc.gov/public/attachments/DOC-392418A1.pdf. All references in this document to the International Bureau and the Satellite Division refer to filings made with, or actions taken by, the International Bureau prior to the establishment of the Space Bureau.

[6] *See Cut-Off Established for Additional NGSO FSS Applications or Petitions for Operations in the 10.7-12.7 GHz, 12.75-13.25 GHz, 13.8-14.5 GHz, 17.7-18.6 GHz, 18.8-20.2 GHz, And 27.5-30 GHz Bands*, *Satellite Policy Branch Information*, Report No. SPB-279, DA 20-325 (rel. March 24, 2020) (2020 Ku/Ka-band Processing Round Public Notice).

[7] *See generally* SpaceX Gen2 First Amendment.

[8] *Satellite Policy Branch Information, Space Station Applications Accepted for Filing*, Report No. SAT-01598 (Dec. 23, 2021).

[9] *See SpaceX Gen2 First Partial Grant*, 37 FCC Rcd at 14887-88, 14889-93, paras. 6, 9, n.35, n.51, n.52, n.54, n.55, n.56, n.57, n.58, n.59, n.60, n.61 (fully describing the record to date before the Commission adopted the *SpaceX Gen2 First Partial Grant*).

[10] *See* SpaceX Gen2 First Amendment, Narrative at 5.

[11] *Id.*, Frequencies Requested.

[12] *See* SpaceX Gen2 Application, Technical Attachment at 4.

[13] *See* SpaceX Gen2 Second Amendment; Letter from David Goldman, Director, Space Exploration Technologies Corp., to Marlene H. Dortch, Secretary, FCC, ICFS File Nos. SAT-LOA-20200526-00055 and SAT-AMD-

(continued….)

record developed subsequently, only one party, Viasat, Inc. (Viasat), raised concerns about SpaceX's use of the E-band.[14]

3. On November 29, 2022, the Commission granted in part and deferred in part SpaceX's application, as amended, authorizing SpaceX to construct, deploy, and operate up to 7,500 Gen2 Starlink satellites, communicating in the Ku- and Ka-bands, subject to a number of conditions.[15] The *SpaceX Gen2 First Partial Grant* also granted certain SpaceX waiver requests, including waivers of the in-band TT&C requirement; the downlink power flux density (PFD) limits and associated certification requirement; the requirement to obtain an International Telecommunication Union (ITU) finding of compliance with equivalent power flux density (EPFD) limits prior to initiation of service; and the requirement to complete certain aspects or fields of Schedule S to account for various limitations in the Commission's software.[16] The *SpaceX Gen2 First Partial Grant* also authorized SpaceX to conduct communications during orbit-raising and deorbit of its satellites for launch and early-orbit phase (LEOP) operations and communications testing.[17] The *SpaceX Gen2 First Partial Grant* deferred consideration of SpaceX's use of the E-band frequencies and use of tracking beacons as well as the remaining 22,488 satellites in SpaceX's request.[18] Two parties have appealed the *SpaceX Gen2 First Partial Grant* to the D.C. Circuit Court of Appeals and two additional parties have submitted petitions for reconsideration to the Commission, all of which remain pending.[19] The Space Bureau has also granted a series of authorizations for special temporary authority for SpaceX to begin operations using E-band frequencies on a limited number of its authorized Gen2 Starlink satellites.[20]

4. On October 13, 2023, the Space Bureau granted, with conditions, SpaceX's request to modify its authorization for a separate constellation of satellites operating with V-band frequencies to instead add V-band capabilities to SpaceX's Gen2 Starlink satellites (*SpaceX V-band Modification Order*).[21] This modification was consistent with commitments made on the record in the Gen2 Starlink

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20210818-00105 at 6, n.17 (dated Aug. 19, 2022) (SpaceX August 19, 2022 Letter); Letter from David Goldman, Senior Director, Satellite Policy, Space Exploration Technologies Corp., to Marlene H. Dortch, Secretary, FCC, ICFS File Nos. SAT-LOA-20200526-00055 and SAT-AMD-20210818-00105 at 2, Exhibit A (dated Oct. 4, 2022) (SpaceX October 4, 2022 Letter).

[14] *See* Petition of Viasat, Inc., ICFS File Nos. SAT-LOA-20200526-00055 and SAT-AMD-20210818-00105, at 5, N.6 (filed Feb. 8, 2022) (Viasat Petition).

[15] *See generally SpaceX Gen2 First Partial Grant*, 37 FCC Rcd 14882.

[16] *Id.* at 14899-901, paras. 22-25.

[17] *Id.* at 14927-28, paras. 90-91.

[18] *Id.* at 14883, para. 1; *see also* SpaceX Gen2 Second Amendment.

[19] *International Dark-Sky Association v. FCC*, No. 22-1337 (D.C. Cir. filed Dec. 29, 2022), *Dish Network Corp. v. FCC*, No. 23-1001 (D.C. Cir. filed Jan. 3, 2023); *see* also Petition for Reconsideration of LeoLabs, Inc., ICFS File Nos. SAT-LOA-20200526-00055 and SAT-AMD-20210818-00105 (filed Dec. 30, 2023); Petition for Clarification of Viasat, Inc., ICFS File Nos. SAT-LOA-20200526-00055 and SAT-AMD-20210818-00105 (filed Jan. 3, 2023).

[20] *See e.g.*, *Space Exploration Holdings, Request for Special Temporary Authority, Grant Stamp*, ICFS File No. SAT-STA-20221228-00180 (authorizing SpaceX to conduct communications with E-band frequencies for a period of 60 days, including a condition limiting the number of satellites communicating in the E-band that SpaceX may bring into use in the first year after grant of this special temporary authorization to 1,500 satellites); *Space Exploration Holdings, Request for Special Temporary Authority, Grant Stamp*, SAT-STA-20230412-00085 (granted May 4, 2023); *Space Exploration Holdings, Request for Special Temporary Authority, Grant Stamp*, SAT-STA-20230523-00123 (granted Jul. 13, 2023); *Space Exploration Holdings, Request for Special Temporary Authority, Grant Stamp*, SAT-STA-20230906-00217 (granted Sept. 28, 2023)

[21] *See Space Exploration Holdings, LLC., Application for Modification of Authorization of the SpaceX V-band NGSO Satellite System, Grant stamp*, ICFS File No. SAT-MOD-20230322-00062 (granted-in-part/dismissed-in-part Oct. 13, 2023) (*SpaceX V-band Modification Order*).

proceeding.[22] The Space Bureau has also granted-in-part and deferred-in-part SpaceX's request to modify its Gen2 authorization to add supplemental coverage from space (SCS) capabilities to its Gen2 Starlink satellites (*SpaceX SCS Modification Partial Grant*).[23] SpaceX's request to modify its Gen2 authorization to add mobile-satellite system capabilities to its Gen2 satellites remains pending.[24]

III. DISCUSSION

5. After our review of the record, we conclude that an additional grant in part of the SpaceX Gen2 Starlink application, as amended, authorizing SpaceX to conduct communications in the E-band, subject to the requirements and conditions specified herein, will serve the public interest. Below, we address the various outstanding issues raised by commenters on SpaceX's application pertaining to its use of the E-band. Where appropriate we defer matters of general applicability to ongoing or potential future rulemakings.

6. SpaceX proposes to operate in the E-band for communications between satellites and gateway earth stations.[25] SpaceX recognizes that the Commission has not yet adopted service rules for satellite use of the E-band frequencies, though SpaceX states it will operate in these frequencies consistent with the U.S. Table of Frequency Allocations.[26] SpaceX therefore proposes to operate consistent with the Commission's applicable default service rules, in accordance with section 25.289 of the Commission's rules, until the Commission adopts service rules for this band, at which time SpaceX will be obligated to come into compliance with those rules.[27]

7. Specifically, SpaceX proposes transmissions from its satellites in the E-band with a minimum antenna gain of 42 dBi and a maximum gain of 52 dBi.[28] SpaceX also states its maximum equivalent isotropic radiated power (EIRP) density for its E-band beams will vary from 22.2 dBW/MHz to 25.8 dBW/MHz depending on the operating altitude.[29] SpaceX also states that two E-band beams are

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[22] *See SpaceX Gen2 First Partial Grant*, 37 FCC Rcd at 14883, 14896, paras. 2, 19 (noting that because of SpaceX's commitment to modify its V-band authorization to add V-band capabilities to the 7,500 Gen2 Starlink satellites authorized in the first partial grant, the number of satellites authorized was slightly less than the number of satellites SpaceX potentially would have deployed if it had deployed a separate V-band constellation).

[23] *See Space Exploration Holdings, LLC., Application for Modification of the Authorization for the SpaceX Gen2 NGSO Satellite System, Grant Stamp*, ICFS File No. SAT-MOD-20230207-00021, GN Docket No. 23-135 (granted-in-part/deferred-in-part Dec. 1, 2023) (*SpaceX SCS Modification Partial Grant*), petition for reconsideration pending. The Space Bureau authorized SpaceX to deploy a modified version of the previously authorized 7,500 Gen2 Starlink satellites with the capability to operate in certain frequencies in the 1429 MHz to 2690 MHz range and to operate these satellites on frequencies within the 1910-1915 MHz (Earth-to-space) and 1990-1995 MHz (space-to-Earth) frequency bands for limited on-orbit check out of the antennas immediately following deployment of each satellite for a period of 10 days or less, to ensure initial functionality of the satellite antenna. *Id.* The remainder of SpaceX's request to conduct commercial SCS operations in the 1910-1915 MHz (Earth-to-space) and 1990-1995 MHz (space-to-Earth) frequency bands within the United States and to conduct SCS operations outside the United States in the 1429 MHz to 2690 MHz frequency range remains pending.

[24] *See* Space Exploration Holdings, LLC., Application for Modification of the Authorization for the SpaceX Gen2 NGSO Satellite System, ICFS File No. SAT-MOD-20230207-00022 (filed Feb. 7, 2023). Specifically, SpaceX requests to modify the authorization for its Gen2 Starlink satellites to add Mobile-Satellite Service communications in the 1610-1617.775 MHz, 2000-2020 MHz, and 2020-2025 MHz (Earth-to-space) and 2180-2200 MHz and 2483.5-2500 MHz (space-to-Earth) frequency bands.

[25] *See* SpaceX Gen2 Application, Narrative at 10.

[26] *Id.*, Technical Attachment at 4.

[27] *Id.* at 4-5 (citing 47 CFR §§ 25.217(b), (e), 25.289).

[28] *Id.* at 13.

[29] *See* SpaceX Gen2 First Amendment, Technical Attachment at 9. We note that SpaceX originally proposed maximum EIRP densities from 21.9 dBW/MHz to 29.7 dBW/MHz, depending on the operating altitude of its

(continued….)

transmitted at the same frequency per satellite, right hand and left hand circular polarization, and up to 32 satellites can transmit to a single gateway at once, for a maximum number of 64 co-frequency beams transmitting to the same earth station at any one time.[30] SpaceX states its gateway earth stations will generally operate with a minimum elevation angle of 25 degrees but will operate with a minimum elevation angle of 5 degrees in regions with latitudes greater than 62 degrees.[31] SpaceX also states it may conduct TT&C operations using E-band frequencies, and in accordance with section 25.202(g)(1), SpaceX will ensure that TT&C operations not conducted at a band edge will cause no greater interference and will require no greater interference protection than SpaceX's communications with gateway earth stations.[32] In addition, SpaceX notes the registered terrestrial Fixed Service (FS) stations operating in the E-band, and states that it has deployed its gateway earth stations so far in rural areas, which are unlikely to be located near these registered links, and since SpaceX licenses its gateways on an individual basis, it can coordinate with a terrestrial FS station operating in the E-band should a gateway be located close to that operator.[33]

8. We grant SpaceX authority to conduct communications in the E-band. As an initial matter, we note that the E-band frequencies are the subject of an ongoing Commission rulemaking proceeding to allow for new uses of the 71–76 GHz, 81–86 GHz, 92–94 GHz, and 94.1–95 GHz bands (collectively, the 70/80/90 GHz bands).[34] These bands are currently allocated on a co-primary basis for federal and nonfederal operations in the fixed-satellite service, fixed service, mobile service, and mobile-satellite service, among other allocations.[35] The recent *70/80/90 GHz Report and Order* adopted rules to authorize certain point-to-point links between fixed locations and endpoints in motion in the 71-76 GHz (70 GHz band) and 81-86 GHz (80 GHz band) bands to facilitate the use of these frequencies for access to broadband services on aircraft and ships.[36] The Commission also modified its rules to permit the use of smaller and lower cost antennas to facilitate the provision of 5G backhaul service in the 70 GHz and 80 GHz bands and mandated a channelization plan in those bands.[37] The *70/80/90 GHz Report and Order* did not alter the non-federal FSS allocation in these bands and established rules to protect future satellite use of these bands from certain links between fixed locations and endpoints in motion.[38] We condition this grant such that SpaceX must modify its operations if necessary to come into compliance with the

satellites. *See* SpaceX Gen2 Application, Technical Attachment at 14.

[30] *See* SpaceX Gen2 Application, Technical Attachment at 14-15.

[31] *Id.* at 13; Letter from William M. Wiltshire, Counsel, Space Exploration Holdings, LLC., to Karl A. Kensinger, Chief, Satellite Division, International Bureau, FCC, ICFS File Nos. SAT-LOA-20200526-00055 and SAT-AMD-20210818-00105 at 4 (dated Jan. 7, 2022) (SpaceX January 7, 2022, Response to Satellite Division Information Request).

[32] *See* SpaceX Gen2 Application, Technical Attachment at 16.

[33] *Id.* at 33-34.

[34] *See Modernizing and Expanding Access to the 70/80/90 GHz Bands*, WT Docket No. 23-133, Report and Order and Further Notice of Proposed Rulemaking, FCC 24-16 (rel. Jan. 26, 2024) (*70/80/90 GHz Report and Order*, or when referring solely to the further notice, *70/80/90 GHz Further Notice*).

[35] *See* 47 CFR § 2.106.

[36] *70/80/90 GHz Report and Order* at paras. 2, 12-23.

[37] *Id.* at paras. 2, 56-67.

[38] *Id.* at paras. 35-42 The Commission did, in the *70/80/90 GHz Further Notice*, seek comment on two issues for which the record was not sufficient to make a final determination: (1) whether to permit ship-to-aerostat transmissions as part of the maritime service otherwise authorized in the *70/80/90 GHz Report and Order*; and (2) whether to include FSS earth stations in the existing third-party database registration regime modified in the *70/80/90 GHz Report and Order*, and if so, under what protection criteria, EIRP and out-of-band emission limits they should be included. *70/80/90 GHz Further Notice* at paras. 85-91.

recent *70/80/90 GHz Report and Order*, and any future rules developed in the ongoing 70/80/90 GHz rulemaking proceeding.

9. As part of its Petition to Deny or Hold in Abeyance the SpaceX Gen2 application, as amended, Viasat argues that the Gen2 Starlink constellation would generally preclude other operators' access to spectrum because of the sheer size of the proposed constellation.[39] In the *SpaceX Gen2 First Partial Grant*, we addressed Viasat's general concerns regarding the Gen2 Starlink constellation's impact on the public interest.[40] Viasat also specifically argued that the preclusive effects of SpaceX's proposal to use the E-band are unknown, and so the Commission should open an E-band processing round before considering this part of SpaceX's application.[41]

10. Sections 25.156 and 25.157 of the Commission's rules set forth procedures for consideration of applications for NGSO satellite authorizations.[42] In most cases,[43] applications not filed in response to a public notice initiating a processing round will be considered lead applications, and the Commission will initiate a new processing round and establish a cut-off date for the filing of competing applications.[44] SpaceX filed its Gen2 application in response to the processing round initiated in March 2020 for the 10.7-12.7 GHz, 12.75-13.25 GHz, 13.85-14.5 GHz, 17.7-18.6 GHz, 18.8-20.2 GHz, and 27.5-30 GHz bands by NGSO FSS systems (the 2020 Ku/Ka-band Processing Round),[45] but the E-band frequencies SpaceX requests are not included in that processing round, and this portion of SpaceX's application would therefore normally initiate a new processing round for applications for satellites operating in the E-band. The Satellite Division did not initiate an E-band processing round when it placed the SpaceX Gen2 application, as amended, on public notice, and deferred consideration of SpaceX's request to operate using E-band frequencies in the *SpaceX Gen2 First Partial Grant*.[46]

11. In considering SpaceX's request to operate in the E-band now, we note that the Commission has declined, in certain circumstances, to open a processing round for NGSO FSS operations.[47] For example, in 2018 and 2021, the Commission authorized Audacy Corporation (Audacy) and the Boeing Company (Boeing), respectively, to operate in the NGSO FSS using frequencies assigned as part of processing rounds, but also authorized the licensees to operate intersatellite links in the 65-71 GHz band, in both cases without initiating a new processing round for those particular frequencies.[48] In those instances, the Commission found that both Audacy's and Boeing's operations in the requested 65-71 GHz band would not create new spectrum conflicts with other operators and that, given the set of

[39] *See* Viasat Petition at I-II, 4-9.

[40] *See SpaceX Gen2 First Partial Grant*, 37 FCC Rcd at 14897-99, paras. 20-21.

[41] *See* Viasat Petition at 5, N.6.

[42] *See* 47 CFR §§ 25.156(d)(1), 25.157.

[43] *See, e.g.*, 47 CFR § 25.157(b), (i) (applications for replacement satellites and applications filed under the streamlined process for small satellites or small spacecraft under sections 25.122 and 25.123 of the Commission's rules are not subject to the Commission's processing round framework).

[44] *See* 47 CFR § 25.157(c)(2).

[45] *See 2020 Ku/Ka-band Processing Round Public Notice*; *see also SpaceX Gen2 First Partial Grant*, 37 FCC Rcd at 14886-87, para. 5.

[46] *See SpaceX Gen2 First Partial Grant*, 37 FCC Rcd at 14920, para. 69.

[47] *See*, *e.g.*, *Audacy Corporation, Application for Authority to Launch and Operate a Non-Geostationary Medium Earth Orbit Satellite System in the Fixed- and Inter-Satellite Service*, Order and Authorization, 33 FCC Rcd 5554, 5562, para. 21 (2018) (*Audacy Order*); *The Boeing Company, Application for Authority to Launch and Operate a Non-Geostationary Satellite Orbit System in the Fixed-Satellite Service*, Order and Authorization, 36 FCC Rcd 16067, 16075-76, paras. 21-23 (2021) (*Boeing Order*).

[48] *See Audacy Order*, 33 FCC Rcd at 5562, para. 21; *Boeing Order*, 36 FCC Rcd at 16075-76, paras. 21-23.

operations requested, it was more efficient to authorize the requested operations with conditions than to initiate a processing round for those frequencies.[49]

12. We decline to open an E-band processing round at this time for similar reasons, and we waive the processing round procedures in sections 25.156 and 25.157 related to the request for E-band frequencies on our own motion.[50] Generally, the Commission may waive any rule for good cause shown.[51] Waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.[52] In making this determination, we may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.[53] Waiver is therefore appropriate if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.[54]

13. Like the operations proposed by Audacy and Boeing in their applications, we find SpaceX's proposed operations in the E-band present no new or increased frequency conflicts with other satellite operations. SpaceX proposes solely to conduct gateway operations in the E-band with gateway earth stations having a minimum elevation angle of 25 degrees (except with a minimum elevation angle of 5 degrees in regions with latitudes greater than 62 degrees north), rather than service links, and SpaceX is also already authorized to conduct gateway operations in Ka-band frequencies, so its operations are not solely dependent on use of the E-band. Moreover, only one other satellite operator, WorldVu Satellites Ltd. (OneWeb), has requested authority to operate in the E-band.[55] Consequently, we find that SpaceX's limited gateway operations in the E-band will not preclude other operators from entering the band in the future. We find that these limited, non-preclusive operations, conditioned below on compliance with sharing requirements of a potential future processing round constitute the special circumstances contemplated in the waiver standard. We also find that it is more efficient and in the public interest to authorize SpaceX's requested operations for an additional band for gateway operations, which will benefit consumers by expanding the capacity of its Gen2 Starlink system, than it would be to initiate a processing round for E-band frequencies at this time. Given these special circumstances and benefits to the public interest, we find that waiver of the Commission's processing round rules is in the public interest. However, we condition this grant to require SpaceX to coordinate with any and all existing and future FSS operators in these bands, including OneWeb should it be authorized to operate in the E-band. Consistent with these conditions, we emphasize that granting this portion of SpaceX's application outside of a processing round does not confer on SpaceX a higher status with respect to later authorized systems, unlike the first-come, first-served system specified in the Commission's rules for GSO-like satellite

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[49] *See Audacy Order*, 33 FCC Rcd at 5562, para. 21; *Boeing Order*, 36 FCC Rcd at 16075-76, paras. 21-22.

[50] A waiver is appropriate only if both (1) special circumstances warrant a deviation from the general rule, and (2) such deviation better serves the public interest. *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008) (citing *Northeast Cellular Telephone Co.*, 897 F.2d 1164, 1166 (1990)). Generally, the Commission may waive any rule if there is good cause to do so and, in making this determination, may take into account considerations such as hardship, equity, or more effective implementation of overall policy on an individual basis. 47 CFR § 1.3. *See Northeast Cellular*, 897 F.2d at 1166 ("[A] waiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest. The agency must explain why deviation better serves the public interest and articulate the nature of the special circumstances to prevent discriminatory application and to put future parties on notice as to its operation."); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) ("The agency's discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety valve procedure for consideration of an application for exemption based on special circumstances.").

[51] 47 CFR § 1.3.

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

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

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

[55] *See* ICFS File No. SAT-MPL-20211104-00144, Narrative at 8.

operations. Moreover, depending on the number of any such applications for operations in this frequency band, and their ability to effectively share spectrum, a processing round, which would include SpaceX, may be initiated in the future to resolve mutual exclusivity concerns. We therefore also condition this grant on SpaceX's compliance with any sharing requirements adopted as part of a future E-band processing round. Additionally, SpaceX may need to modify its operations in the event that additional FSS operators seek to operate in these frequency bands to the extent necessary to ensure the protection of adjacent band services. In other words, SpaceX's operations in the E-band are at its own risk—this authorization does not guarantee that SpaceX will always be permitted to operate as it currently proposes.

14. SpaceX must coordinate its operations in the 81.0-86.0 GHz band with the radio astronomy observatories contained in footnote US161 to the United States Table of Frequency Allocations.[56] The 81.0-86.0 GHz band is allocated on a co-primary basis to federal and nonfederal operations in the fixed and mobile services, fixed-satellite and mobile satellite services, space research, and radio astronomy.[57] In addition, SpaceX's operations in the 81.0-86.0 GHz band are also subject to footnote US342 of the United States Table of Frequency Allocations. Therefore, SpaceX must take all practicable steps to protect the radio astronomy service from harmful interference.[58]

15. Additionally, we observe that the adjacent 76-81 GHz band is allocated, inter alia, to the radiolocation service on a primary basis. Vehicular radar systems operate in the 76-81 GHz band under this allocation. We anticipate that existing emission limits would allow adjacent band co-existence between SpaceX operations and vehicular radars.[59]

16. SpaceX is also required to complete coordination with federal operators utilizing the 86-92 GHz band for passive services prior to SpaceX commencing operations. The 86-92 GHz band is allocated to the Earth exploration-satellite service (passive), radio astronomy service, and space research service (passive). The Commission has previously noted that the 86-92 GHz passive band may require additional technical constraints imposed on adjacent-band active services to ensure interference protection, including Federal operations in that band.[60] In accordance with footnote US246,[61] no station may transmit in the 86-92 GHz band. The Commission will consider coordination to have been completed when SpaceX and affected federal operators (including NASA, NOAA, DOD, and NSF) have concluded a coordination agreement or agreements.[62] We also note that, should other FSS operators seek to operate in the 81.0-86.0 GHz band, or if additional services are allowed in the band pursuant to the ongoing 70/80/90 GHz rulemaking proceeding, SpaceX may be required to adjust its operations to further reduce out-of-band emissions in order to ensure the appropriate interference protection criteria are met when considering aggregate effects from multiple systems and services.

17. When conducting communications in the E-band, SpaceX must also comply with the default service rules in section 25.217, which include coordination with NTIA to achieve compatible operations with authorized Federal Government users.[63] SpaceX must also coordinate with all radio astronomy stations as discussed above. Should the Commission develop service rules specific to these frequency bands, SpaceX must modify its operations to come into compliance with those rules. Prior to

[56] *See* 47 CFR § 2.106(c)(161).

[57] *See* 47 CFR § 2.106.

[58] *See* 47 CFR § 2.106(c)(342).

[59] *See* 47 CFR § 25.202(f)(3).

[60] *See Modernizing and Expanding Access to the 70/80/90 GHz Bands*, Notice of Proposed Rulemaking, 35 FCC Rcd 6039, 6056 (2020) (*70/80/90 GHz NPRM*).

[61] *See* 47 CFR § 2.106(c)(246).

[62] Until completion of the coordination agreement(s), SpaceX may operate using E-band frequencies only pursuant to any conditional authorizations for special temporary authority. *See*, *supra*, para. 3, n.19.

[63] *See* 47 CFR § 25.217(b)(2).

filing an application for an E-band gateway earth station, the default service rules require SpaceX to coordinate with all affected terrestrial fixed licensees. Under the Commission's rules, non-Federal terrestrial licensees in the 71.0-76.0 GHz and 81.0-86.0 GHz bands are issued nationwide, non-exclusive licenses and each terrestrial fixed link is authorized upon successful registration in a third-party database. Accordingly, SpaceX must consult the third-party database and complete coordination with the licensees of all affected non-Federal fixed terrestrial links registered or pending in the third-party database.[64] 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 the International Communications Filing System (ICFS) under the default service rules.[65] We note that the Commission recently proposed to require registrations for new FS links submitted on or after January 26, 2024 (the release date of the *70/80/90 GHz Further Notice*) to demonstrate protection of FSS earth stations with a final authorization prior to the submission date of the new FS registration.[66] Today's action is based on the Commission's current rules and in no way prejudges the outcome of the Commission's pending proposal.

18. As part of its application, as amended, SpaceX requests to communicate in the E-band for operations during transition phases before and after reaching its authorized operational altitudes.[67] This would include authority to perform TT&C functions during orbit-raising and de-orbit maneuvers, as well as authority for testing communications equipment performance during the orbit-raising process, which would be conducted on a non-protected, non-harmful interference basis.[68] We grant SpaceX authority to communicate in the E-band during transition phase operations, subject to the same conditions we imposed in the *SpaceX Gen2 First Partial Grant* for SpaceX's Ku- and Ka-band communications during transition phase operations. Specifically, during launch and early orbit phase operations, payload testing, and deorbit of its satellites, SpaceX must operate on a non-harmful interference basis, i.e., SpaceX must not cause harmful interference and must accept any interference received. In the event of any harmful interference under this grant, SpaceX must immediately cease operations upon notification of such interference and inform the Commission, in writing, of such an event.

19. Finally, we continue to condition our authorization of the Gen2 Starlink constellation to require SpaceX to operate consistent with the technical specifications provided to the Commission, including any supplemental specifications, in connection with this application, as amended, for its Gen2 Starlink constellation. These specifications include antenna beam patterns; GSO avoidance angle;

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[64] We note that SpaceX states that it followed this approach for 21 recent E-band gateway earth station applications. *See* ICFS File Nos. SES-LIC-20221229-01539-01543, 01545-01560.

[65] Satellite operations were not yet permitted in the E-band in 2003 when the Commission adopted the license/registration approach for non-Federal terrestrial links. *Allocations and Service Rules for the 71-76 GHz, 81-86 GHz and 92-95 GHz Bands*, WT Docket No. 02-146, Report and Order, 18 FCC Rcd 23318, 23344, para. 62 (2003). The Commission recognized, however, that there were co-primary satellite allocations in various portions of the E-band and decided to maintain multiple services in the allocation table and address possible sharing criteria in the future stating that "all terrestrial 71-76 GHz and 81-86 GHz band entities are hereby made aware that future operations of satellite and satellite earth stations could be permitted in the 71-76 GHz and 81-86 GHz bands. Once the Commission considers and adopts technical standards for terrestrial and satellite operations to share this spectrum, all licensees will be expected to satisfy these and any other Part 101 requirements." *Id*., 18 FCC Rcd at 23344, para. 63. *See also id*. para. 61 (Commission noted that "[it] must take further action under Part 25 of our Rules for earth stations to operate in the 71–76 GHz (downlink) and 81–86 GHz (uplink) bands").

[66] *See 70/80/90 GHz Further Notice* at para. 90.

[67] SpaceX Gen2 Application, Technical Attachment at 2.

[68] *See* 47 CFR §§ 25.282, 25.283.

physical characteristics; frequencies used for satellite communications, including outside the United States; and other technical information.

IV. ORDERING CLAUSES

20. Accordingly, IT IS ORDERED, that the Gen2 Starlink Application, as amended, filed by Space Exploration Holdings, LLC (SpaceX), IS GRANTED-IN-PART and DEFERRED-IN-PART to the extent set forth above, pursuant to sections 0.51 and 0.261 of the Commission's rules, 47 CFR §§ 0.51 and 0.261, and section 309(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(a).

21. IT IS FURTHER ORDERED that this authorization of SpaceX's Gen2 Starlink application, as amended, is subject to all requirements and conditions specified in prior orders authorizing operations of its Gen2 system,[69] as well as the new conditions specified at paragraphs 22mm-tt.

22. IT IS FURTHER ORDERED that this authorization is subject to the following requirements and conditions:

a. SpaceX must timely provide the Commission with the information required for Advance Publication, Coordination, and Notification of the frequency assignment(s) for this constellation, including due diligence information, pursuant to Articles 9 and 11 of the ITU Radio Regulations. This authorization may be modified, without prior notice, consistent with the coordination of the frequency assignment(s) with other Administrations. *See* 47 CFR § 25.111(b). SpaceX is responsible for all cost-recovery fees associated with the ITU filings. 47 CFR § 25.111(d).

b. In connection with the provision of service in any particular country, SpaceX is obliged to comply with the applicable laws, regulations, rules, and licensing procedures of that country.

c. Operations in the 10.7-11.7 GHz (space-to-Earth) frequency band are authorized up to the applicable power flux-density limits in 47 CFR § 25.208(b), and up to the equivalent power flux-density requirements of Article 22 of the ITU Radio Regulations, as well as Resolution 76 (Rev. WRC-15) of the ITU Radio Regulations.

d. In the 10.7-11.7 GHz band, operations must be coordinated with the radio astronomy observatories listed in 47 CFR § 2.106(c)(131), to achieve a mutually acceptable agreement regarding the protection of the radio telescope facilities operating in the 10.6-10.7 GHz band. For the purposes of coordination with these listed facilities or the National Radio Quiet Zone, correspondence should be directed to the National Science Foundation Spectrum Management Unit (Email: esm@nsf.gov).

e. Operations in the 11.7-12.2 GHz (space-to-Earth) frequency band are authorized up to the power flux-density limits in Article 21 of the ITU Radio Regulations, and up to the equivalent power flux-density requirements of Article 22 of the ITU Radio Regulations, as well as Resolution 76 (Rev. WRC-15) of the ITU Radio Regulations.

f. Operations in the 12.2-12.7 GHz (space-to-Earth) frequency band are authorized up to the power flux-density limits in 47 CFR § 25.208(o) and Article 21 of the ITU Radio Regulations, and up to the equivalent power flux-density requirements of Article 22 of the ITU Radio Regulations, as well as Resolution 76 (Rev. WRC-15) of the ITU Radio Regulations.

[69] *See*, *e.g.*, conditions contained in the *SpaceX Gen2 First Partial Grant*, the *SpaceX V-band Modification Order*, and the *SpaceX SCS Modification Partial Grant*. We note that SpaceX has previously satisfied some of these conditions. We also note that our decision to specify all of the conditions included in the *SpaceX Gen2 First Partial Grant* in this authorization is without prejudice to the pending petitions for reconsideration and clarification on that order. *See* Petition for Reconsideration of LeoLabs, Inc., ICFS File Nos. SAT-LOA-20200526-00055 and SAT-AMD-20210818-00105 (filed Dec. 30, 2023); Petition for Clarification of Viasat, Inc., ICFS File Nos. SAT-LOA-20200526-00055 and SAT-AMD-20210818-00105 (filed Jan. 3, 2023).

g. Operations in the 12.2-12.7 GHz (space-to-Earth) frequency band are subject to the condition that SpaceX may not use more than one satellite beam from any of its authorized Gen2 Starlink satellites in the same frequency in the same or overlapping areas at a time.

h. Operations in the 12.75-13.25 GHz (Earth-to-space) frequency band must be in accordance with footnote 5.441 to the U.S. Table of Frequency Allocations, 47 CFR § 2.106(b)(5.441), which states that operations in this band are subject to application of the provisions of No. 9.12 for coordination with other non-geostationary-satellite systems in the fixed-satellite service. Non-geostationary-satellite systems in the fixed-satellite service shall not claim protection from geostationary-satellite networks in the fixed-satellite service operating in accordance with the Radio Regulations. Non-geostationary-satellite systems in the fixed-satellite service in the 12.75-13.25 GHz (Earth-to-space) frequency band shall be operated in such a way that any unacceptable interference that may occur during their operation shall be rapidly eliminated.

i. Operations of non-geostationary-satellite systems in the 12.75-13.25 GHz (Earth-to-space) frequency band with earth stations in the United States are restricted to individually licensed earth stations in accordance with footnote NG57 to the U.S. Table of Frequency Allocations, 47 CFR § 2.106(d)(57). Licensing of earth stations (i.e. filed after Sept. 19, 2022) for operations in the 12.75-13.25 GHz band will be subject to the filing freeze on applications for new or modified authorizations for use of the 12.7-13.25 GHz band. *See* Public Notice, DA 22-974 (released Sept. 19, 2022); *Expanding Use of the 12.7-13.25 GHz Band for Mobile Broadband or Other Expanded Use*, Notice of Inquiry and Order, GN Docket No. 22-352, FCC 22-80 (rel. Oct. 28, 2022).

j. In the 13.85-14.5 GHz (Earth-to-space) frequency band, reception is permitted for levels up to the equivalent power flux-density requirements of Article 22 of the ITU Radio Regulations.

k. SpaceX's operations in the 13.85-14.0 GHz band must comply with footnotes 5.502 and US356 to the International and United States Table of Frequency Allocations, 47 CFR § 2.106(b)(5.502), (c)(356).

l. In the 14.47-14.5 GHz band, operations are subject to footnote US342 to the U.S. Table of Frequency Allocations, 47 CFR § 2.106(c)(342), and all practicable steps must be taken to protect the radio astronomy service from harmful interference. Prior to commencing operations in the 14.47-14.5 GHz band, SpaceX must certify that it has updated its coordination agreement with the National Science Foundation to protect the radio astronomy service from harmful interference.

m. SpaceX's operations in the Ku-band are limited to minimum elevation angles of 25 degrees for all user terminals located below 62 degrees north latitude and minimum elevation angles of 5 degrees for user terminals located at or above 62 degrees north latitude.

n. Space-to-Earth operations in the 17.8-18.6 GHz, 18.8-19.3 GHz, and 19.7-20.2 GHz frequency bands must complete coordination with U.S. Federal systems, in accordance with footnote US334 to the United States Table of Frequency Allocations, 47 CFR § 2.106(c)(334), prior to being used. The use of space-to-Earth operations in the 17.8-18.6 GHz, 18.8-19.3 GHz, and 19.7-20.2 GHz bands must be in accordance with any signed coordination agreement between SpaceX and U.S. Federal operators. Two weeks prior to the start of any operations in the 17.8-18.6 GHz, 18.8-19.3 GHz, and 19.7-20.2 GHz bands, SpaceX must provide contact information for a 24/7 point of contact for the resolution of any harmful interference to Jimmy Nguyen, Email: Jimmy.Nguyen@us.af.mil.

o. Operations in the 18.8-19.3 GHz (space-to-Earth) frequency band are authorized up to the power flux-density limits in Article 21 of the ITU Radio Regulations.

p. Operations in the 19.7-20.2 GHz frequency band are subject to the condition that SpaceX may not use more than one satellite beam from any of its authorized Gen2 Starlink satellites in the same frequency in the same or overlapping areas at a time.

q. In the 27.5-28.6 GHz and 29.5-30 GHz (Earth-to-space) frequency bands reception is permitted at levels up to the applicable equivalent power flux-density requirements of Article 22 of the ITU Radio Regulations.

r. Operations in the 27.5-28.35 GHz (Earth-to-space) frequency band are secondary with respect to Upper Microwave Flexible Use Service (UMFUS) operations, except for FSS operations associated with earth stations authorized pursuant to 47 CFR § 25.136.

s. Operations in the 28.35-28.6 GHz and 29.5-30 GHz (Earth-to-space) frequency bands are on a secondary basis with respect to GSO FSS operations.

t. Under 47 CFR § 25.146(a), SpaceX must receive a favorable or "qualified favorable" finding in accordance with Resolution 85 (WRC-03) with respect to its compliance with applicable equivalent power flux-density limits in Article 22 of the ITU Radio Regulations. SpaceX must communicate the ITU finding to the Commission, and in case of an unfavorable finding, SpaceX must adjust its operation to satisfy the ITU requirements. SpaceX must cooperate with other NGSO FSS operators in order to ensure that all authorized operations jointly comport with the applicable limits for aggregate equivalent power flux-density in the space-to-Earth direction contained in Article 22 of the ITU Radio Regulations, as well as Resolution 76 (WRC-03) of the ITU Radio Regulations.

u. SpaceX must make available to any requesting party the data used as input to the ITU-approved validation software to demonstrate compliance with applicable Equivalent Power Flux Density (EPFD) limits, including the data that combine the Gen2 Starlink satellites into one consolidated file.

v. SpaceX operations in the Ku- and Ka-band frequencies must comply with spectrum sharing procedures among NGSO FSS space stations specified in 47 CFR § 25.261 with respect to any NGSO system licensed or granted U.S. market access pursuant to the 2020 Ku/Ka-band processing round initiated in Public Notice DA 20-325. Spectrum sharing between SpaceX's operations and operations of NGSO systems granted U.S. market access, where such operations do not include communications to or from the U.S. territory, are governed only by the ITU Radio Regulations and are not subject to section 25.261.

w. Prior to commencing operations in the Ku- and Ka-band frequency bands, SpaceX must certify that it has made a coordination agreement with, or make a showing to the Commission demonstrating and certifying that its operations will not cause harmful interference to, any operational system licensed or granted U.S. market access in the NGSO FSS processing rounds referred to in Public Notices DA 16-804, 31 FCC Rcd 7666 (IB 2016) and DA 17-524, 32 FCC Rcd 4180 (IB 2017). SpaceX may commence operations at its own risk, on a non-interference, unprotected basis with respect to any operations authorized in earlier processing rounds for which coordination has not been completed, prior to the approval of its showing by the Commission.

x. Operations in the 37.5-40.0 GHz band are unprotected with respect to the non-federal fixed and mobile services, except as authorized pursuant to 47 CFR § 25.136.

y. Operations in the 37.5-40.0 GHz band are authorized up to the power flux-density limits in 47 CFR § 25.208(r)(1). Prior to starting operation in this band, SpaceX must present the showing described in Section 25.114(c)(8) to confirm compliance with these power flux-density limits.

z. Operations in the 37.5-38.0 GHz and 40.0-40.5 GHz bands must be successfully coordinated with Federal Space Research Service (SRS) facilities, pursuant to Recommendation ITU-R SA.1396, "Protection Criteria for the Space Research Service in the 37-38 GHz and 40.0-40.5 GHz Bands."

aa. Operations in the 40-42 GHz band are authorized up to the power-flux density limits in 47 CFR § 25.208(s) and (t). We note that as part of the modification to its original V-band authorization,

SpaceX reduced its power flux density by 8 dB in the 40.0-42.0 GHz (space-to-earth) frequency band.[70] Therefore, SpaceX must operate its system consistent with this reduced PFD in the 40.0-42.0 GHz band.

bb. In accordance with 47 CFR § 2.106(c)(211), SpaceX is urged to take all practicable steps to protect radio astronomy observations in the adjacent bands from harmful interference from its operations in the 40.5-42 GHz band.

cc. Operations in the 47.2-48.2 GHz band must provide interference protection to the fixed and mobile services, except as authorized pursuant to 47 CFR § 25.136.

dd. Any future grant of earth station licenses for operations with the SpaceX system will be subject to the following condition, unless the condition is satisfied prior to such license grant: in the 48.94-49.04 GHz band, operations must be coordinated with radio astronomy stations operating on a co-primary basis in this band. Operations in the 47.2-50.2 GHz band are subject to rules adopted in the *Spectrum Frontiers Proceeding*, GN Docket 14-177.

ee. In accordance with 47 CFR § 2.106(c)(342), SpaceX is urged to take all practicable steps to protect radio astronomy observations from harmful interference from its operations in the 48.94-49.04 GHz band.

ff. Unwanted earth station emissions into the 50.2-50.4 GHz band, as measured at the antenna port, must comport with either of the applicable limits contained in ITU-R Resolution 750 (REV. WRC-19):

i. −42 dBW into the 200 MHz of the EESS (passive) band for earth stations not employing uplink power control, or

ii. −42 dBW into the 200 MHz of the EESS (passive) band at zenith increasing to a maximum level of −35 dBW into the 200 MHz of the EESS (passive) band at a minimum elevation angle of 15° for earth stations employing uplink power control.

gg. Operations in the 50.4-51.4 GHz band (Earth-to-space) must provide interference protection to the fixed and mobile services, except for earth stations authorized pursuant to 47 CFR § 25.136.

hh. Operations in the 50.4-51.4 GHz band (Earth-to-space) must not cause unacceptable interference to, or claim protection from, a geostationary satellite orbit (GSO) fixed satellite service or GSO broadcast satellite service network. These operations must comply with ITU Radio Regulations Nos. 22.5L and 22.5M.

ii. We note that as part of the modification to its original V-band authorization, SpaceX reduced its equivalent isotropic radiated power (EIRP) in the 47.2-50.2 GHz and 50.4-51.4 GHz (Earth-to-space) frequency bands.[71] Therefore, SpaceX must operate its system in accordance with this reduced EIRP in the 47.2-50.2 and 50.4-51.4 GHz bands.

jj. SpaceX may conduct operations in the 40.0-42.0 GHz (space-to-Earth) and 47.2-50.2 GHz and 50.4-51.4 GHz (Earth-to-space) frequency bands down to a minimum elevation angle of 25 degrees. SpaceX may conduct operations in the 37.5-40.0 GHz band (space-to-Earth) frequency band down to a minimum elevation angle of 35 degrees.

kk. SpaceX operations in V-band frequencies must comply with the spectrum sharing procedures among NGSO FSS space stations specified in 47 CFR § 25.261 with respect to any NGSO system licensed or granted U.S. market access pursuant to the processing round initiated in Public Notice,

[70] *See* Space Exploration Holdings, LLC, Application for Modification of the Authorization for the SpaceX V-band NGSO Satellite System, ICFS File No. SAT-MOD-20230322-00062, Legal Narrative at 10 (filed Mar. 22, 2023).

[71] *Id.*

DA 16-1244. Spectrum sharing between SpaceX's operations and operations of NGSO systems granted U.S. market access, where such operations do not include communications to or from U.S. territory, are governed only by the ITU Radio Regulations and are not subject to Section 25.261.

ll. SpaceX operations in V-band frequencies shall not cause interference to, and shall not claim protection from, GSO networks operating in the FSS and BSS in accordance with Section 25.289 of the Commission's rules, 47 CFR § 25.289. In the event that relevant EPFD limits or procedures related to sharing between GSO and NGSO networks are adopted by the Commission or the ITU, operations must be in conformance with such limits and procedures.

mm. SpaceX must coordinate its proposed frequency use for operations in the 71.0-76.0 GHz (space-to-Earth) and 81.0-86.0 GHz (Earth-to-space) frequency bands with any existing U.S. licensees or U.S. market access grantees in the Fixed-Satellite Service whose facilities could be affected by SpaceX's E-band operations, in terms of frequency interference or restricted capacity, and SpaceX must cooperate fully with other future co-frequency Fixed-Satellite Service satellites or satellite systems in coordinating operations in these bands.

nn. SpaceX must comply with any sharing requirements adopted as part of a future E-band processing round that includes the 71.0-76.0 GHz and 81.0-86.0 GHz bands.

oo. Operations in the 71.0-76.0 GHz (space-to-Earth) and 81.0-86.0 GHz (Earth-to-space) frequency bands must comply with the default service rules in section 25.217 of the Commission's rules, 47 CFR § 25.217. Should the Commission develop service rules specific to these frequency bands, SpaceX must come into compliance with those rules.

pp. Prior to filing an application for a gateway earth station for operations in the 71.0-76.0 GHz and 81.0-86.0 GHz bands, SpaceX must complete coordination with Federal users and non-federal terrestrial licensees (47 CFR § 101.1523) in accordance with the provisions in 47 CFR § 25.203(c) for links registered or pending in the third-party database.

qq. In the 81.0-86.0 GHz band, operations must be coordinated with the radio astronomy observatories listed in 47 CFR § 2.106(c)(161).

rr. In the 81.0-86.0 GHz band, operations are subject to footnote US342 to the U.S. Table of Frequency Allocations, 47 CFR § 2.106(c)(342), and all practicable steps must be taken to protect the radio astronomy service from harmful interference. Prior to commencing operations in the 81.0-86.0 GHz band, SpaceX must certify that it has updated its coordination agreement with the National Science Foundation to protect the radio astronomy service from harmful interference.

ss. Prior to commencing operations of downlink and uplink operations in the 71.0-76.0 GHz and 81.0-86.0 GHz frequency bands, respectively, SpaceX must demonstrate compliance with operational conditions as prescribed and coordinated with NTIA and the U.S. Federal Fixed Satellite Service (FSS) systems. Downlink and uplink operations in the 71.0-76.0 GHz and 81.0-86.0 GHz frequency bands, respectively, must be in accordance with any signed coordination agreement between SpaceX and U.S. Federal FSS operators. Two weeks prior to the start of any operations in the 71.0-76.0 GHz and 81.0-86.0 GHz bands, SpaceX must provide contact information for a 24/7 point of contact for the resolution of any harmful interference to Jimmy Nguyen, Email: Jimmy.Nguyen@us.af.mil.

tt. In the 86.0-92.0 GHz band, operations are subject to footnote US246 to the U.S. Table of Frequency Allocations, 47 CFR § 2.106(c)(246). Prior to commencing operations in the 81.0-86.0 GHz band, SpaceX must certify that it has a signed coordination agreement or agreements with U.S. federal operators utilizing the 86-92 GHz band for passive services.

uu. All operations by SpaceX for the limited on-orbit check out[72] in the 1910-1915 MHz (Earth-to-space) and 1990-1995 MHz (space-to-Earth) bands shall be on an unprotected and non-harmful interference basis, i.e., SpaceX shall not cause harmful interference to, and shall not claim protection from interference caused to it, by any lawfully operating station.

vv. In the event of any harmful interference during SpaceX's limited on-orbit check out for operations in the 1910-1915 MHz (Earth-to-space) and 1990-1995 MHz (space-to-Earth) frequency bands, SpaceX shall cease operations immediately upon notification of such interference, and shall inform the Commission, in writing, immediately of such an event.

ww. SpaceX shall coordinate with any potentially affected operators, including operators authorized to use the 1910-1915 MHz (Earth-to-space) and 1990-1995 MHz (space-to-Earth) frequency bands, before operating in those bands for its planned on-orbit check out. SpaceX must provide to the other operator(s) the dates of the testing and a stop-buzzer point of contact in the event that harmful interference occurs.

xx. Any action taken or expense incurred as a result of operations pursuant to the *SpaceX SCS Modification Partial Grant* is solely at SpaceX's own risk. That grant in part only addresses operations in the 1910-1915 MHz and 1990-1995 MHz bands for purposes of limited on-orbit checkout with authorized earth station(s) in the United States. SpaceX must obtain additional approval from the Commission before conducting any operations with its satellites in the 1429 MHz to 2690 MHz frequency range with any locations outside the United States. Neither the *SCS Modification Partial Grant* nor this grant authorize SpaceX to provide service, perform any launch and early orbit phase (LEOP) operations other than the limited satellite check out specified in the scope of grant, conduct testing, or send or receive any other transmissions in the 1429 MHz to 2690 MHz range.[73]

yy. During launch and early orbit phase operations, payload testing, and deorbit of its satellites, SpaceX must operate on a non-harmful interference basis, i.e., SpaceX must not cause harmful interference and must accept any interference received. In the event of any harmful interference under this grant, SpaceX must immediately cease operations upon notification of such interference and inform the Commission, in writing, of such an event.

zz. SpaceX must operate consistent with the technical specifications provided to the Commission, including any supplemental specifications, in connection with this application, as amended, for its Gen2 Starlink constellation, including antenna beam patterns; GSO avoidance angle; physical characteristics; frequencies used for satellite communications, including outside the United States; and other technical information. Should SpaceX wish to alter these technical specifications, it must apply for a license modification from the Commission.

aaa. SpaceX shall maintain full control of its satellites at all times and shall operate its satellites in accordance with any existing coordination agreements.

bbb. SpaceX must provide a semi-annual report, by January 1 and July 1 each year, covering the preceding six-month period, respectively, from June 1 to November 30 and December 1 to May 31. The report should include the following information:

i. The number of conjunction events identified for Starlink satellites during the reporting period, and the number of events that resulted in an action (maneuver or coordination

[72] The scope of the *SpaceX SCS Modification Partial Grant* included authorization for a limited on-orbit check out of the antennas immediately following deployment of each satellite for a period of 10 days or less, to ensure initial functionality of the satellite antenna. *See SpaceX SCS Modification Partial Grant*, Scope of Grant.

[73] Accordingly, the *SpaceX SCS Modification Partial Grant* does not address considerations associated with any operations in these frequency bands, including the need for any waivers of the Table of Frequency Allocations, section 2.106(a) of the Commission's rules. 47 CFR § 2.106(a).

with another operator), as well as any difficulties encountered in connection with the collision avoidance process and any measures taken to address those difficulties.

ii. Satellites that, for purposes of disposal, were removed from operation or screened from further deployment at any time following initial deployment, and identifying whether this occurred less than five years after the satellite began regular operations or were available for use as an on-orbit replacement satellite,

iii. Satellites that re-entered the atmosphere,

iv. Satellites for which there was a disposal failure, i.e., a satellite that loses the capability to maneuver effectively after being raised from its injection, including a discussion of any assessed cause of the failure and remedial actions. For each such satellite, SpaceX shall report an estimated orbital lifetime for the satellite following the failure, and for the Gen2 Starlink constellation the cumulative number of failed satellite object years,

v. Identification of any collision avoidance system outages or unavailability, either on a system-wide basis or for individual satellites. An "outage" would include any individual satellite anomaly that results in a satellite not achieving targeted risk mitigation via maneuver.

ccc. In the event of satellite failures resulting in more than 100 post-failure object years, SpaceX may not deploy any additional satellites until the Commission has approved a license modification that includes an updated orbital debris mitigation plan addressing reduction in the failure rate or mitigation of the risk of satellite failures.

ddd. SpaceX must maintain satellite orbits so as to operate all of its satellites at or below 580 km.

eee. SpaceX may not deploy any satellites designed for operational altitudes below the International Space Station.[74] SpaceX must communicate and collaborate with NASA to ensure that deployment and operation of its satellites does not unduly constrain deployment and operation of NASA assets and missions, supports safety of both SpaceX and NASA assets and missions and preserves long-term sustainable space-based communications services. SpaceX must report on the progress of its communications and collaboration efforts to the Commission in its regular reports specified in condition bbb.

fff. SpaceX may not deploy any satellites authorized for its Gen2 system directly to their operational altitude.[75]

ggg. Upon receipt of a conjunction warning from the 18th Space Control Squadron or other source, SpaceX must review and take all possible steps to assess the collision risk and mitigate collision risk if necessary. As appropriate, steps to assess and mitigate should include, but are not limited to: contacting the operator of any active spacecraft involved in such warning; sharing ephemeris data and other appropriate operational information with any such operator; modifying spacecraft attitude and/or operations.

hhh. SpaceX must continue to coordinate and collaborate with NASA to promote a mutually beneficial space environment that would minimize impacts to NASA's science missions involving astronomy.

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[74] *See SpaceX Gen2 First Partial Grant*, 37 FCC Rcd. at 14888-89, para. 7 (describing SpaceX's request for some satellites to be deployed in orbital shells centered at altitudes from 340 km to 360 km (below the ISS). *See also id.* at 14952-53, para. 135bb. Language change from the initial ordering clause is to avoid any confusion with respect to FAA's role in launch collision avoidance.

[75] *Id.* at 14927-28, para. 91.

iii. SpaceX must coordinate with NSF to achieve a mutually acceptable agreement to mitigate the impact of its satellites on optical ground-based astronomy. SpaceX must submit an annual report to the Commission, by January 1st each year covering the preceding year containing the following information: (1) whether it has reached a coordination agreement with NSF addressing optical astronomy; and (2) any steps SpaceX has taken to reduce the impact of its satellites on optical astronomy, including but not limited to darkening, deflecting light away from the Earth, attitude maneuvering, and provision of orbital information to astronomers for scheduling observations around satellites' locations.

jjj. SpaceX must follow its commitment to work with the scientific community to explore methods to collect observational data on formation of alumina from satellite reentry, to implement reasonable methods that are discovered to the extent practicable, and to report findings from these measurements taken to the Commission, as part of its annual report specified in condition lll.

kkk. This authorization is subject to modification to bring it into conformance with any rules or policies adopted by the Commission in the future. Accordingly, any investments made toward SpaceX's Gen2 operations, including but not limited to any operations in bands authorized in this Order, assume the risk that operations may be subject to additional conditions or requirements as a result of any future Commission actions. This includes, but is not limited to, any conditions or requirements resulting from any action in the proceedings associated with IB Docket 22-271 and IB Docket 18-313,[76] WT Docket 20-443,[77] WT Docket 20-133,[78] IB Docket 21-456,[79] GN Docket 22-352,[80] and GN Docket 23-65.[81]

lll. All operations of the Gen2 Starlink system must also comport with any additional terms and conditions contained in the *SpaceX Gen2 First Partial Grant*, the *SpaceX V-band Authorization Order*, and the *SpaceX SCS Modification Partial Grant*.[82]

23. IT IS FURTHER ORDERED that SpaceX is subject to the rules regarding the sharing of ephemeris data in section 25.146(e) of the Commission's rules, 47 CFR § 25.146(e).

24. IT IS FURTHER ORDERED that this authorization is also subject to the following requirements:

a. Applicable to SpaceX Gen2 satellites:

[76] *See generally Mitigation of Orbital Debris in the New Space Age*, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 4156 (2020); *Space Innovation; Mitigation of Orbital Debris in the New Space Age*, Second Report and Order, 37 FCC Rcd 11818 (2022); *Mitigation of Orbital Debris in the New Space Age*, Order on Reconsideration, FCC 24-6 (Jan. 26, 2024).

[77] *See generally Expanding Flexible Use of the 12.2-12.7 GHz Band et. al.*, WT Docket No. 20-443, Notice of Proposed Rulemaking, 36 FCC Rcd 606 (2021).

[78] *See generally 70/80/90 GHz NPRM*, 35 FCC Rcd at 6039.

[79] *See generally Revising Spectrum Sharing Rules for Non-Geostationary Orbit, Fixed-Satellite Service Systems; Revision of Section 25.261 of the Commission's Rules to Increase Certainty in Spectrum Sharing Obligations Among NGSO FSS Systems*, IB Docket No. 21-456, Order and Notice of Proposed Rulemaking, 36 FCC Rcd 17871 (2021).

[80] *See generally Expanding Use of the 12.7-13.25 GHz Band for Mobile Broadband or Other Expanded Use*, GN Docket No. 22-352, Notice of Inquiry and Order, 37 FCC Rcd 13427 (2022).

[81] *See generally Single Network Future: Supplemental Coverage from Space*, Notice of Proposed Rulemaking, FCC 23-22, (Mar. 17, 2023).

[82] *See generally SpaceX Gen2 First Partial Grant*; *SpaceX V-band Modification Order*; *SpaceX SCS Modification Partial Grant*.

i. SpaceX must post a surety bond in satisfaction of 47 CFR §§ 25.165(a)(1) & (b) no later than **December 31, 2022**,[83] and thereafter maintain on file a surety bond requiring payment in the event of a default in an amount, at minimum, determined according to the formula set forth in 47 CFR § 25.165(a)(1); and

ii. SpaceX must launch 50% of the maximum number of proposed space stations, place them in the assigned orbits, and operate them in accordance with the station authorization no later than **December 1, 2028**, and SpaceX must launch the remaining space stations necessary to complete its authorized service constellation, place them in their assigned orbits, and operate each of them in accordance with the authorization no later than **December 1, 2031**. 47 CFR § 25.164(b).[84]

b. Applicable to SpaceX operations in the V-band[85]:

i. SpaceX must post a surety bond in satisfaction of 47 CFR §§ 25.165(a)(1) & (b) no later than **December 19, 2018**,[86] and thereafter maintain on file a surety bond requiring payment in the event of a default in an amount, at minimum, determined according to the formula set forth in 47 CFR § 25.165(a)(1); and

ii. SpaceX must launch 50 percent of the maximum number of proposed space stations with V-band capabilities, place them in the assigned orbits, and operate them in accordance with this grant no later than **November 19, 2024**, and must launch the remaining space stations necessary to complete its authorized V-band system, place them in their assigned orbits, and operate them in accordance with the authorization no later than **November 19, 2027**. 47 CFR § 25.164(b).

c. Failure to post and maintain a surety bond will render this grant null and void automatically, without further Commission action.

d. Failure to meet the milestone requirements of 47 CFR § 25.164(b) may result in SpaceX's authorization being reduced to the number of satellites in use at the milestone date. Failure to comply with the milestone requirements of 47 CFR § 25.164(b) will also result in forfeiture of SpaceX's surety bond. SpaceX must either demonstrate compliance with each of the milestone requirements or notify the Commission in writing, within 15 days after the specified deadline, if the particular requirement was not met. 47 CFR § 25.164(f).

25. IT IS FURTHER ORDERED that we waive sections 25.156 and 25.157 of the Commission's rules on our own motion, 47 CFR §§ 25.156, 25.157, to authorize SpaceX's operations in the 71.0-76.0 GHz and 81.0-86.0 GHz frequency bands outside of a processing round, subject to the conditions set forth above.

26. This authorization is granted without prejudice to enforcement action in connection with any operations outside the scope of SpaceX's license grant in ICFS File Nos. SAT-LOA-20200526-00055 and SAT-AMD-20210818-00105 or grant of special temporary authority in ICFS File Nos. SAT-

[83] SpaceX has satisfied this part of the condition by posting the surety bond for its Gen2 satellites operating in the Ku-, Ka-, and E-band frequencies. *See* Bond of Space Exploration Holdings LLC, ICFS File Nos. SAT-LOA-20200526-00055 and SAT-AMD-20210818-00105 (filed Dec. 30, 2022).

[84] We note that the *NGSO FSS Order* modified section 25.164(b) to offer additional flexibility and requires launch and operation of 50% of an authorized system within six years of grant and the remaining satellites within nine years of grant.

[85] *See SpaceX V-band Modification Order*. The separate milestones applicable to SpaceX's V-band operations are consistent with SpaceX's original V-band authorization.

[86] SpaceX has satisfied this part of the condition by filing of its filed its surety bond in accordance with the condition on its original V-band authorization on December 3, 2018. *See* Bond of Space Exploration Holdings, LLC, ICFS File No. SAT-LOA-20170301-00027 (filed Dec. 3, 2018)

STA-20221228-00180, SAT-STA-20230412-00085, SAT-STA-20230523-00123, SAT-STA-20230906-00217, and SAT-STA-20231204-00300.

27. This grant is without prejudice to any future action taken in connection with ICFS File Nos. SAT-LOA-20200526-00055, SAT-AMD-20210818-00105, SAT-AMD-20221216-00175, SAT-MOD-20230207-00021, and SAT-MOD-20230207-00022.

28. This grant does not alter the license term for the SpaceX Starlink Gen2 satellite system.

FEDERAL COMMUNICATIONS COMMISSION

Kerry E. Murray
Deputy Chief and Chief of Staff
Space Bureau

Joel Taubenblatt
Chief
Wireless Telecommunications Bureau

Ronald T. Repasi
Chief
Office of Engineering and Technology

PUBLIC NOTICE

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DA No. 24-223

Report No. SAT-01804 **Friday March 8, 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-ASG-20220719-00069 E S3067 R2 Space, LLC
Assignment
Consummated Effective Date: 03/25/2021

Current Licensee: R2 Space, LLC
FROM: R2 Space, Inc.
TO: Meta Aerospace LLC

No. of Station(s) listed: 1

SAT-ASG-20230519-00116 E ICEYE US, Inc.
Assignment
Consummated Effective Date: 03/25/2021

Current Licensee: R2 Space, LLC
FROM: R2 Space, LLC
TO: ICEYE US, Inc.

No. of Station(s) listed: 1

SAT-RPL-20231023-00259 E S3183 Astranis Projects USA LLC
Replacement Satellite Application (no new frequency)
Withdrawn Effective Date: 03/05/2024

Nature of Service: Fixed Satellite Service, Other

SAT-STA-20240221-00037 E S3066 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 03/07/2024

On March 7, 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-T/C-20210423-00056 E S3067 ICEYE US, Inc.
Transfer of Control
Consummated Effective Date: 03/25/2021

Current Licensee: R2 Space, LLC
FROM: R2 Space, Inc.
TO: Meta Aerospace LLC

No. of Station(s) listed: 1

SAT-T/C-20231229-00329 E Liberty Sirius XM Holdings Inc.
Transfer of Control
Grant of Authority Effective Date: 03/07/2024

Current Licensee: Sirius XM Radio Inc.
FROM: Liberty Media Corporation
TO: Liberty Sirius XM Holdings Inc.

No. of Station(s) listed: 3

SAT-T/C-20231229-00330 E Liberty Sirius XM Holdings Inc.
Transfer of Control
Grant of Authority Effective Date: 03/07/2024

Current Licensee: XM Radio LLC
FROM: Liberty Media Corporation
TO: Liberty Sirius XM Holdings Inc.

No. of Station(s) listed: 2

SAT-T/C-20231229-00331 E Liberty Sirius XM Holdings Inc.
Transfer of Control
Grant of Authority Effective Date: 03/07/2024

Current Licensee: Satellite CD Radio LLC
FROM: Liberty Media Corporation
TO: Liberty Sirius XM Holdings Inc.

No. of Station(s) listed: 1

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

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

In the Matter of	)	
	)	
Kuiper Systems LLC	)	ICFS File Nos.:
	)	SAT-MOD-20230228-00043
Request for Modification of the Authorization for the Kuiper NGSO Satellite System	)	SAT-AMD-20230613-00140
	)	
	)	Call Sign: S3051

ORDER AND AUTHORIZATION

Adopted: March 8, 2024 **Released: March 8, 2024**

By the Chief, Space Bureau:

I. INTRODUCTION

1. In this Order and Authorization (Order), we grant Kuiper Systems LLC's (Kuiper) application, as amended,[1] for modification of the license for its constellation of non-geostationary orbit (NGSO) satellites. Kuiper plans to use frequencies allocated to the fixed-satellite service (FSS) and mobile-satellite service (MSS) in the Ka-band. The license modification reduces the total number of satellites specified in its constellation from 3,236 to 3,232; modifies the specified orbital parameters of its constellation; and authorizes radiofrequency communications necessary for Kuiper to conduct launch and early-orbit phase (LEOP) operations, payload testing, and deorbit operations on a non-interference basis. In connection with grant of this modification, we deny the Petition to Deny filed by Space Exploration Holdings, LLC (SpaceX).[2] Grant of Kuiper's application will serve the public interest by allowing Kuiper to accelerate the deployment of its constellation and improve customer coverage once deployed, thereby bringing affordable broadband connectivity to unserved and underserved areas of the United States.

II. BACKGROUND

2. *Kuiper's authorization.* On July 30, 2020, the International Bureau[3] granted, with conditions, Kuiper's application to construct, deploy, and operate a constellation of 3,236 NGSO FSS

[1] Kuiper Systems LLC, Application for Modification of the Authorization for the Kuiper System, ICFS File No. SAT-MOD-20230228-00043 (filed Feb. 28, 2023) (Kuiper Modification Application); Kuiper Systems LLC, Application to Amend Modification of the Authorization of the Kuiper System, ICFS File No. SAT-AMD-20230613-00140 (filed Jun. 13, 2023) (Kuiper Amendment).

[2] Petition to Deny and Comments of Space Exploration Holdings LLC, ICFS File Nos. SAT-MOD-20230228-00043 and SAT-AMD-20230613-00140 (filed Jul. 31, 2023) (SpaceX Petition).

[3] On January 4, 2023, the Commission adopted an Order that established the Space Bureau to handle the policy and licensing matters related to satellite communications and other in-space activities formerly handled by the International Bureau, which the Order eliminated. *See Establishment of the Space Bureau and the Office of International Affairs and Reorganization of the Consumer and Governmental Affairs Bureau and the Office of the Managing Director*, MD Docket No. 23-12, Order, FCC 23-1, paras. 1-2 (adopted Jan. 4, 2023). The Space Bureau officially launched on April 11, 2023. See Press Release, FCC, FCC Space Bureau & Office of International Affairs to Launch Next Week (April 7, 2023), https://docs.fcc.gov/public/attachments/DOC-392418A1.pdf. All references in this document to the International Bureau and the Satellite Division refer to filings made with, or actions taken by, the International Bureau prior to the establishment of the Space Bureau.

satellites operating in the Ka-band (*Kuiper Authorization*).[4] Kuiper's constellation was authorized as part of the 2020 Ku/Ka-band processing round.[5]

3. *Orbital Debris Modification.* On February 8, 2023, the International Bureau granted Kuiper's application to modify its constellation (*Kuiper Orbital Debris Modification Order*), fulfilling a condition on its authorization to provide updated orbital debris mitigation information to the Commission before it could begin deployment of its satellites.[6] The *Kuiper Orbital Debris Modification Order* included a number of conditions to protect space safety and optical astronomy, including requirements to coordinate with the National Aeronautics and Space Administration (NASA) and National Science Foundation (NSF), reporting requirements on collision risk and satellite failures, and establishment of the number of satellite disposal failures that may trigger additional conditions on Kuiper's license, possibly up to and including a limitation on additional deployments.[7] SpaceX has filed an application for review of the *Kuiper Orbital Debris Modification Order*, which remains pending.[8]

4. *Modification Application.* On February 28, 2023, Kuiper filed the instant application.[9] Kuiper proposes to modify its currently-authorized constellation to slightly reduce the total number of satellites, from 3,236 satellites to 3,232 satellites, and to restructure the distribution of satellites within its orbital planes.[10] Specifically, Kuiper now proposes to operate seven hundred eighty-two satellites at 590 km altitude and 33 degrees inclination, operating in seven hundred eighty-two orbital planes with one satellite per plane; two satellites at 590 km altitude and 30 degrees inclination, operating in one orbital plane with two satellites per plane; one thousand two hundred ninety-two satellites at 610 km altitude and 42 degrees inclination, operating in one thousand two hundred ninety-two orbital planes with one satellite per plane; and one thousand one hundred fifty-six satellites at 630 km altitude and 51.9 degree inclination, operating in two hundred eighty-nine orbital planes with four satellites per plane.[11] Kuiper does not seek to modify the orbital altitudes of any of its satellites or the frequencies with which it is authorized to

[4] *See Kuiper Systems, LLC, Application for Authority to Deploy and Operate a Ka-band Non-Geostationary Satellite Orbit System,* Order and Authorization, 35 FCC Rcd 8324 (Jul. 30, 2020) (Kuiper Authorization).

[5] *Id.*, 35 FCC Rcd at 8324, 8334, 8337-38, Paras. 2, 34, 40-43; *Cut-Off Established for Additional NGSO FSS Applications or Petitions for Operations in the 10.7-12.7 GHz, 12.75-13.25 GHz, 13.8-14.5 GHz, 17.7-18.6 GHz, 18.8-20.2 GHz, And 27.5-30 GHz Bands*, *Satellite Policy Branch Information*, Report No. SPB-279, DA 20-325 (rel. March 24, 2020) (2020 Ku/Ka-band Processing Round Public Notice).

[6] *See Kuiper Systems, LLC, Request for Modification of the Authorization for the Kuiper Systems LLC NGSO Satellite System,* Order and Authorization, 38 FCC Rcd 1112 (2023) (*Kuiper Orbital Debris Modification Order*). *See* Application for Review of Space Exploration Holdings, LLC, ICFS File No. SAT-MOD-20211207-00186 (filed Feb. 21, 2023). In addition to the present modification application, Kuiper has filed two additional modification applications which remain pending. *See* Kuiper Systems LLC, Request for Modification of the Authorization for the Kuiper System, ICFS File No. SAT-MOD-20210806-00095 (filed Aug. 6, 2021); Kuiper Systems LLC, Application for Minor Amendment of Pending Modification of the Kuiper System, ICFS File No. SAT-AMD-20230329-00067 (filed Mar. 29, 2023); Kuiper Systems LLC, Request for Modification of the Authorization for the Kuiper System, ICFS File No. SAT-MOD-20230201-00013 (filed Feb. 1, 2023).

[7] *Kuiper Orbital Debris Modification Order*, 38 FCC Rcd at 1123-24, paras. 50-51, 53-56.

[8] *See* Application for Review of Space Exploration Holdings, LLC, ICFS File No. SAT-MOD-20211207-00186 (filed Feb. 21, 2023). Our action herein to grant the Kuiper Modification Application, as amended, is without prejudice to Commission action on the SpaceX application for review of the *Kuiper Orbital Debris Modification Order*.

[9] *See generally* Kuiper Modification Application.

[10] *Id.*, Legal Narrative at 1, 3.

[11] *Id.* at 3.

communicate.[12] On June 13, 2023, Kuiper amended its application to include a request for authorization to conduct LEOP operations, payload testing, and deorbit operations.[13]

5. *Public notice.* The Kuiper modification and amendment were placed on public notice on June 30, 2023.[14] SpaceX filed a petition to deny and comments, raising several concerns with Kuiper's proposed modification. First, SpaceX raises concerns regarding Kuiper's compliance with the requirement that it coordinate operations with systems authorized in previous processing rounds and also argues that Kuiper's request to include its two satellites previously licensed for experimental operations as part of its overall part 25-authorized system will allow Kuiper to "skirt[] build-out requirements" and claim regulatory benefits of having a "built" system.[15] Second, SpaceX maintains that the Commission cannot grant Kuiper the same authority as SpaceX to conduct LEOP, testing, and deorbit operations unless the Commission also imposes the additional orbital debris mitigation conditions SpaceX has previously requested the Commission add to Kuiper's authorization.[16] Third, SpaceX alleges that Kuiper must explain how its reconfigured system can avoid collisions with objects in similar orbits, particularly a new Chinese satellite constellation.[17] Kuiper opposed SpaceX's petition,[18] and SpaceX filed a reply.[19]

III. DISCUSSION

6. After our review of the record, we conclude that granting Kuiper's application for modification, as amended, subject to the requirements and conditions specified herein, will serve the public interest. Under section 25.117 of the Commission's rules, we will grant Kuiper's modification request unless doing so would make Kuiper unqualified to operate a space station or granting the modification request would not serve the public interest, convenience, and necessity.[20] We find that this modification will not make Kuiper unqualified to operate a space station and it will serve the public interest, convenience, and necessity, and therefore we grant Kuiper's request with respect to reconfiguration of orbital parameters as described in its application and subject to the conditions set forth in this Order. Below, we address the various outstanding issues raised by SpaceX on Kuiper's application.

A. Satellite Reconfiguration

7. *Interference into Other Systems and Processing Round Status*. Kuiper's constellation was originally authorized as part of the 2020 Ku/Ka-band processing round.[21] Our rule governing the modification of space station licenses states that "applications for modifications of space station

[12] *Id.*

[13] Kuiper Amendment, Narrative at 1.

[14] *Satellite Licensing Division and Satellite Programs and Policy Division Information, Space Station Applications Accepted for Filing*, Report No. 01-738 (Jun. 30, 2023).

[15] SpaceX Petition at 3.

[16] *Id.* at 6-7. Specifically, SpaceX asks the Commission to impose all of the space sustainability conditions that it included as part of SpaceX's second-generation license. *See Space Exploration Holdings, LLC, Request for Orbital Deployment and Operating Authority for the SpaceX Gen2 NGSO Satellite System*, Order and Authorization, 37 FCC Rcd 14882 (2022) (*SpaceX Gen2 Order*).

[17] SpaceX Petition at 5-6.

[18] Opposition of Kuiper Systems LLC, ICFS File Nos. SAT-MOD-20230228-00043 and SAT-AMD-20230613-00140 (filed Aug. 15, 2023) (Kuiper Opposition).

[19] Reply of Space Exploration Holdings LLC, ICFS File Nos. SAT-MOD-20230228-00043 and SAT-AMD-20230613-00140 (filed Aug. 25, 2023) (SpaceX Reply).

[20] 47 CFR § 25.117(d)(2)(i)-(ii).

[21] *Kuiper Authorization*, 35 FCC Rcd at 8324, 8334, 8337-38, Paras. 2, 34, 40-43.

authorizations will be granted," unless one of several enumerated exceptions applies, none of which are potentially relevant here except for the provisions stating that the modification will not be granted if it "would make the applicant unqualified to operate a space station under the Commission's rules" or "would not serve the public interest, convenience, and necessity."[22] No concerns have been raised in the record that grant of Kuiper's modification application would make Kuiper unqualified to operate a space station, and we find there is no basis to make such a determination here. With respect to the public interest requirement, in the context of applications to modify authorized NGSO systems that were originally subject to modified processing round procedures, the Commission has interpreted this provision to include the following determination: "[i]f the proposed modification does not present any significant interference problems and is otherwise consistent with Commission policies, it is generally granted[,]" but if the modification "presents significant interference problems, [the Bureau] would treat the modification as a newly filed application and would consider the modification application in a subsequent satellite processing round."[23] Kuiper provided an analysis that demonstrates that its proposed modification will not cause any additional interference into fixed-service stations,[24] geostationary orbit satellites,[25] or other NGSO constellations.[26] Additionally, Kuiper states that its modification will not increase interference into its own system, but it nonetheless is willing to accept any additional interference caused by this modification.[27] We note that SpaceX did not raise concerns regarding interference when objecting to Kuiper's proposed modification. We have reviewed Kuiper's analysis and find that this proposed modification will not increase interference into other participants in the 2020 processing round.[28] Though Kuiper proposes to redistribute satellites in its constellation, the redistribution will be within previously authorized orbital planes. Moreover, the frequency use, beam footprints, power flux density and equivalent power flux density levels, minimum antenna elevation angles, equivalent isotropic radiated power (EIRP) levels, and service area associated with its constellation will remain unchanged from the parameters previously authorized.[29] Therefore under our rules, grant of this modification application does not change Kuiper's status in the 2020 processing round.

8. We decline to adopt SpaceX's request that prior to our action on Kuiper's modification, we require Kuiper to comply with the condition to complete coordination with earlier-round systems before it may deploy its two prototype satellites.[30] Kuiper's license, as modified, continues to require that it may deploy spacecraft prior to completion of coordination, but may not operate in the frequencies for which coordination is required until coordination is completed.[31] First, we note that Kuiper's two

[22] 47 CFR § 25.117(d)(2)(i)-(ii). None of the other exceptions in section 25.117(d)(2) appear to be relevant, and none have been raised in connection with Kuiper's modification application, as amended.

[23] *See Space Exploration Holdings, LLC, Request for Modification of the Authorization for the SpaceX NGSO Satellite System,* Order and Authorization and Order on Reconsideration, 36 FCC Rcd 7995, 8006-07, para. 16 (2021) (affirming the approach in *Teledesic LLC*, Order and Authorization, 14 FCC Rcd 2261, 2264, para. 5 (IB 1999), regarding satellite modification applications).

[24] Kuiper Modification Application, Technical Appendix at 4.

[25] *Id.* at 4-5. Kuiper certifies once again that its constellation, as modified, will comply with International Telecommunication Union (ITU) EPFD limits. *Id.* at 5.

[26] *Id.* at 5-6.

[27] *Id.* at 6.

[28] *Id.*, Legal Narrative at 5-6, Technical Appendix at Annex A.

[29] *Id.*, Technical Appendix at 3-6.

[30] SpaceX Reply at 2, 4-5.

[31] Kuiper has requested modification of this condition pursuant to a separate pending modification request. *See* Kuiper Systems LLC, Request for Modification of the Authorization for the Kuiper Systems LLC NGSO System, (continued….)

prototype satellites have now been deployed, and these satellites are operating on an unprotected, non-interference basis pursuant to experimental authorization—in other words, Kuiper must accept interference from, and not cause interference to, other authorized systems and must cease operations immediately upon notification of such an event. Since Kuiper has agreed to continue to operate those two satellites on an unprotected, non-interference basis consistent with the conditions on its experimental license, we see no reason to alter that status for continued operations of these two satellites at this time. Additionally, we note that Kuiper has completed coordination with Telesat Canada, Space Norway AS, and O3b Limited that Kuiper states are not affected by this modification because this modification will not alter the interference environment, and Kuiper states that it is also engaged in ongoing good-faith coordination with other participants in the prior Ku/Ka-band processing rounds.[32] Therefore, we conclude that while coordination remains pending, Kuiper may operate its two prototype satellites consistent with the conditions on its experimental authorization, but may not operate any additional satellites in the relevant frequency bands prior to the completion of coordination, where such coordination is required. We condition this authorization accordingly.

9. SpaceX objects to Kuiper's plan to add its prototype satellites, originally licensed under the Commission's part 5 rules, to its part 25 license, arguing that it will allow Kuiper to evade International Telecommunication Union (ITU) requirements[33] to bring its constellation into use and the Commission's since-modified unbuilt system rule,[34] allowing Kuiper to in fact further delay deployment.[35] We disagree with these claims. First, SpaceX argues that by adding its experimental satellites to its main constellation, Kuiper will be able to avoid ITU rules which require Kuiper to bring its system into use by launching one satellite by 2026.[36] But Kuiper's experimental satellites are already included in Kuiper's ITU filings for its constellation,[37] so adding them to Kuiper's part 25 authorization has no impact on Kuiper's compliance with the ITU "build-out" requirements. SpaceX argues that grant of this modification will allow Kuiper to delay its service because Kuiper will be able to claim that it has brought its commercial system into use when it launches its two experimental satellites rather than when its commercial system is actually deployed.[38] However, Kuiper will still be subject to the Commission's build-out milestones for its commercial system, and as a result, the inclusion of the two experimental satellites in its part 25 authorization will have no impact on when Kuiper is required to launch, place into assigned orbits, and operate 50 percent of its part 25 system.[39] SpaceX also argues that by adding its prototype satellites to its part 25 license, Kuiper will be able to skirt the Commission's unbuilt system

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ICFS File No. SAT-MOD-20230201-00013 (filed Feb. 1, 2023). Our action herein to grant the Kuiper Modification Application, as amended, is without prejudice to action on this separate modification request.

[32] Kuiper Modification Application, Technical Appendix at 6-7.

[33] *See* ITU R.R. No. 11.4, 11.44C ("A frequency assignment to a space station in a non-geostationary-satellite orbit network or system in the fixed-satellite service . . . shall be considered as having been brought into use when a space station with the capability of transmitting or receiving that frequency assignment has been deployed and maintained on one of the orbital plane(s) of the non-geostationary satellite network or system for a continuous period of 90 days, irrespective of the notified number of orbital planes and satellites per orbital plane in the network or system.").

[34] 47 CFR § 25.159(b) (2023).

[35] SpaceX Petition at 2-4; SpaceX Reply at 3-4.

[36] SpaceX Petition at 3; SpaceX Reply at 3-4.

[37] Kuiper's constellation is described in the ITU filings USASAT-NGSO-8A, 8B, and 8C. USASAT-NGSO-8C contains the two prototype satellites authorized under the Commission's part 5 experimental rules, along with a subset of Kuiper's commercial satellites.

[38] SpaceX Petition at 3.

[39] 47 CFR § 25.164(b); *infra* at para. 52.

rule, which since the time SpaceX filed its petition has been modified to eliminate the prohibition on a licensee applying for an additional NGSO satellite system license in a particular frequency band if that licensee already has a licensed-but-unbuilt NGSO satellite system in the band.[40] The Commission recently adopted a report and order modifying the unbuilt system rule and thus this objection is moot.[41] Additionally, SpaceX references a build-out requirement on Kuiper's gateway earth stations authorization.[42] If the gateway stations communicate with the satellite(s) specified as a point of communication in their license, whether the satellites are licensed under a part 5 experimental authorization or part 25 does not determine completion of the earth station requirement. We find that grant of this modification will not slow Kuiper's deployment or reduce Kuiper's service, because the Commission's milestones will continue to apply to Kuiper's system.[43]

B. LEOP Operations, Payload Testing, and Deorbit Operations

10. We authorize Kuiper to conduct communications while orbit-raising its satellites to their operational altitudes and during deorbit of its satellites, subject to the conditions set forth herein. This includes authorization to conduct tracking, telemetry, and command (TT&C) operations during orbit raising and deorbit of its satellites, as well as testing of communications equipment performance during the orbit-raising process, which would be conducted on an unprotected, non-interference basis.[44] Testing satellites at lower altitudes allows Kuiper to deorbit any failed satellites and minimize the risk of satellites experiencing a disposal failure at their operational altitudes, which lessens the collision risk posed by the constellation. Kuiper commits to conduct these operations on an unprotected, non-harmful interference basis and to "take all practicable steps to ensure safe operation of its spacecraft and avoid causing harmful interference."[45]

11. We find that granting Kuiper authority for transition phase operations is in the public interest with the conditions adopted herein. Kuiper's practice of testing its satellites at injection altitude, before orbit-raising, will allow it to deorbit any non-functional satellites in a matter of days or weeks, helping to ensure that non-maneuverable satellites do not reach operational orbit.[46] A single blanket authorization for these operations, rather than a continuous stream of requests for special temporary authority, will also support administrative efficiency and preserve Commission resources.[47] We conclude

[40] SpaceX Petition at 3; SpaceX Reply at 3-4.

[41] *Space Innovation; Expediting Initial Processing of Satellite and Earth Station Applications*, Report and Order and Further Notice of Proposed Rulemaking, FCC 23-73, para. 31 (Sept. 22, 2023); *Expediting Initial Processing of Satellite and Earth Station* Applications, 88 FR 84737 (Dec. 6, 2023) (establishing January 5, 2024, as the effective date for the modification of the unbuilt system rule); see *also* Comments of Space Exploration Holdings, LLC, IB Docket Nos. 22-411, 22-271, at 21-22 (filed Mar. 3, 2023).

[42] *See* Kuiper Systems LLC, Radio Station Authorization, SES-LIC-20210409-00634, Callsign E210070 (granted Dec. 14, 2022); Kuiper Systems LLC, Radio Station Authorization, SES-LIC-20210409-00635, Callsign E210071 (granted Dec. 14, 2022).

[43] Kuiper Opposition at 5; SpaceX Petition at 3. We will also require Kuiper to comply with conditions placed on its experimental licenses for its two prototype satellites. *See* Kuiper Systems LLC, ELS File No. 0956-EX-CN-2021 (Granted June 9, 2022); Kuiper Systems LLC, ELS File No. 0234-EX-CN-2022 (granted Jan. 27, 2023).

[44] Kuiper Amendment, Narrative at 2. Kuiper notes that a condition in the *Kuiper Orbital Debris Modification Order* requires Kuiper to conduct these operations on a non-interference basis, but the Bureau did not explicitly grant Kuiper authority for these operations at that time. *Id.* (citing *Kuiper Orbital Debris Modification Order*, 38 FCC Rcd at 1123, para. 49).

[45] *Id.* at 3.

[46] *Id.* at 3-4.

[47] *Id.* at 4.

that granting Kuiper authority for the enumerated operations under this license, with the conditions set forth herein, will ensure that other operators do not encounter harmful interference resulting from these operations. Kuiper must therefore conduct TT&C operations during LEOP and deorbit operations and testing of communications equipment on an unprotected, non-interference basis. We also condition this authorization such that Kuiper may not deploy any of its 3,232 satellites authorized in this grant directly to their operational altitudes.

C. Orbital Debris Mitigation

12. SpaceX agrees that the proposed reconfiguration of Kuiper's satellites could improve service for Kuiper's customers but contends that Kuiper has not satisfactorily explained how its constellation will avoid collisions operating in the same orbital altitude range, including "thousands of Chinese satellites planned to share these same orbits."[48]

13. First, we note that in Kuiper's original license grant, the Commission conditioned the authorization on Kuiper coordinating its physical operations with space stations of NGSO systems operating at similar orbital altitudes.[49] This condition continues to apply. In the prior modification addressing Kuiper's orbital debris mitigation plan, the International Bureau considered arguments regarding the likelihood of additional satellites being deployed in low-Earth orbit at overlapping altitudes, including non-U.S. authorized systems.[50] At the time, SpaceX argued that the Commission should limit Kuiper to deployments only to its 630 kilometer altitude orbital shell, and defer action regarding the remainder of the constellation to allow for "continued monitoring" of deployment.[51] The International Bureau rejected these arguments.[52]

14. SpaceX renews these arguments in its filings regarding the instant application, now with a reference to a Chinese satellite constellation.[53] SpaceX notes that Kuiper raised concerns regarding overlap with SpaceX's satellites during the authorization process for both SpaceX's first generation and second generation constellations and argues that these concerns point to Kuiper being unable to share orbits with other satellite operators.[54] We once again reject this argument. Nothing in this modification changes Kuiper's already approved space safety and orbital debris mitigation plans.[55] Kuiper's authorization continues to be conditioned on Kuiper coordinating the physical operations of its spacecraft with any operator using similar orbits, for the purpose of eliminating collision risk and minimizing operational impacts. The orbital parameters specified in this grant continue to be subject to change based on such coordination, and we will continue to monitor the deployment of Kuiper's system, including satellite failures and collision avoidance system outages or unavailability based on Kuiper's existing reporting conditions. Kuiper must review and take all possible steps to assess the collision risk, with any other space stations, including a Chinese satellite constellation, and mitigate the collision risk if necessary.[56]

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[48] SpaceX Petition at 5; SpaceX Reply at 6-7.

[49] *Kuiper Orbital Debris Modification Order*, 38 FCC Rcd at 1122, para. 47.

[50] *Id.* at 1116, para. 15.

[51] *Id.* at 1116-17, para. 16.

[52] *Id.*

[53] SpaceX Petition at 5-6; SpaceX Reply at 6-7.

[54] *See* SpaceX Petition at 2; *SpaceX Gen2 Order*, 37 FCC Rcd at 14923-24, paras. 80-82; *Space Exploration Holdings, LLC, Request for Modification of the Authorization for the SpaceX NGSO Satellite System*, Order and Authorization and Order on Reconsideration, 36 FCC Rcd 7995, 8032-33, para. 66 (2021).

[55] Kuiper Opposition at 6-7.

[56] *See infra*, para. 40.

15. SpaceX further argues that if the Commission grants Kuiper the authority to conduct LEOP operations in the same manner that it has permitted SpaceX to do, the Commission must also impose the same "space sustainability conditions" that were included on SpaceX's Gen2 license, including a condition that includes a 100 object-year metric to help assess satellite reliability.[57]

16. We find, however, that the conditions previously applied to Kuiper's authorization, and the conditions we impose today regarding Kuiper's transition phase operations, are sufficient at this time to address concerns regarding satellite failures. Specifically, we maintain the existing reporting requirements already placed on Kuiper's license.[58] These conditions give the Commission the ability to monitor Kuiper's operations continuously to address satellite reliability issues as they arise, with additional flexibilities to account for a system that is in the early stages of what is ultimately planned to be a larger-scale deployment. For example, Kuiper is required to provide a report if during any continuous one-year period there are two or more satellite disposal failures. This report must be filed within 10 days following the second disposal failure and must either state the assessed cause of the failure and remedial actions for each of the disposal failures during the period, if available, or provide a schedule for completion of a process for doing so. We also encourage Kuiper to provide information and collaborate with the Commission in the event of even a single satellite disposal failure. Based on our review of a report filed by Kuiper or in response to other information provided during the course of Kuiper's initial deployment, and pursuant to the conditions on Kuiper's authorization,[59] we will act swiftly to modify Kuiper's license to add terms and conditions—including additional reporting obligations, limitations on additional deployments, requirements for early removal of satellites from orbit, or any other appropriate conditions—in order to limit collision risk.

17. Regarding the condition that includes the 100 object year metric, the Commission already had a record of the SpaceX satellites' past performance through previous reporting requirements applied to its first generation constellation. Based on that record, the 100 object year metric was applied to its second generation constellation as part of an incremental approach to monitoring and maintaining space safety.[60] Kuiper, on the other hand, with only two prototype satellites launched out of a planned constellation of 3,232 satellites, does not yet have the type of satellite reliability data regarding its overall system that it will have at a later date. Instead, Kuiper's system is more like SpaceX's first generation system in terms of being early in the deployment phase and to which the Commission did not impose an object year metric.[61]

18. Accordingly, we reject SpaceX's request that we apply additional "space sustainability" conditions to Kuiper's authorization in this modification, including a condition specifying the 100 object year metric, but instead maintain the existing reporting requirements that will allow us to monitor and address any satellite reliability issues associated with Kuiper's system. Kuiper's orbital debris conditions are consistent with, and in fact exceed, the orbital debris conditions placed on the first generation SpaceX constellation.[62] Finally, as with SpaceX, Kuiper's authorization will also be subject to any alternative

[57] SpaceX Petition at 6-7; *see also SpaceX Gen2 Order*, 37 FCC Rcd at 14952, para. 135z.

[58] *Kuiper Orbital Debris Modification Order*, 38 FCC Rcd at 1123, paras. 50-51.

[59] *Id.* at 1123, paras. 50-51.

[60] *See SpaceX Gen2 Order*, 37 FCC Rcd at 14924-14925.

[61] *Space Exploration Holdings, LLC, Request for Modification of the Authorization for the SpaceX NGSO Satellite System*, Order and Authorization and Order on Reconsideration, 36 FCC Rcd 7995, 8049, para. 97u (2021).

[62] *See id.*; *Kuiper Orbital Debris Modification Order*, 38 FCC Rcd at 1123-24, paras. 50-51, 53-56. For example, Kuiper must submit a report within 10 days of two satellite failures within a continuous one-year period whereas the condition on SpaceX's first generation constellation required a report after three satellite failures. Additionally, Kuiper's authorization has a condition that requires Kuiper to monitor its satellites' propellant reserves to ensure sufficient amounts to perform collision avoidance and end-of-life maneuvers.

approaches developed in the context of the ongoing rulemaking proceeding to identify and address adverse trends in satellite failures before they begin to have a potentially significant effect on the orbital environment.[63]

IV. CONCLUSION AND ORDERING CLAUSES

19. Accordingly, IT IS ORDERED, that the Kuiper Modification Application, as amended, filed by Kuiper Systems LLC (Kuiper), is GRANTED, pursuant to section 309(a) of the Communications Act of 1934, as amended, 47 USC § 309(a).

20. IT IS FURTHER ORDERED that this authorization is subject to the following requirements and conditions:[64]

21. Prior to commencing operations in the 17.8-18.6 GHz and 18.8-20.2 GHz and 27.5-30 GHz bands, Kuiper must certify that it has completed a coordination agreement with or make a showing that it will not cause harmful interference to any operational system licensed or granted U.S. market access in the NGSO FSS processing rounds referred to in Public Notices DA 16-804, 31 FCC Rcd 7666 (IB 2016) and DA 17-525, 32 FCC Rcd 4180 (IB 2017).[65]

22. Kuiper's operations must comply with spectrum sharing procedures among NGSO FSS space stations specified in 47 CFR § 25.261 with respect to any NGSO system licensed or granted U.S. market access pursuant to the March 2020 Processing Round initiated by Public Notice, DA 20-325. Spectrum sharing between Kuiper's operations and operations of NGSO systems granted U.S. market access, where such operations do not include communications to or from the U.S. territory, are governed only by the ITU Radio Regulations and are not subject to section 25.261.

23. In connection with the provision of service in any particular country, Kuiper is obliged to comply with the applicable laws, regulations, rules, and licensing procedures of that country.

24. Kuiper must accept any additional interference resulting from this modification compared to its current authorization, from licensees or market access grantees authorized in the Commission's NGSO 2020 Processing Round.

25. Kuiper must comply with all conditions on its experimental licenses, except as modified in this Order, for operations of its two prototype satellites.

26. Kuiper must timely provide the Commission with the information required for Advance Publication, Coordination, and Notification of the frequency assignment(s) for this constellation, including due diligence information, pursuant to Articles 9 and 11 of the ITU Radio Regulations. This authorization may be modified, without prior notice, consistent with the coordination of the frequency assignment(s) with other Administrations. *See* 47 CFR § 25.111(b). Kuiper is responsible for all cost-recovery fees associated with the ITU filings. 47 CFR § 25.111(d).

27. Operations in portions of the 17.8-18.6 GHz, 18.8-20.2 GHz, and 27.5-30 GHz bands, including MSS operations in the 19.7-20.2 GHz and 29.5-30 GHz bands, are authorized up to the applicable power flux-density and equivalent power-flux density limits contained in Articles 21 and 22, as well as Resolution 76 of the ITU Radio Regulations. In addition, operations must comply with the out-of-

[63] *See Mitigation of Orbital Debris in the New Space Age,* Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 4156 (2020) (*Orbital Debris R&O and FNPRM*).

[64] The conditions here replicate the full set of conditions applicable to Kuiper operations as specified in prior orders, except that new conditions have been added at paragraphs 24, 25, and 43 as discussed above, and a new condition has been added at paragraph 23 consistent with other satellite authorizations.

[65] Kuiper has filed a request for modification of this condition. The request is currently pending. *See* Kuiper Systems LLC, Request for Modification of the Authorization for the Kuiper NGSO Satellite System, ICFS File No. SAT-MOD-20230201-00013 (filed Feb. 1, 2023).

band emissions limits in 25.202(f), 47 CFR § 25.202(f).

28. Operations in the 19.3-19.4 GHz and 19.6-19.7 GHz (space-to-Earth) frequency bands are authorized up to the power flux-density limits in Article 21 of the ITU Radio Regulations that govern NGSO FSS systems in the 17.7-19.3 GHz (space-to-Earth) frequency band. Operations in the band 19.3-19.4 GHz and 19.6-19.7 GHz are on a secondary basis with respect to the GSO FSS. Blanket authorized earth stations in the 19.3-19.4 GHz and 19.6-19.7 GHz bands operate on a secondary basis with respect to the fixed service.

29. Kuiper must cooperate with other NGSO FSS operators in order to ensure that all authorized operations jointly comport with the applicable limits for aggregate equivalent power flux density in the space-to-Earth direction contained in Article 22 of the ITU Radio Regulations, as well as Resolution 76 (WRC-03) of the ITU Radio Regulations.

30. Operations in the 17.7-17.8 GHz band are limited to service outside of the United States and must not cause harmful interference to nor claim protection from assignments in the broadcasting-satellite service operating in conformity with the Radio Regulations, pursuant to 5.517 of the U.S. Table of Frequency Allocations.

31. Operations in the 17.8-18.3 GHz frequency band are on a secondary basis with respect to the fixed service.

32. Operations in the 19.3-19.7 GHz and 29.1-29.5 GHz bands must be coordinated with any previously authorized NGSO MSS systems not included in the March 2020 Processing Round over the bands designated for use by NGSO MSS feeder links. Until any coordination agreement required is obtained, operations shall not be conducted in these frequency bands. Sharing of the 19.3-19.7 GHz and 29.1-29.5 GHz bands with other systems authorized within the March 2020 Processing Round will be subject to section 25.261.

33. MSS operations in the 19.7-20.2 GHz and 29.5-30 GHz bands shall be conducted on a non-interference, non-protected basis with respect to other FSS operations in these bands.

34. Operations in the 27.5-28.35 GHz band are secondary with respect to Upper Microwave Flexible Use Service (UMFUS) operations, except for FSS operations associated with earth stations authorized pursuant to 47 CFR § 25.136.

35. In accordance with footnote NG62 to 47 CFR § 2.106, in the 28.5-29.1 GHz and 29.25-29.5 GHz bands, Kuiper shall not cause harmful interference to, or claim protection from, stations in the fixed service listed in that footnote.

36. Space-to-Earth operations in the 17.8-18.6 GHz, 18.8-19.3 GHz, and 19.7-20.2 GHz bands must complete coordination with U.S. Federal systems, in accordance with footnote US334 to the United States Table of Frequency Allocations, 47 CFR § 2.106, prior to being used. The use of space-to-Earth operations in the 17.8-18.6 GHz, 18.8-19.3 GHz, and 19.7-20.2 GHz bands must be in accordance with any signed coordination agreement between Kuiper and U.S. Federal operators. Two weeks prior to the start of any operations in the 17.8-18.6 GHz, 18.8-19.3 GHz, and 19.7-20.2 GHz bands, Kuiper must provide contact information for a 24/7 point of contact for the resolution of any harmful interference to Jimmy Nguyen, Email: Jimmy.Nguyen@us.af.mil.

37. IT IS FURTHER ORDERED that prior to initiation of service, Kuiper must receive a favorable or "qualified favorable" finding in accordance with Resolution 85 with respect to its compliance with applicable EPFD limits in Article 22 of the ITU Radio Regulations as per paragraph 26 of the original grant document. Kuiper must communicate the ITU finding to the Commission and, in case of an

unfavorable finding, adjust its operation to satisfy the ITU requirements. *See also* 47 CFR § 25.146(c).[66]

38. IT IS FURTHER ORDERED that Kuiper must make available to any requesting party the data used as input to the ITU approved validation software to demonstrate compliance with applicable EPFD limits.

39. IT IS FURTHER ORDERED that Kuiper must comply with the sharing of ephemeris data procedures described in section 25.146 of the Commission's rules. 47 CFR § 25.146(e).

40. IT IS FURTHER ORDERED that Kuiper must coordinate physical operations of spacecraft with any operator using similar orbits, for the purpose of eliminating collision risk and minimizing operational impacts. The orbital parameters specified in this grant are subject to change based on such coordination.

41. IT IS FURTHER ORDERED that this authorization and any earth station licenses granted in the future are subject to modification to bring them into conformance with any rules or policies adopted by the Commission in the future.

42. During launch and early orbit phase operations, payload testing, and deorbit of its satellites, Kuiper must operate on a non-harmful interference basis, i.e. Kuiper must not cause harmful interference and must accept any interference received. In the event of any harmful interference under this grant, Kuiper must immediately cease operations upon notification of such interference and inform the Commission, in writing, of such an event.

43. Kuiper may not deploy any of its 3,232 satellites authorized in this grant directly to their operational altitudes.

44. Kuiper must provide a semi-annual report, by January 1 and July 1 each year, covering the preceding six-month period, respectively, from June 1 to November 30 and December 1 to May 31. The report should include the following information:

a. The number of conjunction events identified for Kuiper satellites during the reporting period, and the number of events that resulted in an action (maneuver or coordination with another operator), as well as any difficulties encountered in connection with the collision avoidance process and any measures taken to address those difficulties,

b. Satellites that, for purposes of disposal, were removed from operation or screened from further deployment at any time following initial deployment, and identifying whether this occurred less than five years after the satellite began regular operations or were available for use as an on-orbit replacement satellite,

c. Satellites that re-entered the atmosphere,

d. Satellites for which there was a disposal failure, i.e., a satellite that loses the capability to maneuver effectively after being raised from its injection, including a discussion of any assessed cause of the failure and remedial actions,

e. Identification of any collision avoidance system outages or unavailability, either on a system-wide basis or for individual satellites. An "outage" would include any individual satellite anomaly that results in a satellite not achieving targeted risk mitigation via maneuver.

45. Kuiper must also provide a report if during any continuous one-year period there are two

[66] Kuiper has filed a request for modification of this condition. The request is currently pending. *See* Kuiper Systems LLC, Request for Modification of the Authorization for the Kuiper NGSO Satellite System, ICFS File No. SAT-MOD-20210806-00095 (filed Aug. 6, 2021); Kuiper Systems LLC, Application for Minor Amendment of Pending Modification of the Kuiper System, ICFS File No. SAT-AMD-20230329-00067 (filed Mar. 29, 2023).

or more satellite disposal failures. Such report shall be filed not later than 10 days following the second disposal failure and must either state the assessed cause of the failure and remedial actions for each of the disposal failures during the period, if available, or provide a schedule for completion of a process for doing so. Based on the information reported, the license may be subject to additional terms and conditions, including additional reporting obligations, limitations on additional deployments, requirements for early removal of satellites from orbit, or any other appropriate conditions to limit collision risk.

46. Upon receipt of a conjunction warning from the 18th Space Control Squadron or other source, Kuiper must review and take all possible steps to assess the collision risk and mitigate collision risk if necessary. As appropriate, steps to assess and mitigate should include, but are not limited to: contacting the operator of any active spacecraft involved in such warning; sharing ephemeris data and other appropriate operational information with any such operator; modifying spacecraft attitude and/or operations.

47. Kuiper must communicate and collaborate with NASA to ensure that deployment and operation of its satellites does not unduly constrain deployment and operation of NASA assets and missions, supports safety of both Kuiper and NASA assets and missions, and preserves long-term sustainable space-based communications services. Kuiper must report on the progress of its communications and collaboration efforts to the Commission in its regular reports specified in condition para. 44.[67]

48. Kuiper must continue to coordinate and collaborate with NASA to promote a mutually beneficial space environment that would minimize impacts to NASA's science missions involving astronomy.

49. Kuiper must monitor its satellites' propellant reserves to ensure that the Kuiper satellites are able to fully perform collision avoidance maneuvers during operations at the relevant altitudes specified in its application as well as complete maneuvers to lower the apogee to below any inhabitable space stations. Should a Kuiper satellite engage in more maneuvers than originally projected or otherwise consume propellant more rapidly than anticipated, Kuiper must initiate deorbit operations early in order to ensure that sufficient propellant remains to complete deorbit maneuvers. Kuiper must make available to other operators supplemental information, based on GPS readings or other supplemental sources, such as third-party observations, sufficient to reduce covariance of predicted trajectories to a level that facilitates collision avoidance procedures, as coordinated with other operators.

50. Kuiper must coordinate with NSF to achieve a mutually acceptable agreement to mitigate the impact of its satellites on optical ground-based astronomy. Kuiper must submit an annual report to the Commission, by January 1st each year covering the preceding year containing the following information: (1) whether it has reached a coordination agreement with NSF addressing optical astronomy; and (2) any steps Kuiper has taken to reduce the impact of its satellites on optical astronomy, including but not limited to darkening, deflecting light away from the Earth, attitude maneuvering, and provision of orbital information to astronomers for scheduling observations around satellites' locations.

51. This authorization is subject to modification to bring it into conformance with any rules or policies adopted by the Commission in the future. Accordingly, any investments made toward operations in the bands authorized in this Order by Kuiper in the United States assume the risk that operations may be subject to additional conditions or requirements as a result of any future Commission actions. This includes, but is not limited to, any conditions or requirements resulting from any action in

[67] Language change from the prior version of this ordering clause is to avoid any confusion with respect to the Federal Aviation Administration's role in launch collision avoidance.

the proceedings associated with IB docket 22-271 and IB Docket 18-818,[68] WT Docket 20-443,[69] WT docket 20-133,[70] IB docket 21-456,[71] and GN Docket 22-352.[72]

52. IT IS FURTHER ORDERED that this authorization is also subject to the following requirements:

a. Kuiper must post a surety bond in satisfaction of 47 CFR §§ 25.165(a)(1) & (b) no later than August 30, 2020, and thereafter maintain on file a surety bond requiring payment in the event of a default in an amount, at minimum, determined according to the formula set forth in 47 CFR § 25.165(a)(1); and

b. Kuiper must launch 50% of the maximum number of proposed space stations, place them in the assigned orbits, and operate them in accordance with the station authorization no later than July 30, 2026, and Kuiper must launch the remaining space stations necessary to complete its authorized service constellation, place them in their assigned orbits, and operate each of them in accordance with the authorization no later than July 20, 2029. 47 CFR § 25.164(b).[73]

53. Failure to post and maintain a surety bond will render this grant null and void automatically, without further Commission action. Failure to meet the milestone requirements of 47 CFR § 25.164(b) may result in Kuiper's authorization being reduced to the number of satellites in use on the milestone date. Failure to comply with the milestone requirement of 47 CFR § 25.164(b) will also result in forfeiture of Kuiper's surety bond. By August 14, 2026, Kuiper must either demonstrate compliance with its milestone requirement or notify the Commission in writing that the requirement was not met. 47 CFR § 25.164(f).

[68] *See generally Orbital Debris R&O & FNPRM*.

[69] *See generally Expanding Flexible Use of the 12.2-12.7 GHz Band, et. al.*, WT Docket No. 20-443, Notice of Proposed Rulemaking, 36 FCC Rcd 606 (2021).

[70] *See generally Modernizing and Expanding Access to the 70/80/90 GHz Bands, et al.*, WT Docket No. 20-133, Report and Order and Notice of Proposed Rulemaking, 35 FCC Rcd 6039 (2020).

[71] *See generally Revising Spectrum Sharing Rules for Non-Geostationary Orbit, Fixed-Satellite Service Systems; Revision of Section 25.261 of the Commission's Rules to Increase Certainty in Spectrum Sharing Obligations Among NGSO FSS Systems*, IB Docket No. 21-456, Order and Notice of Proposed Rulemaking, 36 FCC Rcd 17871 (2021).

[72] *See generally Expanding Use of the 12.7-13.25 GHz Band for Mobile Broadband or Other Expanded Use*, GN Docket No. 22-352, Notice of Inquiry and Order, 37 FCC Rcd 13427 (2022).

[73] We note that the *NGSO FSS Order* modified section 25.164(b) to offer additional flexibility and requires launch and operation of 50% of an authorized system within six years of grant and the remaining satellites within nine years of grant.

54. IT IS FURTHER ORDERED that the Petition to Deny of Space Exploration Holdings LLC is DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Julie M. Kearney
Chief
Space Bureau

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-225
Released: March 8, 2024

MODIFICATION OF THE FREEDOM OF INFORMATION ACT FEE SCHEDULE

The Freedom of Information Act (FOIA) requires federal agencies to establish a schedule of fees for the processing of requests for agency records in accordance with fee guidance issued by the Office of Management and Budget (OMB).[1] In 1987, OMB issued its Uniform Freedom of Information Act Fee Schedule and Guidelines.[2] However, because the FOIA requires that each agency's fees be based upon the direct cost incurred by the agency in providing FOIA services,[3] OMB did not provide a unitary, government-wide schedule of fees.

The Commission bases its FOIA Fee Schedule on the grade level of the employee who processes the request. See 47 CFR § 0.467(a)(2). Thus effective January 1987, the Fee Schedule is computed at Step 5 of each grade level on the General Schedule and includes an additional 20 percent for personnel benefits. The Commission's rules provide that the Fee Schedule will be modified periodically to correspond with modifications in the rate of pay approved by Congress. Pursuant to 47 CFR § 0.467(a)(1) note, the Commission announces modifications to the hourly fees by Public Notice, and posts the fee chart on its FOIA website, https://www.fcc.gov/reports-research/guides/how-file-foia-request.

Accordingly, by this Public Notice we are modifying the Commission's Freedom of Information Act Fee Schedule. The Commission is revising the schedule of fees required by Section 0.467 of its rules, 47 CFR § 0.467,[4] for the recovery of the full, allowable direct costs of searching for and reviewing agency records requested pursuant to the FOIA and the Commission's rules, 47 CFR §§ 0.460(e) and 0.461. The revisions correspond to modifications in the rate of pay in accordance with the President's December 21, 2023 Executive Order.[5]

[1] 5 U.S.C. § 552(a)(4)(A)(i).

[2] 52 FR 10012 (March 27, 1987).

[3] 5 U.S.C. § 552(a)(4)(A)(iv).

[4] These fees may be restricted or waived in accordance with 5 U.S.C. § 552(a)(4)(A); 47 CFR § 0.470(e).

[5] Exec. Order 14113, Adjustments of Certain Rates of Pay (Dec. 21, 2023).

The current FOIA Fee Schedule is as follows. Please note that these fees will be modified periodically to correspond with any modifications in the rate of federal pay.

Grade	***Hourly Fee***
GS-1	19.09
GS-2	20.78
GS-3	23.42
GS-4	26.29
GS-5	29.42
GS-6	32.80
GS-7	36.44
GS-8	40.36
GS-9	44.58
GS-10	49.09
GS-11	53.93
GS-12	64.64
GS-13	76.87
GS-14	90.84
GS-15	106.85

The Fee Schedule contained herein is effective upon release of this Public Notice in accordance with 47 CFR § 0.467(a)(1) note.

Note that the copy charge is $0.10 per page, and the cost for a computer disk is $5.00. See 47 CFR § 0.465(c)(2).

For further information, please contact Stephanie Kost, FOIA Public Liaison, Office of the Managing Director, Performance and Program Management at (202) 418-0440 or FOIA-Public-Liaison@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 24-226
Released: March 8, 2024

WIRELINE COMPETITION BUREAU REMINDS SECURE AND TRUSTED COMMUNICATIONS NETWORKS REIMBURSEMENT PROGRAM RECIPIENTS OF THEIR APRIL 8, 2024 STATUS UPDATE FILING OBLIGATION

WC Docket No. 18-89

The Wireline Competition Bureau (Bureau) reminds Recipients[1] in the Secure and Trusted Communications Networks Reimbursement Program (Reimbursement Program) of their obligation to file status updates with the Federal Communications Commission every 90 days, beginning on the date on which the Bureau approved Recipients' applications, until the obligation to file expires.[2] All Recipients were required to file the last status update on January 8, 2024.[3] Accordingly, all Recipients must file their next status update on April 8, 2024.[4] For additional information about Reimbursement Program filing requirements, please refer to the *Initial Status Update PN*.[5]

Recipients will submit status updates through the online portal, https://fccprod.servicenowservices.com/scrp (Supply Chain Reimbursement Program Online Portal) by

[1] The Secure and Trusted Communications Networks Act of 2019, as amended, defines "recipient" as "any provider of advanced communications service the application of which for a reimbursement under the [Reimbursement] Program has been approved by the Commission, regardless of whether the provider has received reimbursement funds." Secure and Trusted Communications Act of 2019, Pub. L. No. 116-124, 134 Stat. 158, § 9(11) (2019) (codified as amended at 47 U.S.C. § 1608(11)), as amended by Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, § 901, 134 Stat. 1182 (2021); *see also* 47 CFR § 1.50001(h) ("The term 'Reimbursement Program recipient' or 'recipient' means an eligible advanced communications service provider that has requested via application and been approved for funding in the Reimbursement Program, regardless of whether the provider has received reimbursement funds.").

[2] 47 CFR § 1.50004(k) (requiring Reimbursement Program recipients to "file a status update with the Commission 90 days after the date on which the Wireline Competition Bureau approves the recipient's application for reimbursement and every 90 days thereafter, until the recipient has filed the final certification").

[3] *See Wireline Competition Bureau Reminds Secure and Trusted Communications Networks Reimbursement Program Recipients of their January 8, 2023 Status Update Filing Obligation,* WC Docket No. 18-89, Public Notice, DA 23-1143 (WCB Dec. 7 2023) (*December 2023 Status Update PN*). The *December 2023 Status Update PN* and other Reimbursement Program releases are available on the Commission's website via https://www.fcc.gov/supplychain/reimbursement.

[4] Because 90 days after January 8, 2024—April 7, 2024 —falls on a Sunday, the deadline to file the next status update is April 8, 2024. *See* 47 CFR § 1.4(e)(1), (j) (describing the computation of Commission deadlines that would fall on a holiday, and defining "holiday" to include weekend days).

[5] *See Wireline Competition Bureau Reminds Secure and Trusted Communications Networks Reimbursement Program Recipients of their Status Update Filing Obligation,* WC Docket No. 18-89, Public Notice, DA 22-967 (WCB Sept. 16, 2022) (*Initial Status Update PN*).

completing FCC Form 5640 Part K: Status Updates. Requests for confidential treatment must be submitted by filing a written request electronically in WC Docket No. 18-89 in the Commission's Electronic Comment Filing System (ECFS), https://www.fcc.gov/ecfs.

Additional Information and Resources. Recipients with questions may contact the Fund Administrator Help Desk by email at SCRPFundAdmin@fcc.gov or by calling (202) 418-7540 from 9:00 AM ET to 5:00 PM ET, Monday through Friday, except for Federal holidays. General information and Commission documents regarding the Reimbursement Program are available on the Reimbursement Program webpage, https://www.fcc.gov/supplychain/reimbursement.

-FCC-

Federal Communications Commission
Washington, D.C. 20554

March 8, 2024

DA 24-227
In Reply Refer to:
1800B3-ARR
Released: March 8, 2024

Blueberry Radio
c/o William Spry
5114 Princeton Glendale Road
Liberty Twp, OH 45011
bspry@raduga.net

Re: **Blueberry Radio**
New LPFM, Liberty Township, Ohio
Facility ID No. 785490
Application File No. 0000231962

Petition for Reconsideration

Dear Applicant:

We have before us the Petition for Reconsideration (Petition)[1] filed by Blueberry Radio (Petitioner), seeking reconsideration of the Media Bureau's (Bureau) dismissal of Petitioner's application (Application) for a construction permit for a new low power FM (LPFM) station at Liberty Township, Ohio.[2] For the reasons set forth below, we deny the Petition.

Background. Petitioner filed the Application during the 2023 LPFM Filing Window,[3] and certified that "the proposed facility complies with the engineering requirements of 47 CFR [s]ection 73.807(a) through (g), and 73.825" and did not request a waiver of that rule.[4] On January 19, 2024, Bureau staff dismissed the Application for failure to meet the minimum distance spacing requirements enumerated in section 73.807(a)[5] of the Commission's rules (Rules), with respect to the second-adjacent channel licenses of stations WNKN(FM), Middletown, Ohio and WUBE(FM), Cincinnati, Ohio, and noted that an amendment was not permitted under section 73.870(c) of the Rules.[6]

On January 29, 2024, Petitioner filed the Petition, seeking reinstatement of the Application and a waiver of section 73.870(c) in order to file a second-adjacent waiver exhibit. Specifically, Petitioner: 1)

[1] Pleading File No. 0000237337 (filed Jan. 29, 2024).

[2] Application File No. 0000231962 (filed Dec. 07, 2023).

[3] *Media Bureau Announces Filing Procedures and Requirements for November 1 – November 8, 2023, Low Power FM Filing Window*, Public Notice, DA 23-642 (MB July 31, 2023) (*Procedures Public Notice*). Based on a request from LPFM advocates, the Bureau subsequently delayed the window until December 6, 2023. *Media Bureau Announces Revised Dates for LPFM New Station Application Filing Window*, Public Notice, DA 23-984 (MB Oct. 17, 2023). The Bureau subsequently extended the close of the window until December 15, 2023. *Media Bureau Announces Extension of LPFM New Station Application Filing Window*, Public Notice, DA 23-1150 (MB Dec. 11, 2023).

[4] Application at Technical Certifications, Interference.

[5] *See* 47 CFR § 73.807(a).

[6] *See Broadcast Actions*, Public Notice, Report No. PN-2-240123-01 (MB Jan. 23, 2024) (citing 47 CFR § 73.870(c)). *See also* Application File Nos. 0000084313 and (BLH-20170320AAM) (license applications for WNKN(FM) and WUBE(FM).

characterizes its failure to address the second channel spacing error, without request for a waiver, as a "simple error" on the part of its consulting engineer; 2) argues that a minor amendment could correct the error and warrant reinstatement of the Application *nunc pro tunc*; 3) notes that the Application is a singleton, and 4) requests waiver of section 73.870(c), in order to amend the Application to include a section 73.807 waiver, and submits a corresponding engineering data exhibit.[7]

Discussion. The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission's original determination, or raises additional facts not known or existing at the time of the petitioner's last opportunity to present such matters.[8] Petitioner has not demonstrated any legal error in the Bureau's dismissal of the Application, nor has it cited any precedent that warrants reinstatement.

Section 73.807 Violation. Bureau staff correctly dismissed the Application for failure to meet second-adjacent channel spacing requirements, as outlined in section 73.807(a). Specifically, LPFM applicants must protect authorized FM stations, pending applications for new and existing FM stations filed prior to the release of the *Procedures Public Notice*, authorized LPFM stations, and vacant FM allotments, by meeting the minimum distance separation requirements specified in section 73.807 of the Commission's rules.[9] Pursuant to section 73.870(c), any application submitted during an LPFM filing window that fails to meet the spacing requirements of section 73.807 will be dismissed without opportunity to amend.[10] Moreover, the *Procedures Public Notice* warned LPFM applicants that, "[c]onsistent with established processing rules, an LPFM application that fails to protect these authorizations, applications, and vacant FM allotments will be *dismissed with no opportunity to correct the deficiency*."[11]

Additionally, although section 3(b)(2)(A) of the Local Community Radio Act of 2010 (LCRA) authorizes the Commission to waive second-adjacent channel spacing requirements, an LPFM applicant must specifically request the waiver and demonstrate that its proposed LPFM facilities "will not result in interference to any authorized radio service."[12] The Bureau explicitly cautioned LPFM applicants that it will dismiss any application that fails to comply with the second-adjacent channel spacing requirements without requesting a waiver, supported by the requisite engineering exhibit, and that a dismissed applicant will *not* be permitted to seek *nunc pro tunc* reinstatement of its application.[13]

Here, the Bureau correctly dismissed the Application because Petitioner failed to meet the minimum spacing requirements of section 73.807(a)(1) with respect to second-adjacent stations WNKN(FM) and WUBE(FM), and failed to submit a waiver request and supporting exhibit. The Commission has previously held that the Bureau may properly prohibit dismissed LPFM applicants that

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[7] Petition at 1.

[8] *See* 47 CFR § 1.106(c), (d); *see also WWIZ, Inc.,* Memorandum Opinion and Order, 37 FCC 685, 686 (1964).

[9] *See* 47 CFR § 73.807(a)(1).

[10] *See* 47 CFR § 73.870(c).

[11] *See Procedures Public Notice* at 3 and n.14 (emphasis in original) (citing *Low Power FM Filing Window*, Public Notice, 15 FCC Rcd 24817, 24818 (MB 2000); *Media Bureau Announces Availability of the Revised FCC Form 318 and the Filing Procedures for October 15-October 29, 2013 Low Power FM Filing Window*, Public Notice, 28 FCC Rcd 8854, 8855 (MB 2013); 47 CFR §73.870(c)).

[12] Pub. L. No. 111-371, 124 Stat. 4072 (2011); *see also* 47 CFR § 73.807(e) (outlining LPFM applicant requirements for a second-adjacent channel spacing waiver).

[13] *See Procedures Public Notice* at 4; *see also Clifford Brown Jazz Foundation*, Memorandum Opinion and Order, 29 FCC Rcd 13258 (2014) (*Clifford Brown*) (affirming dismissal of application, without ability to amend and seek reinstatement, where applicant failed to comply with second-adjacent spacing rules and failed to include a waiver request with its application) (citing 47 CFR § 73.870(c)).

did not submit waiver requests of the second-adjacent channel spacing rules in the filing window from filing amendments to correct violations of section 73.807.[14] Petitioner has not demonstrated any basis to contravene the rules and established precedent and reinstate the Application.

Section 73. 870(c) Waiver Request. We reject Petitioner's request of a waiver of section 73.870(c) to allow it to amend the Application to include a waiver of the section 73.807(a) second-adjacent channel spacing rule. The Commission's Rules may be waived only for good cause shown.[15] The Commission must give waiver requests "a hard look," but an applicant for waiver "faces a high hurdle even at the starting gate"[16] and must support its waiver request with a compelling showing.[17] Waiver is appropriate only if both (1) special circumstances warrant a deviation from the general rule, and (2) such deviation better serves the public interest.[18]

Petitioner fails to meet this burden. Petitioner states generally that a waiver "serves the public interest,"[19] but offers no other justification, circumstance, or precedent warranting grant of the request. Petitioner likewise fails to assert a "special circumstance" warranting the waiver beyond the error of its engineer. The Commission, however, has long held that errors of technical assistants are not an excuse for failure to adhere to the Rules.[20] Additionally, the Commission has held that a singleton is not a special circumstance that justifies a waiver of the Rules.[21] Moreover, permitting applicants to file requests to waive section 73.807 minimum distance separation requirements after the close of the filing window and the Commission's dismissal of their application for lack of such a waiver request would frustrate the processing efficiencies which sections 73.807 and 73.870(c) were designed to promote, be unfair to the many applicants who fully complied with the rules and filing requirements, and is therefore, contrary to the public interest.[22] Accordingly, we find Petitioner fails to show that special circumstances warrant a deviation from our rules or that such deviation would serve the public interest.

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[14] *See Christian Charities Deliverance Church*, Memorandum Opinion and Order, 30 FCC Rcd 10548, 10549, para. 5 (2015) (finding *nunc pro tunc* reinstatement inapplicable because it is superseded by section 73.870(c)) (citing *People of Progress*, Memorandum Opinion and Order, 29 FCC Rcd 15065 (2014); *Clifford Brown*, 29 FCC Rcd 13258).

[15] 47 CFR § 1.3.

[16] *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (subsequent history omitted).

[17] *Greater Media Radio Co., Inc*., Memorandum Opinion and Order, 15 FCC Rcd 7090 (1999) (citing *Stoner Broadcasting System, Inc.*, Memorandum Opinion and Order, 49 FCC 2d 1011, 1012 (1974)).

[18] *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

[19] Petition at 1.

[20] *See Roy E. Henderson*, Memorandum Opinion and Order, 33 FCC 3385, 3387-88, para. 6 (2018) (rejecting argument that licensee's engineer was to blame for station's unauthorized operations); *Whidbey Island Ctr. for the Arts*, Forfeiture Order, 25 FCC Rcd 8204, 8205, para. 6 and n.12 (MB 2010) ("the Commission has long held that 'licensees are responsible for the acts and omissions of their employees and independent contractors'"); *Vista Services Corporation*, Forfeiture Order, 15 FCC Rcd 20646, 20650 para. 9, n.24 (2000) ("[e]mployers are routinely held liable for breach of statutory duties, even where the failings are those of an independent contractor").

[21] *See NCE MX Group 543*, Memorandum Opinion and Order, 31 FCC Rcd 1358, 1360-61, para. 6 (2016).

[22] *See Creation of a Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2257 (2000) ("In accordance with our window filing procedure for commercial broadcast applications, after the LPFM window closes, the staff initially will screen applications for the purpose of identifying those that are mutually exclusive and those that fail to protect existing broadcast stations in accordance with the standards adopted herein. Applications that fail to properly protect these existing stations will be dismissed without the applicant being afforded an opportunity to amend. This will increase the speed and efficiency with which LPFM applications can be processed by the staff.").

Conclusion. For the reasons set forth above, **IT IS ORDERED** that the Petition for Reconsideration filed by Blueberry Radio, on January 29, 2024 (Pleading File No. 0000237337), IS DENIED.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

PUBLIC NOTICE

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

News Media Information 202 / 418-0500
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DA 24-228
Released: March 8, 2024

DOMESTIC SECTION 214 APPLICATION FILED FOR THE TRANSFER OF CONTROL OF CBTS TECHNOLOGY SOLUTIONS LLC TO CBTS BORROWER, LLC

NON-STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 24-42

Comments Due: March 22, 2024
Reply Comment Due: March 29, 2024

By this Public Notice, the Wireline Competition Bureau seeks comment from interested parties on an application filed by Cincinnati Bell Inc. (Cincinnati Bell), CBTS Technology Solutions LLC (CBTS-TS), and CBTS Borrower, LLC (CBTS Borrower), (collectively, Applicants), pursuant to section 214 of the Communications Act of 1934, as amended, and sections 63.03-04 of the Commission's rules,[1] requesting consent for the indirect transfer of control of CBTS-TS to CBTS Borrower.[2]

Cincinnati Bell (d/b/a altafiber in Ohio, Indiana, and Kentucky), an Ohio corporation, through its subsidiaries, delivers integrated communications solutions to residential and business customers over its fiber-optic network including high-speed internet, video, voice, and data in multiple states.[3] Cincinnati Bell also provides service in Hawaii under the brand Hawaiian Telcom.[4]

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

[2] Joint Application for Consent to Transfer Indirect Control of Domestic Section 214 Authorization Holders, CBTS Technology Solutions LLC to CBTS Borrower, LLC, WC Docket No. 24- 24 (filed on Feb. 7, 2024) (Application). Applicants filed supplements to their application on February 26, 2024 and March 6, 2024. Letter from Andrew D. Lipman et. al., Counsel for Cincinnati Bell and CBTS-TS, and Marc A. Korman, Counsel for CBTS Borrower, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 24-42 (filed Feb. 26, 2024) (Feb. 26 Supplement); Letter from Andrew D. Lipman et. al., Counsel for Cincinnati Bell and CBTS-TS, and Marc A. Korman, Counsel for CBTS Borrower, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 24-42 (filed Mar. 6, 2024) (Mar. 6 Supplement). Applicants also filed applications for the transfer of international authorizations. Any action on this application is without prejudice to other pending applications before the Commission.

[3] Application at 3. Cincinnati Bell subsidiaries that provide telecommunication services that are not subject to this proposed transaction include: Cincinnati Bell Telephone Company LLC, Cincinnati Bell Extended

CBTS-TS, a subsidiary of CBTS LLC (a Delaware limited liability company and a direct subsidiary of Cincinnati Bell), is a Delaware limited liability company offering or providing resold domestic telecommunications services and other services to enterprise customers in every state, except Alaska and California, and the District of Columbia.[5]

CBTS Borrower, a Delaware limited liability company, is an indirect subsidiary of and is ultimately controlled by Neal Moszkowski (United States citizen) and Ramez Sousou (United Kingdom citizen).[6] Applicants state that Jonathan Blizin, a U.S. citizen, and Karim Saddi, a citizen of France, are each expected to acquire a 10% or greater interest in TowerBrook's Fund VI fund family during the pendency of the Application.[7] Applicants further state that CBTS Borrower does not provide telecommunications services and has no affiliates that provide domestic telecommunications services.[8]

Pursuant to the terms of the Equity Purchase Agreement and Plan of Merger, Cincinnati Bell will sell to CBTS Borrower all of the issued and outstanding limited liability company interests of CBTS LLC.[9] Thus, as a result of the proposed transaction, CBTS-TS will become wholly-owned subsidiaries of CBTS Borrower.[10]

Applicants assert that the proposed transaction is consistent with the public interest, convenience, and necessity.[11] 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.[12]

Referral to Executive Branch Agencies. Through this Public Notice, pursuant to Commission practice, the Application and the associated international application, ITC-T/C-20240207-00028, are being 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 Applicants.[13]

Territories LLC, Hawaiian Telcom, Inc., Hawaiian Telcom Services Company, Inc., and Wavecom Solutions Corporation. *Id.* at 10-11.

[4] *Id.* at 3.

[5] *Id.* at 10; Feb. 26 Supplement.

[6] *Id.* at 2.

[7] Mar. 6 Supplement at 1, 4.

[8] *Id.* at 10.

[9] *Id.* at 4.

[10] *Id.*

[11] Application at Exh. B.

[12] 47 CFR § 63.03(c)(1)(v).

[13] 47 CFR § 1.40001. *See Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket No. 16-155, Report and Order, 35 FCC Rcd 10927 (2020), Erratum (Appendix B — Final Rules), DA 20-1404 (OMD/IB rel. Nov. 27, 2020); *see also Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-*

Domestic Section 214 Application Filed for the Indirect Transfer of Control of
CBTS Technology Solutions LLC to CBTS Borrower, LLC,
WC Docket No. 24-42 (filed Feb. 7, 2024).

GENERAL INFORMATION

The application identified herein has been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies.

Interested parties may file comments **on or before March 22, 2024**, and reply comments **on or before March 29, 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.[14] 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) Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, dennis.johnson@fcc.gov;
3) David Krech, Office of Internal Affairs, david.krech@fcc.gov; and
4) Jim Bird, Office of General Counsel, jim.bird@fcc.gov.

Affiliated Entities, IB Docket Nos. 97-142 and 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23918-19, paras. 61-63 (1997), recon. denied, 15 FCC Rcd 18158 (2000).

[14] 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.[15] 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 Tracey Wilson at (202) 418-1394 or Dennis Johnson at (202) 418-0809.

-FCC-

[15] *See* 47 CFR § 1.45(c).

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-229
Released: March 8, 2024

WIRELINE COMPETITION BUREAU ANNOUNCES E-RATE AND RHC PROGRAMS' INFLATION-BASED CAPS FOR FUNDING YEAR 2024

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

Pursuant to sections 54.507(a)(3) and 54.619(a)(3) of the Commission's rules,[1] the Wireline Competition Bureau (Bureau) announces the E-Rate and Rural Health Care (RHC) programs' annual caps for funding year 2024.[2] The adjusted amounts represent a 3.6% inflation-adjusted increase to both programs' funding year 2023 annual caps.[3]

[1] 47 CFR §§ 54.507(a)(3), 54.619(a)(3).

[2] 47 CFR §§ 54.507(a)(1)-(2); 54.619(a)(1)-(2) (requiring an adjustment of the E-Rate and RHC programs' annual caps for funding based on the gross domestic product chain-type price index (GDP-CPI) measure of inflation). *See also Schools and Libraries Universal Service Support Mechanism; A National Broadband Plan For Our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Sixth Report and Order, 25 FCC Rcd 18762, 18782, para. 39 (2010) (*E-Rate Sixth Report and Order*); *Promoting Telehealth In Rural America*, WC Docket No. 17-310, Report and Order, 33 FCC Rcd 6574, 6580, para. 13 (2018) (*RHC Program Funding Cap Order*); *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Report and Order, 34 FCC Rcd 7335, 7400-02, paras. 138-140 (2019) (*2019 Promoting Telehealth Report and Order*). We also note that the E-Rate program is formally known as the schools and libraries universal service support program.

[3] National Income and Product Accounts Table, Bureau of Economic Analysis, revised Feb. 28, 2024, Table 1.1.4 (GDP-CPI), https://apps.bea.gov/iTable/?reqid=19&step=2&isuri=1&categories=survey&_gl=1*14yafjt*_ga*NTA2OTA0NDM0LjE3MDg2MjQwMDQ.*_ga_J4698JNNFT*MTcwODYyNDIxNy4xLjEuMTcwODYyNTkyMy41NC4wLjA.#eyJhcHBpZCI6MTksInN0ZXBzIjpbMSwyLDNdLCJkYXRhIjpbWyJjYXRlZ29yaWVzIiwiU3VydmV5Il0sWyJOSVBBX1RhYmxlX0xpc3QiLCI0Il1dfQ==. We calculate an increase of 3.6% in the rate of inflation based on the gross domestic product average across four quarters of 117.996 in 2022 and 122.283 in 2023. We note that the 2022 gross domestic product figure was revised downward by the Bureau of Economic Analysis (BEA) since the date the Bureau announced the E-Rate and RHC program annual caps for funding year 2023. *See, e.g.*, *Wireline Competition Bureau Announces E-Rate and RHC Programs' Inflation-Based Caps for Funding Year 2023*, CC Docket No. 02-06, WC Docket No. 02-60, Public Notice, DA 23-178, n.3 (WCB Mar. 3, 2023) (*FY 2023 Inflation Funding Cap Public Notice*) (using a gross domestic product figure of 127.225 for 2022 to determine E-Rate and RHC programs' annual caps for funding year 2023).

E-Rate Program: The E-Rate program funding cap for funding year 2024 is $4,940,076,139.[4] This amount represents a 3.6% inflation-adjusted increase to $4,768,413,261, the annual cap for the program last year.[5] In 2010, the Commission began adjusting the E-Rate program's annual cap based on the rate of inflation using the Gross Domestic Product – Chain-type Price Index (GDP-CPI) to help ensure funding keeps pace with the changing broadband and telecommunications needs of schools and libraries.[6]

RHC Program: The RHC program funding cap for funding year 2024 is $706,926,603.[7] The internal cap for upfront payments and multi-year commitments in the Healthcare Connect Fund program is $178,496,951.[8] The internal cap for upfront payments and multi-year commitments will apply only if RHC program demand exceeds available funding.[9] These new funding caps represent a 3.6% inflation-adjusted increase to the $682,361,586 RHC program funding cap and the $172,294,354 internal cap for the Healthcare Connect Fund program's multi-year commitments and upfront payments from funding year 2023.[10] The Commission began indexing the RHC program annual cap to inflation in 2018 to ensure that the RHC program funding keeps pace with the changing broadband and telecommunications needs of rural health care providers.[11] In 2020, the Commission also began indexing the internal cap on multi-year commitments and upfront payments to inflation to prevent inflation from eroding the purchasing power of health care providers requesting multi-year commitments and upfront payments through the Healthcare Connect Fund Program.[12]

For further information, please contact James Bachtell, Wireline Competition Bureau at (202) 418-7400.

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[4] This amount represents a $171,662,877 increase for the E-Rate program funding cap as a whole, including a $128,425,036 increase for the category one services funding level and a $43,237,841 increase for the category two services funding level. *See also* 47 CFR § 54.507(a)(3) (noting that the Bureau will release a public notice "announcing any increase of the annual funding cap including any increase to the $1 billion funding level available for category two services based on the rate of inflation"). The E-Rate program's funding year 2024 runs from July 1, 2024, to June 30, 2025.

[5] *See supra* note 3; *FY 2023 Inflation Funding Cap Public Notice*.

[6] *E-Rate Sixth Report and Order*, 25 FCC Rcd at 18781, para. 36. The Commission did not increase the funding cap for funding year 2015 pursuant to section 54.507(a)(1) of the Commission's rules. 47 CFR § 54.507(a)(1).

[7] This represents a $24,565,017 increase for the RHC program funding cap. The RHC program's funding year 2024 runs from July 1, 2024 to June 30, 2025.

[8] This represents a $6,202,597 increase for the internal cap on multi-year commitments and upfront payments under the Healthcare Connect Fund Program.

[9] *See* 47 CFR § 54.619(a); *see also Promoting Telehealth in Rural America*, WC Docket No. 17-310, Order on Reconsideration, Second Report and Order, Order, and Second Further Notice of Proposed Rulemaking, 38 FCC Rcd 827, 852, para. 60 (2023).

[10] *See RHC Program Funding Cap Order*, 33 FCC Rcd at 6584, para. 23; *2019 Promoting Telehealth Report and Order*, 34 FCC Rcd at 7401, para. 139; *FY 2023 Inflation Funding Cap Public Notice.*

[11] 47 CFR § 54.619(a)(1)-(2); *RHC Program Funding Cap Order*, 33 FCC Rcd at 6583, para. 21.

[12] 47 CFR § 54.619(a)(1)-(2); *2019 Promoting Telehealth Report and Order*, 34 FCC Rcd at 7401, para. 139.

Federal Communications Commission
Washington, D.C. 20554

March 11, 2024

DA 24-230
In Reply Refer to:
1800B3-ARR
Released: March 11, 2024

Unity Media and Radio
c/o Jim Turvaville
360 Patton Street - PO Box 144
Mobeetie, TX 79061
jimturbo61@gmail.com

Re: **Unity Media and Radio**
New LPFM, Athens, Tennessee
Facility ID No. 785062
Application File No. 0000231468

Petition for Reconsideration

Dear Applicant:

We have before us the Petition for Reconsideration (Petition)[1] filed by Unity Media and Radio (Petitioner), seeking reconsideration of the Media Bureau's (Bureau) dismissal of Petitioner's application (Application) for a construction permit for a new low power FM (LPFM) station at Athens, Tennessee.[2] For the reasons set forth below, we deny the Petition.

Background. Petitioner filed the Application during the 2023 LPFM Filing Window,[3] and certified that "the proposed facility complies with the engineering requirements of 47 CFR [s]ection 73.807(a) through (g), and 73.825."[4] On January 17, 2024, Bureau staff dismissed the Application for failure to meet the minimum distance spacing requirements enumerated in section 73.807(a)[5] of the Commission's rules (Rules), with respect to the co-channel license of station WKVL(FM), Greenback, Tennessee, and noted that an amendment was not permitted under section 73.870(c) of the Rules.[6]

On February 1, 2024, Petitioner filed the Petition, seeking reinstatement of the Application and a waiver of section 73.870(c) in order to amend the Application to operate on Channel 297 instead of Channel 285. Specifically, Petitioner characterizes the co-channel spacing error as a "simple database

[1] Pleading File No. 0000237208 (filed Jan. 29, 2024).

[2] Application File No. 0000231468 (filed Dec. 6, 2023).

[3] *Media Bureau Announces Filing Procedures and Requirements for November 1 – November 8, 2023, Low Power FM Filing Window*, Public Notice, DA 23-642 (MB July 31, 2023) (*Procedures Public Notice*). Based on a request from LPFM advocates, the Bureau subsequently delayed the window until December 6, 2023. *Media Bureau Announces Revised Dates for LPFM New Station Application Filing Window*, Public Notice, DA 23-984 (MB Oct. 17, 2023). The Bureau subsequently extended the close of the window until December 15, 2023. *Media Bureau Announces Extension of LPFM New Station Application Filing Window*, Public Notice, DA 23-1150 (MB Dec. 11, 2023).

[4] Application at Technical Certifications, Interference.

[5] *See* 47 CFR § 73.807(a).

[6] *See Broadcast Actions*, Public Notice, Report No. PN-2-240119-01 (MB Jan. 19, 2024) (citing 47 CFR § 73.870(c)). *See also* Application File No. 0000221248 (license application for WKVL(FM)).

error" on the part of its consulting engineer, and argues that a minor amendment could correct the error to avoid mutual exclusivity, and warrants reinstatement of the Application *nunc pro tunc*.[7]

Discussion. The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission's original determination, or raises additional facts not known or existing at the time of the petitioner's last opportunity to present such matters.[8] Petitioner has not demonstrated any legal error in the Bureau's dismissal of the Application, nor has it cited any precedent that warrants reinstatement.

Section 73.807 Violation. Bureau staff correctly dismissed the Application for failure to meet the co-channel spacing requirements, as outlined in section 73.807(a). Specifically, LPFM applicants must protect authorized FM stations, pending applications for new and existing FM stations filed prior to the release of the *Procedures Public Notice*, authorized LPFM stations, and vacant FM allotments, by meeting the minimum distance separation requirements specified in section 73.807 of the Commission's rules.[9] Pursuant to section 73.870(c), any application submitted during an LPFM filing window that fails to meet the spacing requirements of section 73.807 will be dismissed without opportunity to amend.[10] Moreover, the *Procedures Public Notice* warned LPFM applicants that, "[c]onsistent with established processing rules, an LPFM application that fails to protect these authorizations, applications, and vacant FM allotments will be *dismissed with no opportunity to correct the deficiency*."[11]

In addition, Section 3(b)(1) of the Local Community Radio Act of 2010 (LCRA) statutorily bars the Commission from "amend[ing] its rules to reduce the minimum co-channel and first-and second-adjacent channel distance separation requirements" in effect on the date of its enactment, and the Commission cannot waive the co-channel minimum distance spacing requirements imposed by statute.[12]

Here, the Bureau correctly dismissed the Application because Petitioner failed to meet the minimum spacing requirements of section 73.807(a)(1) with respect to co-channel station WKVL(FM). The Commission has previously held that the Bureau may properly prohibit dismissed LPFM applicants that did not comply with the co-channel spacing rules in the filing window from filing amendments to correct violations of section 73.807.[13] Additionally, typographical error claims cannot be used to justify

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[7] Petition at 1.

[8] *See* 47 CFR § 1.106(c), (d); *see also WWIZ, Inc.,* Memorandum Opinion and Order, 37 FCC 685, 686 (1964).

[9] *See* 47 CFR § 73.807(a)(1).

[10] *See* 47 CFR § 73.870(c).

[11] *See Procedures Public Notice* at 3 and n.14 (emphasis in original) (citing *Low Power FM Filing Window*, Public Notice, 15 FCC Rcd 24817, 24818 (MB 2000); *Media Bureau Announces Availability of the Revised FCC Form 318 and the Filing Procedures for October 15-October 29, 2013 Low Power FM Filing Window*, Public Notice, 28 FCC Rcd 8854, 8855 (MB 2013); 47 CFR §73.870(c)); *see also Christian Charities Deliverance Church*, Memorandum Opinion and Order, 30 FCC Rcd 10548, 10552-53, paras. 11-12 (2015) (*Christian Charities*) (affirming section 73.870(c) dismissal of applications for failure to meet minimum spacing requirements).

[12] Pub. L. No. 111-371, 124 Stat. 4072 (2011). *See also Rural Health Care Support Mechanism*, Order, 22 FCC Rcd 20360, 20415, para. 106 (2007) ("although the Commission has authority to waive regulatory requirements, it does not have authority to waive a requirement imposed by statute"); *Federal-State Joint Board on Universal Service*, Memorandum Opinion and Order, 15 FCC Rcd 7170, 7178, para. 13 (1999) (rejecting request to waive statute); *see also Chrysler Corp. v. Brown*, 441 U.S. 281, 302 (1979) ("[T]he exercise of quasi-legislative authority by governmental departments and agencies must be rooted in a grant of such power by the Congress and subject to the limitations which that body imposes.").

[13] *See Calvary Chapel of Bremerton*, Letter Order, 28 FCC Rcd 15537, 15538-39 (MB 2013) (dismissing LPFM applications that fail to meet minimum co-channel spacing requirements, and noting that the Commission does not

filing an otherwise prohibited amendment.[14] Petitioner has not demonstrated any basis to contravene the rules and established precedent and reinstate the Application.

Section 73.870(c) Waiver Request. We reject Petitioner's request of a waiver of section 73.870(c) to allow it to amend the Application to operate on Channel 297 instead of Channel 285. The Commission's Rules may be waived only for good cause shown.[15] The Commission must give waiver requests "a hard look," but an applicant for waiver "faces a high hurdle even at the starting gate"[16] and must support its waiver request with a compelling showing.[17] Waiver is appropriate only if both (1) special circumstances warrant a deviation from the general rule, and (2) such deviation better serves the public interest.[18]

Petitioner fails to meet this burden. Petitioner states generally that a waiver "serves the public interest,"[19] but offers no other justification, circumstance, or precedent warranting grant of the request. Petitioner likewise fails to assert a "special circumstance" warranting the waiver beyond the error of its engineer. The Commission, however, has long held that errors made by engineering consultants are not an excuse for failure to adhere to the Rules.[20] Additionally, the Commission has held that the fact that an application is a singleton[21] is not a special circumstance that justifies a waiver of the Rules.[22] Moreover, permitting applicants to file application amendments to resolve section 73.807 minimum distance separation requirements after the close of the filing window and the Commission's dismissal of their application would frustrate the processing efficiencies which sections 73.807 and 73.870(c) were designed to promote, be unfair to the many applicants who fully complied with the rules and filing requirements, and is therefore, contrary to the public interest.[23] Accordingly, we find Petitioner fails to

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have authority to waive co-channel spacing requirements); *see also Christian Charities* 30 FCC Rcd at 10552-53, paras. 11-12.

[14] *NCE MX Group 82*, Letter Order, DA 23-348 (MB Apr. 25, 2023) (rejecting argument to correct typographical error where corrective amendment was prohibited because it would result in increased mutually exclusivity and was a major amendment).

[15] 47 CFR § 1.3.

[16] *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (subsequent history omitted).

[17] *Greater Media Radio Co., Inc*., Memorandum Opinion and Order, 15 FCC Rcd 7090 (1999) (citing *Stoner Broadcasting System, Inc.*, Memorandum Opinion and Order, 49 FCC 2d 1011, 1012 (1974)).

[18] *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

[19] Petition at 1.

[20] *See Roy E. Henderson*, Memorandum Opinion and Order, 33 FCC 3385, 3387-88, para. 6 (2018) (rejecting argument that licensee's engineer was to blame for station's unauthorized operations); *Whidbey Island Ctr. for the Arts*, Forfeiture Order, 25 FCC Rcd 8204, 8205, para. 6 and n.12 (MB 2010) ("the Commission has long held that 'licensees are responsible for the acts and omissions of their employees and independent contractors'"); *Vista Services Corporation*, Forfeiture Order, 15 FCC Rcd 20646, 20650 para. 9, n.24 (2000) ("[e]mployers are routinely held liable for breach of statutory duties, even where the failings are those of an independent contractor").

[21] An application which is not in conflict with any other application is deemed a singleton application.

[22] *See NCE MX Group 543*, Memorandum Opinion and Order, 31 FCC Rcd 1358, 1360-61, para. 6 (2016).

[23] *See Creation of a Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2257 (2000) ("In accordance with our window filing procedure for commercial broadcast applications, after the LPFM window closes, the staff initially will screen applications for the purpose of identifying those that are mutually exclusive and those that fail to protect existing broadcast stations in accordance with the standards adopted herein. Applications that fail to properly protect these existing stations will be dismissed without the applicant being afforded an opportunity to amend. This will increase the speed and efficiency with which LPFM applications can be processed by the staff.").

show that special circumstances warrant a deviation from our rules or that such deviation would serve the public interest.

Conclusion. For the reasons set forth above, **IT IS ORDERED** that the Petition for Reconsideration filed by Unity Media and Radio, on January 29, 2024 (Pleading File No. 0000237208), IS DENIED.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

PUBLIC NOTICE

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DA 24-231
Released March 11, 2024

CHAIRWOMAN ROSENWORCEL ANNOUNCES THE NEW MEMBERS OF THE INTERGOVERNMENTAL ADVISORY COMMITTEE

Federal Communications Commission (FCC) Chairwoman Jessica Rosenworcel today announced the new members of the FCC's Intergovernmental Advisory Committee (IAC) and named Lieutenant Governor Garlin Gilchrist II of Michigan as Chair of the IAC, and Chairman and CEO Marshall Pierite of the Tunica-Biloxi Tribe of Louisiana as Vice-Chair. The IAC is comprised of elected officials of municipal, county, state, and Tribal governments that will meet with Commission officials to exchange views, information and advice on a range of telecommunications issues for which state, local and Tribal governments explicitly or inherently share responsibility or administration with the Commission.

BACKGROUND AND MISSION

On February 7, 2023, the Commission announced the reauthorization of the IAC,[1] and sought nominations for membership to the committee.[2] The reauthorized IAC will operate for two years, with an option for the Commission to reauthorize it at the end of the two-year period.[3] The term will commence with the new IAC's first meeting on April 18, 2024.

During its two-year term, the IAC may be tasked by the Chairwoman to produce specific deliverables that will further the Commission's programs, mission and objectives, which may include those related to increasing deployment and adoption of broadband services and any other tasks that may assist state, local, and Tribal government officials to better implement or describe the availability of Commission programs to their constituents and other members of the public. The Office of Intergovernmental Affairs (IGA) within the Consumer & Governmental Affairs Bureau is the Chairwoman's designee to serve as liaison to the IAC and provide oversight of the committee.

COMPOSITION OF THE IAC

Pursuant to Section 0.701(b) of the Commission's rules, the IAC should consist of thirty members (or their designated employees), with a minimum of four elected municipal officials (city mayors and city council members); two elected county officials (county commissioners or council members); one elected or appointed local government attorney; one elected state executive (governor or

[1] The prior term of the IAC expired on September 22, 2022.

[2] *FCC Announces Reauthorization of Its Intergovernmental Advisory Committee and Solicits Nominations for Membership on the Committee*, Public Notice, DA 23-109 2023, WL 1926867 (CGB Feb. 7, 2023). Subsequently, in order to provide all interested parties with the opportunity to apply for membership, the deadline for submitting applications was extended, to May 12, 2023. *FCC Announces Extension of Deadline to Submit Nominations for Membership on the Intergovernmental Advisory Committee*, Public Notice, DA 20-307 2020, WL 2951022 (CGB Apr. 13, 2023).

[3] *See* 47 CFR § 0.701(a)

lieutenant governor); three elected state legislators; one elected or appointed public utilities or public service commissioner; and three elected or appointed Tribal representatives.[4]

MEMBERS OF THE IAC

The newly appointed IAC members are:

State Executive Representatives (3)

Roy Cooper, Governor, North Carolina
Designee: Nate Denny, Deputy Secretary, Broadband and Digital Equity, Department of Information Technology
Henry McMaster, Governor, South Carolina
Designee: James Stritzinger, Director, South Carolina Broadband Office, South Carolina Office of Regulatory Staff
Garlin Gilchrist II, Lieutenant Governor, Michigan **(Chair)**
Designee: Eric Frederick, Chief Connectivity Officer, Michigan High-Speed Internet Office, Michigan Department of Labor and Economic Opportunity

Municipal Representatives (8)

Tim Rosener, Mayor, Sherwood, Oregon
Joseph Goldstein, Marietta City Council Member, Marietta, Georgia
Chris Amorose Groomes, Mayor, Dublin, Ohio
Susan Farber, City Council Representative, Dubuque, Iowa
Dr. Alix Desulme, Mayor, City of North Miami, Florida
Erik Sickinger, Town Council Member, Irmo, South Carolina
Dr. Adriana Rocha Garcia, Town Council Member, San Antonio, Texas
Ted Wheeler, Mayor, Portland, Oregon
Designee: Andrew Speer, Franchise Utility Program Manager

County Representatives (7)

Dr. Jonathan Todd Finnell, Superintendent of Schools, Imperial County, California
Gregg Weiss, Commissioner, Palm Beach County, FL
Tarryl Clark, Commissioner, Stearns County, Minnesota
Alan Perdue, Commissioner, Guilford County, North Carolina
Joanna Mackenzie, County Judge, Hudspeth County, Texas
J.D. Clark, County Judge, Wise County, Texas
Terry Cook, Commissioner, Williamson County, Texas

City Attorney Representative (1)

Victor Gordo, Mayor, Pasadena, California
Designee: Javan Rad, Chief Assistant City Attorney

State Legislative Representatives (4)

Cindy Ryu, State Representative, Washington
Louis Riggs, State Representative, Missouri
Matt Pierce, State Representative, Indiana
Angelo J. Puppolo, State Representative, Massachusetts

[4] *See* 47 CFR § 0.701 (b).

State Public Utility Commission Representatives (3)

Tony Evers, Governor, Wisconsin
Designee: Alyssa Kenney, Director of Broadband and Digital Equity, Wisconsin State Broadband Office, Wisconsin Public Service Commission
Dan Watermeier, Chair, Nebraska Public Service Commission
Designee: Cullen Robbins, Director of Telecommunications, Nebraska Universal Service Fund Department, Nebraska Public Service Commission
Muriel Bowser, Mayor, Washington, D.C.
Designee: Thaddeus Johnson, Chief of Staff, Office of Technical and Regulatory Affairs, Public Service Commission of the District of Columbia

Tribal Representatives (4)

Paul Russell, Vice President, Fort McDowell Yavapai Nation, Arizona
Designee: Orlando Moreno, Director of Community and Economic Development of the Fort McDowell Yavapai Nation
Jarred-Michael Erickson, Chairperson, Colville Business Council, Confederate Tribes of the Colville Reservation, Washington
Designee: Ernie Rasmussen, Executive Director, Bigfoot Communications of the Confederated Tribes of the Colville Reservation
Richard Peterson, President, Central Council of the Tlingit and Haida Indian Tribes of Alaska
Designee: Christopher Cropley, Director, Tidal Network
Marshall Pierite, Chairman and CEO of the Tunica-Biloxi Tribe of Louisiana **(Vice-Chair)**

EXEMPTION FROM THE FEDERAL ADVISORY COMMITTEE ACT

Pursuant to the "intergovernmental communications" exemption of the Unfunded Mandates Reform Act of 1995 (UMRA),[5] the IAC is not subject to the Federal Advisory Committee Act (FACA), 5 U.S.C. Ch. 10 (1988).

ACCESSIBLE FORMATS

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

FURTHER INFORMATION

For further information, please contact: Donna Cyrus, Senior Attorney Advisor, Office of Intergovernmental Affairs, Consumer and Governmental Affairs Bureau, Federal Communications Commission, (202) 418-7325, Donna.Cyrus@fcc.gov.

[5] *See* 2 U.S.C. § 1534 (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 24-232
Released: March 11, 2024

WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON THE EXELON UTILITIES' REQUESTS FOR WAIVER OF SECTION 90.613

WT Docket No. 24-80

Comments Due: April 10, 2024
Reply Comments Due: April 25, 2024

By this Public Notice, we seek comment on requests from subsidiaries of Exelon Corporation for waiver of section 90.613 of the Commission's rules to grant two additional 800 MHz channel pairs to allow use of mobile-to-mobile communications on the subsidiaries' existing 800 MHz Land Mobile Radio (LMR) system to use for mobile-only talk around communications throughout parts of its service territory.[1]

Exelon Corporation is an American utility company that operates six subsidiaries that serve more than ten million customers across five states and the District of Columbia.[2] The subsidiaries seeking waiver are Atlantic City Electric Company (ACE), Baltimore Gas and Electric Company (BGE), Commonwealth Edison Company (ComEd), Delmarva Power & Light Company (DPL), PECO Energy Company (PECO), and Potomac Electric Power Company (PEPCO) (collectively "the Exelon Utilities").[3]

Section 90.613 of the Commission's rules sets forth frequencies and limits these frequencies to communications between a base station and a mobile station; base stations are required to transmit in the 851–869 MHz band while mobile stations are required to transmit in the 806–824 MHz band.[4] In their waiver requests, the Exelon Utilities request "two channel pairs for talk around to be deployed throughout its service territory where coverage gaps persist" for use on a secondary basis.[5] The Exelon Utilities

[1] *See* Atlantic City Electric Company, File Nos. 0010535966, 0010536278, 0010537955 (filed May 9–10, 2023); Baltimore Gas and Electric Company, File Nos. 0010538283, 0010538301, 0010538310, 0010538282, 0010538286, 0010538299 (filed May 10, 2023); Commonwealth Edison Company, File Nos. 0010538312, 0010538601, 0010538611, 0010538614, 0010538618 (filed May 10, 2023); Delmarva Power & Light Company, File Nos. 0010538603, 0010538607, 0010538619, 0010540868 (filed May 10–11, 2023); PECO Energy Company, File Nos. 0010539693, 0010539697, 0010539698, 0010539691, 0010539700 (filed May 11, 2023); Potomac Electric Power Company, File Nos. 0010539953, 0010542482 (May 11–12, 2023) (collectively "Exelon Waiver Requests"). See the map included at the end of each waiver request for information about the service territory of each subsidiary. Exelon Waiver Requests at 6.

[2] *Id.* at 1, 6.

[3] *Id.* ACE provides service to southern New Jersey, BGE provides service to Baltimore City and its surrounding Maryland counties, ComEd provides service to northern Illinois, DPL provides service to eastern Maryland and Delaware, PECO provides service to Philadelphia and its surrounding Pennsylvania counties, and PEPCO provides service to Washington, D.C. and its surrounding Maryland counties. *Id.* at 6.

[4] 47 CFR § 90.613.

[5] Exelon Waiver Requests at 3, 4.

assert that the mobile-to-mobile communications would be utilized at the same power levels currently permitted for mobile units to ensure there is no increased risk of "interference to adjacent channel licensees or co-channel licensees."[6]

The Bureau seeks comment on the Exelon Utilities' requests. Interested parties may file comments on or before the date indicated on the first page of this document.

Procedural Matters

To develop a complete record on the issues presented by the Requests, the proceeding will be treated, for *ex parte* purposes, as a "permit-but-disclose" proceeding in accordance with section 1.1200(a) of the Commission's rules,[7] subject to the requirements under section 1.1206(b).[8] The Exelon Utilities filed their Requests electronically in the Commission's Universal Licensing System. We have opened a new docket, **WT Docket No. 24-80**, to facilitate consideration of the Requests and have moved the Exelon Utilities' Requests into this docket. Parties should file all comments and reply comments in **WT Docket No. 24-80**.

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.[9] Parties may file comments, identified by **WT Docket No. 24-80**, 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): 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.[10]

[6] *Id.* at 2.

[7] 47 CFR § 1.1200(a).

[8] 47 CFR § 1.1206(b).

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

[10] *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.

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

Ex Parte Rules. As stated above, the proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[11] Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Additional Information. For further information regarding this Public Notice, please contact Katherine Patsas Nevitt at Katherine.Nevitt@fcc.gov or Christine Parola at Christine.Parola@fcc.gov.

-FCC-

[11] 47 CFR §§ 1.1200 *et seq.*

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

In the Matter of	)	
	)	
Facilitating Shared Use in the 3100-3550 MHz Band	)	WT Docket No. 19-348
	)	
	)	

ORDER

Adopted: March 11, 2024 **Released: March 11, 2024**

By the Chiefs, Wireless Telecommunications Bureau and the Office of Engineering and Technology:

I. INTRODUCTION

1. In this Order, the Wireless Telecommunications Bureau and the Office of Engineering and Technology (WTB/OET) make a non-substantive, editorial revision to section 2.106(c)(431), Table 22.[1] Consistent with the recommendation of the Department of Defense (DoD), WTB/OET revise section 2.106(c)(431), Table 22, of the Commission's rules to delete the Norfolk, Virginia Cooperative Planning Area (CPA) (Norfolk CPA) from the list of CPAs and Periodic Use Areas (PUAs) in Table 22 as redundant because the Norfolk CPA is entirely encompassed within the larger Newport News, Virginia CPA/PUA.[2] As part of this change, and consistent with DoD's request, WTB/OET also rename the Newport News CPA/PUA as the "Newport News-Norfolk CPA/PUA."[3]

II. BACKGROUND

2. Historically, the 3.45 GHz band (3450–3550 MHz) was a predominantly federal band, with limited non-federal use, and DoD in particular operated a number of defense radar systems in the band.[4] In 2020, the Commission adopted the *3.45 GHz R&O and FNPRM*, in which it removed

[1] 47 CFR § 2.106(c)(431), Table 22.

[2] The Commission was notified of DoD's recommendation to delete the Norfolk, Virginia CPA by the National Telecommunications and Information Administration (NTIA). *See* Letter from Scott Patrick, Executive Director, Office of Spectrum Management, U.S. Department of Commerce, National Telecommunications and Information Administration, to Ronald T. Repasi, Chief, Office of Engineering and Technology, and Joel Taubenblatt, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, WT Docket No. 19-348 (filed Feb. 29, 2024) (NTIA Letter), https://www.fcc.gov/ecfs/document/10229079099187/1 (citing Memorandum from Vernita D. Harris, Director, Electromagnetic Spectrum Enterprise Policy and Programs, Department of Defense to Associate Administrator, Office of Management, National Telecommunications and Information Administration, https://www.fcc.gov/ecfs/document/10229079099187/2 (DoD Memorandum)). NTIA supports DoD's recommendation and has requested that the Commission modify its regulatory guidance accordingly for the 3.45 GHz band. *See* NTIA Letter at 2.

[3] *See* DoD Memorandum at 1.

[4] *See Facilitating Shared Use in the 3100-3550 MHz Band*, WT Docket No. 19-348, Second Report and Order, Order on Reconsideration, and Order of Proposed Modification, 36 FCC Rcd 5987, 5992, para. 9 (2021) (*3.45 GHz Band Second R&O*). In March 2021, the Commission announced Auction 110, which offered 100 megahertz of mid-band spectrum in the 3.45-3.55 GHz band for flexible use. *See Auction of Flexible-Use Service Licenses in the 3.45-3.55 GHz Band for Next-Generation Wireless Services; Comment Sought on Competitive Bidding Procedures*
(continued….)

secondary, non-federal allocations from the band and sought comment on restructuring the band to permit coordinated federal and non-federal use.[5] In 2021, the Commission adopted the *3.45 GHz Second R&O*, which created a new 3.45 GHz Service, including a cooperative sharing regime.[6] Under this sharing regime, non-federal systems have unencumbered, full-power use of the entire band across the contiguous United States except for limited locations and circumstances—in effect, within CPAs and PUAs, where current incumbent federal systems remain in the band and non-federal systems are not entitled to protection from federal operations.[7]

3. Commercial operations are not precluded in CPAs and PUAs, but prior coordination between federal incumbents and commercial operations is required.[8] Consistent with DoD's recommendation, the Commission defined CPAs as "geographic locations in which non-federal operations shall coordinate with federal systems in the band to deploy non-federal operations in a manner that shall not cause harmful interference to federal systems operating in the band."[9] In CPAs, operators of non-federal stations may be required to modify their operations to protect federal operations against harmful interference and may not claim interference protection from federal systems.[10] For each CPA, the Commission provided either a point and radius or a series of geographic coordinates (creating a polygon) to define the boundary of the area, which allows non-federal operators to determine precisely which areas require coordination with DoD.[11] DoD also identified several PUAs, which, consistent with DoD's recommendation, the Commission defined as "geographic locations in which non-Federal operations in the band shall not cause harmful interference to Federal systems operating in the band *for episodic periods*."[12] To enable non-federal licensees to determine the areas that require coordination with DoD, the center locations and dimensions for all CPA and PUA coordination areas are defined in section 2.106(c)(431) of the Commission's rules.[13]

4. In the *3.45 GHz Band Second R&O,* the Commission expressly delegated authority to WTB and OET to reduce the size of CPAs and PUAs.[14] The Commission provided that "in the event that the DoD modifies its use in any existing Cooperative Planning or Periodic Use Area so as to *decrease* the size of such area, we delegate authority to [WTB/OET], in coordination with NTIA, to reflect such smaller areas in our rules."[15] In addition to this specific delegation, the Commission broadly delegated additional authority to WTB and OET to create additional CPAs and PUAs as necessary to facilitate commercial network expansion into areas outside the contiguous United States when NTIA provides notice that non-federal operations can occur, to consider applications and assign licenses for partial

for Auction 110, AU Docket No. 21-62, Public Notice, 36 FCC Rcd 6100 (2021); *see also 3.45 GHz Band Second R&O*.

[5] *See generally Facilitating Shared Use in the 3100-3550 MHz Band*, WT Docket No. 19-348, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 11078 (2020) (*3.45 GHz R&O and FNPRM*).

[6] *See generally 3.45 GHz Band Second R&O*, 36 FCC Rcd 5987.

[7] *Id*. at 5997, para. 21. The auction of 3.45 GHz Service licenses was completed, and winning bidders were announced in January 2022. *See Auction of Flexible-Use Service Licenses in the 3.45-3.55 GHz Band Closes, Winning Bidders Announced for Auction 110*, AU Docket No. 21-62, Public Notice, 37 FCC Rcd 308 (2022).

[8] *3.45 GHz Band Second R&O*, 36 FCC Rcd at 5997, para. 21.

[9] *Id*. at 5998, para 23.

[10] *See id.*

[11] *Id.* at 5999, para. 24.

[12] *Id.* at 5999, para. 25 (emphasis added).

[13] 47 CFR § 2.106(c)(431).

[14] *3.45 GHz Band Second R&O*, 36 FCC Rcd at 6000, para. 27.

[15] *Id*.

economic areas associated with such CPAs/PUAs, and to conduct a rulemaking if it became necessary to authorize non-federal operations to these new license areas on the basis of rules that differ from the rules adopted in the *3.45 GHz Band Second R&O*.[16] In addition, OET has delegated authority to make non-substantive, editorial revisions to Part 2 of the Commission's rules.[17]

5. In a Memorandum to the National Telecommunications and Information Administration (NTIA), DoD requests the deletion of the Norfolk CPA from the list of CPAs and PUAs in section 2.106(c)(431), Table 22 of the Commission's rules.[18] DoD maintains that the Norfolk CPA is redundant because the Norfolk CPA is entirely encompassed within the larger Newport News, VA CPA/PUA.[19] As part of this change, DoD also asks that the Newport News CPA/PUA be renamed the "Newport News-Norfolk CPA/PUA."[20]

III. DISCUSSION

6. Pursuant to the delegation of authority by the Commission in the *3.45 GHz Band Second R&O*, as well as OET's authority to make non-substantive revisions to the Part 2 rules, WTB/OET revise the Part 2 rules to delete the redundant Norfolk CPA as requested by DoD and rename the Newport News CPA/PUA as the "Newport News-Norfolk CPA/PUA." For the reasons discussed below, we find that this modification falls within the "good cause" exception to the notice and comment requirements of the Administrative Procedure Act.[21]

7. As a practical matter—and as DoD points out—the Norfolk CPA is entirely subsumed in the larger Newport News CPA/PUA, and any non-federal operations in the former CPA would be required to follow the same coordination procedures after such a change as those required pursuant to the current rule. The larger area also includes the same responsibility for PUA coordination, which currently applies to the entire region, so no protections or coordination requirements will be lost or changed as a result of this rule modification. The only change resulting from this rule modification is that federal and non-federal operators will no longer have to conduct a duplicative coordination process but will instead be able to follow a single coordination procedure for the entire, encompassing area. Thus, while the Newport News CPA/PUA will not decrease in size, the elimination of the Norfolk CPA will have the effect of eliminating a duplicative coordination burden for both federal and non-federal operations, and as such, falls within the authority delegated to WTB/OET.

8. As discussed above, the change proposed by DoD, and conveyed through NTIA, merely deletes a redundant component of the rule, would not alter the compliance obligations of any party, and seeking notice and comment on this technical correction would be a waste of Commission resources. "The larger Newport News CPA/PUA commands the requisite coordination to protect DoD missions operating within the band, to include episodic DoD operations[,]"[22] rendering the Norfolk CPA redundant and unnecessary. Accordingly, without notice and comment, WTB/OET delete the Norfolk CPA from section 2.106(c)(431), Table 22, and rename the Newport News CPA/PUA, the "Newport News-Norfolk CPA/PUA

[16] *Id.* at 6028, para. 115.

[17] 47 CFR § 0.241(i).

[18] *See* DoD Memorandum at 1.

[19] *See id*.

[20] *See id*.

[21] *See* 5 U.S.C. § 553(b)(B) (notice and comment is not necessary "when the agency for good cause finds (and incorporates the finding and a brief statement for reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest").

[22] *See* DoD Memorandum at 1.

IV. PROCEDURAL MATTERS

9. *Regulatory Flexibility Act*. Because this rule change is being adopted without notice and comment, the Regulatory Flexibility Act does not apply.[23]

10. *Paperwork Reduction Act*. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA).[24] In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002.[25]

11. *Congressional Review Act*. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is "non-major" under the Congressional Review Act, 5 U.S.C. § 804(2). The Office of the Managing Director will send a copy of this Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

V. ORDERING CLAUSES

12. IT IS ORDERED, pursuant to sections 1, 4(i), and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 303, that this Order IS ADOPTED.

13. IT IS FURTHER ORDERED that part 2 of the Commission's rules is AMENDED as set forth in the Appendix, effective immediately upon publication in the *Federal Register*.

14. IT IS FURTHER ORDERED that the Office of the Managing Director, Performance Program Management, SHALL SEND a copy of this 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).

[23] 5 U.S.C. § 601 *et seq.*; *see id.* § 601(2).

[24] Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 109 Stat. 163 (1995) (codified in Chapter 35 of title 44 U.S.C.).

[25] The Small Business Paperwork Relief Act of 2002 (SBPRA), Pub. L. No. 107-198, 116 Stat. 729 (2002) (codified in Chapter 35 of title 44 U.S.C.); *see* 44 U.S.C. § 3506(c)(4).

15. These actions are taken under delegated authority pursuant to sections 0.31, 0.131, 0.241, and 0.331 of the Commission's rules, 47 CFR §§ 0.31, 0.131, 0.241, and 0.331, and the *3.45 GHz Band Second R&O*.[26]

FEDERAL COMMUNICATIONS COMMISSION

Joel Taubenblatt
Chief, Wireless Telecommunications Bureau

Ronald Repasi
Chief, Office of Engineering and Technology

[26] *3.45 GHz Band Second R&O* at 6000, para. 27.

APPENDIX A

Final Rules

The Federal Communications Commission amends 47 CFR part 2 as follows:

PART 2 – FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

2. Amend § 2.106 by Table 22

to remove the Norfolk CPA and rename the Newport

News CPA/PUA, the "Newport News-Norfolk CPA/PUA."

The revision reads as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

(c) * * *

(431) * * *

Table 22 to Paragraph (c)(431) – Department of Defense Cooperative Planning Areas and Periodic Use Areas

Location name	State	CPA	PUA	Latitude	Longitude	Radius (km)
* * * * *						
Newport News-Norfolk* (includes Fort Story SESEF range)	VA	Yes	Yes	36° 58' 24"	76° 26' 07"	93
* * * * *						

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

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

DA 24-234
Released: March 12, 2024

WIRELINE COMPETITION BUREAU UPDATES PART G USER GUIDE AND FREQUENTLY ASKED QUESTIONS (FAQ) 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 an updated version of the User Guide for Part G of Form 5640 and an updated version of the Frequently Asked Questions document for the Secure and Trusted Communications Networks Reimbursement Program (Reimbursement Program). These 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 -

Secure and Trusted Communications Networks Reimbursement Program: *Frequently Asked Questions*

Table of Contents

Glossary

Bureau: The Wireline Competition Bureau within the Federal Communications Commission

FCC: Federal Communications Commission (also "the Commission")

FA: Fund Administrator

Reimbursement Program: Secure and Trusted Communications Networks Reimbursement Program

FCC Form 5640 Part C: FCC Form 5640 Part C Application Request for Funding Allocation

FCC Form 5640 Part G or Reimbursement Claim Request: FCC Form 5640 Part G Reimbursement Claim Request

FRN: FCC Registration Number

RRD: Removal, Replacement and Disposal

Secure Networks Act: Secure and Trusted Communications Networks Act of 2019

Secure and Trusted Communications Networks Reimbursement Program: *Frequently Asked Questions*

Note: Any information, guidance, or advice provided in this FAQ constitutes informal guidance and should not be considered a final or binding FCC determination by FCC staff.[1]

About the Secure and Trusted Communications Networks Reimbursement Program (Reimbursement Program)

What is the Secure and Trusted Communications Networks Reimbursement Program (Reimbursement Program)?

The Secure Networks Act directs the FCC to establish the Reimbursement Program. The Reimbursement Program aims to secure the nation's communications supply chain and protect national security by reimbursing eligible providers of advanced communications service for the removal, replacement, and disposal of communications equipment and services that pose a threat to the security of our nation's communications networks.

Specifically, the Reimbursement Program reimburses providers of advanced communications services with ten million or fewer customers for costs reasonably incurred for the removal, replacement, and disposal of covered communications equipment or services that pose a national security risk. Currently, covered communications equipment or services are limited to communications equipment or services produced or provided by Huawei Technologies Company (Huawei) and/or ZTE Corporation (ZTE) that were obtained by providers on or before June 30, 2020.

Who is eligible to participate in the Reimbursement Program?

To be eligible to participate in the Reimbursement Program, you must be an advanced communications service provider[2] (Provider) with ten million or fewer customers that obtained Huawei and/or ZTE equipment and/or services on or before June 30, 2020. The term "advanced communications service" means high-speed switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology with connection speeds of at least 200 kbps in either direction. Providers of advanced communications service could include schools, libraries or health care providers, or consortiums thereof, to the extent they provide such facilities-based broadband service to end users.

To determine whether a Provider has ten million or fewer customers, 'customers' means those customers of the Provider and customers of any affiliate of that Provider that receive advanced

[1] *See Applications of Mary Ann Salvatoriello, John Boyd, Holly Hill Broad. Co., Suzanne M. Wilson*, Memorandum Opinion and Order, 6 FCC Rcd 4705, 4708, para. 22 (1991). In addition to new content, this document contains updates to previous FAQs posted by the Bureau.

[2] A provider of advanced communications service that applies to the Reimbursement Program and is approved for an allocation is referred to in the Secured Networks Act and the Commission's rules as a "Recipient." Because this FAQ addresses phases of the Reimbursement Program that occur both before and after an application is approved, for ease of reference, applicants to the Reimbursement Program and Recipients are referred to collectively as "Providers."

communications services from the affiliate or Provider as of the date the Reimbursement Program application is filed. Providers may be asked to upload supporting documentation to prove their eligibility based on these criteria.

How does the Reimbursement Program work?

Generally, the Reimbursement Program follows the high-level steps below:

a. *Providers* – Confirm eligibility to participate in the Reimbursement Program based on eligibility requirements and identify covered Huawei and/or ZTE equipment and/or services in the network.

b. *Providers* – When the filing window opens, complete the FCC Form 5640 Application Request for Funding Allocation (FCC Form 5640 Part C) using the online filing portal, inclusive of eligibility and cost estimate information and associated supporting documentation.

c. *Bureau & Fund Administrator* – Review applications to determine completeness, eligibility, and reasonableness of cost estimates.

d. *Bureau* – Grant or deny applications.

e. *Bureau* – Issue funding allocations to eligible Providers based on approved cost estimate submissions and notify Providers of their allocation amount.

f. *Providers* – Obtain funding allocations from the Bureau. Submit any needed modification requests, Reimbursement Claim Requests, and supporting documentation as actual costs are incurred.

g. *Bureau & Fund Administrator* – Review Reimbursement Claim Requests based on actual invoices submitted and approve or deny requests as they are received.

h. *Department of Treasury* – Issues reimbursement payments for approved Reimbursement Claim Requests.

i. *Providers* – Complete removal, replacement, and disposal (RRD) project within the mandated term.

j. *Providers* – File all Reimbursement Claim Requests by the Reimbursement Claim Request deadline.

k. *Bureau & Fund Administrator* – Confirm equipment and/or service removement, replacement, and disposal, perform audit, and close out activities with Providers.

How is the Reimbursement Program funded?

The Reimbursement Program is funded by a $1.9 billion appropriation in the Consolidated Appropriations Act, 2021 (CAA).

Where can Providers find more information about the Reimbursement Program?

Additional information about the Reimbursement Program can be found on the Program website at www.fcc.gov/supplychain.

Secure and Trusted Communications Networks Reimbursement Program: *Frequently Asked Questions*

Providers may also contact the Reimbursement Program Fund Administrator email address at SCRPFundAdmin@fcc.gov with questions regarding the application and reimbursement request process or regarding actual submissions. Providers may also contact the Reimbursement Program Fund Administrator by calling (202) 418-7540 from 9:00 AM ET to 5:00 PM ET, Monday through Friday, except for Federal holidays.

Applying to the Reimbursement Program

When and how do Providers apply to the Reimbursement Program?

Reimbursement Program applications must be submitted during a filing window announced by the Bureau. At that time, Providers may utilize FCC Form 5640 Part C, accessed via an online portal accessible at fcc.gov/supplychain to submit their applications. Providers that do not submit an application during a filing window established by the Bureau cannot participate in the Reimbursement Program.

To date, the Bureau has announced and opened one application window for the Reimbursement Program. That application window opened on October 29, 2021 and closed on January 28, 2022. Any future application filing windows will be announced by the Bureau via a Public Notice.

All applications filed during a particular filing window will be treated as if they were simultaneously received once the filing window closes. The Bureau will not attach a preference to applications submitted early. Requests received outside of the filing window will not be accepted. The Bureau and Fund Administrator will begin reviewing applications for eligibility and cost reasonableness only after the filing window has closed.

How can Providers prepare for the application process?

Reimbursement Program funding allocations are based on cost estimates submitted by Providers for costs reasonably incurred for the removal, replacement, and disposal of the covered communications equipment and services in their networks. Providers interested in participating in the Reimbursement Program should inventory such equipment and service in their networks and begin familiarizing themselves with Reimbursement Program requirements.

For instance, Providers that intend to submit an FCC Form 5640 Part C are encouraged to visit the Reimbursement Program website, fcc.gov/supplychain, to obtain more information about the Reimbursement Program and eligibility requirements. Providers should also review Section 4 of the Secure Networks Act,[3] the *2020 Supply Chain Order*,[4] *2021 Supply Chain Order*,[5] the *Finalized Forms*

[3] 47 U.S.C. § 1603.

[4] *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*).

[5] *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 (2021) (*2021 Supply Chain Order*).

Procedures PN,[6] and the *Cost Catalog*, and then begin to compile any vendor quotes, invoices, and other documentation in preparation for their application submission.

Providers should also confirm they are registered in SAM.gov. The SAM.gov Entity Registration Status Tracker provides information on existing registrations and the registration process. Providers are urged to initiate the registration process, or confirm their existing status, early as registration may take some time to complete.

Are there any limitations with respect to number of locations, equipment, or cost estimate submissions that will impact how a Provider must complete their FCC Form 5640 Part C?

Yes. Due to system limitations, Providers that anticipate exceeding any of the following limits will need to submit multiple applications using different FCC Registration numbers such that no one application exceeds any of these limits:

- Locations: 1,000
- Equipment: 1,000 items (combined existing and replacement equipment)
- Cost Estimates: 20,000

Though the maximum number of locations and equipment entries permitted for upload into the templates is 1,000, we recommend that Providers only upload up to 500 locations and equipment entries at a time to avoid system performance issues. Providers attempting to upload more than 500 locations and equipment entries with any one batch upload are likely to face significantly degraded system performance. To submit multiple applications, Providers may either submit separate applications for their subsidiaries (as opposed to submitting one application at the holding company level) or create multiple FRNs associated with one entity EIN/TIN. These approaches will allow the Provider to stay under the limitations listed above and also allow for having multiple people working on their submissions during the filing window as only one person can be in an individual application at any one time.

If Providers choose to create additional/multiple FRNs, they should:

- Provide an attachment of all related FRNs that should be considered during the review period;
- Provide the same required eligibility and cost estimate attachments with each application to prevent any delay in the review of each application;
- Use a consistent naming convention when establishing the new FRNs that indicates the FRNs are associated, e.g., Providers may organize their applications geographically, by

[6] *Wireless 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, 36 FCC Rcd 12190 at 12212-14, paras. 66-70.(WCB Aug. 3, 2021) (*Finalized Forms Procedures PN*).

distribution layer, or any other logical manner and use FRN naming conventions that reflects that decision; and

- Use the same 'Real Party in Interest' FRN for each Provider FRN.

How can a Provider create multiple FRNs for use in creating multiple applications?

Providers creating multiple FRNs for use in creating multiple FCC Form 5640 Applications should use the same TIN in the TIN field of each FRN registration filing. Providers may start the CORES registration process by visiting https://apps.fcc.gov/coresWeb/publicHome.do.

During the filing window, can multiple users work on a single Provider's FCC Form 5640 Part C at the same time?

No. Only one user can work inside any one application at a time. Providers concerned about their ability to complete the application within the filing window or Providers with applications that will exceed 1,000 locations, 1,000 equipment items (combined existing and replacement), or 20,000 cost estimates may do one of the following, as applicable:

1. Providers with multiple eligible subsidiaries should apply at the subsidiary level, as opposed to the Holding Company level, using the FRN of each subsidiary for separate applications. This will allow unique users to work on each application and could avoid any given application reaching the limitations listed above.

2. Providers may also create multiple FRNs associated with one entity EIN/TIN. This will allow the Provider to create multiple applications, one for each FRN, enabling unique users to work on each application. The FCC Form 5640 Part C will also allow for Excel batch uploads for the locations, equipment, and cost estimate sections of the application. These templates can be completed offline, outside the SCRP Filing Portal, so that multiple users can work within the same template, or on multiple versions of the same template, and then combine. The completed batch files can then be uploaded into the FCC Form 5640 application.

What forms of documentation will be required as part of my application to support eligibility and documentation of existing covered communications equipment and services?

FCC Form 5640 Part C contains a number of questions related to eligibility and documentation of the Provider's Huawei and/or ZTE equipment and services obtained on or before June 30, 2020 that is eligible for the Reimbursement Program.

Provider of Advanced Communications Service. Whether a provider is an eligible provider of advanced communications service will be validated using FCC Form 477 Local Telephone Competition and Broadband Reporting filing information.[7] Providers that have not recently filed an FCC Form 477 should

[7] All facilities-based broadband providers are required to file data with the FCC twice a year, using the FCC Form 477, on where they offer Internet access service at speeds exceeding 200 kbps in at least one direction.

be prepared to provide supporting documentation demonstrating their status as an eligible Provider of advanced communications service. Supporting documentation could include:

- Information from the Provider's website describing services provided to customers;
- A catalog of services provided to customers; or
- Annual public financial reports demonstrating number of customers and/or broadband services provided.

Covered Huawei and/or ZTE Equipment. To be eligible for the Reimbursement Program, Providers must show they have in their networks Huawei and/or ZTE equipment or service that was obtained on or before June 30, 2020. The FCC Form 5640 Part C requires Providers to identify their existing Huawei and/or ZTE equipment (e.g., identifying make, model, and serial number when available) and date when such equipment or service was obtained. The required supporting documentation could include:

- Architecture or network configuration diagram(s);
- Equipment inventory lists with asset level identification (e.g., serial number(s));
- Equipment specifications for existing equipment;
- Purchase orders or other documentation (e.g., invoices) that provide equipment specifications and date purchased; or
- Photographs of equipment.

What forms of documentation will be required to support cost estimates?

Documentation to support cost estimates will be requested as part of your FCC Form 5640 Part C. During the filing window, Providers may use the Cost Catalog embedded in FCC Form 5640 Part C to support requests if quotes or other documentation are not available at the time of submission. However, vendor quotes must be provided for costs not included in the Cost Catalog or for estimates that differ from the average cost estimates listed in the Cost Catalog. Also, vendor quotes must be provided for eligible expenses before the Provider will be reimbursed for actual costs.

What equipment or service location information are Providers required to provide in their application?

Each equipment or service will need to correlate to a specific location. Providers are required to upload specific location information for each site, including:

- Location name;
- Latitude of location (using WGS84 datum for latitude coordinates);
- Longitude of location (using WGS84 datum for longitude coordinates);
- Location address (Number & Street, City, State, and Zip Code);

- Location address if no postal address is available (a location description is permissible in situations where a postal address is not available); and
- Type of site location (i.e., cell site, mobile switching center, central office, network operations center, headquarters, or other (if selecting "other" a brief description is required)).

This applies both to cell sites and office locations that may be the location for network core equipment.

Multiple locations and existing equipment can be added via bulk upload.

NOTE: Bulk upload for locations and equipment is not possible after initial application submission. See "Modifications to FCC Form 5640 Part C Information" section for guidance relevant to post-application acceptance.

Is it possible to batch upload site locations, equipment, and cost estimates in the application?

Yes. Excel templates are available for download within the FCC Form 5640 Part C to allow Providers to bulk upload multiple locations and existing and replacement equipment and/or services as well as cost estimates for replacement equipment. Cost estimates can *only* be entered via Excel batch upload and must be consolidated into one Excel template prior to uploading into FCC Form 5640 Part C.

NOTE: Bulk upload for locations and equipment is not possible after initial application submission. See "Modifications to FCC Form 5640 Part C Information" section for guidance relevant to post-application acceptance.

Should Providers file at the holding company level or the individual/subsidiary level?

Providers are encouraged to submit a single, consolidated application at the holding company level (as long as doing so will not result in an application that exceeds 1,000 locations, 1,000 equipment/services items or 20,000 cost estimates); however, they are permitted to submit at the individual/subsidiary level.

If applying at the subsidiary level, Providers will be required to identify their holding company FRN under the "Real Party in Interest" Information section of FCC Form 5640 Part C.

If applying at the holding company level, Providers will need to provide a listing of the FRNs of the subsidiaries covered by their application. This can be included as an attachment in the application. In this case, the Provider's FRN and the "Real Party of Interest" FRN will be the same.

What Provider information is automatically considered confidential in the FCC Form 5640 Part C application?

Consistent with the Freedom of Information Act (FOIA) and the FCC's implementing rules, the FCC will treat certain information in the FCC Form 5640 Part C as presumptively confidential and will withhold such information from routine public inspection, including:

- Detailed accounting information on the covered communications equipment or services removed, replaced, and disposed of, and the replacement equipment or services purchased, rented, leased, or otherwise obtained using Reimbursement Program funds;
- Vendor price quotes;
- Invoices submitted with the FCC Form 5640 Part G;
- Equipment or services location, including address, latitude/longitude, etc.;
- Removal or replacement plans that include sensitive information;
- Specific equipment or service type; and
- Other provider-specific information;
- Specific timeline for the permanent removal, replacement, and disposal of covered communications equipment and services.

For additional information on what information is considered "confidential," please consult the Finalized Form Procedures Public Notice.[8]

When seeking confidential treatment for information contained in attachments categorized as "Other," the Provider must also upload a request for confidentiality providing the justification as to why the information is entitled to confidential treatment. The request for confidentiality will be made publicly available. Attachments including information for which confidential treatment is sought, and granted, will be withheld from routine public inspection. Redacted versions of the attachments (if provided) and attachments not indicated as containing confidential information will be subject to routine public inspection.

Do Providers have the option to submit confidential versions of their timeline and plan documentation?

Providers' timeline and plan documentation will be considered presumptively confidential and will be withheld from the public search portal regardless of whether the Provider requests confidential treatment of those documents, consistent with the language in the *Finalized Form Procedures Public Notice*.[9] FCC Form 5640 Part C provides Providers the option to request confidential treatment for these attachments, but they will be treated as confidential regardless of how the Provider addresses that section of FCC Form 5640 Part C. When prompted for a redacted version of these documents, Providers can choose to provide a redacted version or simply attach a blank document to meet the system requirement for an attachment in that section.

For additional information on requests for confidentiality, please consult the *FCC Form 5640 User Guide*.

[8] *Finalized Forms Procedures PN*, 36 FCC Rcd at 12212-14, paras. 66-70.

[9] *Finalized Forms Procedures PN*, 36 FCC Rcd at 12213-14, para. 69.

Secure and Trusted Communications Networks Reimbursement Program: *Frequently Asked Questions*

Eligible Expenses

What costs are eligible for reimbursement from the Reimbursement Program?

The Reimbursement Program will reimburse eligible Providers of advanced communications services for costs reasonably incurred for the removal, replacement, and disposal of their Huawei and/or ZTE equipment and services obtained on or before June 30, 2020. RRD costs incurred prior to April 17, 2018 will not be reimbursable. Though reimbursement claims can be submitted 120 days after the expiration of the RRD term, costs incurred after the expiration of the RRD term are ineligible for reimbursement.

The FCC considers the cost of replacement facilities 'reasonable' if the replacement facilities are comparable to those in use by the Provider prior to the removal, replacement, and disposal of covered communications equipment or services. Consideration of 'costs reasonably incurred' may necessarily be decided on a case-by-case basis by the Bureau based on information provided as part of the application process.

The FCC recognizes that comparable replacements for older network equipment or services may not be available in the marketplace, necessitating some flexibility. For example, the FCC has said that replacing older mobile wireless networks with a 4G LTE equipment or service that is 5G ready will be treated as a comparable replacement. For additional information on comparable replacements and the treatment of technology upgrades, see the *2021 Supply Chain Order*.[10]

The Bureau developed a Cost Catalog that contains categories of costs expected to be incurred in the RRD process and provides a detailed list of the core and non-core equipment and services eligible for reimbursement (and their associated predetermined estimated costs). Providers may rely on the average cost estimates identified in the Cost Catalog when completing their FCC Form 5640 Part C during the filing window. For costs not covered by the Cost Catalog, or if Providers want to use a cost estimate that differed from the Cost Catalog, they must provide an individualized cost estimate supported by a vendor quote. The Cost Catalog can be found on the Reimbursement Program website.

Although Providers are encouraged to consult the Cost Catalog prior to submitting their applications, the Cost Catalog should not be used as the basis for cost estimates when submitting a request to modify a cost estimate after an application for reimbursement has been approved (post-approval modifications are addressed in more detail below).

What costs are not eligible for reimbursement from the Reimbursement Program?

The Fund Administrator and Bureau will review all costs to ensure adherence to program guidelines and determine reasonableness. Costs ineligible for reimbursement include, but are not limited to, the following:

Technology Upgrades. Reimbursement Claim Requests will be reviewed by the Fund Administrator and the Commission for eligibility and reasonableness. The Bureau will only issue allocations and

[10] *2021 Supply Chain Order*, 36 FCC Rcd at 11992-95, pars. 86-92.

disbursements up to the amount of a comparable replacement using a "costs reasonably incurred" standard. Costs incurred above and beyond the reasonable cost of a comparable replacement will be borne by the Provider. Examples of technology changes that the Commission has said are technology upgrades and not comparable replacements are as follows:

- Replacement of a microwave backhaul with fiber backhaul or replacing last-mile fixed wireless links with fiber-to-the-premises (FTTP); and
- Replacement of fixed wireless links or RAO networks with fiber.

When Reimbursement Program Providers seek to replace eligible covered communications equipment or services with a technology upgrade in excess of the costs of a comparable replacement, they will need to provide price quotes for a comparable replacement with their FCC Form 5640 Part C and may not rely on the cost estimates contained in the Cost Catalog to estimate the cost of a comparable replacement. For additional information on submitting reimbursement claims for technology upgrades, please consult the *FCC Form 5640 User Guide*.

Customer Premises Equipment. Separately, the Commission has determined that the replacement of non-Huawei and/or non-ZTE mobile handsets and other customer premises equipment, including Internet of Things devices, used by end users to access and utilize advanced communications services are not reasonably necessary to the removal, replacement, and disposal of covered communications equipment or service. Accordingly, costs associated with the removal, replacement, and disposal of non-Huawei and/or non-ZTE customer premises equipment are ineligible for reimbursement under the Reimbursement Program.[11] The replacement of covered Huawei and/or ZTE CPE may be eligible for reimbursement, however, where "essential to the provision of advanced communications service."[12] In addition, the Bureau has said, citing the Commission's language in the *2021 Supply Chain Order*, that wired (Wi-Fi) and wireless routers that constitute customer premises equipment (CPE) are not reimbursable under the Program.[13]

Are expenses related to financing a line of credit or bridge loan reimbursable?

There may be instances when a Provider began the removal, replacement, and disposal process prior to applying for and receiving their funding allocation from the Reimbursement Program and obtained a line of credit or bridge loan to do so. In such instances, the origination fees, commitment fees, and other fees and expenses associated with that loan may be reimbursable *up until the time of allocation*. These costs will be considered on a case-by-case basis, and Providers will need to submit supporting documentation, including a brief cover letter, detailing the need for the line of credit or bridge loan, how

[11] *See 2021 Supply Chain Order*, 36 FCC Rcd 11958, 11996, para. 94.

[12] *See Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, Order, DA 21-1339, para. 7 (*Order on Clarification*).

[13] *Wireless 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, 36 FCC Rcd 12190 at 1224, para.100 (WCB Aug. 3, 2021) (*Finalized Forms Procedures PN*).

that funding is being utilized, and demonstrating that reimbursement is being sought only for fees incurred pre-allocation. All such fees incurred after a Provider receives its allocation will carry a presumption of being unreasonable and accordingly, will not be reimbursed.

Are temporary/interim facilities reimbursable?

Yes, 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, but no Reimbursement Program funds may be used to purchase, obtain, or maintain Huawei or ZTE communications equipment or services.

Is construction of a new tower reimbursable?

Costs associated with a new tower may be reimbursable and will be considered on a case-by-case basis. If a structural analysis of a tower concludes that the tower cannot be reinforced to support a new piece of equipment, the Provider should determine whether there are other options available, besides constructing a new tower, that will allow it to complete its equipment replacement within its RRD term. Any Provider seeking reimbursement for tower construction will be required to submit documentation, such as a statement signed by and with the seal of an accredited structural engineer, certifying the results of a tower study, along with the Provider's cost estimate to erect the new tower.

Can Providers be reimbursed for vendor travel expenses? If so, how should travel expenses for reimbursement be submitted?

Vendor travel expenses (e.g., meals, airfare, mileage) not included in a vendor's rates are eligible for reimbursement provided they are reasonable. All stand-alone travel expenses submitted for reimbursement must be itemized. Consistent with Internal Revenue Service guidelines, Providers must also submit receipts for any travel expense greater than $75.00 and all lodging expenses. As such, please include receipts for travel expenses as an attachment to the particular reimbursement request on the FCC Form 5640 Part G with which the travel expense is associated, in addition to the underlying invoice for the service rendered (general information on the submission of Reimbursement Claim Requests is provided below).

Alternatively, expenses for meals and incidentals can be billed on a per diem basis. The per diem amount should be in accordance with the approved government per diem rates in effect with the work that was performed (available at the GSA website) for the location where the work was completed. Note that lodging may not be billed on a per diem basis and those expenses must be supported by a receipt or invoice.

Can a Provider be reimbursed for the cost of in-house labor?

The cost of the salary of an internal employee for the time he or she works exclusively on tasks directly related to the Providers RRD project may be reimbursable. Providers will be required to submit documentation showing hourly rates, time spent on the RRD project, and other information that will

allow the Fund Administrator, and any Reimbursement Program auditors, to verify the cost incurred by the Provider.

Note that overhead and ongoing business expenses not directly attributable to the removal, replacement, and disposal of Huawei and/or ZTE communications equipment or services, that would be incurred regardless of participation in the Reimbursement Program are not reimbursable. Examples of non-reimbursable overhead costs include general business operations, administrative, accounting, rent, utilities, insurance, and normal system maintenance not directly attributable to the Provider's RRD program. For instance, if an employee was hired specifically to manage Reimbursement Program compliance, their salary and benefits may be reimbursable, but only that portion of the salary (i.e., hours) directly related to the Reimbursement Program. Hours working on general business operations not related to the Reimbursement Program will not be reimbursable.

Providers are not permitted to sell services to themselves, and employees of a Provider are not permitted to sell consulting services to that Provider.

Are maintenance and support costs for existing Huawei and ZTE equipment and services eligible for Reimbursement Program support?

No. Costs associated with maintaining the Huawei and ZTE communications equipment and/or services that the Reimbursement Program was created to eliminate are not eligible for reimbursement.

Are project management expenses eligible for Reimbursement Program support?

Project management expenses that are limited to the removal, replacement, and disposal of Huawei and/or ZTE communications equipment or services, and not related to overhead or on-going business expenses that would be incurred irrespective of the Provider's participation in the Reimbursement Program may be reimbursable. Project management services may include both reimbursement-related project management services (e.g., FCC Form 5640 planning, preparation, and filing support, invoice processing, documentation collection and completion) and 'in-the-field' technical project management services (i.e., vendor turnkey or bundled, technical management of on-site equipment removal, replacement, and disposal projects). Note that the project management Cost Catalog categories (in particular 5.7.1 and 5.7.3) are only applicable to costs for 'in-the-field' technical project management services.

How will reimbursement for disposal costs performed prior to the release of the FCC's guidance on disposal best practices be considered?

The FCC addressed this question in the Disposal Guidance PN.[14] Providers of advanced communications services that removed and disposed of covered communications equipment or services prior to the release of this PN on September 30, 2021, could not have known the best practices provided in

[14] *Wireline Competition Bureau Announces Best Practices for Equipment Disposal and Revises FCC Form 5640 Certifications for the Secure and Trusted Communications Networks Reimbursement Program*, WC Docket No. 18-89, Public Notice, 36 FCC Rcd 14061 (WCB Sep. 30, 2021) (*Disposal Guidance PN*).

Appendix A of that PN. Accordingly, the Commission will take this into account when evaluating a Provider's compliance with Section 1.50004(j) for disposal efforts occurring prior to the release of these best practices and may grant Reimbursement Program Claim Requests for disposal costs incurred that were not mentioned in the PN. The Commission expects Providers have acted reasonably, however, in carrying out the safe and secure disposal of covered communications equipment and services and have retained sufficient documentation to verify the disposal efforts taken.

Can the cost of replacing non-Huawei and/or ZTE (i.e., "third-party") network equipment that is not compatible with replacement equipment be reimbursable?

Yes. Third-party network equipment that is not compatible with replacement equipment and rendered useless due to the replacement of covered equipment with incompatible replacement equipment may be eligible for reimbursement under the Reimbursement Program. To be considered eligible, the costs associated with the replacement of such equipment must be reasonably necessary to the removal, replacement, and disposal of covered communications equipment and service. However, the cost of replacing non-Huawei and/or ZTE CPE is ineligible for reimbursement.[15]

Initial Cost Estimates

What is the purpose of submitting cost estimates?

Approved cost estimates will serve as the basis for Reimbursement Program allocation determinations, as well as a basis for the review of subsequent Reimbursement Claim Requests. A Provider's allocation is the amount of funding set aside from the Reimbursement Program for the Provider to draw against as costs are incurred.

To help the Bureau and Fund Administrator determine an approvable estimate amount for purposes of calculating a Provider's allocation, Providers must identify in their application both their existing equipment and/or services and the replacement equipment and/or services they intend to purchase or have purchased to complete their removal, replacement, and disposal project. Providers may only receive funding disbursements for actual costs incurred that are found reasonable, up to the amount of their funding allocation. The Bureau and Fund Administrator will review each cost estimate for reasonableness and ensure that the cost estimate is supported by either the Cost Catalog or vendor quotes and invoices. If additional information is needed, Providers will receive a Request for Information (RFI) for clarification or additional information via the online portal. In order to provide a timely response to any RFIs, please ensure that the Contact Information provided in the application is up-to-date and accurate.

[15] *See* Finalized Forms Procedures Public Notice, 36 FCC Rcd at 12220-21, para. 90.; Order on Clarification, DA 21-1339, paras. 6-7.

Secure and Trusted Communications Networks Reimbursement Program: *Frequently Asked Questions*

Can Providers include contingency amounts in their estimates?

No, contingency amounts will not be accepted as part of a Provider's cost estimate submission. After allocation issuance, Providers can revise their cost estimates through a modification filing if they learn of additional expenses or if they need to change previously provided cost estimates.

If a cost estimate has been approved during the initial estimate review phase, will all invoices associated with that cost estimate also be considered reimbursable?

During the estimate review phase, the Bureau and Fund Administrator will conduct a detailed review of all estimates submitted and request further information as needed. Invoice Submissions undergo a separate, thorough review process even if the cost estimate has already been approved.

When a Reimbursement Program Provider later submits a Reimbursement Claim Request for an expense that was approved during the cost estimate review phase, that submission will be reviewed for sufficiency of documentation (e.g., a valid vendor invoice) and consideration of whether the Provider has made any changes in its transition plan as indicated through other submissions or cost estimate modifications.

If the actual cost of the equipment or service has changed from what the Provider originally estimated, or the Provider purchases equipment or services that are different from what it reported when submitting its initial cost estimates, the Provider must modify its estimate to reflect the updated understanding of expenses. The Bureau and Fund Administrator will review this documentation and recommend payment for the modified expenses that are deemed reasonable. Providers will only be reimbursed for reasonable expenses actually incurred up to the amount of their allocation even if their plans change or actual costs exceed their amount of the funding allocation.

What documentation is required when submitting cost estimates for in-house labor?

If a Provider intends to use in-house labor to perform tasks related to the Reimbursement Program, this cost may be eligible for reimbursement if adequately supported. All internal labor costs that a Provider expects to incur in conjunction with the Reimbursement Program and for which it intends to seek reimbursement must be included in its cost estimate. When filing cost estimates not based on the Cost Catalog, internal labor costs should be estimated on a per hour basis for each Reimbursement Program-related task, providing both an estimate of labor hours to be incurred for each Reimbursement Program-related task and the internal labor rate to be used. The cost estimate for each task will equal the estimate of the total hours per task multiplied by the per hour internal labor rate, which may include salary and benefits. As with all cost estimates, Providers must certify that the estimates are made in good faith.

If a Provider's cost estimate includes internal labor costs, it should upload the following supporting documentation to its estimate:

- A listing of the tasks it expects to perform during the Reimbursement Program, including the estimated hours per task, the internal labor rate to be applied, and the total dollar amount for the task.
- A breakdown of how each internal labor rate is calculated, showing the salary and benefits.

In its review, the Bureau and Fund Administrator will exercise their discretion to determine the reasonableness of hours and/or labor rates. Providers should be prepared to provide justification if additional information is requested as to why the total labor amount entered is above that listed in the Cost Catalog by the Fund Administrator. During the reimbursement period or at account closing, the Bureau and/or Fund Administrator may request additional supporting information for internal labor costs, such as payroll, human resources, or financial records.

How should Providers submit cost estimates for truck rolls or self-install services (Cost Catalog Index 5.49.0)?

Prior versions of the Cost Catalog incorrectly indicated that the cost estimates range and averages identified for truck rolls or self-install services (Cost Catalog Index 5.49.0) were per end user. The cost estimates range and averages instead, however, should be provided for the total estimated cost for the truck rolls or self-installs needed in a local service area, not the cost for truck roll or self-install to each individual end user location. Removal of the "(per end-user)" unit of measurement for cost estimates for truck rolls or self-install services is reflected in the *Cost Catalog*.

How should Providers enter cost estimates when replacing more than one unit of equipment or services?

If the quantity of replacement equipment or services is greater than one, and the Provider is using the Cost Catalog average, the Provider must ***manually*** update Column J (est_cost) of the SCRP Excel Upload Cost Estimates Template to reflect the total cost estimate of all units of the equipment or service being replaced. For equipment, the Provider should also update the "Quantity of Replacement Equipment" (Column P) with the quantity of equipment that this cost estimate includes. Also for equipment, this cost estimate number would reflect the product of multiplying Column I (cost_catalog_avg) by Column O (quantity_of_replacement_equipment). For services, Providers should pay close attention to the unit of measure in the Cost Catalog and reflect the appropriate number in Column J, "Provide Estimate of Costs (in USD)" (for the quantity of services required.

NOTE: This response applies to initial cost estimates. Post application acceptance, Recipients cannot use the Cost Catalog average as a basis for cost estimates. See section, "Modifications to FCC Form 5640 Part C Information" for further guidance.

How should Providers submit cost estimates for project management services?

The Project Management categories in the Cost Catalog (in particular 5.7.1 and 5.7.3) are only applicable to costs for "in-the-field" technical project management services. Reimbursement Program-related project management services (e.g., FCC Form 5640 planning, preparation and filing support, invoice

processing, documentation collection and completion) are not included in the Cost Catalog and should, therefore, be submitted by indicating that the cost estimate average is not included in the Cost Catalog and providing the estimated costs and required supporting documentation. Estimates will be reviewed for reasonableness based on the description of services provided relative to the total cost and technical aspects of the project; consideration of the timing of the Provider's removal, replacement, and disposal project; and consideration of the appropriateness of the rate provided given the type of work described.

The rates for "reimbursement-related" project management services are anticipated to be lower than those included in the Cost Catalog, which are intended to apply to "in-the-field" technical project management services.

How often can Providers revise cost estimates before the Bureau issues a decision on their FCC Form 5640 Part C applications?

During the application filing window, Providers may revise their cost estimates as many times as needed. Once the window closes, however, Providers cannot amend their cost estimates unless: (1) specifically asked to revise their estimate(s) in response to a RFI from the Reimbursement Program Fund Administrator; or (2) the Provider has notified the Reimbursement Program Fund Administrator of its intent to amend its application and has contacted the Fund Administrator Help Desk via email or phone. As a general matter, amendments made to an FCC Form 5640 Part C that would result in an increase to the total cost estimate after the close of an application window will be denied.

Application Decisions and Allocations

When do Providers find out if they are eligible to participate in the Reimbursement Program?

Providers that submitted applications during the October 29, 2021 - January 28, 2022 filing window and were approved for an allocation received notifications from the Bureau on July 15, 2022. The Bureau also announced the approvals via a Public Notice.[16]

If the Bureau opens another application filing window, Providers that submit applications and are deemed eligible will similarly receive notifications from the Bureau at the end of the application review period.

Providers deemed ineligible to participate in the Reimbursement Program will receive communication(s) throughout the application review period and will be provided an opportunity to cure any application defects prior to a final determination.

How can Providers find their allocation amounts?

Providers that were approved for an allocation on July 15, 2022 were notified of their allocation amounts. Allocation information was also announced via a Public Notice on July 18, 2022 and is

[16] *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 (WCB Jul. 18, 2022).

available to Providers via the SCRP Online Portal. As Providers submit reimbursement claims and receive funding disbursements, they can monitor their remaining allocation balance by reviewing their Program Participant File in the SCRP Online Portal.

How are allocations determined?

Costs estimates are submitted by Providers as part of the application process for purposes of determining overall Reimbursement Program Fund demand and funding allocations. Approved cost estimates serve as the basis for Reimbursement Program allocation determinations. A Provider's allocation is the amount of funding set aside from the Reimbursement Program for the Provider to draw against as costs are actually incurred. To help the Bureau and Fund Administrator determine a Provider's approved estimate amount, Providers are required to identify in their application both their existing equipment and/or services and the replacement equipment and/or services they intend to purchase or have purchased to complete their RRD project. Reimbursement Program Providers can only receive funding disbursements for actual reasonable costs incurred, up to the amount of their funding allocation.

May Providers purchase or otherwise obtain covered communications equipment or services after applications for reimbursement are approved?

No. The Secure Networks Act prohibits Providers from purchasing, renting, leasing, or otherwise obtaining covered communications equipment or services using funds from any source (including reimbursement funds or funds from private sources) after the date that their applications to the Reimbursement Program are approved.[17]

Modifications to FCC Form 5640 Part C Information

What modifications must and may be made after a Provider receives an allocation?

Providers are required to submit modified cost estimates if their actual costs differ from previously approved line-item amounts or if an initial line-item estimate was based on a Cost Catalog average rather than a vendor or supplier quote. To do this, Providers must modify their cost estimate by submitting a SCRP Modification of Application for Funding Request filing via the SCRP Online Portal and provide the rationale for the modified costs before a Reimbursement Claim Request for the new amount can be considered.

Providers may also submit modification filings to:

- Update certain aspects of line items and itemized expenses, such as providing required details about replacement equipment and services;
- Update the removal, replacement, and disposal timeline and plan submitted with the Provider's application; and

[17] 47 U.S.C. §§ 1603(c)(2)(B), 1603(d)(4)(B)(i).

- Update location information for covered equipment and replacement equipment.

While Providers may submit requests to modify the removal, replacement, and disposal timelines and plans submitted with their applications (more information on RRD timelines and plans is provided below), Providers must still complete the permanent removal, replacement, and disposal of covered communications equipment or services within one year from the initial disbursement of funds. The submission or approval of a modification request, including any updates to a timeline or plan, will not extend the deadline by which Providers must complete the permanent removal, replacement, and disposal of all covered communications equipment or services.

Further, per the Secure Networks Act, Providers will be required to certify in their Final Certifications that they have "permanently removed from the communications network of the recipient, replaced, and disposed of . . . all covered communications equipment or services that were in the network of the recipient as of the date of the submission of the application of the recipient for the reimbursement[.]"[18] Accordingly, Providers are required to remove, replace, and dispose of all covered communications equipment and services in their networks as of the date of the submission of the application and may not use this modification process to alter that date.

How do Providers submit requests to modify FCC Form 5640 Part C information after an application has been approved?

Please see the Secure and Trusted Communications Networks Reimbursement Program FCC Form 5640 Part G and Modifications of FCC Form 5640 Part C User Guide, available here.

Do Providers have the ability to batch upload their site locations, equipment, and cost estimates when submitting modification requests?

Batch upload is available for cost estimate modifications. Excel templates are available for download to allow Providers to bulk upload modifications to multiple cost estimates. While batch upload is not available to modify equipment or location information, Providers can modify equipment and location details on an individual basis.

What forms of documentation will be required to support modified cost estimates?

When modifying FCC Form 5640 Part C post-allocation, Providers must include actual vendor quotes, contracts, or invoices to support their cost estimates and may not use the average cost from the Cost Catalog.

[18] 47 U.S.C. § 1603(d)(6)(A).

What will be required to document a modification pertaining to existing covered equipment or services?

See the section "Applying to the Reimbursement Program" above for information that a Provider may need to submit to support a modification pertaining to existing Huawei and/or ZTE equipment or services eligible for the Reimbursement Program.

Can a Provider use a modification request to request confidential treatment of previously submitted FCC Form 5640 Part C information?

If Providers determine an attachment should have been marked as confidential after submitting their application, they may submit an SCRP Modification of Application for Funding Request filing, which will allow the Provider to update the information in its FCC Form 5460 Part C for which confidential treatment is sought. However, if and until the modification filing is approved, the information not marked confidential will be publicly available.

How should Providers enter cost estimates when replacing more than one unit of equipment or services?

If the quantity of replacement equipment or services is greater than one, the Provider must *manually* update the "Provide Estimate of Costs (in USD)" (Column K) of the SCRP Excel Upload Cost Estimates Template to reflect the cost estimate associated with *all* units of the equipment or service being replaced. For equipment, the Provider should also update the "Quantity of Replacement Equipment" (Column P) with the quantity of equipment that this cost estimate includes. For services, Providers should pay close attention to the unit of measure in the Cost Catalog and reflect the appropriate expense in "Provide Estimate of Costs (in USD)" (Column K) for the quantity of services required.

RRD Plans, Timelines, and Deadlines

What is an RRD plan and an RRD timeline?

Providers are required to certify in their FCC Form 5640 Part C applications that they have developed: (1) a plan for the permanent removal, replacement, and disposal of the covered communications equipment and services in their communications networks; and (2) a specific timeline for the RRD work. Providers are required to submit their RRD timelines and plans as part of their applications and then certify in their Final Certifications that they have complied with those timelines.

Secure and Trusted Communications Networks Reimbursement Program: *Frequently Asked Questions*

What is the deadline for completing an RRD plan?

Providers must complete the removal, replacement, and disposal of the covered communications equipment and services in their networks within one year of the initial disbursement of reimbursement funds to the Provider.

How should a Provider with multiple applications/FRNs calculate its RRD term?

RRD terms are set on a per-application basis. When a disbursement for any cost actually incurred pursuant to an approved application is made, the one-year RRD term will begin for all work to be completed pursuant to that application. If a Provider submitted multiple applications that were approved, the RRD term for each application will be determined based on when the first disbursement is made for each application.

Are Providers obligated to complete 100% of their RRD projects if they do not receive 100% allocation?

Per the Secure Networks Act, a Provider must submit a Final Certification certifying, among other things, that it "has permanently removed from the communications network of the recipient, replaced, and disposed of . . . all covered communications equipment or services that were in the network of the recipient as of the date of the submission of the application of the recipient for the reimbursement[.]"[19] Accordingly, Providers are expected to remove, replace, and dispose of all Huawei and/or ZTE communications equipment and services in their networks as of the date of the submission of the application even if they receive a prorated allocation from the Reimbursement Program due to funding constraints.

We remind Providers that are eligible telecommunications carriers (ETC) seeking universal service funding that they remain subject to the requirements of section 54.11 of the Commission's rules,[20] which requires ETCs to certify that they do not use covered communications equipment or services prior to receiving a universal service funding commitment or support. This certification requirement goes into effect in February 2023.

Can an RRD term be extended?

Both the Secure Networks Act and the Commission's rules authorize limited extensions of the one-year RRD term.[21] The Commission may grant a general extension of the one-year term by a period of six months to all Reimbursement Program recipients if the Commission: (1) finds the supply of replacement communications equipment or services needed by the recipients to achieve the purposes of the Reimbursement Program is inadequate to meet the needs of the recipients; and (2) provides notice and detailed justification for granting the extension to the Committee on Energy and Commerce of the

[19] 47 U.S.C. § 1603(e)(4)(A)(iii); *see also* 47 CFR § 1.50004(m)(1).

[20] 47 CFR § 54.11.

[21] Secure Networks Act § 4(d)(6)(B)-(C); 47 CFR § 1.50004(h).

House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.[22] The need for a general extension may be informed by periodic status updates filed with the Commission, in which Providers are asked to address the availability of commercial equipment.

In addition, the Bureau may grant individual extensions of a time period not to exceed six months on a case-by-case basis.[23] A Provider requesting such an extension must show that, due to no fault of its own, it is unable to complete the permanent removal, replacement, and disposal by the end of the RRD term.[24] Providers can submit Term Extension requests via the SCRP Online Portal using FCC Form 5640 Part H2 Term Extension Request. Requests must include a detailed justification for their request, and Providers requesting an extension may include documentation supporting the request for the extension. Providers also must download a pdf version of their FCC Form 5640 Part H2 Term Extension Request by submitting the form through the SCRP Online Portal, opening it from their Program Participant File, and clicking on the "Print" button on the top right of the page. Providers must then make these requests available to the public by filing them in the Commission's Electronic Comment Filing System (ECFS) at WC Docket No. 18-89. If the filing contains confidential information, the Provider must submit a request to obtain confidential treatment of that information pursuant to section 0.459 of the Commission's rules. For information about how to submit a filing in ECFS, including information about submitting a confidential filing, please refer to https://www.fcc.gov/ecfs/help/ecfs.

To date, the Commission has not granted a general extension of the one-year RRD term. Though several commenters requested such an extension prior to the opening of the Reimbursement Program filing window, the Bureau found that such requests were premature when the Reimbursement Program had not yet commenced.[25] Further, the Bureau found that granting such an extension, at that time, was "counter to Congress' intent of having a one-year term."[26]

Reimbursement Claim Requests & Payment Process

When can Providers begin submitting invoices for reimbursement?

Providers can submit invoices for reimbursement (Reimbursement Claim Requests) after their allocations have been approved.

Providers must file at least one FCC Form 5640 Part G no later than one year after the FCC approved their FCC Form 5640 Part C. Failure to file within the one-year period will result in the FCC reclaiming the Provider's funding allocation. Providers can continue to file Reimbursement Claim Requests during the RRD term and up until 120 days following the end of the Provider's RRD term. Providers may also submit

[22] 47 CFR § 4.50004(h).

[23] *2020 Supply Chain Order*, 35 FCC Rcd at 14354, para 17.

[24] 47 CFR § 1.50004(h)(1).

[25] *Finalized Forms Procedures PN*, 36 FCC Rcd at 12210, para. 59.

[26] *Id.*

modifications during the 120 days following the expiration of their RRD term to the extent they are necessary to process related reimbursement claims. Providers should note, however, that costs incurred after expiration of the RRD term are not eligible for reimbursement.

How can Providers submit Reimbursement Claims for actual costs incurred?

Providers can submit Reimbursement Claims via the SCRP Online Portal using FCC Form 5640 Part G and will need to include supporting invoices and other cost documentation with the submission. Detailed guidance can be found in the Secure and Trusted Communications Networks Reimbursement Program FCC Form 5640 Part G and Modifications of FCC Form 5640 Part C User Guide available here.

Providers can submit multiple Reimbursement Claim Requests via the SCRP Online Portal as they incur expenses throughout the reimbursement period. Providers are required to link actual costs incurred and the supporting invoice documentation to their itemized cost estimates. Providers must submit invoices through the SCRP Online Portal as attachments to their FCC Form 5640 Part G.

What standard will be applied to determine whether a cost is reimbursable?

The FCC uses a "costs reasonably incurred" standard when determining whether a cost is reimbursable. This standard focuses on whether the cost is reasonably incurred for the removal, replacement, and disposal of Huawei and/or ZTE equipment and services. In evaluating the replacement equipment or service, the Commission focuses on reasonable costs for a comparable replacement. For an additional discussion on the difference between a comparable replacement and a technology upgrade for purposes of the Reimbursement Program, see the *2021 Supply Chain Order*.[27]

A Provider's Reimbursement Claim Request will be evaluated by the Fund Administrator and the Bureau based on information provided by the Provider in their FCC Form 5640 Part G filing. To determine whether the expense was "reasonably incurred," they will consider whether the cost is typically incurred when transitioning from covered communications equipment and services to a replacement, the costs submitted in relation to alternative equipment and services, and the capabilities and functions performed by the replacement equipment and services as compared to the equipment and services removed. The Fund Administrator and the Bureau will use comparisons to the price ranges in the Cost Catalog, review supporting invoice documentation provided, and consider any additional justification or explanation submitted by the Provider. The approval process is designed to ensure reasonably incurred expenses are paid while at the same time guarding against waste, fraud, and abuse associated with the disbursement of federal funding.

What supporting detail is required for reimbursement of expenses?

When submitting a Reimbursement Claim Request, Providers will need to provide a vendor or supplier quote associated with the invoice in the Reimbursement Claim Request. Providers will be required to link actual costs incurred and the supporting invoice documentation to their itemized cost estimates.

[27] *2021 Supply Chain Order*, 36 FCC Rcd at 11992-95, paras. 86-92.

Supporting documentation of the expense incurred must include a valid invoice, receipt, or other form of documentation that explains the nature and cost of the expense.

Specifically, invoices submitted by Providers for reimbursement must include the following information:

- Name of the vendor providing the service or equipment
- Invoice number (assigned by the vendor)
- Invoice date
- Payment due date (Providers should use the payment terms to calculate and document the payment due date on the invoice if this information is not originally included)
- Employer Identification Number (EIN) or Taxpayer Identification Number (TIN) of the vendor
- Description of the service provided or equipment purchased
- Explanation of why the expense is reimbursable under Reimbursement Program guidelines (which may be included in a cover letter)
- Total invoice amount
- Name of the Provider and Provider FRN
- If costs are associated with a specific site location, include Location ID

Note: Providers may not use a Cost Catalog average as documentation of an incurred expense.

Do Providers need to revise cost estimates if the actual cost differs from the previously approved amount?

Yes. Providers will be required to submit a revised cost estimate, by filing a SCRP Modification of Application for Funding Request, providing a detailed justification for cost estimate changes (increases or decreases) before a claim different from a previously approved amount, at the line item level, will be considered. Providers will be notified via the SCRP Online Portal by the Fund Administrator through a RFI if a revision is required. Reimbursement will not be made in excess of a Provider's available allocation amount. Invoices exceeding the available allocation in whole or in part may be submitted as a Reimbursement Claim Request. An invoice that exceeds the available allocation in part will be reviewed for reasonableness and forwarded for payment solely with respect to the amount of the allocation that remains available. An invoice that exceeds the available allocation in whole will not be reviewed for reasonableness or forwarded for payment unless and until a subsequent allocation is made by the FCC. If a subsequent allocation is not issued by the FCC, those pending Reimbursement Claim Requests in excess of the Provider's allocation amount will be denied.

If an element of the approved cost estimate was based on the Cost Catalog price, does the Provider need to submit a copy of the vendor quote, contract, or invoice before requesting reimbursement?

Yes, Reimbursement Program Providers must submit a copy of the vendor quote, contract, or invoice supporting a cost estimate by filing a SCRP Modification of Application for Funding Request before filing FCC Form 5640 Part G for any claims for which the estimated costs were based on the Cost Catalog.

What documentation is required when seeking reimbursement for invoices for in-house labor?

For internal labor costs to be reimbursable, they must be entirely related to the Provider's RRD project When seeking reimbursement for internal labor, Providers must provide details on a per-hour basis for each Reimbursement Program-related task, providing the labor hours incurred for each Reimbursement Program-related task, the internal labor rate used, and a total cost. The total cost for each task should therefore equal the total hours per task multiplied by the per-hour internal labor rate. Internal labor rates may include salary and benefits.

Specifically, when submitting a Reimbursement Claim Request for internal labor, a Provider should provide the following documents (in place of an invoice from a third-party vendor):

- A report detailing the employee name, the employee hourly/labor rates, a description of the work performed for each Program-related task, the number of hours worked, the date(s) of hours worked, and the resulting dollar cost.
    - This report should include an invoice number, invoice date, vendor name and EIN/TIN, and Provider name.
- Copies of employee timesheets or paystubs (or Internal Revenue Service Form W-2 or Wage and Tax Statements) showing hours worked on each Program-related task, each day. Timesheet hours must match the totals reported by the task above. Timesheets may come from either the Provider's time and expense reporting systems or can be manually prepared using spreadsheets or other means.

In their review, the FCC and Fund Administrator will exercise their discretion in determining the reasonableness of hours and/or labor rates. Providers should be prepared to provide justification if additional information is requested by the Fund Administrator.

Do professional services need to be performed prior to being submitted for reimbursement?

Providers may only seek reimbursement for costs actually incurred. Professional services refer to different types of activities such as legal services, engineering professional services, and project management. Project management can include both reimbursement-related project management services (e.g., FCC Form 5640 planning, preparation, and filing support, invoice processing, and documentation collection and completion) and "in-the-field" technical project management services (i.e., vendor turnkey or bundled, technical management of on-site equipment removal, replacement, and disposal projects).

All professional services, excluding "in-the-field" project management services, must be completed before the associated cost is submitted for reimbursement.

"In-the-field" project management services might entail contracts that include interval payments due for future performance periods. Providers may submit Reimbursement Claims for the costs incurred under these contracts provided that the invoices show that payment is owed and due on particular dates. Providers must submit a contract or quote with reasonable and explicit payment terms (e.g., down payment, progress payments, final payment, etc.) in addition to supporting documentation that details the various line items included in the services being provided and indicates whether or not those services have already been provided or are still anticipated to be provided. We remind Providers that all services under the contract must be completed before 100% of the contract expense can be reimbursed.

Please refer to the Cost Catalog for a detailed list of the professional services eligible for reimbursement. For purposes of estimating cost using the Cost Catalog for the initial funding allocation request, Project Management (in particular 5.7.1 and 5.7.3) was limited to estimated costs for "in-the-field" technical project management services.

Does equipment have to be delivered prior submitting invoice for reimbursement?

Providers may submit invoices for equipment prior to receiving the equipment. However, the invoice must show that payment is owed and due on a particular date. All invoices must contain a payment due date in addition to the other metadata requested in the FCC Form 5640. Providers should use an invoice's payment terms to calculate and document the payment due date on the invoice if this information is not originally included. When submitting a reimbursement claim for prepayment of equipment, Providers must submit a valid quote or purchase order that includes reasonable and explicit payment and delivery terms (e.g., down payment, installment payments, final delivery, etc.). We remind Providers that equipment must be delivered before 100% of the expense can be reimbursed.

What supporting detail is required for reimbursement of professional services?

All requests for reimbursement for professional services must be accompanied by a supporting vendor invoice.

- Time and Material Billing – All professional services (e.g., legal work and reimbursement-related project management services), excluding engineering professional services or "in-the-field" technical project management, must be billed as time and materials and not as a fixed fee. For services performed on a "time and materials" basis, the invoice must identify the individual(s) who completed the work, specify the hours and dates worked by the individual(s), the associated rate(s) per hour, and a detailed description of each activity performed by each person.

- Providers are strongly encouraged to provide documentation that includes detailed activity descriptions by day. However, when that level of detail is not available, a list of activities performed over a period of time may be accepted, as long as that period of time does not exceed one month. Invoices will be reviewed for reasonableness based on description of services provided relative to the total cost and technical aspects of the project; consideration of the timing of the Provider's removal, replacement, and disposal

project; and consideration of the rate of the individual(s) relative to the type of work performed. For example, invoices covering a variety of legal services and that also include "reimbursement-related" services (e.g., FCC Form 5640 planning, preparation and filing support, invoice processing, documentation collection and completion) should demonstrate a difference in the rate charged by lawyers performing legal services and other professionals performing FCC Form 5640 planning, preparation, and filing support.

- Fixed Fee Billing – Specific engineering professional services that result in work products or deliverables (e.g., system design, vendor selection, technical bid support, and subcontractor retention and management) may be billed to a Provider as a fixed fee. For professional services billed as fixed fee, the Provider must submit a copy of the vendor invoice and quote that provides a cost and activity "build-up" to support the expense. Fixed fee invoices must specify the time-period covered by the invoice, a description of the services rendered, and the amount due.

Are Providers required to provide a cover letter when submitting reimbursement claims?

Providers are not required to submit a cover letter; however, there are certain scenarios that warrant the provisioning of additional details about the expense(s) for which reimbursement is sought through a cover letter. These scenarios may include:

- If any required invoice details are not included by the vendor on its invoice (please refer to "What supporting detail is required for reimbursement of expenses?" for a list of required invoice details).
- If a partial payment is requested. A Provider may request a partial payment due to:
    - An equipment or service upgrade for which it is only requesting reimbursement for the amount associated with a comparable equipment or service;
    - A non-reimbursable cost included on the invoice but not requested for reimbursement; or
    - An invoice that is split across multiple applications.
- If an invoice submission is not clearly related to the cost category in which it is submitted.

When submitting a cover letter, please be sure it includes the corresponding invoice number, vendor name, and Provider FRN.

If a Provider has a RRD plan that requires a vendor to perform work that is both eligible and ineligible for reimbursement, how should the Provider delineate those expenses in the documentation it submits to support its Reimbursement Claim Request?

Providers must clearly delineate the work the vendor performed, as reflected in the invoice, that the Provider believes is reimbursable. Providers may provide this explanation by submitting a cover letter, clearly marking up the invoice to highlight reimbursable costs, and/or any other means that will indicate the reimbursable costs included on the invoice.

Secure and Trusted Communications Networks Reimbursement Program: *Frequently Asked Questions*

How will the review process for reimbursement claims be impacted if a Provider has an active SCRP Modification of Application for Funding Request?

When a Provider's application has an active modification that is under review or has been issued an RFI, the review process for reimbursement claims that include cost estimates directly related to the modification will be paused until the modification is approved or approved in part.

When will Providers receive reimbursement payments?

Reimbursement Claim Requests will be reviewed by the Fund Administrator and approved or denied by the FCC. Approved Reimbursement Claims Requests will be forwarded to the U.S. Treasury for disbursement. Providers will receive reimbursements via Automated Clearing House payments from the U.S. Treasury into the bank account they identify via the DUNS number on file.

There are many variables that affect the timing of receipt of payments, including documentation provided and any additional documentation that may be requested. Providers can facilitate timely processing of requests by ensuring the accuracy of all information entered in their application, attaching any explanatory and/or documentary materials needed to justify an expense, and responding timely to any requests for information from the Fund Administrator. The Provider also must have a registered SAM.gov Unique Entity ID (UEI) code so approved payments can be transferred to the Provider's bank account. Provider disbursements are subject to the Treasury Offset Program. In the event that a Provider is listed on the Do Not Pay Listing, the Treasury Department can garnish the disbursement to offset the Provider's liability to the Federal Government. Any variance between the approved disbursement by the FCC and the amount received by the Provider could be due to Treasury's internal policies and procedures related to the Offset Program.

How does a Provider submit bank account information to receive payment(s)?

Providers were required to register in SAM.gov prior to submitting their FCC Form 5640 Part C, to verify they were eligible to receive funding from the U.S. Government. Once registration was completed, SAM.gov issued a UEI, which is used to properly route disbursements.

Providers are required to ensure their SAM.gov registration remains active throughout their participation in the Reimbursement Program. Without an active registration with SAM.gov, Providers will not receive disbursements from the Treasury Department. This is imperative to receiving reimbursements in a timely fashion.

Must invoices be paid in full prior to submitting them for reimbursement?

No. Reimbursements can be made on a cost incurred basis as evidenced by a valid invoice. Providers do not need to pay an invoice before submitting it for reimbursement. The invoice must show that a valid payment is owed and due on a particular date. All invoices must contain a payment due date in addition to the other metadata requested in the FCC Form 5640. Providers should use an invoice's payment terms to calculate and document the payment due date on the invoice if this information is not originally included.

Many reimbursable expenses will be billed and owed in installments. Providers can submit invoices and other cost documentation as payment of each installment is requested by the vendor. The SCRP Online Portal permits Providers to specify the portion of the invoice for which they are requesting reimbursement. For example, if 10% of the total amount of the sales order is reflected on the invoice with a specific date due, the FCC Form 5640 Part G allows Providers to request reimbursement for only that 10% that is due, and to return to the expense to add further cost documentation to the same cost estimate line item when additional installments become due.

Will Reimbursement Program funds received by Providers be subject to income tax?

The Commission does not provide tax advice. The IRS did, however, release a letter providing tax guidance on various factual scenarios regarding Providers in the FCC's broadcast incentive auction reimbursement program.[28] While the factual scenarios do not exactly match the scenarios involved in the Reimbursement Program, the guidance provided may prove helpful in understanding the tax consequences and considerations when receiving Reimbursement Program support. As noted in the IRS letter, those seeking determinations on a specific factual pattern can request a private letter ruling from the IRS national office.[29]

What happens if Providers do not use all money disbursed for the equipment or services included in a reimbursement claim?

Reimbursed amounts that are either unused, returned to a Provider by a vendor, or subsequently found to be ineligible based on supplemental information must be returned to the Reimbursement Program. Providers must work with the Fund Administrator to return these funds.

What happens if Providers do not use all of their allocation before their programmatic invoice submission deadline?

Per the FCC's rules, following the expiration of the Reimbursement Claim Request deadline, any unclaimed funding allocated to a Provider will revert to the Reimbursement Program fund for potential allocation to other Reimbursement Program Recipients.[30]

Each FCC Form 5640 Part C that is filed and granted will receive its own separate funding allocation. As the Wireline Competition Bureau has made clear, "once the Bureau makes a funding allocation determination, the Bureau will not adjust the funding allocation amount even if there is a change in the participant's plans or if actual costs exceed estimated costs."[31] The FCC will allow for reallocation of unclaimed funds among affiliated Reimbursement Program participants post-allocation, notwithstanding the limitations on funding allocations discussed above.

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[28] *See* https://ecfsapi.fcc.gov/file/60001012319.pdf (Appx., Letter from IRS to Howard Symons dated July 3, 2014).

[29] Revenue Procedure 2014-1, 2014-1 Internal Revenue Bulletin 1.

[30] 47 CFR § 1.50004(g)(2).

[31] *See Finalized Form Procedures PN*, 36 FCC Rcd at 12204-05, para. 41.

To reallocate unclaimed funding, the participant will need to access their Program Participant file in the SCRP Online Portal to initiate an Allocation Transfer Request. The participant must specify (a) the application from which to transfer funds; (b) the application to receive the transferred funds; and (c) the amount.

How will the FCC handle transactions for RRD work between entities with common ownership?

It is anticipated that Recipients and their vendors will be separate entities free from financial or ownership relationships. There may, however, be instances when Recipients and vendors have common ownership. To assist the FCC and Fund Administrator in guarding the Reimbursement Program against fraud, waste, and abuse, Recipients may be asked to follow additional procedures or provide additional supporting documentation when potential transactions between entities with common ownership are identified during the invoice review process. Additional procedures or documentation will seek to ensure that Recipients receive reimbursement only for actual expenses incurred and that neither Recipients nor their employees benefit monetarily from the Reimbursement Program, which would constitute an abuse of Reimbursement Program rules. Though specific circumstances may vary and will be handled on a case-by-case basis when common ownership is identified, Recipients will be instructed to bill the expense appropriately based on the expense type and at cost, providing supporting documentation demonstrating a monetary transaction has taken place between the two entities and that no mark-up has been applied.

Can Providers add all invoices as one attachment and refer to the same attachment for every invoice submission?

Providers must only include one invoice when uploading to the invoice .pdf attachment field, although additional supporting documentation such as a cover letter or quote may also be included in the same attachment and the invoice may include multiple line items related to different portions of the Provider's RRD plan. Providers may not combine multiple invoices into a single document that is uploaded as the invoice .pdf attachment. Each incurred cost must be submitted as its own reimbursement claim with its own specific related supporting documentation inclusive of an invoice and any other additional support such as cover letter, quote, etc.

Additional supporting documentation for a particular invoice may be added to the Attachment Metadata section.

Reporting, Compliance Monitoring, and Investigations

What reports are Providers required to file once applications for reimbursement have been approved?

There are two reports that all Providers must file on a periodic basis. First, Providers must file status updates with the Commission every ninety days beginning on the date that their application for a reimbursement is approved. The first status updates from all Providers were due on October 13, 2022,

with each subsequent status update due every 90 days thereafter. Status updates must report on the work the Provider is performing to permanently remove, replace, and dispose of their covered communications equipment and services, including the efforts undertaken and the challenges encountered in performing that work. The status updates must also state whether the Provider has: (1) fully complied with, or is in the process of complying with, all requirements of the Reimbursement Program; (2) fully complied with, or is in the process of complying with, the commitments made in the Provider's application; (3) permanently removed from its communications network, replaced, and disposed of, or is in the process of permanently removing, replacing, and disposing of, all covered communications equipment or services that were in the Provider's network as of the date of the submission of the Provider's application; and (4) fully complied with, or is in the process of complying with, the timeline submitted by the Provider in their application. Each status update must include a certification that affirms the information in the update is accurate. Status updates must be filed every ninety days until the Provider notifies the Commission of the completion of the permanent removal, replacement and disposal of the covered communications equipment or service in its Final Certification. Status updates will be made public and will be posted on the FCC's website no earlier than 30 days after submission. The obligation to submit a status update applies to all Providers, including those that have not yet submitted a Reimbursement Claim Request.

Second, once a Provider receives an initial disbursement from the Reimbursement Program, it must begin filing spending reports with the Commission twice a year, by February 10 and August 10. Spending reports must state how the reimbursement funds disbursed to the Provider have been spent, including a detailed accounting of the covered communications equipment or services permanently removed and disposed of and the replacement equipment or services purchased, rented, leased, or otherwise obtained using reimbursement funds. Providers must file a final spending report following their submission of the Final Certification that shows the expenditure of all funds received as compared to the estimated costs identified in their FCC Form 5640 Part C applications. This final spending report must be filed no later than 60 days after the expiration of the Provider's reimbursement claim request deadline.

Where does a Provider file status updates?

An additional section of FCC Form 5640, Part K, is now available via the SCRP Online Portal. This is the mechanism through which Providers will submit status updates.

Where does a Provider file spending reports?

An additional section of FCC Form 5640, Part L, is available via the SCRP Online Portal. This is the mechanism through which Providers will submit spending reports.

Secure and Trusted Communications Networks Reimbursement Program: *Frequently Asked Questions*

What is the Final Certification requirement and how are Final Certifications filed?

No later than ten days after the conclusion of a Provider's RRD term, the Provider must submit a Final Certification to the Commission that indicates whether the Provider has fully complied with (or is in the process of complying with): (1) all terms and conditions of the Reimbursement Program; (2) the commitments the Provider made in its application for eligibility in the Reimbursement Program; and (3) the timeline the Provider submitted as part of its application for eligibility in the Reimbursement Program. This certification must also indicate whether the Provider has permanently removed, replaced, and disposed of all covered communications equipment and services that were in the Provider's network as of the date of the submission of the application for eligibility in the Reimbursement Program. Providers must submit this Final Certification via the SCRP Online Portal. Will Providers be subject to audits or other investigations?

Providers may be subject to a variety of audits, site visits, and proof of payment requests to assist the FCC and Fund Administrator in assessing whether Providers are complying with the requirements of the Secure Networks Act, the Commission's rules, and program procedures and guard the Reimbursement Program against fraud, waste, and abuse.

Audits may be conducted by various oversight bodies, including but not limited to, the FCC, the Fund Administrator, Office of Inspector General (OIG), Government Accountability Office (GAO), or U.S. Department of Treasury. A Reimbursement Program participant has an ongoing obligation to cooperate with program audits and investigations and to retain documentation supporting its requests for reimbursement for a period that extends 10 years after the date the Provider receives its final payment from the Reimbursement Program Fund.

Reimbursements will only be made for actual costs incurred as evidenced by a legitimate third-party invoice provided as documented evidence. Each reimbursement claim submission requires the Reimbursement Program participant to certify to its accuracy and compliance with the Reimbursement Program and FCC rules, and any applicable federal statutes. Should an audit reveal that a Provider submitted false or inaccurate information when submitting a Reimbursement Claim Request for which it subsequently received a disbursement of funds or that the Provider used reimbursement funds for expenses unrelated to its RRD project, the Provider will be required to return such funds to the FCC.

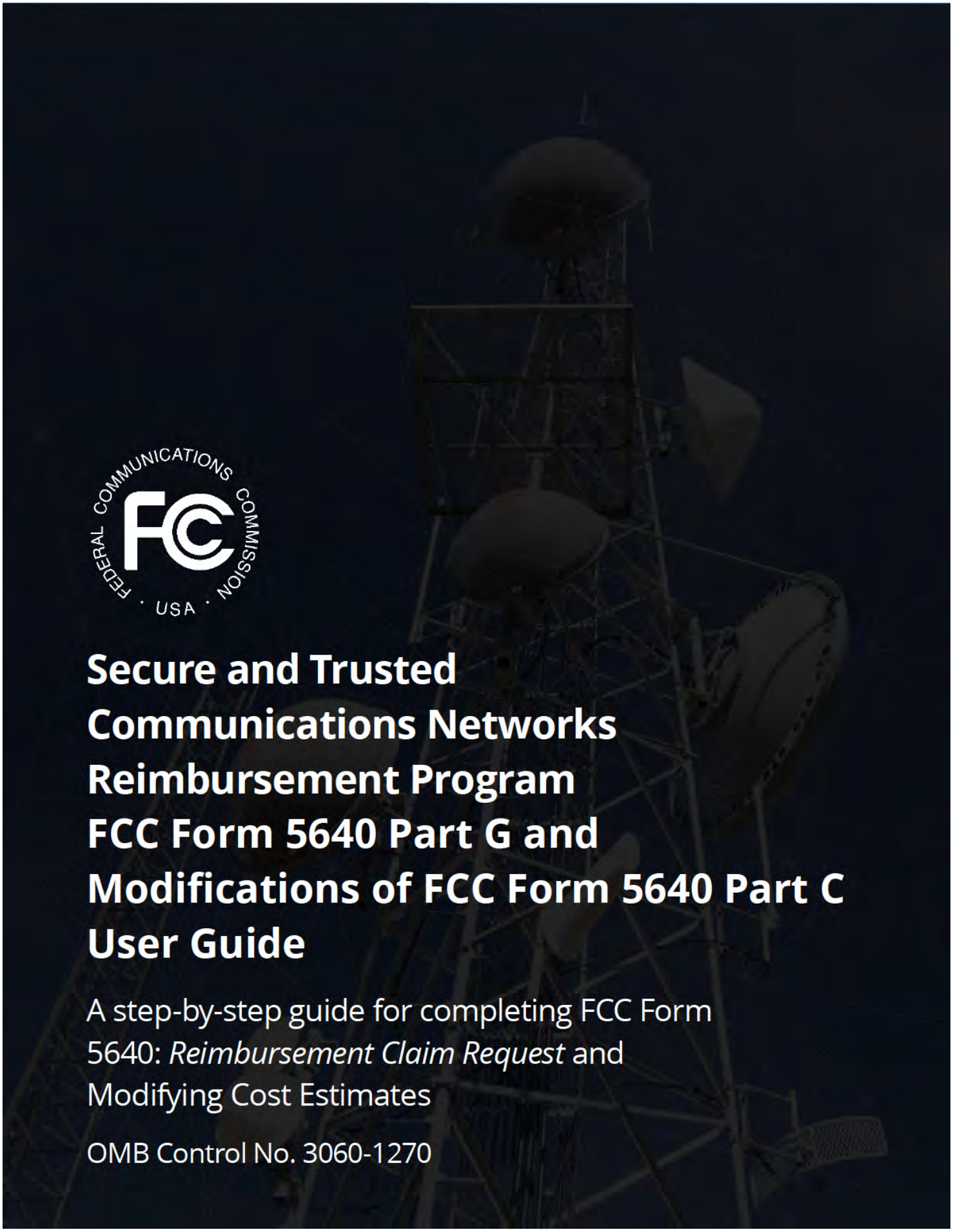
What documentation should Providers retain in order to comply with Reimbursement Program requirements?

In the *2020 Supply Chain Order*, the Commission advised Providers to retain all documentation related to their requests for funding reimbursement for actual expenses incurred (including relevant invoices and receipts) for a period of ten years. As such, Providers should retain documentation for each step of the removal, replacement, and disposal process in order to verify compliance with this requirement (e.g., records concerning the type, quantity, and location of existing covered communication equipment

and services, records concerning the purchase of replacement equipment). As it relates to disposal efforts in particular, Providers should:

- Retain shipping or transportation documentation, including detailed inventories supported by an affidavit, dates, locations, transportation service provider name, and means of transportation.
- Retain certificates of media disposition and certificates of destruction that will help Program Recipients and the Commission verify compliance with their disposal and verification obligations.
- Maintain a chain of custody for removed covered communications equipment awaiting destruction or recycling.
- Maintain a detailed inventory of all items removed from a site. This inventory should be dated by the date of removal, include how the items are being destroyed, where the equipment is being shipped, and the means of transportation to the recyclers. This documentation could take the form of short affidavits, receipts for storage facilities, affidavits attesting to the storage conditions, and photographic or video documentation.
- Have the disposal company maintain sufficient documentation evidencing the destruction of the equipment. At a minimum, the disposal company should be able to provide the Provider with a certificate of destruction, where applicable.

Providers are also advised to maintain records to verify compliance with other requirements of the Secure Networks Act and the FCC's rules, including, but not limited to, copies of reports that are required to be submitted to the FCC and records substantiating any statements of fact in petitions or other requests for relief submitted to the FCC.



Secure and Trusted Communications Networks Reimbursement Program FCC Form 5640 Part G and Modifications of FCC Form 5640 Part C User Guide

A step-by-step guide for completing FCC Form 5640: *Reimbursement Claim Request* and Modifying Cost Estimates

OMB Control No. 3060-1270

Table of Contents

Background

The Secure and Trusted Communications Networks Act of 2019 (Secure Networks Act), as amended, directed the Federal Communications Commission (FCC or Commission) to establish the Secure and Trusted Communications Networks Reimbursement Program (Reimbursement Program or SCRP).[1] The purpose of the Reimbursement Program is to reimburse providers of advanced communications services with ten million or fewer customers for costs reasonably incurred in the removal, replacement, and disposal of communications equipment or services produced or provided by Huawei Technologies Company (Huawei) or ZTE Corporation (ZTE) (or their parents, subsidiaries, or affiliates) and obtained on or before June 30, 2020 (Covered Communications Equipment or Services).[2]

In the *2020 Supply Chain Order*, the Commission adopted rules for the Reimbursement Program, which are codified in section 1.50004 of its rules.[3] The Commission revised these rules in the *2021 Supply Chain Order* and provided additional guidance on the application and reimbursement process in the *Finalized Reimbursement Process Public Notice*, including FCC Form 5640 Part C: Application Request for Funding Allocation (FCC Form 5640 Part C) and a Catalog of Eligible Expenses and Estimated Costs (Cost Catalog), and separately on the disposal process.[4]

On July 15, 2022, the Wireline Competition Bureau (Bureau) issued decisions approving and denying applications submitted for Reimbursement Program support. Applicants that were

[1] *Secure and Trusted Communications Act of 2019*, Pub. L. No. 116-124, 134 Stat. 158 (2020) (codified as amended at 47 U.S.C. § 1601-1609) (Secure and Trusted Communications Networks Act); *Consolidated Appropriations Act, 2021*, Pub. L. No. 116-260, § 901, 134 Stat. 1182 (2020) (CAA).

[2] *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, 11965-78, 11992-96, paras. 18-46, 85-94 (2021) (*2021 Supply Chain Order*); *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, 14309-10, paras. 51-54 (2020) (*2020 Supply Chain Order*) (interpreting "communications equipment or service").

[3] 47 CFR § 1.50004; *2020 Supply Chain Order*, 35 FCC Rcd at 14374-83, Appx. A.

[4] *2021 Supply Chain Order*, at Appx. A; *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, 36 FCC Rcd 12190 (WCB Aug. 3, 2021) (*Finalized Reimbursement Process Public Notice*); *Wireline Competition Bureau Announces Best Practices for Equipment Disposal and Revises FCC Form 5640 Certifications for the Secure and Trusted Communications Networks Reimbursement Program*, WC Docket No. 18-89, Public Notice, 36 FCC Rcd 14061 (WCB Sept. 30, 2021).

approved to receive an allocation (Recipients)[5] received an approval email from the Bureau and the Bureau announced these allocations in a July 18, 2022 Public Notice.[6]

Purpose and Scope of this User Guide

This document is a guide for Recipients to consult when submitting an FCC Form 5640 Part G: Reimbursement Claim Request (FCC Form 5640 Part G or Reimbursement Claim Request) or when modifying their cost estimates in FCC Form 5640 Part C. Recipients must file at least one Reimbursement Claim Request within one year of the approval of their FCC Form 5640 Part C application or their allocations will revert back to the Reimbursement Program.[7] In some cases, Recipients may need to submit a request to modify information submitted with their Application Request for Funding Allocation prior to submitting a Reimbursement Claim Request.

This User Guide provides informal guidance intended to assist Recipients as they proceed with these Reimbursement Program processes and does not constitute legal advice. Recipients remain solely responsible for reviewing and complying with all statutory provisions, rules, FCC precedent, and program procedures.

Mandatory and Permissible Modifications

Recipients that have not yet provided a vendor or supplier quote associated with an invoice because they relied on the Cost Catalog estimates when completing their Application Request for Funding Allocation *must* file a modification before submitting the Reimbursement Claim Request to provide the required vendor or supplier quote.[8] Recipients may also submit modification filings to:

- Update certain aspects of line items and itemized expenses, such as providing required details about replacement equipment and services;[9]
- Update the removal, replacement, and disposal timeline and plan submitted with the Recipient's application; and

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[5] The Secure Networks Act 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." 47 U.S.C. § 1608(11); *see also* 47 CFR § 1.50001 ("The term 'Reimbursement Program recipient' or 'recipient' means any 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.").

[6] *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 (WCB July 18, 2022).

[7] 47 CFR § 1.50004(g)(1).

[8] *Finalized Reimbursement Process Public Notice*, 36 FCC Rcd at 12206, para. 46. Recipients may not rely on the Cost Catalog as the basis for a modified cost estimate.

[9] *Id.* at 12208, para. 54. Permissible modifications to existing line items and itemized expenses include, but are not limited to, adding vendor and supplier quotes as well as new auxiliary equipment if it is required as part of the replacement of the covered equipment.

- Update location information for covered equipment and replacement equipment.[10]

Requests to modify line items and itemized expenses and other material changes will be reviewed by the Fund Administrator[11] and the Bureau to determine if they comply with program requirements.[12] While such modification requests may provide updated cost information for a Recipient's project, the funding allocation issued to the Recipient will not be altered.[13]

In addition, timelines submitted with a Recipient's application[14] must comply with the Recipient's deadline to complete the permanent removal, replacement, and disposal (RRD) of Covered Communications Equipment and Services, which is one year from its initial distribution of a reimbursement.[15] The submission or approval of a modification request, including but not limited to an update to a timeline, does not extend the deadline by which Recipients must complete the permanent removal, replacement, and disposal of all Covered Communications Equipment or Services.

Per the Secure and Trusted Networks Communications Act, Recipients will be required to certify in their Final Certifications that they have "permanently removed from the communications network of the recipient, replaced, and disposed of . . . all covered communications equipment or services that were in the network of the recipient as of the date of the submission of the application of the recipient for the reimbursement[.]"[16] Accordingly, Recipients are required to remove, replace, and dispose of all Covered Communications Equipment and Services in their networks as of the date of the submission of the application and may not now modify their plans to reduce that scope.[17]

Specific instructions on how to submit a modification request via the SCRP Online Portal are provided below. If you have questions about whether a particular type of modification request is permissible before you file, please contact the Fund Administrator at scrpfundadmin@fcc.gov.

Review of Reimbursement Claim Requests

A Recipient's Reimbursement Claim Request will be evaluated by the Fund Administrator and the Bureau based on information provided by the Recipient in its FCC Form 5640 Part G filing. To

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[10] *Id.*

[11] *Id.*

[12] 47 CFR § 1.50004(d).

[13] *Finalized Reimbursement Process Public Notice*, 36 FCC Rcd at 12208, para. 54.

[14] Applicants were required to submit specific timelines for the permanent removal, replacement, and disposal of the Covered Communications Equipment or Services in their networks with their applications, 47 U.S.C. § 1.50004(d)(4)(A)(ii), and will be required to certify that they complied with those timelines in their Final Certifications. 47 U.S.C. § 1.50004(e)(4)(A)(iv).

[15] 47 U.S.C. § 1603(d)(6)(A).

[16] 47 U.S.C. § 1603(e)(4)(A)(iii); 47 CFR § 1.50004(m)(1).

[17] Recipients are encouraged to carefully review modification requests to ensure they are consistent with all applicable provisions of the Secure and Trusted Networks Communications Act, the Commission's rules, and/or program procedures.

determine whether the expense was "reasonably incurred," the Fund Administrator and the Bureau will consider whether the cost is typically incurred when transitioning from Covered Communications Equipment or Services to a replacement, the cost relative to alternative equipment and services, and the capabilities and functions performed by the replacement equipment and services as compared to the equipment and services removed.[18] The Fund Administrator and the Bureau will compare the request to the price ranges in the Cost Catalog, review supporting invoice documentation, and consider any additional justification or explanation submitted by the Recipient in their review of Reimbursement Claim Requests.[19]

The review process is designed to allow reasonably incurred expenses to be paid while guarding the Reimbursement Program against waste, fraud, and abuse.

Specific instructions on how to submit Reimbursement Claim Requests via the SCRP Online Portal are provided below.

Deadline for Submission of All Reimbursement Claim Requests

Recipients have one year from their initial disbursement of a reimbursement to complete the permanent Removal, Replacement, and Disposal (RRD) of all Covered Communications Equipment or Services unless that deadline is extended by the FCC (RRD Term).[20] Recipients can file Reimbursement Claim Requests during the RRD Term and up until 120 days following the end of that term (Reimbursement Claim Request Deadline).[21] Recipients may also submit modifications during the 120 days following the expiration of their RRD term to the extent they are necessary to

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[18] *2020 Supply Chain* Order, 35 FCC Rcd at 14334-36, paras. 118-20; *2021 Supply Chain Order*, 36 FCC Rcd at 11992-96, paras. 86-94.

[19] While the Fund Administrator and the Bureau may refer to the Cost Catalog in evaluating a Reimbursement Claim Request, the Recipient may not rely on the Cost Catalog as the basis for a modified cost estimate and must instead have previously submitted a cost estimate modification request supported by an actual vendor quote or invoice. If the modified cost estimate exceeds the original estimated cost submitted for a particular line item, the Recipient must note the nature of the variation when submitting its cost estimate modification request. The Recipient must then submit an actual vendor invoice to support its Reimbursement Claim Request.

[20] 47 CFR § 1.50004(h); *2020 Supply Chain Order*, 35 FCC Rcd at 14291-92, para. 20. The Commission may extend the Removal, Replacement, and Disposal term for all recipients by six months if it "finds that the supply of replacement equipment or services needed by the recipients to achieve the purposes of the Program is inadequate to meet the needs of the recipients." 47 U.S.C. § 1603(d)(6)(B)(i); 47 CFR § 1.50004(h)(1). The Bureau may also grant a petition filed by a Recipient for an individual extension of up to six months "if the Bureau finds that, due to no fault of such recipient, such recipient is unable to complete the permanent removal, replacement, and disposal" of covered communications equipment and services within one year from their initial disbursement of reimbursement funds. 47 U.S.C. § 1603(d)(6)(C); 47 CFR § 1.50004(h)(2).

[21] 47 CFR § 1.50004(g)(2). A Recipient may request a single extension of their Reimbursement Claim Deadline, not to exceed 120 days. *See* 47 CFR § 1.50004(g)(3). A request for an extension of the Reimbursement Claim Deadline must be submitted before the Reimbursement Claim Deadline passes, or the request will not be deemed timely. *Id.*

process related reimbursement claims. Recipients may not submit Reimbursement Claim Requests for costs that are incurred after the end of their RRD Term. When the Recipient notifies the FCC and Fund Administrator that it has finished all removal, replacement, and disposal activities and has submitted all invoices, the FCC and Fund Administrator will commence closing out the Recipient's reimbursement account.[22] During the process of closing out the account, the FCC and Fund Administrator may require invoice proof of payment from Recipients.

Instructions for Submitting Modification Requests

As noted above, Recipients may make certain modifications to their Application Request for Funding Allocation and in some cases, must do so before submitting a Reimbursement Claim Request. In addition, the Fund Administrator may notify Recipients through a Request for Information (RFI) via the SCRP Online Portal if a modification is required before it can process a Reimbursement Claim Request. Regardless of any modified cost estimates, reimbursements will not be made in excess of a Recipient's available allocation amount.

Getting Started

To begin filing a modification, Recipients will log into the Supply Chain Reimbursement Program Online Portal, open their *Program Participant File*, then navigate to *SCRP Filings* and locate the appropriate Application Request for Funding Allocation that was either Completed Granted or Completed Granted in Part (Figure 1).

Figure 1: SCRP Filings

After opening their FCC Form 5640 filing, Recipients will select the blue 'Modify Application' button, which will allow them to submit the requested modifications to their filing (Figure 2).

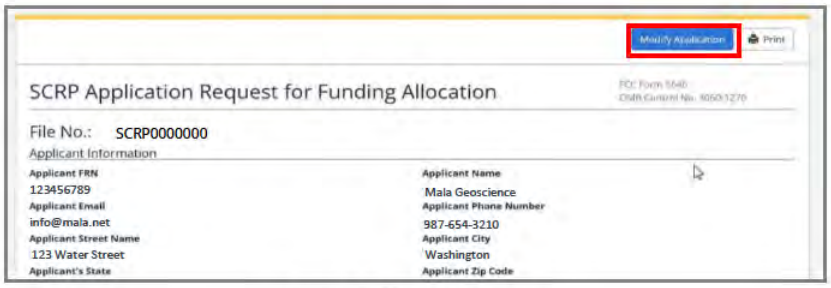

Figure 2: Modify Application

[22] Recipients must file a final certification to the Commission within 10 days following the expiration of the Removal, Replacement, and Disposal process. 47 CFR § 1.50004(m).

Once the modification opens, Recipients will fill out the Filing Contact Information for the individual who will handle any communications related to this modification. They will also provide a description of the modification and its purpose (Figure 3).

Figure 3: Applicant Information

Next, if there are changes to the timeline and plan, Recipients may upload their modified information in the Timeline and Plan Information section (Figure 4).

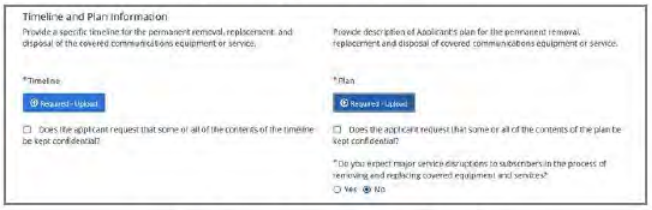

Figure 4: Timeline and Plan Information

If there are changes to Location information, Recipients will add and edit the information in the Locations section (Figure 5). Similarly, if there are changes to Equipment or Service information, Recipients will add or edit the information in the Equipment or Service section (Figure 6). All changes to Location and Equipment or Service information should be linked to a specific cost estimate.

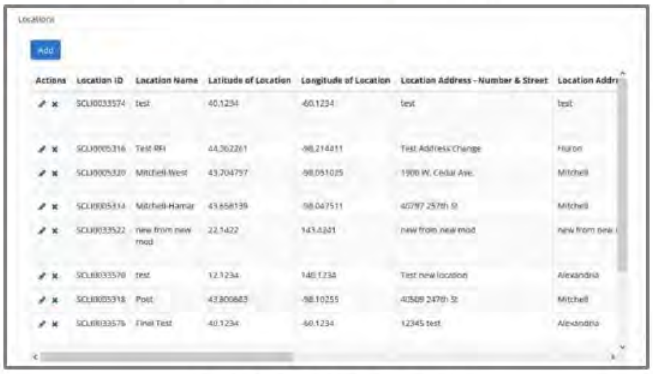

Figure 5: Locations Information

Figure 6: Equipment or Service Information

Next, Recipients will navigate to the Cost Estimate Modification section. As in the initial application filing, Recipients will utilize the batch upload feature by downloading the Excel template within the blue hyperlink (‘*download this excel template for cost estimates modification*’), as shown in Figure 7.

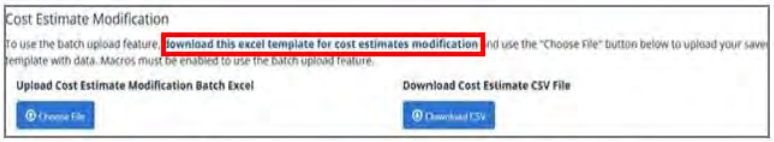

Figure 7: Download Cost Estimate CSV and Choose File

Refer to the sections below for instructions on how to add, edit, and remove cost estimates. Please note that only cost estimates that need to be added, modified, or removed should be included in the Cost Estimate Modification Template. Do not include cost estimates that do not need to be added, modified, or removed in the Cost Estimate Modification Template.

Adding or Editing Cost Estimates

Recipients will use the Cost Estimate ID to identify the cost estimate being modified, which may be copied from a request for information (RFI), if applicable, into Column A of the Cost Estimate Template (Figure 8). Alternatively, Recipients may find all of their cost estimate IDs by navigating to the Cost Estimates section within the SCRP Online Portal (Figure 9), which will include all cost estimates and IDs previously submitted. If the Recipient is entering new cost estimate information that does not have an existing Cost Estimate ID, then it will enter “NEW” in this column of the template. If the Recipient would like to export this information, they may do so by clicking the three horizontal lines above the table (Figure 10).

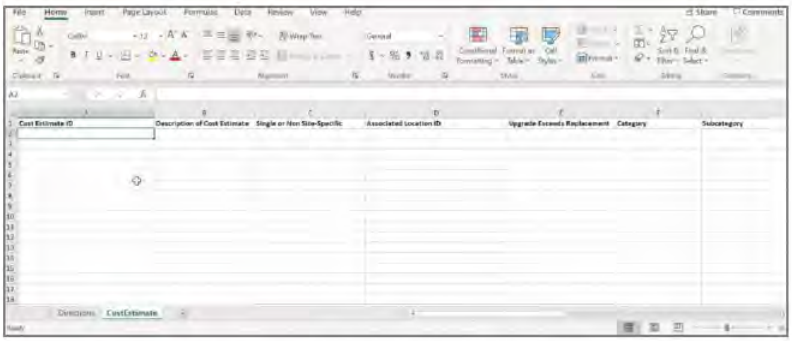

Figure 8: SCRP Excel Upload Cost Estimate Modification Template

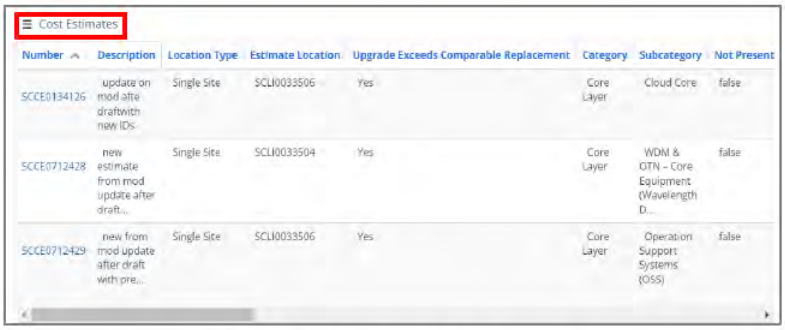

Figure 9: Cost Estimates Dashboard

Removing Cost Estimates

If the Recipient would like to remove a particular cost estimate because it is no longer necessary, it will need to include the Cost Estimate ID in the Cost Estimate Modification Batch Excel template and enter a cost estimate of $0 in Column K (Provide Estimate of Costs (in USD)).

Recipients should not resubmit cost estimates that are not being modified.

Completing Additional Columns and Submitting

After populating the Cost Estimate ID, the Recipient will complete all remaining columns of the Cost Estimate Modification Template for each cost estimate being modified. All of the columns of the Cost Estimate Modification Template, not only the information being modified, must be repopulated and modified as needed. The following describes each data category that must be re-entered into the Modification Template:

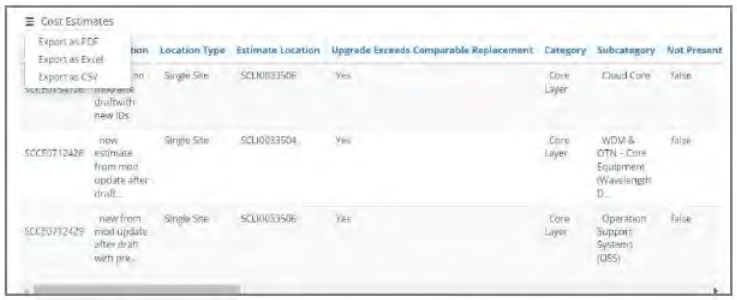

Figure 10: Cost Estimates Pending Review Export Option

- Describe the Cost Estimate.
- Identify if the cost estimate is associated with a Single Site or is Non-site-specific (from the drop-down menu); or
    - All cost estimates for existing or replacement Equipment should be tied to a location (Location ID);
    - If Recipients pick 'Single Site,' they will be required to identify the Location ID associated with the cost estimate. For Covered Equipment on a customer's premise, Recipients should choose 'single site'. Recipients will then input the location ID for the Equipment Location that was input in the location section;
    - If Recipients identify a cost estimate as 'Non-site-specific', they will not be required to identify the Location ID.

If the Recipient seeks to remove, replace, and dispose of equipment at multiple customer premises locations, the Recipient should create one Location ID for all customer premises locations in a given service area. For more information on how to do this, please refer to the Secure and Trusted Communications Networks Reimbursement Program FCC Form 5640 User Guide.

- Indicate whether the cost estimate is associated with a technology upgrade that exceeds a comparable replacement ('yes' or 'no').
    - If Recipients are requesting reimbursement up to the amount of the comparable replacement for the technology upgrade, they will need to complete the following steps:
        - Indicate that the 'Upgrade Exceeds Replacement' in column E.
        - Indicate the Cost Catalog category and subcategory (from the drop-down menu) of the comparable replacement equipment in columns F and G, respectively.
        - Indicate the Cost Catalog item (from the drop-down menu) of the comparable replacement equipment in column H (if applicable).
            - If the Cost Catalog item is not identified in the Cost Catalog, Recipients should choose 'true' in column I.

    - If the comparable replacement equipment is identified in the Cost Catalog, Recipients should confirm that the average cost is automatically populated in column J.
  - Enter the cost estimate for the amount of the comparable replacement equipment in column K.
  - Enter the actual 'Replacement Equipment' being purchased using the Equipment ID associated with the technology upgrade equipment in column O.
- Indicate to which category the cost estimate is related (choose 'Access Layer', 'Distribution Layer', 'Core Layer', 'Software', or 'Services' from the drop-down menu). For additional information on the Cost Estimate categories, please refer to the Cost Catalog (pages 8, 9, 18, 21 & 23).
- Indicate the related Cost Catalog subcategory (from the drop-down menu) based on the Category chosen above.
- Indicate the related Cost Catalog item (from the drop-down menu).
- Indicate if the cost estimate average is not identified in the Cost Catalog (if applicable).
- Confirm that the average cost from Cost Catalog is automatically populated.
- Provide the actual expense or new quote of costs reasonably incurred.
- Populate the 'Cost Estimate Justification and Supporting Quote Information.' In this field, Recipients should provide the file name(s) of the quote(s) that support this cost estimate, in addition to any other justification that the Recipient chooses to provide to support the cost estimate. Quotes that support the cost estimate should be uploaded in the **Attachments** section later in the application.
- Identify the Equipment ID for Existing Equipment or Service Being Removed, Replaced, and/or Disposed.
- Indicate the Quantity of Existing Equipment.
- Identify the Equipment ID for Replacement Equipment or Service.
- Identify the Quantity of Replacement Equipment.

Recipients will no longer be using the Cost Catalog Average when modifying their cost estimates. Column K is where Recipients should enter the new cost estimate value from their vendor quote or actual expense incurred.

Figure 11: Upload Cost Estimate Modification Batch Excel

Once the Recipient has completed the Cost Estimate Modification Template, it will need to select the 'Choose File' button within the application beneath the **Upload Cost Estimate Modification Batch Excel** section on the left-hand side of the screen (Figure 11). When the template has been uploaded to the application, the Recipient should see a link to the document appear beneath the 'Choose File' button. The blue 'Download CSV' button under 'Download Cost Estimate CSV File' provides Recipients with the opportunity to download their completed file, inclusive of their changes.

Once all the necessary changes have been made, the Certifying Official must re-certify their FCC Form 5640 Part C by ticking the box in the Certifications section and complete the Certifier Information section. The Date Signed will automatically populate. This section is the equivalent of electronically signing the submission. Recipients will then submit their modified FCC Form 5640 Part C by clicking on the blue 'Submit' button on the bottom right of the page. If a Recipient is not ready to submit, it can save its modified FCC Form 5640 Part C as a draft by clicking on the blue 'Save as Draft' button on the bottom left of the page.

Recipients can revise their modified FCC Form 5640 Part C by logging into the SCRP Online Portal and navigating to the relevant 'Program Participant File' and 'SCRP Filing'. Once they have selected the correct filing, they may select the blue "Open Modified Draft" button in the top right of the page to continue working. Once revisions have been made, Recipients will have the option to save as draft or submit.

Once ready to submit, Recipients will submit their modified FCC Form 5640 Part C by clicking on the blue 'Submit' button on the bottom right of the page.

Instructions for Submitting FCC Form 5640 Part G: Reimbursement Claim Request

After receiving an allocation and once any required modifications are made, Recipients can return to the SCRP Online Portal and complete an FCC Form 5640 Part G to submit invoices as part of a Reimbursement Claim Request. Please note that some data will need to be input again, e.g., contact information.

Figure 12: Part G- Reimbursement Claim Request

To begin the Reimbursement Claim Request process, the Recipient will log into the SCRP Online Portal and navigate to its *Program Participant File*. After opening its file, the Recipient will click 'Create New Filing' then click **Reimbursement Claim Request (Part G)** (Figure 12).

Applicant Information

The Recipient will begin this section by ensuring that its 'Applicant Information' is accurate, including FRN, Applicant Name, Email, Phone Number, Street Name, City, State, and Zip Code. This information will be automatically populated from the FCC Form 5640 Part C filing.

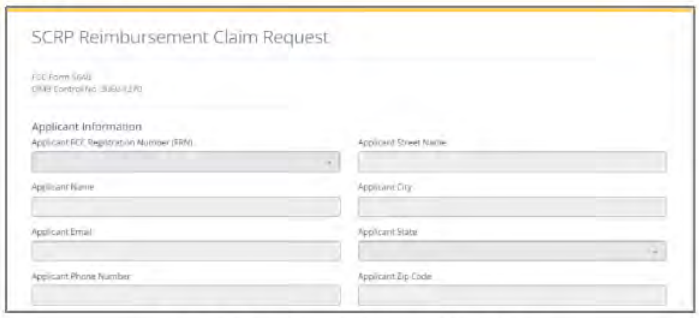

Figure 13: Part G- Applicant Information

Contact Information

In this section, the Recipient will ensure that its 'Contact Information' is accurate. This information may be automatically populated from Part C by clicking the "Is the contact the same as the contact listed on the Application Request for Funding Allocation" checkbox, but Recipients will have the ability to edit the information, if necessary. If the Recipient needs to manually input its contact information, it will complete the following fields: Contact Name, Email, Phone Number, Street Name, City, State (utilizing the drop-down menu), and Zip Code.

Figure 14: Part G- Contact Information

These fields will identify the contact representative if it is different from the Recipient. Please ensure that the **point of contact listed is easily contactable** through the information provided.

Invoice Information

In this section, the Recipient will input information about the invoice(s) to be reimbursed. Recipients will need to provide a vendor or supplier quote associated with the invoice in this section. Recipients will be required to link actual costs incurred and the supporting invoice documentation to their itemized cost estimates.

Additionally, Recipients will need to upload supporting documentation for the costs for which they are seeking reimbursement demonstrating the costs were actually incurred. Such supporting documentation must include a valid invoice, receipt, or other form of documentation that explains the nature, date, and cost of the expense. This attachment must be a pdf.

Invoices submitted by Recipients for reimbursement must include the following information:

- Description of Invoice to be reimbursed
- Invoice Vendor
  - Vendor Name
  - Vendor Identification Number (EIN) or Taxpayer Identification Number (TIN)
- Invoice Number (assigned by the vendor)
- Total Invoice Amount
- Invoice Date
- Invoice Due Date (Recipients should use the payment terms to calculate and document the payment due date on the invoice if this information is not originally included)
- Recipient FRN
- Location ID (if costs are associated with a specific site location)

Previously entered Invoice Vendor names will display in a drop-down menu. If the Invoice Vendor does not appear in the drop-down menu, Recipients should check the 'Other Vendor' box, then enter the Vendor Name and Vendor EIN/TIN.

Recipients will answer 'yes' or 'no' to the questions outlined below:

- Does the attached invoice contain costs ineligible for reimbursement?
- Does the invoice contain expense(s) related to technology upgrades that are not eligible for reimbursement as a comparable replacement?

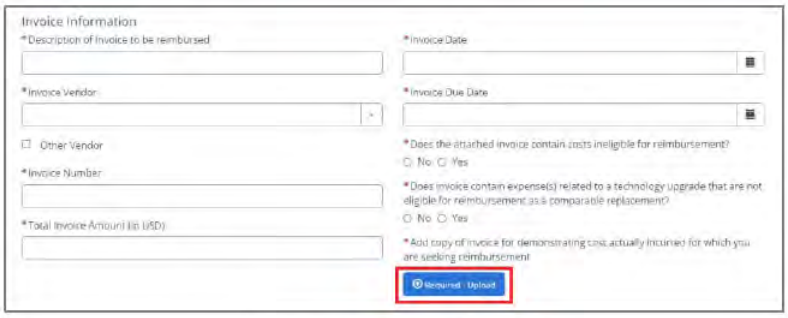

Figure 15: Part G Invoice Upload

Recipients will then upload a copy of the invoice by clicking the blue 'Required Upload' button (Figure 15).

The Recipient will add details of each invoice item by clicking the blue 'Add' button. After clicking the blue 'Add' button, the 'Add Row' pop-up box will appear to add specific details of the invoice item(s) (Figure 16). The Recipient will need to manually input the Reimbursement Request Amount, Description of Item or Services Being Reimbursed, and Identify the Cost Estimate to Which This Cost Is Related. The Recipient may follow this process to add multiple invoice items. After each invoice item is added, it will be reflected in a row. Please note that the Invoice Item ID may populate as null, however this does not mean there is an error, and the ID will populate once the reimbursement claim is submitted.

Figure 16: Part G- Invoice Pop-up

Certifier Information

The Recipient Certifying Official must certify to the accuracy of the Recipient's Reimbursement Claim Request by ticking the box in the Certifications section and completing the Certifier Information section. The Date Signed will automatically populate. This section is the equivalent of electronically signing the Reimbursement Claim Request. If Recipients are not ready to submit, they can save their reimbursement claim as a draft by clicking on the blue 'Save as Draft' button on the bottom left of the page.

Recipients can revise their invoice draft by logging into the SCRP Online Portal and navigating to the relevant 'Program Participant File' and 'SCRP Filing'. Once they have selected the correct Reimbursement Claim file, they may select the "Open Draft" button to continue working. Once revisions have been made, Recipients will have the option to save as draft or submit.

Once ready to submit, Recipients will then submit their reimbursement claim by clicking on the blue 'Submit' button on the bottom right of the page.

Attachments

In this section, Recipients can upload additional documentation that they believe may be beneficial to the review of their Reimbursement Claim Request filing, such as a cover letter or other explanation.

Figure 17: Part G- Attachments

If uploading additional attachments here, Recipients will need to include a short description, the category of the attachment (from the drop-down menu), and indicate if it is to remain confidential (Figure 18). When seeking confidential treatment for attachments categorized as "Other", the Recipient must also upload a request for confidentiality providing the justification as to why the information is entitled to confidential treatment.[23] That request for confidentiality will be made publicly available. Attachments for which confidential treatment is sought will be withheld from routine public inspection. Redacted versions of these attachments and attachments not indicated as containing confidential information will be subject to routine public inspection. Multiple attachments can be added. After an attachment is added, it will be reflected in a row.

Figure 18: Part G- Attachments Pop-Up

Responding to Requests for Information in the SCRP Online Portal

The Fund Administrator may ask a Recipient to respond to a RFI about a submitted Reimbursement Claim Request or a requested modification to its Application Request for Funding Allocation. Recipients will receive a RFI notification via email and should respond to the RFI request within the SCRP Online Portal. If the RFI pertains to a submitted Reimbursement Claim Request, the RFI notification will unlock the associated Reimbursement Claim Request to allow revisions. If the RFI pertains to a submitted modification request, the RFI notification will unlock the associated SCRP Modification of Application for

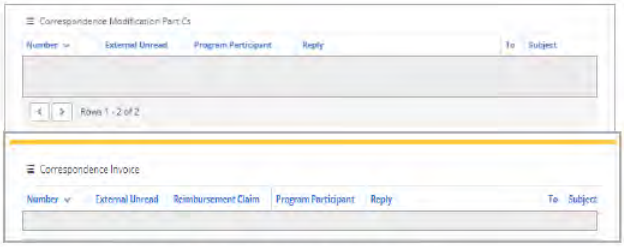

Figure 19: Correspondence Tables

[23] *See Finalized Reimbursement Process Public Notice*, 36 FCC Rcd at 12214, para. 70.

Funding Request to allow revisions. Failure to respond to an RFI could potentially result in a delay in, or denial of, funding.

> When an application has an active modification that is under review or has been issued an RFI, the review process for reimbursement claims that include cost estimates directly related to the modification will be paused until the modification is approved or approved in part.

After logging into the SCRP Online Portal, Recipients will click on their Program Participant File. Recipients will see multiple 'Correspondence' tables. If the RFI pertains to an invoice, select the corresponding row with the RFI communication in the 'Correspondence Invoice' table (Figure 19) to view specific details of the RFI. If the RFI pertains to a submitted modification request, select the corresponding row with the RFI communication in the 'Correspondence Modification Part Cs' table (Figure 19) to view specific details of the RFI. By clicking on the row containing the RFI communication, the specific details of the RFI will open, such as the Program Participant number, Status, Correspondence Type, and more. These greyed boxes cannot be edited by the Recipient. After scrolling down, Recipients will see the body of the correspondence and all communications history related to the RFI. Recipients may reply to the RFI if they have a question regarding the correspondence and/or requested information. Please note that submitted Reimbursement Claim Requests or requested modifications to an Application Request for Funding Allocation will lock again once Recipients recertify and submit, or if they do not make the requested changes in a timely manner.

Amending Part G Reimbursement Claim Request Submissions

If the RFI requires updates to be made to a Reimbursement Claim Request, Recipients will need to amend the claim and resubmit. To amend a claim, Recipients will log into the SCRP Online Portal, navigate to the relevant 'Program Participant File,' then scroll down to 'SCRP Filings' (Figure 20) to select the correct Reimbursement Claim by clicking on the appropriate 'File Number' (note: 'SCRP Internal Status' will be 'Needs More Information'). Once the Recipient has selected the correct Reimbursement Claim file, they should select the blue 'Amend' button (Figure 21) to make the requested changes. Once the requested changes have been made, Recipients will have the option to save as draft or submit. Once ready to submit, Recipients will then submit their reimbursement claim by clicking on the blue 'Submit' button on the bottom right of the page. Recipients may refer to the instructions above beginning on page 12 on how to submit their reimbursement claim via Part G.

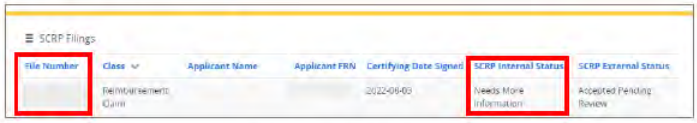

Figure 20: SCRP Filings

Figure 21: Amending Part G Reimbursement Claim

Please note, Recipients have 15 days to respond to the RFI and/or make the requested updates. If a response is not received and/or the requested updates are not made within 15 days, Recipients will receive a follow up email with an additional 10 days to respond and/or make the requested updates before the invoice is denied.

Modifying Form 5640 Part C Application Request for Funding Allocation

If the RFI requires updates to be made to a submitted modification request, Recipients will log into the SCRP Online Portal, open their *Program Participant File*, then navigate to *SCRP Filings* (Figure 22) to select the correct Application Request for Funding Allocation by clicking on the appropriate 'File Number' (note: 'SCRP Internal Status' will be 'Needs More Information'). Once the Recipient has selected the correct modification request, they should select the blue 'Update' button (Figure 23) to make the requested modifications to their filing. Recipients may refer to the instructions above beginning on page 8 on how to modify their Form 5640 Part C.

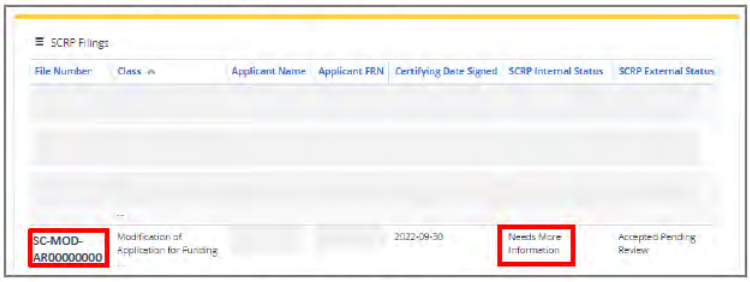

Figure 22: SCRP Filings

Figure 23: Modifying Form 5640 Part C

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 24-235
Released: March 11, 2024

MEDIA BUREAU REMINDS UNITED STATES-BASED FOREIGN MEDIA OUTLETS OF NEXT SEMI-ANNUAL DISCLOSURE DEADLINE

Reports Due by April 11, 2024

Section 1085 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (NDAA) amended the Communications Act of 1934 (the Communications Act) to add section 722, which requires all "United States-based foreign media outlets" to submit to the Commission a report containing: 1) the name of such outlet; and 2) a description of the relationship of such outlet to the foreign principal of such outlet, including a description of the legal structure of such relationship and any funding that such outlet receives from such principal.[1] The report is to be submitted no later than 60 days after the date of the enactment of the NDAA and no less frequently than every 6 months thereafter.[2] As the previous report was due on October 12, 2023, the deadline for outlets to submit the next NDAA report to the Commission is **April 11, 2024**.

The Commission has established an e-mail inbox, at ndaareport@fcc.gov, that outlets should use to submit the reports. Respondents should format the reports as Adobe® Acrobat® (PDF) or Microsoft® Word documents and attach them to the e-mail. The e-mail submitting the report should include a subject or caption referring to the NDAA disclosure requirement and the name of the outlet. Respondents are reminded that the contents of the reports are subject to the provisions of the United States Code governing statements or representations made before the Commission.[3]

For purposes of this disclosure requirement, the NDAA provides that the term "United States-based foreign media outlet" means an entity that (A) produces or distributes video programming (as defined in section 602 of the Communications Act) that is transmitted, or intended for transmission, by a multichannel video programming distributor (as defined in such section) to consumers in the United States; and (B) would be an agent of a foreign principal for purposes of the Foreign Agents Registration Act of 1938 (FARA) (22 U.S.C. § 611 et seq.) but for section 1(d) of FARA (22 U.S.C. § 611(d)).[4] The Communications Act defines the term "video programming" as "programming provided by, or generally considered comparable to programming provided by, a television broadcast station."[5] The term "multichannel video programming distributor" means "a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television

[1] John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, §1085(a) (2018) (NDAA).

[2] 47 U.S.C. § 624(a).

[3] 18 U.S.C. § 1001.

[4] 47 U.S.C. § 624(d)(2).

[5] 47 U.S.C. § 522(20).

receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming."[6]

The NDAA provides that the term "foreign principal" has the meaning given such term in Section 1(b)(1) of FARA (22 U.S.C. § 611(b)(1)).[7] Section 1(b)(1) of FARA provides that "a government of a foreign country and a foreign political party" are included in the definition of a "foreign principal."[8] Section 1(c) of FARA provides that, except "as provided in subsection (d) of this section, the term 'agent of a foreign principal' means (1) any person who acts as an agent, representative, employee, or servant, or any person who acts in any other capacity at the order, request, or under the direction or control, of a foreign principal or of a person any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign principal, and who directly or through any other person--(i) engages within the United States in political activities for or in the interests of such foreign principal; (ii) acts within the United States as a public relations counsel, publicity agent, information-service employee or political consultant for or in the interests of such foreign principal; (iii) within the United States solicits, collects, disburses, or dispenses contributions, loans, money, or other things of value for or in the interest of such foreign principal; or (iv) within the United States represents the interests of such foreign principal before any agency or official of the Government of the United States; and (2) any person who agrees, consents, assumes or purports to act as, or who is or holds himself out to be, whether or not pursuant to contractual relationship, an agent of a foreign principal as defined in clause (1) of this subsection."[9]

Section 1(d) of FARA states that the "term 'agent of a foreign principal' does not include any news or press service or association organized under the laws of the United States or of any State or other place subject to the jurisdiction of the United States, or any newspaper, magazine, periodical, or other publication for which there is on file with the United States Postal Service information in compliance with section 3611 of Title 39, published in the United States, solely by virtue of any bona fide news or journalistic activities, including the solicitation or acceptance of advertisements, subscriptions, or other compensation therefor, so long as it is at least 80 per centum beneficially owned by, and its officers and directors, if any, are citizens of the United States, and such news or press service or association, newspaper, magazine, periodical, or other publication, is not owned, directed, supervised, controlled, subsidized, or financed, and none of its policies are determined by any foreign principal defined in subsection (b) of section 611, or by any agent of a foreign principal required to register under this subchapter."[10]

Consistent with the requirements of the NDAA, the Commission will transmit to Congress a report that summarizes the contents of the reports submitted by United States-based foreign media outlets within 90 days from the date of enactment, and not less frequently than every 6 months thereafter.[11] As the Commission transmitted the previous report on or before Nov. 9, 2023, the Commission will transmit the next report on or before May 9, 2024. In addition, the Commission will make publicly available on its website each report submitted by a United States-based foreign media outlet no later than the earlier of (1) 30 days after the outlet submits its report to the Commission or (2) the date on which the Commission

[6] 47 U.S.C. § 522(13).

[7] 47 U.S.C. § 624(d)(1).

[8] 47 U.S.C. § 624(d)(1); 22 U.S.C. § 611(b)(1). We note that the Department of Justice has adopted regulations implementing the Foreign Agents Registration Act of 1938, including definitions of statutory terms. *See* 5 CFR §§ 5.1, *et seq.; id.* § 5.100.

[9] 22 U.S.C. § 611(c).

[10] 22 U.S.C. § 611(d).

[11] NDAA, §1085(b) (codified at 47 U.S.C. § 624(b)).

transmits its report to Congress.[12] These reports and the Commission's report to Congress can be found on the website of the Media Bureau: https://www.fcc.gov/united-states-based-foreign-media-outlets.

For additional information, contact James Elustondo, James.Elustondo@fcc.gov, of the Media Bureau, Industry Analysis Division, at (202) 418-1801. Press inquiries should be directed to Nancy Murphy, Nancy.Murphy@fcc.gov, at (202) 418-1043.

- FCC -

[12] NDAA, §1085(c) (codified at 47 U.S.C. § 624(c)).

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

In the Matter of	)	
	)	
THE KLAMATH TRIBES	)	ULS File No. 0009168542
	)	
NEZ PERCE TRIBE	)	ULS File No. 0009184902
	)	
ROUND VALLEY INDIAN TRIBES	)	ULS File No. 0008964895
	)	
SHOALWATER BAY TRIBE OF THE SHOALWATER BAY INDIAN RESERVATION	)	ULS File No. 0009220222
	)	
Requests for Waiver of Tribal Lands Definition in the 2.5 GHz Tribal Priority Window	)	

MEMORANDUM OPINION AND ORDER

Adopted: March 11, 2024 **Released: March 12, 2024**

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. The Klamath Tribes (Klamath),[1] Nez Perce Tribe (Nez Perce),[2] Round Valley Indian Tribes (Round Valley),[3] and Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation (Shoalwater Bay)[4] each filed an application in the 2.5 GHz Rural Tribal Priority Window (Tribal Window). In connection with these applications, each Tribe submitted a request for waiver[5] of section 27.1204(b)(2) of the Commission's rules, which defines eligible Tribal lands for purposes of the Tribal Window. In this *Memorandum Opinion and Order*, we grant the Waiver Requests.[6]

II. BACKGROUND

2. In July 2019, the Commission approved an order modernizing the portion of the 2.5 GHz band formerly known as the Educational Broadband Service.[7] Among other things, the order created a

[1] *See* File No. 0009168542 (filed July 31, 2020, amended Aug. 19, 2020) (Klamath Application).

[2] *See* File No. 0009184902 (filed Aug. 13, 2020) (Nez Perce Application).

[3] *See* File No. 0008964895 (filed Feb. 3, 2020, amended July 31, 2020, and Aug. 31, 2020) (Round Valley Application).

[4] *See* File No. 0009220222 (filed Sept. 2, 2020, amended Oct. 9, 2020, Oct. 22, 2020, and Oct. 26, 2020) (Shoalwater Bay Application).

[5] Klamath Application, Petition for Waiver (Klamath Waiver Request); Nez Perce Application, Waiver Request and Eligibility and Local Presence Exhibit (Nez Perce Waiver Request); Round Valley Application, Petition for Waiver (Round Valley Waiver Request); Shoalwater Bay Application, Petition for Waiver (Shoalwater Bay Waiver Request) (collectively, Waiver Requests).

[6] *See* 47 CFR § 1.925(b)(3).

[7] *Transforming the 2.5 GHz Band*, Report and Order, 34 FCC Rcd 5446 (2019) (*2.5 GHz Report & Order*).

Rural Tribal Priority Window during which eligible Tribal entities could apply for licenses for currently unassigned 2.5 GHz spectrum.[8] To obtain a license in the Rural Tribal Priority Window, an applicant must meet four requirements. First, the applicant must be an eligible entity, which the rule defines as "[a] federally recognized American Indian Tribe or Alaska Native Village; or an entity that is owned and controlled by a federally-recognized Tribe or a consortium of federally-recognized Tribes."[9] Second, the applicant must apply for eligible Tribal lands, as defined in section 27.1204(b)(2) of the Commission's rules.[10] Third, the eligible Tribal lands must be in a rural area, which is defined as "lands that are not part of an urbanized area or urban cluster area with a population equal to or greater than 50,000."[11] Finally, the applicant must have a local presence on the eligible Tribal lands for which it is applying.[12]

3. In 2020, the Commission denied a petition for reconsideration seeking adoption of the broader definition of Tribal lands contained in part 73 of our rules, which includes off-reservation trust lands, for purposes of the Tribal Window.[13] Specifically, "[t]he Commission required the direct participation of Tribal governments, or entities owned and controlled by such Tribes, in the 2.5 GHz context to ensure that licensees would have the requisite authority over the deployment of facilities and service on their rural Tribal lands."[14] The Commission recognized, however, that there might be "exceptions to the general rule" where case-by-case waivers would be appropriate to allow for the licensing of off-reservation lands in the Tribal Window.[15]

4. Except for Nez Perce, each Tribe addressed by this *Memorandum Opinion and Order* filed one application during the Tribal Window that requested a license for each Tribe's eligible reservation land, for which no waiver is required, and certain adjacent areas, including different combinations of off-reservation trust, Tribally-owned fee, and non-Tribal lands, which all require a waiver.[16] The Nez Perce filed two applications in the Tribal Window, the first of which sought a license for the Tribe's reservation.[17] That application has been granted.[18] The second application, which is addressed in this *Memorandum Opinion and Order*, requests a waiver of the Tribal lands definition in

[8] *Id.* at 5463–69, paras. 47–65.

[9] 47 CFR § 27.1204(b)(1).

[10] *Id.* § 27.1204(b)(2). The rule defines eligible Tribal lands in relevant part as "any federally recognized Indian Tribe's reservation, pueblo or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) and Indian Allotments, see § 54.400(e) of this chapter, as well as Hawaiian Home Lands—areas held in trust for native Hawaiians by the State of Hawaii, pursuant to the Hawaiian Homes Commission Act, 1920, July 9, 1921, 42 Stat 108, *et seq.*, as amended." *Id.*

[11] *Id.* § 27.1204(b)(3).

[12] *Id.* § 27.1204(b)(4). On January 6, 2020, the Wireless Telecommunications Bureau (Bureau) released a Public Notice setting forth the process for submitting applications in the Tribal Window, including details regarding how applicants could demonstrate compliance with the eligibility requirements or file requests for waiver. *Wireless Telecommunications Bureau Announces Procedures for 2.5 GHz Rural Tribal Priority Window*, Public Notice, 35 FCC Rcd 308 (WTB 2020).

[13] *See Transforming the 2.5 GHz Band*, Order on Reconsideration, 35 FCC Rcd 15074, 15080–81, para. 22 (2020) (*Reconsideration Order*).

[14] *Id*. at 15081, para. 22.

[15] *Id.* at 15081, para. 23.

[16] Klamath Application, Round Valley Application, Shoalwater Bay Application.

[17] *See* File No. 0009001261 (filed Mar. 5, 2020, amended July 29, 2020, and July 30, 2020).

[18] *See* File No. 0009001261 (granted Oct. 21, 2020) (WRJS953).

order to obtain a license for additional rural lands surrounding the Tribe's reservation.[19] Each applicant notes that the areas they have applied for are rural and have poor broadband access.[20]

5. The Wireless Telecommunications Bureau accepted each application for filing.[21] No petitions to deny or oppositions were filed against the applications or Waiver Requests in response to the Bureau's Public Notices.

III. DISCUSSION

6. A request for a waiver may be granted if it is shown that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) in view of unique or unusual 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.[22] Here, we find that each applicant's showing meets the first prong of the waiver standard to the extent that each seeks a waiver for off-reservation trust or Tribally-owned fee lands. With respect to the non-Tribal lands contained within their requested shapefiles, we grant waivers under the second prong of the Commission's waiver standard. Accordingly, we waive section 27.1204(b)(2) of the Commission's rules to allow licensing of the off-reservation trust, Tribally-owned fee, and non-Tribal land specified for each applicant.

7. The Commission established the Tribal Window to address the acute problem of lack of access to wireless communications services in rural Tribal areas.[23] In these instances, we find that, with respect to the off-reservation trust and Tribally-owned fee parcels identified by the applicants, strictly applying the Tribal lands definition would be inconsistent with the Tribal Window's purpose of providing wireless communications services in rural Tribal areas. First, we find that each applicant has shown that the off-reservation trust and fee lands in question are either held for the specific benefit of the Tribe or are directly owned by the Tribe. As such, each applicant has adequately demonstrated its authority over the off-reservation trust and Tribally-owned fee land. We find, based upon the showing made by each of the applicants, that treating these rural lands as eligible Tribal lands under the Tribal Window would be consistent with the Tribal Window's purpose.[24] We note that the off-reservation trust and Tribally-owned fee lands in question are areas subject to the respective Tribe's current, demonstrated authority. In addition, we find that a waiver would be in the public interest because each of the applicants plans to use the 2.5 GHz spectrum to provide service on rural trust and fee lands that are either held for the specific benefit of the Tribe or are directly owned by the Tribe. As such, we find that each of the applicants has

[19] *See* Nez Perce Waiver Request at 1. The most recent U.S. Census mapping data available does not identify these additional rural areas as Tribal lands. *See* https://www.census.gov/cgi-bin/geo/shapefiles/index.php?year=2023&layergroup=American+Indian+Area+Geography.

[20] *See* Klamath Waiver Request at 3; Nez Perce Waiver Request at 5; Round Valley Waiver Request at 7; Shoalwater Bay Waiver Request at 6.

[21] *Wireless Telecommunications Bureau Announces Additional 2.5 GHz Rural Tribal Priority Window License Applications Accepted for Filing*, Public Notice, 36 FCC Rcd 285, 288, 289, Attachs. A, B (WTB 2021) (Shoalwater Bay); *Wireless Telecommunications Bureau Announces Additional 2.5 GHz Rural Tribal Priority Window License Applications Accepted for Filing*, Public Notice, 35 FCC Rcd 12850, 12853, 12854, Attachs. A, B (WTB 2020) (other applications).

[22] 47 CFR § 1.925(b)(3).

[23] *Reconsideration Order*, 35 FCC Rcd at 15075, para. 4.

[24] The Commission has noted that the problem of lack of communications is particularly acute on rural Tribal lands. *See 2.5 GHz Report & Order*, 34 FCC Rcd at 5466, para. 56; *see also Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, 2020 Broadband Deployment Report, 35 FCC Rcd 8986, 9013, para. 47 (2020) ("Rural Tribal lands continue to lag behind urban Tribal lands, with only 52.9% of all Tribal lands in rural areas having deployment of both [fixed and mobile broadband] services, as compared to 93.1% of Tribal lands in urban areas.").

adequately demonstrated that it has "the requisite authority over the deployment of facilities and service[s]"[25] over the lands at issue, and they have therefore demonstrated that strictly applying the Tribal lands definition would be inconsistent with its purpose.

8. With respect to the remaining non-Tribal lands specified in the applications, we find that under the unusual factual circumstances present at this time due to the ongoing transformation of the 2.5 GHz band, strict application of the Tribal lands definition would be contrary to the public interest. The 2.5 GHz band already contains a large number of incumbent licenses, most of which have 35-mile circular geographic service areas (GSAs) or irregular areas caused by overlapping GSAs. Many Tribal lands are similarly small, irregularly-shaped parcels, which can present deployment challenges in light of the 2.5 GHz band's existing incumbency, licensing structure, and technical rules. The non-Tribal lands at issue in the instant applications are, to varying degrees, adjacent to or connect different reservation, off-reservation trust, or Tribally-owned fee lands, which may facilitate use and deployment of 2.5 GHz spectrum across these Tribal areas to the extent they are licensed as part of a unified service area. We note in particular that each of the Waiver Requests is unopposed. On balance, given the specific circumstances present here, in particular the unique nature of the 2.5 GHz band and the current status of its transformation process, we believe that granting waivers to these applicants would help "address the communications needs" on their rural Tribal land and other adjacent rural areas that have historically lacked effective broadband access.[26] In reaching that conclusion, we note that no petitions to deny or oppositions were received with respect to the applications and Waiver Requests. We therefore grant the Waiver Requests.

9. We note that our decision here is limited to the suitability of these specific off-reservation trust, Tribally-owned fee, and non-Tribal lands to be licensed under the Tribal Window. We make no determination as to the status of these lands with respect to other Commission rules or programs, nor for any other purpose. In particular, our decision to grant the Waiver Requests is based on the unique circumstances of the individual applicants and the specific situation present in the 2.5 GHz band at this point in time, and the presence of any one particular fact should not be viewed as supporting a waiver or other form of relief in a different context at a different point in time.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to sections 4(i) and 309(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(a), and section 1.925(b)(3) of the Commission's rules, 47 CFR § 1.925(b)(3), that the waiver requests filed by the Klamath Tribes, Nez Perce Tribe, Round Valley Indian Tribes, and Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation ARE GRANTED, and section 27.1204(b)(2) of the Commission's rules IS WAIVED to allow licensing of the off-reservation trust, Tribally-owned fee, and non-Tribal lands specified in each application.

11. IT IS FURTHER ORDERED, pursuant to sections 4(i), and 309(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and section 27.1204 of the Commission's rules, 47 CFR § 27.1204, that the licensing staff of the Broadband Division SHALL PROCESS the applications filed by the Klamath Tribes (ULS File No. 0009168542), Nez Perce Tribe (ULS File No. 0009184902), Round Valley Indian Tribes (ULS File No. 0008964895), and Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation (ULS File No. 0009220222) for new 2.5 GHz licenses in accordance with this *Memorandum Opinion and Order* and the Commission's rules and policies.

[25] *Reconsideration Order,* 35 FCC Rcd at 15081, para. 22.

[26] *Reconsideration Order*, 35 FCC Rcd at 15075, para. 4.

12. These actions are taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's rules, 47 CFR §§ 0.131, 0.331. This *Memorandum Opinion and Order* is effective upon adoption.

FEDERAL COMMUNICATIONS COMMISSION

Joel Taubenblatt
Chief, Wireless Telecommunications Bureau

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
	)	

ORDER

Adopted: March 12, 2024 **Released: March 12, 2024**

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it a request to cancel[1] the *Notice of Apparent Liability for Forfeiture* issued to San Francisco Television Station KBCW, Inc. (Licensee), licensee of full power commercial television station KPYX(TV), San Francisco, California (Station).[2] In the *NAL*, we found that the Licensee apparently willfully and repeatedly violated section 73.3526(e)(11)(i) of the Commission's rules (Rules) by failing to upload six of the Station's quarterly issues/programs lists to its online public inspection file (OPIF) in a timely manner.[3] As discussed below, we cancel the proposed forfeiture and grant the Station's application for renewal of license.

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 for renewal of license (Application).[6] In the Application, the Licensee disclosed that issues/programs lists for six quarters were

[1] Request of San Francisco Television Station KBCW, Inc. for Cancellation of Forfeiture (Feb. 1, 2024) (on file as attach. under LMS File No. 0000196368) (Cancellation Request).

[2] *San Francisco Television Station KBCW, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, DA 24-32 (issued Jan. 11, 2024) (*NAL*). 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 of San Francisco Television Station KBCW, Inc. for Renewal of License, File No. 0000196368 (filed Aug. 1, 2022).

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. Based on those facts, we issued an *NAL* in the amount of $3,000.[8]

4. On February 1, 2024, the Licensee timely filed a request for cancellation of the *NAL* reiterating that the issues/programs lists had been timely uploaded, but to an incorrect folder. This time the Licensee provided additional detail about where it believed the documents had originally been uploaded, stating that "each of the relevant Issues/Programs Lists was originally filed in the 'Additional Documents' folder in the OPIF, and subsequently relocated to the correct folder once this misfiling error was discovered."[9] The Licensee provided screenshots of documents it posted to its OPIF page which showed that the Licensee had originally uploaded some issues/programs lists to the Additional Documents folder and then later re-uploaded those files to the Issues and Programs folder.[10] However, these screenshots did not provide the dates the documents were originally uploaded. Further, the Licensee stated that its OPIF "History log" "only goes back to February 25, 2022" so it was unable to provide the original upload dates for the six issue/programs lists at issue.[11] As a result, the Licensee again asked that the Commission search its internal systems to determine the original upload dates of each of the six lists.[12] Based on this additional information, Bureau staff was able to verify in the OPIF system that only four issues/programs lists were uploaded to the Station's OPIF late, not six as stated in the *NAL*. In addition, three of the four issues/programs lists were not uploaded as late as set forth in the NAL. Of the four late filed issues/programs lists, three were filed over one month late and one was filed over one year late.[13]

III. DISCUSSION

5. Based on the additional information provided by the Licensee and discovered by Bureau staff upon review of the OPIF system, we have determined that the Licensee failed to timely upload to its OPIF issue/programs lists for a total of four quarters, not six as was originally identified in the *NAL*. Although the Licensee has still violated section 73.35276(e)(11)(i) of the Rules,[14] we find that based on the number of late filed issues/programs lists and how late the lists were filed these violations are *de minimis* and forfeiture is not warranted. We caution the Licensee in the future to take greater care when uploading documents to its OPIF in order to ensure that not only can necessary documents be verified at renewal time, but also so members of the public are able to locate them. We also do not rule out more severe sanctions for similar violations of this nature in the future.

6. In the *NAL* we also stated that grant of the Licensee's Application would occur by separate action upon the conclusion of the forfeiture proceeding and so long as no issues would preclude grant.[15] This cancellation concludes the forfeiture proceeding and we find there are no other issues that would preclude grant of the Application. Therefore, upon release of the NAL we will grant the Licensee's Application.

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[7] Cancellation Request at 2.

[8] *NAL* at paras. 1, 10.

[9] Cancellation Request at 2.

[10] *Id.* at 5.

[11] *Id.*

[12] *Id.*

[13] The *NAL* stated that the Licensee had uploaded one issues/programs list over six months late and five over one year late. *NAL* at para. 3.

[14] *See* 47 CFR § 73.3526(e)(11)(i).

[15] *NAL* at paras. 8-9.

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED that**, pursuant to section 503(b)(2)(e) of the Communications Act of 1934, as amended, 47 U.S.C. § 503(b)(2)(E), and sections 1.80(g)(4) and 1.80(j) of the Commission's rules, 47 CFR §§ 1.80(f)(4) and 1.80(j), the *Notice of Apparent Liability for Forfeiture* in the amount of three thousand dollars ($3,000) issued to **San Francisco Television Station KBCW, Inc.**, **IS HEREBY CANCELLED**.

8. **IT IS FURTHER ORDER** that the application for renewal of license filed by San Francisco Television Station KBCW, Inc. for KPYX(TV), San Francisco, California (LMS File No. 0000196368) **IS GRANTED**.

9. **IT IS FURTHER ORDERED** that a copy of this Order 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, 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: https://www.fcc.gov
TTY: 1-888-835-5322

DA 24-238
Released: March 12, 2024

AUTHORIZATION OF R.M. GREENE, INC. AKA BEAM TO RECEIVE RURAL DIGITAL OPPORTUNITY FUND SUPPORT TRANSFERRED FROM POINT BROADBAND FIBER HOLDING, LLC

WC Docket No. 10-90

On June 21, 2023, the Wireline Competition Bureau (Bureau) approved a partial transfer of a domestic section 214 authorization from Point Broadband Fiber Holding, LLC (Point Broadband) to R.M. Greene, Inc. aka Beam (Beam) (together, Parties),[1] pursuant to section 214 of the Communications Act of 1934, as amended (Act) and sections 63.03-04 of the Commission's rules.[1] As a result of this approval, Parties received consent for the transfer of certain assets from Point Broadband to Beam, including Rural Digital Opportunity (RDOF) support, subject to, and conditioned upon, Beam's authorization to receive this support.[2] Consistent with this approval, the Bureau authorizes Beam to receive this support, as described in more detail below.

Pursuant to the terms of the approved transfer and as of its consummation on December 1, 2023, Point Broadband partially transferred its domestic section 214 authorization in conjunction with its RDOF support and related obligations with respect to 346 eligible census blocks (comprising 21 complete census

[1] *See Domestic Section 214 Application Granted for the Transfer of Control of Certain Authorizations of Point Broadband Fiber Holding, LLC (Point Broadband), and R.M. Greene, Inc. aka Beam (Beam)*, WC Docket 22-344, Public Notice, DA 23-537, at 1, 6 (WCB rel. June 21, 2023) (*214 Transfer Public Notice*); *see also* Application of Point Broadband Fiber Holding, LLC and R.M. Greene, Inc. aka Beam for Partial Assignment of Domestic Section 214 Authorization, WC Docket No. 22-344 (filed Sept. 21, 2022) (Application). Applicants filed supplements to the Application on December 6, 2022, December 13, 2022, December 22, 2022, and March 6, 2023. Letter from K.C. Halm, Counsel for R.M. Greene, Inc. aka Beam, and Stephen Coran, Counsel for Point Broadband Fiber Holding, LLC, to Marlene H. Dortch, Secretary, FCC (filed Dec. 6, 2022) (First Supplement); Letter from Stephen Coran, Counsel for Point Broadband Fiber Holding, LLC, to Marlene H. Dortch, Secretary, FCC (filed Dec. 13, 2022) (Second Supplement); Letter from K.C. Halm, Counsel for R.M. Greene, Inc. aka Beam, to Marlene H. Dortch, Secretary, FCC (filed Dec. 22, 2022) (Third Supplement); Letter from K.C. Halm, Counsel for R.M. Greene, Inc. aka Beam, to Marlene H. Dortch, Secretary, FCC (filed Mar. 6, 2023) (Fourth Supplement); Letter from K.C. Halm, Counsel for R.M. Greene, Inc. aka Beam, to Marlene H. Dortch, Secretary, FCC (filed June 15, 2023) (Fifth Supplement).

[2] *See* 47 U.S.C. § 214; 47 CFR §§ 63.03-04. ETCs seeking to transfer control of their domestic authorizations to operate pursuant to section 214 of the Act or to engage in the sale of assets under section 214 "must first receive approval from the Commission in accordance with sections 63.03 and 63.04 of the Commission's rules governing the procedures for domestic transfer of control/asset applications." *See Rural Digital Opportunity Fund Support Authorized for 466 Winning Bids*, AU Docket No. 20-34 et al., Public Notice, 36 FCC Rcd 13574, 13581 and Attach. A (WCB Sept. 15, 2021) (*RDOF Public Notice*). "Transfers of control and assignments of international section 214 authorizations are separately subject to section 63.24 of the Commission's rules. Except where the Commission has forborne from the application of section 214, this requirement applies to all transfers of control or asset acquisitions involving ETCs." *Id.*

block groups) in Alabama, in a single Study Area Code (259050) (Assigned Blocks).[3] More specifically, Beam acquired $892,797.21 in annual RDOF support to serve 3,420 locations in the Assigned Blocks.[4]

As a condition of this authorization, Beam assumes sole responsibility for complying with universal service fund requirements and Commission rules, regardless of any preexisting or reasonably foreseeable conditions that could impact Beam's ability to meet its obligations in the future, including technical, marketplace and on-the-ground conditions.[5] Indeed, any carrier seeking authorization to receive high cost support pursuant to a section 214 transfer must conduct the proper due diligence prior to consummation of the transaction, and, in doing so, must assume all risks and consequences of noncompliance with the transferred support requirements, including default recovery of support and potential forfeiture penalties.[6] Accordingly, Beam must meet all of the administrative, performance, and deployment obligations and deadlines associated with the acquisition of the Assigned Blocks,[7] including the requirement to deploy voice and broadband service meeting minimum standards to the requisite number of locations by specific service milestones and the obligation to ultimately serve all locations identified by the Commission within eligible areas subject to limited adjustment.[8] In addition, consistent

[3] *See* Application at 5-6, Exh. 1 (List of Assigned Census Block Groups); Letter to Marlene H. Dortch, Secretary, FCC from K.C. Halm, Counsel to R.M. Greene, Inc. dba Beam (filed Dec. 22, 2023) (providing notice of the consummation of the transaction).

[4] Application at 5.

[5] *See Rural Digital Opportunity Fund et al*., WC Docket No. 19-126 et al., Report and Order, 35 FCC Rcd 686, 717-18, para. 68 (2020) (*RDOF Report and Order*) (stressing RDOF bidders' "sole responsibility" to complete due diligence by conducting adequate research and analysis before participating in the RDOF auction); *Rural Digital Opportunity Fund Order,* 35 FCC Rcd at 725, para. 84 (requiring RDOF short-form applicants to certify that they are solely responsible for compliance with all RDOF requirements).

[6] *See RDOF Report and Order*, 35 FCC Rcd at 713-716, paras. 58-64 (adopting non-compliance measures); *id*. at 715-716, para. 63 (stating that in addition to default consequences, RDOF support recipients are subject to sanctions "including but not limited to the Commission's existing enforcement procedures and penalties, reductions in support amounts, potential revocation of ETC designations, and suspension or debarment"). *See* 47 CFR §§ 54.320(c)-(d), 54.804(c)(4), 54.806(c).

[7] 47 CFR §§ 54.802-806; *see generally RDOF Report and Order*, 35 FCC Rcd 686. The Bureau has provided a summary of the various obligations of authorized RDOF support recipients in prior authorization public notices, including in the public notice authorizing Point Broadband to receive the relevant RDOF support. As stated in these public notices, the list is not intended to be comprehensive and all authorized parties are responsible for conducting the due diligence required to comply with universal service fund requirements and the Commission's rules. *See, e.g.*, *RDOF Public Notice* at 1. We note that in addition to the requirements and rules specified in the public notices, RDOF support recipients must test and certify compliance with the relevant performance requirements in accordance with the uniform framework that has been adopted for measuring and reporting on high-cost performance requirements. *See 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, 6083, para.15 (2020); *Connect America Fund*, WC Docket No. 10-90, Order, 33 FCC Rcd 6509, 6530-33, paras. 56-67 (WCB 2018); *Connect America Fund*, WC Docket No. 10-90, Order on Reconsideration, 34 FCC Rcd 10109, 10110, para. 4 (2019) (expanding performance measure testing requirements); *see generally Connect America Fund*, WC Docket No. 10-90, Order, WC Docket No. 10-90, Order, 35 FCC Rcd 14658 (WCB 2020) (clarifying certain requirements).

[8] Specifically, RDOF support recipients must deploy service to an increasing percentage of the CAM-estimated number of locations as of December 31st of each year beginning with a 40% milestone as of the third year of receiving support (2025), 60% as of the fourth year (2026), 80% as of the fifth year (2027), and 100% as of the sixth year (2028). 47 CFR § 54.802(c); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 709-12, paras. 45-55. The Commission will then adjust the initial defined deployment obligation assigned to each RDOF support recipient based on its determination of the number of locations with the supported area without an increase or decrease in support, subject to a 35% margin. In addition, the support recipient must serve, upon reasonable request, new

(continued….)

with the requirements of RDOF, Beam must provide voice service throughout the Assigned Blocks, either through its own facilities or a combination of its own and other ETC's facilities, on the first day of the month following this authorization.[9]

We find that Beam has sufficiently demonstrated its managerial, financial and technological capabilities to meet its RDOF obligations in the Assigned Blocks consistent with the Commission's pre-transaction approval of Point Broadband's application. In this regard, we find relevant the record developed in the associated 214 proceeding.[10] In the 214 Application, Parties explained that there would not be "any adverse alteration" to the build-out plans previously approved by the Commission as part of its review of Point Broadband's long-form application,[11] and that the transaction would "accelerate Beam's ongoing efforts to expand broadband service to unserved and underserved rural areas of Eastern Alabama."[12] Further, Beam submitted information about its managerial and financial history that support a finding that Beam can and will meet RDOF requirements and related obligations.[13] For these reasons, we find that the designation of Beam to receive the transferred support and to meet related public interest and deployment obligations is appropriate.

We also find that Beam has met all prerequisites to authorization. The Commission has designated Beam as an Eligible Telecommunications Carrier (ETC) for the purpose of receiving RDOF support for the Assigned Blocks.[14] In addition, Beam has obtained an irrevocable letter of credit securing the requisite amount of support for the acquired area and is supported by a new Bankruptcy Opinion Letter.[15]

In sum, based on the above information and considerations and subject to the above limitations, we authorize Beam to receive the support associated with the Assigned Blocks. We direct USAC to disburse to Beam the RDOF support from the universal service fund previously associated with SAC 259050 and not previously disbursed to Point Broadband. Beam has been newly assigned SAC 259064 for this purpose.

For further information, please contact Nissa Laughner, Telecommunications Access Policy Division, Wireline Competition Bureau at 202-418-7400.

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locations until the end of the eighth year of support (2030). *See Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 710-11, paras. 49-50; 47 CFR § 54.802(c).

[9] *See RDOF Report and Order*, 35 FCC Rcd at 745, para. 139.

[10] *See 214 Transfer Public Notice* at 3-4.

[11] Application at 8-9*; 214 Transfer Public Notice* at 8-9.

[12] Application at 9; *214 Transfer Public Notice* at 9.

[13] *See* Application at 4-5 and Exh. 3 (describing Beam's operations and management credentials); Fourth Supplement (filing audited financials of the company for the calendar year 2021, subject to a request for confidential treatment); Fifth Supplement (filing audited financials of the company for the calendar year 2022, subject to a request for confidential treatment).

[14] *See Telecommunications Eligible for Universal Service Support Connect America Fund*, Docket No. 10-90, Order, DA 23-505 (WCB rel. June 13, 2023).

[15] 47 CFR § 54.804(c).

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

In the Matter of	)	
	)	
Connect America Fund: A National Broadband Plan for Our Future High-Cost Universal Service Support	)	WC Docket No. 10-90
	)	
ETC Annual Reports and Certifications	)	WC Docket No. 14-58
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Colo Telephone Company, Petition for Waiver of Section 47 CFR § 54.903(a)(4) of the Commission's Rules	)	
	)	
South Canaan Telephone Company, Petition for Waiver of Section 47 CFR § 54.903(a)(4) of the Commission's Rules	)	

ORDER

Adopted: March 12, 2024 **Released: March 12, 2024**

By the Chief, Wireline Competition Bureau:

1. In this Order, the Wireline Competition Bureau (Bureau) denies two petitions filed by Colo Telephone Company (Colo Telephone) and South Canaan Telephone Company (SCTC) seeking a waiver of section 54.903(a)(4) of the Commission's rules, which requires each rate-of-return carrier to annually file by December 31 of each year the data necessary to calculate a carrier's Connect America Fund Broadband Loop Support (CAF BLS).[1] The petitioners failed to demonstrate good cause to justify a waiver.[2] Accordingly, we deny the petitions.

I. BACKGROUND

2. In the *2016 Rate-of-Return Reform Order*, the Commission adopted significant changes to the Universal Service Fund (USF) for areas served by rate-of-return carriers.[3] Among other reforms, the Commission modernized the rate-of-return program to support standalone broadband offerings, as well as the previously supported interstate portion of the common line, in a single CAF BLS mechanism.[4] In essence, CAF BLS supports voice and broadband-only lines to the extent that the carrier's costs (*i.e.*,

[1] *See* 47 CFR § 54.903(a)(4); Colo Telephone, Petition for Waiver, WC Docket No. 10-90 et al. (filed July 5, 2022) (Colo Tel. Petition); SCTC, Petition for Waiver of 47 CFR § 54.903(a)(4) (filed June 10, 2022) (SCTC Petition).

[2] *See* 47 CFR § 1.3; *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

[3] *Connect America Fund, ETC Annual Reports and Certifications, Developing a Unified Intercarrier Compensation Regime*, WC Docket No. 10-90, et al., Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087 (2016) (*2016 Rate-of-Return Reform Order*).

[4] *Id*. at 3117, para. 80.

revenue requirements) exceed its revenues, subject to a budget constraint.[5] CAF BLS is paid preliminarily using forecasted cost and revenue data and is later trued up based on actual cost and revenue data.[6] The true-ups prevent carriers from recovering more revenue from end users and universal service than is necessary to meet their revenue requirements.

3. To determine CAF BLS, a carrier first files the FCC Form 508, which forecasts its interstate common line and consumer broadband-only costs and revenues for the upcoming July 1 to June 30 tariff year.[7] For the purpose of forecasting consumer broadband-only revenue, carriers impute the lesser of the forecasted annual consumer broadband-only revenue requirement or $42 times the number of forecasted consumer broadband-only lines (CBOLs) times 12 months.[8] A budget control mechanism is then applied by the Universal Service Administrative Company (USAC or the Administrator) to that calculation, which reduces the amount of CAF BLS disbursed, if necessary to ensure that the support budget is not exceeded.[9] Each carrier is then required to subsequently file their actual cost and revenue data on FCC Form 509 by December 31 of each year as part of the true-up process pursuant to section 54.903(a)(4) of the Commission's rules.[10] For the purpose of determining consumer broadband-only revenue on the FCC Form 509, carriers are required to impute the carrier's maximum allowable consumer broadband-only rate times the number CBOLs times 12, if that amount is greater than the amount calculated using the same methodology as used for FCC Form 508.[11]

4. Colo Telephone is a rate-of-return carrier and National Exchange Carrier Association (NECA) member serving approximately 500 access lines in Iowa.[12] On December 31, 2021, Colo Telephone timely submitted an FCC Form 509, reporting data for the 2020 calendar year.[13] Colo Telephone subsequently discovered, due to a clerical error, the line count data was underreported, resulting in a decrease of calculated CAF BLS support by approximately $27,000.[14] On July 5, 2022, Colo Telephone filed a petition seeking a waiver of section 54.903(a)(4) of the Commission's rules to allow it to revise its 2021 FCC Form 509 filing.[15]

5. SCTC is a rate-of-return carrier and NECA member serving "approximately 1,200 access lines and 571 broadband-only loops in northeastern Pennsylvania."[16] In December 2021, SCTC filed an FCC Form 509 reporting data for the 2020 calendar year. SCTC subsequently discovered it had underreported the number of CBOLs by "approximately 430, which resulted in an underpayment of CAF

[5] *Id*. at 3120-21, para. 88.

[6] 47 CFR §§ 54.901-54.903.

[7] *Id*. § 54.903(a)(3).

[8] *See 2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3120-21, at para. 88.

[9] 47 CFR § 54.901(f).

[10] *Id*. § 54.903(a)(4) ("Each rate-of-return carrier shall submit to the Administrator on December 31 of each year the data necessary to calculate a carrier's Connect America Fund CAF BLS, including common line and consumer broadband-only loop cost and revenue data, for the prior calendar year. Such data shall be used by the Administrator to make adjustments to monthly per-line CAF BLS amounts to the extent of any differences between the carrier's CAF BLS received based on projected common line cost and revenue data, and the CAF BLS for which the carrier is ultimately eligible based on its actual common line and consumer broadband-only loop cost and revenue data during the relevant period.").

[11] 47 CFR § 54.901(a)(2).

[12] Colo Tel. Petition at 1.

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

[14] *Id*.

[15] *Id*. at 1.

[16] SCTC Petition at 1.

BLS of approximately $216,000."[17] The error occurred by SCTC's failure to include CBOLs served via fiber technology and only including CBOLs served via copper transmission facilities in its submission.[18] According to SCTC, the error was due to its strict interpretation of a classification by NECA, to which there is no supporting citation, of all broadband-only loops as digital subscriber lines. On June 10, 2022, SCTC submitted a petition for waiver of section 54.903(a)(4) of the Commission's rules to allow it to revise its 2021 FCC Form 509 filing to include the omitted CBOLs.[19]

II. DISCUSSION

6. The Bureau finds the Petitioners have not demonstrated good cause to waive the Commission's rules. Section 54.903(a)(4) of the Commission's rules requires "[e]ach rate-of-return carrier [to] submit to the Administrator on December 31 of each year the data necessary to calculate a carrier's [CAF BLS], including common line and [CBOL] cost and revenue data, for the prior calendar year."[20] Both Colo Telephone and SCTC seek a waiver to revise their Form 509 filed by December 31, 2021, reflecting actual data for year-end 2020 as required by section 54.903(a)(4). The Commission's rules do not provide a process for revising Form 509 submissions after the applicable filing deadline, necessitating a waiver petition.

7. Generally, the Commission's rules may be waived for good cause shown.[21] The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.[22] In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.[23] Waiver of the Commission's rules is appropriate when (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest.[24] The Bureau does not routinely grant petitions for waiver to allow carriers to make late revisions of their filings that would increase their support.[25]

8. Colo Telephone states good cause exists to grant its waiver "because the revisions to the Form 509 are to correct a clerical error.[26] Specifically, the "Commission has found that good cause to waive its rules exists for petitioners to make corrections for ministerial and clerical errors," citing a 2010 order involving schools and libraries in the Commission's E-Rate program.[27] Colo Telephone further asserts "good cause" exists because (1) of the small number of access lines it serves, (2) the amount in question, approximately $27,000, is significant to Colo Telephone, and (3) the amount in question is

[17] *Id*. at 1-2; 47 CFR § 54.901(g) ("For purposes of this subpart and consistent with § 69.132 of this chapter, a consumer broadband-only loop is a line provided by a rate-of-return incumbent local exchange carrier to a customer without regulated local exchange voice service, for use in connection with fixed Broadband Internet access service . . . .").

[18] *Id*. at 2.

[19] *Id*. at 1.

[20] 47 CFR § 54.903(a)(4).

[21] *Id*. § 1.3.

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

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

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

[25] *Connect America Fund*, WC Docket 10-90, Order, 36 FCC Rcd 9043, para. 1 (WCB 2021) (*Alenco Order*).

[26] Colo Tel. Petition at 3.

[27] *Id*. at 3 n.6 (citing Requests for Waiver and Review of the Universal Service Administrator by Ann Arbor Public Schools Ann Arbor, MI, et al., CC Docket No. 02-6, Order, 25 FCC Rcd 17319 (TAPD/WCB 2010)).

insignificant to overall CAF BLS disbursements.[28]

9. In support of its waiver request, SCTC states the support "mismatch will have negative implications to SCTC as they try to deploy broadband to remote areas as well as upgrade their network."[29] SCTC further states the error was due to a misunderstanding of how CBOLs are classified in the NECA settlement process, and that "[s]trict compliance with a rule that does not allow revisions to correct a mistake is not in the public interest."[30] Additionally, SCTC states that the amount of potential increased settlements, approximately $216,000, is immaterial to overall CAF BLS payments.[31]

10. Colo Telephone's reliance on a 2010 E-Rate decision, granting a waiver to correct ministerial and clerical errors, is misplaced. In the 2021 *Alenco Order*, which involved a waiver to revise line counts reported per section 54.903, the Bureau affirmed the importance of carrier compliance with the Commission's reporting requirements, stating "USAC requires timely and accurate data in order to administer the high-cost universal service support mechanisms."[32] The Bureau further stated that "constant adjustments due to late filed or corrected data would render high-cost support unmanageable."[33] In a 2014 rulemaking order, the Commission also emphasized the importance of adhering to filing deadlines in the high-cost program.[34] Accordingly, absent additional circumstances, the Bureau will not routinely grant a waiver in the high-cost program simply because the revision sought is to correct a clerical or ministerial oversight.

11. The Bureau finds petitioners' arguments as to the significance of the support amount to petitioner's broadband operations compared to the insignificance of the amount to the total amount of BLS payments equally unpersuasive. In the *Alenco Order*, a rate-of-return carrier sought a waiver of section 54.903(a) of the Commission's rules to allow the carrier to revise its Form 507 submission after the filing deadline.[35] The carrier failed to include 28 CBOLs that resulted in a loss of $73,500 in CAF BLS support.[36] The Bureau made clear "arguments [like Alenco's] that the estimated impact of the correction is both significant to [the carrier] but insignificant relative to the size of the fund would not typically support a finding of good cause to waive the filing deadlines in the Commission's rules."[37] Finally, the Bureau stated "[i]f we concluded that the relative significance to a petitioner and relative insignificance to the fund were a basis to find good cause, we might find a constant flow of waiver petitions from carriers requesting that we re-open closed filings on the basis the carriers find the extra support significant while the amount pales in comparison to the overall size of the fund."[38]

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[28] *Id*. at 4-5.

[29] SCTC Petition at 3.

[30] *Id*.

[31] *Id*. at 3-4.

[32] *See Connect America Fund*, WC Docket No. 10-90, Order, 36 FCC Rcd 9043, 9045, para. 7 (WCB 2021) (*Alenco Order*).

[33] *Id*. at 9045, para. 7 n.19 (citing *Connect America Fund*, WC Docket No. 10-90, Report and Order, 29 FCC Rcd 15644, 15693, para. 138 (2014)).

[34] *Connect America Fund*, 29 FCC Rcd at 15690-93, paras. 129-138 ("We expect all ETCs, even those new to the Commission's processes or with small staffs, to implement appropriate procedures to ensure compliance with the Commission's filing deadlines and other regulatory requirements.").

[35] *See Alenco Order*, 36 FCC Rcd at 9034, para. 1.

[36] Alenco Communications, Inc. (Alenco), WC Docket No. 10-90 et al., Petition for Waiver, at 4 (filed Apr. 21, 2021).

[37] *Alenco Order*, 36 FCC Rcd at 9045, para. 7.

[38] *Id*.

12. The Bureau in the *Alenco Order* did, however, ultimately grant a waiver to allow the carrier to revise its submission. The Bureau justified the grant due to a USAC error "that had created the circumstances in which waiver is appropriate" and not because of the carrier's good cause showing.[39] The Bureau said that "[b]ecause USAC must recalculate support for this period to correct for its own error, the general rule regarding strict adherence to the Commission's filing deadlines for reasons of finality is not applicable here."[40] In this instance, there is no USAC error present to support waiving section 54.903(a)(4) to allow either Colo Telephone or SCTC to revise their FCC Form 509 submissions.

13. As for SCTC's other argument supporting a waiver, we find it equally unpersuasive. SCTC says it misunderstood whether fiber lines providing broadband service to consumer households are to be included as CBOLs due to information received from NECA. While it is unclear what information NECA provided SCTC, the Commission's rules unambiguously state that "a consumer broadband-only loop is a line provided by a rate-of-return incumbent local exchange carrier to a customer without regulated local exchange voice service, for use in connection with fixed Broadband Internet access service."[41] There is no mention of the technology used to provide the loop and clearly carriers use fiber to provide broadband service to consumers. As the Bureau has stated, "a carrier's confusion regarding the rules does not establish special circumstances that warrant deviation from the Commission's rules."[42] Accordingly, we are not sympathetic to SCTC's exclusion of fiber from its CBOL line count due to its own misunderstanding as to what qualifies as a reportable loop.[43]

III. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED that, pursuant to sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, the petition for waiver of section 54.903(a)(4) of the Commission's rules filed by Colo Telephone Company is DENIED.

15. IT IS FURTHER ORDERED that, pursuant to sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, the petition for waiver of section 54.903(a)(4) of the Commission's rules filed by South Canaan Telephone Company is DENIED.

16. 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

[39] *Id*. at 9045, para. 8. USAC, due to an administrative error, had incorrectly used a weighted average of lines reported from April 2017 until January 2021, requiring USAC to recalculate support for this period. *Id*.

[40] *Id*.

[41] 47 CFR § 54.901(g).

[42] *Federal-State Joint Board on Universal Service, NPI Omnipoint Wireless, LLC, Petition for Waiver of Sections 54.307(c), 54.802(a), and 54.903 of the Commission's Rules et al*., CC 96-45, Order, 22 FCC Rcd 4946, 4948, para. 7 (WCB 2007).

[43] The Commission revised Section 54.903 to require the reporting of CBOLs in 2016, more than five years before the reporting deadline at issue here. *See 2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3248-49, 3250, at Appx. B.

PUBLIC NOTICE

Federal Communications Commission
45 L St., N.E.
Washington, D.C. 20002

News media information 202 / 418-0500
Internet: http://www.fcc.gov

REPORT NO: 0510

DA 24-240
Released: March 12, 2024

SPECIAL RELIEF AND SHOW CAUSE PETITIONS

Portions of this Public Notice have been produced by the Media Bureau's computer-based Data Management systems.
This Public Notice is intended to list only special relief requests, petitions for order to show cause and related petitions for reconsideration or applications for review. CSR (cable special relief) petitions and CSC (cable show cause) petitions refer to cable-related matters pursuant to Part 76. The newly-designated BSR (broadcast special relief) petitions refer to certain non-application-related broadcast matters pursuant to Part 73.

Parties seeking special relief pursuant to Part 76 are advised that such requests must be initiated through the special relief provisions of Section 76.7 of the Rules. Many of these filings are subject to the pleading cycle rules set forth in Section 76.7, while others have their own pleading cycle relative to the particular rule involved. For BSR petitions filed pursuant to Part 73, the pleading cycle will be the same as that mandated by Section 76.7 unless stated otherwise.

Petitions for reconsideration and applications for review are listed for informational purposes only. The applicable pleading cycles for these types of petitions are found in Sections 1.106 and 1.115 of the Commission's rules, respectively.

Please Note that files containing these petitions can no longer be reviewed in the Commissions Reference Information Center, CY-Level, 445 12th Street, SW Washington, DC 20554. Anyone may search for petitions electronically filed via the Commission's Electronic Comment Filing System (ECFS) by using MB Docket No. 12-1 in the proceeding number field. Once the Media Bureau has issued a Special Relief and Show Cause Petition Public Notice, interested parties can find the petition at issue by using the newly assigned docket number or the CSR or CSC number. Enter the CSR or CSC number into the Bureau Identification Number field in ECFS.

The letter code following a CSR Number refers to the particular subject of the petition. Those currently in use are: A – ADI/DMA; M – must carry; E – effective competition; C – retransmission consent; P – program access; R – rate regulation; F – rate freeze; L – commercial leased access; Z – technical; S – significantly viewed; N – nonduplication/syndicated exclusivity/sports deletion; D – small system definition; O – otard; and X – cross ownership. If no letter appears after the CSR number, the petition is considered to be in the miscellaneous category. CSC and BSR petitions do not have letter code designations. It is requested that all responses or statements refer to the CSR file number or docket number assigned to the petition.

For further information about this Public Notice contact the Media Bureau at (202) 418-7200.

Docket No.	CSR Number	Petitioner	Respondent	Special Relief Request Communities
24-81	CSR-9015-A	Scottsboro Electric Power Board		Jackson County, Alabama

-FCC-

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

In the Matter of	)
	)
Amendment of section 73.202(b), Table of	)
Allotments, FM Broadcast Stations (Various	)
Locations)	)

ORDER

Adopted: March 12, 2024 **Released: March 12, 2024**

By the Assistant Chief, Audio Division, Media Bureau:

1. This *Order* updates the FM Table of Allotments (FM Table), section 73.202(b) of the Commission's rules.[1] For the reasons discussed below, we amend the FM Table to reinstate certain channels as a vacant FM allotment. The attached Appendix shows the FM Table, as amended, for those communities.

2. Formerly, the FM Table listed all vacant FM allotments as well as FM channels and communities occupied by authorized facilities.[2] In 2006, the Commission removed the allotments of authorized and awarded FM facilities from the FM Table in order to accommodate the new application procedures for radio stations to change their communities of license.[3] As contemplated by the *Changes of Community R&O*, when an authorization is cancelled, the vacant FM channel needs to be reinstated in the FM Table in order to be protected for spacing purposes and preserve the opportunity to license a future station in the specified community. We periodically issue Orders to update the FM Table reinstating allotments that have become vacant due to the cancellation of an authorization or license.

3. The FM allotments listed in the attached Appendix were removed from the FM Table because a construction permit and/or license was granted. These FM allotments, however, are now considered vacant because of the cancellation of the associated authorizations or the dismissal of long-form auction applications.

4. Accordingly, we reinstate the vacant FM allotments set forth in the Appendix. A staff engineering analysis confirms that all of the vacant FM allotments listed in the Appendix meet the minimum distance separation requirements of section 73.207 and the city-grade coverage requirements of section 73.315.[4] The window period for filing applications for these vacant FM allotments will not be opened at this time. Instead, the issue of opening these allotments for filing will be addressed by the Commission in subsequent order.

5. This action constitutes an editorial change in the FM Table of Allotments because the vacant FM allotments listed in the Appendix have previously undergone notice and comment rule making.

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[1] 47 CFR § 73.202(b).

[2] *See 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, 14221, ¶ 15 (2006), *recon. pending* ("*Changes of Community R&O*").

[3] *Id.*

[4] 47 CFR §§ 73.207 and 73.315.

Therefore, further notice and comment proceedings are unnecessary.[5]

6. *Paperwork Reduction and Regulatory Flexibility*. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980, as amended,[6] do not apply to a rulemaking proceeding to amend the FM Table of Allotments in section 73.202(b) of the Rules.[7] This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995.[8] In addition, 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.[9]

7. **Ordering Clauses**. Accordingly, IT IS FURTHER 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, upon publication in the Federal Register, the FM Table of Allotments, 47 CFR § 73.202(b), IS AMENDED, in accordance with the changes set forth in the Appendix to this Order.

8. IT IS FURTHER ORDERED, That the Commission will not send a copy of this *Order* in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A), because these allotments were previously reported.

9. For further information concerning this proceeding, contact Rolanda F. Smith, Media Bureau, (202) 418-2054.

FEDERAL COMMUNICATIONS COMMISSION

Nazifa Sawez
Assistant Chief, Audio Division
Media Bureau

[5] *See* 5 U.S.C. § 553(b)(B) (stating that agency may forego notice and comment procedures if it provides a brief statement of reasons showing that such procedures are unnecessary).

[6] *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).

[7] 47 CFR § 73.202(b).

[8] *See* 44 U.S.C. §§ 3501-3520.

[9] *See* 44 U.S.C. § 3506(c)(4).

APPENDIX

Community	Channel Deleted	Channel Added
North English, Iowa	----------	246A
Colfax, Louisiana	----------	267A
Calhoun City, Mississippi	----------	272A
Battle Mountain, Nevada	----------	253C2
Independence, Oregon	----------	274C0
Huntington, Oregon	----------	294C1
Monument, Oregon	----------	280C3
Murdo, South Dakota	----------	265A
Selmer, Tennessee	----------	288A
Camp Wood, Texas	----------	251C3
Cotulla, Texas	----------	289A
Los Ybanez, Texas	----------	253C2
Ozona, Texas	----------	275A
Stamford, Texas	----------	233A

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 24-242
Released: March 12, 2024

WIRELESS TELECOMMUNICATIONS BUREAU APPROVES TRACE-TEK, LLC'S CONTRABAND INTERDICTION SYSTEM CERTIFICATION APPLICATION UNDER PHASE ONE OF THE AUTHORIZATION PROCESS

GN Docket No. 13-111

I. INTRODUCTION

1. With this Public Notice, the Wireless Telecommunications Bureau (WTB or Bureau) approves the Contraband Interdiction System (CIS) certification application filed by Trace-Tek, LLC[1], subject to the conditions described below. Trace-Tek's CIS Application was filed under phase one of the Commission's two-phase process for certifying CIS for use in the submission of qualifying requests to disable contraband wireless devices in correctional facilities. Approval of Trace-Tek's CIS Application allows it to market and sell its CIS as described in its application, and begin phase two testing. Trace-Tek may begin using its CIS in conjunction with any Designated Correctional Facility Official's (DCFO's)[2] submission of qualifying requests for contraband wireless device disabling only after successful completion of the phase two testing and self-certification process.

II. BACKGROUND

2. In the *Second Report and Order*, the Commission adopted a framework requiring the disabling of contraband wireless devices detected in correctional facilities upon satisfaction of certain criteria.[3] The process of certifying CIS for this purpose consists of two phases: (1) CIS applicants submit certification applications to the Bureau describing the legal and technical qualifications of the systems; and (2) CIS applicants perform on-site testing of certified CISs at individual correctional facilities and file self-certifications with the Bureau confirming that the testing at a specific correctional facility was completed successfully.[4] Following WTB review and approval of the phase one CIS certification applications that meet applicable requirements, stakeholders using certified CISs may begin phase two on-site testing at individual correctional facilities. After both phases are complete, and the period for

[1] 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) (Trace-Tek CIS Application).

[2] *See* 47 CFR § 20.3 (defining a Designated Correctional Facility Official); *Promoting Technological Solutions to Combat Contraband Wireless Device Use in Correctional Facilities*, GN Docket No. 13-111, Second Report and Order and Second Further Notice of Proposed Rulemaking, 36 FCC Rcd 11813, 11818-21, paras. 12-20 (2021) (*Second Report and Order*); *see also Promoting Technological Solutions to Combat Contraband Wireless Device Use in Correctional Facilities*, GN Docket No. 13-111, Erratum (rel. Aug. 3, 2021).

[3] *See Second Report and Order*, 36 FCC Rcd at 11814, para. 2.

[4] *See id.* at 11821-23, paras. 22-38.

filing objections has lapsed,[5] DCFOs are authorized to submit qualifying requests to wireless providers to disable contraband devices located at a CIS approved/tested correctional facility. The Bureau began accepting CIS certification applications on May 3, 2022.[6] On June 23, 2023, the Bureau approved five CIS applications under phase one of the two-phase CIS certification process.[7]

3. *Trace-Tek CIS Application.* On November 30, 2023, the Bureau received Trace-Tek's CIS Application, and on January 12, 2024, the Bureau issued a Public Notice announcing that Trace-Tek's CIS Application had been found complete and inviting stakeholders to review and file comments on the application.[8] No comments were received in response.

III. APPROVAL OF PHASE ONE CIS APPLICATION

4. After careful review of the application, we find that the CIS application filed by Trace-Tek satisfies the eligibility criteria and application requirements, as specified in section 20.23 of the Commission's rules, the *Second Report and Order*, and the *Guidance Public Notice*.[9] As directed by the Commission in the *Second Report and Order*, the Bureau issued the *Guidance Public Notice* to provide guidance on the information required for inclusion in a CIS certification application and on the procedures for the submission of an application.[10] 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.[11] We briefly discuss each of the phase one application requirements in turn below.

5. *CIS Certification Application Description*.[12] We find that Trace-Tek's CIS Application sufficiently described the legal and technical qualifications of its CIS. Further, in accordance with Commission rules, Trace-Tek demonstrated that:

(1) *Equipment Authorization*: all radio transmitters used as part of the CIS have appropriate equipment authorizations pursuant to Commission rules, by providing a certification to

[5] *See* 47 CFR § 20.3(c) (absent objections from a wireless provider . . . the DCFO may submit a qualifying request to a wireless provider beginning on the sixth business day after the later of the self-certification filing or actual service . . .).

[6] *Wireless Telecommunications Bureau Begins Accepting Contraband Interdiction System Certification Applications and Designated Correctional Facility Official Requests*, GN Docket No. 13-111, Public Notice, DA 22-475 (WTB 2022).

[7] *Wireless Telecommunications Bureau Approves Five Contraband Interdiction System Certification Applications Under Phase One of the Authorization Process*, GN Docket No. 13-111, Public Notice, DA 23-547 (WTB 2023) (approving applications filed, respectively, by: CellBlox Acquisitions, LLC; ShawnTech Communications, Inc.; Tecore Networks; SOC, LLC; and OmniProphis Corporation).

[8] *Wireless Telecommunications Bureau Seeks Comment on One Contraband Interdiction System Certification Application*, GN Docket No. 13-111, Public Notice, DA 24-33 (WTB 2024); *see also Promoting Technological Solutions to Combat Contraband Wireless Device Use in Correctional Facilities*, GN Docket No. 13-111, Protective Order, DA 23-223 (WTB 2023).

[9] *See* 47 CFR § 20.23; *Second Report and Order*, 36 FCC Rcd at 11821-23, paras. 22-38; *Wireless Telecommunications Bureau Provides Guidance for Filing Contraband Interdiction System Certification Applications and Self-Certifications*, GN Docket No. 13-111, DA 21-1572, 2-3, paras. 6-8 (WTB 2021) (*Guidance Public Notice*).

[10] *Guidance Public Notice* at 2-4, paras. 5-6, 9-10.

[11] *Id.* at 2-4, paras. 5-10.

[12] *See* 47 CFR § 20.23(b)(1)(i)-(vi) (application requirements); *Second Report and Order*, 36 FCC Rcd at 11821, para. 23; *Guidance Public Notice* at 2-3, para. 6.

that effect;[13]

(2) *CIS Design/Methodology*: the CIS is designed and will be configured to locate devices solely within a correctional facility, and that the methodology to be used in analyzing data collected by the CIS is adequately robust to ensure that a particular wireless device is in fact located within a correctional facility. In this regard, Trace-Tek also provided:

- a description of the scope and overall function of the system;
- a description of the system architecture and configuration with diagrams;
- a description of the hardware and its functions;
- a description of the software and its functions;
- a description of the steps required and preparations needed to implement the CIS at any correctional facility (e.g., site surveys, engineering design, installation, and optimization);
- a description of how the CIS, if so required, interacts with a wireless provider network;
- a description of data analysis techniques; and
- a description of the key performance factors that indicate successful operation, including the expected level of percentage accuracy in the rate of detection of contraband devices vs. non-contraband devices using a relevant sample size (*e.g.*, number of devices to be observed and the length of observation period) and the rationale for the expectation;[14]

(3) *Data Security*: the CIS will secure and protect all data collected and/or information produced as part of its intended use, including a description of the types of data the CIS collects, whether the data is retained and for how long, and how the data is stored and protected;[15]

(4) *911 Calls*: the CIS will not interfere with emergency 911 calls, including a description of the methodology used for allowing emergency 911 calls to be permitted;[16] and

(5) *Spectrum/Network Access Agreement*: the applicant is aware that a CIS may require a spectrum or network access agreement (*e.g.*, a spectrum leasing arrangement or roaming agreement) to be authorized to operate by stating and describing whether the CIS requires such an agreement to operate.[17]

6. *CIS Certification Application Test Plan.* We also find that Trace-Tek's CIS Application included a test plan that can be adapted to the circumstances of each planned deployment at a specific correctional facility, and adequately demonstrated that the CIS's overall methodology for system design and data analysis ensures, to the greatest extent possible, that only devices that are in fact contraband will

[13] Trace-Tek CIS Application at 6. Trace-Tek provided information regarding its equipment authorization for which it sought confidential treatment pursuant to Commission rule section 0.459, 47 CFR § 0.459.

[14] Trace-Tek CIS Application at 6-23. Trace-Tek provided information regarding its CIS design and methodology for which it sought, in part, confidential treatment pursuant to Commission rule section 0.459, 47 CFR § 0.459.

[15] Trace-Tek CIS Application at 23.

[16] *Id.* Trace-Tek provided information regarding its routing of 911 calls for which it sought, in part, confidential treatment pursuant to Commission rule section 0.459, 47 CFR § 0.459.

[17] Trace-Tek CIS Application at 23.

be identified for disabling.[18] Specifically, Trace-Tek included:

(1) A proposed evaluation of the functions that the CIS will perform;[19]

(2) A description of the testing device(s) placement and the number of testing devices that will be used at the correctional facility(ies);[20]

(3) A demonstration of how the placement and number of testing devices are sufficient to evaluate the CIS as the applicant intends to market and operate the system;[21]

(4) A demonstration that the testing will be randomized, and an explanation of why the number of devices and trials are statistically significant;[22]

(5) A description of the data to be collected, including the number of devices correctly and incorrectly identified and/or intercepted as contraband, and the number of emergency 911 calls made and impacted;[23] and

(6) the precise method to be used for calculating the accuracy of the CIS and verifying that emergency 911 calls are unaffected.[24]

IV. CONCLUSION

7. Based on our review, we approve, subject to the conditions below, Trace-Tek's CIS Application in the public interest. Through the issuance of this Public Notice,[25] Trace-Tek may market and sell its certified CIS as described in its application for ultimate use, following phase two testing, in obtaining information for the submission of qualifying requests for the disabling of contraband wireless devices.[26] Trace-Tek may begin the phase two on-site testing of its CIS at individual correctional facilities as outlined in the *Second Report and Order* and more specifically in section 20.23 of the Commission's rules.[27] We remind Trace-Tek that it must file a self-certification following completion of

[18] *See* 47 CFR § 20.23(b)(1)(vii) (application requirements); *Second Report and Order*, 36 FCC Rcd at 11822-23, paras. 26-27; *Guidance Public Notice* at 2-3, paras. 7-8.

[19] Trace-Tek CIS Application at 24-26. Trace-Tek provided information regarding its CIS proposed functions for which it sought, in part, confidential treatment pursuant to Commission rule section 0.459, 47 CFR § 0.459.

[20] Trace-Tek CIS Application at 26-27. Trace-Tek provided information regarding its CIS testing placement and number of testing devices for which it sought, in part, confidential treatment pursuant to Commission rule section 0.459, 47 CFR § 0.459.

[21] Trace-Tek CIS Application at 27-28. Trace-Tek provided information regarding how the placement and number of testing devices are sufficient to evaluate the CIS for which it sought, in part, confidential treatment pursuant to Commission rule section 0.459, 47 CFR § 0.459.

[22] Trace-Tek CIS Application at 28. Trace-Tek provided information regarding its data validation methodology for which it sought, in part, confidential treatment pursuant to Commission rule 0.459, 47 CFR § 0.459.

[23] Trace-Tek CIS Application at 28-29. Trace-Tek provided information regarding the description of the data to be collected by its CIS for which it sought, in part, confidential treatment pursuant to Commission rule section 0.459, 47 CFR § 0.459.

[24] Trace-Tek CIS Application at 29-30. Trace-Tek provided information regarding its method for calculating CIS accuracy for which it sought, in part, confidential treatment pursuant to Commission rule 0.459, 47 CFR § 0.459.

[25] Bureau staff will also update the CIS/Correctional Facility Approval Status Tracker on the Commission's website to reflect this phase one approval at https://www.fcc.gov/wireless/bureau-divisions/mobility-division/contraband-wireless-devices/disabling-process.

[26] *See* 47 CFR § 20.23(b)(2) (marketing and sales); *Second Report and Order*, 36 FCC Rcd at 11822, para. 25.

[27] *See* 47 CFR § 20.23(b)(3) (site-based testing and self-certification requirements); *see also Second Report and Order*, 36 FCC Rcd at 11821-23, paras. 22-38; *Guidance Public Notice* at 4-6, paras. 12-19.

successful CIS testing.[28] The self-certifications must be filed using the Commission's Electronic Comment Filing System (ECFS) and must reference **GN Docket No. 13-111**.[29]

8. *Conditions.* This CIS certification application approval and Trace-Tek's use of its certified CIS for the ultimate submission of qualifying requests is conditioned on the following:

1) Testing of the certified CIS and its subsequent operation and use to support qualifying requests must be as specifically described in Trace-Tek's application as approved through this Public Notice;
2) A phase two testing self-certification, and a subsequently filed qualifying request, must be based upon information received from a certified CIS in deployed areas of an individual correctional facility where the CIS has been fully tested in real-time, live conditions consistent with the approved test plan;
3) The certified CIS must remain highly accurate regarding its:
   a) capability to identify only those devices physically located within the perimeter of operation; and
   b) ability to distinguish between contraband and non-contraband devices;
4) Approved CIS may be marketed and sold only to correctional facilities or entities that will provide contraband interdiction services to such facilities.

9. *Contact Information.* Questions regarding this *Public Notice* may be directed to Halie Peacher, Attorney Advisor, Wireless Telecommunications Bureau, Mobility Division at (202) 418-0514 or Halie.Peacher@fcc.gov.

-FCC-

[28] *See* 47 CFR § 20.23(b)(3) (site-based testing and self-certification requirements); *see also Guidance Public Notice* at 5, para. 14.

[29] *See id.* at 5, para. 15; *see also Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

Federal Communications Commission
Washington, D.C. 20554

March 13, 2024

DA 24-243
In Reply Refer to:
1800B3-TSN
Released: March 13, 2024

Bump FM Inc.
c/o Charles Edward Washington
585 Smithfield Road
North Smithfield, RI 02896
Djcharliewashed@gmail.com

Aaron Read
97 Central Avenue
East Providence, RI 02914
aaronread1@gmail.com

In re: **Bump FM Inc.**
New LPFM, Glocester, RI
Facility ID No. 787990
Application File No. 0000232229

Informal Objection

Dear Applicant and Objector:

We have before us the above-referenced application (Application) for a construction permit for a new low power FM (LPFM) station at Glocester, Rhode Island, filed by Bump FM Inc. (Bump FM) on December 11, 2023, and amended on February 6, 2024. We also have before us an Informal Objection (Objection) to the Application, filed by Aaron Read (Read) on December 26, 2023.[1] For the reasons set forth below, we grant the Objection in part and dismiss the Application.

[1] Pleading File No. 0000234038. The Objection did not include proof of service on Bump FM. On February 8, 2024, Bump FM filed an opposition to the Objection (Opposition). Pleading File No. 0000238544. The delay in filing was due to Read's apparent failure to serve a copy of the Objection on Bump FM. Read's failure to serve the Objection was called to our attention in Bump FM's Supplement, filed on February 28, 2024. Pleading File No. 0000240003. Ordinarily, the Bump FM Supplement would be an unauthorized pleading and, therefore, would not be considered. *See* 47 CFR § 1.45; *see also New Life Broadcasting*, Letter, 25 FCC Rcd 7293, 7294, n. 5 (MB 2010) (declining to consider unauthorized pleadings pursuant to section 1.45 of the rules). The Commission's rules do not require that an informal objection be served on an applicant. *See* 47 CFR § 73.3587 (procedures for filing informal objections); *compare* 47 U.S.C. § 309(d), 47 CFR § 73.3584 (procedures for filing petitions to deny). In the interest of having a complete record, however, the staff forwarded to Bump FM a copy of the Objection, giving the applicant 15 days in which to file the Opposition, consistent with the Bureau's practice. *See* Email from Ryan McClafferty, Attorney Adviser, Audio Division, FCC Media Bureau, to Charles Washington, Bump FM Inc., and Aaron Read (Jan. 26, 2024, 10:36 EDT); *see also Centro Cristiano de Vida Eterna*, Order and Consent Decree, 37 FCC Rcd 4536, 4541 n.60 (MB 2022). Because Bump FM filed a timely opposition in response to the staff email, we disregard the Supplement. Read filed a reply to the Opposition (Reply) on February 22, 2024. Pleading File No. 0000239659.

Background. Bump FM filed the Application on December 11, 2023, during the 2023 LPFM filing window.[2] In the Application, Bump FM listed its local address as "371 Putnam Pike STE 230#1043, Smithfield, RI 02917."[3] In his Objection, Read states that this address is a Staples office supply store, that the "#1043" in the address implies a mailbox only, rather than an actual headquarters, and that this is the only address listed in the Application within 10 miles of the proposed transmitter site.[4] Read further argues that a mailbox does not qualify as a "physical headquarters" or a "campus" for purposes of establishing local presence under section 73.853(b)(1) of the Commission's rules.[5] Finally, Read states that Bump FM did not submit an educational statement with the Application.[6] Read thus urges the Commission to dismiss the Application.

Bump FM subsequently amended its Application on February 6, 2024, changing its address to 585 Smithfield Rd., North Smithfield, RI 02896.[7] In its Opposition, Bump FM states that the address listed in the original Application, while a Staples office supply store, also constituted an office because Bump FM "had paid Staples to allow [Bump FM] use of office space through their Staples Coworking program."[8] Bump FM further states that "[i]n an abundance of caution," it additionally leased and occupied a commercial space at 585 Smithfield Road in North Smithfield, Rhode Island, which is also within 10 miles of the proposed transmitter site, while concurrently paying for the office space at 371 Putnam Pike in Smithfield.[9] It also asserts that, while it did not submit a separate educational program, its "Nonprofit Exhibit" to the Application outlined the proposed programming and its educational nature.[10]

In his Reply, Read reiterates that the addresses provided in the Application for the officers and board members of Bump FM are all more than 10 miles from its proposed transmitter site.[11] He further

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[2] *Media Bureau Announces Filing Procedures and Requirements for November 1 – November 8, 2023, Low Power FM Filing Window*, Public Notice, DA 23-642 (MB July 31, 2023) (*Procedures Public Notice*). Based on a request from LPFM advocates, the Bureau subsequently delayed the window until December 6, 2023. *Media Bureau Announces Revised Dates for LPFM New Station Application Filing Window*, Public Notice, DA 23-984 (MB Oct. 17, 2023). The Bureau subsequently extended the close of the window until December 15, 2023. *Media Bureau Announces Extension of LPFM New Station Application Filing Window*, Public Notice, DA 23-1150 (MB Dec. 11, 2023).

[3] *See* Application, Applicant Information. The Application was accepted for filing on January 4, 2024. *See Applications,* Public Notice, Report No. PN-1-240104-01 (MB Jan. 4, 2024).

[4] Objection at 1. The officers and director of Bump FM all listed their addresses as 25 Metropolitan Road, Providence, Rhode Island 02908, more than 10 miles from the proposed transmitter site. *See* Application, "Parties to the Application" section; *see also* Objection at 2.

[5] 47 CFR § 73.853(b)(1). *See* Objection at 1.

[6] Objection at 1.

[7] Amendment to a Low-Power FM Station Construction Permit Application, Application File No. 0000232229 (Feb. 6, 2024) (Amendment).

[8] Opposition at 1 and Exhibit 2.

[9] Opposition at 1.

[10] Opposition at 1 and Exhibits 3 and 4. *See also* Bump_FM_Inc_Nonprofit_Exhibit.pdf (Nonprofit Exhibit), attached to Application.

[11] Reply at 1. Read did not address, in his Reply, his allegation that Bump FM failed to include a statement in the Application that the proposed station will be used to advance an educational program. We find that the statement outlining the proposed station's programming in its Nonprofit Exhibit fulfills this application requirement, and on that basis Read's Objection IS DENIED IN PART.

notes that the Staples Coworking program is not available in any of Staples's Rhode Island locations.[12] He concludes that because "the original application did not credibly certify a physical headquarters, or campus, nor that at least 75% of its board members were located within 10 miles of the transmitting antenna," the Application failed to meet the local criteria at the time of application, and must thus be dismissed.[13]

Discussion. Pursuant to section 309(d) of the Communications Act of 1934, as amended (Act),[14] petitions to deny and informal objections must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with the public interest.[15] We find that Read has met this burden.

An LPFM applicant must meet basic eligibility requirements[16] and qualify as a "local" entity at the time that it files its FCC Form 2100, Schedule 318 application (LPFM Application).[17] In order to qualify as local, an LPFM applicant that does not propose a public safety or tribal service will be deemed local if it can certify, at the time of application, that . . . :

> (1) The applicant, its local chapter or branch is physically headquartered or has a campus within 16.1 km (10 miles) of the proposed site for the transmitting antenna for applicants in the top 50 urban markets, and 32.1 km (20 miles) for applicants outside of the top 50 urban markets; [or]
>
> (2) It has 75% of its board members residing within 16.1 km (10 miles) of the proposed site for the transmitting antenna for applicants in the top 50 urban markets, and 32.1 km (20 miles) for applicants outside of the top 50 urban markets . . . .[18]

Because the Providence-Warwick-Pawtucket Nielsen Radio Metro covers the entire State of Rhode Island,[19] and is ranked number 44 among urban markets,[20] an LPFM applicant for a station in Rhode Island must demonstrate that its headquarters is located, or 75% of its board members reside, within 10 miles of the proposed site for the transmitting antenna.[21] In the original Application, Bump FM

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[12] Reply at 1 and note 1.

[13] Reply at 2. *See also* 47 CFR § 73.853(b).

[14] 47 U.S.C. § 309(d).

[15] *See, e.g.*, *WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990), *aff'd sub nom. Garden State Broad. L.P. v. FCC*, 996 F. 2d 386 (D.C. Cir. 1993), *rehearing denied* (Sep. 10, 1993); *Gencom, Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864, para. 6 (1986) (petitions to deny and informal objections must contain adequate and specific factual allegations sufficient to warrant the relief requested).

[16] *See* 47 CFR § 73.853.

[17] *See* Instructions for LPFM Application, Legal Certifications, Eligibility Certifications, and Community-Based Criteria Certifications. *See also* LPFM Application, Legal Certifications, Eligibility Certifications, and Community-Based Criteria Certifications.

[18] 47 CFR § 73.853(b).

[19] *See* https://enterpriseefiling.fcc.gov/dataentry/api/download/attachment/25076f91835cf76001836bc9b09f0874.

[20] *See* The Nielsen Company (US) LLC, Radio Market Survey Population & Information, Fall 2023, at 3 (2023) https://www.nielsen.com/wp-content/uploads/sites/2/2023/08/redbook_fa23.pdf.

[21] *See supra* note 18.

certified that it satisfies the local applicant criteria based on its physical headquarters in Smithfield, Rhode Island, within 10 miles of its proposed transmitting antenna site.[22] Although Bump FM amended its application in February 2024 to change its address to North Smithfield, Rhode Island, this is not merely a correction of a typographical error, but rather a new address different from that certified in the original Application. We have been able independently to confirm Read's assertion that Staples Coworking is not available at the address given in Bump FM's original application.[23] Moreover, Bump FM does not state when it first occupied the office space at 585 Smithfield Road in North Smithfield. The earliest suggestion that Bump FM's headquarters was located in North Smithfield occurs in its 2024 Annual Report, filed with the State of Rhode Island on January 8, 2024, almost a month after the original Application was filed.[24] Because there is no indication in either the Application or the February 2024 Amendment that, as of the date the original Application was filed, Bump FM had a headquarters located within 10 miles of its proposed transmitter site, or that 75% of its board members lived within that same 10-mile limit, Bump FM has not sufficiently demonstrated that it was local at the time the Application was submitted. Therefore, we conclude that Bump FM does not qualify as local under section 73.853(b) of the rules.[25]

Conclusion/Action. Accordingly, **IT IS ORDERED** that the Informal Objection filed by Aaron Read on December 26, 2023, (Pleading File No. 0000234038) **IS GRANTED IN PART AND DENIED IN PART**. The Application for a new LPFM construction permit filed by Bump FM Inc. (File No. 0000232229) **IS DISMISSED**.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

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[22] *See* Application at Legal Certifications, Community-Based Criteria Certifications.

[23] *See* http://staplescoworking.com. According to the website, Staples Coworking offers office space in seven locations in Massachusetts—Boston, Brighton, Cambridge, Danvers, Needham, Norwood, and Somerville—as well as in Auburn, Maine. No Rhode Island locations are listed.

[24] State of Rhode Island Non-Profit Corporation Annual Report, Filing Number 202443821460, available at https://business.sos.ri.gov/CorpWeb/CorpSearch/CorpSearchRedirector.aspx?Action=PDF&Path=CORP_DRIVE1/2024/0108/000000000/3303/202443821460_1.pdf.

[25] 47 CFR § 73.853(b). We note that, in general, a dismissed applicant has one opportunity to file a minor curative amendment to its application and petition for reconsideration, requesting reinstatement of the application *nunc pro tunc*. Any amendment and petition must be filed within 30 days of the dismissal, propose only minor changes, and comply with all relevant rules. *See Procedures Public Notice*, *supra* note 2, at 12.

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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Connect America Fund Phase II Auction	)	AU Docket No. 17-182
	)	
The Rural Digital Opportunity Fund Auction	)	AU Docket No. 20-34
	)	
	)	

ORDER

Adopted: March 12, 2024 **Released: March 12, 2024**

By the Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, the Wireline Competition Bureau (Bureau) partially waives, *sua sponte*, the requirement that a bank issuing a letter of credit (LOC) to a support recipient for either the CAF Phase II Auction (Auction 903) or the Rural Digital Opportunity Fund Auction (Auction 904) maintain a Weiss bank safety rating of B- or better.[1] This limited waiver only applies to banks that previously issued LOCs to Auction 903 or 904 support recipients, and therefore previously had a Weiss bank safety rating of B- or better. This waiver expires in one year, on March 12, 2025.[2]

II. BACKGROUND

2. In establishing Auctions 903 and 904, the Commission required that, before being authorized to receive support awarded by Auction 903 or Auction 904, an applicant had to obtain an LOC issued by a qualified bank.[3] LOCs "permit the Commission to immediately reclaim support that has been provided in the event the recipient is not furthering the objectives of universal service by complying with the Commission's rules or requirements."[4] The Commission has several eligibility rules for banks issuing LOCs.[5] One of these rules is that the issuing bank must maintain a Weiss bank safety rating of at least a B-. The Commission determined that Weiss provides "an independent and objective perspective of the safety of the banks it rates based on capitalization, asset quality, profitability, liquidity, and stability

[1] 47 CFR §§ 54.315(c)(2)(i)(B); 54.804(c)(2)(i)(B).

[2] Because this waiver applies to all Auction 903 and Auction 904 support recipients whose LOCs were issued by banks that previously had a Weiss bank safety rating of B- or better, we dismiss as moot the Petitions for Waiver filed by Declaration Networks Group and the Reedsburg Utility Commission. *See* Petition for of Declaration Networks Group for Extension of Temporary Waiver, WC Docket No. 10-90, AU Docket No. 17-182 (filed Feb. 21, 2024); Petition of Reedsburg Utility Commission for Waiver, AU Docket No. 20-34 (filed Feb. 22, 2024).

[3] 47 CFR §§ 54.315(c); 54.804(c); *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 5989-99, paras. 119-40 (2016) (*CAF Phase II Auction Order*).

[4] *Id.* at 5990, para. 120.

[5] 47 CFR §§ 54.315(c); 54.804(c).

indexes," and that banks with a rating of B- or higher had shown that they "offer[] good financial security and ha[ve] the resources to deal with a variety of adverse economic conditions."[6]

3. After obtaining LOCs from qualifying banks, multiple auction support recipients have had their respective bank's Weiss safety ratings fall below a B-. The Commission's rules require that the carrier obtain a new LOC from a different bank with a sufficient Weiss safety rating. Until the carrier obtains a new LOC, its support is withheld. In recognition of the time needed to obtain a new LOC and the burdens on carriers whose support would otherwise be withheld, we have granted several temporary waivers of the rule that requires banks that issue LOCs to maintain a Weiss safety rating of B- or better,[7] thereby allowing auction support recipients to maintain an existing LOC and continue to receive support while they go through the process of obtaining a new one.[8]

4. Several interested parties have submitted filings about the issue. Bank of America submitted comments proposing an alternative standard that could be used to evaluate a bank's reliability and highlighting the fact that a majority of United States banks are now ineligible to issue LOCs to auction support recipients.[9] Wisconsin Bankers Association (WBA) has also explained that, due to the unreliability of the Weiss ratings, the Commission should eliminate its bank safety rule in its entirety.[10] The Coalition of RDOF Winners also noted the significant cost that support winners must incur to obtain a new LOC from a bank with the requisite Weiss safety rating.[11]

III. DISCUSSION

5. Generally, the Commission's rules may be waived for good cause shown.[12] Waiver of the Commission's rules is appropriate only if both: (1) special circumstances warrant a deviation from the

[6] *CAF Phase II Auction Order*, 31 FCC Rcd at 5993, para. 127.

[7] *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*); *Streamlined Resolution of Requests Related to the Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket Nos. 02-60, 06-122, 10-90, 21-93, Public Notice, DA 23-756, at 22 & n.52 (WCB Aug. 31, 2023) (*August 2023 Streamlined Public Notice*); *Streamlined Resolution of Requests Related to the Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket Nos. 02-60, 06-122, 10-90, 20-34, 21-93, Public Notice, DA 23-1104, at 12 & n.39 (WCB Dec. 1, 2023) (*December 2023 Streamlined Public Notice*); *Streamlined Resolution of Requests Related to the Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket Nos. 02-60, 06-122, 10-90, 20-34, 21-93, Public Notice, DA 24-1, at 8 & n.25 (WCB Jan. 2, 2024) (*January 2024 Streamlined Public Notice*); *Streamlined Resolution of Requests Related to the Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket Nos. 02-60, 06-122, 10-90, 20-34, 21-93, Public Notice, DA 24-85, at 7 & n.24 (WCB Feb. 1, 2024) (*February 2024 Streamlined Public Notice*).

[8] We clarify that this order applies to all Auction 903 and 904 support recipients, including those who previously received waivers of the Weiss safety rating requirement. Accordingly, those previous waiver recipients may maintain LOCs with their issuing bank until this waiver ends.

[9] Letter from James Carlisle, Senior Vice President, Federal Government Relations, Bank of America, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Dec. 8, 2023) (BOA *Ex Parte*).

[10] *See* E-mail from Rose Oswald Poels, President and CEO, the Wisconsin Bankers Association, at 2, submitted as an attachment to the Petition of Reedsburg Utility Commission for Waiver, AU Docket No. 20-34 (filed Feb. 22, 2024), available at https://www.fcc.gov/ecfs/document/102221094523933/5

[11] Petition for Emergency Relief of RDOF Coalition Winners, WC Docket No. 10-90 et al., at 11 (filed Aug. 16, 2023).

[12] 47 CFR § 1.3.

general rule, and (2) such deviation will serve the public interest.[13] We believe that both circumstances are present here.

6. Recent submissions from banking institutions indicate that a majority of United States banks are no longer eligible to issue LOCs to auction recipients because they have a safety rating less than a B-.[14] This is in stark contrast to the circumstances that existed when the Commission first adopted the rule requiring an issuing bank to maintain a Weiss bank safety rating of B- or higher. When the Commission initially adopted the Weiss bank safety rating requirement, it specifically noted the large amount of banks that would be able to issue LOCs for support recipients.[15] Even two years ago, almost 75% of United States banks had a Weiss bank safety rating of B- or higher.[16] However, this figure has dropped to less than 41 %.[17] Put differently, there are now more than 1,600 banks across the United States that are no longer able to issue LOCs to auction support recipients despite being eligible to do so two years ago. This significant and unanticipated change in the availability of banks qualified to issue LOCs, including banks that had issued LOCs to program participants and can no longer do so, amounts to special circumstances.

7. This change has resulted in significant additional administrative and resource burdens for auction support recipients and frustrates their ability to comply with program requirements. In order to obtain new LOCs from a different bank, auction participants must expend time and resources, and in some cases maintain two LOCs until the expiration of their already-existing LOC.[18] In addition, for some recipients, this requirement has resulted in withholding of support, which ultimately impacts deployment schedules. We therefore conclude that the public interest will be better served by allowing participants to maintain their existing LOCs and to focus their resources on deploying broadband to and serving consumers in the areas where they won support.

8. Our decision is also consistent with our existing precedent. As noted above,[19] we have thus far granted individual waivers of the relevant LOC rules. We have repeatedly stated that we believe these waivers are in the public interest, because they allow auction support recipients to maintain their existing LOCs with their preferred banks that issued the LOCs when their Weiss safety ratings were at or above a B-. For the same reasons, we now believe a temporary waiver for all auction support recipients is in the public interest.

9. This temporary waiver extends only to auction support recipients that wish to retain, renew, or reestablish their LOCs with banks that previously had Weiss ratings at or above a B- but have since seen that rating fall below B-. This waiver does not allow an auction support recipient to obtain an LOC from a new bank that did not previously provide it with an LOC if that bank has a Weiss safety

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[13] *See Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969), *cert. denied*, 93 S.Ct. 461 (1972)) (*Northeast Cellular*).

[14] BOA *Ex Parte* at 1 (noting that 58% of the banks Weiss rates have a safety rating below a B-, and are therefore ineligible to issue LOCs).

[15] *CAF Phase II Auction Order*, 31 FCC Rcd at 5993, para. 127 (noting that adopting this requirement will "expand the number of eligible U.S. banks from fewer than 70 banks to approximately 3,600 banks").

[16] Weiss Bank Safety Ratings (Feb. 1, 2022) archived at Wayback Machine https://web.archive.org/web/20220201144141/https://weissratings.com/en/banking (Showing the Weiss bank safety ratings from February 1, 2022).

[17] *See* Weiss Bank Safety Ratings https://weissratings.com/en/banking (Showing that as March 12, 2024, 1,851 banks, of the 4,533 banks Weiss rates, had a bank safety rating of B- or higher) (last visited March 12, 2024).

[18] *See, e.g*. Petition of ECFiber for Temporary Waiver, WC Docket No. 10-90, AU Docket No. 20-34, at 6 (filed Apr. 17, 2023) (detailing how ECFiber has been forced to tie up significant resources in obtaining LOCs that are no longer eligible to be used) (*ECFiber Petition*).

[19] *See supra* FN 7.

rating below a B-. This waiver will also allow auction support recipients whose support was suspended solely because their bank's Weiss safety rating fell below a B-, and who have not yet obtained a new LOC from a bank with a sufficient Weiss safety rating, to resume receiving support. During this temporary waiver period, we anticipate an evaluation of potential long-term solutions to the bank eligibility issue.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, that section 47 CFR § 54.315(c)(2)(i)(B) and 47 CFR § 54.804(c)(2)(i)(B) of the Commission's rules ARE WAIVED to the limited extent provided herein.

11. 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

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

In the Matter of	)	
	)	
BURNS PAIUTE TRIBE	)	ULS File No. 0009142952
	)	
LOWER ELWHA KLALLAM TRIBE	)	ULS File No. 0009132715
	)	
Requests for Waiver of Tribal Lands Definition in the 2.5 GHz Tribal Priority Window	)	

MEMORANDUM OPINION AND ORDER

Adopted: March 11, 2024 **Released: March 13, 2024**

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. The Burns Paiute Tribe (Burns Paiute)[1] and the Lower Elwha Klallam Tribe (Lower Elwha)[2] each filed an application in the 2.5 GHz Rural Tribal Priority Window (Tribal Window). In connection with the applications, Burns Paiute and Lower Elwha each submitted a request for waiver[3] of section 27.1204(b)(2) of the Commission's rules,[4] which defines eligible Tribal lands for purposes of the Tribal Window. In this *Memorandum Opinion and Order*, we grant both Waiver Requests.[5]

II. BACKGROUND

2. In July 2019, the Commission approved an order modernizing the portion of the 2.5 GHz band formerly known as the Educational Broadband Service.[6] Among other things, the order created a Rural Tribal Priority Window during which eligible Tribal entities could apply for licenses for currently unassigned 2.5 GHz spectrum.[7] To obtain a license in the Rural Tribal Priority Window, an applicant must meet four requirements. First, the applicant must be an eligible entity, which the rule defines as "[a] federally recognized American Indian Tribe or Alaska Native Village; or an entity that is owned and controlled by a federally-recognized Tribe or a consortium of federally-recognized Tribes."[8] Second, the applicant must apply for eligible Tribal lands, as defined in section 27.1204(b)(2) of the Commission's

[1] *See* File No. 0009142952 (filed July 9, 2020, amended Aug. 26, 2020) (Burns Paiute Application).

[2] *See* File No. 0009132715 (filed July 1, 2020, amended Sept. 1, 2020, and Sept. 2, 2020) (Lower Elwha Application).

[3] Burns Paiute Application, Petition for Waiver (Burns Paiute Waiver Request); Lower Elwha Application, Waiver Request (Lower Elwha Waiver Request).

[4] 47 CFR § 27.1204(b)(2).

[5] *See* 47 CFR § 1.925(b)(3).

[6] *Transforming the 2.5 GHz Band*, Report and Order, 34 FCC Rcd 5446 (2019) (*2.5 GHz Report & Order*).

[7] *Id.* at 5463–69, paras. 47–65.

[8] 47 CFR § 27.1204(b)(1).

rules.[9] Third, the eligible Tribal lands must be in a rural area, which is defined as "lands that are not part of an urbanized area or urban cluster area with a population equal to or greater than 50,000."[10] Finally, the applicant must have a local presence on the eligible Tribal lands for which it is applying.[11]

3. In 2020, the Commission denied a petition for reconsideration seeking adoption of the broader definition of Tribal lands contained in part 73 of our rules, which includes off-reservation trust lands, for purposes of the Tribal Window.[12] Specifically, "[t]he Commission required the direct participation of Tribal governments, or entities owned and controlled by such Tribes, in the 2.5 GHz context to ensure that licensees would have the requisite authority over the deployment of facilities and service on their rural Tribal lands."[13] The Commission recognized, however, that there might be "exceptions to the general rule" where case-by-case waivers would be appropriate to allow for the licensing of off-reservation lands in the Tribal Window.[14]

4. Burns Paiute[15] and Lower Elwha[16] each filed one application within the Tribal Window requesting a license for their respective reservations, off-reservation trust lands, and small parcels of non-Tribal land.[17] Both Tribes specify that technical elements of their anticipated 2.5 GHz deployment plans necessitate a waiver encompassing the off-reservation trust and non-Tribal lands. Burns Paiute proposes to deploy 2.5 GHz spectrum as a mid-mile backbone to connect the Burns Butte area, where its Tribal lands are located, to one of the few feasible fiber connection options in the area.[18] Similarly, Lower Elwha states that without a 2.5 GHz license covering the off-reservation trust and non-Tribal lands it has requested, the Tribe would not be able to utilize an existing Tribally-owned tower that is already connected to fiber to provide service to its reservation.[19] Both Burns Paiute and Lower Elwha indicate that their proposed service areas are rural in nature and have limited and cost-prohibitive broadband options.[20]

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[9] *Id.* § 27.1204(b)(2). The rule defines eligible Tribal lands in relevant part as "any federally recognized Indian Tribe's reservation, pueblo or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) and Indian Allotments, see § 54.400(e) of this chapter, as well as Hawaiian Home Lands—areas held in trust for native Hawaiians by the State of Hawaii, pursuant to the Hawaiian Homes Commission Act, 1920, July 9, 1921, 42 Stat 108, *et seq.*, as amended." *Id.*

[10] *Id.* § 27.1204(b)(3).

[11] *Id.* § 27.1204(b)(4). On January 6, 2020, the Wireless Telecommunications Bureau (Bureau) released a Public Notice setting forth the process for submitting applications in the Tribal Window, including details regarding how applicants could demonstrate compliance with the eligibility requirements or file requests for waiver. *Wireless Telecommunications Bureau Announces Procedures for 2.5 GHz Rural Tribal Priority Window*, Public Notice, 35 FCC Rcd 308 (WTB 2020).

[12] *See Transforming the 2.5 GHz Band*, Order on Reconsideration, 35 FCC Rcd 15074, 15080–81, para. 22 (2020) (*Reconsideration Order*).

[13] *Id*. at 15081, para. 22.

[14] *Id.* at 15081, para. 23.

[15] Burns Paiute Application.

[16] Lower Elwha Application.

[17] Burns Paiute Waiver Request at 3–4; Lower Elwha Waiver Request at 1.

[18] Burns Paiute Waiver Request at 3.

[19] Lower Elwha Waiver Request at 4, 9, 11.

[20] Burns Paiute Waiver at 3–4; Lower Elwha Waiver Request at 3, 10.

5. Both the Burns Paiute and Lower Elwha applications were accepted for filing on November 10, 2020.[21] No petitions to deny or oppositions were filed against either application or Waiver Request in response to the Bureau's Public Notice.

III. DISCUSSION

6. A request for a waiver may be granted if it is shown that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) in view of unique or unusual 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.[22] Here, we find that both the Burns Paiute and Lower Elwha showings with respect to each Tribe's off-reservation trust land meet the first prong of the Commission's waiver standard and their showings with respect to the non-Tribal land referenced in their applications meet the second prong of the Commission's waiver standard. Accordingly, we grant waivers of section 27.1204(b)(2) of the Commission's rules to Burns Paiute and Lower Elwha to allow licensing of the off-reservation trust and non-Tribal lands specified in their respective applications.

7. The Commission established the Tribal Window to address the acute problem of lack of access to wireless communications services in rural Tribal areas.[23] In these instances, we find that strictly applying the Tribal lands definition would be inconsistent with the Tribal Window's purpose of providing wireless communications services in rural Tribal areas. First, we find that Burns Paiute and Lower Elwha have shown that their respective off-reservation trust lands are held for the specific benefit of each of the Tribes, and each Tribe has adequately demonstrated its authority over the off-reservation trust land. We find, based upon the showings made by both Burns Paiute and Lower Elwha, that treating these rural lands as eligible Tribal lands under the Tribal Window would be consistent with the Tribal Window's purpose.[24] We note that the off-reservation trust lands in question are areas subject to the Tribe's current, demonstrated authority. In addition, we find that waivers would be in the public interest because each Tribe has plans to use the 2.5 GHz spectrum to provide service on rural lands specifically held in trust for each Tribe's benefit. As such, we find that both Tribes have adequately demonstrated that they have "the requisite authority over the deployment of facilities and service[s]"[25] over the lands at issue, and they have therefore demonstrated that strictly applying the Tribal lands definition would be inconsistent with its purpose.

8. With respect to the non-Tribal lands that Burns Paiute and Lower Elwha also included in their Waiver Requests, we find under the second prong of the Commission's waiver standard that unique or unusual factual circumstances exist, and that absent the waiver, the applicants would have no reasonable alternative in providing service to their reservation and off-reservation trust lands. We note that the unique configuration of each Tribe's reservation and off-reservation trust land relative to the non-Tribal parcels they seek to license presents technical challenges in establishing a wireless Internet network. From an engineering perspective, it would be difficult for each Tribe to provide service to its

[21] *Wireless Telecommunications Bureau Announces Additional 2.5 GHz Rural Tribal Priority Window License Applications Accepted for Filing*, Public Notice, 35 FCC Rcd 12850, 12853, 12854, Attachs. A, B (WTB 2020).

[22] 47 CFR § 1.925(b)(3).

[23] *Reconsideration Order*, 33 FCC Rcd at 15075, para. 4.

[24] The Commission has noted that the problem of lack of communications is particularly acute on rural Tribal lands. *See 2.5 GHz Report & Order*, 34 FCC Rcd at 5466, para. 56; *see also Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, 2020 Broadband Deployment Report, 35 FCC Rcd 8986, 9013, para. 47 (2020) ("Rural Tribal lands continue to lag behind urban Tribal lands, with only 52.9% of all Tribal lands in rural areas having deployment of both [fixed and mobile broadband] services, as compared to 93.1% of Tribal lands in urban areas.").

[25] *Reconsideration Order,* 35 FCC Rcd at 15081, para. 22.

reservation and off-reservation trust lands and still comply with the interference protection rules applicable to the non-Tribal parcels.[26] The location, nature, and size of each non-Tribal parcel makes it unlikely that any other operator would seek to provide wireless service there, if we were to decide that they must be separately licensed. Under the specific circumstances presented here, we conclude that waivers would facilitate improved service to each Tribe's reservation in furtherance of the Commission's objective in establishing the Tribal Priority Window, as well as their off-reservation trust lands.[27] In reaching that conclusion, we note that no petitions to deny or oppositions were received with respect to the applications and Waiver Requests. Thus, we grant the Waiver Requests filed by Burns Paiute and Lower Elwha.

9. We note that our decision here is limited to the suitability of these specific off-reservation trust and non-Tribal lands to be licensed under the Tribal Window. We make no determination as to the status of these lands with respect to other Commission rules or programs, nor for any other purpose. In particular, our decision to grant the Waiver Requests is based on the unique circumstances of the individual applicants and the specific situation present in the 2.5 GHz band at this point in time, and the presence of any one particular fact should not be viewed as supporting a waiver or other form of relief in a different context at a different point in time.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to sections 4(i) and 309(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(a), and section 1.925(b)(3) of the Commission's rules, 47 CFR § 1.925(b)(3), that the waiver requests filed by the Burns Paiute Tribe on July 9, 2020, and the Lower Elwha Klallam Tribe on September 2, 2020, ARE GRANTED, and that section 27.1204(b)(2) of the Commission's rules IS WAIVED to allow licensing of the off-reservation trust and non-Tribal lands specified in each application.

11. IT IS FURTHER ORDERED, pursuant to sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and section 27.1204 of the Commission's rules, 47 CFR § 27.1204, that the licensing staff of the Broadband Division SHALL PROCESS the applications filed by the Burns Paiute Tribe (ULS File No. 0009142952) and the Lower Elwha Klallam Tribe (ULS File No. 0009132715) for new 2.5 GHz licenses in accordance with this *Memorandum Opinion and Order* and the Commission's rules and policies.

12. This action is taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's rules, 47 CFR §§ 0.131, 0.331. This *Memorandum Opinion and Order* is effective upon adoption.

FEDERAL COMMUNICATIONS COMMISSION

Joel Taubenblatt
Chief, Wireless Telecommunications Bureau

[26] *See*, *e.g.*, 47 CFR § 27.55(a)(4), 27.1221.

[27] *Reconsideration Order*, 35 FCC Rcd at 15075, para. 4.

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

In the Matter of	)	
	)	
WORD OF GOD FELLOWSHIP, INC.	)	Facility ID No. 10291
	)	NAL/Acct. No. 202441420004
Low Power Television Station	)	FRN: 0001843697
KUMO-LD, St. Louis, Missouri	)	LMS File No. 0000235569
	)	

MEMORANDUM OPINION AND ORDER AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 13, 2024 **Released: March 13, 2024**

By the Chief, Video Division, Media Bureau:

I. INTRODUCTION

1. The Media Bureau (Bureau) has before it Word of God Fellowship, Inc. (WOG or Licensee), licensee of low power television (LPTV) station KUMO-LD, St. Louis, Missouri (KUMO-LD or Station). In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* (*NAL*),[1] we find that WOG apparently willfully violated section 73.3598(a)[2] of the Commission's rules (Rules) by failing to timely file a license to cover application and section 73.1635(a) by failing to file for extension of its special temporary authority.[3] WOG also willfully and repeatedly violated section 73.1745 of the Rules[4] and section 301 of the Act,[5] by engaging in unauthorized operation. Based upon our review of the facts and circumstances before us, we conclude that WOG is apparently liable for a monetary forfeiture in the amount of nine thousand five hundred dollars ($9,500).

II. BACKGROUND

2. KUMO-LD is an LPTV station whose channel 51 facilities were displaced by the Incentive Auction and repacking process. The Station obtained a construction permit for displacement channel 32 (Displacement CP) that was granted on July 27, 2018 and expired on July 27, 2021.[6] On October 19, 2017, the Station was granted special temporary authority (STA) to begin operating on channel 32 while its displacement application was pending.[7] That STA expired on April 19, 2018 while

[1] This *NAL* is issued pursuant to sections 309(k) and 503(b) of the Communications Act of 1934, as amended (Act), and section 1.80 of the Commission's rules (Rules). *See* 47 U.S.C. §§ 309(k), 503(b); 47 CFR § 1.80. The Bureau has delegated authority to issue the *NAL* under section 0.283 of the Rules. *See* 47 CFR § 0.283.

[2] *See* 47 CFR § 73.3598(a). *See also* 47 CFR § 73.1620(a) (permitting program tests upon notification to the Commission, provided that within 10 days thereafter, an application for a license is filed with the Commission).

[3] 47 CFR § 73.1635(a).

[4] 47 CFR § 73.1745.

[5] *See* 47 U.S.C. § 301.

[6] *See* LMS File No. 0000030456.

[7] *See* LMS File No. 0000030457.

the displacement application was still pending, was not renewed, and the Station continued to operate on displacement channel 32 after the STA expired.[8]

3. On January 17, 2024, WOG filed the Station's application for license to cover (License Application), over two years after the construction permit had expired and, according to WOG, almost four years after construction was completed.[9] In the License Application, as amended, WOG acknowledged that the Station began operating pursuant to the Displacement CP on January 5, 2020, and that it was late in submitting the License Application "due to administrative oversight."[10] WOG provides documentary evidence that the Station was completed and has been operating since that time, including copies of the Station's monthly tower rent and utility payments, a declaration from its principal, and invoices for the equipment and installation work conducted in January 2020.[11] WOG requests waiver of the rules and that the Commission accept the Station's late-filed Application. WOG argues that grant of its requests are in the public interest because it would permit the Station to continue providing its programming to its viewers in St. Louis, Missouri, and the surrounding areas.[12]

III. DISCUSSION

4. This *NAL* is issued pursuant to section 503(b)(1)(B) of the Act.[13] 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.[14] 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.[15] 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,[16] and the Commission has so interpreted the term in the section 503(b) context.[17] 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."[18]

5. *Apparent Violations*. WOG concedes that it failed to timely file a license to cover as required by section 73.3598(a) of the Rules[19] and that it continued to operate on its displacement channel 32 without authorization after its STA expired in April 2018 as required by section 73.1635(a) of the

[8] *See* LMS File No. 0000235569 (License Application) at Exhibit re: Acceptance of Late-Filed License to Cover Application - KUMO-LD at 1 (Acceptance Exhibit).

[9] *Id.*. We note that because the Displacement CP had not yet been canceled in the Commission's Licensing and Management System (LMS), the Station was able to file license to cover application against its expired permit. Cancellation of a station's forfeited construction permit by Bureau staff in LMS is an administerial function and does not constitute an official Commission action nor require any affirmative cancellation by the Commission. As a result, failure by Bureau staff to cancel a forfeited construction permit in LMS does not result in an expired construction permit remaining valid.

[10] *Id.*, Acceptance Exhibit at 1.

[11] *Id.* at Declaration of Arnold Torres and Robert Sparkman Invoices.

[12] *Id.*, Acceptance Exhibit at 3-4.

[13] 47 U.S.C. § 503(b)(1)(B).

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

[15] 47 U.S.C. § 312(f)(1).

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

[17] *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).

[18] 47 U.S.C. § 312(f)(2).

[19] *See* 47 CFR § 73.3598(a).

Rules.[20] WOG admits that it failed to timely submit an application for license to cover due to an administrative oversight. It is well settled precedent that licensees are responsible for compliance with the Commission's rules and that administrative oversight does not excuse a violation or non-compliance.[21] Furthermore, applicants and licensees are responsible for the errors or oversights of their employees.[22]

6. WOG also operated the Station without a valid license authorization for a total of nearly six years. For nearly 21 months, from April 19, 2018 to January 5, 2020, WOG operated the Station without a valid authorization after it failed to renew its STA. Then beginning January 5, 2020 until over four years later when it filed its license application on January 17, 2024, it operated from its completed displacement facility without a valid license.[23] We therefore find that WOG has apparently engaged in unauthorized operation, in violation of sections 73.1745(a) of the Rules and section 301 of the Act.[24]

7. *Proposed Forfeiture*. The Commission's *Forfeiture Policy Statement* and section 1.80(b)(10) of the Rules establish a base forfeiture amount of $3,000 for the failure to file a required form.[25] The guidelines also specify a base forfeiture amount of $10,000 for each incident of construction and operation without an instrument of authorization for the service.[26] In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in section 503(b)(2)(E) of the Act, including "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."[27]

8. In this case, WOG failed to timely-file a license to cover and to renew its STA to operate on its displacement channel 32 after it expired April 19, 2018. 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

[20] *See* 47 CFR §§ 73.3598(a); 73.1635(a).

[21] *See, e.g*., *Adrian Abramovitch, Marketing Strategy Leaders, Inc. and Marketing Leaders, Inc*., Forfeiture Order, 33 FCC Rcd 4663, 4674, para. 32 & n.79 (2018) ("[O]ne may not "claim ignorance of the law as a defense") (internal cites omitted); *PTT Phone Cards, Inc.*, Forfeiture Order, 30 FCC Rcd 14701, 14704, para. 10 (2015) ("PTT's purported ignorance of the law certainly does not excuse the fact that it . . . [was] out of compliance with all of the provisions of the Act and the [Commission's] [r]ules to which it was subject."); *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, para 3 (1991), recon. denied, 7 FCC Rcd 3454 (1992) (stating that "inadvertence . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance") (internal cite omitted); *see also Townsquare Media of El Paso, Inc.,* Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 6661, 6665, para. 5 & n. 37 (EB 2020) ("It is immaterial whether . . . violations were inadvertent, the result of ignorance of the law, or the product of administrative oversight.") (internal cites omitted)*; Rufus Resources, LLC*, Forfeiture Order, 33 FCC Rcd 6793, 6794, para. 5 (MB 2018) ("It is well settled that ignorance of the [Commission's] [r]ules does not excuse a violation.") (internal cites omitted).

[22] *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).

[23] We deem all operations that have occurred following the filing of the Station's License Application, so long as they are conducted in accordance with the parameters set forth therein, to have been authorized operations.

[24] *See* 47 CFR § 73.1745(a) and 47 U.S.C. § 301.

[25] *See Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) (*Forfeiture Policy Statement*), *recon. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999); 47 CFR § 1.80(b)(10), note to paragraph (b)(10), Section I. *See also Clear Channel*, 26 FCC Rcd at 7157 ("We note that the staff may also issue Notices of Apparent Liability for 'failure to file a required form' as authorized by Section 503(b)(1)(B) of the Communications Act of 1934, as amended (the 'Act') and Section 1.80 of the Rules, for such violations of covering license application filing deadlines or take other enforcement action.").

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

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

forfeiture from the base amount of $26,000 to $9,500. We find it appropriate to reduce the proposed forfeiture from the base forfeiture amount because, as an LPTV station, the Station is providing a secondary service; however we find that a larger forfeiture amount is warranted here than may have been applied in other cases with similar violations due to the length of time of the violation, nearly six years of unauthorized operation, and its failure to file/timely file multiple necessary applications.[28]

9. We will grant the Station's pending License Application by separate action upon the conclusion of this forfeiture proceeding if there are no issues other than the apparent violations that would preclude grant.[29] The Station is permitted to continue to operate pursuant to the parameters specified in the License Application.[30]

IV. ORDERING CLAUSES

10. 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,[31] Word of God Fellowship, Inc. is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of nine thousand five hundred dollars ($9,500) for its apparent willful violations of sections 73.3598(a) and 73.1635(a) of the Commission's rules and its apparent willful and repeated violations of section 73.1745(a) of the Rules and section 301 of the Communications Act of 1934, as amended.[32]

11. **IT IS FURTHER ORDERED**, pursuant to section 1.80 of the Commission's rules,[33] that, within thirty (30) days of the release date of this *NAL,* Word of God Fellowship, 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),[34] or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. **Notification that payment has been made must be sent on the day of payment by e-mail to Shaun.Maher@fcc.gov and VideoNAL@fcc.gov.** Below are instructions that payors should follow based on the form of payment selected:[35]

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[28] *See, e.g.*, *Southwest Colorado TV Translator Association*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 18042 (2021) (reducing forfeiture for late filed application for license to cover and four months unauthorized operations to $3,500 because station was an LPTV station and providing a secondary service) (paid Jan. 20, 2022); *Cf. The Estate of Ettie Clark*, Memorandum Opinion and Order and Notice of Apparent Liability, 37 FCC Rcd 4111 (2022) (finding that although the station is secondary, a larger forfeiture amount ($6,500) was warranted given the lengthy period of time (over three years) the station engaged in unauthorized operation) (paid Apr. 19, 2022).

[29] The Station's pending application for renewal of license will likewise be considered by separate action upon conclusion of this forfeiture proceeding. *See* LMS File No. 0000149556.

[30] If the Station must operate at variance from these parameters it must file all required notifications and applications with the Commission. Any questions with regards to making such filings should be directed to Shaun Maher, Attorney-Advisor, Video Division, Media Bureau by e-mail at Shaun.Maher@fcc.gov (legal) or Mark Colombo, Associate Division Chief, Video Division, Media Bureau by e-mail at Mark.Colombo@fcc.gov (LMS/technical).

[31] 47 U.S.C. § 503(b); 47 CFR § 1.80.

[32] 47 CFR § 73.3598(a); 73.1635(a); 73.1745(a); 47 U.S.C. § 301.

[33] 47 CFR § 1.80.

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

[35] 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 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).[36] For additional detail and wire transfer instructions, go to https://www.fcc.gov/licensing-databases/fees/wire-transfer.
- Payment by credit card must be made by using 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. 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.[37] 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. 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.[38] The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street NE, Washington DC 20554, ATTN: Shaun Maher, Attorney, Video Division, Media Bureau, and **MUST INCLUDE** the NAL/Acct. No. referenced above. Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the

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

[37] *See* 47 CFR § 1.1914.

[38] 47 CFR §§ 1.16 and 1.80(g)(3).

Secretary, Federal Communications Commission.[39] **A copy must also be e-mailed to Shaun.Maher@fcc.gov and VideoNAL@fcc.gov to assist in processing the response.**

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

15. 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.[40]

16. **IT IS FURTHER ORDERED** that copies of this *NAL* shall be sent by First Class and Certified Mail, Return Receipt Requested, to Word of God Fellowship, Inc., 3901 Highway121 S, Bedford, TX 76021 as well as by e-mail to ARNOLD.TORRES@DAYSTAR.COM, and to WOG's counsel, Mark Denbo, Esq., 5028 Wisconsin Avenue, N.W., Suite 301, Washington, DC 20016 and emailed to: mdenbo@fccworld.com.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Division
Media Bureau

[39] 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).

[40] *See* 47 U.S.C. 503(b)(2)(E); *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).

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 24-247
Released: March 13, 2024

EFFECTIVE DATE FOR TEXT BLOCKING RULE PROVISIONS SET FOR SEPTEMBER 3, 2024

CG Docket Nos. 02-278, 21-402

On March 17, 2023, the Commission released the *Text Blocking Report and Order* in the above-captioned proceedings and established a new rule specifically targeting the increasing problem of scam text messages sent to consumers. This rule, 47 CFR § 64.1200(p), goes into effect on September 3, 2024.

The new rule requires mobile service providers to block certain text messages that are highly likely to be illegal. It specifically requires mobile wireless providers to block texts purporting to be from North American Numbering Plan (NANP) numbers on a reasonable Do-Not-Originate (DNO) list which include numbers that purport to be from invalid, unallocated, or unused numbers.[1] It also requires blocking of NANP numbers for which the subscriber to the number has requested that texts purporting to originate from that number be blocked.[2]

The *Text Blocking Report and Order* provided that the new text blocking rule provision in 47 CFR § 64.1200(p) would become effective six months after the Office of Management and Budget completes review of any information collection requirements that the Consumer and Governmental Affairs Bureau determines are required under the Paperwork Reduction Act.[3] The Commission directed the Consumer and Governmental Affairs Bureau to announce the compliance date in a subsequent Public Notice and to cause section 64.1200 to be revised accordingly.[4]

The Office of Management and Budget approved the information collection requirements on February 12, 2024.[5] On March 1, 2024, the Commission announced in the Federal Register both this approval and that the new rule would become effective on September 3, 3024.[6] Accordingly, we hereby remove 47 CFR § 64.1200(q), which provided that compliance with the new rules would not be required

[1] *Targeting and Eliminating Unlawful Text Messages, Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket Nos. 02-278, 21-402, Report and Order and Further Notice of Proposed Rulemaking, 38 FCC Rcd 2744 (2023).

[2] *Id.*

[3] *Id*. at para. 78.

[4] *Id*.

[5] 89 FR 15061 (Mar. 1, 2024).

[6] *Id*.

until 64.1200(q) is removed or the Commission announced a compliance date.

For further information, contact Mika Savir, Attorney Advisor, Consumer Policy Division, Consumer and Governmental Affairs Bureau, at (202) 418-0384 or mika.savir@fcc.gov.

- FCC -

PUBLIC NOTICE

Federal Communications Commission
45 L St., N.E.
Washington, D.C. 20002

News media information 202-418-0500
Internet: http://www.fcc.gov

REPORT NO: 0511 SPECIAL RELIEF AND SHOW CAUSE PETITIONS March 13, 2024

Portions of this Public Notice have been produced by the Media Bureau's computer-based Data Management systems.

This Public Notice is intended to list only special relief requests, petitions for order to show cause and related petitions for reconsideration or applications for review. CSR (cable special relief) petitions and CSC (cable show cause) petitions refer to cable-related matters pursuant to Part 76. The newly-designated BSR (broadcast special relief) petitions refer to certain non-application-related broadcast matters pursuant to Part 73.

Parties seeking special relief pursuant to Part 76 are advised that such requests must be initiated through the special relief provisions of Section 76.7 of the Rules. Many of these filings are subject to the pleading cycle rules set forth in Section 76.7, while others have their own pleading cycle relative to the particular rule involved. For BSR petitions filed pursuant to Part 73, the pleading cycle will be the same as that mandated by Section 76.7 unless stated otherwise.

Petitions for reconsideration and applications for review are listed for informational purposes only. The applicable pleading cycles for these types of petitions are found in Sections 1.106 and 1.115 of the Commission's rules, respectively.

Please Note that files containing these petitions can no longer be reviewed in the Commissions Reference Information Center, CY-Level, 445 12th Street, SW Washington, DC 20554. Anyone may search for petitions electronically filed via the Commission's Electronic Comment Filing System (ECFS) by using MB Docket No. 12-1 in the proceeding number field. Once the Media Bureau has issued a Special Relief and Show Cause Petition Public Notice, interested parties can find the petition at issue by using the newly assigned docket number or the CSR or CSC number. Enter the CSR or CSC number into the Bureau Identification Number field in ECFS.

The letter code following a CSR Number refers to the particular subject of the petition. Those currently in use are: A – ADI/DMA; M – must carry; E – effective competition; C – retransmission consent; P – program access; R – rate regulation; F – rate freeze; L – commercial leased access; Z – technical; S – significantly viewed; N – nonduplication/syndicated exclusivity/sports deletion; D – small system definition; O – OTARD; and X – cross ownership. If no letter appears after the CSR number, the petition is considered to be in the miscellaneous category. CSC and BSR petitions do not have letter code designations. It is requested that all responses or statements refer to the CSR file number or docket number assigned to the petition.

Docket No.	CSR Number	Petitioner	Respondent	Special Relief Request Communities
24-84	CSR-9016-A	Jackson County Commission	WAAY-TV WAFF-TV WHNT-TV WZDX-TV	Jackson County, Alabama

-FCC-

PUBLIC NOTICE

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

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

DA No. 24-249

Report No. TEL-02349 **Thursday March 14, 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-214-20240119-00026 E Green Mountain Long Distance Service, Inc.
International Telecommunications Certificate
Service(s): Global or Limited Global Resale Service
Grant of Authority Date of Action: 03/08/2024

Green Mountain Long Distance Service, Inc. (GMLD) filed an application for authority to provide resale services in accordance with section 63.18(e)(2) of the Commission's rules. 47 CFR § 63.18(e)(2).

GMLD is wholly owned by Selectronics Corporation (Selectronics), both Vermont corporations. The following individuals and entities hold a 10% or greater interest in Selectronics: Eric S. Haskin (40.33%); Scott Haskin (19.14%); Jacob Simms (minor) held in trust (Craig Matanle, Esq. Trustee) (11.52%); The Estate of Michael J. Simms (William A. Mason, Attorney for the Estate) (11.52%); and Shannon K. Simms (11.52%). All of the individuals are U.S. citizens, and the trust and estate are organized in Vermont.

ITC-214-20240208-00031 E MEI Telecom, Inc.

International Telecommunications Certificate

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

Grant of Authority Date of Action: 03/08/2024

MEI Telecom, Inc. (MEI Telecom) 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).

MEI Telecom, a Michigan corporation, is wholly owned by Barry County Services Company (BCS), both Michigan entities. According to the Applicant, no individual or entity holds a 10% or greater direct or indirect interest in BCS.

ITC-ASG-20240122-00013 E Matanuska Telecom Association Inc.

Assignment

Grant of Authority Date of Action: 03/13/2024

Current Licensee: MTA Communications, LLC

FROM: MTA Communications, LLC

TO: Matanuska Telecom Association Inc.

On January 22, 2024, MTA Communications, LLC (MTAC) filed a notification of the pro forma assignment of an international section 214 authorization for the provision of global resale service (ITC-214-19970527-00289) from MTAC to Matanuska Telecom Association Inc. (MTA), effective January 1, 2024. MTAC is wholly owned by MTA, both Alaska entities. In a corporate reorganization, MTAC assigned its international 214 authorization to MTA.

ITC-ASG-20240306-00043 E MTA Communications, LLC

Assignment

Grant of Authority Date of Action: 03/13/2024

Current Licensee: MTA Long Distance, Inc.

FROM: MTA Long Distance, Inc.

TO: MTA Communications, LLC

On March 6, 2024, MTA Long Distance, Inc. (MTA LD) filed a notification of the pro forma assignment of an international section 214 authorization for the provision of global resale service (ITC-214-19970527-00289) from MTA LD to MTA Communications, LLC (MTAC), effective August 1, 2006. In a corporate reorganization, MTA LD was merged into MTAC, it direct parent, with MTAC being the surviving entity. MTA LD were both wholly owned subsidiaries of Matanuska Telecom Association Inc., all Alaska entities.

INFORMATIVE

ITC-214-20210802-00111 Rakuten Symphony USA LLC

By letter dated March 4, 2024, the Commission was notified that Rakuten Mobile USA LLC has changed its name to Rakuten Symphony USA LLC.

ITC-STA-20240227-00041 Pulaski White Rural Telephone Cooperative Inc

On March 13, 2024, we granted the request for special temporary authority (STA) filed by Pulaski-White Rural Telephone Cooperative Inc. d/b/a LightStream (LightStream), an Indiana corporation, to continue to provide global resale international telecommunications service to its customers while the Commission considers its application for international section 214 authority (ITC-214-20240227-00040). LightStream acknowledges that grant of the STA will not prejudice action by the Commission on the underlying application and the STA is subject to cancellation or modification upon notice without a hearing.

The STA expires on September 9, 2024.

SURRENDER

ITC-214-20050408-00148 kgb Carrier New York, Inc.

kgb Carrier New York, Inc. notified the Commission of the surrender of its international section 214 authorization.

ITC-214-20090724-00348 Novega Venture Partners, Inc.

Novega Venture Partners, Inc., now known as Vonage Wireless Inc., 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, DC 20554

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

DA 24-250
Released: March 14, 2024

WIRELINE COMPETITION BUREAU SEEKS COMMENT ON PETITION FOR DECLARATORY RULING OR WAIVER OF SECTION 61.50 OF COMMISSION'S RULES FILED BY HILLIARY COMMUNICATIONS LLC

WC Docket Nos. 10-90, 17-144, 24-82

Comments Due: April 15, 2024
Replies Due: April 30, 2024

By this Public Notice, the Wireline Competition Bureau (Bureau) seeks comment from interested parties on a petition for declaratory ruling or waiver of section 61.50(a) of the Commission's rules filed by Hilliary Communications LLC (Hilliary).[1] Hilliary seeks a declaratory ruling that section 61.50(a) of the Commission's rules and the *Enhanced A-CAM Order* do not compel Oklahoma Western Telephone Company, Inc. and Medicine Park Telephone Company, Inc., local exchange carrier affiliates of Hilliary, to convert their business data service (BDS) offerings from rate-of-return to incentive regulation "merely because they have now become affiliated with [Southwest Oklahoma Telephone Company, Inc. (SWOT)]," a carrier that elected BDS incentive regulation.[2] In the alternative, Hilliary seeks "a waiver of section 61.50(a), so that SWOT may return its BDS to traditional rate-of-return regulation or, at a minimum, to preserve the current 'mixed' regulation *status quo*."[3]

Filing Requirements. Interested parties may file comments on or before the dates indicated above.[4] All filings must refer to **WC Docket No. 10-90, 17-144, and 24-82**.

- Electronic Filers: Comments may be filed electronically using the Commission's online Electronic Comment Filing System (ECFS): https://www.fcc.gov/ecfs/.[5]
- 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.

[1] Petition for Declaratory Ruling or Waiver of the Oklahoma Incumbent Local Exchange Carrier Affiliates of Hilliary Communications LLC, WC Docket Nos. 10-90, 17-144, 24-82 (filed Mar. 11, 2024) (Petition).

[2] *Id*. at iii, 1; *see* 47 CFR § 61.50(a); *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 (July 24, 2023) (*Enhanced A-CAM Order*).

[3] Petition at 1-2.

[4] *See* 47 CFR §§ 1.415 and 1.419.

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

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. 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 help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.[6]

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.[7]

Ex Parte Rules. The proceeding is considered 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 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) 418-8209 or via email at Christopher.Koves@fcc.gov.

- FCC -

[6] *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.

[7] Documents will generally be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

[8] 47 CFR §§ 1.1200 *et seq*.

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

In the Matter of	)	
	)	
CHICKAHOMINY CONSORTIUM	)	ULS File No. 0009167733
	)	
KIOWA TRIBE	)	ULS File No. 0009209295
	)	
MONACAN INDIAN NATION	)	ULS File No. 0009209343
	)	
NANSEMOND INDIAN TRIBE	)	ULS File No. 0009209358
	)	
NARRAGANSETT INDIAN TRIBE	)	ULS File No. 0009167606
	)	
OSNI PONCA, LLC	)	ULS File No. 0009185897
	)	
VIRGINIA TRIBAL CONSORTIUM	)	ULS File No. 0009209344
	)	
Requests for Waiver of the 2.5 GHz Rural Tribal Priority Window Rules	)	

MEMORANDUM OPINION AND ORDER

Adopted: March 11, 2024 **Released: March 14, 2024**

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. The Chickahominy Consortium (Chickahominy),[1] Monacan Indian Nation (Monacan),[2] Nansemond Indian Tribe (Nansemond),[3] Virginia Tribal Consortium (VTC)[4] (collectively, the Virginia Tribes), the Narragansett Indian Tribe (Narragansett),[5] the Kiowa Tribe,[6] and Osni Ponca, LLC (Osni Ponca),[7] submitted the above-captioned applications to participate in the Commission's 2.5 GHz Rural Tribal Priority Window (Tribal Window). In connection with the applications, each Tribe submitted a

[1] *See* File No. 0009167733 (filed July 30, 2020, amended Aug. 3, 2020) (Chickahominy Application).

[2] *See* File No. 0009209343 (filed Sept. 1, 2020, amended Sept. 30, 2020) (Monacan Application).

[3] *See* File No. 0009209358 (filed Sept. 1, 2020, amended Sept. 30, 2020) (Nansemond Application).

[4] *See* File No. 0009209344 (filed Sept. 1, 2020, amended Sept. 30, 2020) (VTC Application).

[5] *See* File No. 0009167606 (filed July 30, 2020) (Narragansett Application).

[6] *See* File No. 0009209295 (filed Sept. 1, 2020, amended June 21, 2021, Aug. 24, 2021, Oct. 18, 2021, and Oct. 26, 2021) (Kiowa Application).

[7] *See* File No. 0009185897 (filed Aug. 14, 2020, amended Sept. 2, 2020) (Osni Ponca Application).

request for waiver[8] of section 27.1204(b)(2) of the Commission's rules, which defines eligible Tribal lands for purposes of the Tribal Window.[9] In this *Memorandum Opinion and Order*, we grant the Waiver Requests in part, as specified below.[10]

II. BACKGROUND

2. In July 2019, the Commission approved an order modernizing the portion of the 2.5 GHz band formerly known as the Educational Broadband Service.[11] Among other things, the order created a Tribal Window during which eligible Tribal entities could apply for licenses for currently unassigned 2.5 GHz spectrum.[12] To obtain a license in the Tribal Window, an applicant must meet four requirements. First, the applicant must be an eligible entity, which the rule defines as "[a] federally recognized American Indian Tribe or Alaska Native Village; or an entity that is owned and controlled by a federally-recognized Tribe or a consortium of federally-recognized Tribes."[13] Second, the applicant must apply for eligible Tribal lands, as defined in section 27.1204(b)(2) of the Commission's rules.[14] Third, the eligible Tribal lands must be in a rural area, which is defined as "lands that are not part of an urbanized area or urban cluster area with a population equal to or greater than 50,000."[15] Finally, the applicant must have a local presence on the eligible Tribal lands for which it is applying.[16]

[8] Chickahominy Application, Request for Waiver of Eligibility Rules for Lands Not Held in Trust by the Chickahominy Consortium (Chickahominy Waiver Request); Monacan Application, Petition for Waiver (Monacan Waiver Request); Nansemond Application, Petition for Waiver (Nansemond Waiver Request); VTC Application, Petition for Waiver (VTC Waiver Request); Narragansett Application, Request for Waiver of Eligibility Rules Exhibit (Narragansett Waiver Request); Kiowa Application, Lawton Urban Area Waiver Request (Kiowa Waiver Request); Osni Ponca Application, Petition for Waiver (Osni Ponca Waiver Request).

[9] 47 CFR § 27.1204(b)(2). Kiowa and Osni Ponca also request a waiver of 47 CFR § 27.1204(b)(3), which excludes lands that are part of an urban area or urban cluster with a population of greater than 50,000 from being eligible in the Tribal Window. Kiowa Waiver Request, Osni Ponca Waiver Request at 1. *See* para. 4, *infra*.

[10] *Id.* § 1.925(b)(3).

[11] *Transforming the 2.5 GHz Band*, Report and Order, 34 FCC Rcd 5446 (2019) (*2.5 GHz Report & Order*).

[12] *Id.* at 5463–69, paras. 47–65.

[13] 47 CFR § 27.1204(b)(1).

[14] *Id.* § 27.1204(b)(2). The rule defines eligible Tribal lands in relevant part as "any federally recognized Indian Tribe's reservation, pueblo or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) and Indian Allotments, see § 54.400(e) of this chapter, as well as Hawaiian Home Lands—areas held in trust for native Hawaiians by the State of Hawaii, pursuant to the Hawaiian Homes Commission Act, 1920, July 9, 1921, 42 Stat 108, *et seq.*, as amended." *Id.*

[15] *Id.* § 27.1204(b)(3).

[16] *Id.* § 27.1204(b)(4). On January 6, 2020, the Wireless Telecommunications Bureau (Bureau) released a Public Notice setting forth the process for submitting applications in the Tribal Window, including details regarding how applicants could demonstrate compliance with the eligibility requirements or file requests for waiver. *Wireless Telecommunications Bureau Announces Procedures for 2.5 GHz Rural Tribal Priority Window*, Public Notice, 35 FCC Rcd 308 (WTB 2020) (*Bureau Procedures PN*).

3. In the *2.5 GHz Report & Order,* the Commission also determined that the Tribal Window would include only unassigned 2.5 GHz spectrum.[17] In the *Bureau Procedures PN*, we specified that licenses will not be granted for Tribal lands where an applicant cannot demonstrate local presence.[18]

4. Among the criteria adopted by the Commission as part of the Tribal Window was the requirement that any area being requested be "in a rural area, which is defined to be lands that are not part of an urbanized area or urban cluster area with a population equal to or greater than 50,000…."[19] The Commission later denied a petition for reconsideration seeking to include urban areas in the definition of eligible Tribal lands in the Tribal Window,[20] reflecting that its underlying purpose was "to address the communications needs of their communities and of residents on rural Tribal lands, including the deployment of advanced wireless services to unserved or underserved areas."[21]

5. In 2020, the Commission also denied a petition for reconsideration seeking adoption of the broader definition of Tribal lands contained in part 73 of our rules, which includes off-reservation trust lands, for purposes of the Tribal Window.[22] Specifically, "[t]he Commission required the direct participation of Tribal governments, or entities owned and controlled by such Tribes, in the 2.5 GHz context to ensure that licensees would have the requisite authority over the deployment of facilities and service on their rural Tribal lands."[23] The Commission recognized, however, that there might be "exceptions to the general rule" where case-by-case waivers would be appropriate to allow for the licensing of off-reservation lands in the Tribal Window.[24]

6. All seven Virginia Tribes submitted Tribal Window applications either directly or through a consortium filing, along with requests for waiver of the Tribal lands definition.[25] Osni Ponca

[17] *2.5 GHz Report & Order*, 34 FCC Rcd at 5469, para. 65 (declining to permit applications for already-licensed spectrum). Further, in the *Bureau Procedures PN*, we reiterated that Tribal Window "applications will only be accepted for channel groups for which there is currently unassigned spectrum in the eligible portion of the 2.5 GHz band . . . over the relevant rural Tribal land." *Bureau Procedures PN*, 35 FCC Rcd at 309, 312 paras. 3, 15. Potential applicants were encouraged to "conduct due diligence to determine whether they will be able to provide service in the areas for which they intend to apply for licenses," including an evaluation of "how much unassigned eligible 2.5 GHz spectrum is available." *Id*. at 309, para. 5.

[18] *Bureau Procedures PN*, 35 FCC Rcd at 313–14, para. 23.

[19] 47 CFR § 27.1204(b)(3). *See also Bureau Procedures Public Notice*, 35 FCC Rcd at 313, para. 20.

[20] *See Transforming the 2.5 GHz Band*, Order on Reconsideration, 35 FCC Rcd 15074, 15079–80, paras. 18–21 (2020) (*Reconsideration Order*).

[21] *Id*. at 15080, para. 19 (citing *2.5 GHz Report & Order*, 34 FCC Rcd at 5463, para. 47).

[22] *See Reconsideration Order*, 35 FCC Rcd at 15080–81, para. 22.

[23] *Id*. at 15081, para. 22.

[24] *Id.* at 15081, para. 23.

[25] *See* Chickahominy Waiver Request; Monacan Waiver Request; Nansemond Waiver Request; VTC Waiver Request. The Monacan Indian Nation and the Nansemond Indian Tribe each filed separate applications. Monacan Application; Nansemond Application. The Chickahominy and Chickahominy – Eastern Division Tribes applied jointly as the Chickahominy Consortium. Chickahominy Application. The Rappahannock Tribe, Inc. (Rappahannock), the Upper Mattaponi Tribe, and the Pamunkey Indian Tribe applied jointly as the Virginia Tribal Consortium. VTC Application. Each of the Virginia Tribes is federally recognized, and thus filing as a consortium meets the applicant eligibility requirements established for the Tribal Window. *See* 47 CFR § 27.1204(b)(1); Indian Entities Recognized by and Eligible To Receive Services From the United States Bureau of Indian Affairs, 88 Fed. Reg. 2112 (2023) (*2023 List of Federally Recognized Tribes*).

filed one application within the Tribal Window,[26] which it amended to include a waiver of the Tribal lands and rural lands definitions.[27] The Narragansett[28] and Kiowa[29] both filed two applications in the Tribal Window. In their Waiver Requests, all of the Tribes note the various ties they have to the areas they have applied for[30] and that these areas have poor broadband access.[31]

7. The Osni Ponca application was accepted for filing on November 10, 2020.[32] The Chickahominy, Monacan, Nansemond, VTC, and Narragansett applications were accepted for filing on April 8, 2021.[33] The Kiowa application was accepted for filing on November 18, 2021.[34] No petitions to deny or oppositions were filed against any of those applications or Waiver Requests in response to the Bureau's Public Notices.[35] T-Mobile USA, Inc. (T-Mobile) filed a letter in response to the Virginia

[26] Osni Ponca Application. Osni Ponca, LLC, is a for-profit economic development company wholly owned by the Ponca Tribe of Nebraska, which is a federally-recognized Tribe, *id*., Amended Eligibility Exhibit—FCC Form 601 at 5, and therefore meets the applicant eligibility requirements established for the Tribal Window. *See* 47 CFR § 27.1204(b)(1); *2023 List of Federally Recognized Tribes*.

[27] *See* Osni Ponca Waiver Request at 1.

[28] The first application sought a license for the Tribe's reservation land in Rhode Island and has been granted. File No. 0009157291 (granted May 12, 2021) (WRMP514). The Narragansett also filed a second application, which is the subject of this *Memorandum Opinion and Order*, requesting a waiver of the Tribal lands definition for Tribally-owned fee land and non-Tribal land adjacent to its reservation. Narragansett Application; Narragansett Waiver Request at 1, 2.

[29] The first application, which requested eligible rural Tribal land in the Kiowa-Comanche-Apache-Fort Sill Apache/Caddo-Wichita-Delaware joint-use Oklahoma Tribal Statistical Area (OTSA) has been granted. File No. 0009209285 (granted Dec. 21, 2021) (WROW819). The second application, which is the subject of this *Memorandum Opinion and Order*, includes a request for the Lawton Urban Area that falls within the separate Kiowa-Comanche-Apache-Fort Sill Apache OTSA, for which the Kiowa also seek a license and is otherwise eligible land for purposes of the Tribal Window not requiring a waiver. Kiowa Waiver Request.

[30] Chickahominy Waiver Request at 1, 2; Kiowa Waiver Request at 1; Monacan Waiver Request at 1, 8–9; Nansemond Waiver Request at 1, 7; Narragansett Waiver Request at 2; Osni Ponca Waiver Request at 2, 5; VTC Waiver Request at 8–9.

[31] Chickahominy Waiver Request at 1, 3; Kiowa Waiver Request at 1; Monacan Waiver Request at 5; Nansemond Waiver Request at 5; Narragansett Waiver Request at 1, 2–3; Osni Ponca Waiver Request at 4–5; VTC Waiver Request at 6.

[32] *Wireless Telecommunications Bureau Announces Additional 2.5 GHz Rural Tribal Priority Window License Applications Accepted for Filing*, Public Notice, 35 FCC Rcd 12850, 12853, 12854, Attachs. A, B (WTB 2020).

[33] *Wireless Telecommunications Bureau Announces Additional 2.5 GHz Rural Tribal Priority Window License Applications Accepted for Filing*, Public Notice, 36 FCC Rcd 7124, 7127, 7128, 7130, 7131, 7132, Attachs. A, B (WTB 2021).

[34] *Wireless Telecommunications Bureau Announces Additional 2.5 GHz Rural Tribal Priority Window License Applications Accepted for Filing*, Public Notice, 36 FCC Rcd 16276, 16279, 16280, Attachs. A, B (WTB 2021).

[35] Letters of support for each of the Virginia applications and the Narragansett Application were submitted by their respective Congressional representatives. *See* Letter from United States Senators Mark R. Warner and Tim Kaine to Dana Shaffer, Deputy Chief, Wireless Telecommunications Bureau, FCC (Sept. 2, 2020); Letter from the Honorable Robert C. "Bobby" Scott to Dana Shaffer, Deputy Chief, Wireless Telecommunications Bureau, FCC (Sept. 1, 2020); Letter from the Honorable Robert J. Wittman to Dana Shaffer, Deputy Chief, Wireless Telecommunications Bureau, FCC (Aug. 21, 2020); Letter from the Honorable Abigail Spanberger to Dana Shaffer, Deputy Chief, Wireless Telecommunications Bureau, FCC (Sept. 29, 2020); Letter from the Honorable Jack Reed, United States Senator, the Honorable Sheldon Whitehouse, United States Senator, the Honorable James R. Langevin, Member of Congress, and David N. Cicilline, Member of Congress, to Ajit Pai, Chair, FCC (July 30, 2020).

applications advocating that any licenses be limited to rural areas where spectrum is available.[36] The Monacan, Nansemond, and VTC filed a response.[37]

III. DISCUSSION

8. A request for a waiver may be granted if it is shown that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) in view of unique or unusual 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.[38] Here, we find that with limited exceptions noted below, each applicant's showing meets the first prong of the waiver standard to the extent that each seeks a waiver for off-reservation trust or Tribally-owned fee lands. With respect to the non-Tribal lands contained within their requested shapefiles, we grant waivers under the second prong of the Commission's waiver standard. Accordingly, with the limited exceptions noted below, we waive section 27.1204(b)(2) of the Commission's rules to allow licensing of the off-reservation trust, Tribally-owned fee, and non-Tribal land specified for each applicant.

9. The Commission established the Tribal Window to address the acute problem of lack of access to wireless communications services in rural Tribal areas.[39] In these instances, we find that, with respect to the off-reservation trust and Tribally-owned fee parcels identified by the applicants, strictly applying the Tribal lands definition would be inconsistent with the Tribal Window's purpose of providing wireless communications services in rural Tribal areas. First, we find that each applicant has shown that the off-reservation trust and Tribally-owned fee lands in question are either held for the specific benefit of the Tribe or are directly owned by the Tribe. As such, each applicant has adequately demonstrated its authority over the off-reservation trust and Tribally-owned fee land. We find, based upon the showing made by each of the applicants, that treating these rural lands as eligible Tribal lands under the Tribal Window would be consistent with the Tribal Window's purpose.[40] We note that the off-reservation trust and Tribally-owned fee lands in question are areas subject to the Tribe's current, demonstrated authority. In addition, we find that a waiver would be in the public interest because the applicants plan to use the spectrum to provide service on rural trust and fee lands that are either held for the specific benefit of the Tribe or are directly owned by the Tribe. As such, we find that each of the applicants has adequately demonstrated that it has "the requisite authority over the deployment of facilities and service[s]"[41] over the lands at issue, and they have therefore demonstrated that strictly applying the Tribal lands definition would be inconsistent with its purpose.

10. With respect to the remaining non-Tribal lands specified in the applications, we find that under the unusual factual circumstances present at this time due to the ongoing transformation of the 2.5

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[36] File Nos. 0009209343, 0009209358, 0009209344, 0009167733, Letter from Steve B. Sharkey, Vice President, Government Affairs, Technology and Engineering Policy, T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, at 2–4 (filed May 10, 2021) (T-Mobile Letter).

[37] File Nos. 0009209343, 0009209358, 0009209344, Letter from Jessica R. G. Krauss, Associate Attorney, Cultural Heritage Partners, PLLC, to Marlene H. Dortch, Secretary, FCC (filed May 20, 2021) (Response Letter).

[38] 47 CFR § 1.925(b)(3).

[39] *Reconsideration Order*, 35 FCC Rcd at 15075, para. 4.

[40] The Commission has noted that the problem of lack of communications is particularly acute on rural Tribal lands. *See 2.5 GHz Report & Order*, 34 FCC Rcd at 5466, para. 56; *see also Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, 2020 Broadband Deployment Report, 35 FCC Rcd 8986, 9013, para. 47 (2020) ("Rural Tribal lands continue to lag behind urban Tribal lands, with only 52.9% of all Tribal lands in rural areas having deployment of both [fixed and mobile broadband] services, as compared to 93.1% of Tribal lands in urban areas.").

[41] *Reconsideration Order,* 35 FCC Rcd at 15081, para. 22.

GHz band, strict application of the Tribal lands definition would be contrary to the public interest. The 2.5 GHz band already contains a large number of incumbent licenses, most of which have 35-mile circular geographic service areas (GSAs) or irregular areas caused by overlapping GSAs. Many Tribal lands are similarly small, irregularly-shaped parcels, which can present deployment challenges in light of the 2.5 GHz band's existing incumbency, licensing structure, and technical rules. With the exception of certain land areas in the Osni Ponca application discussed below, the non-Tribal lands at issue in the instant applications are, to varying degrees, adjacent to or connect different reservation, off-reservation trust, or Tribally-owned fee lands, which may facilitate use and deployment of 2.5 GHz spectrum across these Tribal areas to the extent they are licensed as part of a unified service area. We note in particular that each of the Waiver Requests is unopposed. On balance, given the specific circumstances present here, in particular the unique nature of the 2.5 GHz band and the current status of its transformation process, we believe that granting waivers to these applicants would help "address the communications needs" on their rural Tribal land and other adjacent rural areas that have historically lacked effective broadband access.[42] We therefore grant the Waiver Requests, with the limited exceptions specified below.

11. We note that the scope of these waivers does not extend to the limited circumstances in which any requested land areas either have no unassigned spectrum or have urban land, or the applicant has not demonstrated local presence. The *2.5 GHz Report & Order* and the *Bureau Procedures PN* adopted in connection with the Tribal Window specified that areas with no available spectrum were not eligible.[43] Specifically, each of the applications except for Kiowa include waiver areas without unassigned spectrum, and no waiver of this specific requirement was sought, nor was any related public interest showing made, in the relevant applications.[44] As such, to the extent the applications seek to license areas where no unassigned spectrum is available, the associated Waiver Requests with respect to the Tribal Lands definition in section 27.1204(b)(2) of the Commission's rules are denied. Furthermore, as noted by T-Mobile and confirmed by staff analysis,[45] no spectrum is available in channel block 3 in the rural portion of Monacan's and Nansemond's proposed service areas. Accordingly, any license issued to Monacan and Nansemond will be limited to channel blocks 1 and 2.

12. The *2.5 GHz Report & Order*, *Reconsideration Order*, and *Bureau Procedures PN* also specified that the Tribal Window was limited to rural areas and urban areas were not eligible.[46] Each of the proposed license areas except for Chickahominy contain some ineligible urban land, as determined by United States Census Bureau.[47] Except for Kiowa[48] none of the applications explicitly sought seek a

[42] *Reconsideration Order*, 35 FCC Rcd at 15075, para. 4.

[43] *See 2.5 GHz Report & Order,* 34 FCC Rcd at 5469, para. 65. Further, in the *Bureau Procedures PN*, we reiterated that Tribal Window "applications will only be accepted for channel groups for which there is currently unassigned spectrum in the eligible portion of the 2.5 GHz band . . . over the relevant rural Tribal land." *Bureau Procedures PN*, 35 FCC Rcd at 309, 312 paras. 3, 15.

[44] The portions of the application shapefiles without unassigned spectrum are visible in the mapping tool available at the dedicated webpage for the Tribal Window by activating the existing licenses filter for all three channel groups. *See* 2.5 GHz Rural Tribal Maps, https://www.fcc.gov/25-ghz-rural-tribal-maps (*2.5 GHz Rural Tribal Maps*).

[45] *See* T-Mobile Letter.

[46] *See 2.5 GHz Report & Order*, 34 FCC Rcd at 5466, para. 56; *Reconsideration Order,* 34 FCC Rcd at 5469, para. 65; *Bureau Procedures PN*, 35 FCC Rcd at 313, para. 20.

[47] *See Bureau Procedures Public Notice*, 35 FCC Rcd at 313, para. 20 (*citing* https://www.census.gov/programs-surveys/geography/guidance/geo-areas/urban-rural/2010-urban-rural.html).

[48] Kiowa Waiver Request at 1–2.

waiver of the rural limitation,[49] and Osni Ponca does not offer a separate justification for its requested waiver thereof.[50] While Kiowa argues that excluding the Lawton Urban area would make it more difficult to serve the adjacent rural area and certain facilities near the border of its proposed service area,[51] its application has not established that it is situated any differently from other potential licensees, nor that any unique or unusual factual circumstances exist in this case. Moreover, grant of the Waiver Request would likely not resolve the Kiowa's concerns about the difficulties of providing service near the border. There are several existing, incumbent licensees throughout the Kiowa-Comanche-Apache-Fort Sill Apache OTSA, and the Kiowa are required to protect those operations, whether or not the Waiver Request is granted.[52] We therefore deny the Waiver Requests to the extent they seek to cover urban lands, but will process the remainder of the Kiowa application because it requests eligible rural Tribal land.[53]

13. With respect to the Osni Ponca Waiver Request, we grant in part to the extent that the applicant has demonstrated both that certain non-Tribal land within its requested service area is directly adjacent to the Ponca Tribe's off-reservation trust land, and the applicant has sufficiently demonstrated a physical local presence as required by the *Bureau Procedures PN*.[54] The shapefile accompanying the Osni Ponca application reflects the Ponca Tribe's off-reservation trust parcel in Knox County, Nebraska. As discussed above, we grant a waiver for this trust land under the first prong of the Commission's waiver standard, and we further grant a waiver for the adjacent non-Tribal land area in Knox County (with the exception of the portion already licensed to the Nebraska Indian Community College) under the second prong of this standard to facilitate service to the off-reservation trust land through a contiguous

[49] Monacan, Nansemond, and VTC expressed the view that their respective Waiver Requests do not include urban lands. Response Letter at 1. As noted by T-Mobile in its comments and confirmed by staff analysis, each of their shapefiles do include urban lands. The urban lands can be seen on the *2.5 GHz Rural Tribal Maps* by activating the filter for "Urban Areas GTE 50,000 population."

[50] *See* Osni Ponca Waiver Request at 1, 3, 4, 7. While Osni Ponca refers to a waiver of the rural limitation it does not seek a license for areas that are "both (a) an urbanized area or urban cluster area with a population equal to or greater than 50,000, and (b) part of a geographical service area subject to an existing incumbent Channel 1, Channel 2, or Channel 3 license." Osni Ponca Waiver Request at 1, n.1. Two of the three urbanized areas located within the counties Osni Ponca references (Lincoln, Nebraska and Grand Island, Nebraska) have no available spectrum on any channel. Accordingly, we conclude that Osni Ponca is not seeking a license for those areas. In the third urbanized area in question (Omaha, Nebraska), there is a limited amount of spectrum available, but Osni Ponca does not offer a separate justification for a waiver of the rural limitation.

[51] Kiowa Waiver Request at 1–2.

[52] A review of the Commission's Universal Licensing System (ULS) database shows several incumbent 2.5 GHz licenses that have licenses that cover the same area on the same channels that the Kiowa are requesting. The Kiowa will receive a license for the eligible rural Tribal land area for which they applied, but must protect any such incumbent operations.

[53] Before the Broadband Division is able to process the applications that are the subject of this *Memorandum Opinion and Order*, Commission staff will create revised shapefiles to exclude areas where the relevant waiver requests are denied. The final shapefiles will be reflected in the licenses granted by the Broadband Division in lieu of the application records. Bureau staff will be available to respond to any questions about either the final shapefiles or the Tribes' license records.

[54] The *Bureau Procedures PN* specified that a "Tribe or eligible Tribally owned entity must specifically describe the nature of the local presence and demonstrate that the applicant is physically located on the Tribal land" and "[a]n eligible Tribally owned and controlled corporation must demonstrate local presence on the Tribal land for which [it] applies. Local presence could be demonstrated, for example, by showing that the corporation is owned and controlled by the Tribe for whose rural land it is applying and that the corporation provides services or goods on that Tribal land." *Bureau Procedures PN*, 35 FCC Rcd at 313–14, paras. 21, 23.

service area.[55] The remaining 14 counties described in the waiver request as part of the Ponca Tribe's service area are largely not contiguous to Knox County and also contain in part the reservation lands of other Tribes, in addition to areas that have no unassigned spectrum or has urban land.[56] While Osni Ponca has indicated that it is not seeking to license the eligible Tribal lands of other Tribes, it has not identified both the presence of the Ponca Tribe's own Tribal land in these counties combined with the required physical local presence as a Tribally-owned and controlled business entity.[57] As noted above, "[t]he Commission required the direct participation of Tribal governments, or entities owned and controlled by such Tribes, in the 2.5 GHz context to ensure that licensees would have the requisite authority over the deployment of facilities and service on their rural Tribal lands."[58] In light of these dual requirements, we hereby grant the requested waiver only to the extent described above.

14. We note that our decision here is limited to the suitability of these specific lands under the Tribal Window. We make no determination as to the status of these lands with respect to other Commission rules or programs, nor for any other purpose. In particular, our decision to grant the Waiver Requests is based on the unique circumstances of the individual applicants and the specific situation present in the 2.5 GHz band at this point in time, and the presence of any one particular fact should not be viewed as supporting a waiver or other form of relief in a different context at a different point in time.

IV. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED, pursuant to section 4(i) and 309(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 309(a), and section 1.925(b)(3) of the Commission's rules, 47 CFR § 1.925(b)(3), that the waiver requests filed by the Narragansett Indian Tribe on July 30, 2020; Chickahominy Consortium on July 30, 2020; Osni Ponca, LLC, on August 14, 2020; the Monacan Indian Nation on September 1, 2020; the Nansemond Indian Tribe on September 1, 2020; and the Virginia Tribal Consortium on September 1, 2020, as amended, ARE GRANTED IN PART and section 27.1204(b)(2) of the Commission's rules IS WAIVED IN PART to allow licensing of the off-reservation trust, Tribally-owned fee, and non-Tribal lands specified in each application. Otherwise, the waiver requests ARE DENIED, and the waiver request filed by the Kiowa Tribe on September 1, 2020, as amended, IS DENIED.

16. IT IS FURTHER ORDERED, pursuant to sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and section 27.1204 of the Commission's rules, 47 CFR § 27.1204, that the licensing staff of the Broadband Division SHALL PROCESS the applications filed by the Narragansett Indian Tribe (ULS File No. 0009167606), the Chickahominy Consortium (ULS File No. 0009167733), Osni Ponca, LLC (ULS File No. 0009185897), the Monacan Indian Nation (ULS File No. 0009209343), the Virginia Tribal Consortium (ULS File No. 0009209344), the Nansemond Indian Tribe (ULS File No. 0009209358), and the Kiowa Tribe (ULS File No. 0009209295) for new 2.5

[55] As noted above, we will not issue a license where an applicant cannot demonstrate local presence, such as the Tribal lands of another Tribe. *Id*. at 314, para. 23; *see* FCC License WRJS952, licensed to the Nebraska Indian Community College.

[56] The reservation lands of other Tribes within the Ponca Tribe's service area include the: (1) Yankton Sioux Tribe; (2) Santee Sioux Tribe; (3) Winnebago Tribe; and (4) Omaha Tribe.

[57] Osni Ponca Waiver Request at 2, n.1; *see Bureau Procedures PN*, 35 FCC Rcd at 313–14, paras. 21, 23. While the Osni Ponca application notes the Ponca Tribe's provisioning of social and other services to members throughout its broader service area, and references housing rental arrangements in eleven counties, the application only details the physical presence of certain facilities maintained by the Ponca Tribe in five counties, two of which are specific to the applicant. Osni Ponca Amended Eligibility Exhibit at 2–4. Further, the only Tribal land parcel that has been identified as directly held by, or held in benefit for, the Ponca Tribe is the off-reservation trust land in Knox County. Osni Ponca Waiver Request at 5.

[58] *Reconsideration Order*, at 15081, para. 22.

GHz licenses in accordance with this *Memorandum Opinion and Order* and the Commission's rules and policies.

17. These actions are taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's rules, 47 CFR §§ 0.131, 0.331. This *Memorandum Opinion and Order* is effective upon adoption.

FEDERAL COMMUNICATIONS COMMISSION

Joel Taubenblatt
Chief, Wireless Telecommunications Bureau

Federal Communications Commission
Washington, D.C. 20554

March 14, 2024

DA 24-252
In Reply Refer to:
1800B3-ATS
Released: March 14 2024

Mr. Gregory LaPorta
Portsonic Communications, LLC
400 South 4th Street, Suite 500
Las Vegas, NV 89101-6207
greg@portsonic.net

In re: **Portsonic Communications, LLC**
New LPFM, Las Vegas, Nevada
Facility Id No. 781847
Application File No. 0000231418

Dear Mr. LaPorta:

We have before us the application (Application) filed by Portsonic Communications, LLC (PCNV), for a construction permit for a new low power FM (LPFM) station in Las Vegas, Nevada. As explained below, PCNV is a for-profit entity and therefore ineligible to hold the LPFM authorization it seeks. Therefore, we dismiss the Application.[1] Furthermore, as an independent and alternative basis, we find the Application fails to comply with the spacing requirements of the Commission's rules (Rules), and is defective pursuant to section 73.807 of the Rules.[2]

Background. PCNV filed the Application during the 2023 LPFM Filing Window.[3] PCNV explains that it is a Limited Liability Company and claims that the eligibility requirements in section 73.853(a)(2) of the Rules do "not require an entity providing a non-commercial public safety radio service to be a non-profit organization."[4]

PCNV certifies that it is a "[s]tate or local government or non-government entity that proposes a noncommercial public safety radio service to protect the safety of life, health or property" and that "[i]t proposes a public safety radio service and has jurisdiction within the service area of the proposed LPFM station."[5] The Application contains an attachment that asserts, "PCNV is working on a public safety radio

[1] *See* 47 CFR § 73.853. *See also* 47 CFR § 73.3566(a).

[2] 47 CFR § 73.807.

[3] *Media Bureau Announces Filing Procedures and Requirements for November 1 – November 8, 2023, Low Power FM Filing Window*, Public Notice, DA 23-642 (MB July 31, 2023). Based on a request from LPFM advocates, the Bureau subsequently delayed the window until December 6, 2023. *Media Bureau Announces Revised Dates for LPFM New Station Application Filing Window*, Public Notice, DA 23-984 (MB Oct. 17, 2023). The Bureau subsequently extended the close of the window until December 15, 2023. *Media Bureau Announces Extension of LPFM New Station Application Filing Window*, Public Notice, DA 23-1150 (MB Dec. 11, 2023).

[4] Application at Attach. "12062023_PCNV Legal Certifications.pdf". *See also* Application at Attach. 11022023_PCNV_NVSOS_Business_Information.pdf".

[5] Application, Legal Certifications, Eligibility Certifications and Community-Based Criteria Certifications.

service and PCNV has jurisdiction within the service area of the LPFM station."[6] PCNV further claims that its "public safety radio service is geared to the travel and tourism industry within the greater Las Vegas metropolitan service area."[7]

Separately, PCNV requests a waiver of section 73.807(a)(1) of the Rules with regard to the second adjacent channel licensed facility for station KVEG(FM), Mesquite, Nevada.[8] PCNV recognizes its proposed station would be short-spaced to KVEG(FM) and requests a second-adjacent channel waiver.[9]

Finally, PCNV filed an amendment to the Application on February 14, 2024 (February 14 Amendment). In the February 14 Amendment, PCNV references DKVGK-LP, an LPFM station PCNV previously was licensed to operate before that license was cancelled and states that it "proposes to move KVGK-LP 97.9 FM completely out of the traditional FM band"[10] citing to a Fact Sheet and draft Fifth Notice of Proposed Rulemaking in the Commission's FM6 proceeding, MB Docket No. 03-185.[11] The February 14 Amendment also includes a waiver request in which PCNV "hereby requests a blanket waiver . . . for all rules in [sections] 73.801 [through] 73.881" of the Commission's Rules (LPFM Rules).[12] PCNV again bases this waiver request on the *FM6 Fact Sheet and Draft Fifth NPRM*.[13]

Discussion. *LPFM Eligibility*. PCNV is a for-profit entity and thus prohibited from holding an LPFM license. We disagree with PCNV's interpretation of section 73.853(a) of the Rules and PCNV's claim that a non-governmental entity providing public safety radio services does not need to be a not-for-profit entity. Based on PCNV's inability to comply with the basic eligibility requirements to hold an LPFM license, we dismiss the Application.

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[6] Application at Attach. "12062023_PCNV Legal Certifications.pdf".

[7] *Id*. ("PCNV is presently working with area casino(s) and a nationally well known timeshare company to position the marketplace for PCNV's public safety messages to be aired. PCNV's President was in the local law enforcement/justice community for more than 10+ years in Las Vegas, Nevada.").

[8] Application File No. BLH-20010711AAI.

[9] Application at Attach. "11032023_PCNV Engineering Waiver.pdf" (Spacing Waiver Request).

[10] PCNV explained that the Application "may not actually be needed as PCNV was already made the licensee of KVGK-LP 97.9 FM in Las Vegas, Nevada back on May 12, 2023. The [Application] is submitted to the FCC as a precautionary measure on the FCC Facility ID 190166 conversion of [KVGK-LP] during technical issues with the FCC CDBS to FCC LMS conversion completed in early October 2023." Application at Attach. "12062023_PCNV Legal Certifications.pdf". Although not dispositive to our determination, we note that the license for Station DKVGK-LP, Las Vegas, Nevada, automatically expired as a matter of law on September 5, 2023, because the station was silent for a period of 12 months. *See Las Vegas Public Radio Inc.*, Letter Order, Ref 1800B3-VMM (MB Oct. 4, 2023); *see also Actions*, Public Notice, Report No. PN-2-231006-01 (MB Oct. 6, 2023). That action is now final. *See* 47 CFR § 1.117(a) (providing for 40 days after public notice of the Bureau's decision for the Commission on its own motion to order the record before it for review).

[11] Application at Attach. "02142024_PCNV Amendment.pdf" (citing FCC Fact Sheet, Operation of Analog Radio Services by Digital LPTV Stations as Ancillary or Supplementary Service (FM6), Fifth Notice of Proposed Rulemaking (*NPRM*) – MB Docket No. 03-185 (May 18, 2022) (*FM6 Fact Sheet and Draft Fifth NPRM*).

[12] Application at Attach. "02142024_PCNV LPFM Rules Waiver.pdf" (LPFM Rules Waiver Request).

[13] *Id*.

The Commission restricts the types of entities that may hold LPFM authorizations and the types of service those entities may provide.[14] Among the entities eligible to hold LPFM authorizations are "[s]tate and local governments and non-government entities that will provide noncommercial public safety radio services."[15]

We reject PCNV's argument that section 73.853(a)(2) allows a for-profit entity to hold an LPFM authorization as a public safety entity. The Commission's rules limit LPFM eligibility to nonprofit entities. When the Commission established the LPFM service and set the eligibility rules for a public safety radio service entity, it provided that only "state or local governments or *not-for-profit organizations*" would be able to hold an LPFM license as a public safety entity.[16] PCNV cannot satisfy this requirement. Although the Application does not clarify whether PCNV is for-profit or nonprofit, the PCNV website explicitly states that PCNV is a for-profit entity.[17] Thus, the Application is not consistent with the section 73.853 requirements and must be dismissed, regardless of whether it is providing a public safety service.

As an independent and alternative justification for dismissing the Application, even if PCNV were a nonprofit entity, we note it fails to explain what type of public safety radio service it proposes and neglects to explain how it has jurisdiction within its service area. In the LPFM context, the Commission uses the definition of "public safety radio services" set forth in section 309(j)(2)(A) of the Communications Act of 1934, as amended (Act). That section defines "public safety radio services" as "including private internal radio services used by State and local governments and non-government entities and including emergency road services provided by not-for-profit organizations, that—(i) are used to protect the safety of life, health, or property; and (ii) are not made commercially available to the public."[18] The Commission has explained that the phrase "public safety radio services" encompasses three categories of services: (1) traditional public safety services such as police, fire, and emergency medical services, (2) private internal radio services designated for noncommercial use by entities such as utilities, railroads, transit systems, and others that provide essential services to the public at large and that need reliable internal communications in order to prevent or respond to disasters or crises affecting their service to the public, and (3) private internal radio services used by not-for-profit organizations providing emergency road services.[19] The Application fails to explain how PCNV's proposed public safety service complies with any of these categories.

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[14] 47 CFR § 73.853(a).

[15] *Id.* § 73.853(a)(2). The other eligible entities and services are (1) nonprofit educational organizations that will use their LPFM stations to advance an educational program, and (2) Tribal Applicants that will provide noncommercial radio services. *Id.* § 73.853(a)(1), (3).

[16] *Creation of Low Power Radio Service*, Report and Order, MM Docket No. 99-25, 15 FCC Rcd 2205, 2215, para. 23 (2000) (*LPFM Report and Order*) (stating that "public safety radio services used by state or local governments or not-for-profit organizations, as defined in 47 U.S.C. § 309(j)(2)(A), will be eligible for LPFM licenses"). (emphasis added).

[17] Portsonic, Who We Are, https://www.portsonic.net/business.php (last visited March 12, 2024) ("Portsonic Communications, LLC is a Nevada for profit company under Nevada Taxpayer ID: 1008770736-001").

[18] 47 U.S.C. § 309(j)(2)(A)(emphasis added).

[19] *Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended*, Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 99-87, 15 FCC Rcd 22709, 22716, para. 16, 22740, para. 64, 22743, para. 71 (2000). *See also* H.R. Conf. Rep. No. 105-217, 105th Cong., 1st Sess., at 572 (1997).

Additionally, each LPFM applicant must also certify that it is a local entity. In the case of a public safety radio service applicant, the Commission considers the entity to be "local" if it "has jurisdiction within the service area of the proposed LPFM station."[20] While PCNV certifies in the Application that it is a local entity, PCNV offers no evidence that it has *jurisdiction* to provide public safety services within the proposed LPFM station's service area. Instead, PCNV asserts that it is "working with area casino(s) and a national well known timeshare company to position the marketplace for PCNV's public safety messages to be aired."[21] PCNV nowhere demonstrates that it has jurisdiction in the service area of the proposed LPFM station or that it has been authorized by any of the traditional public safety organizations that do hold jurisdiction in its service area. Absent such a showing, PCNV has failed to show that it is eligible to hold an LPFM authorization as a public safety entity.[22] Accordingly, this serves as a separate and independent basis to dismiss the Application.[23]

Section 73.807(a)(1) Violation. Finally, even if PCNV were a nonprofit and a public safety entity, on independent and alternative grounds we would dismiss the Application because a staff engineering study reveals that the proposed transmitter site specified in the Application fails to meet the minimum spacing requirements of section 73.807(a)(1) of the Rules.[24] Specifically, the proposed site is short-spaced to the second-adjacent channel licensed facility for station KVEG(FM), Mesquite, Nevada.[25] Although section 3(b)(2)(A) of the Local Community Radio Act of 2010 (LCRA) authorizes the Commission to waive second-adjacent channel spacing requirements, an LPFM applicant must

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[20] *Id.* § 73.853(b)(3).

[21] Application at Attach. "12062023_PCNV Legal Certifications.pdf".

[22] *See Weather Alert Radio Network*, Letter Order, DA 24-164 (MB Feb. 23, 2024) (dismissing applications filed by applicant that certified that it was eligible as a public safety entity where applicant failed to show it had jurisdiction in the service areas of the proposed stations).

[23] Additionally, we note that PCNV's President, Gregory LaPorta, holds an attributable interest in a construction permit for full-service noncommercial educational FM station KJPT(FM), Las Vegas, Nevada. Application at Attach. "11082023_PCNV Diversity of Ownership.pdf". *See also* Application File No. 0000166753 (New NCE FM CP, granted June 9, 2022) (LVPR Permit). Section 73.860 of the Rules prohibits any party to an LPFM authorization from holding an attributable interest in any other broadcast authorization. *See* 47 CFR § 73.860(a) ("no license shall be granted to any party if the grant of such authorization will result in the same party holding an attributable interest in any other non-LPFM broadcast station, including any FM translator or low power television station, or any other media subject to our broadcast ownership restrictions."); *see also* 47 CFR § 73.858 ("Ownership and other interests in LPFM station permittees and licensees will be attributed to their holders and deemed cognizable for the purposes of §§ 73.855 and 73.860, in accordance with the provisions of § 73.3555"). The Application did not include a pledge by LaPorta to divest his interest in the LVPR Permit. *See* 47 CFR § 73.860(d) ("a party with an attributable interest in a broadcast radio station must divest such interest prior to the commencement of operations of an LPFM station in which the party also holds an interest"); *see also* Instructions to FCC Form 2100, Schedule 318 – Low Power FM Station Construction Permit Application at 9-10 ("If the applicant (or any party to the application) has an attributable interest in a broadcast station or other media outlet that is prohibited under the Commission's cross-ownership rule, the applicant (or the party to the application) must divest the interest prior to the commencement of operations of the LPFM station. In such circumstances, the applicant must . . . submit an explanatory exhibit identifying the broadcast station or other media outlet in which the applicant (or the party to the application) holds an attributable interest and setting forth the applicant's (or party's) intention to divest such interest.").

[24] 47 CFR § 73.807(a)(1).

[25] Application File No. BLH-20010711AAI.

specifically request the waiver and demonstrate that its proposed LPFM facilities "will not result in interference to any authorized radio service."[26]

PCNV's Spacing Wavier Request is deficient and does not adequately demonstrate that no interference will occur. The waiver fails to include any engineering studies or provide any explanation about how PCNV will protect KVEG(FM) from interference by the proposed facility. An acceptable demonstration of no interference should contain items such as a map of the proposed interference area, a tower diagram, a satellite or aerial photograph, the antenna manufacture's vertical radiation pattern, and/or any details about any nearby structures or major roadways.[27] Therefore, the Application is not acceptable for filing and would be dismissed on this basis if we were not dismissing it for the reasons stated above.

LPFM Rules Waiver Request. Finally, we reject PCNV's LPFM Rules Waiver Request, both to permit the proposed LPFM station to operate outside of the FM band and to the extent it requests an extensive "blanket waiver" of the LPFM Rules. The Commission's Rules may be waived only for good cause shown.[28] The Commission must give waiver requests "a hard look," but an applicant for waiver "faces a high hurdle even at the starting gate"[29] and must support its waiver request with a compelling showing.[30] Waiver is appropriate only if both (1) special circumstances warrant a deviation from the general rule, and (2) such deviation better serves the public interest.[31]

Initially, we note that the only support PCNV offers for its waiver request is a *draft* Notice of Proposed Rulemaking that is not binding on the Commission and cannot serve as precedent.[32] Although the Commission ultimately adopted a Fifth Notice of Proposed Rulemaking in the FM6 proceeding,[33] the final Fifth Notice of Proposed Rulemaking did not adopt any rule changes or policies that would support PCNV's waiver request. Additionally, in the subsequently adopted Fifth Report and Order in the FM6 proceeding, the Commission required that FM6 licensees broadcast an ATSC 3.0 signal in addition to an

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[26] Pub. L. No. 111-371, 124 Stat. 4072 (2011); *see also* 47 CFR § 73.807(e) (outlining LPFM applicant requirements for a second-adjacent channel spacing waiver).

[27] *See, e.g., Creation of a Low Power Radio Service*, Fifth Order on Reconsideration and Sixth Report and Order, 27 FCC Rcd 15402, 15428, para. 78 (2012).

[28] 47 CFR § 1.3.

[29] *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (subsequent history omitted).

[30] *Greater Media Radio Co., Inc*., Memorandum Opinion and Order, 15 FCC Rcd 7090 (1999) (citing *Stoner Broadcasting System, Inc.*, Memorandum Opinion and Order, 49 FCC 2d 1011, 1012 (1974)).

[31] *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

[32] *FM6 Fact Sheet and Draft Fifth NPRM* at 1 ("This document has been circulated for tentative consideration by the Commission at its June 2022 open meeting. The issues referenced in this document and the Commission's ultimate resolutions of those issues remain under consideration and subject to change. This document does not constitute any official action by the Commission. However, the Chairwoman has determined that, in the interest of promoting the public's ability to understand the nature and scope of issues under consideration, the public interest would be served by making this document publicly available.").

[33] *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, Fifth Notice of Proposed Rulemaking, MB Docket No. 03-185, FCC 22-40 (2022).

audio service.[34] PCNV cannot satisfy that requirement. Moreover, the Commission specifically rejected the idea of allowing additional stations to seek authorization for FM6 service.[35] We thus reject both PCNV's reliance on the *FM6 Fact Sheet and Draft Fifth NPRM,* as well as its (now-Commission rejected) proposal to allow FM operations outside of the FM band, as bases for waiving the LPFM Rules. Moreover, PCNV has not identified any special circumstances that warrant a waiver of the LPFM Rules, and has likewise failed to provide any argument that such a waiver would be in the public interest. We thus deny PCNV's request to waive the LPFM Rules in which it seeks authorization to operate its proposed LFPM station outside of the FM band.

Conclusion/Actions. For the reasons set forth above, we find that the Application is patently defective and must be dismissed. Accordingly, **IT IS ORDERED**, that the application for a new LPFM station filed by Portsonic Communications, LLC (Application File No. 0000231418) IS **DISMISSED** pursuant to section 73.3566(a) of the Commission's Rules.[36]

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

[34] *Amendments of Part 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 No. 03-185, FCC 23-58 at 20, paras. 36 (2023).

[35] *Id.* at 31-34, paras. 61-64 ("We find that the plan is neither feasible, because of the possibility of interference; nor efficient, because receivers are not capable of receiving FM stations below 87.7 FM; nor appropriate, because TV6 spectrum is still needed for broadcast television use.").

[36] 47 CFR § 73.3566(a).

Federal Communications Commission
Washington, D.C. 20554

March 14, 2024

DA 24-253
In Reply Refer to:
1800B3-ARR
Released: March 14, 2024

Christian Recovery Foundation
c/o Carlos Cabrera
205 Salem St.
Boston, MA 02113
cbreraboston3030@gmail.com

Re: **Christian Recovery Foundation**
New LPFM, Dracut, Massachusetts
Facility ID No. 787847
Application File No. 0000231555

Petition for Reconsideration

Dear Applicant:

We have before us the Petition for Reconsideration (Petition)[1] filed by Christian Recovery Foundation (Petitioner), seeking reconsideration of the Media Bureau's (Bureau) dismissal of Petitioner's application (Application) for a construction permit for a new low power FM (LPFM) station at Dracut, Massachusetts.[2] For the reasons set forth below, we deny the Petition.

Background. Petitioner filed the Application during the 2023 LPFM Filing Window,[3] and certified that "the proposed facility complies with the engineering requirements of 47 CFR [s]ection 73.807(a) through (g), and 73.825."[4] On January 23, 2024, Bureau staff dismissed the Application for failure to meet the minimum distance spacing requirements enumerated in section 73.807(a)[5] of the Commission's rules (Rules), with respect to the co-channel license of station WSHK(FM), Kittery, Maine, and noted that an amendment was not permitted under section 73.870(c) of the Rules.[6]

On February 1, 2024, Petitioner filed the Petition, seeking reinstatement of the Application and a waiver of section 73.870(c) in order to amend the Application to correct the proposed Station coordinates to meet the minimum spacing requirements of section 73.807. Specifically, Petitioner characterizes the

[1] Pleading File No. 0000237949 (filed Feb. 1, 2024).

[2] Application File No. 0000231555 (filed Dec. 6, 2023).

[3] *Media Bureau Announces Filing Procedures and Requirements for November 1 – November 8, 2023, Low Power FM Filing Window*, Public Notice, DA 23-642 (MB July 31, 2023) (*Procedures Public Notice*). Based on a request from LPFM advocates, the Bureau subsequently delayed the window until December 6, 2023. *Media Bureau Announces Revised Dates for LPFM New Station Application Filing Window*, Public Notice, DA 23-984 (MB Oct. 17, 2023). The Bureau subsequently extended the close of the window until December 15, 2023. *Media Bureau Announces Extension of LPFM New Station Application Filing Window*, Public Notice, DA 23-1150 (MB Dec. 11, 2023).

[4] Application at Technical Certifications, Interference.

[5] *See* 47 CFR § 73.807(a).

[6] *See Broadcast Actions*, Public Notice, Report No. PN-2-240125-01 (MB Jan. 25, 2024) (citing 47 CFR § 73.870(c)). *See also* Application File No. BLH-19921030KC (license application for WSHK(FM)).

co-channel spacing error as a "simple data entry error" on the part of its consulting engineer, and argues that a minor amendment could correct the coordinates, which were off by less than one kilometer, to make the Application a singleton, and warrants reinstatement of the Application *nunc pro tunc*.[7]

Discussion. The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission's original determination, or raises additional facts not known or existing at the time of the petitioner's last opportunity to present such matters.[8] Petitioner has not demonstrated any legal error in the Bureau's dismissal of the Application, nor has it cited any precedent that warrants reinstatement.

Section 73.807 Violation. Bureau staff correctly dismissed the Application for failure to meet the co-channel spacing requirements, as outlined in section 73.807(a). Specifically, LPFM applicants must protect authorized FM stations, pending applications for new and existing FM stations filed prior to the release of the *Procedures Public Notice*, authorized LPFM stations, and vacant FM allotments, by meeting the minimum distance separation requirements specified in section 73.807 of the Commission's rules.[9] Pursuant to section 73.870(c), any application submitted during an LPFM filing window that fails to meet the spacing requirements of section 73.807 will be dismissed without opportunity to amend.[10] Moreover, the *Procedures Public Notice* warned LPFM applicants that, "[c]onsistent with established processing rules, an LPFM application that fails to protect these authorizations, applications, and vacant FM allotments will be *dismissed with no opportunity to correct the deficiency*."[11]

In addition, section 3(b)(1) of the Local Community Radio Act of 2010 (LCRA) statutorily bars the Commission from "amend[ing] its rules to reduce the minimum co-channel and first-and second-adjacent channel distance separation requirements" in effect on the date of its enactment, and the Commission cannot waive the co-channel minimum distance spacing requirements imposed by statute.[12]

Here, the Bureau correctly dismissed the Application because Petitioner failed to meet the minimum spacing requirements of section 73.807(a)(1) with respect to co-channel station WSHK(FM). The Commission has previously held that the Bureau may properly prohibit dismissed LPFM applicants that did not comply with the co-channel spacing rules in the filing window from filing amendments to correct violations of section 73.807.[13] Additionally, typographical error claims cannot be used to justify

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[7] Petition at 1.

[8] *See* 47 CFR § 1.106(c), (d); *see also WWIZ, Inc.,* Memorandum Opinion and Order, 37 FCC 685, 686 (1964).

[9] *See* 47 CFR § 73.807(a)(1).

[10] *See* 47 CFR § 73.870(c).

[11] *See Procedures Public Notice* at 3 and n.14 (emphasis in original) (citing *Low Power FM Filing Window*, Public Notice, 15 FCC Rcd 24817, 24818 (MB 2000); *Media Bureau Announces Availability of the Revised FCC Form 318 and the Filing Procedures for October 15-October 29, 2013 Low Power FM Filing Window*, Public Notice, 28 FCC Rcd 8854, 8855 (MB 2013); 47 CFR §73.870(c)); *see also Christian Charities Deliverance Church*, Memorandum Opinion and Order, 30 FCC Rcd 10548, 10552-53, paras. 11-12 (2015) (*Christian Charities*) (affirming section 73.870(c) dismissal of applications for failure to meet minimum spacing requirements).

[12] Pub. L. No. 111-371, 124 Stat. 4072 (2011). *See also Rural Health Care Support Mechanism*, Order, 22 FCC Rcd 20360, 20415, para. 106 (2007) ("although the Commission has authority to waive regulatory requirements, it does not have authority to waive a requirement imposed by statute"); *Federal-State Joint Board on Universal Service*, Memorandum Opinion and Order, 15 FCC Rcd 7170, 7178, para. 13 (1999) (rejecting request to waive statute); *see also Chrysler Corp. v. Brown*, 441 U.S. 281, 302 (1979) ("[T]he exercise of quasi-legislative authority by governmental departments and agencies must be rooted in a grant of such power by the Congress and subject to the limitations which that body imposes.").

[13] *See Calvary Chapel of Bremerton*, Letter Order, 28 FCC Rcd 15537, 15538-39 (MB 2013) (dismissing LPFM applications that fail to meet minimum co-channel spacing requirements, and noting that the Commission does not

filing an otherwise prohibited amendment.[14] Petitioner has not demonstrated any basis to contravene the rules and established precedent and reinstate the Application.

Section 73.870(c) Waiver Request. We reject Petitioner's request of a waiver of section 73.870(c) to allow it to amend the Application to correct the proposed Station coordinates to meet the minimum spacing requirements of section 73.807. The Commission's Rules may be waived only for good cause shown.[15] The Commission must give waiver requests "a hard look," but an applicant for waiver "faces a high hurdle even at the starting gate"[16] and must support its waiver request with a compelling showing.[17] Waiver is appropriate only if both (1) special circumstances warrant a deviation from the general rule, and (2) such deviation better serves the public interest.[18]

Petitioner fails to meet this burden. Petitioner states generally that a waiver "is justified and aligns with the public interest,"[19] but offers no other justification, circumstance, or precedent warranting grant of the request. Petitioner likewise fails to assert a "special circumstance" warranting the waiver beyond the error of its engineer. The Commission, however, has long held that errors made by engineering consultants are not an excuse for failure to adhere to the Rules.[20] Additionally, the Commission has held that the fact that an application is a singleton[21] is not a special circumstance that justifies a waiver of the Rules.[22] Moreover, permitting applicants to file application amendments to resolve section 73.807 minimum distance separation requirements after the close of the filing window and the Commission's dismissal of their application would frustrate the processing efficiencies which sections 73.807 and 73.870(c) were designed to promote, be unfair to the many applicants who fully complied with the rules and filing requirements, and is therefore, contrary to the public interest.[23] Accordingly, we

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have authority to waive co-channel spacing requirements); *see also Christian Charities* 30 FCC Rcd at 10552-53, paras. 11-12.

[14] *NCE MX Group 82*, Letter Order, DA 23-348 (MB Apr. 25, 2023) (rejecting argument to correct typographical error where corrective amendment was prohibited because it would result in increased mutually exclusivity and was a major amendment).

[15] 47 CFR § 1.3.

[16] *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (subsequent history omitted).

[17] *Greater Media Radio Co., Inc*., Memorandum Opinion and Order, 15 FCC Rcd 7090 (1999) (citing *Stoner Broadcasting System, Inc.*, Memorandum Opinion and Order, 49 FCC 2d 1011, 1012 (1974)).

[18] *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

[19] Petition at 1.

[20] *See Roy E. Henderson*, Memorandum Opinion and Order, 33 FCC 3385, 3387-88, para. 6 (2018) (rejecting argument that licensee's engineer was to blame for station's unauthorized operations); *Whidbey Island Ctr. for the Arts*, Forfeiture Order, 25 FCC Rcd 8204, 8205, para. 6 and n.12 (MB 2010) ("the Commission has long held that 'licensees are responsible for the acts and omissions of their employees and independent contractors'"); *Vista Services Corporation*, Forfeiture Order, 15 FCC Rcd 20646, 20650 para. 9, n.24 (2000) ("[e]mployers are routinely held liable for breach of statutory duties, even where the failings are those of an independent contractor").

[21] An application which is not in conflict with any other application is deemed a singleton application.

[22] *See NCE MX Group 543*, Memorandum Opinion and Order, 31 FCC Rcd 1358, 1360-61, para. 6 (2016).

[23] *See Creation of a Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2257 (2000) ("In accordance with our window filing procedure for commercial broadcast applications, after the LPFM window closes, the staff initially will screen applications for the purpose of identifying those that are mutually exclusive and those that fail to protect existing broadcast stations in accordance with the standards adopted herein. Applications that fail to properly protect these existing stations will be dismissed without the applicant being afforded an opportunity to amend. This will increase the speed and efficiency with which LPFM applications can be processed by the staff.").

find Petitioner fails to show that special circumstances warrant a deviation from our rules or that such deviation would serve the public interest.

Conclusion. For the reasons set forth above, **IT IS ORDERED** that the Petition for Reconsideration filed by Christian Recovery Foundation, on February 1, 2024 (Pleading File No. 0000237949), IS DENIED.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

PUBLIC NOTICE

Federal Communications Commission
45 L Street NE
Washington, DC 20554

News Media Information 202 / 418-0500
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DA 24-254
Released: March 14, 2024

FCC ANNOUNCES MARCH 27, 2024 MEETING AND LEADERSHIP OF THE COMMUNICATIONS EQUITY AND DIVERSITY COUNCIL

GN Docket No. 17-208

In this Public Notice, the Wireline Competition Bureau announces that, consistent with the Federal Advisory Committee Act,[1] the Federal Communications Commission's (FCC or Commission) Communications Equity and Diversity Council (CEDC or Committee) will hold the first meeting of the CEDC under its new charter on March 27, 2024.[2]

The agenda for the meeting will include introducing members of the CEDC, announcing working groups that will assist the CEDC in carrying out its work, and receiving guidance from the Commission's Offices of General Counsel and Managing Director regarding federal advisory committee best practices. FCC Chairwoman Jessica Rosenworcel has designated Heather Gate, Executive Vice President of Digital Inclusion, Connected Nation, to continue to serve as Chair of the CEDC, and Nicol Turner Lee, Ph.D., Senior Fellow and Director of the Center for Technology Innovation – Governance Studies, Brookings Institution, and Susan Au Allen, National President & CEO, US Pan Asian American Chamber of Commerce Education Foundation, to continue to serve as Vice Chairs of the CEDC for the renewed charter.

The March 27, 2024 CEDC meeting will be held in a hybrid manner, from 10:00 am to 2:00 pm ET. The public may attend the meeting in person at FCC headquarters at 45 L Street, NE, Washington, DC. Additionally, the meeting will be available to the public for viewing via the Internet at https://www.fcc.gov/live. While the CEDC's meeting is open to the public, the FCC headquarters building is not open access, and all guests must check in with and be screened by FCC security at the main entrance on L Street. Attendees are not required to have an appointment but must otherwise comply with protocols outlined at: https://www.fcc.gov/visit.

The public may follow the meeting on the Commission's YouTube page at https://www.youtube.com/user/fccdotgovvideo. Members of the public may submit questions during the meeting to livequestions@fcc.gov. Members of the public also may submit written comments to the CEDC using the FCC's Electronic Comment Filing System, ECFS, at www.fcc.gov/ecfs. Any comments should be filed in GN Docket No. 17-208.

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

[1] 5 U.S.C. App. 10.

[2] Notice of this meeting was published in the Federal Register on March 8, 2024, available at https://www.federalregister.gov/documents/2024/03/08/2024-04954/meeting-of-the-communications-equity-and-diversity-council.

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. Please allow at least five days' advance notice for accommodation requests; last-minute requests will be accepted but may not be possible to accommodate.

More information about the CEDC is available at https://www.fcc.gov/communications-equity-and-diversity-council. You may also contact Rodney McDonald, Designated Federal Officer (DFO) of the CEDC, (202) 418-7513, Rodney.McDonald@fcc.gov; Diana Coho, Deputy DFO of the CEDC, (717) 338-2848, Diana.Coho@fcc.gov; Jaime McCoy, Deputy DFO of the CEDC, (202) 418-2320, Jaime.McCoy@fcc.gov; or Sima Nilsson, Deputy DFO of the CEDC, (202) 418-2708, Sima.Nilsson@fcc.gov.

– FCC –

PUBLIC NOTICE

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

News Media Information 202 / 418-0500
Internet: http://www.fcc.gov
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DA 24-255
March 14, 2024

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES REGION 54 (SOUTHERN LAKE MICHIGAN) 700 MHZ AND 800 MHZ REGIONAL PLANNING COMMITTEES TO HOLD MEETINGS

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

The Region 54 (Southern Lake Michigan)[1] 700 MHz and 800 MHz Regional Planning Committees (RPCs) will hold two virtual planning meetings via Microsoft Teams on Thursday, April 18, 2024 at 9:00 am (Central Time). The deadline for new applications to be filed for the Spring meeting is April 1, 2024. Applications can be submitted at any time prior to that date using www.capradap.org.

The agenda for the 800 MHz RPC meeting includes:

- Old Business
  - Applications
  - Plan modification
  - For the good of the order
- New Business
  - Applications
    - City of Chicago – four applications
    - State of Michigan – four applications
  - For the good of the order

The 700 MHz RPC meeting will convene immediately following the 800 MHz RPC meeting.

The agenda for the 700 MHz meeting includes:

- Old Business
  - Applications
  - NRPC Update
  - CAPRAD
  - FCC Update(s) and required plan modifications due to FCC actions.
  - For the good of the order
- New Business
  - Applications
  - For the good of the order

[1] The Region 54 (Southern Lake Michigan) 700 MHz RPC encompasses counties in three states bordering Lake Michigan: Winnebago, McHenry, Cook, Kane, Kendall, Grundy, Boone, Lake, DuPage, DeKalb, Will, and Kankakee Counties, Illinois; Lake, LaPorte, Jasper, Starke, St. Joseph, Porter, Newton, Pulaski, Marshall, and Elkhart Counties, Indiana; and Kenosha, Milwaukee, Washington, Dodge, Walworth, Jefferson, Racine, Rock, Walworth, Washington, and Waukesha Counties, Wisconsin. The Region 54 (Southern Lake Michigan) 800 MHz NPSPAC RPC includes the Michigan counties of Kent, Van Buren, Kalamazoo, Barry, Muskegon, Allegan, Berrien, Cass, and St. Joseph, in addition to all of the above-mentioned Illinois, Indiana and Wisconsin counties.

The Region 54 Regional Planning Committee meetings are open to the public. All eligible public safety providers whose sole or principal purpose is to protect the safety of life, health, or property in the Southern Lake Michigan area may utilize these frequencies. It is essential that not only public safety, but all government, Native American Tribal, and non-governmental organizations eligible under Section 90.523 of the Commission's Rules be represented to ensure that each agency's future spectrum needs are considered in the allocation process. Administrators who are not conversant with telecommunications technology should ensure that their respective agencies are represented by suitably conversant staff.

All interested parties wishing to participate in the planning for the use of public safety spectrum in the 700 MHz and 800 MHz bands within Region 54 are encouraged to attend. For further information and Teams invitation, please contact Ned W. Jacklin via email at nedr54@sbcglobal.net.

Carl Guse
Chairperson, Region 54
Phone: 920-210-4455
Email: crguse@gmail.com

Ned W. Jacklin
Secretary, Region 54
Phone: 815-252-2564
nedr54@sbcglobal.net

- FCC -

PUBLIC NOTICE

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

News Media Information: 202-418-0500
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DA 24-256
March 15, 2024

MEDIA BUREAU IDENTIFIES GROUPS OF MUTUALLY EXCLUSIVE APPLICATIONS SUBMITTED IN THE DECEMBER 2023, LPFM FILING WINDOW

OPENS WINDOW TO ACCEPT SETTLEMENTS AND TECHNICAL AMENDMENTS

By this Public Notice, the Media Bureau (Bureau) identifies by group all of the mutually exclusive (MX) applications submitted in the December 2023, filing window for Form 2100, Schedule 318 (Schedule 318) applications for Low Power FM (LPFM) new station construction permits (LPFM Applications).[1] By this Public Notice, the Bureau also announces a 60-day period beginning with the release of this Public Notice and ending May 14, 2024, for MX applicants to enter into and file settlement agreements and/or to submit technical amendments to resolve conflicts and expedite the grant of applications filed in the recent LPFM window.

MX Groups. When the distance between two window applications does not meet the minimum distance separation requirements specified in section 73.807 of the Commission's rules,[2] the applications are treated as mutually exclusive (MX). An MX group consists of all applications which are MX to at least one other application in the group. The Bureau has identified 109 MX groups, comprising 264 applications.[3] The MX groups, and the applications contained within each MX group, are listed in Attachment A. If an applicant believes any application has been erroneously included, or excluded, from one of the MX groups listed in Attachment A, it should notify the Audio Division (Division) as soon as possible, and within 10 days.

Although the Bureau has generally reviewed the applications listed in Attachment A for technical acceptability, the Bureau could, upon further review, determine that one or more applications within an MX group cannot be accepted for filing or granted. The applications identified in the MX groups, therefore, may include applications that the Bureau at a future date determines are subject to dismissal for legal and/or technical defects.[4]

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[1] *Media Bureau Announces Filing Procedures and Requirements for November 1 – November 8, 2023, Low Power FM Filing Window*, Public Notice, DA 23-642 (MB July 31, 2023) (*LPFM Procedures Notice*); *Media Bureau Announces Revised Dates for LPFM New Station Application Filing Window; Window Open from December 6, 2023 to December 13, 2023,* Public Notice, DA 23-984 (MB October 17, 2023).

[2] 47 CFR § 73.807.

[3] The Bureau received 1,336 Schedule 318 LPFM Applications during the December 2023, LPFM filing window. The Bureau previously identified over 730 technically acceptable LPFM Applications, which are not in conflict with any other application, *i.e.*, singleton applications, and put these applications on Public Notice announcing them as "accepted for filing."

[4] In general, an LPFM applicant whose application is dismissed will have one opportunity to file a minor curative amendment to its application and a petition for reconsideration, requesting reinstatement of the application *nun pro* (continued….)

Dismissed MX Applications. In ascertaining the MX groups, and reviewing the applications for acceptability, the Bureau identified two applications with significant technical and/or legal defects and dismissed these applications. These two MX Applications (filed by Portsonic Communications, LLC and Aire Broadcasting Foundation)[5] are identified with an asterisk as "DISMISSED" in Attachment A.[6] These dismissals are still subject to appeal and, therefore, not yet final.

In general, a dismissed applicant has one opportunity to request reinstatement of the application *nunc pro tunc*[7] by filing a minor curative amendment and petition for reconsideration.[8] Any amendments and petitions for reconsideration seeking reinstatement must be filed within 30 days of the dismissals. In order for an application to be reinstated, the amendment must correct all the application defects, propose only minor changes, comply with all the Commission's relevant rules, and not create any new application conflicts.

Settlement Period – Resolution of Application Conflicts. MX LPFM applicants have a 60-day period, until May 14, 2024, to resolve conflicts through two methods - settlement agreements or technical amendments.[9] This filing opportunity is limited to settlement agreements, which may include requests to dismiss applications filed in the window, and/or engineering amendments that resolve all technical conflicts between at least one application and all other MX applications filed in the window.[10] The requirements and procedures for filing settlement agreements and technical amendments are explained

tunc, within 30 days of the dismissal.

[5] *See* File Nos. 0000231418 and 0000232190.

[6] On February 23, 2024, the Bureau dismissed 203 LPFM Applications, filed by Weather Alert Radio Network (WARN), for failure to demonstrate that WARN is a public safety radio service eligible to hold an LPFM authorization. *See Weather Alert Radio Network, Applications for Construction Permits for New Low Power FM Stations in Communities in Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Texas, Virginia, and the Virgin Islands*, Letter, DA 24-164 (MB Feb. 23, 2024). Several of these WARN applications are mutually exclusive with other LPFM Applications. We note that even if we found WARN was a legitimate public safety radio service applicant, the MX WARN applications would still be dismissed under our rules. Public safety radio applicants were permitted to submit multiple applications in the LPFM filing window, but were required to designate one "priority" application. Non-priority applications are dismissed if competing applications are filed in the same window. *See* 47 CFR § 73.855(c)(2); *see also Creation of a Low Power Radio Service,* Memorandum Opinion and Order, 15 FCC Rcd 19208, 19239-40 (2000); *LPFM Procedures Notice, supra* note 1. Accordingly, the dismissed MX WARN applications are not identified as part of any MX group herein. However, the MX groups, which include dismissed MX WARN applications, are identified with a double asterisk in Attachment A.

[7] *See Commission States Future Policy on Incomplete and Patently Defective AM and FM Construction Permit Applications,* Public Notice, 56 RR 2d 776 (1984); 47 CFR § 1.106.

[8] There are exceptions to this policy. For example, if an LPFM application is dismissed for failure to meet the second-adjacent channel spacing requirements, the applicant is prohibited from amending the application to correct the violation and seek reinstatement. *See* 47 CFR §§ 73.807(a)(1), 73.870(c).

[9] Although settlement and technical amendments submitted during the 60-day period will receive expedited processing, MX applicants can continue to submit settlements and technical amendments at any time after the release of this Public Notice.

[10] *See* 47 CFR § 73.872.

below.[11]

The Bureau will expedite the processing of all complete and rule-compliant settlement agreements and technical amendments that are filed by May 14, 2024.[12] Applicants in MX groups, which have not submitted settlements or technical amendments during this allotted period, will proceed to a comparative analysis.[13] If applicants in any of the MX groups identified in Attachment A are still negotiating a settlement after May 14, 2024, they should advise the Division of this fact so the Division can withhold further comparative processing.

Settlement Agreements.[14] A settlement must propose the grant of at least one technically acceptable application within a group of mutually exclusive applications and must not create *any* new application conflicts or make any existing conflicts worse.[15] Universal settlements, which resolve the claims of all applications within an MX group, are encouraged, but not required.

Applicants entering into agreements to procure the removal of a conflict between applications by amendment or dismissal of an application must ensure that their settlement agreements comply with the pertinent requirements of section 73.3525 of the Commission's rules, including reimbursement restrictions.[16] Specifically, parties must file with the Bureau:

1. A copy of their settlement agreement and any ancillary agreement(s);
2. A joint request for approval of such agreement; and
3. An affidavit of each party to the agreement setting forth:
   (a) The reasons why such agreement is in the public interest;
   (b) A statement that its application was not filed for the purpose of reaching or carrying out such agreement;
   (c) A certification that neither the applicant nor its principals has received any money or

[11] Although LPFM applicants may also communicate and collaborate at any time on aggregating their points and entering into voluntary time-sharing agreements, time share proposals cannot be submitted at this time. Any time-share proposal may *only* be electronically submitted within 90 days after the release of the public notice announcing the tentative selectees in an MX group. *See Media Bureau Provides Guidance on the Processing of Schedule 318 Applications Filed in the LPFM Window*, Public Notice, DA 24-92 (Feb. 1, 2024) (*LPFM Processing Notice*) (detailing, *inter alia*, the procedures and requirements for filing voluntary time-share agreements); 47 CFR § 73.872(c).

[12] Although the Commission's rules permit parties to settle at any time (*see* 47 CFR § 73.7003(d)), we encourage applicants to take advantage of this limited opportunity to enter into settlements. The present window for settlements will provide an opportunity to promptly resolve groups of mutually exclusive applications and permit the expeditious authorization of new broadcast service to these applicants.

[13] The Commission will compare MX applications under the LPFM point system and tentatively select the application(s) with the highest point total from each MX group for grant. *See* 47 CFR § 73.872(b).

[14] We will process any settlement achieved through technical amendment(s) and/or dismissal(s), which results in our ability to grant at least one singleton application. In the event that the staff determines that a settlement complies with the Commission's rules, we will issue a Public Notice accepting for filing all applications proposed for grant pursuant to the settlement. Petitions to deny these applications may be filed within 30 days of this subsequent Public Notice.

[15] Examples of prohibited changes that make existing conflicts worse include: (1) changing an existing conflict with a nearby proposed facility from a first-adjacent channel that is short-spaced under Section 73.807 of the rules to a co-channel that is short-spaced under section 73.807, and/or (2) reducing the distance to another proposal that is already short-spaced under section 73.807 of the rules.

[16] 47 CFR § 73.3525.

other consideration in excess of the legitimate and prudent expenses of the applicant;[17]
(d) The exact nature and amount of any consideration paid or promised;
(e) An itemized accounting of the expenses for which it seeks reimbursement; and
(f) The terms of any oral agreement relating to the dismissal or withdrawal of its application.[18]

Unilateral Withdrawals. Applicants that unilaterally request to withdraw their application without having entered into a settlement agreement with another applicant must nevertheless still submit an affidavit as to whether or not consideration has been promised to or received by such applicant in connection with their dismissal.[19]

Technical Amendments. Acceptable technical amendments will resolve all conflicts between at least one application and all other applications in the same MX group.[20] Only minor engineering amendments, explained below, will be accepted during this 60-day settlement period. Amended applications must specify rule-compliant facilities. Applicants filing technical amendments should carefully consider all legal, e.g., maintaining eligibility as a "local" applicant,[21] and technical requirements. An amendment that creates any new application conflicts, or that worsens any existing conflicts (such as increasing existing overlap), will be denied. Applicants may file technical amendments as part of a settlement agreement or unilaterally. Applicants are encouraged to file technical amendments promptly. These amendments will be processed under a first-come, first-served basis.[22]

Minor Amendments.[23] All pending LPFM applicants may *only* file "minor" amendments, which include: (1) site relocations of 11.2 kilometers or less OR site relocations that involve overlap between the 60 dBu service contours;[24] (2) channel changes of no more than +/- three channels or to an intermediate frequency (+/- 53 or 54) channel; (3) changes in general or legal information; and (4) changes in ownership where the original parties retain more than 50 percent ownership in the application as originally filed, and changes in ownership where the original parties retain 50 percent or less ownership, provided the change is gradual and/or there is no evidence of a takeover concern or significant effect on the organization's mission.[25]

Coordinated and Unilateral Technical Amendments. Applicants filing coordinated technical amendments as part of a settlement agreement must cross-reference all such filings in each amendment. An applicant that unilaterally files an engineering amendment to procure the removal of conflicts with

[17] "Legitimate and prudent expenses" are those expenses reasonably incurred by an applicant in preparing, filing, prosecuting, and settling its application for which reimbursement is being sought. 47 CFR § 73.3525(h).

[18] *See* 47 CFR § 73.3525.

[19] *Id.* § 73.3525(b).

[20] A technical amendment is one in which an applicant removes itself from the MX group to achieve a grant by making minor engineering changes to its own application, without affecting the viability of any of the other applicants to compete for a second station.

[21] *See* 47 CFR § 73.853(b).

[22] *Id.* § 73.870(e).

[23] The Bureau's temporary freeze on the filing of any amendments to new LPFM Applications submitted in the December 2023, filing window was lifted on January 31, 2024. *See LPFM Processing Notice, supra* note 11.

[24] 47 CFR § 73.871(c)(1).

[25] *See id.* § 73.871(c)(3). All ownership changes in a governmental applicant are considered minor. *Id.*

other applications, without having entered into a settlement agreement with any other applicant, must nevertheless submit an affidavit stating whether consideration has been promised to or received by such applicant in connection with its engineering amendment.[26]

Prohibited Amendments. Applicants *may not* amend their applications to increase their comparative point total and *may not* amend their applications to come into compliance with the minimum separation requirements provided in section 73.807 of the Commission's rules.[27]

Major amendments, such as non-adjacent channel changes and otherwise prohibited site relocations of greater than 11.2 kilometers that do not overlap 60 dBu contours (comparing the amended facilities to the prior proposed facilities), are prohibited at this time.[28]

Filing Procedures. Joint requests for approval of a settlement, and the above-referenced documents required by section 73.3525 of the rules (the Settlement Package), must be submitted in the form of an amendment to one (or more) of the applicants' pending Schedule 318 LPFM Application in the Bureau's Licensing and Management System (LMS). Specifically, the Settlement Package should be filed by the applicant(s) whose application will survive/continue to be processed, pursuant to terms of the settlement agreement.[29] The designated applicant(s) should label the Settlement Package, attached as an amendment to the pending Schedule 318, as "Settlement Agreement" for easy identification by Bureau staff. The Settlement Package should include a cover page detailing the following:

- The LMS file numbers and Facility Identification Numbers of *all* of the other applications that are parties to the particular settlement agreement;
- A brief description of the basic terms of the settlement agreement (referencing any applications that are being dismissed or technically amended and the application(s) which will survive and continue to be processed);
- References to any technical application amendments filed in conjunction with the settlement agreement.

Technical application amendments must also be filed electronically on Schedule 318 through LMS. Paper filed amendments and settlements will *not* be considered. Applicants are encouraged to deliver a courtesy copy of the Settlement Package via email to James Bradshaw, James.Bradshaw@fcc.gov.

For assistance logging into LMS or accessing the Schedule 318, please contact the Commission at (877) 480-3201 (Option 2), Monday-Friday, 8:00 am-6:00 pm EST, or submit a request online at https://www.fccprod.service-now.com/auls?id=esupport.

For additional information, please contact: James Bradshaw, James.Bradshaw@fcc.gov;

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[26] *See* 47 CFR §73.3525(b).

[27] 47 CFR §§ 73.807, 73.870(c).

[28] As explained in the *LPFM Processing Notice*, major amendments will only be allowed after the Commission identifies tentative selectees among the MX groups. Tentative selectees will be announced in a series of public notices after the 60-day settlement period. Major amendments will only be allowed within 90 days of the release of a tentative selectee public notice and only with respect to applications in the particular notice.

[29] If more than one application in the MX group will survive/continue to be processed pursuant to the terms of the settlement agreement, the Settlement Package should also be filed as an amendment to these additional Schedule 318 applications.

Alexander Sanjenis, Alexander.Sanjenis@fcc.gov; Amy Van de Kerckhove, Amy.Vandekerckhove@fcc.gov; or Lisa Scanlan, Lisa.Scanlan@fcc.gov of the Media Bureau, Audio Division.

- FCC -

Group	Facid	File num.	Applicant	Channel	City	State	Note
1	784759	231763	North Alabama Community Broadcasting	264	Battleground	AL	
1	784987	231871	Tripp, LLC	264	Cullman	AL	
2	785030	231483	Oliver Lewis Inner City Thoroughbred Jockey Club	229	Little Rock	AR	
2	787912	233147	Multicultural Expo Center	229	Little Rock	AR	
2	788545	233118	The Lam Foundation	229	North Little Rock	AR	
3	784159	232463	Iglesia Cristo Rey Y Redentor Inc.	298	Rogers	AR	
3	782218	231688	Citizen Services, Inc. (CSI) And Its Project Springdale Com	298	Springdale	AR	
4	783397	232469	Iglesia Ciudad De Refugio Y Restauracion Inc.	224	Springdale	AR	
4	788282	232992	Christ Followers Marshallese Full Gospel Church, Inc.	225	Springdale	AR	
5	782220	231424	Texarkana Community Radio -- Fifteenth Street Corporat	276	Texarkana	AR	
5	779049	231552	Radio Inc.	275	Wake Village	TX	
6	784774	232015	Kiddos Educational Foundation	225	Mesa	AZ	
6	778290	231642	Salt River Pima-Maricopa Indian Community	225	Salt River Pima-Maricopa I	AZ	
7	779170	231633	Mount Lemmon Radio Club	295	Mount Lemmon	AZ	
7	788034	232627	Ministerios El Rey De Gloria	295	Whitetail	AZ	
8	788085	232604	School Of Hiphop Phx	220	Phoenix	AZ	
8	788307	233000	Nothing Is Greater Than Love Foundation	220	Phoenix	AZ	
9	778274	231798	Delta 2000	225	Antioch	CA	
9	782227	232361	Antioch Community Radio	225	Antioch	CA	
10	788618	232916	Radio Restauracion	234	Bakersfield	CA	
10	788735	233090	Kern Sounds	234	Bakersfield	CA	
11	785862	232093	Humboldt County Hispanics For Education Fund	272	Chowchilla	CA	
11	786696	232174	Bible Christian Church	272	Le Grand	CA	
12	788625	233172	Heme Aqui Ca Church	268	Cucamonga	CA	
12	780292	231696	Iglesia Ministerios Voz De Jubilo	268	Glendora	CA	
12	787918	232301	Mena Coalition, Inc.	268	San Dimas	CA	
13	788349	232877	Forks Of Salmon Community Club	234	Forks Of Salmon	CA	
13	788350	232885	Mid Klamath Watershed Council	234	Orleans	CA	
14	788325	232278	The Marina Foundation	291	Marina	CA	
14	788267	232943	Beat Poet Broadcasters Inc.	291	Monterey	CA	
15	788755	233076	San Jose Hispanic Foursquare Church	226	Morgan Hill	CA	

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Group	Facid	File num.	Applicant	Channel	City	State	Note
15	788485	233042	I-Health Radio	226	Watsonville	CA	
16	787840	231960	Mountain Community Radio	224	Oakhurst	CA	
16	788331	232969	Grateful Teachers Media And Music Education Foundatic	224	Oakhurst	CA	
17	788198	232602	Ojai Community Broadcasting Foundation	267	Ojai	CA	
17	787122	232614	Camarillo Community Radio	267	Ventura	CA	
18	785715	232162	Worship Life Calvary Chapel, Inc. dba Calvary Chapel San	253	San Clemente	CA	
18	788156	232316	Calvary South OC	253	San Clemente	CA	
19	785879	232939	Football Camp For Kids	245	San Diego	CA	
19	787937	232587	Labors Training And Community Development Alliance	245	San Diego	CA	
19	788332	232802	Justice Overcoming Boundaries In San Diego County	245	San Diego	CA	
20	787850	233068	African Chamber Of Commerce Colorado, Usa	288	Aurora	CO	
20	782297	231690	Denver Community Radio	288	Denver	CO	
21	787863	231813	Hippie Hop Radio	250	Northglenn	CO	
21	788271	232275	CPC of the WMM-Thornton, Co-One Inc.	250	Northglenn	CO	
21	783669	231447	Thornton Community Radio	250	Thornton	CO	
22	788094	231812	La Voz De La Verdad Inc.	298	Naugatuck	CT	
22	788112	232186	Latino Outreach Of Connecticut, Inc.	298	Waterbury	CT	
23	788456	232742	Sickle Cell Foundation Of CFL Inc.	240	Bassville Park	FL	
23	777924	231772	Ember 911, Inc.	240	Leesburg	FL	
23	788076	232217	CPC of the WMM - Leesburg, FL - One Inc.	239	Leesburg	FL	
24	781447	232141	Cape Baptist Church, Inc.	264	Cape Coral	FL	
24	780162	231958	True Tabernacle Of Jesus Christ Int. Ministries, Inc.	264	Fort Myers	FL	
25	779213	231780	Lion Of Judah Prophetic Worship Center, Inc.	275	Citrus Sprinsg	FL	**
25	788060	231731	Rainbow Springs Community Radio	275	Dunnellon	FL	**
26	788665	232893	Insight Flow Inc.	272	Debary	FL	
26	787964	232039	Volusia Vibes Radio, Inc.	272	Deltona	FL	
27	788159	232047	Homegrown Deland, Inc.	273	Deland	FL	
27	788736	233012	Learn Bound Corporation	273	Deland	FL	
28	781064	231491	Yjp Las Olas Inc.	228	Fort Lauderdale	FL	
28	788680	233011	The Reme Foundation, Inc.	228	Fort Lauderdale	FL	
29	785211	231450	For A Better Community Corp.	258	Homestead	FL	

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Group	Facid	File num.	Applicant	Channel	City	State	Note
29	788711	233164	King Jesus Haitian Inc.	258	Homestead	FL	
29	780589	231444	La Familia De Fe Corp.	258	Miami	FL	
29	785408	231715	Cristo Te Ama Ministry	258	Miami	FL	
29	788615	233072	Doral Voice Corp.	258	Miami	FL	
30	788358	232317	Coastal Media Advocates, Inc.	231	Melboune	FL	
30	788176	232072	We Are Brevard Inc.	231	Melbourne	FL	
31	782520	232026	Encouragement Ministries Corp.	227	Ocala	FL	
31	784161	232462	Ministerio Casa De Oracion Para Las Naciones	227	Ocala	FL	
31	787839	232425	Rolling Hills Broadcast Inc.	227	Ocala	FL	
31	788224	232192	Ocala Broadcasting Foundation Inc.	227	Ocala	FL	
31	788397	232594	Education Through Media Foundation	227	Ocala	FL	
32	783639	231729	Ocala Community Communications Network Inc.	236	Ocala	FL	
32	788375	232963	Ocala Pride Incorporated	236	Ocala	FL	
33	788572	232749	Latino Broadcasting Foundation Corporation	220	Orlando	FL	
33	788644	233132	Christ For All Nations Church, Inc.	220	Orlando	FL	
34	788177	232571	La Voz Education	294	Port Saint Lucie	FL	**
34	788669	232868	Omega Baptist Church Of Pentecost Inc.	294	Port Saint Lucie	FL	**
35	778205	231766	Brunswick Community Radio	258	Brunswick	GA	**
35	788197	232674	Coastal Georgia Area Community Action Authority, Inc.	258	Brunswick	GA	**
36	788264	232237	CPC of the WMM-Canton GA-One Inc.	228	Canton	GA	
36	788003	232590	Casa De Dios Atlanta Corp.	228	Roswell	GA	
37	780590	231785	The Last Hour Ministry, Inc.	270	Norcross	GA	
37	780754	231710	Christian Public Radio, Inc.	270	Roswell	GA	
38	778073	231786	Na Leo 'O Hawai'i, Inc.	282	Hilo	HI	
38	787988	232857	The Hawaii Developmental Disabilities Foundation	282	Hilo	HI	
39	788595	233088	Climate March	300	Des Moines	IA	
39	788439	232764	CPC of the WMM Usa-Des Moines IA-One Inc.	300	Des Moines	IA	
40	787606	232979	Trinity International University, Deerfield, Il Campus.	292	Deerfield	IL	
40	777976	231743	Antioquia Pentecostal Church Inc.	292	Linconshire	IL	
41	785365	231456	Rockford Community Radio	226	Rockford	IL	
41	788277	232421	Northern Illinois Radio Broadcasting Association	226	Rockford	IL	
42	788329	232988	In Frequency, Inc.	210	Clarksville	IN	

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Group	Facid	File num.	Applicant	Channel	City	State	Note
42	779401	231681	Fuego Corporation	209	Lousiville	KY	
43	782165	231420	Greenwell Springs Corporation dba Baton Rouge Commu	214	Baton Rouge	LA	
43	788796	233170	Breakthrough Community Services	214	Baton Rouge	LA	
44	788092	231807	Spring Quest	262	Haughton	LA	
44	782196	231495	Shreveport Community Radio	262	Shreveport	LA	
45	782223	231441	Monroe Community Radio	235	Monroe	LA	
45	783332	231470	Centro Compasion	234	Monroe	LA	
45	788558	233014	Old Time Radio Studies And Creativity Project	235	Monroe	LA	
46	788521	232666	Light City Church	260	New Orleans	LA	
46	788784	233183	Made In New Orleans	260	New Orleans	LA	
46	788788	233187	New Orleans Master Craft Guild	260	New Orleans	LA	
47	782172	231434	Easthampton Community Radio	298	Easthampton	MA	
47	788163	232837	Holyoke Community College	298	Holyoke	MA	
47	783735	232638	Above The Rim Inc.	298	Springfield	MA	
47	788160	232099	Iglesia Cristiana Jehova Vive	298	Springfield	MA	
47	787915	231667	Slavic Baptist Church	298	West Springfield	MA	
47	778314	231808	Westfield Evangelical Free Church Church	298	Westfield	MA	
47	778780	231982	City Of Westfield	298	Westfield	MA	
48	787786	232467	Sau 16	298	Exeter	NH	
48	787263	232087	Salisbury Community TV And Media Center	298	Salisbury	MA	
49	788078	232640	Foxboro Cable Access	243	Foxboro	MA	
49	782851	232187	Casa De Adoracion Inc.	243	Taunton	MA	
49	787799	231820	Broadcast Learning Group	243	Woonsocket	RI	
50	779205	231679	Expresso Latin Radio Inc.	248	Worcester	MA	
50	783652	231446	Worcester Community Radio	248	Worcester	MA	
50	788218	232193	Chinese Foundation Of Worcester Corp.	248	Worcester	MA	
51	787849	233138	We Heart Berlin, Inc.	293	Berlin	MD	
51	787905	231587	Faith Baptist Church	293	Berlin	MD	
52	782300	232034	Ministerio Ondas De Amor	236	Holland	MI	
52	788032	232977	West Michigan Substitute Teacher Advisory	236	Holland	MI	
53	788008	233052	Generacion Vino Nuevo	246	Lansing	MI	
53	788309	232657	Lansing Area Peace Education Center	246	Lansing	MI	
54	788103	232879	Shoreline Community Development Corporation	259	Muskegon	MI	

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Group	Facid	File num.	Applicant	Channel	City	State	Note
54	788582	232882	Muskegon Heights Boxing Club Of Champions, Inc.	259	Muskegon	MI	
55	787934	232501	Hope In The Heartland	262	Centerview	MO	
55	779100	231438	University Of Central Missouri	262	Warrensburg	MO	
56	787842	231987	Missouri Mid-South Conference Of The United Church O	231	Maplewood	MO	
56	786211	232384	Uhuru Solidarity Movement Inc.	231	St. Louis	MO	
56	787983	232375	All African People's Development And Empowerment Pre	231	St. Louis	MO	
56	788280	232772	African People's Education And Defense Fund, Inc.	231	St. Louis	MO	
57	788208	232163	Mississippi College	296	Clinton	MS	
57	787927	231478	Renew Florence	296	Florence	MS	
57	788189	233159	People's Advocacy Institute	296	Jackson	MS	
57	788380	232323	Crazy Faith Foundation Ltd	296	Jackson	MS	
58	785395	232910	Clarksville Theological Seminary	238	Clayton	NC	
58	788302	232696	Calvary Chapel Of Clayton	238	Clayton	NC	
59	786891	232226	Ambassador Christian School, Inc.	267	Huntersville	NC	
59	787857	232180	American Broadcasting Company	267	Mooresville	NC	
60	788673	232896	Yoelkie Media Foundation A NJ Nonprofit Corporation	300	A A R P Ins	NJ	
60	778210	232973	Chinese Church Of Atlantic City	300	Atlantic City	NJ	
60	783914	232380	Transmission Communications Network A Nonprofit Cor	300	Atlantic City	NJ	
61	788240	232214	Pentecostal Church Of Penns Grove	293	Penns Grove	NJ	
61	779400	231724	Corelink Ministries	293	Glen Mills	PA	
61	787903	231631	Padio Phila Inc.	293	Newtown Square	PA	
62	788377	233032	Faith Christian Church	295	Boulder City	NV	
62	778865	232171	Mi TV	295	Henderson	NV	
63	788239	232218	Las Vegas Community Radio	235	Las Vegas	NV	
63	788536	232670	Alpha Omar Zainab Media Corp.	235	Las Vegas	NV	
63	788538	233065	Broadcast Educational Community Radio Station	235	Las Vegas	NV	
64	781847	231418	Portsonic Communications, LLC	250	Las Vegas	NV	*
64	788265	232796	Victor B Cohen Foundation	250	Las Vegas	NV	
65	779931	231985	Institutional Community Development Corporation	269	Cleveland	OH	
65	785111	231706	Cleveland Community Radio	269	Cleveland	OH	
65	788136	232558	Latinos International Festival, Inc.	269	Cleveland	OH	
66	781040	232004	Iglesia Pentecostal Cristo Misionera	261	Lorain	OH	
66	788191	232104	Radio Revelacion FM, Inc.	261	Sheffield Lake	OH	

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Group	Facid	File num.	Applicant	Channel	City	State	Note
67	787783	232556	The Marion Education Exchange	294	Marion	OH	
67	788597	232766	My Community Church	294	Marion	OH	
68	785483	231971	Liberty West Broadcasting Inc.	251	Mason	OH	
68	784958	233106	Iglesia Cristiana Pentecostal Aposento Alto	251	Middletown	OH	
69	785125	231700	Tulsa Community Radio	219	Tulsa	OK	
69	787981	232903	Tulsarise	219	Tulsa	OK	
69	788050	233152	Friends Of The Jazz Depot, Inc.	219	Tulsa	OK	
70	788341	232807	The Intersection Church	239	Abbottstown	PA	
70	788495	233037	Community Media Of South Central PA	239	New Oxford	PA	
71	781438	232122	Mt. Zion Baptist Church	238	Brogue	PA	
71	788738	232996	Family Of Christian Churches	238	Lancaster	PA	
72	787776	232190	Aire Broadcasting Foundation	233	Hazleton	PA	*
72	788514	232662	La Casa Dominicana De Hazleton, Inc.	233	Hazleton	PA	
73	785801	232184	Indiana Radio Syndicate	235	Indiana	PA	
73	786512	232182	Worldwide Pants, Incorporated	235	Indiana	PA	
73	786548	232183	Indiana Broadcasting Corporation	235	Indiana	PA	
74	782321	231973	Leading Your Future Corp.	214	Aguada	PR	
74	785674	232897	Spirit Entertainment Inc.	214	Aguada	PR	
74	787925	232032	Bahomamey Radiotelephone Corp.	214	Rincon	PR	
75	785883	232333	Ministerio Dios Cumple El Proposito En Mi Inc.	219	Bayamon	PR	
75	787998	232605	New Beginning Communications Corp.	219	Bayamon	PR	
75	779911	231892	Iglesia Generacion De Fuego, Inc.	219	Caguas	PR	
75	788365	232383	Iglesia Cristiana Pentecostal La Gran,Cosecha, Inc.	219	Caguas	PR	
75	788746	233063	Cantares FM Media Group Inc.	219	Canovanas	PR	
75	788412	232609	Gigante Communications Corp.	219	Carolina	PR	
75	785821	232369	Fundacion Hazlos Sonreir Complices De Amor Inc.	219	Cayey	PR	
76	788321	232800	Sunset Radio Group Inc.	229	Boqueron	PR	
76	788372	232755	Guiding Light Media, Inc.	229	Boqueron	PR	
76	788175	232124	Northwest Broadcasting Corporation	229	Mayaguez	PR	
77	778237	231742	Armonia Communications, Inc.	252	Cabo Rojo	PR	
77	784921	232279	Cristo Se Interesa Por Ti, Inc.	252	Lajas	PR	
78	785206	231950	New Impact Educational Group Inc.	215	Guayanilla	PR	
78	788588	233100	Onda Cultural Del Sur Inc.	215	Ponce	PR	

Applications identifed with * under "Note" have been dismissed. Applications with ** are in groups that formerly included dismissed WARN applications.

Group	Facid	File num.	Applicant	Channel	City	State	Note
79	778336	231769	Imparcial, Inc.	207	Ponce	PR	
79	788255	232576	Iglesia Pabellon De La Victoria Ponce Inc.	207	Ponce	PR	
80	778238	231748	Alimentame Rescatame Adoptame Corp.	207	Quebradillas	PR	
80	788296	232881	Hispanic Broadcast System Puerto Rico Inc.	207	Quebradillas	PR	
81	788230	232999	Sensibilidad 101 Inc.	215	San Juan	PR	
81	781018	231997	Senda Radio Broadcasting Corp.	215	Toa Alta	PR	
82	787816	231733	Blackstone Radio Foundation	269	Westerly	RI	
82	788311	232573	The Buzz Alternative Radio Foundation Inc.	269	Westerly	RI	
83	778363	232216	Faith Baptist Church	227	Bath	SC	
83	779509	231674	Christian Sounds Media	227	North Augusta	SC	
84	779910	232700	Ubuntu Institute For Community Development	231	Greenville	SC	
84	778334	231918	Powerhouse Broadcasting Inc.	231	Piedmont	SC	
85	785327	233075	Faith Cathedral Fellowship Inc.	225	Walterboro	SC	
85	787891	231750	Saints Center Ministries	225	Walterboro	SC	
86	788254	232577	Universidad Internacional Cristiana De Ministerios	261	Bartlett	TN	
86	787338	232370	Citizens Against Unfair Financial Practices	261	Memphis	TN	
87	788491	232566	Summer Cares Outreach Society	298	Collegedale	TN	
87	788413	232506	Hixson Healthy Lifestyle Radio	298	Hixson	TN	
88	788151	232705	Ministerios La True Radio	296	Allen	TX	
88	786758	233069	Pulse Media Broadcasting Group	296	Plano	TX	
88	788500	232745	Alert Community Broadcasting	296	Princeton	TX	
89	787011	232613	Panhandle Pride, Inc.	268	Amarillo	TX	
89	788717	232933	Ethene Radio Amarillo	268	Amarillo	TX	
90	788260	232233	CPC of the WMM-Grand Prairie TX-One Inc.	260	Arlington	TX	
90	788359	232293	CPC of the WMM - Fort Worth, TX - One Inc.	260	Fort Worth	TX	
90	788465	233004	LGBTQ Saves	260	Fort Worth	TX	
91	788773	233112	Triangle Repeater Association	220	Beaumont	TX	
91	788149	232040	Lumberton Ham Radio Club	220	Lumberton	TX	
92	788438	232762	CPC of the WMM-Carrollton, TX-One, Inc.	221	Carrollton	TX	
92	779404	231771	Cedars Community Development Corporation	221	Lancaster	TX	
92	788111	231989	Iglesia De Cristo Kadosh	221	Seagoville	TX	

Applications identifed with * under "Note" have been dismissed. Applications with ** are in groups that formerly included dismissed WARN applications.

Group	Facid	File num.	Applicant	Channel	City	State	Note
93	788367	233066	Htown Community Broadcasting	236	Conroe	TX	
93	788666	233028	Radio Casa De Adoracion TX	236	Spring	TX	
94	785369	231464	Spirit Media, Inc.	277	Huntsville	TX	
94	788072	232858	Alive Church	277	New Waverly	TX	
95	787980	232585	New Vessels Ministries / Iglesia Odres Nuevos	250	Macdona	TX	
95	784006	232012	Sky Broadcasting, Inc.	251	San Antonio	TX	
95	788298	232561	Violet Broadcasting, Inc.	250	San Antonio	TX	
95	788394	232724	Bexar County Public Safety Associaton	250	San Antonio	TX	
96	788294	232347	Trucha	283	McAllen	TX	
96	788181	232077	Pharr Center Church	283	Pharr	TX	
97	783150	232726	Maranatha Christian Broadcast	297	Odessa	TX	
97	788481	232616	Pride Center West Texas	297	Odessa	TX	
98	788333	232586	Dunamis Community Corporation	254	Temple	TX	
98	788442	232578	Royer Foundation	254	Temple	TX	
99	779270	231602	Global Educations Ministries Inc.	283	Tomball	TX	
99	788138	232111	Rosehill Amateur Radio Club	283	Tomball	TX	
100	780186	232349	Virginia College & Community Radio Alliance	234	Charlottesville	VA	
100	780592	231787	La Hora Final Minsitry, Inc.	234	Charlottesville	VA	
100	788698	233061	Air Mix Virginia, Inc.	234	Charlottesville	VA	
101	784638	231455	Petersburg Community Radio	268	Petersburg	VA	
101	788190	232202	Leslie International Public Press Center	268	Petersburg	VA	
102	788102	232413	Essex Catholic Community Radio Inc.	262	Essex Junction	VT	
102	779572	232651	Mount Mansfield Community Television, Inc.	263	Richmond	VT	
103	787075	232199	God's New Generation - Nueva Generacion De Dios	263	Pasco	WA	
103	787994	232753	Casa De Avivamiento	263	Pasco	WA	
104	788183	233127	Spokane Word	298	Spokane	WA	
104	788301	232991	Latinos En Spokane	298	Spokane	WA	
104	788494	232900	School Of Music Spokane	298	Spokane	WA	
104	788759	233062	Living Stone Church Of Spokane	298	Spokane	WA	
105	784696	232078	Manitowoc Baptist Church	269	Manitowoc	WI	
105	788535	232895	Church Of Christ, Manitowoc	269	Manitowoc	WI	

Applications identifed with * under "Note" have been dismissed. Applications with ** are in groups that formerly included dismissed WARN applications.

Group	Facid	File num.	Applicant	Channel	City	State	Note
106	782486	232083	Iglesia Pentecostal Jehova Rafa	279	Mc Farland	WI	
106	788419	233168	Madison Christian LPFM Radio, Inc.	279	Monona	WI	
107	784100	232137	Monergy, Inc.	211	Mequon	WI	
107	784706	231506	Souls Harbor Baptist Church, Inc.	211	Milwaukee	WI	
107	788356	232321	CPC of the WMM - Milwaukee WI - One Inc.	211	Milwaukee	WI	
108	788164	232046	Native American Music Center Ltd.	294	Rhinelander	WI	
108	788242	232717	Winwood Lifestyle Educational Radio Corporation	294	Rhinelander	WI	
109	788089	232048	Citizens For Our Bridge, Inc. dba Steel Bridge Creative Fo	263	Sturgeon Bay	WI	
109	788483	233102	Sturgeon Bay Lifestyle Educational Radio	263	Sturgeon Bay	WI	

Applications identifed with * under "Note" have been dismissed. Applications with ** are in groups that formerly included dismissed WARN applications.

PUBLIC NOTICE

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

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

DA 24-257
Released: March 14, 2024

Proposed Second Quarter 2024 Universal Service Contribution Factor

CC Docket No. 96-45

In this Public Notice, the Office of Managing Director (OMD) announces that the proposed universal service contribution factor for the second quarter of 2024 will be 0.328 or 32.8 percent.[1]

Rules for Calculating the Contribution Factor

Contributions to the federal universal service support mechanisms are determined using a quarterly contribution factor calculated by the Federal Communications Commission (Commission).[2] The Commission calculates the quarterly contribution factor based on the ratio of total projected quarterly costs of the universal service support mechanisms to contributors' total projected collected end-user interstate and international telecommunications revenues, net of projected contributions.[3]

USAC Projections of Demand and Administrative Expenses

Pursuant to section 54.709(a)(3) of the Commission's rules,[4] the Universal Service Administrative Company (USAC) submitted projections of demand and administrative expenses for the second quarter of 2024.[5] Accordingly, the projected demand and expenses are as follows:

[1] *See* 47 CFR § 54.709(a).

[2] *See id.*

[3] *See* 47 CFR § 54.709(a)(2).

[4] *See* 47 CFR § 54.709(a)(3).

[5] *See* Federal Universal Service Support Mechanisms Fund Size Projections for the Second Quarter 2024, available at https://www.usac.org/fcc-filings (filed February 1, 2024) (*USAC Filing for Second Quarter 2024 Projections*; *see also* Federal Universal Service Support Mechanisms Quarterly Contribution Base for the Second Quarter 2024, available at https://www.usac.org/fcc-filings (filed March 1, 2024) (*USAC Filing for Second Quarter 2024 Contribution Base*).

($ millions)

Program Demand	Projected Program Support	Admin. Expenses	Application of True-Ups & Adjustments	Total Program Collection (Revenue Requirement)
Schools and Libraries	631.45	24.15	(3.24)	652.36
Rural Health Care	161.73	8.86	(0.56)	170.03
High-Cost	1,109.50	21.78	(30.37)	1,100.91
Lifeline	297.49	20.55	(148.83)	169.21
Connected Care	0	0	0	0
TOTAL	2,200.17	75.34	(183.00)	2,092.51

USAC Projections of Industry Revenues

USAC submitted projected collected end-user telecommunications revenues for April 2024 through June 2024 based on information contained in the Second Quarter 2024 Telecommunications Reporting Worksheet (FCC Form 499-Q).[6] The amount is as follows:

Total Projected Collected Interstate and International End-User Telecommunications Revenues for Second Quarter 2024: $8.555642 billion.

Adjusted Contribution Base

To determine the quarterly contribution base, we decrease the second quarter 2024 estimate of projected collected interstate and international end-user telecommunications revenues by the projected revenue requirement to account for circularity and decrease the result by one percent to account for uncollectible contributions. Accordingly, the quarterly contribution base for the second quarter of 2024 is as follows:

Adjusted Quarterly Contribution Base for Universal Service Support Mechanism

(Second Quarter 2024 Revenues - Projected Revenue Requirement) * (100% - 1%)

= ($8.555642 billion – $2.092510 billion) * 0.99

[6] *USAC Filing for Second Quarter 2024 Contribution Base* at 4.

=$6.398501 billion.

Unadjusted Contribution Factor

Using the above-described adjusted contribution base and the total program collection (revenue requirement) from the table above, the proposed unadjusted contribution factor for the second quarter of 2024 is as follows:

Contribution Factor for Universal Service Support Mechanisms

Total Program Collection / Adjusted Quarterly Contribution Base

=$2.09251 billion / $6.398501 billion

=0.327031

Unadjusted Circularity Factor

USAC will reduce each provider's contribution obligation by a circularity discount approximating the provider's contributions in the upcoming quarter. Accordingly, the proposed unadjusted circularity factor for the second quarter of 2024 is as follows:

Unadjusted Circularity Factor for Universal Service Support Mechanisms

= Total Program Collection / Projected Second Quarter 2024 Revenues
= $2.092510 billion / $8.555642 billion
= 0.244577

Proposed Contribution Factor

The Commission has directed OMD to announce the contribution factor as a percentage rounded up to the nearest tenth of one percent.[7] Accordingly, the proposed contribution factor for the second quarter of 2024 is as follows:

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[7] *See Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing and Billing Format*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, Order and Second Order on Reconsideration, 18 FCC Rcd 4818, 4826, para. 22 (2003) (*Second Order on Reconsideration)*.

32.8%

Proposed Circularity Discount Factor

The Commission also has directed OMD to account for contribution factor rounding when calculating the circularity discount factor.[8] Accordingly, the proposed circularity factor for the second quarter of 2024 is as follows:

0.246808[9]

Conclusion

If the Commission takes no action regarding the projections of demand and administrative expenses and the proposed contribution factor within the 14-day period following release of this Public Notice, they shall be deemed approved by the Commission.[10] USAC shall use the contribution factor to calculate universal service contributions for the second quarter of 2024. USAC will reduce each provider's contribution obligation by a circularity discount approximating the provider's contributions in the upcoming quarter.[11] USAC includes contribution obligations less the circularity discount in invoices sent to contributors. Contribution payments are due on the dates shown on the invoice. Contributors will pay interest for each day for which the payments are late. Contributors failing to pay contributions in a timely fashion may be subject to the enforcement provisions of the Communications Act of 1934, as amended, and any other applicable law. In addition, contributors may be billed by USAC for reasonable costs of collecting overdue contributions.[12]

We also emphasize that carriers may not mark up federal universal service line-item amounts above the contribution factor.[13] Thus, carriers may not, during the second quarter of 2024, recover through a federal universal service line item an amount that exceeds 32.8 percent of the interstate telecommunications charges on a customer's bill.

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[8] *Id*.

[9] The proposed circularity discount factor = 1 + [(unadjusted circularity discount factor – 1) * (unadjusted contribution factor / proposed contribution factor)]. The proposed circularity discount factor is calculated in a spreadsheet program, which means that internal calculations are made with more than 15 decimal places.

[10] *See* 47 CFR § 54.709(a)(3).

[11] USAC will calculate each individual contributor's contribution in the following manner: (1-Circulatory Factor) * (Contribution Factor*Revenue).

[12] *See* 47 CFR § 54.713.

[13] *See* 47 CFR § 54.712.

In addition, under the limited international revenues exception (LIRE) in section 54.706(c) of the Commission's rules, a contributor to the universal service fund whose projected collected interstate end-user telecommunications revenues comprise less than 12 percent of its combined projected collected interstate and international end-user telecommunications revenues shall contribute based only on projected collected interstate end-user telecommunications revenues, net of projected contributions.[14] The rule is intended to exclude from the contribution base the international end-user telecommunications revenues of any entity whose annual contribution, based on the provider's interstate and international end-user telecommunications revenues, would exceed the amount of its interstate end-user revenues.[15] The proposed contribution factor exceeds 12 percent, which we recognize could result in a contributor being required to contribute to the universal service fund an amount that exceeds its interstate end-user telecommunications revenue. Should a contributor face this situation, the contributor may petition the Commission for waiver of the LIRE threshold.[16]

For further information, contact Thomas Buckley at (202) 418-0725 or Kim Yee at (202) 418-0805, TTY (888) 835-5322, in the Office of Managing Director.

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[14] *See* 47 CFR § 54.706.

[15] *See Federal-State Joint Board on Universal Service*, Sixteenth Order on Reconsideration, CC Docket No. 96-45, Eighth Report and Order, CC Docket No. 96-45, Sixth Report and Order, Docket No. 96-262, 15 FCC Rcd 1679, 1687-1692, paras. 17-29 (1999) (*Fifth Circuit Remand Order*).

[16] Generally, the Commission's rules may be waived for good cause shown. 47 CFR § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may consider considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166; 47 CFR § 54.802(a).

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

In the Matter of	)	
	)	File No.: EB-FD-23-00034823
Jefferson County Cable TV Inc.	)	CD Acct. No.: 202432200004
	)	FRN: 0003749082
	)	
	)	

ORDER

Adopted: March 15, 2024 **Released: March 15, 2024**

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission has entered into a Consent Decree to resolve its investigation into whether Jefferson County Cable TV Inc. (Jefferson County Cable or the Company) violated the Broadband Data Collection (formally referred to as the Digital Opportunity Data Collection) requirements and the Broadband Deployment Accuracy and Technology Availability Act (Broadband DATA Act) in connection with reporting inaccurate information or data with respect to the Company's ability to provide broadband Internet access service.[1] To settle this matter, Jefferson County Cable agrees to pay a $10,000 civil penalty to the United States Treasury. Jefferson County Cable also agrees to implement enhanced compliance measures. This action will help further the Commission's efforts to bridge the digital divide by having accurate data of locations where broadband service is available.[2]

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 Jefferson County Cable's compliance with the Commission's rules governing Broadband Data Collection.[3]

3. In the absence of material new evidence relating to this matter, we do not set for hearing the question of Jefferson County Cable's basic qualifications to hold or obtain any Commission license or authorization.[4]

4. Accordingly, **IT IS ORDERED** that, pursuant to the authority delegated by sections 0.111 and 0.311 of the Commission's rules, 47 CFR §§ 0.111, 0.311, the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

[1] *See* 47 CFR §§ 1.7004, 1.7009; *see also Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195, 11-10, Third Report & Order, 36 FCC Rcd 1126 (2021); Broadband Deployment Accuracy and Technology Availability Act, Pub. L. No. 116-130, 134 Stat. 228 (2020) (codified at 47 U.S.C. §§ 641-646).

[2] *See Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195, 11-10, Third Report & Order, 36 FCC Rcd 1126 (2021).

[3] 47 CFR §§ 1.7004, 1.7009; *see also* Broadband Deployment Accuracy and Technology Availability Act, Pub. L. No. 116-130, 134 Stat. 228 (2020) (codified at 47 U.S.C. §§ 641-646).

[4] *See* 47 CFR § 1.93(b).

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

6. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested to Bob Loveridge, General Manager/Director of Operations, Jefferson County Cable, 116 S. 4th Street, Toronto, Ohio 43964.

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Chief
Enforcement Bureau

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

In the Matter of	)	
	)	
Jefferson County Cable TV Inc.	)	File No.: EB-FD-23-00034823
	)	CD Acct. No.: 202432200004
	)	FRN: 0003749082
	)	
	)	

CONSENT DECREE

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission and Jefferson County Cable TV Inc. (Jefferson County Cable or Company), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau's investigation into whether Jefferson County Cable violated the Broadband Data Collection (formally referred to as the Digital Opportunity Data Collection) requirements and the Broadband Deployment Accuracy and Technology Availability Act (Broadband DATA Act) in connection with reporting inaccurate information or data with respect to the Company's ability to provide broadband Internet access service. To resolve this matter, Jefferson County Cable agrees to implement a compliance plan and pay a $10,000 civil penalty.

I. DEFINITIONS

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

(a) "Act" means the Communications Act of 1934, as amended.[1]

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

(c) "Broadband Data Collection Rules" means 47 CFR § 1.7000 *et seq.*[2] and other Communications Laws related to Broadband Data Collection requirements.

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

(e) "CD Acct No." means account number 202432200004, associated with payment obligations described in paragraph 21 of this Consent Decree.

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

(g) "Communications Laws" means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which Jefferson County Cable is subject by virtue of its business activities, including but not limited to the Broadband DATA Act and Broadband Data Collection Rules.

(h) "Compliance Plan" means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 17.

(i) "Covered Employees" means all employees and agents of Jefferson County Cable

[1] 47 U.S.C. § 151 *et seq.*

[2] 47 CFR §§ 1.7000-1.7010.

who perform, supervise, oversee, or manage the performance of, duties that relate to Jefferson County Cable's responsibilities under the Communications Laws, including the Broadband DATA Act and Broadband Data Collection Rules.

(j) "Effective Date" means the date by which both the Bureau and Jefferson County Cable have signed the Consent Decree and the Bureau has released an Adopting Order.

(k) "Investigation" means the investigation commenced by the Bureau in EB-FD-23-00034823 regarding whether Jefferson County Cable violated the Broadband DATA Act and Broadband Data Collection Rules.

(l) "Jefferson County Cable" or "Company" means Jefferson County Cable TV Inc. and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.

(m) "LOI" means the Letter of Inquiry issued by the Bureau to Jefferson County Cable on March 1, 2023 in connection with apparent violations of the Broadband DATA Act and Broadband Data Collection Rules.

(n) "Operating Procedures" means the standard internal operating procedures and compliance policies established by Jefferson County Cable to implement the Compliance Plan.

(o) "Parties" means Jefferson County Cable and the Bureau, each of which is a "Party."

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

II. BACKGROUND

3. The Commission's efforts to bridge the digital divide require having accurate data of locations where broadband service is available. The FCC adopted the Digital Opportunity Data Collection (commonly referred to as the Broadband Data Collection) in August 2019 "to collect geographically precise and detailed data on broadband service deployment, which would be subject to stakeholder challenges."[3]

4. The Broadband DATA Act was enacted in March of 2020.[4] The Broadband DATA Act requires providers to report "the availability and quality of service of their broadband internet access service" biannually, with filings on or before March 1 (reporting data as of December 31 of the prior year) and September 1 (reporting data as of June 30 of the current year).[5]

5. For purposes of the Broadband Data Collection, a facilities-based service provider must report locations where it has actually built out the broadband network infrastructure such that the provider is able to provide broadband service to the location[6] and is capable of performing a standard broadband installation, at a standard installation charge, within 10 business days after the date on which a service request is submitted.[7] A service provider's "ability to install service within 10 business days of a customer request is a fundamental component of reporting availability for purposes of the Digital

[3] *Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195, 11-10, Third Report & Order, 36 FCC Rcd 1126, 1127, para. 1 (2021) (*Third Report and Order*).

[4] 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).

[5] 47 CFR § 1.7004(a)-(b).

[6] 47 U.S.C. § 642(b)(2)(A)(i)(I).

[7] *Id.* § 642(b)(2)(A)(i)(II); 47 CFR § 1.7001(a)(19).

Opportunity Data Collection, and consumers naturally must have the opportunity to challenge assertions of coverage on that basis."[8]

6. Under the Broadband DATA Act, it is "unlawful for an entity or individual to willfully and knowingly, or recklessly, submit information or data under this subchapter that is materially inaccurate or incomplete with respect to the availability of broadband internet access service or the quality of service with respect to broadband internet access service."[9] The Commission implemented the statutory directive set forth in section 643 of the Broadband DATA Act in the Commission's rules at section 1.7009,[10] which defines materially inaccurate information for purposes of the rule as a submission that "contains omissions or incomplete or inaccurate information that the Commission finds has a substantial impact on its collection and use of the data collected[.]"[11] The "Commission will determine the nature of the violation in complying with Digital Opportunity Data Collection rules on the grounds of 'willfully and knowingly or recklessly' submitting inaccurate or incomplete information on a case-by-case basis, consistent with Commission precedent."[12]

7. With each biannual data filing, providers must include "a certification signed by a corporate officer of the provider that the officer has examined the information contained in the submission and that, to the best of the officer's actual knowledge, information, and belief, all statements of fact contained in the submission are true and correct."[13]

8. Jefferson County Cable is a privately held corporation that was incorporated in Ohio on January 27, 1982. Jefferson County Cable offers only fixed broadband. In its initial filing in August 2022 for data as of June 30, 2022, Jefferson County Cable reported 8,178 addresses to the Broadband

[8] *Third Report and Order*, 36 FCC Rcd at 1158, para. 78.

[9] 47 U.S.C. § 643.

[10] The full text of 47 CFR § 1.7009 is:

> (a) It shall be unlawful for an entity or individual to willfully and knowingly, or recklessly, submit information or data as part of the Digital Opportunity Data Collection that is materially inaccurate or incomplete with respect to the availability or the quality of broadband internet access service. Such action may lead to enforcement action and/or penalties as set forth in the Communications Act and other applicable laws.
> (b) Failure to make the Digital Opportunity Data Collection filing in accordance with the Commission's rules and the instructions to the Digital Opportunity Data Collection may lead to enforcement action pursuant to the Communications Act of 1934, as amended, and any other applicable law.
> (c) For purposes of this section, "materially inaccurate or incomplete" means a submission that contains omissions or incomplete or inaccurate information that the Commission finds has a substantial impact on its collection and use of the data collected in order to comply with the requirements of 47 U.S.C. 641–646.
> (d) Providers must file corrected data when they discover inaccuracy, omission, or significant reporting error in the original data that they submitted, whether through self-discovery, the crowdsource process, the challenge process, the Commission verification process, or otherwise.
> (1) Providers must file corrections within 30 days of their discovery of incorrect or incomplete data; and
> (2) The corrected filings must be accompanied by the same types of certifications that accompany the original filings.

[11] *Id.* § 1.7009(d).

[12] *Third Report and Order*, *supra* note 3, at 1178-79, para. 136.

[13] 47 CFR § 1.7004(d)

Data Collection.[14] In its initial filing in March 2023 for data as of December 31, 2022, Jefferson County Cable reported 6,605 addresses to the Broadband Data Collection.[15]

9. In November 2022, an individual challenged Jefferson County Cable about its claim that it could provide broadband service at a location in Bergholz, Ohio.[16] The challenged location was one of nearly 1,500 locations Jefferson County Cable had included in each of these two relevant Broadband Data Collection filings. At that time, the Company could not provide broadband service at or connect those locations within 10 business days of a request for service,[17] as required by the Broadband Data Collection Rules. Jefferson County Cable acknowledged to the Bureau that it had not taken the necessary time and effort to review and understand the Commission's guidance on Broadband Data Collection filings before it made these two filings.[18] These two filings for data "as of" June 2022 and December 2022 contained "materially inaccurate" information in violation of section 1.7009 of the Commission's rules.

10. After receiving the Bureau's LOI on or about March 1, 2023, Jefferson County Cable corrected its inaccurate submissions for both data filings by removing these approximately 1,500 locations from each of the relevant data filings on May 19, 2023.[19]

III. TERMS OF AGREEMENT

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

12. **Jurisdiction**. Jefferson County Cable 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.

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

14. **Termination of Investigation**. In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, Jefferson County Cable 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 Jefferson County Cable concerning the matters that were the subject of the Investigation, or to set for hearing the question of Jefferson County Cable's basic qualifications to be a Commission licensee or hold Commission licenses or authorizations based on the matters that were the subject of the Investigation.[20]

15. **Admission of Liability**. Jefferson County Cable admits for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of

[14] Response to Letter of Inquiry from Jefferson County Cable, to FCC Enforcement Bureau, at 3, Response to Question 13 (Apr. 13, 2023) (on file in EB-FD-23-00034823) (First LOI Response).

[15] *Id*.

[16] Fed. Commc'ns Comm'n, Broadband Data Collection, Challenge ID: 4539 (Nov. 30, 2022); *see also* Response to Letter of Inquiry from Jefferson County Cable, to FCC Enforcement Bureau, Response to Questions 16 & 27 (June 15, 2023) (on file in EB-FD-23-00034823).

[17] First LOI Response at Response to Question 15.

[18] First LOI Response at Cover Letter.

[19] Information on file in Investigation Number EB-FD-23-00034823.

[20] *See* 47 CFR § 1.93(b).

paragraph 14 herein, that its actions described in paragraphs 8 and 9 violated the Broadband Data Collection Rules.

16. **Compliance Officer**. Within thirty (30) calendar days after the Effective Date, Jefferson County Cable shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as a Compliance Officer and to discharge the duties set forth below. The person designated as the Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that Jefferson County Cable complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his or her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the Broadband Data Collection Rules prior to assuming his/her duties. If Jefferson County Cable is aware of any inaccuracy, omission, or reporting error in any of its data filings as of the Effective Date, the Compliance Officer will ensure that Jefferson County Cable has made any necessary corrections to its Broadband Data Collection data within thirty (30) calendar days of his/her designation.

17. **Compliance Plan**. For purposes of settling the matters set forth herein, Jefferson County Cable agrees that it shall, within sixty (60) calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure compliance with the Communications Laws and with the terms and conditions of this Consent Decree. With respect to the Broadband Data Collection Rules, Jefferson County Cable will implement, at a minimum, the following procedures:

(a) **Operating Procedures**. Within sixty (60) calendar days after the Effective Date, Jefferson County Cable shall establish Operating Procedures that all Covered Employees must follow to help ensure Jefferson County Cable's compliance with the Broadband Data Collection Rules. Jefferson County Cable's Operating Procedures shall include internal procedures and policies specifically designed to ensure that Jefferson County Cable complies with the Broadband Data Collection Rules.

(b) **Compliance Training Program**. Jefferson County Cable shall establish and implement a Compliance Training Program on compliance with the Broadband Data Collection Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of Jefferson County Cable's obligation to report any noncompliance with the Broadband Data Collection Rules under paragraph 18 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program within ninety (90) calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after the initial Compliance Training Program shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. Jefferson County Cable 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.

18. **Reporting Noncompliance**. Jefferson County Cable shall report any noncompliance with the Broadband Data Collection Rules and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of: (i) each instance of noncompliance; (ii) the steps that Jefferson County Cable 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 Jefferson County Cable has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to Meghan Ingrisano, Chief, Enforcement Bureau, Fraud Division, Federal Communications Commission, 45 L Street NE,

Washington, D.C. 20554, or her successor or designee, with a copy submitted electronically to Meghan.Ingrisano@fcc.gov and Sarah.McNally@fcc.gov.

19. **Compliance Reports**. Jefferson County Cable shall file compliance reports with the Commission ninety (90) days after the Effective Date, twelve (12) months after the Effective Date, and twenty-four (24) months after the Effective Date.

(a) Each Compliance Report shall include a detailed description of Jefferson County Cable's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Broadband Data Collection Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Jefferson County Cable, stating that the Compliance Officer has personal knowledge that Jefferson County Cable: (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 18 of this Consent Decree.

(b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and shall comply with section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.[21]

(c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Jefferson County Cable, 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 Jefferson County Cable 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 Jefferson County Cable has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.

(d) All Compliance Reports shall be submitted to Meghan Ingrisano, Chief, Enforcement Bureau, Fraud Division, Federal Communications Commission, 45 L Street NE, Washington, D.C. 20554, or her successor or designee, with a copy submitted electronically to Meghan.Ingrisano@fcc.gov and Sarah.McNally@fcc.gov.

20. **Termination Date**. Unless stated otherwise, the requirements set forth in paragraphs 16 through 19 of this Consent Decree shall expire twenty-four (24) months after the Effective Date. If Jefferson County Cable does not materially comply with the Compliance Obligations and all Broadband Data Collection Rules, as reasonably determined by the FCC, during the twenty-four (24) month period prior to the aforementioned expiration date, the obligations set forth herein may be extended, in the discretion of the FCC, by an additional twelve (12) months.

21. **Civil Penalty**. Jefferson County Cable will pay a civil penalty to the United States Treasury in the amount of $10,000 within thirty (30) calendar days of the Effective Date. Jefferson County Cable acknowledges and agrees that upon execution of this Consent Decree, the Civil Penalty shall become a "Claim" or "Debt" as defined in 31 U.S.C. § 3701(b)(1).[22] Upon an Event of Default, all procedures for collection as permitted by law may, at the Commission's discretion, be initiated. Jefferson County Cable shall send electronic notification of payment to Meghan.Ingrisano@fcc.gov and Sarah.McNally@fcc.gov on the date said payment is made. Payment of the Civil Penalty must be made

[21] 47 CFR § 1.16.

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

by credit card using the Commission's Registration System (CORES) at https://apps.fcc.gov/cores/userLogin.do, ACH (Automated Clearing House) debit from a bank account, or by wire transfer from a bank account. The Commission no longer accepts Civil Penalty payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:[23]

- 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[24] or printed CORES form[25] 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).[26] For additional detail and wire transfer instructions, go to https://www.fcc.gov/licensing-databases/fees/wire-transfer.
- Payment by credit card must be made by using CORES at https://apps.fcc.gov/cores/userLogin.do. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the CD Acct. No. The bill number is the CD Acct. No. with the first two digits excluded (e.g., CD 1912345678 would be associated with FCC Bill Number 12345678). After selecting the bill for payment, choose the "Pay by Credit Card" option. Please note that there is a $24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using CORES at https://apps.fcc.gov/cores/userLogin.do. To pay by ACH, log in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the CD Acct. No. The bill number is the CD Acct. No. with the first two digits excluded (e.g., CD 1912345678 would be associated with FCC Bill Number 12345678). Finally, choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

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

23. **Interest, Charges for Collection, and Acceleration of Maturity Date**. After an Event of Default has occurred under this Consent Decree, the then unpaid amount of the Civil Penalty shall

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

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

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

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

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 Jefferson County Cable.

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

25. **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.

26. **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.

27. **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 Jefferson County Cable does not expressly consent) that provision will be superseded by such Rule or order.

28. **Successors and Assigns**. Jefferson County Cable agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

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

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

31. **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.

32. **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.

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

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

_____
Loyaan A. Egal
Chief
Enforcement Bureau

_____
Date

_____
Robert Loveridge
General Manager/Director of Operations
Jefferson County Cable TV Inc.

_____
Date

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 24-259
Released: March 14, 2024

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU ANNOUNCES THE EFFECTIVE AND COMPLIANCE DATES OF RULES ADOPTED PURSUANT TO THE REPORT AND ORDER ON LOCATION-BASED ROUTING FOR WIRELESS 911 CALLS

PS Docket No. 18-64

On January 26, 2024, the Federal Communications Commission (Commission) released a Report and Order (*Report and Order*) adopting rules to facilitate the implementation of location-based routing for wireless 911 voice calls and real-time text (RTT) communications to 911 call centers.[1] The adopted rules become effective 60 days after publication in the Federal Register.[2]

On March 13, 2024, the Office of the Federal Register published a summary of the *Report and Order*.[3] Accordingly, the rules adopted in the *Report and Order* will take effect on **May 13, 2024**.[4] In addition, compliance dates for the rules adopted in the *Report and Order* will be as follows:

- By **November 13, 2024**, 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.[5] At that time, nationwide CMRS providers must route all wireless 911 voice calls originating on their Internet Protocol-based networks pursuant to the requirements in paragraph (s)(3) of section 9.10 of the rules.[6]
- By **May 13, 2026**, 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).[7] 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 in paragraph (s)(3) of section 9.10 of the rules.[8]
- By **May 13, 2026**, CMRS providers must deploy a technology that supports location-based routing for RTT communications to 911 originating on their Internet Protocol-based networks

[1] *Location-Based Routing for Wireless 911 Calls,* PS Docket No. 18-64, Report and Order, FCC 24-4 (rel. January 26, 2024), Erratum (rel. March 13, 2024) (*Report and Order*).

[2] *See Report and Order* at 60, para. 142.

[3] 89 Fed. Reg. 18488 (March 13, 2024).

[4] *See* 89 Fed. Reg. 18488.

[5] *See* 47 CFR § 9.10(s)(1)(i); *see also* 89 Fed. Reg. 18523.

[6] *See* 47 CFR § 9.10(s)(1)(i), (s)(3); *see also* 89 Fed. Reg. 18523.

[7] *See* 47 CFR § 9.10(s)(1)(ii); *see also* 89 Fed. Reg. 18524.

[8] *See* 47 CFR § 9.10(s)(1)(ii), (s)(3); *see also* 89 Fed. Reg. 18524.

(4G LTE, 5G, and subsequent generations of Internet Protocol-based networks).[9] At that time, CMRS providers must route all RTT communications to 911 originating on their Internet Protocol-based networks pursuant to the requirements in paragraph (s)(3) of section 9.10 of the rules.[10]

Paragraphs (s)(4) and (s)(5) of section 9.10 of the rules contain new or modified information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.[11] Compliance with the requirements in paragraphs (s)(4) and (s)(5) of section 9.10 of the rules will not be required until after approval by OMB. The Commission will publish a document in the Federal Register announcing that compliance date.[12]

For further information, please contact Rachel Wehr, Attorney Advisor, Policy and Licensing Division, Public Safety and Homeland Security Bureau at (202) 418-1138 or rachel.wehr@fcc.gov.

-FCC-

[9] *See* 47 CFR § 9.10(s)(2); *see also* 89 Fed. Reg. 18524.

[10] *See* 47 CFR § 9.10(s)(2), (s)(3); *see also* 89 Fed. Reg. 18524.

[11] *See* 47 CFR § 9.10(s)(4), (s)(5); *see also Report and Order* at 60, para. 142; 89 Fed. Reg. 18523.

[12] *See Report and Order* at 60, para. 142; 89 Fed. Reg. 18524.

PUBLIC NOTICE

Federal Communications Commission
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DA 24-260
Released: March 14, 2024

GRANT OF CONDITIONAL CERTIFICATION FOR CLEARCAPTIONS, LLC, TO PROVIDE INTERNET PROTOCOL CAPTIONED TELEPHONE SERVICE AFTER ITS ACQUISITION BY CC OPPORTUNITIES, LLC

CG Docket No. 03-123

By the Chief, Consumer and Governmental Affairs Bureau:

Conditional certification is granted to ClearCaptions, LLC (ClearCaptions), to continue to provide Internet Protocol Captioned Telephone Service (IP CTS)[1] supported by the Interstate Telecommunications Relay Service (TRS) Fund[2] following the acquisition of majority ownership of ClearCaptions by CC Opportunities, LLC (CC Opportunities). By this action, ClearCaptions, which currently holds a full certification to provide IP CTS,[3] will remain eligible for compensation from the TRS Fund after the change in ownership, pending Commission action on an application for full certification of the post-merger entity. We find it to be in the public interest to grant such conditional certification to ensure the uninterrupted provision of service pending a full determination of ClearCaptions' qualifications.

Background

On December 19, 2023, CC Opportunities and ClearCaptions (Applicants) filed an application for conditional certification to provide IP CTS.[4] Applicants state that, upon consummation of the proposed

[1] IP CTS, a form of telecommunications relay service (TRS), "permits an individual who can speak but who has difficulty hearing over the telephone to use a telephone and an internet Protocol-enabled device via the internet to simultaneously listen to the other party and read captions of what the other party is saying. With IP CTS, the connection carrying the captions between the relay service provider and the relay service user is via the internet, rather than the public switched telephone network." 47 CFR § 64.601(a)(23). TRS are "telephone transmission services that provide the ability for an individual who is deaf, hard of hearing, deaf-blind, or who has a speech disability" to communicate with others via wire or radio "in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability." *Id*. § 64.601(a)(43).

[2] The TRS Fund compensates eligible providers of Internet-based and interstate TRS for their reasonable costs of providing these services. *See id*. § 64.604(c)(5)(iii).

[3] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *ClearCaptions Internet-Based TRS Certification Application*, CG Docket No. 03-123, Order, 38 FCC Rcd 2471 (CGB 2023) (*ClearCaptions Certification Order*) (authorizing ClearCaptions to provide IP CTS for a five-year period, through April 3, 2028).

[4] *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).

transaction, CC Opportunities will acquire controlling (between 86% and 94%)[5] voting and equity interests in ClearCaptions Intermediate, LLC, which in turn directly owns and controls 99% of the voting and equity interest in ClearCaptions.[6] CC Opportunities does not currently hold Commission certification as an IP CTS provider. Therefore, Applicants seek conditional certification to enable ClearCaptions to maintain its eligibility, on an interim basis, to receive compensation from the TRS Fund following its acquisition by CC Opportunities.[7] Upon such grant and consummation of the acquisition, Applicants state, the post-merger ClearCaptions, which then will be majority owned and controlled by CC Opportunities, will file an application for full certification to provide IP CTS under its changed ownership.[8] A draft of that application, attached to the Application, substitutes the post-transaction entity as the applicant, describes how the post-transaction entity will comply with the Commission's minimum TRS standards, and provides information about the new owners.[9]

Applicants state that "ClearCaptions will continue to provide IP CTS services and comply with applicable Commission regulations."[10] Additionally, Applicants explain, CC Opportunities, through LGK Advisors II, L.P., LGK Advisors III, L.P., and their affiliated entities (together, LGK Advisors), "will provide ClearCaptions with access to additional financial and business expertise and resources that will enable ClearCaptions to continue to grow and develop innovative IP CTS solutions and products."[11] Applicants assert that a conditional grant is in the public interest because, through its ownership and control of ClearCaptions, CC Opportunities intends to "further ClearCaptions' mission to maintain and expand the IP CTS that it offers to deaf and hard of hearing Americans," by leveraging "its financial and other resources" and adding individuals from LGK Advisors to ClearCaptions' board of directors to "contribute a new and independent perspective, while ClearCaptions continues under existing day-to-day management, with the oversight of those key individuals."[12]

The Bureau placed the application on Public Notice.[13] No comments or reply comments were received. Subsequently, Applicants met with Commission staff to discuss the Application.[14]

[5] Applicants explain that, "prior to closing, additional minority equity holders will be offered the right to sell . . . which, depending on the volume of those who elect to sell, will cause [CC Opportunities'] ownership interests to ultimately fluctuate within the stated range." Application at 6 n.4.

[6] *Id*. at 6. CC Opportunities will also directly own and the control the remaining 1% voting and equity interest in ClearCaptions following consummation of the transactions. *Id*. at 6-7.

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

[8] *Id.* at 3.

[9] *See id.*, Exh. A, "[Draft] Application of ClearCaptions, LLC, as Owned and Controlled by CC Opportunities, LLC, for Full Certification to Provide Internet Protocol Captioned Telephone Service."

[10] *Id.* at 13.

[11] *Id.* at 9-10.

[12] *Id.* at 10.

[13] *See 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, Public Notice, DA 24-52 (CGB Jan. 17, 2024).

[14] *See, e.g.*, Letter from Tamar E. Finn, ClearCaptions, to Marlene H. Dortch, FCC, CG Docket Nos. 03-123, 13-24, and 22-408 (filed Jan. 18, 2024).

Discussion

Commission certification to provide TRS Fund-supported relay service is not transferable to a non-certified entity.[15] To be granted certification, an applicant must establish that its provision of TRS will meet the Commission's minimum TRS standards[16]—a determination that turns on the actions of its owners, who are ultimately responsible for complying with the Commission's rules.[17] Therefore, "the certification of a provider does not automatically transfer to new owners."[18] Because CC Opportunities, which will acquire a controlling interest in ClearCaptions, does not currently hold Commission certification as an IP CTS provider, the post-acquisition entity, while retaining its corporate identity, must be granted certification on its own account under the new owners.

However, the Commission may grant conditional certification, without prejudice to its final determination of the applicant's qualifications, if additional time is needed for the Commission to complete its evaluation.[19] Such conditional certifications are also granted to allow continuity of service after a change in ownership while preserving the Commission's ability to fully review an application for certification on the merits.[20]

Compliance with minimum standards. As noted above, the Application includes as an exhibit a draft application for full certification, which substitutes the post-transaction entity as the applicant, describes how the post-transaction entity will comply with the Commission's minimum TRS standards, and provides information about the new owners.[21] The Application and the attached draft application for full certification represent that, upon consummation of the acquisition, ClearCaptions will continue to have systems, policies, and procedures in place that enable it to comply with the minimum TRS standards. No party has demonstrated any basis for challenging this representation, and after reviewing the applicant's documentation, we find no reason to conclude that this change in ownership will detract from ClearCaptions' ability to meet the minimum TRS standards. Further, our conditional certification will permit the Commission to evaluate over the next 24 months the extent of ClearCaptions' compliance with such standards following the acquisition.

Accordingly, we find that the public interest and the objectives of section 225 are served by authorizing ClearCaptions to provide TRS under the proposed new ownership, pending a determination as to full certification.

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[15] *See 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, 10438 (CGB 2008) (*Certification Transfer PN*); *see also Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51, Second Report and Order and Order, 26 FCC Rcd 10898, 10918, para. 47 (2011) (*Internet-based TRS Certification Order*) (reaffirming the ruling in the *Certification Transfer PN*).

[16] 47 CFR § 64.606(b)(2)(i).

[17] *Certification Transfer PN*, 23 FCC Rcd at 10439.

[18] *Id*.

[19] *Internet-based TRS Certification Order*, 26 FCC Rcd at 10914-15, para. 37; *see also 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, 5835, para. 64 (2018); *ClearCaptions Certification Order*, 38 FCC Rcd at 2472, para. 3.

[20] *Internet-based TRS Certification Order*, 26 FCC Rcd at 10914-15, para. 37. The ability to issue conditional grants of certification "balances the need for continuity of service with the need to ensure that only qualified applicants for [Internet-based TRS] service are eligible to receive compensation from the TRS Fund for their provision of [Internet-based TRS] services." *Internet-based TRS Certification Order*, 26 FCC Rcd at 10914-15, para. 37.

[21] Application, Exh. A.

For these reasons, the Bureau grants ClearCaptions conditional certification to provide IP CTS after completion of the merger transaction, for a period not to exceed 24 months from the date of this Public Notice, pending the Commission's review of a forthcoming full certification application. This grant is subject to the condition that ClearCaptions must file an application for full certification, under the new ownership, within 15 days after the date the merger transaction is consummated.[22] This grant of conditional certification, which is without prejudice to the Commission's final determination on the anticipated full certification application, is dependent on the Commission verifying the information provided in that application and confirming the company's compliance with the Commission's minimum standards, a process that may include, but is not limited to, conducting one or more site inspections of the applicant's call centers facilities.

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 Stephen Wang at 202-418-1634, or Stephen.Wang@fcc.gov, of the Consumer and Governmental Affairs Bureau, Disability Rights Office.

-FCC-

[22] *See* Application at 1-3.

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 24-261
Released: March 14, 2024

COMMENT DATES FOR FURTHER NOTICE OF PROPOSED RULEMAKING ON TRS FUND COMPENSATION FOR VIDEO RELAY SERVICE

CG Docket Nos. 03-123, 10-51

Comment Date: April 15, 2024
Reply Comment Date: April 29, 2024

On September 28, 2023, the Federal Communications Commission (Commission) adopted a five-year compensation plan for the Video Relay Service (VRS), including additional per-minute compensation for Video-Text Service provided to consumers who are deafblind.[1] In a *Further Notice*, the Commission sought comment on whether and under what circumstances to provide compensation for other types of specialized services and on any rule changes needed to facilitate the provision of Video-Text Service or other forms of specialized services.[2]

On March 14, 2024, a summary of the *Further Notice* was published in the Federal Register.[3] Comments are due on or before **April 15, 2024**, and reply comments are due on or before **April 29, 2024**. Complete comment filing instructions are set forth in the *2023 VRS Compensation FNPRM*.[4]

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

For further information, contact Joshua Mendelsohn, Disability Rights Office, Consumer and Governmental Affairs Bureau, at 202-559-7304, or Joshua.Mendelsohn@fcc.gov.

- FCC -

[1] *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123, 10-51, Report and Order and Further Notice of Proposed Rulemaking, FCC 23-78, para. 107 (Sept. 28, 2023) (*Further Notice*).

[2] *Id.,* paras. 132-40.

[3] Federal Communications Commission, Video Relay Service Compensation, Proposed Rule, 89 Fed. Reg. 18586 (March 14, 2024).

[4] *Further Notice,* para. 147.

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

In the Matter of	)	
	)	ICFS File Nos.:
HawkEye 360, Inc.	)	SAT-MOD-20220906-00099
	)	SAT-AMD-20221014-00136
Application for Modification of License	)	
	)	Call Sign: S3042

ORDER

Adopted: March 13, 2024 Released: March 14, 2024

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

I. INTRODUCTION

1. In this Order, we address the request of Space Exploration Technologies Corp. (SpaceX), filed in an *ex parte* letter, that the Commission impose certain conditions on a license modification requested by HawkEye 360, Inc. (HE360).[1] We grant in part SpaceX's request that we impose conditions on this license, but deny that request insofar as it involves conditions that are not germane to the facts presented in this case. The grant in part of HE360's request for a license modification, as amended, for what is known as the "HE360" constellation, is contained in the attached grant stamp and includes relevant license conditions.[2]

II. BACKGROUND

2. On January 17, 2023, SpaceX filed a letter requesting that certain conditions that have been imposed on SpaceX's license to construct, deploy, and operate up to 7,500 satellites in its Second Generation (Gen2) constellation also be imposed on several pending non-geostationary satellite

[1] *See Policy Branch Information, Applications Accepted for Filing,* Public Notice, Report No. SAT-01681 (Nov. 18, 2022); ICFS File Nos. SAT-MOD-20220906-00099 and SAT-AMD-20221014-00136 (granted-in-part/deferred-in-part March 3, 2023, reissued March 13, 2023). *See also* Letter from David Goldman, Director of Satellite Policy, SpaceX, to Marlene H. Dortch, Secretary, FCC at 1 (dated Jan. 17, 2023) (SpaceX Letter). This letter was filed a month after the conclusion of the public notice period. Therefore we classify the letter, and SpaceX's subsequent response letter as an informal objections pursuant to section 25.154(b) of the Commission's rules. 47 CFR § 25.154(b). We find it is in the public interest in this case to address the relevant issues raised in the informal objections. This order does not address the Application for Review filed by SpaceX on April 3, 2023. *See* Space Exploration Holdings, LLC, Application for Review, ICFS File No. SAT-MOD-20220906-00099 and SAT-AMD-20221014-00136 (Apr. 3, 2023) (SpaceX Application for Review).

[2] This grant addresses HE360's requests specific to Clusters 8 and 9 and defers action on additional requests at this time. *See* attached grant stamp.

applications and petitions, including the instant HE360 modification application.[3] In support of its request, SpaceX cites concerns raised by the National Aeronautics and Space Administration (NASA) and the National Science Foundation (NSF) in its own licensing proceeding, as well as "space sustainability requirements" from its 7,500 satellite license. SpaceX argues, among other things, that concerns expressed by NASA in connection with the Commission's orbital debris proceeding suggest that any constellation of 25 or more satellites should be subject to additional debris mitigation requirements."[4] HE360 filed a responsive *ex parte* letter on February 16, 2023,[5] and SpaceX filed a further consolidated response directed to several of the NGSO applicants on March 31, 2023.[6]

III. DISCUSSION

3. We conclude that some adoption of conditions analogous to the conditions specified in the SpaceX grant, but suited for the specific and distinct factual scenario presented by the HE360 satellites, would serve the public interest. As part of the limited prior grant-in-part to HE360 related to deployment of three of its Cluster 7 satellites, we declined to adopt certain conditions,[7] but based on the additional operations contemplated under this license, which will apply to multiple additional satellite clusters, we conclude that at this time the adoption of certain additional conditions tailored to the HE360 operations are appropriate. We note that we took similar action in grants authorizing Planet Labs' Pelican satellites[8] and ICEYE's Second Traunche satellites.[9] We will assess the appropriateness of such conditions on a case by case basis as we continue to focus on this evolving deployment. Although this grant does not explicitly address SpaceX's application for review filed in connection with our prior grant in part for Cluster 7 satellites, we note that consistent with our approach to the Planet Labs and ICEYE systems, several of the conditions are applicable to the full constellation and therefore would apply to the

[3] *See* SpaceX Letter at 1; *see also Space Exploration Holdings, LLC*, *Request for Orbital Deployment and Operating Authority for the SpaceX Gen2 NGSO Satellite System*, Order and Authorization, FCC 22-91 (2022) (SpaceX Gen2 Order). The SpaceX Letter requests that the FCC impose the following license conditions: (1) file semi-annual reports on collision avoidance maneuvers and satellite disposal, including any difficulties or failures related thereto; (2) apply a new performance-based method for assessing disposal failures that accounts for both the number of failed satellites and their entire passive decay time; (3) communicate and collaborate with NASA to promote space safety and sustainability; (4) take all possible steps to assess and mitigate collision risk after receiving a conjunction warning from the 19th Space Defense Squadron or other source; and (5) coordinate with NSF to reach a mutually acceptable agreement to mitigate the impact of its satellites on optical ground-based astronomy, with associated annual reporting requirements). *Id*.

[4] SpaceX Letter at 2.

[5] *See* Letter from Tony Lin, Counsel to HawkeEye 360, Inc., to Marlene H. Dortch, Secretary, FCC (filed Feb. 16, 2023) (HE360 Response Letter).

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

[7] *See* ICFS File Nos. SAT-MOD-20220906-00099, SAT-AMD-20221014-00136, granted-in-part March 3, 2013, reissued March 13, 2023 (*March 2023 Grant Stamp*).

[8] *Planet Labs PBC Application for Modification of License, ICFS File No. SAT-MOD-20220421-00042*, Order, DA 23-799 (Aug. 31, 2023; grant stamp conditions corrected/reissued Sept. 28, 2023). *See also Policy Branch Information, Action Taken*, Public Notice, DA 23-803, Report No. SAT- 01755.

[9] *ICEYE US, Inc. Application to deploy and operate space stations filed under the FCC streamlined small satellite licensing process, 47 CFR § 25.122, ICFS File No. SAT-LOA-20230404-00070*, Order, DA 23-797 (Aug. 31, 2023; grant stamp conditions corrected/reissued Sept. 28, 2023). *See also Policy Branch Information, Action Taken*, Public Notice, DA 23-803, Report No. SAT- 01755.

HE360 Cluster 7 satellites as well.[10] HE360 satellites are planned to operate at altitudes between 475 and 615 km.[11] The satellites in Clusters 8, 9, and beyond will employ a water-based propulsion system.[12] With respect to the Cluster 8 and 9 launch, HE360 has stated that it will be targeting a deployment orbit of 590 km (±20 km), with an inclination between 45 and 46 degrees.[13] In a jointly filed *ex parte*, HE360 and SpaceX stated that that they have resolved physical coordination matters for their respective systems, with respect to upcoming HE360 launches.[14] In addition, HE360 and SpaceX informed that Commission that they have established an informal process moving forward for the physical coordination of future HE360 satellites and SpaceX satellites.[15]

4. In considering SpaceX's first generation satellite system the Commission defined a disposal failure as any case in which control of a satellite is lost at an altitude of 350 kilometers or greater.[16] Under the circumstances, given HE360's planned deployment of the Cluster 8 and 9 satellites directly to an altitude of 590 km (±20 km), we adopt a condition that HE360 report any loss of control of its satellites similarly when the satellites are above 350 km.[17] Based on the information reported, the license may be subject to additional terms and conditions, including additional reporting obligations, limitations on additional deployments, requirements for early removal of satellites from orbit, or any other appropriate conditions to limit collision risk.[18] We also note that HE360 has experienced propulsion system failures for some satellites that have been deployed to date.[19] Inclusion of a 100 post-failure object years metric in this instance, as with SpaceX's Second Generation grant, identifies a relevant metric where additional Commission action would be necessary before deployment of additional HE360

[10] *See generally* SpaceX Application for Review (requesting that the Commission review the grant stamp released on March 3, 2023 and reissued March 13, 2023, which included conditions applicable to HE360's Cluster 7 deployment).

[11] *See* ICFS File No. SAT-MOD-20220906-00099, Narrative at 2 (HE360 Application). HE360 subsequently filed a modification application seeking to update the authorized operational altitudes for its satellites to between 400 and 615 kilometers. ICFS File No. SAT-MOD-20230724-00181 (filed July 24, 2023). This grant-in-part does not take action on that application request.

[12] HE360 Application, Narrative at 1.

[13] Letter from Tony Lin, Counsel to Hawkeye360 to Marlene H. Dortch, Secretary, FCC (filed Mar. 13, 2024).

[14] *See* Letter from David Goldman, Senior Director of Satellite Policy, and Dennis Burnett, EVP, General Counsel, HawkEye 360, Inc. to Marlene H. Dortch, Secretary, FCC (filed Jul. 12, 2023) (Joint SpaceX/HE360 *Ex Parte*).

[15] *Id*.

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

[17] *See* attached grant stamp at condition 37.

[18] There are potentially material differences between the HE360 constellation and the Starlink constellation that may warrant differing treatment of the two constellations. These include smaller satellite size, and consequent lower collision risk when comparing non-maneuverable satellites, as well as a smaller total number of satellites. There is also no indication that the HE360 satellites will be "checked out" at lower altitudes, so immediate identification of any issues with effective maneuverability, rather than periodic reporting based upon check out at lower altitudes, is warranted.

[19] *See* ICFS File No. SAT-STA-20230724-00182, Exhibit A Narrative at 1 (noting irreparable failures in the propulsion systems of each of the Cluster 4 spacecraft).

satellites following a certain level of failure.

5. We also condition HE360 to provide information regarding potential conjunction events during the reporting period for its satellites, particularly with respect to any difficulties encountered in the collision avoidance process. We believe that such information can help identify potential issues in operator-to-operator coordination.[20]

6. There have been no concerns raised in this proceeding by NASA, NSF, or any other party except SpaceX regarding the instant application. While HE360 has provided information in connection with its application regarding its initial outreach to the NASA CARA office,[21] we are including conditions requiring continued coordination with NASA, including operator-to-operator coordination of physical operations. Additionally, we note that HE360 has not provided any information regarding whether it has coordinated with NSF, and we condition this grant to require HE360 to coordinate with NSF as well.[22] We conclude that it is in the public interest for HE360 to bear the responsibility of ensuring that these coordinations, which are separate from coordination of spectrum use, have been completed with these potentially interested federal agencies.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED that the HawkEye 360, Inc. request for license modification is GRANTED-IN-PART and DEFERRED-IN-PART,[23] pursuant to section 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. § 303(r), and sections 0.51 and 0.261of the Federal Communication Commission's rules, 47 CFR §§ 0.51 and 0.261).

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

FEDERAL COMMUNICATIONS COMMISSION

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

[20] *See also* Joint SpaceX/HE360 *Ex Parte*.

[21] *See* Letter from Tony Lin, Counsel to HawkeEye 360, Inc., to Marlene H. Dortch, Secretary, FCC (filed Feb. 28, 2023) at 2.

[22] *See* condition 39 in the attached grant stamp.

[23] *See* conditions in the attached grant stamp.

ATTACHMENT TO GRANT
HawkEye 360, Inc.
ICFS File Nos. SAT-MOD-20220906-00099, SAT-AMD-20221014-00136

ICFS File No(s):	SAT-MOD-20220906-00099 SAT-AMD-20221014-00136[24]	**GRANTED IN PART/ DEFERRED IN PART With Conditions** **International Bureau Satellite Division**
Licensee/Grantee:	HawkEye 360, Inc. (HE360)	
Call Sign:	S3042	
Satellite Name:	HE360 constellation	
Orbital Location: (required station-keeping tolerance)	Non-geostationary satellite orbit (NGSO) constellation with operational apogee and perigee altitudes from 475 to 615 km (nominal 575 km) with near zero eccentricity. Includes 24 satellites with 97-98 degree inclination (near-polar); 30 satellites with 35-50 degree inclination (mid-inclination); and six satellites with 0-28.5 degrees inclination (near equatorial).	
Administration:	United States of America	
Nature of Service:	Earth Exploration Satellite Service (EESS)	
Scope of Grant:	Modification of license for six additional satellites, identified as Clusters 8 and 9, to include technical parameters and rule waivers previously granted for Cluster 7,[25] and expansion of the mid-inclination orbit range to 35-50 degrees. For Cluster 9, the license is also modified to specify: (1) additional antennas capable of receiving signals in the 30-88 MHz and 120-800 MHz band; (2) revised parameters for X-band (8025-8400 MHz) data downlink operations; (3) the addition of L-band inter-satellite links in the 1626.5-1645.5 MHz, 1646.5-1660.5 MHz, 1525-1544 MHz, and 1545-1559 MHz (space-to-space) frequency bands for relay communications with the Inmarsat Broadband Global Access Network (BGAN); and (4) starting with Cluster 9, removal of 2200-2290 MHz operations for emergency telemetry, tracking, and command.	
Previous Grant(s):	Authority to construct, deploy, and operate up to 80 HE360 satellites, limited to 15 operational at any one time, with apogee and perigee altitudes from 500 to 650 km (nominal 575 km) and with inclinations of 97-98 degrees.[26] Satellites will operate in	

[24] This application, as amended, was previously granted-in-part, and deferred-in-part. *See* ICFS File Nos. SAT-MOD-20220906-00099, SAT-AMD-20221014-00136, granted-in-part March 3, 2013, reissued March 13, 2023 (*March 2023 Grant Stamp*). In that prior grant, we deferred action on the portions of HE360's application for license modification for deployments beyond "Cluster 7". We defer action at this time regarding modification to the license for satellites deployed in Clusters 10 and after. This grant is also without prejudice to any action taken in connection with HE360's pending further modification request in ICFS File No. SAT-MOD-20230724-00181. On January 17, 2023, Space Exploration Technologies Corp. (SpaceX) filed an *ex parte* letter. Letter from David Goldman, Director of Satellite Policy, SpaceX, to Marlene H. Dortch, Secretary, FCC at 1 (dated Jan. 17, 2023). These issues are fully addressed in the accompanying Order.

[25] *See March 2023 Grant Stamp* (modification of license to specify, for three satellites identified as Cluster 7: (1) additional antennas capable of receiving signals in certain UHF frequencies (250-350 MHz); (2) a change in the authorized satellite operational altitude range from 500-615 km to 475-615 km; and (3) changes in operations due to modification of the satellite propulsion system).

[26] HE360's Constellation was preceded by an experimental earth exploration three-satellite cluster called Pathfinder, which was separately coordinated with federal operators. *See* ELS File No. 0024-EX-CN-2017, as modified 0055-EX-CM-2019. The Pathfinder satellites successfully launched on December 3, 2018 and operational in the 2240 MHz, 2246 MHz, 2256 MHz (space-to-Earth), 432-438 MHz (Earth-to-space), 2410 MHz (space-to-space), and 8050 MHz, 8175 MHz, and 8300 MHz (space-to-Earth) frequency bands. Authorization for continued operations of

	clusters of 3 or 4 satellites. *See* ICFS File No. SAT-LOA-2019102-00001 (grant in part Dec. 10, 2019). Modification of license to specify: (1) an additional antenna, beginning with the second cluster, capable of receiving signals transmitted from terrestrial sources (Earth-to-space) in frequency bands used by the Global Positioning System (GPS),[27] for the purpose of detecting terrestrial transmitters that are interfering with GPS signals; and (2) an additional antenna, beginning with the fourth cluster, capable of receiving signals in the 600 MHz to 10 GHz (Earth-to-space) frequency range. *See* ICFS File No. SAT-LOA-20190102-00001 (grant in part Dec. 14, 2020). Modification of license to specify an additional antenna, capable of receiving signals in the 840-960 MHz and 1280-1410 MHz bands, and to reflect the applicant's specification of the "Enpulsion IFM06-02"; both changes beginning with the third cluster or later.[28] *See* ICFS File No. SAT-MOD-20210114-00010 (granted May 25, 2021). Authorization for up to 174 HE360 satellites total,[29] limited to 60 operational at any one time, with apogee and perigee altitudes from 500 to 615 km (nominal 575 km) and with inclinations of 0-28.5, 40-50 and 97-98 degrees. Satellites will operate in clusters of 3 satellites.[30] Modification of license to specify, for three satellites identified as Cluster 7: (1) additional antennas capable of receiving signals in certain UHF frequencies (250-350 MHz); (2) a

this first cluster of three Pathfinder satellites under Part 25 of the Commission's rules was included in the prior grant dated December 10, 2019. *See* ICFS File No. SAT-LOA-20190102-00001 (granted-in-part Dec. 10, 2019).

[27] The antenna is capable of receiving signals in the frequency bands used by the GPS L1, L2, and L5 signals (space-to-Earth), with center frequencies of 1575.42 MHz, 1227.60 MHz, and 1176.45 MHz, but which are being transmitted by non-GPS sources in the Earth-to-space direction. *See* ICFS File No. SAT-AMD-20200728-00090, Letter from Tony Lin, Counsel for Hawkeye360, Inc. to Marlene H. Dortch, Secretary, FCC (Oct. 14, 2020).

[28] *See Policy Branch Information, Satellite Space Applications Actions Taken*, Public Notice, DA 21-630, Report No. SAT-01557 (ICFS File No. SAT−MOD−20210114−00010).

[29] *See* ICFS File No. SAT-LOA-20190102-00001, Letter from Dr. Michael Mineiro, V.P. Legal, Regulatory, and Government Affairs, HawkEye 360, to Samuel Karty, International Bureau, Satellite Policy Branch, FCC (dated Apr. 15, 2022) (requesting a total of 174, rather than 220 satellites, over the term of the license, with plans to operate up to 60 satellites simultaneously). HE360 submitted a letter stating that it has completed pre-coordination for its full constellation with relevant government agencies. *See* ICFS File Nos. SAT-LOA-20190102-00001; SAT-MOD-20210114-00010, Letter from Dr. Michael Mineiro, V.P. Legal, Regulatory, and Government Affairs, HawkEye 360, to Merissa Velez, Chief, Satellite Policy Branch, Satellite Division, FCC (dated Jan. 18, 2022). We had previously deferred action on its application, as requested by HE360, insofar as the application requested authorization of up to 220 satellites, i.e., in excess of 80 satellites. *See* ICFS File No. SAT-LOA-20190102-00001, Letter from Dr. Michael Mineiro, V.P. Legal, Regulatory, and Government Affairs, HawkEye 360, to Stephen Duall, Chief, Satellite Policy Branch, Satellite Division, FCC (dated Dec. 4, 2019).

[30] The application, as amended, was previously granted-in-part, and deferred-in-part. *See Policy Branch Information, Satellite Space Station Applications Actions Taken,* Public Notice, DA No. 19-1268, Report No. SAT-01432 (Dec. 13, 2019); *Policy Branch Information, Satellite Space Applications Actions Taken*, Public Notice, DA No. 20-1502, Report No. SAT-01518 (Dec. 18, 2020) (ICFS File Nos. SAT-LOA-20190102-00001; SAT-AMD-20200728-00090). The portion of HE360's request that had been granted was subsequently modified. *See* ICFS File No. SAT-MOD-20210114-00010 (granted May 25, 2021). The license for HE360's full constellation was granted on October 20, 2022. *See Policy Branch Information, Satellite Space Station Applications Actions Taken,* Public Notice, DA No. 22-1111, Report No. SAT-01676 (Oct. 21, 2022).

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ICFS File Nos. SAT-MOD-20220906-00099, SAT-AMD-20221014-00136

change in the authorized satellite operational altitude range from 500-615 km to 475-615 km; and (3) use of a water-based propulsion system.

Service Area(s): Global. *See* Schedule S Tech Report at Item S6.

Frequencies:[31]

8025-8400 MHz (space-to-Earth) (data downlink):[32,12]

Downlink #1 for satellites 1-60 (20 clusters of 3 satellites)

Center Frequencies	Emission Bandwidths	# near-polar Satellites	# mid-inclination Satellites	# near-equatorial Satellites
8075.0 MHz	8.0 to 80.0 MHz	8	10	2
8165.0 MHz	8.0 to 80.0 MHz	8	10	2
8255.0 MHz	8.0 to 80.0 MHz	8	10	2

Downlink #2 for satellites 22-60, plus replenishment for satellites 1-21 (20 clusters of 3 satellites)

Center Frequencies	Emission Bandwidths	# near-polar Satellites	# mid-inclination Satellites	# near-equatorial Satellites
8090.0 MHz (LHCP only)	105.0 MHz	8	10	2
8210.0 MHz (LHCP)	105.0 MHz	8	10	2
8210.0 MHz (RHCP)	105.0 MHz	8	10	2

2025-2110 MHz (Earth-to-space) (data uplink):

Uplink for satellites 1-9 (3 clusters of 3 satellites)

Center	Emission Bandwidths	# near-	# mid-	# near-

[31] HE360 satellites have antennas capable of receiving in the following bands: 100-182 MHz (VHF Dipole): 382-422 MHz (UHF Dipole): 1090 MHz (ADS-B Patch): 1.6-1.7 GHz (L-band Patch); 2.9-3.1 GHz (S-band Patch): 1.4-7.0 GHz (Molded Button Antenna); 6.0-18.0 GHz (Horn Antenna). Starting with HE360 satellite cluster two, the satellites include antennas capable of receiving signals in the frequency bands used by the GPS L1 (center frequency 1575.42 MHz), L2 (center frequency 1227.60) and L5 (center frequency 1176.45 MHz) signals (GNSS Antenna). Starting with HE360 satellite cluster four, the Molded Button Antenna has been replaced by a Spiral-Backed Antenna capable of receiving in the 600 MHz-10 GHz frequency bands. Starting with HE360 satellites in Cluster 7, the satellites will include antennas capable of receiving signals in the 250-350 MHz frequency band, and the 1090 MHz (ADS-B Patch) antenna will be removed. Starting with HE360 satellites in Cluster 9, the satellites will include additional antennas capable of receiving signals in the 30-88 and 120-800 MHz frequency bands.

[32] Starting with HE360 satellites deployed in Cluster 9, the specifications for this X-band downlink are modified as described in ICFS File Nos. SAT-MOD-20220906-00099 and SAT-AMD-20221014-00136. This includes modifications to the center frequencies. *See* ICFS File No. SAT-AMD-20221014-00136, Narrative at Attachment 2. Except as modified by this grant, the information in this section of the grant document reflects information previously included in what was formerly Appendix A. *See March 2023 Grant Stamp.*

Frequencies		polar Satellites	inclination Satellites	equatorial Satellites
2068.2 MHz	1.33 MHz and 2.66 MHz	3	0	0
2062.7 MHz	1.33 MHz and 2.66 MHz	3	0	0
2077.4 MHz	1.33 MHz and 2.66 MHz	3	0	0

Uplink for satellites 10-60, plus replenishments for satellites 1-9 (20 clusters of 3 satellites)

Center Frequencies	Emission Bandwidths	# near-polar Satellites	# mid-inclination Satellites	# near-equatorial Satellites
2046.5 MHz	1.33 MHz and 2.66 MHz	8	10	2
2049.3 MHz	1.33 MHz and 2.66 MHz	8	10	2
2075.0 MHz	1.33 MHz and 2.66 MHz	8	10	2

Telemetry, Tracking and Command:

8025-8400 MHz (space-to-Earth) (telemetry/tracking):

Downlink for satellites 1-60 (20 clusters of 3 satellites)

Center Frequencies	Emission Bandwidths	# near-polar Satellites	# mid-inclination Satellites	# near-equatorial Satellites
8291.0 MHz	128 kHz to 4.0 MHz	8	10	2
8297.0 MHz	128 kHz to 4.0 MHz	8	10	2
8303.0 MHz	128 kHz to 4.0 MHz	8	10	2

2200-2290 MHz (space-to-Earth) (emergency backup telemetry/tracking)[16]

Emergency Backup TT&C Downlink for satellites 1-21 (7 clusters of 3 satellites):

Center Frequencies	Emission Bandwidths	# near-polar Satellites	# mid-inclination Satellites	# near-equatorial Satellites
2242.0 MHz	256 kHz to 4.0 MHz	5	2	0
2254.0 MHz	256 kHz to 4.0 MHz	5	2	0
2260.0 MHz	256 kHz to 4.0 MHz	5	2	0

2025-2110 MHz (Earth-to-space) (command):

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Command uplink for satellites 1-15 (5 clusters of 3 satellites)

Center Frequencies	Emission Bandwidths	# near-polar Satellites	# mid-inclination Satellites	# near-equatorial Satellites
2063.965 MHz	120 kHz and 180 kHz	4	1	0
2064.965 MHz	120 kHz and 180 kHz	4	1	0
2065.965 MHz	120 kHz and 180 kHz	4	1	0

Command uplink for satellites 16-60, plus replenishments for satellites 1-15 (20 clusters of 3 satellites)

Center Frequencies	Emission Bandwidths	# near-polar Satellites	# mid-inclination Satellites	# near-equatorial Satellites
2052.1 MHz	120 kHz and 180 kHz	8	10	2
2053.0 MHz	120 kHz and 180 kHz	8	10	2
2053.7 MHz	120 kHz and 180 kHz	8	10	2

432-438 MHz (Earth-to-space) (backup command; first cluster launched on December 3, 2018 only)

Inter-satellite links:[33]

First cluster launched on December 3, 2018 only:
2410 MHz (space-to-space)

Cluster 9 and satellites 22-60:
1626.5-1645.5 MHz (transmit) (space-to-space) (inter-satellite link), 200 kHz bandwidth
1646.5-1660.5 MHz (transmit) (space-to-space) (inter-satellite link), 200 kHz bandwidth
1525-1544 MHz (receive) (space-to-space) (inter-satellite link), 200 kHz bandwidth
1545-1559 MHz (receive) (space-to-space) (inter-satellite link), 200 kHz bandwidth

Receive only:

156.7625-156.7875 MHz Automatic Identification System (AIS 3)
156.8125-156.8375 MHz (AIS 4)

[33] HE360 confirms that its terminals operating on the Inmarsat L-band frequencies have an out-of-band EIRP density that complies with the limits listed in Table 8 of ETSI EN 301 473 V2.1.2 and has the additional constraint that the EIRP density will not exceed -45 dBW/30 kHz in the frequency bands lower than 1626.5 MHz. Further, HE360 commits to operating those terminals subject to such limitations. *See* ICFS File Nos. SAT-MOD-20220906-00099 and SAT-AMD-20200728-00090, Letter from Tony Lin, Counsel for Hawkeye360, Inc. to Marlene H. Dortch, Secretary, FCC (Jan. 13, 2023).

ATTACHMENT TO GRANT

HawkEye 360, Inc.

ICFS File Nos. SAT-MOD-20220906-00099, SAT-AMD-20221014-00136

	161.9625-161.9875 MHz (AIS 1) 162.0125-162.0375 MHz (AIS 2) 406.0-406.1 MHz Emergency Position-Indicating Radiobeacon (EPIRB) 156.5125-156.5375 MHz Digital Selective Calling (DSC) 1087.7-1092.3 MHz ((Earth-to-space) Automatic Dependent Surveillance-Broadcast (ADS-B)) Signals with center frequencies of 1575.42 MHz, 1227.60 MHz, and 1176.45 MHz (Earth-to-space)

Unless otherwise specified herein, operations under this grant must comport with the legal and technical specifications set forth by the applicant or petitioner and with the Federal Communications Commission's rules not waived herein. This grant is also subject to the following conditions:[34]

1. HE360 must prepare the necessary information, as may be required, for submission to the International Telecommunication Union (ITU) to initiate and complete the advance publication, coordination, due diligence, and notification process for these space stations, in accordance with the ITU Radio Regulations. HE360 will be held responsible for all cost-recovery fees associated with ITU filings. No protection from interference caused by radio stations authorized by other administrations is guaranteed unless coordination and notification procedures are timely completed or, with respect to individual administrations, by successfully completing coordination agreements. Any radio station authorization for which coordination has not been completed may be subject to additional terms and conditions as required to effect coordination of the frequency assignments of other administrations. *See* 47 CFR § 25.111(b).

2. Upon receipt of a conjunction warning from the 18th Space Control Squadron or other source, HE360 must review and take all possible steps to assess the collision risk, and mitigate collision risk if necessary. As appropriate, steps to assess and mitigate should include, but are not limited to: contacting the operator of any active spacecraft involved in such warning; sharing ephemeris data and other appropriate operational information with any such operator; modifying spacecraft attitude and/or operations.

3. The number of simultaneously operational satellites must not exceed 60. This number does not include the three Pathfinder satellites launched on December 3, 2018, under grants of experimental authorizations pursuant to Part 5 of the Commission's rules.[35] These three Pathfinder satellites must operate under this Part 25 authorization pursuant to the terms and parameters, including earth station power level agreements and mitigation activities, coordinated with Federal users as part of those grants of experimental licenses.[36]

4. For S-band command uplink operations in the 2025-2110 MHz band, HE360 earth stations must operate a duty cycle of no more than 10% to ensure that the constellation complies with interference criteria contained in Recommendation ITU-R SA. 1155-2.[37]

5. This grant includes authority to deploy and operate technically identical replacement satellites during the term of the license, pursuant to 47 CFR § 25.113(i). Based on information provided by the applicant, the anticipated total number of satellites to be deployed during the license term would be 174. Deployment involving a different satellite bus will require the filing and approval of a license modification request in order to, inter alia,

[34] With respect to those frequency bands shared with Federal spectrum users, Federal operators have indicated that Federal missions brought into use after issuance of this grant may prevent future modification or renewal.

[35] *See supra* note 4. We note that the total number of simultaneously operational satellites refers specifically to those satellites operating in frequencies other than TT&C frequencies and does not include non-operational satellites that continue to operate in TT&C frequency bands as part of approved post-mission disposal plans.

[36] *See, e.g.,* ELS File No. 0024-EX-CN-2017, as modified 0055-EX-CM-2019.

[37] As noted *supra*, starting with HE360 satellites in Cluster 9, HE360 plans to remove the S-band transmitter used to provide emergency backup, telemetry (2200-2290 MHz).

address any differences in debris risks due to changes in the physical characteristics of the spacecraft.[38]

6. HE360 must comply with any new rules adopted by the Commission as a result of the rulemaking in IB Docket No. 18-313.[39]

7. HE360's space-to-Earth and Earth-to-space operations shall be strictly limited to durations when the HE360 space stations referenced within this license request are visible to the corresponding earth station locations listed in Appendix A of the attachment to this grant, noting the additional restrictions within this grant.

8. We grant, on our own motion, a waiver of the U.S. Table of Frequency Allocations, 47 CFR § 2.106(a), to allow non-conforming use of the 2200-2290 MHz band for HE360 to conduct telemetry and tracking,, subject to the condition that HE360 operates on a non-interference basis, accepts any interference from authorized services in these bands, and complies with the other conditions below regarding operations in these bands. HE360 intends to operate TT&C in these frequencies but will not operate in the EESS using this frequency band. The 2200-2290 MHz band is allocated to the space operation (space-to-Earth) and space research (space-to-Earth) services in the U.S. Table of Frequency Allocations, 47 CFR § 2.106(a), for federal use only.[40] In this instance we find good cause to waive the Table of Allocations to allow HE360 to operate command links only with its satellites based on HE360's coordination with federal users in the frequency band. Additionally, HE360 shall be aware that non-Federal space-to-Earth transmissions in the 2200-2290 MHz are not permitted to earth stations within the US&P. Based on HE360's coordination with federal users in the frequency band, which should ensure that any authorized federal users are protected from harmful interference, we find good cause to waive the U.S. Table of Frequency Allocations to allow HE360 to operate telemetry and tracking with its satellites in the 2200-2290 MHz band.

9. On our own motion, we grant a waiver of the U.S. Table of Frequency Allocations, 47 CFR § 2.106(a), for HE360 to conduct non-Federal space-to-space EESS operations at 2410 MHz with the first HE360 satellite cluster launched on December 3, 2018 only, subject to the condition that operations in this band do not cause harmful interference and that HE360 may not claim protection from interference. The 2400-2417 MHz band, *inter alia*, is allocated to the amateur service on a primary basis in the U.S. Table of Frequency Allocations, 47 CFR § 2.106(a), for non-Federal use.

10. On our own motion, we grant a waiver of the U.S. Table of Frequency Allocations, 47 CFR § 2.106(a), for HE360 to conduct non-Federal Earth-to-space operations in the 432-438 MHz band, with the first HE360 satellite cluster launched on December 3, 2018 only, subject to the condition that operations in this band do not cause harmful interference and that HE360 may not claim protection from interference. The 432-438 MHz band is allocated to the Earth exploration-satellite service (active) on a secondary basis in the U.S. Table of Frequency Allocations, 47 CFR § 2.106(a), (c)(397), for Federal use only.

11. Power flux-density from HE360's operations in the 8025-8400 MHz band must not exceed the limits in No. 22.5 and Table 21-4 of the International Telecommunication Union's Radio Regulations. In addition, power spectral density levels at space research service earth stations from space-to-Earth operations in the 8025-8400 MHz band must not exceed the limits/protection criteria in Recommendation ITU-R SA.1157-1, and the guidelines for systems operating in the 8025-8400 MHz band in Recommendation ITU-R SA.1810 must be

[38] Deployment of satellites with different propulsion system characteristics, will require grant of a license modification.

[39] *See Mitigation of Orbital Debris in the New Space Age, Notice of Proposed Rulemaking,* FCC 18-159, 33 FCC Rcd 11352 (2018); *Mitigation of Orbital Debris in the New Space Age, Report and Order and Further Notice of Proposed Rulemaking,* FCC 20-54, 35 FCC Rcd 4156 (2020).

[40] Although there are additional footnote allocations for non-Federal space research, space operations, and EESS, these non-federal allocations are limited to circumstances not relevant to HE360's operations. *See* 47 CFR § 2.106(a)(c)(96) and (c)(303).

followed.

12. Operations pursuant to this license must not cause harmful interference to stations operating in the 2025-2110 MHz band in accordance with the United States Table of Frequency Allocations. *See* 47 CFR § 2.106(a), (c)(347).

13. Transmissions in the 2025-2110 MHz, 8025-8400 MHz, and 2200-2290 MHz bands[41] may only be made to/from earth stations coordinated with federal agencies, including National Aeronautics and Space Administration (NASA), Department of Commerce/National Oceanic and Atmospheric Administration (DOC/NOAA), and the United States Air Force Spectrum Management Office (AFSMO). Any use of Federal ground stations shall be coordinated by HE360's federal government customers with AFSMO (jimmy.nguyen@us.af.mil), NASA (HQ-SatCoord@mail.nasa.gov) and DOC/NOAA (edna.prado@noaa.gov). A list of coordinated non-Federal earth stations is attached as Appendix A. HE360 shall provide the FCC with an updated list of coordinated non-Federal earth stations within ten business days following any changes to that list.[42]

14. Earth-to-space transmissions in the 2025-2110 MHz band to HE360 satellites must be coordinated with the SBE (Society of Broadcast Engineers).

15. Transmissions in the 2025-2110 MHz, 2200-2290 MHz, and 8025-8400 MHz bands are limited to the center frequencies and emission bandwidths coordinated with Federal users set forth in the Frequencies section of this grant.

16. In the 2025-2110 MHz band, HE360 shall comply with the following limitations:

a. The primary uplink (Earth-to-space) emission bandwidths shall be limited to 170 kHz, 1.33 MHz, and 2.66 MHz. All uplink (Earth-to-space) 2.66 MHz emission bandwidth transmissions shall be limited to a duty cycle of no more than 10% per earth station per satellite.

b. All uplink (Earth-to-space) transmissions to HE360 satellites using a center frequency of 2046.5 MHz and emission bandwidth of 1.33 MHz from any earth station located in the Northern hemisphere at latitudes greater than 60 degrees or in the Southern hemisphere at latitudes below 50 degrees (e.g. above 60N or below 50S) shall cease transmissions when the NASA PUNCH satellites (4 total) are within view of the respective earth station.

c. All uplink (Earth-to-space) transmissions using center frequencies of 2064.965 MHz and 2065.965 MHz shall be limited to a duty cycle of less than 4% per earth station per satellite.

d. All uplink (Earth-to-space) transmissions using center frequencies of 2053.0 MHz, 2053.7 MHz, 2077.4 MHz, and 2075.0 MHz shall cease transmissions during the Artemis-IV and later Artemis missions from launch to launch + 48 hours.

17. Power flux-density levels at the surface of the Earth resulting from space-to-Earth operation in the 2200-2290 MHz band must not exceed the limits in Table 21-4 of the ITU Radio Regulations, and the power spectral density levels at space research service earth stations resulting from space-to-Earth operations in the 2200-2290 MHz band must not exceed the protection criteria in Recommendation ITU-R SA.1157-1 and Recommendation ITU-R SA.609-2.

[41] As noted *supra*, starting with HE360 satellites in Cluster 9, HE360 plans to remove the S-band transmitter used to provide emergency backup, telemetry downlinks (2200-2290 MHz).

[42] A list of earth stations already coordinated with federal agencies is attached as Appendix A to this grant.

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HawkEye 360, Inc.
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18. All downlink (space-to-Earth) operations in the 2200-2290 MHz band shall be restricted to communication with earth stations identified in Appendix A that are located outside the US&P.[43]

19. In the event a spacecraft emergency requires activation of the emergency backup downlink (space-to-Earth) capability using center frequencies of 2242.0 MHz, 2254.0 MHz, or 2260.0 MHz, HE360 shall immediately notify the NASA JSC Spectrum Management (jsc-dl-spectrum-management@mail.nasa.gov) and Travis Inghram (HQ-SatCoord@mail.nasa.gov). Emergency backup downlink operations in the 2200-2290 MHz band shall be limited to spacecraft emergency situations only, and all other usage is not authorized.

20. All reception must comport with the requirements on unauthorized publication or use of communications in section 705 of the Communications Act of 1934, as amended (47 U.S.C. § 605). This license grant does not constitute an "authorization" with respect to the activities specified in section 705 of the Communications Act or in related provisions of chapter 119, Title 18, United States Code.

21. The U.S. Table of Frequency Allocations, Section 2.106(a), is waived with respect to reception of ADS-B signals in the 1087.7-1092.3 MHz frequency band, for satellites through Cluster 8. This band was allocated internationally for the aeronautical mobile-satellite (R) service (AMS(R)S) (Earth-to-space) on a primary basis, at WRC-15, and is limited to the space station reception of ADS-B emissions from aircraft transmitters that operate in accordance with recognized international aeronautical standards. Stations operating in the AMS(R)S shall not claim protection from stations operating in the aeronautical radionavigation service. Resolution 425 (WRC-15) shall apply.[44] Any future protection of ADS-B reception will be governed by the relevant status in the Table of Frequency Allocations and must be in accordance with any subsequent rulemaking proceedings to implement any new domestic allocations or service rules.

22. The U.S. Table of Frequency Allocations, Section 2.106(a), is waived with respect to reception of AIS signals in the 156.7625-156.7875 MHz (AIS 3), 156.8125-156.8375 MHz (AIS 4), 161.9625-161.9875 MHz (AIS 1) and 162.0125-162.0375 MHz (AIS 2).[45] As a condition of this waiver, HE360 must not claim protection for reception of messages in the 156.0125-162.0375 MHz frequency band that is not in accordance with the Table of Frequency Allocations for the pertinent area and may only claim protection to the extent provided by the status of the reception under the Table of Frequency Allocations.

23. HE360 may claim protection for reception in the 156.7625-162.0375 MHz band only to the extent permitted under the U.S. Table of Frequency Allocations for domestic operations or the ITU Radio Regulations for international operations, as of the time of operation. Operations in the 156.7625-162.0375 MHz band must be in accordance with any Commission rulemakings subsequent to the release of this license that implement any new domestic allocations or service rules for these bands.[46]

24. The U.S. Table of Frequency Allocations, 47 CFR § 2.106(a), is waived with respect to reception of the DSC signal in the 156.5125-156.5375 MHz frequency band on a non-conforming, non-harmful interference basis. The 156.5125-156.5375 MHz frequency band is allocated to Maritime Mobile on a primary basis for non-Federal

[43] *See also* condition 8.

[44] We previously found good cause to waive sections 2.102(a) and 2.106 to permit reception of ADS-B messages on an unprotected basis in the United States because doing so will not cause any interference or unreasonably preclude other services, and make the same finding with respect to Cluster 8.

[45] We previously found that the reception of AIS transmissions cannot cause harmful interference, and these transmissions will be present pursuant to existing authorizations using frequencies allocated to other services regardless of whether they are received by a HE360 satellite. We also concluded that the service HE360 proposes will serve the public interest by providing critical near real-time maritime data of interest for both government and commercial users. We make the same findings with respect to Clusters 8 and 9.

[46] *Iridium Order and Authorization*, 31 FCC Rcd at 8689, para. 50.

operations and in all ITU Regions.[47] In the United States, there is also limited use of this band by certain grandfathered public safety radio pool licensees.[48] As a condition of this waiver, HE360 must not claim protection for reception of messages in the 156.5125-156.5375 MHz frequency band that is not in accordance with the Table of Frequency Allocations for the pertinent area and may only claim protection to the extent provided by the status of the reception under the Table of Frequency Allocations.

25. The U.S. Table of Frequency Allocations, 47 CFR § 2.106(a), is waived with respect to reception of EPIRB signals in the 406-406.1 MHz frequency band. The 406-406.1 MHz frequency band is allocated for Mobile-Satellite Service (MSS) and is limited to low-power satellite emergency position-indicating radio beacons (EPIRB).[49] As a condition of this waiver, HE360 must not claim protection for reception of messages in the 406-406.1 MHz frequency band that is not in accordance with the Table of Frequency Allocations for the pertinent area and may only claim protection to the extent provided by the status of the reception under the Table of Frequency Allocations.

26. The U.S. Table of Frequency Allocations, § 2.106(a), is waived, to the extent necessary, with respect to reception of signals transmitted from terrestrial sources (Earth-to-space) in frequency bands used by the Global Positioning System (GPS). The frequency bands used by the GPS are allocated for Space-to-earth transmissions.[50]

27. HE360's request for a waiver of the U.S. Table of Frequency Allocations, 47 CFR § 2.106(a),[51] with respect to reception of inter-satellite signals from the Inmarsat satellite system in the 1525-1544 MHz and 1545-1559 MHz frequency bands is GRANTED, on an unprotected, non-interference basis.[52] Although the allocations in this frequency band do not include a directional indicator for space-to-space communications, reception by the HawkEye satellites of these frequencies will not in any way alter the interference environment, as the received signal will be indistinguishable in its technical characteristics from signals transmitted in the allocated space-to-

[47] 47 CFR § 2.106(a), (b)(111), (266), and (c)(52).

[48] 47 CFR § 2.106(a), (c)(266). We found that the reception of DSC transmissions cannot cause harmful interference, and these transmissions will be present pursuant to existing authorizations using frequencies allocated to other services regardless of whether they are received by a HE360 satellite. We also concluded that the service HE360 proposes will serve the public interest by providing near real-time maritime safety data. Exhibit A: Narrative at 44. We make the same findings with respect to Clusters 8 and 9.

[49] 47 CFR § 2.106(a), (b)(266). We found that the reception of EPIRB transmissions cannot cause harmful interference, and these transmissions will be present pursuant to existing authorizations using frequencies allocated to other services regardless of whether they are received by a HE360 satellite. We also concluded that the service HE360 proposes will serve the public interest by augmenting existing COSPAS-SARSAT architecture used to monitor and geolocate EPIRB distress signals. We make the same findings with respect to Clusters 8 and 9. The SARSAT (Search and Rescue Satellite Aided Tracking) system is operated by NOAA to detect and locate mariners, aviators, and recreational enthusiasts in distress. It uses NOAA satellites in low-earth and geostationary orbit to detect and locate distress signals and relay them from emergency beacons to a network of ground stations and the U.S. Mission Control Center, which processes the signals and alerts appropriate search and rescue authorities. SARSAT is part of the international COSPAS-SARSAT program. *See* http://www.sarsat.noaa.gov.

[50] We found that the reception of transmitted signals from terrestrial sources (Earth-to-space) in frequency bands used by the Global Positioning System (GPS) cannot cause harmful interference to actual GPS (Space-to earth) operations. We make the same findings with respect to Clusters 8 and 9.

[51] We note that waiver of 47 CFR § 25.112(a)(3) is unnecessary as this provision was removed from the Commission's rules effective Jan. 5, 2024. *See Space Innovation; Expediting Initial Processing of Satellite and Earth Station Applications, Report and Order and Further Notice of Proposed Rulemaking*, FCC 23-73 (Sept. 22, 2023) at para. 27; 88 Federal Register 84737 (Dec. 6, 2023).

[52] *See* Legal Narrative at 8-9.

Earth direction.

28. HE360's request for a waiver of the Table of Frequency Allocations, 47 CFR § 2.106(a), to receive inter-satellite signals from the Inmarsat satellite system in the 1626.5-1645.5 and 1646.5-1660.5 MHz frequency bands on an unprotected, non-interference basis, is GRANTED.[53] Additionally, we grant on our own motion waiver to of the Table of Frequency Allocations, 47 CFR § 2.106(a), to transmit inter-satellite signals to the Inmarsat satellite system in the 1626.5-1645.5 MHz and 1646.5-1660.5 MHz frequency bands on an unprotected, non-interference basis. The allocation for the Mobile-Satellite Service in which the Inmarsat system operates and that encompasses these bands does not include a space-to-space directional indicator. HE360 states that transmission on a non-conforming basis in the L-band frequencies will occur only on frequencies that Inmarsat assigns to the spaceborne Inmarsat BGAN terminals onboard the HE360 spacecraft. HE360 states that transmission on a non-conforming basis in the L-band frequencies will occur only on frequencies that Inmarsat assigns to the spaceborne Inmarsat BGAN terminals onboard the HE360 spacecraft. HE360 notes that these transmissions are approved and supported by Inmarsat and fall within its licensed spectrum.[54] As with its other operations, Inmarsat will assign channels to the spacecraft consistent with its coordination agreements with other operators in the band, ensuring that there is no harmful interference between these systems.[55] Inmarsat will maintain the same extent of positive control of HE360's operations as it does for its other L-band users and will thereby be able to address any unlikely interference issues as required by Section 25.287 of the Commission's Rules.

29. HE360 must maintain a U.S. point of contact available by telephone 24 hours per day, seven days per week, with the authority and ability to terminate operations authorized herein. The telephone number for this U.S. point of contact must also be provided to NTIA (ravery@ntia.doc.gov), DOC/NOAA (edna.prado@noaa.gov), and NASA (HQ-SatCoord@mail.nasa.gov).

30. HE360 shall provide the FCC and other federal agencies the initial orbital parameters (e.g. operating altitudes, inclination angle) for each cluster within 30 days following launch. Notification shall be provided to AFSMO (jimmy.nguyen@us.af.mil), NASA (HQ-SatCoord@mail.nasa.gov) and DOC/NOAA (edna.prado@noaa.gov).

31. Given the opportunity for additional entrants to operate in HE360's requested frequency bands, this grant includes the previously-granted waiver to HE360 of the modified processing round requirements of 47 CFR §§ 25.156 and 25.175.[56]

32. Because HE360 must comply with the technical requirements in Part 2 of the Commission's rules and the above-referenced power flux-density limits, which should prevent harmful interference to other operators in the band, this grant includes the previously-granted waiver of the default service rules in 47 CFR § 25.217(b).[57]

33. This license will become null and void if, at any time during the license term, there are no HE360 satellites operating.

34. In connection with the provision of service in any particular country, HE360 is obliged to comply with the applicable laws, regulations, rules, and licensing procedures of that country

35. HE360's three Pathfinder satellites were successfully launched on December 3, 2018 and are operational. *See* ELS File No. 0024-EX-CN-2017. Authorization for continued operations of the three Pathfinder satellites

[53] Legal Narrative at 8.

[54] *Id*. at 9.

[55] *Id*.

[56] *See DigitalGlobe, Inc.*, Order and Authorization, 20 FCC Rcd 15696 (Sat. Div., Int'l Bur. 2005) at para. 8.

[57] *Id.*, 20 FCC Rcd at 15702-03, para. 19.

under Part 25 of the Commission's rules is included in this grant. We find that warehousing concerns are addressed in this situation through the imposition of condition 25 above. Thus, we decline to impose milestone and bond obligations on HE360.

36. HE360 must coordinate physical operations of spacecraft with any operator using similar orbits, for the purposes of eliminating collision risk and minimizing operational impacts. The orbital parameters specified in this grant are subject to change based on such coordination.

37. HE360 must provide a semi-annual report, by January 1 and July 1 each year, covering the preceding six month period, respectively, from June 1 to November 30 and December 1 to May 31. The report should include the following: Number of conjunction events identified for any HE360 system satellites during the reporting period, and the number of events that resulted in an action (maneuver or coordination with another operator), as well as any difficulties encountered in connection with the collision avoidance process and any measures taken to address those difficulties.

HE360 must report any loss of control of HE360 satellites at altitudes above 350 km not less than 10 days following the loss of control.

Based on the information reported, the license may be subject to additional terms and conditions, including additional reporting obligations, limitations on additional deployments, requirements for early removal of satellites from orbit, or any other appropriate conditions to limit collision risk. In the event of HE360 satellite failures resulting in more than 100 post-failure object years, HE360 may not deploy any additional HE360 satellites until the Commission has approved a license modification that includes an updated orbital debris mitigation plan addressing reduction in the failure rate or mitigation of the risk of satellite failures.

38. HE360 must communicate and collaborate with NASA to support safety of both HE360 and NASA assets and to preserve long-term sustainable space-based communications services. HE360 must report on the progress of its communications and collaboration efforts to the Commission in its regular reports specified in condition 27, above. HE360 must coordinate and collaborate with NASA to promote a mutually beneficial space environment that would minimize impacts to NASA's science missions involving astronomy.

39. HE360 must coordinate with NSF to achieve a mutually acceptable agreement to mitigate the impact of its satellites (call sign S3165) on optical ground-based astronomy. HE360 must submit an annual report to the Commission, by January 1st each year covering the preceding year (1) describing whether it has reached a coordination agreement with NSF addressing optical astronomy; and (2) any steps HE360 has taken to reduce the impact of its satellites on optical astronomy. If HE360 provides a statement in the record that NSF has no concerns within 45 days following deployment of the HE360 satellites to approximately 590 km, no further reporting will be required.

40. The license term is 15 years, calculated from the deployment of the three Pathfinder satellites on December 3, 2018 (that is December 3, 2033).

41. Within 30 days after deployment of each satellite pursuant to this license, HE360 must file a notification with the Commission specifying its apogee and perigee altitudes and orbital inclination.

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

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

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

ATTACHMENT TO GRANT

HawkEye 360, Inc.

ICFS File Nos. SAT-MOD-20220906-00099, SAT-AMD-20221014-00136

Action Date:	March 13, 2024	
Term Dates	**From:** March 13, 2024	**To:** see conditions
Approved:		

Merissa L. Velez
Chief, Satellite Programs and Policy Division

ATTACHMENT TO GRANT
HawkEye 360, Inc.
ICFS File Nos. SAT-MOD-20220906-00099, SAT-AMD-20221014-00136
Appendix A[58]:
HawkEye 360 Earth Stations
Coordinated With Federal Agencies

HawkEye Earth Stations*		
Earth stations	Latitude (N)	Longitude (E)
Svalbard, Norway	78.231	15.390
Tromso, Norway	69.663	18.940
Troll, Antarctica	-72.001	2.526
Punta Arenas, Chile	-52.936	-70.870
Awarua, New Zealand	-46.529	168.381
Hartbeesthoek, South Africa	-25.884	27.884
Long Beach, CA (USA)[59]	34.0	-118.3
Maui, HI (USA)[60]	20.8	-156.5
Athens, Greece	37.845	22.623
Fairbanks, AK (USA)[61]	64.890	-147.529
Inuvik, Canada	68.325	-133.613
Jeju, South Korea	33.541	126.816
Mauritius	-20.501	57.450
Mingenew, Australia	-29.010	115.342
Puertollano, Spain	38.672	-4.162
Peterborough, Australia	-32.962	138.850
Absheron, Azerbaijan	40.466	49.486
Plana, Bulgaria	42.483	23.445
Blonduos, Iceland	65.647	-20.246
Kandy, Sri Lanka	7.274	80.725
Azores, Portugal	36.998	-25.137
Shetland, United Kingdom	60.748	-0.858

***** Earth stations are owned and operated by Kongsberg Satellite Services. *See also* ICFS File Nos. SAT-LOA-20190102-00001, Letter from Dr. Michael Mineiro, V.P. Legal, Regulatory, and Government Affairs, HawkEye 360, to Stephen Duall, Chief, Satellite Policy Branch, Satellite Division, FCC (dated Dec. 4, 2019); ICFS File Nos. SAT-LOA-20190102-00001; SAT-MOD-20210114-00010, Letter from Dr. Michael Mineiro, V.P. Legal, Regulatory, and Government Affairs, HawkEye 360, to Merissa Velez, Chief, Satellite Policy Branch, Satellite Division, FCC (dated Jan. 18, 2022); and ICFS File Nos. SAT-LOA-20190102-00001 and SAT-AMD-20200728-00090, Letter from Tony Lin, Counsel for Hawkeye360, Inc. to Marlene H. Dortch, Secretary, FCC (Nov. 15, 2022).

[58] In the prior grant document, this appendix was designated as "Appendix B." *See March 2023 Grant Stamp.*

[59] The Long Beach, CA, USA earth station will not operate in any S-band frequencies.

[60] The HI, USA earth station will only operate S-band frequencies for uplinks only.

[61] The Fairbanks, AK, USA earth station will not operate with S-band downlinks.

SAT-MOD-20220906-00099

GRANTED IN PART/DEFERRED IN PART
Space Bureau

File # SAT-AMD-20221014-00136

Call Sign S3042 (or other identifier) Grant Date March 13, 2024

Term Dates
From: March 13, 2024 To: see conditions

Approved Merissa L. Velez
Merissa L. Velez
Chief, Satellite Programs and Policy Division

Approved by OMB
3060−0678

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File Number: SAT−MOD−20220906−00099

FCC APPLICATION FOR SPACE AND EARTH STATION:MOD OR AMD − MAIN FORM FCC 312 MAIN FORM FOR OFFICIAL USE ONLY	FCC Use Only

APPLICANT INFORMATION
Enter a description of this application to identify it on the main menu:
Cluster 7+ Modification

1−8. Legal Name of Applicant

Name:	HawkEye 360, Inc.	**Phone Number:**	571−203−0360
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Attention:	Mr Michael Mineiro		

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ATTACHMENT TO GRANT

HawkEye 360, Inc.

ICFS File Nos. SAT-MOD-20220906-00099, SAT-AMD-20221014-00136

ICFS File No(s):	SAT-MOD-20220906-00099 SAT-AMD-20221014-00136[1]	**GRANTED IN PART/ DEFERRED IN PART With Conditions** **International Bureau Satellite Division**
Licensee/Grantee:	HawkEye 360, Inc. (HE360)	
Call Sign:	S3042	
Satellite Name:	HE360 constellation	
Orbital Location: (required station-keeping tolerance)	Non-geostationary satellite orbit (NGSO) constellation with operational apogee and perigee altitudes from 475 to 615 km (nominal 575 km) with near zero eccentricity. Includes 24 satellites with 97-98 degree inclination (near-polar); 30 satellites with 35-50 degree inclination (mid-inclination); and six satellites with 0-28.5 degrees inclination (near equatorial).	
Administration:	United States of America	
Nature of Service:	Earth Exploration Satellite Service (EESS)	
Scope of Grant:	Modification of license for six additional satellites, identified as Clusters 8 and 9, to include technical parameters and rule waivers previously granted for Cluster 7,[2] and expansion of the mid-inclination orbit range to 35-50 degrees. For Cluster 9, the license is also modified to specify: (1) additional antennas capable of receiving signals in the 30-88 MHz and 120-800 MHz band; (2) revised parameters for X-band (8025-8400 MHz) data downlink operations; (3) the addition of L-band inter-satellite links in the 1626.5-1645.5 MHz, 1646.5-1660.5 MHz, 1525-1544 MHz, and 1545-1559 MHz (space-to-space) frequency bands for relay communications with the Inmarsat Broadband Global Access Network (BGAN); and (4) starting with Cluster 9, removal of 2200-2290 MHz operations for emergency telemetry, tracking, and command.	
Previous Grant(s):	Authority to construct, deploy, and operate up to 80 HE360 satellites, limited to 15 operational at any one time, with apogee and perigee altitudes from 500 to 650 km (nominal 575 km) and with inclinations of 97-98 degrees.[3] Satellites will operate in clusters of 3 or 4 satellites. *See* ICFS File No. SAT-LOA-2019102-00001 (grant in part Dec. 10, 2019).	

[1] This application, as amended, was previously granted-in-part, and deferred-in-part. *See* ICFS File Nos. SAT-MOD-20220906-00099, SAT-AMD-20221014-00136, granted-in-part March 3, 2013, reissued March 13, 2023 (*March 2023 Grant Stamp*). In that prior grant, we deferred action on the portions of HE360's application for license modification for deployments beyond "Cluster 7". We defer action at this time regarding modification to the license for satellites deployed in Clusters 10 and after. This grant is also without prejudice to any action taken in connection with HE360's pending further modification request in ICFS File No. SAT-MOD-20230724-00181. On January 17, 2023, Space Exploration Technologies Corp. (SpaceX) filed an *ex parte* letter. Letter from David Goldman, Director of Satellite Policy, SpaceX, to Marlene H. Dortch, Secretary, FCC at 1 (dated Jan. 17, 2023). These issues are fully addressed in the accompanying Order.

[2] *See March 2023 Grant Stamp* (modification of license to specify, for three satellites identified as Cluster 7: (1) additional antennas capable of receiving signals in certain UHF frequencies (250-350 MHz); (2) a change in the authorized satellite operational altitude range from 500-615 km to 475-615 km; and (3) changes in operations due to modification of the satellite propulsion system).

[3] HE360's Constellation was preceded by an experimental earth exploration three-satellite cluster called Pathfinder, which was separately coordinated with federal operators. *See* ELS File No. 0024-EX-CN-2017, as modified 0055-EX-CM-2019. The Pathfinder satellites successfully launched on December 3, 2018 and operational in the 2240 MHz, 2246 MHz, 2256 MHz (space-to-Earth), 432-438 MHz (Earth-to-space), 2410 MHz (space-to-space), and 8050 MHz, 8175 MHz, and 8300 MHz (space-to-Earth) frequency bands. Authorization for continued operations of this first cluster of three Pathfinder satellites under Part 25 of the Commission's rules was included in the prior grant dated December 10, 2019. *See* ICFS File No. SAT-LOA-20190102-00001 (granted-in-part Dec. 10, 2019).

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	Modification of license to specify: (1) an additional antenna, beginning with the second cluster, capable of receiving signals transmitted from terrestrial sources (Earth-to-space) in frequency bands used by the Global Positioning System (GPS),[4] for the purpose of detecting terrestrial transmitters that are interfering with GPS signals; and (2) an additional antenna, beginning with the fourth cluster, capable of receiving signals in the 600 MHz to 10 GHz (Earth-to-space) frequency range. *See* ICFS File No. SAT-LOA-20190102-00001 (grant in part Dec. 14, 2020). Modification of license to specify an additional antenna, capable of receiving signals in the 840-960 MHz and 1280-1410 MHz bands, and to reflect the applicant's specification of the "Enpulsion IFM06-02"; both changes beginning with the third cluster or later.[5] *See* ICFS File No. SAT-MOD-20210114-00010 (granted May 25, 2021). Authorization for up to 174 HE360 satellites total,[6] limited to 60 operational at any one time, with apogee and perigee altitudes from 500 to 615 km (nominal 575 km) and with inclinations of 0-28.5, 40-50 and 97-98 degrees. Satellites will operate in clusters of 3 satellites.[7] Modification of license to specify, for three satellites identified as Cluster 7: (1) additional antennas capable of receiving signals in certain UHF frequencies (250-350 MHz); (2) a change in the authorized satellite operational altitude range from 500-615 km to 475-615 km; and (3) use of a water-based propulsion system.
Service Area(s):	Global. *See* Schedule S Tech Report at Item S6.

[4] The antenna is capable of receiving signals in the frequency bands used by the GPS L1, L2, and L5 signals (space-to-Earth), with center frequencies of 1575.42 MHz, 1227.60 MHz, and 1176.45 MHz, but which are being transmitted by non-GPS sources in the Earth-to-space direction. *See* ICFS File No. SAT-AMD-20200728-00090, Letter from Tony Lin, Counsel for Hawkeye360, Inc. to Marlene H. Dortch, Secretary, FCC (Oct. 14, 2020).

[5] *See Policy Branch Information, Satellite Space Applications Actions Taken*, Public Notice, DA 21-630, Report No. SAT-01557 (ICFS File No. SAT−MOD−20210114−00010).

[6] *See* ICFS File No. SAT-LOA-20190102-00001, Letter from Dr. Michael Mineiro, V.P. Legal, Regulatory, and Government Affairs, HawkEye 360, to Samuel Karty, International Bureau, Satellite Policy Branch, FCC (dated Apr. 15, 2022) (requesting a total of 174, rather than 220 satellites, over the term of the license, with plans to operate up to 60 satellites simultaneously). HE360 submitted a letter stating that it has completed pre-coordination for its full constellation with relevant government agencies. *See* ICFS File Nos. SAT-LOA-20190102-00001; SAT-MOD-20210114-00010, Letter from Dr. Michael Mineiro, V.P. Legal, Regulatory, and Government Affairs, HawkEye 360, to Merissa Velez, Chief, Satellite Policy Branch, Satellite Division, FCC (dated Jan. 18, 2022). We had previously deferred action on its application, as requested by HE360, insofar as the application requested authorization of up to 220 satellites, i.e., in excess of 80 satellites. *See* ICFS File No. SAT-LOA-20190102-00001, Letter from Dr. Michael Mineiro, V.P. Legal, Regulatory, and Government Affairs, HawkEye 360, to Stephen Duall, Chief, Satellite Policy Branch, Satellite Division, FCC (dated Dec. 4, 2019).

[7] The application, as amended, was previously granted-in-part, and deferred-in-part. *See Policy Branch Information, Satellite Space Station Applications Actions Taken,* Public Notice, DA No. 19-1268, Report No. SAT-01432 (Dec. 13, 2019); *Policy Branch Information, Satellite Space Applications Actions Taken*, Public Notice, DA No. 20-1502, Report No. SAT-01518 (Dec. 18, 2020) (ICFS File Nos. SAT-LOA-20190102-00001; SAT-AMD-20200728-00090). The portion of HE360's request that had been granted was subsequently modified. *See* ICFS File No. SAT-MOD-20210114-00010 (granted May 25, 2021). The license for HE360's full constellation was granted on October 20, 2022. *See Policy Branch Information, Satellite Space Station Applications Actions Taken,* Public Notice, DA No. 22-1111, Report No. SAT-01676 (Oct. 21, 2022).

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Frequencies:[8]

8025-8400 MHz (space-to-Earth) (data downlink):[9,12]

Downlink #1 for satellites 1-60 (20 clusters of 3 satellites)

Center Frequencies	Emission Bandwidths	# near-polar Satellites	# mid-inclination Satellites	# near-equatorial Satellites
8075.0 MHz	8.0 to 80.0 MHz	8	10	2
8165.0 MHz	8.0 to 80.0 MHz	8	10	2
8255.0 MHz	8.0 to 80.0 MHz	8	10	2

Downlink #2 for satellites 22-60, plus replenishment for satellites 1-21 (20 clusters of 3 satellites)

Center Frequencies	Emission Bandwidths	# near-polar Satellites	# mid-inclination Satellites	# near-equatorial Satellites
8090.0 MHz (LHCP only)	105.0 MHz	8	10	2
8210.0 MHz (LHCP)	105.0 MHz	8	10	2
8210.0 MHz (RHCP)	105.0 MHz	8	10	2

2025-2110 MHz (Earth-to-space) (data uplink):

Uplink for satellites 1-9 (3 clusters of 3 satellites)

Center Frequencies	Emission Bandwidths	# near-polar Satellites	# mid-inclination Satellites	# near-equatorial Satellites
2068.2 MHz	1.33 MHz and 2.66 MHz	3	0	0
2062.7 MHz	1.33 MHz and 2.66 MHz	3	0	0

[8] HE360 satellites have antennas capable of receiving in the following bands: 100-182 MHz (VHF Dipole): 382-422 MHz (UHF Dipole): 1090 MHz (ADS-B Patch): 1.6-1.7 GHz (L-band Patch); 2.9-3.1 GHz (S-band Patch): 1.4-7.0 GHz (Molded Button Antenna); 6.0-18.0 GHz (Horn Antenna). Starting with HE360 satellite cluster two, the satellites include antennas capable of receiving signals in the frequency bands used by the GPS L1 (center frequency 1575.42 MHz), L2 (center frequency 1227.60) and L5 (center frequency 1176.45 MHz) signals (GNSS Antenna). Starting with HE360 satellite cluster four, the Molded Button Antenna has been replaced by a Spiral-Backed Antenna capable of receiving in the 600 MHz-10 GHz frequency bands. Starting with HE360 satellites in Cluster 7, the satellites will include antennas capable of receiving signals in the 250-350 MHz frequency band, and the 1090 MHz (ADS-B Patch) antenna will be removed. Starting with HE360 satellites in Cluster 9, the satellites will include additional antennas capable of receiving signals in the 30-88 and 120-800 MHz frequency bands.

[9] Starting with HE360 satellites deployed in Cluster 9, the specifications for this X-band downlink are modified as described in ICFS File Nos. SAT-MOD-20220906-00099 and SAT-AMD-20221014-00136. This includes modifications to the center frequencies. *See* ICFS File No. SAT-AMD-20221014-00136, Narrative at Attachment 2. Except as modified by this grant, the information in this section of the grant document reflects information previously included in what was formerly Appendix A. *See March 2023 Grant Stamp.*

2077.4 MHz	1.33 MHz and 2.66 MHz	3	0	0

Uplink for satellites 10-60, plus replenishments for satellites 1-9 (20 clusters of 3 satellites)

Center Frequencies	Emission Bandwidths	# near-polar Satellites	# mid-inclination Satellites	# near-equatorial Satellites
2046.5 MHz	1.33 MHz and 2.66 MHz	8	10	2
2049.3 MHz	1.33 MHz and 2.66 MHz	8	10	2
2075.0 MHz	1.33 MHz and 2.66 MHz	8	10	2

Telemetry, Tracking and Command:

8025-8400 MHz (space-to-Earth) (telemetry/tracking):

Downlink for satellites 1-60 (20 clusters of 3 satellites)

Center Frequencies	Emission Bandwidths	# near-polar Satellites	# mid-inclination Satellites	# near-equatorial Satellites
8291.0 MHz	128 kHz to 4.0 MHz	8	10	2
8297.0 MHz	128 kHz to 4.0 MHz	8	10	2
8303.0 MHz	128 kHz to 4.0 MHz	8	10	2

2200-2290 MHz (space-to-Earth) (emergency backup telemetry/tracking)[16]

Emergency Backup TT&C Downlink for satellites 1-21 (7 clusters of 3 satellites):

Center Frequencies	Emission Bandwidths	# near-polar Satellites	# mid-inclination Satellites	# near-equatorial Satellites
2242.0 MHz	256 kHz to 4.0 MHz	5	2	0
2254.0 MHz	256 kHz to 4.0 MHz	5	2	0
2260.0 MHz	256 kHz to 4.0 MHz	5	2	0

2025-2110 MHz (Earth-to-space) (command):

Command uplink for satellites 1-15 (5 clusters of 3 satellites)

Center Frequencies	Emission Bandwidths	# near-polar Satellites	# mid-inclination Satellites	# near-equatorial Satellites
2063.965 MHz	120 kHz and 180 kHz	4	1	0

2064.965 MHz	120 kHz and 180 kHz	4	1	0
2065.965 MHz	120 kHz and 180 kHz	4	1	0

Command uplink for satellites 16-60, plus replenishments for satellites 1-15 (20 clusters of 3 satellites)

Center Frequencies	Emission Bandwidths	# near-polar Satellites	# mid-inclination Satellites	# near-equatorial Satellites
2052.1 MHz	120 kHz and 180 kHz	8	10	2
2053.0 MHz	120 kHz and 180 kHz	8	10	2
2053.7 MHz	120 kHz and 180 kHz	8	10	2

432-438 MHz (Earth-to-space) (backup command; first cluster launched on December 3, 2018 only)

Inter-satellite links:[10]

First cluster launched on December 3, 2018 only:
2410 MHz (space-to-space)

Cluster 9 and satellites 22-60:
1626.5-1645.5 MHz (transmit) (space-to-space) (inter-satellite link), 200 kHz bandwidth
1646.5-1660.5 MHz (transmit) (space-to-space) (inter-satellite link), 200 kHz bandwidth
1525-1544 MHz (receive) (space-to-space) (inter-satellite link), 200 kHz bandwidth
1545-1559 MHz (receive) (space-to-space) (inter-satellite link), 200 kHz bandwidth

Receive only:

156.7625-156.7875 MHz Automatic Identification System (AIS 3)
156.8125-156.8375 MHz (AIS 4)
161.9625-161.9875 MHz (AIS 1)
162.0125-162.0375 MHz (AIS 2)
406.0-406.1 MHz Emergency Position-Indicating Radiobeacon (EPIRB)
156.5125-156.5375 MHz Digital Selective Calling (DSC)
1087.7-1092.3 MHz ((Earth-to-space) Automatic Dependent Surveillance-Broadcast (ADS-B))
Signals with center frequencies of 1575.42 MHz, 1227.60 MHz, and 1176.45 MHz (Earth-to-space)

[10] HE360 confirms that its terminals operating on the Inmarsat L-band frequencies have an out-of-band EIRP density that complies with the limits listed in Table 8 of ETSI EN 301 473 V2.1.2 and has the additional constraint that the EIRP density will not exceed -45 dBW/30 kHz in the frequency bands lower than 1626.5 MHz. Further, HE360 commits to operating those terminals subject to such limitations. *See* ICFS File Nos. SAT-MOD-20220906-00099 and SAT-AMD-20200728-00090, Letter from Tony Lin, Counsel for Hawkeye360, Inc. to Marlene H. Dortch, Secretary, FCC (Jan. 13, 2023).

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Unless otherwise specified herein, operations under this grant must comport with the legal and technical specifications set forth by the applicant or petitioner and with the Federal Communications Commission's rules not waived herein. This grant is also subject to the following conditions:[11]

1. HE360 must prepare the necessary information, as may be required, for submission to the International Telecommunication Union (ITU) to initiate and complete the advance publication, coordination, due diligence, and notification process for these space stations, in accordance with the ITU Radio Regulations. HE360 will be held responsible for all cost-recovery fees associated with ITU filings. No protection from interference caused by radio stations authorized by other administrations is guaranteed unless coordination and notification procedures are timely completed or, with respect to individual administrations, by successfully completing coordination agreements. Any radio station authorization for which coordination has not been completed may be subject to additional terms and conditions as required to effect coordination of the frequency assignments of other administrations. *See* 47 CFR § 25.111(b).

2. Upon receipt of a conjunction warning from the 18th Space Control Squadron or other source, HE360 must review and take all possible steps to assess the collision risk, and mitigate collision risk if necessary. As appropriate, steps to assess and mitigate should include, but are not limited to: contacting the operator of any active spacecraft involved in such warning; sharing ephemeris data and other appropriate operational information with any such operator; modifying spacecraft attitude and/or operations.

3. The number of simultaneously operational satellites must not exceed 60. This number does not include the three Pathfinder satellites launched on December 3, 2018, under grants of experimental authorizations pursuant to Part 5 of the Commission's rules.[12] These three Pathfinder satellites must operate under this Part 25 authorization pursuant to the terms and parameters, including earth station power level agreements and mitigation activities, coordinated with Federal users as part of those grants of experimental licenses.[13]

4. For S-band command uplink operations in the 2025-2110 MHz band, HE360 earth stations must operate a duty cycle of no more than 10% to ensure that the constellation complies with interference criteria contained in Recommendation ITU-R SA. 1155-2.[14]

5. This grant includes authority to deploy and operate technically identical replacement satellites during the term of the license, pursuant to 47 CFR § 25.113(i). Based on information provided by the applicant, the anticipated total number of satellites to be deployed during the license term would be 174. Deployment involving a different satellite bus will require the filing and approval of a license modification request in order to, inter alia, address any differences in debris risks due to changes in the physical characteristics of the spacecraft.[15]

6. HE360 must comply with any new rules adopted by the Commission as a result of the rulemaking in IB Docket No. 18-313.[16]

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[11] With respect to those frequency bands shared with Federal spectrum users, Federal operators have indicated that Federal missions brought into use after issuance of this grant may prevent future modification or renewal.

[12] *See supra* note 4. We note that the total number of simultaneously operational satellites refers specifically to those satellites operating in frequencies other than TT&C frequencies and does not include non-operational satellites that continue to operate in TT&C frequency bands as part of approved post-mission disposal plans.

[13] *See, e.g.,* ELS File No. 0024-EX-CN-2017, as modified 0055-EX-CM-2019.

[14] As noted *supra*, starting with HE360 satellites in Cluster 9, HE360 plans to remove the S-band transmitter used to provide emergency backup, telemetry (2200-2290 MHz).

[15] Deployment of satellites with different propulsion system characteristics, will require grant of a license modification.

[16] *See Mitigation of Orbital Debris in the New Space Age, Notice of Proposed Rulemaking,* FCC 18-159, 33 FCC Rcd 11352 (2018); *Mitigation of Orbital Debris in the New Space Age, Report and Order and Further Notice of Proposed Rulemaking,* FCC 20-54, 35 FCC Rcd 4156 (2020).

7. HE360's space-to-Earth and Earth-to-space operations shall be strictly limited to durations when the HE360 space stations referenced within this license request are visible to the corresponding earth station locations listed in Appendix A of the attachment to this grant, noting the additional restrictions within this grant.

8. We grant, on our own motion, a waiver of the U.S. Table of Frequency Allocations, 47 CFR § 2.106(a), to allow non-conforming use of the 2200-2290 MHz band for HE360 to conduct telemetry and tracking,, subject to the condition that HE360 operates on a non-interference basis, accepts any interference from authorized services in these bands, and complies with the other conditions below regarding operations in these bands. HE360 intends to operate TT&C in these frequencies but will not operate in the EESS using this frequency band. The 2200-2290 MHz band is allocated to the space operation (space-to-Earth) and space research (space-to-Earth) services in the U.S. Table of Frequency Allocations, 47 CFR § 2.106(a), for federal use only.[17] In this instance we find good cause to waive the Table of Allocations to allow HE360 to operate command links only with its satellites based on HE360's coordination with federal users in the frequency band. Additionally, HE360 shall be aware that non-Federal space-to-Earth transmissions in the 2200-2290 MHz are not permitted to earth stations within the US&P. Based on HE360's coordination with federal users in the frequency band, which should ensure that any authorized federal users are protected from harmful interference, we find good cause to waive the U.S. Table of Frequency Allocations to allow HE360 to operate telemetry and tracking with its satellites in the 2200-2290 MHz band.

9. On our own motion, we grant a waiver of the U.S. Table of Frequency Allocations, 47 CFR § 2.106(a), for HE360 to conduct non-Federal space-to-space EESS operations at 2410 MHz with the first HE360 satellite cluster launched on December 3, 2018 only, subject to the condition that operations in this band do not cause harmful interference and that HE360 may not claim protection from interference. The 2400-2417 MHz band, *inter alia*, is allocated to the amateur service on a primary basis in the U.S. Table of Frequency Allocations, 47 CFR § 2.106(a), for non-Federal use.

10. On our own motion, we grant a waiver of the U.S. Table of Frequency Allocations, 47 CFR § 2.106(a), for HE360 to conduct non-Federal Earth-to-space operations in the 432-438 MHz band, with the first HE360 satellite cluster launched on December 3, 2018 only, subject to the condition that operations in this band do not cause harmful interference and that HE360 may not claim protection from interference. The 432-438 MHz band is allocated to the Earth exploration-satellite service (active) on a secondary basis in the U.S. Table of Frequency Allocations, 47 CFR § 2.106(a), (c)(397), for Federal use only.

11. Power flux-density from HE360's operations in the 8025-8400 MHz band must not exceed the limits in No. 22.5 and Table 21-4 of the International Telecommunication Union's Radio Regulations. In addition, power spectral density levels at space research service earth stations from space-to-Earth operations in the 8025-8400 MHz band must not exceed the limits/protection criteria in Recommendation ITU-R SA.1157-1, and the guidelines for systems operating in the 8025-8400 MHz band in Recommendation ITU-R SA.1810 must be followed.

12. Operations pursuant to this license must not cause harmful interference to stations operating in the 2025-2110 MHz band in accordance with the United States Table of Frequency Allocations. *See* 47 CFR § 2.106(a), (c)(347).

13. Transmissions in the 2025-2110 MHz, 8025-8400 MHz, and 2200-2290 MHz bands[18] may only be made to/from earth stations coordinated with federal agencies, including National Aeronautics and Space Administration (NASA), Department of Commerce/National Oceanic and Atmospheric Administration (DOC/NOAA), and the United States Air Force Spectrum Management Office (AFSMO). Any use of Federal ground stations shall be coordinated by HE360's federal government customers with AFSMO (jimmy.nguyen@us.af.mil), NASA (HQ-SatCoord@mail.nasa.gov) and DOC/NOAA (edna.prado@noaa.gov). A list of coordinated non-Federal earth stations is attached as Appendix A. HE360 shall provide the FCC with an updated list of coordinated non-Federal earth stations within ten business days following any changes to that list.[19]

14. Earth-to-space transmissions in the 2025-2110 MHz band to HE360 satellites must be coordinated with the SBE (Society of Broadcast Engineers).

15. Transmissions in the 2025-2110 MHz, 2200-2290 MHz, and 8025-8400 MHz bands are limited to the center frequencies and emission bandwidths coordinated with Federal users set forth in the Frequencies section of this grant.

16. In the 2025-2110 MHz band, HE360 shall comply with the following limitations:

    a. The primary uplink (Earth-to-space) emission bandwidths shall be limited to 170 kHz, 1.33 MHz, and 2.66 MHz. All uplink (Earth-to-space) 2.66 MHz emission bandwidth transmissions shall be limited to a duty cycle of no more than 10% per earth station per satellite.

    b. All uplink (Earth-to-space) transmissions to HE360 satellites using a center frequency of 2046.5 MHz and emission bandwidth of 1.33 MHz from any earth station located in the Northern hemisphere at latitudes greater than 60 degrees or in the Southern hemisphere at latitudes below 50 degrees (e.g. above 60N or below 50S) shall cease transmissions when the NASA PUNCH satellites (4 total) are within view of the respective earth station.

    c. All uplink (Earth-to-space) transmissions using center frequencies of 2064.965 MHz and 2065.965 MHz shall be limited to a duty cycle of less than 4% per earth station per satellite.

    d. All uplink (Earth-to-space) transmissions using center frequencies of 2053.0 MHz, 2053.7 MHz, 2077.4 MHz, and 2075.0 MHz shall cease transmissions during the Artemis-IV and later Artemis missions from launch to launch + 48 hours.

17. Power flux-density levels at the surface of the Earth resulting from space-to-Earth operation in the 2200-2290 MHz band must not exceed the limits in Table 21-4 of the ITU Radio Regulations, and the power spectral density levels at space research service earth stations resulting from space-to-Earth operations in the 2200-2290 MHz band must not exceed the protection criteria in Recommendation ITU-R SA.1157-1 and Recommendation ITU-R SA.609-2.

18. All downlink (space-to-Earth) operations in the 2200-2290 MHz band shall be restricted to communication with earth stations identified in Appendix A that are located outside the US&P.[20]

19. In the event a spacecraft emergency requires activation of the emergency backup downlink (space-to-Earth) capability using center frequencies of 2242.0 MHz, 2254.0 MHz, or 2260.0 MHz, HE360 shall immediately notify the NASA JSC Spectrum Management (jsc-dl-spectrum-management@mail.nasa.gov) and Travis Inghram (HQ-SatCoord@mail.nasa.gov). Emergency backup downlink operations in the 2200-2290 MHz band shall be limited to spacecraft emergency situations only, and all other usage is not authorized.

20. All reception must comport with the requirements on unauthorized publication or use of communications in section 705 of the Communications Act of 1934, as amended (47 U.S.C. § 605). This license grant does not constitute an "authorization" with respect to the activities specified in section 705 of the Communications Act or in related provisions of chapter 119, Title 18, United States Code.

[17] Although there are additional footnote allocations for non-Federal space research, space operations, and EESS, these non-federal allocations are limited to circumstances not relevant to HE360's operations. *See* 47 CFR § 2.106(a)(c)(96) and (c)(303).

[18] As noted *supra*, starting with HE360 satellites in Cluster 9, HE360 plans to remove the S-band transmitter used to provide emergency backup, telemetry downlinks (2200-2290 MHz).

[19] A list of earth stations already coordinated with federal agencies is attached as Appendix A to this grant.

[20] *See also* condition 8.

21. The U.S. Table of Frequency Allocations, Section 2.106(a), is waived with respect to reception of ADS-B signals in the 1087.7-1092.3 MHz frequency band, for satellites through Cluster 8. This band was allocated internationally for the aeronautical mobile-satellite (R) service (AMS(R)S) (Earth-to-space) on a primary basis, at WRC-15, and is limited to the space station reception of ADS-B emissions from aircraft transmitters that operate in accordance with recognized international aeronautical standards. Stations operating in the AMS(R)S shall not claim protection from stations operating in the aeronautical radionavigation service. Resolution 425 (WRC-15) shall apply.[21] Any future protection of ADS-B reception will be governed by the relevant status in the Table of Frequency Allocations and must be in accordance with any subsequent rulemaking proceedings to implement any new domestic allocations or service rules.

22. The U.S. Table of Frequency Allocations, Section 2.106(a), is waived with respect to reception of AIS signals in the 156.7625-156.7875 MHz (AIS 3), 156.8125-156.8375 MHz (AIS 4), 161.9625-161.9875 MHz (AIS 1) and 162.0125-162.0375 MHz (AIS 2).[22] As a condition of this waiver, HE360 must not claim protection for reception of messages in the 156.0125-162.0375 MHz frequency band that is not in accordance with the Table of Frequency Allocations for the pertinent area and may only claim protection to the extent provided by the status of the reception under the Table of Frequency Allocations.

23. HE360 may claim protection for reception in the 156.7625-162.0375 MHz band only to the extent permitted under the U.S. Table of Frequency Allocations for domestic operations or the ITU Radio Regulations for international operations, as of the time of operation. Operations in the 156.7625-162.0375 MHz band must be in accordance with any Commission rulemakings subsequent to the release of this license that implement any new domestic allocations or service rules for these bands.[23]

24. The U.S. Table of Frequency Allocations, 47 CFR § 2.106(a), is waived with respect to reception of the DSC signal in the 156.5125-156.5375 MHz frequency band on a non-conforming, non-harmful interference basis. The 156.5125-156.5375 MHz frequency band is allocated to Maritime Mobile on a primary basis for non-Federal operations and in all ITU Regions.[24] In the United States, there is also limited use of this band by certain grandfathered public safety radio pool licensees.[25] As a condition of this waiver, HE360 must not claim protection for reception of messages in the 156.5125-156.5375 MHz frequency band that is not in accordance with the Table of Frequency Allocations for the pertinent area and may only claim protection to the extent provided by the status of the reception under the Table of Frequency Allocations.

25. The U.S. Table of Frequency Allocations, 47 CFR § 2.106(a), is waived with respect to reception of EPIRB signals in the 406-406.1 MHz frequency band. The 406-406.1 MHz frequency band is allocated for Mobile-Satellite Service (MSS) and is limited to low-power satellite emergency position-indicating radio beacons

[21] We previously found good cause to waive sections 2.102(a) and 2.106 to permit reception of ADS-B messages on an unprotected basis in the United States because doing so will not cause any interference or unreasonably preclude other services, and make the same finding with respect to Cluster 8.

[22] We previously found that the reception of AIS transmissions cannot cause harmful interference, and these transmissions will be present pursuant to existing authorizations using frequencies allocated to other services regardless of whether they are received by a HE360 satellite. We also concluded that the service HE360 proposes will serve the public interest by providing critical near real-time maritime data of interest for both government and commercial users. We make the same findings with respect to Clusters 8 and 9.

[23] *Iridium Order and Authorization*, 31 FCC Rcd at 8689, para. 50.

[24] 47 CFR § 2.106(a), (b)(111), (266), and (c)(52).

[25] 47 CFR § 2.106(a), (c)(266). We found that the reception of DSC transmissions cannot cause harmful interference, and these transmissions will be present pursuant to existing authorizations using frequencies allocated to other services regardless of whether they are received by a HE360 satellite. We also concluded that the service HE360 proposes will serve the public interest by providing near real-time maritime safety data. Exhibit A: Narrative at 44. We make the same findings with respect to Clusters 8 and 9.

(EPIRB).[26] As a condition of this waiver, HE360 must not claim protection for reception of messages in the 406-406.1 MHz frequency band that is not in accordance with the Table of Frequency Allocations for the pertinent area and may only claim protection to the extent provided by the status of the reception under the Table of Frequency Allocations.

26. The U.S. Table of Frequency Allocations, § 2.106(a), is waived, to the extent necessary, with respect to reception of signals transmitted from terrestrial sources (Earth-to-space) in frequency bands used by the Global Positioning System (GPS). The frequency bands used by the GPS are allocated for Space-to-earth transmissions.[27]

27. HE360's request for a waiver of the U.S. Table of Frequency Allocations, 47 CFR § 2.106(a),[28] with respect to reception of inter-satellite signals from the Inmarsat satellite system in the 1525-1544 MHz and 1545-1559 MHz frequency bands is GRANTED, on an unprotected, non-interference basis.[29] Although the allocations in this frequency band do not include a directional indicator for space-to-space communications, reception by the HawkEye satellites of these frequencies will not in any way alter the interference environment, as the received signal will be indistinguishable in its technical characteristics from signals transmitted in the allocated space-to-Earth direction.

28. HE360's request for a waiver of the Table of Frequency Allocations, 47 CFR § 2.106(a), to receive inter-satellite signals from the Inmarsat satellite system in the 1626.5-1645.5 and 1646.5-1660.5 MHz frequency bands on an unprotected, non-interference basis, is GRANTED.[30] Additionally, we grant on our own motion waiver to of the Table of Frequency Allocations, 47 CFR § 2.106(a), to transmit inter-satellite signals to the Inmarsat satellite system in the 1626.5-1645.5 MHz and 1646.5-1660.5 MHz frequency bands on an unprotected, non-interference basis. The allocation for the Mobile-Satellite Service in which the Inmarsat system operates and that encompasses these bands does not include a space-to-space directional indicator. HE360 states that transmission on a non-conforming basis in the L-band frequencies will occur only on frequencies that Inmarsat assigns to the spaceborne Inmarsat BGAN terminals onboard the HE360 spacecraft. HE360 states that transmission on a non-conforming basis in the L-band frequencies will occur only on frequencies that Inmarsat assigns to the spaceborne Inmarsat BGAN terminals onboard the HE360 spacecraft. HE360 notes that these transmissions are approved and supported by Inmarsat and fall within its licensed spectrum.[31] As with its other operations, Inmarsat will assign channels to the spacecraft consistent with its coordination agreements with other operators in the band,

[26] 47 CFR § 2.106(a), (b)(266). We found that the reception of EPIRB transmissions cannot cause harmful interference, and these transmissions will be present pursuant to existing authorizations using frequencies allocated to other services regardless of whether they are received by a HE360 satellite. We also concluded that the service HE360 proposes will serve the public interest by augmenting existing COSPAS-SARSAT architecture used to monitor and geolocate EPIRB distress signals. We make the same findings with respect to Clusters 8 and 9. The SARSAT (Search and Rescue Satellite Aided Tracking) system is operated by NOAA to detect and locate mariners, aviators, and recreational enthusiasts in distress. It uses NOAA satellites in low-earth and geostationary orbit to detect and locate distress signals and relay them from emergency beacons to a network of ground stations and the U.S. Mission Control Center, which processes the signals and alerts appropriate search and rescue authorities. SARSAT is part of the international COSPAS-SARSAT program. *See* http://www.sarsat.noaa.gov.

[27] We found that the reception of transmitted signals from terrestrial sources (Earth-to-space) in frequency bands used by the Global Positioning System (GPS) cannot cause harmful interference to actual GPS (Space-to earth) operations. We make the same findings with respect to Clusters 8 and 9.

[28] We note that waiver of 47 CFR § 25.112(a)(3) is unnecessary as this provision was removed from the Commission's rules effective Jan. 5, 2024. *See Space Innovation; Expediting Initial Processing of Satellite and Earth Station Applications, Report and Order and Further Notice of Proposed Rulemaking*, FCC 23-73 (Sept. 22, 2023) at para. 27; 88 Federal Register 84737 (Dec. 6, 2023).

[29] *See* Legal Narrative at 8-9.

[30] Legal Narrative at 8.

[31] *Id*. at 9.

ensuring that there is no harmful interference between these systems.[32] Inmarsat will maintain the same extent of positive control of HE360's operations as it does for its other L-band users and will thereby be able to address any unlikely interference issues as required by Section 25.287 of the Commission's Rules.

29. HE360 must maintain a U.S. point of contact available by telephone 24 hours per day, seven days per week, with the authority and ability to terminate operations authorized herein. The telephone number for this U.S. point of contact must also be provided to NTIA (ravery@ntia.doc.gov), DOC/NOAA (edna.prado@noaa.gov), and NASA (HQ-SatCoord@mail.nasa.gov).

30. HE360 shall provide the FCC and other federal agencies the initial orbital parameters (e.g. operating altitudes, inclination angle) for each cluster within 30 days following launch. Notification shall be provided to AFSMO (jimmy.nguyen@us.af.mil), NASA (HQ-SatCoord@mail.nasa.gov) and DOC/NOAA (edna.prado@noaa.gov).

31. Given the opportunity for additional entrants to operate in HE360's requested frequency bands, this grant includes the previously-granted waiver to HE360 of the modified processing round requirements of 47 CFR §§ 25.156 and 25.175.[33]

32. Because HE360 must comply with the technical requirements in Part 2 of the Commission's rules and the above-referenced power flux-density limits, which should prevent harmful interference to other operators in the band, this grant includes the previously-granted waiver of the default service rules in 47 CFR § 25.217(b).[34]

33. This license will become null and void if, at any time during the license term, there are no HE360 satellites operating.

34. In connection with the provision of service in any particular country, HE360 is obliged to comply with the applicable laws, regulations, rules, and licensing procedures of that country

35. HE360's three Pathfinder satellites were successfully launched on December 3, 2018 and are operational. *See* ELS File No. 0024-EX-CN-2017. Authorization for continued operations of the three Pathfinder satellites under Part 25 of the Commission's rules is included in this grant. We find that warehousing concerns are addressed in this situation through the imposition of condition 25 above. Thus, we decline to impose milestone and bond obligations on HE360.

36. HE360 must coordinate physical operations of spacecraft with any operator using similar orbits, for the purposes of eliminating collision risk and minimizing operational impacts. The orbital parameters specified in this grant are subject to change based on such coordination.

37. HE360 must provide a semi-annual report, by January 1 and July 1 each year, covering the preceding six month period, respectively, from June 1 to November 30 and December 1 to May 31. The report should include the following: Number of conjunction events identified for any HE360 system satellites during the reporting period, and the number of events that resulted in an action (maneuver or coordination with another operator), as well as any difficulties encountered in connection with the collision avoidance process and any measures taken to address those difficulties.

HE360 must report any loss of control of HE360 satellites at altitudes above 350 km not less than 10 days following the loss of control.

Based on the information reported, the license may be subject to additional terms and conditions, including additional reporting obligations, limitations on additional deployments, requirements for early removal of satellites from orbit, or any other appropriate conditions to limit collision risk. In the event of HE360 satellite

[32] *Id*.

[33] *See DigitalGlobe, Inc.*, Order and Authorization, 20 FCC Rcd 15696 (Sat. Div., Int'l Bur. 2005) at para. 8.

[34] *Id.*, 20 FCC Rcd at 15702-03, para. 19.

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failures resulting in more than 100 post-failure object years, HE360 may not deploy any additional HE360 satellites until the Commission has approved a license modification that includes an updated orbital debris mitigation plan addressing reduction in the failure rate or mitigation of the risk of satellite failures.

38. HE360 must communicate and collaborate with NASA to support safety of both HE360 and NASA assets and to preserve long-term sustainable space-based communications services. HE360 must report on the progress of its communications and collaboration efforts to the Commission in its regular reports specified in condition 27, above. HE360 must coordinate and collaborate with NASA to promote a mutually beneficial space environment that would minimize impacts to NASA's science missions involving astronomy.

39. HE360 must coordinate with NSF to achieve a mutually acceptable agreement to mitigate the impact of its satellites (call sign S3165) on optical ground-based astronomy. HE360 must submit an annual report to the Commission, by January 1st each year covering the preceding year (1) describing whether it has reached a coordination agreement with NSF addressing optical astronomy; and (2) any steps HE360 has taken to reduce the impact of its satellites on optical astronomy. If HE360 provides a statement in the record that NSF has no concerns within 45 days following deployment of the HE360 satellites to approximately 590 km, no further reporting will be required.

40. The license term is 15 years, calculated from the deployment of the three Pathfinder satellites on December 3, 2018 (that is December 3, 2033).

41. Within 30 days after deployment of each satellite pursuant to this license, HE360 must file a notification with the Commission specifying its apogee and perigee altitudes and orbital inclination.

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

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

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

Action Date:	March 13, 2024	
Term Dates	**From:** March 13, 2024	**To:** see conditions

Approved:

Merissa L. Velez

Merissa L. Velez
Chief, Satellite Programs and Policy Division

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Appendix A[35]:
HawkEye 360 Earth Stations
Coordinated With Federal Agencies

HawkEye Earth Stations*		
Earth stations	Latitude (N)	Longitude (E)
Svalbard, Norway	78.231	15.390
Tromso, Norway	69.663	18.940
Troll, Antarctica	-72.001	2.526
Punta Arenas, Chile	-52.936	-70.870
Awarua, New Zealand	-46.529	168.381
Hartbeesthoek, South Africa	-25.884	27.884
Long Beach, CA (USA)[36]	34.0	-118.3
Maui, HI (USA) [37]	20.8	-156.5
Athens, Greece	37.845	22.623
Fairbanks, AK (USA)[38]	64.890	-147.529
Inuvik, Canada	68.325	-133.613
Jeju, South Korea	33.541	126.816
Mauritius	-20.501	57.450
Mingenew, Australia	-29.010	115.342
Puertollano, Spain	38.672	-4.162
Peterborough, Australia	-32.962	138.850
Absheron, Azerbaijan	40.466	49.486
Plana, Bulgaria	42.483	23.445
Blonduos, Iceland	65.647	-20.246
Kandy, Sri Lanka	7.274	80.725
Azores, Portugal	36.998	-25.137
Shetland, United Kingdom	60.748	-0.858

* Earth stations are owned and operated by Kongsberg Satellite Services. *See also* ICFS File Nos. SAT-LOA-20190102-00001, Letter from Dr. Michael Mineiro, V.P. Legal, Regulatory, and Government Affairs, HawkEye 360, to Stephen Duall, Chief, Satellite Policy Branch, Satellite Division, FCC (dated Dec. 4, 2019); ICFS File Nos. SAT-LOA-20190102-00001; SAT-MOD-20210114-00010, Letter from Dr. Michael Mineiro, V.P. Legal, Regulatory, and Government Affairs, HawkEye 360, to Merissa Velez, Chief, Satellite Policy Branch, Satellite Division, FCC (dated Jan. 18, 2022); and ICFS File Nos. SAT-LOA-20190102-00001 and SAT-AMD-20200728-00090, Letter from Tony Lin, Counsel for Hawkeye360, Inc. to Marlene H. Dortch, Secretary, FCC (Nov. 15, 2022).

[35] In the prior grant document, this appendix was designated as "Appendix B." *See March 2023 Grant Stamp.*

[36] The Long Beach, CA, USA earth station will not operate in any S-band frequencies.

[37] The HI, USA earth station will only operate S-band frequencies for uplinks only.

[38] The Fairbanks, AK, USA earth station will not operate with S-band downlinks.

9−16. Name of Contact Representative

Name:	Tony Lin	**Phone Number:**	202−799−4450
Company:	DLA Piper LLP US	**Fax Number:**	
Street:	500 8th St., NW	**E−Mail:**	tony.lin@us.dlapiper.com
City:	Washington	**State:**	DC
Country:	USA	**Zipcode:**	20004−
Attention:		**Relationship:**	Legal Counsel

CLASSIFICATION OF FILING

17. Choose the button next to the classification that applies to this filing for both questions a. and b. Choose only one for 17a and only one for 17b.

- ○ a1. Earth Station
- ◉ a2. Space Station

(N/A) b1. Application for License of New Station
(N/A) b2. Application for Registration of New Domestic Receive−Only Station
- ○ b3. Amendment to a Pending Application
- ◉ b4. Modification of License or Registration

b5. Assignment of License or Registration
b6. Transfer of Control of License or Registration
- ○ b7. Notification of Minor Modification

(N/A) b8. Application for License of New Receive−Only Station Using Non−U.S. Licensed Satellite
(N/A) b9. Letter of Intent to Use Non−U.S. Licensed Satellite to Provide Service in the United States
(N/A) b10. Other (Please specify)
(N/A) b11. Application for Earth Station to Access a Non−U.S.satellite Not Currently Authorized to Provide the Proposed Service in the Proposed Frequencies in the United States
(N/A) b12. Application for Database Entry
- ○ b13. Amendment to a Pending Database Entry Application
- ○ b14. Modification of Database Entry

17c. 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):

17d.

Fee Classification

18. If this filing is in reference to an existing station, enter:	19. If this filing is an amendment to a pending application enter both fields, if this filing is a modification please enter only the file number:	
(a) Call sign of station: S3042	(a) Date pending application was filed:	(b) File number: SATMOD2021011400010

TYPE OF SERVICE

20. NATURE OF SERVICE: This filing is for an authorization to provide or use the following type(s) of service(s): Select all that apply:

- ☐ a. Fixed Satellite
- ☐ b. Mobile Satellite
- ☐ c. Radiodetermination Satellite
- ☒ d. Earth Exploration Satellite
- ☐ e. Direct to Home Fixed Satellite
- ☐ f. Digital Audio Radio Service
- ☒ g. Other (please specify) Radiofrequency Sensing

21. STATUS: Choose the button next to the applicable status. Choose only one.

○ Common Carrier ◉ Non−Common Carrier

22. If earth station applicant, check all that apply.

- ☐ Using U.S. licensed satellites
- ☐ Using Non−U.S. licensed satellites

23. If applicant is providng INTERNATIONAL COMMON CARRIER service, see instructions regarding Sec. 214 filings. Choose one. Are these facilities:

○ Connected to a Public Switched Network ○ Not connected to a Public Switched Network ◉ N/A

24. FREQUENCY BAND(S): Place an 'X' in the box(es) next to all applicable frequency band(s).

- ☐ a. C−Band (4/6 GHz)
- ☐ b. Ku−Band (12/14 GHz)
- ☒ c.Other (Please specify upper and lower frequencies in MHz.)

Frequency Lower: 2025 Frequency Upper: 8400 (Please specify additional frequencies in an attachment)

TYPE OF STATION

25. CLASS OF STATION: Choose the button next to the class of station that applies. Choose only one.

- ○ a. Fixed Earth Station
- ○ b. Temporary−Fixed Earth Station
- ○ c. 12/14 GHz VSAT Network
- ○ d. Mobile Earth Station
- ○ e. Geostationary Space Station
- ◉ f. Non−Geostationary Space Station
- ○ g. Other (please specify)

26. TYPE OF EARTH STATION FACILITY:

○ Transmit/Receive ○ Transmit−Only ○ Receive−Only ◉ N/A

"For Space Station applications, select N/A."

PURPOSE OF MODIFICATION

27. The purpose of this proposed modification is to: (Place an 'X' in the box(es) next to all that apply.)

- [x] a −− authorization to add new emission designator and related service
- [ ] b −− authorization to change emission designator and related service
- [ ] c −− authorization to increase EIRP and EIRP density
- [x] d −− authorization to replace antenna
- [x] e −− authorization to add antenna
- [ ] f −− authorization to relocate fixed station
- [ ] g −− authorization to change frequency(ies)
- [x] h −− authorization to add frequency
- [ ] i −− authorization to add Points of Communication (satellites & countries)
- [ ] j −− authorization to change Points of Communication (satellites & countries)
- [ ] k −− authorization for facilities for which environmental assessment and radiation hazard reporting is required
- [x] l −− authorization to change orbit location
- [ ] m −− authorization to perform fleet management
- [ ] n −− authorization to extend milestones
- [ ] o −− Other (Please specify)

ENVIRONMENTAL POLICY

28. Would a Commission grant of any proposal in this application or amendment have a significant environmental impact as defined by 47 CFR 1.1307? If YES, submit the statement as required by Sections 1.1308 and 1.1311 of the Commission's rules, 47 C.F.R. 1.1308 and 1.1311, as an exhibit to this application.A Radiation Hazard Study must accompany all applications for new transmitting facilities, major modifications, or major amendments.	○ Yes ◉ No

ALIEN OWNERSHIP Earth station applicants not proposing to provide broadcast, common carrier, aeronautical en route or aeronautical fixed radio station services are not required to respond to Items 30−34.

29. Is the applicant a foreign government or the representative of any foreign government?	○ Yes ◉ No
30. Is the applicant an alien or the representative of an alien?	○ Yes ◉ No ○ N/A
31. Is the applicant a corporation organized under the laws of any foreign government?	○ Yes ◉ No ○ N/A
32. Is the applicant a corporation of which more than one−fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country?	○ Yes ◉ No ○ N/A

33. Is the applicant a corporation directly or indirectly controlled by any other corporation of which more than one−fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country?	○ Yes ◉ No ○ N/A
34. If any answer to questions 29, 30, 31, 32 and/or 33 is Yes, attach as an exhibit an identification of the aliens or foreign entities, their nationality, their relationship to the applicant, and the percentage of stock they own or vote.	

BASIC QUALIFICATIONS

35. Does the Applicant request any waivers or exemptions from any of the Commission's Rules? If Yes, attach as an exhibit, copies of the requests for waivers or exceptions with supporting documents.	◉ Yes ○ No
36. Has the applicant or any party to this application or amendment had any FCC station authorization or license revoked or had any application for an initial, modification or renewal of FCC station authorization, license, or construction permit denied by the Commission? If Yes, attach as an exhibit, an explination of circumstances.	○ Yes ◉ No

37. Has the applicant, or any party to this application or amendment, or any party directly or indirectly controlling the applicant ever been convicted of a felony by any state or federal court? If Yes, attach as an exhibit, an explination of circumstances.	○ Yes ◉ No
38. Has any court finally adjudged the applicant, or any person directly or indirectly controlling the applicant, guilty of unlawfully monopolizing or attemptiing unlawfully to monopolize radio communication, directly or indirectly, through control of manufacture or sale of radio apparatus, exclusive traffic arrangement or any other means or unfair methods of competition?If Yes, attach as an exhibit, an explanation of circumstances	○ Yes ◉ No
39. Is the applicant, or any person directly or indirectly controlling the applicant, currently a party in any pending matter referred to in the preceding two items? If yes, attach as an exhinit, an explanation of the circumstances.	○ Yes ◉ No
40. If the applicant is a corporation and is applying for a space station license, attach as an exhibit the names, address, and citizenship of those stockholders owning a record and/or voting 10 percent or more of the Filer's voting stock and the percentages so held. In the case of fiduciary control, indicate the beneficiary(ies) or class of beneficiaries. Also list the names and addresses of the officers and directors of the Filer.	

41. By checking Yes, the undersigned certifies, that neither applicant nor any other party to the application is subject to a denial of Federal benefits that includes FCC benefits pursuant to Section 5301 of the Anti−Drug Act of 1988, 21 U.S.C. Section 862, because of a conviction for possession or distribution of a controlled substance. See 47 CFR 1.2002(b) for the meaning of "party to the application" for these purposes.	(●) Yes ( ) No
42a. Does the applicant intend to use a non−U.S. licensed satellite to provide service in the United States? If Yes, answer 42b and attach an exhibit providing the information specified in 47 C.F.R. 25.137, as appropriate. If No, proceed to question 43.	( ) Yes (●) No
42b. What administration has licensed or is in the process of licensing the space station? If no license will be issued, what administration has coordinated or is in the process of coordinating the space station?United States	

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43. Description. (Summarize the nature of the application and the services to be provided). (If the complete description does not appear in this box, please go to the end of the form to view it in its entirety.)

Applicant seeks authority to modify license to reflect proposed constellation changes pertaining to Clusters 7 and later.

Narrative

43a. Geographic Service Rule Certification

By selecting A, the undersigned certifies that the applicant is not subject to the geographic service or geographic coverage requirements specified in 47 C.F.R. Part 25.

(●) A

By selecting B, the undersigned certifies that the applicant is subject to the geographic service or geographic coverage requirements specified in 47 C.F.R. Part 25 and will comply with such requirements.

( ) B

By selecting C, the undersigned certifies that the applicant is subject to the geographic service or geographic coverage requirements specified in 47 C.F.R. Part 25 and will not comply with such requirements because it is not feasible as a technical matter to do so, or that, while technically feasible, such services would require so many compromises in satellite design and operation as to make it economically unreasonable. A narrative description and technical analysis demonstrating this claim are attached.

( ) C

CERTIFICATION

The Applicant waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application. The applicant certifies that grant of this application would not cause the applicant to be in violation of the spectrum aggregation limit in 47 CFR Part 20. All statements made in exhibits are a material part hereof and are incorporated herein as if set out in full in this application. The undersigned, individually and for the applicant, hereby certifies that all statements made in this application and in all attached exhibits are true, complete and correct to the best of his or her knowledge and belief, and are made in good faith.

44. Applicant is a (an): (Choose the button next to applicable response.)

- ○ Individual
- ○ Unincorporated Association
- ○ Partnership
- ◉ Corporation
- ○ Governmental Entity
- ○ Other (please specify)

45. Name of Person Signing	46. Title of Person Signing
Michael Mineiro	VP Legal, Regulatory, & Government Affairs

-->

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND / OR IMPRISONMENT
(U.S. Code, Title 18, Section 1001), AND/OR REVOCATION OF ANY STATION AUTHORIZATION
(U.S. Code, Title 47, Section 312(a)(1)), AND/OR FORFEITURE (U.S. Code, Title 47, Section 503).

FCC NOTICE REQUIRED BY THE PAPERWORK REDUCTION ACT

The public reporting for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the required data, and completing and reviewing the collection of information. If you have any comments on this burden estimate, or how we can improve the collection and reduce the burden it causes you, please write to the Federal Communications Commission, AMD−PERM, Paperwork Reduction Project (3060−0678), Washington, DC 20554. We will also accept your comments regarding the Paperwork Reduction Act aspects of this collection via the Internet if you send them to PRA@fcc.gov. PLEASE DO NOT SEND COMPLETED FORMS TO THIS ADDRESS.

Remember − You are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060−0678.

THE FOREGOING NOTICE IS REQUIRED BY THE PAPERWORK REDUCTION ACT OF 1995, PUBLIC LAW 104−13, OCTOBER 1, 1995, 44 U.S.C. SECTION 3507.

Approved by OMB
3060−0678

Date & Time Filed: Oct 14 2022 12:28:41:056PM
File Number: SAT−AMD−20221014−00136

FCC APPLICATION FOR SPACE AND EARTH STATION:MOD OR AMD − MAIN FORM FCC 312 MAIN FORM FOR OFFICIAL USE ONLY	FCC Use Only

APPLICANT INFORMATION
Enter a description of this application to identify it on the main menu:
X−Band 2 TX and Ground Station Amendment

1−8. Legal Name of Applicant

Name:	HawkEye 360, Inc.	**Phone Number:**	571−203−0360
DBA Name:		**Fax Number:**	
Street:	196 Van Buren Street Suite 450	**E−Mail:**	michael.mineiro@he360.com
City:	Herndon	**State:**	VA
Country:	USA	**Zipcode:**	20170 −
Attention:	Mr Michael Mineiro		

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ATTACHMENT TO GRANT

HawkEye 360, Inc.

ICFS File Nos. SAT-MOD-20220906-00099, SAT-AMD-20221014-00136

ICFS File No(s):	SAT-MOD-20220906-00099 SAT-AMD-20221014-00136[1]	**GRANTED IN PART/ DEFERRED IN PART With Conditions** **International Bureau Satellite Division**
Licensee/Grantee:	HawkEye 360, Inc. (HE360)	
Call Sign:	S3042	
Satellite Name:	HE360 constellation	
Orbital Location: (required station-keeping tolerance)	Non-geostationary satellite orbit (NGSO) constellation with operational apogee and perigee altitudes from 475 to 615 km (nominal 575 km) with near zero eccentricity. Includes 24 satellites with 97-98 degree inclination (near-polar); 30 satellites with 35-50 degree inclination (mid-inclination); and six satellites with 0-28.5 degrees inclination (near equatorial).	
Administration:	United States of America	
Nature of Service:	Earth Exploration Satellite Service (EESS)	
Scope of Grant:	Modification of license for six additional satellites, identified as Clusters 8 and 9, to include technical parameters and rule waivers previously granted for Cluster 7,[2] and expansion of the mid-inclination orbit range to 35-50 degrees. For Cluster 9, the license is also modified to specify: (1) additional antennas capable of receiving signals in the 30-88 MHz and 120-800 MHz band; (2) revised parameters for X-band (8025-8400 MHz) data downlink operations; (3) the addition of L-band inter-satellite links in the 1626.5-1645.5 MHz, 1646.5-1660.5 MHz, 1525-1544 MHz, and 1545-1559 MHz (space-to-space) frequency bands for relay communications with the Inmarsat Broadband Global Access Network (BGAN); and (4) starting with Cluster 9, removal of 2200-2290 MHz operations for emergency telemetry, tracking, and command.	
Previous Grant(s):	Authority to construct, deploy, and operate up to 80 HE360 satellites, limited to 15 operational at any one time, with apogee and perigee altitudes from 500 to 650 km (nominal 575 km) and with inclinations of 97-98 degrees.[3] Satellites will operate in clusters of 3 or 4 satellites. *See* ICFS File No. SAT-LOA-2019102-00001 (grant in part Dec. 10, 2019).	

[1] This application, as amended, was previously granted-in-part, and deferred-in-part. *See* ICFS File Nos. SAT-MOD-20220906-00099, SAT-AMD-20221014-00136, granted-in-part March 3, 2013, reissued March 13, 2023 (*March 2023 Grant Stamp*). In that prior grant, we deferred action on the portions of HE360's application for license modification for deployments beyond "Cluster 7". We defer action at this time regarding modification to the license for satellites deployed in Clusters 10 and after. This grant is also without prejudice to any action taken in connection with HE360's pending further modification request in ICFS File No. SAT-MOD-20230724-00181. On January 17, 2023, Space Exploration Technologies Corp. (SpaceX) filed an *ex parte* letter. Letter from David Goldman, Director of Satellite Policy, SpaceX, to Marlene H. Dortch, Secretary, FCC at 1 (dated Jan. 17, 2023). These issues are fully addressed in the accompanying Order.

[2] *See March 2023 Grant Stamp* (modification of license to specify, for three satellites identified as Cluster 7: (1) additional antennas capable of receiving signals in certain UHF frequencies (250-350 MHz); (2) a change in the authorized satellite operational altitude range from 500-615 km to 475-615 km; and (3) changes in operations due to modification of the satellite propulsion system).

[3] HE360's Constellation was preceded by an experimental earth exploration three-satellite cluster called Pathfinder, which was separately coordinated with federal operators. *See* ELS File No. 0024-EX-CN-2017, as modified 0055-EX-CM-2019. The Pathfinder satellites successfully launched on December 3, 2018 and operational in the 2240 MHz, 2246 MHz, 2256 MHz (space-to-Earth), 432-438 MHz (Earth-to-space), 2410 MHz (space-to-space), and 8050 MHz, 8175 MHz, and 8300 MHz (space-to-Earth) frequency bands. Authorization for continued operations of this first cluster of three Pathfinder satellites under Part 25 of the Commission's rules was included in the prior grant dated December 10, 2019. *See* ICFS File No. SAT-LOA-20190102-00001 (granted-in-part Dec. 10, 2019).

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	Modification of license to specify: (1) an additional antenna, beginning with the second cluster, capable of receiving signals transmitted from terrestrial sources (Earth-to-space) in frequency bands used by the Global Positioning System (GPS),[4] for the purpose of detecting terrestrial transmitters that are interfering with GPS signals; and (2) an additional antenna, beginning with the fourth cluster, capable of receiving signals in the 600 MHz to 10 GHz (Earth-to-space) frequency range. *See* ICFS File No. SAT-LOA-20190102-00001 (grant in part Dec. 14, 2020). Modification of license to specify an additional antenna, capable of receiving signals in the 840-960 MHz and 1280-1410 MHz bands, and to reflect the applicant's specification of the "Enpulsion IFM06-02"; both changes beginning with the third cluster or later.[5] *See* ICFS File No. SAT-MOD-20210114-00010 (granted May 25, 2021). Authorization for up to 174 HE360 satellites total,[6] limited to 60 operational at any one time, with apogee and perigee altitudes from 500 to 615 km (nominal 575 km) and with inclinations of 0-28.5, 40-50 and 97-98 degrees. Satellites will operate in clusters of 3 satellites.[7] Modification of license to specify, for three satellites identified as Cluster 7: (1) additional antennas capable of receiving signals in certain UHF frequencies (250-350 MHz); (2) a change in the authorized satellite operational altitude range from 500-615 km to 475-615 km; and (3) use of a water-based propulsion system.
Service Area(s):	Global. *See* Schedule S Tech Report at Item S6.

[4] The antenna is capable of receiving signals in the frequency bands used by the GPS L1, L2, and L5 signals (space-to-Earth), with center frequencies of 1575.42 MHz, 1227.60 MHz, and 1176.45 MHz, but which are being transmitted by non-GPS sources in the Earth-to-space direction. *See* ICFS File No. SAT-AMD-20200728-00090, Letter from Tony Lin, Counsel for Hawkeye360, Inc. to Marlene H. Dortch, Secretary, FCC (Oct. 14, 2020).

[5] *See Policy Branch Information, Satellite Space Applications Actions Taken*, Public Notice, DA 21-630, Report No. SAT-01557 (ICFS File No. SAT−MOD−20210114−00010).

[6] *See* ICFS File No. SAT-LOA-20190102-00001, Letter from Dr. Michael Mineiro, V.P. Legal, Regulatory, and Government Affairs, HawkEye 360, to Samuel Karty, International Bureau, Satellite Policy Branch, FCC (dated Apr. 15, 2022) (requesting a total of 174, rather than 220 satellites, over the term of the license, with plans to operate up to 60 satellites simultaneously). HE360 submitted a letter stating that it has completed pre-coordination for its full constellation with relevant government agencies. *See* ICFS File Nos. SAT-LOA-20190102-00001; SAT-MOD-20210114-00010, Letter from Dr. Michael Mineiro, V.P. Legal, Regulatory, and Government Affairs, HawkEye 360, to Merissa Velez, Chief, Satellite Policy Branch, Satellite Division, FCC (dated Jan. 18, 2022). We had previously deferred action on its application, as requested by HE360, insofar as the application requested authorization of up to 220 satellites, i.e., in excess of 80 satellites. *See* ICFS File No. SAT-LOA-20190102-00001, Letter from Dr. Michael Mineiro, V.P. Legal, Regulatory, and Government Affairs, HawkEye 360, to Stephen Duall, Chief, Satellite Policy Branch, Satellite Division, FCC (dated Dec. 4, 2019).

[7] The application, as amended, was previously granted-in-part, and deferred-in-part. *See Policy Branch Information, Satellite Space Station Applications Actions Taken,* Public Notice, DA No. 19-1268, Report No. SAT-01432 (Dec. 13, 2019); *Policy Branch Information, Satellite Space Applications Actions Taken*, Public Notice, DA No. 20-1502, Report No. SAT-01518 (Dec. 18, 2020) (ICFS File Nos. SAT-LOA-20190102-00001; SAT-AMD-20200728-00090). The portion of HE360's request that had been granted was subsequently modified. *See* ICFS File No. SAT-MOD-20210114-00010 (granted May 25, 2021). The license for HE360's full constellation was granted on October 20, 2022. *See Policy Branch Information, Satellite Space Station Applications Actions Taken,* Public Notice, DA No. 22-1111, Report No. SAT-01676 (Oct. 21, 2022).

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Frequencies:[8]

8025-8400 MHz (space-to-Earth) (data downlink):[9,12]

Downlink #1 for satellites 1-60 (20 clusters of 3 satellites)

Center Frequencies	Emission Bandwidths	# near-polar Satellites	# mid-inclination Satellites	# near-equatorial Satellites
8075.0 MHz	8.0 to 80.0 MHz	8	10	2
8165.0 MHz	8.0 to 80.0 MHz	8	10	2
8255.0 MHz	8.0 to 80.0 MHz	8	10	2

Downlink #2 for satellites 22-60, plus replenishment for satellites 1-21 (20 clusters of 3 satellites)

Center Frequencies	Emission Bandwidths	# near-polar Satellites	# mid-inclination Satellites	# near-equatorial Satellites
8090.0 MHz (LHCP only)	105.0 MHz	8	10	2
8210.0 MHz (LHCP)	105.0 MHz	8	10	2
8210.0 MHz (RHCP)	105.0 MHz	8	10	2

2025-2110 MHz (Earth-to-space) (data uplink):

Uplink for satellites 1-9 (3 clusters of 3 satellites)

Center Frequencies	Emission Bandwidths	# near-polar Satellites	# mid-inclination Satellites	# near-equatorial Satellites
2068.2 MHz	1.33 MHz and 2.66 MHz	3	0	0
2062.7 MHz	1.33 MHz and 2.66 MHz	3	0	0

[8] HE360 satellites have antennas capable of receiving in the following bands: 100-182 MHz (VHF Dipole): 382-422 MHz (UHF Dipole): 1090 MHz (ADS-B Patch): 1.6-1.7 GHz (L-band Patch); 2.9-3.1 GHz (S-band Patch): 1.4-7.0 GHz (Molded Button Antenna); 6.0-18.0 GHz (Horn Antenna). Starting with HE360 satellite cluster two, the satellites include antennas capable of receiving signals in the frequency bands used by the GPS L1 (center frequency 1575.42 MHz), L2 (center frequency 1227.60) and L5 (center frequency 1176.45 MHz) signals (GNSS Antenna). Starting with HE360 satellite cluster four, the Molded Button Antenna has been replaced by a Spiral-Backed Antenna capable of receiving in the 600 MHz-10 GHz frequency bands. Starting with HE360 satellites in Cluster 7, the satellites will include antennas capable of receiving signals in the 250-350 MHz frequency band, and the 1090 MHz (ADS-B Patch) antenna will be removed. Starting with HE360 satellites in Cluster 9, the satellites will include additional antennas capable of receiving signals in the 30-88 and 120-800 MHz frequency bands.

[9] Starting with HE360 satellites deployed in Cluster 9, the specifications for this X-band downlink are modified as described in ICFS File Nos. SAT-MOD-20220906-00099 and SAT-AMD-20221014-00136. This includes modifications to the center frequencies. *See* ICFS File No. SAT-AMD-20221014-00136, Narrative at Attachment 2. Except as modified by this grant, the information in this section of the grant document reflects information previously included in what was formerly Appendix A. *See March 2023 Grant Stamp.*

2077.4 MHz	1.33 MHz and 2.66 MHz	3	0	0

Uplink for satellites 10-60, plus replenishments for satellites 1-9 (20 clusters of 3 satellites)

Center Frequencies	Emission Bandwidths	# near-polar Satellites	# mid-inclination Satellites	# near-equatorial Satellites
2046.5 MHz	1.33 MHz and 2.66 MHz	8	10	2
2049.3 MHz	1.33 MHz and 2.66 MHz	8	10	2
2075.0 MHz	1.33 MHz and 2.66 MHz	8	10	2

Telemetry, Tracking and Command:

8025-8400 MHz (space-to-Earth) (telemetry/tracking):

Downlink for satellites 1-60 (20 clusters of 3 satellites)

Center Frequencies	Emission Bandwidths	# near-polar Satellites	# mid-inclination Satellites	# near-equatorial Satellites
8291.0 MHz	128 kHz to 4.0 MHz	8	10	2
8297.0 MHz	128 kHz to 4.0 MHz	8	10	2
8303.0 MHz	128 kHz to 4.0 MHz	8	10	2

2200-2290 MHz (space-to-Earth) (emergency backup telemetry/tracking)[16]

Emergency Backup TT&C Downlink for satellites 1-21 (7 clusters of 3 satellites):

Center Frequencies	Emission Bandwidths	# near-polar Satellites	# mid-inclination Satellites	# near-equatorial Satellites
2242.0 MHz	256 kHz to 4.0 MHz	5	2	0
2254.0 MHz	256 kHz to 4.0 MHz	5	2	0
2260.0 MHz	256 kHz to 4.0 MHz	5	2	0

2025-2110 MHz (Earth-to-space) (command):

Command uplink for satellites 1-15 (5 clusters of 3 satellites)

Center Frequencies	Emission Bandwidths	# near-polar Satellites	# mid-inclination Satellites	# near-equatorial Satellites
2063.965 MHz	120 kHz and 180 kHz	4	1	0

2064.965 MHz	120 kHz and 180 kHz	4	1	0
2065.965 MHz	120 kHz and 180 kHz	4	1	0

Command uplink for satellites 16-60, plus replenishments for satellites 1-15 (20 clusters of 3 satellites)

Center Frequencies	Emission Bandwidths	# near-polar Satellites	# mid-inclination Satellites	# near-equatorial Satellites
2052.1 MHz	120 kHz and 180 kHz	8	10	2
2053.0 MHz	120 kHz and 180 kHz	8	10	2
2053.7 MHz	120 kHz and 180 kHz	8	10	2

432-438 MHz (Earth-to-space) (backup command; first cluster launched on December 3, 2018 only)

Inter-satellite links:[10]

First cluster launched on December 3, 2018 only:
2410 MHz (space-to-space)

Cluster 9 and satellites 22-60:
1626.5-1645.5 MHz (transmit) (space-to-space) (inter-satellite link), 200 kHz bandwidth
1646.5-1660.5 MHz (transmit) (space-to-space) (inter-satellite link), 200 kHz bandwidth
1525-1544 MHz (receive) (space-to-space) (inter-satellite link), 200 kHz bandwidth
1545-1559 MHz (receive) (space-to-space) (inter-satellite link), 200 kHz bandwidth

Receive only:

156.7625-156.7875 MHz Automatic Identification System (AIS 3)
156.8125-156.8375 MHz (AIS 4)
161.9625-161.9875 MHz (AIS 1)
162.0125-162.0375 MHz (AIS 2)
406.0-406.1 MHz Emergency Position-Indicating Radiobeacon (EPIRB)
156.5125-156.5375 MHz Digital Selective Calling (DSC)
1087.7-1092.3 MHz ((Earth-to-space) Automatic Dependent Surveillance-Broadcast (ADS-B))
Signals with center frequencies of 1575.42 MHz, 1227.60 MHz, and 1176.45 MHz (Earth-to-space)

[10] HE360 confirms that its terminals operating on the Inmarsat L-band frequencies have an out-of-band EIRP density that complies with the limits listed in Table 8 of ETSI EN 301 473 V2.1.2 and has the additional constraint that the EIRP density will not exceed -45 dBW/30 kHz in the frequency bands lower than 1626.5 MHz. Further, HE360 commits to operating those terminals subject to such limitations. *See* ICFS File Nos. SAT-MOD-20220906-00099 and SAT-AMD-20200728-00090, Letter from Tony Lin, Counsel for Hawkeye360, Inc. to Marlene H. Dortch, Secretary, FCC (Jan. 13, 2023).

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Unless otherwise specified herein, operations under this grant must comport with the legal and technical specifications set forth by the applicant or petitioner and with the Federal Communications Commission's rules not waived herein. This grant is also subject to the following conditions:[11]

1. HE360 must prepare the necessary information, as may be required, for submission to the International Telecommunication Union (ITU) to initiate and complete the advance publication, coordination, due diligence, and notification process for these space stations, in accordance with the ITU Radio Regulations. HE360 will be held responsible for all cost-recovery fees associated with ITU filings. No protection from interference caused by radio stations authorized by other administrations is guaranteed unless coordination and notification procedures are timely completed or, with respect to individual administrations, by successfully completing coordination agreements. Any radio station authorization for which coordination has not been completed may be subject to additional terms and conditions as required to effect coordination of the frequency assignments of other administrations. *See* 47 CFR § 25.111(b).

2. Upon receipt of a conjunction warning from the 18th Space Control Squadron or other source, HE360 must review and take all possible steps to assess the collision risk, and mitigate collision risk if necessary. As appropriate, steps to assess and mitigate should include, but are not limited to: contacting the operator of any active spacecraft involved in such warning; sharing ephemeris data and other appropriate operational information with any such operator; modifying spacecraft attitude and/or operations.

3. The number of simultaneously operational satellites must not exceed 60. This number does not include the three Pathfinder satellites launched on December 3, 2018, under grants of experimental authorizations pursuant to Part 5 of the Commission's rules.[12] These three Pathfinder satellites must operate under this Part 25 authorization pursuant to the terms and parameters, including earth station power level agreements and mitigation activities, coordinated with Federal users as part of those grants of experimental licenses.[13]

4. For S-band command uplink operations in the 2025-2110 MHz band, HE360 earth stations must operate a duty cycle of no more than 10% to ensure that the constellation complies with interference criteria contained in Recommendation ITU-R SA. 1155-2.[14]

5. This grant includes authority to deploy and operate technically identical replacement satellites during the term of the license, pursuant to 47 CFR § 25.113(i). Based on information provided by the applicant, the anticipated total number of satellites to be deployed during the license term would be 174. Deployment involving a different satellite bus will require the filing and approval of a license modification request in order to, inter alia, address any differences in debris risks due to changes in the physical characteristics of the spacecraft.[15]

6. HE360 must comply with any new rules adopted by the Commission as a result of the rulemaking in IB Docket No. 18-313.[16]

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[11] With respect to those frequency bands shared with Federal spectrum users, Federal operators have indicated that Federal missions brought into use after issuance of this grant may prevent future modification or renewal.

[12] *See supra* note 4. We note that the total number of simultaneously operational satellites refers specifically to those satellites operating in frequencies other than TT&C frequencies and does not include non-operational satellites that continue to operate in TT&C frequency bands as part of approved post-mission disposal plans.

[13] *See, e.g.,* ELS File No. 0024-EX-CN-2017, as modified 0055-EX-CM-2019.

[14] As noted *supra*, starting with HE360 satellites in Cluster 9, HE360 plans to remove the S-band transmitter used to provide emergency backup, telemetry (2200-2290 MHz).

[15] Deployment of satellites with different propulsion system characteristics, will require grant of a license modification.

[16] *See Mitigation of Orbital Debris in the New Space Age, Notice of Proposed Rulemaking,* FCC 18-159, 33 FCC Rcd 11352 (2018); *Mitigation of Orbital Debris in the New Space Age, Report and Order and Further Notice of Proposed Rulemaking,* FCC 20-54, 35 FCC Rcd 4156 (2020).

7. HE360's space-to-Earth and Earth-to-space operations shall be strictly limited to durations when the HE360 space stations referenced within this license request are visible to the corresponding earth station locations listed in Appendix A of the attachment to this grant, noting the additional restrictions within this grant.

8. We grant, on our own motion, a waiver of the U.S. Table of Frequency Allocations, 47 CFR § 2.106(a), to allow non-conforming use of the 2200-2290 MHz band for HE360 to conduct telemetry and tracking,, subject to the condition that HE360 operates on a non-interference basis, accepts any interference from authorized services in these bands, and complies with the other conditions below regarding operations in these bands. HE360 intends to operate TT&C in these frequencies but will not operate in the EESS using this frequency band. The 2200-2290 MHz band is allocated to the space operation (space-to-Earth) and space research (space-to-Earth) services in the U.S. Table of Frequency Allocations, 47 CFR § 2.106(a), for federal use only.[17] In this instance we find good cause to waive the Table of Allocations to allow HE360 to operate command links only with its satellites based on HE360's coordination with federal users in the frequency band. Additionally, HE360 shall be aware that non-Federal space-to-Earth transmissions in the 2200-2290 MHz are not permitted to earth stations within the US&P. Based on HE360's coordination with federal users in the frequency band, which should ensure that any authorized federal users are protected from harmful interference, we find good cause to waive the U.S. Table of Frequency Allocations to allow HE360 to operate telemetry and tracking with its satellites in the 2200-2290 MHz band.

9. On our own motion, we grant a waiver of the U.S. Table of Frequency Allocations, 47 CFR § 2.106(a), for HE360 to conduct non-Federal space-to-space EESS operations at 2410 MHz with the first HE360 satellite cluster launched on December 3, 2018 only, subject to the condition that operations in this band do not cause harmful interference and that HE360 may not claim protection from interference. The 2400-2417 MHz band, *inter alia*, is allocated to the amateur service on a primary basis in the U.S. Table of Frequency Allocations, 47 CFR § 2.106(a), for non-Federal use.

10. On our own motion, we grant a waiver of the U.S. Table of Frequency Allocations, 47 CFR § 2.106(a), for HE360 to conduct non-Federal Earth-to-space operations in the 432-438 MHz band, with the first HE360 satellite cluster launched on December 3, 2018 only, subject to the condition that operations in this band do not cause harmful interference and that HE360 may not claim protection from interference. The 432-438 MHz band is allocated to the Earth exploration-satellite service (active) on a secondary basis in the U.S. Table of Frequency Allocations, 47 CFR § 2.106(a), (c)(397), for Federal use only.

11. Power flux-density from HE360's operations in the 8025-8400 MHz band must not exceed the limits in No. 22.5 and Table 21-4 of the International Telecommunication Union's Radio Regulations. In addition, power spectral density levels at space research service earth stations from space-to-Earth operations in the 8025-8400 MHz band must not exceed the limits/protection criteria in Recommendation ITU-R SA.1157-1, and the guidelines for systems operating in the 8025-8400 MHz band in Recommendation ITU-R SA.1810 must be followed.

12. Operations pursuant to this license must not cause harmful interference to stations operating in the 2025-2110 MHz band in accordance with the United States Table of Frequency Allocations. *See* 47 CFR § 2.106(a), (c)(347).

13. Transmissions in the 2025-2110 MHz, 8025-8400 MHz, and 2200-2290 MHz bands[18] may only be made to/from earth stations coordinated with federal agencies, including National Aeronautics and Space Administration (NASA), Department of Commerce/National Oceanic and Atmospheric Administration (DOC/NOAA), and the United States Air Force Spectrum Management Office (AFSMO). Any use of Federal ground stations shall be coordinated by HE360's federal government customers with AFSMO (jimmy.nguyen@us.af.mil), NASA (HQ-SatCoord@mail.nasa.gov) and DOC/NOAA (edna.prado@noaa.gov). A list of coordinated non-Federal earth stations is attached as Appendix A. HE360 shall provide the FCC with an updated list of coordinated non-Federal earth stations within ten business days following any changes to that list.[19]

14. Earth-to-space transmissions in the 2025-2110 MHz band to HE360 satellites must be coordinated with the SBE (Society of Broadcast Engineers).

15. Transmissions in the 2025-2110 MHz, 2200-2290 MHz, and 8025-8400 MHz bands are limited to the center frequencies and emission bandwidths coordinated with Federal users set forth in the Frequencies section of this grant.

16. In the 2025-2110 MHz band, HE360 shall comply with the following limitations:

    a. The primary uplink (Earth-to-space) emission bandwidths shall be limited to 170 kHz, 1.33 MHz, and 2.66 MHz. All uplink (Earth-to-space) 2.66 MHz emission bandwidth transmissions shall be limited to a duty cycle of no more than 10% per earth station per satellite.

    b. All uplink (Earth-to-space) transmissions to HE360 satellites using a center frequency of 2046.5 MHz and emission bandwidth of 1.33 MHz from any earth station located in the Northern hemisphere at latitudes greater than 60 degrees or in the Southern hemisphere at latitudes below 50 degrees (e.g. above 60N or below 50S) shall cease transmissions when the NASA PUNCH satellites (4 total) are within view of the respective earth station.

    c. All uplink (Earth-to-space) transmissions using center frequencies of 2064.965 MHz and 2065.965 MHz shall be limited to a duty cycle of less than 4% per earth station per satellite.

    d. All uplink (Earth-to-space) transmissions using center frequencies of 2053.0 MHz, 2053.7 MHz, 2077.4 MHz, and 2075.0 MHz shall cease transmissions during the Artemis-IV and later Artemis missions from launch to launch + 48 hours.

17. Power flux-density levels at the surface of the Earth resulting from space-to-Earth operation in the 2200-2290 MHz band must not exceed the limits in Table 21-4 of the ITU Radio Regulations, and the power spectral density levels at space research service earth stations resulting from space-to-Earth operations in the 2200-2290 MHz band must not exceed the protection criteria in Recommendation ITU-R SA.1157-1 and Recommendation ITU-R SA.609-2.

18. All downlink (space-to-Earth) operations in the 2200-2290 MHz band shall be restricted to communication with earth stations identified in Appendix A that are located outside the US&P.[20]

19. In the event a spacecraft emergency requires activation of the emergency backup downlink (space-to-Earth) capability using center frequencies of 2242.0 MHz, 2254.0 MHz, or 2260.0 MHz, HE360 shall immediately notify the NASA JSC Spectrum Management (jsc-dl-spectrum-management@mail.nasa.gov) and Travis Inghram (HQ-SatCoord@mail.nasa.gov). Emergency backup downlink operations in the 2200-2290 MHz band shall be limited to spacecraft emergency situations only, and all other usage is not authorized.

20. All reception must comport with the requirements on unauthorized publication or use of communications in section 705 of the Communications Act of 1934, as amended (47 U.S.C. § 605). This license grant does not constitute an "authorization" with respect to the activities specified in section 705 of the Communications Act or in related provisions of chapter 119, Title 18, United States Code.

[17] Although there are additional footnote allocations for non-Federal space research, space operations, and EESS, these non-federal allocations are limited to circumstances not relevant to HE360's operations. *See* 47 CFR § 2.106(a)(c)(96) and (c)(303).

[18] As noted *supra*, starting with HE360 satellites in Cluster 9, HE360 plans to remove the S-band transmitter used to provide emergency backup, telemetry downlinks (2200-2290 MHz).

[19] A list of earth stations already coordinated with federal agencies is attached as Appendix A to this grant.

[20] *See also* condition 8.

21. The U.S. Table of Frequency Allocations, Section 2.106(a), is waived with respect to reception of ADS-B signals in the 1087.7-1092.3 MHz frequency band, for satellites through Cluster 8. This band was allocated internationally for the aeronautical mobile-satellite (R) service (AMS(R)S) (Earth-to-space) on a primary basis, at WRC-15, and is limited to the space station reception of ADS-B emissions from aircraft transmitters that operate in accordance with recognized international aeronautical standards. Stations operating in the AMS(R)S shall not claim protection from stations operating in the aeronautical radionavigation service. Resolution 425 (WRC-15) shall apply.[21] Any future protection of ADS-B reception will be governed by the relevant status in the Table of Frequency Allocations and must be in accordance with any subsequent rulemaking proceedings to implement any new domestic allocations or service rules.

22. The U.S. Table of Frequency Allocations, Section 2.106(a), is waived with respect to reception of AIS signals in the 156.7625-156.7875 MHz (AIS 3), 156.8125-156.8375 MHz (AIS 4), 161.9625-161.9875 MHz (AIS 1) and 162.0125-162.0375 MHz (AIS 2).[22] As a condition of this waiver, HE360 must not claim protection for reception of messages in the 156.0125-162.0375 MHz frequency band that is not in accordance with the Table of Frequency Allocations for the pertinent area and may only claim protection to the extent provided by the status of the reception under the Table of Frequency Allocations.

23. HE360 may claim protection for reception in the 156.7625-162.0375 MHz band only to the extent permitted under the U.S. Table of Frequency Allocations for domestic operations or the ITU Radio Regulations for international operations, as of the time of operation. Operations in the 156.7625-162.0375 MHz band must be in accordance with any Commission rulemakings subsequent to the release of this license that implement any new domestic allocations or service rules for these bands.[23]

24. The U.S. Table of Frequency Allocations, 47 CFR § 2.106(a), is waived with respect to reception of the DSC signal in the 156.5125-156.5375 MHz frequency band on a non-conforming, non-harmful interference basis. The 156.5125-156.5375 MHz frequency band is allocated to Maritime Mobile on a primary basis for non-Federal operations and in all ITU Regions.[24] In the United States, there is also limited use of this band by certain grandfathered public safety radio pool licensees.[25] As a condition of this waiver, HE360 must not claim protection for reception of messages in the 156.5125-156.5375 MHz frequency band that is not in accordance with the Table of Frequency Allocations for the pertinent area and may only claim protection to the extent provided by the status of the reception under the Table of Frequency Allocations.

25. The U.S. Table of Frequency Allocations, 47 CFR § 2.106(a), is waived with respect to reception of EPIRB signals in the 406-406.1 MHz frequency band. The 406-406.1 MHz frequency band is allocated for Mobile-Satellite Service (MSS) and is limited to low-power satellite emergency position-indicating radio beacons

[21] We previously found good cause to waive sections 2.102(a) and 2.106 to permit reception of ADS-B messages on an unprotected basis in the United States because doing so will not cause any interference or unreasonably preclude other services, and make the same finding with respect to Cluster 8.

[22] We previously found that the reception of AIS transmissions cannot cause harmful interference, and these transmissions will be present pursuant to existing authorizations using frequencies allocated to other services regardless of whether they are received by a HE360 satellite. We also concluded that the service HE360 proposes will serve the public interest by providing critical near real-time maritime data of interest for both government and commercial users. We make the same findings with respect to Clusters 8 and 9.

[23] *Iridium Order and Authorization*, 31 FCC Rcd at 8689, para. 50.

[24] 47 CFR § 2.106(a), (b)(111), (266), and (c)(52).

[25] 47 CFR § 2.106(a), (c)(266). We found that the reception of DSC transmissions cannot cause harmful interference, and these transmissions will be present pursuant to existing authorizations using frequencies allocated to other services regardless of whether they are received by a HE360 satellite. We also concluded that the service HE360 proposes will serve the public interest by providing near real-time maritime safety data. Exhibit A: Narrative at 44. We make the same findings with respect to Clusters 8 and 9.

(EPIRB).[26] As a condition of this waiver, HE360 must not claim protection for reception of messages in the 406-406.1 MHz frequency band that is not in accordance with the Table of Frequency Allocations for the pertinent area and may only claim protection to the extent provided by the status of the reception under the Table of Frequency Allocations.

26. The U.S. Table of Frequency Allocations, § 2.106(a), is waived, to the extent necessary, with respect to reception of signals transmitted from terrestrial sources (Earth-to-space) in frequency bands used by the Global Positioning System (GPS). The frequency bands used by the GPS are allocated for Space-to-earth transmissions.[27]

27. HE360's request for a waiver of the U.S. Table of Frequency Allocations, 47 CFR § 2.106(a),[28] with respect to reception of inter-satellite signals from the Inmarsat satellite system in the 1525-1544 MHz and 1545-1559 MHz frequency bands is GRANTED, on an unprotected, non-interference basis.[29] Although the allocations in this frequency band do not include a directional indicator for space-to-space communications, reception by the HawkEye satellites of these frequencies will not in any way alter the interference environment, as the received signal will be indistinguishable in its technical characteristics from signals transmitted in the allocated space-to-Earth direction.

28. HE360's request for a waiver of the Table of Frequency Allocations, 47 CFR § 2.106(a), to receive inter-satellite signals from the Inmarsat satellite system in the 1626.5-1645.5 and 1646.5-1660.5 MHz frequency bands on an unprotected, non-interference basis, is GRANTED.[30] Additionally, we grant on our own motion waiver to of the Table of Frequency Allocations, 47 CFR § 2.106(a), to transmit inter-satellite signals to the Inmarsat satellite system in the 1626.5-1645.5 MHz and 1646.5-1660.5 MHz frequency bands on an unprotected, non-interference basis. The allocation for the Mobile-Satellite Service in which the Inmarsat system operates and that encompasses these bands does not include a space-to-space directional indicator. HE360 states that transmission on a non-conforming basis in the L-band frequencies will occur only on frequencies that Inmarsat assigns to the spaceborne Inmarsat BGAN terminals onboard the HE360 spacecraft. HE360 states that transmission on a non-conforming basis in the L-band frequencies will occur only on frequencies that Inmarsat assigns to the spaceborne Inmarsat BGAN terminals onboard the HE360 spacecraft. HE360 notes that these transmissions are approved and supported by Inmarsat and fall within its licensed spectrum.[31] As with its other operations, Inmarsat will assign channels to the spacecraft consistent with its coordination agreements with other operators in the band,

[26] 47 CFR § 2.106(a), (b)(266). We found that the reception of EPIRB transmissions cannot cause harmful interference, and these transmissions will be present pursuant to existing authorizations using frequencies allocated to other services regardless of whether they are received by a HE360 satellite. We also concluded that the service HE360 proposes will serve the public interest by augmenting existing COSPAS-SARSAT architecture used to monitor and geolocate EPIRB distress signals. We make the same findings with respect to Clusters 8 and 9. The SARSAT (Search and Rescue Satellite Aided Tracking) system is operated by NOAA to detect and locate mariners, aviators, and recreational enthusiasts in distress. It uses NOAA satellites in low-earth and geostationary orbit to detect and locate distress signals and relay them from emergency beacons to a network of ground stations and the U.S. Mission Control Center, which processes the signals and alerts appropriate search and rescue authorities. SARSAT is part of the international COSPAS-SARSAT program. *See* http://www.sarsat.noaa.gov.

[27] We found that the reception of transmitted signals from terrestrial sources (Earth-to-space) in frequency bands used by the Global Positioning System (GPS) cannot cause harmful interference to actual GPS (Space-to earth) operations. We make the same findings with respect to Clusters 8 and 9.

[28] We note that waiver of 47 CFR § 25.112(a)(3) is unnecessary as this provision was removed from the Commission's rules effective Jan. 5, 2024. *See Space Innovation; Expediting Initial Processing of Satellite and Earth Station Applications, Report and Order and Further Notice of Proposed Rulemaking*, FCC 23-73 (Sept. 22, 2023) at para. 27; 88 Federal Register 84737 (Dec. 6, 2023).

[29] *See* Legal Narrative at 8-9.

[30] Legal Narrative at 8.

[31] *Id*. at 9.

ensuring that there is no harmful interference between these systems.[32] Inmarsat will maintain the same extent of positive control of HE360's operations as it does for its other L-band users and will thereby be able to address any unlikely interference issues as required by Section 25.287 of the Commission's Rules.

29. HE360 must maintain a U.S. point of contact available by telephone 24 hours per day, seven days per week, with the authority and ability to terminate operations authorized herein. The telephone number for this U.S. point of contact must also be provided to NTIA (ravery@ntia.doc.gov), DOC/NOAA (edna.prado@noaa.gov), and NASA (HQ-SatCoord@mail.nasa.gov).

30. HE360 shall provide the FCC and other federal agencies the initial orbital parameters (e.g. operating altitudes, inclination angle) for each cluster within 30 days following launch. Notification shall be provided to AFSMO (jimmy.nguyen@us.af.mil), NASA (HQ-SatCoord@mail.nasa.gov) and DOC/NOAA (edna.prado@noaa.gov).

31. Given the opportunity for additional entrants to operate in HE360's requested frequency bands, this grant includes the previously-granted waiver to HE360 of the modified processing round requirements of 47 CFR §§ 25.156 and 25.175.[33]

32. Because HE360 must comply with the technical requirements in Part 2 of the Commission's rules and the above-referenced power flux-density limits, which should prevent harmful interference to other operators in the band, this grant includes the previously-granted waiver of the default service rules in 47 CFR § 25.217(b).[34]

33. This license will become null and void if, at any time during the license term, there are no HE360 satellites operating.

34. In connection with the provision of service in any particular country, HE360 is obliged to comply with the applicable laws, regulations, rules, and licensing procedures of that country

35. HE360's three Pathfinder satellites were successfully launched on December 3, 2018 and are operational. *See* ELS File No. 0024-EX-CN-2017. Authorization for continued operations of the three Pathfinder satellites under Part 25 of the Commission's rules is included in this grant. We find that warehousing concerns are addressed in this situation through the imposition of condition 25 above. Thus, we decline to impose milestone and bond obligations on HE360.

36. HE360 must coordinate physical operations of spacecraft with any operator using similar orbits, for the purposes of eliminating collision risk and minimizing operational impacts. The orbital parameters specified in this grant are subject to change based on such coordination.

37. HE360 must provide a semi-annual report, by January 1 and July 1 each year, covering the preceding six month period, respectively, from June 1 to November 30 and December 1 to May 31. The report should include the following: Number of conjunction events identified for any HE360 system satellites during the reporting period, and the number of events that resulted in an action (maneuver or coordination with another operator), as well as any difficulties encountered in connection with the collision avoidance process and any measures taken to address those difficulties.

HE360 must report any loss of control of HE360 satellites at altitudes above 350 km not less than 10 days following the loss of control.

Based on the information reported, the license may be subject to additional terms and conditions, including additional reporting obligations, limitations on additional deployments, requirements for early removal of satellites from orbit, or any other appropriate conditions to limit collision risk. In the event of HE360 satellite

[32] *Id*.

[33] *See DigitalGlobe, Inc.*, Order and Authorization, 20 FCC Rcd 15696 (Sat. Div., Int'l Bur. 2005) at para. 8.

[34] *Id.*, 20 FCC Rcd at 15702-03, para. 19.

failures resulting in more than 100 post-failure object years, HE360 may not deploy any additional HE360 satellites until the Commission has approved a license modification that includes an updated orbital debris mitigation plan addressing reduction in the failure rate or mitigation of the risk of satellite failures.

38. HE360 must communicate and collaborate with NASA to support safety of both HE360 and NASA assets and to preserve long-term sustainable space-based communications services. HE360 must report on the progress of its communications and collaboration efforts to the Commission in its regular reports specified in condition 27, above. HE360 must coordinate and collaborate with NASA to promote a mutually beneficial space environment that would minimize impacts to NASA's science missions involving astronomy.

39. HE360 must coordinate with NSF to achieve a mutually acceptable agreement to mitigate the impact of its satellites (call sign S3165) on optical ground-based astronomy. HE360 must submit an annual report to the Commission, by January 1st each year covering the preceding year (1) describing whether it has reached a coordination agreement with NSF addressing optical astronomy; and (2) any steps HE360 has taken to reduce the impact of its satellites on optical astronomy. If HE360 provides a statement in the record that NSF has no concerns within 45 days following deployment of the HE360 satellites to approximately 590 km, no further reporting will be required.

40. The license term is 15 years, calculated from the deployment of the three Pathfinder satellites on December 3, 2018 (that is December 3, 2033).

41. Within 30 days after deployment of each satellite pursuant to this license, HE360 must file a notification with the Commission specifying its apogee and perigee altitudes and orbital inclination.

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

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

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

Action Date:	March 13, 2024	
Term Dates	**From:** March 13, 2024	**To:** see conditions

Approved:

Merissa L. Velez

Merissa L. Velez
Chief, Satellite Programs and Policy Division

ATTACHMENT TO GRANT
HawkEye 360, Inc.
ICFS File Nos. SAT-MOD-20220906-00099, SAT-AMD-20221014-00136

Appendix A[35]:
HawkEye 360 Earth Stations
Coordinated With Federal Agencies

HawkEye Earth Stations*		
Earth stations	Latitude (N)	Longitude (E)
Svalbard, Norway	78.231	15.390
Tromso, Norway	69.663	18.940
Troll, Antarctica	-72.001	2.526
Punta Arenas, Chile	-52.936	-70.870
Awarua, New Zealand	-46.529	168.381
Hartbeesthoek, South Africa	-25.884	27.884
Long Beach, CA (USA)[36]	34.0	-118.3
Maui, HI (USA) [37]	20.8	-156.5
Athens, Greece	37.845	22.623
Fairbanks, AK (USA)[38]	64.890	-147.529
Inuvik, Canada	68.325	-133.613
Jeju, South Korea	33.541	126.816
Mauritius	-20.501	57.450
Mingenew, Australia	-29.010	115.342
Puertollano, Spain	38.672	-4.162
Peterborough, Australia	-32.962	138.850
Absheron, Azerbaijan	40.466	49.486
Plana, Bulgaria	42.483	23.445
Blonduos, Iceland	65.647	-20.246
Kandy, Sri Lanka	7.274	80.725
Azores, Portugal	36.998	-25.137
Shetland, United Kingdom	60.748	-0.858

* Earth stations are owned and operated by Kongsberg Satellite Services. *See also* ICFS File Nos. SAT-LOA-20190102-00001, Letter from Dr. Michael Mineiro, V.P. Legal, Regulatory, and Government Affairs, HawkEye 360, to Stephen Duall, Chief, Satellite Policy Branch, Satellite Division, FCC (dated Dec. 4, 2019); ICFS File Nos. SAT-LOA-20190102-00001; SAT-MOD-20210114-00010, Letter from Dr. Michael Mineiro, V.P. Legal, Regulatory, and Government Affairs, HawkEye 360, to Merissa Velez, Chief, Satellite Policy Branch, Satellite Division, FCC (dated Jan. 18, 2022); and ICFS File Nos. SAT-LOA-20190102-00001 and SAT-AMD-20200728-00090, Letter from Tony Lin, Counsel for Hawkeye360, Inc. to Marlene H. Dortch, Secretary, FCC (Nov. 15, 2022).

[35] In the prior grant document, this appendix was designated as "Appendix B." *See March 2023 Grant Stamp.*

[36] The Long Beach, CA, USA earth station will not operate in any S-band frequencies.

[37] The HI, USA earth station will only operate S-band frequencies for uplinks only.

[38] The Fairbanks, AK, USA earth station will not operate with S-band downlinks.

9−16. Name of Contact Representative

Name:	Tony Lin	**Phone Number:**	202−799−4450
Company:	DLA Piper	**Fax Number:**	
Street:	500 8th St NW	**E−Mail:**	tony.lin@us.dlapiper.com
City:	Washington	**State:**	DC
Country:	USA	**Zipcode:**	20004−
Attention:		**Relationship:**	Legal Counsel

CLASSIFICATION OF FILING

17. Choose the button next to the classification that applies to this filing for both questions a. and b. Choose only one for 17a and only one for 17b.

- ○ a1. Earth Station
- ◉ a2. Space Station

(N/A) b1. Application for License of New Station
(N/A) b2. Application for Registration of New Domestic Receive−Only Station
- ◉ b3. Amendment to a Pending Application
- ○ b4. Modification of License or Registration

b5. Assignment of License or Registration
b6. Transfer of Control of License or Registration
- ○ b7. Notification of Minor Modification

(N/A) b8. Application for License of New Receive−Only Station Using Non−U.S. Licensed Satellite
(N/A) b9. Letter of Intent to Use Non−U.S. Licensed Satellite to Provide Service in the United States
(N/A) b10. Other (Please specify)
(N/A) b11. Application for Earth Station to Access a Non−U.S.satellite Not Currently Authorized to Provide the Proposed Service in the Proposed Frequencies in the United States
(N/A) b12. Application for Database Entry
- ○ b13. Amendment to a Pending Database Entry Application
- ○ b14. Modification of Database Entry

17c. 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):

17d.

Fee Classification

18. If this filing is in reference to an existing station, enter:	19. If this filing is an amendment to a pending application enter both fields, if this filing is a modification please enter only the file number:	
(a) Call sign of station: S3042	(a) Date pending application was filed:	(b) File number:
	09/06/2022	SATMOD2022090600099

TYPE OF SERVICE

20. NATURE OF SERVICE: This filing is for an authorization to provide or use the following type(s) of service(s): Select all that apply:

- ☐ a. Fixed Satellite
- ☐ b. Mobile Satellite
- ☐ c. Radiodetermination Satellite
- ☒ d. Earth Exploration Satellite
- ☐ e. Direct to Home Fixed Satellite
- ☐ f. Digital Audio Radio Service
- ☒ g. Other (please specify) Radiofrequency Sensing

21. STATUS: Choose the button next to the applicable status. Choose only one.

○ Common Carrier ◉ Non−Common Carrier

22. If earth station applicant, check all that apply.

- ☐ Using U.S. licensed satellites
- ☐ Using Non−U.S. licensed satellites

23. If applicant is providng INTERNATIONAL COMMON CARRIER service, see instructions regarding Sec. 214 filings. Choose one. Are these facilities:

○ Connected to a Public Switched Network ○ Not connected to a Public Switched Network ◉ N/A

24. FREQUENCY BAND(S): Place an 'X' in the box(es) next to all applicable frequency band(s).

- ☐ a. C−Band (4/6 GHz)
- ☐ b. Ku−Band (12/14 GHz)
- ☒ c.Other (Please specify upper and lower frequencies in MHz.)

Frequency Lower: 2025 Frequency Upper: 8400 (Please specify additional frequencies in an attachment)

TYPE OF STATION

25. CLASS OF STATION: Choose the button next to the class of station that applies. Choose only one.

- ○ a. Fixed Earth Station
- ○ b. Temporary−Fixed Earth Station
- ○ c. 12/14 GHz VSAT Network
- ○ d. Mobile Earth Station
- ○ e. Geostationary Space Station
- ◉ f. Non−Geostationary Space Station
- ○ g. Other (please specify)

26. TYPE OF EARTH STATION FACILITY:

○ Transmit/Receive ○ Transmit−Only ○ Receive−Only ◉ N/A

"For Space Station applications, select N/A."

PURPOSE OF MODIFICATION

27. The purpose of this proposed modification is to: (Place an 'X' in the box(es) next to all that apply.)

- ☐ a -- authorization to add new emission designator and related service
- ☐ b -- authorization to change emission designator and related service
- ☐ c -- authorization to increase EIRP and EIRP density
- ☐ d -- authorization to replace antenna
- ☐ e -- authorization to add antenna
- ☐ f -- authorization to relocate fixed station
- ☐ g -- authorization to change frequency(ies)
- ☐ h -- authorization to add frequency
- ☐ i -- authorization to add Points of Communication (satellites & countries)
- ☐ j -- authorization to change Points of Communication (satellites & countries)
- ☐ k -- authorization for facilities for which environmental assessment and radiation hazard reporting is required
- ☐ l -- authorization to change orbit location
- ☐ m -- authorization to perform fleet management
- ☐ n -- authorization to extend milestones
- ☐ o -- Other (Please specify)

ENVIRONMENTAL POLICY

28. Would a Commission grant of any proposal in this application or amendment have a significant environmental impact as defined by 47 CFR 1.1307? If YES, submit the statement as required by Sections 1.1308 and 1.1311 of the Commission's rules, 47 C.F.R. 1.1308 and 1.1311, as an exhibit to this application.A Radiation Hazard Study must accompany all applications for new transmitting facilities, major modifications, or major amendments.	○ Yes ◉ No

ALIEN OWNERSHIP Earth station applicants not proposing to provide broadcast, common carrier, aeronautical en route or aeronautical fixed radio station services are not required to respond to Items 30−34.

29. Is the applicant a foreign government or the representative of any foreign government?	○ Yes ◉ No
30. Is the applicant an alien or the representative of an alien?	○ Yes ◉ No ○ N/A
31. Is the applicant a corporation organized under the laws of any foreign government?	○ Yes ◉ No ○ N/A
32. Is the applicant a corporation of which more than one−fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country?	○ Yes ◉ No ○ N/A

33. Is the applicant a corporation directly or indirectly controlled by any other corporation of which more than one−fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country?	○ Yes ◉ No ○ N/A
34. If any answer to questions 29, 30, 31, 32 and/or 33 is Yes, attach as an exhibit an identification of the aliens or foreign entities, their nationality, their relationship to the applicant, and the percentage of stock they own or vote.	

BASIC QUALIFICATIONS

35. Does the Applicant request any waivers or exemptions from any of the Commission's Rules? If Yes, attach as an exhibit, copies of the requests for waivers or exceptions with supporting documents.	○ Yes ◉ No
36. Has the applicant or any party to this application or amendment had any FCC station authorization or license revoked or had any application for an initial, modification or renewal of FCC station authorization, license, or construction permit denied by the Commission? If Yes, attach as an exhibit, an explination of circumstances.	○ Yes ◉ No

37. Has the applicant, or any party to this application or amendment, or any party directly or indirectly controlling the applicant ever been convicted of a felony by any state or federal court? If Yes, attach as an exhibit, an explination of circumstances.	○ Yes ◉ No
38. Has any court finally adjudged the applicant, or any person directly or indirectly controlling the applicant, guilty of unlawfully monopolizing or attemptiing unlawfully to monopolize radio communication, directly or indirectly, through control of manufacture or sale of radio apparatus, exclusive traffic arrangement or any other means or unfair methods of competition?If Yes, attach as an exhibit, an explanation of circumstances	○ Yes ◉ No
39. Is the applicant, or any person directly or indirectly controlling the applicant, currently a party in any pending matter referred to in the preceding two items? If yes, attach as an exhinit, an explanation of the circumstances.	○ Yes ◉ No
40. If the applicant is a corporation and is applying for a space station license, attach as an exhibit the names, address, and citizenship of those stockholders owning a record and/or voting 10 percent or more of the Filer's voting stock and the percentages so held. In the case of fiduciary control, indicate the beneficiary(ies) or class of beneficiaries. Also list the names and addresses of the officers and directors of the Filer.	

41. By checking Yes, the undersigned certifies, that neither applicant nor any other party to the application is subject to a denial of Federal benefits that includes FCC benefits pursuant to Section 5301 of the Anti−Drug Act of 1988, 21 U.S.C. Section 862, because of a conviction for possession or distribution of a controlled substance. See 47 CFR 1.2002(b) for the meaning of "party to the application" for these purposes.	(●) Yes ( ) No
42a. Does the applicant intend to use a non−U.S. licensed satellite to provide service in the United States? If Yes, answer 42b and attach an exhibit providing the information specified in 47 C.F.R. 25.137, as appropriate. If No, proceed to question 43.	( ) Yes (●) No
42b. What administration has licensed or is in the process of licensing the space station? If no license will be issued, what administration has coordinated or is in the process of coordinating the space station?United States	

2459

43. Description. (Summarize the nature of the application and the services to be provided). (If the complete description does not appear in this box, please go to the end of the form to view it in its entirety.)

Applicant amends the modification application SAT−MOD−20220906−00099 to update communications links and update earth stations.

Amendment Narrative

43a. Geographic Service Rule Certification

By selecting A, the undersigned certifies that the applicant is not subject to the geographic service or geographic coverage requirements specified in 47 C.F.R. Part 25.

(●) A

By selecting B, the undersigned certifies that the applicant is subject to the geographic service or geographic coverage requirements specified in 47 C.F.R. Part 25 and will comply with such requirements.

( ) B

By selecting C, the undersigned certifies that the applicant is subject to the geographic service or geographic coverage requirements specified in 47 C.F.R. Part 25 and will not comply with such requirements because it is not feasible as a technical matter to do so, or that, while technically feasible, such services would require so many compromises in satellite design and operation as to make it economically unreasonable. A narrative description and technical analysis demonstrating this claim are attached.

( ) C

CERTIFICATION

The Applicant waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application. The applicant certifies that grant of this application would not cause the applicant to be in violation of the spectrum aggregation limit in 47 CFR Part 20. All statements made in exhibits are a material part hereof and are incorporated herein as if set out in full in this application. The undersigned, individually and for the applicant, hereby certifies that all statements made in this application and in all attached exhibits are true, complete and correct to the best of his or her knowledge and belief, and are made in good faith.

44. Applicant is a (an): (Choose the button next to applicable response.)

- ○ Individual
- ○ Unincorporated Association
- ○ Partnership
- ◉ Corporation
- ○ Governmental Entity
- ○ Other (please specify)

45. Name of Person Signing	46. Title of Person Signing
Michael Mineiro	VP Legal, Regulatory, & Government Affairs

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WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND / OR IMPRISONMENT
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(U.S. Code, Title 47, Section 312(a)(1)), AND/OR FORFEITURE (U.S. Code, Title 47, Section 503).

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DA No. 24-263

Report No. SAT-01807 **Friday March 15, 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-20221014-00136 E S3042 HawkEye 360, Inc.
Amendment
Granted in Part/ Deferred in Part Effective Date: 03/13/2024

Nature of Service: Earth Exploration Satellite Service, Other

See ICFS File No. SAT-MOD-20220906-00099 for a description of the action taken.

SAT-AMD-20230612-00138 E S3094 Intelsat License LLC
Amendment
Withdrawn Effective Date: 03/12/2024

Nature of Service: Fixed Satellite Service

SAT-LOA-20210611-00079 E S3094 Intelsat License LLC
Launch and Operating Authority
Withdrawn Effective Date: 03/12/2024

Nature of Service: Other

SAT-MOD-20220827-00098 E S2162 SES Americom, Inc.
Modification 09/30/2022 - 02/01/2027
Grant of Authority Effective Date: 03/11/2024

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

On March 11, 2024, the Satellite Programs and Policy Division granted, with conditions, the request of SES Americom, Inc. to extend the license term of the AMC-3 space station until February 1, 2027. AMC-3 operates from the 72° W.L. orbital location and uses the 3700-4200 GHz and 11.7-12.2 GHz (space-to-Earth), and 5925-6425 GHz and 14.0-14.5 GHz (Earth-to-space) frequency bands. Telemetry, tracking, and command is performed using the following center frequencies: 3700.5 MHz, 4199 MHz, 11.702 GHz, 12.180 GHz, and 6423.5 MHz.

SAT-MOD-20220906-00099 E S3042 HawkEye 360, Inc.
Modification 03/13/2024 -
Granted in Part/ Deferred in Part Effective Date: 03/13/2024

Nature of Service: Earth Exploration Satellite Service, Other

On March 13, 2024, the Satellite Programs and Policy Division granted in part, with conditions, the request of HawkEye360, Inc. for modification of its non-geostationary orbit satellite license. Specifically, the Division modified the license to reflect updated technical parameters for six satellites known as the "Cluster 8" and "Cluster 9" satellites. Additionally, for the three "Cluster 9" satellites, the Division modified the license to: (1) specify additional antennas; (2) update parameters for operations in the 8025-8400 MHz band; (3) add L-band inter-satellite links in the 1626.5-1645.5 MHz, 1646.5-1660.5 MHz, 1525-1544 MHz, and 1545-1559 MHz (space-to-space) frequency bands for relay communications with the Inmarsat Broadband Global Access Network (BGAN); and (4) reflect discontinuance of certain telemetry, tracking, and command operations in the 2200-2290 MHz band. See also DA 24-262.

SAT-MOD-20230201-00011 E S3096 SES Americom, Inc.
Modification 06/14/2023 - 06/14/2038
Grant of Authority Effective Date: 03/08/2024

Nature of Service: Fixed Satellite Service

On March 8, 2024, the Satellite Programs and Policy Division granted the request of SES Americom, Inc. to operate the SES-18 space station at the 103.05° W.L. orbital location instead of at the 131° W.L. orbital location. SES-18 operates using the 3.7-4.2 GHz (space-to-Earth) and 5.925-6.425 GHz (Earth-to-space) frequency bands, and telemetry, tracking, and command is performed using the 6415-6425 MHz (Earth-to-space) and 4190-4200 MHz (space-to-Earth) frequency bands.

SAT-STA-20240109-00009 E S3083 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 03/12/2024

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-20240206-00027 E S3083 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 03/12/2024

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-20240226-00040 E S2704 Intelsat License LLC
Special Temporary Authority
Grant of Authority Effective Date: 03/12/2024

Nature of Service: Fixed Satellite Service

On March 12, 2024, the Satellite Programs and Policy Division granted, with conditions, the request of Intelsat License LLC for special temporary authority, for an additional period of 60 days, to operate Intelsat 5 at the 166.15° E.L. orbital location. Intelsat 5 operates in the 3700-4200 MHz, 10.70-10.95 GHz, and 11.2-11.7 GHz (space-to-Earth); and 5925-6425 MHz, 12.75-13.25 GHz, and 14.0-14.25 GHz (Earth-to-space) frequency bands. Intelsat conducts telemetry, tracking, and command operations with Intelsat 5 using the following center frequencies: 11.451 GHz, 11.452 GHz, 11.454 GHz (space-to-Earth), and 13.999 GHz and 14.498 GHz (Earth-to-space).

SAT-STA-20240301-00045 E S3083 Intelsat License LLC

Special Temporary Authority

Grant of Authority Effective Date: 03/12/2024

Nature of Service: Fixed Satellite Service

On March 12, 2024, the Satellite Programs and Policy Division granted, with conditions, the request of Intelsat License LLC to operate the Galaxy 34 satellite, for an additional 30 days, 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-T/C-20231023-00257 E S3092 Astranis Projects USA LLC

Transfer of Control

Withdrawn Effective Date: 03/12/2024

Current Licensee: Astranis Projects USA LLC

FROM: Astranis Projects USA LLC

TO: Astranis Projects USA LLC

No. of Station(s) listed: 1

SAT-T/C-20240130-00019 E DBSD Services Limited

Transfer of Control

Withdrawn Effective Date: 03/12/2024

Current Licensee: DBSD Services Limited

FROM: Dish Network Corporation

TO: EchoStar Corporation

No. of Station(s) listed: 1

SAT-T/C-20240130-00020 E Gamma Acquisition L.L.C.

Transfer of Control

Withdrawn Effective Date: 03/12/2024

Current Licensee: Gamma Acquisition L.L.C.

FROM: Dish Network Corporation

TO: EchoStar Corporation

No. of Station(s) listed: 1

INFORMATIVE

SAT-ASG-20230519-00116 ICEYE US, Inc.

The Satellite Programs and Policy Division Actions Taken Public Notice released March 8, 2024, DA 24-223, is corrected to reflect that the assignment of license consented to in ICFS File No. SAT-ASG-20230519-00116 had not been consummated as of the release of the Notice.

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

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

In the Matter of	)	
	)	
CONFEDERATED TRIBES OF THE CHEHALIS RESERVATION	)	ULS File No. 0009133181
	)	
KARUK TRIBE	)	ULS File No. 0009209830
	)	
LAC VIEUX DESERT BAND OF LAKE SUPERIOR CHIPPEWA INDIANS	)	ULS File No. 0009209820
	)	
MICCOSUKEE TRIBE OF INDIANS OF FLORIDA	)	ULS File No. 0009208700
	)	
MILLE LACS BAND OF OJIBWE	)	ULS File No. 0009174661
	)	
OGLALA SIOUX TRIBE	)	ULS File No. 0009210549
	)	
PUEBLO OF JEMEZ	)	ULS File No. 0009207599
	)	
STOCKBRIDGE-MUNSEE COMMUNITY	)	ULS File No. 0009056169
	)	
Requests for Waiver of the 2.5 GHz Rural Tribal Priority Window Rules	)	

MEMORANDUM OPINION AND ORDER

Adopted: March 13, 2024 **Released: March 15, 2024**

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. The Confederated Tribes of the Chehalis Reservation (Chehalis),[1] Karuk Tribe (Karuk),[2] Lac Vieux Desert Band of Lake Superior Chippewa Indians (Lac Vieux),[3] Miccosukee Tribe of Indians of Florida (Miccosukee),[4] Mille Lacs Band of Ojibwe (Mille Lacs),[5] Oglala Sioux Tribe (Oglala Sioux),[6]

[1] *See* File No. 0009133181, (filed July 1, 2020, amended July 16, 2020, July 24, 2020, July 26, 2023, July 31, 2023 and Aug. 1, 2023) (Chehalis Application).

[2] *See* File No. 0009209830 (filed Sept. 2, 2020) (Karuk Application).

[3] *See* File No. 0009209820 (filed Sept. 2, 2020, amended Nov. 9, 2020) (Lac Vieux Application).

[4] *See* File No. 0009208700 (filed Sept. 1, 2020, amended Sept. 2, 2020) (Miccosukee Application).

[5] *See* File No. 0009174661 (filed Aug. 5, 2020) (Mille Lacs Application).

[6] *See* File No. 0009210549 (filed Sept. 2, 2020, amended Dec. 8, 2020) (Oglala Sioux Application).

Pueblo of Jemez (Jemez),[7] and Stockbridge-Munsee Community (Stockbridge-Munsee)[8] each filed an application in the 2.5 GHz Rural Tribal Priority Window (Tribal Window). In connection with the applications, each Tribe submitted a request for waiver[9] of section 27.1204(b)(2) of the Commission's rules,[10] which defines eligible Tribal lands for purposes of the Tribal Window. In this *Memorandum Opinion and Order*, we grant the Waiver Requests in part, as specified below.

II. BACKGROUND

2. In July 2019, the Commission approved an order modernizing the portion of the 2.5 GHz band formerly known as the Educational Broadband Service.[11] Among other things, the order created a Tribal Window during which eligible Tribal entities could apply for licenses for currently unassigned 2.5 GHz spectrum.[12] To obtain a license in the Tribal Window, an applicant must meet four requirements. First, the applicant must be an eligible entity, which the rule defines as "[a] federally recognized American Indian Tribe or Alaska Native Village; or an entity that is owned and controlled by a federally-recognized Tribe or a consortium of federally-recognized Tribes."[13] Second, the applicant must apply for eligible Tribal lands, as defined in section 27.1204(b)(2) of the Commission's rules.[14] Third, the eligible Tribal lands must be in a rural area, which is defined as "lands that are not part of an urbanized area or urban cluster area with a population equal to or greater than 50,000."[15] Finally, the applicant must have a local presence on the eligible Tribal lands for which it is applying.[16]

[7] *See* File No. 0009207599 (filed Aug. 31, 2020) (Jemez Application).

[8] *See* File No. 0009056169 (filed Apr. 27, 2020, amended June 18, 2020, and Nov. 18, 2020) (Stockbridge-Munsee Application).

[9] Chehalis Application, 2.5 GHz Application and Waiver Request (Chehalis Waiver Request); Karuk Application, Tribal Lands Requirement Waiver (Karuk Waiver Request); Lac Vieux Application, Geographic Waiver Request Justification (Lac Vieux Waiver Request); Miccosukee Application, Petition for Waiver (Miccosukee Waiver Request), Mille Lacs Application, Waiver of FCC Rule Section 27.1204(b) for 2.5 GHz Band Tribal Filing Window (Mille Lacs Waiver Request); Oglala Sioux Application, Petition for Waiver (Oglala Sioux Waiver Request); Jemez Application, Petition for Waiver (Jemez Waiver Request); Stockbridge-Munsee Application, Waiver Request (Stockbridge-Munsee Waiver Request) (collectively, Waiver Requests).

[10] *See* 47 CFR § 27.1204(b)(2).

[11] *Transforming the 2.5 GHz Band*, Report and Order, 34 FCC Rcd 5446 (2019) (*2.5 GHz Report & Order*).

[12] *Id.* at 5463–69, paras. 47–65.

[13] 47 CFR § 27.1204(b)(1).

[14] *Id.* § 27.1204(b)(2). The rule defines eligible Tribal lands in relevant part as "any federally recognized Indian Tribe's reservation, pueblo or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) and Indian Allotments, see § 54.400(e) of this chapter, as well as Hawaiian Home Lands—areas held in trust for native Hawaiians by the State of Hawaii, pursuant to the Hawaiian Homes Commission Act, 1920, July 9, 1921, 42 Stat 108, *et seq.*, as amended." *Id.*

[15] *Id.* § 27.1204(b)(3).

[16] *Id.* § 27.1204(b)(4). On January 6, 2020, the Wireless Telecommunications Bureau (Bureau) released a Public Notice setting forth the process for submitting applications in the Tribal Window, including details regarding how applicants could demonstrate compliance with the eligibility requirements or file requests for waiver. *Wireless Telecommunications Bureau Announces Procedures for 2.5 GHz Rural Tribal Priority Window*, Public Notice, 35 FCC Rcd 308 (WTB 2020) (*Bureau Procedures PN*).

3. In the *2.5 GHz Report & Order*, the Commission also determined that the Tribal Window would include only unassigned 2.5 GHz spectrum.[17] In the *Bureau Procedures PN*, we specified that licenses will not be granted for Tribal lands where an applicant cannot demonstrate local presence.[18]

4. In 2020, the Commission denied a petition for reconsideration seeking adoption of the broader definition of Tribal lands contained in part 73 of our rules, which includes off-reservation trust lands, for purposes of the Tribal Window.[19] Specifically, "[t]he Commission required the direct participation of Tribal governments, or entities owned and controlled by such Tribes, in the 2.5 GHz context to ensure that licensees would have the requisite authority over the deployment of facilities and service on their rural Tribal lands."[20] The Commission recognized, however, that there might be "exceptions to the general rule" where case-by-case waivers would be appropriate to allow for the licensing of off-reservation lands in the Tribal Window.[21]

5. Except for the Chehalis,[22] Miccosukee,[23] Mille Lacs[24] and Oglala Sioux,[25] each Tribe filed one application during the Tribal Window that requested a license for each Tribe's eligible reservation

[17] *2.5 GHz Report & Order*, 34 FCC Rcd at 5469, para. 65 (declining to permit applications for already-licensed spectrum). Further, in the *Bureau Procedures PN*, we reiterated that Tribal Window "applications will only be accepted for channel groups for which there is currently unassigned spectrum in the eligible portion of the 2.5 GHz band . . . over the relevant rural Tribal land." *Bureau Procedures PN*, 35 FCC Rcd at 309, 312 paras. 3, 15. Potential applicants were encouraged to "conduct due diligence to determine whether they will be able to provide service in the areas for which they intend to apply for licenses," including an evaluation of "how much unassigned eligible 2.5 GHz spectrum is available." *Id.* at 309, para. 5.

[18] *Bureau Procedures PN*, 35 FCC Rcd at 313–14, para. 23.

[19] *See Transforming the 2.5 GHz Band*, Order on Reconsideration, 35 FCC Rcd 15074, 15080–81, para. 22 (2020) (*Reconsideration Order*).

[20] *Id*. at 15081, para. 22.

[21] *Id.* at 15081, para. 23.

[22] The Chehalis filed two applications in the Tribal Window. File No. 0009150946 (filed July 16, 2020, amended July 24, 2020, and July 28, 2020); Chehalis Application. The first application sought a license for the Tribe's reservation in Washington State, which has been granted. File No. 0009150946 (granted Dec. 22, 2020) (WRKE717). The second application, which is the subject of this *Memorandum Opinion and Order*, requests a waiver of the Tribal lands definition in order to obtain a license for an adjacent area that connects the reservation with off-reservation trust parcels in Grand Mound, WA. Chehalis Waiver Request at 3–4.

[23] The Miccosukee filed two applications during the Tribal Window. File No. 0009168163 (filed July 30, 2020); Miccosukee Application. The first application sought a license to provide service on the Miccosukee reservation in Florida, which has been granted. File No. 0009168163 (granted Dec. 22, 2020) (WRKE713). The Miccosukee also filed a second application, which is the subject of this *Memorandum Opinion and Order*, requesting a waiver of the Tribal lands definition in order to obtain a license for approximately 189,000 acres of leased lands in Broward County adjacent to the Miccosukee reservation. Miccosukee Waiver Request at 1–2.

[24] The Mille Lacs also filed two applications in the Tribal Window. File Nos. 0009132753 (filed July 1, 2020); Mille Lacs Application. The first application sought a license for the Tribe's reservation lands in Aitkin, Mille Lac, and Pine Counties in Minnesota, which has been granted. File No. 0009132753 (granted Dec. 22, 2020) (WRKE716). The Mille Lacs also filed a second application, which is the subject of this *Memorandum Opinion and Order*, requesting a waiver of the Tribal lands definition in order to provide service in areas adjacent to and interconnecting the Tribe's reservation lands. Mille Lacs Waiver Request at 1–2.

[25] The Oglala Sioux filed three applications in the Tribal Window. File Nos. 0009166464 (filed July 29, 2020) and 0009210465 (filed Sept. 2, 2020); Oglala Sioux Application. The first application sought a license for the Tribe's Pine Ridge Indian Reservation in South Dakota, which has been granted. File No. 0009166464 (granted Oct. 21, 2020) (WRJS954). The second Oglala Sioux application sought a waiver of the Tribal lands definition for land owned by the Tribe near Hells Canyon in Falls River County, South Dakota, which has been granted. File Nos. 0009210465 (granted Apr. 20, 2021) (WRMJ745); *Oglala Sioux Tribe Request for Waiver of Tribal Lands*

(continued….)

land, for which no waiver is required, and certain nearby areas, including different combinations of off-reservation trust, Tribally-owned fee, and non-Tribal lands, which all require a waiver.[26] In their Waiver Requests, the Tribes note the various ties they have to the areas they have applied for[27] and that these areas are rural and have poor broadband access.[28]

6. The Chehalis, Karuk, Miccosukee, Mille Lacs, and Jemez applications were accepted for filing on November 10, 2020.[29] The Lac Vieux, Oglala Sioux, and Stockbridge-Munsee applications were accepted for filing on January 14, 2021.[30] No petitions to deny or oppositions were filed against any of those applications or Waiver Requests in response to the Bureau's Public Notices. T-Mobile filed a letter in response to, *inter alia*, the Lac Vieux application noting the unavailability of any spectrum on Channel Block 3 within Lac Vieux's proposed service area.[31]

III. DISCUSSION

7. A request for a waiver may be granted if it is shown that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) in view of unique or unusual 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.[32] Here, we find that with limited exceptions noted below, each applicant's showing meets the first prong of the waiver standard to the extent that each seeks a waiver for off-reservation trust or Tribally-owned fee lands. With respect to the non-Tribal lands contained within their requested shapefiles, we grant waivers under the second prong of the Commission's waiver standard. Accordingly, with the limited exceptions noted below, we waive section 27.1204(b)(2) of the Commission's rules to allow licensing of the off-reservation trust, Tribally-owned fee, and non-Tribal land specified for each applicant.

8. The Commission established the Tribal Window to address the acute problem of lack of access to wireless communications services in rural Tribal areas.[33] In these instances, we find that, with respect to the off-reservation trust and Tribally-owned fee parcels identified by the applicants, strictly applying the Tribal lands definition would be inconsistent with the Tribal Window's purpose of providing wireless communications services in rural Tribal areas. First, we find that each applicant has shown that

(Continued from previous page)
Definition in the 2.5 GHz Tribal Priority Window, Memorandum Opinion and Order, 36 FCC Rcd 7384 (WTB 2021). The third Oglala Sioux application, which is the subject of this *Memorandum Opinion and Order*, requests a waiver of the Tribal lands definition to provide service to the Oglala Sioux Rural Water Supply System (OSRWSS). Oglala Sioux Waiver Request at 2.

[26] Jemez Application, Karuk Application, Lac Vieux Application, Stockbridge-Munsee Application.

[27] *See* Chehalis Waiver Request at 2–3, 3–4; Karuk Waiver Request at 1–2; Lac Vieux Waiver Request at 1–2, 3–4; Miccosukee Waiver Request at 1–2; Mille Lacs Waiver Request at 1, 2; Oglala Sioux Waiver Request at 6–8, 9; Jemez Waiver Request at 1–2; Stockbridge-Munsee Application at 2.

[28] *See* Chehalis Waiver Request at 4–5; Karuk Waiver Request at 3; Lac Vieux Waiver Request at 2–3, 4; Miccosukee Waiver Request at 2; Mille Lacs Waiver Request at 1–2; Oglala Sioux Waiver Request at 4–5, 9–10; Jemez Waiver Request at 1, 4; Stockbridge-Munsee Waiver Request at 1.

[29] *Wireless Telecommunications Bureau Announces Additional 2.5 GHz Rural Tribal Priority Window License Applications Accepted for Filing*, Public Notice, 35 FCC Rcd 12850, 12853, 12854, Attachs. A, B (WTB 2020).

[30] *Wireless Telecommunications Bureau Announces Additional 2.5 GHz Rural Tribal Priority Window License Applications Accepted for Filing*, Public Notice, 36 FCC Rcd 285, 288, 289, Attachs. A, B (WTB 2021).

[31] Letter from Steve B. Sharkey, Vice President, Government Affairs, Technology and Engineering Policy, T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC (filed Feb. 9, 2021).

[32] 47 CFR § 1.925(b)(3).

[33] *Reconsideration Order*, 35 FCC Rcd at 15075, para. 4.

the off-reservation trust and Tribally-owned fee lands in question are either held for the specific benefit of the Tribe or are directly owned by the Tribe. As such, each applicant has adequately demonstrated its authority over the off-reservation trust and Tribally-owned fee land. We find, based upon the showing made by each of the applicants, that treating these rural lands as eligible Tribal lands under the Tribal Window would be consistent with the Tribal Window's purpose.[34] We note that the off-reservation trust and Tribally-owned fee lands in question are areas subject to the Tribe's current, demonstrated authority. In addition, we find that waivers would be in the public interest because the applicants plan to use the spectrum to provide service on rural trust and fee lands that are either held for the specific benefit of the Tribe or are directly owned by the Tribe. As such, we find that each of the applicants has adequately demonstrated that it has "the requisite authority over the deployment of facilities and service[s]"[35] over the lands at issue, and they have therefore demonstrated that strictly applying the Tribal lands definition would be inconsistent with its purpose.

9. With respect to the remaining non-Tribal lands specified in the applications, we find that under the unusual factual circumstances present at this time due to the ongoing transformation of the 2.5 GHz band, strict application of the Tribal lands definition would be contrary to the public interest. The 2.5 GHz band already contains a large number of incumbent licenses, most of which have 35-mile circular geographic service areas (GSAs) or irregular areas caused by overlapping GSAs. Many Tribal lands are similarly small, irregularly-shaped parcels, which can present deployment challenges in light of the 2.5 GHz band's existing incumbency, licensing structure, and technical rules. The non-Tribal lands at issue in the instant applications are, to varying degrees, adjacent to or connect different reservation, off-reservation trust, or Tribally-owned fee lands, which may facilitate use and deployment of 2.5 GHz spectrum across these Tribal areas to the extent they are licensed as part of a unified service area. We note in particular that each of the Waiver Requests is unopposed. On balance, given the specific circumstances present here, in particular the unique nature of the 2.5 GHz band and the current status of its transformation process, we believe that granting waivers to these applicants would help "address the communications needs" on their rural Tribal land and other adjacent rural areas that have historically lacked effective broadband access.[36] We therefore grant the Waiver Requests, with the limited exceptions specified below.

10. We note that the scope of these waivers does not extend to the limited circumstances in which any requested land areas either have no unassigned spectrum, or the applicant cannot demonstrate local presence. The *2.5 GHz Report & Order* and the *Bureau Procedures PN* adopted in connection with the Tribal Window specified that areas with no available spectrum were not eligible.[37] Specifically, the Jemez, Karuk, Lac Vieux, Miccosukee, and Mille Lacs waiver requests each include waiver areas without unassigned spectrum, and no waiver of this specific requirement was sought, nor was any related public interest showing made, in the relevant applications.[38] As such, to the extent the Jemez, Karuk, Lac Vieux,

[34] The Commission has noted that the problem of lack of communications is particularly acute on rural Tribal lands. *See 2.5 GHz Report & Order*, 34 FCC Rcd at 5466, para. 56; *see also Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, 2020 Broadband Deployment Report, 35 FCC Rcd 8986, 9013, para. 47 (2020) ("Rural Tribal lands continue to lag behind urban Tribal lands, with only 52.9% of all Tribal lands in rural areas having deployment of both [fixed and mobile broadband] services, as compared to 93.1% of Tribal lands in urban areas.").

[35] *Reconsideration Order*, 35 FCC Rcd at 15081, para. 22.

[36] *Reconsideration Order*, 35 FCC Rcd at 15075, para. 4.

[37] *See 2.5 GHz Report & Order*, 34 FCC Rcd at 5469, para. 65. Further, in the *Bureau Procedures PN*, we reiterated that Tribal Window "applications will only be accepted for channel groups for which there is currently unassigned spectrum in the eligible portion of the 2.5 GHz band . . . over the relevant rural Tribal land." *Bureau Procedures PN*, 35 FCC Rcd at 309, 312, paras. 3, 15.

[38] The portions of the application shapefiles without unassigned spectrum are visible in the mapping tool available at the dedicated webpage for the Tribal Window by activating the existing licenses filter for all three channel groups.

(continued….)

Miccosukee, and Mille Lacs applications seek to license areas where no unassigned spectrum is available, the associated waiver requests with respect to the Tribal Lands definition in section 27.1204(b)(2) of the Commission's rules are denied.[39] Furthermore, as noted by T-Mobile and confirmed by staff analysis,[40] no spectrum is available in channel block 3 in Lac Vieux's proposed service area. Accordingly, any license issued to Lac Vieux will be limited to channel blocks 1 and 2.

11. Staff analysis also shows that the Jemez, Lac Vieux, Oglala Sioux, and Stockbridge-Munsee application shapefiles cover portions of the reservation or off-reservation trust lands of other Tribes.[41] As noted above, we will not issue a license where an applicant cannot demonstrate local presence, such as the Tribal lands of another Tribe.[42] Accordingly, we deny the Jemez, Lac Vieux, Oglala Sioux, and Stockbridge-Munsee waiver requests to the extent they include the Tribal lands of other Tribes.

12. Finally, we note that the instant Chehalis and Miccosukee applications[43] overlap with the licenses previously issued to each Tribe for its reservation. The Commission cannot grant two applications for the same channels and the same area, even if the applicant is the same. As such, the shapefiles associated with the Chehalis and Miccosukee applications will be reduced to exclude the overlap areas.[44]

13. We note that our decision here is limited to the suitability of these specific lands under the Tribal Window. We make no determination as to the status of these lands with respect to other Commission rules or programs, nor for any other purpose. In particular, our decision to grant the Waiver Requests is based on the unique circumstances of the individual applicants and the specific situation present in the 2.5 GHz band at this point in time, and the presence of any one particular fact should not be viewed as supporting a waiver or other form of relief in a different context at a different point in time.

(Continued from previous page)
See 2.5 GHz Rural Tribal Maps, *available at* https://www.fcc.gov/25-ghz-rural-tribal-maps (*2.5 GHz Rural Tribal Maps*).

[39] With respect to the eligible reservation land portion of the Jemez application, a review of the Commission's Universal Licensing System (ULS) database shows several incumbent 2.5 GHz licenses that have licenses that cover the same area on the same channels that the Jemez are requesting. The Jemez will receive a license for the eligible rural Tribal land area for which it applied, but must protect any such incumbent operations.

[40] *See* Letter from John J. Schauble, Deputy Chief, Broadband Division, Wireless Telecommunications Bureau, FCC, to Steve B. Sharkey, Vice President, Government Affairs, Technology and Engineering Policy, T-Mobile USA, Inc. at 2 (Mar. 9, 2021).

[41] The Jemez shapefile includes a portion of the Santo Domingo Pueblo that is also without unassigned spectrum, the Lac Vieux shapefile includes part of the Forest County Potawatomi Community reservation, the Oglala Sioux shapefile includes off-reservation trust lands held for the benefit of the Cheyenne River Sioux Tribe, and the Stockbridge-Munsee shapefile includes small amounts of reservation and off-reservation trust lands of the Menominee Tribe. Except in the case of Stockbridge-Munsee and Oglala Sioux, the areas covering another Tribe's reservation are visible at *2.5 GHz Rural Tribal Maps* by activating the eligible rural Tribal lands filter.

[42] *See* para. 3, *supra*. Stockbridge Munsee amended its application to reduce its shapefile and eliminate its mutual exclusivity with the Tribal Window application filed by the Menominee Tribe. Stockbridge Munsee Application, Amendment (filed Nov. 18, 2020). While that amendment eliminated the mutual exclusivity with the Menominee application, it did not eliminate all Menominee lands from its proposed license area.

[43] *See* File Nos. 0009150946, 0009168163 (granted Dec. 22, 2020), Chehalis Application, Miccosukee Application.

[44] Before the Broadband Division is able to process the applications that are the subject of this *Memorandum Opinion and Order*, Commission staff will create revised shapefiles to exclude areas where the relevant waiver requests are denied, or a pending application overlaps with another previously granted to the same Tribe. The final shapefiles will be reflected in the licenses granted by the Broadband Division in lieu of the application records. Bureau staff will be available to respond to any questions about either the final shapefiles or the Tribes' license records.

IV. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED, pursuant to sections 4(i), 303(c), and 309(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(c), 309(a), and section 1.925(b)(3) of the Commission's rules, 47 CFR § 1.925(b)(3), that the waiver requests filed by the Confederated Tribes of the Chehalis Reservation, the Pueblo of Jemez, the Karuk Tribe, Lac Vieux Desert Band of Lake Superior Chippewa Indians, the Miccosukee Tribe of Indians of Florida, the Mille Lacs Band of Ojibwe, the Oglala Sioux Tribe, and the Stockbridge-Munsee Community ARE GRANTED IN PART , and section 27.1204(b)(2) of the Commission's rules IS WAIVED IN PART to allow licensing of the off-reservation trust, Tribally-owned fee, and non-Tribal lands specified in each application. Otherwise, the waiver requests are DENIED.

15. IT IS FURTHER ORDERED, pursuant to sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and section 27.1204 of the Commission's rules, 47 CFR § 27.1204, that the licensing staff of the Broadband Division SHALL PROCESS the applications filed by the Confederated Tribes of the Chehalis Reservation (ULS File No. 0009133181), the Pueblo of Jemez (ULS File No. 0009207599), the Karuk Tribe (ULS File No. 0009209830), the Lac Vieux Desert Band of Lake Superior Chippewa Indians (ULS File No. 0009209820), the Miccosukee Tribe of Indians of Florida (ULS File No. 0009208700), the Mille Lacs Band of Ojibwe (ULS File No. 0009174661), the Oglala Sioux Tribe (ULS File No. 0009210549), and the Stockbridge-Munsee Community (ULS File No. 0009056169) for new 2.5 GHz licenses in accordance with this *Memorandum Opinion and Order* and the Commission's rules and policies.

16. These actions are taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's rules, 47 CFR §§ 0.131, 0.331. This *Memorandum Opinion and Order* is effective upon adoption.

FEDERAL COMMUNICATIONS COMMISSION

Joel Taubenblatt
Chief, Wireless Telecommunications Bureau

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	NAL/Acct. No. MB-202441410008
Southern Media Interactive LLC	)	FRN: 0022147714
	)	
WSFN(AM), Brunswick, Georgia	)	Facility ID No. 29131
W279BC, Brunswick, Georgia	)	Facility ID No. 151451

MEMORANDUM OPINION AND ORDER AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 15, 2024 **Released: March 15, 2024**

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture* (*NAL*),[1] we address Southern Media Interactive LLC's (SMI) operation of WSFN(AM), Brunswick, Georgia (Station), and its associated FM translator, W279BC, Brunswick Georgia (Translator). We find that SMI apparently (1) willfully and repeatedly operated the Station at a variance from its licensed parameters without Commission authorization, in violation of section 301 of the Communications Act of 1934, as amended (Act),[2] and sections 73.1635 and 73.1745(a) of the Rules,[3] (2) willfully and repeatedly discontinued operation of the Station without notifying the Commission or obtaining Commission authorization, in violation of section 73.1740(a)(4) of the Rules,[4] (3) willfully transferred control of the Station (and the Translator) to Shanks Broadcasting, LLC (Shanks) without Commission authorization in violation of section 310(d) of the Act and section 73.3540(a) of the Rules,[5] and (4) willfully and repeatedly failed to fully and completely respond to our requests for information in violation of section 73.1015 of the Rules.[6] We conclude that SMI is apparently liable for a monetary forfeiture in the amount of sixteen thousand two hundred dollars ($16,200) for these violations. Additionally, we find that the Translator failed to operate from an authorized location for more than twelve consecutive months and that its license, therefore, terminated automatically pursuant to section 312(g) of the Act.[7] Accordingly, we delete the Translator from our database of authorized stations.

[1] This *NAL* is issued pursuant to section 503(b) of the Communications Act of 1934, as amended, and section 1.80 of the FCC's rules (Rules). *See* 47 U.S.C. § 503(b); 47 CFR § 1.80. The Bureau has delegated authority to issue the *NAL* under section 0.283 of the Rules. *See* 47 CFR § 0.283.

[2] 47 U.S.C. § 301.

[3] 47 CFR §§ 73.1635, 73.1745(a).

[4] *Id.* § 73.1740(a)(4).

[5] 47 U.S.C. § 310(d); 47 CFR § 73.3540(a).

[6] 47 CFR § 73.1015.

[7] 47 U.S.C. § 312(g).

II. BACKGROUND

2. SMI is the licensee of both the Station and the Translator. The Station's licensed transmitter site is located at 7515 Blythe Island Highway in Brunswick, Georgia. SMI lost access to that site on September 1, 2022, which resulted in the Station going off the air. SMI requested special temporary authority (STA) for the Station to remain silent on October 31, 2022.[8] That same day, SMI notified the Commission that the Translator had gone off the air on October 28, 2022, and requested STA for the Translator to remain silent.[9] We granted both of these silent STA requests.[10]

3. SMI then requested STA to operate the Station with a temporary antenna from an alternate location,[11] which we granted.[12] The Station resumed operation pursuant to this engineering STA on January 1, 2023.[13] The Translator also resumed operation that day.[14]

4. Within a month or so of the Station and the Translator resuming operation, the Enforcement Bureau (EB) received an informal complaint that the Translator was operating, but the Station was silent. The complaint also alleged that the Station's transmitter site had been dismantled. On April 5, 2023, an EB Field Agent visited the Station's licensed transmitter site. He found an empty field with no visible antenna structures. The Field Agent also visited the site listed in the Station's engineering STA, but did not see a tower or antenna at that site. He did observe an empty electrical meter can mounted on a pole at the engineering STA site, which suggested that equipment requiring electrical power might previously have been present. The Field Agent was unable to receive a signal on the Station's frequency at either the licensed or the engineering STA site. With respect to the Translator, the Field Agent found no tower at the Translator's licensed site. Instead, he found the Translator operating from a tower 3.3 miles north of that site.

5. Because it appeared that the Station might have been silent (or failed to operate with authorized facilities) for an extended period of time, the Translator might have operated with unauthorized facilities, and the Translator might have been originating programming in violation of section 74.1263(b) of the Rules, we sent SMI a letter of inquiry (First LOI).[15] The letter required SMI to provide evidence of the Station's and the Translator's operation with authorized facilities between April 25, 2022, and the present date.[16]

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[8] Application File No. 203085.

[9] Application File No. 203087.

[10] Letter from Victoria McCauley, Attorney, Audio Division, Media Bureau, to Cary S. Tepper, Esq., counsel for Southern Media Interactive LLC (dated Nov. 18, 2022) (granting silent STA for Station); Letter from Victoria McCauley, Attorney, Audio Division, Media Bureau, to Cary S. Tepper, Esq., counsel for Southern Media Interactive LLC (dated Nov. 21, 2022) (granting silent STA for Translator).

[11] Application File No. BSTA-20221108AAA.

[12] Letter from Jerome J. Manarchuck, Audio Division, Media Bureau, to Southern Media Interactive LLC (Dec. 15, 2022).

[13] Application File No. 206240. The engineering STA expired on June 13, 2023. SMI requested STA to continue to operate the Station with the facilities specified in the engineering STA on September 18, 2023. Application File No. 221086. We granted this second request for engineering STA on September 27, 2023. Letter from Joseph Szczesny, Engineer, Audio Division, Media Bureau, to William J. Dorminy, Managing Member, Southern Media Interactive LLC (dated Sept. 27, 2023). This second engineering STA will expire on March 26, 2024.

[14] Application File No. 206427.

[15] Letter from Albert Shuldiner, Chief, Audio Division, Media Bureau, to Southern Media Interactive LLC (dated Aug. 2, 2023) (First LOI).

[16] We note that the First LOI contained a typo. It should have requested information regarding the Station's and the Translator's operations between April 5, 2022 (twelve months prior to the date the Field Agent visited the Station's licensed and STA transmitter sites and the Translator's licensed transmitter site) and the present.

6. In its response (First LOI Response),[17] SMI submitted declarations made by SMI's Managing Member and Shanks' Managing Member, and a technical statement from the consulting engineer who performed work for SMI.[18] The declarants admit that, until SMI received the First LOI, it was unaware that the Station had gone off the air.[19] They explain that SMI was ignorant of the Station's operational status because it cannot remotely monitor the Station's operation from the location specified in the engineering STA.[20] The declarants stated that they returned the Station to the air "as soon as [the engineer could]" after SMI received the First LOI.[21] SMI did not specify the specific date on which the Station resumed operating. SMI asserted that the Station had been on the air for most of 2023 but did not provide any station or EAS logs to support its claim.[22] It submitted utility bills as requested. However, the geographic coordinates of the service addresses listed in the utility bills did not correspond to the geographic coordinates of the engineering STA site.[23] In terms of the Translator, SMI acknowledged that the Translator continued operating when the Station was silent in 2023.[24] SMI did not indicate the location from which the Translator had been operating or the technical parameters for such operations.

7. We then sent a second letter of inquiry (Second LOI) to SMI.[25] It explained that the First LOI Response did not include all of the information and materials we had requested in the First LOI, and that some of the information contained in the First LOI Response conflicted with information in the Commission's records. The Second LOI required SMI to resolve inconsistencies related to the Station's silence in 2022, provide documents such as station logs, EAS logs, utility bills and dated photographs to support its assertion that the Station was on the air for most of 2023, state the location from which and parameters with which the Translator had been operating and provide documents to support its claims, and explain Shanks' involvement in the operation and programming of the Station and the Translator and provide any agreements between SMI and Shanks.

8. In its response to the Second LOI (Second LOI Response), SMI submitted two new declarations made by the Managing Members of SMI and Shanks.[26] The declarants clarified the exact dates on which the Station was silent in 2022, and offered some information about Shanks' involvement with the Station and the Translator.[27] They did not specify the location from which—or technical parameters with which—the Translator had been operating. The Second LOI Response did not include any documents.

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[17] SMI actually made two separate submissions in response to the First LOI. Letter from Cary S. Tepper, counsel for Southern Media Interactive LLC, to Marlene S. Dortch, Secretary, FCC (dated Sept. 18, 2023); Letter from Tammy Minshew, Southern Media Interactive LLC, to Marlene S. Dortch, Secretary, FCC (dated Oct. 23, 2023). We refer to them collectively as the First LOI Response.

[18] First LOI Response at Decl. of William J. Dorminy (Dorminy Decl.), Decl. of Bill Shanks (Shanks Decl), Technical Statement of Alan Alsobrook (Alsobrook Statement).

[19] First LOI Response at Dorminy Decl., para. 5, Shanks Decl., para. 7, Alsobrook Statement, para. 4.

[20] *Id.* at Dorminy Decl., para. 5, Shanks Decl., para. 6.

[21] *Id.* at Dorminy Decl., para. 5, Shanks Decl., para. 7.

[22] *Id.* at Dorminy Decl., para. 6, Shanks Decl., para. 8.

[23] The utility bills list service addresses at 7515 Blythe Island Hwy, Tower, and 436 Mall Blvd, Unit D18.

[24] First LOI Response at Shanks Decl., para. 9.

[25] Letter from Albert Shuldiner, Chief, Audio Division, Media Bureau, to Southern Media Interactive LLC (dated Jan. 23, 2024).

[26] Letter from Cary S. Tepper, counsel, Southern Media Interactive LLC (dated Feb. 23, 2024) (Second LOI Response).

[27] *Id*. at Decl. of William J. Dorminy; Decl. of Bill Shanks.

III. DISCUSSION

9. *Automatic Termination of Translator License.* We find that the Translator's license automatically terminated pursuant to section 312(g) of the Act.[28] The evidence before us demonstrates that the Translator has been operating from an unauthorized location for more than a year. The tower specified in the Translator's license was dismantled on January 4, 2023.[29] On April 5, 2023, an EB Field Agent found the Translator operating from a tower about 3 miles north of the Translator's licensed transmitter site. SMI had not and has not sought authorization to operate the Translator from this site. Because it has been more than a year since the Translator could possibly have operated from its licensed transmitter site and our records do not indicate that the Translator has been off the air, we conclude that the Translator has been operating from an unauthorized location since at least January 4, 2023. Accordingly, we find that the Translator's license automatically terminated on January 4, 2024.[30]

10. We have considered on our own motion whether there are circumstances justifying reinstatement of the Translator'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."[31] The Commission has exercised that discretion only rarely, such as in natural disasters, or where silence or unauthorized operation resulted from compelling circumstances beyond the licensee's control.[32] The record in this case contains no evidence that the Translator's unauthorized operations were caused by factors beyond SMI's control. Rather, it appears SMI chose to operate the Translator from a location more than 3 miles from its licensed transmitter site, and chose not to seek Commission authorization to do so.

11. *Unauthorized Station Operation*. Section 301 of the Act and section 73.1350(a) of the Rules prohibit the operation of a broadcast station except under, and in accordance with, a Commission-granted authorization.[33] Section 73.1745(a) further prohibits the operation of a broadcast station at a variance from the terms of the Station's authorization.[34] Pursuant to section 73.1635, a licensee may

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[28] 47 U.S.C. § 312(g) (providing that if a broadcast station fails to transmit broadcast signals for any consecutive 12-month period, then the station's license automatically expires at the end of that period, unless the license is extended or reinstated by the Commission as a matter of equity and fairness).

[29] *See* ASR Registration Search, Registration 1027583, available at https://wireless2.fcc.gov/UlsApp/AsrSearch/asrRegistration.jsp?regKey=128073 (last visited Feb. 28, 2024).

[30] *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) (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 n.69 (rel. May 17, 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) (transmission from unauthorized location insufficient to avoid consequences of section 312(g)).

[31] 47 U.S.C. § 312(g).

[32] *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 Cmty. 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)).

[3333] 47 U.S.C. § 301; 47 CFR § 73.1350(a).

[34] 47 CFR § 73.1745(a).

request STA to operate for a limited time at a variance from the terms of its authorization.[35] However, the licensee must request STA ten days prior to beginning such operations.

12. SMI's first engineering STA expired on June 13, 2023, while the Station was silent. We recognize that the Station was off the air at that time. However, it appears that SMI returned the Station to the air with the facilities specified in the expired engineering STA prior to requesting the second engineering STA. Accordingly, we find that SMI apparently engaged in unauthorized operation of the Station in violation of section 301 of the Act, and sections 73.1350(a), 73.1635 and 73.1745(a) of the Rules. Below, we propose a forfeiture to address this apparent violation.

13. *Discontinued Station Operations.* We find that, on two occasions, SMI apparently failed to notify the Commission that the Station had discontinued operations. In addition, SMI apparently failed to timely seek STA for the Station to remain silent on the first of these occasions, and apparently failed to seek STA for the Station to remain silent on the second of these occasions. As discussed above, the Station went silent on September 1, 2022, and remained silent until January 1, 2023. SMI should have notified the Commission of the Station's silence on September 10, 2022, and should have sought silent STA by October 1, 2022. SMI did not notify the Commission and did not seek silent STA until October 31, 2022.[36] Likewise, the Station was off the air for an extended period of time in 2023, but SMI did not notify the Commission of the Station's silence or seek silent STA. Accordingly, we propose a forfeiture to address SMI's apparent violations of section 73.1740(a)(4) of the Rules.

14. *Unauthorized Transfer of Control*. We find that there apparently was an unauthorized transfer of control of the Station (and the Translator) in violation of section 310(d) of the Act,[37] and section 73.3540 of the Rules.[38] In determining whether there has been an unauthorized transfer of control, the Commission looks to whether a licensee continues to have ultimate control over the station, including its programming, personnel, and finances.[39] A licensee's surrender of control over any one of these indicia to another entity is sufficient to find that another entity has *de facto* control.[40] Here, the record in this case reflects that Shanks took over management of the Station (and the Translator) on September 1, 2022.[41] Shanks is simulcasting on the Station (and the Translator) essentially the same sports talk radio programming it broadcasts on its stations.[42] SMI appears to have ceded control of the Station's

[35] *Id.* § 73.1635.

[36] *Id.* § 73.1740(a)(4) (requiring that licensees notify the Commission no later than the 10th day of a station's discontinued operation, and that licensees seek authority from the Commission if a station is off the air for more than 30 days).

[37] 47 U.S.C. § 310(d) ("No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, 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.").

[38] 47 CFR § 73.3540(a) ("Prior consent of the FCC must be obtained for a voluntary assignment or transfer of control.").

[39] *See, e.g., Radio Moultrie, Inc*., Order to Show Cause and Notice of Opportunity for Hearing, 17 FCC Rcd 24304, 24306 (2002).

[40] *See, e.g., Hicks Broad. of Indiana, LLC*, Hearing Designation Order, 13 FCC Rcd 10662, 10677, para. 50 (1998); *Anabelle Savage, Chapter 7 Tr., Universal Broad., Inc*., Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 3665, 3670, n. 61 (MB 2010); *Clear Channel Broad. Licenses Inc*., Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 14078, 14095, para. 38 (MB 2009).

[41] First LOI Response at Shanks Decl., para. 1; Second LOI Response at Shanks Decl., para. 11.

[42] Second LOI Response at Shanks Decl., paras. 11 and 12.

programming to Shanks.[43] Accordingly, we find that an unauthorized transfer of control of the Station (and the Translator) apparently occurred. Below, we propose a forfeiture for this apparent violation of Section 310(d) of the Act and section 73.3540 of the Rules

15. *Failure to Provided Requested Information and Materials.* We find that SMI apparently violated section 73.1015 of the Rules by failing to fully and completely respond to the First and Second LOIs.[44] As discussed above, SMI has failed to provide information regarding the location and facilities with which the Translator has been operating, information that was requested in both the First and Second LOIs. Additionally, SMI did not comply with our request that it submit copies of the agreements between itself and Shanks. Finally, SMI did not submit various documents (*e.g.,* station logs, EAS logs, utility bills for the Station's operation at the engineering STA site) to the Commission. We propose a forfeiture to address these apparent violations of section 73.1015.

IV. PROPOSED FORFEITURE

16. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against any entity that "willfully or repeatedly fail[s] to comply with . . . any rule, regulation, or order issued by the Commission . . . ."[45] To determine the appropriate forfeiture amount, 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.[46] The Commission has established forfeiture guidelines, base penalties for certain violations and has identified criteria that it considers when determining the appropriate penalty in any given case.[47] Under these guidelines, we may adjust a forfeiture downward for violations that are minor, violations that are voluntarily disclosed, where there is a history of compliance, or where there is an inability to pay.[48] We may adjust a forfeiture upward for violations that are egregious, intentional, continuous, and/or repeated, and violations that cause substantial harm or generate substantial economic gain for the violator.[49] We may also adjust a forfeiture upward where there is an ability to pay, or where there is a history of prior violations of FCC requirements.[50]

17. SMI apparently willfully and repeatedly violated section 301 of the Act and sections 73.1350(a), 73.1635 and 73.1745(a) of the Rules by operating the Station at a variance from its authorized parameters for a short period of time prior to filing the second engineering STA request. It also apparently willfully and repeatedly violated section 73.1740(a)(4) on two occasions by discontinuing the Station's operations but failing to provide notice to the Commission and failing to seek (or failing to timely seek) silent authority when the periods of silence exceeded 30 days. SMI also apparently willfully engaged in an unauthorized transfer of control of the Station (and the Translator) without Commission authorization in violation of section 310(d) of the Act, and section 73.3540(a) of the Rules. Finally, SMI

[43] SMI apparently also ceded control of the Station's finances to Shanks. Second LOI Response at Shanks Decl., paras. 15, 17 (referencing Station "revenue" that Shanks "inherited," and indicating that Shanks "paid $15,000 for a temporary building" at the Station's engineering STA site).

[44] 47 CFR § 73.1015 (providing that "[t]he Commission or its representatives may, in writing, require from any applicant, permittee, or licensee written statements of fact" related to any matter within the Commission's jurisdiction).

[45] 47 U.S.C. § 503(b).

[46] *Id*. § 503(b)(2)(E); 47 CFR § 1.80(b)(11).

[47] 47 CFR § 1.80(b)(11).

[48] *Id*. at Table 3.

[49] *Id*.

[50] *Id*.

apparently willfully and repeatedly failed to fully and completely respond to the First and Second LOIs in violation of section 73.1015 of the Rules.

18. Section 1.80(b)(11) of the Rules sets forth base forfeitures of $10,000 for operation without an instrument of authorization, $5,000 for unauthorized discontinuance of service, $ 3,000 for failure to file a required form or information, $8,000 for unauthorized substantial transfer of control, and $4,000 for failure to respond to Commission communications.[51] Taking into account that SMI's unauthorized operation of the Station was not comparable to "pirate" radio operations and lasted no more than a month and a half, that SMI did partially respond to the First and Second LOIs, and that SMI has a history of compliance with the Act, and the Commission's rules and policies,[52] we propose a total forfeiture in the amount of sixteen thousand two hundred dollars ($16,200).

V. ORDERING CLAUSES

19. Accordingly, **IT IS ORDERED** that the Commission's public and internal databases **SHALL BE MODIFIED** to indicate that the broadcast license for FM translator station W279BC, Brunswick, Georgia (BLFT-20121212ACI) **IS EXPIRED**, that the translator's license **IS CANCELLED** as a matter of law, and that the translator's call sign **IS DELETED**.

20. **IT IS FURTHER 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,[53] that Southern Media Interactive LLC is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of sixteen thousand two hundred dollars ($16,200) for its apparent willful and repeated violations of sections 301 and 310(d) of the Communications Act of 1934, as amended, and sections 73.1015(a), 73.1350(a), 73.1635, 73.1740(a)(4), 73.1745(a), and 73.3540(a) of the Commission's rules.[54]

21. **IT IS FURTHER ORDERED**, pursuant to section 1.80 of the Commission's rules,[55] that, within thirty (30) days of the release date of this *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture,* Southern Media Interactive LLC **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

22. 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), 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:

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN). For additional detail and wire transfer instructions, go to https://www.fcc.gov/licensing-databases/fees/wire-transfer.

[51] *Id.* at Table 1.

[52] *See, e.g., Pirate Media Group, LLC*, Memorandum Opinion and Order and Notice of Apparent Liability, 34 FCC Rcd 12280 (MB 2019).

[53] 47 U.S.C. § 503(b); 47 CFR §§ 0.283, 1.80.

[54] 47 U.S.C. §§ 301, 310(d); 47 CFR §§ 73.1015, 73.1350(a), 73.1635, 73.1740(a)(4), 73.1745(a), 73.1740(a).

[55] 47 CFR § 1.80.

- 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.

23. 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. 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.

24. 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.[56] 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. A courtesy copy emailed to Heather.Dixon@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.

25. **IT IS FURTHER ORDERED** that, pursuant to Section 73.3526 of the Commission's Rules,[57] Southern Media Interactive LLC **SHALL UPLOAD** a copy of this *Memorandum Opinion and*

[56] *Id.* §§ 1.16, 1.80(g)(3).

[57] *Id.* § 73.3526.

Order and Notice of Apparent Liability for Forfeiture to the online public inspection file of WSFN(AM), Brunswick, Georgia.

26. **IT IS FURTHER ORDERED** that copies of this Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture **SHALL BE SENT**, by First Class and Certified Mail, Return Receipt Requested, to Southern Media Interactive LLC, PO Box 876, Fitzgerald, GA 31750, and its counsel, Cary S. Tepper, Esq., 4900 Auburn Avenue, Suite 100, Bethesda, MD 20814.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau

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

In the Matter of	)
	)
Indian Peak Properties, LLC	)
Petitions for Declaratory Ruling	)
Seeking Preemption Under	)
The Rule Governing	)
Over-the-Air Reception Devices	)

ORDER ON REVIEW

Adopted: March 7, 2024 **Released: March 7, 2024**

By the Commission:

I. INTRODUCTION

1. In this Order, we deny in part and dismiss in part an Application for Review (Application), filed by Indian Peak Properties, LLC (Indian Peak),[1] of a Wireless Telecommunications Bureau and Media Bureau (collectively Bureaus) December 13, 2022 letter ruling (*December 2022 Letter Ruling*) regarding application of the Commission's rule governing over-the-air reception devices (OTARD).[2] In the *December 2022 Letter Ruling*, the Bureaus denied a Petition for Reconsideration filed by Indian Peak on August 22, 2022,[3] seeking reconsideration of a letter decision issued by the Bureaus that dismissed five petitions for declaratory ruling in which Indian Peak sought relief for six antennas located on a single-family home (the property) in a residential area of Rancho Palos Verdes, California that Indian Peak operates entirely as a communications site.

2. The *December 2022 Letter Ruling* denied Indian Peak's Petition for Reconsideration on the basis that Indian Peak had failed to "include allegations with sufficient detail, clarity, and accuracy . . . to identify . . . a dispute [that] implicates" the OTARD rule.[4] In particular, the Bureaus found that Indian Peak failed to provide sufficient information to indicate that the antennas are serving users that qualify for OTARD protection because Indian Peak did not "identify any non-communications-service-provider user who regularly resides at or uses the premises."[5] The *December 2022 Letter Ruling* also denied Indian Peak's argument that Commission staff are required to automatically initiate a proceeding and put the

[1] Application for Review of Indian Peak Properties, LLC (filed January 12, 2023) (Application). Indian Peak is an LLC wholly owned by James Kay. *See* Indian Peak Petition for Declaratory Ruling, at 2, n.3 (filed April 17, 2020) (2020 OTARD Petition).

[2] Letter from Garnet Hanly, Chief, Competition and Infrastructure Policy Division, FCC WTB and Maria Mullarkey, Chief, Policy Division, FCC MB to Julian Gehman, Counsel to Indian Peak Properties (WTB Dec. 13, 2022) (*December 2022 Letter Ruling*).

[3] Petition for Reconsideration of Indian Peak Properties, filed Aug. 3, 2022 (Petition for Reconsideration).

[4] *December 2022 Letter Ruling* at 3, citing Letter from Garnet Hanly, Chief, Competition and Infrastructure Policy Division, FCC WTB and Maria Mullarkey, Chief, Policy Division, FCC MB to Toneata Martocchio, counsel for Indian Peak Properties, at 9 (WTB July 18, 2022) (*July 2022 Letter Ruling*).

[5] *December 2022 Letter Ruling* at 3-4.

petition on a public notice without first reviewing the petition for compliance with applicable procedural and substantive requirements.[6]

3. For the reasons set forth below, we deny in part and dismiss in part Indian Peak's Application.[7] Specifically, we find that the Bureaus were correct in finding that the OTARD rule did not apply. However, we find that the Bureaus should have denied the claim on the grounds that Indian Peak failed to plead facts sufficient to establish a regular human presence at the property. Because we find that the OTARD rule does not apply, we dismiss as moot Indian Peak's claim that Commission staff are required to automatically initiate a proceeding and put a petition on public notice without first reviewing the petition for compliance with applicable procedural and substantive requirements. We also dismiss and in the alternative deny Indian Peak's new argument that the OTARD rule creates a reliance interest and a constitutional property interest, as well as its argument that it was deprived of due process. Finally, we dismiss and in the alternative deny the related argument that the staff's failure to place a petition on public notice deprived Indian Peak of an impartial adjudication of the petition.

II. BACKGROUND

A. The Commission's OTARD Rule

4. The Commission's OTARD rule prohibits laws, regulations, or restrictions imposed by State or local governments or private entities that impair the ability of antenna users to install, maintain, or use over-the-air reception devices.[8] The Commission adopted the rule as directed by Section 207 of the Telecommunications Act of 1996, pursuant to the Commission's authority under Section 303 of the Communications Act of 1934.[9] Since adopting the OTARD rule in 1996, the Commission has issued several orders clarifying and extending the rule.[10] Most recently, in the *2021 Fixed Wireless Report and*

[6] *Id*. at 4-5.

[7] The Communications Act of 1934 permits parties to seek Commission review of actions taken on delegated authority. 47 U.S.C. § 151 *et seq*. Specifically, section 5(c)(4) of the Act states that a party "aggrieved by [an action taken on delegated authority] may file an application for review by the Commission within such time and in such manner as the Commission shall prescribe, and every such action shall be passed upon by the Commission." 47 U.S.C. § 155(c)(4). Section 1.115 of the Commission's rules establishes the procedural rules for filing applications for review. 47 CFR § 1.115. Because we affirm the Bureau's determination that the antennas are not covered by the OTARD rule, Indian Peak's argument that the Bureau exceeded its delegated authority, Application at 12,14, is moot.

[8] 47 CFR § 1.4000. Specifically, the OTARD rule applies to "any restriction, including but not limited to any State or local law or regulation, including zoning, land-use, or building regulations, or any private covenant, contract provision, lease provision, homeowners' association rule, or similar restriction . . . ." *Id*. § 1.4000(a)(1).

[9] Telecommunications Act of 1996, Pub. L. No. 104-104, § 207, 110 Stat. 56, 114 (1996) (1996 Act). Section 207 of the 1996 Act states that, "[w]ithin 180 days after the date of enactment of this Act, the Commission shall, pursuant to section 303 of the Communications Act of 1934, promulgate regulations to prohibit restrictions that impair a viewer's ability to receive video programming services through devices designed for over-the-air reception of television broadcast signals, multichannel multipoint distribution service, or direct broadcast satellite services." *Id*. Multichannel multipoint distribution service in the 2.5 GHz band is now known as Broadband Radio Service. *See Transforming the 2.5 GHz Band*, WT Docket No. 18-120, Report and Order, 34 FCC Rcd 5446, 5447, para. 4 (2019).

[10] *In the Matter of Implementation of Section 207 of the Telecommunications Act of 1996*, 13 FCC Rcd 23874 (1998) (*Second OTARD Order*); *Promotion of Competitive Networks in Local Telecommunications Markets*, Report and Order, 15 FCC Rcd 22983 (2000) (*2000 Competitive Networks First Report and Order*); *Promotion of Competitive Networks in Local Telecommunications Markets*, Order on Reconsideration, WT Docket No. 99-217, 19 FCC Rcd 5637 (*2004 Competitive Networks Reconsideration Order*); *Updating the Commission's Rule for Over-the-Air Reception Devices*, WT Docket No. 19-71, Report and Order, 36 FCC Rcd 537 (2021) (*2021 Fixed Wireless Report and Order*).

Order, the Commission extended the OTARD rule to hub and relay antennas used to receive or transmit fixed wireless services.[11]

5. The OTARD rule prohibits state and local regulators and private entities from imposing any restriction on the placement of certain types of antennas "on property within the exclusive use or control of the antenna user where the user has a direct or indirect ownership or leasehold interest in the property that impairs the installation, maintenance, or use of antennas."[12] To qualify for protection under the rule, a qualifying antenna must serve a customer who is on the premises where the antenna is installed.[13] The rule applies to antennas that are used to: (1) "receive direct broadcast satellite service, including direct-to-home satellite service, or to receive or transmit fixed wireless signals via satellite, including a hub or relay[14] antenna used to receive or transmit fixed wireless services that are not classified as telecommunications services"; (2) "receive video programming via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, or to receive or transmit fixed wireless signals other than via satellite, including a hub or relay antenna used to receive or transmit fixed wireless services that are not classified as telecommunications services"; or (3) "receive TV broadcast signals."[15] A restriction "impairs" if it "[u]nreasonably delays or prevents installation, maintenance, or use"; "[u]nreasonably increases the cost of installation, maintenance, or use"; or "[p]recludes reception or transmission of an acceptable quality signal."[16] The Commission has clarified that the OTARD rule applies not only to the owners of property on which antennas are located but also to tenants and to "business invitees."[17] In the *Continental Airlines* case, the Commission found an airport owner's restriction on the placement and use of an antenna by Continental Airlines to provide Wi-Fi service for its employees and customers (treated as its "business invitees") to be pre-empted under the OTARD rule.[18] The rule permits those seeking protection under the rule to file petitions for declaratory ruling with the Commission under section 1.2 of its rules, and requires that "[a]ll allegations of fact . . . must be supported by affidavit of a person or persons with actual knowledge" of the facts alleged.[19]

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[11] *2021 Fixed Wireless Report and Order,* 36 FCC Rcd 537.

[12] 47 CFR § 1.4000(a).

[13] *See 2004 Competitive Networks Reconsideration Order,* 19 FCC Rcd at 5644 (the equipment *must be installed in order to serve the customer on such premises*, and it must comply with all of the limitations of the rule) (emphasis original); *see also 2021 Fixed Wireless Report and Order*, 36 FCC Rcd at 540 ("The revised OTARD rule we adopt today applies to all hub and relay antennas . . . as long as: (1) the antenna serves a customer on whose premises it is located, and (2) the service provided over the antenna is broadband-only.").

[14] 47 CFR § 1.4000 refers to "hub or relay" antennas. Commission orders have historically referred to "hub and relay" antennas. These terms are used interchangeably by the Commission and Indian Peak in their correspondence. For consistency, unless quoting a source we use "hub and relay" in this order.

[15] 47 CFR § 1.4000(a). Antennas in categories (1) and (2) must also meet size restrictions (with an exception for certain equipment located in Alaska, which is not relevant here). *See id.* § 1.4000(a)(1)(i)(B), (a)(1)(ii)(B). "Fixed wireless signals" are defined to mean any "commercial, non-broadcast communications signals transmitted via wireless technology to and/or from a fixed customer location." 47 CFR § 1.4000(a)(2). The term "hub or relay antenna" means "any antenna that is used to receive or transmit fixed wireless signals for the distribution of fixed wireless services to multiple customer locations as long as the antenna serves a customer on whose premises it is located, but excludes any hub or relay antenna that is used to provide any telecommunications services or services that are provided on a commingled basis with telecommunications services." 47 CFR § 1.4000(a)(5).

[16] 47 CFR § 1.4000(a)(3).

[17] *Second OTARD Order*, 13 FCC Rcd 23874; *Continental Airlines*, ET Docket No. 05-247, Memorandum Opinion and Order, 21 FCC Rcd 13201 para. 9 (2006) (*Continental Airlines*).

[18] *Continental Airlines* at 13201, para. 9.

[19] 47 CFR § 1.4000(h); *see also id.* §§ 1.2, 1.4000(e).

B. Indian Peak's Petitions

6. On May 1, 2022, Indian Peak filed five Petitions for Declaratory Ruling[20] seeking preemption under the OTARD rule of a decision by the city of Rancho Palos Verdes, California (City) to revoke a conditional use permit for antennas on a building pursuant to the City's zoning ordinance.[21] The Petitions concerned six antennas on the roof of a single-family home located in Rancho Palos Verdes, California. Indian Peak filed these Petitions following a decision by the Competition and Infrastructure Policy Division of the Wireless Telecommunications Bureau (CIPD) on April 22, 2022, to dismiss a similar petition submitted by Indian Peak concerning ten antennas at the same location.[22] CIPD dismissed that earlier petition because it failed "to provide sufficient information to support a showing that each antenna meets all of the criteria required for protection under the OTARD rule."[23]

7. On July 18, 2022, the Bureaus issued a Letter Ruling (*July 2022 Letter Ruling*) dismissing the five Petitions for Declaratory Ruling filed by Indian Peak. The *July 2022 Letter Ruling* dismissed Petition 1 because it failed to identify a controversy for the Commission to resolve, and dismissed Petition 5 for failure "to make any showing that each antenna support[ed] the offering of a fixed wireless service . . . as required for a dispute to implicate the OTARD rule."[24] Indian Peak has not appealed the dismissals of Petitions 1 or 5, so only Petitions 2-4 are the subject of this Application.

8. The *July 2022 Letter Ruling* dismissed Petitions 2-4 because they failed to make any showing that the antennas served a user on the premises as required for a hub and relay antenna, or that there was a "user [who] has a direct or indirect ownership or leasehold interest in the property."[25] The Bureaus stated that the customers for these antennas appeared to be communications service providers and concluded that these antennas are not eligible for OTARD protection, given the Commission's

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[20] *See* Indian Peak Properties, Petition for Declaratory Ruling Under 47 CFR §1.4000 (filed May 1, 2022) (Petition 1); Indian Peak Properties and LT-WR LLC, Petition for Declaratory Ruling Under 47 CFR §1.4000 (filed May 1, 2022) (Petition 2); Indian Peak Properties and California Internet dba Geo-Links, Petition for Declaratory Ruling Under 47 CFR §1.4000 (filed May 1, 2022) (Petition 3); Indian Peak Properties and One Internet America, Petition for Declaratory Ruling Under 47 CFR §1.4000 (filed May 1, 2022) (Petition 4); Indian Peak Properties and Fisher Wireless, Petition for Declaratory Ruling Under 47 CFR §1.4000 (filed May 1, 2022) (Petition 5) (collectively Petitions or Petitions 1-5). The five petitions were largely identical, in most cases simply swapping out the name of the antenna.

[21] *See* Petitions 1-5 at 3. According to Petitioner, the Rancho Palos Verdes City Council adopted a resolution in December 2004 approving a conditional use permit for the placement of five UHF antennas on the roof of the house. Petitioner asserts that "[i]n subsequent years, some antennas were removed and other antennas were installed on the rooftop of the Property on the good faith assumption that the additional antennas did not require prior zoning approvals because they did not involve the erection of additional support structure and were mounted on the same Building as the UHF antennas that had been approved under . . . [the conditional use permit] and were smaller and lower in profile than the UHF antennas." *Id.* at 2. After the City was alerted to the unpermitted antennas in August 2014, and extended negotiations to revise the conditional use permit were unsuccessful, the City revoked the permit in August 2018. Rancho Palos Verdes, Cal., Res. No. 2018, attached to Letter from William W. Wynder, counsel to City of Rancho Palos Verdes, to Garnet Hanly, Chief of Competition and Infrastructure Policy Division, FCC Wireless Telecommunications Bureau (May 6, 2022), Ex. A (May 6 City Letter).

[22] Letter from Garnet Hanly, Chief, Competition and Infrastructure Policy Division, FCC Wireless Telecommunications Bureau, to Toneata Martocchio, Counsel to Indian Peak Properties (WTB Apr. 22, 2022).

[23] *Id*. at 2, 4.

[24] According to the information in the record, Antenna 1 was a TV satellite antenna and the City was not seeking to have Indian Peak remove Antenna 1. *July 2022 Letter Ruling* at 3. Petition 5 was dismissed for failure "to make any showing that each antenna support[ed] the offering of a *fixed* wireless service . . ." because they appeared to be providing cellular service, which is not covered under the OTARD rule. *Id*. at 6-8.

[25] *Id*. at 2.

statement in the *2021 Fixed Wireless Report and Order* that the OTARD "rule will not treat service providers as 'antenna users.'"[26]

9. On August 3, 2022, Indian Peak filed a Petition for Reconsideration for Petitions 2-4, contending that the justification to dismiss Petitions 2-4 was in error and set new policy,[27] and arguing that the *July 2022 Letter Ruling* should have created a proceeding to consider Petitions 2-4 by putting them on Public Notice.[28] The Petition for Reconsideration reaffirmed that internet service on the property was being used for remote monitoring of the property and the equipment located there.[29]

10. On August 3, 2022, Indian Peak notified the Commission that it had removed the antennas that were the subject of Petitions 2-5.[30] That notice stated that Indian Peak will reinstate the antennas if it receives relief from the Commission,[31] although the record indicates that Indian Peak has since been able to obtain a wireline broadband connection instead.[32] As far as the record for this matter reflects, the antennas subject to these Petitions have not been re-installed pending resolution of Indian Peak's request for relief.

11. On December 13, 2022, the Bureaus issued the *December 2022 Letter Ruling* for which the Petitioner has submitted the instant Application for Review. With respect to Indian Peak's argument that it had identified customers that fall within the OTARD rule's scope, the *December 2022 Letter Ruling* stated that the Bureaus fully considered and rejected Indian Peak's argument and concluded that each of the Petitions failed "to include allegations with sufficient detail, clarity, and accuracy . . . to identify . . . a dispute [that] implicates" the OTARD rule.[33] The *December 2022 Letter Ruling* stated that, as explained in the *July 2022 Letter Ruling*, the "record does not identify any non-communications-service-provider user who regularly resides at or uses the premises."[34] According to the *December 2022 Letter Ruling*, Indian Peak's Petition for Reconsideration reiterated its previous argument that the two tenants of Indian Peak—Fisher Wireless and Comm Enterprises—are "customers, as well as end users."[35] Similar to the *July 2022 Letter Ruling*, the *December 2022 Letter Ruling* stated that "the OTARD rule does not protect antennas where the user is a service provider that merely provides communications service to others not located at the premises."[36]

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[26] *Id*. at 6, citing *2021 Fixed Wireless Report and Order at* 544, para. 20 .

[27] Petition for Reconsideration at 9-11.

[28] *Id.* at 5-9.

[29] *See, e.g.*, Petition for Reconsideration at 4-5 ("One example of such operational use […] has been to monitor alarms and other sensors that are connected to the Internet. These alarms and other sensors indicate the operational status of licensed radio stations and facilitate repair where radio stations go down in severe weather or for other reasons.").

[30] E-mail from Julian Gehman, Counsel to Indian Peak Properties, to OTARD@fcc.gov (Aug. 3, 2022, 17:15 EDT), attaching Notice filed in In re Indian Peak Props. LLC, No. 22-1098 (D.C. Cir. filed Aug. 3, 2022) (Notice of Antenna Removal). The antennas were removed a week earlier, on July 27, 2022, in response to an "abatement action" in state court. This conflicts with Indian Peak's Application, where it states that it, "voluntarily removed the disputed antennas from the Property rooftop." Application at 5.

[31] Notice of Antenna Removal at 2.

[32] Application at 6.

[33] *December 2022 Letter Ruling* at 3 (citing July 2022 Letter Ruling at 9).

[34] *Id.* at 6.

[35] Petition for Reconsideration at 11.

[36] *December 2022 Letter Ruling* at 4 (citing *July 2022 Letter Ruling* at 6).

12. The *December 2022 Letter Ruling* also addressed the argument that Commission staff are required to initiate a proceeding and put the petition on public notice without regard to whether it complies with applicable procedural and substantive requirements.[37] The *December 2022 Letter Ruling* stated that, "as we previously noted, section 1.2(b) of our rules has been interpreted as according discretion to the Commission to avoid seeking comment on petitions that are 'moot, premature, repetitive, frivolous, or which do not warrant consideration by the Commission,' including OTARD petitions that fail to implicate the rule."[38] The *December 2022 Letter Ruling* emphasized that when the initiation of a proceeding immediately alters the parties' legal rights by staying local government action, as would be the case here, "the decision not to initiate a proceeding to solicit responsive pleadings on a defective petition is well within the Commission's discretion to 'conduct its proceedings as will best conduce to the proper dispatch of business and the ends of justice.'"[39]

13. Finally, the *December 2022 Letter Ruling* stated the Bureaus were unpersuaded by Indian Peak's argument that staff improperly shifted the burden of proof.[40] The *December 2022 Letter Ruling* noted that "it was appropriate for the Bureaus to look to Indian Peak to provide information uniquely in its possession, including information on the characteristics of the antennas and their uses, to inform the threshold determination of whether there was a controversy subject to the rule."[41]

C. Application for Review

14. On January 12, 2023, Indian Peak filed the Application for Review that is the subject of this Order. Indian Peak argues that the Bureaus erred in denying Petitions 2-4 and that this denial was a result of taking language in the *2021 Fixed Wireless Report and Order* out of context by expanding the "service-provider" exclusion beyond what was intended in the *2021 Fixed Wireless Report and Order*.[42] Indian Peak argues that the *2021 Fixed Wireless Report and Order* contradicts the Bureaus' letter rulings because Indian Peak is both the building owner and a user and, as such, is covered under the OTARD rule based on language contained in the *2021 Fixed Wireless Report and Order*.[43] Indian Peak argues that its circumstances differ from those contemplated by the Commission in the *2021 Fixed Wireless Report and Order*, when it said it would not deem an antenna owner to also be the antenna user because in this case the antenna owners are not serving as their own users.[44] Indian Peak also claims that the Bureaus misconstrued the purpose of the *2021 Fixed Wireless Report and Order*, which would disenfranchise the entire communications industry from filing an OTARD claim, and that such an application would create an artificial distinction for "communications service provider" or "intermediate service provider" that should be rejected.[45] Furthermore, Indian Peak argues that its situation is analogous to that of the *Continental Airlines* case and argues that, under that precedent, Indian Peak's petitions should be granted.[46] Indian Peak argues that because the Bureaus misapplied the *2021 Report & Order*, the

[37] *See* Petition for Reconsideration at 5-9. In its Petition for Reconsideration and Application, Indian Peak states that the Bureau did not conclude that its petitions were procedurally defective. Petition for Reconsideration at 5; Application at 21.

[38] *Id.* at 5 (citing *John F. Garziglia*, Letter, 28 FCC Rcd 4145, 4146 (MB 2013)) (*Garziglia Letter*); *Petition for Declaratory Ruling - Multifamily Broadband Council*, Letter Order, 32 FCC Rcd 3794, 3795-96 (MB 2017).

[39] *December 2022 Letter Ruling* at 5 (citing 47 U.S.C. § 154(j)); *see FCC v. Schreiber*, 381 U.S. 279, 289-90 (1965).

[40] Petition for Reconsideration at 14.

[41] *December 2022 Letter Ruling* at 5.

[42] Application at 7-10.

[43] *Id.*

[44] *Id.* at 8-9.

[45] *Id.* at 12.

[46] *Id.* at 5-7.

Commission should grant the application for review and find Antennas 2-4 are protected under OTARD.[47] Indian Peak also argues that the Letter Rulings violated Commission rules of procedure by not placing the Petitions on public notice and staying local enforcement action.[48]

15. For the first time, Indian Peak argues in its Application for Review that, because Commission staff are required to place an OTARD petition on public notice upon receipt, regardless of its merits, this creates in the public a reliance interest.[49] Indian Peak asserts that under the precedent of *Board of Regents of State Colleges et al. v. Roth*, 408 U.S. 564 (1972), this guarantee of a stay of enforcement also creates a property interest and due process rights that were violated when the Bureaus declined to place the petition on public notice.[50] Indian Peak asserts, without evidence, that this decision "cost Indian [Peak] hundreds of thousands of dollars and loss of use of the antennas."[51] Indian Peak does not identify a basis for review of this argument under 47 CFR § 1.115.

16. The City opposes grant of the Application.[52] The City reiterates its arguments below that the OTARD rule does not apply to Indian Peak's antennas.[53]

III. DISCUSSION

17. In this Order, the Commission denies, on the merits, Indian Peak's claim that the Bureaus erred in finding that the OTARD rule did not apply to Antennas 2, 3, and 4 described in Indian Peak's petitions for declaratory ruling. The Commission dismisses Indian Peak's claim that the Bureaus should have placed the Petitions on public notice as moot. Additionally, the Commission dismisses as untimely and impermissible Indian Peak's new claim that its due process rights were harmed, resulting in damages to its property interests; in the alternative and on independent grounds, the Commission dismisses this claim as moot and denies this claim on the merits. The Commission also dismisses Indian Peak's new claim that a reliance interest was breached as untimely and impermissible and, in the alternative and on independent grounds, dismisses that argument as moot and denies it on the merits. Finally, the Commission dismisses as moot Indian Peak's claim that the Bureaus did not conduct impartial adjudication because they adjudicated this matter at the screening phase and, in the alternative and on independent grounds, denies this claim on the merits.

A. Indian Peak Failed to Establish that the OTARD Rule Applies to Antennas 2, 3, and 4

18. Based on the record, we find that Indian Peak did not meet its burden to plead facts sufficient to implicate the OTARD rule, and we affirm the Bureaus' determination that the OTARD rule was not applicable. As we explain below, the *Continental Airlines* order is consistent with our finding here that the OTARD rule requires a minimum human presence, and that a finding for Indian Peak in this case, absent a showing of sufficient minimum human contacts at the property, would frustrate the purpose

[47] *Id.* at 2.

[48] *Id.* at 12. Indian Peak claims that the *Garziglia Letter* is "bad precedent" and should be reversed. *Id.* at 18; *see John F. Garziglia*, Letter, 28 FCC Rcd 4145, 4146 (MB 2013) (*Garziglia Letter*).

[49] *Id*. at 18-19. Indian Peak "asks the Commission to make good on its OTARD guidance," *id.* at 19, but does not explain how the Commission should do that.

[50] *Id*. at 22.

[51] *Id*. at 22-3.

[52] William W. Wynder, counsel to City of Rancho Palos Verdes, to Federal Communications Commission (Feb. 6, 2023) (February 6 City Letter).

[53] We note that the City's letter was filed after the deadline established by 47 CFR § 1.115(d) for responses to applications for review. The City does not characterize the letter as a response or seek a waiver of the filing deadline for responses. We accept the filing in the interest of completeness, as it establishes that the City has not abandoned its opposition to the grant of OTARD relief. We rely on the letter solely for that purpose.

of the rule. Indian Peak's Application argues that the Bureaus' order should be overturned, pursuant to 47 CFR § 1.115(b)(2)(i), because the order denied Indian Peak's petitions based on a service provider exclusion that Indian Peak argues conflicts with the *2021 Report & Order*, and with the precedent established in *Continental Airlines*. As explained below, we do not reach a conclusion on Indian Peak's argument regarding the service provider exclusion because, instead, we find that the record does not sufficiently establish the extent or duration of any human presence at the property.

19. Section 207 of the Telecommunications Act of 1996, Restriction on Over-the-Air Reception Devices, requires that the Commission promulgate and enforce regulations to prohibit restrictions that impair a viewer's ability to receive video programming services through devices designed for over-the-air reception of television broadcast signals, multichannel multipoint distribution service, or direct broadcast satellite services.[54] In order to fulfill its statutory obligation, the Commission adopted the OTARD rule in 1996 to "prohibit restrictions that impair a viewer's ability to receive video programming services" through antennas.[55] The Commission clarified or updated the OTARD rule in 1998,[56] 2000,[57] 2004,[58] and 2021.[59] In 2000, the Commission extended the rule to apply to fixed wireless signals, finding that the rule should not distinguish among services based on their nature (e.g., voice, video, data) or among antennas based on their function (i.e., transmit or receive, or both).[60] The *2021 Fixed Wireless Report and Order* extended the OTARD rule to hub and relay antennas used to receive or transmit fixed wireless services that are not classified as telecommunications services.[61]

20. Although the Commission has on several occasions clarified and expanded the scope of the OTARD rule, the Commission has never altered the basic requirement that the rule benefit a human antenna user. The requirement that the Commission adopt regulations that protect "a viewer's ability" to receive service is clearly stated in Section 207 of the Telecommunications Act of 1996. The Commission took special care to note this requirement in its implementing report and order: "[T]he statute requires that we prohibit restrictions that impair the *viewers'* ability to receive the signals in questions."[62]

21. The Commission has used the terms "customer" and "consumer" interchangeably with "viewer" before and since expanding the rule to cover fixed wireless antennas. For example, when it addressed the treatment of hub and relay antennas in 2004, the Commission noted that "we do not intend that carriers may simply locate their hub-sites on the premises of a customer in order to avoid compliance

[54] Telecommunications Act of 1996, Pub. L. No. 104-104, § 207, 110 Stat. 56 (1996); 47 U.S.C. § 303(v).

[55] 47 C.F.R. § 1.4000; Preemption of Local Zoning Regulation of Satellite Earth Stations; Implementation of Section 207 of the Telecommunications Act of 1996; and Restrictions on Over-the-Air Reception Devices: Television Broadcast Service and Multichannel Multipoint Distribution Service, *Report and Order*, *Memorandum Opinion and Order*, *and Further Notice of Proposed Rulemaking*, CS Docket No. 96-83, 11 FCC Rcd 19276 (1996) (*First OTARD Order*).

[56] *Second OTARD Order*, 13 FCC Rcd 23874.

[57] *2000 Competitive Networks First Report and Order*, 15 FCC Rcd 22983, 23027-28.

[58] *2004 Competitive Networks Reconsideration Order,* 19 FCC Rcd 5637.

[59] *2021 Fixed Wireless Report and Order*, 36 FCC Rcd 537.

[60] *2000 Competitive Networks First Report and Order* at 98-99.

[61] *2021 Fixed Wireless Report and Order* and 47 C.F.R. § 1.4000(1)(ii)(A).

[62] *In the Matter of Preemption of Local Zoning Regulation Of Satellite Earth Stations in the Matter of Implementation of Section 207 of the Telecommunications Act of 1996*, 11 FCC Rcd 19276 (1996) (emphasis added). *See also Second OTARD Order*, 13 FCC Rcd at 23889 ("This rule will prohibit lease or other restrictions . . . on leased property under the exclusive use or control of the *viewer*.") (emphasis added). When the Commission amended the rule to cover leased premises, it listed examples of where a viewer might place its antenna within rented premises, such as balconies or patios in residential settings, indicating a continued expectation that the rule would protect the rights of human beings. *Id.*

with a legitimate zoning regulation. Rather, in order to invoke the protections of the OTARD rule, the equipment *must be installed in order to serve the customer on such premises*, and it must comply with all of the limitations of the rule[.]"[63] Although the Commission uses the word "customer" in place of "viewer," nothing in the *2004 Competitive Networks Reconsideration Order* suggests that the Commission was seeking to expand the protections of the OTARD rule beyond serving human beings. To the contrary, when paraphrasing the finding of the D.C. Circuit in *Building Owners and Managers Association et al. v. FCC*, 254 F.3d 89 (D.C. Cir. 2001), the Commission in 2004 used "customer" where the court used "viewer," indicating an intent to use the terms interchangeably.[64] Significantly, the Commission framed the extension of the OTARD rule as applied to fixed wireless antennas as a "consumer protection" measure benefiting "fixed wireless customers."[65] In the *2021 Fixed Wireless Report and Order*, the Commission stated that "updating the OTARD rule will enable consumers to access competing video programming providers," and "the primary benefit of fixed wireless antennas is to secure viewers' access to broadband service."[66]

22. The term "customer" has always indicated that the OTARD rule requires that the equipment serve a human being on the premises. The Commission did not alter this requirement in the *2021 Fixed Wireless Report and Order*. On the contrary, the Commission emphasized that its expansion of the OTARD rule in 2021 was "narrow in scope," and that its action was not intended to alter the rules except to remove the "primary purpose" limitation as applied to broadband-only hub and relay antennas.[67]

23. For OTARD protections to attach to a fixed wireless antenna, the petitioner must demonstrate that it is regularly being used to provide signals to human end users at the location where the equipment is installed. We do not address all possible uses or establish a bright-line standard for such use. Rather, we note that in this specific context, involving Indian Peak's previously-situated multiple antennas and its vague and evolving characterization about the extent of use, we cannot discern that any customer on the premises was served.

24. Indian Peak's piecemeal, ever-evolving characterization of the facts has complicated the review of this matter. As we discuss more fully below, Indian Peak's early filings described service and usage consistent with the remote monitoring of equipment on the premises (e.g., security cameras, smart thermostats). Throughout this matter, however, Indian Peak modified its description of the services and users and used ambiguous language. Despite its numerous submissions, Indian Peak has failed to provide

[63] *2004 Competitive Networks Reconsideration Order,* 19 FCC Rcd at 5644 (emphasis original).

[64] *Compare Building Owners and Managers Association et. al. v. FCC*, at 96-7 ("[W]e hold that the Commission could reasonably construe § 207 to apply to all *viewers*, including tenants, and to obligate the Commission to prohibit any restriction,: including lease provisions, that impairs the installation, maintenance, or use of [a § 207 device].) (emphasis added, internal quotations omitted) *with 2004 Competitive Networks Reconsideration Order,* 19 FCC Rcd at 5640 ("The Court found that the Commission acted reasonably in protecting *customers* who lease property in the *OTARD Second Report and Order*[.]") (emphasis added).

[65] *2004 Competitive Networks Reconsideration Order,* 19 FCC Rcd at 5640-41, para.8 (characterizing extension of the OTARD rule to fixed wireless antennas as providing "important consumer protections to fixed wireless customers" and stating that "it would be illogical for the Commission to protect one group of consumers (*i.e.*, multi-channel video) but deny such protections to another group of consumers (*i.e.*, fixed wireless) based solely on the nature of the equipment in use").

[66] *2021 Fixed Wireless Report and Order,* 36 FCC Rcd at 545, para.18.

[67] *2021 Fixed Wireless Report and Order,* 36 FCC Rcd at 546, para. 19; *id.* at 540, para. 9 ("The revised OTARD rule we adopt today applies to all hub and relay antennas that are used for the distribution of fixed wireless services to multiple *customer* locations, regardless of whether they are 'primarily' used for this purpose, as long as: (1) the antenna serves a *customer* on whose premises it is located, and (2) the service provided over the antenna is broadband-only. Our order here does not modify any other aspects of the current OTARD rule.") (footnote omitted) (emphasis added).

sufficient clarity regarding the frequency, duration, or consistency with which any persons are on site. Indian Peak's allegations of a human presence at the antenna site are vague to the point that we are unable to conclude that human users are on site to more than a *de minimis* extent. For example, Indian Peak describes Fisher Wireless and Comm Enterprises as having "access" to the Property and that they use the internet when present, but also that receiving uninterrupted internet service is "even more important" when no one is at the property.[68] Indian Peak provides no indication of the frequency or duration a human user is on site beyond stating that the antennas provide "connectivity for a number of vendors and contractors who visit the Property on a regular basis and for any residential tenants who lease rooms in the house from time to time."[69] As discussed below, subsequent filings clarified that there were no residential tenants at the property.[70]

25. Indian Peak's 2020 OTARD Petition is not the subject of this Application, but it provides useful context for the matter before us because it was Indian Peak's first effort to seek protection from the City's ordinance as it applied to antennas at the Rancho Palos Verde facility.[71] The 2020 OTARD Petition sought preemption under the OTARD rule of the decision by the City to revoke the conditional use permit.[72] The 2020 OTARD Petition stated that the companies that provided service to the property also owned those antennas, and two of the four companies were leasing rooftop space from Indian Peak.[73] In that Petition, Indian Peak stated that Antenna 2 was used to "provide internet connectivity for various communications, data, and monitoring functions in connection with the Indian Peak property. These include support for "UPS units, DVRs, thermostats, Voice over Internet Protocol (VoIP) phones, web cams, and power monitoring."[74] Antenna 3 and Antenna 4 were identified as providing "backup and additional connectivity."[75] The 2020 Petition did not identify any individuals or entities that used the services provided by the antennas with any clarity beyond "Indian Peak and its affiliated entities."[76] As noted above, the Bureaus dismissed this petition before the instant petitions were filed.[77]

26. Petitions 1-5, which were filed July, 2022, identified the customers who used the antennas, but did so in an internally inconsistent manner.[78] In some places, the Petitions represented that

[68] See Application at 10 ("Fisher Wireless and Comm Enterprises each have employees who access the Property") and Supplement 2 at 4 (""When Fisher Wireless or Comm Enterprises staff are working from the house, uninterrupted Internet allows [them to] remotely control those stations" and "When there is no one working at the house, uninterrupted Internet access is perhaps even more important. Uninterrupted broadband access allows remote monitoring and control of the equipment in the house").

[69] *See* Petition 2 at 6.

[70] *See* Supplement 2 at 2; *See infra* para. 28.

[71] On April 22, 2022, CIPD dismissed the 2020 OTARD Petition without prejudice. Letter from Garnet Hanly, Chief, Competition and Infrastructure Policy Division, FCC WTB, to Toneata Martocchio, Counsel to Indian Peak Properties (Apr. 22, 2022).

[72] 2020 OTARD Petition at 2.

[73] *Id*. at 8-10. These companies were identified as LT-WR LLC, GeoLinks, One Internet America, and Fisher Wireless. We note that Indian Peak and LT-WR are both owned by James Kay; however, Indian Peak's submissions have been inconsistent when describing this relationship.

[74] *Id*. at 9.

[75] *Id.* We note that in subsequent filings, Indian Peak changes the description of the function of Antennas 3 and 4, stating that they are hub and relay antennas which distribute broadband fixed wireless service, but only to Mr. Kay and Indian Peak Properties, LLC. Petition 3 at 8 and Petition 4 at 8.

[76] *See* 2020 OTARD Petition at 9.

[77] *See supra* para. 6.

[78] Indian Peak Properties, Petition for Declaratory Ruling Under 47 CFR §1.4000 (filed May 1, 2022) (Petition 1); Indian Peak Properties and LT-WR LLC, Petition for Declaratory Ruling Under 47 CFR §1.4000 (filed May 1,

(continued….)

the customers on the premises using the antenna were "petitioner and various businesses," while in other places the Petitions represented that the users were "any residential tenants who lease rooms in the house from time to time."[79] They also indicated that, "[Mr. Kay] together with his several companies including Indian Peak Properties, LLC are the customers and primary users of the broadband service provided by Antenna [identifying number]."[80] Other parts of the Petitions stated that, "Mr. Kay and his company Indian Peak Properties, LLC are the primary users and customers of the service [from this antenna]" (omitting "his several companies" as stated elsewhere) and "Indian Peak Properties, LLC is the customer."[81] The Petitions also stated that the antennas are "designed to and [do] provide fixed wireless high-speed internet access [to the house and yard]. . . . In addition, [the antennas] provides connectivity for a number of vendors and contractors who visit the Property on a regular basis, and for any residential tenants who lease rooms in the house from time to time."[82] Notably, in the required affidavit submitted in support of the Petitions, Indian Peak's expert identified only Indian Peak Properties as the customer of each antenna.[83] The Petitions did not name or describe the various "vendors and contractors who visit the Property on a regular basis," explain the purpose for which they used the Internet service, or suggest that their use was anything other than an incidental connection to the home's Wi-Fi network in the same way any vendor or contractor might use the Wi-Fi network at the premises they visit in the course of their work.

27. In supplemental filings to its Petitions made in May and July of 2022,[84] Indian Peak claimed that all three antennas are "wired together to provide a single source of broadband access from geographically diverse providers" in order to maintain redundancy so that Indian Peak's corporate lessees, Comm Enterprises and Fisher Wireless, can "remotely troubleshoot and mitigate network service problems" and "monitor and check the status of their other stations that are similarly equipped with Internet access, and remotely control those stations."[85] These supplemental filings also stated that, "[u]ninterrupted broadband access allows remote monitoring and control of the equipment in the house. . . . [T]he house contains a full suite of equipment for remote monitoring of power supply, HVAC and operational status of the transmitters and other communications equipment, as well as remotely controlling the same."[86]

28. In Supplement 2, Indian Peak stated that there are no residential tenants, contrary to its statements in the Petitions that residential tenants were or could be among those served by the antennas,

(Continued from previous page)
2022) (Petition 2); Indian Peak Properties and California Internet dba Geo-Links, Petition for Declaratory Ruling Under 47 CFR §1.4000 (filed May 1, 2022) (Petition 3); Indian Peak Properties and One Internet America, Petition for Declaratory Ruling Under 47 CFR §1.4000 (filed May 1, 2022) (Petition 4); Indian Peak Properties and Fisher Wireless, Petition for Declaratory Ruling Under 47 CFR §1.4000 (filed May 1, 2022) (Petition 5).

[79] Petition 2 at 3-4, 6; Petition 3 at 3-4, 6; and Petition 4 at 6.

[80] Petition 2 at 6; Petition 3 at 6; Petition 4 at 6.

[81] *See* Petitions 1-5 at 13.

[82] Petition 2 at 6; *See also* Petition 3 and 4.

[83] Petition 1 at 13 (Affidavit of Daniel Redmond); Petition 2 at 13 (Affidavit of Daniel Redmond); Petition 3 at 14 (Affidavit of Daniel Redmond); Petition 4 at 14 (Affidavit of Daniel Redmond); Petition 5 at 14 (Affidavit of Daniel Redmond).

[84] Indian Peak's Supplement and Request for Expedited Action on Petitions for Declaratory Ruling (filed May 26, 2022) (Supplement 1) and Indian Peak's Supplement and Request for Expedited Action on Petitions for Declaratory Ruling (filed July 5, 2022) (Supplement 2).

[85] Supplement 2 at 3-4.

[86] *Id*.

and that the residential property "serves exclusively as a communications center and office building."[87] In this supplement, Indian Peak also stated that the property is leased to Fisher Wireless and Comm Enterprises. In explaining why uninterrupted Internet access is necessary, Indian Peak implies that the companies' personnel may sometimes work from the house ("When [their] Staff are working from the house" Internet access supports remote monitoring of off-site equipment) and sometimes do not work from the house ("When there is no one working at the house," Internet access allows remote monitoring of equipment at the house).[88] Although Indian Peak claimed in its petitions that "vendors and contractors" of an unspecified nature "regularly" visit the property and use the Internet for unidentified purposes, Indian Peak did not clearly state that its tenants' personnel have ever worked at the house and if so, how frequently they were at the property.[89] On the other hand, it appears that Internet service at the property supported only remote monitoring capabilities that allow the site to be maintained and operated without human presence.[90] Indian Peak has never provided evidence of any residential tenants using the building at any time that the case was pending before the Bureaus and, instead, expressly stated in its Supplement 2 that there are no residential tenants.

29. Indian Peak's representations regarding the facts have been unclear and inconsistent, and, ultimately, Indian Peak has not alleged with specificity that the antennas serve on-site human users. In contrast, Indian Peak has consistently maintained that the antennas support the operation of remote monitoring equipment.

30. Indian Peak argues that this case is analogous to *Continental Airlines*. We disagree. While there are similarities between the two cases in that in *Continental Airlines* a corporation was maintaining antennas and service not for its own primary use but rather for the use of its customers, the cases are distinguished by the fact that the customers in *Continental Airlines* were passengers of the airline using its lounge (which the Commission characterized as "business invitees").[91] There was no question that there was a regular and continuous human presence and that a purpose of the service provided by the antennas was to serve those human users.[92] In the instant case, Indian Peak has not clearly alleged or provided sufficient evidence to support the presence of a regular human user at the property despite numerous opportunities to do so. To the contrary, Indian Peak has stated there are no

[87] *Id.* at 2. The City has described the facility as "a single family home in a residential neighborhood . . . The home is vacant and has been converted into an antenna farm for commercial purposes (including roof-mounted antenna and high frequency UHF antenna in the principal bedroom rendering the home uninhabitable)." May 6 City Letter at 1. Indian Peak did not deny these assertions.

[88] *Id*. at 4.

[89] Although Indian Peak's statement that "[w]hen Fisher Wireless or Comm Enterprises staff are working from the house" suggests that staff might sometimes work at the house, Indian Peak used similar language in its petitions with respect to purported antenna use by residential tenants before later revealing that there are no residential tenants and that the property is not operated as a residence. *See* Petition 2 at 3 (stating that Antenna 1 is used "for tenants when Building is rented"); *id.* at 6 (stating that the antenna is used "for any residential tenants who lease rooms in the house from time to time"); Supplement 2 at 2. Indian Peak states in its Application that "Fisher Wireless and Comm Enterprises each have employees who access the Property and, of course, used the Wi-Fi and hard-wired Internet access service." AFR at 6.

[90] Supplement 2 at 2, 4 (noting the systems support thermostats to monitor and control heating and cooling systems via Internet-based remote control, digital video recorders used to monitor the property remotely, remote controlled ethernet switches and routers, and the multiple antenna are required to create back-up redundancies so Comm Enterprises and Fisher Wireless can remotely troubleshoot and mitigate network problems); Petition for Reconsideration at 4-5 ("One example of such operational use . . . has been to monitor alarms and other sensors that are connected to the Internet. These alarms and other sensors indicate the operational status of licensed radio stations and facilitate repair where radio stations go down in severe weather or for other reasons.").

[91] *Continental Airlines*, ET Docket No. 05-247, Memorandum Opinion and Order, 21 FCC Rcd 13201 para. 9.

[92] Supplement 2 to Petitions 1-5, July 5, 2022 at 4 (Supplement 2).

residential tenants, the property "serves exclusively as a communications center and office building,"[93] and acknowledges that the internet service is used primarily by technology capable of performing remote monitoring or control by offsite personnel—a function that specifically does not require a human presence on the property.[94]

31. For the foregoing reasons, we deny Indian Peak's Application for Review as it pertains to seeking OTARD protection for antennas 2, 3, and 4. Because our decision does not turn on whether the antennas are being used by a communications service provider, we need not determine whether the Bureaus' interpretation of the *2021 Fixed Wireless Report & Order* reasonably reflects the Commission's intent.[95]

B. The Issue of Whether the Bureaus Should Have Placed the Petitions on Public Notice is Moot

32. Indian Peak argues that the Bureaus violated Commission procedure by not following the OTARD rule or the declaratory ruling rule found at section 1.2 of the Commission's rules,[96] which Indian Peak asserts required the Bureaus to place their Petitions on public notice.[97] On the other hand, Indian Peak claims no purpose would be served in the initiation of a proceeding at this point because the record is adequate to establish its entitlement to preemption relief.[98] Because we conclude that the antennas are not protected by the OTARD rules, the question of whether the Petitions should have been placed on public notice is moot. Accordingly, this portion of the Application is hereby dismissed.

C. Indian Peak's Remaining Arguments Are Meritless

33. Indian Peak, relying on *Board of Regents v. Roth*, 408 U.S. 564 (1972), states that because 47 CFR § 1.4000(d) provides that "[p]etitions to the Commission must comply with the procedures of paragraphs (f) and (h) of this section **and will be put on notice**[,]" Indian Peak has a property interest for due process purposes.[99] According to Indian Peak, because the Bureaus failed to place the petition on public notice, it was forced to take down its antennas which "cost Indian [Peak] hundreds of thousands of dollars and loss of the use of the antennas."[100] We dismiss this portion of the Application on several alternative and independent grounds. First, Indian Peak's argument is untimely and therefore impermissible.[101] Second, it is moot because we have already concluded that Indian Peak's antennas are not entitled to OTARD protection in the first instance, and initiating a proceeding would serve no purpose—we do not need to hear the City's justification for imposing a restriction because we

[93] *Id*. at 2. Despite alleging that the premises are an "office building," Indian Peak does not allege that its office building is staffed with employees or managers.

[94] *Id*. at 2, 4.

[95] *See December 2022 Letter Ruling* at 4 ("The OTARD rule does not protect antennas where the user is a service provider that merely provides communications to others not located at the premises." (citing *2021 Report & Order*, 36 FCC Rcd at 544, para. 20).

[96] 47 CFR § 1.2.

[97] Application at 12-18, 21-22.

[98] Application at 24 ("Placing Indian's OTARD petitions on public notice at this late date would add nothing new.").

[99] Application at 22 ("Indian was entitled to have its Petitions placed on public notice and, concomitantly, shielded from litigation. The Letter Rulings deprived Indian of this property by refusing to open a 'proceeding.'" (citing *Board of Regents v. Roth* at 577 (emphasis Indian Peak's)); Application at 18-19.

[100] *Id*. at 22. We note that Indian Peak has proffered no evidence to support its claim that not placing the petition on public notice cost it "hundreds of thousands of dollars."

[101] 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.").

have determined it is not prohibited from doing so. Finally, it is moot because a Commission order requiring the Bureaus to initiate a proceeding would not redress Indian Peak's claimed injuries flowing from litigation expenses or loss of the use of its antennas while the Petitions were pending, and to the extent it claims it suffered monetary or other compensable damages, there is no right to any damages remedy in this administrative proceeding.

34. Alternatively and independently, we also deny this part of the Application on the merits. Procedural due process requires that a person receive "some kind of prior hearing" before they are deprived of protected interests.[102] Indian Peak does not have a protected property interest in receiving a stay of enforcement of the City's ordinance. Rather, as Indian Peak acknowledges, its property interest lies in the use of its antennas.[103] To the extent Indian Peak's property interests are at issue here, the relevant governmental action is the City's ordinance, not the Bureaus' determination that the antennas are not entitled to protection under the OTARD rule. Any due process claim lies against the City, not the Bureaus.[104]

35. We likewise find that Indian Peak's new argument that the Bureau's failure to initiate a proceeding "breached the OTARD reliance interest,"[105] is procedurally defective because Indian Peak did not raise this argument with the Bureau.[106] Alternatively and independently, it is moot because we have concluded that the antennas are not entitled to OTARD protection, and the initiation of a proceeding would serve no purpose, as Indian Peak concedes.[107] This claim also fails on the merits because Indian Peak is not seeking the initiation of a proceeding, and to the extent it believes grant of its petitions is an appropriate remedy, we have already determined that the antennas are not subject to OTARD protection. Thus, alternatively and independently, we deny the application as to this issue.

36. Finally, we dismiss as moot Indian Peak's argument that, in deciding not to initiate a proceeding, the Bureau "abrogat[ed] OTARD procedure for impartial adjudication" by "adjudicating" the petition at the "screening phase" and acting as "prosecutor, judge, and jury."[108] As noted above, no purpose would be served by initiating a proceeding at this point. Alternatively and independently, we find this argument unpersuasive on the merits. In making a threshold determination, based on the petitions and additional record submissions, that the OTARD rule does not apply to the antennas at issue, the Bureau acted reasonably and did not deprive Indian Peak of an impartial adjudication. To the extent

[102] *Board of Regents v. Roth*, 408 U.S. 564, 569-570.

[103] Application at 23.

[104] In any event, Indian Peak received abundant due process. The City obtained a court order authorizing it to remove the antennas — a court order granted after years of judicial process affording Indian Peak notice and opportunity to be heard, including full state appellate review. *See* May 6 City Letter & Attachments; Notice filed in *In re Indian Peak Props. LLC*, No. 22-1098 (D.C. Cir. filed Aug. 3, 2022) (attached to e-mail from Julian Gehman, Counsel to Indian Peak Properties, to OTARD@fcc.gov (Aug. 3, 2022, 5:15 pm)) (stating that Indian Peak removed antennas to comply with an "state court judgment ordering removal"). In the course of that litigation, Indian Peak raised its OTARD arguments unsuccessfully before filing petitions with the Commission. *See City of Rancho Palos Verdes v. Indian Peak Properties*, B303638, 2021 Cal. App. Unpub. LEXIS 7247, at *37 (Cal. Ct. App. 2021) (attached to February 6 City Letter at 9)**;** 47 CFR § 1.4000(e) ("Parties may petition the Commission . . . or a court of competent jurisdiction, to determine whether a particular restriction is permissible or prohibited under this section.").

[105] Application at 18-19.

[106] 47 CFR § 1.115(c).

[107] Application at 24.

[108] Application at 19-21.

Indian Peak is claiming the Bureau unfairly treated it differently from other petitioners,[109] Indian Peak does not acknowledge that, unlike the case at hand, each of the cases it cites involved antennas used by consumers. Furthermore, on the basis of the current record, we reject any allegation of unfair treatment.

IV. ORDERING CLAUSE

37. Accordingly, IT IS HEREBY ORDERED, pursuant to sections 1, 4(i), 4(j), 5(c), 201(b), 202(a), 205, 251, 253, 303, 316, and 332 of the Communications Act of 1934, 47 U.S.C. §§ 151, 154(i), 154(j), 155(c), 201(b), 202(a), 205, 251, 253, 303, 316, 332; sections 207 and 706 of the Telecommunications Act of 1996, Pub. L. No. 104-104, §§ 207, 706, 110 Stat. 56, 114, 153; and sections 1.115 and 1.4000 of the Commission's rules, 47 CFR §§ 1.115, 1.4000, that the Application for Review is DENIED IN PART and DISMISSED IN PART with respect to issues addressed in parts III. A and B of this Order and is DISMISSED OR DISMISSED AND IN THE ALTERNATIVE DENIED with respect to issues addressed in part III.C of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[109] *See* Application at 22 (stating that Indian Peak "was the only petitioner to face zoning litigation that did not receive the OTARD shield from litigation").

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

In the Matter of	)	
	)	
Cybersecurity Labeling for Internet of Things	)	PS Docket No. 23-239
	)	

REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: March 14, 2024 **Released: March 15, 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 Commissioners Starks, Simington, and Gomez issuing separate statements.

TABLE OF CONTENTS

I. INTRODUCTION

1. Consumers rely heavily on Internet-connected products to help them manage many aspects of day-to-day life, including home safety, health, recreation, and personal convenience. With this convenience, however, comes risk. Internet of Things (IoT) products are susceptible to a wide range of relatively common security vulnerabilities that are increasingly exploited by cybercriminals who are invading people's privacy and threatening national security. With this *Report and Order* (*Order*), the Commission takes prompt and decisive measures to strengthen the nation's cybersecurity posture by adopting a voluntary cybersecurity labeling program for wireless Internet of Things products.[1] The Commission's IoT Labeling Program will provide consumers with an easy-to-understand and quickly recognizable FCC IoT Label that includes the U.S. government certification mark (referred to as the Cyber Trust Mark) that provides assurances regarding the baseline cybersecurity of an IoT product, together with a QR code that directs consumers to a registry with specific information about the product. Consumers who purchase an IoT product that bears the FCC IoT Label can be assured that their product meets the minimum cybersecurity standards of the IoT Labeling Program, which in turn will strengthen the chain of connected IoT products in their own homes and as part of a larger national IoT ecosystem. Today's *Order* will help consumers make better purchasing decisions, raise consumer confidence with regard to the cybersecurity of the IoT products they buy to use in their homes and their lives, and encourage manufacturers of IoT products to develop products with security-by-design principles in mind.[2]

2. In the following *Order*, we set forth the framework by which the IoT Labeling Program will operate. We focus the IoT Labeling Program initially on IoT "products," which we define to include one or more IoT devices and additional product components necessary to use the IoT device beyond basic operational features. Recognizing that a successful voluntary IoT Labeling Program will require close partnership and collaboration between industry, the federal government, and other stakeholders, we adopt an administrative framework for the IoT Labeling Program that capitalizes on the existing public, private, and academic sector work in this space, while ensuring the integrity of the IoT Labeling Program through oversight by the Commission.

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[1] *See Cybersecurity Labeling for Internet of Things*, PS Docket No. 23-239, FCC 23-65, Notice of Proposed Rulemaking (Aug. 10, 2023) (*IoT Labeling NPRM*); *see also* Exec. Order No. 14028, *Improving the Nation's Cybersecurity*, 86 Fed. Reg. 26633 (May 12, 2021) (*IoT Executive Order*). The IoT Labeling Program has also been referred to as the "U.S. Cyber Trust Mark program." *See* Press Release, White House, Biden-Harris Administration Announces Cybersecurity Labeling Program for Smart Devices to Protect American Consumers (July 18, 2023), https://www.whitehouse.gov/briefing-room/statements-releases/2023/07/18/biden-harris-administration-announces-cybersecurity-labeling-program-for-smart-devices-to-protect-american-consumers/ [https://perma.cc/BR9A-JU59].

[2] See Cybersecurity & Infrastructure Security Agency, *Secure-by-Design, Shifting the Balance of Cybersecurity Risk: Principles and Approaches for Secure by Design Software*, (Oct. 25, 2023), https://www.cisa.gov/resources-tools/resources/secure-by-design [https://perma.cc/8NPX-YR4A] (urging software manufacturers "to take urgent steps necessary to ship products that are secure by design and revamp their design and development programs to permit only secure by design products to be shipped to customers").

II. BACKGROUND

A. The Internet of Things (IoT) Landscape

3. Consumer IoT products communicate over wired and wireless networks using a varying array of technologies, each of which presents its own set of security challenges.[3] In August 2023, the Commission adopted a Notice of Proposed Rulemaking (*IoT Labeling NPRM*) proposing a voluntary program for IoT labeling that would provide consumers with easily understood, accessible information on the relative security of an IoT device or product.[4] The record received in response to the *IoT Labeling NPRM* reflects that cybersecurity threats to IoT products present a significant risk, as nefarious actors try to take advantage of insecure consumer IoT products. For example, Distributed Denial of Service (DDoS) attacks using exploited IoT products continue to increase, "with DDoS attacks 'originating from insecure IoT devices increase[ing] five-fold' over 2022 and 2023."[5] These attacks can disrupt services that consumers rely on.[6] As noted in the record, all types of IoT consumer products are subject to attack, with commenters explaining that "[o]nce-harmless devices like printers and baby monitors can be conscripted into botnets that conduct massive [DDoS] attacks."[7] Some IoT products have even shipped with malware in them.[8] Further, consumer IoT products may face attacks not readily anticipated by consumers, with Consumer Reports explaining how IoT products can be manipulated by hackers using electromagnetic interference (EMI) "to duplicate sounds that can lead to a hacker activating a smart speaker."[9] The record cites the impacts insecure IoT devices have on consumers, highlighting that "nearly one-quarter of users with 20 or more devices in a household have experienced two or more data security breaches in the past year."[10]

4. Consumers are concerned about the security of their IoT products, but they generally do not have access to convenient information on the security risk of these products prior to purchasing one. As highlighted by the Electronic Privacy Information Center (EPIC), readily available security information for consumers is lacking before purchasing IoT products, because the security and privacy information "is often buried within in-box instruction manuals consumers cannot access until after

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[3] *See Cybersecurity Labeling for Internet of Things*, PS Docket No. 23-239, FCC 23-65, Notice of Proposed Rulemaking, para. 3 (2023) (*IoT Labeling NPRM*).

[4] *IoT Labeling NPRM* at 1-2, paras. 1-2.

[5] Comcast Corporation Comments at 9 (Comcast) (citing Press Release, Nokia, Nokia Threat Intelligence Report Finds Malicious IoT Botnet Activity Has Sharply Increased (June 7, 2023), https://www.nokia.com/about-us/news/releases/2023/06/07/nokia-threat-intelligence-report-finds-malicious-iot-botnet-activity-has-sharply-increased/#:~:text=Espoo%2C%20Finland%20%E2%80%93%20The%20latest%20Nokia,fivefold%20over%20the%20past%20year%2C [https://perma.cc/5KHF-CM86]).

[6] *See, e.g.*, Jake Frankenfield, *Denial-of-Service (DoS) Attack: Examples and Common Targets*, Investopedia (May 24, 2023), https://www.investopedia.com/terms/d/denial-service-attack-dos.asp [https://perma.cc/9AK9-ND28] ("In October 2016, a DDoS attack was carried out on a domain name system (DNS) provider, Dyn… The attack on Dyn flooded its servers with overwhelming traffic, creating a massive web outage and shutting down over 80 websites, including major sites like Twitter (now X), Amazon, Spotify, Airbnb, PayPal, and Netflix.").

[7] CTA Comments at 2.

[8] Sead Fadilpašić, *These Popular Android TV Boxes are Reportedly Shipping Laced with Malware*, techradar (May 21, 2023), https://www.techradar.com/news/these-popular-android-tv-boxes-are-laced-with-malware [https://perma.cc/32JX-R8T5].

[9] Consumer Reports Comments at 4; *see also* Forrest McKee Comments at 1 (describing the ""Near Ultrasonic Inaudible Trojan Attack," which utilizes audio signals between 16 and 22 kHz, typically beyond the average adult's hearing range, to discreetly issue malicious commands to devices.").

[10] NTCA – The Rural Broadband Association Comments at 2 (NTCA) (citing Susanne Hupfer, Michael Steinhart, *Shiny New Devices May Bring Joy, But Who's Protecting Consumer Data?*, Deloitte Insights (Jan. 23, 2023)).

purchase."[11] Further, research conducted by Consumer Reports indicates that more than half of consumers surveyed were concerned about the information collected by connected devices.[12] Consumer Reports research also found that more than half of surveyed consumers did not feel informed about the security of the data collected by IoT devices.[13] A majority of consumers surveyed by Consumer Reports felt that the data collected and with whom it was shared was important for them to know, and that it was the responsibility of manufacturers to provide this information to the consumer.[14] Consumer Reports also found widespread consumer uncertainty and distrust on topics such as the length of time the manufacturer would provide software updates and whether the company stored consumer information.[15] Consumer Reports concluded that "[c]onsumers clearly value information from manufacturers as to how their data gets used and stored, how long a product will receive security updates and how good a manufacturer's security practices are, but have no consistent way to find that information, and aren't sure if the info provided is trustworthy."[16] Our IoT Labeling Program is intended to provide consumers with that missing piece.

B. Public and Private IoT Security Efforts

5. As the Commission observed in the *IoT Labeling NPRM*, significant work has already been conducted in the realm of IoT cybersecurity.[17] Because the context of the Commission's action in

[11] Electronic Privacy Information Center (EPIC) Reply at 5.

[12] Letter from Stacey Higginbotham, Policy Fellow, Consumer Reports, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 23-239, Attach. *CR IoT Security Label Summer Research* at 4 (filed Dec. 13, 2023) (*Consumer Reports Summer Research*).

[13] *Consumer Reports Summer Research* at 4.

[14] *Id.* at 4-5.

[15] *Id.* at 5-6.

[16] *Id.* at 8.

[17] We observe that the National Institute of Standards and Technology (NIST) issued several guidelines on cybersecurity for Internet-connected devices, stressing an engineering-based approach that builds security systems directly into IoT technology. *See*, NIST, Systems Security Engineering: Considerations for a Multidisciplinary Approach in the Engineering of Trustworthy Secure System, NIST Special Pub. 800-160 (2016), https://doi.org/10.6028/NIST.SP.800-160 [https://perma.cc/4ASG-MQB2]; *see also* NIST, NISTIR 8259, Foundational Cybersecurity Activities for IoT Device Manufacturers at 15 (2020), https://nvlpubs.nist.gov/nistpubs/ir/2020/NIST.IR.8259.pdf [https://perma.cc/82CX-WXQ7]. The Department of Homeland Security (DHS) also previously released its own cybersecurity policy for IoT devices, delineating six strategic principles that it believes will help stakeholders stop unauthorized intruders from tampering with connected devices. *See* U.S. Dept. of Homeland Security, *Strategic Principles for Securing the Internet of Things (IoT)*, Version 1.0 (Nov. 15, 2016), https://www.dhs.gov/securingtheIoT [https://perma.cc/GG86-4UCH]. NIST and the National Telecommunications and Information Administration (NTIA) developed a risk management framework for addressing cybersecurity issues. *See* NIST, Framework for Improving Critical Infrastructure Cybersecurity (2014), https://www.nist.gov/system/files/documents/cyberframework/cybersecurity-framework-021214.pdf [https://perma.cc/C6M7-Z7V2]. The Communications Security, Reliability, and Interoperability Council IV (CSRIC IV) developed a segment-specific analysis of the application of the Cybersecurity Framework, as well as recommendations for voluntary efforts to address cybersecurity concerns. *See* CSRIC IV, Working Group 4, Cybersecurity Risk Management and Best Practices, Final Report (2015), https://transition.fcc.gov/pshs/advisory/csric4/CSRIC_IV_WG4_Final_Report_031815.pdf [https://perma.cc/4P5E-5NKR]. In addition, the Commission's Technical Advisory Council issued its report on applying security to consumer IoT devices. *See* Federal Communications Commission Technical Advisory Council (FCC TAC), Cybersecurity Working Group, Technical Considerations White Paper (2015), https://transition.fcc.gov/oet/tac/tacdocs/reports/2015/FCC-TAC-Cyber-IoT-White-Paper-Rel1.1-2015.pdf [https://perma.cc/L3JD-FEVB]; *see also* Press Release, FTC, FTC Report on Internet of Things Urges Companies to Adopt Best Practices to Address Consumer Privacy and Security Risks (Jan. 27, 2015), https://www.ftc.gov/news-events/news/press-releases/2015/01/ftc-report-internet-things-urges-companies-adopt-best-practices-address-

(continued….)

this *Order* is widely informed by government actions to date and the significant work of industry and academia, we reiterate here background information also found in the *IoT Labeling NPRM*, and highlight more recent and ongoing efforts to address IoT security labeling across both private and public sectors. We previously noted the progress of international efforts with respect to IoT labeling, such as the publication of an assessment methodology for IoT security provisions to assist assessors of IoT products for Singapore's Cybersecurity Labeling Scheme.[18] More recently, in September 2023, Japan announced its intention to "strengthen research collaboration" with the National Institute for Standards and Technology (NIST) and to work with the U.S. to ensure the interoperability of the IoT labeling scheme Japan is developing.[19] In addition, recognizing the importance of international cooperation to strengthen cybersecurity, the Cybersecurity and Infrastructure Security Agency (CISA) and thirteen international partners released guidance for software manufacturers to consider in making products secure by design.[20] CISA has also taken significant steps to provide consumers with tools to help them keep their families' online activities secure through CISA's Secure Our World program.[21] On January 30, 2024, the U.S. also entered into a Joint CyberSafe Products Action Plan with the European Union, aiming to advance technical cooperation in support of mutual recognition of their respective evolving IoT cybersecurity programs.[22]

6. The Commission further observed in the *IoT Labeling NPRM* the efforts to address IoT security across the U.S. government.[23] In May 2021, the *IoT Executive Order* emphasized the importance of IoT cybersecurity, noting the "persistent and increasingly sophisticated malicious cyber campaigns that threaten the public sector, the private sector, and ultimately the American people's security and privacy."[24] Securing the Internet of Things forms a significant pillar in the National Cybersecurity

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consumer-privacy-security [https://perma.cc/M99B-JKJ3] (proposing privacy and cybersecurity best practices associated with IoT); U.S. Dept. of Health and Human Services, Radio Frequency Wireless Technology in Medical Devices: Guidance for Industry and Food and Drug Administration Staff (2013), http://www.fda.gov/downloads/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm077272.pdf [https://perma.cc/WW47-7CYU] (guidance to the industry on considerations for the safe and effective development and use of RF technology in medical devices).

[18] *See* Cyber Security Agency of Singapore, Cybersecurity Labelling Scheme for IoT Publications No. 4, Assessment Methodology v.1.0, CCCSP-151-4 (2023), https://www.csa.gov.sg/docs/default-source/our-programmes/certification-and-labelling-scheme/cls/publications/-pub-ccc-sp-151-4-cls(iot)-assessment-methodology-v1.0.pdf?sfvrsn=7661147f_1 [https://perma.cc/CT9A-Z69E]. In October 2020, the Cyber Security Agency of Singapore launched its baseline cybersecurity requirements for IoT devices and products and updated its program effective September 22, 2023. Cyber Security Agency of Singapore, *Updates*, https://www.csa.gov.sg/our-programmes/certification-and-labelling-schemes/cybersecurity-labelling-scheme/updates [https://perma.cc/QP6R-WFUY] (last visited Feb. 13, 2024).

[19] Press Release, Ministry of Economy, Trade and Industry, Joint Statement of the Japan-U.S. Economic Policy Consultative Committee at 6 (Nov. 14, 2023), https://www.meti.go.jp/press/2023/11/20231116006/20231116006-1.pdf [https://perma.cc/GN7U-PYP4].

[20] Cybersecurity & Infrastructure Security Agency, *Secure by Design | Shifting the Balance of Cybersecurity Risk: principles and Approaches for Secure by Design Software* (Oct. 25, 2023), https://www.cisa.gov/resources-tools/resources/secure-by-design [https://perma.cc/NZ3Z-CMKF].

[21] Cybersecurity & Infrastructure Security Agency, *Secure Our World*, https://www.cisa.gov/secure-our-world [https://perma.cc/P2J7-M5YQ] (last visited Jan. 12, 2024).

[22] Press Release, European Commission, EU-US Joint Statement on CyberSafe Product Action Plan (Jan. 31, 2024), https://digital-strategy.ec.europa.eu/en/library/eu-us-joint-statement-cybersafe-products-action-plan [https://perma.cc/8D78-H97V].

[23] *IoT Labeling NPRM* at 5, para. 6.

[24] *IoT Executive Order* at 26633.

Strategy.[25] Pursuant to the "Modernizing Federal Government Cybersecurity" section of the *IoT Executive Order*,[26] the Office of Management and Budget (OMB), as part of its annual guidance on compliance with information security and privacy management requirements, directed federal agencies to inventory IoT devices and initiate a process to establish best practices for IoT security across the federal government.[27]

7. The Commission also observed the significant work of NIST,[28] including the *NIST Cybersecurity White Paper*[29] which details recommended criteria and potential labeling program approaches for cybersecurity labeling of consumer IoT products. The White Paper was informed by existing consumer product labeling programs, input provided by diverse stakeholders, public and private, gained from public workshops and comments filed in response to draft documents. The White Paper also relied heavily on the NIST Internal Report (NISTIR) 8259 family of documents (NISTIR 8259, NISTIR 8259A, and NISTIR 8259B),[30] which define the IoT cybersecurity capability core baseline. The core baseline is a set of foundational cybersecurity capabilities that manufacturers can use to identify the cybersecurity capabilities their customers may expect in IoT devices.[31]

8. In September 2022, NIST released the *Profile of the IoT Core Baseline for Consumer IoT Products (NISTIR 8425)*.[32] NISTIR 8425, which is built on NISTIR 8259A and NISTIR 8259B, identifies cybersecurity capabilities commonly needed for the consumer IoT sector and provides guidance for what consumers (including businesses as consumers) should consider when purchasing IoT products.[33] In NISTIR 8425, NIST describes a potential program that would educate the public on IoT cybersecurity capabilities, thereby allowing and enabling consumers in the marketplace to make informed choices about

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[25] White House, National Cybersecurity Strategy at 20 (2023), https://www.whitehouse.gov/wp-content/uploads/2023/03/National-Cybersecurity-Strategy-2023.pdf [https://perma.cc/AZY7-KY9L]; *see also IoT Cybersecurity Improvement Act of 2020*, 15 U.S.C. §§ 278g-3a to 278g-3e (establishes minimum cybersecurity requirements for IoT technology procured by the U.S. government and directs federal agencies to only procure devices that comply with NIST guidelines (NIST SP 800-213 and 213A) and establishes vulnerability reporting requirements for products sold to the U.S. government).

[26] *IoT Executive Order* at 26635-26637.

[27] OMB, Memorandum for the Heads of Executive Departments and Agencies at 5, 7 (2023), https://www.whitehouse.gov/wp-content/uploads/2023/12/M-24-04-FY24-FISMA-Guidance.pdf [https://perma.cc/X3RZ-B7GQ].

[28] *IoT Labeling NPRM* at 5-6, para. 7.

[29] NIST, Recommended Criteria for Cybersecurity Labeling for Consumer Internet of Things (IoT) Products (2022), https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.02042022-2.pdf [https://perma.cc/D59M-BZWD] (*NIST Cybersecurity White Paper*).

[30] NIST, NISTIR 8259, Foundational Cybersecurity Activities for IoT Device Manufacturers (2020), https://nvlpubs.nist.gov/nistpubs/ir/2020/NIST.IR.8259.pdf [https://perma.cc/RZE8-SDRZ]; NIST, NISTIR 8259A, IoT Device Cybersecurity Capability Core Baseline (2020), https://nvlpubs.nist.gov/nistpubs/ir/2020/NIST.IR.8259A.pdf [https://perma.cc/C9AK-2PGA]; NIST, NISTIR 8259B, IoT Non-Technical Supporting Capability Core Baseline (2021) https://nvlpubs.nist.gov/nistpubs/ir/2021/NIST.IR.8259B.pdf [https://perma.cc/6KJK-D2NB]; *see also* NIST, *NIST Cybersecurity for IoT Program, NISTIR 8259 Series* (Nov. 16, 2021) https://www.nist.gov/itl/applied-cybersecurity/nist-cybersecurity-iot-program/nistir-8259-series [https://perma.cc/8HKR-XDH2].

[31] NIST, NISTIR 8425, Profile of the IoT Core Baseline for Consumer IoT Products at 1 (2022), https://nvlpubs.nist.gov/nistpubs/ir/2022/NIST.IR.8425.pdf [https://perma.cc/X8PK-4TV7] (NISTIR 8425).

[32] NIST, *NIST IoT Cybersecurity Program Releases Two New Documents* (Sept. 20, 2022) https://csrc.nist.gov/News/2022/nist-iot-cybersecurity-program-nist-irs-8425-8431 [https://perma.cc/6748-XXXX].

[33] NISTIR 8425 at 2-5.

their IoT purchases.[34] From all of these efforts, NIST has identified key elements of a labeling program that encourage innovation while remaining practical and not burdensome. Most recently, in December 2023, NIST published an *IoT Product Component Requirements Essay* discussing possible standards that may be related to the NISTIR 8425 outcomes. In the essay, NIST notes that "[c]ybersecurity of IoT devices, though critical, is incomplete if cybersecurity of other IoT product components is not considered as well since the IoT device and other IoT product components will be a system."[35] NIST also clarified that the "cybersecurity technical and non-technical outcomes defined in the NISTIR 8425 consumer profile apply to IoT *products* and not just IoT devices."[36]

9. As the Commission acknowledged in the *IoT Labeling NPRM*,[37] NIST's essential work in this arena coupled with the significant private sector contributions and innovations in developing cybersecurity certification programs, Commission experience guiding compliance assessment programs,[38] and prior Commission action in this space,[39] provide the building blocks for our development and adoption of this IoT Labeling Program. We continue to consider closely the work of NIST in support of our IoT labeling efforts.

10. The private sector has also taken measures to promote IoT security. As we noted in the *IoT Labeling NPRM*, for example, the Consumer Technology Association (CTA) has convened an IoT working group tasked with supporting the advancement of the consumer IoT industry,[40] and produced a white paper addressing the current regulatory approach to IoT.[41] The record also references additional

[34] *See id.* at 16; *see also* NIST, *Consumer Cybersecurity Labeling Pilots: The Approach and Contributions* (May 24, 2022), https://www.nist.gov/itl/executive-order-14028-improving-nations-cybersecurity/consumer-cybersecurity-labeling-pilots [https://perma.cc/7TGC-PXVJ].

[35] NIST, Identifying Standards and Guidance for a Consumer IoT Product Development Handbook (2023), https://www.nist.gov/system/files/documents/2023/11/30/FINAL_IoT%20Product%20Requirements%20Discussion%20Essay_20231129.pdf [https://perma.cc/UG83-72FJ] (NIST IoT Product Component Requirements Essay).

[36] *Id*.

[37] *IoT Labeling NPRM* at 6, para. 8.

[38] *See, e.g.,* 47 CFR pt. 2, Subpart J (equipment authorization); 47 CFR § 20.19 (hearing aid compatibility); 47 CFR §§ 2.1091, 2.1093 (radiofrequency radiation exposure); 47 CFR pt. 68 (connection of terminal equipment to the telephone network).

[39] *See Spectrum Requirements for the Internet of Things*, ET Docket No. 21-353, Notice of Inquiry, 36 FCC Rcd 14165 (2021); *Supply Chain NOI*, 36 FCC Rcd 10578, (2021); Report and Order, Order, and Further Notice of Proposed Rulemaking, FCC 22-84 (Nov. 11, 2022); *Revision of Part 15 of the Commission's Rules to Permit Unlicensed National Information Infrastructure (U-NII) Devices in the 5 GHz Band*, ET Docket No. 13-49, First Report and Order, 29 FCC Rcd 4127, 4143, para. 54 (2014).

[40] Consumer Technology Association CES, *IoT Working Group*, https://www.cta.tech/Membership/Member-Groups/IoT-Working-Group [https://perma.cc/9ULY-PJ6E] (last visited Nov. 24, 2023).

[41] ANSI/CTA, Standard Baseline Cybersecurity Standard for Devices and Device Systems ANSI/CTA-2088-A (2022), https://shop.cta.tech/products/https-cdn-cta-tech-cta-media-media-shop-standards-2020-ansi-cta-2088-a-final-pdf [https://perma.cc/8ES6-VN3B]; *see also* Consumer Technology Association, Smart Policy to Secure our Smart Future: How to Promote a Secure Internet of Things for Consumers (2021), https://shop.cta.tech/collections/research/products/smart-policy-to-secure-our-smart-future-how-to-promote-a-secure-internet-of-things-for-consumershttps://shop.cta.tech/collections/research/products/smart-policy-to-secure-our-smart-future-how-to-promote-a-secure-internet-of-things-for-consumers [https://perma.cc/BRM2-CR5A] (CTA Cybersecurity White Paper); *Supply Chain NOI*, 36 FCC Rcd 10578, para. 104 (seeking comment on the CTA Cybersecurity White Paper). CTA has also convened with various organizations to discuss IoT baseline security capabilities. *See* Council to Secure the Digital Economy, The C2 Consensus on IoT Device Security Baseline Capabilities (2019), https://csde.org/wp-content/uploads/2019/09/CSDE_IoT-C2-Consensus-Report_FINAL.pdf [https://perma.cc/2GVK-GFM6]; Council to Secure the Digital Economy, The C2 Consensus on IoT Device Security Baseline Capabilities – 2021 Supplement (2021), https://csde.org/wp-content/uploads/2021/04/C2-Tech-Report_2021_final.pdf [https://perma.cc/U45C-DGYT]; *IoT Labeling NPRM* at 4, para. 5.

efforts undertaken by our industry partners to address IoT vulnerabilities. For example, Comcast notes how their "Comcast Xfinity PKI system (xPKI) provides individual identity to millions of IoT devices on a daily basis through secure automation and standards compliance."[42] Samsung highlights that, in order to function with their "SmartThings platform and receive the 'Works with SmartThings' certification, all devices must pass (1) functional testing for seamless interoperability and (2) security testing for secure connections."[43] It is against these multiple efforts as a backdrop that we take action today to leverage, unify, and elevate efforts to date within a common programmatic framework.

III. REPORT AND ORDER

A. Voluntary IoT Labeling Program

11. Today, we establish a voluntary IoT Labeling Program for wireless consumer IoT products. While participation is voluntary, those that choose to participate must comply with the requirements of the IoT Labeling Program to receive authority to utilize the FCC IoT Label bearing the Cyber Trust Mark. The *IoT Labeling NPRM* sought comment on whether the proposed IoT Labeling Program should be voluntary,[44] reasoning that "success of a cybersecurity labeling program will be dependent upon a willing, close partnership and collaboration between the federal government, industry, and other stakeholders."[45] The record shows substantial support for a voluntary approach.[46] CEDIA suggests that IoT Labeling Program must be voluntary "for the program to gain momentum in the marketplace."[47] AIM, Inc. suggests that the voluntary aspect of the IoT Labeling Program "will help drive adoption of the label by device producers."[48] Further, commenters suggest that a voluntary program will ensure the broadest reach, most efficiency, and widest access to a diversity of IoT technologies.[49] We agree that a voluntary program will help drive adoption of the IoT Labeling Program, so that a willing, close partnership can be achieved. We also agree with the record that flexible, voluntary, risk-based best practices are the hallmarks of IoT security as it exists today and as it is being developed around the world.[50] Additionally, we acknowledge the view that "consumer labeling is a difficult undertaking in any context,"[51] especially in the evolving area of cybersecurity, and that the "best approach is to start the Program with something achievable and effective."[52] We concur that willing participation will allow the IoT Labeling Program to be more easily achievable than requiring participation in a novel program. With the added imprimatur of a U.S. government certification mark, the IoT Labeling Program will help

[42] Comcast Comments at 4.

[43] Samsung Comments at 2.

[44] *IoT Labeling NPRM* at 6, para. 9.

[45] *Id.*

[46] USTelecom at 2; CTIA Comments at 15; NCTA Comments at 4; Samsung Electronics America Comments at 5 (Samsung); Comcast Comments at 1*; see also* Open Voice Network Comments at 4 (OVON); Alliance for Automotive Innovation Comments at 2 (Auto Innovators; Plumbing Manufacturers International Comments at 2 (PMI); Custom Electronic Design & Installation Association Reply at 3 (CEDIA); Infineon Technologies Americas Corp. Reply at 2-3 (Infineon); EPIC Reply at 4.

[47] CEDIA Reply at 3.

[48] AIM, Inc. Comments at 3 (AIM).

[49] Consumer Technology Association Reply at 3 (CTA) (citing Association of Home Manufacturers Comments at 2 (AHAM)); Consumer Technology Association Comments at 4 (CTA); CTIA – The Wireless Association Comments at 15 (CTIA); National Association of Manufacturers Comments at 2 (NAM); NTCA Comments at 4; Telecommunications Industry Association Comments at 2 (TIA); USTelecom – The Broadband Association Comments at 11-12 (USTelecom); Widelity Comments at 1-4; Wi-Fi Alliance Comments at 10.

[50] CTIA Comments at 15.

[51] CTIA Reply at 1.

[52] Infineon Reply at 2.

distinguish products in the marketplace that meet minimum requirements and provide options to consumers.

12. We reject arguments that mandating participation in the IoT Labeling Program is necessary.[53] While we recognize that a voluntary IoT Labeling Program may cause concern that smaller businesses with limited resources may choose not to participate,[54] we believe the strong stakeholder engagement and collaboration that we expect to result from willing participation, and which is vital to establishing this new program, outweighs these risks. Further, while we acknowledge that, at least in the near term, allowing the IoT Labeling Program to be voluntary "could limit its adoption and impact,"[55] we believe this risk is outweighed by the benefits that a voluntary program will garner, such as speed to market to hasten impact, efficiency of resources, and the likelihood that consumer demand will drive widespread adoption over time.

13. In adopting the IoT Labeling Program with the parameters discussed in this *Order*, we are establishing a collaborative effort between the federal government and relevant stakeholders in industry and the private sector. We emphasize that this *Order* is intended to provide the high-level programmatic structure that is reasonably necessary to establish the IoT Labeling Program and create the requirements necessary for oversight by the Commission, while leveraging the extensive work, labeling schemes, processes and relationships that have already been developed in the private sector. We also note that there is further development to be done by the private sector and other federal agencies to implement the IoT Labeling Program and, as discussed below, expects many of the details not expressly addressed in this *Order* will be resolved through these separate efforts and by the authorities the Commission delegates to the Public Safety and Homeland Security Bureau (PSHSB or the Bureau).

B. Eligible Devices or Products

14. As explained herein, today's *Order* initially establishes the IoT Labeling Program for wireless consumer IoT products. We do not, however, foreclose the possibility of expanding the IoT Labeling Program in the future. In the *IoT Labeling NPRM*, we sought comment on the scope of devices or products for sale in the United States that should be eligible for inclusion in the IoT Labeling Program, asking what would provide the most value to consumers.[56] We sought comment on whether the IoT Labeling Program should include IoT "devices" or "products," [57] and proposed that those eligible should include intentional radiators that generate and emit radio frequency (RF) energy by radiation or induction.[58] Additionally, the *IoT Labeling NPRM* sought comment on whether to focus on consumer IoT or to include enterprise IoT.[59]

15. As described below, the record supports adopting an IoT Labeling Program that encompasses consumer-focused IoT products. We focus our IoT Labeling Program initially on consumer IoT products, rather than enterprise or industrial IoT products. Because medical devices regulated by the U.S. Food and Drug Administration (FDA) already are subject to statutory and regulatory cybersecurity requirements under other federal laws more specifically focused on such devices, we do not include such

[53] Paul Cabral Comments at 1; Bryce Gilchrist Comments at 1; Kenneth Johnson Comments at 1; *see also* Internet Safety Labs Comments at 2 (recommending that the IoT Labeling Program become mandatory over time).

[54] *See* Michael Ravnitzky Comments at 1 (Ravnitzky).

[55] *Id*.

[56] *IoT Labeling NPRM* at 6, para. 10.

[57] *Id.* at 8, para. 13.

[58] *Id.* at 7, para. 12.

[59] *Id.* at 8, para. 16.

devices in our IoT Labeling Program. In addition, we exclude from this program motor vehicles[60] and motor vehicle equipment[61] given that the National Highway Traffic Safety Administration (NHTSA) "has the authority to promulgate motor vehicle safety regulations on cybersecurity and has enforcement authority to secure recalls of motor vehicles and motor vehicle equipment with a safety-related defect, including one involving cybersecurity flaws."[62] We also exclude from our IoT Labeling program any communications equipment on the Covered List that the Commission maintains pursuant to the Secure and Trusted Communications Networks Act and equipment produced by certain other entities as discussed below. Finally, our initial IoT Labeling Program will focus on wireless consumer IoT devices consistent with the core of our section 302 authority governing the interference potential of devices that emit radio frequency energy—and thus we exclude wired IoT devices at this time.

16. *Definition of IoT Devices*. Although we focus our IoT Labeling program on IoT "products," to lay a foundation we must first address the definition of IoT "devices" because this definition is a building block of the IoT "product" definition. In this respect, we adopt the modified version of the NIST definition of "IoT device" that the Commission proposed in the *IoT Labeling NPRM*.[63] Specifically, the *IoT Labeling NPRM* proposed defining an IoT device to include (1) an Internet-connected device capable of intentionally emitting RF energy that has at least one transducer (sensor or actuator) for interacting directly with the physical world, coupled with (2) at least one network interface (e.g., Wi-Fi, Bluetooth) for interfacing with the digital world.[64] This definition builds on NIST's definition by adding "Internet-connected" as a requirement, because "a key component of IoT is the usage of standard Internet protocols for functionality."[65] The modified definition adopted today also adds that a device must be "capable of intentionally emitting RF energy," because aspects of the Commission's authority recognizes the particular risks of harmful interference associated with such devices. It should be noted that we direct the Label Administrator to collaborate with Cybersecurity Label Administrators (CLAs) and other stakeholders (e.g., cyber experts from industry, government, and academia) as

[60] Motor Vehicle "means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public streets, roads, and highways, but does not include a vehicle operated only on a rail line." 49 U.S.C. §§ 30102(7).

[61] Motor Vehicle Equipment "means - (A) any system, part, or component of a motor vehicle as originally manufactured; (B) any similar part or component manufactured or sold for replacement or improvement of a system, part, or component, or as an accessory or addition to a motor vehicle; or (C) any device or an article or apparel, including a motorcycle helmet and excluding medicine or eyeglasses prescribed by a licensed practitioner, that – (i) is not a system, part, or component of a motor vehicle; and (ii) is manufactured, sold, delivered, or offered to be sold for use on public streets, roads, and highways with the apparent purpose of safeguarding users of motor vehicles against risk of accident, injury, or death." 49 U.S.C. §§ 30102(8).

[62] Letter from Tara Hairston, Senior Director – Technology Policy, Alliance for Automotive Innovation, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 23-239, at 9 (filed March 8, 2024) (Auto Innovators *Ex Parte*) (noting the NHTSA Cyber Best Practices for Motor Vehicles leverages the NIST framework); Letter from J. David Grossman, Vice President, Regulatory Affairs and Mike Bergman, Vice President, Technology & Standards, Consumer Technology Association, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 23-239, at 9 (filed March 4, 2024) (CTA March *Ex Parte*).

[63] *IoT Labeling NPRM* at 7, para. 11.

[64] *Id.*

[65] *Id*. (citing NISTIR 8425 at 23). As with the NIST definition, our definition specifically "excludes common general purpose computing equipment (e.g., personal computers, smartphones) as well as routers." NIST White Paper at page 3, note 3. *See also* Letter from David Valdez, Vice President, Privacy & Cybersecurity Policy, CTIA, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 23-239, at 1-2 (filed March 6, 2024) (CTIA *Ex Parte*); Letter from Katie McAuliffe, Senior Director, Telecom Policy, Information Technology Industry Council, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 23-239, at 2 (filed March 7, 2024) (ITI *Ex Parte*); Letter from Grace Burkard, Director of Operations, ioXt Alliance, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 23-239, at 2 (filed March 7, 2024) (ioXt *Ex Parte*).

appropriate and recommend within 45 days of publication of updates or changes to NIST guidelines, or adoption by NIST of new guidelines, to the FCC any appropriate modifications to the Labeling Program standards and testing procedures to stay aligned with the NIST guidelines.[66]

17. The record supports this reasoning. For example, Consumer Reports states that "[i]f you're going to sell a device where some of the benefits come from having a cloud connection, an app, and connectivity, then those must also be secured."[67] Consumer Reports provides further support for the Commission's reasoning by noting that "connectivity may be so central to the functionality of the device that it may no longer be able to operate safely [without it]."[68] TIC Council Americas similarly "agrees that 'internet-connected' should be included in the definition of IoT devices."[69] We agree with these arguments and adopt the modified IoT device definition requiring "Internet-connected" device element to assure consumers that the functionality of the IoT device or product displaying the Cyber Trust Mark is reasonably secure as well. As noted by ioXt Alliance, including "Internet-connected" in the definition of IoT makes "sense if the program focuses on IoT products instead of devices because not all IoT devices are 'internet-connected.'"[70] Because the IoT Labeling Program will be focused on the broader category of IoT consumer products and not devices, including "Internet-connected" in the definition of IoT device is further justified.

18. We disagree with commenters who argue the Commission should adopt the NIST definition of a device without change.[71] We acknowledge that the record indicates some concern regarding the Internet-connected element of the Commission's proposed definition; however, we find these concerns to be misplaced. TIC Council Americas, for example, supports adding "Internet-connected" to the definition, but argues that "there are devices that are able to connect to non-internet connected networks, and that those devices should not be excluded from the program."[72] While we do not foreclose the possibility of expanding the IoT Labeling Program to devices on non-internet connected networks in the future, we focus initially on the more common category of Internet-connected consumer IoT products. Others argue that "Internet-connected" is too "situational,"[73] with a concern that the device might become "disconnected from the internet and, therefore, no longer be an 'IoT device.'"[74] We do not agree that "Internet-connected device" must be interpreted so narrowly as to exclude from the IoT Labeling Program devices that may become disconnected from the Internet. "Internet-connected," in terms of the IoT Labeling Program, applies to the functional capability of the device; if the device is capable of being connected to the Internet, the fact that it may not be connected at any given point in time does not exclude its eligibility for participation in the IoT Labeling Program. Further, any potential concerns arising from requiring an IoT device be "Internet-connected" for inclusion in the IoT Labeling Program are outweighed by the benefit of giving consumers further assurance that the security of their IoT device or product extends to the connected functionality that a consumer expects when making such a purchase. In this respect, including "Internet-connected" in the definition of IoT device also recognizes the highest risk functional component of an IoT device that distinguishes "smart" devices from other devices a consumer may use, and allows the Cyber Trust Mark to more effectively support consumer expectations.

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[66] *See infra* para. 53.

[67] Consumer Reports Comments at 6.

[68] *Id.* at 26.

[69] TIC Council Americas Comments at 3.

[70] ioXt Alliance Comments at 7-8.

[71] Connectivity Standards Alliance Comments at 3 (CSA); AIM Comments at 2.

[72] TIC Council Americas Comments at 3.

[73] CSA Comments at 2.

[74] *Id*.

19. The record also supports adding an RF energy-emitting element to the IoT device definition, acknowledging the Commission's authority under Section 302 governing the interference potential of devices that emit RF energy and can cause harmful interference to radio communications.[75] We reject the argument that limiting the definition to RF-emitting devices may lead to marketplace confusion if a product does not bear the Cyber Trust Mark due solely to its lack of RF energy emissions.[76] In the first instance, we note the need to launch an achievable IoT Labeling Program consistent with the Commission's core authority. We also note that the benefits that a focus on wireless products will have in elevating the overall cybersecurity posture of the IoT ecosystem, especially in view of the record indicating that the majority of IoT devices are wireless,[77] outweigh the risks associated with concerns regarding marketplace confusion. In any case, there will be a number of products – both wired and wireless – that do not bear the Cyber Trust Mark while uptake occurs. We also anticipate that consumer education in this space will help alleviate these concerns.

20. We further disagree with the view that the capability of a device to emit RF radiation is "unrelated to the general, far-ranging cybersecurity concerns the Commission is confronting in this proceeding."[78] Instead, we agree with Comcast that interference caused by a [distributed denial of service] attack raises "the same policy concerns and has the same practical effect as interference caused by traditional means."[79] EPIC explains how hackers exploit unpatched vulnerabilities to attack a large number of wireless devices, and turning them into signal jammers to take down mobile networks.[80] The record thus bears out our view that cybersecurity vulnerabilities in wireless IoT devices could cause harmful interference to radio communications. Given Congress' direction to the Commission in Section 302 of the Act to guard against the interference potential of wireless devices, requiring the element of "emitting RF energy interference" in the IoT device definition for the initial iteration of the IoT Labeling Program focuses on that core Commission authority without ruling out future action regarding wired IoT devices.[81] Further, while we acknowledge that devices that unintentionally or incidentally emit RF radiation may also pose interference potential, we find that a focus initially on "intentional" radiators provides the ability of a nascent program to target products with the highest risk profile from among those that emit RF energy.

21. *Definition of IoT Products*. We adopt the NIST definition of an "IoT product."[82] Specifically, the *IoT Labeling NPRM*'s proposed definition of IoT product is an "IoT device and any additional product components (e.g., backend, gateway, mobile app) that are necessary to use the IoT device beyond basic operational features."[83] The record supports adopting the IoT product definition developed by NIST, with Garmin International, Inc. (Garmin) noting that a fundamental purpose of the

[75] Comcast Comments at 13 ("Specifically, the text and history of Section 302 strongly support the arguments set forth in the NPRM that the Commission has the authority to move forward with the program."); CTA Comments at 8 ("Therefore, the Commission's proposal to establish rules … for this voluntary labeling program fall within the scope of the FCC's Section 302 authorities.").

[76] CSA Comments at 3; *see also* AIM Comments at 2 (noting potential confusion from limiting the NIST definition). We also note that for now, we are limiting the class of devices eligible for the Cyber Trust Mark to wireless intentional radiators, as discussed in para. 37, *infra*.

[77] Consumer Reports Reply at 3 (explaining that "wireless devices are the majority of IoT devices.").

[78] USTelecom Comments at 13; *see also* CTIA Reply at 4 ("Attacks that seek to weaponize radiofrequency interference, while theoretically possible, are not a major risk.").

[79] Comcast Comments at 15.

[80] EPIC Reply at 5.

[81] We discuss further below our initial focus of the IoT Labeling Program on wireless devices. *See infra* paras. 37-39.

[82] *IoT Labeling NPRM* at 8, para. 13.

[83] *Id.*

IoT Labeling Program "is to inform consumers regarding device security as they evaluate potential IoT purchases. . . . [T]his purpose is best achieved by focusing on 'consumer IoT products' as defined by NIST in NISTIR 8425."[84] Additionally, Kaiser Permanente states that adopting the NIST definition of IoT products will "promote consistency across federal agency programs and related industry norms and requirements."[85] Further, the Information Technology Industry Council (ITI) explained that the "Commission's implementation of the program will be more successful if it aligns as closely as possible to the definitions, processes and procedures already outlined by NIST."[86] We agree with these commenters, in that adopting NIST's IoT product definition will allow for consistency in the treatment of programmatic elements across the federal government, and allow the Commission to appropriately leverage the work existing in this space to promote the IoT Labeling Program's success. We also note that no commenters opposed the NIST definition of IoT products. For purposes of the IoT Labeling Program, when discussing IoT products and their "components" in this *Order*, we are using the NISTIR 8425 scoping definition of "components." We believe that this definition allows the IoT Labeling Program to address the most relevant "package" components expected by consumers to be securable when making purchasing decisions, and encompasses the appropriate level of "component" pieces to address the functionalities that generate the most salient cybersecurity risks.[87] This view is supported by the record, with CTA providing a proposed testing framework where "all individual components provided by the manufacturer should be in scope for testing," including all components of the IoT product "that are necessary for the device to function in a normal use case scenario."[88]

22. *IoT Devices vs. IoT Products*. We find that the IoT Labeling Program should apply to "IoT products" as defined above, rather than being limited only to "IoT devices." In the *IoT Labeling NPRM*, the Commission noted that it was important to ensure that the IoT Labeling Program "would be sufficiently inclusive to be of value to consumers."[89] Since the Commission's adoption of the *IoT Labeling NPRM*, NIST has provided clarity in this realm by stating "the cybersecurity technical and non-technical outcomes defined in the NISTIR 8425 consumer profile apply to IoT products and not just IoT devices."[90] In addition, in reviewing the record, we believe applying the IoT Labeling Program to IoT products instead of IoT devices alone achieves these priorities because only by addressing the full functionality of a consumer product (i.e., one or more IoT devices and any additional product components (e.g., backend, gateway, mobile app) that are necessary to use the IoT device, beyond basic operational features) "including data communications links to components outside this scope but excluding those external components and any external third-party components that are outside the manufacturer's control"[91] will provide consumers the necessary scope to satisfy the basic security expectation of the

[84] Garmin International, Inc. Comments at 6 (Garmin); *see also* Everything Set, Inc. Comments at 3 ("We believe the cybersecurity labeling program should be focused on IoT products consistent with the NIST definition.").

[85] Kaiser Permanente Comments at 2.

[86] Information Technology Industry Council Comments at 4 (ITI).

[87] For purposes of the IoT Labeling Program, the NISTIR 8425 scoping definition of "components" falls into three main types: Specialty networking/gateway hardware (e.g., a hub within the system where the IoT device is used); Companion application software (e.g., a mobile app for communicating with the IoT device); and Backends (e.g., a cloud service, or multiple services, that may store and/or process data from the IoT device). *See* NISTIR 8425 at 2. Our use of this scoping definition of "components" is intended only to apply to the IoT Labeling program. We note that Commission rules use the term "components" in a variety or contexts and different rule provisions, and we are not intending to affect the use of that term in those other contexts.

[88] Letter from J. David Grossman, Vice President, Regulatory Affairs, CTA, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 23-239, at 9 (filed Feb. 8, 2024) (CTA *Ex Parte*).

[89] *IoT Labeling NPRM* at 6, para. 10.

[90] NIST IoT Product Component Requirements Essay at 1.

[91] CTA March *Ex Parte* Appx B, at 1.

consumer and effectuate a discernable increase in the cybersecurity posture of the IoT ecosystem at large.[92]

23. There is significant support in the record for an IoT product focus for the IoT Labeling Program.[93] As explained by UL Solutions, applying the IoT Labeling Program to IoT products is necessary since "most IoT devices sold to consumers cannot be meaningfully used without additional components."[94] The Cybersecurity Coalition further supports this position by saying "IoT devices are typically part of a broader ecosystem of components that can have their own security issues, requiring 'IoT cybersecurity' to extend beyond individual devices to be effective."[95] ITI notes an IoT product focus benefits consumers because it "will appropriately capture the relevant devices/components of the product that could be vulnerable to attack (and are always included in an IoT product, as NIST points out)."[96] Applying the IoT Labeling Program to IoT products further benefits consumers by promoting consumer safety because it "encourages manufacturers to prioritize security across all components, ultimately leading to safer and more reliable IoT experiences for consumers."[97] Additionally, the record indicates that "the entire service which includes cloud infrastructure as well as apps or other ways to control or manage the device by the user, and not simply the physical device itself, is critical for an assessment of safety and security."[98] Further, focusing on IoT products aligns not only with the technical requirements of NISTIR 8425, but also "emerging requirements in Europe and the UK, such as the EU [Cyber Resilience Act], and EU Directives on consumer protections EU 2019/770, 771."[99] We agree and will apply the IoT Labeling Program to consumer IoT products, which provides for the greatest level of consumer benefit by prioritizing cybersecurity across the entirety of the consumer product, as compared to just the device, which is able to perform its full functionality only when working in conjunction with other product components.

24. We disagree with Samsung, CTIA, LG Electronics, and CTA, who advocate focusing on IoT devices instead of IoT products.[100] Samsung and CTIA argue that cybersecurity standards for devices are more mature than standards for products,[101] and CTA argues that applying the FCC IoT Label to

[92] We recognize that the amount of control manufacturers have over third-party components may vary depending on specific circumstances. If manufacturers have the ability to control third-party components through a contractual basis or other means, we expect they will undertake a good faith effort to do so.

[93] *See, e.g.*, Cybersecurity Coalition Comments at 3; UL Solutions Comments at 2; IEEE 802 LAN/MAN Standards Committee at 3; ITI Comments at 2; International Speech and Communication Association Special Interest Group: Security and Privacy in Speech Communication Comments at 2 (ISCA); Consumer Reports Comments at 6 ("The definition of an IoT device must include all elements of an IoT system."); Connected Consumer Device Security Council (CCDS) Comments at 1-2.

[94] UL Solutions Comments at 2.

[95] Cybersecurity Coalition Comments at 3.

[96] ITI Comments at 3.

[97] ISCA Comments at 2.

[98] Everything Set, Inc. Comments at 3.

[99] Letter from Dr. Amit Elazari, CEO and Co-Founder, OpenPolicy, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 23-239, at 4 (filed Jan. 24, 2024).

[100] Samsung Comments at 4; CTIA Comments at 21; LG Electronics USA Inc. Comments at 1 (LG Electronics); CTA Comments at 14.

[101] *See, e.g.*, Samsung Comments at 4 ("However, given the relative maturity of IoT device cybersecurity criteria and standards, the Commission should focus the scope of the Program initially on IoT devices…."); *see also* CTIA Comments at 21 ("Because many frameworks and resources in the market, including the NISTIR 8259 series upon which the Commission seeks to build the program, are focused on device-level criteria, widening the scope of the program to encompass the entire IoT "product" would create significant complications….").

products would be more complex than devices.[102] LG Electronics expresses concern that expanding to products "would require device manufacturers to attest to the security of product components that are outside of their control."[103] We do not agree that these rationales support limiting application of the IoT Labeling Program only to devices, rather than products. First, applying the IoT Labeling Program narrowly to IoT devices would run counter to NIST's guidance and considerable work in this space, upon which the Commission has relied for the basis for the IoT Labeling Program proposal. NIST's *Profile of the IoT Core Baseline for Consumer IoT Products* (NISTIR 8425), discussed above, provides fundamental IoT guidelines and applies to the broader product category,[104] and the more recent *NIST IoT Product Component Requirements Essay* clearly states that the outcomes listed in NISTIR 8425 apply to consumer IoT products and not just IoT devices.[105]

25. Further, regarding the notion that the IoT Labeling Program should be focused on IoT devices because existing standards for IoT devices are more readily available or achievable in the near term, we counter that the record shows existing IoT device standards can be leveraged to support assessing IoT products as well. As noted by commenter ITI, existing IoT industry standards "capture similar baseline themes" to the NIST criteria.[106] In view of these similarities, the IoT Labeling Program can leverage these existing standards for IoT devices as building blocks, and tailor them in view of the IoT products being assessed. Accordingly, the need to realize the benefits of a product-level label weigh in favor of taking a small amount of time to get to product-based standards by leveraging existing device standards.

26. We also reject the argument that because "cybersecurity frameworks and testing programs have been developed to focus on device-level—rather than product-level—assessment" that a device-level IoT Labeling Program is the appropriate outcome.[107] We note, for example, that ITI recommends recognizing IoT security assessments from our international partners, such as IoT assessments under the Cybersecurity Labelling Scheme (CLS) by Singapore's Cyber Security Agency, which assesses the overall IoT product, and not just a single device included in the IoT product.[108] In this regard, the ability to recognize international efficiencies for IoT Labeling Program participants would be hindered by limiting the Cyber Trust Mark to the device level, as Singapore's CLS (and other evolving international standards) focus on product-level assessments.

27. Finally, applying the IoT Labeling Program to products enhances value to consumers without requiring manufacturers to be responsible for products or devices that are outside of their control. The record shows that a consumer's expectation of security extends to the entire IoT product they purchase. This consumer expectation is evidenced in the record by ITI, clarifying that "because consumers purchase, interact with, and view IoT merchandise not as component parts but as complete physical product . . . Consumers are primarily concerned with the entire physical product they are

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[102] CTA Comments at 14.

[103] LG Electronics Comments at 1.

[104] *See generally* NISTIR 8425.

[105] NIST IoT Product Component Requirements Essay at 1.

[106] ITI Comments at 6.

[107] Letter from David Valdez, Vice President, Privacy & Cybersecurity Policy, CTIA, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 23-239, at 4 (filed Jan. 8, 2024) (CTIA *Ex Parte*).

[108] ITI Comments at 6; Singapore Cyber Security Agency, Cybersecurity Labelling Scheme for IoT Publication No. 2 at 10 (Sept. 2023), https://www.csa.gov.sg/docs/default-source/our-programmes/certification-and-labelling-scheme/cls/publications/-pub-ccc-sp-151-2-cls(iot)-scheme-specifications-v1.3.pdf?sfvrsn=5c9ace5f_1 [https://perma.cc/3C2J-QWXE] (requiring the testing lab to "determine if the firmware *and companion mobile application* of the Device Under Test (DUT) is free from common software errors such as buffer overflown [sic], known vulnerabilities in any of the third-party libraries being used, and known malware." [emphasis added]).

purchasing."[109] Additionally, as noted by UL Solutions, "most IoT devices sold to consumers cannot be meaningfully used without additional components."[110] In view of this need, a manufacturer seeking authority to affix the FCC IoT Label is expected to secure the whole IoT product, including the product's internal communication links connecting the different parts of the product to each other as well as the product's communication links that connect the IoT product to the outside world. We do not require manufacturers to be responsible for third-party products or devices (including apps) that are outside of their control;[111] however, where a manufacturer allows third-party apps, for example, to connect to and they allow that application to control their IoT product, such manufacturer is responsible for the security of that connection link and the app if such app resides on the IoT product. Further, we agree with CTIA that if "a [p]roduct [c]omponent also support[s] other IoT Products through alternative features and interfaces, these alternative features and interfaces may, through risk-assessment, be considered as separate from and not part of the IoT Product for purposes of authorization."[112] Moreover, NIST enumerates the dangers of an IoT device-only focus, establishing that the "additional product components have access to the IoT device and the data it creates and uses-making them potential attack vectors that could impact the IoT device, customer, and others,"[113] and that "these additional components can introduce new or unique risks to the IoT product."[114] Consumer expectations that the FCC IoT Label would apply to the entirety of the product purchased is further highlighted by Consumer Reports, explaining that "If everything is sold within a box, then everything in the box should be approved to use the mark."[115] Consumer Reports also notes that "[i]f the labeling programs were only to address the physical device and not other system components, consumers would likely be deceived as to the scope and efficacy of the program."[116] The record is adamant that the "Cyber Trust Mark must be trusted by consumers to be successful."[117] In view of the record, securing only a portion of an IoT product by just assessing a single IoT device included in the IoT product, instead of assessing the devices and components that comprise the IoT product holistically, could deceive consumers and go against consumer expectation that the technology being brought into their homes is reasonably secure. We weigh heavily the likelihood for consumer confusion should the device-only approach be taken, and accordingly we apply this consumer IoT Labeling Program to IoT products and not just IoT devices.

28. In sum, although there are relative advantages and disadvantages with either a narrow focus on IoT devices or a broader focus on IoT products, on balance we are persuaded to focus our initial IoT Labeling Program on IoT products. As explained above, we find commenters' concerns about encompassing full IoT products in our IoT Labeling Program to be overstated. At the same time, we see significant shortcomings with a narrower focus just on IoT devices. Weighing the totality of these considerations, we are persuaded that targeting the IoT Labeling Program on IoT products is the best approach at this time.

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[109] ITI Comments at 4.

[110] UL Solutions Comments at 2.

[111] To further clarify, nothing in this item prohibits manufacturers from allowing product owners from installing the software of their choice, from disabling security features, or from replacing or modifying components of a product, including the firmware and software. An IoT manufacturer cannot be held responsible for the owner's decision to make such changes, just as a traditional product manufacturer cannot be responsible for the actions of a consumer who modifies the core mechanisms of a product and thereby risks rendering it unsafe. However, we reiterate that in order to be authorized to use the FCC IoT Label, manufacturers must meet the requirements of the program.

[112] CTA March *Ex Parte*, Appx B at 2.

[113] NISTIR 8425 at 3.

[114] *Id*.

[115] Consumer Reports Comments at 6.

[116] *Id.*

[117] Whirlpool Corporation Comments at 6 (Whirlpool).

29. *Consumer IoT Products vs. Enterprise IoT Products*. The *IoT Labeling NPRM* sought comment on whether we should focus the IoT Labeling Program on IoT products intended for consumer use or include products intended for industrial or business use.[118] Specifically, the *IoT Labeling NPRM* noted that "IoT devices and products have proliferated not only in the non-enterprise space, but also in the workplace from office settings to field settings, from medical settings to industrial settings."[119] The IoT Labeling Program we adopt today applies to the labeling of consumer IoT products that are intended for consumer use,[120] and does not include products that are primarily intended to be used in manufacturing, healthcare, industrial control, or other enterprise applications. While we do not foreclose expansion of the IoT Labeling Program at a later date, this initial scope will provide value to consumers most efficiently and expediently, without added complexity from the enterprise environment.

30. The record supports the IoT Labeling Program having a consumer IoT focus, with support provided by UL Solutions, the Cybersecurity Coalition, and the Connectivity Standards Alliance, among others.[121] The FDA also suggests that IoT outside of the consumer scope may need "[g]reater and more tailored controls," suggesting that different considerations might attend IoT with a purpose outside of that in the routine consumer realm.[122] Additionally, commenters highlight the differing security needs of consumer and enterprise products.[123] For example, UL Solutions notes that "IoT products intended for commercial or industrial settings are exposed to different types of threats than consumer products and often carry higher risk if breach, which necessitates different requirements."[124] CSA also highlights that "[e]nterprise device security approaches are often customized and vary based on the specific needs of the business."[125] We agree that applying the IoT Labeling Program to consumer IoT products will reduce complexity, which will bolster the likelihood of success when starting the new IoT Labeling Program.

31. ISCA supports including enterprise IoT, stating that a broader scope will ensure the IoT Labeling Program remains flexible to the extent that the boundary between consumer and enterprise IoT is blurring.[126] Further, ISCA and Abhishek Bhattacharyya note that attackers have more to gain from targeting enterprise settings.[127] While there are considerable threat vectors and vulnerabilities associated

[118] *IoT Labeling NPRM* at 8, para. 16.

[119] *Id.*

[120] Some of the IoT devices and products that are intended for consumer use include smart thermostats, smart lights, smart locks, smart cameras, smart watches and fitness trackers. *See* Philips Healthcare Comments at 2 (listing smart doorbells and smart thermostats as examples of consumer IoT products).

[121] UL Solutions Comments at 2; Cybersecurity Coalition Comments at 4 ("The Commission should leverage [the] existing work on consumer IoT and not delay implementation of a consumer-focused label by attempting to cover non-consumer products as well . . . ."); CSA Comments at iii; Consumer Reports Comments at 9 ("[B]idirectional communications devices that interact with an enterprise, medical, or utility network" should be outside the scope of the IoT Labeling Program.); *see also* ioXt Alliance Reply at 4; IEEE 802 LAN/MAN Standards Committee Comments at 3; Medical Imaging & Technology Alliance Comments at 2; National Electronic Manufacturers Association Comments at 5 (NEMA); Garmin Comments at 9; TIC Council Americas Comments at 3; ITI Comments at 2. *But see* Kaiser Permanente Comments at 2-3 (arguing the Commission should include devices and products used by consumers, corporations and organizations across all industries, but exclude devices and products identified to pose an unacceptable risk to national security).

[122] Center for Devices and Radiological Health, U.S. Food and Drug Administration Comments at 5 (FDA).

[123] *See, e.g.*, UL Solutions Comments at 2; CSA Comments at 5.

[124] UL Solutions Comments at 2.

[125] CSA Comments at 5.

[126] ISCA Comments at 2.

[127] *Id.*; Abhishek Bhattacharyya Comments at 1.

with all classes of IoT products,[128] we agree with Everything Set, Inc., that focusing the IoT Labeling Program on household use of IoT products will be more useful and have greater impact, given that enterprises tend to have more time, resources, and expertise to devote to network security.[129] They note further that many small- and medium-sized businesses also buy consumer devices, so a consumer-focused Cyber Trust Mark would be of utility to them, as well.[130] We believe in the near term that a consumer focus will provide the most initial impact, and create a level of recognition and trust in the Cyber Trust Mark itself as the IoT Labeling Program progresses that could be leveraged to enterprise IoT at a later time, and we therefore defer consideration of the IoT Labeling Program's expansion.

32. *Exclusion of Certain Devices/Products.* As an initial matter, we exclude from the IoT Labeling Program medical devices regulated by the U.S. Food and Drug Administration (FDA).[131] The Center for Devices and Radiological Health (within the FDA) expresses concern that the Commission's labeling IoT Labeling Program may lack controls and minimum criteria that it believes are necessary for IoT medical devices.[132] In addition, the FDA is concerned that including medical devices in the IoT Labeling Program may cause consumer confusion and "potentially creates conflict where product manufacturers attempt to both qualify for the Cyber Trust Mark and comply with existing statutory and regulatory cybersecurity requirements under other federal laws, such as the Federal Food, Drug, and Cosmetic Act (FD&C Act)."[133] These considerations persuade us to exclude FDA-regulated medical devices from our IoT Labeling Program, consistent with commenters' recommendations. In addition, we exclude from this program motor vehicles[134] and motor vehicle equipment[135] given that the National

[128] There are many types IoT devices and products, which may be divided into various categories or classes based on their purpose, application, and functionality. These classes of IoT devices and products include smart home (e.g., smart thermostats, smart lights, smart locks, smart cameras), wearables (e.g., fitness trackers, smart watches), and Healthcare (e.g., remote patient monitoring devices, smart medical equipment). It is worth noting that not all IoT devices or products are created equal, in terms of features, security and the level of risk they present. Additionally, from security standpoint, an IoT product that is appropriate for consumer or home use may not be suitable for industrial or enterprise environment. These differences suggest the need for different security standards that distinguish between low-risk, medium-risk and high-risk applications. Our approach to identifying the specific cybersecurity standards to apply enables us to appropriately account for that in the case of particular wireless consumer products (or categories of such products) in our initial implementation of the IoT Labeling Program.

[129] Everything Set, Inc. Comments at 3.

[130] *Id.*

[131] *See*, *e.g.*, FDA Comments at 1; Consumer Reports Comments at 15 (arguing the Commission's labeling program should not supersede the Consolidated Appropriations Act of 2023, which includes cybersecurity rules covering medical devices, including connected consumer devices such as thermometers or CPAP machines); Kevin Fu Comments at 1 (recommending the program explicitly exclude FDA-regulated medical devices from its scope "to prevent a weakening of the more rigorous FDA expectations of cybersecurity engineering"); Phillips Healthcare Comments at 2 (stating FDA requirements often go beyond what would be required in the proposed FCC program and that including medical devices in this labeling program would create confusion among users by providing an incorrect signal that an FDA-cleared medical device without the Cyber Trust Mark does not maintain high cybersecurity standards); NTCA Reply at 4.

[132] FDA Comments at 1.

[133] *Id.*

[134] Motor Vehicle "means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public streets, roads, and highways, but does not include a vehicle operated only on a rail line." 49 U.S.C. §§ 30102(7).

[135] Motor Vehicle Equipment "means - (A) any system, part, or component of a motor vehicle as originally manufactured; (B) any similar part or component manufactured or sold for replacement or improvement of a system, part, or component, or as an accessory or addition to a motor vehicle; or (C) any device or an article or apparel, including a motorcycle helmet and excluding medicine or eyeglasses prescribed by a licensed practitioner, that – (i) is not a system, part, or component of a motor vehicle; and (ii) is manufactured, sold, delivered, or offered to be sold (continued….)

Highway Traffic Safety Administration (NHTSA) "has the authority to promulgate motor vehicle safety regulations on cybersecurity and has enforcement authority to secure recalls of motor vehicles and motor vehicle equipment with a safety-related defect, including one involving cybersecurity flaws."[136]

33. *Exclusion of Devices/Products Produced by Certain Entities.* We adopt the following measures to promote national security in connection with the IoT Labeling Program. The *IoT Labeling NPRM* proposed to exclude from the IoT Labeling Program (1) any communications equipment on the Covered List maintained by the Commission pursuant to section 2 of the Secure and Trusted Communications Networks Act (STCNA);[137] (2) any IoT device produced by an entity identified on the Covered List (i.e., an entity named or any of its subsidiaries or affiliates) as producing "covered" equipment; and (3) any device or product from a company named on certain other lists maintained by other federal agencies that represent the findings of a national security review.[138] We now adopt all of these prohibitions as they relate to our decision to focus the IoT Labeling Program on consumer IoT products. Thus, any communications equipment identified on the Covered List, now or in the future, will be ineligible for the IoT Labeling Program, and any such product will be denied approval to use the Cyber Trust Mark. Furthermore, any additional products produced by an entity identified on the Covered List as producing "covered" equipment, or any product containing devices or product components produced by such an entity, will be ineligible for the IoT Labeling Program; this would include products that may not fit within the definition of "communications equipment" under STCNA.[139] Only entities identified on the Covered List as producers of "covered" equipment—not those on the Covered List only because of their "covered" services—are subject to this prohibition.[140] In addition, we adopt the proposal that IoT devices or products containing devices manufactured by companies named on the Department of Commerce's Entity List,[141] named on the Department of Defense's List of Chinese Military Companies,[142] or

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for use on public streets, roads, and highways with the apparent purpose of safeguarding users of motor vehicles against risk of accident, injury, or death." 49 U.S.C. §§ 30102(8).

[136] Auto Innovators *Ex Parte* (noting the NHTSA Cyber Best Practices for Motor Vehicles leverages the NIST framework); CTA March *Ex Parte*.

[137] The Secure and Trusted Communications Networks Act of 2019 requires the Commission to publish a list of "covered" communications equipment that, among others, "poses an unacceptable risk to the national security of the United States or the security and safety of United States persons." Secure and Trusted Communications Networks Act of 2019, Pub. L. No. 116-124, 133 Stat. 158, § 1603(b)(1) (2020) (codified as amended at 47 U.S.C. §§ 1601–1609). As of March 14, 2024, the Covered List includes telecommunications and video surveillance equipment produced by Huawei Technologies Company, ZTE Corporation, Hangzhou Hikvision Digital Technology Company, Dahua Technology Company, and by any of these entities' subsidiaries or affiliates. *See* FCC, *List of Equipment and Services Covered By Section 2 of The Secure Networks Act* (Oct. 6, 2023), https://www.fcc.gov/supplychain/coveredlist [https://perma.cc/7EJ4-SDCE].

[138] *IoT Labeling NPRM* at 9, para. 18.

[139] *See* 47 U.S.C. § 1608(4); 47 CFR § 1.50001(c).

[140] As of March 14, 2024, this includes Huawei Technologies Company, ZTE Corporation, Hangzhou Hikvision Digital Technology Company, Dahua Technology Company, and their subsidiaries and affiliates. *See* FCC, *List of Equipment and Services Covered By Section 2 of The Secure Networks Act* (Oct. 6, 2023), https://www.fcc.gov/supplychain/coveredlist [https://perma.cc/7EJ4-SDCE].

[141] *See* Bureau of Industry and Security, U.S. Department of Commerce, Supplement No. 4 to Part 744 – Entity List (2023), https://www.bis.doc.gov/index.php/documents/regulations-docs/2326-supplement-no-4-to-part-744-entity-list-4/file [https://perma.cc/STW5-B8GW]; *see also* CTIA Comments at 39-40; Cybersecurity Coalition Comments at 4; USTelecom Comments at 2 (recommending excluding entities that appear on this list from the labeling program).

[142] *See* U.S. Department of Defense, Entities Identified as Chinese Military Companies Operating in the United States in Accordance with Section 1260H of the William M. ("Mac") Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116-283), Tranche 2 (2022),

(continued….)

suspended or debarred from receiving federal procurements or financial awards, including those published as ineligible for award on the General Service Administration's System for Award Management,[143] will not be authorized to display the FCC IoT Label or participate in the IoT Labeling Program. Further, we exclude from the IoT Labeling Program any products containing devices produced or manufactured by these entities. We conclude that inclusion on these lists represents a determination by an agency charged with making national security determinations that a company's products lack the indicia of trustworthiness that the Cyber Trust Mark is intended to represent. Our action here thus supports and reinforces the steps we have taken in other proceedings to safeguard consumers and communications networks from equipment that poses an unacceptable risk to national security and that other federal agencies have taken to identify potential concerns that could seriously jeopardize the national security and law enforcement interests of the United States.[144]

34. With the exception of China's comments raising the same WTO issue we rejected in the *Report and Order* applying the Covered List to the FCC equipment authorization program,[145] the record overwhelmingly supports excluding from the IoT Labeling Program these products and devices produced by companies identified on the Covered List.[146] Additionally, USTelecom, CTIA, CTA, Cybersecurity Coalition and Consumer Reports specifically support excluding from the IoT Labeling Program IoT devices that are manufactured by companies on the Covered List,[147] but also urge the Commission to restrict any equipment manufactured by companies on additional federal restricted lists, including those otherwise banned from federal procurement.[148] Consumer Reports agrees with excluding systems that

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https://media.defense.gov/2022/Oct/05/2003091659/-1/-1/0/1260H%20COMPANIES.PDF [https://perma.cc/5LMA-LZLG]; *see also* CTIA Comments at 39-40, Cybersecurity Coalition Comments at 4, and USTelecom Comments at 2 (recommending excluding entities that appear on this list from the labeling program).

[143] *See* U.S. General Services Administration System for Award Management, *Exclusion Types*, https://sam.gov/content/entity-information/resources/exclusion-types [https://perma.cc/5L45-LKCJ] (last visited Feb. 15, 2024); *see also* CTIA Comments at 39-40 (recommending excluding entities otherwise prohibited from federal procurement from the labeling program).

[144] *See, e.g.*, *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, Third Report and Order, WC Docket No. 18-89 (Jul. 14, 2021); *Protecting Against National Security Threats to the Communications Supply Chain through the Equipment Authorization Program, Protecting Against National Security Threats to the Communications Supply Chain through the Competitive Bidding Program*, Report and Order, Order, and Further Notice of Proposed Rulemaking, ET Docket No. 21-232 and EA Docket No. 21-233 (Nov. 25, 2022).

[145] *See Protecting Against National Security Threats to the Communications Supply Chain through the Equipment Authorization Program, Protecting Against National Security Threats to the Communications Supply Chain through the Competitive Bidding Program*, Report and Order, Order, and Further Notice of Proposed Rulemaking, ET Docket No. 21-232 and EA Docket No. 21-233, at 255 (Nov. 25, 2022).

[146] *See* ioXt Alliance Comments at 11-12; CTIA Comments at 39-41; NCTA Comments at 8; Somos Comments at 3; Kaiser Permanente Comments at 3; CTA Comments at 26; Consumer Reports Comments at 10; ITI Comments at 5-6; USTelecom Comments at 2,7; Cybersecurity Coalition Comments at 4-5; CTIA Reply Comments at 6. *But see* People's Republic of China Comments at 6 (claiming WTO Article 2.1 requires equally favorable treatment preventing any restrictions based on the Covered List).

[147] USTelecom Comments at 7-8; CTIA Comments at 39-41; CTA Comments at 26; Cybersecurity Coalition Comments at 4-5; Consumer Reports Comments at 10.

[148] *See* USTelecom Comments at 7-8 (Commission should also exclude devices on the following lists: FY2019 NDAA § 889; FAR § 52.204-25 (ban on federal procurement of certain equipment produced by Huawei, ZTE, Hytera, Hikvision, Dahua); FY2023 NDAA § 5949 (ban on federal procurement of semiconductor products and services from SMIC, CXMT, and YMTC); FAR § 52.204-23 (ban on federal procurement of Kaspersky Lab software and hardware); Bureau of Industry and Security, U.S. Department of Commerce, Supplement No. 4 to Part 744 – Entity List (2023), https://www.bis.doc.gov/index.php/documents/regulations-docs/2326-supplement-no-4-to-part-744-entity-list-4/file [https://perma.cc/STW5-B8GW]; U.S. Department of Defense, Entities Identified as

(continued….)

include components included on the Covered List or similar lists from the IoT Labeling Program.[149] Each of these lists represent the determination by relevant Federal agencies that the entities on the list may pose a national security threat within their respective areas, and as such we find that we cannot separately sanction their products as trustworthy via the IoT Labeling Program. While each list is designed to support specific prohibitions, their use here only excludes their contents from a voluntary program representing U.S. Government assessment of their security and does not prohibit any other use. Insofar as the FCC IoT Label reflects the FCC's signal to consumers about cybersecurity, it is reasonable for the FCC to take a cautious approach especially for those products for which relevant Federal agencies have expressed other security concerns.

35. *Applicant Declaration Under Penalty of Perjury*. To implement the Commission's goal of ensuring the Cyber Trust Mark is not affixed to products that pose a risk to national security or a risk to public safety, we require applicants seeking authorization to use the FCC IoT Label to provide a declaration under penalty of perjury that all of the following are true and correct:[150]

(i) The product for which the applicant seeks to use the FCC IoT Label through cybersecurity certification meets all the requirements of the IoT Labeling Program.

(ii) The applicant is not identified as an entity producing covered communications equipment on the Covered List, established pursuant to § 1.50002 of the Commission's rules.

(iii) The product is not comprised of "covered" equipment on the Covered List.

(iv) The product is not produced by any entity, its affiliates, or subsidiaries identified on the Department of Commerce's Entity List, or the Department of Defense's List of Chinese Military Companies.

(v) The product is not owned or controlled by or affiliated with any person or entity that has been suspended or debarred from receiving federal procurements or financial awards, to include all entities and individuals published as ineligible for award on the General Service Administration's System for Award Management.

(vi) The applicant has taken every reasonable measure to create a securable product.

(vii) The applicant will, until the support period end date disclosed in the registry, diligently identify critical vulnerabilities[151] in our products and promptly issue software updates correcting them, unless such updates are not reasonably needed to protect against security failures.

(viii) The applicant will not elsewhere disclaim or otherwise attempt to limit the substantive or procedural enforceability of this declaration or of any other representations and commitments made on the FCC IoT Label or made for purposes of acquiring or maintaining authorization to use it.

36. If any applicant fails to make any of the above disclosures within 20 days after being notified of its noncompliance, such failure would result in termination of any improperly granted authorization to use the Label, and/or subject the applicant to other enforcement measures. The applicant

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Chinese Military Companies Operating in the United States in Accordance with Section 1260H of the William M. ("Mac") Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116-283), Tranche 2 (2022), https://media.defense.gov/2022/Oct/05/2003091659/-1/-1/0/1260H%20COMPANIES.PDF [https://perma.cc/5LMA-LZLG]); *see also* CTIA Comments at 39-41 (recommending entities otherwise banned from federal procurement should also be excluded from the program); CTA Comments at 26; Cybersecurity Coalition Comments at 4-5.

[149] Consumer Reports Comments at 10.

[150] 47 CFR § 1.16.

[151] A critical vulnerability is one that must be corrected to reasonably protect against security failures.

is required to update its declaration, or withdraw a not-yet granted application, if any of the applicant's circumstances impacting the declarations materially change while the application is pending.

37. *Wireless Consumer IoT Devices vs. Wired Consumer IoT Devices*. Today's *Order* adopts the *IoT Labeling NPRM*'s proposal that the IoT Labeling Program apply initially to wireless consumer IoT devices. This is consistent with the *IoT Labeling NPRM* proposal to focus the scope of the IoT Labeling Program on intentional radiators that generate and emit RF energy by radiation or induction and exclude wired-only IoT devices,[152] noting such devices are encompassed by the Commission's section 302 authority governing the interference potential of devices that emit RF energy and can cause harmful interference.[153] We find that this distinction is appropriate, both because of the Commission's interest in keeping the scope of the IoT Labeling Program clear and manageable during its debut and because there is support in the record for wireless intentional radiators as most prevalent types of consumer IoT devices contemplated in the *IoT Labeling NPRM*. While we recognize that there are other types of RF devices – both unintentional and incidental radiators – that are subject to our jurisdiction, we are not including them in our IoT Labeling Program at this time.

38. We acknowledge there is substantial support in the record for including wired IoT consumer products within the scope of the IoT Labeling Program. Consumer Reports recommends including both wired and wireless IoT within the scope of the IoT Labeling Program, pointing out that wired IoT devices or products are vulnerable to cybersecurity threats just as wireless IoT devices or products are.[154] Consumer Reports also points out that "while wireless devices are the majority of IoT devices, there are still almost 700 million wired IoT devices globally, and they are expected to grow by a 10% [compound annual growth rate] through 2027 according to IoT Analytics 'State of IoT – Spring 2023 Report.'"[155] TÜV SÜD also encourages the Commission to cover both wired and wireless devices within the scope of the IoT Labeling Program,[156] and AIM emphasizes the importance of the security of both wired and wireless IoT to the cybersecurity ecosystem.[157] CTA further states that the Commission should not define the scope of the IoT Labeling Program in such a way as to exclude wired IoT products.[158] AHAM points out that both wired and wireless IoT are included in the NIST definition.[159]

39. While we agree that wired IoT products are susceptible to cyberattacks and similarly pose security risks to consumers and others, we find it to be in the public interest for the IoT Labeling Program to start with wireless consumer IoT products in view of the record indicating that "wireless devices are the majority of IoT devices,"[160] which would indicate that a focus on this product segment will have a substantial impact on the overall IoT market. The record also supports this approach, with Keysight Technologies, Inc. concurring that "the program should include consumer RF IoT products initially."[161]

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[152] *IoT Labeling NPRM* at 7, para. 12.

[153] 47 U.S.C. § 302a(a)(1) ("The Commission may, consistent with the public interest, convenience, and necessity, make reasonable regulations . . . governing the interference potential of devices which in their operation are capable of emitting radio frequency energy by radiation, conduction, or other means in sufficient degree to cause harmful interference to radio communications; . . . .").

[154] Consumer Reports Comments at 4.

[155] Consumer Reports Reply at 3 (citing Satyajit Sinha, *State of IoT: Number of connected IoT devices growing 16% to 16.7 billion globally* (May 24, 2023), https://iot-analytics.com/number-connected-iot-devices/ [https://perma.cc/E2NM-KB4Q]).

[156] TÜV SÜD Comments at 2.

[157] AIM Comments at 2, 5.

[158] CTA Comments at 13.

[159] AHAM Comments at 4.

[160] Consumer Reports Reply at 3.

[161] Keysight Technologies, Inc. Comments at 1 (Keysight).

Further, we do not agree with arguments that there may be an unintended perception that "[c]reating a program that would only certify wireless IoT devices would send an improper message that only wireless IoT devices are secure."[162] Instead, we believe that beginning with wireless IoT products is both feasible and can be adopted with more speed, providing more prompt benefit in the marketplace. Further, a more limited scope will streamline the initial rollout of the IoT Labeling Program, provide focus to the additional tasks necessary to stand up the program, and lay the groundwork for expansion, and we do not foreclose consideration including wired IoT products in the future. As such and as discussed below, we also defer consideration of our legal authority to consider wired products at this time.[163]

C. Oversight and Management of the IoT Labeling Program

1. Fostering Close Public-Private Collaboration

40. In the *IoT Labeling NPRM*, the Commission recognized that for a voluntary IoT Labeling Program to be successful, it must include a close partnership and collaboration between federal government, industry, and other stakeholders.[164] The record in this proceeding supports implementation of the IoT Labeling Program through public-private collaboration that leverages the expertise and existing frameworks of the federal government, industry, and other stakeholders.[165] The *IoT Labeling NPRM* sought comment on adopting NIST's recommendation that there be one "scheme owner" ultimately responsible for overseeing and managing the IoT Labeling Program, and whether that entity should be the Commission. The Commission also sought comment on whether one or more third-party administrator(s) could be utilized to manage some or all of the IoT Labeling Program functions identified by NIST and, if so, which functions, and how such third-party administrators should be chosen.[166] Based on the comments filed regarding oversight and management of the IoT Labeling Program, the Commission finds it is in the public interest to continue to foster public-private collaboration, including with regard to the management and administration of the IoT Labeling Program, while ensuring the Commission retains ultimate control and oversight of the IoT Labeling Program. In this respect, providing a broad, unifying government oversight framework for existing private labeling schemes and other private efforts in this context will allow current participants in this ecosystem to capitalize on their existing investments and relationships in a way that not only promotes the overall effectiveness of the FCC's IoT Labeling Program and increases the security of the IoT ecosystem.

41. The Commission adopts the *IoT Labeling NPRM* proposal that the IoT Labeling Program be comprised of a single "program owner" responsible for the overall management and oversight of the IoT Labeling Program, with administrative support from one or more third-party administrators.[167] NIST's white paper recommends one "scheme owner" responsible for managing the labeling program, determining its structure and management, and performing oversight to ensure the program is functioning consistently in keeping with overall objectives.[168] We agree that it is appropriate for a single entity to perform these functions and find that the Commission will be the program owner of the IoT Labeling Program, and as such, retains ultimate control over the program, and determines the program's structure. CSA highlights support in the record for having the Commission as the program owner, arguing that "[p]lacing the regulatory authority in the hands of the Commission and providing government-backed

[162] Planar Systems, Inc. Comments at 1 (Planar).

[163] *See infra* Section IV.

[164] *IoT Labeling NPRM* at 9, para. 19.

[165] CTA Comments at 16; ioXt Alliance Comments at 2; Kaiser Permanente Comments at 4.

[166] *IoT Labeling NPRM* at 10-11, para. 22.

[167] *Id.*

[168] *NIST Cybersecurity White Paper* at 2.

endorsement may strengthen trust with Consumers."[169] However, the *NIST Cybersecurity White Paper* also recommends the "scheme owner" be responsible for defining the conformity assessment requirements, developing the label and associated information, and conducting consumer outreach and education.[170]

42. While the Commission as program owner will *oversee* the elements of the program, the program will be supported by Cybersecurity Label Administrators (Label Administrators or CLAs) who will manage certain aspects of the program and authorize use the FCC IoT Label as well as a Lead Administrator selected by the Bureau from among the CLAs, which will undertake additional duties including acting as the point of contact between the CLAs and the Commission. In addition, the Commission believes it is appropriate for a Lead Administrator, in collaboration with the CLAs and other stakeholders, to identify or develop, and recommend to the Commission for approval, the IoT specific standards and testing procedures, procedures for post-market surveillance, as well as design and placement of the label. The Lead Administrator will also be responsible for developing, in coordination with stakeholders, a consumer education plan and submitting the plan to the Bureau and engaging in consumer education. Each of these duties are discussed in depth below. The Cybersecurity Coalition recommends the Commission utilize a single administrator, rather than multiple administrators "to reduce the likelihood of conflict among administrators and simplify engagement with manufacturers, consumers, and government agencies."[171] CTA, on the other hand, contemplates multiple administrators, suggesting that the Commission may consider leveraging "a consortium of scheme owners[] to ensure that the IoT Labeling Program is administered and issues are adjudicated in an effective, objective, and timely fashion."[172] We agree with CTA's reasoning, while also acknowledging the Cybersecurity Coalition's concern regarding potential conflict. Accordingly, the Bureau will select a Lead Administrator from among the CLA applicants to address conflicts.

43. As an initial matter, we have looked to the structure of, and experiences with, the Commission's equipment authorization program and rules in developing the IoT Labeling Program, as proposed and discussed in the *IoT Labeling NPRM*. We emphasize, however, that the IoT Labeling Program is new and distinct, and it will operate under its own rules and with new authorities specifically delegated to PSHSB. This is consistent with the record developed in the proceeding, in which many commenters urged the Commission to keep the equipment authorization and IoT Labeling programs separate.[173] In addition, several commenters addressed whether obtaining a valid equipment authorization should be a pre-requisite for obtaining the Cyber Trust Mark,[174] or whether obtaining approval to use the Cyber Trust Mark would be required as a condition for applying for an equipment authorization.[175] We

[169] CSA Reply at 4 (citing American Association for Laboratory Accreditation (A2LA) Comments at 2, TIC Comments at 3-4, Kaiser Permanente Comments at 3-4, UL Solutions Comments at 2-3, ITI Comments at 6, and Consumer Reports Comments at 10-12 to support Commission as program owner; Cybersecurity Coalition Comments at 5-6, and NEMA Comments at 6 as supporting the Commission overseeing and managing the IoT Labeling Program; and A2LA Comments at 2, 22, TIC Comments at 3-4, and Cybersecurity Coalition Comments at 5-6 as support for its argument that government-backed endorsement strengthening consumer trust).

[170] *NIST Cybersecurity White Paper* at 2.

[171] Cybersecurity Coalition Comments at 5.

[172] CTA Comments at 23.

[173] *See, e.g.,* ITI Comments at 4; Consumer Reports Comments at 35; CTA Reply at 10; Letter from Association of Home Appliance Manufacturers, Connectivity Standards Alliance, Consumer Technology Association, CTIA Information Technology, Industry Council, National Electrical Manufacturers Association, Plumbing Manufacturers International Power Tool Institute, Security Industry Association, Telecommunications Industry Association, U.S. Chamber of Commerce, and USTelecom, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 23-239, at 1 (Nov. 8, 2023) (Coalition Letter Reply).

[174] NCTA Reply at 6; Coalition Letter Reply at 1.

[175] TIA Comments at 2; CTA Comments at 9.

emphasize that our IoT Labeling Program is voluntary, and parties are required to follow the Commission's equipment authorization program regardless of whether or not they choose to participate in the IoT Labeling Program. We also clarify that there is no requirement to complete the equipment authorization process before qualifying for the Cyber Trust Mark;[176] however, our existing part 2 rules will continue to prohibit the marketing of a device that does not have a valid equipment authorization.[177]

44. We conclude that it is in the public interest and supported in the record to adopt the IoT Labeling Program structure recommended by NIST, with the modifications discussed above regarding third-party administrators that are overseen by the Commission as the program owner. This and the following paragraph preview the remaining roles and responsibilities for the IoT Labeling Program, which will be developed in depth in the remaining sections of this *Order*. The Commission also will be responsible for coordinating mutual recognition of the Cyber Trust Mark with international partners, coordinating with the Lead Administrator, federal partners, industry, and other stakeholders on consumer education programs, and performing oversight to ensure the IoT Labeling Program is functioning properly. In addition, the Commission will specify the data to be included in a consumer-friendly registry that provides additional information about the security of the products approved to use the Cyber Trust Mark and is accessible through the QR Code that is required to accompany the Cyber Trust Mark. Further, the Commission will own and maintain the registration for the Cyber Trust Mark, which may only be used when the product has been appropriately tested and complies with the Commission's IoT Labeling Program requirements.

45. The Commission will approve qualified Cybersecurity Label Administrators (Label Administrators or CLAs) to manage certain aspects of the labeling program and be authorized by the Commission to license the Cyber Trust Mark to manufacturers whose products are in compliance with the Commission's IoT cybersecurity labeling rules. The Commission will also select a Lead Administrator, which will be responsible for carrying out additional administrative responsibilities, including but not limited to reviewing applications and recognizing qualified and accredited Cybersecurity Testing Laboratories (CyberLABs) and engaging in consumer education regarding the Cyber Trust Mark. The Lead Administrator will also collaborate with cyber experts from industry, government, academia and other relevant sectors if needed to identify, develop, and maintain consumer IoT cybersecurity technical and conformity assessment standards that are based on NIST standards and guidance, that will be submitted to PSHSB for consideration and approval, and, subject to any required public notice and comment, adopted into the Commission's rules. The standards and testing procedures developed or identified in collaboration with CLAs and other stakeholders and submitted by the Lead Administrator for consideration by the Commission will, in turn, be used by accredited[178] testing labs recognized by the Lead Administrator—whether CyberLABs,[179] a CLA-run lab, or a testing lab internal to a company (in-house testing lab) for product testing.

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[176] *See* Coalition Letter Reply at 1.

[177] *See* 47 CFR pt. 2.

[178] The organization(s) accrediting the prospective Label Administrators and testing labs must meet the requirements and conditions in ISO/IEC 17011. *See* 47 CFR § 8.218(b)(1); ISO/IEC 17011:2017(E), *Conformity assessment—General requirements for accreditation bodies accrediting conformity assessment bodies*, Second Edition, November 2017, IBR approved for § 8.217.

[179] There appeared to be some confusion in the record with the Commission's use of the term Cybersecurity Labeling Authorization Bodies. Specifically, the ANSI National Accreditation Board (ANAB) recommended the Commission reconsider the use of the term "CyberLAB" as the "implication that such organizations are laboratories could create market confusion." ANAB Reply at 2. We disagree that the term CyberLAB may be confusing because these organizations are, in fact, laboratories/testing bodies that will be testing products to determine compliance with applicable standards. The CyberLABs, however, are not "certification bodies." Rather, the entity that will be authorizing an applicant to use the Cyber Trust Mark on their product is the CLA, as described in para. 55, *infra*. To ensure there is no confusion, the Commission has changed the term from Cybersecurity Labeling

(continued….)

46. Retaining key overarching functions within the Commission as discussed above will ensure the effective administration and oversight of this government program and protect the integrity of the FCC-owned Cyber Trust Mark, while perpetuating, where appropriate, the relevant efforts of the private sector that meet the goals and requirements of the program. We also agree with CSA that program ownership by the Commission will increase consumer confidence in the Cyber Trust Mark. In addition, the clear high-level oversight functions retained for the Commission ensures the Commission has meaningful decision making control.[180] Here, while the CLA(s) will recommend standards and testing procedures to be approved by the Commission as well as manage the day-to-day administrative functions assigned, the Commission will ultimately review, consider, and exercise judgment on whether the requirements are appropriate to support the Commission's program, and on how the program is ultimately administered.

2. Cybersecurity Label Administrators (CLAs)

47. The *IoT Labeling NPRM* sought comment on how one or more third-party administrators might be used to manage some or all of the labeling program functions and the best ways for the Commission to utilize the respective expertise of the Commission, other federal government entities, industry, and other stakeholders.[181] It also sought comment on how the Commission might select one or more third-party administrators, what qualifications such administrators should possess, what national security considerations are relevant to these qualifications, and whether there are existing stakeholders well-suited to convene the working group the Commission tasks with developing and identifying IoT security standards.[182]

48. We adopt the *IoT Labeling NPRM's* proposal that one or more qualified third-party administrators (Cybersecurity Labeling Administrators or CLAs) be designated by the Commission to manage certain aspects of the labeling program and be authorized to certify the application of the FCC IoT Label by manufacturers whose products are found to be in compliance with the Commission's IoT cybersecurity labeling rules and regulations.[183] The record supports the Commission's adoption of a labeling program that is supported by CLAs.[184] According to TIC Council Americas, involving independent third-party administrators who verify that labeled products meet the program requirements will bring trust, consistency, and an impartial level playing field to the Cyber Trust Mark.[185] The Cybersecurity Coalition, Widelity, and CSA highlight that utilizing experienced third-party administrators will allow the program to run more efficiently and will provide "the required expertise for the administration of the program."[186] CTA and other commenters also assert that the IoT Labeling Program will be best served if the Commission "leverage[s] the unique expertise and existing certification

"Authorization Bodies" as these terms are reserved for accreditation bodies, to Cybersecurity Testing Laboratories, reflecting that the function of these labs is for testing and generating reports, and not certifying or issuing a label. We continue to use the short-form term "CyberLAB" to refer to these testing labs.

[180] *Consumers' Rsch. v. FCC*, 88 F.4th 917, 926 (11th Cir. 2023) ("[A]government agency may delegate statutory authority to private entities without violating the private nondelegation doctrine so long as (1) the entity "function[s] subordinately" to the agency, and (2) the agency retains "authority and surveillance over the activities" of the private entity.").

[181] *IoT Labeling NPRM* at 11, para. 23.

[182] *Id.* at 11, paras. 23-24.

[183] CTA Comments at 10; *but see* Kaiser Permanente Comments at 3 (supporting use of third parties to play integral roles in the management and administration of the IoT Labeling Program, subject to the FCC maintaining oversight of the program and serving as the entity that grants permission to use the Cyber Trust Mark to applicants).

[184] *See, e.g.*, CTA Reply at 7; CTA Comments at 16-18; ioXt Alliance Comments at 13; UL Solutions Comments at 6; CTIA Comments at 26-27; Cybersecurity Coalition Comments at 5; ITI Comments at 8.

[185] TIC Council Americas Comments at 1.

[186] Cybersecurity Coalition Comments at 5-6; Widelity Comments at 3; CSA Comments at 5-6.

infrastructure offered by well-regarded industry organizations."[187] AHAM says that "[g]iven the volume and increasing numbers of IoT products on the market, [the] FCC needs to give manufacturers as many options as possible as far as obtaining the Cyber Trust mark" and that "third parties will play an important role in any successful program."[188]

49. CTA supports assigning certain responsibilities to one or more independent, (i.e., neutral) third-party administrators which it refers to as "Authorized Scheme Owners." However, the Commission disagrees with this descriptor insofar as some commenters are confused as to whether the "scheme owner" is the entity ultimately responsible for the program, or a third-party entity responsible for certain program administration functions or specified tasks under the ultimate direction of the Commission. To avoid confusion, the Commission refers to these third-party administrators as CLAs. These CLAs are neutral third parties independent of the applicant and within the context of a program overseen by the Commission.

50. We believe that authorizing one or more CLAs to handle the routine administration of the program will help to ensure a timely and consistent rollout of the program. In particular, several private entities have already implemented robust IoT cybersecurity labeling programs with established business processes in place to receive applications from IoT manufacturers and conduct conformity/standards testing against widely accepted cybersecurity guidelines (e.g., NIST guidelines) or proprietary product profiles based on the NIST criteria.[189] We anticipate a large number of entities will seek grants of authorization to use the FCC IoT Label and we are concerned that if we were to adopt a program limited to a single administrator, there may be bottlenecking delays in the processing of applications and a single administrator could result in a single point of failure in the program. Allowing multiple CLAs to execute the role of day-to-day administration of the program will provide for the simultaneous processing of a significant number of applications, provide redundancy of structure, and potentially foster competition in this space to better serve those seeking access to the label. In addition, leveraging the expertise of multiple existing program managers and using pre-existing systems and processes that meet our program specifications will minimize administrative delay, while promoting an efficient and timely rollout of the Cyber Trust Mark. This will also ensure that the Commission effectively utilizes the expertise of those entities who have made investments in their own cybersecurity labeling programs and have experience working with manufacturers and IoT conformity and standards testing, expediting the ability to provide consumers with a simple way to understand the relative security of the products and devices they purchase under a government-backed standard.

3. Responsibilities of the Lead Administrator and CLAs

51. We recognize, however, that there is a need for a common interface between the CLAs and the Commission to facilitate ease of engagement and to conduct other initial tasks associated with the launch of the program.[190] We delegate authority to PSHSB to review CLA applications, review CLA applications that also request consideration for Lead Administrator, select the Lead Administrator and manage changes in the Lead Administrator.

52. *Lead Administrator Duties*. The Lead Administrator will undertake the following duties in addition to the CLA duties outlined below:

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[187] CTA Comments at 10; *see also* AHAM Comments at 3; Cybersecurity Coalition Comments at 5; ioXt Alliance Comments at 13; UL Solutions Comments at 6.

[188] AHAM Comments at 3; *see also* Kaiser Permanente Comments at 3 ("Given the wide scope of IoT devices and products eligible for the Program, we recommend considering the use of multiple third-party administrators to share responsibilities and manage the day-to-day details of the application, assessment, granting and maintenance/renewal processes for defined subsets of IoT devices.").

[189] CTA Comments at 16; ioXt Alliance Comments at 2-3 (referencing the ioXt Certification Program).

[190] *See* ioXt Alliance Comments at 13 (suggesting a lead entity to oversee operation by recommending the FCC "consider establishing an advisory committee/board to advise on operations of the program.").

a. interface with the Commission on behalf of the CLAs, including but not limited to submitting to the Bureau all complaints alleging a product bearing the FCC IoT Label does not meet the requirements of the Commission's labeling program;

b. conduct stakeholder outreach as appropriate;

c. accept, review, and approve or deny applications from labs seeking recognition as a lab authorized to perform the conformity testing necessary to support an application for authority to affix the FCC IoT Label,[191] and maintain a publicly available list of Lead Administrator-recognized labs and a list of labs that have lost their recognition;

d. within 90 days of release of the Public Notice announcing the Lead Administrator selection, the Lead Administrator shall, in collaboration with CLAs and other stakeholders (e.g., cyber experts from industry, government, and academia) as appropriate:

   i. submit to the Bureau recommendations identifying and/or developing the technical standards and testing procedures for the Commission to consider with regard to at least one class of IoT products eligible for the IoT Labeling Program. The Bureau will evaluate the recommendations, and if the Bureau approves of the recommendations, subject to any required public notice and comment, adopt them into the Commission's rules;

   ii. submit to the Bureau a recommendation on how often a given class of IoT products must renew their request for authority to bear the FCC IoT Label, which may be dependent on the type of product, and that such a recommendation be submitted in connection with the relevant standards recommendations for an IoT product or class of IoT products;[192] The Bureau will evaluate the recommendations, and if the Bureau approves of the recommendations, subject to any required public notice and comment, adopt them into the Commission's rules;

   iii. submit to the Bureau a recommendation on procedures for post market surveillance by the CLAs. The Bureau will evaluate the recommendations, and if the Bureau approves of the recommendations, subject to any required public notice and comment, adopt them into the Commission's rules; and

   iv. submit to the Bureau recommendations with regard to updates to the registry including whether the registry should be in additional languages, and if so, to recommend specific languages for inclusion;

   v. submit to the Bureau recommendations on the design of the FCC IoT Label, including but not limited to labeling design and placement (e.g., size and white spaces, product packaging, whether to include the product support end date and other security and privacy information on the label.) The Bureau will evaluate the recommendations, and if the Bureau approves of the recommendations, subject to any required public notice and comment, adopt them into the Commission's rules.

e. The Lead Administrator shall, in collaboration with CLAs and other stakeholders

[191] If the Lead Administrator, in addition to its administrative duties, intends to offer lab testing service (CLA-run lab), it must submit an application with PSHSB seeking FCC recognition as a lab authorized to perform conformity testing to support an application for authority to affix the FCC IoT Label. The Lead Administrator is not authorized to recognize its own cybersecurity testing lab. If approved by PSHSB, the Lead Administrator will add the name of its lab to the list of recognized labs.

[192] *See infra* para. 124.

(e.g., cyber experts from industry, government, and academia) as appropriate recommend within 45 days of publication of updates or changes to NIST guidelines, or adoption by NIST of new guidelines, to the FCC any appropriate modifications to the Labeling Program standards and testing procedures to stay aligned with the NIST guidelines;

f. submit to the Commission reports on CLAs' post-market surveillance activities and findings in the format and by the date specified by PSHSB;

g. develop in collaboration with stakeholders a consumer education campaign, submit the plan to the PSHSB, and participate in consumer education;[193]

h. receive complaints about the Labeling Program, including but not limited to consumer complaints about the registry and coordinate with manufacturers to resolve any technical problems associated with consumers accessing the information in the registry;

i. facilitate coordination between CLAs; and

j. submit to the Commission any other reports upon request of the Commission or as required by Commission rule.

53. *Cybersecurity Label Administrator Duties.* CLA(s) are responsible for various administrative duties, including:

a. receive and evaluate applications and supporting data requesting authority to use the FCC IoT Label on the product subject to the application;

b. grant an application only if it meets all of the Commission's requirements to use the FCC IoT Label and authorize the applicant to use the FCC IoT Label on the product subject to the application;

c. ensure that manufacturers make all required information accessible by the IoT registry;

d. participate in consumer education campaign in coordination with the Lead Administrator;

e. perform post-market surveillance activities, such as audits, in accordance with ISO/IEC 17065[194] and submit periodic reports to the Lead Administrator of their post-market surveillance activities and findings in the format and by the date specified by PSHSB; and

f. receive complaints alleging an IoT product does not support the cybersecurity criteria conveyed by the Cyber Trust Mark and refer these complaints to the Lead Administrator which will notify PSHSB.[195]

54. The record supports the use of CLAs to support a variety of tasks within the program's construct. ioXt Alliance supports utilizing CLAs for evaluating and certifying products for the Cyber

[193] *See infra* Section L.

[194] *See* 47 CFR § 8.220(g); ISO/IEC 17065:2012(E), *Conformity assessment—Requirements for bodies certifying products, processes and services*, First Edition, 2012–09–15, IBR approved for § 8.220. ISO/IEC 17065:2012, *Conformity Assessment – Requirements for Bodies Certifying Products, Processes and Services*, https://anab.ansi.org/standard/iso-iec-17065/ [https://perma.cc/8LLA-MQ39].

[195] This process does not foreclose the ability of consumers to file an informal complaint in accordance with the Commission's rules. *See* 47 CFR §§ 1.716 – 1.719. In the event an informal complaint is filed with the Commission, the complaint will be forwarded to the Lead Administrator for investigation and/or referral to the issuing CLA.

Trust Mark.[196] CTA supports utilizing CLAs to conduct program operations.[197] The Cybersecurity Coalition and Kaiser Permanente also support utilizing CLAs for managing the day-to-day operations of the IoT Labeling Program.[198] CSA argues that, "the day-to-day administration of the Cyber Trust Mark Program should be managed by a Third-Party Administrator, serving as the entity that grants permission to use the Program trademark to applicants."[199] In addition, ITI recommends that it should be the responsibility of the CLA to review or audit self-attestations and that "third-party administrators can and should play a key role in administering conformity assessment schemes."[200] CSA and CTIA further recommend adopting the *IoT Labeling NPRM's* proposal that a third-party administrator evaluate, accredit, or recognize the CyberLABs,[201] and CSA also "recommends that the Commission hire a third-party administrator to operate the IoT Registry."[202] Finally, ioXt Alliance recommends that third-party administrators should also "vet companies and products during the certification process" [203] to determine which products pose a threat to national security, based on Commission guidance. ioXt Alliance also notes in its comments that the "label design and associated information should be informed by the expertise of manufacturers and third-party administrators."[204]

55. Subject to Commission oversight, and consistent with recommendations in the record, the CLAs will evaluate and grant or deny requests for authority to use the FCC IoT Label on consumer IoT products in accordance with the IoT Labeling Program. Each administrator will be responsible for certifying that the consumer IoT products for which it authorizes a manufacturer to apply the FCC IoT Label are tested by an accredited testing lab, which as discussed further below may be a CyberLAB, the applicant's own in-house lab, or a CLA-run lab, and that the testing report demonstrates the product conforms to all Commission IoT labeling rules. The CLA will track each application it receives requesting authority to use the FCC IoT Label, and the disposition of all applications, including date of filing, date of acceptance as complete, the date and reason application is returned to applicant, and date of grant or denial. The CLAs will review each application they receive to ensure the application and supporting documents are provided and are sufficient to show the product conforms to all Commission rules and that it includes a compliance test report generated by an accredited and Lead Administrator-recognized testing lab (e.g., third-party lab (CyberLAB), applicant's in-house testing lab, or CLA-run lab). If the application is deficient, it will not be granted until all necessary conditions are satisfied. If the application is complete and meets all of the Commission's requirements, the CLA will issue a cybersecurity labeling authorization (i.e., cybersecurity certification) approving the applicant to affix the FCC IoT Label to the identified product.

56. In addition to its role as a CLA, the Lead Administrator must collaborate with CLAs and other stakeholders (e.g., cyber experts from industry, government, and academia) as appropriate to develop or identify, and maintain, consumer IoT cybersecurity technical and conformity assessment standards to be met for each class of IoT product seeking authority to affix the FCC IoT Label on their product, which the Lead Administrator will submit to PSHSB for consideration and approval and, subject to any required public notice and comment, adoption into its rules. Adopting standards through

[196] ioXt Alliance Comments at 14.

[197] *See* CTA Reply at 4.

[198] *See* Cybersecurity Coalition Comments at 5; Kaiser Permanente Comments at 3.

[199] CSA Reply at 5-6 (citing Kaiser Permanente Comments at 3-4; ITI Comments at 6).

[200] ITI Comments at 9.

[201] CTIA Comments at 26 (citing *IoT Labeling NPRM* at 12, para. 26).

[202] CSA Comments at 15.

[203] ioXt Alliance Comments at 12.

[204] *Id.* at 13.

consensus is supported by the record in this proceeding.[205] The Information Technology Industry Counsel (ITI) supports the Commission retaining ownership of the IoT Labeling Program and authorizing the "various industry-led, consensus standards, which can be used to gain approval for the Cyber Trust Mark."[206] ITI also notes that using industry-led, consensus standards will also limit the likelihood of legal challenges.[207] UL Standards & Engagement agrees that the FCC should use a "voluntary consensus-based standards development process" to create and update standards for the IoT Labeling Program.[208] The U.S. Chamber of Commerce also supports a consensus-based approach urging the Commission "to track closely with public-private developments in IoT cybersecurity as well as industry-driven initiatives, such as the *C2 Consensus on IoT Device Security Baseline Capabilities* (C2 Consensus)[209] and CTIA's cybersecurity certification program for IoT devices."[210] The Council to Secure the Digital Economy (CSDE), which is "composed of USTelecom, the Consumer Technology Association (CTA), and 13 global information and communications technology (ICT) companies - has also already convened technical experts from 19 leading organizations throughout the ICT sector to develop and advance industry consensus on baseline security capabilities for new devices,"[211] including the C2 Consensus document, which provides guidance to the public and private sectors on IoT devices security.[212] We agree with these recommendations that the Commission adopt standards following recommendations based on an industry-led consensus process, leveraging standards work already in process or completed, which will provide for the swift development and implementation of the IoT Labeling Program.

57. The Lead Administrator is to base the recommended technical standards and testing procedures on the NISTIR 8425, *Profile of the IoT Core Baseline for Consumer IoT Products*. As noted by ITI, there is "a suite of existing standards that might be leveraged to ensure that the outcomes NIST outlines can be met."[213] In addition, NIST's *IoT Product Component Requirements Essay* provides a summary of standards and guidance that NIST has initially identified as applicable to IoT devices and IoT product components, that the Lead Administrator may determine are applicable to the IoT Labeling Program.[214] The Lead Administrator should evaluate and leverage existing work for efficiency and speed to market where appropriate in making its recommendations to the Commission.

58. The Lead Administrator in collaboration with stakeholders as appropriate will identify or develop IoT cybersecurity standards (or packages of standards) and testing procedures that they determine

[205] As below, we emphasize the importance of leveraging existing expertise in this space, and as such adopt as a criterion for consideration in selecting the lead administrator the ability to convene and develop consensus among stakeholders.

[206] ITI Reply at 5.

[207] *Id.* at 6.

[208] UL Standards & Engagement Comments at 1.

[209] Council to Secure the Digital Economy, C2 Consensus on IoT Device Security Baseline Capabilities (2019), https://kvh31b.p3cdn1.secureserver.net/wp-content/uploads/2019/09/CSDE_IoT-C2-Consensus-Report_FINAL.pdf [https://perma.cc/6HTV-25ZP]; Council to Secure the Digital Economy, The C2 Consensus on IoT Device Security Baseline Capabilities – 2021 Supplement (2021), https://csde.org/wp-content/uploads/2021/04/C2-Tech-Report_2021_final.pdf [https://perma.cc/U45C-DGYT].

[210] U.S. Chamber of Commerce Comments at 3 (Chamber). The Chamber also argues that "[a]bove all, the Commission should reach a consensus with industry on fundamental concerns including the scope of covered IoT, security criteria and standards, conformity assessments, and liability protections." Chamber Comments at 3.

[211] Council to Secure the Digital Economy, The C2 Consensus on IoT Device Security Baseline Capabilities at 1 (2019), https://csde.org/wp-content/uploads/2019/09/CSDE_IoT-C2-Consensus-Report_FINAL.pdf [https://perma.cc/UG7K-C4RZ].

[212] *Id.*

[213] ITI Reply at 5.

[214] NIST IoT Product Component Requirements Essay at 3-7.

can be used to test that a product meets the NISTIR 8425 criteria for each class of products identified by the working group.[215] The Lead Administrator will submit to the Bureau recommendations on a rolling basis as they are identified, but shall submit the initial set of recommendations no later than 90-days after release of the Public Notice selecting the Lead Administrator. We specify a timeframe here to ensure timeliness of initial standards and prompt launch of the program. Noting the work already ongoing on these issues,[216] we also find such a timeframe to be reasonably achievable. The proposed standards (or packages of standards) and testing procedures must be approved by the Commission prior to implementation. The Commission delegates authority to PSHSB to evaluate and (after any required public notice and comment) approve (or not approve) the technical standards and testing procedures proposed by the Lead Administrator for use in the IoT Labeling Program and adopt the approved standards and testing procedures into the Commission's rules. The Commission further directs the Bureau to ensure the standards and testing procedures are relevant and appropriate to support the Commission's IoT Labeling Program.

4. Selecting CLAs and Revoking Authority to Grant Applications to Use the FCC IoT Label

59. *Selecting CLAs*. Each entity seeking authority to act as a CLA must file an application with the Commission for consideration by PSHSB,[217] which includes a description of its organization structure, an explanation of how it will avoid personal and organizational conflict when processing applications, a description of its processes for evaluating applications seeking authority to use the FCC IoT Label, and a demonstration of expertise that will be necessary to effectively serve as a CLA including, but not limited to:

1. Cybersecurity expertise and capabilities in addition to industry knowledge of IoT and IoT labeling requirements.
2. Expert knowledge of NIST's cybersecurity guidance, including but not limited to NIST's recommended criteria and labeling program approaches for cybersecurity labeling of consumer IoT products.
3. Expert knowledge of FCC rules and procedures associated with product compliance testing and certification.
4. Knowledge of Federal law and guidance governing the security and privacy of agency information systems.
5. Demonstration of ability to securely handle large volumes of information and demonstration of internal security practices.
6. Accreditation pursuant to all the requirements associated with ISO/IEC 17065[218] with the

[215] *See, e.g.*, CTIA Certification, *Cybersecurity Certification Program for IoT devices*, version 1.3 (July 2020), https://api.ctia.org/wp-content/uploads/2020/08/CTIA-IoT-Cybersecurity-Program-Management-Document-Ver-1.3.pdf [https://perma.cc/E8P6-9RV3].

[216] *See* Letter from David Grossman, Vice President, Regulatory Affairs, CTA, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 23-239, at 1-2 (Feb. 8, 2024).

[217] This approach necessitates a mechanism for the Commission to recognize administrators, and we accordingly adopt a rule doing so. *See infra* Appx. A, 47 CFR § 8.219. We model our approach on analogous elements of our equipment authorization rules, with which the Commission and industry have substantial experience, and which have proven workable in practice. *See* 47 CFR § 2.949. We delegate to PSHSB and OMD authority to take any necessary steps, including adoption of additional procedures and any applicable fees (pursuant to any required public notice and comment), as necessary to ensure compliance with the Communications Act with respect to any rules adopted here that contemplate the filing of applications directly with the Commission. 47 U.S.C. § 158(c).

[218] ISO/IEC 17065:2012(E), *Conformity assessment—Requirements for bodies certifying products, processes and services*, First Edition, 2012–09–15, IBR approved for § 8.220. ISO/IEC 17065:2012, *Conformity Assessment* –

(continued….)

appropriate scope.[219] We recognize that CLAs cannot obtain accreditation to the FCC scope until after the Commission adopts standards and testing procedures. As such, the Commission will accept and conditionally approve CLA applications from entities that meet the other FCC program requirements and commit to obtain ISO/IEC 17065 accreditation with the appropriate scope within six (6) months of the effective date by the adopted standards and testing procedures. CLA approval to authorize use of the FCC IoT Label will be finalized upon receipt and demonstration to the Commission of ISO/IEC 17065 accreditation with the appropriate scope.[220]

7. Demonstrate implementation of controls to eliminate actual or potential conflicts of interests (including both personal and organizational), particularly with regard to commercially sensitive information, to include but not limited to, remaining impartial and unbiased and prevent them from giving preferential treatment to certain applications (e.g., application line jumping) and from implementing heightened scrutiny of applications from entities not members or otherwise aligned with the CLA.
8. That the applicant is not owned or controlled by or affiliated[221] with any entity identified on the Commission's Covered List or is otherwise prohibited from participating in the IoT Labeling Program. We will dismiss all CLA applications from an entity (company) identified on the Commission's Covered List, the Department of Commerce's Entity List,[222] and the Department of Defense's List of Chinese Military Companies.[223]
9. That the applicant is not owned or controlled by or affiliated with any person or entity that has been suspended or debarred from receiving federal procurements or financial awards, to include all entities and individuals published as ineligible for award on the General Service Administration's System for Award Management.[224]
10. In addition to completing the CLA application information, entities seeking to be the Lead Administrator will submit a description of how they will execute the duties of the Lead Administrator, including:
    a. their previous experience in IoT cybersecurity;

Requirements for Bodies Certifying Products, Processes and Services, https://anab.ansi.org/standard/iso-iec-17065/ [https://perma.cc/8LLA-MQ39].

[219] The scope of CLA's ISO/IEC 17065 certification includes certifying IoT products and devices for compliance with FCC cybersecurity standards.

[220] Consistent with standard practice for accreditation, the organization accrediting the CLAs must be recognized by the Bureau to perform such accreditation based on International Standard ISO/IEC 17011. ISO/IEC 17011:2017.

[221] For purposes of this IoT labeling program an "affiliate" is defined as "a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this part the term 'own' means to own an equity interest (or the equivalent thereof) of more than 10 percent." *See* 47 U.S.C. § 153(2).

[222] *See* Bureau of Industry and Security, U.S. Department of Commerce, Supplement No. 4 to Part 744 – Entity List (2023), https://www.bis.doc.gov/index.php/documents/regulations-docs/2326-supplement-no-4-to-part-744-entity-list-4/file [https://perma.cc/STW5-B8GW].

[223] *See* Entities Identified as Chinese Military Companies Operating in the United States in Accordance with Section 1260H of the William M. ("Mac") Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116-283), Tranche 2, U.S. Department of Defense (2022), https://media.defense.gov/2022/Oct/05/2003091659/-1/-1/0/1260H%20COMPANIES.PDF [https://perma.cc/5LMA-LZLG].

[224] *See* U.S. General Services Administration System for Award Management, *Exclusion Types*, https://sam.gov/content/entity-information/resources/exclusion-types [https://perma.cc/5L45-LKCJ] (last visited Feb. 15, 2024).

b. what role, if any, they have played in IoT labeling;

c. their capacity to execute the Lead Administrator duties outlined in this *Order*;

d. how they would engage and collaborate with stakeholders to identify or develop the Bureau recommendations discussed in this *Order*;

e. a proposed consumer education campaign; and

f. additional information the applicant believes demonstrates why they should be the Lead Administrator.

60. For items #7 and #8, we note that the record raises national security considerations when selecting a Label Administrator. For example, CTIA urges that the Commission "exclude all entities on the Covered List (not just those included on the list for producing equipment), all entities on the other lists identified in the *IoT Labeling NPRM*, as well as entities that are otherwise banned from federal procurement."[225] CTIA explains that these broad exclusions for program participation are necessary because of "the unique nature of the proposed labeling program – namely that it is both government-administered and voluntary – counsels in favor of painting with a broad brush on national security-based exclusions."[226] We agree with the commenters in the record, and consistent with our reasoning herein addressing the exclusion of certain products that would raise potential national security concerns, we also prohibit entities owned or controlled by or affiliated with entities that produce equipment found on the Covered List, as well as entities specified on the other lists referenced above or those suspended or debarred from receiving federal procurements or financial awards from being a CLA in view of national security considerations and to insure the integrity of the IoT Labeling Program. Each of these lists represent the determination of relevant Federal agencies that the entities on the list may pose a national security threat within their respective areas, and as such we find that it is not in the public interest to permit these entities to provide assurances to the American public that products meet minimum cybersecurity standards. Importantly, we are only excluding the entities of the lists from a voluntary program under which the FCC approves their capability to oversee cybersecurity certification testing for purposes of the IoT Label. Insofar as the FCC IoT Label reflects the FCC's signal to consumers about cybersecurity, it is reasonable for us to take a cautious approach when approving entities to conduct the underlying product evaluations when relevant Federal Agencies have expressed security concerns with the entity.

61. NCTA also suggests that 'any "foreign entity of concern' as defined by the CHIPS Act should be ineligible for certification or recognition as a CyberLAB."[227] Further, ioXt Alliance recommends that the Commission "establish rules to ensure CyberLABs are not subject to undue influence by foreign adversaries."[228] We agree that it would be problematic for the U.S. to rely on the determination of entities controlled or affiliated with "foreign adversaries" as to the security of products approved to use the Cyber Trust Mark, and therefore the FCC will not recognize for purposes of the IoT Labeling Program any applicant that is an entity, its affiliate, or subsidiary owned or controlled by a "foreign adversary" country. A "foreign adversary" country is defined in the Department of Commerce's rule, 15 CFR § 7.4,[229] and includes China (including Hong Kong), Cuba, Iran, North Korea, Russia, and

[225] CTIA Reply at 7.

[226] CTIA Comments at 41.

[227] NCTA Comments at 8.

[228] ioXt Alliance Reply at 6.

[229] 15 CFR § 7.4 (stating "[t]he Secretary has determined that the following foreign governments or foreign non-government persons have engaged in a long-term pattern or serious instances of conduct significantly adverse to the national security of the United States or security and safety of United States persons and, therefore, constitute foreign adversaries solely for the purposes of the Executive Order, this rule, and any subsequent rule" promulgated (continued….)

Maduro Regime. We do not otherwise see a basis to preclude other foreign entities from serving as CLAs, but at this preliminary stage of establishing the IoT Labeling Program—where no international agreements are yet in place in this regard, and oversight details continue to be effectuated—we defer action in this regard. We delegate authority to PSHSB, in consultation with OIA, to evaluate and (after any appropriate public notice and comment) establish qualification criteria for any entity outside the United States to be approved to act as a CLA once any appropriate international agreements or other appropriate prerequisites are in place.

62. We decline to require that a CLA be a non-profit. In the *IoT Labeling NPRM*, we sought comment on whether the CLA should be required to be a non-profit entity.[230] The Cybersecurity Coalition recommends that the CLA be a non-profit entity, but did not elaborate on why, focusing their comments on having a neutral, independent third-party that followed consistent pricing guidelines and had industry experience and strong security practices.[231] Researchers from the Northeastern University's College of Engineering similarly agreed that the Label Administrator should be a non-profit while emphasizing that the CLA should not have conflicts of interest.[232] We decline, however, to require that the CLA be a non-profit organization, recognizing that there may be well-qualified companies that may be for-profit organizations or non-profit organizations that possess the other relevant qualifications. We agree with what appear to be the underlying concerns of the record, that the CLA be neutral, have the knowledge outlined above, (e.g., knowledge regarding FCC rules, IoT cybersecurity standards and testing procedures), and be free of conflicts.[233] However, we believe that a company that satisfies the above requirements could carry out the CLA duties without being a non-profit organization. Moreover, expanding the pool of potential participants should increase the likelihood that a reasonable number of qualified entities apply to fulfill the specified roles. In addition, the record did not highlight reasons why a for-profit company would be incapable of fulfilling the role of label administrator.

63. Termination of CLA Authority. To address national security concerns, the authority of CLAs to grant applications to use the FCC IoT Label under the IoT Labeling Program will automatically terminate if the CLA subsequently becomes owned or controlled by or affiliated with an entity that produces equipment found on the Covered List, or otherwise added to any exclusionary list identified in this item as precluding authorization as a CLA. In addition, a CLA's authority may also be terminated for failure to uphold the required competencies or accreditations enumerated above. We delegate authority to PSHSB, to determine if a CLA's authority is to be terminated in the latter circumstance, and to terminate such authorization.[234] PSHSB, may identify such CLA deficiencies itself or receive notice from other

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pursuant to the Executive Order); *see* 15 CFR § 7.2 ("Foreign adversary means any foreign government or foreign non-government person determined by the Secretary to have engaged in a long-term pattern or serious instances of conduct significantly adverse to the national security of the United States or security and safety of United States persons."); *see* Executive Order 13873 of May 15, 2019, Securing the Information and Communications Technology and Services Supply Chain, 84 Fed. Reg. 22689 (May 15, 2019).

[230] *IoT Labeling NPRM* at 11, para. 24.

[231] Cybersecurity Coalition Comments at 5.

[232] Northeastern University College of Engineering Comments at 3 ("Ideally, administrators should [be a] non-profit academia-based organization with connections to the industry but no conflict of interest.").

[233] *See, e.g.*, Cybersecurity Coalition Comments at 5; Northeastern University College of Engineering Comments at 3.

[234] Because of the public safety importance of a CLA having the requisite qualifications and adhering to our rules when evaluating requests to use the FCC IoT Label, this process should proceed appropriately expeditiously to minimize any periods of time where a CLA continues to operate in that capacity once concerns have come to PSHSB's attention. In particular, PSHSB shall provide notice to the CLA that the Bureau proposes to terminate the CLA's authority and provide the CLA a reasonable opportunity to respond (not more than 20 days) before reaching a decision on possible termination. PSHSB may suspend the CLA's ability to issues labeling authorizations during the pendency of such consideration if appropriate.

entities, including other agencies, consumers, and industry, that products granted authorization by a CLA do not accurately reflect the security posture of the product. Products authorized to use the FCC IoT Label by a disqualified CLA will be subject to the disqualification procedures described further below.

64. *CLA Application Filing Window*. We delegate authority to the Bureau to issue a Public Notice opening the initial filing window to receive applications from entities seeking authority to be recognized as a CLA (and Lead Administrator) under the IoT Labeling Program with instructions on how to apply and further details on the qualifications required of CLA applicants as well as the decision criteria used to select applicants. We also delegate to the Bureau authority to open additional filing windows or otherwise accept additional applications for authority to be recognized by the Bureau as a CLA when and as the Bureau determines it is necessary. Interested parties must establish they meet the requirements established in this *Order*. The Commission notes that it may refer applications to the U.S. Committee for the Assessment of Foreign Participation in the U.S. Telecommunications Sector (Team Telecom) for their review and consideration of national security and law-enforcement risks.[235] We further delegate authority to PSHSB in coordination with the Office of the Managing Director (OMD) (specifically Office of the Chief Information Officer) and, to the extent necessary, the Office of General Counsel (OGC) (specifically the Senior Agency Official for Privacy), to receive and review each application for compliance with the criteria established in this *Order*. We also delegate to PSHSB authority to adopt additional criteria and administrative procedures necessary to efficiently select one or more independent, non-governmental entities, to act as CLA(s) and Lead Administrator. The Lead Administrator must provide equitable recommendations to the Commission to encourage the broadest possible participation of CLAs within the parameters of the FCC's rules.[236] We also delegate to PSHSB authority to adopt additional criteria and procedures in the event the Lead Administrator must be replaced or chooses to withdraw from its responsibilities.[237] We delegate authority to PSHSB to release a Public Notice announcing the CLA(s) selected by the Bureau and next steps for each entity, including but not limited the execution of appropriate documentation governing the details of the CLA's responsibilities. Moreover, we delegate to PSHSB and OMD authority to take any necessary steps, including adoption of additional procedures and any applicable fees after selection of the CLAs, if necessary to ensure compliance with the Communications Act or applicable government-wide statutes that are implicated by the IoT Labeling Program. Finally, we also delegate authority to PSHSB and OMD, in consultation with OGC, to take any additional actions necessary to preserve the Commission's rights to the Cyber Trust Mark under trademark and other applicable laws. Only entities who have followed the procedures required by PSHSB and OMD and executed relevant required documentation will be authorized by the Commission to accept and grant applications authorizing the use of the FCC IoT Label, which includes the Cyber Trust Mark and QR Code.

D. CyberLABs, CLA-Run Labs, and In-House Testing Labs

65. The *IoT Labeling NPRM* sought comment on how IoT devices or products could demonstrate compliance with IoT security standards.[238] In the *IoT Labeling NPRM*, the Commission proposed the IoT Labeling Program could draw from the Commission's organizational structure for approving RF equipment when developing a process for assessing IoT devices and products for compliance with the IoT cybersecurity standards. In this case, the Commission proposed naming third

[235] *Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, Order 36 FCC Rcd 14848 (2021).

[236] We also agree with CTA in highlighting the importance of PSHSB's involvement in matters where the Lead Administrator and CLAs may share vested interests. *See* Letter from J. David Grossman, Vice President, Regulatory Affairs, CTA & Mike Bergman, Vice President, Technology & Standards, CTA, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 23-239, at 3 (filed Mar. 4, 2024).

[237] We recognize the potential raised by ioXt Alliance for anticompetitive preferences in recommendations made to the Bureau if a CLA is chosen as Lead Administrator. *See* ioXt *Ex Parte*.

[238] *IoT Labeling NPRM* at 11, para. 25.

parties with expertise in security and compliance testing to fill this role and proposed to call these entities CyberLABs.[239]

66. The Commission envisioned the role of CyberLABs as assessing IoT devices or products for compliance against IoT security standards, once developed.[240] The Commission sought comment on whether the Commission or one of the authorized label administrators would evaluate, accredit, or recognize the CyberLABs, noting that it was seeking to ensure that CyberLABs have the necessary expertise and resources to properly test and assess whether IoT devices and products are in compliance with the IoT security standards.[241] To become accredited and FCC-recognized for the proposed IoT Labeling Program, the Commission proposed the submission of applications demonstrating the applicant CyberLAB met the following requirements:

- Qualifications: The CyberLAB has technical expertise in cybersecurity testing and conformity assessment of IoT devices and products.
- Resources: The CyberLAB has the necessary equipment, facilities, and personnel to conduct cybersecurity testing and conformity assessment of IoT devices and products.
- Procedures: The CyberLAB has documented procedures for conformity assessment.
- Continued competence: Once accredited and recognized, CyberLABs would be periodically audited and reviewed to ensure they continue to comply with the IoT security standards and testing procedures.[242]

67. We adopt our proposal to accept CyberLABs, in-house labs, and CLA-run labs, to test and assess IoT products for compliance with the consumer IoT standards that are established pursuant to the process described above to actualize the outcome of the NIST criteria. Rather than having the Commission or CLA evaluate or accredit a lab, however, we are persuaded that it is appropriate to recognize testing labs that have been accredited to ISO/IEC 17025 standards to conduct compliance testing that would support an application for authority to affix the FCC IoT Label.[243] Consistent with standard practice for accreditation, the organization accrediting the testing labs must be recognized by the Bureau to perform such accreditation based on International Standard ISO/IEC 17011.[244] We recognize that labs cannot be accredited or recognized in the context of this IoT Labeling Program until after the IoT cybersecurity standards have been approved by the Commission and incorporated into the Commission's rules. We delegate authority to PSHSB to publish a Public Notice, subject to any required notice and comment, outlining the specific standards CyberLABs, in-house labs, and CLA-run labs must meet to be recognized as qualified to conduct conformity testing to support applications seeking authority to use the FCC IoT Label. We also find it to be in the public interest for the Lead Administrator to review and recognize labs that meet these accreditation requirements and make a list of recognized labs publicly available.[245]

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[239] *Id.* at 11-12, para. 25.

[240] *Id.*

[241] *Id.* at 12, para. 26.

[242] *Id*.

[243] *See, e.g.,* AHAM Comments at 3; CSA Comments at 5-6; CTA Comments at 16-18; CTIA Comments at 26-27; Cybersecurity Coalition Comments at 5; ITI Comments at 8; and Widelity Comments at 3. We note that our rules will incorporate certain standards by reference, and we delegate authority to PSHSB to take any additional steps necessary, including non-substantive edits to the rule text, to effectuate the incorporation by reference.

[244] ISO/IEC 17011:2017.

[245] To enable the Lead Administrator to compile a reliable and verifiable list, we require accredited CyberLABs to submit certain information to the Lead Administrator: (1) Laboratory name, location of test site(s), mailing address and contact information; (2) Name of accrediting organization; (3) Scope of laboratory accreditation; (4) Date of

(continued….)

68. We agree with CTIA that entities specializing in testing and certification will be valuable to program participants, and that such entities are likely to have the resources and expertise to evaluate IoT products in accordance with a standard.[246] CTIA also notes, "a third-party certification model will help to lend credibility to the program" because CyberLABs can focus on the assessment aspects of the program in a way that helps ensure the integrity of the IoT Labeling Program.[247] We also agree with CTA that leveraging accredited industry bodies to perform conformity assessments will "speed the establishment of the program and increase the program's ultimate quality."[248]

69. We agree with CSA's argument that the Commission should adopt a model where CyberLABs must be ISO/IEC 17025 accredited.[249] CSA notes its confusion as to whether CyberLABs were intended to be "certification bodies" as defined by ISO/IEC 17065 or "evaluation laboratories" as defined by ISO/IEC 17025.[250] We clarify that the proposal as envisioned by the *IoT Labeling NPRM* and adopted here is for CyberLABs, in-house labs, and CLA-run labs to function as a body responsible for assessing the security of IoT products[251] (i.e., testing lab). CSA proposes that such bodies hold ISO/IEC 17025 accreditations, as this model has been the basis for mutual recognition agreements in the cybersecurity industry,[252] and we agree.

70. We note the objection of LG Electronics, which asserts that "[t]he CyberLAB concept described in the NPRM would almost certainly create a testing bottleneck" that would slow the process, and deter participation in the IoT Labeling Program.[253] Instead, LG Electronics argues, self-certification is required to avoid these problems, although LG Electronics concedes that some compliance certification is required to participate in the IoT Labeling Program.[254] As a nascent program, and as discussed above in connection with the envisioned process, we do not find it appropriate to adopt at this time a labeling path that does not include some level of laboratory testing in combination with an application to a CLA to ensure the product bearing the FCC IoT Label complies with the IoT Labeling Program's requirements. However, we recognize the benefits of time, efficiency and cost-savings associated with in-house testing and will allow the option for applicants to use an in-house testing labs, provided the lab is ISO/IEC 17025 accredited.

71. *CyberLABs' Programmatic Role.* CyberLABs will receive requests for conformance testing from manufacturers seeking to use the FCC IoT Label and will assess and test the products using the cybersecurity standards developed by industry and approved by the Commission and provide the applicant with a report of their findings. There was confusion in the record with how the term CyberLAB

expiration of accreditation; (5) Designation number; (6) FCC Registration Number (FRN); (7) A statement as to whether or not the laboratory performs testing on a contract basis; (8) For laboratories outside the United States, details of the arrangement under which the accreditation of the laboratory is recognized; and (9) Other information as requested by the Commission.

[246] CTIA Comments at 26.

[247] *Id.* at 27.

[248] *Id.* at 18.

[249] CSA Comment at 7.

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

[251] *See IoT Labeling NPRM* at 11-12, para. 25.

[252] CSA Comments at 7.

[253] LG Electronics Comments at 2.

[254] *Id.* ("Self-certification would help avoid these problems without compromising program integrity."); *see also* Cybersecurity Coalition Comments at 6 ("The Coalition is concerned that the structure envisioned in [the *IoT labeling NPRM*] will be complex, costly, and introduce bottlenecks into the label approval process.").

is to be applied.[255] The Commission clarifies that the CyberLABs are laboratories whose role is limited to conducting compliance tests and generating reports. CyberLABs are not, in the organizational structure adopted today, either certifying products or issuing authorization to use the FCC IoT Label. While the *IoT Labeling NPRM* defined a CyberLAB as an "authorization body" we remove that reference here as the term "authorization body" might be seen as referring to certification bodies, not laboratories. The role of CyberLABs is to conduct the required tests and generate test reports for use by the applicant in seeking CLA authorization to use the FCC IoT Label.

72. *In-House Testing Lab*. We also adopt an option for manufacturers to use an accredited and Lead Administrator-recognized in-house testing lab to perform the cybersecurity conformity testing for their IoT products, provided the in-house lab meets the same vigorous standards as the CyberLABs. In the *IoT Labeling NPRM*, the Commission sought comment on whether there is an avenue for "a comprehensive review that an IoT device or product compl[ies] with the IoT security standards."[256] We received significant support in the record for an in-house testing option. Samsung argues that, to encourage widespread adoption, the Commission must allow manufacturers an option to perform in-house testing to receive the label.[257] The Cybersecurity Coalition urges the Commission to allow for in-house testing.[258] We agree that an in-house testing option, for some manufacturers, will be more cost-effective, encourage participation in the IoT Labeling Program, and when combined with the filing of an application with a CLA can assure quality and trust in the IoT Labeling Program.[259] However, we do require that in-house labs meet the same accreditation and recognition requirements as CyberLABs. In this respect, consumers may be assured that the label achieved on an in-house basis meets the same standards as those tested elsewhere, promoting consistency and reliance on the IoT Labeling Program generally. We also expect that ensuring a common baseline testing standard will ultimately aid in the ability to gain international recognition of the Cyber Trust Mark.

73. *CLA-Run Testing Lab*. We also recognize that CLAs may also have, or seek to have, their own in-house labs conduct conformity testing for applicants seeking certification to use the Mark. The Commission finds no need to limit the number of potential testing facilities by prohibiting CLA-run labs from also being considered recognized labs. Applicants who wish to do so, may file an application with an authorized CLA and request the services of the CLA's accredited and Lead Administrator-recognized lab. Again, the Commission requires CLA labs to meet the same accreditation and recognition requirements as CyberLABs. Only after a lab has been accredited by a recognized accreditation body may the lab file an application with the Lead Administrator seeking to be recognized as an approved cybersecurity testing lab.[260] As explained by A2LA, "[a]ccreditation is a means of determining the technical competence of conformity assessment organizations such as laboratories using

[255] CSA Comments at 6 ("[CSA] believes that using the new term "CyberLAB" will generate confusion. Because "CyberLAB" includes "LAB" in the name, Alliance members who read the FCC NPRM thought that the CyberLAB was an ISO 17025 organization (an "Evaluation Laboratory"). After carefully reviewing paragraph 25, it seems clear that "CyberLABs" are intended to operate as Certification Bodies, as described in ISO 17065.).

[256] *IoT Labeling NPRM* at 15, para. 32.

[257] Samsung Comments at 5.

[258] Cybersecurity Coalition at 6.

[259] *See* CSA Comments at 7-8.

[260] This approach necessitates a mechanism for the Commission to recognize lab accreditation bodies, and we accordingly adopt a rule doing so. *See infra* Appx. A, 47 CFR § 8.218. We model our approach on analogous elements of our equipment authorization rules, with which the Commission and industry have substantial experience, and which have proven workable in practice. *See* 47 CFR § 2.949. We delegate to PSHSB and OMD authority to take any necessary steps, including adoption of additional procedures and any applicable fees (pursuant to any required public notice and comment), as necessary to ensure compliance with the Communications Act with respect to any rules adopted here that contemplate the filing of applications directly with the Commission. 47 U.S.C. § 158(c).

qualified, third-party accreditation bodies. It assures federal government agencies as well as private sector organizations that assessments conducted by accreditation bodies are objective and reliable and that one can have confidence in the data generated by the accredited testing laboratory."[261] Recognizing that, whether an IoT product is evaluated by a CyberLAB, CLA-run lab, or an in-house lab there is a need to ensure equal rigor in the process, this requirement applies to in-house testing labs and third-party testing labs (CyberLABs and CLA-run labs). For ease of understanding, when we refer to CyberLABs below, we are including CyberLABs, in-house testing labs, and CLA-run labs.

74. In order to achieve recognition by the Lead Administrator, all labs seeking recognition under the Commission's IoT Labeling Program must submit evidence of accreditation in the form of an attestation from an accreditation body that the prospective lab has demonstrated:

1. Technical expertise in cybersecurity testing and conformity assessment of IoT devices and products. Compliance with all requirements associated with ISO/IEC 17025. If we determine that other ISO standards or other relevant requirements are missing, the Commission will provide guidance to industry on how they may be addressed.
2. Knowledge of FCC rules and procedures associated with IoT cybersecurity compliance testing and certification.
3. Necessary equipment, facilities, and personnel to conduct cybersecurity testing and conformity assessment of IoT devices and products.
4. Documented procedures for IoT cybersecurity conformity assessment.
5. Demonstrated implementation of controls to eliminate actual or potential conflicts of interests (including both personal and organizational), particularly with regard to commercially sensitive information.
6. That the applicant is not owned or controlled by or affiliated with any entity that produces equipment on the FCC Covered List or is otherwise prohibited from participating in the IoT Labeling Program. We will dismiss all applications from a company named on the Department of Commerce's Entity List, the Department of Defense's List of Chinese Military Companies.
7. That the applicant is not owned or controlled by or affiliated with any person or entity that has been suspended or debarred from receiving federal procurements or financial awards, to include all entities and individuals published as ineligible for award on the General Service Administration's System for Award Management.

75. Once accredited and recognized, the testing labs will be periodically audited and reviewed by the accreditation body to ensure they continue to comply with the IoT security standards and testing procedures.

76. Concerning items #6 and #7, national security considerations must be considered when allowing testing labs to participate because of "the unique nature of the proposed labeling program."[262] As recommended in the record and consistent with our exclusions as to eligible products and eligibility to serve as a third-party administrator, all entities owned or controlled by or affiliated with entities that produce equipment found on the Covered List, as well as entities specified on the other U.S. government exclusionary lists referenced above are prohibited from serving as a CyberLAB.[263] Each of these lists represent the determination of relevant Federal agencies that the entities on the list may pose a national security threat within their respective areas, and as such we find that we cannot give U.S. Government endorsement to their security testing while claiming they pose such a threat. Insofar as the label reflects the FCC's signal to consumers about cybersecurity, it is reasonable for the FCC to take a cautious

[261] A2LA Comments at 4.

[262] CTIA Comments at 41.

[263] CTIA Reply at 7.

approach especially for those products for which relevant Federal agencies have expressed other security concerns with the testing lab.

77. NCTA also suggests also suggests that "any 'foreign entity of concern' as defined by the CHIPS Act should be ineligible for certification or recognition as a CyberLAB."[264] Further, ioXt Alliance recommends that the Commission "establish rules to ensure CyberLABs are not subject to undue influence by foreign adversaries."[265] We agree that it would be problematic for the U.S. to rely on the determination of entities controlled or affiliated with "foreign adversaries" as to the security of products approved to use the Cyber Trust Mark, and therefore the Lead Administrator will not recognize for purposes of the IoT Labeling Program any testing lab that is an entity, its affiliate, or subsidiary owned or controlled by a "foreign adversary" country. A "foreign adversary" country is defined in the Department of Commerce's rule, 15 CFR § 7.4,[266] and includes China (including Hong Kong), Cuba, Iran, North Korea, Russia, and Maduro Regime. Because of the role CLAs will play in the labeling program, we find that the concerns related to entities identified as "foreign adversaries" are equally applicable to entities acting as CLAs as they are testing labs.[267] To avoid these issues, the record suggests requiring testing labs certify compliance with the Commission's rules, including the rules pertaining to the Covered List.[268] Accordingly, we find it appropriate that each testing lab must certify to the truth and accuracy of all information included in its recognition application and immediately update the information if the information changes.

78. We also note that Garmin advocates even stricter measures on the testing labs, suggesting that the labs be "located in the U.S."[269] We decline to require physical location within the U.S. to avoid "unnecessarily limiting the pool of legitimate CyberLABs approved to conduct testing and conformity assessment for the Mark."[270] Further, the record indicates that this stricter approach "would vastly diminish manufacturers' abilities to select and access evaluation labs, conduct proper risk management and promote competition and diversity in the lab market."[271] Such a restriction might also unduly limit the ability of legitimate foreign corporations that do not raise national security concerns to participate in the IoT Labeling Program to the detriment of the goal of elevating the cybersecurity posture of those IoT devices sold in the U.S. and to promote international recognition of the Cyber Trust Mark. We delegate authority to the Bureau to adopt any additional criteria or procedures necessary with respect to labs located outside of the United States.

79. Terminating CyberLAB Testing Authority. To address national security concerns, the CyberLAB recognition afforded to entities under this IoT Labeling Program will be automatically terminated for entities that subsequently become affiliated with an entity that is owned or controlled by or

[264] NCTA Comments at 8.

[265] ioXt Alliance Reply at 6.

[266] 15 CFR § 7.4 (stating "[t]he Secretary has determined that the following foreign governments or foreign non-government persons have engaged in a long-term pattern or serious instances of conduct significantly adverse to the national security of the United States or security and safety of United States persons and, therefore, constitute foreign adversaries solely for the purposes of the Executive Order, this rule, and any subsequent rule" promulgated pursuant to the Executive Order); *see* 15 CFR § 7.2 ("Foreign adversary means any foreign government or foreign non-government person determined by the Secretary to have engaged in a long-term pattern or serious instances of conduct significantly adverse to the national security of the United States or security and safety of United States persons."); *see* Executive Order 13873 of May 15, 2019, Securing the Information and Communications Technology and Services Supply Chain, 84 Fed. Reg. 22689 (May 15, 2019).

[267] *See supra* para. 76.

[268] NCTA Comments at 8.

[269] Garmin Comments at 15.

[270] ioXt Alliance Reply at 6.

[271] CTA Comments at 27.

affiliated with entities that produce equipment placed on the Covered List, or that are otherwise added to any exclusionary list identified in this item as precluding authorization as a CyberLAB. CyberLAB testing authority may also be terminated for failure to uphold the required competencies or accreditations enumerated above. We delegate authority to the Bureau to determine when a CyberLAB's authority is to be terminated, and to terminate such authorization.[272] The Bureau may identify such deficiencies itself or receive notice from other entities, including other agencies, consumers, and industry, that products tested by a CyberLAB do not accurately reflect the security posture of the product. Products authorized to use the FCC IoT Label by a disqualified CyberLAB will be subject to the disqualification procedures described further below.

80. *Fees.* To fulfill their role, as envisioned by the *IoT Labeling NPRM*,[273] we authorize CyberLABs to charge reasonable fees to conduct the tasks adopted today. The *IoT Labeling NPRM* proposed a fee calculation methodology adopted by the Commission in the *2020 Application Fee Report and Order* and sought comment on whether any oversight is needed by the Commission over such charges.[274] We did not receive any comments on the suitability of the approach proposed in the *IoT Labeling NPRM* or detailed comments about the degree of oversight the Commission should conduct over the charges. We recognize the Cybersecurity Coalition's comments that high fees would deter participation in the IoT Labeling Program.[275] We anticipate that there will be multiple CyberLABs authorized through the approach adopted today, and we believe that market competition will ensure fees are reasonable, competitive, and accessible while covering the costs incurred by the CyberLABs in performing their designated tasks. We believe this addresses the concerns raised by the Cybersecurity Coalition and renders the approach proposed in the *IoT Labeling NPRM* unnecessary. The National Association of Manufacturers rightly indicates, however, that the fee structure for CyberLABs will necessitate "robust protections to ensure that CyberLABs focus on the underlying mission of protecting the public rather than boosting their revenues."[276] We delegate to the Bureau, in connection with OMD, to review and reconsider if necessary whether the level and structure of the fees should be regulated by the Commission.

E. Two-Step Process for Obtaining Authority to Use the FCC IoT Label

81. The Commission adopts a two-step process for a manufacturer seeking authority to use the FCC IoT Label, which includes (1) product testing by an accredited and Lead Administrator-recognized lab (e.g., CyberLAB, CLA lab, or an in-house lab) and (2) product label certification by a CLA. In the *IoT Labeling NPRM*, the Commission sought comment on the different processes that may be taken to assess conformity of consumer IoT products and devices to the Commission's IoT labeling

[272] Because of the public safety importance of a CyberLAB having the requisite qualifications and adhering to our rules when evaluating requests to use the FCC IoT Label, this process should proceed appropriately expeditiously to minimize any periods of time where a CyberLAB continues to operate in that capacity once concerns have come to PSHSB's attention. In particular, PSHSB shall provide notice to the CyberLAB that the Bureau proposes to terminate the CyberLAB's authority and provide the CyberLAB a reasonable opportunity to respond (not more than 20 days) before reaching a decision on possible termination. PSHSB may suspend the CLA's ability conduct product testing during the pendency of such consideration if appropriate.

[273] *IoT Labeling NPRM* at 20, para. 50. ("We anticipate that . . . third parties in this program may wish to charge for their services[.]).

[274] *See id.*; *Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1109 of the Commission's Rules*, MD Docket No. 20-270, Report and Order, 35 FCC Rcd 15089, 15127, para. 115-117 (2020). Application fees are adjusted every two years to reflect changes in the Consumer Price Index. *See, e.g., Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1109 of the Commission's Rules*, MD Docket No. 20-270, Order, FCC 22-94 (2023).

[275] Cybersecurity Coalition Comments at 14.

[276] NAM Comments at 4.

rules.[277] The *IoT Labeling NPRM* noted that the Commission's equipment authorization program, as currently administered, only allows for two authorization procedures: (1) Certification (which requires the filing of an application) and (2) Supplier's Declaration of Conformity (SDoC).[278] In the context of this IoT Labeling Program and as discussed in detail below, we find that in order to ensure the integrity of this nascent program, that the FCC IoT Label certification process will include a two-step process involving (1) the use of an accredited and Lead Administrator-recognized laboratory (CyberLAB, CLA lab, or in-house lab) to test the IoT product for compliance to FCC rules and generate a test report; and (2) an application to an FCC-recognized CLA (i.e., an accredited certification body) to certify the product as fully compliant with all relevant FCC IoT Labeling Program rules.

1. Product Testing by an Accredited and Recognized Lab

82. The record is split on the processes the Commission should adopt for manufacturers to follow when seeking to use the FCC IoT Label, specifically with regard to whether it is necessary for a third-party to review and verify the product meets all of the IoT Labeling Program requirements, including product testing, or if the manufacturer should be afforded the opportunity to "self-declare" compliance and affix the FCC IoT Label without third-party verification.[279]

83. UL Solutions, TÜV SÜD, and TIC Council Americas recommend that the Commission require all applications to be supported by conformity testing conducted by an accredited lab (e.g., ISO/IEC 17025 accredited),[280] and submitted to a third-party for verification of compliance with the Commission's program requirements.[281] Others argue the Commission should accept a declaration of

[277] *IoT Labeling NPRM* at 15, para. 32; *see also* ISO/IEC 17000:2004, Conformity assessment - Vocabulary and general principles, defines conformity assessment as "demonstration that specified requirements relating to a product, process, system, person or body are fulfilled." Conformity assessment includes sampling and testing, inspection, supplier's declaration of conformity, certification, and management system assessment and registration. It also includes accreditation of the competence of those activities by a third-party and recognition (usually by a government agency) of an accreditation program's capability. ANSI, National Conformity Assessment Principles for the United States (2007), https://share.ansi.org/Shared%20Documents/News%20and%20Publications/Brochures/NCAP%20second%20edition.pdf [https://perma.cc/2H5E-VSDH].

[278] The *IoT Labeling NPRM* used the SDoC process, self-attestation and self-certification interchangeably. However, we clarify that the inclusion of these new terms was not an indication of change of policy or regulations to equipment authorization rules or any FCC rules.

[279] As explained by A2LA, "[a] common practice in conformity assessment is self-declaration. This is when organizations test and inspect their own products and declare that they meet a standard. Caution needs to be practiced due to the bias inherent in self-declaration. Accreditation is a means of determining the technical competence of conformity assessment organizations such as laboratories using qualified, third-party accreditation bodies. It assures federal government agencies as well as private sector organizations that assessments conducted by accreditation bodies are objective and reliable and that one can have confidence in the data generated by the accredited testing laboratory." A2LA Comments at 4.

[280] UL Solutions Comments at 2 (supporting conformity testing by an in-house lab, but only where the testing is aligned to ISO 17025 requirements, which will "enable a standardized approach and level playing field."); TÜV SÜD Comments at 3 (opposing allowing manufacturers to perform self-assessments in their internal labs because the results are not independent); TIC Council Americas Comments at 6 ("[Due to the] higher level of risk associated with the cybersecurity of IoT products, the complex technical nature of the testing, and the need for consistent and impartial adherence to the standards for the fidelity of the label and the benefit of the consumer—testing for the authorization of the use of the label should only be performed by those with the recognized competency to do so. Self-assessment by manufacturers to the program's standards should be permitted only where the manufacturer laboratory has met this bar, such as accreditation to ISO/IEC 17025.").

[281] UL Solutions Comments at 5-6 (explaining that given the high-threat environment in which IoT devices operate and the potential for digital and physical harms that can result from a cyberattack, requiring assessment by an independent third-party before a product bears the Cyber Trust Mark "best serves consumers and best enables the development of a consistent, effective, trustworthy program.").

conformity or self-certification,[282] while others recommend the Commission enter into agreements with each manufacturer to allow the manufacturer to conduct internal conformity testing of its products and self-certify compliance with the Commission's program requirements resulting in approval to use the Cyber Trust Mark without third-party involvement.[283] CTA, for example, contemplates a "Manufacturer Self-Attestation Process" where manufacturers apply to the Commission for access to a "Mark Self-Attestation License Agreement" between the manufacturer and the FCC. Under this process, the manufacturer provides documentation showing how it complies with the NIST Criteria and if the Commission agrees with the documentation, the parties execute the agreement. The license agreement will identify the limits of the manufacturer's license authority, which may be corporate-wide, on a divisional basis, or for a specific product line.[284]

84. To ensure the Cyber Trust Mark retains the highest level of integrity and consumer trust, we agree with commenters who caution against allowing testing by entities that are not accredited and recognized. We also agree with Garmin and AHAM, who recommend third-party verification of the information contained in a manufacturer's application to use the Cyber Trust Mark.[285] UL Solutions notes that while the Commission's equipment authorization process allows some products that pose a low risk of RF interference to be approved via an SDoC, there is no clear line to be drawn between low-risk and high-risk connected products when "IoT devices are significant targets for an ever- growing number of cybersecurity attacks."[286] In addition, UL Solutions points to the investigation conducted by the Government Accountability Office (GAO) into the ENERGY STAR program's initial reliance a supplier's declaration of conformity, which GAO found to be unreliable because GAO was able to obtain UL certification with blatantly non-conforming products.[287]

85. The Commission disagrees with commenters who believe the IoT Labeling Program should offer different methods of conformity assessment based on varying levels of risk and potential impact on consumers because doing so adds an unnecessary and significant layer of complexity to the

[282] Keysight Comments at 2; NAM Comments at 4; Samsung Comments at 5; NCTA Comments at 8-9 (suggesting "[c]onformity assessment by accredited third-party labs is an effective means to ensure that the Program reflects high cybersecurity standards," but if the Commission determines self-certification should be permitted, the self-certification should match the same administrative requirements and level of testing vigor offered by a CyberLAB and not afford manufacturers a way to bypass program requirements); CSA Comments at 12 (arguing that self-attestation or SDoC is critical to the success of the program, and manufacturers should be transparent about their results and applications should be reviewed by an ISO 17025 accredited entity for completeness and consistency with the Labeling Program requirements, but the "review should not involve re-testing the device as that would defeat the purpose of the self-attestation option–to reduce the cost and delay to market for innovative new products.").

[283] Garmin Comments at 5; CTA Comments at 24 ("The program should prioritize self-assessment and self-approval processes as the structure underlying a self-attestation option to use the Mark.").

[284] CTA Reply Comments at Annex, A-14 to A-15.

[285] *See* Garmin Comments at 13; *see also* AHAM Comments at 3 (arguing manufacturers should be permitted to conduct the required testing and provide a test report to a third-party certifier who reviews the test report and decides whether to adopt the results and certify that the product meets the Commission's program requirements and manufacturers should be able to be qualified as CyberLABs).

[286] UL Solutions Comments at 5 (citing e.g., David Paul, *IoT Devices See More Than 1.5bn Cyberattacks so Far This Year* (Sept. 13, 2021), https://www.digit.fyi/iot-security-kaspersky-research-attacks/ [https://perma.cc/B7E5-35BF]; James Coker, *Smart home experiences over 12,000 cyber-attacks in a week* (July 2, 2021), https://www.infosecurity-magazine.com/news/smart-home-experiences-cyber/ [https://perma.cc/D6L6-2GLH]; Jill McKeon, *IoT Malware Attack Volume up 123% in Healthcare* (July 28, 2022), https://healthitsecurity.com/news/iot-malware-attack-volume-up-123-in-healthcare).

[287] UL Solutions Comments at 5 (citing Government Accountability Office, Energy Star Program, Covert Testing Shows the Energy Star Program Certification Process Is Vulnerable to Fraud and Abuse, GAO-10-470 (2010), https://www.gao.gov/assets/files.gao.gov/assets/gao-10-470.pdf [https://perma.cc/9VB5-ZWTA] (GAO Report)).

process. The Commission recognizes the view of Keysight, NEMA, AIM, Whirlpool, AHAM, Consumer Reports, Garmin, NAM, ITI, and TIC Council Americas, who support self-attestation as an efficient and cost effective methodology for applicants to conduct conformity assessments.[288] However, the Commission agrees with A2LA, which urges caution with self-attestations of conformity "due to the bias inherent in self-declaration."[289] We also take into serious consideration the 2010 GAO Report that found the ENERGY STAR program in effect at that time, which was "primarily a self-certification program relying on corporate honesty and industry self-policing to protect the integrity of the Energy Star label,"[290] failed to require upfront third-party validation of manufacturers' self-reported claims of compliance with the program requirements, which resulted in the certification of bogus products as ENERGY STAR compliant.[291] ENERGY STAR has since changed the manner in which it certifies products as ENERGY STAR compliant, stating that in order "[t]o ensure consumer confidence in the ENERGY STAR label and to protect the investment of ENERGY STAR partners, the U.S. Environmental Protection Agency (EPA) requires all ENERGY STAR products to be third-party certified. Products are tested in an EPA-recognized laboratory and reviewed by an EPA-recognized certification body before they can carry the label."[292]

86. As such, in light of the nascent nature of the IoT Labeling Program, lessons learned in the ENERGY STAR context, and the need to ensure that the Cyber Trust Mark garners sufficient trust by consumers to be viewed as providing accurate information and manufacturer participation, we find that allowing a path to "self-attestation" is not appropriate at this time. While such a path may provide for prompt time to market for the Cyber Trust Mark itself, the concerns regarding the Mark's integrity at this initial stage counsel against "self attestation." Moreover, we anticipate that the benefits and level of efficiency afforded manufacturers by the ability to use in-house labs will mitigate the additional process associated with certification by a CLA, as discussed below.

2. Filing an Application with a CLA

87. We intend for the Cyber Trust Mark to serve as a reliable and trusted way for consumers to quickly identify those products that meet the Commission's program requirements. To achieve this, the Commission must adopt sufficient controls over the IoT Labeling Program to ensure only those products that meet the Commission's requirements bear the Cyber Trust Mark. The Commission's second step of requiring an application be submitted to a CLA is a significant and important control to ensure that an independent disinterested third-party outside the manufacturer's control has reviewed the manufacturer's product application and supporting test report and verified that the product complies with the Commission's program requirements.

88. The second step of the application process is particularly important because, as discussed above, the Commission allows the first step (testing) to be completed by an accredited and recognized CyberLAB, a CLA lab, or the manufacturer's in-house lab. Requiring the manufacturer to submit an application with a CLA is an important control, particularly to ensure that all products, including those products whose conformity testing is conducted, and reports are generated, by the manufacturer's in-

[288] *See* Coalition Letter Reply at 2; Keysight Comments at 2; NEMA Comments at 5; AIM Comments at 3; Whirlpool Comments at 4 (supports self-attestation especially for lower risk IoT, but notes self-attestation should be validated by a third-party to protect the integrity of the program); AHAM Comments at 3; Samsung Comments at 5; Consumer Reports Comments at 20; Garmin Comments at 12; NAM Comments at 4; ITI Reply at 4; TIC Council Americas Reply at 1.

[289] A2LA Comments at 4; *see also* Ravnitzky Comments at 1.

[290] GAO Report at 8.

[291] GAO Report at 7.

[292] ENERGY STAR, *Third-Party Certification*, https://www.energystar.gov/partner_resources/products_partner_resources/third_party_cert [https://perma.cc/N6HG-JRKW] (last visited Jan. 16, 2024).

house lab, are subject to third-party scrutiny and oversight. As such, the Commission requires all entities seeking to use the FCC IoT Label must submit an application for authority to a CLA to use the FCC IoT Label that is supported by the appropriate report detailing the conformity testing conducted by a lab that is both accredited and Lead Administrator-recognized (CyberLAB, CLA lab, or manufacturer's in-house lab). Only entities who have received prior authorization from a CLA (i.e., cybersecurity certification) are authorized to use the FCC IoT Label, which will ensure the IoT Labeling Program retains its integrity.[293] We further recognize that the CLA may charge a reasonable fee to cover the cost of reviewing the application and the costs of conducting the other tasks the CLA would perform. We delegate authority to the Bureau, in connection with OMD, to review and reconsider, if necessary, whether the level and structure of the fees should be regulated by the Commission.[294] Once the IoT Labeling Program is established, we may revisit the issue of whether to adopt additional pathways to obtaining authority to use the FCC IoT Label.

89. The *IoT Labeling NPRM* sought comment on whether and how one or more third-party administrators should be utilized to manage the IoT Labeling Program, and whether the Commission should designate one or more administrators to authorize use of the label.[295] Kaiser Permanente argues that the Commission should maintain ownership of the application process, as well as oversight and supervision of third parties administering the IoT Labeling Program.[296] Garmin notes that the application process described in the *IoT Labeling NPRM* is unclear and worries that third-party involvement would require enormous effort, and cautioned that sharing sensitive information with a third-party administrator itself raises security concerns.[297] However, the record was silent with respect to details about an application process. We agree that oversight and supervision of the IoT Labeling Program, including intaking applications, will require effort but believe a CLA is in the best position to streamline that process and, as noted, ensure the integrity of the process. We will require the CLA to have the ability to securely handle large volumes of information, which we believe should alleviate Garmin's concern.[298] We outline the application process to use the FCC IoT Label below.

90. Before being able to display the Cyber Trust Mark, the applicant must determine their product is an eligible product under our rules; have their product tested by an accredited and Lead Administrator-recognized CyberLAB, CLA Lab, or manufacturer's in-house lab; obtain a report of conformity and compliance from the lab; and submit an application for authority to use the FCC IoT Label to an FCC-recognized CLA in accordance with their procedures. Using the CLAs' filing processes, entities seeking authority to use the FCC IoT Label will file an application to be developed by the Bureau. Each application must include a report of conformity issued by an accredited CyberLAB, accredited CLA lab, or accredited in-house lab whose testing and reporting is comparative in rigor to that completed by a CyberLAB. The CLA will review the application and supporting documentation to ensure it is complete and in compliance with the Commission's rules and will either grant or deny the application. If an application is granted, the CLA will provide the applicant with notification of the grant and authority to affix the FCC IoT Label to the product granted authorization.

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[293] In addition to the discussion in the text, we adopt certain rules to support the administration and integrity of the IoT Labeling Program, including governing the designation of agents for service of process and governing required signatures. *See infra*, Appx. A, 47 CFR § 8.208(i), (k). We model our approach on analogous elements of our equipment authorization rules, with which the Commission and industry have substantial experience, and which have proven workable in practice. *See* 47 CFR § 2.911(d)(7), (f).

[294] *See* CTA March *Ex Parte* Appx. B at 3.

[295] *IoT Labeling NPRM* at 11, para. 23.

[296] Kaiser Permanente Comments at 3.

[297] Garmin Comments at 12.

[298] *See supra* para. 5959**Error! Reference source not found.** (requiring CLAs to "[demonstrate] ability to securely handle large volumes of information and demonstration of internal security practices.").

91. Applications that do not meet the Commission's IoT Labeling Program requirements will be denied by the CLA. If an application is denied, the CLA will provide the applicant with notification of the denial and an explanation of why it was denied. An applicant may only re-submit an application for a denied product if the CLA-identified deficiencies have been corrected. The applicant must indicate on its application that it is re-submitting the application after it was denied, the name of the CLA that denied the application, and the CLA's explanation of why it was denied. Failure to disclose the denial of an application for the same or substantially similar product will result in denial of the application for that product and the FCC will take other regulatory and/or legal action it deems appropriate.

92. Grant or denial of an application for authority to use the FCC IoT Label will be made by the CLA in the first instance. The CLA will return incomplete applications to the applicant or otherwise contact the applicant regarding the incomplete application, as soon as possible.

93. We delegate authority to the Bureau to issue a Public Notice after any necessary notice and public comment and after completing any process required under the Paperwork Reduction Act, providing further details on how to apply for authority to use the FCC IoT Label, including but not limited to informational elements of the application, additional details on filing requirements (e.g., description or photograph of the label and how/where it will be affixed to the product), and how to request confidential treatment of submitted information. As the Commission anticipated in the NPRM,[299] CLAs may charge reasonable fees for their services and to cover the costs of performing the administrative duties. The *IoT Labeling NPRM* proposed to follow the fee calculation methodology adopted by the Commission in the *2020 Application Fee Report and Order* and requested comment on the proposal and any changes.[300] We did not receive any comments on the suitability of this approach. We recognize the Cybersecurity Coalition's comments that high fees would deter participation in the IoT Labeling Program.[301] We anticipate that there will be multiple administrators authorized through the approach adopted today, and we believe that market competition will ensure fees are reasonable, competitive, and accessible while covering the costs incurred by the CLA in performing their designated tasks. We believe this addresses the concerns raised by the Cybersecurity Coalition and renders the approach proposed in the *IoT Labeling NPRM* unnecessary. We therefore reject the NPRM's proposal. To the extent that the Lead Administrator may incur costs in performing its duties on behalf of the program as a whole, we expect these costs to be shared among CLAs as a whole.[302] We delegate to the Bureau, in connection with OMD, to consider these issues and provide guidance to the CLAs and Lead Administrator to ensure the fees do not become onerous, as indicated by the record.[303]

94. *Seeking Review of CLA Decision.* Any party aggrieved by an action taken by a CLA must first seek review from the CLA, which must be filed with the CLA within 60 days from the date of the CLA's decision. The CLAs should respond within 10 business days to a request for review.[304] A party aggrieved by an action taken by a CLA may, after seeking review by the CLA, seek review from the

[299] *IoT Labeling NPRM* at 20, para. 50.

[300] *Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1109 of the Commission's Rules*, MD Docket No. 20-270, Report and Order, 35 FCC Rcd 15089, 15127, para. 115-117 (2020). Application fees are adjusted every two years to reflect changes in the Consumer Price Index. *See, e.g., Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1109 of the Commission's Rules*, MD Docket No. 20-270, Order, FCC 22-94 (2023).

[301] Cybersecurity Coalition Comments at 14.

[302] *See supra* para. 52 (describing the duties of the Lead Administrator). We recognize that many of the duties of the Lead Administrator benefit all the CLAs and the program as a whole, and we do not suggest that the costs associated with the duties of the Lead Administrator as described in this Order to be an exhaustive list of the shared costs we expect to be shared among CLAs as a whole.

[303] *See* Cybersecurity Coalition Comments at 14.

[304] *See* CTA March *Ex Parte* Appx B at 5 (recommending CLAs respond within 10 days to a request for review.)

Commission. A request for Commission review must be filed with the Commission within 60 days from the date the CLA issues a decision on the party's request for review. Other parties interested in Commission review of a CLA decision must adhere to the time periods for filing oppositions and replies set forth in 47 CFR § 1.45.

95. We delegate authority to PSHSB to consider and act upon requests for review of CLA decisions. Requests for review that raise novel questions of fact, law, or policy will be considered by the full Commission. An affected party may seek review of a decision issued under delegated authority pursuant to the rules set forth in part 1 of the Commission's rules. The Bureau will conduct de novo review of requests for review of decisions issued by a CLA. The Commission will conduct de novo review of requests for review of decisions by the CLA that involve novel questions of fact, law, or policy; provided, however, that the Commission will not conduct de novo review of decisions issued by the Bureau under delegated authority. The Bureau will, within 45 days, take action in response to a request for review of CLA decision that is properly before it.[305] The Bureau may extend the time period for taking action on a request for review of a CLA decision for a period of up to 90 days. The Commission may also at any time, extend the time period for taking action of a request for review of a CLA decision pending before the Bureau. The Commission will issue a written decision in response to a request for review of a CLA decision that involves novel questions of fact, law, or policy within 45 days. The Commission may extend the time period for taking action on the request for review of a CLA decision. The Bureau also may extend action on a request for review of an CLA decision for a period of up to ninety days. While a party seeks review of a CLA decision, they are not authorized to use the FCC IoT Label until the Commission issues a final decision authorizing their use of the FCC IoT Label.

F. Consumer IoT Product Cybersecurity Criteria and Standards

96. *Technical Criteria for Consumer IoT Products*. In the *IoT Labeling NPRM*, the Commission sought comment on adopting NIST's recommended IoT criteria (NIST Core Baseline), which are discussed in detail in NISTIR 8425, as the basis for the IoT Labeling Program.[306] The Commission also asked whether there are other IoT criteria it should consider and whether there are separate criteria that should be considered for higher risk IoT devices or classes of devices.[307] We adopt the *IoT Labeling NPRM* proposal that the NIST Core Baseline serve as the basis of the IoT Labeling Program. The NIST Core Baseline is based on product-focused cybersecurity capabilities (also referred to by NIST as "Outcomes") rather than specific requirements, which NIST asserts provide the flexibility needed due to the diverse marketplace of IoT products, and we agree. As outlined in the *IoT Labeling NPRM*, the NIST criteria includes the following IoT product capabilities: (1) asset identification; (2) product configuration; (3) data protection; (4) interface access control; (5) software update; (6) cybersecurity state awareness; and the following IoT Product Developer Activities: (7) documentation; (8) information and query reception; (9) information dissemination; and (10) product education and awareness.[308]

97. The record reflects broad support for adoption of the technical criteria presented in NISTIR 8425. For example, a coalition of industry stakeholders including the Association of Home Appliance Manufacturers, Connectivity Standards Alliance, Consumer Technology Association, CTIA

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[305] *See Id*. (recommending the Bureau respond to appeals within 20 days.)

[306] *IoT Labeling NPRM* at 13, para. 27 (citing Appendix A (describing the NIST criteria)); *see also* NISTIR 8425.

[307] *Id.*

[308] NISTIR 8425 at 4; *NIST Cybersecurity White Paper* at 4-10 (Feb. 4, 2022); NIST, *Report for the Assistant to the President for National Security Affairs (APNSA) on Cybersecurity Labeling for Consumers: Internet of Things (IoT) Devices and Software, A summary review of labeling actions called for by Executive Order (EO) 14028: Improving the Nation's Cybersecurity* at 4 (2022), https://www.nist.gov/system/files/documents/2022/05/24/Cybersecurity%20Labeling%20for%20Consumers%20under%20Executive%20Order%2014028%20on%20Improving%20the%20Nation%27s%20Cybersecurity%20Report%20%28FINAL%29.pdf [https://perma.cc/PA4J-DD76] (*NIST Summary Report*).

Information Technology, Industry Council, National Electrical Manufacturers Association, Plumbing Manufacturers International Power Tool Institute, Security Industry Association, Telecommunications Industry Association, U.S. Chamber of Commerce, and USTelecom submitted a letter to the Commission supporting the establishment of "a voluntary program based on the technical criteria developed by [NIST], under NISTIR 8425."[309] UL Solutions supports adoption of the NISTIR 8425 criteria and asserts that there are several mature standards that can be drawn from that address the NISTIR 8425 criteria, such as UL 2900, UL 5500, and IEC 62443.[310]

98. CTIA supports adoption of the NIST Core Baseline, but urges the Commission not to prescribe any specific methodologies that testing programs or standards must use, other than to require that such programs or standards be consistent with NIST Core Baseline.[311] CSA also supports adoption of the NIST Core Baseline, but urges the Commission to refrain from developing its own standards for testing.[312] Rather, CSA asserts that they have developed a certification program that meets the requirements of NISTIR 8425 and other relevant standards documents, including ETSI EN 303 645 and the Singapore Cybersecurity Labeling Scheme,[313] and CTA indicates that they are working on American National Standards (ANS) documents that will "[d]efine a Framework that is a standardized and objective method of applying the Criteria in NISTIR 8425 to a candidate Scheme or to a manufacturer's proposal for self-attestation…"[314] Garmin encourages the Commission to consider ETSI 303 645 standards,[315] and commenters American Certification Body, Inc. and Consumer Reports encourage international standards such as those developed as a result of the EU Cyber Resiliency Act and UK's Product Security and Telecommunications Infrastructure Act.[316] These commenters did not oppose referencing the NIST criteria.

99. We agree with Infineon, Consumer Reports, and NCTA and adopt NISTIR 8425 as the basis for the Commission's IoT Labeling Program.[317] The consumer IoT environment is complicated by a significant number of different types of consumer IoT products. Adoption of the NIST criteria as the foundation of the IoT Labeling Program will result in a robust consumer IoT program that is sufficiently flexible that it can be applied across all types of consumer IoT products. The NIST criteria were

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[309] Coalition Letter Reply at 1. *See also*, CSA Comments at 8-9 ("[CSA] recommends prompt adoption of NISTIR 8425 as the basis for the program"); CTIA Comments at 16; CTA Comments at 11; NCTA Comments at 5; Consumer Reports Comments at 16-17; ioXt Alliance Comments at 6; Cybersecurity Coalition Comments at 7; UL Solutions Comments at 4; ITI Comments at 7; TechNet Comments at 2; Comcast Comments at 11; Kaiser Permanente Comments at 3; NTCA Reply at 3; AHAM Comments at 4; Samsung Comments at 3; NYC Cyber Command Office of Technology & Innovation Comments at 3 (supporting consideration of the Cloud Security Alliance's IoT Framework, based on sourced NIST controls) (NYC OTI).

[310] *See, e.g.*, UL Solutions Comments at 4.

[311] *See* CTIA Comments at 22.

[312] CSA Comments at 10-11.

[313] *Id.*

[314] CTA Reply at A-1; *see also* CTIA *Ex Parte*.

[315] *See* Garmin Comments at 10.

[316] *See* American Certification Body, Inc. Reply at 1 (encouraging incorporation of international standards such as the EU Cyber Resiliency Act); Consumer Reports Comments at 18-19 (recommending the UK's Product Security and Telecommunications Infrastructure Act).

[317] *See, e.g.*, Infineon Comments at 2 ("Infineon recommends that the Commission adhere as closely as possible to NISTIR 8425, which is one of the best and most widely recognized cybersecurity standards for IoT."); Consumer Reports Comments at 18 (The NIST 8425 document creates an excellent starting place for setting the criteria for a certification program and should be used to develop the framework."); NCTA Comments as 5-6 ("Building the Program on the foundation of [NISTIR 8425]'s already-established process and guidance would maintain a consistent federal approach to IoT security baseline requirements[.]").

developed through a multi-year effort between NIST and various stakeholders, and includes significant industry input and will continue to be updated by NIST as necessary. The Commission agrees with NIST's publication, which avers that the following NISTIR 8425 criteria identify the cybersecurity capabilities that consumers would expect manufacturers to address within the products they buy. NIST contemplates that most of the criteria concern the IoT product directly and are expected to be satisfied by software and/or hardware implemented in the IoT product (1-6 below) and other criteria apply to the IoT product developer (7-10 below).[318] The following is the list of the NIST IoT product capability criteria, NIST's brief description of each, and the NIST-identified cybersecurity utility for each:[319]

(1) Asset Identification: The product can be uniquely identified by the customer and other authorized entities and the product uniquely identifies each IoT product component and maintains an up to date inventory of connected product components

    i. Cybersecurity Utility: The ability to identify IoT products and their components is necessary to support such activities as asset management for updates, data protection, and digital forensics capabilities for incident response.

(2) Product Configuration: The configuration of the IoT product is changeable, with an ability to restore a secure default setting, and changes can only be performed by authorized individuals, services, and other IoT product components.

    i. Cybersecurity Utility: The ability to change aspects of how the IoT product functions can help customers tailor the IoT product's functionality to their needs and goals. Customers can configure their IoT products to avoid specific threats and risk they know about based on their risk appetite.

(3) Data Protection: The IoT product protects data store across all IoT product components and transmitted both between IoT product components and outside the IoT product from unauthorized access, disclosure, and modification.

    i. Cybersecurity Utility: Maintaining confidentiality, integrity, and availability of data is foundational to cybersecurity for IoT products. Customers will expect that data are protected and that protection of data helps to ensure safe and intended functionality of the IoT product.

(4) Interface Access Control: The IoT product restricts logical access to local and network interfaces – and to protocols and services used by those interfaces – to only authorized individuals, services, and IoT product components.

    i. Cybersecurity Utility: Enumerating and controlling access to all internal and external interfaces to the IoT product will help preserve the confidentiality, integrity, and availability of the IoT product, its components, and data by helping prevent unauthorized access and modification.

(5) Software Update: The software of all IoT product components can be updated by authorized individuals, services, and other IoT product components only by using a secure and configurable mechanism, as appropriate for each IoT product component.

    i. Cybersecurity Utility: Software may have vulnerabilities discovered after the IoT product has been deployed; software update capabilities can help ensure secure delivery of security patches.

(6) Cybersecurity State Awareness: The IoT product supports detection of cybersecurity incidents affecting or affected by IoT product components and the data they store and

[318] NISTIR 8425 at 2; *NIST Cybersecurity White Paper* at 4-10; *NIST Summary Report* at 4.

[319] NISTIR 8425 at 5-10; *see also IoT Labeling NPRM* at Appendix A.

transmit.

i. Cybersecurity Utility: Protection of data and ensuring proper functionality can be supported by the ability to alert the customer when the device starts operating in unexpected ways, which could mean that unauthorized access is being attempted, malware has been loaded, botnets have been created, device software errors have happened, or other types of actions have occurred that was not initiated by the IoT product user or intended by the developer.

The following is the list of NIST-identified IoT Product Developer Activities/Non-Technical Supporting Capabilities and their NIST-identified cybersecurity utility:[320]

(7) Documentation: The IoT product developer creates, gathers, and stores information relevant to cybersecurity of the IoT product and its product components prior to customer purchase, and throughout the development of a product and its subsequent lifecycle.

i. Cybersecurity Utility: Generating, capturing, and storing important information about the IoT product and its development (e.g., assessment of the IoT product and development practices used to create and maintain it) can help inform the IoT product developer about the product's actual cybersecurity posture.

(8) Information and Query Reception: The IoT product developer has the ability to receive information relevant to cybersecurity and respond to queries from the customer and others about information relevant to cybersecurity.

i. Cybersecurity Utility: As IoT products are used by customers, those customers may have questions or reports of issues that can help improve the cybersecurity of the IoT product over time.

(9) Information Dissemination: The IoT product developer broadcasts (e.g., to the public) and distributes (e.g., to the customer or others in the IoT product ecosystem) information relevant to cybersecurity.

i. Cybersecurity Utility: As the IoT product, its components, threats, and mitigations change, customers will need to be informed about how to securely use the IoT product.

(10) Product Education and Awareness: The IoT product developer creates awareness of and educates customers and others in the IoT product ecosystem about cybersecurity-related information (e.g., considerations, features) related to the IoT product and its product components.

i. Cybersecurity Utility: Customers will need to be informed about how to securely use the device to lead to the best cybersecurity outcomes for the customers and the consumer IoT product marketplace.

100. *Consumer IoT Product Standards*. The *IoT Labeling NPRM* recognized that the Commission's "conformity assessment program must be based on IoT security standards and testing requirements that the IoT devices and products must satisfy to be eligible to receive and use the label."[321] The *IoT Labeling NPRM* proposed that standards be developed jointly with industry and other stakeholders and asked for comments on who should convene these stakeholders and develop standards that allow for "the consistent and replicable testing necessary to ensure the outcome based NIST IoT

[320] NISTIR 8425 at 11-16.

[321] *IoT Labeling NPRM* at 13, para. 28.

labeling criteria are fulfilled."[322] The Commission sought comment on whether the Commission or an outside entity is in the best position to convene these stakeholders. The *IoT Labeling NPRM* also sought comment on the relevant industry consensus standards that may already exist and should be considered by the Commission for the IoT Labeling Program, or whether new standards need to be developed.

101. We find that standards are necessary to administer the IoT Labeling Program in a fair and equitable manner and to ensure the products with the FCC IoT Label have all been tested to the same standards to provide consumers with confidence that products bearing the FCC IoT Label include strong cybersecurity. Commenters generally agree with the adoption of standards based on NIST's Core Baseline for Consumer IoT products (NISTIR 8425).[323] We take up the Cybersecurity Coalition's recommendation "that the Commission or a designated third-party administrator work with stakeholders to identify recognized standards that encompass the Core Baseline, or that offer equivalent controls."[324] NCTA also notes that "Standards Development Organizations ("SDOs") and specification organizations are well-established organizations that can develop standards aligned with NIST guidelines and the Program's goals."[325] According to NIST, the NISTIR 8425 "*outcomes* are guidelines that describe **what** is expected… but more specific information may be needed to define how to implement IoT products or product components so that they meet an outcome. *Requirements* define **how** a component can meet an outcome for a specific use case, context, technology, IoT product component etc. …."[326]

102. We reject CTIA's recommendation that the Commission refrain from adopting specific standards and solely rely on the NIST criteria.[327] Rather, the Commission agrees with NIST and commenters that its criteria are general guidelines that must be further developed into a requirements document (i.e. standards) and corresponding testing procedures, which will demonstrate how the product bearing the FCC IoT Label has met the NIST criteria and to ensure consistency of application across a class of products. ITI adds that the "Commission need not recreate [existing] work or develop its own standards but can leverage completed standards work for swift development and implementation."[328] The integrity of the Cyber Trust Mark requires the Commission to adopt standards that provide for adequate and consistent testing of products to ensure that all products bearing the FCC IoT Label have demonstrated conformance to the identified standards that the Commission has approved as compliant with the NIST criteria. In addition, for the Commission's IoT Labeling Program to be fairly administered by the multiple CLAs, all products displaying the FCC's label must be tested against the same standards to ensure that all products displaying the FCC IoT Label conform to the Commission's standards.

103. Commenters such as TÜV SÜD agree that "the main requirement when perform[ing] testing for compliance is that the test need[s] to be reliable and always offer the same outcome when a product is tested in the same condition. In the current state of the NIST IoT criteria there is not enough detail[] in the standard, so there is the need to write a more detail[ed] test method/standard."[329] UL Solutions also "supports the use of the NISTIR 8425 criteria as the basis for the IoT Labeling Program. These criteria help establish a minimum security baseline suitable for consumer IoT products… However, as noted in paragraphs 27 and 28 [of the *IoT Labeling NPRM*], these criteria must be defined by minimum IoT security requirements and standards to enable consistent and replicable product testing."[330]

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[322] *Id.*

[323] *See, e.g.*, Cybersecurity Coalition Comments at 6; UL Solutions Comments at 4; Samsung Comments at 3.

[324] Cybersecurity Coalition Comments at 6-7.

[325] NCTA Comments at 6.

[326] IoT Product Component Requirements Essay at 1-2 (emphasis in original).

[327] CTIA Comments at 16.

[328] ITI Reply at 5.

[329] TÜV SÜD Comments at 3.

[330] UL Solutions Comments at 4.

Moreover, Somos similarly agrees that leveraging existing standards for device definition and security guidelines are the fastest, most effective path to the definition of a secure ecosystem, that NIST 8425 standard is the appropriate starting point, and that "existing standards should allow for the Commission to quickly create its definitions and guidelines."[331] We agree with the Cybersecurity Coalition that "only those standards and best practices recognized by the labeling program should be eligible, in order to avoid the inclusion of non-credible or irrelevant frameworks that may undermine trust in the label."[332]

104. We further determine that, given the existing work in this space, the Commission should not undertake the initial development of the standards that underpin the NIST Core Baseline. Rather, as discussed in paragraph 56 above, we direct the Lead Administrator to undertake this task, and delegate authority to the Bureau to review and approve the consumer IoT cybersecurity standards and testing procedures that have been identified and/or developed by the Lead Administrator (after any appropriate public comment) that ensures the product to which a manufacturer seeks to affix the FCC IoT Label conforms to the NIST criteria. NIST's *IoT Product Component Requirements Essay* provides a summary of standards and guidance that NIST has initially identified as applicable to IoT devices and IoT product components, that the Lead Administrator may determine are applicable to the IoT Labeling Program.[333] Moreover, the Lead Administrator may also determine existing standards or schemes that exist in the market already may be readily adaptable and leverage such work to meet the terms of the program.

105. The Commission recognizes that since a "product" for purposes of the IoT Labeling Program is comprised of at least one IoT device and any additional product components that are necessary to use the IoT device beyond basic operational features, there may be multiple standards (e.g., a package of standards) applicable to a single IoT product (e.g., standards applicable to IoT devices; mobile apps; networking equipment included with IoT devices; and cloud platforms). The Commission does not anticipate a single standard would be developed or identified to apply to *all* consumer IoT products. However, a single package of standards may be developed or identified for each product type or class as identified by the Lead Administrator and reviewed and approved by the Bureau. We also agree with the Cybersecurity Coalition that "participants should have discretion to include security features that go beyond standard requirements . . . So long as the additional security features do not conflict with conformity with the standard used for eligibility by the labeling program participants, participants should be encouraged to go beyond baseline requirements."[334]

G. The FCC IoT Label (Cyber Trust Mark and QR Code)

106. We adopt the *IoT Labeling NPRM's* proposal to implement a single binary label with layering.[335] As discussed in the *IoT Labeling NPRM*, "under a binary label construct, products will either qualify to carry the label or not qualify (i.e., not be able to carry the label) and 'layers' of the label would include the Commission's Cyber Trust Mark representing that the product or device has met the Commission's baseline consumer IoT cybersecurity standards and a scannable code (e.g., QR Code) directing the consumer to more detailed information of the particular IoT product."[336]

107. We adopt a binary label because we believe that a label signaling that an IoT product has met the minimum cybersecurity requirements will be simplest for consumers to understand, especially as the label is introduced to and established for the public. The Cybersecurity Coalition supports a binary label, citing the benefits of a simple, consumer friendly nature and its potential to streamline the

[331] Somos Reply at 1.

[332] Cybersecurity Coalition Comments at 6-7.

[333] IoT Product Component Requirements Essay at 3-7.

[334] Cybersecurity Coalition Comments at 6-7.

[335] *IoT Labeling NPRM* at 16, para. 35.

[336] *Id.* (internal footnotes omitted).

purchasing decision for consumers.[337] Similarly, as LG points out, "[l]ike the ENERGY STAR program, a binary label specifying that a device has met a government standard – in this case for cybersecurity – will be enough to drive consumers and manufacturers toward more secure products," while leaving manufacturers free to separately provide additional cybersecurity information about their products.[338] And the Connectivity Standards Alliance supports the use of a single binary label with layering, as recommended by NIST, asserting that "[a]cademic studies have validated this approach."[339] Conversely, Canada advocates a multi-tiered approach to labeling to "lower barriers to entry into the labelling regime and facilitate trade and competition by ensuring Micro, Small and Medium Sized Enterprises (MSMEs), with fewer resources to meet a high level of cybersecurity," and to "provide the incentives for a greater number of firms to innovate in IoT products and work on 'climbing the ladder' of cybersecurity levels over time."[340] Another commenter suggests a multi-tiered label that would have different colors depending on the length of time the product is supported.[341] Other commenters advocate a multi-tiered approach that need not be reflected in different Cyber Trust Marks, but in different information available when a consumer scans the QR code.[342] A study by Carnegie Mellon University indicates that different types of labels of various complexities have varying levels of effectiveness but does not contest the idea of a binary label.[343] We also recognize that some international regimes, such as Singapore, use a multi-tiered label.[344]

108. Although one could imagine myriad different approaches to labeling that each have relative advantages and disadvantages, on balance we are persuaded to rely on a binary label as we begin our IoT Labeling Program, consistent with NIST's recommended approach. We agree with the Cybersecurity Coalition that "the primary value of the IoT . . . labeling program is to better enable ordinary consumers to distinguish labeled products as likely providing better basic security than unlabeled products."[345] We believe a binary label meets this goal by providing a clear indication that products with the label meet the Commission's cybersecurity requirements. We anticipate that promoting early consumer recognition of the FCC IoT Label—which we think is better advanced by a binary label—will, in turn, make consumers more attuned to cybersecurity issues and more receptive to additional cybersecurity information that manufacturers elect to provide apart from the FCC IoT Label and associated QR code. Thus, we believe that our use of a binary label still retains incentives for manufacturers to innovate and achieve higher levels of cybersecurity. Our approach to determining what

[337] Cybersecurity Coalition Comments at 1; *see also, e.g.*, CTA Comments at 32 ("CTA supports the Commission's proposal, consistent with NISTIR 8425, to implement a single, binary label with layered information. This approach will allow consumers to rapidly assess product security at point-of-sale and provide more detailed, up-to-date information to consumers or subject matter experts conducting a more thorough review of a product's capabilities." (footnote omitted)).

[338] LG Electronics Comments at 2.

[339] Connectivity Standards Alliance Comments at 13.

[340] Government of Canada Comments at 1.

[341] Jason Cole Comments at 1.

[342] *See, e.g.*, CTIA Comments at 28.

[343] *See* Carnegie Mellon and Duke Researcher Comments at 5.

[344] Cyber Security Agency of Singapore, *Cybersecurity Labeling Scheme (CLS) for Consumers*, https://www.csa.gov.sg/our-programmes/certification-and-labelling-schemes/cybersecurity-labelling-scheme/for-consumers [https://perma.cc/X3MG-MKZ4] (last visited Jan. 8, 2024); *see also, e.g.*, Government of Canada Comments at 1 (noting Singapore's program and advocating "instituting a number of levels of cybersecurity that firms could choose to meet"); People's Republic of China Comments at 4-5 (advocating "that the U.S. utilize the internationally recognized IoT product network security level classification system to further specify the safety level standards for related products in this [labeling] program, and provide specific requirements for classification certification and corresponding label information based on the level").

[345] Cybersecurity Coalition Comments at 1.

cybersecurity standards will be applied also accommodates the potential for different requirements being necessary to meet the NIST baseline criteria in different contexts.[346] To the extent that any multi-tiered labeling approach contemplated by commenters would allow manufacturers to obtain a label through lesser cybersecurity showings, that would be less effective at achieving the goals of our program. And to the extent that any multi-tiered labeling approach would require manufacturers to make heightened cybersecurity showings to achieve higher-tier labels, that is unlikely to lower barriers to participation in the IoT Labeling Program while also risking less understanding and acceptance of the FCC IoT Label by consumers. Because delay in moving forward with the IoT Labeling Program would have its own costs in pushing back the potential for benefits to consumers and device security, we also recognize the benefits of a binary label as more straightforward to implement, at least at the start of our IoT Labeling Program. Weighing all the relevant considerations, we are persuaded to move forward with a binary label at this time.

109. We require that products bearing the FCC IoT Label, which includes the Cyber Trust Mark, must also include the corresponding QR Code. Approval to use the Cyber Trust Mark is conditioned on the label also bearing the QR Code in accordance with the IoT Labeling Program's label standards. In addition, the FCC IoT Label must be easily visible to consumers (e.g., on product packaging). This approach received considerable support in the record. We agree with USTelecom that "consumers should not have to open the package to get information because that could impact their ability to return the product."[347] Power Tool Institute, Inc. concurs that "[p]lacing a QR Code on the packaging is preferable to placing it on the device."[348] Notable pros of using a QR Code are providing "consumers with detailed information about a device or product,"[349] enhancing the program's objective by providing real-time updates.[350] However, some commenters raise concerns with the placement of the QR Code on the product packaging. Logitech urges the Commission to not require a QR Code in conjunction with the label, stating that it could crowd packaging, cause consumer confusion, and may cause confusion if retailers scan the wrong barcode when checking out a customer.[351] We believe that as the label becomes established and recognized by consumers and retailers, the benefit of providing a QR Code linking to a registry populated with current information on the IoT product outweighs the potential for consumer confusion. We also believe the registry will be of value to consumers such that they will want to see it acknowledged in an easily accessible manner, which will override any potential difficulty retailers may have with scanning the incorrect code. Moreover, recognizing the realities of inventory turnover against the need for a cybersecurity label to be dynamic, the use of a QR Code-embedded URL in this context ensures that (1) if a consumer desires more information about the product than what the label itself signifies there is a simple means of access; and (2) information associated with the product's compliance with the IoT Labeling Program is current. We view these as relevant considerations to purchasing decisions, which requires easy access to such information "on the spot" rather than requiring a purchaser to independently seek it out.

110. We direct the Lead Administrator to collaborate with stakeholders as needed to recommend to the Commission standards for how the FCC IoT Label bearing the Cyber Trust Mark and the QR Code should be designed (e.g., size and white spaces) and where such a label should be placed. This should include where the label could be placed on products where consumers may not see product packaging when shopping or after purchasing (e.g., refrigerators, washing machines, dryers, dishwashers, etc.) and including where consumers purchase products online. The Lead Administrator and stakeholders

[346] *See supra* paras. 56-58.

[347] USTelecom Comments at 8.

[348] Power Tool Institute Comments at 3 (PTI).

[349] Kaiser Permanente Comments at 4.

[350] NYC OTI Comments at 4.

[351] Logitech Comments at 3.

should also examine whether the label design should include the date the manufacturer will stop supporting the product as well as whether including other security and privacy information (e.g. sensor data collection)[352] on the label would be useful to consumers. In addition, the Lead Administrator should address the use of the FCC IoT Label in store displays and advertising.[353] We recognize the current work being done by industry on an appropriate format for the label, including the Cybersecurity Label Design, which is part of CTA's ANSI-accredited standards program.[354] As noted by CTA in its reply comments, the FCC specifies requirements for the use of the Cyber Trust Mark, but "there are several additional details needed regarding QR coding and resolution, white space for accurate recognition of QR codes, and more."[355] CTA states that the draft ANSI/CTA-2120 details lay out requirements for packaging, and we encourage the Lead Administrator to review and consider the work CTA's Cybersecurity Label Design working group (a subgroup of CTA's Cybersecurity and Privacy Management Committee) has completed in this regard.[356] We agree that we should take into consideration the considerable work that has already been undertaken with respect to labeling design and placement and seek to leverage and benefit from this expertise by directing the Lead Administrator to seek feedback from a cross-section of relevant stakeholders who have been working on these issues. We delegate authority to PSHSB to review, approve (or not approve) the Lead Administrator-recommended labeling design and placement standards after any required public notice and comment process and if approved incorporate into the Commission's Part 8 rules. The provisions of 47 CFR § 2.935(a) (allowing the electronic display of "other information that the Commission's rules would otherwise require to be shown on a physical label attached to the device") do not apply to the FCC IoT Label.[357] The Cyber Trust Mark may only be used as directed by

[352] Letter from Lorrie Cranor, CyLab Director and Bosch Distinguished Professor in Security and Privacy Technologies, FORE Systems University Professor of Computer Science and Engineering & Public Policy, Carnegie Mellon University et. al., to Marlene H. Dortch, Secretary, FCC, PS Docket No. 23-239, (March 12, 2024) (CMU Ex Parte) at para. 2.

[353] The issue of where the FCC IoT Label would be placed was raised in the record. We agree that flexibility in placement is important in instances where the consumer might not see the product's packaging, such as in larger appliances, before purchasing the product. *See* AHAM Comments at 5; NAM Comments at 5. We recognize that some types of products might be customarily displayed in ways that make a one-size-fits-all approach inappropriate. As such, we agree with the ioXt Alliance's suggestion that we consider how the label may be placed in ways that will be helpful to a consumer, such as through an in-store display, advertisement on a screen, or website. *See* ioXt Alliance Comments at 20.

[354] CTA Reply at A-7.

[355] *Id*. at A-8

[356] *Id.* at A-7 to A-9.

[357] By their term, those rules – which allow certain electronic labeling of "information that the Commission's rules would otherwise *require* to be shown on a physical label" – do not apply to a voluntary program that permits the use of the FCC IoT Label for entities meeting the relevant criteria of that voluntary program. 47 CFR § 2.935(a) (emphasis added); *see also, e.g.*, *Amendment of Parts 0, 1, 2, 15 and 18 of the Commission's Rules Regarding Authorization Of Radiofrequency Equipment*, ET Docket No. 15-170, First Report and Order, 32 FCC Rcd 8746, 8758, para. 28 (2017) (explaining that the proposed rules "generally would allow a radiofrequency device to electronically display any labels *required* by our rules, including the FCC ID required for certified devices, as well as any warning statements or other information that our rules require to be placed on a physical label on the device" (emphasis added)); *id*. at 8763-64, para. 41 (discussing the rules' application "[i]f the Commission imposes (under current or future regulations) a *requirement* that a device physically bear a label with regulatory information"). The regulatory context also supports that understanding. The E-LABEL Act, which the Commission was implementing when adopting the relevant rules, likewise appears focused on the general sorts of mandatory labeling requirements the Commission had in place in 2014. *See, e.g.*, E-LABEL Act, Pub. L. No. 113-197, § 2(1) (2014) (discussing "physical label requirements" of the sort established by the Commission in 1974 and refined over time); *id*., § 3 (adopting provisions codified at 47 U.S.C. § 622(a) defining "electronic labeling" as "displaying required labeling and regulatory information" and focusing on equipment and devices "required under regulations of the Commission to be authorized by the Commission before the equipment or device may be marketed or sold within the United

(continued….)

Part 8, notwithstanding 47 CFR § 2.935 or any other rule.

H. Registry

111. We adopt our proposal from the *IoT Labeling NPRM* that the label include the Cyber Trust Mark and a QR Code that links to a decentralized publicly available registry containing information supplied by entities authorized to use the FCC IoT Label (e.g., manufacturers) through a common Application Programming Interface (API). The registry will include and display consumer-friendly information about the security of the product. We believe a publicly accessible registry furthers the Commission's mission of allowing consumers to understand the cybersecurity capabilities of the IoT devices they purchase. We also agree that it is important for the registry to be dynamic, so a consumer can be aware if a product loses authorization to use the FCC IoT Label or if the manufacturer is no longer providing security updates.[358] There is robust support for the development of a publicly-accessible registry.[359] We agree with NCTA that "the IoT Registry is foundational to the value and utility of the Cyber Trust Mark Program."[360] In the following paragraphs, we establish general parameters for registry information.

112. In the *IoT Labeling NPRM*, the Commission proposed a single registry associated with the IoT Labeling Program and that the QR Code included as part of the FCC IoT Label include a link to the information about the product on the registry webpage.[361] Today, we adopt a decentralized registry that contains specific essential information that will be disclosed by the manufacturer, as discussed in further detail below. This essential information from the manufacturer will be provided to a consumer accessible application via the registry by utilizing a common API that is secure by design. When a consumer scans the QR Code, a consumer accessible application will access the registry using the common API and present the consumer with the information we require to be displayed from the registry. CTIA points out that a centralized registry containing all the information the Commission conceived in the *IoT Labeling NPRM* and by commenters in the record would be inordinately complex and costly.[362] We agree, and endeavor to meet the policy goal of providing a transparent, accessible registry to the public through more efficient and less complicated means.

113. We agree with the Commission's assessment in the *IoT Labeling NPRM* that the registry's goal is to assist the public in understanding security-related information about the products that bear the Cyber trust Mark.[363] CTIA confirms this view, stating "the Commission should focus on the [registry] as a means to provide consumers with information that is critical to the success of the program."[364] CTIA further proposes that we should allow each manufacturer to establish their own

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States"). Independently, the Commission's focus on the types of mandatory label or information disclosure requirements of the sort imposed under its equipment authorization rules when adopting section 2.935 of the rules persuades us that those e-labeling rules should not apply to the IoT Labeling Program at this time, given our conscious decision to make the program "new and distinct," consistent with commenters' urging to keep the equipment authorization and IoT Labeling programs separate. *See supra* para. 43; *see also* 47 U.S.C. § 302a(a) (authorizing the Commission to adopt "reasonable regulations" based on its assessment of "the public interest, convenience, and necessity); *id*., § 622(b) (directing the Commission to take "appropriate" action "as necessary" with respect to e-labeling).

[358] Cybersecurity Coalition Comments at 11.

[359] CSA Comments at 15; NCTA Comments at 9; Infineon Comments at 2; WiFi Alliance Comments at 2; USTelecom Comments at 9; AIM Comments at 4; Planar Comments at 2.

[360] NCTA Comments at 9.

[361] *IoT Labeling NPRM* at 18, para. 41.

[362] CTIA Reply at 10-11.

[363] *See IoT Labeling NPRM* at 18, para. 41.

[364] CTIA Reply at 12.

mechanisms for conveying this information to consumers.[365] However, we acknowledge ioXt's concern that a completely manufacturer-driven approach could lead to inconsistencies, inaccuracies, or other difficulties for the consumer.[366] To balance the need for a workable, streamlined registry that is consistent for consumers and meets the Commission's goals while easing the administrative burden inherent in a centralized registry, we require a common API that would provide access to the following essential information from the manufacture and display it to the consumer in a simple, uniform way:[367]

(1) Product Name;
(2) Manufacturer name;
(3) Date product received authorization (i.e., cybersecurity certification) to affix the label and current status of the authorization (if applicable);
(4) Name and contact information of the CLA that authorized use of the FCC IoT Label;
(5) Name of the lab that conducted the conformity testing;
(6) Instructions on how to change the default password (specifically state if the default password cannot be changed);
(7) Information (or link) for additional information on how to configure the device securely;
(8) Information as to whether software updates and patches are automatic and how to access security updates/patches if they are not automatic;
(9) The date until which the entity promises to diligently identify critical vulnerabilities in the product and promptly issue software updates correcting them, unless such an update is not reasonably needed to protect against cybersecurity failures (i.e. the minimum support period); alternatively, a statement that the device is unsupported and that the purchaser should not rely on the manufacturer to release security updates;
(10) Disclosure of whether the manufacturer maintains a Hardware Bill of Materials (HBOM) and/or a Software Bill of Materials (SBOM);[368] and
(11) Additional data elements that the Bureau determines are necessary pursuant to the delegated authority discussed in paragraph 121 below.

114. To reduce potential burdens and focus on essential information, we pare back the scope of the registry from what the Commission proposed in the *IoT Labeling NPRM*. We agree with the Cybersecurity Coalition that "[t]he primary purpose of the label is to help consumers make informed purchasing decisions"[369] and include in the registry information that is key to making a purchasing decision, without overwhelming the consumer.[370] To this end, we agree with commenters who suggest that including the information proposed in the *IoT Labeling NPRM* may be too burdensome. NEMA, for example, expresses concern about the resources required for a registry containing a full catalogue of

[365] *Id.*

[366] ioXt Reply at 11.

[367] We note that the use of an API as part of the registry was recommended by CSA, the National Retail Foundation, and Widelity. Along with the benefits of an API that we identify here, the use of an API provides other benefits to other stakeholders in industry and retailers, while providing stakeholders with information that could assist with innovation and potential expansion of the registry to provide additional functions. *See* CSA Comments at 16; National Retail Foundation Comments at 1-2 (NRF); Widelity Comments at 3.

[368] In addition to the declaration, the SBOM and HBOM will be made available upon request by the Commission, CyberLAB, and/or CLA.

[369] Cybersecurity Coalition Comments at 9.

[370] CTIA Comments at 31 ("Ultimately, the Commission must ensure that information conveyed to consumers . . . strikes the right balance between giving consumers valuable information . . . and overloading consumers with information that will be difficult to maintain and update, confuse consumers, and even tip off bad actors.").

devices.[371] CTIA agrees that the IoT registry envisioned by the *IoT Labeling NPRM* would "impose significant, unmeetable burdens" for participants and the manager of the registry, and encourages us to refine our approach.[372] The Cybersecurity Coalition likewise expresses concern over the complexity of the proposed registry.[373] We agree that the registry be "modest in its goals" and "limited to basic information that is uniform . . . and pragmatic and useful to the consumer."[374] We believe that a registry containing simple, easy to understand information will be most helpful to a consumer making a purchasing decision, but also see the value in allowing manufacturers to include a second registry page (following the consumer-focused page) to enable manufacturers to provide additional technical details designed for researchers, enterprise purchasers, and other expert consumers of the label.[375] Focusing only on the most critical information will further facilitate the speedy establishment of the IoT Labeling Program and the registry itself.

115. In the interest of keeping information simple and establishing the database swiftly, we streamline the elements that should be included in the registry. We do require information about how to operate the device securely, including information about how to change the password, as it would help consumers understand the cybersecurity features of the products, how those products are updated or otherwise maintained by the manufacturer, and the consumer's role in maintaining the cybersecurity of the product.[376] We do not require information about whether a product's security settings are protected against unauthorized changes as part of the initial rollout of the registry in an attempt to streamline the registry to address concerns that the registry would be too bulky or unfriendly to consumers. We recognize the value of ensuring the registry information is accessible to everyone, including those whose primary language is not English. Accordingly, we direct the Lead Administrator to recommend to the Bureau whether the registry should be in additional languages and if so, to recommend the specific languages for inclusion. We delegate authority to the Bureau to consider and adopt requirements in this regard upon review of these recommendations. As the Association of Home Appliance Manufacturers points out, the location of the product's manufacture is redundant with existing legal requirements.[377] We also do not require labels to include an expiration date at this time as it may not be an applicable requirement for every product,[378] but we direct the Label Administrator to consider whether to recommend including the product support end date on labels for certain products, or category of products.

116. While we recognize the value of utilizing the registry to keep consumers informed about product vulnerabilities, we note CTIA and Garmin's concerns about listing unpatched vulnerabilities as not providing value to consumers, discouraging manufacturers from participating in the program, and tipping off bad actors.[379] We agree that these concerns are significant and do not require detailed information about vulnerability disclosures in the registry at this time. Rather, we require disclosure only

[371] NEMA Comments at 6.

[372] CTIA Comments at 29.

[373] Cybersecurity Coalition Comments at 11.

[374] CTA Reply at 13.

[375] Letter from J. David Grossman, Vice President, Regulatory Affairs, CTA & Mike Bergman, Vice President, Technology & Standards, CTA, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 23-239, Appendix B, at 3 (filed Mar. 4, 2024).

[376] *See* Widelity Comments at 2 ("[A] Registry containing information on IoT . . . and their cybersecurity features . . . would allow consumers . . . to easily access information on a product's security features, vulnerabilities, and updates[.]"); *see also* Consumer Reports Reply Comments at Appendix A.

[377] AHAM Comments at 5; *see* 16 CFR § 500.5 ("The label of a consumer commodity shall specify conspicuously the name and place of business of the manufacturer, packer, or distributor.").

[378] *IoT Labeling NPRM* at 19-20, paras. 47-48; *see also infra* Section I (describing the record and setting forth tasks with respect to determining the renewal process).

[379] CTIA Comments at 30-32; Garmin Reply at 2.

of whether a manufacturer maintains an SBOM and HBOM for supply chain security awareness. We agree with Consumer Reports, NYC Cyber Command Office of Technology and Innovation (NYC OTI), and the Cybersecurity Coalition that an SBOM should be considered as an element of the registry.[380] We also note that Garmin's concern is with disclosing the specific contents of an SBOM to the public, which "could reveal confidential business relationships with companies, as well as provide a roadmap for attackers,"[381] but this is not what we require here. Requiring participating manufacturers to disclose only the maintenance of an SBOM and HBOM, rather than the contents therein, indicates an added level of software and hardware security while also protecting potentially sensitive information. Further, while we agree with CTA that a searchable registry would have value for the public,[382] we are mindful of the resources, costs, and time involved with creating a registry that is searchable by each of the elements identified in the *IoT Labeling NPRM*.[383] In limiting the registry as we have, we address the concerns that the registry may be too complex to administer in the initial iteration of the IoT Labeling Program. As discussed above, the decentralized, API-driven registry we adopt today addresses the complexity concerns raised in the record. We cabin our initial vision of the registry and direct the Bureau, as described further below, to consider ways to make the initial design of the registry modest, with potential to scale the registry as the IoT Labeling Program grows.

117. In this respect, we note that NIST's research suggests that "future work should be done to examine potential issues of including an expiry date on a label."[384] NIST cited studies conducted by the UK government that consumers were confused about what the expiration date meant, and an Australian government study in which consumers thought the device would stop working after that date.[385] The UK research did conclude, however, that continued manufacturer support was important to survey participants.[386] Consumer Reports suggested an expiration date, if present, should be tied to an end-of-support date rather than a renewal date.[387] NIST's research into the importance of support dates to consumers coupled with the potential confusion of expiration dates and the support from the record lead us to conclude an expiration date is not warranted. We do find, however, that the disclosure of a minimum support period and end date for the support period for the device is appropriate and will provide meaningful information to consumers on the manufacturer's commitment to provide patches or other support – a vital issue in a dynamic threat environment.[388] To ensure that information about this support

[380] Consumer Reports Comments at 3; NYC OTI Comments at 5; Cybersecurity Coalition Comments at 10-12; *see also* FDA Comments at 4 (noting that submission of a software bill of materials to the Secretary is required for FDA-regulated medical devices).

[381] Garmin Reply at 3.

[382] CTA Comments at 34.

[383] *See* Letter from Stacey Higginbotham, Policy Fellow, Consumer Reports, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 23-239 (Dec. 13, 2023) referencing Consumer Reports, *CR Cyber Trust Mark IoT Security Registry Design Proposal* at 5, n.5 (Dec. 12, 2023) (*Consumer Reports Registry Design Proposal*) (describing a site capable of searching by product identifiers and manufacturers as "more sophisticated" and suggesting that initial design of the registry should not be overly complex).

[384] Julie M. Haney & Susanne M. Furman, *Smart Home Device Loss of Support: Consumer Perspectives and Preferences* at 503, NIST (2023), https://tsapps.nist.gov/publication/get_pdf.cfm?pub_id=936232 [https://perma.cc/EL5G-TSL5] (*NIST Consumer Perspectives Research*).

[385] *NIST Consumer Perspectives Research* at 503.

[386] *NIST Consumer Perspectives Research* at 498 (describing the importance of security updates for different types of devices, where between 77% and 90% of participants "strongly agree or agree" that security updates were important depending on the device type).

[387] Consumer Reports Comments at 33.

[388] *See* CSA Comments at 21-22; Letter from Grace Burkard, Director of Operations, ioXt Alliance, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 23-239 (Dec. 14, 2023) at 2; *see also* Letter from Marco Peraza, Legal (continued….)

period remains accurate, and to encourage manufacturers to support their products for longer periods, manufacturers shall be able to extend the support period in the registry through a mechanism to be determined by the Lead Administrator, but which should be expeditious and require no further disclosures.

118. While we identify the defined set of data that is consistent across all manufacturers, we believe the information contained in the registry for a particular IoT product or product class may also depend on the standards and testing procedures adopted for each particular IoT product. As such, in the near term, we expect there will be additional registry data elements that are specific to an IoT product, or classes of IoT products, that are not yet ripe for decision in this *Order*. We also recognize that some of the information recommended by NIST in its consumer education recommendations, discussed in further detail below, may be valuable for consumers to see in the registry.[389] Accordingly, while we provide a baseline of necessary information that must be displayed for an IoT product in the registry, regardless of class the IoT product belongs to, we delegate authority to the Bureau to determine, subject to any required public notice and comment processes, whether any additional disclosure fields, such as the manufacturer's access control protections (e.g., information about passwords, multi-factor authentication), whether or not the data is encrypted while in motion and at rest (including in the home, app, and cloud), patch policies and security or privacy information[390] are necessary, and if so, what should they be.

119. We disagree with commenters, such as LG, who suggest that manufacturers should have discretion over whether to include additional privacy and/or security information through a QR Code, URL, or other scannable mechanism insofar as it would require additional information in the registry.[391] LG Electronics, though supportive of adding a variety of data to the registry, acknowledges it is unclear how much detail or what types of information would be of value to a consumer.[392] We believe that allowing discretion over what information is included in the registry may overcrowd it, or engender consumer confusion. Rather, uniform registry elements will provide greater consistency for consumers and adoption of uniform registry elements is supported by the record.[393] We make clear, however, that we do not otherwise restrict what information manufacturers may include or reference on their product packaging, so long as it does not interfere with or undermine the display of the FCC IoT Label.

120. We recognize that a decentralized registry relying on data derived through an API from manufacturers will require some oversight to ensure that the registry, when accessed by consumers using QR Codes, functions as described and displays the required information about individual products. We direct the Lead Administrator to receive and address any technical issues that arise in connection with displaying the registry through the QR Code, the associated API, and consumer complaints with respect to the registry. CSA recommends that the Commission engage a third-party with operating the registry

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Advisor, FCC, on behalf of Hacker News Members, to PS Docket No. 23-239 (Sept. 14, 2023) (during the Hacker News website public Q&A and discussion session commenters generally support a requirement that manufacturers be required to support their devices for a minimum period; vendors should disclose the period for which they support a device; and certain classes of devices should have a mandatory minimum support period.).

[389] *See infra* Section L.

[390] *See* Consumer Reports Comments at 23; CMU *Ex Parte* at para. 3.

[391] *See* LG Electronics Comments at 2 ("[A]lthough LG supports the NPRM's proposal to implement a single binary label, manufacturers should have discretion over whether to provide additional security or privacy information through a QR Code, URL, or other scannable mechanism.").

[392] *Id.*

[393] Cybersecurity Coalition Comments at 9-10; Planar Comments at 2 (describing the European Product Registry for Energy Labeling as a model where "[c]overed products sold [that] bear [the label] contain[] a QR code that leads the consumer to a webpage with full details about the product's energy consumption").

for cost and efficiency reasons.[394] CTA agrees that the Commission should use a third-party to host and manage the registry due to the resources required to establish the registry.[395] We agree that, given the structure of the registry as we adopt it today, the Lead Administrator is in the best position to interface with manufacturers to ensure the smooth operation of the registry.

121. We also recognize that for a registry of this magnitude to be effectively and timely rolled out requires significant input and coordination with industry partners. To determine how the registry should be structured to best meet the goals of the IoT Labeling Program as we adopt it today, we direct the Bureau to seek comment and consider, as part of a public process, the technical details involved with the operation of the registry. We delegate authority to the Bureau to adopt a Public Notice, subject to any required public notice and comment, establishing the structure of the registry; identifying the common API; how the API should be structured; how the API should be used; how the queried data will be displayed to the consumer; how manufacturers need to maintain and implement the API in connection with its interactions with the registry; what, if any, additional disclosure fields would be most beneficial to consumers in the future, as discussed above;[396] how the data in the registry returned by the API should be presented to the consumer; how the costs involved in maintaining the registry will be handled; how often the registry should be updated;[397] whether to require the manufacturer to list the product sensors, what data is collected, if the data is shared with third parties, or security or privacy issues and if data should be replicated;[398] and whether data should be replicated in multiple repositories – by the relevant CLA(s) or vendors, for example – and publicly accessible via a single query point; and any other technical information needed to establish the registry as we adopt today. The Bureau should consider how to reduce burdens on manufacturers in supporting the decentralized registry. We delegate authority to PSHSB in coordination with, at a minimum, OMD (specifically the Office of the Chief Information Officer) and, to the extent necessary OGC (specifically the Senior Agency Official for Privacy) to identify and impose any applicable security or privacy requirements arising from Federal law or Federal guidance for the registry and to approve or modify the recommendations regarding the functional elements of the registry listed above. We further delegate authority to PSHSB to publish a Public Notice, subject to any required public notice and comment, adopting and incorporating into the Commission's rules any additional requirements or procedures necessary to implement the Cyber Trust Mark registry.

I. Continuing Obligations of Entities Authorized to Use the FCC IoT Label

122. We adopt the proposal in the *IoT Labeling NPRM* that applicants must renew their authority to use the FCC IoT Label. Entities authorized to use the FCC IoT Label are required to ensure the product bearing the FCC IoT Label continue to comply with the Commission's program requirements. We disagree with CCDS that no renewals should be required and the product should simply bear the last date of testing. Such an approach could severely impair consumer trust in the label, especially if a product bearing the FCC IoT Label is being sold as new but is far out of date as to its initial achievement of the Mark.

123. For those that support some interval of renewal, the record is divided with respect to

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[394] CSA Comments at 15-16 ("The Alliance recommends that the Commission hire a third-party administrator to operate the IoT registry because this will likely result in a more cost-effective and efficient solution[.]").

[395] CTA Comments at 38.

[396] See NCTA *Ex Parte* at 4 recommending changes to the data elements be consistent with the IoT Labeling program's policies, especially that such changes be intelligible and useful to the average (i.e., non-expert, non-technical) consumer, and otherwise necessary to advance the objectives of the IoT Labeling Program.

[397] *See, e.g.*, *Consumer Reports Summer Research* at 4 ("Consumers are interested in the security of their connected devices and the data those devices collect about them."); Consumer Reports Comments at 6 ("The FCC needs to establish a mechanism to ensure the registry stays up to date.").

[398] *See* CMU *Ex Parte* at para. 2 (recommending consumers should "be informed about the sensors on the device and the type of information being collected and how that information will be used.")

whether IoT Labeling Program applicants should file for renewal each year, as proposed in the *IoT Labeling NPRM*.[399] Consumer Reports and TÜV SÜD agree that annual renewal is appropriate.[400] AHAM feels that an annual renewal application as the Commission proposed was unnecessary, or at minimum "unnecessarily rigid."[401] AHAM posits that a requirement to renew should only be triggered when a significant or substantive change is made to either the standard the manufacturer certifies to, or a significant design change to the product.[402] Similarly, more durable IoT products (such as smart appliances) may need to be renewed less frequently.[403] NAM argues that annual renewals are unnecessary for products that pose a limited risk.[404] Kaiser Permanente believes higher-risk devices should be updated annually, and otherwise renewal should occur every three years.[405] CCDS argues no annual testing is necessary, and the product should simply have the date it was authorized to bear the label that signals the product was compliant as of the initial date.[406] CSA suggests limiting the need for annual testing, but suggests some kind of annual reporting should be required.[407] We observe that other certifying bodies, such as ioXt, require annual renewal for products they certify and allow incentives for early renewal.[408] Based on the record, we recognize the degrees of nuance attendant to the different types of products at issue. We agree with the notion that certain IoT products, depending on their lifespan and risk level, may need different standards for renewal to achieve the FCC IoT Label.

124. We task the Lead Administrator to collaborate with stakeholders and provide recommendations to PSHSB on how often a given class of IoT products must renew their request for authority to bear the FCC IoT Label, which may be dependent on the type of product, and that such a recommendation be submitted in connection with the relevant standards recommendations for an IoT product or class of products. In doing so, consideration should be given as to whether annual continuous compliance reports are acceptable for purposes of renewing, and how to effectively balance the need for industry flexibility and the need to ensure that consumers have up-to-date information about the product they are considering purchasing. Consideration should also be given to the fees incurred as part of a renewal process, as we agree with Kaiser Permanente that renewal fees must not be unduly burdensome or cost-prohibitive.[409] We emphasize that renewals should occur frequently enough that a consumer can be sure that a product bearing the FCC IoT Label has reasonable cybersecurity protections in place, and some process must be in place to ensure accountability, even if annual testing is not required. We delegate authority to PSHSB to review, approve (if appropriate) and, subject to any required public notice and comment, adopt into the Commission's rules, the proposals from the Lead Administrator for renewal of authority to bear the FCC IoT Label.[410]

J. Audits, Post-Market Surveillance, and Enforcement

125. We adopt the *IoT Labeling NPRM*'s proposal to rely on a combination of administrative remedies and civil litigation to address non-compliance and direct the CLA(s) to conduct post-market

[399] *IoT Labeling NPRM* at 19, para. 47.

[400] Consumer Reports Comments at 19; TÜV SÜD Comments at 2.

[401] AHAM Comments at 4.

[402] *Id.*; Whirlpool Comments at 5; CTA Reply at 7.

[403] AHAM Comments at 4-5.

[404] NAM Comments at 5.

[405] Kaiser Permanente Comments at 2.

[406] CCDS Comments at 5.

[407] CSA Comments at 19.

[408] ioXt Comments at 23.

[409] Kaiser Permanente Comments at 5.

[410] *See e.g.*, NCTA *Ex Parte* at 3-4 (recommending renewal under certain circumstances).

surveillance. The *IoT Labeling NPRM* sought comment on how to enforce program requirements to ensure the integrity of the Cyber Trust Mark is maintained.[411] We asked whether non-Commission entities should conduct random audits and/or market surveillance, who those entities should be, and what audit requirements should be included.[412] We also sought comment on what enforcement measures would be appropriate to address fraudulent uses of the FCC IoT Label.[413] The purpose of this IoT Labeling Program is to provide reasonable assurances to the consumer that the products they bring into their homes have at least a minimum level of cybersecurity. The success of the IoT Labeling Program hinges on the label retaining its integrity as a trusted consumer resource. This requires vigorous review and enforcement to ensure that products bearing the Cyber Trust Mark are in compliance with the program standards. We further observe that the ISO/IEC 17065 standards require CLAs to perform appropriate post-market surveillance activities. We adopt post-market surveillance and civil enforcement, accordingly.

126. We find support in the record that the "Mark must be trusted by consumers to be successful"[414] and "to gain consumer confidence and incentivize cybersecurity, the label must be backed by a robust enforcement program."[415] We agree with the EPIC's position that weak enforcement may result in unmet consumer expectations regarding a product's actual level of cybersecurity and "allow bad actors to take advantage of the goodwill created by the cybersecurity program,"[416] and take up its recommendation of independent, post-market audits accordingly.[417] Whirlpool also supports regular market surveillance to find instances of unapproved use of the Cyber Trust Mark, as well as products that may have been certified but no longer meet program requirements.[418] Whirlpool states that surveillance "should include random auditing… as well as sampling of some established percentage on a regular basis of certified products/devices."[419] The American Association for Laboratory Accreditation supports adopting the product surveillance standards established for TCBs and in the EPA's ENERGY STAR program.[420] We also agree with commenters who indicate that the Commission, CLAs, and possibly the Federal Trade Commission (FTC) should be able to receive complaints of noncompliant displays of the Cyber Trust Mark, which could result in auditing.[421] We delegate authority to the Bureau, in coordination with the Consumer and Governmental Affairs Bureau, to determine the process for receiving and responding to complaints. CTA and Planar Systems also support random auditing.[422] We agree that random audits, in addition to regular post-market surveillance will best serve to maintain consumer

[411] *IoT Labeling NPRM* at 20-21, para. 51.

[412] *Id.*

[413] *Id.*

[414] Whirlpool Comments at 6.

[415] EPIC Reply at 26.

[416] *Id.* at 27.

[417] *Id.* at 27-31.

[418] *See* Whirlpool Comments at 6.

[419] *Id.*

[420] A2LA Comments at 2; *see also* OET Knowledge Database, *TCB Post-Market Surveillance* (Apr. 26, 2022), https://apps.fcc.gov/kdb/GetAttachment.html?id=dQfN6tcMcj%2FrEmjHGZ%2B3dw%3D%3D&desc=610077%20D01%20TCB%20Post%20Market%20Surveillance%20v06r02&tracking_number=20540 [https://perma.cc/FA7K-ZXSR] (outlining post-market surveillance responsibilities of TCBs) (*TCB Post-Market Surveillance*).

[421] *See* Cybersecurity Coalition Comments at 14; EPIC Reply at 33.

[422] CTA Comments at 25; Planar Comments at 2.

confidence in the Cyber Trust Mark.[423]

127. *Post-market surveillance*. We agree with the Cybersecurity Coalition that post-market surveillance of products receiving the Cyber Trust Mark should be a principal enforcement mechanism,[424] and find that CLAs are in the best position to conduct post-market surveillance and random auditing, in accordance with ISO/IEC 17065. These activities are based on type testing a certain number of samples of the total number of product types which the CLA has certified. In addition, each CLA must be prepared to receive and address post-market surveillance from the public. If a CLA determines that a product fails to comply with the technical regulations for that product, the CLA will immediately notify the grantee and the Lead Administrator in writing. The grantee will have 20 days to provide a report to the CLA describing actions taken to correct the deficiencies.[425] Continued deficiency after 20 days will result in termination of the grantee's approval to display the Cyber Trust Mark. A grantee's approval to display the Cyber Trust Mark may also be terminated subject to the 20 day cure period for false statements or representations found in their application or associated materials or if other conditions come to the attention of a CLA which would warrant initial refusal to authorize use of the FCC Label. Such terminations will protect the integrity of the FCC IoT Label and encourage accurate representations and disclosures in application materials that will enhance the reliability of the Labeling Program's operation, more generally.

128. We believe it is appropriate for the Lead Administrator, in collaboration with the CLAs and other stakeholders, to identify or develop, and recommend to the Commission for approval, the post market surveillance activities and procedures that CLAs will use for performing post-market surveillance. The recommendations should include specific requirements such as the number and types of samples that a CLA must test and the requirement that grantees submit, upon request by PSHSB or a CLA, a sample directly to the CLA to be evaluated for compliance at random or as needed.[426] We delegate authority to the Bureau to review the recommendations and, subject to any required public notice and comment, incorporate post market procedures into the Commission's rules. We also delegate authority to the Bureau to establish requirements (subject to any required public notice and comment) regarding post-market surveillance of products in any instances where the CLA that granted the authorization of the product is not available to conduct such post-market surveillance. The document will also address procedures to be followed if a grantee's approval to display the Cyber Trust Mark is terminated based on mandatory post-market surveillance or notice from the public, including disqualification from the IoT Labeling Program and potential further investigation into other products related to the manufacturer or the CyberLAB, as discussed below. Finally, the Lead Administrator will submit periodic reports to PSHSB of the CLAs' post-market surveillance activities and findings in the format and by the date specified by PSHSB.

129. The *IoT Labeling NPRM* sought comment on disqualification for nonconformity, referencing the Department of Energy's ENERGY STAR program, which sets out contractual

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[423] To enable a meaningful audit process it will be important to be able to review certain key records, which we consequently will require grantees to retain records regarding the original design and specifications and all changes that have been made to the relevant consumer IoT product that may affect compliance with the IoT Labeling Program requirements; a record of the procedures used for production inspection and testing; and a record of the test results that demonstrate compliance. *See infra* Appx. A, 47 CFR § 8.215. We model our approach on analogous elements of our equipment authorization rules, with which the Commission and industry have substantial experience, and which have proven workable in practice. *See* 47 CFR § 2.938(a), (f).

[424] Cybersecurity Coalition Comments at 14; *see also* Ricardiam DAO LLC Comments at 1 (listing regular periodic security audits as a key component for the program).

[425] ioXt *Ex Parte*.

[426] If necessary to accommodate the volume of auditing, a CLA may outsource some post-market surveillance testing to a recognized CyberLAB, but retains responsibility for the final review. *See e.g.*, *TCB Post-Market Surveillance*, Section E(2) at 3 (describing a similar process for outsourcing post-market testing for the Equipment Authorization program).

Disqualification Procedures, including a 20 day period to dispute before a formal disqualification decision and what steps an ENERGY STAR partner must take after being formally disqualified (e.g., removing references to ENERGY STAR in the product labeling, marketing).[427] The *IoT Labeling NPRM* asked whether the IoT Labeling Program should adopt a similar process.[428] We agree with EPIC and Planar Systems in supporting a "cure period [to] give[] good actors the opportunity to fix any issues without incurring penalties"[429] and " to address any discovered non-conformance as long as the manufacturer is acting in good faith."[430] Here, we adopt a cure period of 20 days, which is in line with the ENERGY STAR program.[431]

130. EPIC also supports adopting disqualification procedures similar to ENERGY STAR's for non-compliance, including ceasing shipments of units displaying the label, ceasing the labeling of associated units, removing references to the label from marketing materials, and covering or removing labels on noncompliant units within the brand owner's control.[432] It notes that the EPA also conducts retail store level assessments to identify mislabeled products and argues that a robust enforcement mechanism should include all of these actions.[433] We delegate to the Bureau to consider whether such requirements should follow from termination of authority.

131. In addition, we find that a combination of enforcement procedures for non-compliance are available, including administrative remedies under the Communications Act and civil litigation trademark infringement or breach of contract.[434] Administrative remedies may include, but are not limited to, show cause orders, forfeitures, consent decrees, cease and desist orders, and penalties.[435] The Commission will pursue all available means to prosecute entities who improperly or fraudulently use the FCC IoT Label, which may include, but are not limited to, enforcement actions, legal claims of deceptive practices prosecuted through the FTC, [436] and legal claims for trademark infringement or breach of contract. The record supports both administrative remedies to address consumer harm and civil

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[427] *IoT Labeling NPRM* at 20-21, para. 51; *see also* ENERGY STAR, *Disqualification Procedures ENERGY STAR® Products* (Feb. 28, 2018), https://www.energystar.gov/sites/default/files/asset/document/Disqualification_Procedures_0.pdf [https://perma.cc/V4EX-3P8N] (*Disqualification Procedures*).

[428] *IoT Labeling NPRM* at 20-21, para. 51.

[429] *Id.*

[430] Planar Comments at 2.

[431] *See Disqualification Procedures* at 1. *But see* ioXt *Ex Parte* at 3 (citing e.g., European Telecommunications Standards Institute (ETSI), Coordinated Vulnerability Disclosure (CVD), https://www.etsi.org/standards/coordinated-vulnerability-disclosure (noting "ETSI aims to resolve all valid vulnerabilities within 90 days of reporting though it may take longer for complicated fixes.") (last visited Mar. 5, 2024)). Given our interest in ensuring that deficiencies are cured in a timely manner and consistent with the ENERGY STAR program, we believe 20 days is a sufficient period of time.

[432] EPIC Reply at 27-31.

[433] *Id.* at 31.

[434] *IoT Labeling NPRM* at 20-21, para. 51.

[435] *Id. See, e.g.*, *Sound Around, Inc.*, Notice of Apparent Liability for Forfeiture, FCC 20-46 (2023) (proposing a $1.2 million penalty for marketing 33 unauthorized RF devices in violation of Section 302 and Section 2.803(b)(1) of the Communications Act of 1934).

[436] In addition, to further help safeguard the integrity of the IoT Labeling Program and the FCC IoT Label, we codify a rule that prohibits any person from, in any advertising matter, brochure, etc., using or making reference to the FCC IoT Label or the Cyber Trust Mark in a deceptive or misleading manner. *See infra*, Appx. A, 47 CFR § 8.213(b). We model our approach on analogous elements of our equipment authorization rules, with which the Commission and industry have substantial experience, and which have proven workable in practice. *See* 47 CFR § 2.927(c).

enforcement actions for false use of the FCC IoT Label.[437] We assert that this combination of enforcement mechanisms are best suited to protect consumer trust in the Cyber Trust Mark and incentivize participant compliance.

132. *Cyber Trust Mark Demonstrates Adherence to Widely Accepted Industry Cybersecurity Standards*. While we decline to preempt state law, we find that approval to use the Cyber Trust Mark on a particular product is an indicator of reasonableness and demonstrates adherence to widely accepted industry cybersecurity standards. The *IoT Labeling NPRM* asked whether the label represented an "indicium of reasonableness" that may serve as a defense or a safe harbor against liability for damages as a result of a cyber incident, while making clear that it did not intend for the IoT Labeling Program to preempt existing laws.[438] While several commenters support Commission preemption of state laws,[439] as well as adoption of liability protections for devices approved to display the Cyber Trust Mark,[440] we decline to preempt state law and decline to implement a legal safe harbor beyond reiterating the Commission's view that achievement of FCC IoT Label is an indicium of reasonableness for entities whose products are compromised despite being approved to use the Cyber Trust Mark. We recognize that a more fulsome safe harbor provision may indeed incentivize participation in the IoT Labeling Program, as the U.S. Chamber of Commerce urges.[441] However, on this record we are not persuaded that it would be feasible or prudent for the Commission to make liability pronouncements as to laws or standards outside the Commission's purview as would be necessary for a broader safe harbor in the absence of preemption. As EPIC observes, such a safe harbor could also decrease consumer trust in the label.[442] In addition, several states have adopted legal safe harbors for entities that implement reasonable security measures (e.g., voluntarily adopt recognized best practices such as NIST's and implement written security programs), and we defer to the states to determine whether approval to use the Cyber Trust Mark meets these State requirements. Given the uncertain interplay between qualification to use the Cyber Trust Mark and various state law regimes, coupled with the risk that such a safe harbor could decrease consumer trust in the label, we decline to preempt state liability requirements at this time.

K. International Reciprocal Recognition of the Cyber Trust Mark

133. The Commission sought comment in the *IoT Labeling NPRM* on how the Commission should coordinate and engage with international bodies maintaining their own labeling programs, and whether to engage in mutual recognition of international labels.[443] We note the robust record highlighting the immense value to manufacturers of IoT products in international harmonization of cybersecurity

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[437] *See, e.g.*, EPIC Reply at 33 ("Such administrative remedies could include requiring the company to notify impacted consumers, corrective advertising, and financial penalties … [and] we encourage the FCC to take enforcement action or refer the matter to the Federal Trade Commission (FTC) to prosecute under its authority to combat deceptive acts or practices").

[438] *IoT Labeling NPRM* at 21, para. 52.

[439] PMI Comments at 2 (supporting preemption for those states with cybersecurity requirements); CTIA Comments at 36; CTIA Reply at 9 (citing NAM Comments at 6 ("The FCC . . . should limit liability and enhance consistency by providing for preemption of state-level laws and requirements for products participating in the program, and clarifying that the program's legal safe harbor protects companies from potential liability associated with current or future state requirements.")); USTelecom Comments at 11 (urging the Commission to "use its platform as a leading voice in this space to encourage federal preemption," because "[o]pening enforcement to the states will likely cause confusion and inconsistency in application and enforcement").

[440] Chamber Comments at 4; AHAM Comments at 6; Samsung Comments at 5-6; NAM Comments at 6.

[441] Chamber Comments at 2.

[442] EPIC Reply at 35. *See also* Consumer Reports Comments at 28-39 ("[A] safe harbor would mean little in practice, as the company would in any case be required to prove that it had performed all the requisite elements of a robust security program.").

[443] *IoT Labeling NPRM* at 23, para. 55.

standards.[444] We agree with Widelity that "IoT devices are often manufactured and sold globally. As supply chains evolve, a consistent set of standards will support the rapid growth of innovation and security."[445] We further agree with Consumer Reports that "mutual recognition should only occur when the other program to be recognized has standards as stringent or more stringent" than the IoT Labeling Program.[446]

134. We recognize several other countries already have an established national cyber IoT labeling program, including Singapore,[447] Finland,[448] and Germany.[449] The record cites to these programs and highlights their features for consideration in developing the IoT Labeling Program.[450] For example, the record explains how Singapore's CLS takes reference from the EN 303 645 standards developed by the European Telecommunications Standards Institute (ETSI).[451] We note that other commenters have also recommended use of the ETSI EN 303 645 standards.[452] Further, the record provides Finland's IoT labeling database as an example for developing our IoT registry.[453] Several other countries have government activity around IoT devices or products.[454] For example, Canada has a cybersecurity certification program for small and medium-sized organizations.[455] As another example, South Korea has a IoT security certification system justified under Article 48-6 of their "Act on Promotion of Information and Communications Network Utilization and Information Protection" statute.[456]

135. We also observe continuing developments in IoT security across the globe for consideration.[457] The European Union Agency for Cybersecurity (ENISA) is currently developing a

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[444] *See* Widelity Comments at 4; Whirlpool Comments at 4-5; AHAM Comments at 4; PTI Comments at 2; American Certification Body, Inc. Reply at 1; Coalition Letter Reply at 2.

[445] Widelity Comments at 4.

[446] Consumer Reports Comments at 40.

[447] Cyber Security Agency of Singapore, *Cybersecurity Labeling Scheme (CLS)*, https://www.csa.gov.sg/our-programmes/certification-and-labelling-schemes/cybersecurity-labelling-scheme [https://perma.cc/Z5MR-4TTS] (last visited Dec. 29, 2023).

[448] Finnish Transport and Communications Agency National Cyber Security Centre, *Cybersecurity*, https://tietoturvamerkki.fi/en [https://perma.cc/NF8D-CL97] (last visited Dec. 29, 2023).

[449] Federal Office for Information Security, *IT Security Label*, https://www.bsi.bund.de/EN/Themen/Verbraucherinnen-und-Verbraucher/IT-SiK-fuer-Verbraucher/IT-SiK-fuer-Verbraucher_node.html [https://perma.cc/NS3G-LRFG] (last visited Dec. 29, 2023).

[450] ITI Comments at 6; CSA Comments at 10; TÜV SÜD Comments at 4.

[451] ITI Comments at 6.

[452] Garmin Comments at 10; EPIC Reply at 12.

[453] TÜV SÜD Comments at 4 (providing Finland's IoT labelling database as an example).

[454] *See* Hollie Hennessey & Mike Sullivan-Trainor, Consumer IoT Device Cybersecurity Standards, Policies, and Certification Schemes at Part 1 (2023), https://csa-iot.org/wp-content/uploads/2023/02/Consumer-IoT-Device-Cybersecurity-Standards-Policies-and-Certification-Schemes.pdf [https://perma.cc/UN9M-FE2M].

[455] Government of Canada, *CyberSecure Canada* (Dec. 29, 2023), https://ised-isde.canada.ca/site/cybersecure-canada/en [https://perma.cc/6ZKU-HG9L].

[456] Press Release, Ministry of Science and ICT (MSIT) MSIT and Korea Internet and Security Agency signed an Memorandum of Understanding with the Singapore Cyber Security Agency for Mutual Recognition of IoT Security Certification Systems (Dec. 14, 2023), https://www.msit.go.kr/eng/bbs/view.do;jsessionid=pJsmQ-Zxr72rRsCgyqvwPmVCaAmf3EIfa0FZ60tY.AP_msit_1?sCode=eng&mPid=2&mId=4&bbsSeqNo=42&nttSeqNo=938 [https://perma.cc/CE5P-5EHF].

[457] *See* Auto Innovators *Ex Parte* at 1-2 referencing international regulations addressing cybersecurity in automobiles. ISO/SAE 21434:2021 - Road Vehicles - Cybersecurity Engineering (Aug. 2021) and UNECE 155 -

(continued….)

cybersecurity certification framework that would require certain products, services, and processes to adhere to specific requirements.[458] Relatedly, the U.S. has signed an agreement for a joint roadmap between the Cyber Trust Mark and similar consumer labeling programs in the EU.[459] Further, Japan has committed to work with the U.S. to "ensure interoperability" of its IoT labeling scheme currently under development.[460]

136. We fully recognize the importance of ensuring international recognition of the IoT Labeling Program and reciprocity considerations underlie our decisions today. We delegate authority to the Bureau and the FCC Office of International Affairs to work with other federal agencies to develop international recognition of the Commission's IoT label and mutual recognition of international labels, where appropriate, as promptly as possible to enable recipients of the Cyber Trust Mark to realize the benefits an internationally recognized Cyber Trust Mark can have to promote global market access. Moreover, the proliferation in the marketplace both in the U.S. and abroad of products meeting a common baseline standard will elevate the overall global cybersecurity baseline for IoT and promote security-by-design approaches to smart products.

L. Consumer Education

137. We adopt the *IoT Labeling NPRM*'s proposal and base the IoT Labeling Program's consumer education requirements on the considerations NIST outlines in the *NIST Cybersecurity White Paper*[461] due to its general applicability to an IoT label and in light of support from the record.[462] The Lead Administrator will be responsible for developing a consumer education campaign that is based on the considerations recommended by NIST in the *NIST Cybersecurity White Paper* and discussed in greater detail below.[463] In developing its consumer education plan, we task the Lead Administrator with considering ways to roll out a robust campaign with a reasonable national reach, including ways to make the consumer education accessible and developing education materials in multiple languages.[464] We further task the Lead Administrator with considering the costs of conducting such outreach and how that outreach would be funded. Once developed, the Lead Administrator will submit this consumer education plan to the Bureau for consideration and for coordination in publicizing the benefits of the IoT Labeling Program. We recognize the importance of close collaboration between industry and delegate authority to the Bureau to consider and work with the Lead Administrator and other stakeholders to determine how the consumer education campaign would be executed and to execute the campaign. In addition and in

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Uniform Provisions Concerning the Approval of Vehicles with Regards to Cyber Security and Cyber Security Management Systems. As noted earlier in the document, the Commission's program initially focusses on consumer IoT, rather than enterprise or industrial.

[458] European Union Agency for Cybersecurity (ENISA), *Cybersecurity Certification Framework*, https://www.enisa.europa.eu/topics/certification/cybersecurity-certification-framework [https://perma.cc/5ZS4-KWTX] (last visited Dec. 29, 2023).

[459] Press Release, European Commission, EU-US Joint Statement on CyberSafe Product Action Plan (Jan. 31, 2024), https://digital-strategy.ec.europa.eu/en/library/eu-us-joint-statement-cybersafe-products-action-plan [https://perma.cc/8D78-H97V].

[460] Press Release, Ministry of Economy, Trade and Industry, Joint Statement of the Japan-U.S. Economic Policy Consultative Committee at 6 (Nov. 14, 2023), https://www.meti.go.jp/press/2023/11/20231116006/20231116006-1.pdf [https://perma.cc/GN7U-PYP4].

[461] *IoT Labeling NPRM* at 22, para. 53; *NIST Cybersecurity White Paper* at 19-20.

[462] *See, e.g.*, CSA Comments at 26; Cybersecurity Coalition Comments at 15; NYC OTI Comments at 4; Comcast Comments at 10; Kaiser Permanente Comments at 5; PMI Comments at 2; NRF Comments at 2; Coalition Letter Reply at 2.

[463] We anticipate that the Lead Administrator may receive support from other Label Administrators in conducting its consumer outreach campaign.

[464] The Lead Administrator should include recommendations about what those languages should be.

furtherance of our expectation that the success of the IoT Labeling Program will be dependent on a close collaboration with the federal government, industry, and other relevant stakeholders,[465] the Commission will coordinate as needed with relevant agencies, such as the Department of Homeland Security, CISA, the FBI, as well as the FTC, the Consumer Product Safety Commission (CPSC), and other industry stakeholders who have indicated a willingness to publicize the benefits of the IoT Labeling Program as part of their own consumer education activities.

138. In the *IoT Labeling NPRM*, the Commission stated its expectation that the success of the IoT Labeling Program would require a robust consumer education campaign involving a collaboration with manufacturers, retailers, industry, and non-profit groups to promote the label and explain to consumers what the label means.[466] The Commission sought comment on whether the campaign should rely on consumer education materials recommended by NIST, the anticipated costs of such a campaign, and mechanisms in which to conduct outreach consistent with federal constraints on federal outreach.[467] We agree with CEDIA that consumer education will have a significant impact on meeting the IoT Labeling Program's goals.[468] We further agree that adequate consumer education must inform consumers of the limitations of the Cyber Trust Mark as well as the benefits of having a product that meets baseline cybersecurity requirements,[469] and we agree with CSA that consumers should understand that the label does not guarantee complete device security, but that such protections are an important component of risk management.[470] As pointed out by the City of New York's Office of Technology and Innovation, an effective consumer education program would need to cover the risks and threats to "digital integration of [IoT] devices" and how those risks "can be lessened by helping operators, users, and consumers . . . learn the key elements of a strong IoT Cybersecurity posture."[471] We agree with commenters in the record that NIST's approach to consumer education is best, and note that no commenters opposed NIST's approach.

139. As the Commission acknowledged in the *IoT Labeling NPRM*, NIST has prepared a document identifying consumer education considerations as part of its analysis of a cybersecurity labeling program.[472] In following with NIST's recommendations, the Commission believes consumers should have access to the following information as part of the IoT Labeling Program's consumer education plan:

(1) What the label means and does not mean, including that the label does not imply an endorsement of the product and that labeled products have not completely eliminated risk;

(2) What cybersecurity baselines must be met to obtain authority to affix the label, why they were included, and how those criteria address security risks;

(3) A glossary of applicable terms, written in plain English;

(4) General information about the conformity assessment process, including information about how the conformity assessment was conducted and the date the label was

[465] *IoT Labeling NPRM* at 6, para. 9.

[466] *Id.*at 21, para. 53.

[467] *Id.*at 21-22, paras. 53-54.

[468] CEDIA Reply at 5 ("Consumer and industry education will have a significant impact on meeting the goals of the U.S. Cyber Trust Mark program.").

[469] *See id.*("[E]ducation must also inform consumers of the limitations of the mark; and that 'reasonable efforts' alone may not fully protect the consumer.").

[470] CSA Comments at 18 ("No IoT device will be completely secure . . . . Nevertheless, cybersecurity features, like seatbelts and airbags in cars, are beneficial in reducing risk.").

[471] NYC OTI Comments at 4.

[472] *IoT Labeling NPRM* at 21-22, para. 53; *NIST Cybersecurity White Paper* at 19-20.

awarded to the product;

(5) The kinds of products eligible for the label and an easy way for consumers to identify labeled products;

(6) The current state of device labeling as new cybersecurity threats and vulnerabilities emerge;

(7) Security considerations for end-of-life IoT products and functionality implications if the product is no longer connected to the Internet;

(8) Consumer's shared responsibility for securing the device software and how their actions (or inactions) can impact the product's software cybersecurity; and

(9) Contact information for the IoT Labeling Program and information on how consumers can lodge a complaint regarding a product label.

140. We recognize that some aspects of this consumer education campaign overlap other aspects of the IoT Labeling Program, such as the registry. We see no harm with including that information in the registry as well as the consumer education campaign. We also observe the importance of conducting what NIST describes as a "campaign" to establish and increase label recognition,[473] and thus envision a Lead Administrator-led, multiple stakeholder engagement that puts NIST's recommendations into practice.

141. NIST has conducted research into the consumer perspective on the loss of manufacturer support in IoT products.[474] The research suggests that proactive communication to consumers from the manufacturer with information about end-of-life support policies, the expected lifespan, and how to sign up for notifications about changes to support is an additional, important step.[475] NIST also emphasizes the importance of consumer education about the meaning of the dates attached to a label, and cautions that this can confuse consumers as to the date's meaning.[476] We agree with Consumer Reports that educating consumers about the meaning of support periods is an important aspect of consumer education.[477] We believe that the recommendations identified by NIST in the *NIST Cybersecurity White Paper*, coupled with the consumer research done by NIST and industry, provide a strong model that the Lead Administrator can utilize in its consumer education campaign to meet the goals NIST and the record, discussed above, identify as important for a successful consumer education campaign.

142. To assist the Lead Administrator in promoting consumer education, the Commission will coordinate publicizing the benefits of the IoT Labeling Program with the relevant agencies, including the Department of Homeland Security, CISA, FBI, FTC, the Consumer Product Safety Commission (CPSC), and other industry stakeholders who have indicated a willingness to assist with consumer education. A coalition of trade associations advocates for a consumer education program led by the U.S. government,[478] but do not propose how to conduct outreach consistent with the federal outreach concerns articulated in the *IoT Labeling NPRM*.[479] We agree that a government outreach program is essential in a larger campaign to effectively inform consumers about the IoT Labeling Program, consistent with NIST's recommendations identified above. The Commission intends to work closely with CISA to make use of

[473] *NIST Cybersecurity White Paper* at 19.

[474] *See NIST Consumer Perspectives Research*.

[475] *Id.*at 502-503.

[476] *Id.*at 503.

[477] Consumer Reports Comments at 26 ("Relatedly, we will have to educate consumers that a connected device required regular updates over time in order to stay secure.").

[478] Coalition Letter Reply at 4.

[479] *IoT Labeling NPRM* at 21, para. 53.

their "Secure our World" program.[480] We agree with CTA that federal consumer education efforts do not preclude independent communication and outreach programs.[481] For example, the National Retail Foundation indicated their willingness to support consumer education efforts.[482] While Everything Set, Inc. is concerned that outsized private sector involvement in consumer education might hurt the campaign's credibility,[483] we believe that retail and manufacturer involvement in promoting the IoT Labeling Program and the limitations of the IoT Labeling Program are important to ensure widespread recognition of the Cyber Trust Mark in commerce. To promote consumer education and engage in a joint effort with industry and stakeholders to raise awareness of the label, the Commission will coordinate with the Lead Administrator, Executive Agencies, and other industry stakeholders who have indicated a willingness to publicize the benefits of the IoT Labeling Program as part of their own consumer education efforts.

M. Cost/Benefit Analysis

143. Our analysis indicates that the expected benefits of the IoT Labeling Program greatly exceed the expected costs of the program. The expected benefits of the IoT Labeling Program include improved consumer cyber awareness; reduced vulnerability of products that could be used in cyberattacks both in people's homes and as part of a larger national IoT ecosystem; and increased manufacturer competition and relational benefits stemming from increased goodwill and product awareness. Consumers value the security of their devices, and the complexity of understanding whether IoT devices meet baseline security standards, and making informed purchases on that basis is a significant cost to consumers.[484]

144. *Consumer Benefit from Reduced Search Costs*. The Cyber Trust Mark can lower consumer research costs by reducing the amount of time consumers spend researching the cybersecurity characteristics of IoT products before making a purchase. We estimate that the Cyber Trust Mark will save consumers at least $60 million annually from reduced time spent researching cybersecurity features of potential purchases. We use the U.S. Department of Transportation (DOT)'s approach of valuing the time savings of travel to value the time savings to consumers of the Cyber Trust Mark.[485] Our analysis relies on the share of households with a smart home device (which we note is only one segment of the IoT

[480] Cybersecurity & Infrastructure Security Agency, *Secure Our World*, https://www.cisa.gov/secure-our-world [https://perma.cc/4KFU-RSGC] (last visited Jan. 12, 2024).

[481] CTA Comments at 32 ("The private sector can augment the government's educational campaign through advertising, websites and social media.").

[482] *See* NRF Comments at 2 ("The National Retail Foundation . . . supports the idea that retailers who sell IoT devices should be part of broader efforts to raise consumer awareness around IoT cybersecurity.").

[483] Everything Set, Inc. Comments at 3.

[484] Summary statistics from American Experiences Survey conducted by Consumer Reports found that the majority of respondents were interested in purchasing a connected device and a large share had difficulty learning about the security features of connected devices. *Consumer Reports Summer Research* at 5 ("Four out of five of our respondents were interested in purchasing a connected device scoring their desire between 3 and 5 on a five-point scale with 5 being most interested, and 38% had tried to find security or privacy information about a connected device before purchase. But many found it difficult because it was either unavailable, available only after purchase, buried on legal documents, or not always found in a consistent place."). Similarly, Comcast highlights the difficulty consumers have comparing security features between products. Comcast Comments at 10 ("But today there is an information asymmetry: consumers do not have a reliable, easy-to-understand mechanism to compare security features between otherwise comparable IoT devices (or, as noted, to understand that a device's security is no longer being supported.)").

[485] *See* Memorandum from Vinn White, Acting Assistant Secretary for Transportation Policy, U.S. Department of Transportation to Secretarial Officers and Modal Administrators at 13 (Sept. 27, 2016), https://www.transportation.gov/sites/dot.gov/files/docs/2016%20Revised%20Value%20of%20Travel%20Time%20Guidance.pdf [https://perma.cc/MP3R-TMS7].

market likely to be impacted by this *Order*), the share of those households that are likely to devote time to investigating the cybersecurity of their connected products, and an estimate of their time value of researching cybersecurity characteristics of devices. First, we estimate that 49 million U.S. households own at least one IoT device from a market segment that likely will be impacted by the Cyber Trust Mark. Further, recent survey evidence suggests that 32% of households are invested in reducing their cybersecurity risk.[486] We estimate each hour of time savings to be valued at $16 based on the median compensation in the U.S. and an individual's potential preference for researching products rather than working an additional hour.[487] We note that this calculation only focuses on one segment of the IoT market, which may underestimate the time savings induced by this *Order*. We recognize that the exact time savings of utilizing the Cyber Trust Mark relative to searching for information online is unknown, so a lower end estimate of 15 minutes of time savings per year per household is used. We find a 15-minute time savings is consistent with the value of cybersecurity features disclosed in surveys.[488] Given

[486] A survey of households showed that 41% of internet connected households (92%) have a smart home device. This indicates that 38% (=92%*41%) of households have at least one smart home device. The survey represented the market for smart home devices, like thermostats, lighting control systems, smart appliances, and other components. *See* Jennifer Kent, Next-Generation Smart Home: Building for the Future at 2, https://www.parksassociates.com/products/whitepapers/next-gen-smart-home-2023 [https://perma.cc/KJE6-T3EW] (last visited Jan. 18, 2024). This would indicate that out of the 130 million households in the United States, 49 million (=130,000,000*0.38) have an IoT device. *See* U.S. Census Bureau, *Selected Social Characteristics in the United States (DP02) American Community Survey 2022 1-Year Estimates*, https://data.census.gov/table?q=households&g=010XX00US [https://perma.cc/3YZ5-XFM8] (last visited Feb. 8, 2024). Furthermore, a survey by Cisco shows that 32% of consumers are "Privacy Actives" - those that are interested in privacy and security and have acted on behalf of those interests. *See* Cisco, Building Consumer Confidence Through Transparency and Control at 5 (2021), https://www.cisco.com/c/dam/en_us/about/doing_business/trust-center/docs/cisco-cybersecurity-series-2021-cps.pdf?CCID=cc000742&DTID=esootr000515&OID=rptsc027438 [https://perma.cc/2KHM-K978]. This indicates that 15 million (=130,000,000*0.38*0.32) (rounded down) households would experience cost savings from using the Cyber Trust Label.

[487] The median wage is $22.46 for all occupations and it is adjusted by 1.45 = ($43.93/ $30.35), which is the ratio of average total compensation to average wages to fully account for the benefits of an additional hour of work. U.S. Bureau of Labor Statistics, *May 2022 National Occupational Employment and Wage Estimates* (Apr. 25, 2023), https://www.bls.gov/oes/current/oes_nat.htm#00-0000; Press Release, U.S. Bureau of Labor Statistics, Employer Costs for Employee Compensation – September 2023 (Dec. 15, 2023), https://www.bls.gov/news.release/pdf/ecec.pdf. Value of time savings calculations are dependent on an individual's willingness to pay a portion of their hourly income to avoid an activity. Generally, the more uncomfortable the activity the larger the share of income an individual would pay. DOT uses 50% for personal local travel, meaning an individual would be willing to pay half of their hourly income to avoid one hour of personal travel, and 70% for personal intercity travel. The rate at which consumers are willing to pay to avoid spending an hour of time researching cybersecurity concerns is unknown so the preference associated with personal local travel (50%) is used. *See* Memorandum from Vinn White, Acting Assistant Secretary for Transportation Policy, U.S. Department of Transportation to Secretarial Officers and Modal Administrators at 13 (Sept. 27, 2016), https://www.transportation.gov/sites/dot.gov/files/docs/2016%20Revised%20Value%20of%20Travel%20Time%20Guidance.pdf [https://perma.cc/MP3R-TMS7]. Given the difficulty in researching IoT security that is highlighted by the record, we believe this preference rate is reasonable. Together this means that each hour of time savings is equal to $16.14 (=22.26*1.45*0.5).

[488] We find the value of 15 minutes of search time to be consistent with the value consumers already place on various security features. For example, a survey related to smart home devices found that participants were willing to pay $5.75 for automatic updates relative to manual security updates. From the same survey consumers were also willing to pay $12.74 for password protection. Given that an hour of research time is valued at $16.14, it is likely that a household would be willing to spend at least 15 minutes, valued at $4.04= (16.14/(15/60)) researching whether a device has the security features they are interested in. *See* Pardis Emami-Naeini et al., *Are Consumers Willing to Pay for Security and Privacy of IoT Devices?*, USENIX (Aug. 2023), https://www.usenix.org/conference/usenixsecurity23/presentation/emami-naeini [https://perma.cc/SYJ7-W4QA] (*Duke and Carnegie Mellon Study*).

manufacturer and industry group comments showing support for consumer awareness and cybersecurity, we believe there would be sufficiently large enough immediate manufacturer participation in the IoT Labeling Program to incur these benefits in the first year of the program, and every year thereafter.[489] Nationwide, the Cyber Trust Mark would result in a minimum of $60 million in time savings annually.[490]

145. A separate approach to calculating the benefit of the Cyber Trust Mark is to estimate the value consumers place on security and privacy features of IoT devices. A study submitted by Consumer Reports found that respondents valued individual security upgrades between $6 and $13.[491] The study also found that devices were valued at around $34 more if they had a label emphasizing a bundle of the most protective security features.[492] Given the difficulty consumers face in understanding what security and privacy features are included in a device, the Cyber Trust Mark would help consumers easily identify and choose products with features they value. For example, if the Cyber Trust Mark represented the most protective features associated with the label in the in the study, a consumer would benefit by $34 from purchasing a device with the Cyber Trust Mark over a device that did not display the Mark. Based on our estimate of 15 million households that would be impacted by the IoT labeling program, we estimate that the benefit to consumers, in terms of the added value of the Cyber Trust Mark, would be between $85 million and $500 million annually.[493] While the exact security features that will be proposed by the Lead Administrator in collaboration with stakeholders are not yet determined, if the Cyber Trust Mark only emphasized the lowest valued security feature, the program would produce a benefit of at least $85 million.[494]

146. *Manufacturer Competitive and Reputational Benefits*. Aside from the direct benefits to consumers, there are also wider benefits of the Cyber Trust Mark. Participating businesses benefit from

[489] Cisco Comments at 1 ("Cisco shares the Commission's goal of increasing consumer awareness of cybersecurity concerns related to IoT and we have a significant interest in strengthening the resiliency of the communications network."); Samsung Comments at 2 ("Samsung is also committed to strengthening IoT security through leadership in industry initiatives and standard-setting bodies."); AHAM Comments at 1 ("AHAM conceptually supports the Commission's effort to create a voluntary program that allows manufacturers to show that they took the necessary steps to meet a baseline standard of security for IoT products"); CTA Comments at 2 ("CTA and its members have made enhancing security across the IoT ecosystem a top priority. In 2018, CTA joined forces with partners across the connected ecosystem to form the Council to Secure the Digital Economy (CSDE) and develop guidance for the international information and communications technology community on how to secure IoT and reduce risk across the connected ecosystem.").

[490] $60 million = (15,000,000*$16*(15/60)) is the estimated value for 15 minutes of time savings nationwide.

[491] *See Duke and Carnegie Mellon Study* at 8, Table 2. Researchers calculated consumers' willingness to pay for five individual security and privacy improvements related to a smart speaker with voice assistant and a smart smoke detector. The security features varied from low protection to high protection. On the high end, Table 2 shows that consumers were willing to pay $13.31 for cloud storage to be de-identifiable verse identifiable. On the low end, consumers were willing to pay $5.75 for automatic security updates verses manual ones.

[492] Researchers calculated consumers' willingness to pay for a device with no label verses a device with a label indicating the device included a set of the most protective security features. *See id.* ("The regression analysis (see Table 4) showed that compared to having risky security and privacy practices or no transparency, participants were significantly more willing to purchase . . . and willing to pay significantly higher premiums (. . . premium= $33.63 . . .) to have a smart device with improved security and privacy practices.").

[493] As noted in our analysis above, there are approximately 15 million households that would benefit from being aware of their IoT devices cybersecurity. The range of benefits is based on the range of values discussed in the *Duke and Carnegie Mellon Study*. Based on the lowest valued feature the benefit would be $85 million ≈ (15,000,000*$5.75) and based on the value of the label, the higher end of benefits would be $500 million ≈ (15,000,000*$33.63), with both estimates rounded down to the nearest five million.

[494] Consumers valued automatic updates over manual updates at a value of $5.75. This is the lowest value feature that consumers still put a positive premium on. *See Duke and Carnegie Mellon Study* at 8, Table 2. While we understand that some devices that consumers are already purchasing contain the features they value, by focusing on the lower end of benefits, we emphasize the lower bound of value placed on security and privacy features.

product differentiation and quality signaling vis-a-vis competitors that do not participate in the IoT Labeling Program and from increased company goodwill and reduced risks related to cybersecurity incidents.[495] By aligning minimum security practices with the proposed standards, and communicating those standards to consumers, manufacturers may be able to generate goodwill and reduce business loss after cybersecurity incidences.[496] While we do not revisit our discussion of a safe harbor from liability as discussed above, we note that manufacturers may benefit from adopting security practices that are consistent with standards necessary to bear the Cyber Trust Mark. We highlight that there have been several instances where the Federal Trade Commission investigated and settled with firms due to poor security practices or inaccurate communication of their security practices.[497] We merely note that a manufacturer that has gone through the process of obtaining the Cyber Trust Mark may benefit from likely having documented the security practices and attendant testing necessary to acquire the Mark.

147. *Market-Wide Benefits of Reduced Cybersecurity Incidents.* Insecure IoT products are often used in distributed denial-of-service (DDoS) attacks, which can be used to overwhelm websites to create a distraction during other cybersecurity crimes, or to request a ransom be paid to stop the attack. While we cannot quantify the expected benefits the Cyber Trust Mark may have on reducing the number of vulnerable devices and/or the potential reduction on their likelihood of being used in a cybersecurity attack, commenters do highlight improved security as one of the major benefits of this IoT Labeling Program.[498] We do further emphasize this as a benefit that is likely to have significant impacts on firms in a wide range of industries.[499]

148. *Costs to IoT Labeling Program Participants*. Only those entities who choose to participate will incur costs associated with the voluntary IoT Labeling Program. The specific costs to

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[495] Consumers value cybersecurity and the Cyber Trust Mark would help them identify devices/products that are consistent with their preferences. Research found that consumers were willing to pay a premium for cybersecurity features and many searched for device cybersecurity information before purchase. *See id.*at 1 ("Participants were willing to pay a significant premium for devices with better security and privacy practices."); *Consumer Reports Summer Research* at 5 ("Four out of five of our respondents were interested in purchasing a connected . . . and 38% had tried to find security or privacy information about a connected device before purchase.").

[496] A report by IBM includes reputational costs as a factor associated with lost business that can be associated with a data breach. IBM Security, Cost of a Data Breach Report at 15 (2023), https://www.ibm.com/downloads/cas/E3G5JMBP [https://perma.cc/5NMF-5HQE] ("Lost business costs include activities such as business disruptions and revenue losses from system downtime, the cost of lost customers and acquiring new customers, and reputation losses and diminished goodwill."); *see also* Duke and Carnegie Mellon Study at 1 ("Participants were willing to pay a significant premium for devices with better security and privacy practices.").

[497] "The FTC also alleged that Tapplock failed to implement a security program or take other steps that might have helped the company discover electronic vulnerabilities with its locks." Press Release, FTC, FTC Gives Final Approval to Settlement with Smart Lock Maker (May 20, 2020), https://www.ftc.gov/news-events/news/press-releases/2020/05/ftc-gives-final-approval-settlement-smart-lock-maker [https://perma.cc/RQ3P-GWV5]. "According to the complaint, Ring also failed to implement standard security measures to protect consumers' information from two well-known online threats—"credential stuffing" and "brute force" attacks—despite warnings from employees, outside security researchers and media reports." Press Release, FTC, FTC Says Ring Employees Illegally Surveilled Customers, Failed to Stop Hackers from Taking Control of Users' Cameras (May 31, 2023), https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-says-ring-employees-illegally-surveilled-customers-failed-stop-hackers-taking-control-users [https://perma.cc/P5MN-RCJC].

[498] *See, e.g.*, Keysight Comments at 1; Logitech Comments at 1; A2LA Comments at 1; AIM Comments at 1; Widelity Comments at 1; Whirlpool Comments at 3; ITI Comments at 2; Everything Set, Inc. Comments at 3.

[499] Industry reports highlight the use of IoT devices in DDoS attacks as well as the potential harm of such attacks. *See* Akamai, *The Evolution of DDoS: Return of the Hacktivists* at 4 (Jan. 2023), https://www.akamai.com/resources/research-paper/the-evolution-of-ddos-return-of-the-hacktivists [https://perma.cc/VT6H-4KZ8] ("The explosion of the Internet of Things (IoT) has been a boon to DDoS attackers, providing an endless army of poorly secured devices that they can requisition to serve as botnets.").

participating manufacturers cannot be readily measured but are expected to include: conformity testing fees at a CyberLAB, CLA lab, or through in-house testing; CLA fees; internal compliance and filing costs; Cyber Trust Mark placement on product; costs incurred for API access as part of the QR Code; a customer information campaign; and adjustments to security practices necessary to meet the standards established for the Cyber Trust Mark. These costs are likely to vary depending on the standards and testing procedures proposed by the Lead Administrator as well as the extent of manufacturer participation. Any in-house testing lab will also be required to obtain accreditation to ISO/IEC standards and will incur the accreditation costs. We expect that manufacturers that choose to pursue this option may offset the accreditation costs with time savings, and potentially cost savings, associated with in-house testing.

149. Participating manufacturers will incur conformity testing, reporting costs, potential renewal fees, and Label Administrator processing fees, but the Commission's IoT Labeling Program is voluntary and we only expect manufacturers who would benefit from the program to participate in the long-run, further indicating that accrued benefits will exceed manufacturer costs. Furthermore, comments in the record show that many manufacturers and industry groups are in favor of consumer awareness and addressing cybersecurity concerns.[500] This provides some indication that manufacturers perceive the benefits of participating in the IoT Labeling Program as outweighing the costs. We understand that manufacturers' security practices for IoT products vary. Some manufacturers will find it beneficial to align their cybersecurity standards with the IoT Labeling Program's standards and apply for the Cyber Trust Mark. If a manufacturer decides not to participate in the program, then they will not experience any additional costs.

150. *Cost of Registry Development and Administration*. We attempt to estimate the cost of developing and administering the registry with currently available information, recognizing that our cost estimate is unable to incorporate pending issues that will be addressed by the Bureau as discussed above.[501] While the cost to the Lead Administrator to manage the registry in accordance with the Bureau's pending determinations and as discussed above are forthcoming, we nevertheless attempt to estimate the costs of the Lead Administrator' administrative role in managing the registry as described above. Our estimate utilizes data submitted by Consumer Reports, which envisioned a centralized registry. We note that the registry, as adopted, will be less burdensome than the costs described by Consumer Reports in their estimates.[502] Our estimate to maintain registry components and review applications as part of the CLA duties, which aligns with the middle of the expert range based on commenter submissions, is approximately $5 million annually. The high-end estimate submitted by Consumer Reports is $10 million.[503] Consumer Reports indicates that setting up a centralized registry could be done by one individual with a few contractors at a cost less than $200,000 a year.[504] Depending on the requirements, the Lead CLA may still need to set up some minimal components of a registry and incur a small portion of these costs. The estimates on the annual administration costs are much less precise with the expert proposed estimate of between $100k and $10 million annually, with indication that the $10 million estimate is on the very high end.[505] Staff calculate a more reasonable, but likely still high, estimate in the middle of that range, even accounting for the advanced technical expertise that would be

[500] *See, e.g.*, Cisco Comments at 1; Samsung Comments at 2; AHAM Comments at 1; CTA Comments at 2; Coalition Letter Reply at 1.

[501] *See supra* para. 121121.

[502] The Consumer Reports proposed registry architecture includes a dataset that can store images and PDFs as well as allows for device manufacturers, retailers, security researchers and administrators to access the platform. *See Consumer Reports Registry Design Proposal* at 4. The registry, as adopted, does not include these features and therefore would not incur the costs to develop and maintain them.

[503] *Id.* at 7.

[504] *Id.*

[505] *Id.*at 8.

required to review applications. For example, an organization relying on five lawyers, five electrical engineers, and five software developers in a full-time capacity would require $3 million annually in wage compensation. If we generously assume another $2 million in additional costs to accommodate ISO/IEC accreditation, contractors, facilities, and other resources, the total is $5 million. While these estimates are for a single administrator, we believe this is a reasonable estimate of the staffing costs that would be distributed among the CLAs to meet the requirements of reviewing applications.

151. The estimated high-end costs of administering the IoT Labeling Program annually ($10 million) are far less than the low-end estimate of annual benefits to consumers ($60 million) of just one aspect of the program. We further highlight that the benefits to manufacturers are likely to exceed manufacturer's participation costs. Together this indicates the total program benefits exceed costs. Because the initial startup costs are so low relative to the benefits, we do not compare the discounted values.

IV. LEGAL AUTHORITY

152. We adopt the *IoT Labeling NPRM*'s tentative conclusion that the FCC has authority to adopt the IoT Labeling Program. We conclude that section 302 provides us with the authority to adopt a voluntary program for manufacturers seeking authority to affix the FCC-owned Cyber Trust Mark on wireless consumer IoT products that comply with the program requirements.[506] In the *IoT Labeling NPRM*, the Commission sought comment on its authority under section 302 of the Act, along with other possible sources of authority.[507] In particular, under section 302(a) of the Act, consistent with the public interest, convenience, and necessity, the Commission is authorized to make "reasonable regulations (1) governing the interference potential of devices which in their operation are capable of emitting radio frequency energy by radiation, conduction, or other means in sufficient degree to cause harmful interference to radio communications; and (2) establishing minimum performance standards for home electronic equipment and systems to reduce their susceptibility to interference from radio frequency energy.'"[508]

153. Some commenters question our authority under section 302 to establish an IoT Labeling Program.[509] The U.S. Chamber of Commerce cautions the Commission to not "overinterpret its harmful interference authority" under sections 302(a) and 333.[510] CTIA argues that the Commission does not have the authority to regulate cybersecurity, but does not cite to section 302(a) or explain why the Commission's action today does not fall within the scope of section 302(a) or any other section of the Communications Act.[511] Others do not dispute the Commission's authority to adopt a voluntary program but argue that the Commission does not have the authority to make the IoT Labeling Program mandatory.[512]

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[506] 47 U.S.C. § 302a.

[507] *IoT Labeling NPRM* at 23-26, paras. 57-65.

[508] 47 U.S.C. § 302a(a).

[509] *See, e.g.*, NTCA Comments at 10 ("It is not clear that a voluntary IoT label program intended to increase consumer confidence serves the explicit concerns of diminishing radio interference as contemplates in Sections 302(a) and 333."); CTIA Comments at 43 ("[T]he FCC does not have any express statutory authority to create a cybersecurity labeling program or otherwise adopt requirements related to the cybersecurity of Internet-connected devices."); Chamber Comments at 3 ("The Chamber is concerned with the Commission's interpretation of its legal authority.").

[510] Chamber Comments at 3.

[511] CTIA Comments at 42-44.

[512] *See* USTelecom Comments at 2 ("[S]ections 302 or 333 of the Communications Act do not authorize the Commission to impose general cybersecurity *requirements* . . . .") (emphasis added); *see also, e.g.*, NCTA Comments at 13 n.27 ("Although NCTA previously raised concerns about the scope of the Commission's authority

(continued….)

154. We agree with Comcast that Congress intended section 302 to be flexible enough "to address novel issues not yet on the legislative radar[.]"[513] As Comcast further observes, "[t]he stated goal of the [IoT Labeling] Program is to 'ensure that IoT devices have implemented certain minimum cybersecurity protocols to prevent their being hacked by bad actors who could cause the devices to cause harmful interference to radio communications," which falls squarely within the Commission's remit under Section 302(a)."[514] Further, NYC OTI points out that IoT which "by design doesn't protect against the reception of spurious or unintended RF communications may be subject to a series of radio-layer attacks due to the lack of these protections" and thus is within our authority to regulate.[515] A voluntary IoT Labeling Program thus assures consumers that certain cybersecurity standards are met to protect those devices from being used to generate interference to other devices.[516]

155. In addition to our authority under section 302(a)(1), section 302(a)(2) authorizes the Commission to "establish minimum performance standards for home electronic equipment and systems to reduce their susceptibility to interference from radio frequency energy."[517] A voluntary program for consumer IoT products is encompassed within our authority to regulate home electronic equipment and their accompanying systems that render that home electronic equipment operational.

156. Section 302(a)(2) allows such regulations to apply to "the manufacture, import, sale, offer for sale, or shipment of such devices and home electronic equipment and systems[.]" The legislative history of section 302 also supports our conclusion. Congress adopted section 302 due to concerns about radio frequency interference to consumer electronic equipment:[518]

> In the market for home devices, however, good faith industry attempts to solve this interference have not always been as successful. . . . [T]he Conferees believe that Commission authority to impose appropriate regulations on home electronic equipment and systems is now necessary to insure that consumers' home electronic equipment and systems will not be subject to malfunction due to [radio frequency interference].[519]

157. Congress envisioned "home electronic equipment and systems" to include not only radio and television sets, but all types of electronics and their supporting systems used by consumers.[520]

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under Section 302 to address cybersecurity concerns in other contexts, here the Commission proposes to establish a voluntary program that is limited to connected devices, which is well within the Commission's Section 302 and 333 authority."); CTIA Reply at 4-5 (noting that "several commenters articulated their view that while a voluntary program could be considered 'reasonable,' the FCC lacks authority to develop mandatory regulations or requirements under Sections 302, 303, or 333 of the Act," and observing that "a purely voluntary program is unlikely to invite the same scrutiny as a set of mandatory standards"). Because we adopt a voluntary program, we need not address arguments that it would be unreasonable under section 302(a) to adopt mandatory requirements or that mandatory requirements otherwise would be beyond the Commission's authority.

[513] Comcast Comments at 15.

[514] *Id.* at 14 (quoting *IoT Labeling NPRM* at 24, para. 59); *see also, e.g.*, NCTA Comments at 12-13.

[515] NYC OTI Comments at 4-5.

[516] *See* Zhifei Xu *et al.*, *Inaudible Attack on Smart Speakers With Intentional Electromagnetic Interference*, Vol. 69 IEEE Transactions on Microwave Theory and Techniques (2021). While CTIA asserts that "[a]ttacks that seek to weaponize radiofrequency interference . . . are not a major risk" it does not provide the basis for that assertion—and even it concedes that such attacks are possible. CTIA Reply at 4. Based on our historical experience and expertise we are more cautious about such risks and believe the voluntary IoT Labeling Program we adopt for Internet-connected wireless devices is a measured response appropriately calibrated to our assessment of those risks.

[517] 47 U.S.C. § 302a(2).

[518] H.R. Rep. No. 97-765, at 32 (Conf. Rep.), 1982 U.S.C.C.A.N. at 2276 (1982).

[519] Conf. Rep. at 2276.

[520] *Id.*

Examples given by Congress were home burglar alarms, security systems, automatic garage door openers, record turntables, and sound systems.[521] Congress clearly foresaw interference and disruption to consumer equipment and the systems that equipment was connected to as within the ambit of section 302 when it gave the Commission "exclusive jurisdiction" over matters involving radio frequency interference.[522] The many alternatives available to the Commission to accomplish its duty under section 302 include directing manufacturers to meet "certain minimal standards" or utilizing labels.[523]

158. We additionally conclude that our section 302(a) authority to adopt "reasonable regulations" governing the interference potential of devices capable of causing RF interference empowers us to choose specific approaches that advance goals of the Act in addition to the core concerns in section 302(a)(1) and (2).[524] For one, as widely supported in the record, we rely on NIST's recommended IoT criteria (the NIST Core Baseline) as the foundation for the cybersecurity requirements to be applied under the IoT Labeling Program.[525] Even if some elements or applications of those criteria could advance policies or interests in addition to guarding against the risk that exploited vulnerabilities in Internet-connected wireless consumer IoT products could cause harmful interference, it would be neither prudent nor workable to try to segregate or disaggregate that package of criteria in an effort to isolate some product capabilities from others in an effort to narrow the Program's focus. To the contrary, maintaining the integrity of the cohesive package of NIST criteria advances the directive in section 302(a) to address the interference potential of wireless devices through "reasonable regulations."[526] Commenters point out, for example, that even when harmful interference to IoT products from cyberattacks "is not necessarily the traditional form of interference caused by devices operating in frequencies and at power levels not approved by the Commission[,]" it can implicate statutory policy concerns nonetheless.[527] Under the

[521] *Id.*

[522] *Id.*

[523] *Id*. at 2277.

[524] We thus reject claims to the contrary. *See, e.g.*, NTCA Comments at 7-8.

[525] We reject the efforts of some commenters to cast doubt on our authority by arguing that "[t]o date, the Commission has not played a role in reviewing IoT for cybersecurity risks, and Congress did not look to the Commission when it considered and passed legislation to improve IoT cybersecurity." Chamber Comments at 3. But there is no doubt that Congress has looked to NIST in that regard. *See, e.g.*, *IoT Cybersecurity Improvement Act of 2020*, 15 U.S.C. § 278g-3a to § 278g-3e (establishes minimum cybersecurity requirements for IoT technology procured by the U.S. government and directs federal agencies to only procure devices that comply with NIST guidelines (NIST SP 800-213 and 213A) and establishes vulnerability reporting requirements for products sold to the U.S government); *see also* CTIA Comments at 11-12 (citing the *IoT Cybersecurity Improvement Act of 2020* and noting that it "delegated authority to NIST and the Department of Homeland Security"). It remains proper for us to carry out our statutory duties even when they implicate issues that some might argue historically have not been as central a focus of the Commission's work, and it is eminently reasonable for us to do so informed by outside expertise—as reflected in our reliance on the NIST Core Baseline as the foundation for our IoT Labeling Program, and through our public-private collaboration efforts here more generally. *Cf. Huawei Tech. USA, Inc. v. FCC*, 2 F.4th 421, 427 (5th Cir. 2021) ("Assessing security risks to telecom networks falls in the FCC's wheelhouse. And the agency's judgments about national security receive robust input from other expert agencies and officials. We are therefore persuaded that, in crafting the rule, the agency reasonably acted within the broad authority Congress gave it to regulate communications."); *id*. at 439 ("[T]he FCC cannot conjure national security authority out of thin air. . . . [B]ut as the FCC argues, the Act's purposes include 'mak[ing] [communication] available . . . for the purpose of the national defense' and 'promoting safety of life and property through the use of wire and radio communications.' The agency reasonably read 'public interest' in light of these larger goals to encompass secure networks." (citation omitted)).

[526] 47 U.S.C. § 302a(a).

[527] Comcast Comments at 15; *see also, e.g.*, NYC OTI Comments at 4-5 (IoT which "by design doesn't protect against the reception of spurious or unintended RF communications may be subject to a series of radio-layer attacks due to the lack of these protections.").

circumstances here, we thus find it "reasonable" for our IoT Labeling Program to rely on the full package of IoT cybersecurity criteria that guard against the risk that the covered products *cause* harmful interference, and also guard against the risk of interference *to* those covered products—even in the case of non-RF interference—consistent with the policy goals underlying provisions such as sections 302(a) and 333 and of the Act.[528] Our understanding of the reasonableness of our approach here also is informed by the public safety and national security goals in sections 1 and 4(n) of the Act.[529] Thus, although we do not rely on additional provisions beyond section 302 as authority for the voluntary IoT Labeling Program we adopt today, they inform our understanding of what regulatory approach to implementing section 302(a) is reasonable under these circumstances.[530]

159. Comcast also cites the legislative history of section 302(a) in support of our authority to establish an IoT Labeling Program.[531] Congress agreed with a letter from the Commission that initial language that would have restricted section 302(a) to devices that cause harmful interference to "'commercial, aircraft, and public safety' radio communications" was too narrow.[532] Congress instead adopted the current language: "reasonable regulations . . . consistent with the public interest, convenience, and necessity."[533] The Commission's authority under section 302 was designed by Congress to be "sufficiently broad to permit it to formulate rules relating to any service where interference from these devices is a serious problem."[534] Such language, it was believed, would be "sufficiently broad to permit it to formulate rules relating to any service where interference from these devices is a serious problem."[535] We conclude that a voluntary program with minimum standards to prevent radio interference to consumer IoT products is consistent with the text and history of section 302.

160. Further, we have previously imposed security requirements that prevent unauthorized parties from accessing and alerting technology to cause radio interference under our section 302 authority. In 2020, we required that access points to automated frequency coordination systems were secure so unauthorized parties could not alter the list of available frequencies and power levels sent to an access point.[536] We agree with Comcast that our previous actions requiring end user devices to "contain security features sufficient to protect against modification of software and firmware by any unauthorized parties"[537] and actions to secure unlicensed national information infrastructure devices[538] are sufficiently

[528] 47 U.S.C. §§ 302a(a), 333.

[529] 47 U.S.C. §§ 151, 154(n).

[530] Because we conclude that section 302 of the Act authorizes our actions today, we defer consideration of other sources of authority that the Communications Act may grant the Commission over this area.

[531] Comcast Comments at 14.

[532] U.S. Rep. No. 90-1276, at 7 (1968), *reprinted in part at* 114 Cong. Rec. 18,428 (June 24, 1968).

[533] *Id.*; 47 U.S.C. § 302a.

[534] U.S. Rep. No. 90-1276, at 7 (1968), *reprinted in part at* 114 Cong. Rec. 18,428 (June 24, 1968).

[535] *Id.*

[536] *Unlicensed Use of the 6 GHz Band; Expanding Flexible Use in Mid-Band Spectrum Between 3.7 GHz and 24 GHz*, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 3852, para. 79 (2020).

[537] *Amendment of the Commission's Rules with Regard to Commercial Operations in the 3550- 3650 MHz Band*, GN Docket No. 12-354, Report and Order and Second Further Notice of Proposed Rulemaking, 30 FCC Rcd 3959, 4033-4034, para. 240 (2015).

[538] *Revision of Part 15 of the Commission's Rules to Permit Unlicensed National Information Infrastructure (U-NII) Devices in the 5 GHz Band*, ET Docket No. 13-49, First Report and Order, 29 FCC Rcd 4127, 4143, para. 54 (2014).

analogous to this proceeding as to be supported by our section 302 authority.[539]

161. Finally, consistent with our tentative conclusion in the *IoT Labeling NPRM*, we find that our section 302 authority enables us to rely on third parties in carrying out the implementation details of our Program.[540] As the Commission pointed out in the *NPRM*, section 302(e) of the Act authorizes the Commission to delegate equipment testing and certification to private laboratories, and the Commission already has relied in part on third parties in carrying out its equipment authorization rules that likewise implement section 302 of the Act.[541]

V. FURTHER NOTICE OF PROPOSED RULEMAKING

162. In this *Further Notice of Proposed Rulemaking* (*Further Notice*), we seek comment on additional declarations intended to provide consumers with assurances that the products bearing the FCC IoT Label do not contain hidden vulnerabilities from high-risk countries, that the data collected by the products does not sit within or transit high-risk countries, and that the products cannot be remotely controlled by servers located within high-risk countries. Specifically, we seek comment on whether we should require manufacturers to disclose to the Commission whether firmware and/or software were developed and manufactured in a "high-risk country," as well as where firmware and software updates will be developed and deployed from. We also seek comment on whether to require manufacturers to disclose to consumers in the registry whether firmware and/or software were developed and manufactured in a "high-risk country," as well as where firmware and software updates will be developed and deployed from. We propose to include as high-risk countries those foreign adversary countries defined by the Department of Commerce in 15 CFR § 7.4.[542] Are there other sources that the Commission should consider for identifying high-risk countries? Specifically, we seek comment on whether to require the applicant seeking to use the FCC IoT Label to make one of the following declarations under penalty of perjury to accompany its application to use the label:

a. No software or software update or part of any software or software update that runs on or controls the product was or will be developed or deployed from within a country on the Secretary of Commerce's list of high-risk countries, except that this commitment does not apply to the origin of open-source contributions not paid for directly or indirectly by us or our direct or indirect partners in offering this product; or

b. This device runs, or due to future software updates might run, software developed within the Secretary of Commerce's list of high-risk country or countries. Applicant is not aware of any backdoors or other sabotage, or any reason to believe that there is a particular heightened risk for such backdoors or sabotage relative other software developed within such a country, but we inform purchasers and users that the Department of Commerce has designated high-risk country or countries as jurisdictions whose conduct is significantly adverse to the national

[539] Comcast Comments at 15-16 ("The FCC's history with Section 302 includes a number of analogous situations where the FCC cited Section 302 to justify rules or requirements ensuring the security of devices to avoid RF interference.").

[540] *IoT Labeling NPRM* at 25, para. 62. Although some commenters contest our section 302 authority as a general matter, no commenter contends that, insofar as section 302 of the Act does provide us authority, that authority would not be broad enough to allow us to rely on third parties as we do here.

[541] *Id*.

[542] 15 CFR § 7.4(a). "The Secretary [of Commerce] has determined that the following foreign governments or foreign non-government persons have engaged in a long-term pattern or serious instances of conduct significantly adverse to the national security of the United States or security and safety of United States persons and, therefore, constitute foreign adversaries solely for the purposes of the Executive Order, this rule, and any subsequent rule: (1) The People's Republic of China, including the Hong Kong Special Administrative Region (China); (2) Republic of Cuba (Cuba); (3) Islamic Republic of Iran (Iran); (4) Democratic People's Republic of Korea (North Korea); (5) Russian Federation (Russia); and (6) Venezuelan politician Nicolás Maduro (Maduro Regime)." This list may be revised as determined as necessary by the Secretary of Commerce.

security of the United States or security and safety of United States persons.

163. We also seek comment on requiring manufacturers to disclose to the Commission whether the data collected by the product is stored in or transits a high-risk country or countries. We also seek comment on whether to require manufacturers to disclose to consumers in the registry whether the data collected by the product is stored in or transits a country or countries that are known to pose a national security risk to the United States. Does the manufacturer have sufficient knowledge of the data collected by the device to know where the servers hosting the collected data are located or where the servers remotely controlling the device will be located? Is it possible for the location of stored data to be changed without the manufacturer's knowledge? Are there other factors that would impact the manufacturer's ability to make these declarations. Specifically, we seek comment on requiring the applicant seeking to use the FCC IoT Label to make one of the following declarations under penalty of perjury to accompany its application to use the label:

a. No customer data collected by this product will be sent to servers located on the Department of Commerce's list of high-risk countries, defined at 15 CFR § 7.4 or any successor regulation. No servers that remotely control the device will be located in such a country; or

b. Customer data collected by this product will be sent to servers located in a high-risk country or countries. We inform purchasers and users that the Secretary of Commerce has designated high-risk country or countries as jurisdictions whose conduct is significantly adverse to the national security of the United States or security and safety of United States persons.

164. If a manufacturer must disclose one of these exposures or potential exposures to a high-risk country, should it have to disclose additional information as well? Should it have to disclose the identity of the high-risk country or countries? Should it have to disclose the specific hardware or software components or server activities that did, will, or could originate from or take place in those countries? How could such disclosures help purchasers make informed decisions about product acquisitions? And what burdens would such additional disclosures place on manufacturers? Should we require manufacturers to include this information in the registry to inform consumers of these issues?

165. Alternatively, should the fact that software or firmware originates from such countries, that data will be stored in such countries, or that products can be remotely controlled by servers within such countries, make products ineligible for the label altogether? Are there certain product components, such as cellular interface modules, that pose elevated risks for which such a prohibition might specifically be warranted?

166. With respect to these declarations proposed to require the manufacturer to inform the Commission, would such information provide meaning to consumers? Should we require manufacturers to include this information in the registry to inform consumers of these issues? How would manufacturers inform users who are not purchasers? In addition, we seek comment on the possible costs and benefits of requiring any additional language in the relevant product's registry page. Should they encompass some or all of the same representations made in an application for authorization to use the FCC label, or should they be different or additional? Can such representations be made not just for the benefit of the purchaser or user, but also extend to any third parties who may be impacted by a security vulnerability in a labeled product attributable to a failure of the manufacturer, and what would the practical or legal implications of that be? How might this influence manufacturer participation in the program? Could the federal Magnuson-Moss Act be an additional legal overlay here, as well?[543] How should those state and federal laws inform whether and how the Commission requires manufacturer or seller representations in the product's registry page?

VI. PROCEDURAL MATTERS

167. *Paperwork Reduction Act.* This document contains new and modified information

[543] 15 U.S.C. §§ 2301-2312.

collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

168. The *Further Notice* may contain new or modified information collection(s) subject to the Paperwork Reduction Act of 1995.[544] All such new or modified information collection requirements will be submitted to OMB for review under section 3507(d) of the PRA. 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, pursuant to the Small Business Paperwork Relief Act of 2002,[545] we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."[546]

169. In this present document, we have assessed the effects of the operational framework for a voluntary IoT cybersecurity labeling program. Since the IoT Labeling Program is voluntary, small entities who do not participate in the IoT Labeling Program will not be subject to any new or modified reporting, recordkeeping, or other compliance obligations. Small entities that choose to participate in the IoT Labeling Program by seeking authority to affix the Cyber Trust Mark on their products will incur recordkeeping and reporting as well as other obligations that are necessary to test their IoT products to demonstrate compliance with the requirements we adopt today. We find that, for the Cyber Trust Mark to have meaning for consumers, the requirements for an IoT product to receive the Cyber Trust Mark must be uniform for both small businesses and other entities. Thus, the Commission continues to maintain the view we expressed in the *IoT Labeling NPRM*, that the significance of mark integrity, and building confidence among consumers that devices and products containing the Cyber Trust Mark label can be trusted to be cyber secure, necessitates adherence by all entities participating in the IoT Labeling Program to the same rules regardless of size.

170. *Regulatory Flexibility Act*. The Regulatory Flexibility Act of 1980, as amended (RFA),[547] 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."[548] 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.

171. We have also prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the potential impact of rule and policy change proposals on small entities in the *Further Notice*. The IRFA is set forth in Appendix C. The Commission invites the general public, in particular small businesses, to comment on the IRFA. Comments must be filed by the deadlines for comments on the *Further Notice* indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA.

172. *Congressional Review Act*. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is "non-major" under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send

[544] Pub. L. No. 104-13.

[545] Pub. L. No. 107-198.

[546] 44 U.S.C. § 3506(c)(4).

[547] 5 U.S.C. § 603.

[548] 5 U.S.C. § 605(b).

a copy of this Report & Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

173. *OPEN Government Data Act*. The OPEN Government Data Act requires agencies to make "public data assets" available under an open license and as "open Government data assets," *i.e.*, in machine-readable, open format, unencumbered by use restrictions other than intellectual property rights, and based on an open standard that is maintained by a standards organization.[549] This requirement is to be implemented "in accordance with guidance by the Director" of the OMB.[550] The term "public data asset" means "a data asset, or part thereof, maintained by the Federal Government that has been, or may be, released to the public, including any data asset, or part thereof, subject to disclosure under the Freedom of Information Act (FOIA)."[551] A "data asset" is "a collection of data elements or data sets that may be grouped together,"[552] and "data" is "recorded information, regardless of form or the media on which the data is recorded."[553] We delegate authority, including the authority to adopt rules, to the Bureau, in consultation with the agency's Chief Data Officer and after seeking public comment to the extent it deems appropriate, to determine whether to make publicly available any data assets maintained or created by the Commission within the meaning of the OPEN Government Act pursuant to the rules adopted herein, and if so, to determine when and to what extent such information should be made publicly available. Such data assets may include assets maintained by a CLA or other third-party, to the extent the Commission's control or direction over those assets may bring them within the scope of the OPEN Government Act, as interpreted in the light of guidance to be issued by OMB.[554] In doing so, the Bureau shall take into account the extent to which such data assets are subject to disclosure under the FOIA.[555]

174. *Ex Parte Presentations—Permit-But-Disclose.* The proceeding this *Further Notice of Proposed Rulemaking* initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[556] 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

[549] Congress enacted the OPEN Government Data Act as Title II of the Foundations for Evidence-Based Policymaking Act of 2018, Pub. L. No. 115-435 (2019), §§ 201-202. 44 U.S.C. § 3502(20), (22) (defining "open Government data asset" and "public data asset"); *id.* § 3506(b)(6)(B) (addressing public availability).

[550] 44 U.S.C. § 3506(b)(6)(B).

[551] 44 U.S.C. § 3502(22).

[552] *Id.* § 3502(17).

[553] *Id.* § 3502(16).

[554] OMB has not yet issued final guidance.

[555] *See, e.g.*, 5 U.S.C. § 552(b)(4), (6)-(7) (containing exemptions concerning confidential commercial information, personal privacy, and information compiled for law enforcement purposes, respectively).

[556] 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.[557]

175. *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.

176. *Providing Accountability Through Transparency Act.* Consistent with the Providing Accountability Through Transparency Act, Public Law 118-9,[558] a summary of this document will be available on https://www.fcc.gov/proposed-rulemakings.

177. *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).

178. *Additional Information*. For further information regarding the *Report and Order*, please contact Drew Morin, Acting Chief, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau by email to drew.morin@fcc.gov; or James Zigouris, Attorney-Advisor, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, (202) 418-0697, or by email to james.zigouris@fcc.gov.

VII. ORDERING CLAUSES

179. Accordingly, IT IS ORDERED that pursuant to the authority contained in sections 1, 2, 4(i), 4(n), 302, 303(r), 312, 333, and 503, of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(n), 302a, 303(r), 312, 333, 503; the IoT Cybersecurity Improvement Act of 2020, 15 U.S.C. § 278g-3a to § 278g-3e; this *Report and Order* IS hereby ADOPTED.

180. IT IS FURTHER ORDERED that the amendments of the Commission's Rules as set forth in Appendix A are ADOPTED, effective 30 days after publication in the Federal Register, except for the amendments to 47 CFR §§ 8.208, 8.209, 8.212, 8.214, 8.215, 8.217, 8.218, 8.219, 8.220, 8.221, 8.222. The amendments to 47 CFR §§ 8.208, 8.209, 8.212, 8.214, 8.215, 8.217, 8.218, 8.219, 8.220, 8.221,

[557] *Id.* § 1.49(f).

[558] 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.

8.222, which may contain new or modified information collection requirements, will not become effective until OMB completes any review that the Public Safety and Homeland Security Bureau determines is required under the Paperwork Reduction Act. The Commission directs the Public Safety and Homeland Security Bureau to announce effective dates for these sections by publication in the Federal Register and by subsequent Public Notice.

181. 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 and Initial Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.

182. 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, see 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Final Rules

The Federal Communications Commission amends subchapter A of Title 47 of the Code of Federal Regulations as follows:

1. Under the authority of 47 U.S.C §§ 151, 152, 153, 154(i)-(j), 160, 163, 201, 202, 206, 207, 208, 209, 214, 215, 216, 217, 218, 219, 220, 230, 251, 254, 256, 257, 301, 303, 304, 307, 309, 310, 312, 316, 332, 403, 501, 503, 522, 1302, revise the heading for subchapter A to read as follows:

Subchapter A – General

PART 8 – SAFEGUARDING AND SECURING THE INTERNET

2. The authority citation for part 8 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 152, 153, 154, 163, 201, 202, 206, 207, 208, 209, 216, 217, 257, 301, 302a, 303, 304, 307, 309, 312, 316, 332, 403, 501, 503, 522, 1302, 1753.

3. Revise the heading for part 8 to read as set forth above.

§§ 8.1, 8.2, 8.3, and 8.6 [Designated as Subpart A]

4. Designate §§ 8.1, 8.2, 8.3, and 8.6 as subpart A.

5. Add a heading for newly designated subpart A to read as follows:

Subpart A—PROTECTIONS FOR INTERNET OPENNESS

6. Add subpart B, consisting of §§ 8.201 – 8.222 to read as follows:

Subpart B—Cybersecurity Labeling Program for IoT Products

§ 8.201 Incorporation by reference.

Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the FCC and at the National Archives and Records Administration (NARA). Contact the Federal Communications Commission (FCC or Commission) at the address indicated in 47 CFR 0.401(a), phone: (202) 418-0270. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email fr.inspection@nara.gov. The material may be obtained from the International Organization for Standardization (ISO), 1, ch. De la Voie Creuse, CP 56, CH 1211, Geneva 20, Switzerland; www.iso.org; Tel.: +41 22 749 01 11; Fax: +41 22 733 34 30; email: central@iso.org.

(a) ISO/IEC 17011:2017(E), *Conformity assessment—Requirements for accreditation bodies accrediting conformity assessment bodies*, Second Edition, November 2017; IBR approved for § 8.217.

(b) ISO/IEC 17025:2017(E), *General requirements for the competence of testing and calibration laboratories*, Third Edition, November 2017; IBR approved for §§ 8.217; 8.220.

(c) ISO/IEC 17065:2012(E), *Conformity assessment—Requirements for bodies certifying products, processes and services*, First Edition, 2012-09-15; IBR approved for § 8.220.

Note 1 to § 8.201: The standards listed in this section are co-published with the International Organization for Standardization (ISO), 1, ch. De la Voie-Creuse, CP 56, CH–1211, Geneva 20, Switzerland; www.iso.org; Tel.: + 41 22 749 01 11; Fax: + 41 22 733 34 30; email: central@iso.org.

Note 2 to § 8.201: ISO publications can also be purchased from the American National Standards Institute (ANSI) through its NSSN operation (www.nssn.org), at Customer Service, American National Standards Institute, 25 West 43rd Street, New York, NY 10036, telephone (212) 642–4900.

§ 8.202 Basis and purpose.

In order to elevate the nation's cybersecurity posture and provide consumers with assurances regarding their baseline cybersecurity, thereby addressing risks of harmful radiofrequency interference to and from consumer Internet-connected (Internet of Things or IoT) products the Federal Communications Commission establishes a labeling program for consumer IoT products.

§ 8.203 Definitions.

(a) *Affiliate*. For purposes of this subpart and the IoT labeling program, an *affiliate* is defined as a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this subpart, the term *own* means to own an equity interest (or the equivalent thereof) of more than 10 percent.

(b) *Consumer IoT Products*. IoT products intended primarily for consumer use, rather than enterprise or industrial use. *Consumer IoT Products* exclude medical devices regulated by the U.S. Food and Drug Administration (FDA) and excludes motor vehicles and motor vehicle equipment regulated by the National Highway Traffic Safety Administration (NHTSA).

(c) *Cybersecurity Label Administrator (CLA)*. An accredited third-party entity that is recognized an authorized by the Commission to manage and administer the labeling program in accordance with the Commission's rules in this subpart.

(d) *Cybersecurity Testing Laboratory (CyberLAB)*. Accredited third-party entities recognized and authorized by a CLA to assess consumer IoT products for compliance with requirements of the labeling program.

(e) *Cyber Trust Mark*. A visual indicator indicating a consumer IoT product complies with program requirements of the labeling program and the Commission's minimum cybersecurity requirements in this subpart.

(f) *FCC IoT Label*. A binary label displayable with a consumer IoT product complying with program requirements of the Labeling Program, the binary label bearing the Cyber Trust Mark, and a scannable QR code that directs consumers to a registry containing further information on the complying consumer IoT product.

(g) *Intentional Radiator*. A device that intentionally generates and emits radiofrequency energy by radiation or induction.

(h) *Internet-Connected Device*. A device capable of connecting to the internet and exchanging data with other devices or centralized systems over the internet.

(i) *IoT Device*.

(1) An Internet-connected device capable of intentionally emitting radiofrequency energy that has at least one transducer (sensor or actuator) for interacting directly with the physical world, coupled with

(2) At least one network interface (e.g., Wi-Fi, Bluetooth) for interfacing with the digital world.

(j) *IoT Product*. An IoT device and any additional product components (e.g., backend, gateway, mobile app) that are necessary to use the IoT device beyond basic operational features, including data Federal Communications Commission FCC 24-26 communications links to components outside this scope but excluding those external components and any external third-party components that are outside the manufacturer's control.

(k) *Labeling Program*. A voluntary program for consumer IoT products that allows a complying consumer IoT product to display an FCC IoT Label.

(l) *Lead Administrator*. A CLA selected from among Cybersecurity Label Administrators (CLAs) to be responsible for carrying out additional administrative responsibilities of the labeling program.

(m) *Product Components*. Hardware devices, plus supporting components that generally fall into three main types per NISTIR 8425: specialty networking/gateway hardware (e.g., a hub within the system where the IoT device is used); companion application software (e.g., a mobile app for communicating with the IoT device); and backends (e.g., a cloud service, or multiple services, that may store and/or process data from the IoT device). Should a Product Component also support other IoT Products through alternative features and interfaces, these alternative features and interfaces may, through risk-assessment, be considered as separate from and not part of the IoT Product for purposes of authorization.

(n) *Registry*. Information presented to consumers about consumer IoT products that comply with the program requirements of the Labeling Program, the registry is publicly accessible through a link from the QR Code of the FCC IoT Label displayed with the complying Consumer IoT Product, and containing information about the complying consumer IoT product, manufacturer of the complying Consumer IoT Product, and other information as required by the Labeling Program.

§ 8.204 Prohibition on use of the FCC IoT Label on products produced by listed sources.

All Consumer IoT Products produced by sources listed in this subpart, are prohibited from obtaining use of the FCC IoT Label under this subpart. This includes:

(a) All communications equipment on the Covered List, as established pursuant to 47 CFR 1.50002;

(b) All IoT Products containing IoT Devices or Product Components produced by entities listed in paragraph (c) or (d) of this section;

(c) IoT Devices or IoT Products produced by any entity, its affiliates, or subsidiaries identified on the Covered List as producing covered equipment, as established pursuant to 47 CFR 1.50002;

(d) IoT Devices or IoT Products produced by any entity, its affiliates, or subsidiaries identified on the Department of Commerce's Entity List, 15 CFR part 744, supplement no. 4, and/or the Department of Defense's List of Chinese Military Companies, http://media.defense..gov/202/Oct/05/2003091660/-1/-1/0/1260H%20COMPANIES.PDF; and

(e) Products produced by any entity owned or controlled by or affiliated with any person or entity that has been suspended or debarred from receiving federal procurements or financial awards, to include

all entities and individuals published as ineligible for award on the General Service Administration's System for Award Management.

§ 8.205 Cybersecurity labeling authorization.

(a) Cybersecurity labeling authorization is an authorization issued by a Cybersecurity Label Administrator (CLA) and authorized under the authority of the Commission, which grants an applicant of a complying Consumer IoT Product to display the FCC IoT Label on the relevant packaging for the complying consumer product, based on compliance with the program requirements as determined by the CLA.

(b) Cybersecurity labeling authorization attaches to all units of the complying Consumer IoT Product subsequently marketed by the grantee that are identical (see § 8.206) to the sample determined to comply with the program requirements except for permissive changes or other variations authorized by the Commission.

§ 8.206 Identical defined.

As used in this subpart, the term identical means identical within the variation that can be expected to arise as a result of quantity production techniques.

§ 8.207 Responsible party.

In the case of a complying Consumer IoT Product that has been granted authorization to use the FCC IoT Label, the applicant to whom that grant of cybersecurity labeling authorization is issued is responsible for continued compliance with the program requirements for continued use of the FCC IoT Label.

§ 8.208 Application requirements.

(a) An application to certify the Consumer IoT Product as being compliant with the Labeling Program shall be submitted in writing to a Cybersecurity Labeling Administrator (CLA) in the form and format prescribed by the Commission. Each application shall be accompanied by all information required by this subpart.

(b) The applicant shall provide to the CLA in the application all information that the CLA requires to determine compliance with the program requirements of the Labeling Program.

(c) The applicant will provide a declaration under penalty of perjury that all of the following are true and correct:

(1) The product for which the applicant seeks to use the FCC IoT Label through cybersecurity certification meets all the requirements of the IoT Labeling Program.

(2) The applicant is not identified as an entity producing covered communications equipment on the Covered List, established pursuant to 47 CFR 1.50002.

(3) The product is not comprised of "covered" equipment on the Covered List.

(4) The product is not produced by any entity, its affiliates, or subsidiaries identified on the Department of Commerce's Entity List, 15 CFR part 744, supplement no. 4, and/or the

Department of Defense's List of Chinese Military Companies, http://media.defense..gov/202/Oct/05/2003091660/-1/-1/0/1260H%20COMPANIES.PDF; and

(5) The product is not owned or controlled by or affiliated with any person or entity that has been suspended or debarred from receiving federal procurements or financial awards, to include all entities and individuals published as ineligible for award on the General Service Administration's System for Award Management as described in § 8.204.

(6) The applicant has taken every reasonable measure to create a securable product.

(7) The applicant will, until the support period end date disclosed in the registry, diligently identify critical vulnerabilities in our products and promptly issue software updates correcting them, unless such updates are not reasonably needed to protect against security failures.

(8) The applicant will not elsewhere disclaim or otherwise attempt to limit the substantive or procedural enforceability of this declaration or of any other representations and commitments made on the FCC IoT Label or made for purposes of acquiring or maintaining authorization to use it.

(d) The applicant shall provide a written and signed declaration to the CLA that all statements it makes in the application are true and correct to the best of its knowledge and belief.

(e) Each application, including amendments thereto, and related statements of fact and authorizations required by the Commission, shall be signed by the applicant or their authorized agent.

(f) The applicant declares the product is reasonably secure and will be updated through the minimum support period for the product and the end date of the support period must be disclosed.

(g) The applicant shall declare under penalty of perjury that the consumer IoT product for which the applicant is applying for participation in the Labeling Program is not prohibited pursuant to § 8.204.

(h) If the identified listed sources under § 8.204 are modified after the date of the declaration required by paragraph (c) of this section but prior to grant of authorization to use the FCC IoT Label, then the applicant shall provide a new declaration as required by paragraph (c).

(i) The applicant shall designate an agent located in the United States for the purpose of accepting service of process on behalf of the applicant.

(1) The applicant shall provide a written attestation:

(i) Signed by both the applicant and its designated agent for service of process, if different from the applicant;

(ii) Acknowledging the applicant's consent and the designated agent's obligation to accept service of process in the United States for matters related to the applicable product, and at the physical U.S. address and email address of its designated agent; and

(iii) Acknowledging the applicant's acceptance of its obligation to maintain an agent for service of process in the United States for no less than one year after either the grantee has permanently terminated all marketing and importation of the applicable equipment within the U.S., or the conclusion of any Commission-related administrative or judicial proceeding

involving the product, whichever is later.

(2) An applicant located in the United States may designate itself as the agent for service of process.

(j) Technical test data submitted to the CLA shall be signed by the person who performed or supervised the tests. The person signing the test data shall attest to the accuracy of such data. The CLA may require the person signing the test data to submit a statement showing that they are qualified to make or supervise the required measurements.

(k) Signed, as used in this section, means an original handwritten signature or any symbol executed or adopted by the applicant or CLA with the intent that such symbol be a signature, including symbols formed by computer-generated electronic impulses.

§ 8.209 Grant of authorization to use FCC IoT Label.

(a) A CLA will grant cybersecurity labeling authorization if it finds from an examination of the application and supporting data, or other matter which it may officially notice, that the consumer IoT product complies with the program requirements.

(b) Grants will be made in writing showing the effective date of the grant.

(c) Cybersecurity certification shall not attach to any product, nor shall any use of the Cyber Trust Mark be deemed effective, until the application has been granted.

(d) Grants will be effective from the date of authorization.

(e) The grant shall identify the CLA granting the authorization and the Commission as the issuing authority.

(f) In cases of a dispute, the Commission will be the final arbiter.

§ 8.210 Dismissal of application.

(a) An application that is not in accordance with the provisions of this subpart may be dismissed.

(b) Any application, upon written request signed by the applicant or their agent, may be dismissed prior to a determination granting or denying the authorization requested.

(c) If an applicant is requested to submit additional documents or information and fails to submit the requested material within the specified time period, the application may be dismissed.

§ 8.211 Denial of application.

If the CLA is unable to make the findings specified in § 8.209(a), it will deny the application. Notification of the denial to the applicant will include a statement of the reasons for the denial.

§ 8.212 Review of CLA decisions.

(a) *Seeking review from a CLA*. Any party aggrieved by an action taken by a CLA must first seek review from the CLA. The CLA should respond to appeals of their decisions in a timely manner and

within 10 business days of receipt of a request for review.

(b) *Seeking review from the Commission*. A party aggrieved by an action taken by a CLA may, after seeking review by the CLA, seek review from the Commission.

(c) *Filing deadlines*. (1) An aggrieved party seeking review of a CLA decision by the CLA shall submit such a request within sixty (60) days from the date the CLA issues a decision. Such request shall be deemed submitted when received by the CLA.

(2) An aggrieved party seeking review of a CLA decision by the Commission shall file such a request within sixty (60) days from the date the CLA issues a decision on the party's request for review. Parties must adhere to the time periods for filing oppositions and replies set forth in 47 CFR 1.45.

(d) *Review by the Public Safety and Homeland Security Bureau or the Commission.* (1) Requests for review of CLA decisions that are submitted to the Federal Communications Commission shall be considered and acted upon by the Public Safety and Homeland Security Bureau; provided, however, that requests for review that raise novel questions of fact, law or policy shall be considered by the full Commission.

(2) An aggrieved party may seek review of a decision issued under delegated authority by the Public Safety and Homeland Security Bureau pursuant to the rules set forth in 47 CFR part 1.

(e) *Standard of review.* (1) The Public Safety and Homeland Security Bureau shall conduct de novo review of request for review of decisions issued by the CLA.

(2) The Federal Communications Commission shall conduct de novo review of requests for review of decisions by the CLA that involve novel questions of fact, law, or policy; provided, however, that the Commission shall not conduct de novo review of decisions issued by the Public Safety and Homeland Security Bureau under delegated authority.

(f) *Time periods for Commission review of CLA decisions.* (1) The Public Safety and Homeland Security Bureau shall, within forty-five (45) days, take action in response to a request for review of a CLA decision that is properly before it. The Public Safety and Homeland Security Bureau may extend the time period for taking action on a request for review of a CLA decision for a period of up to ninety days. The Commission may also at any time, extend the time period for taking action of a request for review of a CLA decision pending before the Public Safety and Homeland Security Bureau.

(2) The Commission shall issue a written decision in response to a request for review of a CLA decision that involves novel questions of fact, law, or policy within forty-five (45) days. The Commission may extend the time period for taking action on the request for review of a CLA decision. The Public Safety and Homeland Security Bureau also may extend action on a request for review of a CLA decision for a period of up to ninety days.

(g) *No Authorization Pending CLA Review.* While a party seeks review of a CLA decision, they are not authorized to use the FCC IoT Label until the Commission issues a final decision authorizing their use of the FCC IoT Label.

§ 8.213 Limitations on grants to use the FCC IoT Label.

(a) A grant of authorization to use the FCC IoT Label remains effective until set aside, revoked or withdrawn, rescinded, surrendered, or a termination date is otherwise established by the Commission.

(b) No person shall, in any advertising matter, brochure, etc., use or make reference to the FCC IoT Label or the Cyber Trust Mark in a deceptive or misleading manner.

§ 8.214 IoT product defect and/or design change.

When a complaint is filed directly with the Commission or submitted to the Commission by the Lead Administrator or other party concerning a consumer IoT product being non-compliant with the Labeling Program, and the Commission determines that the complaint is justified, the Commission may require the grantee to investigate such complaint and report the results of such investigation to the Commission within 20 days. The report shall also indicate what action if any has been taken or is proposed to be taken by the grantee to correct the defect, both in terms of future production and with reference to articles in the possession of users, sellers and distributors.

§ 8.215 Retention of records.

(a) For complying consumer IoT products granted authorization to use the FCC IoT Label, the grantee shall maintain the records listed as follows:

(1) A record of the original design and specifications and all changes that have been made to the complying consumer IoT product that may affect compliance with the standards and testing procedures of this subpart.

(2) A record of the procedures used for production inspection and testing to ensure conformance with the standards and testing procedures of this subpart.

(3) A record of the test results that demonstrate compliance with the appropriate regulations in this chapter.

(b) Records shall be retained for a two-year period after the marketing of the associated product has been permanently discontinued, or until the conclusion of an investigation or a proceeding if the grantee is officially notified that an investigation or any other administrative proceeding involving its product has been instituted.

§ 8.216 Termination of authorization to use the FCC IoT Label.

(a) Grant of authorization to use the FCC IoT Label is automatically terminated by notice of the Bureau following submission of a report as specified in § 8.214 has not been adequately corrected:

(1) For false statements or representations made either in the application or in materials or response submitted in connection therewith or in records required to be kept by § 8.215.

(2) If upon subsequent inspection or operation it is determined that the consumer IoT product does not conform to the pertinent technical requirements in this subpart or to the representations made in the original application.

(3) Because of conditions coming to the attention of the Commission which would warrant it in refusing to grant authorization to use the FCC IoT Label.

(4) Because the grantee or affiliate has been listed as described in § 8.204.

(b) [Reserved]

§ 8.217 CyberLABs.

(a) A CyberLAB providing testing of products seeking a grant of authorization to use the FCC IoT Label shall be accredited by a recognized accreditation body, which must attest that the CyberLAB has demonstrated:

(1) Technical expertise in cybersecurity testing and conformity assessment of IoT devices and products.

(2) Compliance with accreditation requirements based on ISO/IEC 17025 (incorporated by reference, see § 8.201).

(3) Knowledge of FCC rules and procedures associated with products compliance testing and cybersecurity certification.

(4) Necessary equipment, facilities, and personnel to conduct cybersecurity testing and conformity assessment of IoT devices and products.

(5) Documented procedures for conformity assessment.

(6) Implementation of controls to eliminate potential conflicts of interests, particularly with regard to commercially sensitive information.

(7) That the CyberLAB is not an organization, its affiliates, or subsidiaries identified by the listed sources of prohibition under § 8.204.

(8) That it has certified the truth and accuracy of all information it has submitted to support its accreditation.

(b) Once accredited or recognized the CyberLAB will be periodically audited and reviewed to ensure they continue to comply with the requirements of the ISO/IEC 17025 standard.

(c) The Lead Administrator will verify that the CyberLAB is not listed in any of the lists in § 8.204.

(d) The Lead Administrator will maintain a list of accredited CyberLABs that it has recognized, and make publicly available the list of accredited CyberLAB. Inclusion of a CyberLAB on the accredited list does not constitute Commission endorsement of that facility. Recognition afforded to a CyberLAB under the Labeling Program will be automatically terminated for entities that are subsequently placed on the Covered List, listed sources of prohibition under § 8.204, or of it, its affiliate, or subsidiary is owned or controlled by a foreign adversary country defined by the Department of Commerce in 15 CFR § 7.4.

(e) In order to be recognized and included on the list in paragraph (d) of this section, the accrediting organization must submit the information in paragraphs (e)(1) through (9) of this section to the Lead Administrator:

(1) Laboratory name, location of test site(s), mailing address and contact information;

(2) Name of accrediting organization;

(3) Scope of laboratory accreditation;

(4) Date of expiration of accreditation;

(5) Designation number;

(6) FCC Registration Number (FRN);

(7) A statement as to whether or not the laboratory performs testing on a contract basis;

(8) For laboratories outside the United States, details of the arrangement under which the accreditation of the laboratory is recognized; and

(9) Other information as requested by the Commission.

(f) A laboratory that has been accredited with a scope covering the measurements required for the types of IoT products that it will test shall be deemed competent to test and submit test data for IoT products subject to cybersecurity certification. Such a laboratory shall be accredited by a Public Safety and Homeland Security Bureau-recognized accreditation organization based on ISO/IEC 17025. The organization accrediting the laboratory must be recognized by the Public Safety and Homeland Security Bureau to perform such accreditation based on ISO/IEC 17011 (incorporated by reference, see § 8.201). The frequency for reassessment of the test facility and the information that is required to be filed or retained by the testing party shall comply with the requirements established by the accrediting organization, but shall occur on an interval not to exceed two years.

§ 8.218 Recognition of CyberLAB accreditation bodies.

(a) A party wishing to become a laboratory accreditation body recognized by the Public Safety and Homeland Security Bureau (PSHSB) must submit a written request to the Chief of PSHSB requesting such recognition. PSHSB will make a determination based on the information provided in support of the request for recognition.

(b) Applicants shall provide the information in paragraphs (b)(1) through (4) of this section as evidence of their credentials and qualifications to perform accreditation of laboratories that test equipment to Commission requirements, consistent with the requirements of § 8.217(e). PSHSB may request additional information, or showings, as needed, to determine the applicant's credentials and qualifications.

(1) Successful completion of an ISO/IEC 17011 peer review, such as being a signatory to an accreditation agreement that is acceptable to the Commission.

(2) Experience with the accreditation of conformity assessment testing laboratories to ISO/IEC 17025.

(3) Accreditation personnel/assessors with specific technical experience on the Commission cybersecurity certification rules and requirements.

(4) Procedures and policies developed for the accreditation of testing laboratories for FCC cybersecurity certification programs.

§ 8.219 Approval/recognition of Cybersecurity Label Administrators.

(a) An accredited third-party entity wishing to become a Cybersecurity Label Administrator (CLA) must file a written application with the Commission. The Commission may approve the written application for the accredited third-party entity to be recognized and authorized by the Commission as a CLA to manage and administer the labeling program by meeting the requirements of paragraph (b) of this section. An accredited third-party entity is recognized and authorized by the Commission to manage and administer the labeling program in accordance with the Commission's rules in this subpart.

(b) In the United States, the Commission, in accordance with its procedures, allows qualified accrediting bodies to accredit CLAs based on ISO/IEC 17065 and other qualification criteria. CLAs shall comply with the requirements in § 8.220.

§ 8.220 Requirements for CLAs.

(a) *In general.* CLAs designated by the Commission, or designated by another authority recognized by the Commission, shall comply with the requirements of this section. Each entity seeking authority to act as a CLA must file an application with the Commission for consideration by PSHSB, which includes a description of its organization structure, an explanation of how it will avoid personal and organizational conflict when processing applications, a description of its processes for evaluating applications seeking authority to use the FCC IoT Label, and a demonstration of expertise that will be necessary to effectively serve as a CLA including, but not limited to, the criteria in paragraph (c) of this section.

(b) *Methodology for reviewing applications.* (1) A CLA's methodology for reviewing applications shall be based on type testing as identified in ISO/IEC 17065 (incorporated by reference, see § 8.201).

(2) A CLA's grant of authorization to use the FCC IoT Label shall be based on the application with all the information specified in this part. The CLA shall review the application to determine compliance with the Commission's requirements in this subpart and shall issue a grant of product cybersecurity certification in accordance with § 8.208.

(c) *Criteria for designation.* (1) To be designated as a CLA under this section, an entity shall demonstrate cybersecurity expertise and capabilities in addition to industry knowledge of IoT and IoT labeling requirements.

(2) The entity shall demonstrate expert knowledge of National Institute of Standards and Technology's (NIST) cybersecurity guidance, including but not limited to NIST's recommended criteria and labeling program approaches for cybersecurity labeling of consumer IoT products.

(3) The entity shall demonstrate expert knowledge of FCC rules and procedures associated with product compliance testing and certification.

(4) The entity shall demonstrate knowledge of Federal law and guidance governing the security and privacy of agency information systems.

(5) The entity shall demonstrate an ability to securely handle large volumes of information and demonstrate internal security practices.

(6) To expedite initial deployment of the FCC labeling program, the Commission will accept and conditionally approve applications from entities seeking to be designated as a CLA provided they commit to obtain accreditation pursuant to all the requirements associated with ISO/IEC 17065

with the appropriate scope within six (6) months of the effective date by the adopted standards and testing procedures and otherwise meet the FCC's IoT Labeling Program requirements. The entity must also demonstrate implementation of controls to eliminate actual or potential conflicts of interests (including both personal and organizational), particularly with regard to commercially sensitive information. The Bureau will finalize the entity's application upon receipt and demonstration of ISO/IEC 17065 accreditation with the appropriate scope.

(7) The entity, or any of its affiliates or subsidiaries, is not owned or controlled by, or affiliated with, any entity identified on the Commission's Covered List, listed sources of prohibition under § 8.204, or a foreign adversary country defined by the Department of Commerce in 15 CFR § 7.4.

(8) The entity must demonstrate it has implemented controls to eliminate actual or potential conflicts of interests (including both personal and organizational), particularly with regard to commercially sensitive information, to include but not limited to, remaining impartial and unbiased and prevent them from giving preferential treatment to certain applications (e.g., application line jumping) and from implementing heightened scrutiny of applications from entities not members or otherwise aligned with the CLA.

(d) *External resources.* (1) In accordance with the provisions of ISO/IEC 17065, the evaluation of a product, or a portion thereof, may be performed by bodies that meet the applicable requirements of ISO/IEC 17025, in accordance with the applicable provisions of ISO/IEC 17065 for external resources (outsourcing). Evaluation is the selection of applicable requirements and the determination that those requirements are met. Evaluation may be performed using internal CLA resources or external (outsourced) resources.

(2) A CLA shall not outsource review or decision activities.

(3) When external resources are used to provide the evaluation function, including the testing of products subject to labeling, the CLA shall be responsible for the evaluation and shall maintain appropriate oversight of the external resources used to ensure reliability of the evaluation. Such oversight shall include periodic audits of products that have been tested and other activities as required in ISO/IEC 17065 when a CLA uses external resources for evaluation.

(e) *Commission approves a CLA.* (1) The Commission will approve as a CLA:

(i) Any entity in the United States that meets the requirements of this section.

(ii) The Commission will not approve as a CLA any organization, its affiliates, or subsidiaries listed in the listed sources of prohibition under § 8.204.

(2) The Commission will withdraw its approval of a CLA if the CLA's designation or accreditation is withdrawn, if the Commission determines there is just cause for withdrawing the approval, or upon request of the CLA. The Commission will limit the scope of products that can be certified by a CLA if its accreditor limits the scope of its accreditation or if the Commission determines there is good cause to do so. The Commission will notify a CLA in writing of its intention to withdraw or limit the scope of the CLA's approval and provide at least 60 days for the CLA to respond.

(3) The Commission will notify a CLA in writing when it has concerns or evidence that the CLA is not carrying out its responsibilities under the Labeling Program in accordance with the

Commission's rules in this subpart and policies and request that it explain and correct any apparent deficiencies.

(4) The Public Safety and Homeland Security Bureau shall provide notice to the CLA that the Bureau proposes to terminate the CLA's authority and provide the CLA a reasonable opportunity to respond (not more than 20 days) before reaching a decision on possible termination.

(5) If the Commission withdraws its recognition of a CLA, all grants issued by that CLA will remain valid unless specifically set aside or revoked by the Commission.

(6) A list of recognized CLAs will be published by the Commission.

(f) *Scope of responsibility.* (1) A CLA shall receive and evaluate applications and supporting data requesting authority to use the FCC IoT Label on the product subject to the application.

(2) A CLA shall grant authorization to use the FCC IoT Label with a complying consumer IoT product in accordance with the Commission's rules and policies.

(3) A CLA shall accept test data from any Lead Administrator-recognized accredited CyberLAB, subject to the requirements in ISO/IEC 17065 and shall not unnecessarily repeat tests.

(4) A CLA may establish and assess fees for processing applications and other Commission-required tasks.

(5) A CLA may only act on applications that it has received or which it has issued a certification authorizing use of the FCC IoT Label.

(6) A CLA shall dismiss an application that is not in accordance with the provisions of this subpart or when the applicant requests dismissal, and may dismiss an application if the applicant does not submit additional information or test samples requested by the CLA.

(7) A CLA shall ensure that manufacturers make all required information accessible to the IoT registry.

(8) A CLA shall participate in a consumer education campaign in coordination with the Lead Administrator.

(9) A CLA shall receive complaints alleging a product bearing the FCC IoT Label does not support the cybersecurity criteria conveyed by the Cyber Trust Mark and refer these complaints to the Lead Administrator which will notify the Public Safety and Homeland Security Bureau.

(10) A CLA may not:

(i) Make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress;

(ii) Grant a waiver of the rules in this subpart; or

(iii) Take enforcement actions.

(11) All CLA actions are subject to Commission review.

(g) *Post-market surveillance requirements.* (1) In accordance with ISO/IEC 17065, a CLA shall perform appropriate post-market surveillance activities. These activities shall be based on type testing a certain number of samples of the total number of product types for which the CLA has certified use of the Label.

(2) PSHSB may request that a grantee of authority to use the FCC IoT Label submit a product sample directly to the CLA that evaluated the grantee's application as part of the post market surveillance. Any product samples requested by the Commission and tested by the CLA will be counted toward a minimum number of samples that the CLA must test to meet its post market surveillance requirements.

(3) A CLA may also request a grantee submit samples of products that the CLA has certified to use the FCC IoT Label directly to the CLA.

(4) If during post market surveillance of a complying consumer IoT product, a CLA determines that the product fails to comply with the technical regulations (or other FCC requirements) for that product, the CLA shall immediately notify the grantee and the Commission in writing of its findings. The grantee shall provide a report to the CLA describing the actions taken to correct the situation, as provided in § 8.216, and the CLA shall provide a report of these actions to the Commission within 30 days.

(5) CLAs shall submit periodic reports to the Commission of their post-market surveillance activities and findings in a format and by a date specified by the Commission.

§ 8.221 Requirements for the Lead Administrator.

(a) *Establishing a Lead Administrator*. If more than one qualified entity is selected by the Commission to be a CLA, the Commission will select a Lead Administrator. The Lead Administrator shall:

(1) Interface with the Commission on behalf of the CLAs, including but not limited to submitting to the Bureau all complaints alleging a product bearing the FCC IoT Label does not meet the requirements of the Commission's labeling program;

(2) Coordinate with CLAs and moderate stakeholder meetings;

(3) Accept, review, and approve or deny applications from labs seeking recognition as a lab authorized to perform the conformity testing necessary to support an application for authority to affix the FCC IoT Label, and maintain a publicly available list of Lead Administrator-recognized labs and a list of labs that have lost their recognition;

(4) Within 90 days of election as Lead Administrator, the Lead Administrator will, in collaboration with the CLAs and stakeholders (e.g. cyber experts from industry, government, and academia):

(i) Submit to the Bureau recommendations identifying and/or developing the technical standards and testing procedures for the Commission to consider with regard to at least one class of IoT products eligible for the IoT Labeling Program. The Bureau will evaluate the recommendations, subject to any required public notice and comment, adopt them into the Commission's rules in this subpart;

(ii) Submit to the Bureau a recommendation on how often a given class of IoT products must renew their request for authority to bear the FCC IoT Label, which may be dependent on the type of product, and that such a recommendation be submitted in connection with the relevant standards recommendations for an IoT product or class of IoT products. The Bureau will evaluate the recommendations, and if the Bureau approves of the recommendations, subject to any required public notice and comment, adopt them into the Commission's rules in this subpart;

(iii) Submit to the Bureau a recommendation on procedures for post market surveillance by the CLAs. The Bureau will evaluate the recommendations, and if the Bureau approves of the recommendations, subject to any required public notice and comment, adopt them into the Commission's rules in this subpart;

(iv) Make recommendations to the Bureau with regard to updates to the registry including whether the registry should be in additional languages and if so, to recommend specific languages for inclusion; and

(v) Submit to the Bureau recommendations on the design of the FCC IoT Label, including but not limited to labeling design and placement (e.g., size and white spaces, product packaging) and whether to include the product support end date on labels for certain products or category of products. The Bureau will evaluate the recommendations, and if the Bureau approves of the recommendations, subject to any required public notice and comment, adopt them into the Commission's rules in this subpart;

(5) Within 45 days of publication of updates or changes to NIST guidelines, or adoption by NIST of new guidelines, recommend in collaboration with CLAs and other stakeholders any appropriate modifications to the Labeling Program standards and testing procedures to stay aligned with the NIST guidelines;

(6) Submit to the Commission reports on CLAs' post-market surveillance activities and findings in the format and by the date specified by Public Safety and Homeland Security Bureau;

(7) Develop in collaboration with stakeholders a consumer education campaign, submit the plan to the Public Safety and Homeland Security Bureau, and participate in consumer education;

(8) Receive complaints about the Labeling Program, including but not limited to consumer complaints about the registry and coordinate with manufacturers to resolve any technical problems associated with consumers accessing the information in the registry;

(9) Facilitate coordination between CLAs; and

(10) Submit to the Commission any other reports upon request of the Commission or as required by Commission rules in this subpart.

(b) *Criteria for designation*. In addition to completing the CLA application information, entities seeking to be the Lead Administrator will submit a description of how they will execute the duties of the Lead Administrator, including:

(1) Their previous experience in IoT cybersecurity;

(2) What role, if any, they have played in IoT labeling;

(3) Their capacity to execute the Lead Administrator duties;

(4) How they would engage and collaborate with stakeholders to identify or develop the Bureau recommendations;

(5) A proposed consumer education campaign; and

(6) Additional information the applicant believes demonstrates why they should be the Lead Administrator.

§ 8.222 Establishment of an IoT Registry.

(a) A grantee of authority to use the FCC IoT Label shall provide information about the complying Consumer IoT Product to the public. Information supplied by grantees shall be made available in a dynamic, decentralized, publicly accessible registry through a common Application Programming Interface (API) that is secure by design.

(b) A grantee of authority to use the FCC IoT Label shall publish the following information through the common API in the Registry:

(1) Product Name;

(2) Manufacturer name;

(3) Date the product received authorization (i.e., cybersecurity certification) to affix the label and current status of the authorization (if applicable);

(4) Name and contact information of the CLA that authorized use of the FCC IoT Label;

(5) Name of the lab that conducted the conformity testing;

(6) Instructions on how to change the default password (specifically state if the default password cannot be changed);

(7) Information (or link) for additional information on how to configure the device securely;

(8) Information as to whether software updates and patches are automatic and how to access security updates/patches if they are not automatic;

(9) The date until which the entity promises to diligently identify critical vulnerabilities in the product and promptly issue software updates correcting them, unless such an update is not reasonably needed to protect against cybersecurity failures (i.e. the minimum support period); alternatively, a statement that the device is unsupported and that the purchaser should not rely on the manufacturer to release security updates;

(10) Disclosure of whether the manufacturer maintains a Hardware Bill of Materials (HBOM) and/or a Software Bill of Materials (SBOM); and

(11) Additional data elements that the Bureau deems necessary.

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 *Cybersecurity Labeling for Internet of Things* Notice of Proposed Rulemaking (*IoT Labeling NPRM*) released in August 2023.[2] The Federal Communications Commission (Commission) sought written public comment on the proposals in the *IoT Labeling NPRM*, including comment on the IRFA. No comments were filed addressing the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[3]

A. Need for, and Objectives of, the Final Rules

2. In today's *Report and Order* (*Order*), the Commission adopts a voluntary U.S. Cyber Trust Mark (Cyber Trust Mark or Mark) cybersecurity labeling program for Internet-connected consumer Internet of Things (IoT) products that will provide consumers with an easy-to-understand indicator of a product's relative cybersecurity and improve consumer confidence and understanding of IoT product cybersecurity. Consumer IoT products are susceptible to a wide range of security vulnerabilities that can be exploited by attackers to gain unauthorized access to the IoT product and its data. Providing customers with an easy-to-understand label indicating that an IoT product has satisfied baseline cybersecurity standards allows a consumer to understand the relative security risk that the IoT product may pose when making a purchase. We adopt an IoT Labeling Program focusing on IoT "products," which in accordance with the Commission's proposed adoption of the definition proposed in the *IoT Labeling NPRM* incorporates the National Institute of Standards and Technology (NIST) definition of an IoT product as an "IoT device and any additional product components (e.g., backend, gateway, mobile app) that are necessary to use the IoT device beyond basic operational features."[4] The record supports the Commission's adoption of a program focused on the IoT product rather than the individual device, because a label on the product addresses the full functionality of the device and the most relevant components the consumer expects to be secured when they buy a product. In addition to enabling consistency in the treatment of programmatic elements across the federal government, our adopted definition of IoT product will include the component pieces of a device posing cybersecurity risks. We focus the IoT Labeling Program on "consumer" IoT rather than "enterprise" IoT, as such an approach will provide value to consumers most efficiently and expediently, without added complexity from the enterprise environment. Medical devices regulated by the U.S. Food and Drug Administration (FDA), and devices that pose a risk to national security and public safety are excluded from the program. We also exclude wired products at this time because of the Commission's interest in keeping the scope of the IoT Labeling Program clear and manageable during its debut and because there is support in the record for wireless intentional radiators as most prevalent types of consumer IoT devices contemplated in the *IoT Labeling NPRM*.

3. We adopt standards and testing procedures based on the NIST framework for IoT, adopt the use of one or more Cybersecurity Label Administrators (Label Administrators or CLAs), overseen by the Commission to manage certain aspects of the program, and assign tasks and duties to that administrator to ensure timely rollout of the program. The Commission will select from among the CLA applicants one entity to be the Lead Administrator. The Lead Administrator will collaborate with stakeholders to, among other things, develop recommendations on the development or identification of the technical standards and testing procedures that must be met for an IoT product to be eligible to be authorized to use the Cyber

[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] *Cybersecurity Labeling for Internet of Things*, PS Docket No. 23-239, FCC 23-65, Notice of Proposed Rulemaking (Aug. 10, 2023) *(IoT Labeling NPRM)*.

[3] 5 U.S.C. § 604.

[4] *See IoT Labeling NPRM* at 8, para. 13.

Trust Mark; make recommendations to the Commission about how often a given class of IoT products must renew their request for authority to bear the Mark; and recommendations on specific IoT label formatting. The Lead Administrator will submit each of these recommendations to the Chief of the Public Safety and Homeland Security Bureau (Bureau) for review and possible approval.

4. We adopt a two-step process that must be followed by a manufacturer seeking authority to use the Cyber Trust Mark. The manufacturer must:

1) Obtain conformance testing and a report demonstrating that the IoT product meets the program's standards and other FCC requirements necessary to be authorized to bear the Cyber Trust Mark. This testing may be provided by an accredited and FCC-recognized laboratory, which may include a Cybersecurity Testing Laboratory (CyberLAB), a manufacturer's in-house lab, or a lab operated by a Label Administrator; and
2) Submit an application to the Label Administrator of their choice, which will review the applications and supporting test report, and will authorize the applicant's use of the Cyber Trust Mark on that product if all program requirements have been met.

This process will ensure the label reliably reflects the security of the IoT product and secure consumer trust in the label. This structure implements controls to assure consumers that the IoT products bearing the Mark have undergone a meaningful procedure involving verification by disinterested parties and that the product meets the Commission's requirements to obtain authority to affix the Cyber Trust Mark to a product.

5. The Commission further adopts a binary label with layering due to its consumer-friendly nature and its potential to streamline purchasing decisions. The label will contain a QR Code with an embedded link that directs the consumer to a registry that will display information about the security of the product for the consumer. To determine how the registry should be structured to best meet the goals of the IoT Labeling Program as we adopt it today, we direct the Bureau to seek comment and consider, as part of a public process, the technical details involved with the operation of the registry. The Commission also tasks the Lead Administrator with fielding complaints about the registry from consumers and coordinating with manufacturers to resolve any technical problems associated with consumers accessing the information in the registry. We also address renewal of the label, enforcement considerations, international reciprocal recognition of the label, and stress the importance of consumer education to understand the limits and benefits of the label, rooted in a consumer education framework created by NIST. These elements ensure the label is accessible and easily understood by consumers. Adopting the voluntary IoT Labeling Program described above will further the Commission's objective to provide better information to consumers about the cybersecurity of the IoT products they use, and bolster the cybersecurity of the nationwide IoT ecosystem.

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 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.[5] The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

[5] 5 U.S.C. § 604(a)(3).

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

8. The RFA directs agencies to provide a description of and, where feasible, an estimate of, the number of small entities that may be affected by the rules, adopted herein.[6] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[7] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[8] A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[9]

9. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein.[10] First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.[11] These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.[12]

10. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[13] The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.[14] Nationwide, for tax year 2022, there were approximately 530,109 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.[15]

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[6] *Id.* § 604(a)(4).

[7] 5 U.S.C. § 601(6).

[8] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[9] 15 U.S.C. § 632.

[10] 5 U.S.C. § 601(3)-(6).

[11] *See* SBA, Office of Advocacy, *What's New With Small Business?*, (Mar. 2023) https://advocacy.sba.gov/wp-content/uploads/2023/03/Whats-New-Infographic-March-2023-508c.pdf [https://perma.cc/Z824-JRBW].

[12] *Id*.

[13] 5 U.S.C. § 601(4).

[14] The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. S*ee* IRS, *Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard)* (Dec. 4, 2023), https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard [https://perma.cc/6QWK-CR8J]. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

[15] *See* IRS, *Exempt Organizations Business Master File Extract (EO BMF)* (Feb. 4, 2024), https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf [https://perma.cc/SXT4-U8C8]. 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

(continued….)

11. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[16] U.S. Census Bureau data from the 2022 Census of Governments[17] indicate there were 90,837 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.[18] Of this number, there were 36,845 general purpose governments (county,[19] municipal, and town or township[20]) with populations of less than 50,000 and 11,879 special purpose governments (independent school districts[21]) with enrollment populations of less than 50,000.[22] Accordingly, based on the 2022 U.S. Census of Governments data, we estimate that at least 48,724 entities fall into the category of "small governmental jurisdictions."[23]

12. *Radio Frequency Equipment Manufacturers (RF Manufacturers).* There are several analogous industries with an SBA small business size standard that are applicable to RF Manufacturers. These industries are Fixed Microwave Services, Other Communications Equipment Manufacturing, Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. A description of these industries and the SBA small business size standards are detailed below.

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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.

[16] 5 U.S.C. § 601(5).

[17] 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with "2" and "7". *See also* U.S. Census Bureau, *Census of Governments, About* (Nov. 18, 2021), https://www.census.gov/programs-surveys/cog/about.html [https://perma.cc/E2FJ-TRXF].

[18] *See* U.S. Census Bureau, 2022 Census of Governments – Organization Table 2. Local Governments by Type and State: 2022 [CG2200ORG02], https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html [https://perma.cc/6Z48-XY77]. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). *See also* tbl.2. CG2200ORG02 Table Notes_Local Governments by Type and State_2022.

[19] *See id.* at tbl.5. County Governments by Population-Size Group and State: 2022 [CG2200ORG05], https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html [https://perma.cc/6Z48-XY77]. There were 2,097 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

[20] *See id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2022 [CG2200ORG06], https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html [https://perma.cc/6Z48-XY77]. There were 18,693 municipal and 16,055 town and township governments with populations less than 50,000.

[21] *See id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2022 [CG2200ORG10], https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html [https://perma.cc/6Z48-XY77]. There were 11,879 independent school districts with enrollment populations less than 50,000. *See also* tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2022 [CG2200ORG04], CG2200ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2022.

[22] While the special purpose governments category also includes local special district governments, the 2022 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

[23] This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,845) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (11,879), from the 2022 Census of Governments - Organizations tbls. 5, 6 & 10.

13. *Fixed Microwave Services.* Fixed microwave services include common carrier,[24] private-operational fixed,[25] and broadcast auxiliary radio services.[26] They also include the Upper Microwave Flexible Use Service (UMFUS),[27] Millimeter Wave Service (70/80/90 GHz),[28] Local Multipoint Distribution Service (LMDS),[29] the Digital Electronic Message Service (DEMS),[30] 24 GHz Service,[31] Multiple Address Systems (MAS),[32] and Multichannel Video Distribution and Data Service (MVDDS),[33] where in some bands licensees can choose between common carrier and non-common carrier status.[34] Wireless Telecommunications Carriers (*except* Satellite)[35] is the closest industry with an SBA small business size standard applicable to these services. The SBA small size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[36] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[37] Of this number, 2,837 firms employed fewer than 250 employees.[38] Thus, under the SBA size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

14. 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 on 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

[24] *See* 47 CFR Part 101, Subparts C and I.

[25] *See id*. Subparts C and H.

[26] 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.

[27] *See* 47 CFR Part 30.

[28] *See* 47 CFR Part 101, Subpart Q.

[29] *See id*. Subpart L.

[30] *See id*. Subpart G.

[31] *See id*.

[32] *See id.* Subpart O.

[33] *See id*. Subpart P.

[34] *See* 47 CFR §§ 101.533, 101.1017.

[35] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers* (*except Satellite*)," https://www.census.gov/naics/?input=517312&year=2017&details=517312 [https://perma.cc/NBD5-UHZ9] (last visited Feb. 14, 2024).

[36] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[37] *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 [https://perma.cc/XKA9-98E9] (last visited Feb. 14, 2024).

[38] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

identified in Part 101 of the Commission's rules for the specific fixed microwave services frequency bands.[39]

15. 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.

16. *Other Communications Equipment Manufacturing*. This industry comprises establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, radio and television broadcast, and wireless communications equipment).[40] Examples of such manufacturing include fire detection and alarm systems manufacturing, Intercom systems and equipment manufacturing, and signals (e.g., highway, pedestrian, railway, traffic) manufacturing.[41] The SBA small business size standard for this industry classifies firms having 750 or fewer employees as small.[42] For this industry, U.S. Census Bureau data for 2017 shows that 321 firms operated for the entire year.[43] Of that number, 310 firms operated with fewer than 250 employees.[44] Based on this data, we conclude that the majority of Other Communications Equipment Manufacturers are small.

17. *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.[45] 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.[46] The SBA small business size standard for this industry classifies firms having 1,250 employees or less as small.[47] U.S. Census Bureau data for 2017 show that there were 656 firms in

[39] *See* 47 CFR §§ 101.538(a)(1)-(3), 101.1112(b)-(d), 101.1319(a)(1)-(2), and 101.1429(a)(1)-(3).

[40] *See* U.S. Census Bureau, *2017 NAICS Definitions, "334290 Other Communications Equipment Manufacturing,"* https://www.census.gov/naics/?input=334290&year=2017&details=334290 [https://perma.cc/D4JU-E6ZZ] (last visited Feb. 14, 2024).

[41] *Id.*

[42] *See* 13 CFR § 121.201, NAICS Code 334290.

[43] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 334290, https://data.census.gov/cedsci/table?y=2017&n=334290&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false [https://perma.cc/EB69-799P] (last visited Feb. 14, 2024).

[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* 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 [https://perma.cc/2EMS-VMD9] (last visited Feb. 14, 2024).

[46] *Id.*

[47] *See* 13 CFR § 121.201, NAICS Code 334220.

this industry that operated for the entire year.[48] Of this number, 624 had fewer than 250 employees.[49] Based on this data, we conclude that a majority of manufacturers in this industry are small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

18. As described above, the Commission adopts the operational framework for a voluntary IoT cybersecurity labeling program. Since the IoT Labeling Program is voluntary, small entities who do not participate in the IoT Labeling Program will not be subject to any new or modified reporting, recordkeeping, or other compliance obligations. The IoT Labeling Program framework incorporates, and is consistent with, certain NIST guidelines and protocols as part of the Commission's recognition that public-private collaboration that leverages the expertise and existing frameworks of the federal government, industry, and other stakeholders is necessary for the success of its voluntary IoT Labeling Program. The Commission will be the IoT Labeling Program owner and retain ultimate control over the IoT Labeling Program, however, third-party administrators will carry out responsibilities such as management of day-to-day functions, and development of processes, standards, and testing to be approved by the Commission. In light of the work that remains to be done for administration and implementation of the IoT Labeling Program, the Commission is not in a position to quantify the costs for small entities or to determine whether it will be necessary for small entities to hire professionals to comply with the IoT Labeling Program.

19. Small entities that choose to participate in the IoT Labeling Program by seeking authority to affix the Cyber Trust Mark on their products will incur recordkeeping and reporting as well as other obligations that are necessary to test their IoT products to demonstrate compliance with the requirements the Commission adopts in the *Order*. More specifically, small entities and other applicants are required to have their product tested by an accredited and FCC-recognized CyberLAB, Label Administrator Lab, or manufacturer's in-house lab; obtain a report of conformity and compliance from the testing lab; and submit an application for authority to use the Cyber Trust Mark to an FCC-recognized Label Administrator in accordance with procedures established by the Label Administrator. To ensure that IoT products approved for the use of the Cyber Trust Mark do not pose national security or public safety risks, small entities and other applicants seeking authorization to use to the Cyber Trust Mark are required to provide a declaration under penalty of perjury that as of the date they file their application that, (i) the product for which the applicant seeks to use the Mark through cybersecurity certification meets all the requirements of the IoT Labeling Program; (ii) the applicant is not identified on the Covered List, established pursuant to § 1.50002 of the of the Commission's rules, as an entity producing covered communications equipment; and (iii) the product is not produced by any entity, its affiliates, or subsidiaries identified on the Department of Commerce's Entity List, or the Department of Defense's List of Chinese Military Companies.

20. The *Order* adopts the NIST Core Baseline technical criteria presented in NISTIR 8425 as the foundation of the Commission's IoT Labeling Program as proposed in the *IoT Labeling NPRM*. Small entities and others seeking use of the FCC IoT Label will be required to provide information on asset identification; product configuration; data protection; interface access control; software update; cybersecurity state awareness; and the IoT product development activities, on documentation, information and query reception, information dissemination, and product education and awareness for each product submission. To ensure their IoT products are eligible for continued use of the Cyber Trust Mark, small entities will need to keep the records necessary to demonstrate the products continue to comply with the

[48] *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 [https://perma.cc/Q649-9AC4] (last visited Feb. 14, 2024).

[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.

IoT Labeling Program requirements. The Bureau has not yet adopted standards addressing how often an IoT product, or a class of IoT products, will need to be retested for continuing eligibility to display the Cyber Trust Mark. While these standards have yet to be determined, maintaining records to demonstrate compliance with the minimum cybersecurity standards that are adopted will be necessary for small entities that elect to participate in the IoT Labeling Program. Additionally, small entities who participate in the IoT Labeling Program will be required to maintain appropriate records in the event their IoT product label authorization is subject to an audit.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

21. The RFA requires an agency to provide, "a description of the steps the agency has taken to minimize the significant economic impact on small entities…including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected."[50]

22. The actions taken by the Commission in the *Order* were considered to be the least costly and minimally burdensome for small and other entities that choose to participate in the IoT Labeling Program. To serve the aims of the program, and for the Cyber Trust Mark to have meaning for consumers, the requirements for an IoT product to receive the Cyber Trust Mark must be uniform for both small businesses and other entities. Thus, the Commission continues to maintain the view expressed in the IRFA for the *IoT Labeling NPRM* that the significance of mark integrity, and building confidence among consumers that devices and products containing the Cyber Trust Mark label can be trusted to be cyber secure, necessitates adherence by all entities participating in the IoT Labeling Program to the same rules regardless of size.

23. 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 IoT Labeling Program is voluntary, so a small entity can engage in their own analysis to determine whether the benefits of participating in the program outweigh the costs of participating in the IoT Labeling Program with respect to any IoT products they manufacture. The Commission expects small entities that participate in the IoT Labeling Program like other entities will realize benefits from having the Cyber Trust Mark on their IoT product(s) such as product differentiation, increased consumer confidence, reduced risk of distributed denial-of-service (DDoS) and other types of cyber-attacks, and reduced cybersecurity incident related risks.

24. In the *Order*, the Commission has tasked the Lead Administrator with developing or identifying the standards to which every participant's IoT product must meet. Rather than formulating and adopting its own standards and testing procedures, the Commission opted to adopt standards based on recommendations made by the Lead Administrator in collaboration with industry stakeholders that will be able to leverage existing standards work in progress or completed, facilitating faster development of standards, and therefore facilitating a faster rollout of the IoT Labeling Program. Small entities will benefit from the Commission directive that the Lead Administrator use as a foundation for the IoT Labeling Program the technical criteria developed by NIST in the NISTIR 8425, Profile of the IoT Core Baseline for Consumer IoT Products, which provides flexibility that can be applied across all types of consumer IoT products. Small entities will also benefit from the limited scope of the IoT Labeling Program which is only applicable to consumer IoT products.

25. The Commission's decision to allow manufacturers seeking certification to use the Cyber Trust Mark the option to conduct in-house conformity testing for IoT products, provided the in-house labs meet the same accreditation and FCC-recognition requirements as CyberLABs, is a step that may benefit small entities. To the extent that a Cybersecurity Label Administrator also operates an in-house lab to

[50] 5 U.S.C. § 604(a)(6).

conduct conformity testing, the ability of small entities to use the Cybersecurity Label Administrator for both product testing and certification to use the Cyber Trust Mark may yield both time and costs saving for small entities. Also related to lab testing, the Commission considered but declined to require conformity testing labs to be physically located in the U.S., which provides more testing lab options for small and other entities. The Commission also considered but declined to allow self-attestation of conformity with testing requirements by applicants seeking the Cyber Trust Mark certification, citing support in the record of the certification of bogus products as Energy Star compliant in the Energy Star program when the program was "primarily a self-certification program relying on corporate honesty and industry self-policing to protect the integrity of the Energy Star label."[51]

26. The Commission anticipates that as the IoT Labeling Program becomes established in the minds of the consumer, small entities may benefit from recognition of the Cyber Trust Mark on their IoT products, and thus receive greater recognition in the market as a result of participating in the program. The Commission considered utilizing and adopted a single binary label as proposed in the *IoT Labeling NPRM* in part due to its simplicity to consumers, but a simple label benefits small businesses who want to place the label on their product as the small entity will not need to accommodate a more complex, and likely more costly, labeling regime on product packaging.

27. The Commission also considered arguments advocating against imposing unnecessarily rigid or burdensome requirements to participate in the IoT Labeling Program, in response to the renewal requirement proposal in the *IoT Labeling NPRM* that participants be required to file for renewal annually providing supporting documentation that their products continue to meet the IoT Labeling Program requirements.[52] Agreeing that different types of IoT products may require different renewal standards depending on their lifespan and level of risk, the Commission opted to task the Lead Administrator to collaborate with stakeholders and recommend a product-centered approach.[53] The Commission directed that the recommendation consider whether annual compliance report filings could be used for renewal purposes, and the recommendation balance the need to provide the industry with flexibility, while ensuring that consumers are provided up-to-date product information in a timely fashion to inform their purchasing decisions. The Commission sought to make the IoT Labeling Program sufficiently flexible for participants by taking achievable steps that preserve the IoT Labeling Program's integrity, while also making it accessible to as many small and other manufacturers as possible.

G. Report to Congress

28. 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.[54] 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*.[55]

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[51] Government Accountability Office, Energy Star Program, Covert Testing Shows the Energy Star Program Certification Process Is Vulnerable to Fraud and Abuse, GAO-10-470 (2010), https://www.gao.gov/assets/files.gao.gov/assets/gao-10-470.pdf [https://perma.cc/9VB5-ZWTA].

[52] AHAM Comments 4.

[53] *Id.* at 4-5; Whirlpool Comments at 5; CTA Reply at 7; NAM Comments at 5; Kaiser Permanente Comments at 2; CCDS Comments at 5; CSA Comments at 19.

[54] 5 U.S.C. § 801(a)(1)(A).

[55] *Id.* § 604(b).

APPENDIX C

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Federal Communications Commission (Commission) has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *Further Notice of Proposed Rulemaking* (*Further Notice*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Further Notice*. The Commission will send a copy of the *Further Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the *Further Notice* and IRFA (or summaries thereof) will be published in the Federal Register.[3]

A. Need for, and Objectives of, the Proposed Rules

2. The *Further Notice* included with the *Report and Order (Order)* follows the Commission's adoption of rules establishing a voluntary cybersecurity labeling program for Internet of Things (IoT) products. The Commission's IoT Labeling Program will provide consumers with an easy-to-understand and quickly recognizable FCC IoT Label that indicates the labeled product meets certain basic minimum cybersecurity requirements. The FCC IoT Label includes a U.S. government certification mark (Cyber Trust Mark) and a QR code that directs consumers to a registry with consumer-friendly information about the security of products bearing the Cyber Trust Mark. The Labeling Program will help consumers make better purchasing decisions, raise consumer confidence with regard to the cybersecurity of IoT products they buy to use in their homes, and encourage manufacturers to develop IoT products with security-by-design principles in mind.

3. The *Further Notice* further explores potential expansion of disclosure requirements of the *Order*. We propose to require manufacturers to make additional declarations assuring consumers that the products bearing the FCC IoT Label do not contain hidden vulnerabilities from high-risk countries and that the data collected by the products does not sit within or transit high-risk countries. We seek comment on whether to require manufacturers to make such disclosures to accompany its application and whether to make such disclosures in the registry. We further inquire about the value of this information for consumers and how manufacturers might inform other users who are not purchasers. We also seek comment on the costs and benefits of the proposals in the *Further Notice* and potential impacts of the Magnusson-Moss Act.

4. Specifically, in the *Further Notice* we seek comment on requiring applicants seeking to use the FCC IoT Label to make one of the following declarations under penalty of perjury regarding software developed or deployed within a high-risk country:

c. No software or software update or part of any software or software update that runs on or controls the product was or will be developed or deployed from within a country on the Secretary of Commerce's list of high-risk countries, except that this commitment does not apply to the origin of open-source contributions not paid for directly or indirectly by us or our direct or indirect partners in offering this product; or

d. This device runs, or due to future software updates might run, software developed within the Secretary of Commerce's list of high-risk country or countries. We promise that we are not aware of any backdoors or other sabotage, nor of any reason to believe that there is a particular heightened risk for such backdoors or sabotage relative other software developed

[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.*

within such a country, but we inform purchasers and users that the Department of Commerce has designated high-risk country or countries as jurisdictions whose conduct is significantly adverse to the national security of the United States or security and safety of United States persons.

5. The *Further Notice* also seeks comment on requiring applicants seeking to use the FCC IoT Label to make one of the following declarations under penalty of perjury regarding data stored in or transited through a country known to pose a national security risk to the United States:

c. No customer data collected by this product will be sent to servers located on the Department of Commerce's list of high-risk countries. No servers that remotely control the device will be located in such a country.

d. Customer data collected by this product will be sent to servers located in a high-risk country or countries. We inform purchasers and users that the Secretary of Commerce has designated high-risk country or countries as jurisdictions whose conduct is significantly adverse to the national security of the United States or security and safety of United States persons.

6. Our proposals and the matters upon which we seek comment in the *Further Notice* are intended to build upon today's *Order* by enhancing the national security protections associated with the IoT Labeling Program through increased supply chain transparency.

B. Legal Basis

7. The proposed action is authorized pursuant to sections 1, 2, 4(i), 4(n), 302, 303(r), 312, 333, and 503, of the Communications Act of 1934, as amended.[4]

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules will Apply

8. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted.[5] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[6] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[7] A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[8]

9. *Small Business, Small Organizations, and Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein.[9] First, while there are industry specific size standards for small business that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business in

[4] 47 U.S.C. §§ 151, 152, 154(i), 154(n), 302a, 303(r), 312, 333, 503; the IoT Cybersecurity Improvement Act of 2020, 15 U.S.C. § 278g-3a to § 278g-3e.

[5] 5 U.S.C. § 603(b)(3).

[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] 5 U.S.C. § 601(3)-(6).

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]

10. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[12] The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.[13] Nationwide, for tax year 2022, there were approximately 530,109 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.[14]

11. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[15] U.S. Census Bureau data from the 2022 Census of Governments[16] indicate there were 90,837 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.[17] Of this number, there were 36,845 general purpose governments (county,[18] municipal, and town or township[19]) with populations of

[10] *See* SBA, Office of Advocacy, *What's New With Small Business?* (Mar. 14, 2023), https://advocacy.sba.gov/2023/03/14/whats-new-with-small-business/ [https://perma.cc/Z824-JRBW].

[11] *Id.*

[12] 5 U.S.C. § 601(4).

[13] The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. *See* IRS, *Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard)* (Dec. 4, 2023), https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard [https://perma.cc/6QWK-CR8J]. 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* IRS, *Exempt Organizations Business Master File Extract (EO BMF)* (Feb. 4, 2024), https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf [https://perma.cc/SXT4-U8C8]. 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.

[15] 5 U.S.C. § 601(5).

[16] 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with "2" and "7". *See also* U.S. Census Bureau, *Census of Governments, About* (Nov. 18, 2021), https://www.census.gov/programs-surveys/cog/about.html [https://perma.cc/E2FJ-TRXF].

[17] *See* U.S. Census Bureau, 2022 Census of Governments – Organization Table 2. Local Governments by Type and State: 2022 [CG2200ORG02], https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html [https://perma.cc/6Z48-XY77]. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). *See also* tbl.2. CG2200ORG02 Table Notes_Local Governments by Type and State_2022.

[18] *See id.* at tbl.5. County Governments by Population-Size Group and State: 2022 [CG2200ORG05], https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html [https://perma.cc/6Z48-XY77]. There were 2,097 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

[19] *See id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2022 [CG2200ORG06], https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html

(continued….)

less than 50,000 and 11,879 special purpose governments—independent school districts[20] with enrollment populations of less than 50,000.[21] Accordingly, based on the 2022 U.S. Census of Governments data, we estimate that at least 48,724 entities fall into the category of "small governmental jurisdictions."[22]

12. *Radio Frequency Equipment Manufacturers (RF Manufacturers).* There are several analogous industries with an SBA small business size standard that are applicable to RF Manufacturers. These industries are Fixed Microwave Services, Other Communications Equipment Manufacturing, Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. A description of these industries and the SBA small business size standards are detailed below.

13. *Fixed Microwave Services.* Fixed microwave services include common carrier,[23] private-operational fixed,[24] and broadcast auxiliary radio services.[25] They also include the Upper Microwave Flexible Use Service (UMFUS),[26] Millimeter Wave Service (70/80/90 GHz),[27] Local Multipoint Distribution Service (LMDS),[28] the Digital Electronic Message Service (DEMS),[29] 24 GHz Service,[30] Multiple Address Systems (MAS),[31] and Multichannel Video Distribution and Data Service (MVDDS),[32] where in some bands licensees can choose between common carrier and non-common carrier status.[33]

[https://perma.cc/6Z48-XY77]. There were 18,693 municipal and 16,055 town and township governments with populations less than 50,000.

[20] *See id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2022 [CG2200ORG10], https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html [https://perma.cc/6Z48-XY77]. There were 11,879 independent school districts with enrollment populations less than 50,000. *See also* tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2022 [CG2200ORG04], CG2200ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2022.

[21] While the special purpose governments category also includes local special district governments, the 2022 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

[22] This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,845) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (11,879), from the 2022 Census of Governments - Organizations tbls. 5, 6 & 10.

[23] *See* 47 CFR Part 101, Subparts C and I.

[24] *See id*. Subparts C and H.

[25] 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.

[26] *See* 47 CFR Part 30.

[27] *See* 47 CFR Part 101, Subpart Q.

[28] *See id*. Subpart L.

[29] *See id*. Subpart G.

[30] *See id*.

[31] *See id.* Subpart O.

[32] *See id*. Subpart P.

[33] *See* 47 CFR §§ 101.533, 101.1017.

Wireless Telecommunications Carriers (*except* Satellite)[34] is the closest industry with an SBA small business size standard applicable to these services. The SBA small size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[35] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[36] Of this number, 2,837 firms employed fewer than 250 employees.[37] Thus, under the SBA size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

14. 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.[38]

15. 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.

16. *Other Communications Equipment Manufacturing*. This industry comprises establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment).[39] Examples of such manufacturing include fire detection and alarm systems manufacturing, Intercom systems and equipment manufacturing, and signals (e.g., highway, pedestrian, railway, traffic) manufacturing.[40] The SBA small business size standard for this industry classifies firms having 750 or fewer employees as small.[41] For this industry, U.S. Census Bureau data for 2017 shows that 321 firms operated for the entire

[34] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers* (*except Satellite*)," https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[35] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[36] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[37] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[38] *See* 47 CFR §§ 101.538(a)(1)-(3), 101.1112(b)-(d), 101.1319(a)(1)-(2), and 101.1429(a)(1)-(3).

[39] *See* U.S. Census Bureau, *2017 NAICS Definitions, "334290 Other Communications Equipment Manufacturing,*" https://www.census.gov/naics/?input=334290&year=2017&details=334290.

[40] *Id.*

[41] *See* 13 CFR 121.201, NAICS Code 334290.

year.[42] Of that number, 310 firms operated with fewer than 250 employees.[43] Based on this data, we conclude that the majority of Other Communications Equipment Manufacturers are small.

17. *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.[44] 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.[45] The SBA small business size standard for this industry classifies firms having 1,250 employees or less as small.[46] U.S. Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year.[47] Of this number, 624 had fewer than 250 employees.[48] Based on this data, we conclude that a majority of manufacturers in this industry are small.

D. Description of Project Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

18. We expect the potential rules addressed in the *Further Notice* will impose new or additional reporting, recordkeeping and/or other compliance obligations on small entities who choose to participate in the program who would potentially be required to keep records related to the countries of origin of their software, software updates, logic-performing hardware, and data collection. In the *Further Notice* we raise various matters relating to the reporting requirement obligations we should adopt, including whether to require manufactures to disclose the jurisdictional provenance of the software of their product or whether the data collected by the product is not stored and does not transit countries that are known to pose a national security risk to the United States.

19. The *Further Notice* seeks comment on a number of aspects relating to our proposals and matters we discuss, including the benefits and costs associated with a provider's implementation of them. We seek comment on and have requested cost and benefit information from commenters pertaining to our proposals, inquiries, and conclusions in the *Further Notice*. Thus, at this time the record does not include sufficient cost/benefit analyses to allow the Commission to quantify the costs of compliance for small entities a including whether it will be necessary for small entities to hire professionals to comply with the proposed rules if adopted. In light of the importance of mark integrity and the need to build consumer confidence and trust in the security of IoT products that will display the FCC IoT Label, regardless of the size of the entity seeking to participate in the proposed cybersecurity labeling program, adherence by all participants to the same Commission rules is necessary. However, we expect that the comments we

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[42] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 334290, https://data.census.gov/cedsci/table?y=2017&n=334290&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[43] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[44] *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.

[45] *Id.*

[46] *See* 13 CFR § 121.201, NAICS Code 334220.

[47] *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.

[48] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

receive will help the Commission identify and evaluate relevant matters for small entities, including any compliance costs and burdens that may result from the proposals and other matters discussed in the *Further Notice*.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

20. 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."[49]

21. The Commission has taken specific steps to address some of the costs for manufacturers seeking to use the FCC IoT Label in the *Further Notice*. We seek to give small and others providers maximum flexibility and reduce potential costs of compliance with disclosure requirements. We consider and seek comment on various national security disclosure requirements for applicants seeking to use the FCC IoT Label. We believe that burdens on small and other providers would be diminished by requiring these disclosures along with other elements of a manufacturer's application to use the FCC IoT Label. The disclosures also define high-risk countries as those on the Department of Commerce's foreign adversary list, which applicants must already reference, pursuant to other requirements adopt in today's *Order*. We further believe that it is in the public interest to preserve the integrity of the Cyber Trust Mark and build confidence among consumers with the additional national security declarations we consider in the *Further Notice*.

22. Rather than proposing rules regarding additional national security disclosures at this juncture, in the *Further Notice* we seek comment on costs associated with disclosing the jurisdictional provenance of device software and whether the data collected by products is stored in our transits through high-risk countries. The Commission is mindful that small and other providers subject to any new rules adopted in this proceeding may incur compliance costs. The Commission expects to more fully consider the economic impact and alternatives for small entities following the review of comments filed in response to the *Further Notice*. Having input from interested parties will allow the Commission to better evaluate options and alternatives to minimize any significant economic impact on small entities that may result from the proposed disclosure requirements discussed in the *Notice*. The Commission's evaluation of this information will shape the final alternatives it considers to minimize any significant economic impact that may occur on small entities, the final conclusions it reaches, and final rules it promulgates.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

23. None.

[49] 5 U.S.C. § 603(c).

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *Cybersecurity Labeling for Internet of Things*, PS Docket No. 23-239, Report and Order and Further Notice of Proposed Rulemaking (March 14, 2024).

Internet of Things devices are all around us. They are multiplying—fast. If you buy a television, a thermostat, a home security camera, or a fitness tracker today the odds are it is connected the internet. These smart devices make our lives easier and more convenient. They mean we can watch what we want, turn down the heat when we are away, check who is at the front door when we are not home, and keep tabs on our health at all times. It is extraordinary.

Still, the device that I think of most when I think about this new world of the Internet of Things—and maybe it is because I am a Mom—is a baby monitor. My goodness, you want that to be safe. You want to know when you bring that monitor into your house to watch your newborn, that connection is secure and not going to invite any malware or malicious activity into your home. I think parents everywhere feel this way.

So what do we do about it? What can we do to make sure that the conveniences billions of these devices offer do not come with the downside of increased security risk? How do we make sure the everyday connections in our homes are safe?

These are the right questions to ask. Because this increase in connection brings more that convenience. It brings cyber vulnerabilities. After all, every device connected to the internet is a point of entry for the kind of attacks that steal our personal data and can compromise our safety.

That is why today the Federal Communications Commission establishes the first-ever voluntary cybersecurity labeling program for connected smart devices in the United States. The label is called the U.S. Cyber Trust Mark. When it is displayed, it will mean that the device has been certified to meet cybersecurity standards. The label will include a QR code linking to a product registry that will provide consumer-friendly information. Just like the "Energy Star" logo helps us know which devices are energy efficient, the Cyber Trust Mark will help us make informed choices about the security and privacy of Internet of Things products we bring into our homes and businesses.

We are building the Cyber Trust Mark program on the well-known cybersecurity criteria developed by the National Institute of Standards and Technology. We are also building this effort on the existing model we have at this agency for authorization of devices using radio frequency. So we have both a framework for standards and a framework for execution. To get it done, we will need expert partners. We will select third-party administrators, including a Lead Administrator, through a rigorous selection process that will work with us on the day-to-day details of the program. The administrators selected will be responsible for receiving and reviewing applications from manufacturers to use the Cyber Trust Mark.

From the start, we are building national security into the program. No entity or communications equipment from what is known as the "Covered List" is eligible for a label. And in the a further rulemaking we ask questions if manufacturers should be required to disclose if firmware or software in the product was developed in a country that is a foreign adversary.

Our expectation is that over time more companies will use the Cyber Trust Mark—and more consumers will demand it. This has the power to become the worldwide standard for secure Internet of Things devices. To get to this point, we know we need to work with our federal partners, manufacturers, retailers, and cybersecurity groups. We are ready to do just that.

This is no small task. But it's worth it. Because the future of smart devices is big and the opportunity for the United States to lead the world with a global signal of trust is even greater. I appreciate working with my colleagues on establishing this program and look forward to seeing the Cyber Trust Mark in the marketplace.

I want to thank the staff responsible for this effort including Steven Carpenter, Rochelle Cohen, Josh Gehret, Ahmed Lahjouji, Zoe Li, Nicole McGinnis, Drew Morin, Renee Roland, Tara Shostek, and James Zigouris from the Public Safety and Homeland Security Bureau; Brian Butler, Dana Shaffer, Paul Murray, Jamison Prime, George Tannahill, and Krista Witanowski from the Office of Engineering and Technology; Edward Carlson, Jared Carlson, and Brandon Moss from the Office of International Affairs; Regina Brown and Sarah Stone from the Office of the Managing Director; Hunter Deeley, Matthew Gibson, Jason Koslofsky, Shannon Lipp, Jeremy Marcus, Ryan McDonald, Elizabeth Mumaw, and Victoria Randazzo from the Enforcement Bureau; Joy Ragsdale and Chana Wilkerson from the Office of Communications Business Opportunities; Eugene Kiselev, Mack Wachala, and Aleks Yankelevich from the Office of Economics and Analytics; and Erika Olsen, Larry Atlas, Andrea Kelly, Doug Klein, Marcus Maher, Karen Schroeder, Jeff Steinberg, and Chin Yoo from the Office of General Counsel.

STATEMENT OF
COMMISSIONER GEOFFREY STARKS

Re: *Cybersecurity Labeling for Internet of Things*, PS Docket No. 23-239, Report and Order and Further Notice of Proposed Rulemaking (March 14, 2024).

Everywhere we look, the term "connected" is attached to products that formerly lacked it. Products that exist in all of our homes—lightbulbs, thermostats, locks, doorbells, smoke alarms, and even your toaster and refrigerator—now often come standard with wireless capability and the ability to access and control a device through the Internet. This innovation, though, is not costless. Far too many Internet of Things (IoT) products include lackluster security features, if any at all. This is a risk to all of us because insecure and cheap IoT products can threaten our security, our privacy, and more. They can allow remote access to our homes, allow bad actors to monitor our comings and goings remotely, lead to data theft, or, if enough insecure IoT products are combined to form a network, create botnets that can wreak havoc throughout the Internet through denial of service attacks.

We've known about these risks a long time, and today's Order is the culmination of years of work by the Biden Administration, the National Institute of Standards and Technology (NIST), government agencies, and private stakeholders. With the proliferation of connected products available it is challenging, even for the most informed consumer, to confidently identify the cybersecurity capabilities of an IoT device. But help is on the way. Once the Cyber Trust Mark is up and running, consumers will only need to look at the product packaging to determine whether the product meets the standards keyed to NIST's *Profile of the IoT Core Baseline for Consumer Products* (NISTIR 8425). By simply scanning a QR code on the product, consumers can learn more about specific security features, including, for example, the minimum support period for the product and instructions on how to change the default password. Consumers can purchase with confidence knowing that the product, including components such as the backend and mobile app necessary to use the IoT product, meet baseline standards.

This Cyber Trust Mark is ready to meet the moment. Stories abound about the prevalence of insecure IoT devices. Just last week, following yet another report of cheap, insecure IoT devices made from China flooding markets in the United States, I sent letters to five leading retailers to learn more about the sale, and promotion, of easily hackable video doorbells that lack even basic security measures.[1] I also asked about their plans to incorporate the Cyber Trust Mark into their marketplaces to help consumers identify IoT products that meet the Mark's level of security. I look forward to reviewing their responses, and working together to stop risky and insecure products from entering the commerce stream.

I strongly support the Order we adopt today, and believe the item strikes an appropriate balance between a voluntary program that entices manufacturers and retailers to participate with teeth to protect consumers. I particularly would like to thank Chairwoman Rosenworcel for her leadership and for supporting my ideas to properly scope the Cyber Trust Mark. As I signaled when we considered the *Notice*, I believed then that the proper scope for the Cyber Trust Mark needed to be "products," not "devices." The Order we adopt today adhered to that policy cut, and I believe gets it right that the best frame for the Cyber Trust Mark is IoT products. This is consistent with NISTIR 8425, as well as consumer expectations, and will ensure that the Cyber Trust Mark is both successful domestically and can achieve mutual recognition internationally with other cyber labeling programs that focus on IoT products.

Second, I maintain that it is imperative that we do not place our stamp of approval on devices from products that any branch of the United States government and our allies have identified as part of a national security review. I'm very happy that the Order keeps that policy as well, excluding from the Cyber Trust Mark equipment produced by any entity on our Covered List, the Department of Commerce's Entity List, and the Department of Defense's List of Chinese Military Companies. I'm also very happy

[1] *FCC Commissioner Geoffrey Starks Calls on Online Marketplaces to Stop the Sale of Insecure and Unauthorized IoT Devices*, Release, Mar. 8, 2024, https://docs.fcc.gov/public/attachments/DOC-401038A1.pdf.

that this prohibition applies to Cybersecurity Label Administrators and CyberLABs participating in the Cyber Trust Mark.

Third, I thank the Chairwoman for agreeing to language in the Order to make clear that the Lead Administrator should ensure that the Cyber Trust Mark standards are dynamic and updated when NIST adopts additional recommendations for routers, cloud, and other aspects of the IoT ecosystem that it is currently considering. Making it clear that our standards are not stagnant will ensure that consumers are protected as technology and manufacturers innovate.

Much work remains before we see the first Cyber Trust Mark label on a product's packaging, but with today's vote we are closer than ever. Once the Cyber Trust Mark is available, I look forward to the innovation that I expect will occur from consumers and the federal government purchasing and deploying IoT products with confidence knowing that those products meet the core baseline for IoT cybersecurity. I thank staff for their great work on this item. I strongly approve.

STATEMENT OF
COMMISSIONER NATHAN SIMINGTON

Re: *Cybersecurity Labeling for Internet of Things,* PS Docket No. 23-239, Report and Order and Further Notice of Proposed Rulemaking (March 14, 2024).

I'm thrilled that we are enacting this order today. I'm not exaggerating when I say that it has the potential to be the beginning of a new era for American cybersecurity policy.

It is long established law in this country that if your car explodes in a minor accident, if a table saw comes loose and maims you, or if your lightbulb overheats and causes a fire, you can take the negligent product manufacturer to court and recover your damages. This gives manufacturers a strong incentive to design safe products. But if an attacker hacks your smart home device, like an Alexa, and steals your financial information or listens in on your private conversations, you have little to no recourse against the manufacturer, even if the attack was only possible due to its negligent cybersecurity practices. This is because device manufacturers and software developers routinely disclaim all liability and warranties against such failures and tort law provides few protections in the absence of physical injury to persons or property.

I've become increasingly alarmed at this gap in our legal system, and in December of 2022, I first argued for using our authority under Title III to address negligent cybersecurity practices by wireless device manufacturers, on the theory that hacked devices could be used to cause harmful interference. Today, we use exactly that theory to institute this program, a massive first step in bringing legal accountability to the device industry. I worked hard to make sure that the program will set a high bar for the security of wireless devices. If manufacturers want to be eligible for the US Cyber Trust Mark, they will have to declare that they have taken every reasonable measure to create a secure device.[1] They will have to commit to a support period up front, and during that support period, they will have to diligently identify critical vulnerabilities in their products and promptly release updates correcting them. Crucially, they will be prohibited from disclaiming these promises to the consumer. As a result, these promises will be enforceable not only by the FCC itself, but also by the courts of every state under product warranty and contract law.

Importantly, this program is optional. The IoT market is incredibly dynamic and innovative—and young. The risk of inadvertently stifling it with overregulation is real. So instead of imposing mandatory rules, we are setting a high bar for products to earn the right to use the US Cyber Trust Mark and hoping that consumers and businesses begin to value that mark because it means that the manufacturer is confident enough about the security of their product, and their processes for patching security flaws, that they are willing to stand behind the product legally. Over time, I hope that consumers and businesses, and their insurers, begin to insist that the products they buy bear this mark.

More work remains to be done. I'm happy that the Chairwoman's office agreed to include a further notice of proposed rulemaking on the issue of how to handle devices that run software developed in hostile countries, that will receive updates deployed from or that can be controlled by servers in such countries, or that will store user data in those countries. Such devices are at high risk of being weaponized by hostile powers like China. It is incredibly easy to hide a backdoor in an IoT device, and almost impossible to detect it, as a good backdoor is indistinguishable from an accidental coding mistake. The House of Representatives voted to ban one trojan horse yesterday, TikTok, and here at the FCC we need to make sure that consumers and businesses are aware if they might be buying another one.

[1] In recognition of the fact that a device's security might reasonably depend on the actions of its owner and users, the order uses the term "securable."

We will also need to figure out how to expand this program to computers, smartphones, routers, and non-consumer devices generally. I hope that as we do so, we focus less on bureaucratic processes and checkbox compliance exercises and more on simply requiring the manufacturers and software developers behind those products to put their skin in the game and stop hiding behind broad disclaimers of warranties and liability if they want their products to bear the US Cyber Trust Mark.

Thank you to the Chairwoman's office, other Commissioners, and staff for working with me on getting this item right.

STATEMENT OF
COMMISSIONER ANNA M. GOMEZ

Re: *Cybersecurity Labeling for Internet of Things*; PS Docket No. 23-239, Report and Order and Further Notice of Proposed Rulemaking (Mar. 14, 2024).

I really like this item. The Cyber Trust Mark will help consumers make sense of the myriad connected devices we use in our daily lives. Just among my office, we use 95 connected devices, and that does not include the devices we use for our work at the Commission. These are just our personal devices.

This order establishes a great program for consumers, and I believe in empowering consumers with information, so I am happy to support it.

I also think that making this a voluntary program strikes the right balance to encourage industry and manufacturer participation, which is critical for its success. This is a great example of a public-private partnership in service of the greater public good.

Thank you to the Chairwoman for incorporating our edits about the program also being accessible in multiple languages and for your visionary leadership in launching it. And thank you to the Public Safety and Homeland Security Bureau for thinking about every detail that will be needed to launch this groundbreaking program.

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

In the Matter of	)	
	)	
Single Network Future: Supplemental Coverage from Space	)	GN Docket No. 23-65
	)	
	)	
	)	
Space Innovation	)	IB Docket No. 22-271
	)	
	)	

REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: March 14, 2024 **Released: March 15, 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 Commissioners Starks and Gomez issuing separate statements.

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I. INTRODUCTION

1. Today, we take a major step toward harnessing the power of hybrid satellite-terrestrial networks to connect everyone, everywhere to modern communications services. The regulatory framework we adopt—the first of its kind in the world—will enable collaborations between satellite operators and terrestrial service providers to offer ubiquitous connectivity directly to consumer handsets using spectrum previously allocated only to terrestrial service. We anticipate that supplemental coverage from space, or SCS, will enable consumers in areas not covered by terrestrial networks to be connected using their existing devices via satellite-based communications. SCS is a crucial component of the Commission's vision for a "single network future" in which satellite and terrestrial networks work seamlessly together to provide coverage that neither network can achieve on its own.

2. Our actions to facilitate the deployment of SCS will serve several important public interest goals for the nation. First, the SCS framework will expand the reach of communications services, particularly emergency services, so that connectivity and assistance is available in more remote places. Second, the SCS framework will spur advancements in cutting-edge, space-based technologies that will position the United States as a global leader in this arena. And third, the SCS framework will continue our efforts to promote the innovative and efficient use of our nation's spectrum resources in ways that foster creative collaborations among users.

3. In crafting this new framework, it is essential that we balance the desire to accelerate innovative SCS operations that will serve these critical public interest goals with the need to retain service quality of terrestrial networks, protect spectrum usage rights, and minimize the risk of harmful interference, both domestically and internationally. Accordingly, the framework we adopt in this *Report and Order* represents an initial step to encourage the development of SCS while minimizing the risks of harmful interference to existing terrestrial and satellite networks that support non-federal and federal users. In the future, as the marketplace for SCS develops, we plan to build on the framework we adopt today, to enable deployment of SCS in additional bands and scenarios.

4. In the *Report and Order*, to allow satellite communications on spectrum previously allocated only to terrestrial services, we modify the United States Table of Frequency Allocations to authorize bi-directional, secondary mobile-satellite service operations in certain spectrum bands that have no primary, non-flexible-use legacy incumbents, federal or non-federal. For these bands, we authorize SCS only where one or more terrestrial licensees—together holding all licenses on the relevant channel throughout a defined geographically independent area—lease access to their spectrum rights to a participating satellite operator, whose part 25 license reflects these frequencies and the geographically independent area in which they will offer SCS.

5. In recognition that this new offering has the potential to bring life-saving connectivity to remote areas, we apply interim 911 call and text routing requirements to ensure that help is available to those who need it today while we work toward enabling automatic location-based routing of all

emergency communications whether or not there is a terrestrial connection available. The *Further Notice of Proposed Rulemaking* we adopt today will help move us toward that goal.

6. We anticipate that the actions we take today will propel the United States towards a single network future that supports public safety, ubiquitous connectivity, technological innovation, sharing of spectrum resources, and global leadership, to the benefit of all Americans.

II. BACKGROUND

7. On March 17, 2023, the Commission released the *Notice of Proposed Rulemaking* seeking comment on a proposed regulatory framework necessary to enable SCS.[1] In the *Notice*, the Commission surveyed various partnerships between satellite service[2] providers and terrestrial wireless service[3] providers that are facilitating the development of satellite-terrestrial connectivity.[4] As the Commission explained, some partnerships rely on the use of spectrum allocated to satellite services, as opposed to spectrum allocated to terrestrial services, to provide expanded service options to subscribers using smartphones.[5] Other partnerships are premised on relationships between satellite operators and terrestrial wireless providers to use terrestrial wireless spectrum,[6] which is the scope of the new regulatory framework we adopt herein.

A. SCS Notice of Proposed Rulemaking

8. In the *Notice*, the Commission proposed to: (1) amend the U.S. Table to permit mobile-satellite service (MSS) on a co-primary basis in eligible flexible-use bands, operating as a non-conforming use where it conflicts with ITU allocations; (2) enable SCS only where a single terrestrial licensee holds all the spectrum access rights in a given channel in an entire geographically independent area (GIA)[7] and there are no primary, non-flexible-use incumbents in the band; and (3) require both a

[1] *See Single Network Future: Supplemental Coverage from Space; Space Innovation*, GN Docket No. 23-65, IB Docket No. 22-271, Notice of Proposed Rulemaking, FCC 23-22 (Mar. 17, 2023) (*Notice*).

[2] We use the term "satellite service" to mean "space radiocommunications." *See* ITU Radio Regulations No. 1.8 (defining space radiocommunications as "[a]ny radiocommunication involving the use of one or more space stations or the use of one or more reflecting satellites or other objects in space").

[3] We use the term "terrestrial wireless service," "terrestrial service," or "wireless service" to mean fixed and mobile services. *See* ITU Radio Regulations Nos. 1.7, 1.20, and 1.24. We use "terrestrial licensee" or "terrestrial provider" or "terrestrial service provider" to refer to a Commercial Mobile Radio Service (CMRS) provider.

[4] *See Notice* at 2-6, paras. 3-9.

[5] *Id.* at 3-4, paras. 4-5. In these scenarios, satellite operators are authorized under part 25 of the Commission's rules to use spectrum currently allocated for mobile-satellite service to provide such service (space-to-Earth) to smartphones. For example, the Globalstar and Apple partnership involves the use of Globalstar's licensed satellite spectrum to provide emergency messaging for Apple's recent iPhones when no cellular or Wi-Fi service is available. *See* Press Release, Apple, Emergency SOS via Satellite Available Today on the iPhone 14 Lineup in the US and Canada (Nov. 15, 2022), https://www.apple.com/newsroom/2022/11/emergency-sos-via-satellite-available-today-on-iphone-14-lineup/; Mitchell Clark, *Satellite-to-Phone Companies are Thrilled About SpaceX and T-Mobile, Actually*, (Aug. 27, 2022), https://www.theverge.com/2022/8/27/23324128/t-mobile-spacex-satellite-to-phone-technology-ast-lynk-industry-reactions-apple (Satellite-to-Phone Companies Aug. 27, 2022 Article). Apple advertises that its most recent iPhone 15 offers Emergency SOS via satellite in 14 countries and regions on three continents around the world, with plans to expand to additional countries. *See* Press Release, Apple, Apple Debuts iPhone 15 and iPhone 15 Plus (Sept. 12, 2023), https://www.apple.com/newsroom/2023/09/apple-debuts-iphone-15-and-iphone-15-plus/. Other partnerships are working toward "direct-to-device" offerings to enable messaging on cell phones using satellite spectrum. *See* Rachel Jewett, *Viasat, Ligado, and Skylo to Collaborate on Direct to Device Services*, (Mar. 2, 2023), https://www.satellitetoday.com/telecom/2023/03/02/viasat-ligado-and-skylo-to-collaborate-on-direct-to-device-services/.

[6] *See Notice* at 4-6, paras. 6-9.

[7] *See infra* para. 54.

lease agreement between the terrestrial licensee and non-geostationary satellite orbit (NGSO)[8] satellite operator and a modification of the satellite operator's part 25 license or market access authorization to enable the relevant transmissions. The *Notice* sought comment on this proposal and on expanding it to enable operations under additional circumstances, including where a single licensee does not control an entire GIA and where there are non-flexible-use incumbents.

9. Comments were due on May 12, 2023, and reply comments were due on June 12, 2023. During the comment period, the Commission received 39 comments, including one express comment, and 22 reply comments.[9]

B. Standardization Efforts Related to SCS

10. In the *Notice*, the Commission also noted the relevance of the 3rd Generation Partnership Project (3GPP)'s work regarding wireless standards insofar as it relates to collaborations between satellite operators and terrestrial service providers.[10] While some solutions are based on pre-Release 17 3GPP standards, 3GPP's Release 17 standards were the first to introduce features designed to efficiently support non-terrestrial network (NTN) operations with input from industry stakeholders and to address satellite's role in the development of 5G systems worldwide. Such specifications define support for New Radio (NR) based satellite access deployed in the Frequency Range 1[11] serving handsets and Very Small Aperture Terminals as well as narrowband Internet of Things and Long-Term Evolution Machine-Type Communication based access for enhanced machine-type communication using satellites.[12] In addition, 3GPP Release 18 includes extension of NTN to Frequency Range 2,[13] including operation in the Ku-band as well as enhancements for improved coverage, service continuity, and mobility between NTN and terrestrial networks.[14] More recently, 3GPP approved a plan to submit a 5G NR satellite access Radio Interface Terminal proposal to International Mobile Telecommunications-2020 (IMT-2020).[15]

11. 3GPP's focus has primarily been on incorporating bands allocated for satellite services into terrestrial devices, but some of the bands under consideration by 3GPP—such as the S band[16] and the

[8] *See* 47 CFR § 25.103.

[9] Parties that filed comments, reply comments, and *ex partes* in the proceeding are listed in Appendix A.

[10] *See Notice* at 3-4, 50, paras. 5, 130.

[11] Frequency Range 1 bands refers to bands below 24 GHz. Release 17 identified two bands with existing MSS allocations for 5G NTN provision: band 255 (1525 MHz-1559 MHz and 1626.5 MHz-1660.5 MHz) and band 256 (1980 MHz-2010 MHz and 2170 MHz-2200 MHz). *See* Munira Jaffar & Nicolas Chuberre, *NTN & Satellite in Rel-17 & 18*, (July 1, 2022), https://www.3gpp.org/news-events/partner-news/ntn-rel17 (NTN & Satellite July 1, 2022 Article).

[12] *See* NTN & Satellite July 1, 2022 Article. The authors suggest that terrestrial/satellite partnerships "will enable the full integration of satellite in the 3GPP ecosystem and define a global standard for future satellite networks. This will address the challenges of reachability and service continuity in unserved/underserved areas, enhance reliability through connectivity between various access technologies, and improve network resilience and dependability in responding to natural and man-made disasters." *Id.*

[13] Frequency Range 2 bands refers to bands above 24 GHz, specifically 24.25 GHz to 52.6 GHz.

[14] *See* 3GPP RP-232669 Work Item NR NTN enhancements Release 18.

[15] *See* 3GPP TR 37.911 V0.1.0 (2023-09) Technical Report: Study on self-evaluation toward the IMT-2020 submission of the 3GPP Satellite Radio Interface Technology (Release 18). IMT-2020 is a standard set of specifications for 5G networks issued by the ITU Radiocommunication Sector (ITU-R) of the ITU. The Commission submits information about U.S.-licensed satellites to the ITU and, after coordination is completed and a notification is filed with the ITU containing the final technical parameters of the system, the ITU subsequently places the frequency assignments in the Master International Frequency Register (MIFR). The Commission thereby must ensure that U.S.-licensed satellite operators will abide by ITU requirements for satellite operations.

[16] The S band includes frequencies from 2 GHz to 4 GHz.

Ku-band[17]—include overlapping terrestrial allocations. In the *Notice*, the Commission sought comment on 3GPP's work to address interference concerns related to satellite-based operations in flexible-use spectrum that was designated for terrestrial networks, and whether that work, or related work being done by other organizations, should be incorporated into this proceeding.[18] Satellite companies, such as EchoStar, have long encouraged 3GPP to incorporate satellite components.[19] These companies recognize that satellites can be an important means to provide connectivity to underserved and unserved areas.[20] We believe that the SCS framework that we adopt today will help advance technological innovation as it pertains to SCS operations. We will continue to monitor 3GPP and other international fora and welcome such efforts as they facilitate the realization of SCS systems and their efficient inter-operation with terrestrial networks that is key to safe and predictable end user experiences. We believe that the record in this proceeding provides a sufficient basis for moving forward with authorizing SCS services and adopting rules applicable to their operation.

C. SCS Development by Industry

12. As explained in the *Notice*, satellite operators and terrestrial service providers recognize the potential of using spectrum currently allocated for terrestrial wireless service to directly serve consumer handsets and other end-user devices from satellites.[21] Because these efforts rely on satellite operators using spectrum allocated to terrestrial services that is exclusively licensed to terrestrial service providers, this approach has, to date, required Commission review outside of the existing regulatory frameworks to permit satellite use. Specifically, the Commission has facilitated satellite and terrestrial partnerships that deliver connectivity over terrestrial spectrum by granting experimental authorizations, other limited authorizations, and ad hoc rule waivers.[22] The following is a summary of Commission action related to SCS.

13. *Experimental Authorizations.* As the *Notice* details, in 2017, the Commission's Office of Engineering and Technology (OET) and what was then the International Bureau (IB) granted Higher

[17] The conventional Ku-band refers to frequencies in the 11.7-12.2 GHz (space-to-Earth) and 14.0-14.5 GHz (Earth-to-space) bands. The extended Ku-band refers to frequencies in the 10.95-11.2 GHz (space-to-Earth), 11.45-11.7 GHz (space-to-Earth), and 13.75-14.0 GHz (Earth-to-space) bands.

[18] *See Notice* at 50, para. 130.

[19] *See* The Hughes Team, *Upcoming 3GPP Release 17 to Include Satellite in Global 5G Standard*, (June 22, 2021), https://www.hughes.com/resources/insights/5g/upcoming-3gpp-release-17-include-satellite-global-5g-standard; *see also* Press Release, EchoStar, EchoStar Begins Construction of Global S-band Network (Feb. 1, 2023), https://ir.echostar.com/news-releases/news-release-details/echostar-begins-construction-global-s-band-network (announcing EchoStar's agreement with Astro Digital for the construction of a global S-band MSS network to deliver global Internet of Things (IoT), machine-to-machine (M2M) and other data services through a constellation intended to "serve as a foundation for EchoStar to engineer 5G New Radio (NR) based NTN capabilities according to 3GPP release 17 specifications"); Skylo Team, *MediaTek and Skylo Collaborate on Next-Gen 3GPP NTN Satellite Solutions on Smartphones and Wearables*, (Feb. 14, 2023), https://www.skylo.tech/newsroom/mediatek-and-skylo-collaborate-on-next-gen-3gpp-ntn-satellite-solutions-on-smartphones-and-wearables (announcing the continuing partnership between Skylo, an NTN service provider, and chipset manufacturer MediaTek, to work toward the integration of "cellular and satellite connectivity into the same device").

[20] T-Mobile contends that incorporation of 3GPP work is not necessary because that group tends to follow the industry and 3GPP can therefore be expected to address SCS standardization issues going forward, as necessary. T-Mobile Comments, GN Docket No. 23-65, at 17 (rec. May 12, 2023). Fairspectrum observes that the SCS framework could apply pressure on 3GPP to work on co-channel spectrum sharing between satellite and terrestrial operations. Fairspectrum Oy Comments, GN Docket No. 23-65, at 2 (rec. May 15, 2023) (Fairspectrum Comments). Omnispace worries that SCS, as proposed, departs from consensus-driven international efforts like 3GPP and risks exacerbating global interference concerns. Omnispace LLC Comments, GN Docket No. 23-65, at 6, 12-14, 17-31 (rec. May 14, 2023) (OmniSpace Comments).

[21] *See Notice* at 4-6, paras. 6-9.

[22] *Id.* at 6-8, paras. 10-15.

Ground LLC (Higher Ground) a waiver of the United States Table of Frequency Allocations (U.S. Table) and the fixed-satellite service (FSS) coordination rules for the company to use satellites in the 6 GHz band (allocated for the FSS and Fixed Service) to provide a commercially available text messaging service using a sleeve that attaches to smartphones.[23] This grant followed Higher Ground's initial operations under experimental licenses dating back to 2014.[24] In 2021 and 2022, OET granted Totum Labs, Inc. (Totum) two experimental licenses: one for a satellite communicating with a single earth station in San Diego, CA, and the other for satellite communications with the San Diego earth station as well as "mobile station locations."[25] These experimental licenses allow Totum to test satellite communication and tracking of IoT devices in the 2400-2483.5 MHz band using spread spectrum waveforms.[26] In 2021 and 2022, OET granted several experimental licenses allowing Lynk Global (Lynk) to test communications between satellites and "mobile station locations" in the 800 MHz band.[27] In 2022, OET also granted an experimental license to AST SpaceMobile (AST) for earth stations to communicate with a satellite licensed by Papua New Guinea and to be registered with the International Telecommunication Union (ITU) by Spain.[28] AST's experimental license permits testing to inform AST's plan to provide 4G and 5G broadband connectivity in unserved and underserved areas.[29] OET has also granted experimental licenses to Omnispace LLC (Omnispace) for testing communications with its Medium Earth Orbit satellite in the 2 GHz S band.[30] Various parties continue to file experimental license applications to test space-based communications with points on Earth, and the Commission will continue to process them.

14. *Lynk Global*. As described in the *Notice*, Lynk has partnered with a number of mobile network operators (MNOs) outside of the United States to provide satellite connectivity to user terminals currently operating as part of the MNOs' terrestrial network.[31] In 2022, IB authorized, with conditions, Lynk's request to operate an NGSO satellite system at locations outside the United States, and in

[23] *See Higher Ground Application for Blanket Earth Station License*, IBFS File No. SES-LIC-20150616-00357 Call Sign E150095, Order and Authorization, 32 FCC Rcd 728 (Jan. 18, 2017) (*Higher Ground Waiver Order*). Higher Ground is required to prevent the devices from transmitting where they may cause interference to the microwave links in the band. *Id.* at 732.

[24] *Higher Ground Waiver Order*, 32 FCC Rcd at 730 n.8.

[25] *See* ELS File No. 0391-EX-CN-2020 (granted Jan. 14, 2021); ELS File No. 0044-EX-CM-2022 (granted May 12, 2022). The relevant satellites are operated by Loft Orbital Solutions, Inc. pursuant to a satellite license conditional grant from IB in May 2021. *See* Loft Orbital Solutions, Inc., Application for Earth Exploration Satellite Service Other, IBFS File No. SAT-LOA-20200907-00105 (granted May 24, 2021).

[26] *See* ELS File No. 0391-EX-CN-2020; ELS File No. 0044-EX-CM-2022.

[27] *See* ELS File No. 0931-EX-CN-2020 (granted May 17, 2021); ELS File No. 0162-EX-CN-2021 (granted Mar. 19, 2021); ELS File No. 0656-EX-CN-2021 (granted Nov. 19, 2021). In May 2022, OET granted licenses to Lynk for additional satellites that were expected to launch in late 2022 and early 2023. *See* ELS File No. 0117-EX-CN-2021 (granted May 25, 2022); ELS File No. 0113-EX-CN-2022 (granted May 25, 2022). Lynk deployed and began operating the first satellite, Lynk Tower 1, in April 2022 pursuant to experimental authority. *See* ELS File No. 0656-EX-CN-2021 (granted Nov. 19, 2021); Letter from Shawn Marcum, Director of Legal and Regulatory Affairs to Lynk, to Marlene H. Dortch, Secretary, FCC, at 1 (filed Apr. 12, 2022).

[28] *See* ELS File No. 1059-EX-CN-2020 (granted June 2, 2022). This license was modified in early 2023 to add a mobile station location in Hana, Hawaii, and has since been renewed. *See* ELS File No. 0208-EX-CN-2022 (granted Feb. 9, 2023); *see also* ELS File No. 0130-EX-CR-2023 (granted May 8, 2023).

[29] *See* Narrative attached to AST & Science LLC application for ELS File No. 1059-EX-CN-2020 (granted June 2, 2022).

[30] *See, e.g.*, ELS File No. 0018-EX-CN-2023 (granted Feb. 14, 2023), which modifies ELS File No. 1343-EX-CN-2022 (granted Jan. 9, 2023) to add two station locations in Brewster, Washington, and Tysons, Virginia, to the already authorized location in Gainesville, Georgia.

[31] *See Notice* at 5, para. 8.

countries where Lynk has obtained agreements with MNOs and the requisite local regulatory authority to provide service.[32] IB authorized Lynk to deploy ten NGSO MSS satellites as part of a "cellular-based satellite communications network" that would provide connectivity by operating on most cellular frequencies used globally in the 617-960 MHz band in international markets only.[33] Lynk announced that it has contracts with more than 30 MNOs covering more than 50 countries where its "satellite-direct-to-standard-mobile-phone-system" is being deployed, providing emergency alerts and two-way Short Message Service (SMS) messaging.[34] Although Lynk has five low Earth orbit (LEO) satellites in orbit of its planned network of approximately 5,000 satellites, it has mentioned plans to expand its geographic coverage and service capabilities.[35]

15. *AST SpaceMobile*. AST has partnered with several MNOs for its planned satellite to smartphone service, including AT&T and Vodafone.[36] In 2020, as discussed in the Notice, AST originally filed applications with the Commission requesting U.S. market access for gateway links in the V-band for its SpaceMobile satellite system, which would be comprised of 243 LEO satellites.[37] Although AST requested authority to operate in the United States, it clarified that it was not seeking to operate on terrestrial frequencies independent of a terrestrial licensee partner,[38] and intended to seek specific authority to operate on terrestrial spectrum through future lease arrangements with a terrestrial partner.[39] At that time, AST stated that it was not seeking changes to the U.S. Table or waivers related to terrestrial frequencies allocated to parts 24 and 27 of the Commission's rules.[40] In 2023, following release of the *Notice*, AST and AT&T sought authorization from the Commission to provide SCS using certain bands licensed to AT&T pursuant to a leasing arrangement between the parties.[41] AST also filed an amendment to its pending market access petition to request part 25 authorization to offer SCS pursuant to its partnership with AT&T to lease certain of its terrestrial mobile broadband frequencies.[42] In 2024, AST filed an additional amendment whereby it requests a U.S. license, rather than a grant of U.S. market access, for its SpaceMobile satellite system and an increase in the size of its planned constellation from

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[32] *See Lynk Global, Inc.*, *Application to Deploy and Operate Space Stations Filed Under the FCC Streamlined Small Space Station Authorization Process, 47 CFR § 25.122*, ICFS File No. SAT-LOA-20210511-00064 Call Sign S3087, Order and Authorization, 37 FCC Rcd 10681, 10681 (IB Sept. 16, 2022) (*Lynk Order*); Lynk Global, Inc., ICFS File No. SAT-LOA-20210511-00064, Technical Narrative at 2. The then-International Bureau granted, with conditions, Lynk's application to construct, deploy, and operate ten NGSO satellites in low-Earth orbit (LEO). *Lynk Order*, 37 FCC Rcd at 10681, para. 1.

[33] *See generally Lynk Order*.

[34] *See* Press Release, Lynk, Lynk and Vodafone Cook Islands to Begin Sat2Phone Service for Subscribers (Aug. 8, 2023), https://lynk.world/news/lynk-and-vodafone-cook-islands-to-begin-sat2phone-service-for-subscribers/.

[35] *See* Jason Rainbow, *The Promise of Direct-to-Device*, (July 14, 2023), https://spacenews.com/the-promise-of-direct-to-device/; Letter from Margo R. Deckard, Chief Operating Officer, Lynk Global, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-65 et al., at 2 (filed Mar. 7, 2024) (Lynk Add'l Mar. 7, 2024, *Ex Parte*).

[36] *See Notice* at 5-6, para. 9.

[37] *See* AST & Science LLC, Amendment to Petition for Declaratory Ruling, ICFS File No. SAT-APL-20201028-00126 Call Sign S3065 (filed Oct. 28, 2020) (amending ICFS File Nos. SAT-PDR-20200413-00034 and SAT-APL-20200727-00088).

[38] *Id.*

[39] *Id.*

[40] *Id.*

[41] *See* ULS File Nos. 0010538493 (lead), 0010538588, 0010538610, 0010538635, 0010538647, 0010538661, and 0010538682 (notifying the Commission of AT&T's intention to "lease to AST certain 850 MHz cellular A and B block spectrum as well as certain Lower 700 MHz B and C block spectrum" in order to provide SCS).

[42] *See* AST & Science LLC, Amendment to Petition for Declaratory Ruling, ICFS File No. SAT-APL-20230717-00172 Call Sign S3065 (filed July 17, 2023).

243 to 248 satellites.[43] As part of this request, *inter alia*, AST updates its requested orbital parameters and includes a comprehensive overview of the frequencies upon which its planned constellation would be capable of operating—AST seeks initial authorization to operate the satellites only using the V-band in the United States and deferral of the request to provide SCS within the United States.[44] Commission staff are considering the pending AST requests for satellite-to-device authority.

16. *SpaceX.* As discussed in the *Notice*, in August 2022, Space Exploration Technologies Corporation (SpaceX) announced a partnership with T-Mobile in which SpaceX would use a block of T-Mobile's mid-band Personal Communications Services (PCS) spectrum held over a nationwide footprint to provide service to T-Mobile's subscribers in rural and remote locations, thereby filling coverage gaps in T-Mobile's terrestrial network.[45] Three Commission actions to date have provided an avenue for SpaceX and T-Mobile to deploy and test their proposed SCS system while review of their pending applications—and this proceeding—continue. First, in December 2023, the Space Bureau (SB) granted-in-part and deferred-in-part, with conditions, SpaceX's request for modification of its previously authorized second-generation (Gen2) Starlink constellation.[46] Specifically, SB authorized SpaceX to deploy a modified version of the previously-authorized Gen2 Starlink satellites with SCS-capable antennas, with the ability to operate in certain frequencies in the 1429 MHz to 2690 MHz range and on frequencies within the 1910-1915 MHz and 1990-1995 MHz bands for limited on-orbit check out of the antennas immediately following deployment of each satellite for a period of 10 days or less, to ensure initial functionality of the satellite antenna. Second, later in December 2023, SB approved SpaceX's earth station STA application for limited on-orbit testing.[47] Finally, also in December 2023, OET granted

[43] *See* AST & Science LLC, Amendment to Petition for Declaratory Ruling, ICFS File No. SAT-APL-20240311-00053 Call Sign S3065 (filed Mar. 11, 2024).

[44] *See id.* AST also seeks to provide off-nominal TT&C outside of the United States in the S-band and UHF band. *See id.* The application also includes frequencies that AST SpaceMobile may use for service links in foreign jurisdictions, but for which AST does not seek instant Commission action. *See id.*

[45] *See T-Mobile Takes Coverage Above and Beyond with SpaceX*, (Aug. 25, 2022), https://www.t-mobile.com/news/un-carrier/t-mobile-takes-coverage-above-and-beyond-with-spacex (T-Mobile Aug. 25, 2022 Article); Rachel Jewett, *Elon Musk Announces SpaceX Starlink Cellular Partnership with T-Mobile*, (Aug. 25, 2022), https://www.satellitetoday.com/telecom/2022/08/25/elon-musk-announces-spacex-starlink-cellular-partnership-with-t-mobile/.

[46] *See* Space Exploration Holdings, LLC Application for Modification of Authorization for the SpaceX Gen2 NGSO Satellite System to Add a Direct-to-Cellular System, ICFS File No. SAT-MOD-20230207-00021 Call Sign S3069 (granted-in-part, deferred-in-part Dec. 1, 2023) (SpaceX Gen2 SCS Modification Application). In December 2022, the Commission granted SpaceX authority to construct, deploy, and operate up to 7,500 NGSO satellites, using frequencies in the Ku- and Ka-bands, to provide FSS as part of its "second-generation" Starlink LEO constellation (Gen2 Starlink Order) subject to certain conditions. The Commission deferred consideration of SpaceX's use of the E-band frequencies and use of tracking beacons as well as the remaining 22,488 satellites in SpaceX's application. *See Space Exploration Holdings, LLC Request for Orbital Deployment and Operating Authority for the SpaceX Gen2 NGSO Satellite System*, ICFS File Nos. SAT-LOA-20200526-00055 and SAT-AMD-20210818-00105 Call Sign S3069, Order and Authorization, 37 FCC Rcd 14882, at 14884 (Dec. 1, 2022) (*SpaceX Gen2 Order*), *appeals pending sub nom. Int'l Dark Sky Ass'n v. FCC*, No. 22-1337 (D.C. Cir. filed Dec. 30, 2022), *Dish Network Corp. v. FCC*, No. 23-1001 (D.C. Cir. filed Jan. 3, 2023). Prior to this partial grant, on March 28, 2018, the Commission granted SpaceX authority to deploy and operate its first-generation NGSO satellite system comprising 4,425 satellites operating in the Ku- and Ka-bands for provision of FSS (Gen1 Starlink). *Space Exploration Holdings, LLC et al.*, IBFS File No. SAT-LOA-20161115-00118 Call Sign S2983, IBFS File No. SAT-LOA-20170726-00110 Call Sign S3018, Memorandum Opinion, Order and Authorization, 33 FCC Rcd 3391, 3391, 3403-04, paras. 1, 33 (2018). Subsequently, the Commission granted three license modifications for the Gen1 Starlink system, and a number of requests for Special Temporary Authority (STA) for LEOP and payload testing operations, and to adjust earth station elevation angles.

[47] *See* Space Exploration Holdings, LLC, Application for Special Temporary Authority, ICFS File No. SES-STA-20231201-02496 (granted Dec. 14, 2023).

SpaceX's part 5 experimental STA for testing in 25 terrestrial locations.[48]

17. SpaceX's requests for broader authority remain pending. SB and the Wireless Telecommunications Bureau (WTB) continue to consider the issues presented in SpaceX's Gen2 SCS modification request and the accompanying lease application filed by SpaceX and T-Mobile,[49] both of which are the subject of an April 2023 *Public Notice*.[50] In response, some commenters expressed concerns about potential interference that would result from the proposed operations.[51] AT&T argued that the parties have failed to meet the waiver standard with respect to the U.S. Table, failed to request other necessary rule waivers, and omitted necessary technical information.[52] Others expressed procedural objections to the applications.[53]

III. REPORT AND ORDER

18. Satellite-to-device connectivity can support critical public interest benefits, including ubiquitous connectivity, access to 911 service from remote areas, technological advancement, and innovative spectrum use. In recognition of these benefits, the Commission proposed an SCS framework to enable the rapid deployment of these systems while recognizing that the technical and legal complexities involved in allowing satellite transmissions on spectrum allocated for terrestrial service calls

[48] *See* Space Exploration Holdings, LLC, Application for Experimental Special Temporary Authority, ELS File No. 2398-EX-ST-2023 (granted Dec. 20, 2023); Space Exploration Holdings, LLC, Application for Experimental Special Temporary Authority, ELS File No. 2479-EX-STA-2023 (granted Dec. 20, 2023). On March 7, 2024, SpaceX reported that its initial launch and testing had been a "massive success," demonstrating SMS and data capabilities across a range of devices. Letter from David Goldman, Vice President of Satellite Policy, Space Exploration Technologies Corp, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-65 et al., at 1 (filed Mar. 7, 2024).

[49] *See* SpaceX Gen2 SCS Modification Application, ICFS File No. SAT-MOD-20230207-00021; ULS File Nos. 0010303032, 0010303146, 0010303124, and 0010303084 (filed Dec. 6, 2022 and amended Feb. 7, 2023).

[50] *Space Bureau and Wireless Telecommunications Bureau Seek Comment on Filings of SpaceX and T-Mobile Requesting to Establish Supplemental Coverage from Space; Space Exploration Holdings, LLC Application Accepted for Filing*, GN Docket No. 23-135, ICFS File No. SAT-MOD-20230207-00021, Public Notice, DA 23-338 (WTB/SB Apr. 28, 2023); *see* 47 CFR § 25.151.

[51] *See, e.g.*, National Radio Astronomy Observatory Opposition, GN Docket No. 23-135, at 4-5 (rec. May 4, 2023) (NRAO Opposition) (arguing that the proposed operations would create harmful interference with the National Radio Quiet Zone); Rural Wireless Association, Inc. (RWA) Comments, GN Docket No. 23-135, at 2-3 (rec. May 18, 2023) (expressing concern that the proposed operations may cause adjacent channel harmful interference to operations in the PCS C-Block in rural and remote areas); Opposition of Omnispace, LLC, GN Docket No. 23-135, at 5-7 (rec. May 18, 2023) (Omnispace Opposition) (arguing that SpaceX's downlink MSS operations within the United States may cause interference with MSS uplink operations outside the United States); TerreStar Solutions Reply, GN Docket No. 23-135, at 2-4 (rec. May 30, 2023) (TerreStar SpaceX Filing Reply) (expressing concern about harmful interference to domestic and international MSS operators, as well as to operations in adjacent channels).

[52] *See* AT&T Comments, GN Docket No. 23-135, at 4-6 (rec. May 18, 2023). Specifically, AT&T contends that SpaceX and T-Mobile should request a waiver of several part 24 rules, including those addressing equipment authorization, calculation of heigh above average terrain, frequency restriction, power and antenna height limits, interference protection, and maintenance of station location information. *Id*. at 4-8. Further, AT&T argues that SpaceX should submit detailed information regarding how it will comply with part 24's frequency stability requirements, field strength limits, and OOBE limitations. *Id*. at 10-12.

[53] *See, e.g.*, NRAO Opposition, GN Docket No. 23-135, at 5 (arguing that it is premature for the Commission to consider the request); Petition to Dismiss or Deny of DISH Network Corporation, GN Docket No. 23-135, at 2, 5 (rec. May 19, 2023) (arguing that the application violates section 25.159 of the Commission's rules, which limits pending applications and unbuilt satellite systems, and suggests that the number of waiver requests run the risk of "swallowing the rules").

for an incremental approach.[54] In response to the *Notice*, a substantial number of commenters expressed support for the establishment of an SCS framework.[55] Today, we adopt this framework, with some modification from the Commission's initial proposal. We adopt rules that modify the U.S. Table to authorize bi-directional, secondary MSS operations in certain spectrum bands that have no primary, non-flexible-use legacy incumbents, federal or non-federal. For these bands, our rules authorize SCS only where one or more terrestrial licensees—together holding all licenses on the relevant channel throughout a GIA—lease access to their spectrum rights to a participating satellite operator, whose part 25 license reflects these frequencies and the GIA in which they will offer SCS.

A. Establishing a Framework for Supplemental Coverage from Space

19. The Commission is charged with regulating radio spectrum across the United States in a manner which serves the public interest.[56] In order to promote administrative efficiency, predictability, and consistency, it prefers to do so by generally-applicable rules, adopted through notice-and-comment proceedings such as this one, rather than by issuing individual waivers in those cases where the Commission finds good cause.[57] This approach allows the Commission to carefully consider the entire landscape of an issue and make comprehensive policy—rather than being limited only to the specific facts before it—while maintaining the "safety valve" of waivers for circumstances that differ from the norm and justify unique treatment.[58] As the Commission described in the *Notice*, even before the start of this proceeding, several stakeholders supported the Commission's initiation of a rulemaking on this issue.[59] However, in response to the *Notice*, some commenters suggest that the best path forward is a waiver-based or case-by-case approach, and not a new regulatory framework. For example, AT&T states that the Commission should proceed with a waiver-based approach to SCS, not the adoption of new rules or allocations, stressing that SCS is a supplement to terrestrial networks which must be protected first and foremost.[60]

20. Under the suggested waiver-based approach, parties would apply to the Commission and be required to demonstrate with predictive models that SCS operations would not interfere with terrestrial systems.[61] AT&T, Verizon, and T-Mobile argue that a waiver-based approach using existing rules is a better approach than the adoption of a new regulatory framework essentially because it would be premature to adopt complex rules given the nascent and supplemental nature of SCS.[62] CTIA suggests a

[54] *See Notice* at 19, para. 42.

[55] *See, e.g.*, Association of Public-Safety Communications Officials-International, Inc. Comments, GN Docket No. 23-65, at 1-2 (rec. May 12, 2023) (APCO Comments); AST SpaceMobile, Inc. Comments, GN Docket No. 23-65, at 1 (rec. May 14, 2023) (AST Comments); Boulder Regional Emergency Telephone Service Authority Comments, GN Docket No. 23-65, at 1-2 (rec. June 12, 2023) (BRETSA Comments); Rural Wireless Association, Inc. Comments, GN Docket No. 23-65, at 1-3 (rec. May 12, 2023) (RWA Comments); TechFreedom Comments, GN Docket No. 23-65, at 2-3 (rec. May 12, 2023); Viasat, Inc. Comments, GN Docket No. 23-65, at 1 (rec. May 12, 2023) (Viasat Comments); T-Mobile USA, Inc. Reply Comments, GN Docket No. 23-65, at 3-4 (rec. June 12, 2023) (T-Mobile Reply).

[56] 47 U.S.C. § 301; *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

[57] *See WAIT Radio*, 418 F.2d at 1159; *see also Mary V. Harris Foundation v. FCC*, 776 F.3d 21, 28-29 (D.C. Cir. 2015); *Delta Radio, Inc. v. FCC*, 387 F.3d 897, 900-01 (D.C. Cir. 2004).

[58] *See Indus. Broad. Co. v. FCC*, 437 F.2d 680, 683 (D.C. Cir. 1970); *WAIT Radio*, 418 F.2d at 1156, 1157, 1159.

[59] *See Notice* at 12, para. 24 n.92.

[60] AT&T Services, Inc. Comments, GN Docket No. 23-65, at 2-3, 5-7 (rec. May 12, 2023) (AT&T Comments); AT&T Services, Inc. Reply, GN Docket No. 23-65, at 1-2 (rec. June 12, 2023) (AT&T Reply).

[61] AT&T Comments at 7-9; AT&T Reply at 4. Verizon agrees with AT&T's proposals. Verizon Reply, GN Docket No. 23-65, at 4-5 (rec. June 12, 2023) (Verizon Reply).

[62] Verizon Comments, GN Docket No. 23-65, at 7 (rec. May 12, 2023); T-Mobile USA, Inc. Comments, GN Docket No. 23-65, at 2 (rec. May 12, 2023) (T-Mobile Comments).

similar process that relies on secondary market rules, technical demonstrations, and "targeted rule waivers."[63]

21. In contrast, Omnispace, SpaceX, AST, and Lynk disagree with commenters who favor a waiver-based approach. Omnispace opposes reliance on case-by-case waivers, noting that "virtually every communications service provider participating in this proceeding" indicates an interest in SCS.[64] SpaceX argues that proceeding exclusively by waiver would restrict flexibility, undermine the Commission's goal of fostering innovation and rapid deployment of competitive operations, and subject "all applications to regulatory gamesmanship."[65] AST appreciates that the Commission will continue to process waiver requests, but argues that waivers should not become the "norm" because they would "create undue burden and uncertainty for applicants."[66] Lynk recommends that interim waivers be available to interested parties, but that the Commission should adopt a rules-based approach to SCS "to provide long-term certainty, consistency, and transparency for operators and other spectrum users."[67] Lynk adds that a rules-based approach with technology-neutral rules "ensures that licenses are granted through open processes, based on objective, pre-determined qualifications, rather than subjective, case-by-case assessments."[68]

22. We find that a hybrid approach of adopting rule changes to execute a new regulatory framework for SCS—while continuing to actively monitor the nascent SCS marketplace to consider modifications and to address proposals that do not fit neatly within our framework by waiver—is the best path forward, that this approach is reasonable in light of the record developed in this proceeding particularly regarding technical issues, and that such an approach satisfies the need to be fair, transparent, and efficient, all in serving the public interest.[69] The complexity inherent in fusing satellite and terrestrial operations calls for transparent, consistent, predictable rules that will support growth and innovation in the United States. We anticipate that our rules will inform our counterparts in other countries as we all face similar interference management challenges in fostering these types of collaborations and services.

23. While we today establish a framework to enable SCS on a variety of bands in all parts of the United States, we recognize, as the Commission did in the *Notice*,[70] that there are particular SCS implementations that may not align with this framework. Because we do not want to discourage or delay other innovative solutions for supplemental satellite coverage, we will continue to consider on a case-by-case basis filings for waiver or STA made by interested parties for SCS, including proposals to operate in bands not identified as eligible for SCS in the framework we adopt today. Additionally, in the future, as the marketplace for SCS develops, we plan to build on this framework, to enable deployment of SCS in additional bands and scenarios.

24. Some commenters raise concerns that the Commission should not move forward in

[63] CTIA Comments, GN Docket No. 23-65, at 6-7 (rec. May 12, 2023).

[64] Omnispace LLC Reply, GN Docket No. 23-65, at 30-33 (rec. June 12, 2023) (Omnispace Reply) (arguing that, while international consensus on the use of spectrum for SCS is necessary prior to moving forward with the adoption of an SCS framework, a comprehensive rule change is ultimately preferable to a waiver approach).

[65] Space Exploration Holdings, LLC Reply, GN Docket No. 23-65, at 6-7, 9 (rec. June 12, 2023) (SpaceX Reply).

[66] AST Comments at 14-15.

[67] Lynk Global, Inc. Reply, GN Docket No. 23-65, at 2 (rec. June 12, 2023) (Lynk Reply).

[68] *Id*.

[69] Letter from Jameson Dempsey, Principal, Space Exploration Technologies Corp, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-65 et al., at 1 (filed Feb. 28, 2024) (SpaceX Feb. 28, 2024, *Ex Parte*) ("This dual-track approach will more quickly deliver the Commission's vision of a Single Network Future for consumers here and abroad, and will set a strong example for others to follow.").

[70] *Notice* at 12-20, paras. 24-43.

adopting the proposed SCS framework without first achieving international consensus.[71] National Radio Astronomy Observatory (NRAO) and Omnispace suggest that SCS should be an agenda item for the World Radiocommunication Conference 2027 (WRC-27), where it can be studied and there can be an opportunity to build international consensus.[72] Omnispace goes so far as to claim that the adoption of our proposed framework "will vitiate decades of American diplomacy and risk destroying U.S. influence as a spectrum policy leader for the world."[73] We disagree. We believe that it would serve the public interest to address any domestic impediments, enable innovations and investments in efficient and effective use of the spectrum, and foster U.S. leadership in spectrum-based services. In addition, developing a successful domestic framework without delay is an important opportunity to spur innovation and offer our domestic experience and leadership to the international community as the marketplace for SCS continues to evolve. We agree with commenters who recognize that international regulators are looking to the FCC for leadership on how to address novel SCS services.[74] We believe the rules we adopt today strike the appropriate balance between speed and comprehensiveness that will enable SCS to continue to develop and mature under our continued—and constantly evolving—supervision. We also agree with SpaceX that an approach that waits for international consensus before acting would leave American innovation at the mercy of "lengthy and cumbersome international harmonization effort[s]," could harm American companies, and would "delay global development of this new life-saving technology, potentially for decades."[75] We note that the World Radiocommunication Conference 2023 decided to add an agenda item for WRC-27 to study several candidate bands already allocated to the mobile service and identified for terrestrial International Mobile Telecommunications (IMT) to assess whether these bands can be used for MSS that would be delivered directly to terrestrial IMT user equipment to complement terrestrial mobile coverage.[76] We will participate in these ITU studies and other international undertakings to ensure significant progress to establish an international regulatory framework in the ITU Radio Regulations for SCS.

25. Our hope is that our domestic proceeding will improve the deployment of this exciting new service in the United States, with the added benefit of informing how other countries approach the challenges involved in enabling satellite-to-device connectivity and serving as a regulatory model for other administrations. We are keenly aware of the need to minimize the risk of harmful interference, and that goal is at the center of our SCS framework. First, we note that the new MSS allocations we add to the U.S. Table will remain subject to the United States' international obligations under treaties, bilateral or multilateral agreements, the International Radio Regulations, and other instruments of the ITU. Furthermore, we are adding an MSS allocation to certain bands to permit SCS operations on a secondary basis domestically, not on a co-primary basis as proposed in the *Notice*.[77] As suggested by Kepler,[78] we

[71] Omnispace LLC Reply, GN Docket No. 23-65, at 3, 18-20 (rec. June 12, 2023) (Omnispace Reply).

[72] NRAO Comments, GN Docket No. 23-65, at 4 (rec. May 8, 2023) (NRAO Comments); Omnispace Reply at 19-20.

[73] Omnispace Reply at 2.

[74] *See, e.g.*, Letter from Margo R. Deckard, Chief Operating Officer, Lynk Global, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-65 et al., at 1, 2 (filed Dec. 11, 2023); SpaceX Reply at iii; SpaceX Feb. 28, 2024, *Ex Parte* at 1-2 (stating the SCS framework "will balance the strong interest in bringing American innovation to international markets with the Commission's role as filing administration").

[75] SpaceX Reply at 10.

[76] *See* International Telecommunication Union (ITU) World Radiocommunication Conference (WRC-23), Provisional Final Acts, (WRC-23 Provisional Final Acts). Res Com 6/9 (WRC-23) Studies on possible new allocation to the MSS for direct connectivity between space stations and IMT user equipment to complement terrestrial IMT network coverage, WRC-23 Provisional Final Acts at p. 567-569, https://www.itu.int/dms_pub/itu-r/opb/act/R-ACT-WRC.15-2023-PDF-E.pdf.

[77] *See infra* paras. 46-52.

[78] Kepler Communications Comments, GN Docket No. 23-65, at 5-6 (rec. May 14, 2023) (Kepler Comments).

are enabling certain SCS operations domestically in the United States while also reminding our licensees that SCS operations shall not cause harmful interference to other countries' operations that conform to the ITU Radio Regulations and shall eliminate any harmful interference immediately. We will continue to monitor ongoing international work on SCS and adjust our approach as needed. We believe, however, that the record in this proceeding provides a sufficient basis for moving forward with authorizing SCS services and adopting rules applicable to their operation.

26. *Section 316 of the Act.* We note that, in the *Notice*, the Commission tentatively concluded that the SCS framework that we adopt today would not be a modification of any terrestrial licenses under section 316 of the Act.[79] The record shows no opposition to this tentative conclusion.[80] We therefore find that since the SCS leasing framework that we adopt today is built upon the rights that terrestrial licensees already have and is merely enabling a new—supplemental—method of providing gap coverage within the existing geographic area covered by the existing license, permitting SCS under this framework is not a modification of any terrestrial licenses under section 316 of the Act.[81]

B. Spectrum Bands Available for SCS

27. In the *Notice*, the Commission proposed a new regulatory framework for SCS that provides a path for rapid implementation of this new offering across certain spectrum bands allocated and licensed exclusively on a terrestrial basis to enable transmissions from space stations to end-user devices.[82] Because of the complexity of this undertaking, and to minimize the risk of harmful interference, the Commission focused its present efforts on a selection of spectrum bands where there are no primary, non-flexible-use legacy incumbent operations, federal or non-federal.[83] The Commission explained that it proposed these flexible-use bands for inclusion in the proposed framework because commercial wireless services have been deployed on these bands, which are allocated and assigned for terrestrial mobile service, and because the bands contain at least one spectrum block with an existing licensee holding rights sufficient for a satellite operator to meet the proposed entry criteria.[84]

1. SCS Bands

28. In the *Notice*, the Commission explained in detail how each of the following bands satisfies the proposed entry criteria.[85] We adopt as eligible for SCS the list of bands proposed in the *Notice* with two exceptions. We will not include the Wireless Communications Service (WCS) band (2305-2320 and 2345-2360 MHz), and we will add the 758-769/788-799 MHz band licensed to the First Responder Network Authority (FirstNet)[86] as a band eligible for SCS under our framework. Accordingly, the list of bands that will be available for the provision of SCS (the SCS Bands) is as follows:

- 600 MHz: 614-652 MHz and 663-698 MHz;
- 700 MHz: 698-769 MHz, 775 MHz-799 MHz, and 805-806 MHz;
- 800 MHz: 824-849 MHz and 869-894 MHz;
- Broadband PCS: 1850-1915 MHz and 1930-1995 MHz; and

[79] *Notice* at 30, para. 71; 47 U.S.C. § 316.

[80] Skylo Technologies, Inc. Comments, GN Docket No. 23-65, at 11 n.11 (rec. May 12, 2023) (Skylo Comments) ("Skylo agrees with the Commission's conclusion that the proposed framework would not constitute a modification of any terrestrial licenses under Section 316 of the Communications Act."). No other commenters addressed this question.

[81] 47 U.S.C. § 316.

[82] *See generally Notice*.

[83] *See id.* at 12-13, para. 24.

[84] *See id.* at 14-15, para. 29.

[85] *See id.* at 9-12, 16-19, paras. 18-23, 34-39.

[86] *See id.* at 17, para. 35.

- AWS-H Block: 1915-1920 MHz and 1995-2000 MHz

29. We recognize that some of the bands that we find currently suitable for SCS present a degree of technical complexity that may require us to more closely examine the SCS proposals that would be submitted pursuant to the framework we adopt today, but these case-by-case situations do not preclude us from adopting generally applicable service rules under which the risk of harmful interference can be minimized. Some commenters are concerned about the effects of SCS operations in certain segments of the proposed bands. For example, Shure expresses concern that SCS operations in the 614-617 MHz sub-band may cause interference to wireless microphones and calls for further analysis and testing.[87] Other commenters are concerned that SCS operations could cause interference with radio astronomy operations.[88] Because the protection of radio astronomy is applicable to all SCS operations, we discuss those concerns in depth later in this *Report and Order*.

30. With the exception of significant concerns raised with respect to the WCS band, the concerns regarding the possibility of potential interference or requests for additional protections or studies prior to the adoption of our framework do not convince us to exclude the remaining spectrum bands from our initial framework for SCS operations. Under the rules we adopt today, terrestrial service providers and satellite operators collaborating to provide SCS will be required to protect adjacent band and cross-border operations. We also note that, while our selection of the SCS Bands gives stakeholders a path to accelerated SCS operations, our entry criteria and application processes are intended to ensure compliance with the rules and requirements that will protect existing operations.

31. Moreover, the MSS allocation that we are adding to the SCS Bands is on a secondary, not a co-primary, basis as the Commission had initially proposed,[89] meaning that the stations shall not cause harmful interference to stations of a primary service nor claim protection from harmful interference from those stations operating on a primary basis. Accordingly, protection of existing primary services from harmful interference from SCS operations in the SCS Bands is built into the new allocation. Finally, we emphasize that just because a band is available for SCS operations pursuant to our framework, it does not guarantee that the Commission will automatically authorize an SCS collaboration in the requested band.[90] Upon submission of the SCS application, the Commission will conduct a rigorous analysis of the technical materials submitted to ensure compliance with our entry criteria and any applicable rules and requirements.

2. Exclusion of the Wireless Communications Service Band

32. Although the Commission proposed in the *Notice* to authorize SCS in the WCS band,[91] after a careful examination of the record, we find that the risk of harmful interference to existing operations should we permit SCS in the WCS band outweighs the benefits of inclusion at this time. The Commission noted in the *Notice* that WCS' placement—straddling the Satellite Digital Audio Radio

[87] Shure Incorporated Comments, GN Docket No. 23-65, at 2 (rec. May 12, 2023) (Shure Comments).

[88] *See, e.g.*, California Institute of Technology Comments, GN Docket No. 23-65, at 1-2 (Caltech Comments); National Academy of Sciences' Committee of Radio Frequencies Comments, GN Docket No. 23-65, at 5-6, 10-12 (CORF Comments); NRAO Comments at 2-3.

[89] *See Notice* at 13-16, paras. 25-32.

[90] For instance, the spectrum in the 600 MHz band referenced by Shure as a concern, 614-617 MHz, is a guard band that has no licensees, so its inclusion in an SCS Band available for SCS operations does not mean that SCS will be permitted there. *See generally Promoting Spectrum Access for Wireless Microphone Operations; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket Nos. 14-166 and 12-268, Report and Order, 30 FCC Rcd 8739 (2015); *Promoting Spectrum Access for Wireless Microphone Operations; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket Nos. 14-166 and 12-268, Order on Reconsideration and Further Notice of Proposed Rulemaking, 32 FCC Rcd 6077, 6080-81, para. 4 (2017).

[91] *See Notice* at 18, para. 37.

Service (SDARS)—and the adjacency of federal operations present difficult coordination concerns and sought comment on ensuring the goals of our service rules were met in any SCS framework.[92] Aerospace and Flight Test Radio Coordinating Council, Inc. expresses concerns that SCS operations in the WCS band at 2345-2360 MHz could cause harmful interference to adjacent band aeronautical mobile telemetry operations and suggests that additional protections are needed.[93] Lockheed Martin suggests that additional coordination should be required for SCS operations in this part of the WCS band.[94] SiriusXM expresses concerns about SDARS protection stating that "the overall interference environment for SDARS has . . . worsened in recent years" and notes the need to ensure protection from possible future SCS operations.[95]

33. In addition to these comments, on February 16, 2024, the National Telecommunications and Information Administration (NTIA) filed a white paper in the record on this proceeding prepared by the National Science Foundation (NSF) that raises concerns about the impact on radio astronomy from SCS operations in the WCS band.[96] NSF describes the WCS band as "the top band[] recommended for removal from consideration for allocations" given its use for S/X Celestial Reference Frame legacy observations.[97]

34. Based on our review of the record, we do not believe the concerns with SCS operations in the WCS band can be resolved by interference protection rules. Instead, given the serious concern that permitting SCS in this band could potentially interfere with important adjacent band operations, and our interest in authorizing SCS in the near-term where feasible, we will not include the WCS band as available for SCS at this time.

3. Inclusion of 700 MHz Public Safety Broadband Spectrum

35. In the *Notice*, the Commission sought comment on whether to include the 758-769/788-799 MHz band, often referred to as "Band 14," which is not currently licensed for commercial use to serve consumer handsets, but rather used to provide public safety services.[98] Specifically, as suggested by some parties prior to adoption of the *Notice*, the Commission asked whether it should include 700 MHz spectrum licensed to FirstNet on a nationwide basis in the framework.[99] FirstNet and several other commenters support the inclusion of the Band 14 spectrum as an authorized band for SCS.[100] They argue that the use of FirstNet's spectrum for SCS would advance vital public safety objectives, in particular, "utilizing Band 14 to provide SCS for FirstNet users may present an opportunity to better support first

[92] *See id.* at 11-12, 18, paras. 23, 37.

[93] Aerospace and Flight Test Radio Coordinating Council, Inc. Comments, GN Docket No. 23-65, at 5-10 (rec. May 12, 2023) (AFTRCC Comments).

[94] Lockheed Martin Corporation Comments, GN Docket No. 23-65, at 6 (rec. May 12, 2023) (Lockheed Martin Comments).

[95] Sirius XM Radio Comments, GN Docket No. 23-65, at 7-9 (rec. May 12, 2023) (Sirius XM Comments).

[96] *See generally* National Science Foundation, A Preliminary Assessment of Potential Impacts to Radio Astronomy Systems from Supplementary Coverage from Space, GN Docket No. 23-65 (2024) (*NSF White Paper*).

[97] *Id.* at 23.

[98] *See Notice* at 17, para. 35.

[99] *Id*. at 17, para. 35 & n.112. As noted, these parties submitted comment on the public draft notice of proposed rulemaking released on February 23, 2023. *Id*. The 758-769 MHz and 788-799 MHz segments of the 700 MHz band are licensed to FirstNet. *Id*. at 17, para. 35 & n.113. These segments are also known as "Band 14."

[100] *See, e.g.*, First Responder Network Authority Comments, GN Docket No. 23-65, at 3-4 (rec. May 12, 2023) (FirstNet Comments); Nextivity, Inc. Comments, GN Docket No. 23-65, at 3-4 (rec. May 12, 2023) (Nextivity Comments); AST SpaceMobile, Inc. Reply, GN Docket No. 23-65, at 17-18 (rec. June 12, 2023) (AST Reply); AT&T Reply at 12; Lynk Reply at 4.

responders and the communities they serve nationwide."[101] AST and AT&T agree that authorizing SCS on Band 14 preserves the potential for using SCS technology to enhance the communications capabilities of first responders.[102] More specifically, AST explains that SCS will enhance the utility of FirstNet's network in rural areas where terrestrial coverage does not extend, provide important capabilities in the aftermath of disasters during power failures, and fill coverage gaps in FirstNet's network in remote regions such as national parks and Native American reservations.[103] We agree that SCS offers important benefits to public safety subscribers of FirstNet and will include FirstNet's 700 MHz spectrum in the SCS Bands. Improving public safety is an overarching goal of this proceeding, and permitting SCS operations on the 700 MHz public safety spectrum licensed to FirstNet on a nationwide basis is likely to further this goal.

36. The only commenter that directly opposes the inclusion of FirstNet's 700 MHz spectrum as a band available for SCS is T-Mobile, arguing that the spectrum used by FirstNet is not flexible-use spectrum and citing to its comments in a different proceeding regarding the relationship between FirstNet and AT&T.[104] We are not persuaded by this argument in the context of choosing bands to include in our initial SCS framework. While we focus our SCS framework on flexible-use bands due to the nature of the wireless services they enable, there is nothing about our SCS proposal which rests on the flexible-use nature of a given band. Instead, we will enable SCS in bands which we believe are well-suited for it, and we find that this spectrum meets this criteria.

37. As explained by FirstNet in its comments, while the inclusion of Band 14 for SCS "has the potential to provide additional benefits to public safety," any such use would need to occur in accordance with the parameters of the FirstNet program, pursuant to the 2012 Act.[105] This difference—which means that FirstNet would not be able to utilize SCS using the part 1 leasing framework we adopt for SCS today—is noted by AT&T and Lynk as well.[106] Indeed, we recognize that FirstNet is unique in terms of its organizational and licensing structure, and does not fit squarely into our SCS framework. As FirstNet notes, the Commission's framework that includes part 1 leasing as a requirement is not applicable in the Band 14 context which is governed by a separate statutory structure.[107] Nonetheless, the compelling public safety benefits of including the FirstNet spectrum in the bands available for SCS, particularly for first responders in emergency situations, support our decision to include FirstNet's 700 MHz spectrum in the SCS Bands. As a result, we will enable FirstNet to satisfy our entry criteria for SCS collaborations through a non-leasing mechanism, as discussed in the FirstNet SCS authorization section later in this *Report and Order*.[108]

4. Declining to Include Other Spectrum Bands

38. The SCS Bands, with important qualifications and notes as described in the *Notice*, are ones that can accommodate collaborations that can satisfy the entry criteria adopted herein. Given the complexity of this undertaking, the Commission also sought comment in the *Notice* on whether there are any other flexible-use terrestrial bands that we should consider for initial or future SCS operations.[109]

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[101] FirstNet Comments at 3.

[102] AST Reply at 17-18; AT&T Reply at 12.

[103] AST Reply at 18-20.

[104] T-Mobile Reply at 12.

[105] FirstNet Comments at 3.

[106] *See* AT&T Reply at 13; Lynk Reply at 4.

[107] FirstNet Comments at 3-4.

[108] *See infra* paras. 105-09.

[109] *See Notice* at 19, para. 41. We clarify that suggestions to permit SCS operations on unlicensed spectrum are outside the scope of this proceeding. *See, e.g.*, LoRa Alliance Comments, GN Docket No. 23-65, at 1 (rec. May 11,

(continued….)

Some commenters responded by suggesting that the Commission should not apply the SCS framework only to a particular set of bands.[110] By and large, these commenters recommend that, rather than limiting SCS operations to specific bands, the Commission should permit SCS operations in all flexible-use spectrum provided that the parties can demonstrate to the Commission that their proposed SCS operations will not cause harmful interference and will comply with applicable conditions.[111]

39. We reject this suggestion and find it in the public interest to focus our initial SCS framework on a defined set of SCS Bands as proposed in the *Notice*. A primary goal of this proceeding is to adopt an SCS framework that will rapidly realize the public safety benefits of SCS in areas that are currently unserved or underserved while minimizing the risks of harmful interference as this technology—and the marketplace it will enable—develop. In order to meet this goal, our framework is measured and focused on SCS operations that present less technically complex interference protection scenarios. This approach applies to all aspects of our framework, including the choice of bands. In particular, we reject the recommendation to expand our initial set of bands eligible for SCS operations to include bands with primary, non-flexible-use incumbents. This expansion would require the Commission to undertake complicated, time-consuming interference analyses on a band-by-band basis that could delay our support for a rapid roll-out of SCS.

40. Several commenters support the spectrum bands identified in the *Notice* as bands that should be available for potential SCS operations, recognizing the need to protect existing networks.[112] Limiting SCS operations to the SCS Bands is a way to encourage this supplemental service while substantially minimizing the risk of harmful interference to existing terrestrial networks. AT&T "applauds" the Commission's goal of minimizing the risk of harmful interference and protecting adjacent band and cross-border operations, stating that "protecting licensed, primary terrestrial operations is paramount," and our limiting available bands in our initial framework is an important way to accomplish this goal.[113] In the future, as the marketplace for SCS develops, we anticipate that our framework will expand to include additional bands and scenarios. We address each of the specific bands commenters suggest should be included in the SCS Bands in turn.

41. *1670-1675 MHz Band.* Ligado recommends that the Commission include the 1670-1675 MHz band for SCS operations.[114] Although this band aligns with our framework in that it is allocated and licensed for commercial wireless operations, it does not satisfy our band requirement that there are no primary, non-flexible-use incumbent operations, federal or non-federal, in the band. As the Commission stated in the *Notice*, commercial wireless operations in this band must protect three federal earth stations

2023) (LoRa Comments) (proposing the Commission allow SCS in the unlicensed 902-928 MHz band); Fleet Space Reply, GN Docket No. 23-65, at 3 (rec. June 12, 2023) (Fleet Space Reply) (suggesting that all unlicensed spectrum should be assessed to determine whether it could support SCS).

[110] *See, e.g.*, AST Comments at 15-16; CTIA Comments at 9-10; Intelsat License LLC Comments, GN Docket No. 23-65, at 6 (rec. May 12, 2023) (Intelsat Comments); Kuiper Systems LLC Comments, GN Docket No. 23-65, at 3 (rec. May 12, 2023) (Kuiper Comments); Space Exploration Holdings, LLC Comments, GN Docket No. 23-65, at 4-6 (rec. May 14, 2023) (SpaceX Comments).

[111] *See, e.g.*, AST Comments at 15-16; CTIA Comments at 9-10; Intelsat Comments at 6; Kuiper Comments at 3; SpaceX Comments at 4-6.

[112] *See, e.g.*, Lockheed Martin Comments at 4-5 (agreeing with our decision to initially confine SCS operations to bands that do not include any primary, non-flexible use legacy incumbent operations); DISH/EchoStar Comments at 4 (supporting the spectrum bands identified in the *Notice* as candidates for SCS leasing arrangements); Omnispace Comments at 32-33 (supporting the proposal to license SCS operations only in spectrum bands that meet our entry criteria and licensing requirements).

[113] AT&T Comments at 7.

[114] Ligado Networks LLC Comments, GN Docket No. 23-65, at 9-11 (rec. May 12, 2023) (Ligado Comments).

through advanced coordination.[115] Nevertheless, Ligado contends that the 1670-1675 MHz band is well suited for SCS because it is a nationwide license with a single terrestrial licensee, and it will be technically easier to fill coverage gaps in this mid-band spectrum.[116] Moreover, Ligado explains that it has experience coordinating with and protecting co-primary federal earth stations and adjacent band operations from interference.[117] Although we appreciate Ligado's position and suggestions, the spectrum bands we are including in our initial SCS framework do not include bands with non-flexible-use incumbent licensees. Excluding bands with incumbent operations helps us to move forward expeditiously with the rollout of SCS operations, while greatly minimizing the risks of harmful interference to existing terrestrial networks and other critical operations which rely on predictable, harmful interference-free spectrum access.

42. *1695-1710 MHz Band.* In the *Notice*, the Commission sought comment on whether an unpaired band at 1695-1710 MHz would be suitable for SCS operations.[118] Like the 1670-1675 MHz band, this band does not satisfy our band requirement that there are no primary, non-flexible-use incumbent operations, federal or non-federal, in the band. Specifically, non-flexible-use operations in the band are concentrated in particular areas.[119] TerreStar suggests that the most efficient use of this band would be a broad allocation for MSS in ITU Region 2.[120] In opposition, T-Mobile responds that this suggestion is beyond the scope of the instant proceeding.[121] We agree. Here, we are focused on identifying eligible bands for SCS operations in order to move forward expeditiously with SCS while minimizing the risks of harmful interference to existing terrestrial networks and other important public safety interests.

43. *The 1.4 GHz Band*. MidWave Wireless, Inc. (MidWave) suggests that the Commission include the 1.4 GHz band (1390-1392 MHz, 1392-1395 MHz, and 1432-1435 MHz bands) in the SCS framework that we adopt today.[122] The 1.4 GHz band is a terrestrial band whose licenses are held by one licensee, MidWave, nationwide, and is adjacent to spectrum that is used for wireless medical telemetry service (WMTS).[123] Pursuant to a condition in the *TerreStar 2020 Order*, MidWave is required to "use a

[115] *See Notice* at 52-53, para. 139.

[116] Ligado Comments at 9-10.

[117] *Id.* at 10.

[118] *See Notice* at 52-53, para. 139.

[119] *Id.*

[120] TerreStar Solutions, Inc. Comments, GN Docket No. 23-65, at 4 (rec. May 12, 2023) (TerreStar Comments).

[121] T-Mobile Reply at 20.

[122] Letter from John M. R. Kneuer, Chief Executive Officer, MidWave Wireless, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-65 et al. (filed Oct. 30, 2023) (MidWave Oct. 30, 2023, *Ex Parte*). The commercial 1.4 GHz band includes the unpaired 1390-1392 MHz band, and the A and B Blocks of the paired 1392-1395 MHz and 1432-1435 MHz bands. *See TerreStar Corporation Request for Temporary Waiver of Substantial Service Requirements for 1.4 GHz Licenses*, WT Docket No. 16-290, Order on Reconsideration, 35 FCC Rcd 4354, 4355, para. 3 (WTB 2020) (*TerreStar 2020 Order*). In 2002, the Commission established fixed and mobile allocations for the 1.4 GHz band and adopted governing service rules. *See Reallocation of the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz Government Transfer Bands, et al*., ET Docket No. 00-221, Report and Order and Memorandum Opinion and Order, 17 FCC Rcd 368 (2002) (allocating the 1.4 GHz band to fixed and mobile services (with the exception of aeronautical mobile) on a primary basis). In taking this action, the Commission decided to license operations in this band as a part 27 Wireless Communications Service, thereby applying the technologically neutral regulatory and licensing framework of part 27 to these operations. *See TerreStar 2020 Order*, 35 FCC Rcd at 4355, para. 3.

[123] Specifically, the 1.4 GHz band spectrum at 1390-1395 MHz is adjacent to the WMTS spectrum at 1395-1400 MHz, and the 1.4 GHz band spectrum at 1432-1435 MHz is adjacent to the WMTS spectrum at 1427-1432 MHz. *See TerreStar 2020 Order*, 35 FCC Rcd at 4355-56, paras. 3-5. The Commission established three WMTS bands in (continued….)

significant portion of spectrum associated with each of its licenses for the deployment of WMTS operations."[124] WMTS systems are used to monitor patients' health at thousands of hospitals and other medical facilities throughout the country. They include devices to measure patients' life-critical health parameters, including oxygen saturation, blood pressure, respiration, and electrocardiogram, among others.[125] MidWave suggests that the 1.4 GHz band is "an excellent candidate for the provision of SCS" since it was cleared to begin deploying additional, flexible-use services in the 1.4 GHz band in August 2023.[126] Moreover, MidWave states that authorizing SCS in this band will align with the longstanding Commission goal of "allow[ing] 1.4 GHz [b]and licensees the flexibility to pursue a variety of business plans while affording adjacent users sufficient protection from interference."[127] MidWave also states that it has "already taken action to protect existing and adjacent WMTS uses of the band" and has "published extensive technical information demonstrating the feasibility" of non-WMTS uses in the band.[128]

44. We decline to add the 1.4 GHz band to the SCS Bands at this time.[129] While a primary goal of this proceeding is to increase innovation, investment, and competition, we believe that the best path forward to achieving those goals is by implementing an SCS framework that will minimize the risks of harmful interference. This means that the framework that we adopt today is geared towards enabling SCS operations that present less technically complex interference protection scenarios, which is not the case in the 1.4 GHz band. Pursuant to the *TerreStar 2020 Order*, MidWave is required to dedicate a significant amount of the band to WMTS use, and to provide for WMTS use in at least 2,000 health care facilities nationwide.[130] In creating these requirements, a key element of the *TerreStar 2020 Order* involved the Commission's concern that "non-WMTS use of the 1.4 GHz Band would place WMTS in the adjacent bands at significant risk of harmful interference."[131] Thus, in granting the waiver, WTB

2000, allocating 14 megahertz to WMTS on a primary basis: 608-614 MHz, 1395-1400 MHz, and 1427-1432 MHz. *Id.* The channels in 1427-1432 MHz are shared by WMTS and non-WMTS devices such as utility telemetry devices. *See* 47 CFR §§ 90.259(b), 95.2363(a)(3).

[124] *See TerreStar 2020 Order*, 35 FCC Rcd at 4369-70, para. 35; *see also id.* at 4369-70, para. 34.

[125] *See id.* at 4355-56, para. 4. WMTS devices are also used for monitoring fetal heart rate and other activity in the womb prior to and during the birthing process. *Id.* The physiological data of multiple patients can be transmitted simultaneously via a radio link to a remote location equipped with a specialized radio receiver, such as a nurses' station, allowing early detection of life-threatening developments and enabling timely medical intervention. *Id.*

[126] MidWave Oct. 30, 2023, *Ex Parte* at 1.

[127] *Id.* at 2 (citing *TerreStar 2020 Order*, 35 FCC Rcd at 4355, para. 3).

[128] *Id.*

[129] We note that the Commission's decision today envisions a hybrid approach to SCS licensing that does not foreclose any party with proposals for providing SCS that do not satisfy our framework from applying to the Commission and requesting a waiver of relevant rules. AFTRCC states that such proposals should include demonstrations that the proposed SCS operations will not cause harmful interference to existing co-band and adjacent band operations. *See* Letter from Edward A. Yorkgitis, Jr., Counsel to Aerospace and Flight Test Radio Coordinating Council, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-65 et al., at 2-3 (filed Mar. 7, 2024) (AFTRCC Mar. 7, 2024, *Ex Parte*). In its letter, AFTRCC also asks the Commission to require MidWave to demonstrate "that adjacent band safety-of-flight Federal and non-Federal aeronautical mobile telemetry operations will be protected from harmful interference" should MidWave seek to deploy SCS in the 1432-1435 MHz bands. *Id*. at 3. We decline to address these issues because we are not including the 1.4 GHz band as an SCS Band at this time.

[130] *See TerreStar 2020 Order*, 35 FCC Rcd at 4369-74, paras. 34-35; *see also id.* at 4370, para. 34, n.104.

[131] *See TerreStar 2020 Order*, 35 FCC Rcd at 4369-70, para. 34. The *TerreStar 2020 Order* granted in part the TerreStar, ASHE, and GE Healthcare petitions for reconsideration of the *TerreStar 2017 Order*, and we granted TerreStar a limited and conditional waiver of the substantial service construction requirement under section 27.14(a) associated with the Licenses. *Id.* at 4363-74, paras. 20-43; *see also TerreStar Corporation Request for Temporary*

(continued….)

required that WMTS use in the 1.4 GHz band continue indefinitely so that the deployment and costly investment by health care facilities is not potentially disrupted by "possibly incompatible applications" such as terrestrial flexible-use operations permitted after TerreStar meets its performance milestones, which happened in August 2023.[132] Because a significant portion of the 1.4 GHz band at several locations is encumbered, we decline to include the 1.4 GHz band as an SCS Band at this time.[133]

45. *The 2.5 GHz Band*. In response to the Commission's request in the *Notice* for comment on the unique circumstances regarding the 2.5 GHz band (2496-2690 MHz), TechFreedom submits that the Commission should include the band as available for SCS operations as a way to gain maximum use for this spectrum.[134] While TechFreedom's comments note the advantages of this mid-band spectrum, they do not explain how inclusion of this band in the SCS framework would accommodate the unique, complex circumstances currently at play in the band.[135] Notably, the Commission changed the regulatory framework for this band in 2019 to afford incumbent users more flexibility,[136] but the configuration of the band continues to support a wide range of uses. The band includes two different radio services with different licensing structures.[137] While the Commission eliminated the special educational eligibility requirements that formerly applied in one portion of the band,[138] much of the band is currently occupied by incumbent licenses with 35-mile radius geographic service areas, many of which consist of irregular shapes.[139] Furthermore, the Commission also established a Tribal Priority Window to improve access to services in rural Tribal areas,[140] and it has issued over 300 licenses to federally-recognized Tribes and Tribally controlled entities in response to applications filed in that window.[141] Finally, the formerly educational portion of the band contains a three-tiered overlay structure where spectrum rights can automatically revert to a different licensee if a pre-existing license is cancelled or terminated.

Waiver of Substantial Service Requirements, WT Docket No. 16-290, Order, 32 FCC Rcd 7480 (WTB MD 2017) (*TerreStar 2017 Order*).

[132] *See* TerreStar 2020 Order, 35 FCC Rcd at 4369-70, para. 34. The TerreStar 2020 Order provided that once TerreStar had satisfactorily met its Final Deployment Obligation, TerreStar could pursue deployment of additional (i.e., non-WMTS) services using its licenses in the 1.4 GHz band. *Id*. at 4370 n.112. The TerreStar 2020 Order provided that "TerreStar may commence deployment of [ ] additional services 90 days after release of [the] Public Notice absent an affirmative finding by the Bureau that such additional services will cause harmful interference to WMTS." *Id*.; *see also Wireless Telecommunications Bureau Seeks Comment on TerreStar Corporation Filings Seeking to Offer Additional Services in the 1.4 GHz Band*, WT Docket No. 16-290, Public Notice, DA 23-424 (WTB 2023); Letter from Bryan M. Tramont, Counsel for TerreStar Corporation, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 16-290 (filed Feb. 14, 2023) (certifying that it met its Final Deployment Obligation and providing a full technical demonstration of how addition use of the spectrum will not cause harmful interference to WMTS). Comments were received from AFTRCC and TerreStar Corporation. *See* Aerospace and Flight Test Radio Coordinating Council, Inc. Comments, WT Docket No. 16-290 (rec. June 30, 2023); TerreStar Corporation Comments, WT Docket No. 16-290 (rec. July 17, 2023). *See generally* AFTRCC Mar. 7, 2024, *Ex Parte* at 3.

[133] We likewise note that airborne and space-to-earth operations are prohibited in the 1390-1400 MHz band, further complicating possible SCS deployments. *See* 47 CFR § 2.106(c)(79).

[134] *See Notice* at 54, para. 143; TechFreedom Comments at 17.

[135] *See* TechFreedom Comments at 17.

[136] *See Transforming the 2.5 GHz Band*, WT Docket No. 18-120, Report and Order, 34 FCC Rcd 5446 (2019) (*2.5 GHz Report and Order*).

[137] *See* 47 CFR pt. 27, subpt. M.

[138] *See 2.5 GHz Report and Order*, 34 FCC Rcd at 5451-56, paras. 15-25.

[139] *See id.* at 5449, para. 10.

[140] *See id.* at 5463-69, paras. 47-65.

[141] *See* FCC, *2.5 GHz Rural Tribal Application Details*, https://www.fcc.gov/25-ghz-rural-tribal-application-details (last visited Feb. 16, 2024) (listing granted Rural Tribal Priority Window applications).

Accordingly, we decline to add the 2.5 GHz band to the SCS Bands at this time.

C. Adding a Mobile-Satellite Service Allocation to Bands Available for SCS

46. After review of the record, we adopt new allocations, including appropriate modifications to the U.S. Table and a new non-federal footnote,[142] for secondary MSS (space-to-Earth and Earth-to-space) operations in the SCS Bands to permit SCS to the subscribers of the relevant terrestrial networks using those bands.[143] In the *Notice*, the Commission proposed to modify the U.S. Table, by footnote,[144] to authorize co-primary MSS operations in the SCS Bands to permit SCS to the subscribers of the relevant terrestrial networks using those bands. Specifically, the Commission proposed to add the footnote allocation in bands where one incumbent terrestrial licensee holds all co-channel licenses throughout a GIA and there were no non-flexible-use incumbent operations in the band.[145] The Commission also sought comment on whether the proposed allocation should be on a secondary rather than a co-primary basis and whether it should make direct changes to the U.S Table rather than relying solely on a footnote allocation.[146] Finally, the Commission sought comment on whether to add an FSS allocation as well as an MSS allocation and whether to permit fixed as well as mobile use in the bands.[147] While the approach we adopt today differs from the lead proposal in the *Notice*, the Commission sought comment in the *Notice* on each element of the approach adopted herein and received a robust record in response. We believe that the allocation we adopt today accurately reflects the status of licensees in the SCS Bands—and the operational rights of these entities under the SCS framework we adopt today—while providing regulatory certainty for nascent SCS operations and sufficient protection for terrestrial networks.

47. We hereby modify the U.S. Table by adding a secondary MSS allocation in each of the SCS Bands along with the following non-federal footnote NG33A, which will limit the operations to providing SCS:

> NG33A: The secondary MSS operations in the bands 614-652 MHz and 663-769 MHz, 775-799 MHz, and 805-806 MHz, 824-849 MHz and 869-894 MHz, and 1850-1920 MHz and 1930-2000 MHz are limited to Supplemental Coverage from Space (SCS) and are subject to the Commission's SCS rules in part 25 of this chapter.

This allocation indicates that bidirectional MSS operations (space-to-Earth and Earth-to-space) apply to the provision of SCS and is added for the entire spectrum range of each of the SCS Bands. Prospective satellite operators and terrestrial licensees that intend to provide SCS should refer to the service rules for each band to identify the specific frequencies over which SCS service can be provided as well as any limits regarding signal directionality (i.e., uplink versus downlink). As a secondary service, SCS operations may not cause harmful interference to—and are not entitled to interference protection from—any primary service operating in the relevant band.[148]

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[142] Non-federal footnotes consist of the letters "NG" followed by one or more digits and denote a stipulation applicable only to non-federal operations. They only appear in the non-federal portion of the U.S. Table. 47 CFR § 2.105(d)(5)(iii).

[143] *See supra* para. 28.

[144] Proposed footnote NG33A: "The bands 614-652 MHz and 663-758 MHz, 775 MHz-788 MHz, and 805-806 MHz, 824-849 MHz and 869-894 MHz, 1850-1920 MHz and 1930-2000 MHz, and 2305-2320 MHz and 2345-2360 MHz are allocated to the MSS on a co-primary basis. MSS operations in these frequency bands are subject to the Commission's rules for Supplemental Coverage from Space set forth in part 25 of this chapter." *See Notice* at 13-14, para. 26.

[145] *Notice* at 13-14, para. 26.

[146] *Id.* at 13-14, paras. 26, 28.

[147] *Id.* at 15-16, paras. 30-31.

[148] *See* 47 CFR § 2.105(c)(2).

48. We believe that this approach will support the Commission's efforts to facilitate the expansion of wireless coverage across the United States—particularly in rural and underserved areas—by providing satellite operators and terrestrial licensees with the certain, stable regulatory framework that they need to rapidly deploy. Specifically, we find that making the new MSS SCS allocation secondary to existing co-primary services, including terrestrial operations, is consistent with the SCS regulatory framework—which requires satellite operators to obtain a lease agreement with a terrestrial licensee(s) within a given GIA prior to initiating service—and will ensure that there is no confusion regarding the status of these services vis-à-vis their terrestrial counterparts. We agree with Lynk that a secondary allocation will also more accurately reflect the relationship between the satellite operator and the terrestrial licensee since SCS operations are not independent and, instead, are provided as a supplement to the terrestrial licensee's existing network.[149] We find that the secondary allocation accurately reflects this operating relationship, as reflected in our SCS service rules, while providing an appropriate level of protection to the satellite service in the SCS Bands. We also find that satellite operators should be able to provide service to any subscriber device, fixed or mobile, rather than being limited to only mobile devices. This flexible approach has broad support in the record.[150]

49. In addition, granting satellite operators secondary status in the SCS Bands is consistent with our approach to the international framework for this new supplemental service. Some commenters raise concerns about adopting the proposed co-primary allocation on the grounds that, since SCS has not been allocated internationally, granting SCS co-primary status would be inconsistent with Article 5 of the ITU Radio Regulations.[151] As Kepler argues, a secondary allocation would be more appropriate since it would clearly indicate that satellite operators do not have international status in the SCS Bands and that satellite operations shall not cause harmful interference to operations that conform with the International Table of Frequency Allocations (International Table).[152] We emphasize that any new allocations remain subject to the United States' international obligations under treaties, bilateral or multilateral agreements, the International Table, and other international instruments.[153]

50. Some commenters support the Commission's lead proposal to make SCS co-primary with existing services in the SCS Bands.[154] Notably, AST contends that granting a co-primary allocation to SCS would ensure that the services they provide to terrestrial licensees are afforded priority over other secondary users in the band and that any concerns regarding the relative priority of the SCS operations and the terrestrial service offerings could be addressed in lease and operating agreements.[155] While we agree with AST that the agreements between the terrestrial licensee and the satellite operator are key factors in establishing the technical boundaries of their relationship, in no circumstance under the rules we adopt today is it permissible for the satellite operator to provide SCS without consent from a terrestrial licensee. As a supplemental service, SCS satellite operations are inherently secondary to the terrestrial

[149] *See* Lynk Global, Inc. Comments, GN Docket No. 23-65, at 5-6 (rec. May 12, 2023) (Lynk Comments).

[150] *See, e.g.*, Aalyria Technologies, Inc. Comments, GN Docket No. 23-65, at 9 (rec. May 23, 2023) (Aalyria Comments), SpaceX Comments at 4, Kepler Comments at 6-7, Lynk Comments at 5-6. Moreover, as Iridium notes, the Commission previously allowed Iridium to provide service to fixed devices on an ancillary, nonconforming basis. *See* Iridium Communications, Inc. Comments, GN Docket No. 23-65, at 9 (rec. May 12, 2023) (Iridium Comments) (citing *Motorola Satellite Communications for Modification of License*, Order and Authorization, 11 FCC Rcd 13952, 13955-56, para. 10 (1996)).

[151] Kepler Comments at 5; Omnispace Comments at 31-32 ("Any new domestic MSS allocations in the identified bands should be on a secondary basis, to align with U.S. obligations in relation to use of the ITU Radio Regulations Section 4.4 to legitimize operations with respect to other country's radiocommunications services.").

[152] *See* Kepler Comments at 5.

[153] *See infra* paras. 224-36.

[154] AST Comments at 29; TechFreedom Comments at 14; Skylo Comments at 7-8.

[155] *See* AST Comments at 29.

operations in the bands, and under the rules we adopt herein, SCS access to the relevant bands requires permission of the relevant terrestrial licensees through the use of our leasing framework.[156] Moreover, commenters have not presented any evidence of other secondary services that could cause harmful interference to SCS operations in the SCS Bands. As such, we find that a secondary allocation accurately reflects the operational hierarchy and the status of SCS operations vis-à-vis terrestrial operations and will provide operational certainty for satellite operators without creating confusion for the public or terrestrial licensees.

51. Some commenters—including CTIA, AT&T, T-Mobile, and Verizon—oppose adding any allocations for SCS MSS to the U.S. Table and suggest that we should, instead, address all requests to provide SCS on a case-by-case basis.[157] These commenters claim that the addition of any MSS allocation to the U.S. Table could lead to confusion regarding the rights of MSS operators vis-à-vis terrestrial licensees.[158] These commenters support a waiver-based approach that they claim would provide the Commission, and individual parties, with the flexibility to develop and implement case-specific SCS solutions and would ensure that terrestrial networks are fully protected from MSS operations.[159] They claim that, since SCS operations are inherently ancillary to the networks operated by terrestrial licensees, the Commission should use its existing rules to establish a framework for processing and evaluating SCS applications and issuing waivers of the U.S. Table, and other rules, as needed.[160] We disagree with these assertions and find that establishing a secondary allocation will more effectively advance the Commission's goals in moving forward to a single network future. We believe that the public interest will be best served by establishing clear and transparent rules—including not only a regulatory framework but also U.S. Table allocations—for the provision of SCS. Such rules will provide a predictable framework and environment for this new service to flourish, facilitate the efficient use of spectrum resources, establish this approach as a guide for other regulators seeking to introduce SCS, and provide sufficient flexibility for new technologies and business models to take hold.[161]

52. We also find that our approach addresses many of the substantive issues raised by the commenters in their objections to granting SCS status in the U.S Table.[162] AT&T, T-Mobile, Verizon, and CTIA all emphasize that the Commission must make it clear that satellite operators may only use

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[156] While Skylo argues in favor of co-primary MSS allocations for SCS operations, they acknowledge that "licensing SCS on a non-harmful interference basis is vital in these bands in order to protect current terrestrial users and maximize efficient spectrum use." *See* Skylo Comments at 7. We believe that a secondary MSS allocation will more effectively further this goal.

[157] *See* Verizon Comments at 7-14; T-Mobile Comments at 3-5; AT&T Comments at 12-14; CTIA Comments at 2-7.

[158] *See* Verizon Comments at 13 ("An MSS allocation—a primary allocation in particular—would cause needless confusion and undermine the notion that SCS 'supplements' a terrestrial wireless service.").

[159] *See* AT&T Comments at 12-14; Verizon Comments at 7-14.

[160] *See* Verizon Comments at 7-14; T-Mobile Comments at 3-5; AT&T Comments at 12-14; CTIA Comments at 2-7. T-Mobile also proposes an alternate model, similar to a proposal by SpaceX, whereby the Commission would simply "clarify" that SCS is a service that terrestrial operators may provide under their existing licenses via lease, without any changes to the U.S. Table. *See* T-Mobile Comments at 5; SpaceX Comments at 2-4.

[161] *See* AST Comments at 14-15 ("Waivers create undue burden and uncertainty for applicants. . . . [T]he Commission can create the certainty necessary to attract capital and spur innovation by developing flexible rules designed to accommodate the rapid pace of advancement in technology."); *see also* SpaceX Reply at 7-8.

[162] Verizon directly opposes adding even a secondary allocation for SCS. *See* Verizon Reply at 7 ("Similarly, there is no reason to adopt a secondary allocation for SCS. SCS is only supplemental to an underlying terrestrial license and wireless service in the event the wireless licensee chooses to pursue an SCS partnership. There is no independent basis to operate standalone SCS in a terrestrial wireless band."); *see also* CTIA Comments at 5 ("Adopting new allocations for specific bands or other rules governing SCS operations would be premature at this stage.").

designated spectrum bands for SCS on a secondary basis and, as such, must not cause harmful interference to any terrestrial operations.[163] We agree and find that the approach we adopt today addresses this concern by ensuring that MSS is secondary to terrestrial operations in all SCS Bands, that such operations will be limited solely to SCS, and that SCS may only be provided pursuant to a lease agreement with a terrestrial licensee(s) within a given GIA.[164] Indeed, since SCS operations may only commence pursuant to a part 1 lease arrangement or as it relates to FirstNet, an agreement with a terrestrial licensee in a given GIA, the terrestrial licensee controls which, if any, satellite operator is authorized to transmit within that GIA and the terms under which satellite operators are permitted to provide SCS.[165] We believe that this approach provides the protection, flexibility, and security sought by AT&T, CTIA, Verizon, and T-Mobile,[166] while also establishing regulatory certainty and clear rules for satellite operators and terrestrial licensees intending to provide SCS.[167]

D. SCS: Space Station Operations

53. As we strive to realize the public interest benefits of SCS as rapidly as possible in this proceeding, we remain cognizant of the need to balance rapid deployment with our responsibility to establish rules that would minimize the risk of harmful interference. Introducing satellite operations in flexible-use terrestrial spectrum presents new technical challenges, in particular with regard to dealing with potential co-channel interference in adjacent license areas.[168] In balancing our desire to expedite the deployment of SCS with the need to minimize technical complexities and harmful interference, the *Notice* proposed to initially limit our SCS framework to circumstances that meet certain entry criteria wherein a single terrestrial licensee holds all co-channel licenses in the relevant band throughout a GIA and the partnering NGSO satellite operator holds an existing part 25 license or grant of market access.[169] The *Notice* also asked for comment on whether we should expand the SCS regulatory framework beyond the limited proposal. Although we are expanding the entry criteria to allow for greater participation than originally proposed, we find that a GIA restriction and initial entry criteria are essential to SCS

[163] *See* T-Mobile Comments at 7; AT&T Comments at 5-9; Verizon Comments at 12-14; CTIA Comments at 6-12.

[164] *See* T-Mobile Comments at 6 ("As part of grant of SCS authority, the Commission should make clear that use of terrestrial spectrum by space station operators conveys authority to provide SCS only on a secondary basis and does not create any expectation that the spectrum is being designated for satellite use."); AT&T Comments at 8 ("[A]pplicants should also be required to demonstrate how its proposed SCS operations would avoid interfering with—or displacing—any existing terrestrial services . . .").

[165] We note that AT&T argues that adopting a co-primary allocation MSS would exceed the Commission's authority under the Communications Act, violate the APA, and be considered an unconstitutional "regulatory taking." *See* AT&T Reply at 7-8. While we need not address the merits—such as they are—of AT&T's arguments, given that we decline to adopt a co-primary MSS allocation and have explained that decision, nothing in our decision should be read as an endorsement of AT&T's assertions or conclusions.

[166] *See* Lynk Reply at 7-8 (arguing that a secondary allocation addresses concerns raised by Verizon and T-Mobile and more accurately reflects the relationships between satellite operators and terrestrial licensees.).

[167] For the same reasons, we also reject SpaceX's suggestion to simply include SCS in the existing definition of Mobile Service and permit SCS operations in all exclusively licensed, flexible use spectrum bands. *See* SpaceX Comments at 1-6; SpaceX Reply at 2-5, 7. We also note that SpaceX's proposed approach would provide even less regulatory certainty and protection to satellite operators and terrestrial licensees that provide SCS than the case-by-case approach advocated by AT&T, T-Mobile, Verizon, and CTIA, and would effectively strip the Commission of any oversight role for this nascent technology.

[168] The record includes comments suggesting that we accept applications for SCS from non-satellite, non-terrestrial service platforms, such as high-altitude platform stations (HAPS). *See, e.g.*, High Altitude Platform Stations Alliance Comments, GN Docket No. 23-65, at 1-2 (rec. May 11, 2023) (HAPS Comments); Intelsat Comments at 3-4. However, in the *Notice*, the Commission stated that the proposed framework did not make proposals regarding, or seek comment on, the issue of satellite service to airborne devices, including HAPS. *See Notice* at 12-13, para. 24 n.93. Accordingly, we will not address these comments as they are outside the scope of this proceeding.

[169] *See Notice* at 19, para. 42.

implementation at this time.

1. Geographically Independent Area

54. In the *Notice*, the Commission proposed to limit the provision of SCS "to instances where a single terrestrial licensee holds all co-channel licenses in the relevant band throughout one of six GIAs."[170] The Commission explained that it was seeking to minimize the possibility for interference between geographically adjacent markets and noted that there are no Commission-licensed land areas adjacent to each proposed GIA and that there is significant geographic separation between the proposed GIAs.[171] Further, the Commission reasoned that the limitation was necessary so that SCS could be provided without the presence in each GIA of co-channel licensees requiring interference protection.[172] The Commission sought comment on the costs and benefits of its initial proposal regarding the GIA requirement, as well as on extending the SCS framework to include additional scenarios, including where there are multiple unaffiliated flexible-use licensees in a given GIA, but all licensees in that area agree to jointly provide SCS to their customers in cooperation with a satellite operator.[173]

55. After careful analysis of the record, we find it in the public interest to adopt the Commission's proposal to limit SCS authorizations to the following GIAs: (1) the contiguous United States (CONUS); (2) Alaska; (3) Hawaii; (4) American Samoa; (5) Puerto Rico/U.S. Virgin Islands; and (6) Guam/Northern Mariana Islands.[174] Given the novel technical challenges at play when introducing satellite communications to terrestrial spectrum, we believe that a GIA restriction is necessary in the initial SCS framework because it minimizes the risk of potential interference to geographically-adjacent, co-channel license areas. When we refer to all co-channel licenses throughout a GIA in our discussion of the SCS entry criteria and application requirements in this *Report and Order*, we mean that, to provide SCS under a part 25 authorization, a satellite operator must be the lessee of one or more valid lease arrangement(s) covering (1) all frequencies over which it provides SCS, as identified in its part 25 SCS application, and (2) the entire area of a GIA. This requirement is not met, for example, if a significant portion of the GIA's geography is not licensed (i.e., remains in the Commission's inventory).[175]

56. Some commenters argue that restricting SCS to GIAs is unnecessary as long as the satellite operator demonstrates to the Commission that it will not cause harmful interference to adjacent licensees.[176] For example, AST argues that SCS should be permitted in additional scenarios such as when the terrestrial service provider's licenses cover less than a full GIA as long as the satellite operator

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[170] *See id.* at 20, para. 45. The proposed GIAs are: (1) CONUS; (2) Alaska; (3) Hawaii; (4) American Samoa; (5) Puerto Rico/U.S. Virgin Islands; and (6) Guam/Northern Mariana Islands. *Id*.

[171] *Id.*

[172] *Id*.

[173] *See id.* at 53-54, paras. 141-144.

[174] *See id.* at 20, para. 45.

[175] We recognize, however, that there may be a scenario in which only a small portion of the GIA is not licensed. In that case, we will assess the facts of the particular SCS application on a case-by-case basis to determine whether the lease(s) covers the functional equivalent of the entire area of a GIA. If so, then we will consider the entry criteria to be met with regard to the GIA restriction, but the parties will be required to demonstrate to the Commission how they will ensure that terrestrial devices connecting to their SCS network will only operate on the SCS network within the boundaries of the licensed areas of the GIA.

[176] *See, e.g*., AST Comments at 5-7; AT&T Comments at 15-17; Kuiper Comments at 6-7; Lynk Comments at 8-11; Letter from Margo R. Deckard, Chief Operating Officer, Lynk Global, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-65 (filed Dec. 21, 2023); Letter from Margo R. Deckard, Chief Operating Officer, Lynk Global, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-65, at 2-3 (filed Feb. 16, 2024) (Lynk Feb. 16, 2024, *Ex Parte*); Lynk Add'l Mar. 7, 2024, *Ex Parte* at 3; Letter from Henry G. Hultquist, Vice President-Federal Regulatory, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-65 et al., at 2 (filed Mar. 7, 2024) (AT&T Mar. 7, 2024, *Ex Parte*).

demonstrates that it will not interfere with adjacent users.[177] Similarly, Lynk argues that rather than implementing a GIA restriction, the Commission should adopt service rules specific to SCS establishing "signal strength thresholds at the edge of neighboring areas."[178] This *Report and Order* seeks to simplify the provision of SCS that presents interference protection scenarios that are less technically complicated while still permitting action on alternative proposals via our waiver process. Our GIA restriction accomplishes that objective by focusing on those SCS implementations which eliminate one major harmful interference risk and thus are more amenable to generally applicable service rules based on the current record. But we emphasize that our decision today incorporates a hybrid approach to SCS licensing whereby proposals that satisfy our entry criteria can proceed pursuant to the rules we establish, while still leaving the door open for other implementations to be approved by waiver. It does not foreclose the ability for parties with proposals for providing SCS that do not satisfy our framework from applying to the Commission and demonstrating that they will not cause harmful interference under the proposed parameters specific to their SCS operations.[179] While we anticipate that SCS applications meeting our entry criteria will benefit from the simplified processing that a rules-based framework provides, we are committed to ensuring that all complete SCS proposals which fully address technical and legal concerns will receive expeditious consideration by the Commission.

57. Kepler agrees that our GIA restriction "would simplify the initial deployment of satellite systems operating in bands shared with terrestrial mobile" and facilitate "rapid" deployment.[180] Omnispace supports the Commission's proposal to license SCS only where applicants can satisfy the Commission's entry criteria and licensing requirements, specifically noting that the GIA limitation would help to avoid technical complexities that could arise.[181] Verizon also acknowledges that provision of SCS in areas smaller than a GIA would be more technically complicated because these operations would not have "the protection buffer GIAs otherwise provide between SCS and adjacent terrestrial operations."[182] DISH and EchoStar also agree with the Commission's initial SCS licensing framework.[183] These comments support our decision to take a measured approach to SCS rules to initially minimize the risk of harmful interference from complex technical scenarios by including GIAs in our entry criteria.

58. *Multiple Licensees Jointly Satisfying the GIA Requirement.* Some commenters suggest the proposal in the *Notice*, wherein a single terrestrial licensee must hold all co-channel licenses in a given GIA, would limit SCS to large carriers with nationwide authority over a block of spectrum, or otherwise exclude smaller or regional terrestrial operators from participation in the framework.[184] We are sensitive to these concerns, and in response, we expand our entry criteria so that multiple terrestrial service providers may work with a satellite operator to provide SCS, as long as together those service providers hold all the licenses in the relevant channel throughout a GIA. These more expansive entry criteria than what the Commission proposed in the *Notice* help provide an opportunity for broader

[177] AST Comments at 12-13; AST Reply at 2-6.

[178] Lynk Comments at 8-11; Letter from Margo R. Deckard, Chief Operating Officer, Lynk Global, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-65 at 1-2 (filed Jan. 12, 2024).

[179] *See* AT&T Mar. 7, 2024, *Ex Parte* at 2; *see also* Lynk Add'l Mar. 7, 2024, *Ex Parte* at 3. We agree that our hybrid approach permits us to process SCS applications that do not satisfy our entry criteria that nonetheless demonstrate that the proposed operations will not cause harmful interference.

[180] Kepler Comments at 3.

[181] Omnispace Comments at 32-33.

[182] Verizon Reply at 5-6.

[183] DISH/EchoStar Comments at 4-5.

[184] *See, e.g.*, Aalyria Comments at 5-6 (regarding the CONUS GIA); AST Comments at 5-7 (regarding the CONUS GIA); AT&T Comments at 15-17 (regarding the CONUS GIA); OptimERA Holdings, Inc. Reply, GN Docket No. 23-65, at 4-5 (rec. June 12, 2023) (OptimERA Reply) (regarding the Alaska GIA); Competitive Carriers Association Reply, GN Docket No. 23-65, at 5-9 (rec. June 12, 2023) (CCA Reply); Skylo Comments at 17-18.

deployment of SCS both spectrally and geographically, and allow additional licensees to participate, while still minimizing the risk of harmful interference. Some commenters suggest this approach as a way to make SCS more accessible.[185] For example, CCA suggests that to be more inclusive, the Commission could permit "collaborations among carriers at the outset to provide SCS," and Kuiper suggests "allowing satellite operators to partner with multiple terrestrial licensees that, when considered together, act as a GIA-exclusive licensee."[186] In adopting these criteria—while keeping the GIA restriction—we anticipate that additional service providers will be encouraged to participate in SCS collaborations, thereby increasing competition in the provision of SCS.

59. Even with an expansion of the Commission's proposed entry criteria to allow for participation by multiple terrestrial providers that hold all the licenses throughout a GIA, there is a concern that licensees with larger service areas will "seize the market" and become dominant in the offering of SCS to consumers.[187] While we acknowledge this concern, we find it in the public interest to adopt a GIA restriction because it will accelerate SCS deployment in less technically complex interference protection scenarios. We encourage terrestrial service providers to consider all the GIAs available—not just CONUS—while also exploring opportunities to collectively provide SCS in areas where a group of cooperating licensees hold all relevant licenses. We also again highlight that we will continue to consider filings by interested parties seeking authority to provide SCS without meeting our initial entry criteria.

60. We believe our expansion of the entry criteria to allow licensees to jointly satisfy the GIA coverage requirement will enable more flexibility in SCS offerings, making additional bands available in GIAs even when multiple entities hold the relevant co-channel licenses. In its comments, AST argues that the proposed GIA restriction not only favors a small number of nationwide licensees, but also limits valuable spectrum for SCS, in particular low-band spectrum under 1 GHz in the CONUS GIA.[188] Once again, we recognize this concern, but we note that the SCS Bands include several sub-1 GHz bands (the 600, 700, and 800 MHz bands), and that we have expanded our entry criteria to permit multiple terrestrial licensees that together hold all co-channel licenses covering a GIA to participate in SCS collaborations, which should enable SCS by a wider variety of entities in those bands. We also remind commenters that, in addition to our waiver process for those SCS proposals that do not align with our framework, there are five GIAs in addition to CONUS that are available for SCS. We therefore encourage interested parties to think creatively when considering how to deploy SCS in its early stages while the technology and marketplace develop.

61. *Dynamic Spectrum Sharing*. Commenters also urge us to consider alternative paths for authorizing SCS which could increase competition. Aalyria supports the GIA restriction as "an eloquently simple means of preventing interference between co-channel licensees," but suggests that the Commission should also permit co-channel licensees to employ "dynamic network orchestration technologies" to provide SCS as a way of enabling greater competition.[189] These technologies, Aalyria claims, would enable participation by smaller and regional carriers to participate in the framework through spectrum sharing without causing harmful interference between adjacent market providers.[190] However, as noted by T-Mobile, dynamic spectrum management systems are "typically used when

[185] *See, e.g.*, CCA Reply at 8-9; Kuiper Comments at 6-7.

[186] CCA Reply at 9; Kuiper Comments at 6.

[187] Kepler Comments at 3-4 (expressing concerns regarding smaller regional operations ability to enter the market). *But see* Kepler Comments at 3 (supporting the Commission's GIA framework "as an initial step towards a broader policy").

[188] AST Comments at 5-10; AST Reply at 4.

[189] Aalyria Comments at 6. DSA also proposes the use of dynamic spectrum management for SCS operations. Dynamic Spectrum Alliance Comments, GN Docket No. 23-65, at 2-3 (rec. May 12, 2023) (DSA Comments).

[190] Aalyria Comments at 6-8.

spectrum is shared and not licensed on an exclusive basis."[191] As the Commission made clear in the *Notice*, our initial SCS framework is intended to provide coverage to a terrestrial mobile service licensee's subscribers operating in underserved or unserved areas within the licensee's service area on spectrum previously licensed exclusively on a terrestrial basis.[192] We therefore will not modify our framework and GIA restriction to allow spectrum sharing for SCS at this time. However, we note that terrestrial licensees' control of their networks means dynamic spectrum sharing may be an option they consider to enable these operations.

2. Part 25 License Entry Criteria

62. In order to perform commercial space station operations within the United States or through a U.S. license, operators must receive a part 25 license from the Commission that is tied to a specific satellite(s).[193] Applications for a part 25 license generally require the submission of information about the frequencies requested for use and relevant technical details, a plan for orbital debris mitigation, and for those seeking a U.S. license, materials for an ITU satellite network filing, which is submitted by the FCC to the ITU. As discussed in detail below, in instances where an applicant proposes to use spectrum on a non-conforming basis with respect to ITU Radio Regulations, the applicant needs to also prepare and submit to the Commission materials to indicate that the operations in derogation of international frequency allocations can be conducted without causing harmful interference to incumbent stations operating in accordance with international frequency allocations. Once the application is deemed acceptable for filing under our rules, it is placed on public notice. Following review of the application as well as the record, including any public comments, SB, on delegated authority, will grant a part 25 license if it determines that doing so would serve the public interest. Prior to this *Report and Order*, the SCS Bands were not allocated for satellite services or otherwise authorized for satellite services via rule.

63. Here, we adopt entry criteria that NGSO and geostationary satellite orbit (GSO) operators must meet in order to apply for or modify an existing part 25 license to operate satellites in the SCS Bands in the United States and its territories.[194] Specifically, we establish an SCS framework allowing satellite operators to apply to modify a current part 25 license to include SCS where: (1) the satellite operator has one or more leasing notification(s) or application(s), or in the case of FirstNet, a Form 601, on file with the Commission to access the spectrum allocated for MSS provision of SCS from a single terrestrial licensee or multiple licensees that hold, collectively or individually, all co-channel licenses throughout a GIA; (2) the current part 25 space station licensee or part 25 grantee of market access for NGSO or GSO satellite operation seeks modification of authority to provide SCS in the same geographic areas covered in the relevant GIA; and (3) the terrestrial devices involved in SCS qualify as "licensed by

[191] T-Mobile Reply at 12-13.

[192] *See Notice* at 12-13, para. 24.

[193] For ease of reference, when we refer to space station "licenses" within this *Report and Order*, we are referring to both part 25 U.S. licenses and part 25 U.S. market access authorizations granted to non-U.S.-licensed operators. In addition, although the terms have different definitions in section 25.103 of the Commission's rules, for the purpose of this *Report and Order*, we use the term "space station" and "satellite" interchangeably. 47 CFR § 25.103.

[194] *See Notice* at 21, para. 48. We note that in the context of SCS that may be provided outside the United States, leasing of spectrum from a mobile service provider is not a relevant prerequisite. Each country has the right to regulate licensing, market access, and/or landing rights in its own territories, and even if a country requires some arrangement between an SCS provider and a mobile service provider, such arrangements can be struck in various ways, not just through spectrum leasing, under the laws of that country. *See* Margo R. Deckard, Chief Operating Officer, Lynk, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-65 et al., at 1-2 (filed Mar. 5, 2024) (Lynk Mar. 5, 2024, *Ex Parte*); *see also,* Letter from Steve B. Sharkey, Vice President, Government Affairs, T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-65 et al. at 2, 4-5 (filed Mar. 6, 2024) (T-Mobile Mar. 6, 2024, *Ex Parte*).

rule" earth stations under the new provisions of part 25.[195] Similarly, satellite operators may apply for an initial part 25 license with authority to provide SCS if they meet requirements (1) and (3) above, and if in their part 25 application, those operators seek to provide SCS in the same geographic areas covered in the relevant GIA.

64. *Part 25 Licensing*. As an initial matter, the *Notice* proposed that a part 25 license is a necessary component of an SCS authorization,[196] and in the rules we adopt today, we confirm that the satellite operator in the SCS arrangement must obtain a part 25 license prior to commencing SCS.[197] The Commission's rules contemplate that the transmission of energy, communications, or signals by space or earth stations requires a part 25 license, and we see no reason to deviate from this requirement today.[198] Under our existing part 25 rules, Commission staff must review the technical and narrative information presented in the application, including orbital debris information, in order to make a determination on whether a satellite can operate safely and without causing harmful interference. By applying our existing part 25 rules as part of the SCS framework that we adopt today, we believe that we will accomplish three goals. First, we will provide regulatory certainty for operators and Commission staff who have experience with part 25 space station application rules and understand their requirements. Second, we will streamline our processes by implementing a single rule part that applies to SCS and non-SCS. Finally, we will enable competition by applying identical rules for operators providing services under the SCS framework with those providing similar or related services though spectrum already allocated for satellite services.

65. In the *Notice*, the Commission proposed directing WTB and then-IB to evaluate and coordinate simultaneous processing of all applications required to be filed under our proposed entry criteria if adopted.[199] Several commenters support this proposal that SB (as successor to IB) should oversee the space-based aspect of SCS, and we agree.[200] SB routinely handles processing of part 25 applications, which, as we adopt today, are a key component of an SCS application. Operations in space bring their own set of complex issues, which must be evaluated prior to issuing a license or modification.

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[195] *See* Appx. B (adding 47 CFR § 25.125). *See generally* SpaceX Feb. 28, 2024, *Ex Parte* at 1-2 (expressing support for the SCS framework).

[196] *See, e.g.*, *Notice* at 22-23, paras. 52-53.

[197] DISH/EchoStar Comments at 6. *But see* OneWeb Comments, GN Docket No. 23-65, at 1-2 (rec. May 12, 2023) (emphasizing that the SCS framework should be derived from existing terrestrial rights and keep additional licensing requirements to a minimum).

[198] 47 CFR § 25.102. We note that we recently released the *2023 Satellite and Earth Station Processing Report and Order and FNPRM* to streamline satellite licensing, and those actions taken will benefit operators wishing to implement SCS, as will any actions taken in response to that *FNRPM*. *Expediting Initial Processing of Satellite and Earth Station Applications; Space Innovation*, IB Docket Nos. 22-411 and 22-271, Report and Order and Further Notice of Proposed Rulemaking, FCC 23-73 (Sept. 22, 2023) (*2023 Satellite and Earth Station Processing Report and Order and Further Notice*). This recent action expanded upon previous streamlining initiatives. *See, e.g.*, *Further Streamlining Part 25 Rules Governing Satellite Services*, IB Docket No. 18-314, Report and Order, 35 FCC Rcd 13285 (2020); *Streamlining Licensing Procedures for Small Satellites*, IB Docket No. 18-86, Report and Order, 34 FCC Rcd 13077 (2019); *Comprehensive Review of Licensing and Operating Rules for Satellite Services*, IB Docket No. 18-86, Second Report and Order, 30 FCC Rcd 14713 (2015) (*Part 25 Streamlining Second Report and Order*); *Comprehensive Review of Licensing and Operating Rules for Satellite Services*, IB Docket No. 12-267, Report and Order, 28 FCC Rcd 12403 (2013).

[199] *Notice* at 22, para. 50. We note that, since the *Notice* was adopted, SB was created to lead policy and licensing matters related to satellite and space-based communications and activities at the Commission, and IB was dissolved. *See Establishment of the Space Bureau and the Office of International Affairs and Reorganization of the Consumer and Governmental Affairs Bureau and the Office of the Managing Director*, MD Docket No. 23-12, Order, 38 FCC Rcd 608, 609, para. 4 (2023).

[200] *See* Satellite Industry Association Reply Comments, GN Docket No. 23-65, at 4 (rec. June 12, 2023) (SIA Reply); Omnispace Comments at 3, 33; AST Comments at 23 n.58. *But see* OneWeb Comments at 1.

These issues can be most efficiently handled by SB where staff routinely analyze highly specialized technical issues and unique satellite-related legal issues, and coordinate with other federal government agencies as well as the international community, including the ITU, and border administrations. In addition to SB's authority to "facilitate the international coordination of U.S. spectrum allocations for space-based services," SB has authority to review the part 25 applications for SCS in order to "facilitate the international coordination of U.S. spectrum allocations for . . . frequency and orbital assignments so as to minimize cases of international radio interference involving U.S. licensees."[201] As such, SB can review part 25 applications for SCS pursuant to its delegated authority.

66. In the *Notice*, the Commission proposed that an NGSO satellite operator with an existing part 25 license may apply to modify such authorization to include SCS where that entity meets our entry criteria.[202] The Commission asked whether the framework should also include new satellite entrants seeking to provide SCS.[203] While some operators support limiting the SCS framework to operators with an existing part 25 authorization,[204] others support the inclusion of satellite operators who do not hold existing part 25 licenses in this framework.[205] We agree with commenters who favor including in this framework those satellite operators without an existing part 25 license that seek to provide only SCS. We find that including both existing and new entrants in this framework will most effectively encourage competition. We likewise believe that we can still achieve a streamlined authorization process for new entrants, who—in accordance with the rules we adopt today—will have already reached an agreement with one or more terrestrial licensees.[206] Furthermore, we are satisfied that our new part 25 rules, and the application review we conduct to ensure compliance with those rules, will prevent new entrants from frivolously applying under this framework.[207] In addition, experimental licensees who seek to transition to a part 25 SCS license may apply under this framework as a new part 25 entrant.[208]

67. In the *Notice*, the Commission sought comment on whether the SCS framework should also include GSO systems.[209] While Kepler and OneWeb question the viability of SCS service via GSO systems,[210] the majority of commenters favor including GSO systems within the framework.[211] Lockheed Martin notes that, despite higher latency that may be associated with GSO systems, the provision of many services via GSO is possible.[212] Kepler, in contrast, contends that GSO systems are unlikely to be capable of generating small enough beams to avoid interference and argues that the shorter lifetimes attributed to

[201] *See* 47 CFR § 0.51(c).

[202] *See Notice* at 21, para. 48.

[203] *See id.* at 24, para. 56.

[204] DISH/EchoStar Comments at 6; Lockheed Martin Comments at 9; Lynk Comments at 4-5; OneWeb Comments at 3-4.

[205] AST Comments at 23-24; AT&T Comments at 18; TechFreedom Comments at 9-10; T-Mobile Comments at 3; T-Mobile Reply at 18; Viasat Comments at 3; SpaceX Comments at 11; Sirius XM Radio Comments, GN Docket No. 23-65, at 12-13 (rec. May 12, 2023) (Sirius XM Comments).

[206] *See* AST Comments at 23-24; AT&T Comments at 18; TechFreedom Comments at 10; Viasat Comments at 3.

[207] AST Comments at 23-24.

[208] We will continue to permit experimental licensing for SCS in bands outside of those specified in this proceeding, including for regional coverage. *See* Lynk Comments at 13.

[209] *Notice* at 22, para. 51.

[210] Kepler Comments at 9; *see also* OneWeb Comments at 3-4 (opposing the inclusion of GSO systems).

[211] AT&T Comments at 18; DISH/EchoStar Comments at 6; Intelsat Comments at 3; Intelsat Reply at 2-4; SIA Reply at 3-4; Sirius XM Comments at 10; Sirius XM Radio Reply Comments, GN Docket No. 23-65, at 5 (rec. June 12, 2023) (Sirius XM Reply); T-Mobile Comments at 7; T-Mobile Reply at 18, Viasat Comments at 2; Skylo Comments at 5-6; *see also* CCA Reply at 12; TerreStar Comments at 2.

[212] Lockheed Martin Comments at 9.

NGSO systems provide the optimal means of ensuring continued development and improvement of the service and requisite technology.[213] We reject Kepler's arguments and find that the staff review of applications will prevent the authorization of any operations by entities who are not capable of providing the requisite interference protection. And any benefit from the shorter lifetimes of NGSO systems can be evaluated as a market decision of SCS satellite operators and terrestrial providers rather than a prohibition in our rules. We note that many similar services are provided by NGSO and GSO satellites today.[214] We believe our rules should foster maximum flexibility for parties to design SCS implementations that work for a particular use case, and this means both NGSO and GSO systems should be eligible to participate in the SCS framework. This decision will also promote competition and the rapid deployment of this new technology.[215]

68. Both U.S.- and non-U.S.-licensed operators will be eligible to apply for and receive a part 25 license for the provision of SCS. One commenter expresses concern that a non-U.S. satellite operator will face unique issues bearing on its ability to coordinate and integrate with a U.S. terrestrial licensee.[216] We are not persuaded. We do not see why a non-U.S.-licensed satellite operator would face unique issues in coordinating with a U.S. terrestrial provider. Because satellite operators must partner with a terrestrial provider(s) in a part 1 lease arrangement or agreement, both U.S.- and non-U.S.-licensed satellite operators would be subject to associated contractual obligations to a domestic terrestrial wireless provider. Both U.S.- and non-U.S.-licensed satellite operators would similarly need to comply with established regulations and the terms of its license.[217] Given the part 1 leasing requirements we establish herein, we find that it is in the public interest to permit non-U.S.-licensed operators who otherwise meet the entry criteria adopted herein to apply under this framework.[218] Doing so will increase competition and encourage innovation so that SCS technology may be deployed quickly.[219]

69. *Part 1 Leasing Requirement*. In the *Notice*, the Commission proposed that the SCS entry criteria require a part 25 licensee or applicant have on file a part 1 lease arrangement or agreement authorizing its use of frequencies licensed to a terrestrial licensee that holds all co-channel licenses for those frequencies throughout an entire GIA.[220] The Commission also proposed to require that the notifications(s), application(s), and arrangement(s) be approved prior to the lessee's operation for the

[213] Kepler Comments at 9.

[214] Inmarsat, a global satellite service provider that has been acquired by Viasat, as well as Ligado, are examples of GSO operators that have provided MSS within CONUS. *See* FCC, *Space Station Approval List* (updated Oct. 5, 2023), https://www.fcc.gov/approved-space-station-list; Ligado, *Solutions*, https://ligado.com/solutions/. Likewise, Iridium, Globalstar, and ORBCOMM are examples of NGSO operators that have used a constellation of LEO satellites to provide MSS within the United States. *See* Iridium, *Network*, https://www.iridium.com/network/globalnetwork/ (last visited Jan. 11, 2024); Globalstar, *Our Technology*, https://www.globalstar.com/en-us/about/our-technology (last visited Jan. 11, 2024); ORBCOMM, *ORBCOMM OG2*, https://www.orbcomm.com/en/networks/satellite/orbcomm-og2.

[215] *See Notice* at 25, para. 58; Sirius XM Comments at 12; Sirius XM Reply at 6; Viasat Comments at 3; Skylo Comments at 6.

[216] *See* TechFreedom Comments at 13.

[217] *See* AST Reply at 7.

[218] We remind stakeholders that satellite operators intending to enter into either a part 1 spectrum manager or *de facto* transfer leasing arrangement with a terrestrial licensee must meet the applicable foreign ownership eligibility requirements pursuant to section 310 of the Act. *See* 47 U.S.C. § 310 (license ownership restrictions); 47 CFR §§ 1.9020(d)(2)(ii), 1.9030(d)(2)(ii); *see also Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, IB Docket Nos. 97-142, 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891 (1997), recon. denied, 15 FCC Rcd 18158 (2000).

[219] *See* AST Reply at 8.

[220] *See Notice* at 21, para. 48.

purpose of receiving a part 25 SCS license grant.[221] We received various comments about the proposal that satellite operators must provide evidence of a part 1 lease prior to receiving a part 25 license to provide SCS within the United States. Some commenters argue that a lease should not be required for the Commission to issue a license granting partial part 25 authority to launch equipment that will be used to provide SCS.[222] Rather, these commenters prefer a "two-step" licensing model starting with a deployment grant which would not require a lease and followed by an operations grant which would require a lease.

70. Other commenters object to the proposed requirement that a satellite operator must have a part 1 lease with a terrestrial licensee in order to receive any part 25 license to provide SCS. Lynk argues that satellite operators should not be required to enter into a lease before receiving a part 25 license to provide SCS, and instead argues that grant of the part 25 license should be conditioned on the satellite operator having a terrestrial partner for the relevant geographic area prior to provision of SCS.[223] Lynk further argues that requiring a part 1 lease before grant of a part 25 license would stifle competition, add unnecessary regulatory delay in the deployment of satellite networks, and would not meaningfully add any protection for the terrestrial partners.[224] Intelsat rejects requiring a lease entirely, arguing that the Commission should not mandate commercial arrangements as a prerequisite for providing SCS, that this limits the number of SCS providers, and will ultimately cause SCS to be more homogenous and slower to market.[225]

71. We find that it is in the public interest to require satellite operator(s) and terrestrial licensee(s) partners to have a part 1 lease arrangement or agreement on file with the Commission so that the relevant ULS file numbers can be included in the SCS part 25 application. We also find that the lease(s) or agreement(s) must be granted or accepted before the Commission issues the part 25 license or modification of an existing license to both deploy and operate satellites that will provide SCS. Likewise, satellite operators must ensure that the part 1 lease(s) remain valid while the satellite operator provides SCS. The Commission has authority to issue licenses "for the use or operation of apparatus for transmission of energy, or communications, or signals by radio."[226] Establishing an SCS framework in which we would issue a partial grant for only deployment of satellites without authority to transmit or receive communications via spectrum would not align with the traditional part 25 licensing processes or authority of the Commission.[227] Moreover, a two-step part 25 licensing process, as proposed by some commenters, would require duplicative and inefficient use of staff resources.

72. We believe requiring grant or acceptance of a part 1 lease arrangement or agreement prior to granting a part 25 license or modification to provide SCS will best allow the Commission to determine whether an operator can effectively deploy SCS. WTB's process and rules for filing for a part 1 lease arrangement or agreement for use of spectrum were established in 2003 and are well understood by

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[221] *See id.* at 29-30, paras. 70-71.

[222] T-Mobile Reply at 14-17; SpaceX Comments at 7-8; SpaceX Reply at 9; T-Mobile Reply at 14-15.

[223] *See* Lynk Comments at 7; Lynk Reply at 6-7; CCA Reply at 14.

[224] *See* Lynk Comments at 7.

[225] *See* Intelsat Reply at 9.

[226] 47 U.S.C. § 153(49); *see also id.* § 308.

[227] As previously noted, during the pendency of this rulemaking, SpaceX received authorization to deploy its Gen2 NGSO satellites with the capability to utilize certain frequencies that were identified in this proceeding for SCS. The authorization did not cover the provision of SCS. SpaceX was subsequently authorized to engage in experimental operations, but has not, to date, been authorized to provide SCS using these satellites. The grant was issued subject to the outcome of this proceeding. The grant also stated that any action taken or expense incurred as a result of operations is solely at SpaceX's own risk. *See* SpaceX Gen2 SCS Modification Application, ICFS File No. SAT-MOD-20230207-00021, conditions 6 and 11. Regardless of the grant, the satellites deployed by SpaceX would have been launched as part of SpaceX's Gen2 system, operating on separate frequencies.

operators and Commission staff, which will lead to efficient processing.[228] Documents filed with the Commission regarding lease arrangements can also be viewed by the general public, which provides transparency and public notice.[229] Moreover, a lease demonstrates that a terrestrial licensee consents to the satellite operator's use of the spectrum,[230] which will mean that a satellite operator can begin and is actually authorized to provide SCS soon after receiving an SCS part 25 license. Furthermore, in previous Commission decisions we have made clear the rights and responsibilities for both the lessor and lessee for each part 1 lease type, which will ensure that the terrestrial licensee's rights are not infringed upon and create a safeguard against the risk of harmful interference.[231]

73. We recognize that requiring Commission approval of a part 1 lease arrangement or agreement prior to receiving a part 25 license grant, rather than relying on post-grant conditions, may restrict flexibility of satellite operators that wish to find a terrestrial partner once they are already licensed. However, we have determined that the clear rights and responsibilities as it pertains to each party to a part 1 leasing arrangement or agreement, the well-established process of reviewing such arrangements and agreements, and the publicly available information that is filed within a lease notification/application outweigh any purported additional flexibility of alternatives and is necessary at this early stage of SCS development.

74. *Part 25 Application Procedures.* Satellite operators applying for SCS authorization should submit a modification application or an application for a new license that includes a comprehensive proposal for each space station.[232] The comprehensive proposal for each space station in the part 25 SCS application should include the frequencies requested for SCS use and relevant technical details, a plan for orbital debris mitigation, an ITU satellite network filing that covers the relevant provisions of ITU Radio Regulations and the ITU Rules and Procedures,[233] and the relevant part 1 lease arrangement or agreement ULS file number(s)[234] with a brief description of the coverage areas that will be

[228] *See generally Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, WT Docket No. 00-230, Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 20604 (2003) (*First Secondary Markets Report and Order*). These rules have been further streamlined. *See generally Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, WT Docket No. 00-230, Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 17503 (2004) (*Second Secondary Markets Report and Order*).

[229] *First Secondary Markets Report and Order*, 18 FCC Rcd at 20610-13, paras. 12-14.

[230] T-Mobile Reply at 15; Verizon Reply at 10.

[231] *First Secondary Markets Report and Order*, 18 FCC Rcd at 20651-52, 20664, paras. 100-05, 135-37.

[232] *See* 47 CFR § 25.114. *See generally* Letter from Mindel De La Torre, Chief Regulatory and International Strategy Officer, Omnispace, LLC, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-65 et al., at 3-4 (filed Mar. 8, 2024) (Omnispace Mar. 7, 2024, *Ex Parte*) (expressing support for the Commission's decision that part 25 license requires the inclusion and review of a comprehensive proposal prior to authorization).

[233] *See, e.g.,* ITU Radio Regulation No. 4.4, ITU Rules of Procedure at Part A1, AR4, Page 1 (stating that, in No. 1.3, "administrations intending to authorize the use of spectrum under No. 4.4 still have the obligation, under Sections I and II of Article 9, Nos. 11.2 and 11.3, to notify to the Bureau 'any frequency assignment if its use is capable of causing harmful interference to any service of another administration" and ITU Rules of Procedure at Part A1, AR4, Page 2 (stating that, in No. 1.6, "administrations, prior to bringing into use any frequency assignment to a transmitting station operating under No. 4.4, shall determine: a) That the intended use of the frequency assignment to the station under No. 4.4 will not cause harmful interference into the stations of other administrations operating in conformity with the Radio Regulations; b) What measures it would need to take in order to comply with the requirement to immediately eliminate harmful interference pursuant to No. 8.5. When notifying the use of frequency assignments to be operated under No. 4.4, the notifying Administration shall provide a confirmation that it has determined that these frequency assignments meet the conditions referred to above in item a) and that it has identified measures to avoid harmful interference and to immediately eliminate such in case of a complaint").

[234] When the relevant lease ID(s) becomes available, part 25 operators should add the relevant lease ID(s) to the part 25 application file.

served, domestically and internationally. Once SB is satisfied that the application is acceptable for filing, SB will then place the part 25 application on public notice, together with applicable SCS "entry criteria" certifications, and interested parties will have an opportunity to file pleadings in response to the application.[235] SB, together with WTB, will review the part 25 application, associated part 1 lease arrangement(s), and all the pleadings filed in response to the application to determine if the applicant is qualified, if the proposed facilities and operations comply with all applicable rules, regulations, and policies, and if grant of the application will serve the public interest, convenience and necessity.[236] Further, OET will process the requisite equipment certification needed before the commencement of SCS, as needed.[237]

75. Commenters raise concerns about scaling SCS satellite systems under our part 25 license requirements.[238] We believe our current modification process allows license holders to build out their systems, and it remains the responsibility of the license holder to modify and update their licenses as appropriate as systems expand.[239] Likewise, if, during the course of operations, the relevant lease ID(s) change or the coverage areas change, domestically or internationally, satellite operators must file a supplement to their part 25 applications to update that information.

76. We also address our processing round and first-come, first-served rules in the SCS context. Upon review of the record, we conclude that our processing round rules and first-come, first-served procedures are not applicable to requested operations in the SCS Bands.[240] Commenters broadly agree with exempting SCS Bands from processing rounds.[241] For NGSO systems, processing round procedures are designed to allow the secondary market to determine the appropriate amount of spectrum for each NGSO-like system.[242] Because the SCS framework contemplates a relationship between a

[235] *See* 47 CFR §§ 25.151, 25.154; *Notice* at 21-22, para. 49.

[236] *See* 47 CFR § 25.156(a). Proposed facilities and operations must comply with all requirements discussed herein. *See infra* paras. 224-36; *see also* Omnispace Mar. 7, 2024, *Ex Parte* at 3-6.

[237] *See infra* paras. 213-23.

[238] *See* Lynk Comments at 5 (arguing that the Commission expressly "provide for the expansion of systems to provide additional or more comprehensive coverage over time"); Sirius XM Comments at 13-14 (arguing that "the SCS concept should be scalable to permit satellite operators that collaborate with terrestrial operators to expand the types of service they provide over the years as technology evolves"). In the event an applicant applies while an equipment certification for use of devices for the provision of SCS as required at *infra* paras. 213-23 is pending, certification of the equipment by the Commission under all relevant rule parts is required before an operator can provide SCS.

[239] *See* 47 CFR §§ 25.117(a), 25.160(a).

[240] Our current part 25 rules for authorizing new "NGSO-like" systems typically involve a processing round procedure where applicants for licenses or petitions for U.S. market access are considered in groups based on frequencies requested and filing date. *See* 47 CFR §§ 25.137, 25.157; *see also id.* § 25.157(a) (defining the term "NGSO-like satellite operation" as: "(1) Operation of any NGSO satellite system; and (2) Operation of a GSO [geostationary satellite orbit] MSS [mobile-satellite service] satellite to communicate with earth stations with non-directional antennas"). Likewise, license applications for "GSO-like" satellite operation are placed in a queue and considered in the order they are filed, under a first-come, first-served licensing process. *See id.* § 25.158(b); *see also id.* § 25.158(a)(1) (defining the term "GSO-like satellite operation" as "operation of a GSO satellite to communicate with earth stations with directional antennas, including operation of GSO satellites to provide MSS feeder links"). In addition, we note that although the Commission proposed to modify section 25.112(a)(3), 47 CFR § 25.112(a)(3), to permit the filing of applications notwithstanding the non-conformance, *see Notice* at 22, para. 50, this rule has been eliminated, and the proposal is no longer applicable. *See 2023 Satellite and Earth Station Processing Report and Order and Further Notice*, FCC 23-73, at 5-6, para. 11.

[241] AST Comments at 24; SpaceX Comments at 9-10; OneWeb Comments at 2.

[242] *Amendment of the Commission's Space Station Licensing Rules and Policies*, IB Docket No. 02-34, First Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 10760, 10776, para. 29 (2003).

satellite operator(s) and terrestrial licensee(s) to jointly operate in the band for which the terrestrial licensee(s) holds an exclusive license, there is no need for a processing round. Given the terrestrial licensee's rights, no mutually exclusive applicants can seek to share the spectrum for SCS.[243] Under this framework, a processing round would be duplicative since the Commission has already made a determination regarding the exclusive use of the subject terrestrial bands. As such, requested operations in SCS Bands are exempt from our processing round procedures.

77. For the same reason that we find our processing round rules should not apply to NGSO satellites that provide SCS—the terrestrial licensee(s) will already hold exclusive rights to the spectrum being used to provide SCS pursuant to the part 1 lease arrangement or agreement—we similarly find that GSO operators applying under this framework will be exempt from our first-come, first-served rules.[244] Similarly, we clarify that SCS satellite applications should not be subject to competitive bidding because the terrestrial licensee previously gained exclusive use to licenses via competitive bidding or secondary market transactions, and will choose their satellite partner(s) based on contractual arrangements. Thus, no spectrum is being made available for competitive bidding.[245] Finally, frequency bands used for feeder link operations, or any other operations of the satellites in other frequency bands not identified for SCS at this time, may still be subject to processing round or first-come, first-served requirements.[246]

E. SCS: Earth Station Operations

78. In addition to authorizing space station operations, we must also consider a framework for authorizing terrestrial devices to communicate with a space station in the SCS context. In this *Report and Order*, we adopt an approach in which terrestrial devices may be licensed by rule in order to communicate with a satellite for the provision of SCS.

79. Under Article I of the ITU Radio Regulations and section 25.103 of the Commission's rules, an "earth station" is any station located on the earth intended for communications with a "space station."[247] The Commission's rules require that an applicant seek prior authorization before transmitting from an earth station in the United States to space stations.[248] Similar to the Commission's rules, the ITU Radio Regulations and the Communications Act require that the Commission license any transmitting station.[249] As such, the Commission must license terrestrial devices transmitting to or receiving from satellites for the purposes of SCS.

80. Under our existing rules, earth stations are licensed on either an individual or blanket-license basis pursuant to section 25.115 of our rules.[250] Under a blanket license, earth stations may be

[243] *See* SpaceX Comments at 9-10.

[244] 47 CFR § 25.158. Although in the *Notice* the Commission asked about the possibility of amending the first-come, first-served procedure rules for GSO operators seeking to provide SCS, no parties commented. *See Notice* at 22, para. 51 ("For example, should we amend Commission rule sections 25.156, 25.157, or 25.158, or other relevant rules, to reflect our proposed entry criteria, or should we adopt a new rule section?").

[245] *See Notice* at 25-26, para. 60; SpaceX Comments at 10.

[246] *Amendment of the Commission's Space Station Licensing Rules and Policies*, 18 FCC Rcd at 10812, para. 131.

[247] *See* ITU Radio Regulation No. 1.63 ("[E]arth station: A station located either on the Earth's surface or within the major portion of the Earth's atmosphere and intended for communication: with one or more space stations; or with one or more stations of the same kind by means of one or more reflecting satellites or other objects in space."); 47 CFR § 25.103 ("Earth station. A station located either on the Earth's surface or within the major portion of the Earth's atmosphere intended for communication: (1) With one or more space stations; or (2) With one or more stations of the same kind by means of one or more reflecting satellites or other objects in space.").

[248] *See* 47 CFR §§ 25.102(a), 25.115(a)(1)(i).

[249] *See* ITU Radio Regulation No. 18.1; 47 U.S.C. §§ 301, 303 (requiring the Commission to license any transmitting station).

[250] *See* 47 CFR § 25.115.

deployed anywhere within the geographic area specified in the license without site-specific coordination.[251] In light of these requirements, the Commission proposed in the *Notice* "to modify our part 25 rules to require a terrestrial licensee that has partnered with a satellite operator to seek a blanket earth station license for all of its subscribers' terrestrial devices that will operate with space stations, and are otherwise authorized under the terrestrial license."[252] The Commission sought comment on ways to streamline earth station licensing processes and forms for SCS blanket earth station applications with the goal of eliminating any potential burdens on applicants. It also sought comment on alternatives to blanket earth station licensing that would more efficiently and effectively authorize SCS communications from terrestrial devices, consistent with our international obligations and statutory mandates.[253] Commenters generally oppose the Commission's blanket licensing proposal.[254]

81. Some commenters argue that blanket licensing under part 25 is unnecessarily burdensome. For instance, SpaceX contends that blanket licensing of every terrestrial device as an earth station would require terrestrial providers to license all of their terrestrial devices twice, would require SB staff to process an endless stream of new earth station applications to keep pace with the incredibly rapid and innovative product lifecycle in the terrestrial device market, and would be inconsistent with the Commission's priority of streamlining and simplifying satellite earth station licensing.[255] Similarly, commenters argue that there should be no new earth station authorization for terrestrial devices because the terrestrial devices and network are already authorized by the Commission and there would be no modifications to the operating parameters for the devices to transmit to and receive from SCS satellites. For example, Verizon argues that there is no practical reason to impose blanket earth station licensing requirements on terrestrial devices.[256] Verizon further contends that wireless providers' off-the-shelf terrestrial devices were designed with a solely terrestrial-based network in mind, and already comply with applicable terrestrial requirements and equipment authorizations.[257] Further, AST notes that terrestrial devices, as earth stations, will not require any modification to transmit to and from satellites, and they are

[251] An application for transmitting earth station authority must be filed on FCC Form 312, Main Form and include a Schedule B. Earth station applicants must include any certifications, showings, or other information required by section 25.115. If the Commission finds a license application acceptable for filing, it will be placed on public notice. After review and consideration of any petitions or comments filed on an application, the Commission will grant the application if doing so will serve the public interest, convenience, and necessity.

[252] *Notice* at 27-28, para. 64.

[253] *Id.* at 24, 28, paras. 61, 66.

[254] *See, e.g.*, AT&T Comments at 19-20; OneWeb Comments at 3 *(*arguing that the Commission should "follow[] the model of how handsets are licensed in terrestrial area licensed systems," i.e., receive "Part 2 equipment approval and then . . . operate under the terrestrial licensee's authorization"); Verizon Comments at 14 (arguing that handsets were designed for terrestrial use, and they comply with terrestrial requirements, "so there is little risk that these devices would be in any way unregulated or cause harmful interference to other incumbent operations"); T-Mobile Comments at 8-9 (contending that handsets are very different from "what the Commission has historically regulated as earth stations"); SpaceX Comments at 13-14 (arguing that there is no need to require mobile carriers to obtain new satellite earth station authorizations for handsets); CTIA Reply at 11 (submitting that devices should be exempt from Part 25 requirements because "[n]othing about the maximum output power, transmit signal quality, radiofrequency spectrum emissions, receiver sensitivity, blocking characteristics, or any other user equipment performance specification will change due to the introduction of SCS into the mobile wireless ecosystem"); Letter from Steve B. Sharkey, Vice President, Government Affairs, Technology and Engineering Policy, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-65 (filed Jan. 18, 2024) (T-Mobile Jan. 18th, 2024, *Ex Parte*) (reiterating that blanket earth station licenses for handsets would serve no regulatory or practical purpose and be unnecessary and duplicative).

[255] SpaceX Comments at 13-14.

[256] Verizon Reply at 8.

[257] *Id.* at 8-9.

already licensed under parts 24 and 27 of the Commission's rules.[258]

82. T-Mobile and other commenters argue that the terrestrial devices communicating with satellites should not be treated as earth stations under the Commission's rules. T-Mobile argues that because there is little relationship between a terrestrial or IoT device and what the Commission has historically regulated as earth stations, the Commission should not require licensing of terrestrial devices that communicate with SCS satellites as earth stations.[259] In addition, T-Mobile contends that every terrestrial device that is also capable of accessing a satellite network would already be licensed to the terrestrial provider.[260] Further, AT&T contends that the Commission's premise that terrestrial devices communicating with space stations would be operating as earth stations in a space service is incorrect. In other words, AT&T contends that terrestrial devices are not earth stations because they are "intended" for communications with other terrestrial devices, and only periodically communicate with space stations.[261] Additional commenters take similar stances opposing the blanket licensing approach for terrestrial devices.[262]

83. Some commenters contend that, because SCS will be a supplemental service, the terrestrial devices are designed with the intent to communicate with terrestrial networks and only sporadically with satellites—but are not designed with the primary intent to do so—and, as such, do not require earth station licenses.[263] We disagree with this interpretation. If a provider designs a network to enable the ability for a given terrestrial device to communicate with a satellite and intends, even just for supplemental purposes, for the device to communicate with a satellite for a particular service, the device is intending to communicate with a satellite. Simply because a service or use by the device is secondary or supplemental does not make that service or use unintentional.[264] Because the terrestrial device will be both receiving from and transmitting to satellites, the Commission is required to license it as an earth station.

84. In striving to reach our goal of effectively authorizing SCS, we note that the Commission can choose the best and most efficient method of licensing the devices as earth stations under its rules, so long as the Commission "maintain[s] . . . control . . . over all the channels of radio transmission . . ." and acts in the public interest.[265] In the *Notice*, although the Commission proposed a blanket licensing framework, it also requested comment on alternative licensing processes that may be more efficient, but still consistent with our rules and obligations.[266] After review of the record, we agree with commenters that a blanket licensing framework in which licensees would need to submit applications to request blanket authority would be unnecessary and unduly burdensome. Instead, we adopt a "license by rule" approach for earth station licenses for terrestrial providers' subscriber devices[267] communicating with

[258] AST Comments at 24-26.

[259] T-Mobile Comments at 8-9.

[260] *Id.* at 9.

[261] AT&T Comments at 21-22.

[262] *See, e.g.*, OneWeb Comments at 3 (arguing that the Commission should "follow[] the model of how handsets are licensed in terrestrial area licensed systems"); SpaceX Comments at 13-14; Lynk Reply at 8-9; CTIA Reply at 11.

[263] AT&T Comments at 19-20; T-Mobile Comments at 8-9.

[264] Note, the Commission recognizes that there are times when a user will use a device outside of its manufacturer's or operator's intended purpose (i.e., in violation of an equipment authorization or terms of use). The intentional communication between a terrestrial device and satellite even just for supplemental coverage, would not be unintentional use under the rules we adopt here today or existing Commission interpretations.

[265] *See* 47 U.S.C. § 301.

[266] *Notice* at 28, para. 66.

[267] The rules we adopt today use the term "SCS earth stations" to refer to terrestrial operators' subscriber devices which connect to an SCS network. *See* Appx. B (amending 47 CFR § 25.103 to define "SCS earth stations").

space stations for the purpose of SCS.[268] We find that this approach will allow the Commission to effectively and efficiently authorize SCS communications from terrestrial devices acting as earth stations, consistent with our international obligations and statutory mandates.

85. All parties who comment on the downsides of the part 25 blanket licensing proposal support an efficient alternative to blanket licensing. As some commenters point out, devices are covered under the terrestrial wireless licensee's authorization and the technical parameters of devices are already part of the equipment authorization process administered by OET.[269] Commenters suggest that filing a second application that contains materially the same information in the licensee's equipment authorization would not result in any change to the spectrum or interference environment and would be unduly burdensome and unnecessary. Commenters also suggest that a part 25 blanket license would not serve the public interest or the Commission's goal of streamlining earth station and space station applications.[270] Similarly, as OneWeb points out, a method of license by rule for terrestrial devices already exists.[271]

86. The Commission recognizes that it is difficult for operators to predict the quantity or type of terrestrial devices that will be capable of SCS in the future when an initial earth station application is submitted.[272] In addition, we recognize that requiring blanket licensing may be a burden to both applicants and Commission staff if it required further action every time a modification or application is filed for earth stations.[273] And we are mindful that this could present roadblocks and ultimately slow down deployment of SCS.[274] Thus, based on the record before us, we will not require part 25 blanket licensing of terrestrial devices as earth stations for SCS.

87. Today, we adopt a license by rule approach for terrestrial devices as earth stations communicating with a satellite network for the purposes of SCS. Specifically, so long as the terrestrial devices connecting to the SCS network are doing so pursuant to an effective part 1 leasing arrangement or agreement and are operating within the existing technical parameters of their OET equipment authorization, the terrestrial licensee's license parameters, and applicable part 22, 24, or 27 rules, then those devices will be licensed as earth stations by rule without the need to file a part 25 earth station

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[268] Because we adopt a license by rule approach, and therefore no specific entity will be applying or holding an earth station license for the purpose of SCS, we do not address at this time whether the terrestrial licensee or space station licensee should be the applicant and holder of such a license. However, this does not preclude us from revisiting this in future proceedings should specific and affirmative licensing of terrestrial devices as earth stations for the purpose of SCS be necessary.

[269] Apple Inc. Comments, GN Docket No. 23-65, at 8 (rec. May 14, 2023) (Apple Comments); T-Mobile Comments at 9-10; Verizon Reply at 8-9; SpaceX Comments at 13.

[270] T-Mobile Comments at 8-10; SpaceX Comments at 3; Verizon Reply at 8-9; AT&T Reply at 11; Letter from Jameson Dempsey, Principal, Satellite Policy, SpaceX, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-65 et al., at 2 (filed Mar. 8, 2023) (SpaceX Mar. 8, 2023, *Ex Parte*) (requiring a part 25 blanket license "would duplicate existing authority, add significant administrative burden on applicants and staff alike, needlessly complicate deployment of beneficial services, and require a continual stream of modifications to accommodate inevitable and ongoing innovation in the mobile handset market"); Letter from Steve B. Sharkey, Vice President, Government Affairs, Technology and Engineering Policy, T-Mobile, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-65 et al., at 4-5 (Jan. 11, 2024) (stating that requiring a part 25 blanket license "will serve no purpose" and would be "unnecessary and duplicative"). *See generally Expediting Initial Processing of Satellite and Earth Station Applications*, IB Docket Nos. 22-411, 22-271, Notice of Proposed Rulemaking, 37 FCC Rcd 15167, 15172-73, para. 16 (2022).

[271] OneWeb Comments at 3.

[272] T-Mobile Comments at 8 ("[M]any terrestrial licensees are not even aware of some of the mobile devices that are being used on their networks, such as bring-your-own devices, making it impossible to obtain a Part 25 authorization for those devices.").

[273] *See* AT&T Comments at 4.

[274] *See id.* at 4; SpaceX Comments at 13-14.

application for additional authority.[275] We adopt these rules as 47 CFR § 25.115(q) and 47 CFR § 25.125(e).[276]

F. Leasing

88. In the *Notice*, the Commission proposed to leverage the Commission's secondary markets rules to facilitate the provision of SCS on a terrestrial licensee's exclusively-licensed spectrum operating in a relevant GIA.[277] The Commission recognized that our proposed leasing framework may not squarely fit within the existing leasing regimes because we would be authorizing satellite operators, to enter into leasing arrangements.[278] It also noted that the intent of SCS is to supplement coverage to a terrestrial licensee's subscribers, and sought comment on whether our leasing rules require amendment to effectuate SCS.[279]

89. In this *Report and Order*, we authorize SCS based on a lease arrangement or agreement between one or more terrestrial licensees and one or more satellite operators. The fundamental basis of this SCS lease requirement is that a wireless license conveys to a licensee the right to operate on a given set of frequencies in a particular geographic license area. Based on our existing rules, those rights are limited to terrestrial transmissions. However, utilizing the framework we adopt today, we will permit terrestrial licensees to lease access to these frequencies to a satellite operator, enabling space-based transmissions for the purpose of filling in gaps in the terrestrial licensee's coverage of its license area. In order to enable these SCS deployments, today we adopt rules that will allow terrestrial licensees that independently or together hold all co-channel licenses on the relevant band in a GIA to enter into a leasing arrangement with a one or more satellite operators for the provision of SCS within that GIA.

90. Specifically, we adopt a two-pronged methodology by which a single or multiple co-channel terrestrial licensee(s) may enter into a leasing arrangement for the provision of SCS. Under the first leasing method, we enable a single terrestrial licensee who holds all co-channel licenses on the relevant band in a GIA to enter into either a spectrum manager or a *de facto* transfer leasing arrangement with one or more satellite operators. Under the second leasing method, we provide parties with additional flexibility in structuring spectrum leasing arrangements by permitting spectrum manager or *de facto* leases, subject to the procedures we adopt herein, where there are multiple co-channel licensees on the relevant band in a GIA working with a single satellite operator. Both methods, whether there is a single licensee or multiple co-channel licensees, will be subject to the rules and procedures that we adopt today.

91. We believe that the entry criteria we establish today, and the framework that we set forth, will aid in advancing the general goals set forth in the Commission's *Secondary Markets Policy Statement*: to significantly expand and enhance secondary markets in a manner that aligns with our public interest objectives in order to permit spectrum to flow more freely among users and uses in response to

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[275] Licensees must operate within any associated conditions of the underlying terrestrial licensee authorization and/or equipment authorization. A satellite operator with SCS authorization via a market access grant will be able to avail themselves of the rules we adopt here today but, in addition to the above mentioned parameters, must also operate within any additional parameters included in its space station market access grant.

[276] All applicants must first satisfy relevant technical rules and be authorized for use as devices under part 25 of the Commission's rules. *See infra* paras. 213-23. To be clear, as described in this *Report and Order*, manufacturers must modify existing equipment authorizations for previously certified terrestrial devices to reflect those devices' approval to operate under a part 25 MSS allocation and service rules. *Id.* Applicants seeking new authorizations should include a request for part 25 on future certification applications for equipment that is capable of SCS operations.

[277] *Notice* at 28-29, para. 68.

[278] *Id.* at 28-30, paras. 68-71.

[279] *Id.* at 29-30, paras. 69-70.

economic demand.[280] We also believe that this approach will enable the public interest benefits of SCS—namely providing gap coverage where terrestrial networks do not reach and improving access for first responders and public safety entities to those in need of assistance in hard-to-connect areas—and we therefore find that allowing terrestrial licensees to enter into leasing arrangements with entities for the provision of SCS will not only enable the provision of new and diverse services and applications, but will also serve the public interest by permitting additional spectrum users to gain access to spectrum.

1. Authorizing SCS Operations by Part 1 Spectrum Leasing Arrangements

92. As a core component of our decision today to adopt a framework that authorizes SCS, we amend our part 1 leasing rules to permit terrestrial licensees to lease terrestrial spectrum rights to satellite operators for the purpose of providing SCS. We also adopt an alternative to the leasing structure that will enable FirstNet to utilize SCS by submitting proof of its contractual agreement(s). Finally, we decline to allow terrestrial licensees to utilize operating agreements in lieu of a leasing arrangement.

93. In the *Notice*, the Commission explained that a terrestrial licensee has the exclusive right to use its spectrum in its authorized geographic area, but the terrestrial licensee is not currently authorized under part 25 of the Commission's rules to operate a space station to close coverage gaps in its network.[281] Because of this, the Commission sought general comment on the extent to which our current leasing rules require amendment to effectuate SCS.[282] In particular, the *Notice* asked whether we should amend the definition of a spectrum lessee under section 1.9003 of the Commission's rules to specifically include in the definition of spectrum lessee a satellite operator that collaborates with a terrestrial licensee/lessor to provide SCS.[283] The Commission also sought comment on whether we should amend the definition of spectrum leasing arrangement to specifically include leases involving the provision of SCS.[284] No commenters addressed these questions. We do not believe that the definition of "spectrum lessee" or of "spectrum leasing arrangement" requires revision to enable SCS. We find that these two definitions, as currently written, are broad enough to encompass and authorize the SCS leasing framework that we adopt today.

94. In seeking comment on extending our part 1 leasing rules to the provision of SCS, the Commission also proposed to require licensees providing SCS to use the Commission's existing leasing regime, and sought comment on whether all aspects of the regime are appropriate in this novel context, or whether certain refinements are necessary.[285] Many commenters express support for this proposal, calling for the use of our current spectrum leasing framework to effectuate SCS partnerships.[286] Similarly, commenters agree that leasing arrangements are a crucial part of the entry requirements that we adopt today and agree that satellite operators must have a lease agreement prior to obtaining satellite

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[280] *See generally Principles for Promoting Efficient Use of Spectrum by Encouraging the Development of Secondary Markets*, Policy Statement, 15 FCC Rcd 24178 (2000) (*Secondary Markets Policy Statement*).

[281] *Notice* at 28-30, paras. 68-71.

[282] *Id.* at 28-30, paras. 68-71.

[283] *Id.* at 29, para. 69. Section 1.9003 defines a "spectrum lessee" as "[a]ny third-party entity that leases, pursuant to the spectrum leasing rules set forth in this subpart, certain spectrum usage rights held by a licensee. This term includes reference to third-party entities that lease spectrum usage rights as spectrum sublessees under spectrum subleasing arrangements." 47 CFR § 1.9003.

[284] *Notice* at 29-30, para. 70. Section 1.9003 defines a "spectrum leasing arrangement" as "[a]n arrangement between a licensed entity and a third-party entity in which the licensee leases certain of its spectrum usage rights in the licensed spectrum to the third-party entity, the spectrum lessee." 47 CFR § 1.9003.

[285] *Notice* at 29-30, para. 70.

[286] *See generally* SpaceX Comments at 11-13; T-Mobile Comments at 12-13; Verizon Comments at 8-9; AST Comments at 26-28; AT&T Comments at 22-23; CTIA Comments at 12-13; DISH/EchoStar Comments at 5; T-Mobile Reply at 7-8.

authorization modifications.[287] Commenters believe that the current leasing framework extends requirements to lessees requiring them to refrain from and mitigate operations that create harmful interference, and makes the lessor responsible for compliance with the statutory demands and Commission rules.[288] Further, commenters support the use of our existing leasing rules because it will encourage secondary market transactions and provide the necessary flexibility to craft these new arrangements.[289] We agree, and think that the expansion of our leasing framework that we adopt today will promote administrative efficiency and enable the rapid provision of SCS on a terrestrial licensee's exclusive-use spectrum.

a. Single and Multiple Co-Channel Terrestrial Licensee Parameters

95. In order to effectuate the SCS leasing framework and to afford stakeholders with clarity regarding the process, we adopt a two-pronged approach by which a single terrestrial licensee or multiple co-channel terrestrial licensees may enter into one or more leasing agreements for the provision of SCS. Specifically, under the first leasing method, we enable a single terrestrial licensee who holds all co-channel licenses on the relevant band in a GIA to enter into either a spectrum manager or a *de facto* transfer leasing arrangement with one or more satellite operators which will then provide SCS on frequencies in a GIA for which the terrestrial licensee holds all of the licenses. Under the second leasing method, we provide parties with additional flexibility in structuring spectrum leasing arrangements by permitting spectrum manager or *de facto* transfer leases where there are multiple co-channel licensees on the relevant band in a GIA and all licensees holding co-channel licenses in the GIA are participating in the SCS partnership. Both methods, whether there are one or more co-channel licensees, will be subject to the rules and procedures that we adopt herein. In addition, the lessee and lessor should adequately describe the leasing arrangement as an attachment to the FCC Form 608, and include: (1) a certification that the parties are entering into the leasing arrangement for the purpose of fulfilling the part 25 entry criteria; (2) a description of which method, single or multiple terrestrial licensee, the parties are utilizing to meet the part 25 entry criteria; and (3) if the parties are utilizing the multiple terrestrial licensee

[287] CTIA Comments at 12-13; AT&T Comments at 10-11; DISH/EchoStar Comments at 4; CTIA Reply at 4-6; Verizon Reply at 9; Letter from Henry G. Hultquist, Vice President-Federal Regulatory, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-65 et al., at 1-2 (filed Feb. 20, 2024) (AT&T Feb. 20, 2024, *Ex Parte*).

[288] SpaceX Comments at 12 (explaining that under the part 1 leasing rules, "the mobile carrier has the incentive to ensure that SCS complies with applicable service rules and the terms of the underlying license, providing a strong safeguard against harmful interference"); T-Mobile Comments at 12-13; Verizon Comments at 8-9; AST Comments at 26-28; CTIA Comments at 12-13 ("requiring a spectrum lease agreement to be in place will help mitigate the risk of harmful interference in a given terrestrial band, which will allow for a more streamlined authorization process for SCS operations"); AST Reply at 6-8; CTIA Reply at 5-6 (requiring a leasing arrangement "as a prerequisite for any SCS authorization will protect consumers' interest in interference-free mobile broadband and the terrestrial licensees' reasonable investment-backed expectations in a continued ability to serve the public").

[289] SpaceX Comments at 11-13 ("The Commission should preserve the flexibility inherent in its secondary markets rules . . ."); Verizon Comments at 8-9 ("The approach outlined [in Verizon's comments], is well-known, and will easily accommodate arrangements between terrestrial wireless licensees and satellite operators."); AST Comments at 26-28 ("AST SpaceMobile supports the licensing and leasing framework set forth by the Commission and agrees that partnerships between terrestrial licensees and satellite operators present the best opportunity to leverage the potential of SCS."); CTIA Comments at 12-13 ("As the Commission has found, existing secondary-market rules provide ample flexibility for leasing arrangements, and these rules can be used seamlessly for introducing new SCS operations."); AT&T Comments at 22-23 ("The Commission's proven secondary market policies play a crucial role in allowing providers 'to gain ready access to spectrum,' thereby 'enabl[ing] provision of new and diverse services and applications to help meet the ever-changing needs of the public.'"); DISH/EchoStar Comments at 5; CTIA Reply at 5-6 ("[T]he Commission's secondary-market rules provide ample flexibility for all manner of commercial agreements, including leasing arrangements, and the Commission can rely upon these provisions to accelerate the deployment of new SCS operations while protecting consumers of terrestrial mobile services against harm."); Verizon Reply at 9-10; T-Mobile Reply at 7-8.

method, the parties should: (a) describe the nature of the leasing arrangement(s); and (b) demonstrate how the entirety of the GIA is covered by the lease arrangement(s).

96. Under either method, we require that there are leases covering the entire area of the GIA in order to meet the part 25 entry criteria. Further, a terrestrial licensee's license gives it the right to serve a given geographic area using particular frequencies, as such SCS service would be limited to those frequencies and that area.[290] This means that the SCS leasing framework that we adopt today would not allow SCS operations outside the specific frequencies and license areas described in the underlying terrestrial licenses.[291] We believe this decision further alleviates the concerns raised by stakeholders regarding the potential for interference from geographically-adjacent, co-channel licensees.

97. *Single Terrestrial Licensee.* Under the first leasing method, we will allow licensees to enter into a spectrum manager or *de facto* transfer leasing arrangement with one or more satellite operators where the single terrestrial licensee holds all co-channel licenses on the relevant band in a GIA. This leasing method limits the provision of SCS to instances where a single terrestrial licensee holds all co-channel licenses in the relevant band throughout one of six GIAs. We expect that these SCS leasing arrangements would be largely the same as the leasing agreements that terrestrial wireless licensees/lessors use under our current rules. The limitations built into the framework we adopt today—with regard to the amount of spectrum and geographic area that may be leased—will ensure SCS can evolve in the environment most amenable to rapid success. We find that this method minimizes the risk of harmful interference between geographically adjacent markets and allows SCS to be provided without the presence in each GIA of co-channel licenses requiring interference protection.[292]

98. Terrestrial licensees that hold all co-channel licenses in the relevant band in a GIA are afforded the flexibility of entering into a spectrum manager or a *de facto* transfer leasing arrangement utilizing the existing leasing application/notification requirements. Moreover, in an effort to refrain from implementing more limitations, we will allow terrestrial licensees engaged in this first leasing method the opportunity to enter into leasing arrangements with more than one satellite operator to provide SCS over a GIA. We believe that allowing the terrestrial licensees to lease to more than one satellite operator will give terrestrial licensees more flexibility to respond to consumer demand for SCS services, and thus, will allow the marketplace to drive the spectrum to its most efficient use.[293] We encourage prospective SCS

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[290] *Notice* at 30, para. 71.

[291] Given the unique licensing structure of the 800 MHz Cellular band, this results in some "unserved areas" being ineligible for SCS. *See generally Amendment of Parts 1 and 22 of the Commission's Rules with Regard to the Cellular Service, Including Changes in Licensing of Unserved Area; Amendment of the Commission's Rules with Regard to Relocation of Part 24 to Part 27 et al.*, WT Docket No. 12-40 *et al.*, Second Report and Order, Report and Order, and Second Further Notice of Proposed Rulemaking, 32 FCC Rcd 2518, 2520-21, paras. 1-4 (2017); *id.* at 2521, para. 4 n.10 (explaining that 800 MHz licensees have the opportunity to expand their service coverage without prior authorization). Lynk suggests that 800 MHz Cellular licensees should be permitted to expand their license area to provide purely SCS-based services in adjacent unserved areas despite the area not currently being covered by their license. Lynk Comments at 10. We believe this proposal increases the legal and technical concerns created by SCS and decline to adopt this proposal, though we note, as discussed above, that we may permit SCS in GIAs which have small unserved areas under certain circumstances. *See supra* note 171.

[292] *See Notice* at 20, para. 45; *see also First Secondary Markets Report and Order*, 18 FCC Rcd at 20609-10, para. 9 ("[L]icensees in the Wireless Radio Services covered herein may lease some or all of their spectrum usage rights to third parties, for any amount of spectrum and in any geographic area encompassed by the license, and for any period of time within the term of the license.").

[293] *See generally* SpaceX Comments at 11-13; AT&T Comments at 15-17; AST Comments at 11-12 ("[T]he Commission should permit SCS services in geographic regions with less than full-CONUS coverage when the satellite operator demonstrates that it will not interfere with adjacent users."); Aalyria Comments at 5-6 (stating that the Commission's initial proposal to limit the entry criteria to a single terrestrial licensee that holds all of the co-channel licenses in the band throughout the relevant GIA will constrain competition); Kepler Comments at 2-3;

(continued….)

lessees and licensees to review the specific policies and procedures that we adopt today as we further clarify the rights and responsibilities of terrestrial licensees and space station operators as they relate to the provision of SCS.

99. *Multiple Co-Channel Terrestrial Licensees.* Under the second leasing method, we will allow licensees to enter into a spectrum manager or *de facto* transfer leasing arrangement with a satellite operator where there are multiple co-channel terrestrial licensees who together hold all licenses on the relevant band in a GIA. We expect that expanding our SCS licensing framework from the original proposal to include not only single licensee arrangements, but multiple licensees that collectively hold all co-channel licenses in a particular band throughout one of six GIAs, will incentivize SCS collaborations and allow additional licensees to participate, while still minimizing the risk of harmful interference.

100. Under this second SCS leasing framework, we reiterate that this method only works for the purpose of meeting the part 25 entry criteria where there are leases covering *all* relevant co-channel licenses in the GIA. We further emphasize that the rights and responsibilities of terrestrial licensees and satellite operators are the same as in a single licensee context, except that, where multiple licensees hold co-channel licenses in the GIA, the entire GIA must be covered by one or more lease arrangements with the satellite operator.[294] The leasing arrangements under the multiple licensee method that we adopt today may only be entered into under Model 1 or Model 2, discussed below.

101. *Multiple Co-Channel Terrestrial Licensee Model 1.* One terrestrial licensee holding a license in a GIA may enter into a spectrum manager or *de facto* transfer leasing arrangement with each of the other co-channel licensees in that GIA. Once the terrestrial licensee has entered into a leasing arrangement with all of the co-channel licensees in that GIA, the terrestrial licensee may then sublet to a satellite operator for the purpose of meeting our part 25 entry criteria.

- Example 1: Where there are only two co-channel licensees (A and B) on the relevant channel in a GIA, Licensee A may enter into a lease arrangement with Licensee B to lease access to the relevant frequencies throughout all of Licensee B's licenses in that GIA. Licensee A then subleases those frequencies—along with leasing those under its own license—to the satellite operator.
- Example 2: Where there are more than two co-channel licensees (A, B, C, and D) on the relevant channel in a GIA, Licensee A may enter into separate leasing arrangements with each of the co-channel licensees. As relevant for this example, this means that Licensee A must enter into a distinct leasing arrangement with each of the co-channel licensees, such that Licensee A enters into a leasing arrangement with: (1) Licensee B to lease access to the relevant frequencies throughout all of Licensee B's licenses in that GIA; (2) Licensee C to lease access to the relevant frequencies throughout all of Licensee C's licenses in that GIA; and (3) Licensee D to lease access to the relevant frequencies throughout all of Licensee D's licenses in that GIA. Once Licensee A has entered into leasing arrangements with Licensee B, C, and D, Licensee A then subleases those frequencies—along with leasing those under its own license—to the satellite operator.
- Example 3: A third party, X, may enter into individual lease arrangements with all relevant co-channel licensees, and then sublease to the satellite operator. This parallels Example 2 above as Third Party X must still enter into leasing arrangements with all of the relevant co-channel licensees and must have leases that cover all of the relevant licenses in that GIA.

Lockheed Martin Comments at 10; OptimERA Reply at 4-5; Nsighttel Wireless, LLC d/b/a Cellcom Reply, GN Docket No. 23-65, at 7 (rec. June 12, 2023) (Cellcom Reply); CCA Reply at 9; Lynk Feb. 16, 2024, *Ex Parte*.

[294] We note that the rights as it pertains to terrestrial licensees and satellite operators also differs in certain instances as it pertains to the ability to sublet. *See infra* paras. 120-22.

102. *Multiple Co-Channel Terrestrial Licensee Model 2.* A satellite operator may enter into individual leasing arrangements with each co-channel licensee that holds a license on the relevant band in the GIA.

- Example 1: Where there are only two co-channel licensees (A and B) on the relevant channel in a GIA, the satellite operator may enter into a lease arrangement with Licensee A and then separately enter into a lease arrangement with Licensee B. The leases must cover all of the relevant licenses in that GIA.
- Example 2: Where there are more than two co-channel licensees (A, B, and C) on the relevant channel in a GIA, a satellite operator may enter into separate leasing arrangements with each of the co-channel licensees. As relevant for this example, this means that the satellite operator must enter into a distinct leasing arrangement with each of the co-channel licensees, such that the satellite operator enters into a leasing arrangement with: (1) Licensee A to lease access to the relevant frequencies throughout all of Licensee A's licenses in that GIA; (2) Licensee B to lease access to the relevant frequencies throughout all of Licensee B's licenses in that GIA; and (3) Licensee C to lease access to the relevant frequencies throughout all of Licensee C's licenses in that GIA. The satellite operator must enter into leasing arrangements with Licensee A, B, and C that covers all of the relevant licenses in that GIA.

103. We stress that, while single-licensee arrangements include the option for multiple satellite operators at the terrestrial licensee's discretion, where there are multiple licensees controlling the co-channel licenses in a GIA, they may not enter into lease arrangements with multiple satellite operators to provide SCS over the GIA. In other words, there may be *either* multiple terrestrial licensees or multiple satellite operators providing SCS in a given GIA on a given channel, but there may not be multiple of *both*. This requirement will ensure a single SCS network—maintained by a single controlling terrestrial licensee or satellite operator—in a given channel in a given GIA, rather than an arrangement whereby multiple licensees and multiple satellite operators could work to carve up a GIA into smaller areas, each with their own SCS networks operating simultaneously. As the marketplace for—and technology enabling—SCS develops, we can examine and revisit this requirement to determine if this level of complexity is sustainable.

104. We also again emphasize that if a terrestrial licensee chooses to utilize Model 1 or a satellite operator chooses to utilize Model 2, it must ensure that the leasing arrangements encompass all of the relevant licenses on the relevant band in that GIA. We caution prospective SCS lessors and lessees that meeting the part 25 entry criteria we adopt today is conditioned on a showing of leases that cover every license within the specific GIA where SCS will be offered. We continue to believe that this showing is necessary so that SCS can be provided without the need for additional complex protection requirements for geographically-adjacent co-channel licenses. We suggest that prospective SCS lessees and licensees should review the specific policies and procedures that we adopt today as we further clarify the rights and responsibilities of terrestrial licensees and satellite operators as it relates to the provision of SCS.

b. FirstNet SCS Authorization

105. In the *Notice*, the Commission sought comment on incorporating FirstNet's 700 MHz public safety spectrum (the 758-769/788-99 MHz band, sometimes referred to as "Band 14") into the SCS framework.[295] It also proposed to require licensees providing SCS to use the Commission's existing leasing regime, and sought comment on whether certain refinements to that regime are necessary, given

[295] *Notice* at 17, para. 35.

the novel nature of SCS.[296] In response, commenters expressed support for allowing FirstNet to take full advantage of SCS's potential.[297] FirstNet urged the Commission to authorize Band 14 for the provision of SCS noting that this would provide the "potential to 'create significant public safety benefits,' especially during emergency events and response."[298] Nextivity stated the public interest would be best served by "extending the opportunity to provide FirstNet coverage from space" especially since the "notion of an ever evolving network" is "built into the very establishment of FirstNet's enabling statute."[299] Similarly, AST encouraged the Commission to authorize SCS on Band 14 to "enhance the communication capabilities of first responders."[300]

106. We are authorizing SCS on FirstNet's licensed frequencies in the 700 MHz band for the purpose of providing broadband connectivity to first responders because we believe that allowing FirstNet to utilize SCS can serve a critical public safety need by improving access for first responders and public safety entities.[301] However, in doing so, we recognize that FirstNet's unique structure does not fit squarely within the part 25 entry criteria that we adopt today—requiring that a satellite operator have a part 1 lease notification/application on file.[302] In its comments, FirstNet explains that the SCS part 1 leasing framework "is not applicable in the Band 14 context."[303] Instead, FirstNet states that "any arrangement to utilize Band 14 for SCS would need to be through a contractual relationship" pursuant to the 2012 Act regulatory framework.[304]

107. We find that it is in the public interest to allow FirstNet to satisfy the leasing arrangement requirement by demonstrating to the Commission that it and its terrestrial partners have entered into contractual agreements which together authorize the relevant satellite operator to provide SCS on the frequencies licensed to FirstNet. We emphasize that we are authorizing FirstNet to utilize an alternative to our part 1 leasing requirement solely because FirstNet's license and operating structure is unique and not well-suited to a leasing requirement.[305] We also find that enabling SCS on FirstNet spectrum will provide significant public safety benefits which justify this alternate path, such as enhancing public safety

[296] *Id.* at 29-30, paras. 70-71 (proposing to require licensees providing SCS to use the Commission's existing leasing regime and seeking comment on whether certain refinements to that regime are necessary, given the novel nature of SCS).

[297] Nextivity Comments at 3-4; FirstNet Comments at 2-4; AT&T Reply at 12-13; BRETSA Comments at 7-8; AST Reply at 17-20; Lynk Reply at 3-6; CTIA Reply at 4 n.11.

[298] FirstNet Comments at 3-4.

[299] Nextivity Comments at 3-4 (stating that the public interest would be best served by "extending the opportunity to provide FirstNet coverage from space"); *id.* at 3-4 n.11 (citing Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, 206 (2012) (codified at 47 U.S.C. § 1422(b)) ("The nationwide public safety broadband network shall be based on a single, national network architecture that evolves with technological advancements . . .")).

[300] AST Reply at 17 ("Authorizing SCS in Band 14 also advances FirstNet's public safety objectives by enabling first responders nationwide to enjoy seamless communications in the immediate aftermath of disasters.").

[301] *See supra* paras. 35-37.

[302] *See supra* paras. 69-73.

[303] FirstNet Comments at 3-4 ("To meet its statutory mandate, the FirstNet program provides prioritized primary access to public safety users—with access to Band 14 for AT&T's non-public safety use on a secondary basis only, pursuant to contract—so that first responders and other public safety entities have access to and use of the FirstNet network when and where they need it without competing with commercial users."); AT&T Feb. 20, 2024, *Ex Parte* at 1 n.2.

[304] FirstNet Comments at 3-4.

[305] *See generally* 47 U.S.C. § 1428(a).

communications in rural and unserved areas, during emergency situations, or during national disasters.[306] Thus, to participate in this framework, FirstNet should make a filing associated with its license in ULS, explaining that it has entered into agreement(s) to provide for SCS and is seeking to enable that service.[307] This filing should: (1) describe the manner in which FirstNet has conveyed to its satellite partner an authorization to utilize the 758-769/788-799 MHz band or portions of the band; (2) identify and describe the geographic area(s) and nature of the proposed SCS operations; and (3) demonstrate how, under the agreement, the rights and responsibilities of the satellite operator are substantively the same as those of a part 1 lessee.[308]

108. In addition to the ULS filing, to participate in SCS, FirstNet's satellite operator partner must obtain a new part 25 license or modify an existing part 25 license, as set forth in the SCS entry criteria.[309] The FirstNet SCS part 25 application should refer to FirstNet's ULS filing for SCS. In the same manner as other SCS operations, the terrestrial devices used for FirstNet would qualify as "licensed by rule" earth stations under the new provisions of part 25. Similarly, the part 25 filing related to the provision of SCS on this spectrum would be exempt from processing round procedures.[310] We note that nothing in this FirstNet SCS construct precludes FirstNet's commercial partner(s) from using excess spectrum capacity for SCS on a commercial basis.[311]

109. The Commission delegates to WTB, SB, and Public Safety and Homeland Security Bureau (PSHSB) the authority to determine whether the demonstrations in the filings satisfy by rule both our part 1 leasing requirements and the part 25 SCS entry criteria. Pursuant to this delegation and the existing delegated authority to act on applications,[312] the bureaus should assess and act on the FirstNet filings requesting the provision of SCS operations.

c. Operating Agreements

110. As part of the SCS framework that we adopt today, we are requiring that a prospective SCS provider have a part 1 leasing notification or application on file with the Commission in order to meet our part 25 entry criteria. In the *Notice*, the Commission also sought comment, as an alternative

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[306] *See* BRETSA Comments at 7-8 (explaining that for the "agencies the BRETSA-funded PSAPs support, and particularly the Boulder County Sheriff's Office with responsibility for responding to incidents in the unincorporated areas of Boulder County including the mountainous areas, the potential for SCS-extended FirstNet coverage is critical"); AST Reply at 17; AT&T Reply at 12-13 ("SCS offers the promise of supplemental connectivity, which may result in benefits to the public safety community."); FirstNet Comments at 3 ("[U]tilizing Band 14 to provide SCS for FirstNet users may present an opportunity to better support first responders and the communities they serve nationwide."); Nextivity Comments at 3-4 ("[T]he public interest would be served by extending the opportunity to provide FirstNet coverage from space in the vast geographies of our country that remain uncovered.").

[307] Specifically, FirstNet should file a FCC Form 601 application and attach the relevant showings to that application. *See* Call Sign WQQE234. This public filing would be retained in the official record for the license and would provide a mechanism for the Bureaus to take action on the filing.

[308] *See generally* 47 CFR §§ 1.9020 (spectrum manager leases), 1.9030 (long-term *de facto* transfer leases), 1.9035 (short-term *de facto* transfer leases). We note that FirstNet may request confidential treatment of information contained in this submission(s) consistent with section 0.459 of the Commission's rules. *See id.* § 0.459 (detailing procedures to request withholding materials from public inspection); *see also FCC Provides Instructions Regarding Submission of Confidential Materials*, Public Notice, 35 FCC Rcd 2973 (2020).

[309] *See supra* paras. 64-68.

[310] *See supra* paras. 74-77.

[311] Under the public-private arrangement established by the governing statute, Band 14 spectrum is used on a primary basis for public safety and FirstNet's commercial partner(s) can use excess capacity (i.e., capacity not being used by the public safety users). 47 U.S.C. § 1428(a)(2)(B)(i)-(ii).

[312] 47 CFR §§ 0.131(a), 0.51, 0.191(f).

proposal, on allowing the prospective SCS providers to enter into operating agreements with the terrestrial licensee(s) in lieu of a part 1 leasing arrangement.[313] The Commission noted that, while operating agreements are typical in the satellite context for use of spectrum allocated and licensed for space radiocommunication services, operating agreements are not used in place of filing a leasing arrangement on a FCC Form 608 under the Commission's part 1 leasing regime.[314] In response, AST and SpaceX express support for the use of operating agreements as an alternative to leasing arrangements, with AST stating that an operating agreement is a viable alternative and "such agreements are common in the satellite context."[315] In the alternative, CTIA argues that SCS should be driven by spectrum lease arrangements, with the related Form 608, so that exclusive use rights are protected.[316]

111. We find AST and SpaceX's reasoning to be unpersuasive. The common use of operating agreements (or shared use agreements) in the context of satellite licensing does not directly translate to terrestrial spectrum rights.[317] Under part 25 of the Commission's rules, satellite licenses for NGSO systems are generally granted in processing rounds with the understanding that the licensees are left to share and/or coordinate, in good faith, on their own by business arrangement.[318] In contrast, under part 1 of the Commission's rules, the licenses are granted at auction/via competitive bidding, or are acquired in secondary market transactions.[319] Terrestrial licensees may lease their spectrum through spectrum manager or *de facto* transfer leasing arrangements.[320] While both the Commission's part 25 and part 1 rules require satellite and terrestrial licensees to maintain control of the licensed spectrum, satellite licensees are afforded more flexibility when the satellite operator wants to share (or as it relates to terrestrial licensees, lease) its spectrum because the Commission does not always require documentation or notice of the satellite operator's shared use agreements.[321] We find that the differences in the part 25 and part 1 rules justify different treatment of spectrum sharing in the two contexts.

112. Moreover, we find that the part 1 secondary markets rules require the use of a spectrum manager or *de facto* transfer leasing arrangement for the purpose of providing SCS. In the *First*

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[313] *Notice* at 23, paras. 53-54.

[314] *Id.* at 23, para. 54.

[315] AST Comments at 26 n.68 ("AST SpaceMobile also supports the FCC's proposal to allow for operating agreements as an alternative to leasing arrangements. As acknowledged, such agreements are common in the satellite context. Both leases and operating agreements are viable alternatives, provided the underlying parties comply with Section 310(d) of the Act."); *see also* SpaceX Comments at 12 ("The Commission should preserve the flexibility inherent in its secondary markets rules, including permitting operators to reach spectrum access arrangements—e.g., spectrum manager leases or operating agreements—without requiring prior Commission approval.").

[316] CTIA Comments at 12-14; *see also* AT&T Comments at 10-11; Verizon Comments at 4; DISH/EchoStar Comments at 5 (stating that it supports relying on secondary market leasing rules to facilitate SCS services); T-Mobile Comments at 12; T-Mobile Reply at 715 (disagreeing with Lynk, which would have the Commission approve the provision of SCS with no lease agreement in place); CTIA Reply at 4-5; Verizon Reply at 2, 9-10 (stating commenters generally share the view that the Commission's existing spectrum leasing framework is a sound approach for Commission oversight of an SCS arrangement).

[317] AST Comments at 26 n.68. We note that the term "operating agreements" in the satellite operator context could mean satellite capacity agreements, coordination agreements, etc.

[318] *See* 47 CFR §§ 25.119 (assignment or transfer of control of station authorization), 25.137 (requests for U.S. market access through non-U.S.-licensed space stations), 25.157 (consideration of application for NGSO-like satellite operations).

[319] *See id.* §§ 1.945 (license grants), 1.948 (assignment of authorization or transfer of control).

[320] *See id.* subpt. X (spectrum leasing).

[321] *Id.* § 25.137 (assignment or transfer of control of station authorization); *see also id.* § 1.9010 (*de facto* control standard for spectrum leasing arrangements).

Secondary Markets Order, the Commission noted that one of the reasons that it adopted the revised leasing arrangements rules was to create regulatory certainty.[322] The Commission noted that doing so would eliminate barriers, such as the licensee's fear of abandoning its future rights to the spectrum or risk of losing its licenses as unauthorized transfers of *de facto* control under Section 310(d) of the Act, that may have "prevented licensees from allowing a third party to gain access to" spectrum.[323] In keeping with this reasoning, we believe that allowing parties to enter into operating agreements without the Commission's knowledge or approval in lieu of filing a part 1 lease notification or application with the Commission could eliminate some of the certainty that we, and many commenters, believe was created by our secondary markets rules,[324] and which we believe are particularly important in the context of a novel offering like SCS. Spectrum leasing arrangements are an essential mechanism that allows parties to use spectrum without the necessity of acquiring a license,[325] and we agree with CTIA that they are also a necessary protection mechanism for the licensee's exclusive use rights.[326] Therefore, we find that a licensee/lessor may not enter into an operating agreement with a satellite operator in lieu of entering into a spectrum manager or *de facto* transfer leasing arrangement to satisfy the part 25 authorization entry criteria.

2. Specific Policies and Procedures Applicable to SCS Spectrum Leasing Arrangements

113. We are implementing an SCS framework by which one or more terrestrial licensees may enter into leasing arrangements with satellite operators for the purpose of providing SCS. Because of the novel nature surrounding this SCS framework, this section discusses the specific policies and procedures that will apply to SCS leasing arrangements. In particular, we: (1) extend our current leasing arrangement rules to the provision of SCS; (2) extend our subleasing rules to the provision of SCS; (3) revise our construction and performance attribution rules; (4) maintain the current spectrum manager and *de facto* transfer leasing terms; (5) decline to implement rules that would prevent either party from severing a part 1 leasing agreement; (6) adopt rules requiring subscriber notification of SCS leasing arrangements; (7) maintain our current interference-related leasing rules; (8) decline to extend ECIP eligibility to SCS leasing arrangements; and (9) decline to adopt new E911 obligations.

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[322] *First Secondary Markets Report and Order*, 18 FCC Rcd at 20625-26, para. 44; *see also id.* at 20625, para. 44 n.95 (citing commenters' concerns that leasing spectrum could constitute an unauthorized transfer of control).

[323] *Id*. at 20625-26, para. 44; *see also* 47 U.S.C. § 310(d) ("No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, 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.").

[324] CTIA Comments at 12-14 ("[F]ocusing on SCS applications that are backed by a terrestrial licensee's voluntary agreement to use its spectrum for SCS will protect the spectrum usage rights that terrestrial licensees have invested heavily to acquire and make available for wireless services . . ."); AT&T Comments at 22-23 ("The Commission's proven secondary market policies play a crucial role in allowing providers 'to gain ready access to spectrum,' thereby 'enabl[ing] provision of new and diverse services and applications to help meet the ever-changing needs of the public.'"); Verizon Comments at 4; DISH/EchoStar Comments at 5 (stating that it supports relying on secondary market leasing rules to facilitate SCS services); T-Mobile Comments at 12; T-Mobile Reply at 7-9, 15; CTIA Reply at 4-5; Verizon Reply at 2, 9-10 (stating commenters generally share the view that the Commission's existing spectrum leasing framework is a sound approach for Commission oversight of an SCS arrangement). *See generally* SpaceX Comments at 12 ("Regardless of the type of arrangement that the SCS partners reach, the Commission should adopt the flexible approach it has pioneered for terrestrial licenses that avoids unduly restricting an operator's ability to reach commercial arrangements . . .").

[325] *First Secondary Markets Report and Order*, 18 FCC Rcd at 20624, paras. 41-42.

[326] CTIA Comments at 12-14.

a. *De Facto* Transfer and Spectrum Manager Leasing Arrangements

114. Under our existing secondary market rules, licensee lessors and their lessees have two spectrum leasing options that each provide different rights and responsibilities for the licensee and lessee: *de facto* transfer leasing arrangements; and spectrum manager leasing arrangements.[327] Under either leasing option, the lessor and the lessee may choose to enter into a long-term (more than one year) or short-term (one year or less) arrangement.[328] Spectrum manager leasing arrangements generally do not require prior Commission approval; rather, the licensee/lessor must notify the Commission in advance of commencing operations.[329] In contrast, *de facto* transfer spectrum leasing arrangements are typically subject to the Commission's general approval procedures, under which the Commission must grant the application prior to the parties putting the proposed spectrum leasing arrangement into effect.[330]

115. In the *Notice*, the Commission sought comment on whether it should allow all forms of leasing, including spectrum manager and *de facto* transfer (short- and long-term), in the SCS framework.[331] Commenters overwhelmingly support a framework that allows the flexibility and the freedom to reach spectrum access agreements that best serve the mobile carriers and subscribers.[332] SpaceX urges the Commission to "preserve the flexibility inherent in its secondary markets rules" in a manner that permits operators to "reach spectrum access arrangements . . . without requiring prior Commission approval."[333] In contrast, Verizon asks the Commission to limit leasing for SCS purposes to spectrum manager leases stating that the "assignment of responsibilities in the spectrum manager lease rules is most appropriate" especially since the "lessor enabling SCS remains 'directly and primarily responsible' for ensuring the" lessee's compliance with the Act and the Commission's rules.[334]

116. We agree with the overwhelming record support asking the Commission to create a leasing structure for SCS that allows parties to develop agreements and enter into leasing arrangements that best suit their commercial requirements. We believe that limiting the type of leasing arrangement, as suggested by Verizon, would also limit the freedom and flexibility of the lessor and the lessee which could ultimately hinder the prospective lessor's and lessees' ability to enter into an agreement. As

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[327] 47 CFR §§ 1.9030(a), (e), 1.9035(a), (e). Though two spectrum leasing options generally exist, we note that another leasing option—available only to 3.5 GHz Priority Access Licensees and therefore outside the scope of this *Report and Order*—is light touch leasing, a process that builds upon and incorporates our traditional spectrum manager leasing approval process. *Id.* §§ 1.9046, 96.32(c), 96.66.

[328] *Id.* §§ 1.9030(a), 1.9035(a).

[329] *Id.* § 1.9020(e)(1)(ii) (requiring 21 days advance notice for spectrum manager leasing arrangements greater than one year in length, or 10 days advance notice for arrangements of one year or less in length). The Commission reviews the notifications to ensure that all necessary technical and other information is correctly submitted, but the subject spectrum leasing arrangement may be implemented without waiting for such review, unless the parties to the spectrum manager leasing arrangement have requested on the form that the arrangement become effective upon Commission acceptance of the notification. Spectrum manager leasing notifications require no prior public notice before the Commission may accept them.

[330] *Id.* §§ 1.9030(a), (e), 1.9035(a), (e). Both long-term and short-term *de facto* transfer spectrum leasing applications are subject to overnight processing under the Commission's immediate approval procedures if the filing meets certain conditions. *Id.* §§ 1.9030(e)(2) (immediate approval procedures), 1.9035(e) (certain conditions still must be met in order for a short-term *de facto* transfer lease to qualify for immediate processing).

[331] *Notice* at 29-30, para. 70.

[332] SpaceX Comments at 11-12; AST Comments at 26; CTIA Comments at 13; AT&T Comments at 22; DISH/EchoStar Comments at 5 (stating that the Commission should rely on its existing secondary market rules to facilitate SCS, which includes both *de facto* transfer and spectrum manager leases); AST Reply at 6-8; CCA Reply at 11; CTIA Reply at 7; T-Mobile Reply at 7-8.

[333] SpaceX Comments at 12.

[334] Verizon Comments at 8 (citing 47 CFR § 1.9020(b)(1)); Verizon Reply at 9-10.

Verizon also states in its comments, we want to "leave parties to SCS leasing arrangements free to negotiate the business terms of their arrangements,"[335] which we believe is made possible by giving parties the option of entering into both *de facto* transfer and spectrum manager lease agreements. Thus, we allow prospective lessors and lessees to enter into both *de facto* transfer and spectrum manager leasing arrangements in the SCS framework that we adopt today.

117. We likewise choose to utilize our existing application approval and notification processing procedures for both lease types.[336] The Commission's rules require that the parties to a *de facto* transfer spectrum leasing arrangement file an application for approval of the lease with the Commission.[337] Parties to a spectrum manager lease must file a notification of the spectrum leasing arrangement with the Commission and can commence operations without prior Commission approval after a short period.[338] The Commission's rules provide for expedited processing (by the next business day) of all categories of spectrum leasing applications and notifications.[339] To be accepted for processing, any application or notification must be "sufficiently complete," including information and certifications relating to a lessee's eligibility and qualification to hold spectrum, and lessee compliance with the Commission's foreign ownership rules.[340] *De facto* transfer spectrum leasing applications must also be accompanied by the requisite filing fee.[341]

118. Long-term *de facto* transfer spectrum leasing applications and spectrum manager leasing notifications must meet three additional criteria for immediate approval or processing.[342] First, the lease cannot involve spectrum that may be used to provide an interconnected mobile voice and/ or data service and that would result in a geographic overlap with licensed spectrum "in which the proposed spectrum lessee already holds a direct or indirect interest of 10 [percent] or more."[343] Second, the licensee cannot be "a designated entity or entrepreneur subject to unjust enrichment requirements and/or transfer restrictions under applicable Commission rules."[344] Finally, the spectrum leasing arrangement cannot

[335] Verizon Comments at 8-9.

[336] In the *Notice*, the Commission sought comment on whether it should require spectrum manager leases for such operations to obtain prior Commission approval, notwithstanding the procedures typically applicable to such leases. *Notice* at 29-30, para. 70.

[337] 47 CFR §§ 1.9030(a), (e), 1.9035(a), (e).

[338] *Id.* § 1.9020(e)(1). Under general notification procedures, spectrum manager leases for more than one year must be filed at least 21 days prior to the date of operation. *Id.* § 1.9020(e)(1)(ii). Spectrum manager leases of one year or less must be filed at least 10 days prior to the date of operation. *Id*. § 1.9020(e)(1)(ii). We note that under immediate approval processes, acceptance of the notification will be reflected in ULS on the next business day following the day the application is filed, and spectrum manager lessees may operate upon acceptance consistent with the terms of the leasing arrangement. *Id.* § 1.9020(e)(2)(ii).

[339] *Id.* §§ 1.9020(e)(2)(iii), 1.9030(e)(2)(iii), 1.9035(e)(2); *see also Second Secondary Market Report and Order*, 19 FCC Rcd at 17512, para. 14 n.42 ("[U]nder the immediate approval process, spectrum leasing parties must submit qualifying applications and include the requisite filing fees. The [Wireless Telecommunications] Bureau will then process the application overnight and . . . indicate in our Universal Licensing System (ULS) that the application has been approved."). Applications and notifications are filed on FCC Form 608, "FCC Application or Notification for Spectrum Leasing Arrangement." 47 CFR § 1.913(a)(5).

[340] 47 CFR §§ 1.9020(e)(1)(i), (e)(2)(i), 1.9030(e)(1)(i), (e)(2)(i), 1.9035(e)(1).

[341] *Id.* §§ 1.9030(e)(1)(i), (e)(2)(i), 1.9035(e)(1); *see also id.* § 1.9020(e)(1)(i).

[342] *Id.* §§ 1.9020(e)(2)(i)(A)-(D), 1.9030(e)(2)(i)(A)-(D). All short-term *de facto* transfer spectrum leasing applications are processed via immediate approval procedures. *See id.* § 1.9035(e).

[343] *Id.* §§ 1.9020(e)(2)(i)(A), 1.9030(e)(2)(i)(A).

[344] *Id.* §§ 1.9020(e)(2)(i)(B), 1.9030(e)(2)(i)(B).

"require a waiver of, or declaratory ruling pertaining to, any applicable Commission rules."[345]

119. We believe that our current application approval and notification processing procedures should apply to all SCS related leasing arrangements, where all of the processing criteria are met, because it will remove unnecessary delay by utilizing the procedures that are already in place.[346] While DISH contends that both spectrum manager leases and *de facto* transfer leases should be subject to long-form prior Commission approval based on the necessary interference and out-of-band emissions showings, we believe that our rules as currently written do not need to be revised for SCS.[347] We believe that the SCS framework that we adopt today ensures the licensee/lessor and the lessee must abide by our technical and service rules. For this reason, we believe that altering our processing rules to mandate that all leasing arrangement notifications/applications are subject to prior Commission approval would cause undue delay, which goes against the Commission's policy goals as it pertains to the facilitation of secondary markets.[348] Finally, we find that the public interest will continue to be protected by subjecting these arrangements, following approval, to public notice and possible additional review under the Commission's reconsideration procedures, where necessary.[349] We believe that our current procedures protect the public interest and will promote efficiency and regulatory certainty, and thus, apply our current application approval and notification processing procedures to leasing arrangements involving SCS.

b. Subleasing

120. Pursuant to sections 1.9020(l) and 1.9030(k), a spectrum lessee in a spectrum manager or long-term *de facto* transfer leasing arrangement may sublease its leased spectrum usage rights with the licensee's consent and through the licensee's establishment of privity with the spectrum sublessee.[350] In the *Notice*, the Commission explained that a satellite operator-lessee would be providing SCS coverage to the subscribers of the terrestrial licensee-lessor, and because of this, the ability to sublease to a third party may raise practical or technical issues regarding the continued provision of sufficient service quality to subscribers.[351] For this reason, it sought comment on whether subleasing is appropriate in the proposed framework, and asked whether subleasing could introduce unintended consequences, including adversely

[345] *Id.* §§ 1.9020(e)(2)(i)(C), 1.9030(e)(2)(i)(C). Short-term *de facto* lease applications must also meet this requirement. *Id.* § 1.9035(e)(1).

[346] AST Comments at 26-28 ("[T]he Commission need not require more information from SCS parties in their Form 608 submissions than is currently standard, limit the types of leases SCS participants may enter into, require FCC approval of SCS spectrum manager leases, or upset the traditional allocation of responsibilities as between lessor and lessee."); *see also* CTIA Reply at 6-7 (noting that existing secondary market rules should be applied to SCS partnerships with minimal changes and stating that they provide the necessary flexibility to craft these new arrangements).

[347] DISH/EchoStar Comments at 5.

[348] *Second Secondary Market Report and Order*, 19 FCC Rcd at 17512, para. 14 ("This action serves the Commission's policy goals of facilitating secondary markets in spectrum usage rights by enabling parties to implement spectrum leasing arrangements without undue delay.").

[349] Consistent with our rules and policies concerning standing, we remind all stakeholders that any interested party is entitled to file a petition for reconsideration of our approval of the spectrum leasing arrangement within 30 days of the public notice date. *See* 47 U.S.C. § 405; 47 CFR § 1.106(b). In addition, the Bureau is able to reconsider the grant on its own motion within 30 days of the public notice date, and the Commission could reconsider the grant on its own motion within 40 days of the public notice date. *See* 47 CFR §§ 1.108, 1.117.

[350] 47 CFR §§ 1.9020(l) (spectrum manager subleasing), 1.9030(k) (long-term *de facto* transfer subleasing). The licensee must submit a notification regarding the spectrum subleasing arrangement in accordance with the applicable notification procedures set forth in this section. *Id.* §§ 1.9020(l), 1.9030(k). Subleasing is not permitted under a short-term *de facto* transfer lease. *Id.* § 1.9035(m).

[351] *Notice* at 32, para. 77.

affecting supplemental coverage or increasing the potential for harmful interference.[352]

121. In response, Skylo asks the Commission to refrain from allowing subleasing in the SCS context.[353] Skylo states that the ability to sublease "may raise practical or technical issues that could adversely affect supplemental coverage," such as where a satellite operator attempts to sublease to offer direct-to-consumer services.[354] While we understand Skylo's concerns, we note that all subleases require the licensee's consent, require a submission to the FCC, and are subject to non-interference rules.[355] We believe that our current rules will adequately protect against any concerns of interference in this context. Moreover, we remind terrestrial licensees that they may seek to protect themselves from the risks associated with subleasing arrangements by including provisions in their leases that prohibit the spectrum lessee from entering into a sublease.[356] We do not intend to dictate how parties conduct their businesses, and our decision is meant to permit freely-negotiated business transactions, subject to continuing to ensure our ability to administer the spectrum leasing policies as reflected in our rules and adopted today.

122. We will allow SCS lessees to sublease their spectrum usage rights in accordance with our subleasing rules for each lease type, under certain conditions.[357] Specifically, the prospective SCS sublessee must be entering into the sublease for the purpose of providing SCS, and thus, must hold or apply for a requisite part 25 authorization or market access grant. In addition, we will not allow multiple satellite operators where there are multiple licensees controlling the co-channel licenses in a GIA; for this reason, we will not allow satellite operators to sublease where there are multiple terrestrial licensees jointly leasing their co-channel rights in a given GIA. Finally, all SCS lessees and sublessees must follow existing coordination rules, as outlined herein.[358] This will ensure that the licensee is aware of the sublease, the role of the new sublessee in operating on the frequencies covered by the license, and provide an additional guardrail against the risk of harmful interference.

c. Construction and Performance Requirements Attribution

123. In the SCS framework that we adopt today, we amend our rules regarding the attribution of an SCS lessee's service to the licensee lessor's construction and performance requirements. Specifically, we will not allow a licensee lessor, relying on the lessee's activities related to the provision

[352] *Id*.

[353] Skylo Comments at 11-12. No other commenters submitted support or opposition.

[354] Skylo Comments at 11-12 ("Preventing subleasing for SCS services would also help avoid situations in which a satellite operator may use the mobile terrestrial license to offer direct-to-consumer services. Because the terrestrial operator is the primary licensee, the SCS framework should not be inappropriately used as a mechanism for the provision of services to end-user customers by satellite operators.").

[355] 47 CFR §§ 1.9020(l) (spectrum manager subleasing) ("A spectrum lessee may sublease the leased spectrum usage rights subject to the licensee's consent and the licensee's establishment of privity with the spectrum sublessee."), 1.9030(k) (long-term *de facto* transfer subleasing) ("The application filed by parties to a spectrum subleasing arrangement must include written consent from the licensee to the proposed arrangement."); *see also id.* §§ 1.9010(b)(1)(ii), 1.9020(d)(1), 1.9030(d)(1), 1.9035(d).

[356] *First Secondary Markets Report and Order*, 18 FCC Rcd at 20652, para. 106.

[357] 47 CFR §§ 1.9020(l) (spectrum manager subleasing), 1.9030(k) (long-term *de facto* transfer subleasing).

[358] *See infra* paras. 224-36.

of SCS, to meet the licensee's construction[359] or discontinuance[360] obligations or to meet any safe harbor to the renewal requirement[361] applicable to the underlying license. In the *Notice*, the Commission explained that our current rules allow a lessor to attribute the build-out and performance activities of its lessee to the lessor's construction and performance requirements.[362] Under a spectrum manager leasing arrangement, the licensee/lessor remains responsible for compliance with any construction and performance requirements applicable to the leased spectrum, but may attribute to itself the build-out or performance activities of its spectrum lessee(s) for purposes of compliance with any such requirements.[363] Similarly, under a long-term *de facto* transfer spectrum leasing arrangement, the licensee/lessor may attribute to itself the buildout or performance activities of its spectrum lessee(s) for purposes of compliance with any such requirements.[364]

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[359] *See generally* 47 CFR § 1.946 (construction and coverage requirements); *see also id.* § 1.946(a) ("For each of the Wireless Radio Services, requirements for construction and commencement of service or commencement of operations are set forth in the rule part governing the specific service. For purposes of this section, the period between the date of grant of an authorization and the date of required commencement of service or operations is referred to as the construction period.").

[360] *See generally id.* § 1.953(b) (180-day rule for geographic licenses) ("Permanent discontinuance of service or operations for Covered Geographic Licenses is defined as 180 consecutive days during which a licensee does not operate or, in the case of commercial mobile radio service providers, does not provide service to at least one subscriber that is not affiliated with, controlled by, or related to the licensee.").

[361] *See generally id.* § 1.949(d) (renewal standard) ("An applicant for renewal of an authorization of a Covered Site-based License or a Covered Geographic License must demonstrate that over the course of the license term, the licensee(s) provided and continue to provide service to the public, or operated and continue to operate the license to meet the licensee(s)' private, internal communications needs."). In a letter, T-Mobile asks the Commission "to allow terrestrial licensees to rely on the availability of SCS to meet the safe harbor renewal standard that otherwise requires licensees to represent that they continue to provide the same level of service as required by their final performance requirement." Letter from Steve B. Sharkey, Vice President, Government Affairs, T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-65 et al., at 2 (filed Mar. 5, 2024) (T-Mobile Mar. 5, 2024, *Ex Parte*) (citing 47 CFR § 1.949(e)(2)(i)). We do not believe that revising section 1.949(e)(2)(i) of the Commission's rules to include the provision of SCS as a safe harbor is appropriate at this time. Rather, this scenario—where a licensee has modified its service or operations to offer a novel service—was contemplated by the Commission when it adopted the safe harbor rules, and at that time the Commission determined that such a network modification by a licensee would warrant additional scrutiny before the Commission can determine whether license renewal is in the public interest. *See Amendment of Pts 1, 22, 24, 27, 74, 80, 90, 95, & 101 To Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services*, WT Docket No. 10-112, Second Report & Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 8874, 8886-89, paras. 27-34 (2017) ("Examples of licensees that will not be able to meet a safe harbor, but for whom there nonetheless may be legitimate bases that warrant renewal, include a licensee that no longer provides service or no longer operates at the level required to meet its final performance requirement, or a licensee that has modified its service or operations since its final performance requirement to offer novel services or employ a unique system architecture."). Thus, in the event that a licensee is unable to meet the renewal standard by satisfying one of the safe harbor requirements pursuant to existing rules, it must file a renewal showing pursuant to section 1.949(f) of the Commission's rules. *See* 47 CFR § 1.949(f) (renewal showing).

[362] *Notice* at 30-31, paras. 72-73.

[363] 47 CFR § 1.9020(d)(5) (spectrum manager lease construction/performance requirements).

[364] However, such attribution is not available to a licensee/lessor under a short-term *de facto* transfer spectrum leasing arrangement. *See* 47 CFR §§ 1.9030(d)(5) (long-term *de facto* transfer lease construction/performance requirements), 1.9035(d)(3) (short-term *de facto* transfer lease construction/performance requirements); *see also First Secondary Markets Report and Order*, 18 FCC Rcd at 20676, para. 177 ("[S]hort-term leasing arrangements are expressly designed to be temporary in nature, and therefore cannot be counted to establish that the licensee is meeting the purposes and policies underlying our buildout rules, including the goal of ensuring establishment of service in rural areas.").

124. The Commission sought comment on whether it should permit a terrestrial licensee to rely on its satellite lessee partner's coverage to meet underlying terrestrial performance obligations, and if so, how this would work in relation to our current performance rules.[365] The Commission also asked whether it should revise our leasing rules in the alternative to permit terrestrial licensees to enter into lease arrangements with satellite partners to extend existing coverage only after the terrestrial licensee has first met all of its final performance obligations for each underlying license that is part of the GIA.[366] In response, the majority of commenters agree that the performance and build-out requirements should remain the terrestrial licensee's responsibility and maintain that the terrestrial licensee should not be allowed to attribute its satellite partner's coverage to meet its construction, renewal, and discontinuance requirements.[367] For example, Verizon argues that an "SCS partnership should not create an end-run around the terrestrial wireless licensee's buildout obligations" because SCS operations are more limited than the wireless services expected by consumers.[368] In contrast, Lynk argues that the Commission should allow the SCS lessee's infrastructure to satisfy the licensee's buildout requirements "where the satellite service satisfies the service and resiliency requirements in the relevant frequencies and geographic region."[369]

125. After review of the record, we find that we will revise our rules such that we will not allow licensees to rely on the service provided by their satellite operator partners/lessees for purposes of satisfying the construction and performance requirements that are conditions of the license authorization.[370] In making this decision, we lean heavily on the arguments presented by Verizon—that allowing attribution via SCS, at this time, "would run counter to the Commission's goal[s]" of providing

[365] *Notice* at 30-31, paras. 72-73. The Commission also asked whether such attribution rules should remain available to terrestrial licensees where SCS is intended to supplement existing terrestrial service to fill coverage gaps. *Id.*

[366] *Id*. The Commission recognized that our performance rules in most flexible-use terrestrial bands were created in parallel with the advent and subsequent implementation of competitive bidding for licenses which meant that market forces and incentives resulted in virtually all of the performance metrics in flexible-use bands (*e.g.*, coverage of a certain percentage of population) being met with the provision of evolving 4G and 5G technologies serving commercial handsets. *Id.*

[367] SpaceX Comments at 12 (stating there is need to impose minimum lease terms, requirements to meet final performance obligations, or termination rules); Skylo Comments at 11 ("[T]errestrial licensees should continue to be subject to coverage or other buildout obligations, regardless of any leasing arrangements with SCS operators, as the licensee remains the primary service provider, in addition to other reporting obligations, such as outage reports."); AT&T Comments at 23-24 ("[W]ith SCS still in its infancy, it is too soon to define what may be appropriately counted toward satisfying terrestrial spectrum buildout requirements."); Verizon Reply at 10-11 ("The Commission should avoid any ambiguity suggesting that SCS partners could shift the wireless provider's terrestrial construction requirements to the satellite operator where it is only providing a limited offering."); Lynk Comments at 11 ("[A]ll buildout requirements should remain the obligation of the terrestrial licensee . . ."); TechFreedom Comments at 16 ("The obligations to implement SCS operations should always remain separate from any buildout obligations a terrestrial licensee (or lessee) of the same frequency has."); Verizon Reply at 3; T-Mobile Reply at 13 ("[T]errestrial licensees should not, at least for initial performance obligations, be permitted to rely on SCS."); AT&T Reply at 5-6.

[368] Verizon Reply at 10-11 & n.34. We note that, in its comments, AT&T agreed with Verizon, arguing that allowing the satisfaction of build-out requirements through SCS "would run counter to the Commission's goal of maintaining the 'market incentives' to provide 'core coverage [in] licensed areas,' and it also would unfairly reward licensees that have for years allowed large swaths of spectrum to lie fallow." AT&T Comments at 23-24. However, in its February 20th *ex parte*, AT&T "clarifies [] that the FCC should not prohibit SCS service from satisfying wireless buildout requirements. Instead, as SCS solutions evolve, the Commission should apply a flexible approach that evaluates SCS service performance on a case-by-case basis." AT&T Feb. 20, 2024, *Ex Parte* at 2. For the reasons stated herein, we agree with AT&T's original position.

[369] Lynk Comments at 11.

[370] This revision extends to all of the licensee's build-out obligations where it is required to construct and operate one or more specific facilities, cover a certain percentage of geographic area, reach a certain percentage of population, or provide "substantial service."

"core coverage [in] licensed areas."[371] We likewise agree that since the provision of SCS is such a new service and, as the SCS acronym suggests, is intended to *supplement* existing terrestrial service to fill coverage gaps, it is too soon to allow SCS-based construction and performance activities to fulfill the terrestrial licensees' obligations.[372] We note in particular that, for the foreseeable future, SCS will not enable the kind of high-speed broadband data connectivity that characterizes modern commercial wireless networks. We believe that this is especially true given that the performance metrics, such as meeting substantial service or covering a certain percentage of population, in flexible-use bands were created based on market forces and incentives that were solely derived from the provision of terrestrial services.[373] Thus, allowing the attribution of SCS-based services could allow licensees to circumvent robust fulfillment of our existing performance rules.[374]

126. We believe that our decisions today will promote the public interest and further ensure that licensees are meeting their construction and performance obligations, as originally intended. We also believe that maintaining our current construction and performance requirements will promote the efficient use of spectrum by also ensuring that the warehousing of spectrum is prevented. Today, we revise our rules regarding the attribution of an SCS lessee's build-out or performance activities to the

[371] Verizon Comments at 10-11; Verizon Reply at 3, 10-11; *see also Notice* at 30-31, para. 73 (stating that "we do not intend for this new paradigm to alter market incentives in the provision of core coverage to licensed areas"). We also note that, despite its later filing, this position is the one advanced by AT&T in its initial comments. *See* AT&T Comments at 23-24; *see also* AT&T Feb. 20, 2024, *Ex Parte* at 2.

[372] *See Notice* at 30, para. 72; *see also* AT&T Comments at 23-24 ("The Commission rightly recognizes that 'SCS service options initially may be more limited than a terrestrial licensee's . . .'"); Verizon Reply at 2-3, 10-11 ("The Commission should avoid any ambiguity suggesting that SCS partners could shift the wireless provider's terrestrial construction requirements to the satellite operator where it is only providing a limited offering. As the record makes clear, SCS will supplement an underlying terrestrial wireless service . . ."); AT&T Reply at 5-6 ("SCS is not a 'substitute for fully functional terrestrial mobile service,' and thus a terrestrial licensee should not be able to utilize SCS to avoid any buildout obligations it might have."). In its comments, Lynk agrees that "the terrestrial spectrum at issue will remain, first and foremost, terrestrial spectrum, and SCS will be a complementary service that is not intended to replace terrestrial services offered in those bands." *See* Lynk Comments at 11. Similarly, TechFreedom "oppose[d] the notion that a terrestrial licensee could use SCS operations to avoid any buildout obligations it might have for its terrestrial licenses" and stated that "SCS operations should always be in addition to, not instead of, terrestrial deployment . . ." *See* TechFreedom Comments at 16. T-Mobile states that "it is appropriate for the Commission to require that terrestrial licensees rely on their own provision of service to meet initial performance requirements and to avoid discontinuing service." T-Mobile Mar. 5, 2024, *Ex Parte* at 2; *see also* Letter from Rachael Bender, Vice President and Associate General Counsel, Federal Regulatory and Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-65 et al., at 2-3 (filed Mar. 8, 2024) (Verizon Mar. 8, 2024, *Ex Parte*) ("At this time, supplemental coverage from space is a nascent offering that will not provide the same level of service as terrestrial networks.").

[373] *Notice* at 30-31, para. 73 ("[M]arket forces and incentives resulted in virtually all of the performance metrics in flexible-use bands (e.g., coverage of a certain percentage of population) being met with the provision of evolving 4G and 5G technologies serving commercial handsets."). In its letters, AT&T states that "[r]ather than drawing a bright line at this stage, the Commission should not prohibit SCS service from satisfying wireless buildout requirements, so long as the Commission evaluates SCS service performance on a case-by-case basis." Letter from Henry G. Hultquist, Vice President-Federal Regulatory, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-65 et al. (filed Mar. 6, 2024) (AT&T Mar. 6, 2024, *Ex Parte*); AT&T Mar. 7, 2024, *Ex Parte*. We reiterate that we do not believe that it is appropriate to allow a terrestrial licensee to rely on SCS provided by its satellite operator partners/lessees to satisfy the terrestrial licensee's buildout or performance requirements at this time. *See* Verizon Mar. 8, 2024, *Ex Parte* at 2-3 (expressing support for the Commission's decision at this time).

[374] Verizon Comments at 10-11; Verizon Reply at 3, 10-11. We also agree with the point raised by AT&T, that our "performance requirements remain important tools 'to prevent spectrum warehousing' and to promote the rapid development and deployment of robust services. These tools are particularly critical here, where all agree that SCS cannot match the service of terrestrial wireless networks." AT&T Reply at 5-6.

licensee/lessor's construction and performance requirements.[375] We emphasize that these revisions only apply to the SCS framework that we adopt today, and we are not revising our rules as they relate to any other service offering. We also remind licensees that the applicable performance or buildout requirements remain a condition of the license, and failure to meet such requirements can lead to the automatic termination of the license(s).[376]

d. Lease Term and Lease Severability

127. *License Term of Part 25 License and Length of Lease.* Pursuant to section 1.9040(a)(2) of the Commission's rules, the term of a spectrum leasing arrangement may not be longer than the term of the underlying lessor's license.[377] A licensee and spectrum lessee may, contingent on the Commission's grant of the license renewal, extend the spectrum leasing arrangement into the term of the renewed licenses authorization.[378] As adopted later in this *Report and Order*, we continue to apply the current part 25 rule regarding license terms to satellite licensees seeking to provide SCS through license modification; such licensees would retain their current license term.[379] Since the part 25 license term is unlikely to consistently align with the license term (and concomitant lease term) of the underlying terrestrial license, in the *Notice*, the Commission sought comment on ways in which it should account for differences in the length of a part 25 space station authorization to transmit and receive signals and the length of the associated part 1 lease.[380] The Commission also asked commenters to discuss whether it should implement any requirements in the event that the terrestrial licensee loses some or all of the licenses that comprise the leased area, for example, as a result of automatic termination for failure to meet performance obligations, failure to receive a license renewal, license revocation, or assignment or transfer.[381]

128. In the SCS framework that we adopt today, we will not implement minimum or maximum lease terms beyond what is already required by rule. We do not agree with Skylo that a minimum 10-year lease term between terrestrial licensees and SCS lessees would offer stability to both "SCS operator[s] and their subscribers."[382] Rather, we agree with other commenters and find that implementing minimum lease terms could constrain the licensee lessor's ability to manage its spectrum.[383]

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[375] *See* Appx. B (revising 47 CFR § 1.9047(g)).

[376] *See* 47 CFR § 1.946(c).

[377] *Id*. § 1.9040(a)(2). All spectrum leasing arrangements must provide that "[i]f the license is revoked, cancelled, terminated, or otherwise ceases to be in effect, the spectrum lessee has no continuing authority or right to use the leased spectrum unless otherwise authorized by the Commission." *Id.*

[378] *Id*. §§ 1.9020(m) (spectrum manager leases), 1.9030(l) (long-term *de facto* transfer leases), 1.9035(n) (short-term *de facto* transfer leases). The Commission must be notified of the renewal of the spectrum leasing arrangement at the same time that the licensee submits its application for license renewal. *See id.* § 1.949. In addition, the spectrum lessee may operate under the extended term, without further action by the Commission, until such time as the Commission shall make a final determination with respect to the renewal of the license authorization and the extension of the spectrum leasing arrangement into the term of the renewed license authorization.

[379] *See infra* paras. 143-44; *see also* 47 CFR § 25.121(a)-(b).

[380] *Notice* at 31, para. 74.

[381] *Id.*

[382] Skylo Comments at 14-15.

[383] AT&T Comments at 23 (stating that the Commission should not adopt any minimum lease terms or other policies that would constrain licensees' spectrum management); DISH/EchoStar Comments at 5 (stating the existing lease requirements are sufficient); T-Mobile Reply at 8-9 (citing AT&T Comments at 23; SpaceX Comments at 12) (advocating that the Commission should not impose any minimum lease terms or other conditions that are typically negotiated between parties to a lease, and stating that minimum lease terms would unnecessarily constrain licensees' spectrum and network management abilities).

We likewise do not want to impose any rules that may act as an unnecessary regulatory barrier to entry.[384]

129. Although we are not establishing any minimum or maximum lease terms, we remind stakeholders that they have the option to extend or renew a lease where the applicable license remains valid.[385] For spectrum manager leasing arrangements, the licensee must notify the Commission at least 21 days in advance of operating under the extended term.[386] For long-term *de facto* transfer leasing arrangements where the parties seek to extend the lease, the parties may extend if they file the lease extension prior to or on the date the lease terminates.[387] For long-term *de facto* transfer leasing arrangements where the underlying license requires renewal, the licensee and spectrum lessee must notify the Commission of the lease renewal at the same time that the licensee submits its application for renewal.[388] Finally, for short-term *de facto* transfer leasing arrangements, the parties may extend the short-term arrangement, so long as the initial term and extension(s), together, would not result in an arrangement exceeding 360 days, by notifying the Commission of the extension at least 10 days in advance of operating under the extended term.[389] We believe that our current lease renewal and extension rules provide enough certainty to prospective SCS lessees and ensures the adequate duration of spectrum leases and licenses, as negotiated and entered into by the prospective lessor(s) and lessee(s).[390]

130. By maintaining our current leasing rules pertaining to the length of the relevant lease, we also maintain our rules relating to a spectrum lessee's operating authority in the event that the licensee loses some or all of the licenses that comprise the leased area, for example, as a result of automatic termination for failure to meet performance obligations, failure to receive a license renewal, license revocation, or assignment or transfer.[391] In its comments, T-Mobile agrees that if the license authorization is terminated, the lease also will automatically terminate.[392] Lynk, however, states that satellite operators' SCS rights should not be terminated in the event a satellite operator-MNO relationship ends.[393] We will

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[384] In the *First Secondary Markets Report and Order*, the Commission stated that one of its goals in adopting leasing policies and procedures was to remove unnecessary regulatory constraints. *First Secondary Markets Report and Order*, 18 FCC Rcd at 20625-26, para. 44.

[385] 47 CFR §§ 1.9020(h), (m) (spectrum manager leases), 1.9030(g), (l) (long-term *de facto* transfer leases), 1.9035(h), (n) (short-term *de facto* transfer leases); *see also* T-Mobile Comments at 12 (stating that if a lease terminates and the applicable license remains valid, that lease may be renewed).

[386] 47 CFR § 1.9020(h)(2) (noting this applies where general notification procedures are applicable).

[387] *Id*. § 1.9030(g)(2) ("A spectrum leasing arrangement may be extended beyond the initial term set forth in the spectrum leasing application pursuant to the applicable application procedures set forth in § 1.9030(e).").

[388] *Id*. § 1.9030(l) ("The spectrum lessee may operate under the extended term, without further action by the Commission, until such time as the Commission shall make a final determination with respect to the renewal of the license authorization and the extension of the spectrum leasing arrangement into the term of the renewed license authorization."); *see also id.* § 1.949.

[389] *Id*. § 1.9035(h)(2).

[390] We trust that our secondary market rules will ensure that parties are able to enter into agreements for the facilitation of SCS, and do not believe that the Commission should mandate the terms of those agreements. *See generally* Skylo Comments at 14-15 ("To facilitate the smooth and uninterrupted provision of SCS services, the Commission's rules should ensure adequate duration of spectrum leases and licenses.").

[391] 47 CFR §§ 1.9020(k) (spectrum manager leases), 1.9030(j) (long-term *de facto* transfer leases), 1.9035(l) (short-term *de facto* transfer leases).

[392] T-Mobile Comments at 12-13; Skylo Comments at 15 ("In the event that the terrestrial license is terminated, revoked, or fails to get a renewal, SCS operations in the respective bands ought to cease until such time that the SCS operator enters into a new lease with a compatible terrestrial spectrum licensee.").

[393] Lynk Comments at 7-8 ("The Commission should similarly reject its proposal to terminate SCS rights in the event that a satellite operator-MNO relationship ends, as new relationships may form with different MNOs to serve different markets.").

not implement any special requirements that would otherwise allow a lessee to continue to operate if the lessor no longer holds the relevant license as the lessee's authority to operate on the licensed spectrum is directly tied to the licensee's authorization.[394]

131. *Lease Severability.* As emphasized herein, a lease arrangement between a terrestrial licensee and an SCS lessee is an integral part of our SCS framework. In the *Notice*, the Commission sought comment on whether it should address the potential for severability of a lease agreement.[395] In particular, it asked if any limitations are necessary regarding the parties' ability to terminate the lease that forms a substantial basis of the SCS licensing structure.[396] In addition, the Commission asked whether it should implement minimum lease terms to ensure continued gap coverage and, if so, what is the appropriate period.[397] Finally, the Commission asked whether it should consider any provisions that could ensure gap service is achieved for a limited period in the event the underlying lease is terminated.[398]

132. After review of the record, we decline to adopt limitations on parties' ability to terminate the part 1 lease. We likewise refrain from mandating provisions that could ensure gap service is achieved in the event that the lease is terminated. A majority of commenters ask the Commission to refrain from making revisions to the current secondary markets rules that would otherwise unnecessarily constrain the parties ability to negotiate leasing terms or take away from the licensees' spectrum and network management abilities.[399] In contrast, Skylo proposes that if a lease is terminated early, "there should be a minimum one-year winding down period to ensure continued gap coverage."[400] We do not intend to dictate how parties conduct their businesses. Instead, in implementing the SCS framework, we strive to utilize a voluntary, market-driven system that gives stakeholders the flexibility to freely negotiate business transactions. We emphasize, however, that since we are not implementing termination requirements nor are we requiring any new wind down requirements, the licensee lessor and lessee could address any concerns surrounding termination and wind down through certain contractual protections.[401]

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[394] *First Secondary Markets Report and Order*, 18 FCC Rcd at 20679, para. 187.

[395] *Notice* at 32, para. 76.

[396] *Id*. Specifically, the Commission asked whether a part 25 space station authorization for SCS should automatically terminate if the underlying lease is terminated or is it necessary to include a condition indicating that operations in the relevant frequencies must stop if the underlying lease is terminated. *See id.* The Commission also asked commenters to consider whether the associated part 25 space station and blanket earth station authorizations should terminate if the parties decide not to renew a lease. *See id.* And, alternatively, if the satellite operator's part 25 authorization is not renewed, or terminates for failure to meet applicable milestones, or is revoked, or if the terrestrial operator's earth station license is not renewed, should the associated lease terminate. *See id.*

[397] *Id.*

[398] *Id.*

[399] AT&T Comments at 23 ("[T]he Commission should not adopt any minimum lease terms or other policies that would unnecessarily constrain terrestrial licensees' ability to manage their spectrum portfolios . . ."); T-Mobile Reply at 8-9 (citing AT&T Comments at 23; SpaceX Comments at 12) (advocating that the Commission should not impose any minimum lease terms or other conditions that are typically negotiated between parties to a lease, and stating that minimum lease terms would unnecessarily constrain licensees' spectrum and network management abilities); SpaceX Comments at 11-13 (arguing for flexibility in parties' ability to enter and structure spectrum access agreements and stating that there is no need to impose minimum lease terms, requirements to meet final performance obligations, or termination rules); T-Mobile Comments at 11-12 (stating the license holder must retain "the ultimate ability to control the use of its spectrum," and there should be no minimum period for any SCS agreement); T-Mobile Comments at 12-13 (arguing that if a lease terminates and the applicable license remains valid, that lease may be renewed, and if the license or space station authorization is terminated, the lease is automatically also terminated).

[400] Skylo Comments at 15.

[401] *Id*. (noting that the SCS framework will "will require collaboration between a satellite operator and a terrestrial licensee that holds all relevant co-channel licenses within a specified area").

For example, these concerns could be addressed by entering into agreements that provide for the continuity and the lifespan of the service especially since the termination of the part 1 lease also terminates the satellite operator's right to operate on the relevant spectrum in the given GIA. Moreover, the licensee lessor, in entering into these contractual arrangements, may also take into consideration that the satellite operator loses its right to operate under the part 25 license if any one of the leases that allows for the use of specific terrestrial spectrum in the GIA for SCS terminates.

e. Interference-Related Leasing Rules

133. In the *Notice*, the Commission explained that the current leasing rules require all lessees to comply with rules requiring responsibility for ensuring non-interference with co-channel and adjacent channel licensees applicable to the lessor/licensee under the license authorization.[402] The primary responsibility for such compliance depends on the type of lease. With a spectrum manager lease, the lessor/licensee has "direct responsibility and accountability for ensuring that their spectrum lessees comply with [the interference-related service] rules, including responsibility for resolving all interference disputes."[403] In contrast, under a *de facto* transfer lease, the spectrum lessee has primary responsibility for ensuring compliance with the Commission's policies and rules, including interference rules applicable to the lessor/licensee.[404] Thus, in the event of an interference issue under a *de facto* transfer lease, the "Enforcement Bureau will first approach the authorized spectrum lessee, and the lessee will be expected to bring its operations into compliance with the Commission's requirements."[405]

134. Due to the novelty surrounding the SCS framework, the Commission sought comment on whether to retain the existing hierarchy of responsibility in the SCS context.[406] The Commission also sought comment on whether it is practical and appropriate for direct responsibility and accountability to apply to the lessor/licensee, or whether the lessee, given that it has been issued a separate part 25 authorization, should be responsible for interference resolution.[407] Verizon, in its comments, contends that the licensee as lessor enabling SCS should be directly and primarily responsible for ensuring the lessee's compliance with the Act and applicable Commission rules.[408] However, other commenters recommend that the Commission should refrain from altering the leasing rules pertaining to interference.[409] After review of the record, we find that retaining the existing hierarchy of responsibility in the SCS part 1 leasing context in conjunction with the interference rules that we adopt today will provide the appropriate safeguards against the risk of harmful interference.

135. We agree with commenters that the allocation of responsibilities between lessor and lessee, as it pertains to interference, should remain the same based on lease type.[410] We note that, in SCS arrangements, the licensee retains an interest in the efficient and responsible functioning of the network operating on the leased frequencies, and it is often the licensee's network which is most at risk of harmful interference. We also remind stakeholders that, although a licensee's responsibility in *de facto* transfer

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[402] *Notice* at 31-32, para. 75; *see also First Secondary Markets Report and Order*, 18 FCC Rcd at 20665, para. 142; 47 CFR §§ 1.9010(b)(1)(ii), 1.9020(d)(1), 1.9030(d)(1), 1.9035(d).

[403] *Notice* at 31-32, para. 75; *First Secondary Markets Report and Order*, 18 FCC Rcd at 20653, para. 108.

[404] *Notice* at 32, para. 75; *First Secondary Markets Report and Order*, 18 FCC Rcd at 20664, 20675, paras. 137, 172-73.

[405] *Notice* at 32, para. 75; *First Secondary Markets Report and Order*, 18 FCC Rcd at 20664, para. 138.

[406] *Notice* at 32, para. 75.

[407] *Id.*

[408] Verizon Comments at 8.

[409] *See generally* SpaceX Comments at 5, 12; Verizon Comments at 8; CTIA Reply at 5-6.

[410] AST Comments at 26-28; SpaceX Comments at 12 (stating licensees are incentivized to ensure compliance with service rules, and that "provide[s] a strong safeguard against harmful interference").

leasing arrangements is more limited than the licensee's responsibilities in spectrum manager leasing arrangements, this does not mean that the licensee is relieved of all responsibility no matter the circumstance. As we stated in the *Second Secondary Markets Report and Order*, spectrum lessees are primarily and directly responsible for ensuring compliance with Commission policies and rules, and thus, we will first approach the lessee when we have questions about interference or other technical performance issues.[411] As a further safeguard, we also noted that the Commission has the direct authority to pursue remedies against lessees under Section 503(b) of the Act.[412] We also remind stakeholders that licensees that enter into a *de facto* transfer leasing arrangement continue to hold *de jure* control of the leased spectrum, as well as non-delegable duties regarding their license, and thus, could be held accountable, in certain limited circumstances, where the lessee does not abide by the Commission's rules and policies.[413] We believe that the current secondary markets safeguards that are in place today will adequately ensure that the risk of harmful interference is mitigated and decline to make any alterations to our secondary markets rules regarding interference at this time.

f. Eligibility for ECIP Participation

136. In the *Notice*, the Commission sought comment on whether SCS participants that seek to enter into leasing arrangements should be eligible for Enhanced Competitive Incentive Program (ECIP) benefits.[414] The Commission also explained that ECIP benefits provide, among other things, incentives for stakeholders to engage in qualifying transactions that make spectrum available in rural areas for advanced wireless services if the stakeholders meet certain requirements.[415] Because prospective ECIP applicants must meet certain threshold requirements prior to receiving the benefits, the Commission also sought comment on how prospective ECIP applicants that intend to provide satellite services primarily intended to fill-in terrestrial coverage gaps in select areas would meet the eligibility requirements and requisite Qualifying Geography thresholds.[416] In response, RWA argues that the FCC should not permit

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[411] *Second Secondary Markets Report and Order*, 19 FCC Rcd at 17563-64, paras. 125-27.

[412] *Id.* at 17563-64, para. 126; 47 U.S.C. § 503(b) (Activities constituting violations authorizing imposition of forfeiture penalty; amount of penalty; procedures applicable; persons subject to penalty; liability exemption period).

[413] *Second Secondary Markets Report and Order*, 19 FCC Rcd at 17563-64, paras. 126-27. In the *Second Secondary Markets Report and Order* we indicated that "such potential residual accountability is quite circumscribed, and would only attach to ongoing violations or other egregious behavior by the spectrum lessees about which the licensee had knowledge or should have knowledge." *Id.* at 17564, para. 27. As an example, we noted that our rules require that "any agreement between a licensee and spectrum lessee must contain provisions that the spectrum lessee comply at all times with applicable Commission rules." *Id.*; *see also* 47 CFR § 1.9040(a)(i). Accordingly, we remind licensees that they will be held accountable to the extent that a licensee is found complicit with ongoing violations by the spectrum lessee about which the licensee is aware and does nothing to ensure compliance. While we hope that instances in which licensees that have entered into *de facto* transfer leases may be held accountable for ongoing or egregious acts of their lessees that provide SCS will be quite rare, we will not relieve these licensees altogether, in all cases no matter how egregious, for responsibility for any act of their spectrum lessees. *See Second Secondary Markets Report and Order*, 19 FCC Rcd at 17564, para. 127.

[414] *Notice* at 33, paras. 78-79; *see also Partitioning, Disaggregation, & Leasing of Spectrum*, WT Docket No. 19-38, Report and Order and Second Further Notice of Proposed Rulemaking, 37 FCC Rcd 8825, 8826, paras. 1-2 (2022) (*ECIP Report and Order*).

[415] *Notice* at 33, paras. 78-79. In the *Notice*, the Commission explained that under the rural transactions-focused prong of the ECIP program there are various requirements that must be met before a stakeholder can receive the program benefits and to prevent waste, fraud, and abuse. *Id.* at 33, para. 79 ("For example, leasing arrangements must be for a minimum of five years, a lessee is required to construct an area of between 300 and 15,000 square miles (Qualifying Geography), depending upon the size of the lessor's licensed area, within two years of the ECIP grant, and a lessee must maintain continuous operations in that entire Qualifying Geography area for three consecutive years.").

[416] *Id.* at 33, paras. 78-79; *see also ECIP Report and Order*, 37 FCC Rcd at 8826, 8845-46, 8872-73, paras. 1-2, 64-66, Appx. A; 47 CFR § 1.60004.

ECIP participation under the SCS framework because doing so would "contrast with the goals of the [ECIP] program."[417] We decline to extend ECIP benefits to stakeholders that intend to enter into a leasing arrangement for the provision of SCS at this time.

137. One of the Commission's goals in the *ECIP Report and Order* was to "facilitate new opportunities for small carriers and Tribal nations" with the intended result of "greater competition and expanded wireless deployment in rural areas."[418] The expansion of wireless deployments under the ECIP program was meant to incentivize transactions to facilitate terrestrial build-out through a terrestrial-based regulatory licensing paradigm.[419] Under the ECIP program, any covered geographic licensee that meets the qualification requirements: (1) may offer spectrum to an unaffiliated eligible entity through a partition and/or disaggregation; and/or (2) where it is eligible to lease in an "included service," may offer spectrum to an unaffiliated eligible entity through a long-term leasing arrangement.[420]

138. In contrast, through the SCS licensing framework that we adopt today, the terrestrial licensee is entering into the leasing arrangement(s) with a satellite operator with the ultimate intent of using satellites to expand the terrestrial licensee's current network coverage and to fill-in terrestrial coverage gaps in select areas.[421] At present, we find that the provision of SCS does not align with the goals or entry criteria of the ECIP program because the SCS leasing framework that we adopt today does not provide a path for satellite operators to meet the ECIP eligibility requirements and requisite ECIP Qualifying Geography thresholds. We recognize, though, that ECIP is a new program that was established by the Commission in July 2022,[422] and the SCS leasing rules that we adopt today are a part of a novel framework. We believe it is in the public interest to allow the SCS marketplace—and the ECIP program—time to develop before determining whether it is appropriate for these two new Commission efforts to support one another. Therefore, we decline to extend ECIP benefits to stakeholders that intend to enter into a leasing arrangement for the provision of SCS at this time.

g. 911-Related Leasing Rules

139. Pursuant to existing leasing rules, there are certain circumstances where a lessee is obligated to comply with Enhanced 911 (E911) requirements under section 9.10 of our rules depending on the lease type.[423] In the *Notice*, the Commission sought comment on whether it should impose 911

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[417] RWA Comments at 2, 6 ("The distinct difference under this proposed [SCS] framework is that the larger providers would lease their spectrum to the satellite operators to further expand *their own network coverage* rather than leasing to a rural or Tribal carrier for the rural or Tribal carrier to make efficient use of the spectrum in their own networks. Thus, the nationwide, statewide, and territory-wide providers that lease their spectrum to the satellite operators would be able to enjoy the license benefits of the ECIP program while further expanding *their own coverage footprint*. There is no need for the FCC to incentivize these carriers to expand their networks in this manner.").

[418] *ECIP Report and Order*, 37 FCC Rcd at 8826, paras. 1-2.

[419] *Notice* at 33, para. 79.

[420] *ECIP Report and Order*, 37 FCC Rcd at 8830-31, para. 18. A "qualifying transaction" is defined as "[a] transaction between unaffiliated parties involving a partition and/or disaggregation, long-term leasing arrangement, or full assignment that meets the requirements of either the small carrier or Tribal Nation transaction prong pursuant to § 1.60003 or the rural-focused transaction prong pursuant to § 1.60004." 47 CFR § 1.60001; *see id.* §§ 1.60003 (small carrier or tribal nation transaction prong), 1.60004 (rural-focused transaction prong).

[421] *Notice* at 33, para. 79.

[422] We note that, on February 15, 2024, WTB announced that the ECIP rules were effective and began accepting assignment and lease applications to participate in the program. *See WTB Launces Enhanced Competition Incentive Program Beginning February 15, 2024*, WT Docket No. 19-38, Public Notice, DA 24-141 (WTB 2024).

[423] *See* 47 CFR §§ 1.9020(d)(8) (stating that under spectrum manager leases, "[i]f E911 obligations apply to the licensee (see § 9.10 of this chapter), the licensee retains the obligations with respect to leased spectrum."), 1.9030(d)(8) (stating that under long-term de facto transfer leases, "to the extent the licensee is required to meet

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obligations on satellite operators seeking to provide SCS as part of their part 25 authorization, and if so, whether there would be any potential inconsistencies between the E911 requirements under the satellite operator's lease and any independent 911 obligation under the satellite operator's license.[424] As further discussed in the service rules section of this *Report and Order*, and based on record support, we adopt interim 911 call routing requirements for terrestrial licensees utilizing SCS, but decline to adopt any new 911 obligations as they independently pertain to satellite operators.[425] Because of this decision, we likewise decline to address any potential inconsistencies relating to E911 leasing rules at this time and seek further comment in the accompanying *Further Notice* on ways in which we can extend our 911 rules in the SCS context.

G. Service Rules

140. In order to enable SCS in a manner that reduces regulatory barriers and fosters rapid deployment, we adopt limited amendments to the service rules governing satellite and terrestrial licensees to enable the provision of SCS. In doing so, we note that the terrestrial licenses which underpin SCS may be issued under parts 22, 24, or 27, and that satellite operators are authorized under part 25. With regard to the terrestrial licenses, we recognize that they will primarily be issued under parts 22, 24, or 27, and we largely maintain the existing service rules in these parts that apply to terrestrial licensees in the SCS context. In addition to those rule parts, however, there are service rule obligations in part 90 that currently apply to FirstNet. As such, we find that applicable part 90 service rules will continue to apply to FirstNet as the terrestrial partner in an SCS arrangement, where relevant. The unique regulatory framework adopted today that enables SCS not only involves different kinds of service providers authorized under different rule parts, but also terrestrial, flexible-use spectrum that is newly allocated to permit mobile satellite services. In the *Notice*, the Commission proposed to apply certain existing service rule obligations to both satellite operators and terrestrial licensees and sought comment on the applicability of other rules in the SCS context.[426] In this section, we first address service rules applicable to the satellite operators authorized under part 25 of the Commission's rules to provide SCS, and then the service rules applicable to terrestrial licensees authorized to provide SCS in collaboration with their satellite operator partners.

1. Part 25 Licensing

141. In the *Notice*, the Commission proposed to largely maintain current part 25 service rules for satellite operators who will deploy SCS networks.[427] We adopt those proposals with regard to the regulatory status, license terms and renewals, bonds and milestones, automatic termination, and some obligations of operators.

142. *Regulatory Status.* In the *Notice*, the Commission proposed that the space station operator would retain its existing regulatory status when applying to modify its license to provide SCS.[428]

E911 obligations (*see* § 9.10 of this chapter), the spectrum lessee is required to meet those obligations with respect to the spectrum leased under the spectrum leasing arrangement insofar as the spectrum lessee's operations are encompassed within the E911 obligations."), 1.9035(d)(4) (stating that under short-term de facto transfer leases, "[i]f E911 obligations apply to the licensee (see § 9.10 of this chapter), the licensee retains the obligations with respect to leased spectrum. A spectrum lessee entering into a short-term de facto transfer leasing arrangement is not separately required to comply with any such obligations in relation to the leased spectrum.").

[424] *Notice* at 33-34, para. 80 (seeking comment on 911-related leasing rules); *see also id.* at 35-37, paras. 83-91 (seeking comment on 911 requirements).

[425] *See infra* paras. 174-83.

[426] *See Notice* at 34, para. 81.

[427] *Id.*

[428] *Id.* at 34-35, para. 82. Pursuant to the Commission's part 25 rules, a space station licensee must indicate its regulatory status—common carrier or non-common carrier—when it files an application for a space station

(continued….)

Commenters agree with this proposal and argue against automatic classification of space stations performing SCS as common carriers.[429] We agree with commenters and, consistent with our current rules, find that the space station licensee or prospective licensee has the opportunity to indicate its regulatory status as either a non-common carrier or common carrier when applying to provide SCS. For satellite operators with an existing part 25 license, this selection could include retaining a space station's current regulatory status as a non-common carrier, or if the operator is expanding the services it will offer to include those traditionally provided by a common carrier, the operator may choose to change its regulatory status to a common carrier. The satellite operator can indicate a change to its regulatory status in the FCC Form 312 submitted with the modification application in which the operator seeks authority to provide expanded services. A satellite operator is not necessarily providing a common carrier telecommunications service in the provision of SCS. Rather, the satellite operator is offering the mobile carrier an ability to leverage SCS capabilities, regardless of whether that capability is limited to text messaging or includes broader capabilities like IoT connectivity.[430] However, we acknowledge that SCS does ultimately result in end-user capabilities traditionally provided by a common carrier. Accordingly, satellite operators can choose their regulatory status as either common carrier or non-common carrier.

143. *License Term and Renewal.* In the *Notice*, the Commission also proposed to maintain our current rules for license terms and renewals, which commenters generally support.[431] Thus, consistent with our proposed framework, a part 25 space station license that is modified to add SCS would retain whatever license term remains under its existing license.[432] Similarly, a modification of an existing part 25 grant of market access to add SCS would not alter the license term of the satellite operations.[433] A new entrant would also be subject to our existing part 25 license term rules.

144. Relatedly, in the *Notice*, the Commission proposed to apply current part 25 renewal rules for satellite authorizations permitting SCS.[434] Commenters agree with the Commission's proposal.[435] We adopt the Commission's proposal and maintain the renewal rules for space stations, and find it continues to be the responsibility of space station operators to file for renewal of the part 25 license. Moreover, since the SCS earth stations, i.e., the terrestrial devices, used for SCS will be licensed by rule, the license terms and renewal rules of those SCS earth stations will be governed by our existing rules.

145. *Deployment Milestones for Part 25 Licensees.* In the *Notice*, the Commission proposed to retain the satellite spectrum milestones applicable to current part 25 satellite operators to provide SCS.[436] Commenters are divided as to whether we should retain milestones for satellite operators seeking

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authorization. *See* 47 CFR § 25.114(c)(11). Satellite space station licenses typically have a non-common carrier status, while the vast majority of terrestrial wireless licensees in flexible-use bands are regulated as common carriers. *See* 47 U.S.C. § 332; 47 CFR pt. 20.

[429] AST Comments at 30-31, 35; SpaceX Comments at 15.

[430] SpaceX Comments at 15.

[431] *See Notice* at 39-40, para. 98. Under section 25.121(a), with some exceptions, licenses for facilities governed by part 25 are issued for a period of 15 years. 47 CFR § 25.121(a)(1); *see also* 47 CFR § 25.121(b). SpaceX contends that the Commission should retain 15-year license terms for SCS authorizations, and T-Mobile agrees that a satellite operator should retain whatever license term remains under its existing license. SpaceX Comments at 17; T-Mobile Comments at 15.

[432] *See Notice* at 39-40, para. 98.

[433] *Id.*

[434] *Id.* Pursuant to section 25.121 of the Commission's rules, an application for a space station system replacement authorization for NGSO satellites must "be filed no earlier than 90 days, and no later than 30 days, prior to the end of the twelfth year of the existing license term." 47 CFR § 25.121(e).

[435] T-Mobile Comments at 15; SpaceX Comments at 17.

[436] *See Notice* at 41, para. 102; 47 CFR § 25.164(a), (b)(1)-(2).

to provide SCS.[437] We agree with commenters who favor retaining the milestone requirements. Milestones prevent speculative systems from creating partnerships with terrestrial operators on which they cannot follow through and thereby depriving consumers of the benefits of SCS connectivity. Although we recognize that the milestone requirements pose constraints on operators when constructing and deploying their systems, we find the public interest weighs in favor of ensuring only viable SCS systems are licensed and deployed. As such, we encourage satellite operators to be prepared to implement their proposed SCS operations before applying for a part 25 license to ensure they have sufficient time after grant to meet the deployment milestones.

146. Similarly, the Commission proposed to apply the surety bond requirements applicable to current part 25 satellite operators to the satellite operators seeking to provide SCS.[438] Commenters are also divided on this proposal.[439] When the Commission adopted the bond requirement in 2003, it concluded that the bond requirement would prevent valuable spectrum resources from lying fallow when another party could put the resources into use.[440] The Commission further reasoned that requiring satellite licensees to make a financial commitment to construct and launch their satellites—a bond that would be called if milestones were not reached—would help deter speculative applications.[441] Our experience has shown that bonds provide a check on spectrum warehousing and discourage applications from entities without the financial stability needed to operate a satellite system. Therefore, we agree with commenters who support our proposal to retain the current bond requirements. In conjunction with our milestone rules, our current surety bond rules will prevent submission of speculative satellite applications or

[437] AST, SpaceX, DISH/EchoStar, and TechFreedom support retaining current milestone requirements. *See* AST Comments at 36-38; SpaceX Comments at 17; DISH/EchoStar Comments at 6; TechFreedom Comments at 16. SpaceX argues we should only require a single buildout "for a general SCS launch authorization, rather than separate bonds and milestones for each set of SCS frequencies on the antenna or within each SCS partnership." SpaceX Comments at 18. AST argues that "[t]he opportunity for a new use of space station licensees' systems afforded by SCS cannot serve as a basis for space station licensees to extend their milestones." AST Comments at 37. TechFreedom adds that "the obligations to implement SCS operations should always remain separate from any buildout obligations a terrestrial licensee (or lessee) of the same frequency has." TechFreedom Comments at 16. Lynk contends that new milestone requirements for SCS should not be adopted because an MNO can partner with multiple satellite operators to prevent a failure or delay in service being rolled out. Lynk Comments at 11-12. Lynk adds that a six-year milestone period is insufficient because part of that time is spent seeking SCS approval. Lynk Comments at 12. In contrast, Kepler argues that the current requirements create barriers to new entrants and that requiring operators to deploy in accordance with milestones would result in more, but less effective, satellites being launched, which goes against the Commission's interest in limiting orbital debris. Kepler Comments at 8.

[438] *See Notice* at 41, para. 103. Under section 25.165, space station licensees generally must post a surety bond within a certain time period after grant of the license, and failure to post a bond causes the license to be rendered automatically null and void. 47 CFR § 25.165. Should the licensee fail to meet the established milestone, the licensee will forfeit that bond. *Id*. § 25.165(c).

[439] DISH/EchoStar and SpaceX support retaining our bond requirements. *See* DISH/EchoStar Comments at 6; SpaceX Comments at 17; *see also* Lynk Comments at 11. SpaceX argues we should only require a single bond requirement for a general SCS launch authorization, rather than separate bonds and milestones for each set of SCS frequencies on the antenna or within each SCS partnership. SpaceX Comments at 18. Lynk opposes the adoption of any new bond requirements. *See* Lynk Comments at 11. Kepler posits that requiring the same bond requirements for operators seeking to provide SCS would result in "unnecessary barriers to new entrants." Kepler Comments at 7-8. Kepler adds that bonds are intended to prevent "spectrum warehousing and incentivize deployment," but there is low risk of this in the SCS context because terrestrial providers are likely to contract performance requirements, or switch to other providers in the event that an initial provider fails to perform. *Id.*

[440] *See Amendment of the Commission's Space Station Licensing Rules and Policies*, 18 FCC Rcd at 10824-25, paras. 166-67.

[441] *Id*.

creation of partnerships that will not result in SCS connectivity, and as such the public interest weighs in favor of retaining this requirement.[442]

147. We clarify that, for satellite operators seeking to modify an existing license to add SCS, the bond and milestone requirements indicated in the initial part 25 license will continue to apply.[443] In addition, for new entrants seeking a part 25 license that will include SCS, the licensees must submit a new bond and meet new milestones for those satellites. Ultimately, bonds and milestones will continue to be tied to the deployment and operation of the satellites.[444]

148. *Automatic Termination.* The Commission proposed to retain the current part 25 rules regarding automatic termination of station authorizations for satellite licensees seeking to provide SCS jointly with a terrestrial operator.[445] Specifically, for part 25 satellite operators, the Commission has adopted an automatic termination rule that describes the consequences for failing to meet applicable milestones.[446] Station authorizations also terminate for the removal or modification of the facilities, which renders the station not operational for more than 90 days.[447] In addition to proposing to retain this automatic termination rule, the Commission sought comment on whether a part 25 license for SCS should automatically terminate if the underlying lease is terminated and sought comment on whether any other rule amendments were required in the public interest.[448] T-Mobile concurs with the Commission's proposal to retain the current automatic termination rule, and no parties oppose.[449] We therefore adopt the Commission's proposal to retain current part 25 rules regarding automatic termination.[450] We also adopt a new provision to cover SCS and determine that the failure to provide SCS for more than 90 days on all or some of the authorized SCS frequencies automatically terminates the part 25 license for those frequencies where SCS operations have ceased.[451] We find a 90 day period for SCS in this regard is consistent with the existing automatic termination rule related to removal or modification of facilities and is consistent with the Commission's duty to promote efficient spectrum use.[452] We note that the termination provisions addressed in this rulemaking are only relevant to termination of the SCS authorization, and the remainder of the satellite operations are subject to the existing part 25 automatic termination provisions, which have

[442] *See* SpaceX Comments at 18.

[443] *See, e.g.*, SpaceX Gen2 SCS Modification Application, ICFS File No. SAT-MOD-20230207-00021.

[444] *See* 47 CFR § 25.164(a), (b)(1).

[445] *See Notice* at 42-43, para. 106. To promote spectrum efficiency, the Commission establishes performance requirements or deployment milestones, depending on the radio service, with attendant consequences for failing to timely meet the requirements. *See id.* at 42, para. 105.

[446] *See* 47 CFR § 25.161.

[447] *See id.* § 25.161(c).

[448] *See Notice* at 32, 42-43, paras. 76, 106.

[449] T-Mobile Comments at 15; *see also* Skylo Comments at 11 ("[I]n cases where the terrestrial licensee loses some or all spectrum licenses in an area leased to an SCS operator (for example, if the licensee fails to renew the license or the license is suspended or revoked), then the SCS operations should also cease until a new lease arrangement is established with the subsequent licensee.").

[450] 47 CFR § 25.161.

[451] We clarify that, if a part 25 authorization permits SCS in more than one GIA, the authority to operate in a particular GIA will terminate, but the part 25 authorization for SCS in the other GIA(s) will remain valid. Relatedly, SpaceX argues that the Commission should not terminate an international SCS launch authorization due to the termination of a domestic spectrum access agreement. SpaceX Comments at 12. We clarify that, if a satellite operator has received a satellite authorization from the Commission to perform SCS domestically and to deploy on frequency bands capable of providing SCS in other countries, that deployment authorization may continue if only the domestic lease and associated authorization terminates.

[452] Lynk Comments at 7-8.

not been altered. Similarly, automatic termination that is unrelated to loss of a part 1 lease arrangement or agreement will continue to be governed by existing part 25 rules, which provide for automatic termination of a station that is not operational for 90 days.[453]

149. Furthermore, the Commission sought comment on whether to include a condition indicating that operations in the relevant frequencies must stop if the underlying lease is terminated.[454] We remind satellite operators that they must cease SCS in the relevant frequencies if the underlying part 1 lease arrangement or agreement is terminated, and we find that it serves the public interest to adopt this as a condition to the part 25 license. Specifically, in an SCS partnership between a satellite operator and a single terrestrial licensee, SCS must cease throughout the affected GIA and frequencies if the lease that allows for the use of that terrestrial spectrum for SCS terminates or if the terrestrial operator's underlying license(s) no longer covers the entire relevant GIA. Likewise, in an SCS arrangement in which multiple terrestrial licensees have leases with a satellite operator, if any one of the leases that enables satisfaction of the GIA coverage requirement terminates, then SCS must cease throughout the affected GIA and frequencies.[455]

150. *Other Existing Obligations.* In the *Notice*, the Commission further sought comment on whether any other existing service rule obligations applicable to terrestrial providers offering commercial service in the SCS Bands need to be addressed in the Commission's proposed part 25 licensing framework.[456] The Commission invited parties to comment on matters such as orbital debris requirements, roaming rules, or application of part 25 rules that would be inconsistent with the proposed framework.[457]

151. Commenters raise issues with two additional part 25 rule sections in the context of SCS, and we agree with one commenter's proposal. First, section 25.289 of our rules provides for the protection of GSO systems by NGSO systems.[458] However, section 25.289 only applies to FSS and Broadcasting-Satellite Service (BSS) operations and does not apply to satellite operations in MSS bands given that the non-directional antennas involved in MSS make it difficult for NGSO and GSO systems to share the same spectrum.[459] As such, we clarify that we will continue to maintain section 25.289 as written and not apply it to SCS, as SCS also involves service to terrestrial devices with omnidirectional antennas.[460] Second, the Commission proposed adding section 25.204(g) to our rules to set power limits for earth stations involved in SCS.[461] The Commission proposed that SCS earth stations would be

[453] *See* 47 CFR § 25.161(c). While T-Mobile argues that the 90-day automatic termination period for space stations providing SCS should become effective from the time that commercial SCS begins, the license term for part 25 space station licenses typically begins on the date that the licensee notifies the Commission that operation of an initial space station(s) is compliant with the license terms and conditions and that the space station(s) has been placed in its authorized orbit and has begun operating. *See id.* § 25.121(d); T-Mobile Mar. 5, 2024, *Ex Parte* at 6.

[454] *See Notice* at 32, para. 76.

[455] For operations in the United States, we recognize that the complexity of SCS arrangements may result in situations where the underlying part 1 lease(s) becomes invalid and inadvertently causes a loss of rights for the satellite operator to operate throughout the GIA. We encourage parties to notify both WTB and SB of any such situation and note that parties may request waivers if the underlying part 1 lease rights temporarily lapse.

[456] *Notice* at 43, para. 108.

[457] *Id.*

[458] 47 CFR § 25.289.

[459] *Id.*; OneWeb Comments at 5 n.13.

[460] OneWeb Comments at 5 n.13.

[461] *See Notice* at Appx. A, 68, para. 13 ("Earth stations operating in conjunction with the provision of SCS pursuant to § 25.125 shall comply with the power requirements for the respective band of operation of the terrestrial partner for terrestrial transceivers in parts 22, 24, or 27 of this chapter (e.g., §§ 22.913, 24.232, 27.50).").

required to meet the power limits applicable to terrestrial devices and base stations.[462] As explained in the discussion of the technical rules later in this *Report and Order*, we adopt that proposal.[463]

152. Unless otherwise noted herein, we will continue to apply our part 25 rules to satellite operators that will provide SCS.[464] SpaceX argues generally that we should not impose the full set of part 25 rules upon operators providing SCS, while AST contends that we should not add any additional obligations.[465] However, we have not been persuaded to change any additional rules, and we see no reason to impose additional part 25 obligations not otherwise addressed. We agree with Viasat, which stated in its comments, "[w]hile the SCS framework is novel, the fundamental on-orbit activities that enable it are not, and there is no reason to exclude satellites providing SCS from these requirements without a clear justification that doing so would serve the public interest."[466] In particular, we will continue to apply space station orbital debris mitigation requirements to satellite operators.[467] Commenters favor retaining our orbital debris requirements for satellite operators providing SCS.[468] We clarify that "any modification to add SCS to an existing satellite authorization should include evaluation of the impact of the modification on the operator's existing orbital debris mitigation plan."[469] We recognize the importance of our orbital debris rules in the provision of SCS, given the use of often larger antennas, which in turn can create an increased risk of orbital debris.[470]

2. Terrestrial Wireless Licensing

153. *License Term and Renewal.* For the same reasons we adopt the proposal from the *Notice* to maintain our part 25 license term and renewal rules, we also decline to make any changes to existing license term or renewal rules for terrestrial wireless service providers partnering to provide SCS with satellite operators. As noted in the *Notice*, various Commission rule parts contain license term and renewal obligations for terrestrial wireless service licensees.[471] Section 1.949 explains the renewal standards and what type of showing is required to receive a grant of a renewal application.[472] The Commission sought comment on whether we should amend any of our terrestrial licensee renewal rules.[473] No party suggests that we should change our existing rules governing license term and renewal for terrestrial licensees. Therefore, we will maintain the current term and renewal requirements in section 1.949 for terrestrial licensees that are collaborating with satellite operators to provide SCS.[474]

154. *Automatic Termination.* In the *Notice*, the Commission described how its permanent discontinuance of service rules function together with construction and renewal requirements for

[462] *See id.* at 49, para. 127; Intelsat Comments at 2 n.5.

[463] *See infra* para. 208.

[464] *See* Viasat Comments at 4; DISH/EchoStar Comments at 6.

[465] SpaceX Comments at 17; AST Comments at 36-38.

[466] Viasat Comments at 4.

[467] 47 CFR § 25.114. We note that U.S. licensees and holders of U.S. market access authorization are subject to the same orbital debris requirements. *See* Lynk Comments at 4-5.

[468] TerreStar Comments at 4-5; Viasat Comments at 4.

[469] Viasat Comments at 4.

[470] *See id.* at 4-5.

[471] *See Notice* at 39-40, paras. 98-99.

[472] *See* 47 CFR § 1.949.

[473] *Notice* at 40, para. 99.

[474] *See* 47 CFR § 1.949.

terrestrial licensees to ensure spectrum efficiency and the provision of service in a timely manner.[475] Different services have different requirements that can lead to automatic license termination if there is a permanent discontinuance.[476] Specifically, section 1.953 defines permanent discontinuance of service.[477] The Commission sought comment on whether any part 1 rule revisions are necessary in the public interest to address the unique nature of SCS as a collaborative service involving both satellite operators and terrestrial service providers.[478] No party suggests that we make any changes to applicable discontinuance of service rules for terrestrial licensees that have arrangements with satellite operators to provide SCS and we have determined that SCS may not count towards our discontinuance rules.[479] For that reason, we will maintain the current discontinuance requirements for terrestrial licensees pursuant to section 1.953 of the Commission's rules.[480]

155. *Mobile Spectrum Holdings Policies.* In evaluating mobile spectrum holdings policies, including the potential competitive effects of spectrum aggregation in secondary market transactions from long-term spectrum leasing arrangements, the Commission uses a spectrum screen to help it identify, on a case-by-case basis, those local markets that may warrant further competitive analysis.[481] The spectrum screen trigger is approximately one-third of the total spectrum that the Commission has determined is suitable and available for mobile voice/mobile broadband use.[482] Further, below-1-GHz spectrum concentration is an enhanced factor in the Commission's review if, post-transaction, the acquiring entity would hold more than one-third of the currently available and suitable spectrum below 1 GHz.[483] Commission rules and policies specify how spectrum holdings are attributed to particular entities for purposes of spectrum aggregation review, including the attribution of spectrum holdings to both the lessor and lessee in a given long-term leasing arrangement.[484]

156. In the *Notice*, the Commission sought comment on spectrum aggregation and other potential competitive issues in the context of the leasing relationship between the terrestrial service provider and the satellite operator to enable the provision of SCS on spectrum licensed to the terrestrial

[475] *See Notice* at 42, para. 105.

[476] *Id.*

[477] *See* 47 CFR § 1.953.

[478] *Id.*

[479] *See supra* paras. 148-49.

[480] *See* 47 CFR § 1.953.

[481] *Policies Regarding Mobile Spectrum Holdings Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, WT Docket No. 12-269, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6133, 6221-22, 6228, paras. 225, 246 n.656 (2014) (*Mobile Spectrum Holdings Report and Order*); *see also 2022 Communications Marketplace Report*, GN Docket No. 22-203, Report, 37 FCC Rcd 15514, 15578, para. 83 (2022) (*2022 Communications Marketplace Report*).

[482] *2022 Communications Marketplace Report*, 37 FCC Rcd at 15578-79, para. 84 n.215, Fig. II.B.9. The Commission has included the following bands in the spectrum aggregation screen: 600 MHz, 700 MHz (except for 758-769/788-799 MHz licensed to FirstNet), Cellular, SMR, Broadband PCS, AWS-1, AWS-3, AWS-4, H Block, WCS A and B Blocks, BRS, EBS, 3.7 GHz, and 3.45 GHz. *Id.* at 66, Fig. II.B.9.

[483] *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6238-40, paras. 282-88. With respect to 600 MHz licenses acquired in the Broadcast Incentive Auction, the Commission adopted rules prohibiting secondary market transactions within a specified time period. *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6212, paras. 197-98; 47 CFR § 20.22(c).

[484] *Mobile Spectrum Holdings Report and Order*, 29 FCC Rcd at 6228, 6245, paras. 246 n.656, 301-02; 47 CFR § 20.22(b)(5). Section 20.22(b)(5)(i) of the Commission's rules provides that long-term *de facto* transfer leasing arrangements (as defined in section 1.9003) and long-term spectrum manager leasing arrangements (as identified in section 1.9020(e)(1)(ii)) that enable commercial use shall be attributable to lessees, lessors, sublessees, and sublessors for purposes of this section.

service provider.[485] Specifically, the Commission sought comment on whether to apply its existing secondary market policies on spectrum attribution and aggregation to the SCS leasing framework, or whether it should make any changes in the SCS context.[486]

157. In this proceeding, we seek to leverage our existing leasing framework and existing service rules and policies wherever possible in order to facilitate the rapid provision of SCS, while continuing to evaluate the complexity of this undertaking as a new and innovative use of spectrum. Consistent with this approach, and after consideration of the record, we find that it is in the public interest to maintain our existing mobile spectrum holdings policies and secondary market aggregation rules, and not to make any changes in the SCS context at this time.

158. As an initial matter, we note that this *Report and Order* establishes rules for SCS in the following SCS Bands: 600 MHz, 700 MHz, 800 MHz, Broadband PCS, and AWS-H Block Bands.[487] These bands already are included in our spectrum screen and enhanced factor review (where applicable), except for the 758-769/788-799 MHz band licensed to FirstNet. Entities holding licenses in the bands included in the screen already are attributed with the spectrum covered by their licenses for purposes of spectrum aggregation review, and the entity holding the 758-769/788-799 MHz band is not so attributed. In long-term leasing arrangements, spectrum included in the screen would be attributed to both lessor and lessee under the Commission's spectrum attribution rules, absent any changes to those rules in the SCS context.

159. In its comments, T-Mobile argues that a satellite operator lessee in the SCS context should be attributed with the spectrum it leases for purposes of spectrum aggregation policies, but that the Commission should evaluate whether the terrestrial licensee should continue to be attributed with that spectrum in areas where only SCS is provided.[488] In response, AT&T and Verizon urge the Commission not to adopt special spectrum aggregation policies for SCS,[489] and AT&T asserts that any such changes would be better addressed in a separate proceeding.[490] We agree with AT&T and Verizon and decline to change our spectrum attribution rules for leasing at this time.

160. We emphasize that the development of SCS is in a nascent stage, and we do not yet have evidence to support making a change in these rules. Accordingly, under section 20.22 of our rules, spectrum subject to long-term leasing arrangements, including for deployment of SCS, will continue to be attributed to both the lessor and the lessee, and these lease arrangements will be assessed by the Commission on a case-by-case basis for competitive review.[491] We note, however, that case-by-case review of leases for SCS deployment should take into account the public benefits that can be achieved by SCS arrangements, as articulated in this *Report and Order*.

161. In addition, we do not adopt an SCS-specific spectrum screen, as suggested by Fleet Space as a way to promote competition.[492] Until the SCS marketplace has had a chance to develop, it is

[485] *See Notice* at 38-39, paras. 94-96.

[486] *See id.* at 39, para. 96.

[487] *See supra* para. 28.

[488] T-Mobile Comments at 15.

[489] AT&T Reply at 5 n.18; Verizon Reply at 11.

[490] AT&T Reply at 5 n.18.

[491] We note that this rule and these policies apply both to a scenario involving one terrestrial operator that holds all co-channel licenses throughout an entire GIA and to a scenario involving a collaboration among multiple terrestrial service providers that together hold all licenses on the relevant channel in a GIA. In the latter scenario, the terrestrial licensees may each lease individually to the satellite operator, or one licensee may lease from each of the other co-channel licensees and then sublet to the satellite operator.

[492] Fleet Space Reply at 8.

premature to enact a spectrum screen mechanism solely applicable to spectrum that qualifies for SCS.

162. *SCS Operation Over Large Bodies of Water.* Under our current rules, terrestrial licensing areas cover markets that extend over bodies of water.[493] The Commission suggested in the *Notice* that it was not necessary to modify the existing market area boundary limits in parts 22, 24, and 27 of the Commission's rules in the SCS context.[494] Nevertheless, the Commission sought comment on whether any additional boundary limits should be placed at the margins of a GIA, for example, at international boundaries or at a boundary extending into water.[495] One commenter, Skylo, suggests that SCS should be available only where the terrestrial licensee's network is located, i.e., if there is no terrestrial service over large bodies of water, such as the Great Lakes or the Gulf of Mexico, then SCS operations should not be permitted.[496] In response, several commenters urge the Commission to reject this argument and permit SCS over large bodies of water. Verizon notes that the Commission's rules already address the scope of a terrestrial licensee's authority to operate over bodies of water "including the Atlantic and Pacific Oceans, the Gulf of Mexico, the Great Lakes, and more," and that these rules should extended to SCS operations.[497] Indeed, AST argues that, "[i]f a body of water lies within the boundaries of the underlying terrestrial license, there is no reason why a licensee should be required to forfeit its rights to extend its coverage area using SCS technology."[498] While T-Mobile does not believe that SCS should be used to expand a terrestrial licensee's coverage area, T-Mobile does agree that SCS should be available over bodies of water if those areas are considered part of the licensee's authorized service area.[499]

163. In line with these comments, we find that it is in the public interest to permit SCS operations over large bodies of water that are included within the relevant GIA where the terrestrial licensee's market boundary limit extends over that body of water. We emphasize that we are not implementing any new rules, but we are merely allowing terrestrial licensees to keep the current rights associated with their licenses as it pertains to SCS.[500] As the terrestrial licensee or licensees would hold all co-channel licenses covering the GIA, the licensees' authorized service area would include the bodies

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[493] *See, e.g.*, *Cellular Service and Other Commercial Mobile Radio Services in the Gulf of Mexico*; *Amendment of Part 22 of the Commission's Rules for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules*, WT Docket No. 97-112, CC Docket No. 90-6, Order, 17 FCC Rcd 1209, 1224, para. 46 n.75 (2002) ("For example, MTAs, BTAs, and EAs are all based on county boundaries. The distance that the boundaries of coastal counties extend over water varies by state. The county boundaries of Texas and Florida extend three marine leagues (nine nautical miles) out from the water line, the county boundary of Louisiana extends three imperial nautical miles (imperial nautical mile = 6080.2 feet) into the Gulf, and all other states' boundaries extend three nautical miles (approximately 3.3 statute miles) from the baseline into the Gulf.").

[494] *See Notice* at 45, para. 115; 47 CFR §§ 22.983, 24.236, 27.55.

[495] *Notice* at 45, para. 115.

[496] Skylo Comments at 10.

[497] Verizon Reply at 13 (citing *Facilitating Access to Spectrum for Offshore Uses and Operations*, WT Docket No. 22-204, Notice of Inquiry, 37 FCC Rcd 7178, 7179, para. 4 (2022) (*Offshore NOI*) ("The Commission uses ongoing, demand-driven licensing in the Gulf of Mexico and in other U.S. territorial waters in the Atlantic and Pacific Oceans, including areas adjacent to the Continental United States (CONUS), Alaska, Hawaii, Puerto Rico, the U.S. Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.").

[498] AST Reply at 8 ("[T]he very point of SCS operations is to supplement terrestrial services where the terrestrial network is out of reach."); *see also* Verizon Reply at 13 (stating the same rules should apply to SCS, which will be a supplement to an existing terrestrial licensee's service area).

[499] T-Mobile Reply at 19.

[500] We also note that there is an ongoing proceeding whereby the Commission sought comment on ways to facilitate the development of commercial and private wireless networks offshore. *See Offshore NOI*, 37 FCC Rcd 7178. This proceeding concerns extending licensing to unlicensed areas, and therefore, it is not relevant to our discussion here regarding SCS operations over large bodies of water. We decline to make any decisions in this *Report and Order* that could impact that proceeding.

of water within the GIA, and we see no reason not to permit SCS as a way to enable gap coverage over large bodies of water in the same way it will do so over unserved land areas. Indeed, we note the important public safety nature of emergency communications offshore and anticipate SCS over large bodies of water will provide important public interest benefits.

164. *SCS Restrictions.* In the *Notice*, the Commission asked whether any additional boundary limits should be placed at the margins of a GIA, for example, at international boundaries or at a boundary extending into water, in the SCS context.[501] Although we find that it is not in the public interest to adopt any additional restrictions on the operation of SCS beyond what is described herein pursuant to our regulatory framework, we take this opportunity to emphasize that SCS is only permitted within the boundaries of the relevant GIA. In other words, SCS is not permitted (1) in any other GIA not authorized under the satellite operator's part 25 authorization as described to the Commission, or (2) over international borders. As described in the international coordination section of this *Report and Order*, SCS must be conducted in accordance with international regulations and agreements with border countries.[502] In order to ensure compliance with our GIA restriction, we will require the satellite operators to demonstrate to the Commission in their part 25 application how they will ensure that terrestrial devices connecting to their SCS networks will only operate within the boundaries of the relevant GIA.

165. *Retaining Full GIA/Block.* In the *Notice*, the Commission sought comment on what limitations, if any, are necessary to impose on a satellite operator or terrestrial service provider's ability to assign or transfer its rights under its licenses.[503] Specifically, the Commission asked whether a terrestrial licensee should be prohibited, for example, from assigning, partitioning, or disaggregating any rights in any of the licenses that cover a part of the GIA.[504] These questions concerning license alienability are important given that our SCS framework requires a satellite operator to have lease arrangements with one or more terrestrial service providers that hold all co-channel licenses on the relevant band covering an entire GIA. Our initial framework is intended to avoid technical complexities that could arise if SCS is not limited to a GIA, made possible through a lease arrangement, and presents the most efficient path to rapidly enabling SCS.

166. As a general matter, in this proceeding, we are striving to maintain, as much as possible, our existing leasing framework and policies governing secondary market transactions in the SCS context. For example, we are not changing our secondary market or spectrum aggregation policies so that the market for SCS is given a chance to develop before we impose restrictions. Only where the benefits of imposing a restriction outweigh the costs of keeping our current rules and policies in place will we take action to adopt a restriction. Commenters here generally support applying existing rules and policies encouraging secondary market transactions to SCS collaborations, focusing primarily on the negotiation of lease terms.[505] Some commenters, for instance AT&T, argue more specifically that the Commission should not prohibit licensees from assigning, partitioning, or disaggregating rights in any of their licenses that cover part of a GIA.[506]

167. Although we are generally maintaining our current leasing framework for SCS in order to encourage the rapid development and implementation of SCS, our initial framework relies on entry criteria that minimizes the possibility for interference between geographically adjacent markets. Our entry criteria include limiting authorizations for SCS to instances where there are part 1 lease

[501] *See Notice* at 45, para. 115.

[502] *See infra* paras. 224-36.

[503] *See Notice* at 28, para. 67.

[504] *Id*.

[505] *See, e.g.*, AT&T Comments at 22-23; CTIA Comments at 3-4; SpaceX Comments at 11; T-Mobile Comments at 7-8; Verizon Comments at 8-9.

[506] *See, e.g.*, AT&T Comments at 22-23; AST Comments at 26.

arrangements on file to lease the spectrum throughout an entire GIA. We find it necessary in this instance to limit alienability to ensure that the SCS arrangement authorized by the Commission continues to qualify under our entry criteria. More specifically, we clarify that the terrestrial licensee or licensees involved in an SCS arrangement may not engage in any transaction—e.g., lease, assignment, transfer, partition, disaggregation—that would result in the arrangement no longer satisfying our entry criteria.[507] This restriction will be added as a condition to any Commission lease grant, whether a spectrum manager or *de facto* transfer lease. This condition will ensure that the goals which justified the GIA requirement in the first place—minimizing the risk of harmful interference to geographically-adjacent co-channel licensees—continue to be satisfied throughout the entirety of the SCS arrangement. Accordingly, we find it in the public interest to keep our entry criteria intact and make clear that the terrestrial licensee(s), participating in an SCS arrangement with a satellite operator, must continue to hold the underlying spectrum rights throughout the relevant GIA and frequencies as described in the satellite operator's part 25 authorization.

168. *Permissible Communications.* In the *Notice,* the Commission explained that there are rules in parts 22, 24, and 27 that lay out what communications are considered permissible on the applicable terrestrial spectrum for the terrestrial licensees.[508] The licensing framework adopted herein for the provision of SCS changes certain allocations to permit space station transmissions authorized under part 25 of the Commission's rules on previously terrestrial-only spectrum. The Commission tentatively concluded that it is unnecessary to revise the part 22, 24, and 27 rules related to permissible communications to enable the provision of SCS because the transmissions that will be supplementing existing terrestrial coverage are generated by the satellite operator and not the terrestrial service provider.[509] Given the lack of comment on this issue, we affirm our tentative conclusion and find that no rule changes are necessary in this regard.

169. *Other Existing Obligations.* Although we are maintaining—to the greatest extent possible—existing service rules currently applicable to both satellite operators and terrestrial licensees in an effort to expedite the provision of SCS, the Commission asked in the *Notice* whether there are public interest reasons that part 25 satellite operator lessees should be required to comply with any other service rules applicable to their terrestrial service partners.[510] For example, the Commission asked whether our roaming rules in part 20 should apply to satellite operators providing SCS under the regulatory framework adopted herein.[511] The Commission noted that SCS is not a standalone service, but rather a supplement to existing terrestrial service.[512] Based upon our consideration of the record, we decline to apply roaming requirements to SCS operations at this time.

170. Roaming arrangements between wireless service providers enable customers of one provider to receive services from another provider's network when they are in areas that their provider's network does not cover. The Commission's part 20 rules requiring voice and data roaming arrangements are intended to promote consumer access to mobile services nationwide and encourage facilities-based

[507] We note that these transactions would be permitted as long as they would result in the arrangement continuing to qualify. For example, where multiple licensees are jointly providing SCS, transactions between them which keep the underlying spectrum rights within the bounds of the arrangement are permitted. Similarly, a "sale-and-leaseback" arrangement may be permitted where an appropriate showing is made, under certain circumstances.

[508] *Notice* at 43, para. 107 (citing 47 CFR §§ 22.901, 24.3, 27.2(a)).

[509] *Id.* at 43, para. 107.

[510] *Id.* at 43, para. 108.

[511] *Id.*; 47 CFR § 20.12.

[512] *Notice* at 43, para. 108.

competition among multiple service providers.[513] Under the Commission's rules, facilities-based providers of mobile voice and data services must offer roaming to other facilities-based technologically compatible providers.[514]

171. Commenters express differing views regarding whether roaming requirements should apply in the SCS context. Some commenters recommend that the Commission apply its part 20 roaming rules to SCS, specifically suggesting that we modify section 20.12 to clarify that the roaming obligations of a CMRS provider extend to the portions of its coverage made up of SCS.[515] Verizon argues that the Commission should refrain from adopting additional regulatory requirements for SCS based on speculation about how SCS services will develop.[516] CCA, RWA, and Cellcom urge the Commission to preserve the roaming relationships among terrestrial wireless providers.[517] RWA suggests that the SCS framework should require the prioritization of the use of other terrestrial wireless networks where available.[518]

172. Upon careful consideration of the record, we conclude that, at this time, we will not apply the part 20 roaming rules to satellite operators providing SCS. We also decline requests in the record to clarify that the roaming obligations of a CMRS provider extend to the portions of its coverage made up of SCS operations and to establish requirements requiring the prioritization of other terrestrial networks for roaming. Our primary objective in this proceeding is to establish a framework that will facilitate the rapid provision of SCS while recognizing that SCS technologies are continuing to be developed. We decline to require roaming with respect to SCS at this time because we find that applying roaming requirements in the SCS context at this nascent stage is premature and may add complexity and additional technical considerations that could affect the development of SCS collaborations. We are not persuaded by comments urging us to adopt roaming prioritization requirements to safeguard existing terrestrial roaming arrangements and instead agree with other commenters that such requests are based on speculative assessments of how SCS will develop. In addition, the Commission does not typically intervene in interpreting contractual arrangements to affect the competitive position of providers, and we do not find that doing so in this case is necessary to serve the public interest.[519] We find that the public interest would be better served at this time by continuing to monitor whether or how roaming arrangements are affected as SCS collaborations are implemented going forward

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[513] *See Data Roaming Order*, 26 FCC Rcd at 5415, para. 9; *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 25 FCC Rcd 4181, 4182, paras. 1-2 (2010).

[514] *See* 47 CFR § 20.12.

[515] *See* AT&T Comments at 18-19; AT&T Reply at 11-12; Intelsat Reply at 6.

[516] Verizon Comments at 15.

[517] *See* CCA Reply at 9-11 (highlighting the service and economic benefits of terrestrial roaming relationships to consumers); RWA Comments at 5-6 (describing the importance of terrestrial roaming partnerships with regard to robust service and competition); Cellcom Reply at 4 (emphasizing that current terrestrial roaming agreements are important for competition).

[518] *See* RWA Comments at 5-6. RWA states that "[u]nder such a mechanism, where both a satellite provider, through the leasing arrangement, and a rural or regional carrier are providing coverage in the same geographic area, the nationwide, statewide, or territory-wide carrier should be required to prioritize use of the rural or regional carriers' network to ensure that Americans are afforded the best and most reliable broadband coverage possible. Where such networks are unavailable, the customers devices should then, and only then, default to supplemental satellite coverage." *Id*.

[519] *See* Verizon Comments at 15. We note that this decision is limited to the context of our consideration of roaming requirements for SCS operations and is separate from our decisions with respect to prioritization requirements that should apply in connection with 911 and WEA requirements for SCS.

3. Ensuring Public Safety Communications

173. A primary goal of this proceeding is to promote public safety by expanding the availability of emergency communications to consumers, especially in remote, unserved, or underserved areas. Doing so strengthens terrestrial wireless service providers' ability to support critical public safety mechanisms such as 911 and Wireless Emergency Alerts (WEA) in such areas, increasing the geographic range where first responders can provide emergency services.[520] The Commission emphasized this goal in the *Notice*[521] and requested comment on how best to promote this goal and enhance consumers' access to our nation's emergency response system by using SCS provided via a collaboration between a terrestrial service provider and a satellite operator.[522] The parties' responsive comments generally support these goals and confirm our view that terrestrial providers should take steps to ensure their subscribers' access to the 911 system in areas where they use SCS arrangements to expand coverage to their end-users.

a. 911 Call Transmission Requirements

174. As discussed in detail below, we adopt interim 911 text and call routing requirements for terrestrial providers that use SCS arrangements to extend their coverage service areas, but do not apply these requirements to SCS satellite operators at this time.[523] In doing so, we recognize both the vital importance of 911 service to emergency response and disaster preparedness, and that nascent SCS operations and deployments require flexibility. As some terrestrial 911 requirements may not be feasible at this time, we establish interim 911 requirements that require terrestrial providers to transmit all SCS 911 voice calls and texts[524] to a Public Safety Answering Point (PSAP) using either an emergency call center or location-based routing. Terrestrial providers must also transmit location information and the user's phone number to facilitate dispatch and callback capabilities at the receiving PSAP. Under our approach, for purposes of delivering SCS 911 voice calls and SCS 911 text messages, terrestrial providers must either: (1) use information regarding the location of a device, including but not limited to device-based location information,[525] and transmit the phone number of the device used to send the SCS 911

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[520] *Notice* at 2, para. 1 (explaining that SCS could "play a key role" in fulfilling FCC public interest goals, including "facilitating ubiquitous wireless coverage across the nation; expanding the availability of emergency communications to consumers and the geographic range of first responders to provide emergency services; and promoting competition in the provision of wireless services to consumers, among others").

[521] *Id.* at 35, para. 83 (emphasizing that "911 service is a vital part of our nation's emergency response and disaster preparedness system, and the Commission is committed to increasing public safety by encouraging and coordinating development of a nationwide, seamless communications system for emergency services that is regularly upgraded").

[522] *Id.* at 35-37, paras. 83-91.

[523] *See supra* Section III.F.2.g (declining to extend E911 requirements in the SCS context where a satellite operator enters into a part 1 leasing arrangement with a terrestrial licensee).

[524] For purposes of this proceeding, we use the phrase "SCS 911" voice calls to refer to 911 calls as defined in section 9.3 of the rules and initiated by terrestrial providers' end-user subscribers and carried over satellite facilities pursuant to an SCS arrangement between the terrestrial provider and the satellite operator. "911 call" refers to "[a]ny call initiated by an end user by dialing 911 for the purpose of accessing an emergency service provider." 47 CFR § 9.3. For wireless carriers, "all 911 calls" include those they are required to transmit pursuant to subpart C of part 9. *Id.* §§ 9.3, 9.10. Under section 9.10(b) "all wireless 911 calls" refers to "any call initiated by a wireless user dialing 911 on a phone using a compliant radio frequency protocol of the serving carrier." *Id.* § 9.10(b). A 911 text message refers to "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." *Id.* § 9.10(q)(9).

[525] For purposes of this proceeding, we use the term "location-based routing" to mean the use of information regarding the location of a device, including but not limited to device-based location information, to route 911 communications to an appropriate PSAP. We note that this definition of location-based routing is functionally equivalent with the definition established for wireless 911 voice calls and 911 real-time text messages in the context of wireless 911 routing. *See id.* § 9.3. In the companion *Further Notice*, we seek further comment on defining "location-based routing" requirements for SCS 911 purposes.

voice call or SCS 911 text message and available information to an appropriate PSAP; or (2) use an emergency call center, at which emergency call center personnel must determine the emergency caller's phone number and location and then transfer or otherwise direct the SCS voice call or SCS text message to an appropriate PSAP. In addition, we require terrestrial providers that use SCS to (1) explain how their SCS deployments have supported 911 call/text routing to the geographically appropriate PSAP with sufficient location information in annual reports to the Commission; (2) submit a one-time privacy certification; and (3) provide consumer disclosures regarding the extent of SCS 911 connectivity.

175. In seeking comment on whether to extend wireless 911 requirements to the provision of SCS, the Commission recognized that SCS is a novel way of connecting consumers to emergency services that mixes terrestrial and space technology.[526] The Commission further acknowledged that it may not be feasible for the collaborators to comply with all existing 911 requirements when the satellite operator is supplementing the terrestrial provider's service.[527] The Commission sought detailed information on how to best support the availability of emergency 911 services and what, if any, rule changes are necessary to accommodate SCS.[528]

176. In this proceeding, the record reflects the importance of emergency communications via SCS where terrestrial communications infrastructure is limited or non-existent, as well as during natural disasters that disrupt terrestrial networks.[529] However, the record is divided over the technical feasibility

[526] *Notice* at 35, paras. 83-84.

[527] *Id.* at 35, para. 84 (seeking "comment on whether it is technically or otherwise feasible for terrestrial service providers to satisfy the requirements in section 9.10 when incorporating their satellite operator collaborator's supplemental service, and if not, which particular requirements are not feasible and why"); *id.* at 35, para. 85 (asking whether "all or some of the CMRS 911 and E911 rules [should] apply to both SCS partners, individually or together").

[528] *Notice* at 35, para. 86 (proposing to modify the "part 25 rules to require a terrestrial licensee that seeks to collaborate with a satellite operator to provide SCS, to apply for a blanket earth station license for all of its subscribers' terrestrial devices that are otherwise authorized under its terrestrial license, to operate using transmissions to and from the satellite operator's space stations"); *id.* at 36, para. 87 (seeking "detailed information on the process by which SCS is activated when a consumer attempts to access 911 services during emergencies, including when no cellular or Wi-Fi service is available"); *id.* at 36, para. 88 (asking "commenters to discuss how satellite providers would route 911 services, including voice and text-to-911"); *id.* at 36, para. 89 (seeking "comment on the feasibility, availability, and cost of provisioning consumer devices to support SCS for 911"); *id.* at 36, para. 90 (seeking comment on how the Commission should apply current MSS emergency call center and reporting obligations "in the context of an SCS offering in which the part 25 license or grant of market access holder modifies its existing part 25 authorization and leases exclusive-use spectrum, most likely from a CMRS wireless provider"); *id.* at 37, para. 91 (seeking "comment on the anticipated public safety impacts of supplemental voice and text satellite coverage in areas that have not previously received service or during emergencies when the CMRS network is otherwise unavailable"); *see also id.* at 39, para. 97 (asking about public interest concerns the Commission should consider that would weigh in favor of placing limits on the SCS collaboration, and observing that stakeholders have indicated that the initial provision of SCS is likely to focus on messaging-type services in areas that terrestrial networks have difficulty covering, but could evolve to include increased capacity with enhanced capabilities and functionality).

[529] For example, APCO notes that "[f]irst responders and members of the public could benefit from being able to communicate more reliably across a broader geographic area during emergencies, ultimately saving lives." APCO Comments at 1-2. Apple and SpaceX indicate that SCS can provide valuable coverage in emergency situations. *See, e.g.*, Apple Comments at 2-6 (describing "Apple's experience in planning, testing, and developing [its Emergency SOS via satellite] solution over many years [that] can offer valuable insights into the business and regulatory considerations associated with launching a satellite-to-device feature like Emergency SOS via satellite," including investments, hardware and software changes, enabling connectivity, and outreach to emergency responders); SpaceX Comments at 13 ("SpaceX has agreed to meet the Commission's MSS emergency 911 services rules as a part of its spectrum management agreement with T-Mobile. Because this technology is already available, the Commission can take the same approach by first applying 911 rules similar to those used for MSS to SCS. This (continued….)

of extending 911 requirements to SCS at this early stage in SCS deployments. For example, APCO states that wireless providers should be responsible for the consumer 911 experience whether the call is via terrestrial or satellite infrastructure, and it may be appropriate to extend "some or all" of section 9.10 requirements to satellite operators as well.[530] On the other hand, some commenters assert that the Commission should recognize the role of satellite operators and refrain from imposing terrestrial wireless 911 requirements on SCS satellite operators that may be infeasible at this time.[531] For example, AT&T suggests that the Commission should permit the use of location-based routing to automatically redirect SCS 911 voice calls to the appropriate PSAP and should permit the use of emergency call centers "as a back-up option if the necessary location information for location-based routing is not available from the handset."[532] Some commenters support a phased-in approach to SCS 911 rules.[533] Apple and AST note that SCS services could support lifesaving or emergency assistance communications, even if not 911 capable in the first instance.[534] Finally, some commenters suggest that the Commission seek additional comment by issuing a Further Notice of Proposed Rulemaking regarding the technical feasibility of

approach will immediately benefit consumers that otherwise would not have any emergency service, and also allow the Commission to build toward a more robust emergency calling environment as SCS technologies develop.") (footnote omitted).

[530] APCO Comments at 3 (urging the Commission to press satellite operators to prove that it is infeasible for them to comply); *id.* (arguing that uniform application of the 911 requirements will reduce consumer confusion and promote benefits of the service).

[531] For example, in response to APCO, T-Mobile urges the Commission to recognize the role of satellite operators in providing SCS and that "any obligation imposed on satellite operators related to SCS should take into consideration current obligations on satellite operators and technical capabilities of satellite systems." T-Mobile Reply at 17. T-Mobile points out that "the Commission cannot simply impose existing public safety obligations on SCS providers if it is not feasible to do so." *Id.* at 17. Rather, the Commission should phase in emergency communications over SCS as it becomes technically feasible. *Id.* at 17-18 (citing SpaceX Comments); *see also* Verizon Reply at 11-13.

[532] AT&T Comments at 25. AT&T "agrees that the Commission's wireless 911 requirements should extend to areas served through SCS deployments," but AT&T urges that the Commission's approach should be adjusted to reflect that SCS services will be deployed on satellites. *Id.* at 24-25. Intrado explains that current satellite technology affects 911 routing, so technical feasibility is important when considering whether to extend 911 requirements to SCS satellite operators. Intrado Life & Safety, Inc. (Intrado) Reply, GN Docket No. 23-65, at 2-4 (rec. June 12, 2023) (Intrado Reply) ("Because it takes time to attain a sufficiently accurate GPS fix (*e.g.*, within a mile) to route a 911 SCS call, this may require the handset to wait a short amount of time to acquire a GPS fix before placing the 911 call. If a GPS fix cannot be obtained within an acceptable time period, these 911 SCS calls should route to a national emergency call relay center (*i.e.*, an Emergency Call Center) that has the ability to retrieve location from the handset or query the user for location and nature of emergency, relay the call to the appropriate PSAP over native trunks, and transmit any available location information natively to the PSAP.").

[533] *See, e.g.*, AT&T Comments at 24 (adopting 911 or WEA rules "while SCS remains in its infancy would be premature"); SpaceX Comments at 13; T-Mobile Comments at 17-18; Apple Comments at 6-7; Intrado Reply Comments at 2. Some commenters encourage collaboration with industry and public safety stakeholders to phase in more robust emergency calling as SCS technologies mature. *See, e.g.*, Apple Comments at 2-7 (stating that the delivery of emergency communications services to end-user devices through satellite-based services requires, e.g., consideration of the differences between terrestrial and satellite communications; investing in infrastructure, software, and hardware to establish connectivity; designing user interfaces; and coordinating with PSAPs and other public safety organizations); SpaceX Comments at iii, 16 (stating that the Commission can establish a strong foundation for emergency calling by "adopting baseline requirements similar to existing mobile-satellite service rules for SCS, while working with the industry to phase in more robust rules as more capabilities come online").

[534] *See, e.g.*, Apple Comments at 5 ("To allow use of Emergency SOS via satellite in areas not yet supporting text-to-911, Apple established relay centers where trained agents receive messages from users and call PSAPs on their behalf."); AST Reply at 23 (noting that "SCS-based calling or texting services enable communications directed to friends and family when one is stuck in a remote area, or during a disaster that destroyed terrestrial infrastructure").

applying terrestrial 911 requirements to SCS.[535]

177. Section 9.10 of the Commission's rules lays out the 911 requirements applicable to terrestrial providers.[536] Additionally, we recently amended our part 9 rules to require CMRS (terrestrial) providers to implement location-based routing for wireless 911 voice calls and real-time text (RTT) communications[537] to 911 nationwide, but deferred a decision on whether to require covered text providers[538] to implement location-based routing for other types of texts to 911, such as SMS.[539] MSS providers are exempt from the wireless 911 requirements[540] but are required to support emergency call center service to the extent that they offer two-way interconnected voice service.[541]

178. Today, we establish interim requirements for terrestrial providers that use SCS arrangements to carry 911 calls and seek further comment in the *Further Notice* on appropriate long-term 911 requirements. We believe that adopting an interim approach at this time that recognizes the current state of technology will permit rapid deployment of innovative solutions in the dynamic satellite-terrestrial marketplace. At the same time, the *Further Notice* will serve to develop a robust record to consider policies and rules that will ultimately help to ensure that consumers receive an SCS 911 experience equal to terrestrial 911 service. We note that nothing in today's decision, including the rules we adopt today, authorizes the use of any non-U.S. satellite navigation system in conjunction with the 911 system. CMRS providers seeking to employ foreign satellite navigation systems for 911 should follow the existing approval process.[542]

179. Under our approach, terrestrial providers that utilize SCS arrangements to expand coverage areas to provide service to their end-user subscribers must either: (1) use information regarding the location of a device, including but not limited to device-based location information, to route SCS 911 voice calls and 911 text messages to an appropriate PSAP, and transmit the caller's phone number and available location information to the PSAP; or (2) use an emergency call center, at which emergency call

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[535] *See, e.g.*, Lynk Comments at 12-13; AST Reply at 22-23; CCA Reply at 16. For example, Lynk observes that "[s]uch a proceeding will help alleviate and address concerns that many satellite networks have historically been unable to comply with certain rules adopted in the 9-1-1 . . . proceedings due to technical infeasibility." Lynk Reply at 5-6. *See, e.g.*, Verizon Reply at 11-12 & n.41 (citing *Revision of the Commission's Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems; Amendment of Parts 2 and 25 to Implement the Global Mobile Personal Communications by Satellite (GMPCS) Memorandum of Understanding and Arrangements*, CC Docket No. 94-102, IB Docket No. 99-67, Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 25340, 25348, para. 21 (2003)).

[536] Section 9.10 of the Commission's rules describes 911 requirements applicable to Commercial Mobile Radio Service providers, including requirements to support basic 911 and Enhanced 911 (E911), outdoor and indoor location accuracy, and text-to-911. 47 CFR § 9.10; *Notice* at 35, para 83.

[537] 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 id.* § 67.1(g).

[538] 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).

[539] *Location-Based Routing for Wireless 911 Calls*, PS Docket No. 18-64, Report and Order, FCC 24-4 (Jan. 26, 2024) (*LBR Report and Order*).

[540] 47 CFR § 9.10(a); *Notice* at 35, para. 83.

[541] 47 CFR § 9.18 (MSS 911 requirements); *Notice* at 35, para. 83.

[542] *See Wireless E911 Location Accuracy Requirements; AT&T Services, Inc. Request for Authorization and Waiver*, PS Docket No. 07-114, Order, 35 FCC Rcd 8805, 8808-09, para. 11 (PSHSB 2020); *Wireless E911 Location Accuracy Requirements*, PS Docket No. 07-144, Fourth Report and Order, 30 FCC Rcd 1259, 1272-73, para. 40 (2015).

center personnel must determine the emergency caller's phone number and location and then transfer or otherwise direct the SCS 911 voice call to an appropriate PSAP. In other words, terrestrial providers are required to either transmit SCS 911 voice calls and 911 text messages traversing their networks using automatic, location-based routing or, alternatively, use emergency call centers to route SCS 911 voice calls and 911 text messages.[543] We require providers that utilize SCS to explain how their SCS deployments support SCS 911 voice call and 911 text routing to the geographically appropriate PSAP with sufficient location information in annual reports to the Commission.[544]

180. The option for terrestrial providers that use SCS arrangements to route SCS 911 voice calls and 911 text messages using location-based routing is similar to the requirement for CMRS providers under section 9.10(s) of our rules.[545] However, unlike the wireless 911 voice call and real-time text communication location-based routing requirement for CMRS providers, which requires those providers to use location-based routing when location information meets certain thresholds for timeliness and accuracy, our approach permits terrestrial providers extending their coverage through SCS arrangements to route 911 calls through one of two options. In addition, we do not set specific accuracy or timeliness thresholds to determine when terrestrial providers must use location-based routing but seek comment on defining routing criteria in our companion *Further Notice*. Further, the option to use an emergency call center is similar to the emergency call center requirement applicable to MSS operators providing two-way service under section 9.18(a) of our rules.[546] As with existing MSS 911 rules, emergency call center personnel who receive an SCS emergency call must determine the caller's phone number and location and then transfer or otherwise redirect the 911 call to an appropriate PSAP.[547] However, unlike the MSS requirement, terrestrial providers have the option to use either location-based routing or the emergency call center to transmit SCS 911 voice calls and 911 text messages to an appropriate PSAP. While we provide two options for compliance, we encourage terrestrial providers in the interest of public safety to use a delivery methodology that results in the least delay in delivering the SCS 911 voice call or text to an appropriate PSAP. We currently consider that the delivery methodology that results in the least delay in delivering the SCS 911 voice call or text to an appropriate PSAP is likely to be location-based routing, and we seek further comment in the *Further Notice* on whether we should require location-based routing as a primary routing and delivery methodology for SCS 911 voice calls and texts.

181. Based on the record developed in response to the *Notice*, we believe that the SCS regulatory framework at this stage in SCS deployment requires a nuanced approach to 911 requirements that takes into account the fact that in SCS arrangements, the emergency calls will be carried over satellite infrastructure that is utilized to supplement the terrestrial service provider's coverage.[548] We recognize

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[543] Under section 9.10(s), CMRS providers must use location-based routing for wireless 911 voice calls and RTT communications to 911 originating on their Internet-Protocol-based networks 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%. In the absence of these conditions, CMRS providers must default to "best available" location information for routing wireless 911 voice calls and RTT communications to 911, which may include but is not limited to device-based or tower-based location information. *LBR Report and Order*, FCC 24-4 at 2-3, 62, para. 3, Appx. A.

[544] *See, e.g.*, Letter from Lauren Kravetz, Vice President, Government Affairs, Intrado, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-65 et al., at 4 (filed Jan. 7, 2024); *see also* Letter from Lauren Kravetz, Vice President, Government Affairs, Intrado, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-65 et al., at 1-2 (filed Feb. 23, 2024).

[545] In the companion *Further Notice*, we seek comment on whether to implement a requirement for terrestrial providers to deploy and use location-based routing more extensively on their networks. *See infra* paras. 241-45.

[546] 47 CFR § 9.18(a).

[547] *Id.*

[548] *See, e.g.*, Apple Comments at 7 (stating that "simply applying 911 or wireless emergency alert ("WEA") rules (continued….)

that even as we facilitate use of SCS arrangements to close coverage gaps and complement terrestrial service, we do not envision that SCS arrangements will circumvent existing wireless 911 service obligations or delay the development of other innovative solutions for improving wireless 911 location-based routing.[549] We note that some commenters suggest that the "current emergency call center requirements that apply to MSS providers recognize that applying the wireless 911 requirements to satellite service is more difficult than applying them to terrestrial services."[550] We also take into consideration that terrestrial wireless carriers will be providing the underlying telecommunications service to consumers.[551] Thus, we balance the benefits of facilitating initial SCS deployment with our goal of expeditiously improving the availability of emergency communications in remote areas and during disasters.[552]

182. Our interim approach presents the fewest practical and technical complexities and provides the most efficient path for enabling the public safety benefits of SCS service in the near-term during disasters and emergencies in remote areas. In adopting interim SCS 911 requirements today, we seek to balance concerns over prematurely extending terrestrial 911 requirements to satellite operators against our goal of ensuring that SCS end users have access to robust 911 services even during the initial stages of SCS deployment. At this stage, for SCS 911 voice calls and 911 text messages, we lack information on satellite data capacities, satellite link budget, and optimization schemes for the initial SCS deployments and the impact on device-to-satellite connectivity, including time for obtaining a location fix for automatic location-based routing of 911 calls. In discussing why applying terrestrial voice services requirements would not be appropriate, for example, Apple observes that "[t]he scopes of possible SCS and similar technologies are significant and could vary widely across available bandwidths, link budgets,

developed for terrestrial voice services would not be appropriate"); AT&T Comments at 24-25 (noting that the Commission's "approach should be tailored to reflect the fact that SCS services will be deployed on satellites"); Lynk Comments at 13 (noting that "it is critical to recognize that the technical parameters of [911 and WEA] services will necessarily need to be adapted to the SCS context"); SpaceX Comments at 13; TechFreedom Comments at 15 (supporting "extending 911 requirements to SCS operators to the extent possible given their network architecture"); T-Mobile Comments at 14-15 ("The terrestrial licensee should not be responsible for any failure by the satellite operator to provide that required service; the terrestrial licensee will have no control over the operational capabilities and the related ability to meet regulatory requirements of the space station operator."); Verizon Reply at 11-12 (stating that the Commission should consider applying to SCS "its existing mobile-satellite service ('MSS') 911 rules"); AST Reply at 21 & n.84 ("[I]t would be inappropriate to simply extend the current MSS emergency call center rules [to] SCS satellite operators that offer their services on a non-common carriage basis. Otherwise, the rollout of SCS would undoubtedly be delayed by regulatory and technical complexities."); CCA Reply at 16 (agreeing that it is important for the FCC to recognize that the technical parameters of 911 and WEA services will necessarily need to be adapted to the SCS context); T-Mobile Reply at 3 ("Even though SCS will be a supplement to services offered by terrestrial licensees, the Commission should recognize that transmissions from space will be generated from a space station operator").

[549] *See, e.g.*, Apple Comments at 6-9; Skylo Comments at 16 (stating that SCS operations "are complementary to—and not substitutes for—terrestrial services").

[550] AST Reply at 21.

[551] For example, in discussing why SCS is not presently able to ensure "the ubiquitous, seamless, consistently reliable, and fully functional mobile coverage provided by terrestrial networks," Apple observes that "SCS, per its name, supplements or adds to an existing mobile network, and technical parameters need to be carefully considered to optimize SCS for that supplementary role." Apple Comments at 8-9. Apple advises that "[t]he Commission should continue to actively reassess its regulatory framework as satellite-to-device functionality evolves, making changes as necessary as new satellite-to-device technologies become substitutes for, rather than supplements to, terrestrial mobile connectivity." *Id.* at 9.

[552] SpaceX Mar. 8, 2023, *Ex Parte*, GN Docket No. 23-65, at 2 ("The Commission should strike a careful balance in this initial proceeding to enable timely deployment while promoting public safety."); AST Reply at 21.

and power levels that will drive maximum data capacities."[553] The record would benefit from additional information regarding the technical feasibility of requiring satellite operators to comply with section 9.10 of the Commission's rules.[554]

183. Given the nascent nature of SCS as a supplement to terrestrial wireless coverage, and in recognition of SCS 911 voice calls and SCS 911 text messages traversing terrestrial and satellite networks, we believe that these factors militate against extending terrestrial 911 voice call routing requirements to SCS satellite operators at this time. Instead, the approach we adopt ensures that terrestrial wireless carriers have responsibility for the SCS 911 voice call and 911 text message experience. Our approach relies on elements of our current terrestrial and MSS 911 frameworks, recognizes the role of satellite facilities in terrestrial providers' services, promotes certainty, and lays the groundwork for considering further improvements for SCS and MSS 911 service rules, including seeking comment on our goal of requiring automatic location-based routing of 911 calls using SCS. We also encourage all stakeholders to collaborate on integrating 911 technologies to achieve automatic location-based routing for 911 SCS voice calls.[555]

184. *Reporting Requirements*. We also require terrestrial providers that utilize SCS arrangements to expand their coverage areas for providing service to disclose certain information to the Commission regarding SCS 911 voice calls and 911 text messages.[556] Such requirements are consistent with reporting requirements that apply to MSS providers under section 9.18(b) of our rules[557] and location-based routing reporting requirements that apply to terrestrial providers under section 9.10(s) of our rules.[558] Accordingly, we require that terrestrial providers that utilize SCS to extend coverage must maintain records of SCS 911 voice calls and 911 text messages received under their SCS arrangements and received at their emergency call centers. Following the compliance date of new section 9.10(t)(3) of the rules, terrestrial providers must submit reports annually regarding SCS 911 voice calls and 911 text messages in the Commission's Electronic Comment Filing System. We direct PSHSB to issue a Public Notice prior to the deadline for terrestrial providers to file SCS 911 reports and certifications. Such a

[553] Apple Comments at 7. Similarly, Verizon argues: "[A]ny assumption that wireless provider 911 and E911 capabilities can be readily transposed to SCS operations reads too much into mobile wireless service and SCS residing in the same customer end user device. Indeed, the SCS capabilities will vary between different frequency bands considering 'available bandwidths, link budgets, and power levels that will drive maximum data capacities.' Therefore, applying even existing terrestrial basic 911 requirements to SCS satellite offerings is problematic at this early stage of the SCS lifecycle." Verizon Reply at 12 (quoting Apple Comments at 7) (footnote omitted).

[554] *See, e g.*, Kepler Comments at 6-7; Lynk Comments at 13; SpaceX Comments at 16 ("To enable rapid deployment of life-saving technology in the near term while ensuring robust access to E911 service in the long term, the Commission should establish baseline requirements for SCS while working with industry to phase-in more robust 911 calling over time, consistent with technical feasibility."); AST Reply at 23 (arguing that "911 and WEA requirements should be phased in after the Commission issues a Further Notice of Proposed Rulemaking so that satellite operators and their terrestrial partners can deploy SCS coverage, industry stakeholders can better understand the capabilities and limitations of SCS services, and market participants can evaluate the requisite support and upgrades to 911 infrastructure that [are] outside the control of satellite operators and their carrier parties"); CCA Reply at 16 (urging "the FCC to seek additional comment on technical capabilities of SCS innovations to provide 911 and WEA and to permit modified provision of emergency capabilities as SCS technologies evolve").

[555] *See, e.g.*, Apple Comments at 7 ("[T]he public interest would be better served by fostering collaboration with PSAPs and first responders during the feature development process while encouraging more rapid adoption of capabilities such as text-to-911.").

[556] *See, e.g.*, *Notice* at 36, para. 90 (seeking comment on how the Commission should apply current MSS emergency call center and reporting "obligations in the context of an SCS offering in which the part 25 license or grant of market access holder modifies its existing part 25 authorization and leases exclusive-use spectrum, most likely from a CMRS wireless provider").

[557] 47 CFR § 9.18(b).

[558] *Id.* § 9.10(s); *LBR Report and Order*, FCC 24-4 at 62, Appx. A.

Public Notice will include necessary instructions for terrestrial providers to file reports and certifications in compliance with the requirements adopted in this *Report and Order*. For administrative convenience, we direct PSHSB to open a separate docket for the filing of SCS 911 reports and certifications. This new docket is only for SCS 911 reports and certifications. The instant rulemaking dockets remain open for other rulemaking-related matters. We require terrestrial providers to annually submit a report to the Commission by October 15th of each year regarding SCS 911 voice calls and 911 text messages, and emergency call center data, current as of September 30th of that year. These reports must include, at a minimum, the following:

(1) The name and address of the CMRS provider that uses SCS arrangements to provide service to its end-user customers, the address of that CMRS provider's emergency call center, and the contact information of the emergency call center;

(2) The aggregate number of SCS 911 voice calls and 911 text messages received by the network of the CMRS provider that provides SCS service to its end-user subscribers during each month during the relevant reporting period;

(3) The aggregate number of SCS 911 voice calls and 911 text messages received by the emergency call center each month during the relevant reporting period;

(4) The aggregate number of SCS 911 voice calls and 911 text messages received by the emergency call center each month during the relevant reporting period that required forwarding to a public safety answering point and how many did not require forwarding to a public safety answering point; [559]

(5) The aggregate number of SCS 911 voice calls and 911 text messages that were routed using location information that met the timeliness and accuracy thresholds defined in Section 9.10(s)(3)(i)(A) and (B) of the rules;[560]

(6) The aggregate number of SCS 911 voice calls and 911 text messages that were routed using location information that did not meet the timeliness and accuracy thresholds defined in Section 9.10(s)(3)(i)(A) and (B) of the rules;[561] and

(7) An explanation of how the SCS deployment, including network architecture, systems, and procedures, will support SCS 911 call and text routing to the geographically appropriate PSAP with sufficient location information in compliance with the SCS 911 requirements adopted in this *Report and Order*.

185. We conclude that extending and adapting the existing MSS 911 reporting requirements and location-based routing requirements for wireless 911 voice calls to terrestrial providers that utilize SCS to extend their coverage areas represents a minimally burdensome requirement. In addition, we believe that these reporting requirements will promote transparency and accountability in routing SCS 911 voice calls and 911 text messages, and that they will provide the public useful data for evaluating the interim SCS 911 requirements and identifying 911 technology developments and routing trends, particularly with regard to 911 text messages, which is especially relevant since initial SCS deployments may be focused on text messaging before evolving to voice.[562]

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[559] 47 CFR § 9.18(b).

[560] *Id.* § 9.10(s)(3)(i)(A), (B); *LBR Report and Order*, FCC 24-4 at 62, Appx. A.

[561] 47 CFR § 9.10(s)(3)(i)(A), (B); *LBR Report and Order*, FCC 24-4 at 62, Appx. A.

[562] For example, Intrado urges us to "require all applicants/providers to explain in their applications to the Commission how their SCS deployments will support 911 call/text routing to the geographically appropriate Public Safety Answering Point (PSAP) with sufficient location information. Intrado Jan. 4, 2024, *Ex Parte* at 1 (explaining that "[b]ecause cell-sector routing is not possible with satellites and GPS information for SCS is sometimes unavailable at call setup, there will be certain SCS 911 calls/texts that will need to be routed to a nationwide 911

(continued….)

186. *Subscriber Disclosure Requirements*. Consistent with the goal of promoting consumer awareness of the extent to which SCS is used to provide connectivity to 911,[563] we adopt consumer disclosure requirements for terrestrial providers to inform their subscribers of the limitations when using SCS to contact 911. In the *Notice*, the Commission sought comment on the anticipated public safety impacts of supplemental voice and text satellite coverage in areas that have not previously received service or during emergencies when the terrestrial network is otherwise unavailable.[564] The Commission asked whether terrestrial partners engaged in or planned any outreach or coordination with public safety entities ahead of implementation, and whether "providers plan to alert subscribers in any way of any limitations on calling or texting 911 from a handset connected to satellite services[.]"[565] It also noted that "consumers using commercial wireless handsets typically have an expectation that they can connect to 911 operators" and sought comment on how best to inform consumers using SCS of the extent of their connectivity to 911.[566]

187. Consistent with some parties' comments in this proceeding,[567] we require each terrestrial provider that uses SCS arrangements to supplement its coverage to specifically advise every subscriber, both new and existing, prominently and in plain language, of the circumstances under which 911 service for calls or texts may not be available through SCS or may be in some way limited by comparison to traditional E911 service. Such circumstances may include, but are not limited to, potential delay in connecting the call or text to 911, potential inability of the service to determine the end-user's location and call-back number, the consequences of moving into or out of SCS/terrestrial coverage during a live call, and potential inability of the end-user's device to obtain a line of sight to the satellite. The disclosure requirement we adopt today is consistent with the disclosure requirement the Commission adopted for

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relay call center (like the Intrado ECRC) that has the ability to retrieve location from the handset or verbally ask the user for location and nature of emergency, relay the call to the appropriate PSAP over native trunks, and transmit any available location information natively to the PSAP."). Consistent with our approach to this early stage in SCS deployments, however, we believe terrestrial providers should solely be responsible for explaining how SCS arrangements will support the 911 call and text experience for consumers.

[563] *See Notice* at 35, para. 84 ("Given that a key benefit of SCS is to provide connectivity to Americans in areas where they may have no other option for communications service, we seek comment on how best to facilitate access to our nation's emergency response system for consumers using SCS. In addition, because consumers using commercial wireless handsets typically have an expectation that they can connect to 911 operators, we seek comment on how best to inform consumers using SCS of the extent of their connectivity to 911.").

[564] *See id.* at 37, para. 91.

[565] *See id.*

[566] *See id.* at 35, para. 84. In addition, the Commission sought comment on whether it should "modify any of the Commission's part 9 rules, including those that apply to CMRS, MSS, or covered text providers, to accommodate increased use of this service and ensure reliable connectivity to 911." *See id.* at 37, para. 91.

[567] Apple Comments at 7-8; AST Reply at 23 ("Moreover, SCS operators and their terrestrial partners can communicate to users any limitations associated with their 911 calling capabilities through customer disclosures consistent with what the Commission's rules allow for other voice calling services."); Verizon Reply at 12. Apple, for example, states that to protect user privacy, "users also need transparency about how satellite-to-device offerings work, how they interact with other terrestrial mobile and satellite-enabled features, and how these solutions may use or share their personal data." Apple Comments at 7. Apple states that "[u]sers should have clear information about SCS/non-SCS functionality and interoperability, including any limitations that could prompt them to opt out of a particular offering, and that users should know how their personal data, including location, will be used and protected across the ecosystem." *Id.* To that end, Apple submits that "the Commission should require compliance with appropriate disclosure rules and regulatory guardrails as new satellite-to-device features are introduced into the marketplace." *Id.* at 7-8. Verizon asserts that "any SCS arrangement should account for consumer expectations when it comes to dialing or texting 911" and that "SCS partners should therefore pursue customer notification measures so that consumers are informed of the capabilities available when a 911 call or text goes through the satellite operator network." Verizon Reply at 12.

interconnected Voice Over Internet Protocol (VoIP) service providers.[568] In that context, the Commission reasoned that VoIP consumers in many cases may not understand that the "reasonable expectations" they have developed with respect to the availability of 911/E911 service via wireless and traditional wireline telephones may not be met when they use interconnected VoIP services.[569] We similarly conclude here that consumers may not be aware of the limitations on their ability to connect to 911 via SCS and that a disclosure requirement will provide vital information to these consumers.

188. *Privacy of Location Information*. We continue to stress the importance of the privacy requirements placed on telecommunications carriers and, particularly, the requirements found in section 222 of the Communications Act of 1934, as amended.[570] Significantly, except for limited circumstances, such as if required by law or with a subscriber's approval, section 222 requires CMRS providers to protect the confidentiality of customer proprietary network information, including location information, and prohibits such providers from using, disclosing, or permitting access to such information.[571] However, section 222 also provides for limited exceptions, including contacting 911.[572] This exception for contacting 911 provides that the location information obtained during such contact can be disclosed to a PSAP or other emergency service entity.[573] Because the rules we adopt will permit terrestrial providers to route SCS 911 voice calls to an appropriate PSAP via location-based routing, these providers will obtain and use customer location information.

189. We believe that it is imperative for terrestrial wireless providers to continue to ensure the privacy and security of customer proprietary network information, including location information obtained to enable location-based routing. In the *Notice*, the Commission sought comment regarding the "technical and operational challenges, costs, and public interest benefits of extending wireless 911 requirements to CMRS providers and satellite providers that offer SCS," the provision of 911 caller location information, and "consumer privacy concerns with SCS."[574] Apple emphasizes the importance of protecting the privacy of SCS user location data.[575] To that end, we require that, prior to use of SCS location information to meet the Commission's 911 rules, terrestrial providers must certify that neither they nor any third party they rely on to obtain SCS location information will use that information or associated data for any non-911 purpose, except with prior express consent or as otherwise permitted or required by law. The certification also must state that terrestrial providers and any third party they rely on to obtain SCS location information will implement measures sufficient to safeguard the privacy and security of the information. These obligations are consistent with our existing rules that apply to z-axis and dispatchable location data, as well as location information used for location-based routing.[576] Terrestrial providers must submit this one-time certification in the Commission's Electronic Comment Filing System on the due date of the first report made under new section 9.10(t)(3) of the rules.

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[568] *IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, WC Docket Nos. 04-36 and 05-196, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, 10272, para. 48 (2005) (*VoIP E911 Order*); *see also* 47 CFR § 9.11(b). The Commission's 911 rules include other consumer disclosure requirements. *See, e.g.*, *id.* § 9.10(o) (Licensees providing non-service initialized handsets must affix a label to each handset that notifies the user of limitations on the user's connectivity to 911, including "that the handset can only be used to dial 911" and "that the 911 operator will not be able to call the user back.").

[569] *See VoIP E911 Order*, 20 FCC Rcd at 10272, para. 48.

[570] 47 U.S.C. § 222.

[571] *Id.* § 222(a), (c)(1), (f).

[572] *Id.* § 222(d).

[573] *Id.* § 222(d)(4).

[574] *Notice* at 15-36, paras. 84-89.

[575] Apple Comments at 6-8.

[576] *See, e.g.*, 47 CFR § 9.10(i)(4)(iv), (v); *LBR Report and Order*, FCC 24-4 at 47, para. 101.

b. Wireless Emergency Alerts

190. *Wireless Emergency Alerts (WEA) Participation*. In the *Notice*, the Commission sought comment on a variety of issues related to how satellite operators' collaborations with terrestrial licensees could support WEA.[577] For example, the Commission asked about the impact of satellite operations that "supplement terrestrial wireless providers' coverage areas" on "WEA's availability and reliability in areas underserved by terrestrial wireless providers."[578] The Commission asked whether providers that elected to participate in WEA would need to update their election.[579] The Commission also sought comment on the technical aspects of satellite operators' ability to provide WEA.[580]

191. We agree with commenters that it is premature to determine how satellite operators who may provide SCS fit within the Commission's WEA regulatory framework. Commenters reference the nascent nature of SCS and tout the potential benefits of SCS,[581] but urge the Commission to be cautious about prematurely adopting WEA rules.[582] Many commenters describe the technical issues that need to be resolved prior to providing satellite-to-device WEA alert messages.[583] To this end, we note that the PSHSB recently announced that in the second quarter of 2024, it would start testing technologies that might be able to deliver WEA alert messages to mobile phones without using cell towers.[584] In doing so, it invited parties that are developing such technologies, including satellite operators, to participate in these tests.[585] Accordingly, we will defer consideration of the applicability of our WEA requirements to SCS pending the completion of this initiative, so that we might be informed by any relevant test results.[586]

c. Prioritization and Roaming

192. In the *Notice*, the Commission asked how a device with access to SCS would determine the Radio Access Network on which to transmit a 911 call, and how the order of priority, among satellite,

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[577] *Notice* at 37-38, para. 92-93. At the time of the *Notice*, representatives from the T-Mobile-SpaceX and Apple-Globalstar partnerships stated that they intended to support WEA. *Id.* at 37, para. 92 n.208.

[578] *Notice* at 37, para. 92.

[579] *Id.*

[580] *Id.* at 37-38, para. 93.

[581] *See, e.g.*, AT&T Comments at 1 ("SCS is still nascent but has the potential to develop into a useful tool to help terrestrial mobile operators supplement their networks to serve customers in certain situations, including in areas where an emergency compromises terrestrial infrastructure or where deploying additional infrastructure is logistically difficult or cost prohibitive."); Lynk Comments at 12 ("SCS can provide near-instantaneous backup to terrestrial wireless networks that are exposed to natural and man-made disasters . . ."); SpaceX Comments at 17; Verizon Comments at 15; Lynk Reply at 2-4

[582] Regarding adopting WEA requirements, AT&T states that "adopting rules while SCS remains in its infancy would be premature." AT&T Comments at 24; Verizon Comments at 15 ("[T]he Commission should refrain from entertaining policy choices here based on any speculative assessments of how SCS will develop and the impact it may have in the marketplace."); AST Reply at 22.

[583] Lynk Comments at 13; SpaceX Comments at 17; AST Reply at 21-22.

[584] *See Public Safety and Homeland Security Bureau Seeks Partners to Test Expansion of Coverage for Wireless Emergency Alerts When Cell Sites Are Down, Including through the Use of Satellite*, PS Docket No. 22-160, Public Notice, DA 23-995, at 1 (PSHSB Oct. 19, 2023) (*PSHSB Testing WEA Without Cell Towers PN*). Thirteen entities responded to this Public Notice, including two whose solution included the use of satellites: Skylo Technologies, Inc., and Lynk Global, Inc. *See* Skylo Technologies, Inc. Comments, PS Docket No. 22-160, at 1 (rec. Dec. 18, 2023); Lynk Global, Inc. Comments, PS Docket No. 22-160, at 2, 6 (rec. Dec. 18, 2023).

[585] *PSHSB Testing WEA Without Cell Towers PN* at 1.

[586] *See id.* at 1. PSHSB indicated that the results of tests of technologies using high-altitude transmissions on terrestrial frequencies would be entered into the record of this present proceeding (GN Docket No. 23-65 and IB Docket No. 22-271). *Id.* at 2 n.8.

other CMRS networks, or Wi-Fi, would impact the availability of various 911 services such as voice calls to 911 or texts to 911 or the quality of 911 location data.[587] The Commission also asked whether it should consider any additional public interest concerns that would weigh in favor of placing limits on the SCS collaboration.[588] In this *Report and Order*, we adopt interim requirements for terrestrial providers to provide 911 service to end-user subscribers when using SCS arrangements and defer consideration of the applicability of our WEA requirements, recognizing that the record reflects division about the technical feasibility of extending 911 and WEA requirements to SCS at this early stage in SCS deployments. In light of the nascent state of SCS service, we recognize that terrestrial roaming arrangements, where available, may continue to be a better tool to promote access to E911 services and WEA message delivery at this time. Accordingly, we take measures to promote the safety of life and property by ensuring consumers receive the full benefit of E911 service and encourage terrestrial providers to prioritize the effective delivery of WEA messages.[589] Specifically, to the extent that SCS deployments are not technically capable of fully complying with our E911 requirements as they apply to wireless providers, or our existing WEA requirements, and where wireless service otherwise is available, including pursuant to a roaming agreement, we encourage terrestrial providers to prioritize connection to wireless networks over SCS arrangements for purposes of transmitting 911 calls and distributing WEA messages.[590]

H. Technical Issues

193. *Potential Satellite-to-Satellite Interference Issues*. Some commenters raise concerns about the potential for satellite-to-satellite interference from SCS to existing MSS operations in certain frequency bands.[591] Specifically, MSS operator Omnispace expresses interference concerns about potential SCS operations in bands where there is a conflict between the direction of the proposed operations, space-to-Earth (downlink), and the International Table, Earth-to-space (uplink). Omnispace urges the Commission to limit the potential of harmful interference to MSS satellite operators that operate outside the United States in accordance with the ITU Radio Regulations and that are internationally allocated to MSS in the Earth-to-space direction in the International Table.[592]

194. At this time, with the exception of our decision to exclude the WCS band from the SCS Bands, concerns about the possibility of potential interference, or requests for additional protections or studies prior to the adoption of the Commission's framework, do not convince us to *exclude* specific

[587] *Notice* at 36, para. 87.

[588] *Id.* at 39, para. 97. For example, the Commission noted that "stakeholders have indicated that the initial provision of SCS is likely to focus on messaging-type services in areas that terrestrial networks have difficulty covering, but could evolve to include increased capacity with enhanced capabilities and functionality." *Id.*

[589] *See* 47 CFR § 9.10(q)(7) (roaming-related requirements with text-to-911 service); *id.* § 10.470 ("When, pursuant to a roaming agreement . . . a subscriber receives services from a roamed-upon network of a Participating CMS Provider, the Participating CMS Provider must support WEA alerts to the roaming subscriber to the extent the subscriber's mobile device is configured for and technically capable of receiving WEA alerts.").

[590] As noted above, our decision to decline to apply the Commission's part 20 rules requiring voice and data roaming arrangements to SCS operations is separate from our discussion here with respect to prioritization in connection with 911 and WEA requirements for SCS operations. *See supra* paras. 169-72. In the companion *Further Notice*, and in recognition that SCS capabilities and functionality may evolve, we seek additional comment on prioritization and roaming.

[591] *See* Omnispace Comments at 4, 17-24, 27-28; DISH/EchoStar Comments at 1, 3-8; Globalstar Reply at 5 (agreeing with Omnispace and DISH/EchoStar that "the Commission should work to ensure that any new SCS operations do not cause harmful interference to existing satellite systems operating domestically or abroad").

[592] *See, e.g.*, Omnispace Comments at 33-35; Omnispace Reply at 30-34. Omnispace also raises some of these same interference concerns in response to SpaceX's application to provide SCS. Omnispace Opposition, GN Docket No. 23-135; *see also* SpaceX Gen2 SCS Modification Application, ICFS File No. SAT-MOD-20230207-00021, Technical Narrative, at 1. We will address Omnispace's specific arguments related to operations proposed by SpaceX in the context of the application proceeding, not in this *Report and Order*.

spectrum bands from our initial framework for SCS. But we offer additional information regarding such operations here to address the record concerns regarding interference and international coordination issues. As an initial matter, we are authorizing SCS only on a non-interference basis to both domestic and cross-border operations. In addition, the fact that a frequency band is available for SCS pursuant to the Commission's framework does not guarantee that the Commission will automatically authorize SCS in the requested frequency band. The Commission will conduct a rigorous analysis of all SCS applications—in particular the technical materials submitted—to ensure compliance with our entry criteria and any applicable rules and requirements. For example, as noted by Omnispace, the 1910-1915 MHz/1990-1995 MHz band presents a level of technical complexity for SCS.[593] In the context of the SpaceX SCS Modification Application, Omnispace has submitted extensive technical analyses in support of its interference concerns with SpaceX's proposal for SCS in this band.[594] Specifically, Omnispace claimed that SpaceX did not adequately model the complete dynamics of their constellation. As part of its review of the pending application, and in light of Omnispace's concerns, SB requested additional interference demonstrations from the SCS applicant, SpaceX.[595] SpaceX responded with a Monte Carlo analysis that simulated its 7500 satellite constellation, split into multiple operational planes with transmit power, antenna gains values from their link path profile, as well as PFDs as measured on the ground.[596] We anticipate WTB and SB conducting a similar detailed analysis to evaluate the potential for satellite-to-satellite interference for other proposed SCS on a case-by-case basis.[597] Further, as described in the international coordination section of this *Report and Order*, with respect to cross-border interference, insofar as SCS conflicts with the ITU Radio Regulations and the International Table, such operations must be on a non-harmful interference basis and any harmful interference must be immediately eliminated

[593] *See* Omnispace Comments at 30.

[594] *See* Omnispace Opposition, GN Docket No. 23-135; Omnispace, LLC Reply Comments to Responses, GN Docket No. 23-135, ICFS File No. SAT-MOD-20230207-00021 (filed June 5, 2023) (OmniSpace SpaceX Reply); Letter from Mindel De La Torre, Chief Regulatory and International Strategy Officer, Omnispace, LLC, to Marlene H. Dortch, Secretary, FCC, ICFS File No. SAT-MOD-20230207-00021 (filed Oct 20, 2023) (Omnispace Oct. 20, 2023, *Ex Parte*); Letter from Mindel De La Torre, Chief Regulatory and International Strategy Officer, Omnispace, LLC, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-135, ICFS File No. SAT-MOD-20230207-00021 (filed Aug. 18, 2023) (Omnispace Aug. 18, 2023, *Ex Parte*).

[595] *See* Letter from Kathyrn J. Medley, Acting Chief, Satellite Licensing Division to William Wiltshire, Counsel SpaceX, Docket No. GN 23-135, File No. ICFS SAT-MOD-20230207-00021 (filed Nov. 7, 2023) (Space Bureau Satellite Licensing Division, request that SpaceX provide an interference analysis, including link budgets, for operations in the 1990-1995 MHz (space-to-Earth) and 1910-1915 MHz (Earth-to-space) bands, calculating the difference in interference in clear sky and rain fade or cloud cover conditions. For satellite-to-satellite analysis, SB also requested SpaceX provide Monte-Carlo simulation results that produce time-based statistics for the level of interference expected to be seen by other satellite operators operating in the reverse-band mode of operations.). SpaceX and Omnispace have submitted numerous technical filings in support of their respective analyses. *See, e.g*. Omnispace Opposition, GN Docket No. 23-135; OmniSpace SpaceX Reply, GN Docket No. 23-135; Omnispace Oct. 20, 2023, *Ex Parte*, GN Docket No. 23-135; Omnispace Aug. 18, 2023, *Ex Parte*, GN Docket No. 23-135; Letter from David Goldman, Vice President of Satellite Policy, Space Exploration Technologies Corp., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-135, ICFS File No. SAT-MOD-20230207-00021 (filed Sept. 29, 2023); Letter from Jameson Dempsey, Principal, Satellite Policy, Space Exploration Technologies Corp., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-135, ICFS File No. SAT-MOD-20230207-00021 (filed Nov. 14, 2023) (SpaceX Nov. 14, 2023, *Ex Parte*); Letter from David Goldman, Vice President of Satellite Policy, Space Exploration Technologies Corp. to Marlene H. Dortch, Secretary, FCC GN Docket No. 23-135, ICFS File No. SAT-MOD-20230207-00021 (filed Nov. 24, 2023).

[596] *See, e.g*., SpaceX Nov. 14, 2023, *Ex Parte*, GN Docket No. 23-135, at A-3-A-7; Letter from Jameson Dempsey, Director, Satellite Policy, SpaceX, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-135, at A-4-A-5 (filed Nov. 30, 2023) (SpaceX Nov. 30, 2023, *Ex Parte*).

[597] *See* Omnispace Mar. 7, 2024, *Ex Parte* at 2-6.

pursuant to No. 4.4 of the ITU Radio Regulations.[598]

195. *Terrestrial Partners with Existing Lease Arrangements.* In the *Notice*, the Commission explained that terrestrial licensees with pre-existing part 1 lease arrangements would be expected to protect their lessees from any harmful interference that might arise from satellite partners' deployment of SCS within the licensees' markets.[599] Spectrum manager lease arrangements presently require licensees to ensure that their lessees comply with the Commission's rules that apply to the licensed spectrum, and licensees must resolve any interference issues involving their lessees. The Commission nevertheless sought comment as to whether we should rely upon licensees to protect their pre-existing lessees from harmful interference that could result from SCS deployment, or if we should modify our rules to offer more protections to those lessees.[600] The Commission also sought comment on whether we should prohibit future lease arrangements after terrestrial licensees have entered into leases with satellite operators for the provision of SCS, and if so, whether we should permit parties to establish protections by contract or if we should offer more protections in our rules. Commenters express consistent support for the application of existing rules to mitigate potential harmful interference upon SCS deployment.[601] We agree, and believe that our existing secondary market rules will adequately ensure that the risk of harmful interference is mitigated, and we therefore decline at this time to make any alterations to our secondary market rules relating to harmful interference.

196. *In-Market Downlink Power Flux Density (PFD) Limits.* The Commission proposed and sought comment on a framework in which satellite operators would enter into private contractual arrangements with their terrestrial partners to establish protections for any co-channel operations.[602] The Commission inquired whether we should implement in-market PFD limits for the bands under consideration for SCS, or if we should instead permit the satellite and terrestrial partners to negotiate those limits themselves.[603] The record indicates broad support for the Commission's proposal to allow parties to resolve protections for co-channel operations through private contractual agreements.[604] In support of private negotiation, one commenter contends that integration of SCS into a given market entails a "nuanced engineering and integration effort," that it would be impractical for the Commission to regulate these arrangements at the necessary level of detail, and that terrestrial licensees are best equipped to control their own frequencies.[605] Other commenters note that the Commission can protect current users by making sure that the existing service rules and technical limits in the bands under consideration are maintained, especially with assurances from SCS applicants that they will comply with those limits.[606] We adopt the Commission's proposal in light of the record, and we decline to impose in-market downlink PFD limits at this time.

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[598] *See infra* paras. 224-36.

[599] *See Notice* at 44, para. 111.

[600] *Id.* at 44, para. 112.

[601] *See, e.g.*, Skylo Comments at 9-10; AT&T Comments at 7-9; CTIA Comments at 15-16; T-Mobile Comments at 6-8; Sirius XM Comments at 2.

[602] *See Notice* at 44-45, para. 113.

[603] *Id.* at 45, para. 114.

[604] *See, e.g.*, Skylo Comments at 9; AST Comments at 18-19; AT&T Comments at 7-8; CTIA Comments at 15-16; T-Mobile Comments at 6-8; Sirius XM Comments at 9.

[605] AST Comments at 18-19.

[606] *See, e.g.*, Skylo Comments at 9; *see also* AT&T Comments at 7-8 (contending that SCS applicants should comply with existing rules and provide a predictive model showing that they will do so, and co-channel operations should take precedence over SCS); CTIA Comments at 15-16 (supporting demonstration that prospective SCS will not disrupt co-channel or adjacent channel operations, in harmony with present leasing rules); Sirius XM Comments at 1-2, 13-14.

197. *Market Area Boundary Limits*. In the *Notice*, the Commission observed that it would likely be unnecessary to amend the existing market area boundary limits in parts 22, 24, and 27 of the Commission's rules.[607] As proposed, the SCS framework would not result in co-channel neighbor operators that compete with each other.[608] For this reason, SCS partners should be expected to coordinate regarding the technical parameters necessary to avoid co-channel interference with one another's operations. As one commenter observes, SCS "should overlay on top of a partnering mobile operator's network seamlessly, without requiring any revision to the relevant operator's authority."[609] We generally agree.

198. At the boundaries of a GIA, however, including at international borders or boundaries extending into water, certain limits might be necessary and applicable. Although the introduction of SCS into spectrum licensed for terrestrial networks should have no impact to other radio systems operating in the band within the same or nearby geographical areas, we adopt a rule to limit the signal levels from SCS at and beyond the terrestrial operator's licensed area to be the same as those defined for terrestrial operation in each respective band. More specifically, we maintain the existing market area boundary limits established in parts 22, 24, and 27 of the Commission's rules.[610] These limits have also been used and shown to be feasible for operations similar to SCS.[611] The limits, which should be aggregate signal from all beams, are 40 dBμV/m for the 600 MHz, 700 MHz,[612] and 800 MHz bands, and 47 dBμV/m for the AWS-H Block and Broadband PCS.[613]

199. Further, as the Commission explained in the *Notice*, the terrestrial bands eligible for SCS are not allocated for international MSS use.[614] SCS can therefore only be deployed on the condition that stations using these frequencies will not cause harmful interference to, or claim protection from harmful interference caused by, an international station operating in accordance with the provisions of the Constitution, the Convention, and the ITU Radio Regulations.[615]

200. We recognize that managing time varying signal levels from SCS space stations, which may be moving and utilizing multibeam transmissions, will require careful and dynamic management of power level and beams. Satellite operators must also account for multiple overlapping and changing

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[607] *Notice* at 45, para. 115.

[608] *Id.*

[609] AST Comments at 19; *see also* Verizon Comments at 9-11 (noting the sufficiency of existing limits, provided that SCS applicants demonstrate that they will comply with those rules).

[610] *See* 47 CFR §§ 22.983, 24.236, 27.55.

[611] *See, e.g.*, SpaceX Gen2 SCS Modification Application, ICFS File No. SAT-MOD-20230207-00021, Technical Narrative, at 10-11.

[612] This limit applies to the 700 MHz band, but not to the 758-769/788-799 MHz frequencies licensed to FirstNet. *See Implementing Public Safety Broadband Provisions of the Middle Class Tax Relief and Job Creation Act of 2012; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band; Service Rules for the 698-746, 747-762, and 777-792 MHz Bands*, PS Docket No. 12-94, Second Report and Order, 28 FCC Rcd 15174, 15183-84, paras. 27-30 (2013).

[613] 47 CFR §§ 22.983, 24.236, 27.55. We again note that, as a secondary service, SCS operations may not cause harmful interference to—and are not entitled to interference protection from—any primary terrestrial service. *Id.* § 2.105(c)(2).

[614] *See Notice* at 50, para. 131.

[615] *See* ITU Radio Regulation No. 4.4 (stating that "[a]dministrations of the Member States shall not assign to a station any frequency in derogation of either the Table of Frequency Allocations in this Chapter or the other provisions of these Regulations, except on the express condition that such a station, when using such a frequency assignment, shall not cause harmful interference to, and shall not claim protection from harmful interference caused by, a station operating in accordance with the provisions of the Constitution, the Convention and these Regulations"); *see also infra* paras. 224-36.

satellites or beams covering the same areas, as well as leakage and interference from side beams. Therefore, the power limit for interference protection at any given point or area should be applied to aggregation of power received across all visible beams and satellites at all times as they move over any given point or area.

201. In addition, and as shown by SpaceX and AST, to meet the power limits at service boundaries, operators may need to cease beam transmissions in zones to allow for signal degradation from the edge of SCS coverage.[616] Given that the size of such zones depends on target services, satellite and beamforming configuration, and power management solutions which may improve over time, we do not set a limit on the zone size as long as the receive power limits are met. We further note that the limits and coordination requirements that we adopt in this proceeding will be subject to current and future agreements reached with border countries.[617]

202. *Out of Band Emission (OOBE) Limits*. The Commission proposed in the *Notice* to apply OOBE limits consistent with those required for terrestrial operations in the particular bands proposed for SCS to protect adjacent band licensees from the risk of harmful interference.[618] The Commission sought comment on this proposal, specifically whether the current OOBE limits are sufficient to protect the range of adjacent band services if these limits are applied to the satellite downlink signals providing supplemental coverage, and whether further limits are needed to protect federal receivers in the band.[619] We also asked whether changes would be needed when applying the terrestrial limits to satellite emissions or if additional OOBE limits would be needed.[620] In light of the various views expressed in the record on this issue, as well as our preference for straightforward requirements, we adopt a uniform OOBE limit for SCS across the SCS Bands expressed as a terrestrial PFD limit.

203. According to SpaceX and AST, SCS satellites may use high power transmissions and large antenna gains to provide the high carrier-to-noise and interference ratios of 20 dB or higher needed to provide service to terrestrial devices.[621] These strong, wide area satellite transmissions may also produce large amounts of undesired signal energy into adjacent bands, potentially affecting many terrestrial networks' operations. To ensure those adjacent band devices are protected from the risk of harmful interference, we find that OOBE limits are warranted, and given the nature of SCS, we find that these limits should be measured and enforced on the ground. In setting these limits, we recognize that different factors may affect the potential for harmful interference due to the inherent difference in propagation effects when the signal is generated from a multibeam satellite constellation compared to when it is transmitted from a terrestrial base station. We therefore adopt limits that constitute a reasonable middle ground between existing terrestrial OOBE limits and satellite-based limits.

204. The existing OOBE limits for base stations vary across different radio services, and these services are governed by different parts of the Commission's rules (e.g., parts 22, 24, 27). Commenters express mixed views on which OOBE limits should be applied to SCS. Although different OOBE limits apply across individual SCS Bands, we believe adopting a uniform out-of-band PFD limit for supplemental satellite coverage across the various bands is reasonable and provides a simple requirement for satellite operator compliance. This approach also will help simplify how satellite operators implement power management across multiple satellites, satellite beams, and orbital altitudes. Some commenters support the Commission's initial proposal to apply existing OOBE limits for terrestrial base stations to

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[616] *See, e.g.*, AST Comments, Exhibit A at 3-5; SpaceX Gen2 SCS Modification Application, ICFS File No. SAT-MOD-20230207-00021, Technical Narrative, at 6, 9-11.

[617] *See infra* paras. 224-36.

[618] *See Notice* at 45-46, paras. 117-18.

[619] *Id.* at 45-46, para. 117.

[620] *Id.*

[621] *See* AST Comments, Exhibit A, at 3-4; SpaceX Nov. 14, 2023, *Ex Parte*, GN Docket No. 23-135, at A-7-A-8.

satellites providing SCS.[622] Others contend that those limits would not protect certain operations from harmful interference and instead argue for more stringent OOBE limits on SCS.[623] Some commenters, including SpaceX, assert that the Commission should adopt the more relaxed OOBE limits applicable to satellite systems under part 25.[624] AT&T contends that the part 25 OOBE limits would not protect adjacent-band terrestrial wireless operations, supports applying relevant existing OOBE limits for each band, and contends that those limits should account for aggregate interference given transmissions from multiple beams and satellites in nearby areas.[625] Fairspectrum recommends that a metric be used which takes into account the aggregate interference to the protected entity, and, that a satellite operator should be able to design its network so that the aggregate interference limit is not exceeded.[626] SpaceX, while advocating for dynamic interference modeling which accounts for aggregation,[627] suggests that unrealistically conservative worst-case aggregate interference limits would be unnecessarily strict, would overstate the risk of harmful interference to any terrestrial user, and could harm the public interest by restricting new service.[628] We acknowledge the common principles in these views[629] and, accordingly, we

[622] AST Comments at 20; AT&T Comments at 8-9; Sirius XM Comments at 9; Verizon Comments at 11; Verizon Reply at 4-5.

[623] CORF Comments at 3, 12; NRAO Comments at 2-3.

[624] *See* SpaceX Nov. 14, 2023, *Ex Parte*, GN Docket No. 23-135, at A-7 ("SpaceX will not cause harmful out-of-band interference to terrestrial or satellite operators under either limit [terrestrial or Part 25], the Commission should apply the existing Part 25 emissions mask to SpaceX's operations rather applying terrestrial standards that are not necessary to protect other users or comply with ITU [Radio Regulations No.] 4.4.").

[625] *See* Letter from Michael P. Goggin, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-65 et al., at 2-4 (filed Feb. 7, 2024) (AT&T Feb. 7, 2024, *Ex Parte*).

[626] *See* Fairspectrum Comments at 2.

[627] *See* Letter from David Goldman, Vice President of Satellite Policy, Space Exploration Technologies Corp., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-65 et al., at Attach. A, 2-4 (filed Feb. 13, 2024) (SpaceX Feb. 13, 2024, *Ex Parte*).

[628] *See id*. at 1-2; *see also* Letter from David Goldman, Vice President of Satellite Policy, Space Exploration Technologies Corp., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-65 et al., Attach. B (filed Feb. 20, 2024) (supporting the use of mobile service technical rules for SCS).

[629] SpaceX argues that the Commission does not have adequate notice or a sufficient record under the Administrative Procedure Act to adopt an aggregate OOBE because SpaceX asserts the Commission did not propose or seek comment on an aggregate OOBE interference methodology in the *Notice*. SpaceX Feb. 28, 2024, *Ex Parte* at 2; *see also* T-Mobile Mar. 5, 2024, *Ex Parte* at 3. We disagree. In the *Notice*, the Commission included a discussion of OOBE issues and asked a number of questions related to the protection of services in adjacent bands, including whether its existing limits would suffice, whether additional limits are required to protect the operations in adjacent bands, how to account for impacts from different types of technologies and use cases, and what other related technical requirements might be necessary for the Commission to adopt to address interference issues. *Notice* at 46-47, paras. 117-18, 120. Moreover, we note that aggregate OOBE issues are discussed in the record generally and as it relates to specific issues such as the WCS band and radio astronomy, and that several parties addressed or supported an aggregate OOBE limit in their comments and advocacy. *See, e.g.,* AFTRCC Comments at 7; CORF Comments at 6; SiriusXM Comments at 9; Verizon Comments at 11; AST Reply at 11-12; Fairspectrum Comments at 2 ("A metric, which takes into account the aggregate interference to the protected entity should be used."); Letter from E. Barlow Keener, Senior Counsel, Fairspectrum, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-65, IB Docket No. 22-271, at 4, 6 (filed Nov. 21, 2023) (Fairspectrum Nov. 21, 2023, *Ex Parte*); AT&T Feb. 7, 2024, *Ex Parte* at 2-4. In addition, we note that more recently, Verizon, AT&T, AFTRCC, and DISH rejected the notice and comment arguments made by SpaceX after public release of the draft *Report and Order*. Letter from Pantelis Michalopoulos et al., Counsel to DISH Network Corporation, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-65 et al., at 2-3 (filed Mar. 7, 2024) (DISH Mar. 7, 2024, *Ex Parte*) (noting the substantial record developed in this lengthy proceeding that supports the adoption of limits and arguing that the proposed limits must remain part of the regime); AFTRCC Mar. 7, 2024, *Ex Parte* at 4-5 (agreeing with the adoption of a uniform aggregate OOBE limit for the SCS Bands at this time in our initial framework); AT&T Mar. 7, 2024, *Ex Parte* at 3 (continued….)

adopt an aggregate interference limit applicable to all SCS Bands. In setting this aggregate PFD limit, we have utilized reasonable assumptions regarding state-of-the-art technology in currently deployed terrestrial networks and accordingly have not used any worst-case assumptions.[630] Therefore, we believe this aggregate OOBE limit rule is not unnecessarily strict and will enable flexibility in the deployment of SCS systems while protecting adjacent band operations from harmful interference.

205. As an initial matter, we note that, because the part 25 OOBE rule for satellites is expressed relative to a 4 kilohertz bandwidth compared to 100 or 1,000 kilohertz used in the SCS Bands,[631] the requirements for satellite systems to attenuate out-of-band signals are generally 14-24 dB less stringent than the requirements placed on terrestrial services. We also note that the existing OOBE spectral density (per MHz) limits decrease as frequencies increase from below 1 GHz to above 1 GHz, while the RF spatial flux density (per square meter) of signal power strength limits increases as frequencies increase from below 1 GHz to above 1 GHz.[632] Thus, to provide a uniform limit across the various SCS Bands, we consider some balancing of these effects for PFD limits that are normalized to both 'per MHz' and 'per square meter'; i.e., dBW/m^2/MHz. We considered receiver protection levels as evidenced by existing OOBE limits along with a range of receiver antenna gain values, receiver noise levels, bandwidths, and appropriate I/N interference thresholds, used for coexistence analyses, to derive the PFD levels that we are adopting. In consideration of the record, and in line with our goal to create a simple requirement, we adopt an aggregate out-of-band PFD limit of -120 dBW/m^2/MHz for the 600MHz, 700MHz, 800MHz, and PCS 1990-1995 MHz bands. We also specify that this PFD limit will apply at 1.5 meters above ground level, a height frequently associated with terrestrial device usage that has been used by the Commission when developing interference protection criteria for other wireless services.[633] We believe that this limit represents an equitable—and technologically feasible—middle ground between the positions expressed in the record and will effectively protect adjacent band operations across the SCS Bands.

206. We note some recent debate on the issue of OOBE limits in the record in this proceeding. Specifically, SpaceX and T-Mobile argue that an aggregate out-of-band PFD limit of -120 dBW/m²/MHz is too strict, and that a more relaxed figure should be used.[634] In opposition, AT&T, DISH, and Verizon support an aggregate limit of -120 dBW/m²/MHz, noting that variability in receiver gain and noise values in the same or different bands should be considered for interference protection.[635] AT&T in particular disagrees with SpaceX's figure for the appropriate noise floor.[636] Verizon also disagrees with SpaceX's use of "equivalent noise performance" of a "3GPP-compliant" equipment figure as suggested by

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(noting its support for the aggregate OOBE limits as reasonable to protect terrestrial licensees from in-band and adjacent-band interference, stating that SpaceX's request to "punt" consideration of an aggregate limit "would vitiate the fundamental purpose of an SCS framework" and should be rejected, and contending that the *Notice* provided adequate notice to consider OOBE in the aggregate); Verizon Mar. 8, 2024, *Ex Parte* at 2 (arguing that the Commission provided the requisite notice that it would consider OOBE in the aggregate). We conclude that the Commission provided adequate notice that the Commission would consider an aggregate OOBE limit for SCS and that we have a sufficient record to adopt an aggregate OOBE limit for SCS.

[630] *See* SpaceX Feb. 28, 2024, *Ex Parte* at 2 (arguing against the use of "worst case" scenarios in protection calculations).

[631] *See, e.g.*, 47 CFR §§ 22.917(b), 24.238(b), 27.53(g).

[632] *Compare* 47 CFR § 27.53(c)(5) (43+10*LogP attenuation in 100 kHz resolution bandwidth below 1 GHz), *with* 47 CFR § 27.53(a)(5) (43+10*LogP attenuation resolution bandwidth of 1 MHz above 1 GHz), *and* 47 CFR § 27.55(a)(2) (40 dBμV/m below 1 GHz, *and* 47 CFR § 27.55(a)(1) and (a)(3) 47 dBμV/m above 1 GHz).

[633] *See, e.g.*, *id.* §§ 27.55(d)-(e), 96.41(d)(1).

[634] SpaceX Feb. 28, 2024, *Ex Parte* at 2; T-Mobile Mar. 5, 2024, *Ex Parte* at 3.

[635] AT&T Mar. 7, 2024, *Ex Parte* at 3; DISH Mar. 7, 2024, *Ex Parte* at 2-3; Verizon Mar. 8, 2024, *Ex Parte* at 2.

[636] AT&T Mar. 7, 2024, *Ex Parte* at 3.

SpaceX's calculations, emphasizes that 3GPP receiver compliance metrics are a form of minimum performance standards, not typical values, and notes that flagship devices do exceed the 3GPP minimum standards.[637] In light of these recent record developments, including concerns raised by AT&T, DISH, and Verizon about the potential for harmful interference to adjacent operations if we were to adopt a more relaxed PFD limit, we are not persuaded by SpaceX and T-Mobile's arguments that such a change would be appropriate in this context. We conclude that an aggregate out-of-band PFD limit of -120 dBW/m²/MHz strikes the appropriate balance and will provide clarity for stakeholders interested in enabling SCS while protecting adjacent terrestrial operations.

207. Given that we are breaking new ground in permitting satellite operations to not only operate in bands allocated for terrestrial systems, but permitting them to be fully integrated into those systems, we believe that it is in the public interest to require that those satellites protect terrestrial systems commensurate with the protections they are afforded from terrestrial-only systems. While the out-of-band PFD limits we adopt today may require more stringent attenuation than the emission limits specified in section 25.202(f) for satellite operation, we believe that these stricter limits are both necessary and technologically feasible for satellite operators providing SCS.[638] We note that terrestrial systems have been operating alongside each other for many years, and the current OOBE limits for those services have provided the necessary protection. Moreover, no evidence has been provided showing that signals emanating from a satellite under very different geometry would permit OOBE limits to be significantly relaxed and still provide protection from adjacent band harmful interference. The record also indicates that SpaceX, AST, and other prospective SCS satellite operators can tailor their signals such that the out-of-band emissions from the satellite signal could meet OOBE limits similar to what our rules require terrestrial operations to meet for the various rule parts within which they plan to provide SCS.[639] We believe that these same capabilities can be readily used to meet the balanced OOBE limits set forth in this *Report and Order*.

208. *Terrestrial Device Power and OOBE Limits.* In the *Notice*, the Commission proposed to maintain the transmit power and OOBE limits currently applicable in each band to a range of terrestrial devices that would also be licensed as earth stations under the SCS framework.[640] After reviewing the record, we adopt the Commission's proposal to amend section 25.204 (power and out-of-band emission limits for earth stations) to reflect that SCS earth stations will be required to meet the power limits applicable to terrestrial transceivers for the bands in which they seek to operate.[641] One commenter observes that the existing power limits under parts 22, 24, and 27 of the Commission's rules suffice to establish links between satellites and mobile devices.[642] Another notes that the present service rules and

[637] Verizon Mar. 8, 2024, *Ex Parte* at 2.

[638] *See id.* §§ 25.202(f), 24.238; *see also* SpaceX Gen2 SCS Modification Application, ICFS File No. SAT-MOD-20230207-00021, Technical Narrative, at 11; Letter from David Goldman, Vice President of Satellite Policy, Space Exploration Technologies Corp., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-65 et al., Attach. A at 3-4 (filed Feb. 13, 2024) (stating that "SpaceX anticipates that the aggregate interference from its full direct-to-cellular constellation in PCS G Block will be more than 10 dB below the noise floor of the idealized UE," which SpaceX characterizes in its ex parte as -107.5 dBW/m2/MHz.). We note that this aggregate interference figure of -117.5 dBW/m2/MHz —which SpaceX states its system will be below—is 2.5 dB above the -120 dBW/m2/MHz figure we adopt today.

[639] *See, e.g.*, SpaceX Nov. 30, 2023, *Ex Parte*, GN Docket No. 23-135, at A-6; SpaceX Nov. 14, 2023, *Ex Parte*, GN Docket No. 23-135, at 2-4, A-7; Consolidated Opposition to Petitions and Response to Comments of Space Exploration Holdings, Inc., GN Docket No. 23-135, ICFS File No. SAT-MOD-20230207-00021, at 19-21 (rec. May 30, 2023) (SpaceX May 30th Consolidated Opposition); SpaceX Gen2 SCS Modification Application, ICFS File No. SAT-MOD-20230207-00021, Technical Narrative, at 11-12; AST Comments at 20.

[640] *Notice* at 49, para. 127.

[641] *See* Appx. B (amending 47 CFR § 25.204(g)); *see also Notice* at 49, para. 127.

[642] AST Comments at 21-22.

technical limits have been calibrated to the specific bands to which they apply, and preserving them will protect existing spectrum users.[643] The user devices connected to SCS are expected to operate with the same transmitters and receivers used to connect within their terrestrial network. We clarify that parts 22, 24, and 27 of the Commission's rules as cited are relevant to SCS operations, which extend traditional terrestrial coverage. Therefore, we find that the existing rules, as cited in the proposed text for section 25.204(g), provide appropriate transmit power and OOBE limits for terrestrial devices that will access SCS.[644]

209. *Elevation Angle for Satellite Downlinks.* The Commission observed in the *Notice* that the NGSO satellites used to provide SCS will need to move their signal beams as they move across the sky, and these beams will hit the ground at varying elevation angles.[645] As we have explained, collaborating satellite and terrestrial partners must coordinate to minimize the risk of harmful interference. The Commission nevertheless sought comment on whether we should establish a minimum satellite elevation angle in order to minimize focused signal energy into terrestrial base station antennas.[646] Comments on this issue were limited, but AST notes that, while it does not necessarily object to a minimum angle requirement, satellite operators will self-regulate to meet the field strength requirements at license area boundaries, and more study might be needed to ascertain whether a minimum angle requirement is necessary.[647] We find that satellite elevation angles will be system-dependent, and that we need not, at this time, establish a minimum requirement in order to minimize the risk of harmful interference but will review special circumstances. We further note that, since we will not require minimum satellite elevation angle information, there may be cases where we will not receive minimum satellite elevation angle information.

210. *Protection of Radio Astronomy and Space Sciences.* In the *Notice*, the Commission sought comment on whether existing rules addressing the protection of radio astronomy and other space science services would be adequate in the context of the provision of SCS or whether the Commission should consider other approaches.[648] Some commenters express concerns that the application of existing non-interference protections will be insufficient to safeguard radio astronomy and other such operations, and argue that the Commission should study the issue further.[649] AST submits that concerned commenters misapprehend the size of the satellite beams' footprints, and states that its own satellites will deploy narrow beams capable of avoiding radio astronomy sites.[650] In addition, on February 16, 2024, NTIA filed a white paper in the record on this proceeding describing anticipated impacts from SCS on current and planned radio astronomy and other space science operations.[651] CORF also expresses concerns about potential interference into radio astronomy sites from SCS downlinks, but notes that bilateral efforts between an RAS observatory and a satellite operator can develop practical limits to avoid

[643] Skylo Comments at 9; *see also* SpaceX Comments at 18.

[644] Intelsat notes that, with some exceptions, the power limit rules cited in the proposed new rule are intended for terrestrial base stations, rather than terrestrial devices, and recommends revising the proposed new rule to align with limits applicable to end user devices operating under the respective terrestrial rule parts. *See* Intelsat Comments at 2 n.5. However, as set forth in this paragraph, we do not believe it is necessary to modify the rule language.

[645] *Notice* at 46-47, para. 119.

[646] *Id.*

[647] AST Comments at 20-21.

[648] *See Notice* at 47, para. 123.

[649] *See* Caltech Comments at 2; CORF Comments at 9-11; NRAO Comments at 2; Letter from Harvey S. Liszt, Spectrum Manger, National Radio Astronomy Observatory, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-65 et al., at 1-2 (filed Feb. 24, 2024) (NRAO Feb. 24, 2024, *Ex Parte*).

[650] AST Reply at 12-13.

[651] *See generally NSF White Paper*.

harmful interference to astronomical observations.[652]

211. Under the SCS licensing framework that we adopt today, satellite operators and terrestrial licensees providing SCS will be required to comply with existing satellite and terrestrial rules to avoid harmful interference into radio astronomy and related services. In addition, as discussed herein, space stations proposing to use SCS frequencies must obtain an FCC license under our part 25 rules prior to full-scale operation. We emphasize that the Commission's part 25 licensing process will provide an opportunity for addressing concerns from federal and non-federal stakeholders related to the protection of radio astronomy and other space science services in the context of the specific proposed SCS systems. Applications will be placed on public notice to provide interested parties the opportunity to comment, including on concerns regarding the potential effects of these proposed systems on radio astronomy and other space science services. We note that the licensing process can also include consideration of classified communications on national security issues, as needed. We expect that addressing federal and other stakeholders' concerns with respect to radio astronomy in the licensing context would serve the public interest by allowing us to strike a reasonable balance among competing public interest benefits and narrowly tailor any remedies that may be appropriate on a case-by-case basis, taking into account the specific operational parameters before us.

212. Such an approach is also consistent with the Commission's previous approaches to protecting radio astronomy and other space science services where appropriate in the context of space and earth station licensing and operations.[653] Assessment of the potential for harmful interference and its mitigation is a fact-specific analysis that requires consideration of the particular characteristics of each system. We, therefore, decline to adopt any new rules specific to SCS with respect to protection of radio astronomy and other space science services at this time, and will consider such concerns in the context of the Commission's review of SCS license applications. We also strongly encourage applicants to conduct outreach and work with appropriate federal agency contacts in advance of submission of license applications to the Commission, including conducting Monte Carlo analyses of potential impacts to radio astronomy systems using their specific configurations, as appropriate.[654] We note that such advance engagement will help facilitate later review and consideration of a part 25 SCS license application by

[652] CORF specifically notes that "spatial avoidance" is among the most effective means of protecting the scientific effectiveness and return on investment of RAS facilities. CORF Comments at 13. CORF states that development of such measures might start with initial trial avoidance parameters, which would be refined iteratively by the SCS provider and RAS observatory, a process which would likely involve sharing of satellite ephemeris and activity data to facilitate attribution of harmful interference, followed by negotiation. *Id.* at 8, 12-14.

[653] We note that current part 25 rules include requirements to coordinate with radio astronomy in various bands. *See, e.g.*, 47 CFR § 25.203(f). The Commission also conditions space station operations in certain frequencies to ensure that all practicable steps shall be taken to protect the radio astronomy service from harmful interference where appropriate. *See, e.g., SpaceX Gen2 Order*, 37 FCC Rcd at 14913-14, para 51. On a case-by-case basis, the Commission also imposes various license conditions to protect other science and astronomy missions. For example, in the Gen2 Starlink Order, the Commission conditioned the space station authorization in question to require SpaceX to continue to coordinate and collaborate with NASA to promote a mutually beneficial space environment that would minimize impacts to NASA's science missions involving astronomy and to require SpaceX to coordinate with NSF to achieve a mutually acceptable coordination agreement to mitigate the impact of its satellites on optical ground-based astronomy. *Id.* at 14931, para. 98. The Commission also required SpaceX to submit an annual report to the Commission, by January 1st each year, covering the preceding year and containing the following information: (1) whether it has reached a coordination agreement with NSF addressing optical astronomy; and (2) any steps SpaceX has taken to reduce the impact of its satellites on optical astronomy, including but not limited to darkening, deflecting light away from the Earth, attitude maneuvering, and provision of orbital information to astronomers for scheduling observations around satellites' locations. *Id.*

[654] *See NSF White Paper* at 40 (noting that Monte Carlo approaches will allow satellite network operators to evaluate potential impacts to radio astronomy sites in a comprehensive manner, and noting that where possible, these analyses should incorporate actual proposed system design characteristics); NRAO Feb. 24, 2024, *Ex Parte* at 2.

federal agencies. Applicants should contact NSF for up to date information about radio astronomy facilities, including potentially relevant radio astronomy locations.[655]

213. *Equipment Authorization for SCS.* In the *Notice*, the Commission noted that our terrestrial (parts 22, 24, and 27) and satellite (part 25) service rules require all transmitting devices to meet the relevant technical rules and obtain equipment authorization.[656] Additionally, we note that an equipment authorization grant through the certification process under our part 2 rules[657] reflects the particular rule parts under which any approved device can operate, and that operation in any other manner or pursuant to radio services or allocations not specifically noted on the grant of certification is not permitted. Thus, the Commission proposed that for new devices certified after the effective date of any rules adopted in this proceeding, we would require that the equipment certification applicant specifically seek certification under part 25 as well as the relevant terrestrial rule part(s) for all intended uses of the device.[658] The Commission also proposed not to require that devices already certified for terrestrial operation be re-certified to add part 25 SCS authorizations to existing equipment certifications, so long as the provision of service to such existing devices would not require technical modifications.[659] The Commission also asked if we should instead consider other approaches such as requiring grantees to seek permissive changes to their equipment authorization for existing devices to add part 25 usage to existing equipment.[660]

214. In its comments, Apple opines that user uptake could occur more quickly if existing terrestrial devices that are able to accommodate SCS functionality are permitted to be authorized using the Commission's part 2 permissive change process.[661] SpaceX states that so long as the Commission retains existing terrestrial device rules, there is no need to require that new devices obtain a part 25 certification as it would only complicate the process, be inefficient if bands are authorized serially, and would not provide any benefit for consumers or spectrum users.[662] TechFreedom similarly states that, so long as the technical rules do not require changes to existing consumer equipment, the existing part 2 equipment authorization process should be sufficient to ensure that terrestrial devices communicating with satellites do not disrupt or otherwise interfere with terrestrial networks.[663] Likewise, T-Mobile, in the context of whether a blanket earth station license is needed, states that only required equipment approvals should be necessary to permit users to operate terrestrial devices when connected to a satellite.[664]

215. Upon consideration of the tradeoffs regarding whether we should require existing as well as new terrestrial devices to obtain equipment certification that includes part 25 in addition to terrestrial rule parts, we believe there is benefit to requiring equipment authorizations to reflect that certain terrestrial devices are recognized by the Commission to communicate with a satellite in addition to

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[655] NSF has provided the following contact email: esm@nsf.gov.

[656] *Notice* at 49, para. 128.

[657] Radio frequency devices are required to be properly authorized under part 2 of the Commission's rules prior to being marketed or imported into the United States. 47 CFR pt. 2. The Commission has two different approval procedures for equipment authorization—certification and Supplier's Declaration of Conformity. *Id.* § 2.901 *et seq*. The required procedure depends on the type of equipment being authorized as specified in the applicable rule part.

[658] *Notice* at 49, para. 129.

[659] *Id.*

[660] *Id.* at 49-50, para. 129.

[661] Apple Comments at 8; *see also* CTIA Reply at 12 (stating its agreement with this approach).

[662] SpaceX Comments at 20-21.

[663] TechFreedom Comments at 14.

[664] T-Mobile Comments at 9-10.

terrestrial base stations. Given that the Commission is not modifying any terrestrial device-related technical rules for SCS, commenters addressing this issue generally agree that recognizing that terrestrial devices include part 25 certifications can suffice in lieu of a blanket earth station license to ensure that such terrestrial devices do not increase the potential for causing harmful interference to other spectrum users.[665] This decision is consistent with existing Commission rules which require portable earth-station transceivers subject to regulation under part 25 to be authorized under equipment certification procedures.[666]

216. We disagree with SpaceX regarding its position that requiring each terrestrial device's equipment authorization to reflect its approval to operate under part 25 would not provide any benefit to consumers or spectrum users.[667] On the contrary, requiring a part 25 designation on the equipment certification provides several benefits. First, there is benefit to consumers and the Commission from having a searchable database of terrestrial devices specifically authorized to provide SCS. The most apparent benefit to consumers is that they would have access to a publicly available, authoritative source regarding whether their terrestrial device has SCS capability or could be provisioned for such operations. This is important when considering that SCS could be offered as a premium capability and only available for certain terrestrial devices. Moreover, having terrestrial devices designated for SCS listed in our Equipment Authorization System (EAS) provides tracking and accountability for devices capable of SCS, which could prove beneficial in the event that there are harmful interference incidents and we need to consider enforcement action.

217. For the foregoing reasons, we require terrestrial device equipment authorization grantees to modify existing, or obtain new, equipment authorizations for previously certified terrestrial devices to reflect those devices' approval to operate under a part 25 MSS allocation and applicable SCS rules. Additionally, we note that new applicants should include a request for part 25 on future certification applications for equipment that is capable of operation in an SCS mode.

218. We are cognizant that this requirement does present some administrative burden for equipment authorization grantees and applicants, especially as it relates to already certified equipment. The Commission's existing procedures through the permissive change process which enable electrical or mechanical changes to certified equipment when those changes do not affect the characteristics required to be reported to the Commission[668] do not apply here where the only change being made to the certification is adding authorization for part 25. Under our existing rules, "a change other than a permissive change" requires a grantee to file a new application for certification accompanied by the information specified in part 2 of our rules.[669] We find there is good reason to provide grantees a way to effectuate the necessary changes to their equipment authorization grants under our rules that also minimizes the administrative burdens associated with a new equipment certification application. We therefore waive relevant rule provisions to provide a simplified process for existing grantees to modify their certifications to reflect part 25 authorization for SCS.

219. In the specific instance of adding the part 25 designation to the equipment certification, strict adherence to the requirement to submit a new certification application would yield little more than the resubmission and analysis of information that was already provided to the Commission and found to be sufficient for certification. A repeat of this process would therefore be overly burdensome both for the grantee and the Commission. We note that terrestrial device equipment authorization grantees that update existing authorizations to include part 25 operation, like other administrative changes to existing authorizations, must comply with the Commission's rules implementing the prohibition on authorization

[665] *See e.g.*, TechFreedom Comments at 14; T-Mobile Comments at 8-9.

[666] 47 CFR § 25.125(e).

[667] *See* SpaceX Comments at 20-21.

[668] 47 CFR § 2.1043.

[669] *Id.* § 2.1043(c).

of communications equipment that has been determined to pose an unacceptable risk to the national security of the United States and the security and safety of United States persons, as identified on the Commission's Covered List ("covered" equipment)—published pursuant to the Secure and Trusted Communications Networks Act of 2019.[670] Our existing administrative process associated with either amending an existing equipment authorization or obtaining a new authorization ensures that we do not provide expanded operating privileges to "covered" equipment.[671]

220. We find that the intent of our rules regarding changes in certified equipment, so long as the only change is adding part 25 SCS authority to an existing certification, will be met by grantees submitting a statement describing that addition, along with required certifications and designations regarding covered equipment and U.S. agent for service of process. To effectuate this modified procedure, to amend the certification to include a part 25 SCS authorization under the terms of this *Report and Order*, the Commission, by its own motion pursuant to section 1.3 of its rules, waives certain of its rules.[672]

221. Specifically, for any authorized device for which the grantee wishes to add part 25 for the sole purpose of indicating the device is authorized to provide SCS, we waive the section 2.1043(c) requirement to file a new application for certification accompanied by all of the required information as specified in part 2 of our rules.[673] We also waive the provision that prohibits marketing the modified device until the grant of certification has been issued, insofar as that marketing remains consistent with the current certification and does not indicate the part 25 SCS capability.[674] All other requirements of section 2.1043(c) remain in effect.[675] We also waive the requirements of section 2.911(c) and (e);[676] but

[670] *See generally Protecting Against National Security Threats to the Communications Supply Chain through the Equipment Authorization Program*; *Protecting Against National Security Threats to the Communications Supply Chain through the Equipment Authorization Program*, ET Docket No. 21-232, EA Docket 21-233, Report and Order and Further Notice of Proposed Rulemaking, 37 FCC Rcd 13493, 13509-98, paras. 32-263 (2022) (*EA Security Report and Order* and *EA Security FNPRM*, respectively). Pursuant to section 2(a) and (d) of the Secure and Trusted Communications Networks Act of 2019 and sections 1.50002 and 1.50003 of the Commission's rules, the Commission's PSHSB publishes a list ("Covered List") of communications equipment and services that have been determined by one of the sources specified in that statute to pose an unacceptable risk to the national security of the United States or the security and safety of United States persons ("covered" equipment). Secure and Trusted Communications Networks Act of 2019, Pub. L. No. 116-124, 133 Stat. 158 (2020) (codified as amended at 47 U.S.C. §§ 1601-1609) (Secure Networks Act); 47 CFR §§ 1.50002, 1.50003. In March 2021, PSHSB first published this Covered List, which is periodically updated and includes identification of "covered" equipment that the Commission now prohibits from obtaining an equipment authorization, as discussed in the *EA Security Report and Order*. *EA Security Report and Order*, 37 FCC Rcd at 13509, para. 32.

[671] Under the rules adopted in the *EA Security Report and Order*, the Commission did not adopt any rules providing for review or revocation of any equipment authorization granted prior to adoption of the order. *See EA Security Report and Order*, 37 FCC Rcd at 13541, para. 107. The Commission did, however, adopt rules that prohibit authorization of "covered" equipment including through class II and III permissive change modifications of existing equipment certifications. *See id.* at 13526, para. 66; 47 CFR § 2.932(e).

[672] *See* 47 CFR § 1.3.

[673] *Id.* § 2.1043(c).

[674] *Id.*

[675] *Id.*

[676] *Id.* § 2.911(c), (e). Section 2.911 requires all applications for equipment certification to be submitted in writing to a Telecommunication Certification Body (TCB) and details the required content for those applications. *Id.* § 2.911(a).

the requirements of section 2.911(d)[677] and (f)[678] will remain in effect. Under this process, these filings will be accepted consistent with the existing procedures for permissive changes. Taking such administrative action is warranted because it would be overly burdensome in this instance to require all of the technical information needed for a new equipment authorization application and such requirement would provide no tangible benefits given that no technical application review is necessary to effectuate the relevant change.

222. The waiver of certain requirements of section 2.1043(c), and of sections 2.911(c) and 2.911(e) of the Commission's rules, as described in this *Report and Order*, is granted only for the purpose of adding a part 25 SCS designation to equipment certifications granted on or before the 60th day after a summary of this *Report and Order* is published in the Federal Register. Thus, a streamlined process will be available for adding this designation to certifications that have already been granted and to those that will be granted within 30 days after the effective date of this *Report and Order* (i.e., applications that are likely already in process). We believe that this period of time is sufficient to permit grantees whose equipment is already undergoing testing and review for certification to easily amend their grants should they not be able to update their application with the test lab or TCB prior to grant. This waiver is effective immediately and extends for six months following the date that the last rules adopted herein become effective We believe this time period is reasonable and sufficient for grantees to understand their obligations and to prepare and submit the minimal information required.[679] We authorize OET to extend the six-month period for which the waiver is in effect for up to an additional six months for good cause. Beyond these time limitations, grantees may still request a modification to their equipment authorization but they must do so by their own motion pursuant to the Commission's waiver request rules. New applicants for equipment certification should request part 25 authorization as part of their initial application.

223. In providing this limited waiver to our rules, we aim to minimize the burden on equipment certification holders, while ensuring tracking and accountability for devices capable of SCS, and compliance with our prohibition on the authorization of covered equipment. Similarly, for new equipment authorizations, terrestrial devices need only show compliance with the terrestrial technical rules for the rule parts under which they will operate; no additional tests are needed for part 25 SCS capability. Thus, seeking to have the part 25 SCS designation on the equipment certification only requires the applicant to request such a designation pursuant to the SCS rules.[680]

I. International Coordination

224. As noted previously, under the SCS framework we adopt today, SCS will be authorized pursuant to a secondary MSS allocation in the U.S. Table.[681] Although the operations will be consistent with the U.S. Table, these operations will not conform with the International Table, and resolution of cross-border interference will be governed by ITU Radio Regulation No. 4.4. This provision states that, "Administrations of the Member States shall not assign to a station any frequency in derogation of either the Table of Frequency Allocations in this Chapter or the other provisions of these Regulations, except on the express condition that such a station, when using such a frequency assignment, shall not cause harmful interference to, and shall not claim protection from harmful interference caused by, a station

[677] *Id.* § 2.911(d). Section 2.911(d) requires information that must be submitted with an equipment authorization application including a statement as to whether the applicant is identified on the Covered List. *Id.*

[678] *Id.* § 2.911(f) (specifying signature requirements).

[679] *See* T-Mobile Mar. 5, 2024, *Ex Parte* at 4.

[680] Devices capable of SCS operation shall be authorized pursuant to the equipment certification procedure in part 2, subpart J of this chapter for importation, sale or lease in the United States, or offer, shipment, or distribution for sale or lease in the United States for portable earth-station transceivers subject to regulation under part 25. 47 CFR pt. 2, subpt. J; *id.* at pt. 25.

[681] *See supra* paras. 46-52.

operating in accordance with the provisions of the Constitution, the Convention and these Regulations."[682]

225. Accordingly, we must take steps to ensure that for any frequency assignment we make that is not consistent with the International Table, which includes SCS operations pursuant to the domestic MSS allocation, the relevant station(s) do not cause harmful interference to, and shall not claim protection from harmful interference caused by, any station that is operating in accordance with the ITU provisions, including allocated services in the International Table. We find that it would serve the public interest to establish a regulatory framework to consider applications for SCS on an unprotected, non-harmful interference basis with respect to the services in other countries that are operating in accordance with ITU Radio Regulations. Such a framework ensures that we comply with our rights and obligations arising out of our ITU treaty commitments and protects incumbent services in other countries operating in conformance with the ITU Radio Regulations. This is particularly important in the case of authorization of satellite services, given that a satellite footprint can be larger than the footprint of a terrestrial base station and therefore in some cases may have more potential to impact the territories of other administrations.

226. As previously noted, in making any frequency assignment for operations of a space station, we require that the appropriate materials be submitted to the ITU.[683] Under the framework we adopt for SCS, as part of an application for a part 25 authorization, SCS applicants seeking to use spectrum on an non-conforming basis with respect to the International Table will be required to provide detailed interference analyses and associated link budgets showing that requested operations will not cause harmful interference to stations operating in accordance with the ITU Radio Regulations. These analyses will also be used as supporting documentation along with the ITU registration materials to support the Commission's representation—as the notifying administration to the ITU—that any such operations will not cause harmful interference.[684] In addition, as discussed in more detail below, to the extent that any part 25 applicants plan to communicate with areas outside the United States, pursuant to a market access authorization issued by another jurisdiction, they must describe the measures that they will take to immediately eliminate any harmful interference issues. Also as discussed further below, any operations that would occur between the satellites and locations outside the United States are subject to further authorization by the relevant administration.

227. With respect to what we would expect in terms of interference analyses, in the *Notice*, the Commission sought comment on the appropriate procedures to be used.[685] Lockheed Martin submits that, with regard to the appropriate procedures for interference analyses, co-channel interference "should be studied and specified in a similar manner to unlicensed services."[686] Fairspectrum notes ITU regulations ITU-R M.2292 and ITU-R BS.2340 are relevant to our questions regarding shared bands between

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[682] ITU Radio Regulation No. 4.4.

[683] 47 CFR § 25.111(b); *see also* ITU Rules of Procedure at Part A1, AR4, Page 1 (stating that, in No. 1.3, "administrations intending to authorize the use of spectrum under No. 4.4 still have the obligation, under Sections I and II of Article 9, Nos. 11.2 and 11.3, to notify to the Bureau 'any frequency assignment if its use is capable of causing harmful interference to any service of another administration'").

[684] ITU Rules of Procedure at Part A1, AR4, Page 2 (stating that, in No. 1.6, "administrations, prior to bringing into use any frequency assignment to a transmitting station operating under No. 4.4, shall determine: a) That the intended use of the frequency assignment to the station under No. 4.4 will not cause harmful interference into the stations of other administrations operating in conformity with the Radio Regulations; b) What measures it would need to take in order to comply with the requirement to immediately eliminate harmful interference pursuant to No. 8.5. When notifying the use of frequency assignments to be operated under No. 4.4, the notifying Administration shall provide a confirmation that it has determined that these frequency assignments meet the conditions referred to above in item a) and that it has identified measures to avoid harmful interference and to immediately eliminate such in case of a complaint").

[685] *Notice* at 51, para. 133.

[686] Lockheed Martin Comments at 10.

terrestrial mobile and SCS operations.[687] We note that SCS will be subject to more stringent licensing restrictions than unlicensed services and that we are treating the SCS operations as if they were part of the terrestrial network. Although Omnispace argues that operators applying for SCS authorization should be subject to a much more rigorous interference analysis that shows "no interference" into existing services,[688] in this context, we seek to prevent *harmful* interference—rather than *no* interference—and require that satellite operators cease operations causing harmful interference if it should nonetheless occur. Given that the ITU studies in advance of the WRC-27 are just beginning, we will follow those closely and will work with other ITU administrations to develop methodologies to study coexistence of SCS with other services.

228. To ensure that we are meeting all our obligations as a notifying administration, consistent with the ITU Radio Regulations, our framework for SCS applicants will involve consideration of both potential harmful interference to U.S. neighboring countries from operations of the satellites with authorized earth stations in the United States, as well as consideration of how potential provision of SCS by U.S.-licensed satellites, permitted to operate in another country by the relevant administration outside the United States, will avoid causing harmful interference to other stations in other countries in conformity with the ITU Radio Regulations. We note that provision of any SCS outside the United States must be duly authorized by the relevant administrations and will be subject to laws, regulations, and requirements applicable to such operations in the territories of the authorizing administrations.

229. We continue to emphasize the importance of international harmonization, particularly with Canada and Mexico.[689] In the *Notice*, the Commission proposed to apply existing signal level limits and coordination requirements in the SCS Bands, subject to current and future agreements with border countries.[690] Some commenters argue that we should maintain our existing limits at international borders, consistent with our international and bilateral agreements.[691] Commenters point to our limitation of SCS to the specific geographies where the terrestrial operator holds exclusive-use co-channel spectrum rights[692] and SCS operators maintain the ability to meet field strength limits at relevant borders as protection against cross-border interference.[693] Other commenters suggest that the Commission adopt additional rules or procedures to address cross-border interference and facilitate coordination among operators.[694] As the Commission noted in the *Notice*, all band restrictions we adopt herein are subject to bilateral agreements that ensure terrestrial licensees meet a particular signal level limit at the relevant international border (e.g., field strength limit or PFD), unless the relevant administrations agree to alternative limits along with, in some cases, a coordination requirement for stations placed within a

[687] Fairspectrum Comments at 3.

[688] Letter from Mindel De La Torre, Chief Regulatory and International Strategy Officer, Omnispace, LLC, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-65 et al., Attach. at 20 (filed June 1, 2023).

[689] TerreStar Comments at 3; DISH/EchoStar Comments at 7.

[690] *See Notice* at 50, para. 131; *see, e.g.*, 47 CFR §§ 22.169, 22.983(c), 24.236, 27.55, 27.57.

[691] Verizon Comments at 11; T-Mobile Comments at 16; *see also* DISH/EchoStar Comments at 7 (arguing that "use of terrestrial spectrum for SCS should be subject to the bi-lateral coordination process with both Mexico and Canada").

[692] Skylo Comments at 18; T-Mobile Comments at 16-17.

[693] AST Reply at 17.

[694] Letter from E. Barlow Keener, Counsel, Fairspectrum Oy, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-65 et al., at 2 (filed June 6, 2023) (Fairspectrum *Ex Parte*); Kepler Comments at 6-7. Sirius XM purports that we modify existing cross-border agreements so that SCS operations are feasible. Sirius XM Comments at 14-15. Since the WCS band is not included in the initial SCS framework, we will not address Sirius XM's comments related to the WCS band.

certain distance of the border.[695]

230. The Commission also sought comment in the *Notice* on the viability of coordination between satellite operators providing service in the United States and terrestrial operators in bordering countries.[696] T-Mobile argues that we should permit satellite and terrestrial partners to negotiate technical details that do not conform with established parameters.[697] T-Mobile further argues that we either "permit parties to submit a technical showing that satisfies those adjacent-channel and adjacent-area criteria" or "allow satellite operators to demonstrate to the Commission that they have obtained concurrence from all impacted licensees."[698]

231. SCS shall not cause harmful interference to other countries' operations and our licensees must address and eliminate any harmful interference cases immediately. Our licensees must respect all existing rules and limits in the SCS Bands to protect incumbent users. The cross-border coordination and any negotiated technical parameters must be mutually acceptable to all involved, including our counterpart agencies who oversee or regulate spectrum use in other countries. As is the case with any new spectrum-based service, we will continue to refine protection limits and address any cross-border issues that may arise through bilateral and multilateral efforts and negotiations. In addition, we will continue to work closely with our counterparts in Canada and Mexico to develop mutually agreeable interference protection measures along our borders to ensure that provision of SCS serves the public interest for all.[699]

232. Although our SCS framework will authorize services in the United States only, a U.S. satellite license includes all operations of that U.S.-licensed space station—including authorization of transmission or reception at the space station facility to/from stations located outside the United States. However, such communications are subject to the laws, regulations, and requirements of any country in connection with communications with that country, including but not limited to, authorization to communicate with earth stations in that jurisdiction. FCC licensing is an important aspect of ensuring that the United States satisfies the treaty obligation for authorization and continuing supervision of the space activities of non-governmental entities.[700]

233. The detailed licensing and regulatory framework we adopt in this order is intended to address SCS operations with earth stations in the United States and its territories. However, we must consider that satellite systems are global in nature, and therefore we expect SCS operators to design systems with the capability of operating outside of the United States.[701] Therefore, in authorizing a space station for operations as a U.S.-licensed space station, we will take into consideration all operations of that satellite facility, which will include all frequencies utilized for transmission and reception on the satellite, including where such frequencies will ultimately be used to communicate with earth stations outside of the United States, subject to additional approvals of the relevant countries where such earth stations will be located.

234. For SCS, this will include steps that the Commission will take to ensure that, in making a

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[695] *See Notice* at 50-51, para. 132 & n.281, n.282.

[696] *See id.* at 51-52, para. 134.

[697] T-Mobile Comments at 17.

[698] *Id.*

[699] *See* ITU Rules of Procedure at Part A1, AR4, Page 2; *see also* 47 CFR §§ 22.169, 22.983(c), 24.236, 27.55, 27.57.

[700] *See* Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, art. 6, Oct. 10, 1967, 18 U.S.T. 2410, 610 U.N.T.S. 205; *see also* 47 U.S.C. § 301.

[701] *See, e.g.*, SpaceX Gen2 SCS Modification Application, ICFS File No. SAT-MOD-20230207-00021, Technical Narrative at 1-2.

frequency assignment to a satellite operator, all of our obligations pursuant to No. 4.4 of the ITU Radio Regulations are satisfied, as follows:

(1) In order to be authorized to deploy a satellite or system with the capability to operate outside the United States, an applicant must first obtain a U.S. space station license that covers all of the frequencies on the satellite, including those that they propose to operate on with U.S. earth stations, as well as those to be used internationally. This is an existing requirement that applies to all satellite license applications under part 25, not just those proposing to use SCS frequencies.
(2) Then, prior to conducting any communications with earth stations outside the United States, the space station licensee must ensure that all of its operations are duly authorized by the country in which such communications will occur, and that it will satisfy all terms and conditions of any foreign license or authorization, including but not limited to any transmit power, out of band emission, geographic, or other limits. This requirement also is an existing requirement and applies to all U.S.-licensed satellites, not just those planning to use approved frequencies for SCS.

235. Additionally, recognizing that SCS that may occur in bands not allocated for such services in the International Table must be consistent with ITU Radio Regulation No. 4.4, we find that it would serve the public interest to include express conditions in the SCS licenses to ensure that our obligations are met as the ITU notifying administration for U.S.-licensed space station operations.[702] In these cases, we will require additional assurances from SCS licensees that while operating outside of the United States, pursuant to an authorization from another country, the satellite operations will not cause harmful interference into a nearby country. Therefore, we will include requirements as part of license conditions on a case-by case basis to ensure that:

(3) Prior to conducting any communications with earth stations outside the United States, a satellite operator licensed to provide SCS, or applicant for a license to provide SCS, must certify to SB and the Office of International Affairs (OIA) that it has obtained all necessary authorizations from the relevant country prior to initiation of communications with earth stations in that country. The certification must include steps that were taken to address harmful interference concerns and that provision of SCS will not result in harmful interference to operations that are in conformity with the ITU Radio Regulations[703] in neighboring or nearby countries.[704] The certification must also be accompanied by a demonstration specifying the measures that the U.S. licensee or applicant will take to eliminate any harmful interference immediately, in the event that it is notified of harmful interference resulting from such SCS operations. SB and OIA will review such certification and demonstration, and will jointly notify the licensee or applicant if such documentation is

[702] *See* Chair, Committee 5, WRC-23, Fifth Report from Committee 5 to Plenary, Agenda Item 9.3, at 8 (2023).

[703] *See* ITU Rules of Procedure at Part A1, AR4, Page 2 (stating that "an administration intending to use a frequency assignment to a transmitting station under No. 4.4 has to notify to the" ITU Radio Bureau "this frequency assignment, pursuant to Article 11, if possible prior to bringing it into use"); *see also* ITU Rules of Procedure at Part A1, AR4, Page 2 (stating that "administrations, prior to bringing into use any frequency assignment to a transmitting station operating under No. 4.4, shall determine: a) That the intended use of the frequency assignment to the station under No. 4.4 will not cause harmful interference into the stations of other administrations operating in conformity with the Radio Regulations; b) What measures it would need to take in order to comply with the requirement to immediately eliminate harmful interference pursuant to No. 8.5").

[704] In the *Notice*, the Commission sought comment on the appropriate protections in instances where countries do not have a common land border, but are adjacent over nominal water distances. *See Notice* at 52, para. 135; Fairspectrum Comments at 3. Depending on the specific case, we would expect this rulemaking to address situations where there may not be a common land border, but stations in another country could still be potentially affected, such as over a nominal water distance.

acceptable or if additional documentation is required.

236. In connection with the above-requirements for part 25 SCS applicants and licensees, we also note that there may also be additional conditions or limitations placed on the operations on a case-by-case basis, including conditions necessary to ensure ongoing supervision of the space station communications, as circumstances require. The Commission staff will also continue to participate in all international SCS sharing studies,[705] as we work closely with other international partners on matters related to SCS to ensure the most efficient and effective use of the spectrum without causing harmful interference to incumbent services.[706] We intend that any changes to our rules as a result of these international efforts will be applicable to all existing and future part 25 SCS licensees. In the meantime, we emphasize that the U.S.-licensed space stations intending to provide SCS outside the United States must inform the Commission that they have obtained all necessary authorizations from the relevant countries and demonstrate that such operations will not cause harmful interference to operations in conformity with the ITU Radio Regulations before the initiation of service in those countries. We note that we will keep the ITU informed on any SCS applications and deployments to help with information sharing and transparency.

J. Space-Based Coverage to Consumer Devices in Spectrum Already Allocated for Mobile-Satellite Service Communications

237. In the *Notice*, we limited our proposed SCS framework to operations that will be performed in bands allocated to terrestrial operations.[707] There are MSS systems in which satellites are communicating with terrestrial devices and operating within bands already allocated to MSS.[708] In contrast, SCS will be integrated with the terrestrial carrier's standard network using terrestrial spectrum.[709] We clarify that the SCS framework adopted herein is limited to operations performed in the bands designated in this *Report and Order* for SCS and remains separate from the existing service rule framework for MSS systems.[710] The provision of MSS to terrestrial devices in MSS-allocated spectrum does not raise the same novel legal and technical complexities as does SCS in terrestrial spectrum.[711] Likewise, MSS direct-to-device systems have already been successfully performing operations within an existing regulatory framework.[712] As such, the rules we establish here for SCS do not impact our service

[705] *See* WRC-23 Provisional Final Acts. Studies on possible new allocation to the MSS for direct connectivity between space stations and IMT user equipment to complement terrestrial IMT network coverage, Res Com 6/9 (WRC-23), WRC-23 Provisional Final Act, at 567-569, https://www.itu.int/dms_pub/itu-r/opb/act/R-ACT-WRC.15-2023-PDF-E.pdf.

[706] *See* TerreStar Comments at 3. Commenters are divided as to whether the Commission should establish a domestic framework before studies are done internationally. *See, e.g.*, ITU-R study groups in the context of WRC-27; *see also* AST Reply at 15-17; Omnispace Comments at 8-10; TerreStar Comments at 3; Kepler Comments at 6; T-Mobile Reply at 4-5. Caltech and NRAO also argue that SCS should be on the WRC-27 agenda. Caltech Comments at 3; NRAO Comments at 4. Other commenters argue as to whether we should incorporate 3GPP recommendations into our rules. *See* T-Mobile Comments at 17; AST Reply at 15-16; Iridium Comments at 8; Omnispace Comments at 6, 8; *see also* Fairspectrum *Ex Parte*, Attach. B at 15 (requesting that the Commission "directly communicate[] the content of this NPRM in 3GPP").

[707] *See Notice* at 12-13, para. 24.

[708] *See* Globalstar Comments at 4.

[709] *See generally Notice*; *see also* Iridium Comments at 1.

[710] We note that our allocation of SCS as MSS in the U.S. Table is separate from decisions made here regarding service rules for MSS.

[711] *See Notice* at 56-57, para. 150.

[712] *See* Globalstar Comments at 4; Iridium Comments at 2, 5; Apple Comments at 2; Ligado Comments at 3, 4, 6; T-Mobile Comments at 19-20; DISH/EchoStar Comments at 8.

rules for MSS operators or in any way change the terms of authorization for existing MSS systems.[713] We note that it is outside the scope of this proceeding to adopt any measures for service rules for MSS or related earth stations.[714]

238. By establishing an SCS regulatory framework that is distinct from the MSS regulatory framework, satellite operators intending to provide SCS will have the flexibility to determine which spectrum bands and framework will best suit the needs of their business and of their developing technologies.[715] Some MSS operators emphasize the importance of ensuring that MSS operators are able to freely compete on a level playing field with SCS operators.[716] We agree that a competitive marketplace is important. And we believe that it would serve the public interest to continue to maintain separate regulatory frameworks for SCS and MSS and to employ the interference protection measures for SCS adopted herein to ensure that these new rules promote competition.[717]

IV. FURTHER NOTICE OF PROPOSED RULEMAKING

239. In the accompanying *Report and Order*, we adopt rules to facilitate ubiquitous connectivity by allowing partnerships between terrestrial network operators and satellite operators using terrestrial spectrum to fill coverage gaps that will enable communications with existing and future wireless devices without the need for hardware changes. We recognize that the framework we adopt today is a first step, focusing on particular SCS implementations which present less complex legal and technical challenges in order to foster the rapid deployment and development of these exciting networks. As we noted throughout the *Report and Order*, we will continue to consider waiver applications for SCS implementations that do not fit perfectly within our framework. And as the marketplace for—and technologies underpinning—this new offering evolves, we will continue to reassess our rules to find additional ways we can increase flexibility for terrestrial licensees and satellite operators.

240. Nevertheless, we seek to further develop the record in this *Further Notice* on how to improve 911 service for SCS connections and protect radio astronomy. Given the primary importance of emergency communications over SCS networks in the short term, we first seek comment on a number of ways we can propel industry toward truly ubiquitous automatic location-based routing of all 911 calls to accelerate connections between first responders and those who need help, regardless of their location. Next, in recognition of the importance of safeguarding radio astronomy, we seek further comment on ways to improve the coordination process between federal and non-federal stakeholders in the SCS context and on whether additional rule changes or policies are necessary to avoid harmful interference to radio astronomy and related services beyond the part 25 SCS licensing process we adopt today.

A. Improving Public Safety Communications Over SCS

241. *Improvements in Location-Based Routing*. We seek comment on how and whether we should modify requirements for routing SCS 911 voice calls and 911 text messages, including whether we should require the use of location-based routing to route 911 SCS voice calls directly to an appropriate PSAP, if technically feasible. In the initial *Notice*, the Commission sought comment on a number of technical issues relating to extending E911 rules to SCS, and we expand upon those questions in this *Further Notice*.

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[713] *See* SpaceX Reply at 14-15. These include the E911 and WEA obligations for MSS, as well as the blanket earth station licensing regime for MSS. *See* Iridium Comments at 6. *But see* Letter from Joseph A. Godles, Attorney for Iridium Communications, Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-65 et al., Attach. at 2 (filed Nov. 30, 2023).

[714] *But see* Iridium Comments at 9-10.

[715] *See id.* at 4-8; *see also* SpaceX Reply at 13-14.

[716] Globalstar Comments at 6; Apple Comments at 6, 9.

[717] *See id.*

242. In light of our existing requirement that CMRS providers deploy and use location-based routing for wireless 911 voice calls and RTT communications to 911 when available location information meets certain requirements for accuracy and timeliness,[718] how would such a requirement impact the availability of location-based routing for terrestrial wireless providers that use SCS to extend their coverage areas? We seek updated responses to the questions raised in the *Notice* in light of the new requirements for CMRS providers to deploy and use location-based routing in certain situations.[719]

243. In the *Report and Order*, we establish on an interim basis that terrestrial providers must route all SCS 911 voice calls to a PSAP using either location-based routing or an emergency call center. We take this interim step in order to balance the need for SCS 911 voice calls and text messages to be routed to an appropriate PSAP with the need for terrestrial providers to have flexibility in implementation of SCS. In light of the ongoing deployment and continued innovation of SCS, we seek any new and updated information regarding technological or other developments in routing SCS 911 voice calls since the last round of filings.

244. We also seek comment on improvements to the 911 rules that apply to such terrestrial providers when using SCS to extend their coverage. Should we require terrestrial providers to use location-based routing for SCS 911 voice calls when information about the location of the device is available to the CMRS provider's network at time of routing? In the alternative, should we require terrestrial providers to use location-based routing for SCS 911 voice calls only when location information meets certain thresholds for accuracy and timeliness? For example, as in the wireless location-based routing rules, should we only require terrestrial providers to use location-based routing for SCS 911 voice calls when location information meets an accuracy threshold of 165 meters at a confidence level of at least 90% and is available to the network at the time of routing the call?[720] Would a 165-meter accuracy threshold be appropriate for SCS 911 voice calls, or should an accuracy threshold be larger or smaller? We recognize that the technology likely used to identify the precise location of the device may be different when a terrestrial provider uses SCS to extend its coverage, as opposed to when it is using only terrestrial networks, and seek comment on any such technological differences.

245. Are there other threshold requirements that the Commission should consider when requiring location-based routing, beyond accuracy and timeliness of available location information? We recognize that, given the nature of SCS to extend coverage, cell tower information is unlikely to be available as a fallback when location-based routing does not meet whatever threshold requirements should be in place for using location-based routing. Should we require terrestrial providers to default to emergency call center service when threshold conditions for location-based routing are not met? Or should we require terrestrial providers to default to either "best available" location information for routing SCS 911 voice calls or emergency call center service when threshold conditions for location-based routing are not met?[721] We seek comment on the availability, reliability, and accuracy of the location information that terrestrial providers currently have access to when using location-based routing for SCS 911 voice calls. For what percentage of calls is such location information available? What factors (technical, operational, cost) impact this location's availability, and which factors are within the control of the terrestrial provider? Is such location information available in a timely fashion to allow for call set up and call routing? Are there any potential solutions to improve SCS location information? In addition, we seek comment on how we should address any potential inconsistencies between the 911 call routing

[718] *LBR Report and Order*, FCC 24-4 at 62, Appx. A.

[719] *Notice* at 35-37, paras. 83-91.

[720] *LBR Report and Order*, FCC 24-4 at 3, para. 3.

[721] *Id*. at 37, para. 72.

requirements of terrestrial providers and satellite operators as SCS evolves.[722]

246. *Device-to-Satellite Connectivity*. In the context of how SCS can function as an extension of a terrestrial network, we observe that a satellite can be considered as a bi-directional "bent pipe," receiving and forwarding signaling and user payload to and from a user's device to a terrestrial network (e.g., 5G base station (gNB), 5G core network (5GC), and other terrestrial network elements). A satellite can also play a more active role in the network, connecting directly to the 5GC on the ground. In other words, the gNB and 5GC can belong to and be operated by either the terrestrial provider or the satellite operator. Regardless of deployment model, the SCS satellite should be able to send and receive the 5G signaling information needed for placing an emergency call between the user equipment (UE) and 5G network along with the caller location information needed for call routing and dispatch. Given that 911 calls and texts would typically be placed outdoors with the user device having view of the GPS satellites in the sky, and given that user devices typically have GPS receivers, user devices should be able to determine their location, and for Assisted GPS (A-GPS), SCS should be able to provide the needed assistance information.

247. We seek comment on this tentative analysis. How accurate would the location provided by A-GPS be in this scenario? Since the calls most likely would be Session Initiation Protocol (SIP) calls, we believe that user device location information could be carried in the existing SIP header. Is this a correct assumption? In addition, we ask commenters to explain whether existing standards for terrestrial provider 911 calls are sufficient for SCS 911 calls. Would any new standards have to be developed for 911 calling? If so, what standards would be needed, who should develop them, and what would be the expected timeline for such development? Should the existing rules be modified to help ensure that 911 calls through SCS provide the same level of service as 911 calls made through terrestrial networks? If so, what specific modifications would be needed and under what timelines? Should we require that gNB and 5GC services be offered by the terrestrial network service provider with the same level of 911 service as terrestrial service providers provide for the terrestrial 911 calls? If gNB and 5GC services are offered by the satellite operator, should the Commission require the satellite operator to offer the same level of 911 service as the terrestrial network provider or should the satellite service provider be considered a roaming service provider?

248. *Interconnectivity Between Terrestrial Providers and Satellite Operators*. We seek comment on establishing rules around interconnectivity between terrestrial providers and satellite operators in the context of SCS 911 connections. Due to the unique qualities of the diverse spectrum bands that could accommodate satellite-to-device technologies, Apple notes that "planning will be critical to ensure a single network future with smooth handoff between SCS and non-SCS features."[723] "Setting final rules will require more details about how carriers and satellite operators will achieve seamless interconnectivity, including plans to rely on industry standards and support legacy devices."[724] What standards are currently in place related to this topic? What future standards work is anticipated, or required, to enable disparate networks and systems to interconnect for the purpose of enabling SCS 911 connectivity? What are plans for support of legacy devices? What details can be provided as to how interconnectivity between terrestrial providers and satellite operators works today to inform discussions of future advances to SCS 911 connections? Are changes to those operational models already in the planning stage? If so, we seek comment on what those changes will be. We also seek information on satellite data capacities, satellite link budget, and optimization schemes for the initial SCS deployments and the impact on device-to-satellite connectivity as they relate to SCS 911 connectivity and

[722] *Notice* at 33-34, para. 80. In the *Notice*, the Commission observed that stakeholders have indicated that the initial provision of SCS is likely to focus on messaging-type services in areas that terrestrial networks have difficulty covering but could evolve to include increased capacity with enhanced capabilities and functionality. *Id.* at 39, para. 97.

[723] Apple Comments at 7.

[724] *Id.*

functionality, including time for obtaining a location fix for automatic location-based routing of 911 calls. Regarding privacy and security, should there be an explicit requirement for satellite operators to protect customer proprietary network information of terrestrial provider subscribers when customers make 911 calls and texts, and disclose security breaches?

249. *Network Selection and Roaming.* Given that typically a 911 caller would abandon the 911 call if it is not connected within a certain time period, how long should the network selection take before a 911 call is eventually attempted via SCS? What are the trade-offs in setting this value? Should this value be established as a standard value for all SCS networks? Also, given the possibility that a 911 caller may be mobile and moving in and out of terrestrial network and SCS coverage, how should handoff between these networks be handled to guarantee seamless call continuity and successful callback? How do terrestrial providers plan to select networks for use with SCS 911 voice calls and 911 text messages? How do terrestrial providers prioritize their own terrestrial networks, their roaming partners' terrestrial networks, terrestrial networks with which they do not have a roaming agreement, and their own SCS networks? We understand that SCS is to be supplemental to terrestrial networks, including traditional terrestrial call paths, such as roaming, and additional technologies, such as Wi-Fi. However, in order to ensure that 911 calls utilize the best available path for delivery of both the message and location information, we seek comment on how terrestrial providers intend to select the order in which networks are selected. Do terrestrial providers envision any scenarios in which the selection of SCS would involve lack of capacity, versus lack of coverage? Specifically, in the event of a major emergency where network capacity is reached, are there any plans, or possibilities, that SCS would be utilized for additional capacity? In an area where a terrestrial provider does not have a terrestrial network, but a terrestrial network without a roaming agreement does provide coverage in that area, what are the trade-offs of using the terrestrial network without a roaming agreement or SCS to transmit a subscriber's 911 call?

250. *PSAP Outreach*. The Commission has previously asked whether terrestrial partners are or plan to be engaged in any outreach or coordination with public safety entities in advance of implementation.[725] Since the delivery of SCS 911 voice calls includes the possibility of using third party emergency call centers, to promote awareness and transparency, should we mandate terrestrial providers conduct outreach to PSAPs, and, if so, what would such a mandate look like? In addition, we now seek comment on what the planned outreach to the PSAP community entails. Will terrestrial providers be preparing training or briefing documents or presentations for the public safety community? Will terrestrial providers be consulting with public safety agencies and associations to determine the level of training and awareness required? Will terrestrial providers be collaborating with public safety to create and deliver such training and awareness? What are the timelines for such outreach? What assurance will terrestrial providers provide PSAPs that terrestrial providers will maintain oversight over emergency call centers, and call center routing decisions? In the event emergency call centers incorrectly route SCS 911 voice calls (e.g., route a 911 call to a PSAP in the incorrect county), how do terrestrial providers plan to expeditiously resolve complaints from 911 authorities and PSAPs?

251. For 911 calls that are delivered directly to PSAPs, rather than via an emergency call center, how do terrestrial providers envision delivering those calls with regard to current classes of service? Class of service is a designation of the type of wireless location service (e.g., MOBL, W911, WRLS, WPH1, WPH2, WCVC).[726] Public safety telecommunicators are trained to assess calls based on a number of factors, including class of service. Class of service may be used to provide an indication of what type of location information telecommunicators should expect (geodetic x/y/z coordinates or civic location), quality of location information, and whether the caller is using a fixed, mobile, or nomadic device. How will location be represented to the PSAP, e.g., geodetic information? Will there be

[725] *Notice* at 37, para. 91.

[726] *See* APCO International, Wireless 9-1-1 Deployment and Management Effective Practices Guide (2022), https://www.apcointl.org/~documents/standard/11033-2022-wireless-911-deployment-and-management-effective-practices-guide.

confidence and uncertainty factors for that location? Are terrestrial providers considering a new class of service for SCS, and, if so, are terrestrial providers working with the public safety community presently? If terrestrial providers are not considering a new class of service for 911 calls delivered under an SCS arrangement, what class of service will be used, and how will the PSAPs know the call is SCS rather than a traditional wireless call, or a non-service initialized call with no location or callback number?

B. Radio Astronomy Considerations

252. In the accompanying *Report and Order*, we examine the record regarding whether existing rules addressing the protection of radio astronomy and space science services would be sufficient in the SCS context.[727] We find that our part 25 licensing process will provide an opportunity for the Commission to address concerns from federal and non-federal stakeholders related to the protection of radio astronomy and space sciences in the context of specific SCS applications.[728] Therefore, rather than adopt new SCS rules with respect to the protection of radio astronomy and space sciences, we determine that it is in the public interest to address these concerns based on the facts of specific proposals.[729] We encourage SCS applicants to work with appropriate federal agencies in advance, including conducting analyses of potential impacts to radio astronomy systems, and we direct applicants to contact NSF for more information to facilitate this coordination.[730] We expect that such advance engagement will facilitate the Commission's review of SCS applications.

253. While we find in the *Report and Order* that—at this stage—new rules to ensure protection of radio astronomy and space sciences are not required, we recognize the importance of ensuring effective and efficient coordination among federal and non-federal stakeholders related to SCS applications. We also continue to value input from our federal agency partners in the part 25 SCS licensing process and aim to ensure that cooperation and coordination is as efficient and effective as possible. For these reasons, in this *Further Notice*, we seek comment on whether there are additional ways to encourage and improve coordination among federal and non-federal stakeholders with respect to the coexistence of radio astronomy and SCS and whether we should make any changes to our rules to facilitate this coordination.

254. Of particular importance on this question, on February 16, 2024, NTIA filed a white paper prepared by NSF in this proceeding in which NSF describes the potential impacts from SCS on current and planned radio astronomy and other space science operations, particularly from satellite downlinks—SCS transmissions in the space-to-Earth direction—and suggests potential mitigations.[731] In the white paper, NSF states that, in addition to the National Radio Quite Zone (NRQZ), additional sites have been chosen for radio astronomy facilities, and that such "facilities primarily employ remote locations, rather than allocated spectrum, to enable access to the relevant spectrum . . .."[732] The white paper describes several locations of existing and planned radio astronomy observatories which NSF identifies as having potential to be impacted by SCS operations in bands identified for consideration for SCS in the *Notice* and describes technical details about the receivers at each facility.[733] The white paper

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[727] *See also Notice* at 48, paras. 125-26 (seeking comment on whether the Commission should adopt new coordination requirements for radio astronomy stations in certain locations).

[728] *See supra* para. 211. We note that any national security concerns will also be addressed in the licensing process, as needed.

[729] *See supra* paras. 210-12.

[730] *Id.*

[731] *See generally NSF White Paper*.

[732] *Id.* at 4, 11.

[733] *Id.* at 3, 15-30. We note that in the accompanying *Report and Order*, the Commission declined to include the WCS band as available for SCS at this time, citing NSF's significant concerns about the impact on radio astronomy from SCS operations in the WCS band in the white paper. *See supra* paras. 32-34; *NSF White Paper* at 23

(continued….)

also identifies concerns related to impacts from SCS operations on radio astronomy, and potential recommendations to address those concerns.[734]

255. While we anticipate that the part 25 licensing process will provide an opportunity for the Commission to address concerns related to protecting radio astronomy in the context of specific SCS applications, we also plan to continue to evaluate our procedures as SCS—and the technology enabling it—evolves. To that end, we seek comment on whether the unique nature of SCS may warrant additional consideration, including rule changes, related to the protection of radio astronomy. We ask that commenters provide as much specificity as possible. For example, should we consider rule changes to part 1, part 25, or another rule part that would require coordination of SCS applications? Section 1.924 of the Commission's rules—along with the NTIA Manual of Regulations and Procedures for Federal Radio Frequency Management—set forth procedures regarding coordination of certain applications within identified Quite Zones, including the NRQZ, the Arecibo Observatory, and other sites.[735] We ask commenters whether it would be appropriate to consider changes to section 1.924, to require a coordination process with regard to SCS applications. We seek comment only on whether to consider changes to section 1.924 related to SCS applications, and note that rule changes regarding other radio services are not a part of the SCS implementations which are the focus of this proceeding. If we were to consider rule changes specific to SCS, should coordination requirements apply only to SCS transmissions into the NRQZ, or also to SCS transmissions into other locations with sensitive scientific facilities and, if we should include other facilities, which should be included?[736] For example, we note that in its white paper, NSF identified several locations of existing and planned radio astronomy observatories and the details of the receiver bands at each facility.[737] Should any changes to our rules be band-specific or should they apply to all SCS operations? In lieu of or in addition to adopting new rules, are there other incentives the Commission could implement to encourage coordination and coexistence of radio astronomy operations and SCS?[738]

256. We note that, while we are not adopting requirements for SCS applicants to coordinate with potentially-affected federal users at this time, some stakeholders have already engaged in

(describing the WCS band as "the top band[ ] recommended for removal from consideration" given its use for S/X Celestial Reference Frame legacy observations).

[734] *See NSF White Paper* at 31-41.

[735] *See* 47 CFR § 1.924; NTIA, Manual of Regulations and Procedures for Federal Radio Frequency Management (2021), https://www.ntia.gov/publications/redbook-manual; *NSF White Paper* at 3. The NRQZ is a specified area designed to minimize interference to radio astronomy observations at the NRAO site located at Green Bank, Pocahontas County, West Virginia, and the Naval Radio Research Observatory (NRRO) site at Sugar Grove, Pendleton County, West Virginia. 47 CFR § 1.924(a). Section 1.924(a) requires that applicants or licensees seeking to establish a new or modified station at a fixed, permanent location in the NRQZ must notify the Director of the NRAO in writing, either prior to or simultaneously with their application to the Commission. *See id.* § 1.924(a)(1). The Commission then allows a period of 20 days for comments and objections, unless the applicant submits written consent from the NRAO with its application. *See id.* § 1.924(a)(2). If objections from the NRAO are filed prior to the end of the 20-day period, the Commission will, after consideration of the record, take whatever action is deemed appropriate. *See id.* § 1.924(a)(3). Section 1.924(a) currently applies to applicants and licensees for the range of services that fall under the category of the Wireless Radio Services. *See id.* §§ 1.901, 1.907.

[736] *See* Omnispace Comments at 28-31 (discussing the potential impacts SCS operations could have on radio astronomy and space science services); NRAO Feb. 24, 2024, *Ex Parte* at 1 ("Protection of radio astronomy operations inside the NRQZ is not just a matter of respecting the frequency allocations to radio astronomy -- such is the case everywhere -- but of observing the NRQZ rules that protect radio astronomy operations at all frequencies from the transmitters for which SCS will substitute.").

[737] *NSF White Paper* at 15-30.

[738] *See id. But see* SpaceX Comments at 19-20 (noting the "same incentives that will drive satellite operators to protect other active services by meeting mobile interference limits will also protect passive services, including radio astronomy and space services, obviating the need for new satellite-specific rules.").

coordination efforts related to SCS applications and radio astronomy. For example, in a filing opposing SpaceX's application to modify its authorization for its Gen2 NGSO satellite system to add SCS, NRAO nonetheless notes "with appreciation SpaceX's continuing cooperation in coordination and field-testing their Ku-band FSS operations."[739] SpaceX also points out that it has been working closely with NRAO to coordinate and "looks forward to continuing its precedent-setting coordination discussions with NRAO that are finding ways to allow consumers to benefit from this new service, while coexisting with radio astronomy."[740] To this end, we note that in its transmittal accompanying the NSF white paper, NTIA states that the white paper "highlights the value of early coordination efforts between potential applicants for such [SCS] authority and affected federal spectrum users, ideally prior to applicants finalizing their system designs."[741] We seek comment on whether such early coordination efforts by stakeholders are and can be successful to enable the coexistence of SCS and radio astronomy, and if so, under what circumstances. How can such early coordination efforts facilitate review and consideration of part 25 SCS license applications by federal agencies? Would submission of other technical information by SCS applicants regarding the protection of radio astronomy operations—in addition to Monte Carlo analyses—be helpful in these coordination efforts?[742]

V. PROCEDURAL MATTERS

257. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),[743] 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."[744] Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of rule and policy changes contained in this *Report and Order*. The FRFA is set forth in Appendix C.

258. We have also prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the potential impact of the rule and policy changes contained in the *Further Notice*. The IRFA is set forth in Appendix D. 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.

259. *Paperwork Reduction Act Analysis*. This *Report and Order* may contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. All such requirements will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other federal agencies will be invited to comment on any new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

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[739] NRAO SpaceX Filing Comments at 2, para. 5.

[740] SpaceX May 30, 2023 Consolidated Opposition at 6, 21-22; *see also* T-Mobile Reply at 16-17. Similarly, in its reply, AST states that it "remains committed to ensuring that RAS operations . . . enjoy effective interference protection." AST Reply at 11-14.

[741] Letter from Sean T. Conway, Deputy Chief Counsel, NTIA, U.S. Department of Commerce, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 23-65 et al. (filed Feb. 16, 2024) (submitting the *NSF White Paper* prepared by NSF).

[742] *See supra* para. 212.

[743] 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).

[744] 5 U.S.C. § 605(b).

260. In this present document, we have assessed the effects of our adoption of rules implementing the part 25 license entry criteria and requirements, part 1 leasing requirements, 911 text and call routing requirements, and technical requirements for the SCS Bands, and find that they will have a small impact on small business concerns. Due to the significant costs involved in SCS development and deployment, we anticipate that few entities impacted by this rulemaking would qualify as small businesses.

261. In addition, this *Further Notice* may contain potential new or revised information collection requirements subject to the Paperwork Reduction Act of 1995.[745] All such new or modified information collection requirements will be submitted to OMB for review under section 3507(d) of the PRA. 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, 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.

262. *Congressional Review Act.* The Commission will submit this draft *Report and Order* and *Further Notice* 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* and *Further Notice* to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

263. *Providing Accountability Through Transparency Act*. Consistent with the Providing Accountability Through Transparency Act, Public Law 118-9, a summary of this *Further Notice* will be available on https://www.fcc.gov/proposed-rulemakings.

264. *Ex Parte Presentations.* The proceeding this *Further Notice* initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[746] 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.

265. *Comment Period and Filing Procedures.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the

[745] Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 109 Stat. 163 (1995) (codified at 44 U.S.C. § 3501 *et seq.*).

[746] 47 CFR § 1.1200 *et seq.*

Commission's Electronic Comment Filing System (ECFS).[747] Commenters should refer to GN Docket No. 23-65 when filing in response to this *Further Notice*.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: https://www.fcc.gov/ecfs/.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701, U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, 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.[748]

266. *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).

267. *Further Information.* For additional information on this proceeding, contact Jon Markman of the Mobility Division, Wireless Telecommunications Bureau, at Jonathan.Markman@fcc.gov or (202) 418-7090, or Merissa Velez of the Space Bureau Satellite Programs and Policy Division, at Merissa.Velez@fcc.gov or (202) 418-0751.

VI. ORDERING CLAUSES

268. Accordingly, **IT IS ORDERED** that, pursuant to the authority found in sections 1, 4(i), 157, 301, 303, 307, 308, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 157, 301, 303, 307, 308, 309, and 310, that this *Report and Order and Further Notice of Proposed Rulemaking* **IS HEREBY ADOPTED**.

269. **IT IS FURTHER ORDERED** that this *Report and Order* **SHALL BE EFFECTIVE** 30 days after publication in the Federal Register, with the exception of revisions to sections 1.9047(d)(2), 9.10(t)(3)-(5), 25.125(b)(1)-(2), and 25.125(c) of the Commission's rules, 47 CFR § 1.9047(d)(2), 47 CFR § 9.10(t)(3)-(5), 47 CFR § 25.125(b)(1)-(2), and 47 CFR § 25.125(c) (amendatory instructions 3, 8, and 16 in Appendix B below), which may contain new or modified information collection requirements and will not be effective until after the Office of Management and Budget completes any review the Wireless Telecommunications Bureau and the Space Bureau determine is required under the Paperwork Reduction Act and provide an effective date by subsequent Public Notice.

270. **IT IS FURTHER ORDERED** that, pursuant to Section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), and Section 1.3 of the Commission's rules, 47 CFR § 1.3, the following rules are waived, effective immediately upon adoption of this *Report and Order* and extending until the date that is six months following the effective date announced in the Public Notice issued pursuant to paragraph 269, to the limited extent and as described herein: Sections 2.1043(c), and 2.911(c) and (e) of

[747] *See* FCC, Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (June 30, 1998).

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

the Commission's rules, 47 CFR §§ 2.1043(c), and 2.911(c) and (e). This temporary waiver is granted only for the purpose of adding a part 25 designation to equipment certifications granted on or before the 60th day after a summary of this *Report and Order* is published in the Federal Register.

271. **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 the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

272. **IT IS FURTHER ORDERED** that the Commission SHALL SEND a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

List of Commenters
(GN Docket No. 23-65)

Aalyria Technologies, Inc.
Aerospace and Flight Test Radio Coordinating Council, Inc. (AFTRCC)
Association of Public-Safety Communications Officials-International, Inc. (APCO)
Apple Inc.
AST SpaceMobile, Inc. (AST)
AT&T Services, Inc. (AT&T)
Aviation Spectrum Resources, Inc. (ASRI)
Astronomy Department of California Institute of Technology and Owens Valley Radio Observatory (Caltech et al.)
CTIA
DISH Network Corporation, EchoStar Global LLC, Hughes Network Systems, LLC, and EchoStar Mobile Limited (DISH, et al.)
Dynamic Spectrum Alliance (DSA)
Evergreen Colorado Rotary Wildfire Ready Team
Fairspectrum Oy
Globalstar, Inc. (Globalstar)
High Altitude Platform Stations (HAPS) Alliance
Intelsat License, LLC (Intelsat)
Iridium Communications, Inc.
Kepler Communications, Inc.
Kuiper Systems (Amazon)
Ligado Networks LLC
Lockheed Martin Corporation
LoRa Alliance
Lynk Global, Inc. (Lynk)
National Academy of Sciences Committee on Radio Frequencies (CORF)
National Radio Astronomy Observatory (NRAO)
National Telecommunications and Information Administration on behalf of First Responder Network Authority (FirstNet)
Nextivity, Inc.
Omnispace, LLC (Omnispace)
OneWeb
Rural Wireless Association, Inc. (RWA)
Shure Incorporated
Sirius XM Radio, Inc. (Sirius XM)
Skylo Technologies, Inc.
Sonoma County Department of Emergency Management
Space Exploration Technologies Corporation (SpaceX)
T-Mobile USA, Inc. (T-Mobile)
TechFreedom
TerreStar Solutions Inc.
Verizon
Viasat, Inc.

Reply Comments
(GN Docket No. 23-65)

AFTRCC
AST
AT&T
Boulder Emergency Telephone Service Authority
Competitive Carriers Association (CCA)
CTIA
Fleet Space
Globalstar
Intelsat
Intrado Life & Safety, Inc. (Intrado)
Iridium
Lynk
Omnispace
OptimERA Holdings, Inc.
NSighttel Wireless, LLC d/b/a Cellcom
RWA
Satellite Industry Association (SIA)
Sirius XM
SpaceX
T-Mobile
Verizon

Ex Partes
(GN Docket No. 23-65)

AFTRCC
AST
AT&T
CCA
DISH, et al.
Fairspectrum Oy
Intrado
Lynk
NRAO
Omnispace
RWA
SpaceX
T-Mobile
Verizon

APPENDIX B

Final Rules

The Federal Communications Commission amends 47 CFR parts 1, 2, 9, and 25 as follows:

PART 1 – Practice and Procedure

1. The authority citation for part 1 continues to read as follows:

AUTHORITY: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note, unless otherwise noted.

2. Effective 30 days after publication in the *Federal Register*, revise § 1.9047 to read as follows:

§ 1.9047 Special Provisions relating to spectrum leasing arrangements involving terrestrial spectrum rights for Supplemental Coverage from Space.

(a) *Supplemental Coverage from Space.* For purposes of this section, Supplemental Coverage from Space (SCS) has the same meaning as in § 25.103 of this chapter.

(b) *Geographically independent area (GIA).* For purposes of this section, geographically independent area (GIA) has the same meaning as in § 25.103 of this chapter.

(c) *Part 25 SCS Entry Criteria.* For purposes of this section, part 25 SCS Entry Criteria refers to the requirements outlined in § 25.125(a) and (b) of this chapter.

(d) *Scope.* Under this section, a licensee may enter into a spectrum manager (*see* § 1.9020) or *de facto* transfer (*see* §§ 1.9030 and 1.9035) leasing or subleasing arrangement with a spectrum lessee in only the bands identified in § 2.106(d)(33)(i) of this chapter for the purpose of meeting the part 25 SCS Entry Criteria.

(1) The licensee seeking to engage in spectrum leasing under this section may do so under the following parameters:

(i) A single licensee that holds all co-channel licenses on the relevant band in a GIA may enter into a leasing arrangement with one or more satellite operators.

(ii) If there are multiple co-channel licensees that collectively hold all co-channel licenses in a particular band throughout one of six GIAs, the licensees may enter into spectrum leasing arrangements only under one of the following conditions:

(A) One licensee holding a license in the GIA must enter into an individual spectrum leasing arrangement with each of the other co-channel licensees in that GIA. The licensee may then enter into a leasing arrangement with one satellite operator; or

(B) One satellite operator may enter into individual leasing arrangements with each of the relevant co-channel licensees that together hold all co-channel licenses on the relevant band in the GIA.

(2) [Reserved].

(e) *FirstNet.* In order for the First Responder Network Authority (FirstNet), as defined in 47 U.S.C. § 1424, to fulfill the part 25 SCS Entry Criteria, FirstNet must file a FCC Form 601 in the Universal Licensing System (ULS) that:

(1) Describes the manner in which FirstNet has conveyed to its satellite partner an authorization to utilize the 758-769/788-799 MHz band or portions of the band;

(2) Identifies and describes the geographic area(s) and nature of the proposed SCS operations; and

(3) Demonstrates how, under the agreement, the rights and responsibilities of the satellite operator partner are substantively the same as those of a lessee under this part.

(f) *Subleasing.* Notwithstanding the provisions of §§ 1.9020(l) and 1.9030(k), an SCS spectrum lessee may sublease spectrum usage rights subject to the following condition.

(1) Satellite operators may not enter into a spectrum subleasing arrangement where there are multiple terrestrial licensees jointly leasing their co-channel rights in a given GIA pursuant to paragraph (d)(1)(ii) of this section.

(2) [Reserved].

(g) *Construction/performance requirements.* Notwithstanding the provisions of §§ 1.9020(d)(5)(i) and 1.9030(d)(5)(i), a licensee may not attribute to itself the build-out or performance activities of its SCS spectrum lessee(s) for purposes of complying with any applicable performance or build-out requirement.

3. Delayed indefinitely, further revise § 1.9047 by adding paragraph (d)(2) to read as follows:

* * * * *

(d) * * *

(2) The spectrum lessee or sublessee seeking to engage in spectrum leasing under this section must provide within the FCC Form 608:

(i) a certification that the parties are entering into the leasing arrangement for the purpose of fulfilling the part 25 Entry Criteria;

(ii) a description of which method, single or multiple terrestrial licensee, the parties are utilizing to meet the part 25 Entry Criteria; and

(iii) if the parties are utilizing the spectrum leasing arrangement outlined in paragraph (d)(1)(ii) of this section, the parties must:

(A) describe the nature of the leasing arrangement(s); and

(B) demonstrate how the entirety of the GIA is covered by the lease arrangement(s).

PART 2 – FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

4. The authority citation for part 2 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

5. Amend § 2.106 as follows:

a. Revise paragraph (a) pages 30, 36, 37, and 38;

b. Add paragraph (d)(33)(i); and

c. Add and reserve paragraph (d)(33)(ii).

The revisions and additions read as follows:

§ 2.106 Table of Frequency Allocations.

(a) * * *

* * * * *

5.149 5.291A 5.294 5.296 5.300 5.304 5.306 5.312	614-698 BROADCASTING Fixed Mobile 5.293 5.308 5.308A 5.309	
694-790 MOBILE except aeronautical mobile 5.312A 5.317A BROADCASTING		
	698-806 MOBILE 5.317A BROADCASTING Fixed	
5.300 5.311A 5.312		
790-862 FIXED MOBILE except aeronautical mobile 5.316B 5.317A BROADCASTING		
	5.293 5.309	
	806-890 FIXED MOBILE 5.317A BROADCASTING	
5.312 5.319		

614-890	614-698 FIXED MOBILE Mobile-satellite NG33A NG5 NG14 NG33 NG115 NG149	RF Devices (15) Satellite Communications (25) Wireless Communications (27) LPTV, TV Translator/Booster (74G Low Power Auxiliary (74H)
	698-758 FIXED MOBILE BROADCASTING Mobile-satellite NG33A NG159	Satellite Communications (25) Wireless Communications (27) LPTV and TV Translator (74G)
	758-775 FIXED MOBILE Mobile-satellite NG33A NG34 NG159	Satellite Communications (25) Public Safety Land Mobile (90R)
	775-788 FIXED MOBILE BROADCASTING Mobile-satellite NG33A NG159	Satellite Communications (25) Wireless Communications (27) LPTV and TV Translator (74G)
	788-805 FIXED MOBILE Mobile-satellite NG33A NG34 NG159	Satellite Communications (25) Public Safety Land Mobile (90R)
	805-806 FIXED MOBILE BROADCASTING Mobile-satellite NG33A NG159	Satellite Communications (25) Wireless Communications (27) LPTV and TV Translator (74G)
	806-809 LAND MOBILE	Public Safety Land Mobile (90S)
	809-849 FIXED LAND MOBILE Mobile-satellite NG33A	Public Mobile (22) Satellite Communications (25) Private Land Mobile (90)
	849-851 AERONAUTICAL MOBILE	Public Mobile (22)
	851-854 LAND MOBILE	Public Safety Land Mobile (90S)
	854-894	

862-890 FIXED MOBILE except aeronautical mobile 5.317A BROADCASTING 5.322 5.319 5.323	5.317 5.318	5.149 5.305 5.306 5.307 5.320		FIXED LAND MOBILE Mobile-satellite NG33A US116 US268	Public Mobile (22) Satellite Communications (25) Private Land Mobile (90)

1700-1710 FIXED METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile 5.289 5.341		1700-1710 FIXED METEOROLOGICAL-SATELLITE (space-to-Earth) MOBILE except aeronautical mobile 5.289 5.341 5.384	5.341	5.341 US88	
1710-1930 FIXED MOBILE 5.384A 5.388A 5.388B 5.149 5.341 5.385 5.386 5.387 5.388			1710-1761 5.341 US91 US378 US385	1710-1780 FIXED MOBILE 5.341 US91 US378 US385	
			1761-1780 SPACE OPERATION (Earth-to-space) G42 US91		
			1780-1850 FIXED MOBILE SPACE OPERATION (Earth-to-space) G42	1780-1850	
1930-1970 FIXED MOBILE 5.388A 5.388B 5.388	1930-1970 FIXED MOBILE 5.388A 5.388B Mobile-satellite (Earth-to-space) 5.388	1930-1970 FIXED MOBILE 5.388A 5.388B 5.388	1850-2025	1850-2000 FIXED MOBILE Mobile-satellite NG33A	RF Devices (15) Personal Communications (24) Satellite Communications (25 Wireless Communications (27) Fixed Microwave (101)
1970-1980 FIXED MOBILE 5.388A 5.388B 5.388					
1980-2010 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 5.351A 5.388 5.389A 5.389B 5.389F					
				2000-2020 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space)	Satellite Communications (25) Wireless Communications (27)
2010-2025 FIXED MOBILE 5.388A 5.388B 5.388	2010-2025 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 5.388 5.389C 5.389E	2010-2025 FIXED MOBILE 5.388A 5.388B 5.388		2020-2025 FIXED	

				MOBILE	
2025-2110 SPACE OPERATION (Earth-to-space) (space-to-space) EARTH EXPLORATION-SATELLITE (Earth-to-space) (space-to-space) FIXED MOBILE 5.391 SPACE RESEARCH (Earth-to-space) (space-to-space) 5.392			2025-2110 SPACE OPERATION (Earth-to-space) (space-to-space) EARTH EXPLORATION-SATELLITE (Earth-to-space) (space-to-space) SPACE RESEARCH (Earth-to-space) (space-to-space) FIXED MOBILE 5.391 5.392 US90 US92 US222 US346 US347	2025-2110 FIXED NG118 MOBILE 5.391 5.392 US90 US92 US222 US346 US347	TV Auxiliary Broadcasting (74F) Cable TV Relay (78) Local TV Transmission (101J) Page 36

Table of Frequency Allocations			2110-2483.5 MHz (UHF)		Page 37
International Table			United States Table		FCC Rule Part(s)
Region 1 Table	Region 2 Table	Region 3 Table	Federal Table	Non-Federal Table	
2110-2120 FIXED MOBILE 5.388A 5.388B SPACE RESEARCH (deep space) (Earth-to-space) 5.388			2110-2120 US252	2110-2120 FIXED MOBILE US252	Public Mobile (22) Wireless Communications (27) Fixed Microwave (101)
2120-2170 FIXED MOBILE 5.388A 5.388B 5.388	2120-2160 FIXED MOBILE 5.388A 5.388B Mobile-satellite (space-to-Earth) 5.388 2160-2170 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.388 5.389C 5.389E	2120-2170 FIXED MOBILE 5.388A 5.388B 5.388	2120-2200	2120-2180 FIXED MOBILE NG41	
2170-2200 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.351A 5.388 5.389A 5.389F				2180-2200 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth)	Satellite Communications (25) Wireless Communications (27)

2200-2290 SPACE OPERATION (space-to-Earth) (space-to-space) EARTH EXPLORATION-SATELLITE (space-to-Earth) (space-to-space) FIXED MOBILE 5.391 SPACE RESEARCH (space-to-Earth) (space-to-space) 5.392		2200-2290 SPACE OPERATION (space-to-Earth) (space-to-space) US96 EARTH EXPLORATION-SATELLITE (space-to-Earth) (space-to-space) FIXED (line-of-sight only) MOBILE (line-of-sight only including aeronautical telemetry, but excluding flight testing of manned aircraft) 5.391 SPACE RESEARCH (space-to-Earth) (space-to-space) 5.392 US303	2200-2290 US96 US303	
2290-2300 FIXED MOBILE except aeronautical mobile SPACE RESEARCH (deep space) (space-to-Earth)		2290-2300 FIXED MOBILE except aeronautical mobile SPACE RESEARCH (deep space) (space-to-Earth)	2290-2300 SPACE RESEARCH (deep space) (space-to-Earth)	
2300-2450 FIXED MOBILE 5.384A Amateur Radiolocation	2300-2450 FIXED MOBILE 5.384A RADIOLOCATION Amateur	2300-2305 G122	2300-2305 Amateur	Amateur Radio (97)
		2305-2310 US97 G122	2305-2310 FIXED MOBILE except aeronautical mobile RADIOLOCATION Amateur US97	Wireless Communications (27) Amateur Radio (97)
		2310-2320 Fixed Mobile US100 Radiolocation G2 US97 US327	2310-2320 FIXED MOBILE BROADCASTING-SATELLITE RADIOLOCATION US97 US100 US327	Wireless Communications (27)
		2320-2345 Fixed Radiolocation G2 US327	2320-2345 BROADCASTING-SATELLITE US327	Satellite Communications (25)
5.150 5.282 5.395	5.150 5.282 5.393 5.394	2345-2360 Fixed Mobile US100 Radiolocation G2	2345-2360 FIXED MOBILE US100 BROADCASTING-SATELLITE RADIOLOCATION	Wireless Communications (27)

		US327	US327	
		2360-2390 MOBILE US276 RADIOLOCATION G2 G120 Fixed US101	2360-2390 MOBILE US276 US101	Aviation (87) Personal Radio (95)
		2390-2395 MOBILE US276 US101	2390-2395 AMATEUR MOBILE US276 US101	Aviation (87) Personal Radio (95) Amateur Radio (97)
		2395-2400 US101 G122	2395-2400 AMATEUR US101	Personal Radio (95) Amateur Radio (97)
		2400-2417 5.150 G122	2400-2417 AMATEUR 5.150 5.282	RF Devices (15) ISM Equipment (18) Amateur Radio (97)
		2417-2450 Radiolocation G2 5.150	2417-2450 Amateur 5.150 5.282	
2450-2483.5 FIXED MOBILE Radiolocation 5.150	2450-2483.5 FIXED MOBILE RADIOLOCATION 5.150	2450-2483.5 5.150 US41	2450-2483.5 FIXED MOBILE Radiolocation 5.150 US41	RF Devices (15) ISM Equipment (18) TV Auxiliary Broadcasting (74F) Private Land Mobile (90) Fixed Microwave (101) Page 38

* * * * *

(d) * * *

* * * * *

(33) * * *

(i) NG33A The secondary MSS operations in the bands 614-652 MHz and 663-769 MHz, 775-799 MHz, and 805-806 MHz, 824-849 MHz and 869-894 MHz, and 1850-1920 MHz and 1930-2000 MHz are limited to Supplemental Coverage from Space (SCS) and are subject to the Commission's SCS rules in part 25 of this chapter.

(ii) [Reserved]

* * * * *

PART 9 – 911 REQUIREMENTS

6. 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.

7. Effective 30 days after publication in the *Federal Register*, amend § 9.10 by revising paragraph (a) and adding paragraph (t) to read as follows:

§ 9.10 911 Service.

(a) *Scope of section*. Except as described in paragraph (r) of this section, the following requirements of paragraphs (a) through (t) of this section are only applicable to CMRS providers, excluding mobile satellite service (MSS) operators, to the extent that they:

* * * * *

(t) *Interim 911 Requirements for Supplemental Coverage from Space —*

(1) *Supplemental Coverage from Space.* For purposes of this paragraph (t), "Supplemental Coverage from Space" or "SCS" has the same meaning as in part 25, subpart A of this chapter; "SCS 911 calls" are 911 calls (as defined in § 9.3) that are carried over satellite facilities pursuant to a CMRS provider's SCS arrangement; and an "SCS 911 text message" is a 911 text message (as defined in paragraph (q)(9) of this section) that is carried over satellite facilities pursuant to a CMRS provider's SCS arrangement.

(2) *Call Transmission Requirements*. For purposes of delivering SCS 911 voice calls and SCS 911 text messages, CMRS providers must either:

(i) Use information regarding the location of a device, including but not limited to device-based location information, to route SCS 911 voice calls and SCS 911 text messages to an appropriate PSAP and transmit the phone number of the device used to send the SCS 911 voice call or SCS 911 text message and available location information to an appropriate PSAP; or

(ii) Use an emergency call center, at which emergency call center personnel must determine the emergency caller's phone number and location and then transfer or otherwise direct the 911 caller to an appropriate PSAP.

8. Delayed indefinitely, further amend § 9.10 by adding paragraphs (t)(3) through (5) to read as follows:

* * * * *

(t) * * *

(3) *Reporting*. Each CMRS provider that utilizes SCS arrangements to expand its coverage areas for providing service to its end-user subscribers must maintain records of all SCS 911 voice calls and SCS 911 text messages received on its network and received at its emergency call center. By October 15 of each year, each CMRS provider that utilizes SCS arrangements to expand its coverage areas for providing service to its end-user subscribers must submit a report to the Commission regarding SCS 911 voice calls and 911 text messages, and its emergency call center data, current as of September 30 of that year. CMRS providers that utilize SCS arrangements to expand their coverage areas for providing service to their end-user subscribers must submit this certification in the Commission's Electronic Comment Filing System. These reports must include, at a minimum, the following:

(i) The name and address of the CMRS provider, the address of that CMRS provider's emergency call center, and the contact information of the emergency call center;

(ii) The aggregate number of SCS 911 voice calls and SCS 911 text messages received by the network of the CMRS provider that provides SCS service to its end-user subscribers during each month during the relevant reporting period;

(iii) The aggregate number of SCS 911 voice calls and SCS 911 text messages received by the emergency call center each month during the relevant reporting period;

(iv) The aggregate number of SCS 911 voice calls and SCS 911 text messages received by the emergency call center each month during the relevant reporting period that required forwarding to a PSAP and how many did not require forwarding to a PSAP;

(v) The aggregate number of SCS 911 voice calls that were routed using location information that met the timeliness and accuracy thresholds defined in paragraphs (s)(3)(i)(A) and (B) of this section;

(vi) The aggregate number of SCS 911 voice calls and SCS 911 text messages that were routed using location information that did not meet the timeliness and accuracy thresholds defined in paragraphs (s)(3)(i)(A) and (B) of this section; and

(vii) An explanation of how the SCS deployment, including network architecture, systems, and procedures, will support routing SCS 911 voice calls and SCS 911 text messages to the geographically appropriate PSAP with sufficient location information in compliance with paragraph (t)(2) of this section.

(4) *Certification*. CMRS providers that utilize SCS arrangements to expand their coverage areas for providing service to their end-user subscribers must certify on a one-time basis that neither they nor any third party they rely on to obtain location information or associated data used for compliance with paragraph (t)(2)(i) or (ii) will use such location information or associated data for any non-911 purpose, except with prior express consent or as otherwise permitted or required by law. The certification 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 (t)(2)(i) or (ii) have implemented measures sufficient to safeguard the privacy and security of such location information or associated data. CMRS providers that utilize SCS arrangements to expand their coverage areas for providing service to their end-user subscribers must submit this one-time certification in the Commission's Electronic Comment Filing System on the due date of the first report made under paragraph (t)(3) of this section.

(5) *Subscriber notification.* Each CMRS provider that utilizes SCS arrangements to expand its coverage areas for providing service to its end-user subscribers shall specifically advise every subscriber, both new and existing, in writing prominently and in plain language, of the circumstances under which 911 service

for all SCS 911 calls, or SCS 911 text messages may not be available via SCS or may be in some way limited by comparison to traditional enhanced 911 service.

PART 25 - SATELLITE COMMUNICATIONS

9. The authority citation for part 25 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 301, 302, 303, 307, 309, 310, 319, 332, 605, and 721, unless otherwise noted.

10. Amend § 25.103 by adding the following definitions in alphabetical order to read as follows:

§ 25.103 Definitions.

* * * * *

Geographically independent area (GIA). Any of the following six areas: (1) CONUS; (2) Alaska; (3) Hawaii; (4) American Samoa; (5) Puerto Rico/U.S. Virgin Islands; and (6) Guam/Northern Mariana Islands.

* * * * *

Supplemental Coverage from Space (SCS). The provision of coverage to terrestrial wireless subscribers through an arrangement or agreement (see § 1.9047 of this chapter) between one or more NGSO or GSO operator(s) and one or more terrestrial wireless licensee(s), involving transmissions between space stations and SCS earth stations. NGSO and GSO operators and terrestrial wireless service licensees seeking to provide SCS must be authorized in compliance with § 25.125.

* * * * *

SCS earth stations. Any earth station used for the provision of Supplemental Coverage from Space consistent with § 25.115(q).

* * * * *

11. Amend § 25.109 by adding paragraph (f) to read as follows:

§ 25.109 Cross-reference.

* * * * *

(f) Space and SCS earth stations providing SCS are subject to technical rules in parts 2, 22, 24, and 27 of this chapter where applicable.

12. Amend § 25.114 by adding paragraph (a)(4) to read as follows:

§ 25.114 Applications for space station authorizations.

* * * * *

(a)(4) For an application filed pursuant to the SCS procedure in § 25.125, the filing must be submitted on FCC Form 312, Main Form and Schedule S, with attached exhibits as required by paragraph (d) of this section, and must constitute a comprehensive proposal.

* * * * *

13. Amend § 25.115 by adding paragraph (q) to read as follows:

§ 25.115 Applications for earth station authorizations.

* * * * *

(q) *SCS earth stations.* An applicant seeking to use SCS earth stations to provide SCS must comply with § 25.125.

(1) A satellite operator licensed under § 25.125 to provide SCS is permitted to communicate with all terrestrial wireless licensee(s)-associated SCS earth stations that have been approved for such use under part 2 of this chapter.

(i) Such earth stations must show compliance with this part and at least one of either part 22, 24, or 27 of this chapter to provide SCS within the technical parameters and provisions associated with the device certification.

(ii) The device certification must show compliance with the licensed parameters of the terrestrial wireless license(s) and at least one of either part 22, 24, or 27 of this chapter, as applicable.

(2) An earth station may be used for the provision of SCS when:

(i) The satellite operator licensed under § 25.125 is a party to a valid and approved spectrum leasing arrangement or agreement pursuant to § 1.9047 of this chapter with at least one terrestrial wireless licensee(s) licensed under one of either part 22, 24, or 27 of this chapter; and

(ii) That terrestrial wireless licensee(s) has met and operates within all conditions associated with the relevant terrestrial wireless license(s).

(3) A satellite operator authorized to provide SCS under § 25.125 is authorized under paragraph (q)(1) of this section to communicate with SCS earth stations for any period during which each of the following apply:

(i) The service is provided during the valid duration of any spectrum leasing arrangement or agreement pursuant to § 1.9047 of this chapter between the terrestrial wireless licensee(s) and satellite operator;

(ii) The devices to which service is provided are certified under part 2 of this chapter; and

(iii) The terrestrial wireless licensee(s) is a valid licensee(s) under part 22, 24, or 27 of this chapter.

(4) A satellite operator with SCS authorization via a market access grant can avail itself of the provisions of this paragraph (q) but, in addition to the parameters established in paragraphs (q)(1) and (2) of this section, must also comply with any additional parameters included in the satellite operator's space station market access grant.

(5) A satellite operator operating in conformance with the parameters established in this part does not need a separate earth station authorization for the provision of SCS under this part.

14. Amend § 25.117 by adding paragraph (j) to read as follows:

§ 25.117 Modification of station license.

* * * * *

(j) An application for modification of a space station authorization to provide SCS must comply with § 25.125.

15. Effective 30 days after publication in the *Federal Register*, add § 25.125 to read as follows:

§ 25.125 Applications for supplemental coverage from space (SCS).

(a) *SCS entry criteria.* This section applies only to applicants seeking to provide SCS. An applicant for SCS space station authorization must hold either an existing NGSO or GSO license or grant of U.S. market access under this part, or must be seeking a NGSO or GSO license or grant of U.S. market access under this part, and must have a lease arrangement(s) or agreement pursuant to § 1.9047 of this chapter with one or more terrestrial wireless licensee(s) that hold,

collectively or individually, all co-channel licenses throughout a GIA in a band identified in § 2.106(d)(33)(i) of this chapter. Applicants for SCS space stations must comply with the requirements set forth in paragraph (b) of this section.

(b) *SCS space station application requirements.* An applicant seeking a space station authorization to provide SCS must either submit an application requesting modification of a current NGSO or GSO license or grant of U.S. market access under this part, or an application seeking a new NGSO or GSO license or grant of U.S. market access under this part.

(1) - (2) [Reserved].

(3) Applications to modify an authorization under this part to provide SCS and applications seeking to provide SCS in the bands identified in § 2.106(d)(33)(i) of this chapter will not be subject to the processing round procedures or first-come, first-served procedures in §§ 25.137, 25.157, and 25.158.

(c) [Reserved].

(d) *Effective date and continued operation of SCS authorization.* SCS authorization will be deemed effective in the Commission's records and for purposes of the application of the rules set forth in this section after each of the following requirements is satisfied:

(1) Grant of:

(i) A modification application under this part or request for modification of a grant of market access; or

(ii) An application to launch and operate or market access;

(2) Approval of a leasing arrangement(s) or agreement(s) under part 1 of this chapter (*see* § 1.9047 of this chapter); and

(3) Grant of a valid SCS earth station equipment certification under part 2 of this chapter.

(e) *SCS earth station equipment certification requirements.* Applicants for certification for SCS earth stations for use with a satellite system must meet all requirements for equipment certification and equipment test data necessary to demonstrate compliance with pertinent standards under part 22, 24, or 27 of this chapter as applicable.

16. Delayed indefinitely, amend § 25.125 by adding paragraphs (b)(1) and (2) and (c) to read as follows:

§ 25.125 Applications for supplemental coverage from space (SCS).

* * * * *

(b) * * *

(1) The application must include a certification that:

(i) A lease notification(s) or application(s), pursuant to § 1.9047 of this chapter, where a single terrestrial wireless licensee holds or multiple co-channel licensees collectively hold all co-channel licenses within the relevant GIA in the bands identified in § 2.106(d)(33)(i) of this chapter, or as it pertains to FirstNet, an agreement, is on file with the Commission;

(ii) The current space station licensee under this part or grantee of market access for NGSO or GSO satellite operation under this part seeks modification of authority to provide SCS in the same geographic areas covered in the relevant

GIA, or the applicant for a space station license under this part or grant of market access for NGSO or GSO satellite operation under this part seeks to provide SCS in the same geographic areas covered in the relevant GIA; and

(iii) SCS earth stations will qualify as "licensed by rule" earth stations under § 25.115(q).

(2) The application must include a comprehensive proposal for the prospective SCS system on FCC Form 312, Main Form and Schedule S, as described in § 25.114, together with the certification described in paragraph (b)(1) of this section and include a list of the file and identification numbers associated with the relevant leasing notification(s) under part 1 of this chapter, application(s), and FCC Form 601(s), with a brief description of the coverage areas that will be served, domestically and internationally.

* * * * *

(c) *Equipment authorization for SCS earth stations.* Each SCS earth station used to provide SCS under this section must meet the equipment authorization requirements under paragraph (e) of this section and all equipment authorization requirements for all intended uses of the device pursuant to the procedures specified in part 2 of this chapter and the requirements of at least one of part 22, 24, or 27 of this chapter.

* * * * *

17. Amend § 25.137 by revising paragraphs (b) and (f) to read as follows:

§ 25.137 Requests for U.S. market access through non-U.S.-licensed space stations.

* * * * *

(b) Any request pursuant to paragraph (a) of this section must be filed electronically through the International Communications Filing System and must include an exhibit providing legal and technical information for the non-U.S.-licensed space station of the kind that §§ 25.114, 25.122, 25.123, or 25.125 would require in a license application for that space station, including but not limited to information required to complete Schedule S. An applicant may satisfy this requirement by cross-referencing a pending application containing the requisite information or by citing a prior grant of authority to communicate via the space station in question in the same frequency bands to provide the same type of service.

* * * * *

(f) A non-U.S.-licensed space station operator that has been granted access to the United States market pursuant to a declaratory ruling may modify its U.S. operations under the procedures set forth in §§ 25.117(d), (h), and (j) and 25.118(e).

* * * * *

18. Amend § 25.161 by adding paragraph (e) to read as follows:

§ 25.161 Automatic termination of station authorization.

* * * * *

(e) The failure to provide any SCS on all or some of the SCS authorized frequencies for more than 90 days in the event of termination of the lease arrangement(s) or agreement(s) specified in the § 25.125(a) SCS entry criteria. In this instance, the authorization will be terminated in whole or in part with respect to the relevant frequencies on which SCS has not been operational for more than 90 days in the United States, unless specific authority is requested.

19. Amend § 25.202 by adding paragraph (k) to read as follows:

25.202 Frequencies, frequency tolerance, and emission limits.

* * * * *

(k) Space station downlinks operating as SCS under the provisions of § 25.125 and § 2.106(d)(33)(i) of this chapter are subject to the following rules.

(1) *Out of band emission limits.* Notwithstanding the emission limitations of paragraph (f) of this section, the aggregation of all space station downlink emissions outside a licensee's SCS frequency band(s) of operation shall not exceed a power flux density of -120 dBW/m^2/MHz at 1.5 meters above ground level.

(2) *Interference caused by out of band emissions.* If any emission from a transmitter operating in the SCS service results in harmful interference to users of another radio service, the FCC may require a greater attenuation of the emission than specified in this section.

20. Amend § 25.204 by revising the section heading and adding paragraph (g) to read as follows:

§ 25.204 Power and out-of-band emission limits for earth stations.

* * * * *

(g) SCS earth stations providing SCS pursuant to §§ 25.125 and 25.115 shall comply with the power requirements and out-of-band emission limits corresponding to devices operating in parts 22, 24, or 27 of this chapter (e.g., §§ 22.913, 24.232, 27.50), as required for their operating frequencies.

21. Amend § 25.208 by revising the section heading and adding paragraph (w) to read as follows:

§ 25.208 Power flux-density and in-band field strength limits.

* * * * *

(w) The aggregate field strength at the earth's surface produced by all visible beams and satellites within each satellite constellation providing SCS service as they move over any given point or area in bands authorized by NG33A in the United States Table of Frequency Allocations and § 25.125 must meet:

(1) 40 dBμV/m for the 600 MHz, 700 MHz, and 800 MHz bands; and

(2) 47 dBμV/m for the AWS and PCS bands; and

(3) Licensees must comply with all applicable provisions and requirements of treaties and other international agreements between the United States government and the governments of other countries, including Canada and Mexico. Absent specific international agreements regarding SCS, licensees must comply with the limited provided in paragraphs (w)(1) and (2) of this section.

APPENDIX C

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Single Network Future: Supplemental Coverage from Space, Space Innovation, Notice of Proposed Rulemaking* (*Notice*) released in March 2023.[2] The Federal Communications Commission (Commission) sought written public comment on the proposals in the *Notice*, including comment on the IRFA. No comments were filed addressing the IRFA. This 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 takes a major step toward harnessing the power of hybrid satellite-terrestrial networks to connect people to modern communications services. To accomplish this objective, the Commission adopts a regulatory framework to enable collaborations between satellite operators and terrestrial service providers to offer ubiquitous connectivity directly to consumer handsets using spectrum previously allocated only to terrestrial service. Supplemental coverage from space (SCS) will enable consumers in areas not covered by terrestrial infrastructure to be connected using their existing devices via satellite-based communications. The framework the Commission adopts in the *Report and Order* balances the desire to accelerate innovative SCS operations that will serve these critical public interest goals with the need to retain service quality of terrestrial networks, protect spectrum usage rights, and minimize the risk of harmful interference, both domestically and internationally. The objectives of the framework include facilitating ubiquitous wireless coverage across the nation, expanding the availability of emergency communications to consumers and the geographic range of first responders to provide emergency services, and promoting competition in the provision of wireless services to consumers.

3. In the *Report and Order*, to allow satellite communications on spectrum previously allocated only to terrestrial services, the Commission modifies the United States Table of Frequency Allocations (U.S. Table) to authorize bi-directional, secondary mobile-satellite service (MSS) operations in certain spectrum bands that have no primary, non-flexible-use legacy incumbents, federal or non-federal. For these bands, the Commission authorizes SCS only where one or more terrestrial licensees—together holding all licenses on the relevant channel throughout a defined geographically independent area (GIA)—lease access to their spectrum rights to a participating satellite operator, whose part 25 license reflects these frequencies and the GIA in which they will offer SCS. The list of bands (SCS Bands) that will be available for the provision of SCS is as follows:

- 600 MHz: 614-652 MHz and 663-698 MHz;
- 700 MHz: 698-769 MHz, 775 MHz-799 MHz, and 805-806 MHz;
- 800 MHz: 824-849 MHz and 869-894 MHz;
- Broadband PCS: 1850-1915 MHz and 1930-1995 MHz; and
- AWS-H Block: 1915-1920 MHz and 1995-2000 MHz

In an effort to realize the public interest benefits of SCS as soon as possible, while minimizing the risk of harmful interference, the Commission adopts the proposal to limit SCS authorizations to the following GIAs: (1) the contiguous United States (CONUS); (2) Alaska; (3) Hawaii; (4) American Samoa; (5)

[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] *Single Network Future: Supplemental Coverage from Space, Space Innovation*, GN Docket No. 23-65 and IB Docket No. 22-271, Notice of Proposed Rulemaking, FCC 23-22 (Mar. 17, 2023) (*Notice*).

[3] 5 U.S.C. § 604.

Puerto Rico/U.S. Virgin Islands; and (6) Guam/Northern Mariana Islands.

4. Additionally, in the *Report and Order*, the Commission adopts rules requiring a part 25 license as a necessary component of an SCS authorization that must be obtained prior to commencing SCS. The Commission also adopts entry criteria that non-geostationary satellite orbit (NGSO) and geostationary satellite orbit (GSO) operators must meet to apply for or modify an existing part 25 license to operate satellites in SCS Bands. The Commission adopts rules to establish a license by rule approach for terrestrial devices as earth stations communicating with a satellite network for the purposes of SCS. Furthermore, the *Report and Order* authorizes SCS based on a lease arrangement or agreement between one or more terrestrial licensees and one or more satellite operators, subject to the restrictions adopted. The Commission also adopts limited amendments to the service rules governing satellite and terrestrial licensees to enable the provision of SCS.

5. Similarly, the Commission adopts certain technical rules, including requiring terrestrial device equipment authorization grantees to modify existing, or obtain new, equipment authorizations for previously certified terrestrial devices and also grants a limited waiver of certain rules. The Commission also addresses international coordination, stating that SCS will be authorized pursuant to a secondary MSS allocation in the U.S. Table. These operations may not cause harmful interference to—and shall not claim protection from—any station operating in accordance with ITU provisions, whether in the United States or internationally. Finally, the Commission clarifies that the SCS framework is limited to operations performed in the bands designated in the *Report and Order* for SCS and remains separate from the service rules for MSS systems. Consequently, the rules the Commission adopts in the *Report and Order* represent an initial step to encourage the development of SCS while minimizing the risks of harmful interference to existing terrestrial and satellite networks that support non-federal and federal users.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

6. Parties that filed comments did not specifically reference the IRFA in their comments; however, some commenters, some of which include small entities, expressed concerns that the proposal in the *Notice* in which a single terrestrial licensee must hold all co-channel licenses in a given GIA would either limit SCS to large carriers with nationwide authority over a block of spectrum, or, at a minimum, exclude smaller or regional terrestrial operators from participation in the framework.[4] These concerns are discussed in greater detail in section F of this FRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

7. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.[5]

8. The Chief Counsel did not file any comments in response to the proposed rules or policies in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will

[4] *See Report and Order*, para. 58.

[5] 5 U.S.C. § 604(a)(3).

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.[6] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[7] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[8] A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[9]

10. *Small Businesses, Small Organizations, Small Government Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein.[10] First, where there are industry specific size standards for businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.[11] These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.[12]

11. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[13] The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.[14] Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenue of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.[15]

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[6] *Id.* § 604(a)(4).

[7] *Id.* § 601(6).

[8] *Id.* § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[9] 15 U.S.C. § 632.

[10] *See* 5 U.S.C. § 601(3)-(6).

[11] *See* SBA, Office of Advocacy, "What's New With Small Business?," https://advocacy.sba.gov/wp-content/uploads/2023/03/Whats-New-Infographic-March-2023-508c.pdf (Mar. 2023).

[12] *Id.*

[13] *See* 5 U.S.C. § 601(4).

[14] The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. 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.

[15] *See* Exempt Organizations Business Master File Extract (EO BMF), "CSV Files by Region," https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-

(continued….)

12. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[16] U.S. Census Bureau data from the 2017 Census of Governments[17] indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.[18] Of this number, there were 36,931 general purpose governments (county,[19] municipal, and town or township[20]) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts[21] with enrollment populations of less than 50,000.[22] Accordingly, based on the 2017 U.S. Census of Government data, we estimate that at least 48,971 entities fall into the category of "small government jurisdictions."[23]

13. *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

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.

[16] *See* 5 U.S.C. § 601(5).

[17] *See* 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with "2" and "7". *See also* Census of Governments, https://www.census.gov/programs-surveys/cog/about.html.

[18] *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.

[19] *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.

[20] *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.

[21] *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.

[22] 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.

[23] This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) 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.

reselling satellite telecommunications."[24] Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business with $38.5 million or less in annual receipts as small.[25] U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year.[26] Of this number, 242 firms had revenue of less than $25 million.[27] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 65 providers that reported they were engaged in the provision of satellite telecommunications services.[28] Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees.[29] Consequently, using the SBA's small business size standard, a little more than half of these providers can be considered small entities.

14. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.[30] 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.[31] The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[32] U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.[33] Of that number, 2,837 firms employed fewer than 250 employees.[34] Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 797 providers that reported they were engaged in the provision of wireless services.[35] Of these providers, the Commission estimates that 715 providers have 1,500 or fewer

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[24] *See* U.S. Census Bureau, *2017 NAICS Definition, "517410 Satellite Telecommunications,"* https://www.census.gov/naics/?input=517410&year=2017&details=517410.

[25] *See* 13 CFR § 121.201, NAICS Code 517410.

[26] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 517410, https://data.census.gov/cedsci/table?y=2017&n=517410&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.

[27] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[28] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[29] *Id.*

[30] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite),"* https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[31] *Id.*

[32] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[33] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[34] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[35] 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.

employees.[36] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

15. *600 MHz Band*. These wireless communications services are radiocommunication services licensed in the 617-652 MHz and 663-698 MHz frequency bands that can be used for fixed and mobile flexible uses.[37] 600 MHz Band services fall within the scope of the Wireless Telecommunications Carriers (except Satellite)[38] industry where the SBA small business size standard classifies a business as small if it has 1,500 or fewer employees.[39] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[40] Of this number, 2,837 firms employed fewer than 250 employees.[41] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

16. Based on Commission data as of November 2021, there were approximately 3,327 active licenses in the 600 MHz Band service.[42] The Commission's small business size standards with respect to 600 MHz Band services involve eligibility for bidding credits and installment payments in the auction of licenses for these services. For purposes of bidding credits, the Commission defined "small business" as an entity with average gross revenues not exceeding $55 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues not exceeding $20 million for each of the three preceding years for the 600 MHz band auction.[43] Pursuant to these definitions, 15 bidders claiming small business status won 290 licenses.[44]

17. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or 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

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[36] *Id.*

[37] *See* 47 CFR §§ 27.4, 27.5(l).

[38] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers* (*except Satellite*)," https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[39] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[40] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[41] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[42] Based on a FCC Universal Licensing System search on November 16, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = WT; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[43] *See* 47 CFR § 27.1301(a).

[44] *See Incentive Auction Closing and Channel Reassignment Public Notice; Incentive Auction Closes; Reverse Auction and Forward Auction Results Announced; Final Television Band Channel Assignments Announced; Post-Auction Deadlines Announced*, 32 FCC Rcd 2786, Appendix B (Auction No.1002) (April 23, 2017), https://www.fcc.gov/document/fcc-announces-results-worlds-first-broadcast-incentive-auction-0/appendix-b.

estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

18. *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.[45] Wireless Telecommunications Carriers (*except* Satellite)[46] 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.[47] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[48] Of this number, 2,837 firms employed fewer than 250 employees.[49] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

19. According to Commission data as of December 2021, there were approximately 2,824 active Lower 700 MHz Band licenses.[50] 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.[51] In auctions for Lower 700 MHz Band licenses seventy-two winning bidders claiming a small business classification won 329

[45] *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.

[46] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers* (*except Satellite*)," https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[47] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[48] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&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.

[50] 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.

[51] *See* 47 CFR § 27.702(a)(1)-(3).

licenses,[52] twenty-six winning bidders claiming a small business classification won 214 licenses,[53] and three winning bidders claiming a small business classification won all five auctioned licenses.[54]

20. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

21. *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.[55] 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.[56] Wireless Telecommunications Carriers (*except* Satellite)[57] 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.[58] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[59] Of that number, 2,837 firms employed fewer than 250 employees.[60] Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

22. According to Commission data as of December 2021, there were approximately 152

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[52] *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.

[53] *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.

[54] *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.

[55] *See* 47 CFR § 27.4.

[56] *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.

[57] *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.

[58] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[59] *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.

[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.

active Upper 700 MHz Band licenses.[61] 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.[62] Pursuant to these definitions, three winning bidders claiming very small business status won five of the twelve available licenses.[63]

23. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

24. *Cellular Radiotelephone Service.* This service is radio service in which licensees are authorized to offer and provide cellular service for hire to the general public and was formerly titled Domestic Public Cellular Radio Telecommunications Service.[64] Cellular Radiotelephone Service falls within the scope the Wireless Telecommunications Carriers (except Satellite)[65] industry, where the SBA small business size standard classifies a business as small if it has 1,500 or fewer employees.[66] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[67] Of this number, 2,837 firms employed fewer than 250 employees.[68] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

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[61] 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.

[62] *See* 47 CFR § 27.502(a).

[63] *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.

[64] *See* 47 CFR § 22.99.

[65] *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.

[66] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[67] *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.

[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.

25. Based on Commission data, as of November 2021, there were approximately 1,908 active licenses in this service.[69] The Commission's small business size standards with respect to Cellular Radiotelephone Services involve eligibility for bidding credits and installment payments in the auction of licenses for these services. For purposes of bidding credits, the Commission has defined "small business" as an entity that either (1) together with its affiliates and controlling interests has average gross revenues of not more than $3 million for each of the three preceding years, or (2) together with its affiliates and controlling interests has average gross revenues of not more $15 million for each of the three preceding years.[70]

26. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

27. *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.[71] Wireless Telecommunications Carriers (except Satellite)[72] 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.[73] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[74] Of this number, 2,837 firms employed fewer than 250 employees.[75] Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

28. According to Commission data as December 2021, there were approximately 4,472 active AWS licenses.[76] The Commission's small business size standards with respect to AWS involve

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[69] Based on a FCC Universal Licensing System search on November 12, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = CL; 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.

[70] *See* 47 CFR § 22.223(b).

[71] *See* 47 CFR § 27.1(b).

[72] *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.

[73] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[74] *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.

[75] *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.

[76] 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.

(continued….)

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.[77] Pursuant to these definitions, 57 winning bidders claiming status as small or very small businesses won 215 of 1,087 licenses.[78] In the most recent auction of AWS licenses 15 of 37 bidders qualifying for status as small or very small businesses won licenses.[79]

29. 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.

30. *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.[80] 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.[81] 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.[82] The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small.[83] U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.[84] Of those firms, 1,039 had revenue of less than $25 million.[85] Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be

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We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[77] *See* 47 CFR §§ 27.1002, 27.1102, 27.1104, 27.1106.

[78] *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.

[79] *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).

[80] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517919 All Other Telecommunications,*" https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[81] *Id.*

[82] *Id*.

[83] *See* 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

[84] *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.

[85] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

considered small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

31. While the Commission sought to minimize compliance burdens where practicable, the SCS framework adopted in the *Report and Order* will impose new or additional reporting, recordkeeping, and/or other compliance obligations on small entities. In addition, while it sought comment from concerned parties regarding costs related to those obligations, the record does not contain a detailed cost/benefit analysis that would allow us to quantify such related costs to small entities. The rules adopted in the *Report and Order* encompass a broad range of leasing, licensing, and technical compliance requirements that are summarized in further detail below.

32. *Part 25 License Entry Criteria.* The *Report and Order* effectuates SCS in certain flexible-use bands previously allocated solely for terrestrial use by the adoption of rules to authorize satellite-to-terrestrial (uplink and downlink) operations in these bands whereby a NGSO or GSO satellite operator may apply for a new or modify an existing part 25 authorization when that entity meets certain prerequisites, or "entry criteria." The "entry criteria" requires the satellite operator intending to modify its existing part 25 application in order to provide SCS to include a certification that provides the following information: (1) the satellite operator has one or more leasing notification(s) or application(s), or in the case of FirstNet, a Form 601, on file with the Commission to access the spectrum allocated for MSS provision of SCS from a single terrestrial licensee or multiple licensees that hold, collectively or individually, all co-channel licenses throughout a GIA; (2) the current part 25 space station licensee or part 25 grantee of market access for NGSO or GSO satellite operation seeks modification of authority to provide SCS in the same geographic areas covered in the relevant GIA; and (3) the terrestrial devices involved in SCS qualify as "licensed by rule" earth stations under the new provisions of part 25. Similarly, satellite operators may apply for an initial part 25 license with authority to provide SCS if it shows that it meet requirements (1) and (3) above, and if in their part 25 application, those operators request to provide SCS in in the same geographic areas covered in the relevant GIA.

33. In its adopted rules, the Commission maintains its existing part 25 rules for obtaining and modifying a license and applies them to the SCS framework. Under this framework, meeting the proposed entry criteria would allow small and other entities to apply to modify its existing satellite authorization. However, all related applications—including those seeking modification, lease applications, and earth station equipment certifications—must first be granted to provide SCS. Thus, the *Report and Order*'s requirements are in addition to the existing underlying reporting, recordkeeping, and compliance requirements. We further note, however, that due to the significant costs involved in SCS development and deployment, we anticipate that few satellite operators affected by this rulemaking would qualify under the definition of "small entity."

34. *Part 1 Leasing.* In the *Report and Order*, the Commission adopts a framework authorizing SCS by amending its part 1 leasing rules to permit terrestrial licensees to lease terrestrial spectrum rights to satellite operators for the purpose of providing SCS. In order to properly comply, the adopted rules require applicants for and current licensees of the authorized SCS bands to provide the following information using the current FCC Form 608: (1) a certification that the parties are entering into the leasing arrangement for the purpose of fulfilling the part 25 entry criteria; (2) a description of which method, single or multiple terrestrial licensee, the parties are utilizing to meet the part 25 entry criteria; and (3) if the parties are utilizing the spectrum leasing arrangement under the multiple terrestrial licensee method, the parties must: (a) describe the nature of the leasing arrangement(s); and (b) demonstrate how the entirety of the GIA is covered by the lease arrangement(s). The Commission believes that this requirement will improve the level of interference protection licensees receive in the band; and will create a more predictable and transparent spectrum environment for any current and future users of the band(s). This process also utilizes the Commission's current application approval and notification processing

procedures because it will remove unnecessary delay by utilizing the procedures that are already in place. Further, in light of these limited changes to the current application procedures, the Commission does not believe that small entities will have to hire professionals to comply with the *Report and Order*.

35. *Part 25 Automatic Termination.* In the *Report and Order*, the Commission retains the current part 25 rules regarding automatic termination of station authorizations to satellite licensees seeking to provide SCS jointly with a terrestrial operator, and adds a rule whereby the termination of any lease(s) that allow for the use of specific terrestrial spectrum for SCS is a trigger for automatic termination of the part 25 license. This requirement utilizes and applies the Commission's current part 25 automatic termination process. In light of these limited changes to the current procedures, the Commission does not believe that small entities will have to hire professionals to comply with the *Report and Order*.

36. *911 Call Transmission Requirements.* In the *Report and Order*, the Commission establishes on an interim basis that terrestrial providers must transmit all SCS 911 calls and texts to a PSAP using either an emergency call center or location-based routing. Terrestrial providers must also transmit location information and the user's phone number to facilitate dispatch and callback capabilities at the receiving PSAP. This interim step will balance the need for SCS 911 voice calls and texts to be routed to the appropriate PSAP with the need for terrestrial providers to have flexibility in their implementation of SCS. Under this approach, terrestrial providers must either: (1) use information regarding the location of a device, including but not limited to device-based location information, and transmit the phone number of the device used to send the SCS 911 voice call or SCS 911 text message and available information to an appropriate PSAP; or (2) use an emergency call center, at which emergency call center personnel must determine the emergency caller's phone number and location and then transfer or otherwise direct the SCS voice call or SCS text message to an appropriate PSAP. In addition, the Commission requires terrestrial providers that use SCS to file an SCS 911 report with the Commission on an annual basis, by October 15th of each year, that explains how their SCS deployments have supported 911 call/text routing to the geographically appropriate PSAP with sufficient location information. Terrestrial providers that utilize SCS to extend coverage must maintain records of SCS 911 voice calls and 911 text messages received under their SCS arrangements and received at their emergency centers. The Commission finds that these reporting and location-based routing requirements represent minimally burdensome requirements when weighed against the necessity of 911 service for emergency response and disaster preparedness. Further, while these recordkeeping and reporting requirements present new obligations for small entities, we note that these measures will promote the Commission's objectives regarding transparency and accountability in routing SCS voice calls and 911 text messages and provide useful data. Additionally, to advance consumer awareness of the extent to which SCS is used to provide connectivity to 911, the Commission adopts consumer disclosure requirements for terrestrial providers to inform their subscribers of the limitations when using SCS to contact 911. Finally, there is a one-time requirement that, prior to use of SCS location information to meet the Commission's 911 rules, terrestrial providers must certify that neither they nor any third party they rely on to obtain SCS location information will use that information or associated data for any non-911 purpose, except with prior express consent or as otherwise permitted or required by law. The certification also must state that terrestrial providers and any third party they rely on to obtain SCS location information will implement measures sufficient to safeguard the privacy and security of the information.

37. *Market Area Boundary Limits*. In the *Report and Order*, the Commission maintains the existing market area boundary limits in parts 22, 24, and 27 of the Commission's rules. Noting that SCS partners should be expected to coordinate regarding the technical parameters necessary to avoid co-channel interference with one another's operations. Although the introduction of SCS into spectrum licensed for terrestrial networks should have no impact to other radio systems operating in the band within the same or nearby geographical areas, the Commission adopts a rule to limit the signal levels from SCS at and beyond the terrestrial operator's licensed area to be the same as those defined for terrestrial

operation in each respective band. More specifically, the Commission maintains the existing market area boundary limits established in parts 22, 24, and 27 of the Commission's rules. These limits have also been used and shown to be feasible for operations similar to SCS. SCS can therefore only be deployed on the condition that stations using these frequencies will not cause harmful interference to, or claim protection from harmful interference caused by, an international station operating in accordance with the provisions of the Constitution, the Convention, and the Radio Regulations of the ITU.

38. The Commission recognizes that managing time varying signal levels from SCS space stations, which may be moving and utilizing multibeam transmissions, will require careful and dynamic management of power level and beams for small and other entities. Satellite operators must also account for multiple overlapping and changing satellites or beams covering the same areas, as well as leakage and interference from side beams. Therefore, the power limit for interference protection at any given point or area should be applied to aggregation of power received across all visible beams and satellites at all times as they move over any given point or area. In addition, operators may need to cease beam transmissions in zones to allow for signal degradation from the edge of SCS coverage. Given that the size of such zones depends on target services, satellite and beamforming configuration, and power management solutions which may improve over time, the Commission does not set a limit on the zone size as long as the receive power limits are met.

39. *Out of Band Emission (OOBE) Limits*. In the *Report and Order* the Commission adopted a uniform OOBE limit for SCS operation across the SCS Bands expressed as a terrestrial PFD limit. To ensure those adjacent band devices are protected from the risk of harmful interference, we find that both OOBE limits are warranted, and given the nature of SCS, that these limits should be measured and enforced on the ground. In setting these limits, we recognize that different factors may affect the potential for harmful interference due to the inherent difference in propagation effects when the signal is generated from a multibeam satellite constellation compared to when it is transmitted from a terrestrial base station. As a result, we therefore adopt limits that constitute a reasonable middle ground between existing terrestrial OOBE limits and satellite-based limits.

40. The existing OOBE limits for base stations vary across different radio services, and these services are governed by different parts of the Commission's rules (e.g., parts 22, 24, 27). Although different OOBE limits apply across individual SCS Bands, we believe adopting a uniform PFD limit for supplemental satellite coverage across the various bands is reasonable and provides a simple requirement for satellite operator compliance. To provide a uniform limit across the various SCS Bands, the Commission considers some balancing of these effects for PFD limits that are normalized to both 'per MHz' and 'per square meter'; i.e., $dBW/m^2/MHz$. We also specify that this PFD limit will apply at 1.5 meters above ground level, a height frequently associated with handset usage that has been used by the Commission when developing interference protection criteria for other wireless services. We believe that this limit represents an equitable—and technologically feasible—balance between the positions expressed in the record and will effectively protect adjacent band operations across the SCS Bands. Further, given that the Commission is breaking new ground in permitting satellite operations to not only operate in bands allocated for terrestrial systems, but permitting them to be fully integrated into those systems, we believe that it is in the public interest to require that those satellites protect terrestrial systems commensurate with the protections they are afforded from terrestrial-only systems. While the out-of-band PFD limits the Commission adopted may require more stringent attenuation than the emission limits specified in section 25.202(f) for satellite operation, the Commission believes that these stricter limits are both necessary and technologically feasible for small and other satellite operators providing SCS.

41. *Equipment Authorization for SCS.* The adopted rules in the *Report and Order* also require terrestrial device equipment authorization grantees to modify existing, or obtain new, equipment authorizations for previously certified terrestrial devices to reflect those devices' approval to operate under a part 25 MSS allocation and applicable SCS rules. New applicants should include a request for part 25 on future certification applications for equipment that is capable of operation in an SCS mode.

This requirement does introduce a new administrative burden for equipment authorization grantees and applicants, especially as it relates to already certified equipment. The Commission's existing procedures through the permissive change process which enable electrical or mechanical changes to certified equipment when those changes do not affect the characteristics required to be reported to the Commission do not apply here where the only change being made to the certification is adding authorization for part 25. Under the Commission's existing rules, "a change other than a permissive change" requires a grantee to file a new application for certification accompanied by the information specified in part 2 of the Commission's rules.[86] The Commission believes there is good reason to provide grantees a way to effectuate the necessary changes to their equipment authorization grants under the Commission's rules that also minimizes the administrative burdens associated with a new equipment certification application by waiving relevant rule provisions to provide a simplified process for existing grantees to modify their certifications to reflect part 25 authorization for SCS.

42. In granting a limited waiver of its rules, the Commission aims to minimize the burden on small and other equipment certification holders, while ensuring tracking and accountability for devices capable of SCS, and compliance with its prohibition on the authorization of covered equipment. Similarly, for new equipment authorizations, terrestrial devices need only show compliance with the terrestrial technical rules for the rule parts under which they will operate; no additional tests are needed for part 25 SCS capability. Thus, seeking to have the part 25 SCS designation on the equipment certification only requires the applicant to request such a designation pursuant to the SCS rules.

43. *International Coordination*. In the *Report and Order*, the adopted rules require that SCS operations that may occur in bands not allocated for such services in the International Table must be consistent with ITU Radio Regulation No. 4.4, and find that it would serve the public interest to include express conditions in the SCS licenses to ensure that the Commission's obligations are met as the ITU notifying administration for U.S. licensed space station operations. In these cases, the Commission will require additional assurances from SCS licensees that while operating outside of the United States, pursuant to an authorization from another country, the satellite operations will not cause harmful interference into a nearby country. Prior to conducting any communications with earth stations outside the United States, a satellite operator licensed to provide SCS, or applicant for a license to provide SCS, must certify to Space Bureau and the Office of International Affairs (OIA) that it has obtained all necessary authorizations from the relevant country prior to initiation of communications with earth stations in that country. The certification must include steps that were taken to address harmful interference concerns and that these SCS operations will not result in harmful interference to operations that are in conformity with the ITU Radio Regulations in neighboring or nearby countries. The certification must also be accompanied by a demonstration specifying the measures that the U.S. licensee or applicant will take to eliminate any harmful interference immediately, in the event that it is notified of harmful interference resulting from such SCS operations. These requirements are consistent with existing Commission rules, thereby limiting the compliance burden for small and other entities.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered

44. 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.[87]

[86] 47 CFR § 2.1043(c).

[87] 5 U.S.C. § 604(a)(6).

45. As discussed above, the *Report and Order* adopts an SCS framework that allows, through a collaboration between a terrestrial mobile service provider and satellite operator, transmissions directly from satellites to terrestrial devices on spectrum that was previously allocated and licensed exclusively on a terrestrial basis. In the discussion of the issues, the initial *Notice* sought comment on, the Commission raised alternatives and sought input such as a cost and benefit analyses from small and other entities. By requesting such information, the Commission gave small entities the opportunity to broaden the scope of the Commission's understanding of impacts which may not be readily apparent, and offer alternatives not already considered that could minimize the economic impact on small entities.

46. *Waiver-Based Approach.* The Commission declines to adopt a waiver-based approach to enable SCS, opting instead to enable SCS on a variety of bands in all parts of the United States through generally-applicable rules. Some commenters argued for a waiver-based approach instead, but the Commission believes a generally-applicable rules approach allows the Commission to better serve the public by allowing it to more carefully consider the entire landscape of an issue as well as make more comprehensive policy decisions.[88] However, because there are particular SCS implementations that do not perfectly align with this framework, in order to not discourage or delay other innovative solutions for SCS, the Commission will continue to consider on a case-by-case basis filings for waiver or STA made by interested parties for SCS. Permitting case-by-case filings for waiver or STA will allow more flexibility for smaller entities who do not have the resources that larger entities have to participate in providing SCS.

47. *Geographically Independent Area (GIA).* In the initial *Notice*, the Commission proposed to limit the provision of SCS "to instances where a single terrestrial licensee holds all co-channel licenses in the relevant band throughout one of the six GIAs." In the *Report and Order*, the Commission adopted the proposal to limit SCS authorizations to the following GIAs: (1) CONUS; (2) Alaska; (3) Hawaii; (4) American Samoa; (5) Puerto Rico/U.S. Virgin Islands; and (6) Guam/Northern Mariana Islands.[89] The Commission adopted its original proposal to limit SCS to GIAs at this time, and acknowledges that this decision does not foreclose the ability for parties with proposals for providing SCS that do not satisfy the framework from applying to the Commission and demonstrating that they will not cause harmful interference. Some commenters, some of which include small entities, suggested this proposal would limit SCS to large carriers with nationwide authority over a block of spectrum, or otherwise exclude smaller or regional terrestrial operators from participation in the framework.[90] Because of these concerns, the Commission has taken the step of expanding its entry criteria so that multiple terrestrial service providers may work with a satellite operator to provide SCS, as long as together those service providers hold all the licenses in the relevant channel throughout a GIA. These more expansive entry criteria help provide an opportunity for broader deployment of SCS both spectrally and geographically and allows additional licensees to participate, while still minimizing the risk of harmful interference.

48. *Part 25 License Entry Criteria.* In the *Report and Order*, the Commission adopted rules to authorize satellite-to-terrestrial (uplink and downlink) operations in certain bands whereby a NGSO or GSO satellite operator may apply for a new or modify an existing part 25 authorization where that entity meets certain prerequisites, or "entry criteria." This approach will significantly expand and enhance secondary markets in a manner that aligns with the Commission's public interest objectives in order to permit spectrum to flow more freely among users and uses in response to economic demand. The Commission believes that by allowing spectrum to be utilized in this way, it will encourage small entities to become more involved in this process and collaborate with larger providers.

49. Furthermore, in the *Report and Order*, the Commission declined to require part 25

[88] *See Report and Order*, paras. 19-22.

[89] *See id.*, paras. 54-55.

[90] *See id.*, para. 58.

blanket earth station licensing because the comments in the record reflected that blanket licensing would be unnecessarily burdensome to small and other entities. In the initial *Notice*, the Commission proposed that a terrestrial licensee seeking to collaborate with a satellite operator to offer SCS must apply for and obtain a blanket earth station license for all of its subscribers' terrestrial devices that will be transmitting to space stations for SCS operations. The Commission sought comment on this approach as well as any other approaches that would be consistent with statutory and international obligations. However, commenters raised significant concerns regarding blanket licensing, and, thus, the Commission instead adopts a license by rule approach for terrestrial devices as earth stations communicating with a satellite network for the purposes of SCS. By not requiring providers to apply for and obtain a blanket earth station license, the Commission removes a barrier that was potentially unnecessarily burdensome, in particular for small entities with limited resources.

50. *Part 1 Leasing.* The Commission adopts a framework authorizing SCS by amending its part 1 leasing rules to permit terrestrial licensees to lease terrestrial spectrum rights to satellite operators for the purpose of providing SCS. These requirements are consistent with existing Commission part 1 leasing rules, and the Commission will require applicants for and current licensees of the authorized SCS bands to provide the necessary information using current FCC Form 608. This process will benefit small entities by saving time and resources, as it utilizes the Commission's current application approval and notification processing procedures, and it will remove unnecessary delay by utilizing the procedures that are already in place. Additionally, the Commission considered, but declined, to adopt an approach where a lease was not initially required. Some commenters advocated for the adoption of a "two-step" licensing model in response to the *Notice*, which would have involved a deployment grant that would not have required a lease initially. However, the Commission believes that a two-step part 25 licensing process would require a duplicative and inefficient use of staff resources that could create a significant economic burden to small entities.

51. *Part 25 Automatic Termination.* The Commission retains the current part 25 rules regarding automatic termination of station authorizations to satellite licensees seeking to provide SCS jointly with a terrestrial operator and adds a rule whereby the termination of any lease(s) that allow for the use of specific terrestrial spectrum for SCS is a trigger for automatic termination of the part 25 license. The new rule that triggers the current part 25 automatic termination requirement is consistent with the current automatic termination rules. By retaining the current part 25 rules regarding automatic termination, small and other entities will not have to become acquainted with a new set of rules, thus reducing their compliance burden.

52. *911 Call Transmission Requirements.* The Commission establishes on an interim basis that terrestrial providers must transmit all SCS 911 calls and texts to a PSAP using either an emergency call center or location-based routing. Terrestrial providers must also transmit location information and the user's phone number to facilitate dispatch and callback capabilities at the receiving PSAP. This interim step will balance the need for SCS 911 voice calls and texts to be routed to the appropriate PSAP with the need for entities to have flexibility in their implementation of SCS. The Commission implements this interim step because some terrestrial 911 requirements may not be feasible at this time and, thus, balanced feasibility with the vital importance of 911 services. In connection with this interim requirement, terrestrial providers that use SCS to extend coverage must maintain records of SCS 911 voice calls and text messages received on their network and emergency call centers. In addition, the adopted rules require terrestrial providers to file an SCS 911 report with the Commission on an annual basis, which will provide critical information regarding SCS 911 connectivity to the Commission while accomplishing it in a manner that does not create a severe burden for entities required to file. The Commission concluded that extending and adapting the existing MSS 911 reporting and location-based routing requirements are minimally burdensome. While these requirements do present new obligations for small entities, these measures will promote transparency and accountability in routing SCS voice calls and provide useful data. In addition, the concurrently adopted *Further Notice of Proposed Rulemaking*

will also provide an ample record in which the Commission may consider any additional concerns regarding SCS 911-related issues.

53. The *Report and Order* also establishes disclosure requirements for terrestrial providers to inform their subscribers of the limitations resulting from the use of SCS to contact 911. This disclosure requirement is consistent with the disclosure requirement the Commission adopted for interconnected Voice Over Internet Protocol (VoIP) service providers, demonstrating that it will be familiar to entities and not cause a significant economic impact. While this is a new requirement for providers, it will provide vital information to consumers about the limitations of SCS when contacting 911. The Commission also adopts a rule requiring terrestrial providers to file with the Commission a one-time certification regarding safeguarding the privacy and security of SCS location information. These obligations are consistent with the Commission's existing rules that apply to z-axis and dispatchable location data, as well as location information used for location-based routing; therefore, it will be familiar to terrestrial providers and not create an additional costly burden on small entities.

54. *Market Area Boundary Limits.* The Commission maintains the existing market area boundary limits in parts 22, 24, and 27 of the Commission's rules, noting that SCS partners should be expected to coordinate regarding the technical parameters necessary to avoid co-channel interference with one another's operations. Although the existing market area boundary limits remain, the Commission states that certain limits may be necessary and applicable to the boundaries of the GIA, including at international borders or boundaries extending into water. Therefore, the Commission adopts a rule to limit the signal levels from SCS at and beyond the terrestrial operator's licensed area to be the same as those defined for terrestrial operation in each respective band.

55. *Out of Band Emission (OOBE) Limits.* The Commission adopts a uniform OOBE limit for SCS operation across the SCS Bands expressed as a terrestrial PFD limit. The Commission declined to apply the existing OOBE limits for base stations; instead, after the perspective of commenters who expressed mixed views on which OOBE limits to apply, the Commission adopts a uniform PFD limit for SCS, which provides an equitable—and technologically feasible—compromise between the positions expressed in the record and will also effectively protect adjacent band operations across the SCS Bands. Further, by adopting a uniform OOBE limit for SCS operations, entities will not have to become knowledgeable about several different limitations, which will save much needed time and resources for small entities. We note that even though the out-of-band PFD limits adopted may require more stringent attenuation than the emission limits specified in section 25.202(f) for satellite operation, the Commission believes these stricter limits are both necessary and technologically feasible for satellite operators providing SCS.

56. *Equipment Authorization for SCS.* In the *Report and Order*, the Commission requires terrestrial device equipment authorization grantees to modify existing, or obtain new, equipment authorizations for previously certified terrestrial devices to reflect those devices' approval to operate under a part 25 MSS allocation and applicable SCS rules. This requirement does introduce a new administrative burden for equipment authorization grantees and applicants, especially as it relates to already certified equipment. The Commission's existing procedures through the permissive change process which enable electrical or mechanical changes to certified equipment when those changes do not affect the characteristics required to be reported to the Commission do not apply here where the only change being made to the certification is adding authorization for part 25. Under the Commission's existing rules, "a change other than a permissive change" requires a grantee to file a new application for certification accompanied by the information specified in part 2 of the Commission's rules.[91] While the Commission believes there is good reason to provide grantees a way to effectuate the necessary changes to their equipment authorization grants under the Commission's rules that also minimizes the

[91] 47 CFR § 2.1043(c).

administrative burdens associated with a new equipment certification application. The Commission therefore waives relevant provisions to provide a simplified process for existing grantees to modify their certifications to reflect part 25 authorization for SCS. In providing this limited waiver to existing rules, the Commission aims to minimize the burden on equipment certification holders, while ensuring tracking and accountability for devices capable of SCS, and compliance with our prohibition on the authorization of covered equipment. Similarly, for new equipment authorizations, terrestrial devices need only show compliance with the terrestrial technical rules for the rule parts under which they will operate; no additional tests are needed for part 25 SCS capability.

57. *International Coordination.* In the *Report and Order*, the Commission requires that SCS operations in bands not allocated for such services in the International Table must be consistent with ITU Radio Regulation No. 4.4 and finds it would serve the public interest to include express conditions in the SCS licenses to ensure that the Commission's obligations are met as the ITU notifying administration for U.S. licensed space station operations. In these cases, the Commission will require additional assurances from SCS licensees that while operating outside the United States, pursuant to an authorization from another country, the satellite operations will not cause harmful interference. Prior to conducting any communications with earth stations outside the United States, a satellite operator licensed to provide SCS, or applicant for a license to provide SCS, must certify to the Space Bureau and the Office of International Affairs that it has obtained all necessary authorizations from the relevant country prior to initiation of communications with earth stations in that country.

58. *ECIP Program.* The initial *Notice* sought comment on eligibility for the Enhanced Competition Incentive Program (ECIP), which the Commission established in July 2022 to facilitate new opportunities for small carriers and Tribal nations to increase access to spectrum, while incorporating provisions to ensure against program waste, fraud and abuse. Given that the framework is primarily intended to facilitate provision of SCS to existing consumer handsets, and ECIP was adopted with requirements tailored specifically towards provision of service through terrestrial base stations, the Commission considered whether to make SCS participants, necessarily engaged in leasing arrangements, eligible for ECIP benefits which could reduce the economic impacts for small carriers and tribal nations. In the *Report and Order*, the Commission declines to extend ECIP benefits to stakeholders that presently intend to enter into leasing arrangements for the provision of SCS. The Commission highlights that the provisions of SCS do not align with the goals or entry criteria of the ECIP program and believes it is in the public interest to allow the SCS marketplace and the ECIP program to further develop before determining whether it is appropriate for these two new Commission efforts to support one another.

G. Report to Congress

59. 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.[92] 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.[93]

[92] 5 U.S.C. § 801(a)(1)(A).

[93] *Id.* § 604(b).

APPENDIX D

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Federal Communications Commission (Commission) has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *Further Notice of Proposed Rulemaking* (*Further Notice*). The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines provided on the first page of the *Further Notice*. The Commission will send a copy of the *Further Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the *Further Notice* and IRFA (or summaries thereof) will be published in the Federal Register.[3]

A. Need for, and Objectives of, the Proposed Rules

2. Building on the interim 911 call and text routing requirements established in the *Report and Order*, the *Further Notice* will help the Commission move toward its objective of enabling automatic location-based routing of all emergency communications regardless of whether or not there is a terrestrial connection available. As discussed in the *Report and Order*, the Commission takes a major step towards facilitating ubiquitous connectivity, by adopting rules that enable partnerships between terrestrial network operators and satellite operators, who will then utilize terrestrial spectrum to fill coverage gaps, thereby enabling communications with existing and future wireless devices without the need for hardware changes. This regulatory framework serves as a first step, focusing on particular supplemental coverage from space (SCS) implementations which present less complex legal and technical challenges in order to foster the rapid deployment and development of these exciting networks. Given the primary importance of emergency communications over SCS networks in the short term, the Commission seeks to further develop the record in the *Further Notice* on improving 911 service for SCS connections. The Commission seeks comment on a number of ways in which it can propel industry stakeholders towards achieving truly ubiquitous automatic location-based routing of all 911 calls to accelerate connection between first responders and those who need help, regardless of their location.

3. Further, the Commission seeks input from interested parties as to how and whether it should modify requirements for routing SCS 911 voice calls and 911 text messages, including whether it should require the use of location-based routing to route 911 SCS voice calls directly to an appropriate Public Safety Answering Point (PSAP), if technically feasible. The Commission also seeks to expand upon a number of technical issues relating to extending E911 rules to SCS that it sought comment on in the initial *Notice* from this proceeding. Additionally, in light of the Commission's existing requirement that Commercial Mobile Radio Service (CMRS) providers deploy and use location-based routing for wireless 911 voice calls and real-time text communications to 911 when available location information meets certain requirements for accuracy and timeliness, the Commission also seeks updated responses to the questions raised in the initial *Notice* due to new requirements for CMRS providers to deploy and use location-based routing in certain situations.

4. Through its adopted rules in the *Report & Order*, the Commission establishes on an interim basis that terrestrial providers must route all SCS 911 calls to a PSAP using either location-based routing or an emergency call center. This approach will balance the need for SCS 911 voice calls and text messages to be routed to the appropriate PSAP with the need for terrestrial providers to have flexibility in their implementation of SCS. Because of the ongoing deployment and continued innovation of SCS, the *Further Notice* requests any new and updated information regarding technological or other developments

[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.*

in routing SCS 911 voice calls since the last rounds of filing. In addition, the Commission seeks comment on improvements to the 911 rules that apply to such terrestrial providers when using SCS to extend their coverage.

5. In the *Further Notice*, the Commission also addresses direct-to-satellite connectivity, and acknowledges that a satellite can play a more active role in the network, by connecting directly to the 5G core network. Because 911 calls and texts would typically be placed outdoors with the user device having view of the GPS satellites in the sky and because user devices typically have GPS receivers, user devices should be able to determine their location, and for Assisted GPS, SCS should be able to provide the needed assistance information. In the *Further Notice*, the Commission seeks comment on this tentative analysis. The Commission also seeks comment on establishing rules regarding interconnectivity between terrestrial providers and satellite operators as well as information on satellite data capacities, and satellite link budget, and optimization schemes for the initial SCS deployments and their impact on device-to-satellite connectivity, including time for obtaining a location fix for automatic location-based routing of 911 calls. The Commission also seeks comment on questions related to network selection and roaming in the *Further Notice*, focusing on a situation where a 911 caller would discontinue the 911 call if it is not connected within a certain time period. Finally, in the initial *Notice*, the Commission asked whether terrestrial partners engaged in or planned any outreach or coordination with public safety entities in advance of implementation. Because the delivery of SCS 911 voice calls includes the possibility of using third party emergency call centers, to promote awareness and transparency, the Commission requests comment via the *Further Notice* regarding issues concerning PSAP outreach.

6. Finally, in recognition of the concerns raised by the National Telecommunications and Infrastructure Association (NTIA) and the National Science Foundation (NSF) related to potential impacts from SCS on radio astronomy the Commission seeks further comment on the coordination process between federal and non-federal stakeholders in the SCS context and on whether additional rule changes or policies are necessary to avoid harmful interference to radio astronomy beyond the part 25 SCS licensing process adopted in the *Report and Order*.

B. Legal Basis

7. The proposed action is authorized pursuant to sections 1, 4(i), 157, 301, 303, 307, 308, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 301, 303, 307, 308, 309, and 310.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

8. The RFA directs agencies to provide a description of, and where feasible, an estimate of, the number of small entities that may be affected by the 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 SBA.[7]

[4] 5 U.S.C. § 603(b)(3).

[5] *Id.* § 601(6).

[6] *Id.* § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with 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.

9. *Small Businesses, Small Organizations, Small Governmental Jurisdictions*. Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, 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]

10. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[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]

11. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[14] U.S. Census Bureau data from the 2017 Census of Governments[15] indicate that 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

[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] 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 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] 5 U.S.C. § 601(5).

[15] *See* 13 U.S.C. § 161. The Census of Government is conducted every five (5) years compiling data for years ending with "2" and "7". *See also 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.

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]

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."[22] 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.[23] U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year.[24] Of this number, 242 firms had revenue of less than $25 million.[25] 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.[26] Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees.[27] Consequently, using the SBA's small business size

[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 tbl.5, 6, & 10.

[22] *See* U.S. Census Bureau, *2017 NAICS Definition, "517410 Satellite Telecommunications,"* https://www.census.gov/naics/?input=517410&year=2017&details=517410.

[23] *See* 13 CFR § 121.201, NAICS Code 517410.

[24] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 517410, https://data.census.gov/cedsci/table?y=2017&n=517410&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.

[25] *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.

[26] 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.

[27] *Id.*

standard, a little more than half of these providers can be considered small entities.

13. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.[28] 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.[29] The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[30] U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.[31] Of that number, 2,837 firms employed fewer than 250 employees.[32] 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.[33] Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees.[34] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

14. *600 MHz Band*. These wireless communications services are radiocommunication services licensed in the 617-652 MHz and 663-698 MHz frequency bands that can be used for fixed and mobile flexible uses.[35] 600 MHz Band services fall within the scope of the Wireless Telecommunications Carriers (except Satellite)[36] industry where the SBA small business size standard classifies a business as small if it has 1,500 or fewer employees.[37] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[38] Of this number, 2,837 firms employed fewer than 250 employees.[39] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

15. Based on Commission data as of November 2021, there were approximately 3,327 active

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[28] *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.

[29] *Id.*

[30] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[31] *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.

[32] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[33] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[34] *Id.*

[35] *See* 47 CFR §§ 27.4, 27.5(l).

[36] *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.

[37] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[38] *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.

[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.

licenses in the 600 MHz Band service.[40] The Commission's small business size standards with respect to 600 MHz Band services involve eligibility for bidding credits and installment payments in the auction of licenses for these services. For purposes of bidding credits, the Commission defined "small business" as an entity with average gross revenues not exceeding $55 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues not exceeding $20 million for each of the three preceding years for the 600 MHz band auction.[41] Pursuant to these definitions, 15 bidders claiming small business status won 290 licenses.[42]

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. *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.[43] Wireless Telecommunications Carriers (*except* Satellite)[44] 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.[45] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[46] Of this number, 2,837 firms employed fewer than 250 employees.[47] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

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[40] 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 only the following radio service(s)", Radio Service = WT; 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.

[41] *See* 47 CFR § 27.1301(a).

[42] *See Incentive Auction Closing and Channel Reassignment Public Notice; Incentive Auction Closes; Reverse Auction and Forward Auction Results Announced; Final Television Band Channel Assignments Announced; Post-Auction Deadlines Announced*, 32 FCC Rcd 2786, Appendix B (Auction No.1002) (April 23, 2017), https://www.fcc.gov/document/fcc-announces-results-worlds-first-broadcast-incentive-auction-0/appendix-b.

[43] *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.

[44] *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.

[45] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[46] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[47] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

18. According to Commission data as of December 2021, there were approximately 2,824 active Lower 700 MHz Band licenses.[48] 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.[49] In auctions for Lower 700 MHz Band licenses seventy-two winning bidders claiming a small business classification won 329 licenses,[50] twenty-six winning bidders claiming a small business classification won 214 licenses,[51] and three winning bidders claiming a small business classification won all five auctioned licenses.[52]

19. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

20. *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.[53] 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.[54] Wireless Telecommunications Carriers (*except* Satellite)[55] is the closest industry

[48] 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.

[49] *See* 47 CFR § 27.702(a)(1)-(3).

[50] *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.

[51] *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.

[52] *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.

[53] *See* 47 CFR § 27.4.

[54] *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.

[55] *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.

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.[56] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[57] Of that number, 2,837 firms employed fewer than 250 employees.[58] Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

21. According to Commission data as of December 2021, there were approximately 152 active Upper 700 MHz Band licenses.[59] 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.[60] Pursuant to these definitions, three winning bidders claiming very small business status won five of the twelve available licenses.[61]

22. 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.

23. *Cellular Radiotelephone Service.* This service is radio service in which licensees are authorized to offer and provide cellular service for hire to the general public and was formerly titled Domestic Public Cellular Radio Telecommunications Service.[62] Cellular Radiotelephone Service falls within the scope the Wireless Telecommunications Carriers (except Satellite)[63] industry, where the SBA small business size standard classifies a business as small if it has 1,500 or fewer employees.[64] U.S.

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[56] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[57] *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.

[58] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[59] 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.

[60] *See* 47 CFR § 27.502(a).

[61] *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.

[62] *See* 47 CFR § 22.99.

[63] *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.

[64] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[65] Of this number, 2,837 firms employed fewer than 250 employees.[66] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

24. Based on Commission data, as of November 2021, there were approximately 1,908 active licenses in this service.[67] The Commission's small business size standards with respect to Cellular Radiotelephone Services involve eligibility for bidding credits and installment payments in the auction of licenses for these services. For purposes of bidding credits, the Commission has defined "small business" as an entity that either (1) together with its affiliates and controlling interests has average gross revenues of not more than $3 million for each of the three preceding years, or (2) together with its affiliates and controlling interests has average gross revenues of not more $15 million for each of the three preceding years.[68]

25. 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.

26. *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.[69] Wireless Telecommunications Carriers (except Satellite)[70] 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.[71] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[72] Of this number,

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[65] *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.

[66] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[67] Based on a FCC Universal Licensing System search on November 12, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = CL; 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.

[68] *See* 47 CFR § 22.223(b).

[69] *See* 47 CFR § 27.1(b).

[70] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers* (*except Satellite*)," https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[71] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[72] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

2,837 firms employed fewer than 250 employees.[73] Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

27. According to Commission data as of December 2021, there were approximately 4,472 active AWS licenses.[74] 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.[75] Pursuant to these definitions, 57 winning bidders claiming status as small or very small businesses won 215 of 1,087 licenses.[76] In the most recent auction of AWS licenses 15 of 37 bidders qualifying for status as small or very small businesses won licenses.[77]

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 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. *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.[78] 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.[79] 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.[80] The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small.[81] U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that

[73] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[74] Based on a FCC Universal Licensing System search on December 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.

[75] *See* 47 CFR §§ 27.1002, 27.1102, 27.1104, 27.1106.

[76] *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.

[77] *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).

[78] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517919 All Other Telecommunications,*" https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[79] *Id.*

[80] *Id*.

[81] *See* 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

operated for the entire year.[82] Of those firms, 1,039 had revenue of less than $25 million.[83] 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

30. The *Further Notice* may impose new or additional reporting or recordkeeping and/or other compliance obligations on small entities if rules discussed therein are adopted. For example, small and other entities are likely to be subject to the requirement of routing SCS 911 voice calls and 911 text messages, including the use of location-based routing to route 911 SCS voice calls directly to an appropriate PSAP, if technically feasible. Additionally, those entities are also likely to be subject to compliance rules concerning the proposed requirement that all devices utilizing SCS should be able to determine their location. For Assisted GPS (A-GPS), SCS should be able to provide the needed assistance information for 911 calls and texts, if adopted. In addition, small and other entities could be subject to coordination requirements or required to submit additional technical information related to the protection of radio astronomy.

31. The Commission also seeks comment on questions regarding improvements in location-based routing, device-to-satellite connectivity, interconnectivity between terrestrial providers and satellite operators, network selection and roaming, and PSAP outreach. Because of the ongoing deployment and continued innovation of SCS, the Commission seeks any new and updated information regarding technological or other developments in routing SCS 911 voice calls since the last rounds of filing. Entities should report any additional information regarding routing SCS 911 voice calls since their last filings.

32. The Commission also seeks comment on whether there are additional ways to encourage and improve coordination among federal and non-federal stakeholders with respect to the coexistence of radio astronomy and SCS and whether the Commission should make any changes to its rules to facilitate this coordination. If such rules are adopted, operators could be required to provide reports regarding coordination efforts or additional technical information in addition to the existing underlying reporting, recordkeeping, and compliance requirements adopted in the *Report and Order*.

33. At this time, the record does not include a detailed cost/benefit analysis that would allow us to quantify the costs of compliance for small entities, including whether it will be necessary for small entities to hire professionals in order for them to comply with the rules proposed in the *Further Notice*, should they be adopted. The Commission invites comment on the costs and burdens of the proposals in the *Further Notice* and expects the information received in comments including, where requested, cost and benefit analyses, to help the Commission identify and evaluate relevant compliance matters for small entities, including compliance costs and other burdens that may result if the proposals and associated requirements discussed in the *Further Notice* are adopted.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

34. The RFA requires an agency to describe any significant, 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

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[82] *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.

[83] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. 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.

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."[84]

35. In the initial *Notice*, the Commission took steps to minimize significant economic impact to small and other entities by obtaining information from interested parties on a number of technical issues relating to extending E911 rules to SCS, and it expands upon those actions in the *Further Notice*. In the *Further Notice*, the Commission considered how best to improve our 911 rules that apply to terrestrial providers when using SCS to extend their coverage. The Commission also considered whether it should require terrestrial providers to use location-based routing for SCS 911 voice calls when information about the location of the device is available to the CMRS provider's network at the time of routing. Alternatively, the Commission considered whether it should require terrestrial providers to use location-based routing for SCS 911 voice calls only when location information meets certain thresholds for accuracy and timeliness. The information obtained from commenters could provide the Commission with opportunities to ultimately adopt threshold-related rules that serve to lessen the burden on small providers.

36. The Commission also considered whether threshold requirements should be changed when requiring location-based routing, beyond accuracy and timeliness of available location information and, if changes are needed, what form they should take. Given the nature of SCS to extend coverage, cell tower information is unlikely to be available as a fallback when location-based routing does not meet whatever threshold requirements should be in place for using location-based routing. Therefore, the Commission requests comment on several questions involving what threshold requirements should be considered for SCS 911. In considering changes to the threshold requirements, we will consider the potential economic impact to small entities.

37. Additionally, in the *Further Notice*, the Commission seeks comment on ways to establish rules around interconnectivity between terrestrial providers and satellite operators within the context of SCS 911 connections. The rules that are ultimately adopted could lessen the compliance requirements for small and other entities. The *Further Notice* requests information involving both the current standards and anticipated future standards. These standards will be important to consider for informing discussions of future advances to SCS 911 connections and requires consideration of alternatives that take into account the potential impact of the adopted rules on small entities. Lastly, the Commission asked how long the network selection should take before a 911 call is eventually attempted via SCS. The Commission acknowledges that SCS is to be supplemental to terrestrial networks, including traditional terrestrial call paths, such as roaming, and additional technologies, such as Wi-Fi. The Commission seeks comment on ways to minimize the economic burden on small providers

38. Furthermore, the Commission seeks comment on what, if any, coordination requirements should be adopted. In the alternative, to possibly lessen the compliance burdens on entities, the Commission asks if there are other incentives the Commission could implement to encourage coordination and coexistence of radio astronomy operations and SCS. Likewise, the Commission asks about the effectiveness of early coordination efforts when considering whether to adopt additional requirements and whether the submission of additional technical information would be helpful in these coordination efforts. While the Commission does not explicitly propose that additional coordination requirements be adopted, the Commission inquires as to whether additional requirements would be necessary given existing coordination efforts and the unique nature of SCS as the information obtained from commenters could provide the Commission with opportunities to ultimately adopt threshold-related rules that serve to lessen the burden on small providers.

39. The Commission is hopeful that the comments it receives will specifically address matters impacting small entities and include data and analyses relating to these matters. Further, while

[84] 5 U.S.C. § 603(c)(1)-(4).

the Commission believes the rules that are eventually adopted in this proceeding should benefit small entities, the Commission expects to more fully consider the economic impact and alternatives for small entities following the review of comments filed in response to the *Further 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

40. None.

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *In the Matter of Single Network Future: Supplemental Coverage from Space*, *Space Innovation*, GN Docket No. 23-65, IB Docket No. 22-271, Report and Order and Further Notice of Proposed Rulemaking (March 14, 2024)

We are fast heading to a world where next-generation wireless networks will connect everyone and everything around us. They will open up possibilities for communications that we cannot even fully imagine today. But we will not be successful in our effort to make this always-on connectivity available everywhere if we limit ourselves to using only one technology. We are going to need it all—fiber networks, licensed terrestrial wireless systems, next-generation unlicensed technology, and satellite broadband. But if we do this right, these networks will seamlessly interact in a way that is invisible to the user. We won't need to think about what network, where, and what services are available. Connections will just work everywhere, all the time.

That vision is what we call the Single Network Future—and the opportunities are vast. But the path to this future is going to require many steps—and we take a huge step forward today.

In this decision, we bring satellite and wireless communications together. We do this because their convergence can accomplish more than either network can do on its own. Together they can end dead zones. It means when disaster strikes and destroys ground-based systems, we will have a back-up in space. If that sounds out there, it is because direct satellite-to-smartphone communication is moving from sci-fi fantasy to reality.

One year ago, I spoke about this vision of the Single Network Future at Mobile World Congress. When I returned for this year's event, my counterparts from across the world told me they are watching United States closely. There is good reason for that—because today at the Federal Communications Commission, we become the first regulator in the world to shape this future. We are the first country to adopt a framework that combines satellite and wireless service through supplemental coverage from space.

Here's what it looks like. We have developed a framework that allows a satellite operator to partner with a terrestrial mobile carrier to get access to their terrestrial spectrum. Then the satellite system can provide service directly to the subscribers of the wireless carrier in areas where the carrier lacks coverage. So there is no need to wait for new spectrum or a new generation of devices. Satellite operators and their carrier collaborators can use terrestrial spectrum that is already in the market to bring these services to the phones that we have today. Even better, we accomplish all of this while protecting existing networks from harmful interference by ensuring that the new supplemental satellite operations are secondary to mobile network operations and requiring that one or more carriers hold all co-channel licenses throughout a defined geographically independent area.

To further safely grow these opportunities, we also have a rulemaking. Recognizing that this new connectivity is powerful when it comes to calling 911 for emergency help, especially in places where terrestrial signals are scarce, we seek comment on how to enable automatic location-based routing of emergency communications.

This is what the future looks like—a Single Network Future. Thank you to the many staff responsible for this latest entry in our Space Innovation Agenda, including Melissa Conway, Kamran Etemad, Stacy Ferraro, Garnet Hanly, Kari Hicks, Joyce Jones, Alice Koethe, Susannah Larson, John Lockwood, Jon Markman, Andrew McArdell, Roger Noel, Charles Oliver, Christine Parola, Halie Peacher, Paul Powell, Jessica Quinley, Jeremy Reynolds, Jennifer Salhus, John Schauble, Blaise Scinto, Joel Taubenblatt, and Janet Young, from the Wireless Telecommunications Bureau; Greg Boren, Greg Coutros, Jennifer Gilsenan, Franco Hinojosa, Julie Kearney, Jeanette Kennedy, Whitney Lohmeyer, Kathyrn Medley, Stephanie Neville, Sankar Persaud, Jeanine Poltronieri, and Merissa Velez from the Space Bureau; Bahman Badipour, Jamie Coleman, Martin Doczkat, Michael Ha, Ira Keltz, Nick Oros,

Bob Pavlak, Ron Repasi, Tony Serafini, Dana Shaffer, Jim Szeliga, George Tannahill, Dusmantha Tennakoon, Krista Witanowski, and Sean Yun from the Office of Engineering and Technology; Brenda Boykin, Steven Carpenter, Jill Coogan, Gerald English, John Evanoff, David Furth, Shabbir Hamid, Timothy Hoseth, Debra Jordan, David Kirschner, Barbara Kunkel, Brian Marenco, Nicole McGinnis, Erika Olsen, Renee Roland, Rasoul Safavian, David Sieradzki, Rachel Wehr, and James Wiley from the Public Safety and Homeland Security Bureau; Edward Carlson, Jared Carlson, Nese Guendelsberger, David Hu, Dante Ibarra, Ethan Lucarelli, James McLuckie, and Brandon Moss from the Office of International Affairs; Kim Cook, Kathy Harvey, Jeremy Marcus, Ryan McDonald, and Josh Zeldis from the Enforcement Bureau; Deborah Broderson, Michele Ellison, Michael Janson, Doug Klein, David Konczal, Anjali Singh, and Chin Yoo from the Office of General Counsel; Michael Gussow and Joy Ragsdale from the Office of Communications Business Opportunities; and Judith Dempsey, Catherine Matraves, Giulia McHenry, and Cher Li from the Office of Economics and Analytics.

STATEMENT OF
COMMISSIONER GEOFFREY STARKS

Re: *In the Matter of Single Network Future: Supplemental Coverage from Space*, *Space Innovation*, GN Docket No. 23-65, IB Docket No. 22-271, Report and Order and Further Notice of Proposed Rulemaking (March 14, 2024)

Just about a year has passed since we proposed a framework for launching cell towers in space. During that time, we've seen greater promise. More rescues of hikers, stranded motorists, and crash victims who reached emergency services with a satellite text. More testing of capabilities that go beyond texting, including the first two-way satellite-to-cell phone calls, the first 5G satellite-to-cell phone call, and satellite-to-cell data downloads peaking at 14 and 17 Mbps. We've also seen more investment to bring those capabilities out of the lab and into the hands of consumers. Not to mention much greater international interest and focus, much of it galvanized at last year's World Radio Conference.

Where we've seen promise, we've also seen pivots. We've seen partners end work on a proprietary satellite-to-cell solution. We've seen analysts and executives shift away from the hype in favor of a more measured debate about the satellite-to-cell business plan. We've also seen companies fill-in connectivity gaps the old fashioned way—by pairing purpose-built satellite terminals with cellular devices instead of combining them into a direct-to-cell solution. Promises and pivots. Those are the hallmarks of a technology that is as exciting as it is fluid.

That's why I'm glad we're pursuing what this Order calls a "hybrid approach" to authorizing SCS. That approach creates an enduring, rules-based framework for less complicated SCS deployments. At the same time, it doesn't limit SCS to proposals that fit its mold. It commits to taking a serious, evidence-based look at any reasonable proposal that deserves our attention, whether that proposal meets the criteria set forth in our rules or charts a different course. In other words, it commits to keeping up not just with the promise, but with the pivots as well. And in doing so, it gives every innovator—large and small, old and new—a path to see their promise reached. This was an important aspect of the framework to me, and I'm thankful that we tweaked the item to put all SCS players on firm footing.

I thank the Chairwoman for her leadership on this item and for forging new ground so quickly in an area as novel as SCS. I'd also like to thank everyone on our staff who worked on this challenging item. It's terrific work, and it has my full support.

STATEMENT OF
COMMISSIONER ANNA M. GOMEZ

Re: *Single Network Future: Supplemental Coverage from Space*, GN Docket No. 23-65, IB Docket No. 22-271, Report and Order and Further Notice of Proposed Rulemaking (Mar. 14, 2024).

Today, we continue to support the United States's rapidly expanding space economy by adopting rules to enable hybrid satellite-terrestrial networks to connect everyone, everywhere. These hybrid networks work together to provide coverage that neither can achieve alone. They will provide life-saving connections in emergencies—we've already seen this in Hawaii and California. But, these networks will also promote innovation that benefits consumers, unlock economic opportunities for industries like precision agriculture, and connect the most remote, hard to reach areas.

This framework is groundbreaking, and continues to chart the path forward for U.S. leadership in the space economy. I am proud to support this item, and look forward to the innovation that will unfold in a single network future.

Thank you to the Commission staff who worked on this item, including the Space Bureau, Wireless Telecommunications Bureau, and the Office of Engineering and Technology.

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
	)	

NOTICE OF PROPOSED RULEMAKING

Adopted: March 14, 2024 **Released: March 15, 2024**

By the Commission: Chairwoman Rosenworcel and Commissioner Gomez issuing separate statements.

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:

I. INTRODUCTION

1. With this Notice of Proposed Rulemaking, we initiate a proceeding to revise the Emergency Alert System (EAS) rules[1] to adopt a new EAS event code for Missing and Endangered Persons "MEP". The EAS and Wireless Emergency Alerts (WEA) systems are used to distribute tens of thousands of warnings to the public every year, providing critical notice of emergencies ranging from severe weather events, such as tornados and hurricanes, to natural disasters, such as tsunamis and wildfires, to civil emergencies, such as AMBER alerts and law enforcement warnings. These emergency alerts provide critical information and empower affected communities to take appropriate action and aid public safety officials in their efforts to address emergencies. In 2022, approximately 187,000 adults who fall outside of the criteria for AMBER Alerts went missing in the United States.[2] While of a widespread concern, this issue is particularly prevalent in Tribal communities, where American Indian and Alaska Native people are at a disproportionate risk of experiencing violence, murder, or vanishing;[3] so much so

[1] 47 CFR § 11.1 *et. seq.*

[2] According to the National Crime Information Center (NCIC), during 2022, roughly 547,000 persons were entered into its missing persons database. Of these entries, approximately 187,000 were 18 or older. As of December 31, 2022, there were 97,127 active missing person records, of which roughly 66,000 were 18 or older. None of these persons would have been subject to AMBER alerts, whose criteria are persons under 18. Further, although precise data on missing adults over the age of 65 (the criterion for Silver Alerts) are unavailable at this time, it is clear that many missing adults are under the age of 65. *See* 2022 NCIC Missing Person and Unidentified Person Statistics. https://www.fbi.gov/file-repository/2022-ncic-missing-person-and-unidentified-person-statistics.pdf/view (last visited Feb. 20, 2024). *See also* Lost but Not Forgotten: Finding the Nation's Missing, https://nij.ojp.gov/topics/articles/lost-not-forgotten-finding-nations-missing, ("[O]f the 12,950 active missing persons cases in NamUs [DOJ's forensic data site to assist investigations] as of February 2017, 5,440 (42 percent) involve missing females and 7,510 (58 percent) involve missing males. Of those, the average age of missing females and males is 30 years and 36 years, respectively, with an overall average age of 33 years for all active missing persons.").

[3] Indian Affairs, Missing and Murdered Indigenous People, https://www.bia.gov/service/mmu (last visited Feb. 20, 2024).

that Congress has tasked the Department of Interior and Department of Justice (DOJ) to establish a joint commission, the Not Invisible Act Commission (NIAC), to focus on reducing violent crimes against American Indians and Alaska Natives.[4] The NIAC has been specifically tasked to identify, report, and respond to instances of missing and murdered Indigenous peoples (MMIP) cases, as such cases have been historically underreported or misclassified.[5] With this proposal to establish a dedicated MEP event code, the FCC is taking a step to facilitate the more efficient and widespread dissemination of alerts and coordinated responses to incidents involving all missing and endangered persons – including Indigenous persons – across multiple jurisdictions.[6]

2. Specifically, the proposed new MEP event code will allow for the transmission of "Ashanti Alerts" associated with persons missing or abducted from states, territories, or Tribal communities that fall outside of AMBER Alert notification criteria to the public over the EAS.[7] In doing so, we seek to advance the important public policy objective of encouraging states, territories, and Tribal governments to develop or enhance existing missing and endangered person and Ashanti Alert plans to optimize regional and nationwide search efforts for missing, endangered, or abducted persons.[8] We also seek to facilitate integration of those local plans into the United States Department of Justice's (DOJ's) National Ashanti Alert Network as required by the Ashanti Alert Act in a manner similar to that used for the AMBER Alert and Silver Alert communications networks.[9]

II. BACKGROUND

3. *EAS Architecture*. The EAS is a national public warning system through which TV and radio broadcasters, cable systems, and other service providers ("EAS Participants")[10] deliver alerts to the

[4] Public Law 116-166, Not Invisible Act of 2019, 134 Stat. 766, (2020). *See also* "A 2021 report from the Government Accountability Office concluded that baseline data on the rates of murder or the number of missing persons from [American Indian/Alaskan Native] communities is difficult to obtain and the full scope of the problem remains unknown," US Department of Interior, *Not One More: Findings and Recommendations of the Not Invisible Act Commission,* November 1, 2023, https://www.justice.gov/otj/media/1322566/dl?inline at 34 (*NIAC Not One More: Findings & Recommendations*).

[5] *Id.*

[6] Throughout this NPRM, we use the terms "Tribal community," "Native American," "Alaska Native," "American Indian," and "indigenous," interchangeably, to be as inclusive as possible of all nomenclature utilized by Native communities in the United States. We use the term Tribal Government, specifically, in instances to refer to a Tribal Government's designated public safety authorities and emergency management entities that would be involved in the dissemination of emergency alerts to the Tribe's members.

[7] *See* Ashanti Alert Act of 2018, Pub L. 115-401, 132 Stat. 5339 (2018); 34 U.S.C. §21901, *et. seq*. Ashanti Alerts are "voluntary dissemination of information to law enforcement, media and the public about missing adults who are endangered or abducted or who have special needs or circumstances." DOJ, *Resource Basket for Law Enforcement*, https://www.justice.gov/tribal/mmip/resources/law-enforcement (last visited Feb. 5, 2024).

[8] *See* DOJ, *Guide for Implementing or Enhancing an Endangered Missing Advisory*, March 2011, https://www.ojp.gov/pdffiles1/ojjdp/232001.pdf.

[9] *See* Comments of the National Ashanti Alert Network Stakeholders Working Group and Pilot Project Participants Working Group, PS Docket Nos. 15-91 and 15-94, at 3 (filed Jan. 29, 2024) (*SWG and Pilot Project Comments*).

[10] The Commission's rules currently define EAS Participants as analog radio broadcast stations, including AM, FM, and Low-power FM stations; digital audio broadcasting stations, including digital AM, FM, and Low-power FM stations; Class A television and Low-power TV stations; digital television broadcast stations, including digital Class A and digital Low-power TV stations; analog cable systems; digital cable systems; wireline video systems; wireless cable systems; direct broadcast satellite service providers; and digital audio radio service providers. *See* 47 CFR § 11.11(a).

public to warn them of impending emergencies and dangers to life and property.[11] The primary purpose of the EAS is to furnish the President with "the capability to provide immediate communications and information to the general public at the National, State and Local Area levels during periods of national emergency."[12] The common usage of the EAS, however, is to distribute alerts issued by state and local governments, as well as by the National Weather Service (NWS) to the public.[13] While EAS Participants are required to broadcast Presidential alerts (and certain test alerts designed to ensure the EAS is functioning properly), they participate in broadcasting state and local EAS alerts voluntarily.[14] The Commission, the Federal Emergency Management Agency (FEMA), and the NWS implement the EAS at the federal level.[15]

4. EAS alerts are configured using the EAS Protocol, which utilizes fixed codes to identify the various elements of an EAS alert so that each alert can deliver accurate, secure, and geographically-targeted alerts to the public.[16] Of particular relevance to this proceeding, the EAS Protocol utilizes a

[11] *See Review of the Emergency Alert System; Independent Spanish Broadcasters Association, The Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council, Petition for Immediate Relief*, ET Docket No. 04-296, Fifth Report and Order, 27 FCC Rcd 642, 646, para. 6 (2012) (*Fifth Report and Order*). A more detailed history of the EAS is summarized in the first Notice of Proposed Rulemaking in this docket. *See Review of the Emergency Alert System*, Notice of Proposed Rulemaking, 19 FCC Rcd 15775, 15776-77, paras. 6-8. In addition, an overview of the present organization and functioning of the EAS system is included in the *Second Report and Order*. *See Review of the Emergency Alert System; Independent Spanish Broadcasters Association, The Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council, Petition for Immediate Relief*, Second Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 13275, 13280-83, paras. 11-14 (2007) (*Second Report and Order*).

[12] 47 CFR § 11.1. Under the part 11 rules, national activation of the EAS for a Presidential alert message, initiated by the transmission of an Emergency Action Notification (EAN) event code, is designed to provide the President the capability to transmit an alert message (in particular, an audio alert message) to the American public within ten minutes from any location at any time and must take priority over any other alert message and preempt other alert messages in progress. *See*, *e.g.*, *Review of the Emergency Alert System*, First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 18625, 18628, para. 8 (2005) (*First Report and Order*). *See also*, *e.g.*, 47 CFR §§ 11.33(a)(11), 11.51(m), (n).

[13] *See*, *e.g.*, *Review of the Emergency Alert System; Independent Spanish Broadcasters Association, The Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council, Petition for Immediate Relief*, Third Further Notice of Proposed Rulemaking, 26 FCC Rcd 8149, 8152-53, para. 3 (2011).

[14] *See* 47 CFR § 11.55(a). *See also First Report and Order*, 20 FCC Rcd at 18628, para. 8. The Commission has noted previously that its authority to require participation in the EAS primarily emanates from Sections 1, 4(i) and (n), 303(r), and 706 of the Communications Act. *See*, *e.g.*, *Fifth Report and Order*, 27 FCC Rcd at 643-4, para. 2; Review of the Emergency Alert System, Notice of Proposed Rulemaking, 19 FCC Rcd 15775, 15778-79, paras. 10-11 (2004). In addition, various other statutory provisions grant authority to regulate participation in EAS, including section 624(g) of the Act and others. We believe that sections 1, 4, 303, 335, 624, 706, and 713 of the Act, 47 U.S.C. §§ 151, 154, 303, 335, 544, 606, 613, provide ample authority for the proposals in this Notice of Proposed Rulemaking.

[15] The respective roles of the Commission, FEMA, and NWS are defined in a series of Executive documents. *See* 1981 State and Local Emergency Broadcasting System (EBS) Memorandum of Understanding Among the Federal Emergency Management Agency (FEMA), Federal Communications Commission (FCC), the National Oceanic and Atmospheric Administration (NOAA), and the National Industry Advisory Committee reprinted as Appendix K to Partnership for Public Warning Report 2004-1, The Emergency Alert System (EAS): An Assessment; Memorandum, Presidential Communications with the General Public During Periods of National Emergency, The White House (Sept. 15, 1995); and Public Alert and Warning System, Exec. Order No. 13407, 71 Fed. Reg. 36975 (June 26, 2006).

[16] *See* 47 CFR § 11.31(c), (e).

three-character "event code" to describe the nature of the alert (e.g., "CAE" signifies a Child Abduction Emergency, otherwise known as an AMBER Alert).[17]

5. The EAS distributes messages in one of two ways. The first method is through a broadcast-based, hierarchical alert message distribution system in which an alert message originator (e.g., State Governor's offices, state, county, and Tribal emergency management authorities, Public Safety Answering Points, state, county, and Tribal fire departments, National Weather Service) at the local, state or national level encodes (or arranges to have encoded) a message in the EAS Protocol.[18] The alert is then broadcast from one or more EAS Participants, and subsequently relayed from one station to another until all affected EAS Participants have received the alert and delivered it to the public.[19] This process of EAS alert distribution among EAS Participants is often referred as the "daisy chain" distribution architecture. Because this EAS architecture has been in place since the inception of the EAS, it is often referred to as the "legacy EAS." The second method of distribution is an IP-based process. Specifically, since June 30, 2012, authorized emergency alert authorities have been able to distribute EAS alerts over the Internet to EAS Participants (who in turn deliver the alert to the public) by formatting those alerts in the Common Alerting Protocol (CAP) and delivering those alerts through the FEMA-administered Integrated Public Alert and Warning System (IPAWS).[20] This process for distributing alerts to EAS Participants represents the "CAP-based" EAS. Both the legacy and CAP-based EAS architectures are

[17] *Id.*

[18] The EAS protocol provides very basic information about the emergency involved. *See* 47 CFR § 11.31. Under this protocol, an EAS alert uses a four-part message: (1) preamble and EAS header codes (which contain information regarding the identity of the sender, the type of emergency, its location, and the valid time period of the alert); (2) audio attention signal; (3) audio message, if included by the alert originator; and (4) preamble and "end of message" (EOM) codes. *See id*. § 11.31(a). Although the EAS protocol specifies that the message can be audio, video, or text, only baseband audio and limited data modulated into baseband audio can be sent. The preamble, header codes and EOM codes are modulated into baseband audible tones using the audio frequency-shift keying (AFSK) modulation scheme and combined with the Attention Signal and audio message for transmission to the public; EAS decoders in EAS Participant facilities monitoring that transmission demodulate the header codes to determine with the alert is valid and programmed for rebroadcast. Specifically, the EAS decoder is activated by receiving the EAS protocol preamble codes plus header codes, which are repeated three times consecutively at the start of an EAS message transmission. The EAS decoder uses bit-by-bit comparison for error detection to ensure that at least two of the three match. Depending upon the nature of the alert message, this three-time transmission (or "burst") is followed by a two-tone Attention Signal (8 seconds in duration), which functions as an audio alert to listeners and viewers that an emergency message follows. The Attention Signal is followed by an audio message. At the end of this message, the preamble plus end of message code is transmitted three consecutive times to signal to the EAS decoder that the alert message is terminated and to return to regular programming. *See* 47 CFR § 11.31.

[19] In the legacy EAS, when an EAS Participant broadcasts an alert message, the message is received not only by that EAS Participant's local audience but also by downstream EAS Participants that monitor the transmission, following a matrix of monitoring assignments set forth in State EAS Plans. The applicable State EAS Plan assigns each EAS Participant alert sources from which it is required to monitor alert messages that they may transmit. The EAS Participant uses specialized EAS equipment to decode the header codes in each alert message it receives and, if the alert is in a category and geographic location relevant to that entity, it will rebroadcast the alert. That rebroadcast, in turn, is received not only by that entity's audience by also by additional downstream EAS Participants that monitor it. This process of checking and rebroadcasting the alert will be repeated until all affected EAS Participants in the relevant geographic area have received the alert and delivered it to the public. At the national level, EAS message distribution starts at Primary Entry Point (PEP) stations, which are a group of geographically diverse, high power radio stations designated and tasked by FEMA to transmit "Presidential Level" messages initiated by FEMA. *See Fifth Report and Order*, 27 FCC Rcd at 646-47, para. 7. At the state level, state governors and state and local emergency operations managers activate the EAS by utilizing state-designated EAS entry points – specifically, State Primary stations and "State Relay" stations. *See* 47 CFR § 11.21. These monitoring pathways are set forth in State EAS Plans administered by State Emergency Communications Committees. *See* 47 CFR § 11.21.

[20] *See* 47 CFR § 11.56; *see also Fifth Report and Order*, 27 FCC Rcd at 644-45, para. 4.

designed so that EAS Participants deliver to the public the alert content they receive from the EAS sources they monitor. Further, the EAS architecture and equipment is designed to operate automatically, without any intervention from the EAS Participant, both to minimize the risk of operator error and to facilitate EAS operation at unattended stations.[21]

6. *Ashanti Alerts*. Enacted in 2018, the Ashanti Alert Act was named in honor of Ashanti Billie, a 19-year-old woman who was abducted in Virginia and found dead in North Carolina in 2017.[22] The Ashanti Alert Act required a National Coordinator with the Department of Justice to establish a national communications network to "provide assistance to regional and local search efforts for missing adults through the initiation, facilitation, and promotion of local elements of the network, in coordination with States, Indian Tribes, units of local government, law enforcement agencies, and other concerned entities with expertise in providing services to adults."[23] Ashanti Alerts are intended to aid in the search and recovery of missing persons over the age of 17 who fall outside the scope of America's Missing: Broadcast Emergency Response (AMBER) Alerts and Silver Alerts.[24]

7. The Ashanti Alert Act required the DOJ to designate a National Ashanti Alert Coordinator—the Bureau of Justice Assistance (BJA)—to, among other things, work with "States and Indian Tribes to encourage the development of additional Ashanti Alert plans in their network" and "establish voluntary guidelines for States and Indian Tribes, to use in developing Ashanti Alert plans that will promote compatible and integrated Ashanti Alert plans throughout the United States" [25] The BJA also must coordinate and consult with the Federal Communications Commission and other federal agencies "in carrying out activities under" the Act, and also must "consult with local broadcasters and State, Tribal and local law enforcement agencies in establishing minimum standards [for issuance and dissemination of Ashanti Alerts] and in carrying out other activities" under the Act.[26]

8. Ashanti Alerts can provide for rapid dissemination of information to law enforcement agencies, media, and the public about adults who have been reported missing, along with suspect information.[27] However, these alerts are currently transmitted through a patchwork of notification systems with laws that vary based on jurisdiction; this can cause significant delay in the dissemination of these alerts. Establishing the MEP event code for missing and endangered person alerts should create uniformity in the alert process to help locate missing individuals who are older than the age for which an AMBER alert may be issued (i.e., individuals over the age of 17) and either suffer from a documented mental or physical disability, are missing under circumstances where their physical safety may be in danger, or where their disappearance may not have been voluntary – including abduction or kidnapping.[28] The alerts should be limited to the geographic area that the missing person could reasonably reach and should include to the extent possible the circumstances of the missing person's disappearance, their

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[21] *See Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System*, Report and Order and Further Notice of Proposed Rulemaking, 10 FCC Rcd 1786, 1822-23, paras. 103-104 (1994) (subsequent history omitted) (*1994 Report and Order*).

[22] DOJ, Fact Sheet, *National Ashanti Alert Network* (July 2020) bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/National-Ashanti-Alert-Network-Fact-Sheet.pdf ("*Ashanti Alert Fact Sheet*").

[23] Pub. Law 115-401 (2018) Sec. 202 (a).

[24] *See* 34 U.S.C. § 21901, *et. seq.* *See also* BJA, *Ashanti Alert Act National Notification System – Overview*, https://bja.ojp.gov/program/ashanti-alert/overview (last visited Feb. 5, 2024)("*Ashanti Alert Notification System Overview*"); *Ashanti Alert Fact Sheet*.

[25] *See* 34 U.S.C. § 21903(a) and (b).

[26] 34 U.S.C. § 21903(c).

[27] *Ashanti Alert Fact Sheet*.

[28] *See* 34 U.S.C. §§ 21901(7), 21904(b)(3); *SWG and Pilot Project Group Comments* at 3.

physical and mental condition, and the modes of transportation available to them.[29]

9. *Savanna's Act.* Savanna's Act was named after Savanna LaFontaine-Greywind, a pregnant member of the Spirit Lake Tribe who was found brutally murdered in the Red River of North Dakota in 2017.[30] The Act sought to clarify federal, state, Tribal and local law enforcement responsibilities with respect to the collecting and sharing of data "related to missing or murdered Indian men, women, and children, regardless of where they reside. . . and directs U.S. attorneys to develop regionally appropriate guidelines for responding to missing or murdered Indians."[31] The Act further calls for establishing guidance for "best practices in conducting searches for missing persons on and off Indian land."[32]

10. Savanna's Act was signed into law along with the Not Invisible Act on October 10, 2020; both Acts specifically called attention to the need for law enforcement coordination in addressing violent crimes against American Indians and Alaska Natives. The *Not One More: Findings and Recommendations of the Not Invisible Act Commission* released on November 1, 2023, emphasized the difficulty in gathering data on missing and endangered Indigenous persons, and stressed the need for adopting practices that assist federal, state, territorial, and Tribal authorities in coordinating and collaborating on the reporting and response to missing persons cases.[33]

11. *Resolution adopted by the National Congress of American Indians*. In late 2023, Native Public Media sponsored a resolution calling for the Commission to establish an MEP event code to "enable a more rapid and coordinated response to incidents involving missing indigenous persons."[34] NCAI Resolution #NO-23-001 noted that "Native Americans face significant challenges in addressing the issue of missing and endangered adults, requiring immediate attention and action," and the current EAS event codes failed to account for these unique missing person circumstances.[35] The NCAI further noted that their "communities have historically been disproportionately affected by missing person cases, with Native Americans constituting 2.5% of all missing person cases despite comprising only 1.2% of the U.S. population, as reported by the National Crime Information Center, underscoring the urgent need for targeted measures."[36] The General Assembly of the National Congress of American Indians (NCAI) adopted this resolution in November 2023.[37] The NCAI, according to Native Public Media, envision using the MEP event code to broadcast timely and critical alerts across the nation using IPAWS.[38]

12. On January 29, 2024, the National Ashanti Alert Network Stakeholder Working Group

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[29] *See* 34 U.S.C. §§ 21901, *et. seq.*

[30] National Indigenous Women's Resource Center, *Savanna's Act Fact Sheet,* *https://www.niwrc.org/sites/default/files/files/reports/Fact%20Sheet-Savanna%27s%20Act-New.pdf* (last visited Feb. 20, 2024). *See also,* 25 U.S.C. § 5701, *et. seq.*

[31] 25 U.S.C. § 5701.

[32] 25 U.S.C. § 5704.

[33] *NIAC Not One More: Findings & Recommendations,* Finding C, https://www.justice.gov/otj/media/1322566/dl?inline at 100.

[34] *Tribes, Native Public Media Urge FCC to Establish Missing and Endangered Event Code,* Navajo-Hopi Observer (Dec 15, 2023), https://www.nhonews.com/news/2023/dec/05/guest-column-tribes-native-public-media-urge-fcc-e/.

[35] National Congress of American Indians (NCAI), *To Establish a National Federal Communications Commission Event Code for Missing and Endangered Persons*, Resolution #NO-23-001 (2023), https://ncai.assetbank-server.com/assetbank-ncai/assetfile/5305.pdf.

[36] *Id.*

[37] *Id*.

[38] *See id*.

(SWG) and Pilot Project Participants Working Group (Pilot Project Group) noted that there was no current "one size fits all" approach to missing and endangered person alerts for adults, even those as applied to senior citizens.[39] They asked the Commission to establish a dedicated alerting system event code for missing and endangered persons, "MEP".[40] Notably, this request and the NCAI's resolution calling for an MEP event code both define situations that meet the Ashanti Alert Act activation criteria, suggesting significant if not complete overlap between the circumstances in which the MEP event code they envision should be used and when Ashanti Alerts are meant to apply.[41]

III. DISCUSSION

13. We propose to revise the Commission's EAS rules to add a new "MEP" event code for all EAS alerts about missing and endangered person incidents that do not meet the criteria for an AMBER Alert. Currently, alert originators who issue missing and endangered person alerts that do not meet the criteria of an AMBER Alert, use a variety of event codes to issue such alerts.[42] For example, Florida has a "Purple Alert Plan" for alerts requested through local law enforcement; the alerts are sent through text and email, voluntarily broadcast through media, and posted on Florida Department of Transportation and Florida Department of Highway Safety and Motor Vehicles until the missing person is located.[43] Similarly, Texas has the Coordinated Law Enforcement Adult Rescue (CLEAR) Alert program which is designed to close the gap between missing children and senior citizens.[44] Texas law enforcement agencies request activation of the alert through the Texas Department of Public Safety (DPS) which may be activated for a maximum of 24-hours (although that may be extended by request).[45] Additionally, there are regional alert networks that operate independently of the State Network; those regional programs must be contacted separately to request activation.[46] We seek comment on how the individual local, state, territorial, and Tribal authority missing and endangered person plans are working in practice.

14. EAS Participants have discretion as to whether they issue EAS alerts other than the National Alert.[47] Would EAS Participants be more likely to retransmit missing and endangered person alerts if we create a dedicated MEP event code? To what extent do EAS Participants retransmit generic event codes, such as Civil Emergency Message (CEM) or Law Enforcement Warning (LEW) under which non-AMBER missing and endangered person alerts are currently sent? Will creating a specific event code for missing and endangered persons be beneficial to alert originators who may use it and EAS Participants who may retransmit it? Will it help public safety officials and others investigating the number of such incidents? Will it benefit the public?

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[39] *SWG and Pilot Project Group Comments*.

[40] *Id.*

[41] *See id.*; 34 U.S.C. § 21904

[42] *See* PBS WARN, https://warn.pbs.org/ (last visited Feb. 15, 2024). To find such alerts, change the search criteria to "All Alerts" and enter "missing" in the search window. The "Local Area Emergency" and "Law Enforcement Warning" event codes are the most commonly used event codes for missing and endangered person alerts that do not meet the criteria of an AMBER alert, which would use the "Child Abduction Emergency" event code.

[43] Florida Department of Law Enforcement, Missing Endangered Persons Information Clearinghouse, Florida Purple Alert Criteria and FAQs, https://www.fdle.state.fl.us/PurpleAlerts/Frequently-Asked-Questions.aspx (last visited Feb. 20, 2024).

[44] Texas Department of Public Safety, https://www.dps.texas.gov/section/intelligence-counterterrorism/clear-alert (last visited Feb. 20, 2024).

[45] Texas Department of Public Safety, Request Alert Activation, *https://www.dps.texas.gov/section/intelligence-counterterrorism/request-alert-activation* (last visited Feb. 20, 2024).

[46] *Id.*

[47] 47 CFR §§ 11.51; 11.52; 11.54.

15. We propose that by adopting the dedicated MEP event code for EAS, our rules can help facilitate the delivery of Ashanti Alerts in a uniform and consistent manner. We seek comment on this approach. Will creating such an event code facilitate the transmission of Ashanti Alerts and thus promote the establishment of a national communications network "to provide assistance to regional and local search efforts for missing adults," as called for in the Ashanti Alert Act?[48] Several developments support taking this action. The Ashanti Alert Act encourages states, territories, and Tribal governments to develop or enhance their Ashanti Alert or missing and endangered person plans. It also seeks to facilitate the integration of those plans into a national network to assist and optimize regional and local search efforts for missing or endangered adults.[49] We expect that adopting a new "MEP" event code will facilitate the rapid and coordinated delivery of alert notifications about missing and endangered persons to the public in a uniform and consistent manner. This, in turn, would promote the development, enhancement, and integration of a nationwide communications network for Ashanti Alert and Ashanti Alert compliant plans and coordination of officials and stakeholders within those plans, as contemplated by the Ashanti Alert Act.

16. Specifically, we propose to amend Section 11.31(e) of the EAS rules to add a new "MEP" event code to the codes contained within the EAS Protocol. We seek comment on this proposal. Would having an event code be consistent with BJA's guidance, and allow for the issuing of Ashanti alerts, i.e., alerts related to (1) individuals over the age of 17; (2) missing adults who have special needs or circumstances; and (3) missing adults who are endangered or who have been abducted or kidnapped.[50] Should the MEP event code be limited to the criteria for an Ashanti Alert? How would limiting this event code to Ashanti Alert criteria impact missing and endangered person alerts that did not meet the criteria of an AMBER alert or an Ashanti alert? Should other criteria be considered as well? For example, could such an event code be used for missing children events that do not meet the criteria for an AMBER alert? Could such an event code be used for Silver Alerts? What are the benefits of having one event code for all missing and endangered person events that do not meet the criteria of an AMBER alert vis a vis one more limited in scope? What are the consequences of only having one such code? As with other non-Presidential alerts, EAS Participants' carriage of Ashanti Alerts and use of the MEP event code would be voluntary. We seek comment on these proposals.

17. *Efficacy of the EAS as a mechanism for delivering Ashanti Alerts.* We seek comment on the efficacy of the EAS as a mechanism for the delivery of Ashanti Alerts. For over two decades, the EAS has proven to be an effective method of alerting the public and saving lives and property.[51] EAS Participants continue to voluntarily transmit thousands of alerts and warnings annually regarding severe weather threats, child abductions, law enforcement officials' safety, and other local emergencies.[52]

18. We seek comment on whether EAS could accommodate missing and endangered person alerts, including Ashanti Alerts, as effectively as it does these other types of alerts. Specifically, are there constraints that would impede the ability of the EAS to contain the information required under the Ashanti Alert Act[53] and envisioned by BJA guidance? Can the relevant information be communicated within a two-minute time frame, for example?[54] We note that EAS alerts delivered over the IPAWS can

[48] 34 U.S.C. § 21902(a).

[49] *See* 34 U.S.C. § 21901, *et. seq. See also Ashanti Alert Fact Sheet.*

[50] *Ashanti Alert Fact Sheet*. *See* 34 U.S.C. § 21901(7), 34 U.S.C. § 21904(b)(3).

[51] *See Proposed Action to Improve Accessibility and Performance of the Wireless Emergency Alerts (WEA)*, PS Docket Nos. 15-91 and 15-94, *Fifth Report and Order*, 27 FCC Rcd 642, 646, para. 6.

[52] FCC, *Report: August 11, 2021 Nationwide EAS Test* at 23 (2021), https://docs.fcc.gov/public/attachments/DOC-378861A1.pdf.

[53] 34 U.S.C. § 21904(b)(1).

[54] 47 CFR § 11.33(a)(9).

contain detailed text files, non-English alerts, or other content-rich data that is not always available in EAS alerts delivered via the broadcast-based daisy chain.[55] Do Ashanti Alerts routinely contain extra text files or other data-rich content that would benefit from the capabilities of IPAWS? Would it have a negative impact on the value of an EAS dedicated MEP event code that such data-rich content may not be delivered to all EAS Participants, depending on whether they receive the alert through IPAWS or through the broadcast-based daisy chain?

19. Currently, EAS Alerts are limited to the geographic contours and service areas of broadcasters and cable service providers. Are there any geographic or service area limitations[56] that would pose challenges to the effectiveness of missing and endangered person alerts, including Ashanti Alerts, which – per statutory requirements – must be delivered to "geographic areas that the missing adult could reasonably reach, considering the circumstances and physical and mental condition of the missing adult, the modes of transportation available to the missing adult, and the circumstances of the disappearance?"[57] How should the term "reasonably" be construed in this context and how does such construction impact EAS Participants' ability to disseminate these alerts? Are there differences between EAS Participants (e.g., small versus large cable operators) that affect the ability to target geographic areas as prescribed for the alerts?

20. *Implementation of the proposed MEP event code*. We seek comment on whether establishing a dedicated MEP event code would aid in the development of the national communications network contemplated by the Ashanti Alert Act.[58] Would MEP as a dedicated EAS event code provide a central and organizing element for missing and endangered person and Ashanti Alert plans across the nation and, thus, facilitate the work of the National Ashanti Alert Network?

21. We are aware that several states, territories, and Tribal governments have Ashanti Alert plans, Ashanti Alert Act compliant plans, missing and endangered person plans, or have legislative proposals for such plans.[59] We observe that implementation of these plans vary.[60] We seek comment on how many states, territories, and Tribal governments, in fact, have such plans or proposals. Where such

[55] FCC, Public Safety & Homeland Security Bureau, *Report: September 28, 2016, Nationwide EAS Test* at 5 n.2, 6, 16-17 (2017), http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0421/DOC-344518A1.pdf (last visited Feb. 9, 2024).

[56] *See* 47 CFR § 11.2.

[57] 34 U.S.C. § 21904(b)(2).

[58] 34 U.S.C. § 21902(a).

[59] *See, e.g.,* Ark. Code Ann. § 12-12-205 (West 2024); Colo. Rev. Stat. Ann. § 16-2.7-103 (West 2024); Conn. Gen. Stat. Ann. § 29-1i (West 2024); Fla. Stat. § 937.021(West 2024); Idaho Code Ann. § 67-2922 (West 2024); 50 Ill. Comp. Stat. Ann. 722/5 (West 2024); Ind. Code Ann. § 12-10-18-0.5 (West 2024); Kan. Stat. Ann. § 75-712c (West 2024); Minn. Stat. Ann. § 299C.53 (West 2024); Mont. Code Ann. § 44-2-407 (West 2024); N.J. Stat. Ann. § 52:17B-213 (West 2024); N.M. Stat. Ann. § 29-15-2 (West 2024); N.Y. Exec. Law § 837-f-2 (McKinney 2024); N.C. Gen. Stat. Ann. § 143B-1014 (West 2024); N.D. Cent. Code Ann. § 12-68-01 (West 2024); Okla. Stat. Ann. tit. 63, § 1-1990.10 (West 2024); 35 Pa. Stat. Ann. § 7025.1 (West), PA AR 9-35 Missing Endangered Persons Advisory System, https://www.psp.pa.gov/contact/RTKL%20DOCUMENTS/AR%209-35.pdf; Tex. Gov't Code § 411.462 (West 2024); Va. Code Ann. § 52-34.12 (West 2024); WY LEGIS 45 (2023), 2023 Wyoming Laws Ch. 45 (H.B. 18); PR: 25 L.P.R.A. § 986a (West 2024); Wyo. Stat. Ann. § 24-12-102 (West 2024). *See also* NCCMP's *Ashanti Alert Notification System*, Ashanti Alerts - NC Center for Missing Persons (ncdps.gov), (last visited Feb. 5, 2024); *LEGISLATIVE WATCH WYOMING: Governor Signs Law to Expand State's Missing Persons Alert Systems*, The Wyoming Truth, https://wyomingtruth.org/legislative-watch-wyoming-governor-signs-law-to-expand-states-missing-persons-alert-systems/ (last visited Feb. 5, 2024); State Launches M.I.P.A. – Missing Indigenous Person Alert System, WSP (wa.gov), https://www.wsp.wa.gov/2022/06/30/state-launches-m-i-p-a-missing-indigenous-person-alert-system/ (last visited Feb. 5, 2024); NCCMP's *Ashanti Alert Notification System*, Ashanti Alerts - NC Center for Missing Persons (ncdps.gov), (last visited Feb. 5, 2024).

[60] *See id.*

plans or proposals exist and what are their core components? Would a dedicated EAS event code help ensure that Ashanti Alerts and related outreach are undertaken in a consistent manner nationally? We seek comment on the distribution methods states, territories, and Tribal governments currently employ to deliver Ashanti Alerts or other alerts for missing and endangered persons. To the extent they use different distribution methods to deliver alerts, do these various distribution methods detract from the effectiveness of the alerts? We also seek comment on the experiences of states, territories, and Tribal governments that have adopted missing and endangered person alerts or Ashanti Alerts as part of their alerting systems. Moreover, would the adoption of MEP as a dedicated EAS event code encourage EAS Participants to deliver missing and endangered person alerts, including Ashanti Alerts?

22. We additionally ask whether the availability of a dedicated EAS event code would promote the adoption or enhancement of Ashanti Alerts or missing and endangered person alerts throughout the nation. Would a dedicated EAS event code help integrate existing plans into a coordinated national network? Would the ability of law enforcement agencies to use existing EAS distribution networks alleviate any burden associated with designing and implementing individual missing and endangered person or Ashanti Alert plans? Would the implementation of a dedicated EAS event code encourage States and Tribal governments that do not have missing and endangered person or Ashanti Alert plans to adopt one? Are there widely-recognized "best practices" for Ashanti Alert plans? If so, to what extent would the adoption of the proposed MEP event code enhance the effectiveness of those "best practices"?

23. Has the lack of a dedicated EAS event code impeded the adoption of missing and endangered person or Ashanti Alert plans? Would utilizing the EAS structure help integrate existing plans into a coordinated national framework? Would integrating existing missing and endangered person and Ashanti Alert plans into the EAS structure help individual states, territories, and Tribal governments work together when missing adults have been, or potentially have been transported across state lines, as envisioned by the Ashanti Alert Act?

24. *Missing and Endangered Indigenous Persons*. We seek comment on whether we should consider an additional dedicated EAS event code for missing Indigenous persons on and off Tribal land. As we have recognized above, Native communities "have historically been disproportionately affected by missing person cases, with Native Americans constituting 2.5% of all missing person cases despite comprising only 1.2% of the U.S. population..."[61] Would establishing a dedicated event code for missing Indigenous persons aid in resolving this disparity? Would such a dedicated event code help law enforcement in locating missing Indigenous persons? Who would be considered "Indigenous" for use purposes of this code? Alternatively, would it be more effective to use our proposed MEP code, rather than using a separate dedicated event code?

25. *Protecting Safety, Privacy and Civil Liberties*. We seek comment to ensure that missing and endangered person alerts, including Ashanti Alerts, will provide for the protection of the civil liberties and sensitive medical information of missing adults as required by the Ashanti Alert Act.[62] Are there any particular privacy or other civil liberties concerns that we should consider in implementing the proposed MEP event code? How can we ensure that any alerts comply with all applicable Federal, State, Tribal and local privacy laws and regulations?[63] Are there particular standards that we should adopt in

[61] National Congress of American Indians (NCAI), *To Establish a National Federal Communications Commission Event Code for Missing and Endangered Persons*, Resolution #NO-23-001 (2023), https://ncai.assetbank-server.com/assetbank-ncai/assetfile/5305.pdf. *See generally, NIAC Not One More: Findings & Recommendations* (Noting the need to address the high rates of missing, murdered and trafficked AI/AN people in recent years and discussing potential improvements to alerting systems in order to address the issue).

[62] *See* 34 U.S.C. § 21904(b)(4).

[63] *See* 34 U.S.C. § 21904(b)(4)(A). *See also,* PBS WARN, https://warn.pbs.org/ (last visited Feb. 15, 2024).

order to provide protections against domestic violence?[64] We seek comment on these and any other safety, privacy and civil liberties concerns.

26. *Public Awareness and Outreach.* We seek comment on how the public may respond to an MEP event code. Would establishing MEP as a dedicated EAS event code allow law enforcement to provide a warning that the public recognizes immediately as an alert for a missing or endangered person? Would a dedicated event code convey the appropriate sense of urgency to the public and galvanize the public awareness necessary to aid in the finding of missing or endangered adults? Would a dedicated event code facilitate consistent and effective public outreach educating the public to recognize and respond to "Ashanti Alerts"?

27. We seek comment on what actions states, territories, and Tribal governments have taken to educate the public on missing and endangered person and Ashanti Alerts and the appropriate responses to those alerts. Are there model Public Service Announcements (PSAs) in use that educate the public about missing and endangered person or Ashanti Alerts? How often have such alerts been activated and through what means or media have they been issued? How has the public reacted to these alerts?[65] We encourage commenters to provide examples of all available public responses to missing and endangered person and Ashanti Alerts that have been delivered since the adoption of the Ashanti Alert Act and BJA's Ashanti Alert guidance.

28. *Timeframe.* We seek comment on the timeframe in which MEP as a dedicated EAS event code for missing and endangered person alerts, including Ashanti Alerts, could be implemented. In the *BLU Report and Order*, the Commission required EAS equipment manufacturers to integrate BLU EAS event codes into equipment yet to be manufactured or sold and to make necessary software upgrades available to EAS Participants, no later than twelve months from the effective date of the rules, reasoning that the prompt deployment of alerts using the new codes would be consistent with the goal of public safety.[66] We believe that adding the proposed MEP event code triggers similar technical and public safety requirements regarding equipment readiness. We therefore propose that EAS equipment manufacturers integrate the MEP event code for missing and endangered person alerts, including Ashanti Alerts, into equipment yet to be manufactured and make necessary software upgrades available to EAS Participants, no later than twelve months from the effective date of the rules. We seek comment on this proposal and, if commenters disagree with our analysis or proposed timeframe, we invite them to specify alternatives and the specific technical bases for such alternatives.

29. With regard to EAS Participants, we note that in the *BLU Report and Order* the Commission allowed EAS Participants to implement the new event codes on a voluntary basis until their equipment was replaced.[67] The Commission noted that it took this approach in the past when adopting other new EAS event codes, and that the record did not reflect any basis to take a different approach.[68] Accordingly, we propose a similar approach here, allowing EAS Participants to upgrade their equipment on a voluntary basis through new equipment programmed to contain the code or through a software upgrade to install the code into equipment already in place. We seek comment on this approach.

30. *Wireless Emergency Alerts.* The Wireless Emergency Alert system is a tool for authorized federal, state, local, and Tribal government entities to geographically target alerts and warnings to the WEA-capable mobile devices of participating commercial mobile service providers' subscribers. Many people within the United States depend on WEA, as well as EAS, for public alerts and

[64] *See* 34 U.S.C. § 21904(b)(4)(C).

[65] *See* PBS WARN, https://warn.pbs.org/ (last visited Feb. 15, 2024).

[66] *See Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System*, PS Docket No. 15-94, Report and Order, 32 FCC Rcd 10812, paras. 21 and 22 (2017) (*BLU Report and Order*").

[67] *Id*.

[68] *Id*.

warnings.[69] The National Ashanti Alert Network Stakeholder Working Group and Pilot Project Participants Working Group have also called for a dedicated event code for missing and endangered persons, including adults and certain children who might not fit the criteria outlined for AMBER alerts.[70] We note, however, that WEA does not use event codes in the same manner as EAS. Rather, alert origination software and FEMA IPAWS map EAS event codes onto WEA handling codes that correspond to the alert message classifications that the Commission authorizes for issuance over WEA: National Alert, Imminent Threat Alert, AMBER Alert, and Public Safety Message.[71] What effect would the adoption of an MEP event code for EAS have on WEA? Should we revise our WEA rules to create a separate alert message classification for missing endangered persons alerts? Should alert origination software and FEMA IPAWS map the MEP code onto the AMBER Alert message classification, the Public Safety Message Classification, or a new alert message classification specifically for missing and endangered person alerts?[72] If missing and endangered person alerts, including Ashanti Alerts, merit a unique WEA alert message classification, should we require Participating CMS Providers to enable alert originators or the public to silence the audio attention signal and/or vibration cadence when they issue a missing and endangered person alert? If an alert were deliverable without the audio attention signal and/or without the vibration cadence, would Alert Originators be more likely to use WEA when a person was missing and/or endangered?

31. *Benefits and costs.* We seek comment on the total benefits and costs associated with the proposed addition of the MEP event code to the EAS. For those states, territories, or Tribal governments that have adopted missing and endangered person or Ashanti Alert plans, have those alerts been effective in locating missing, abducted, and/or endangered persons? Would a dedicated EAS code produce a more efficient result than utilizing an existing event code or an alternate delivery mechanism?

32. Would the adoption of a dedicated EAS event code help facilitate a partnership similar to AMBER Alerts? AMBER Alerts represent a voluntary partnership between law-enforcement agencies, broadcasters, transportation agencies, and the wireless industry to activate an urgent bulletin in the most serious child-abduction cases.[73] DOJ reports that 180 of the 181 AMBER Alerts issued in 2022 resulted in a recovery.[74] As of December 31, 2023, 1,186 children were successfully recovered through the AMBER Alert system and 165 children were rescued because of wireless emergency alerts.[75] We seek comment on whether statistical information concerning AMBER Alerts is relevant to missing and endangered person alerts. Is it reasonable to expect a similar success rate for missing and endangered person alerts, including Ashanti Alerts? Would the adoption of a dedicated EAS event code reduce the time to find a lost or abducted person?

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[69] *See, e.g.*, DOJ, Office of Community Oriented Policing Services, Rafael Ramos and Wenjian Liu National Blue Alert Report 2017 to Congress at 8 (2017), https://cops.usdoj.gov/pdf/blue-alert/2017_report.pdf.

[70] *See* SWG and Pilot Project Group Comments at 2 ("[B]oth SWG and Pilot Project states have noted a need for a missing and endangered person code that would supplement the current Child Abduction Emergency (CAE) and Blue Alert (BLU) IPAWS codes. Currently no code exists for missing and endangered persons.").

[71] *See* 47 CFR § 10.400.

[72] Public Safety Messages are only eligible for issuance in connection with another Alert Message Classification. *See* 47 CFR § 10.400(d). AMBER Alerts have specific criteria for issuance over WEA that all missing and endangered person alerts will not meet. *See* 47 CFR § 10.400(c).). Imminent Threat Alerts must meet criteria for urgency, severity, and certainty that all missing endangered person alerts will not meet. *See* 47 CFR § 10.400(b). Public Safety Messages are only eligible for issuance in connection with another Alert Message classification. *See* 47 CFR § 10.400(d).

[73] DOJ, *Amber Alert Report 2022,* p. 7 (2023), https://amberalert.ojp.gov/publications/2022-amber-alert-report.pdf.

[74] *Id.*

[75] AMBER Alert, https://amberalert.ojp.gov/ (last visited Feb. 5, 2024).

33. We seek comment on whether introducing a dedicated EAS event code would help save the lives. For example, would using a dedicated EAS event code facilitate faster information sharing and dissemination of information to the public? Could it potentially provide an additional path of communication to others who may be best positioned to quickly provide assistance, including the media and off-duty public safety official? Could this save lives, not just of those whose disappearance prompts an alert but of others who might otherwise be harmed by the emergency? We seek comment on these and other potential benefits and cost reductions.

34. We also seek comment on the costs of the proposed event code. We believe that adopting a dedicated EAS event code, "MEP," presents technical issues similar to the ones the Commission encountered when creating Blue Alert codes.[76] In the *BLU Report and Order*, the Commission noted that the record indicated that the new alert codes could be implemented by EAS Participants via minimally burdensome and low-cost software downloads; the Commission expected the labor required to download and update the software would not exceed 5 hours for each EAS participant.[77] We believe that the same costs would apply to the adoption of an MEP event code for missing and endangered persons, including Ashanti Alerts. Therefore, we tentatively conclude that the implementation costs for adding a dedicated MEP event code would be approximately $12 million, adjusted for inflation.[78] We seek comment on this analysis and on the cost to EAS equipment manufacturers to create software updates, test these updates, supply them to their customers, oversee these updates, and provide any related customer support.

35. We note that EAS Participants are required to have equipment that would be capable, at a minimum, of being upgraded by software to accommodate EAS modifications like what we propose here.[79] We also see no reason why a new event code could not be bundled with a software upgrade that

[76] *See BLU Report and Order*, 32 FCC Rcd at 10815-16, paras. 8-11.

[77] *BLU Report and Order*, 32 FCC Rcd at 10824-26, paras. 24-27.

[78] We calculate the total cost as follows: $91.89/hour × 5 hours × 25,522 broadcasters, cable headends, and DBS and SDARS providers = $11,726,083, which we round to $12 million. Using an average hourly wage of $60.07 for software and web developers, programmers, and testers, and factoring in a 45% markup of hourly wage for benefits, and a 5.5% inflation adjustment between 2022 and 2023, we estimate an hourly wage of $91.89. *See* Press Release, Bureau of Labor Statistics, National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2022, at https://www.bls.gov/news.release/ocwage.t01.htm (showing that the hourly median wage for software and web developers, programmers, and testers is $60.07). According to the Bureau of Labor Statistics, as of September 2023, civilian wages and salaries averaged $30.35/hour and benefits averaged $13.58/hour. Total compensation therefore averaged $30.35 + $13.58 = $43.93. See Press Release, Bureaus of Labor Statistics, Employer Costs for Employee Compensation – September 2023 (Dec. 15, 2023), https://www.bls.gov/news.release/pdf/ecec.pdf. Using these figures, benefits constitute a markup of $13.58/$30.35 = 45%. We therefore markup wages by 45% to account for benefits. *See* Federal Reserve Bank of St. Louis, *Average Hourly Earnings of All Employees, Total Private* (*CES0500000003*), https://fred.stlouisfed.org/series/CES0500000003 (last visited Feb. 14, 2024) (showing that according to Bureau of Labor Statistics data the average hourly private wage increased by 5.5% between May 2022 and August 2023). The figure 25,519 includes 21,380 broadcaster stations and 4,139 headends. With two direct broadcast satellite (DBS) providers and one satellite digital audio radio service (SDARS) provider, the total number of providers is 25,522. *See Communications Marketplace Report*, FCC 22-103, 2022 Communications Marketplace Report, at 128-29, paras. 186-87 (Dec. 30, 2022) (stating that Sirius XM is the only SDARS provider and DIRECTV and DISH Network are the only two DBS providers); *Broadcast Station Totals as of December 31, 2023*, Public Notice, DA 24-17 (rel. Jan. 8, 2024) (*December 2023 Broadcast Station Totals PN*), https://docs.fcc.gov/public/attachments/DA-24-17A1.pdf (stating that there were 33,428 broadcast stations in the United States as of Dec. 31, 2023, from which we subtract 12,048 FM translators and boosters, and VHF and UHF translators that do not originate programming, for a total number of affected broadcast stations of 21,392); S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022) (stating that there were 4,139 cable headends in the United States).

[79] *See NWS Report and Order*, 31 FCC Rcd at 7924, para. 22 n.77.

EAS Participants would otherwise install anyway, during the regular course of business. We seek comment on this analysis.

36. Finally, are there costs or benefits that should be considered that are not captured in the above discussion? If commenters disagree with our analysis or calculations, they should specify alternative methods and the specific technical bases for such alternatives. We seek comment on whether there are alternative or additional measures that the Commission could take to improve the introduction of missing and endangered person alerts, including Ashanti Alerts, over the EAS to promote the important public policy objective of enabling a rapid and coordinated response to incidents involving missing and endangered persons.

37. *Tribal Consultation*. We anticipate that any revisions to our rules implementing a dedicated "MEP" event code would benefit from Tribal consultation. We therefore direct the Office of Native Affairs and Policy (ONAP) to coordinate government-to-government consultation with Tribal Nations about the topics raised in this NPRM. ONAP will announce the commencement of a Tribal consultation via public notice. Tribal Nations may also notify ONAP of their desire for consultation via email to Native@fcc.gov.

IV. PROCEDURAL MATTERS

38. *Ex Parte Rules.* The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[80] 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 the memorandum 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.

39. In light of the Commission's trust relationship with Tribal Nations and our commitment to engage in government-to-government consultation with them, we find the public interest requires a limited modification of the *ex parte* rules in this proceeding.[81] Tribal Nations, like other interested parties, should file comments, reply comments, and *ex parte* presentations in the record to put facts and arguments before the Commission in a manner such that they may be relied upon in the decision-making process consistent with the requirements of the Administrative Procedure Act.[82] However, at the option of the Tribe, *ex parte* presentations made during consultations by elected and appointed leaders and duly appointed representatives of federally recognized Indian Tribes and Alaska Native Villages to Commission

[80] 47 CFR §§ 1.1200-1.1216.

[81] *See* 47 CFR § 1.1200(a).

[82] 5 U.S.C. §§ 551 *et seq.*

decision makers shall be exempt from the rules requiring disclosure in permit-but-disclose proceedings[83] and exempt from the prohibitions during the Sunshine Agenda period.[84] To be clear, while the Commission recognizes consultation is critically important, we emphasize that the Commission will rely in its decision-making only on those presentations that are placed in the public record for this proceeding.

40. *Comment Filing Procedures*. Pursuant to 47 CFR § 1.415 and 47 CFR § 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).[85]

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://apps.fcc.gov/ecfs/.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
    - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
    - Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.[86]

41. *Regulatory Flexibility Act*. The Regulatory Flexibility Act of 1980, as amended (RFA),[87] 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."[88] 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 set forth in Appendix B. Written public comments are requested in the IRFA. These comments must be filed by the deadlines for comments on the *NPRM* indicated on the first page of this document, and have a separate and distinct heading designating them as responses to the IRFA.

42. *Paperwork Reduction Analysis*. This document does not contain proposed information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198.[89]

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[83] *See generally* 47 CFR § 1.1206.

[84] *See id.* § 1.1203.

[85] *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

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

[87] *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).

[88] 5 U.S.C. § 605(b).

[89] *See* 44 U.S.C. § 3506(c)(4).

43. *Providing Accountability Through Transparency Act*. Consistent with the Providing Accountability Through Transparency Act, Public Law 118-9, a summary of this document will be available on https://www.fcc.gov/proposed-rulemakings.[90]

44. *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 1-888-CALL-FCC (voice).

45. *Additional Information.* For additional information on this proceeding, please contact David Kirschner, Public Safety and Homeland Security Bureau, at david.kirschner@fcc.gov or (202) 418-0695.

V. ORDERING CLAUSES

46. Accordingly, **IT IS ORDERED** that pursuant to Sections 1, 2, 4(i), 4(o), 301, 303(r), 303(v), 307, 309, 335, 403, 624(g), 706, and 715 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(o), 301, 303(r), 303(v), 307, 309, 335, 403, 544(g), 606, and 615, this *Notice of Proposed Rulemaking* **IS ADOPTED.**

47. **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

[90] 5 U.S.C. § 553(b)(4). The Providing Accountability Through Transparency Act, Pub. L. No. 118-9 (2023), amended section 553(b) of the Administrative Procedure Act.

APPENDIX A

Proposed Rules

For the reasons discussed in this document, the Federal Communications Commission proposes to amend 47 CFR part 11 to read as follows:

PART 11 – EMERGENCY ALERT SYSTEM (EAS)

1. The authority citation for part 11 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i) and (o), 303(r), 544(g), 606, 1201, 1206.

2. Amend § 11.31 by:
a. designating the table immediately following paragraph (d)(1) as table 1 to paragraph (d)(1); and
b. designating the table immediately following paragraph (e) as table 2 to paragraph (e); and
c. revising table 2 to paragraph (e); and
d. designating the table immediately following paragraph (f) as table 3 to paragraph (f).

The revision to table 2 to paragraph (e) reads as follows:

§ 11.31 EAS protocol.

* * * * *

(e) * * *

Table 2 to paragraph (e)	
Nature of activation	**Event codes**
National Codes (Required):	
Emergency Action Notification (National only)	EAN.
National Periodic Test	NPT.
Required Monthly Test	RMT.
Required Weekly Test	RWT.
State and Local Codes (Optional):	
Administrative Message	ADR.

Avalanche Warning	AVW.
Avalanche Watch	AVA.
Blizzard Warning	BZW.
Blue Alert	BLU.
Child Abduction Emergency	CAE.
Civil Danger Warning	CDW.
Civil Emergency Message	CEM.
Coastal Flood Warning	CFW.
Coastal Flood Watch	CFA.
Dust Storm Warning	DSW.
Earthquake Warning	EQW.
Evacuation Immediate	EVI.
Extreme Wind Warning	EWW.
Fire Warning	FRW.
Flash Flood Warning	FFW.
Flash Flood Watch	FFA.
Flash Flood Statement	FFS.
Flood Warning	FLW.
Flood Watch	FLA.
Flood Statement	FLS.

Hazardous Materials Warning	HMW.
High Wind Warning	HWW.
High Wind Watch	HWA.
Hurricane Warning	HUW.
Hurricane Watch	HUA.
Hurricane Statement	HLS.
Law Enforcement Warning	LEW.
Local Area Emergency	LAE.
Missing and Endangered Persons	MEP.
Network Message Notification	NMN.
911 Telephone Outage Emergency	TOE.
Nuclear Power Plant Warning	NUW.
Practice/Demo Warning	DMO.
Radiological Hazard Warning	RHW.
Severe Thunderstorm Warning	SVR.
Severe Thunderstorm Watch	SVA.
Severe Weather Statement	SVS.
Shelter in Place Warning	SPW.
Special Marine Warning	SMW.
Special Weather Statement	SPS.

Storm Surge Watch	SSA.
Storm Surge Warning	SSW.
Tornado Warning	TOR.
Tornado Watch	TOA.
Tropical Storm Warning	TRW.
Tropical Storm Watch	TRA.
Tsunami Warning	TSW.
Tsunami Watch	TSA.
Volcano Warning	VOW.
Winter Storm Warning	WSW.
Winter Storm Watch	WSA.

APPENDIX B

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Federal Communications Commission (Commission) has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *Notice of Proposed Rulemaking* (*NPRM*). The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments specified in the *NPRM*. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the Federal Register.[3]

A. Need for, and Objectives of, the Proposed Rules

2. The Emergency Alert System (EAS) is a national public warning system used by federal, state, local, territorial, and Tribal authorities to deliver important emergency information to the public in affected communities through radio and television broadcasters, cable systems, wireline video, and other service providers (EAS Participants).[4] EAS Participants are required to deliver Presidential alerts,[5] and may voluntarily deliver alerts issued by federal, state, local, territorial, and Tribal authorities, such as weather-related and AMBER Alerts.[6] The public also depends on Wireless Emergency Alerts (WEA), a system that allows wireless providers who are participating commercial mobile radio service (CMRS) Providers to voluntarily deliver critical warnings and information to the public through their wireless phones. In the *NPRM,* the Commission proposes adding a new EAS event code for Missing and Endangered Persons ("MEP Warning" or "MEP"), that would be used to transmit "Ashanti Alerts" associated with adult persons missing or abducted from states, territories, or Tribal communities to the public over the EAS.

3. The Ashanti Alert Act was enacted to encourage the formation, enhancement, and integration of Ashanti Alert plans throughout the United States, and for other purposes,[7] by "establish[ing] a voluntary nationwide communication network to aid in the search and recovery of missing persons over the age of 17 who fall outside the scope of America's Missing: Broadcast Emergency Response (AMBER) Alerts and Silver Alerts."[8] As required by the Ashanti Alert Act, the Department of Justice (DOJ) has designated the Bureau of Justice Assistance (BJA) as the Ashanti Alert Coordinator[9] which, in turn, has developed guidance for "states, Indian Tribes, local governments, law

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[1] 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[2] 5 U.S.C. § 603(a).

[3] *Id*.

[4] *See* FCC, Emergency Alert System (EAS), https://www.fcc.gov/consumers/guides/emergency-alert-system-eas, (last visited Feb. 5, 2024) ("FCC EAS Homepage").

[5] 47 CFR § 11.1.

[6] 47 CFR § 11.55(a); DOJ, *AMBER Alert – America's Missing: Broadcast Emergency Response*, https://amberalert.ojp.gov/ (last visited Feb 5, 2024).

[7] 34 U.S.C. § 21901, *et. seq.*

[8] *Ashanti Alert Notification System Overview. See also Ashanti Alert Fact Sheet.*

[9] 34 U.S.C. § 21903.

enforcement agencies, and other stakeholders seeking to establish or enhance an existing Ashanti Alert Plan" in a manner that will promote compatible and integrated missing and endangered person plans throughout the United States.[10] Ashanti Alert carriage, and use of the MEP event code would be voluntary.[11] EAS Participants who decide to carry missing and endangered person alerts, including Ashanti Alerts, should be able to accommodate the new code with a software upgrade of equipment already in place but not yet capable of handling these codes. Any new equipment allowed under existing rules is either similarly upgradeable or will already be programmed to handle the code. The *NPRM* seeks comment on whether adding a MEP event code to the EAS for missing and endangered person alerts would serve the public interest by furthering the goal of the Ashanti Alert Act to disseminate information to the public that protects law enforcement officials, and the public at large.

B. Legal Basis

4. The proposed action is authorized pursuant to sections 1, 2, 4(i), 4(o), 301, 303(r), 303(v), 307, 309, 335, 403, 624(g),706, and 715 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(o), 301, 303(r), 303(v), 307, 309, 335, 403, 544(g), 606, and 615.

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

5. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[12] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[13] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[14] A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[15]

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.[16] 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.[17] These types of small

[10] 34 U.S.C. §§ 21902 and 21903.

[11] *See, e.g.*, 47 CFR § 11.55(a); 47 CFR § 11.52(d)(5). *See also First Report and Order,* 20 FCC Rcd at 18628, para. 8.

[12] 5 U.S.C. § 603(b)(3).

[13] *Id.* § 601(6).

[14] *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."

[15] 15 U.S.C. § 632

[16] *See* 5 U.S.C. § 601(3)-(6).

[17] *See* SBA, Office of Advocacy, "What's New With Small Business?," https://advocacy.sba.gov/wp-content/uploads/2023/03/Whats-New-Infographic-March-2023-508c.pdf (Mar. 2023).

businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.[18]

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."[19] 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.[20] 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.[21]

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."[22] U.S. Census Bureau data from the 2017 Census of Governments[23] indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.[24] Of this number, there were 36,931 general purpose governments (county,[25] municipal, and town or township[26]) with populations of

[18] *Id*.

[19] *See* 5 U.S.C. § 601(4).

[20] 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.

[21] *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 Hawai'i. This data does not include information for Puerto Rico.

[22] *See* 5 U.S.C. § 601(5).

[23] *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.

[24] *See* U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02], https://www.census.godfv/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.

[25] *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.

[26] *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.

less than 50,000 and 12,040 special purpose governments—independent school districts[27] with enrollment populations of less than 50,000.[28] 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."[29]

9. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.[30] 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.[31] The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[32] U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.[33] Of that number, 2,837 firms employed fewer than 250 employees.[34] Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 797 providers that reported they were engaged in the provision of wireless services.[35] Of these providers, the Commission estimates that 715 providers have 1,500 or fewer employees.[36] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

10. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum encompasses services in the 1850-1910 and 1930-1990 MHz bands.[37] The closest industry with a SBA small business size standard applicable to these services is Wireless

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[27] *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.

[28] 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.

[29] 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.

[30] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite),"* https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[31] *Id.*

[32] *See* 13 CFR § 121.201, NAICS Code 517312.

[33] *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.

[34] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[35] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), https://docs.fcc.gov/*pubId.lic*/attachments/DOC-379181A1.pdf.

[36] *Id.*

[37] *See* 47 CFR § 24.200.

Telecommunications Carriers (except Satellite).[38] The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[39] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[40] Of this number, 2,837 firms employed fewer than 250 employees.[41] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

11. Based on Commission data as of November 2021, there were approximately 5,060 active licenses in the Broadband PCS service.[42] The Commission's small business size standards with respect to Broadband PCS involve eligibility for bidding credits and installment payments in the auction of licenses for these services. In auctions for these licenses, the Commission defined "small business" as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $40 million for the preceding three years, and a "very small business" as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding $15 million for the preceding three years.[43] Winning bidders claiming small business credits won Broadband PCS licenses in C, D, E, and F Blocks.[44]

12. 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.

13. *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.[45] 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.[46] Wireless Telecommunications Carriers (*except* Satellite)[47] is the closest industry

[38] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers* (*except Satellite*)," https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[39] *See* 13 CFR § 121.201, NAICS Code 517312.

[40] *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.

[41] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[42] Based on a FCC Universal Licensing System search on November 16, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = CW; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[43] *See* 47 CFR § 24.720(b).

[44] *See* 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.

[45] *See* 47 CFR § 24.5.

[46] *Id*.

[47] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers* (*except Satellite*)," https://www.census.gov/naics/?input=517312&year=2017&details=517312.

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.[48] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[49] Of this number, 2,837 firms employed fewer than 250 employees.[50] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

14. According to Commission data as of December 2021, there were approximately 4,211 active *Narrowband PCS* licenses.[51] The Commission's small business size standards with respect to *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.[52] 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.[53] Pursuant to these definitions, 7 winning bidders claiming small and very small bidding credits won approximately 359 licenses.[54] 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.[55]

15. 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.

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[48] *See* 13 CFR § 121.201, NAICS Code 517312.

[49] *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.

[50] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[51] 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.

[52] *See* 47 CFR § 24.321(a)(1)-(2).

[53] *Id.*

[54] *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.

[55] 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.

16. *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.[56] Wireless Telecommunications Carriers (*except* Satellite)[57] 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.[58] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[59] Of this number, 2,837 firms employed fewer than 250 employees.[60] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

17. 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.[61]

18. 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.

19. *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)[62] 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.[63] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[64] Of this number, 2,837

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[56] *See* 47 CFR §§ 27.1 – 27.1607.

[57] *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.

[58] *See* 13 CFR § 121.201, NAICS Code 517312.

[59] *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.

[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] *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.

[62] *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.

[63] *See* 13 CFR § 121.201, NAICS Code 517312.

firms employed fewer than 250 employees.[65] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

20. According to Commission data as of December 2021, there were approximately 224 active 700 MHz Guard Band licenses.[66] 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.[67] 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 licenses.[68] 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.[69]

21. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

22. *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

(Continued from previous page)

[64] *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.

[65] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[66] 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.

[67] *See* 47 CFR § 27.502(a).

[68] *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.

[69] 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.

services.[70] Wireless Telecommunications Carriers (*except* Satellite)[71] 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.[72] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[73] Of this number, 2,837 firms employed fewer than 250 employees.[74] 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 2,824 active Lower 700 MHz Band licenses.[75] 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.[76] In auctions for Lower 700 MHz Band licenses seventy-two winning bidders claiming a small business classification won 329 licenses,[77] twenty-six winning bidders claiming a small business classification won 214 licenses,[78] and three winning bidders claiming a small business classification won all five auctioned licenses.[79]

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[70] *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.

[71] *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.

[72] *See* 13 CFR § 121.201, NAICS Code 517312.

[73] *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.

[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.

[75] Based on a FCC Universal Licensing System search on December 14, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service = 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.

[76] *See* 47 CFR § 27.702(a)(1)-(3).

[77] *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.

[78] *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.

[79] *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.

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. *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.[80] 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.[81] Wireless Telecommunications Carriers (*except* Satellite)[82] 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.[83] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[84] Of that number, 2,837 firms employed fewer than 250 employees.[85] Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

26. According to Commission data as of December 2021, there were approximately 152 active Upper 700 MHz Band licenses.[86] 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

[80] *See* 47 CFR § 27.4.

[81] *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.

[82] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers* (*except Satellite*)," https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[83] *See* 13 CFR § 121.201, NAICS Code 517312.

[84] *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.

[85] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[86] 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.

preceding three years.[87] Pursuant to these definitions, three winning bidders claiming very small business status won five of the twelve available licenses.[88]

27. 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.

28. *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.[89] Wireless Telecommunications Carriers (*except* Satellite)[90] 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.[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.

29. According to Commission data as December 2021, there were approximately 4,472 active AWS licenses.[94] 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.[95] Pursuant to these definitions, 57 winning bidders claiming status as small or very small businesses won

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[87] *See* 47 CFR § 27.502(a).

[88] *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.

[89] *See* 47 CFR § 27.1(b).

[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.

[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 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.

[95] *See* 47 CFR §§ 27.1002, 27.1102, 27.1104, 27.1106.

215 of 1,087 licenses.[96] In the most recent auction of AWS licenses 15 of 37 bidders qualifying for status as small or very small businesses won licenses.[97]

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. *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,"[98] 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)).[99] 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.[100]

32. 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).[101] 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

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[96] *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.

[97] *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).

[98] The use of the term "wireless cable" does not imply that it constitutes cable television for statutory or regulatory purposes.

[99] *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).

[100] 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.

[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.

[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.

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.

33. According to Commission data as December 2021, there were approximately 5,869 active BRS and EBS licenses.[105] 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.[106] 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.[107] One of the winning bidders claiming a small business status classification in the BRS license auction has an active licenses as of December 2021.[108]

34. 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.[109] 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.

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[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] Based on a FCC Universal Licensing System search on December 10, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service =BR, ED; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[106] *See* 47 CFR § 27.1218(a).

[107] *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.

[108] Based on a FCC Universal Licensing System search on December 10, 2021, https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service =BR; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[109] *See* 47 CFR § 27.1219(a).

35. *The Educational Broadcasting Services.* Cable-based educational broadcasting services fall under the broad category of the Wired Telecommunications Carriers industry.[110] The Wired Telecommunications Carriers industry 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.[111] Transmission facilities may be based on a single technology or a combination of technologies.[112] 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.[113]

36. The SBA small business size standard for this industry classifies businesses having 1,500 or fewer employees as small.[114] U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.[115] Of this total, 2,964 firms operated with fewer than 250 employees.[116] Thus, under this size standard, the majority of firms in this industry can be considered small. Additionally, according to Commission data as of December 2021, there were 4,477 active EBS licenses.[117] The Commission estimates that the majority of these licenses are held by non-profit educational institutions and school districts and are likely small entities.

37. *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.[118] 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.[119] The SBA small business size standard for this industry classifies businesses

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[110] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311. Examples of this category 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 owner operated wired telecommunications infrastructure; direct-to-home satellite system (DTH) services; telecommunications carriers (wired); satellite television distribution systems; and multichannel multipoint distribution services (MMDS).

[111] *Id.*

[112] *Id.*

[113] *Id.*

[114] *See* 13 CFR § 121.201, NAICS Code 517311.

[115] *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.

[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] Based on a FCC Universal Licensing System search on December 17, 2021. https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp. Search parameters: Service Group = All, "Match only the following radio service(s)", Radio Service =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.

[118] *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.

[119] *Id.*

having 1,250 employees or less as small.[120] U.S. Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year.[121] Of this number, 624 firms had fewer than 250 employees.[122] Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

38. *Software Publishers.* This industry comprises establishments primarily engaged in computer software publishing or publishing and reproduction.[123] Establishments in this industry carry out operations necessary for producing and distributing computer software, such as designing, providing documentation, assisting in installation, and providing support services to software purchasers.[124] These establishments may design, develop, and publish, or publish only.[125] The SBA small business size standard for this industry classifies businesses having annual receipts of $41.5 million or less as small.[126] U.S. Census Bureau data for 2017 indicate that 7,842 firms in this industry operated for the entire year. [127] Of this number 7,226 firms had revenue of less than $25 million.[128] Based on this data, we conclude that a majority of firms in this industry are small.

39. *Noncommercial Educational (NCE) and Public Broadcast Stations.* Noncommercial educational broadcast stations and public broadcast stations are television or radio broadcast stations which under the Commission's rules are eligible to be licensed by the Commission as a noncommercial educational radio or television broadcast station and are owned and operated by a public agency or nonprofit private foundation, corporation, or association; or are owned and operated by a municipality which transmits only noncommercial programs for education purposes.

40. The SBA small business size standards and U.S. Census Bureau data classify radio stations[129] and television broadcasting[130] separately and both categories may include both noncommercial and commercial stations. The SBA small business size standard for both radio stations and television

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[120] *See* 13 CFR § 121.201, NAICS Code 334220.

[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 334220, https://data.census.gov/cedsci/table?y=2017&n=334220&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] *See* U.S. Census Bureau, *2017 NAICS Definition, "511210 Software Publishers,"* https://www.census.gov/naics/?input=511210&year=2017&details=511210.

[124] *Id.*

[125] *Id.*

[126] *See* 13 CFR § 121.201, NAICS Code 511210.

[127] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 511210, https://data.census.gov/cedsci/table?y=2017&n=511210&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.

[128] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. 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.

[129] *See* U.S. Census Bureau, *2017 NAICS Definition, "515112 Radio Stations*," https://www.census.gov/naics/?input=515112&year=2017&details=515112.

[130] *See* U.S. Census Bureau, *2017 NAICS Definition, "515120 Television Broadcasting,*" https://www.census.gov/naics/?input=515120&year=2017&details=515120.

broadcasting classify firms having $41.5 million or less in annual receipts as small.[131] For Radio Stations, U.S. Census Bureau data for 2017 show that 1,879 of the 2,963 firms that operated during that year had revenue of less than $25 million per year.[132] For Television Broadcasting, U.S. Census Bureau data for 2017 show that 657 of the 744 firms that operated for the entire year had revenue of less than $25,000,000.[133] While the U.S. Census Bureau data does not indicate the number of non-commercial stations, we estimate that under the applicable SBA size standard the majority of noncommercial educational broadcast stations and public broadcast stations are small entities.

41. According to Commission data as of March 31, 2022, there were 4,503 licensed noncommercial educational radio and television stations[134] In addition, the Commission estimates as of March 31, 2022, there were 384 licensed noncommercial educational (NCE) television stations, 383 Class A TV stations, 1,840 LPTV stations and 3,231 TV translator stations.[135] The Commission does not compile and otherwise does not have access to financial information for these stations that permit it to determine how many stations qualify as small entities under the SBA small business size standards. However, given the nature of these services, we will presume that all noncommercial educational and public broadcast stations qualify as small entities under the above SBA small business size standards.

42. *Radio Stations*. This industry is comprised of "establishments primarily engaged in broadcasting aural programs by radio to the public."[136] Programming may originate in their own studio, from an affiliated network, or from external sources.[137] The SBA small business size standard for this industry classifies firms having $41.5 million or less in annual receipts as small.[138] U.S. Census Bureau data for 2017 show that 2,963 firms operated in this industry during that year.[139] Of this number, 1,879

[131] *See* 13 CFR § 121.201, NAICS Code 515112 (Radio Stations); NAICS Code 515120 (Television Broadcasting).

[132] *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. 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 for the entire year. We also 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 further 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.

[133] *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. 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.

[134] *Broadcast Station Totals as of March 31, 2022*, Public Notice, DA 22-365 (rel. April 5, 2022) (*March 2022 Broadcast Station Totals PN*), https://www.fcc.gov/document/broadcast-station-totals-march-31-2022.

[135] *Id*.

[136] *See* U.S. Census Bureau, *2017 NAICS Definition, "515112 Radio Stations*," https://www.census.gov/naics/?input=515112&year=2017&details=515112.

[137] *Id.*

[138] *See* 13 CFR § 121.201, NAICS Code 515112 (as of 10/1/22 NAICS Code 516110).

[139] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 515112, https://data.census.gov/cedsci/table?y=2017&n=515112&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePrevie

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firms operated with revenue of less than $25 million per year.[140] Based on this data and the SBA's small business size standard, we estimate a majority of such entities are small entities.

43. The Commission estimates that as of December 31, 2023, there were 4,444 licensed commercial AM radio stations and 6,663 licensed commercial FM radio stations, for a combined total of 11,107 commercial radio stations.[141] Of this total, 11,105 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 January 9, 2024, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates that as of December 31, 2023, there were 4,286 licensed noncommercial (NCE) FM radio stations, 1,967 low power FM (LPFM) stations, and 8,927 FM translators and boosters.[142] 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.

44. We note, however, that in assessing whether a business concern qualifies as "small" under the above definition, business (control) affiliations[143] 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.

45. *FM Translator Stations and Low-Power FM Stations.* FM translators and Low Power FM Stations are classified in the industry for Radio Stations.[144] The Radio Stations industry comprises establishments primarily engaged in broadcasting aural programs by radio to the public.[145] Programming

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w=false. We note that the US Census Bureau withheld publication of the number of firms that operated for the entire year.

[140] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We 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.

[141] *Broadcast Station Totals as of December 31, 2023*, Public Notice, DA 24-17 (rel. Jan. 8, 2024) (*January 2024 Broadcast Station Totals PN*), https://docs.fcc.gov/public/attachments/DA-24-17A1.pdf.

[142] *Id.*

[143] "[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).

[144] *See* U.S. Census Bureau, *2017 NAICS Definition, "515112 Radio Stations,"* https://www.census.gov/naics/?input=515112&year=2017&details=515112.

[145] *Id.*

may originate in their own studio, from an affiliated network, or from external sources.[146] The SBA small business size standard for this industry classifies firms having $41.5 million or less in annual receipts as small.[147] U.S. Census Bureau data for 2017 show that 2,963 firms operated during that year.[148] Of that number, 1,879 firms operated with revenue of less than $25 million per year.[149] Therefore, based on the SBA's size standard we conclude that the majority of FM Translator stations and Low Power FM Stations are small. Additionally, according to Commission data, as of December 31, 2023, there were 8,927 FM Translator Stations and 1,967 Low Power FM licensed broadcast stations.[150] The Commission however does not compile and otherwise does not have access to information on the revenue of these stations that would permit it to determine how many of the stations would qualify as small entities. For purposes of this regulatory flexibility analysis, we presume the majority of these stations are small entities.

46. *Television Broadcasting*. This industry is comprised of "establishments primarily engaged in broadcasting images together with sound."[151] These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.[152] 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.[153] 2017 U.S. Census Bureau data indicate that 744 firms in this industry operated for the entire year.[154] Of that number, 657 firms had revenue of less than $25,000,000.[155] Based on this data we estimate that the majority of television broadcasters are small entities under the SBA small business size standard.

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[146] *Id.*

[147] *See* 13 CFR § 121.201, NAICS Code 515112 (as of 10/1/22 NAICS Code 516110).

[148] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: 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.

[149] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We 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 annual receipts 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.

[150] *Broadcast Station Totals as of December 31, 2023*, Public Notice, DA 24-17 (rel. Jan. 8, 2024) (*January 2024 Broadcast Station Totals PN*), https://docs.fcc.gov/public/attachments/DA-24-17A1.pdf.

[151] *See* U.S. Census Bureau, *2017 NAICS Definition, "515120 Television Broadcasting,*" https://www.census.gov/naics/?input=515120&year=2017&details=515120.

[152] *Id.*

[153] *See* 13 CFR § 121.201, NAICS Code 515120 (as of 10/1/22 NAICS Code 516120).

[154] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 515120, https://data.census.gov/cedsci/table?y=2017&n=515120&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.

[155] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

47. As of December 31, 2023, there were 1,380 licensed commercial television stations.[156] Of this total, 1,261 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 January 9, 2024, 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, 379 Class A TV stations, 1,878 LPTV stations and 3,121 TV translator stations.[157] 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.

48. *Cable and Other Subscription Programming.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis.[158] The broadcast programming is typically narrowcast in nature (e.g., limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources.[159] The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.[160] The SBA small business size standard for this industry classifies firms with annual receipts less than $41.5 million as small.[161] Based on U.S. Census Bureau data for 2017, 378 firms operated in this industry during that year.[162] Of that number, 149 firms operated with revenue of less than $25 million a year and 44 firms operated with revenue of $25 million or more.[163] Based on this data, the Commission estimates that the majority of firms operating in this industry are small.

49. *Cable System Operators (Rate Regulation Standard).* 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.[164] Based on industry

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[156] *Broadcast Station Totals as of December 31, 2023*, Public Notice, DA 24-17 (rel. Jan. 8, 2024) (*January 2024 Broadcast Station Totals PN*), https://docs.fcc.gov/public/attachments/DA-24-17A1.pdf.

[157] *Id*.

[158] *See* U.S. Census Bureau, *2017 NAICS Definition, "515210 Cable and Other Subscription Programming,"* https://www.census.gov/naics/?input=515210&year=2017&details=515210.

[159] *Id.*

[160] *Id.*

[161] *See* 13 CFR § 121.201, NAICS Code 515210.

[162] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 515210, https://data.census.gov/cedsci/table?y=2017&n=515210&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false. The US Census Bureau withheld publication of the number of firms that operated for the entire year to avoid disclosing data for individual companies (see Cell Notes for this category).

[163] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in all categories of revenue less than $500,000 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in these categories). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[164] 47 CFR § 76.901(d).

data, there are about 420 cable companies in the U.S.[165] Of these, only seven have more than 400,000 subscribers.[166] In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.[167] Based on industry data, there are about 4,139 cable systems (headends) in the U.S.[168] Of these, about 639 have more than 15,000 subscribers.[169] Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

50. *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."[170] 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.[171] Based on industry data, only six cable system operators have more than 498,000 subscribers.[172] 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.[173] 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.

51. *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."[174] 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.[175] U.S. Census Bureau data for 2017 show that 275

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[165] S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

[166] 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).

[167] 47 CFR § 76.901(c).

[168] S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

[169] S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q (*last visited May 26, 2022).

[170] 47 U.S.C. § 543(m)(2).

[171] *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).

[172] 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).

[173] 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).

[174] *See* U.S. Census Bureau, *2017 NAICS Definition, "517410 Satellite Telecommunications,"* https://www.census.gov/naics/?input=517410&year=2017&details=517410.

[175] *See* 13 CFR § 121.201, NAICS Code 517410.

firms in this industry operated for the entire year.[176] Of this number, 242 firms had revenue of less than $25 million.[177] 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.[178] Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees.[179] Consequently, using the SBA's small business size standard, a little more than half of these providers can be considered small entities.

52. *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.[180] 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.[181] 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.[182] The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small.[183] U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.[184] Of those firms, 1,039 had revenue of less than $25 million.[185] Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

53. *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

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[176] *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.

[177] *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.

[178] 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.

[179] *Id.*

[180] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517919 All Other Telecommunications,*" https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[181] *Id.*

[182] *Id.*

[183] *See* 13 CFR § 121.201, NAICS Code 517919.

[184] *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.

[185] *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.

video using wired telecommunications networks.[186] Transmission facilities may be based on a single technology or combination of technologies.[187] 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.[188] By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.[189]

54. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[190] U.S. Census Bureau data for 2017 show that 3,054 firms operated in this industry for the entire year.[191] Of this number, 2,964 firms operated with fewer than 250 employees.[192] 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.[193] 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

55. The *NPRM* initiates a proceeding to revise the Commission's EAS rules to adopt a new EAS event code, MEP, which may require new reporting, recordkeeping, and other compliance obligations for small and other EAS Participants that voluntarily deliver emergency alerts issued by federal, state, local, territorial, and Tribal authorities. Specifically, the *NPRM* proposes that EAS participants limit alerts to include only the appropriate information relating to the special needs of the missing adult, and shared in geographic areas where the missing adult could reasonably reach. The *NPRM* also seeks comment on how the term "reasonable" may be construed in this context between small and large EAS participants. The *NPRM* proposes that EAS participants be allowed to upgrade equipment on a voluntary basis through new equipment programmed to contain the code or through a software upgrade to install the code into existing equipment, which may allow flexibility for small entities to comply. Under the proposed rules, EAS equipment manufacturers would need to update their equipment to integrate the MEP event code for Ashanti Alerts in new equipment and through software upgrades

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[186] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[187] *Id.*

[188] *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).

[189] *Id*.

[190] *See* 13 CFR § 121.201, NAICS Code 517311.

[191] *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.

[192] *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.

[193] *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).

within twelve months of the effective date of the rules. While event codes such as MEP are not required under the Commission's rules for wireless providers that provide WEA, the *NPRM* seeks comment on whether adoption of a dedicated EAS code for Ashanti Alerts would have any effect on WEA, or whether guidance on classification of Ashanti Alerts would be helpful for small and other CMRS providers and WEA stakeholders.

56. We estimate that broadcast and cable providers may need one hour to download and install a software update specific to the MEP event code. EAS Participants are currently required to have equipment that would be capable of being upgraded by software to accommodate EAS modifications such as those proposed in the *NPRM*, and we see no reason why the a new event code could not be bundled with minimally burdensome, low-cost software upgrades that small and other EAS Participants would otherwise install during the regular course of business. As such, this should diminish the burden on small entities to comply with the proposed rules. We anticipate the information we receive in comments including where requested, cost and benefit analyses, will help the Commission identify and evaluate relevant compliance matters for small entities, including compliance costs for hiring professional staff , if necessary, and other burdens that may result from the proposals and inquiries we make in the *NPRM*.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

57. The RFA requires an agency to describe any significant alternatives that could minimize impacts to small entities that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) and exemption from coverage of the rule, or any part thereof, for such small entities."[194]

58. The rule changes contemplated by the *NPRM* would adopt "MEP" as a new EAS event code for Ashanti Alerts, and require implementation by small and other participating EAS Participants and CMRS Providers on a voluntary basis through equipment already in place (or a software upgrade thereof). Among the alternatives presented in the *NPRM* is whether there are existing EAS event codes that could effectively transmit Ashanti Alerts. The costs to EAS Participants associated with implementing the codes contained in the proposed rule changes are expected to be *de minimis* since the Commission anticipates compliance costs would be limited to the cost of labor for downloading software updates, to the extent any updates are required at all. Nevertheless, we have invited comment on the costs associated with implementation of the proposed Ashanti Alert code in order to more fully understand the impact of the proposed action and assess whether any action is needed to assist small entities. Similarly, while the Commission believes that the costs incurred by equipment manufacturers to write a few lines of code to implement the Ashanti Alert code will be minimal, we have invited comments on the cost to EAS equipment manufacturers of creating software updates, testing these updates, supplying them to their customers, and providing any related customer support. Additionally, we have invited commenters to propose steps that the Commission may take to further minimize any significant economic impact on small entities. When considering proposals made by other parties, commenters are invited to propose other alternatives that serve the goals of the Commission's proposals while minimizing impacts to small entities.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

59. None.

[194] 5 U.S.C. § 603(c)(1)-(4).

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *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; Notice of Proposed Rulemaking (March 14, 2024)

At the Oscar ceremony this week, *Killers of the Flower Moon* was shut out of the awards. But this film accomplished something that I think is more important than racking up wins in Hollywood. It opened our eyes to the troubling fact that violence against Native women has a long history. It affects us to this day. The cruel reality is that we continue to have a crisis of missing and murdered indigenous people, and it is especially acute for women and girls in Tribal communities.

The Bureau of Indian Affairs estimates there are more than four thousand cases of missing and murdered American Indian and Alaska Natives that are unsolved. According to the Federal Bureau of Investigation, the numbers missing are more than two and half times their share of the United States population. While there are new methods to collect data on missing and endangered Tribal and Native people, the true magnitude of this problem is hard to capture through data alone.

This movie gave voice to this crisis. Congress did too, when in 2017 it established May 5 as the National Day of Awareness for Missing and Murdered Native Women and Girls. Then in 2018, Congress passed the Ashanti Alert Act, which directs the Department of Justice to work more closely with state and local law enforcement agencies to help find missing and endangered adults.

These efforts are vital. But I believe more work is needed to help address the crisis of missing and murdered indigenous people—and today the Federal Communications Commission is stepping up to do just that.

It was nearly three decades ago that AMBER Alerts were created. They tell us on television and on mobile phones when a child goes missing. So many young people have been safely found with these alerts. They demonstrate that there is a way to raise awareness when someone goes missing and increase the odds that we safely find them.

So today we propose a new code in our emergency alert systems for broadcasting and wireless that would sound the alarm when adults are missing and endangered, to help raise awareness and support recovery. This is critical, especially for the indigenous women and girls who are at special risk.

I want to thank the National Congress of American Indians for their work to pass a resolution to support the Commission establishing this new code. I want to acknowledge the efforts of members of Congress who have brought attention to this issue, including Senators Luján, Schatz, Daines, Tester, Murkowski, and Cortez Masto. Our work also owes a debt of gratitude to Native Public Media for bringing this issue to our attention. So a big thank you to Loris Taylor of Native Public Media who so said in letter to us "that by working collaboratively, we can make meaningful strides in addressing the challenges posed by the Missing and Murdered Indigenous Persons crises and enhance the safety and well-being of Indigenous peoples, and American people in general." I agree. Our work here may not have the glamour of the Oscar ceremony, but it is absolutely essential because it can help save lives.

Finally, I want to acknowledge the staff responsible for this rulemaking including Alejandro Roark, Mark Stone, Aaron Garza, Wesley Platt, Dana Bowers, Theo Marcus, Bambi Kraus, and Cara Voth from the Consumer and Governmental Affairs Bureau; Nicole McGinnis, Austin Randazzo, James Wiley, George Donato, Drew Morin, David Kirschner, and David Munson from the Public Safety and Homeland Security Bureau; Joy Ragsdale, Joycelyn James, Jamie Saloom, and Chana Wilkerson from the Office of Communications Business Opportunities; and Doug Klein, William Huber, Anjali Singh, and Erika Olsen from the Office of General Counsel.

STATEMENT OF
COMMISSIONER ANNA M. GOMEZ

Re: *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; Notice of Proposed Rulemaking (March 14, 2024)

This Notice of Proposed Rulemaking includes a remarkable statistic from the Department of Justice that is worthwhile repeating – of the 181 AMBER alerts issued in 2022, 180 resulted in the recovery of a child. That is an amazing and encouraging statistic about the effectiveness of emergency alerts.

Today, we begin the process to establish a new emergency alert code dedicated to help find adults that have gone missing. The public policy goal of this proposed rulemaking is to help communities and families that unfortunately experience the anguish of not knowing where their loved ones are.

This notice also represents our small but powerful contribution to address the crisis of Missing and Murdered Indigenous Persons, which has afflicted Native communities for far too long. Native Americans constitute 2.5% of all missing person cases despite comprising only 1.2% of the U.S. population. With this proposal to establish a new emergency alert code for missing persons we hope to offer help.

As I said, via video remarks, at the annual 2024 Reservation Economic Summit held in Las Vegas, Nevada – we want to hear from the public, public safety authorities and emergency response officials. How does this proposal help?

A heartfelt thank you to the staff of the Consumer and Governmental Affairs Bureau for your work on this critical life-saving item. I approve this item.

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

In the Matter of	)	
	)	
Assessment and Collection of Space and Earth Station Regulatory Fees for Fiscal Year 2024	)	MD Docket No. 24-85
	)	
	)	
Review of the Commission's Assessment and Collection of Regulatory Fees for Fiscal Year 2024	)	MD Docket No. 24-86
	)	
	)	
	)	

NOTICE OF PROPOSED RULEMAKING

Adopted: March 13, 2024 **Released: March 13, 2024**

By the Commission:

Comment Date: April 12, 2024
Reply Comment Date: April 29, 2024

TABLE OF CONTENTS

I. INTRODUCTION

1. Pursuant to section 9 of the Communications Act of 1934, as amended,[1] (Communications Act or Act) we undertake this Notice of Proposed Rulemaking (*Notice*) to commence the assessment of regulatory fees for space and earth station payors for fiscal year (FY) 2024.

2. In January 2023, the Commission reorganized its International Bureau into: (1) a Space Bureau to handle policy and licensing matters related to satellite communications and other in-space activities under the Commission's jurisdiction; and (2) an Office of International Affairs to handle issues involving foreign and international regulatory authorities as well as international telecommunications and submarine cable licensing.[2] When the Commission adopted regulatory fees for FY 2023, it noted that it would be the last year for doing so for the International Bureau, and that the creation of the Space Bureau and Office of International Affairs could result in changes in the assessment of regulatory fees due to changes in FTEs, [3] due to increased oversight on various relevant industries.[4] In particular, the Commission stated that an examination of the regulatory fees and categories for non-geostationary orbit (NGSO) space stations would be useful in light of changes resulting from the creation of the Space Bureau.[5] The Commission anticipated that the changes in the industry that resulted in the creation of the Space Bureau would likely also result in changes in the relative FTE burdens between and among space and earth station fee payors.[6] Accordingly, the Commission found that it would be more efficient to seek comment on proposals to examine the categories of regulatory fees for NGSO space stations at the same time as other proposals that might arise as part of a "more holistic review" of the fee burden of the Space Bureau in FY 2024.[7]

3. This *Notice* commences that examination and review of regulatory fees for space and earth station payors that are regulated by the new Space Bureau. Specifically, we seek comment on a range of proposed changes related to the assessment of regulatory fees for space and earth stations under our existing methodology:

- We propose changes to the allocation of fee burdens between geostationary orbit (GSO) and NGSO space stations and maintain the existing allocation of fee burdens between the categories of "less complex" and "other" NGSO space stations;

[1] 47 U.S.C. § 159(a), (b).

[2] *Establishment of the Space Bureau and the Office of International Affairs and Reorganization of the Consumer and Governmental Affairs Bureau and the Office of the Managing Director*, Order, FCC 23-1, 2023 WL 161974 (rel. Jan. 9, 2023) (*Space Bureau Order*).

[3] One FTE, a "Full Time Equivalent" or "Full Time Employee," is a unit of measure equal to the work performed annually by a full-time person (working a 40-hour workweek for a full year) assigned to the particular job, and subject to agency personnel staffing limitations established by the U.S. Office of Management and Budget. *See generally* Executive Office of the President, Office of Management and Budget, Circular No. A-11, Preparation, Submission, and Execution of the Budget (August 2022), https://www.whitehouse.gov/wp-content/uploads/2018/06/a11.pdf. *See* section 85.5(c) for a detailed explanation of how FTEs are calculated. In this proceeding when we state that 1.5 FTEs work on a particular subject matter, that might mean three individuals spend 50% of their time on that area. Moreover, any change in FTE allocation described here is solely for regulatory fee purposes and does not reflect any change of personnel in the various organizational work units.

[4] *Assessment and Collection of Regulatory Fees for Fiscal Year 2023*, Report and Order, FCC 23-66, 2023 WL 5197492 at *22, para. 72 (rel. Aug. 10, 2023) (*FY 2023 R&O*).

[5] *FY 2023 R&O* at 23, para. 73.

[6] *FY 2023 R&O* at 32, para. 106.

[7] *Id*.

- We propose to create new fee categories within the existing fee category of "Space Station (Non-Geostationary Orbit) – Other" to make assessment of our regulatory fees fairer, more administrable, and more sustainable;[8]
- We propose to set the regulatory fee for "Space Stations (per license/call sign in non-geostationary orbit) (47 CFR part 25) (Small Satellite)" for FY 2024 and future fiscal years at the level set for FY 2023 ($12,215), adjusted annually to reflect the percentage change in the appropriation from the previous fiscal year;
- We propose, on an interim basis, to include space stations that are principally used for Rendezvous & Proximity Operations (RPO) or On-Orbit Servicing (OOS), including Orbit Transfer Vehicles (OTV), in the existing fee category for "small satellites" until we can develop more experience in how these space stations will be regulated;
- We propose to assess regulatory fees on all authorized space stations, not just on operational space stations, in order to adhere more closely to the framework of section 9 of the Act and to make our fees fairer, more administrable, and more sustainable;
- We propose to increase the allocation of fees payable by earth station licensees in order to reflect more accurately the fee burden attributable to their licensing and regulation and seek comment on whether additional earth station fee categories should be created; and
- We also propose to amend the title of section 1.1156 of the Commission's rules,[9] which is currently titled "Schedule of regulatory fees for international services," to make clear after the reorganization of the International Bureau that section 1.1156 includes space and earth station regulatory fees.

4. In addition, we propose an alternative methodology for assessing space station regulatory fees in section III.D below. Unlike the proposals made above to adjust the existing methodology, the alternative methodology is a more comprehensive departure from the way that space station regulatory fees have been assessed since 1994 in that it eliminates the separate categories of regulatory fees for GSO and NGSO space stations, as well as existing subcategories for NGSO space stations. It would retain the existing separate regulatory fee category for small satellites and spacecraft licensed under sections 25.122 and 25.123 of our rules.[10] For the reasons discussed below, this alternative methodology may be more

[8] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2013*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 28 FCC Rcd 7790, 7798-7807, paras. 17-40 (2013) (FY 2013 NPRM); *Assessment and Collection of Regulatory Fees for Fiscal Year 2012*, Report and Order, 27 FCC Rcd 8390, 8464-65, paras. 14-16 (2012). The concept of administrability includes the difficulty in collecting regulatory fees under a system that could have unpredictable dramatic shifts in assessed fees in certain categories from year to year. In adopting our fee schedule, we are also mindful of other general limits of fee authority. *See National Cable Television Ass'n v. United States*, 415 U.S. 336, 340-41 (1974) (construing Independent Offices Appropriations Act) (IOAA)); *see also National Cable Television Ass'n v. FCC*, 554 F.2d 1094, 1106 & n.42 (D.C. Cir. 1976). We are mindful that IOAA no longer applies to the Commission. See House of Representatives Report No. 99-453 (1985) at page 433 (noting the significance of National Cable and explaining that IOAA no longer applies to the Commission with the passage of other specific fee authority, application fees, in COBRA-85). We, nevertheless, are cognizant of broader legal issues raised by user fee and/or regulatory fee precedent.

[9] 47 CFR § 1.1156.

[10] 47 CFR §§ 25.122 and 25.123. A "small satellite" is an NGSO space station eligible for authorization under the application process described in § 25.122, and a "small spacecraft" is an NGSO space station operating beyond Earth's orbit that is eligible for authorization under the application process described in § 25.123. 47 CFR§ 25.103. Throughout this *Notice*, we use the terms "space station," "satellite," and "spacecraft." "Space station" is defined in the Commission's rules as "[a] station" located on an object which is beyond, is intended to go beyond, or has been beyond, the major portion of the Earth's atmosphere." 47 CFR §§ 2.1, 25.103. The Commission's rules define "satellite" as "[a] body which revolves around another body of preponderant mass, and which has a motion

(continued….)

fair, administrable, and sustainable than the existing methodology, and we seek comment on all aspects of this alternative approach.

II. BACKGROUND

A. Communications Act Requirements

5. Section 9 of the Act obligates the Commission to assess and collect regulatory fees each year in an amount that can reasonably be expected to equal the amount of its annual salaries and expenses (S&E) appropriation.[11] In accordance with the statute, each year, in an annual fee proceeding, the Commission proposes adjustments to the prior fee schedule under section 9(c) to "(A) reflect unexpected increases or decreases in the number of units subject to the payment of such fees; and (B) result in the collection of the amount required" by the Commission's annual appropriation.[12] Pursuant to section 9A(b)(1) of the Act, the Commission must notify Congress immediately upon adoption of any adjustment.[13] The Commission will also propose amendments to the fee schedule under section 9(d) "if the Commission determines that the schedule requires amendment so that such fees reflect the full-time equivalent number of employees within the bureaus and offices of the Commission, adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities.[14] Pursuant to section 9A(b)(2) of the Act, the Commission must notify Congress at least 90 days prior to making effective any amendments to the regulatory fee schedule.[15]

6. We therefore initiate this proceeding to seek comment on possible changes to the existing methodology for assessing space and earth station regulatory fees, ahead of our annual Commission-wide regulatory fee proceeding for the fiscal year, to adopt amendments to the existing space and earth station regulatory fee categories or to adopt new regulatory fee categories in time for those changes to be effective for FY 2024. Because changes to the regulatory fee categories require 90-day prior notification to Congress to be effective for FY 2024, any changes to the space and earth station regulatory fee categories would have to be adopted and notification of the changes would have to be timely provided to Congress to become effective before the end of FY 2024. While we initiate the examination and review of the existing methodology for assessing regulatory fees for space and earth station payors in this *Notice*, we will propose and finalize the regulatory fee rates for space and earth station payors as part of our annual Commission-wide regulatory fee proceeding for FY 2024. Commenters will have an opportunity in that proceeding to provide comments on the proposed regulatory fee rates for space and earth station payors.

(Continued from previous page)
primarily and permanently determined by the force of attraction of that other body." 47 CFR § 2.1. In this *Notice*, we refer only to artificial satellites. The Commission's rules define "spacecraft" as "[a] man-made vehicle which is intended to go beyond the major portion of the Earth's atmosphere." 47 CFR § § 2.1, 25.103. These terms are used interchangeably in this *Notice*, but we observe that "satellite" and "spacecraft" are more broadly defined than "space station."

[11] 47 U.S.C. § 159(a), (b). The regulatory fee collection is guided by both the statutory authority in sections 6 and 9 of the Communications Act, 47 U.S.C. §§ 156, 159, and the explicit language of each fiscal year's S&E appropriation directing the amount to be collected as an offsetting collection.

[12] 47 U.S.C. § 159(c). For example, if the number of units in a regulatory fee category increases, the amount due per unit may decrease. This would also include proportionate increases in a given fee category to reflect an overall increase in the annual FY appropriation. It is rare, however, for the Commission to solely propose adjustments under section 9(c).

[13] 47 U.S.C. § 159A(b)(1).

[14] 47 U.S.C. § 159(d).

[15] 47 U.S.C. § 159A(b)(2).

B. Space and Earth Station Regulatory Fees and Methodology

7. The existing schedule of regulatory fees for space and earth station payors is contained in section 1.1156 of the Commission's rules.[16] There are four current categories of space station payors: Space Stations (Geostationary Orbit); Space Stations (Non-Geostationary Orbit)—Less Complex; Space Stations (Non-Geostationary Orbit)—Other; and Space Station (Small Satellites).[17] "Less Complex" NGSO systems are defined as NGSO satellite systems planning to communicate with 20 or fewer U.S. authorized earth stations that are primarily used for Earth Exploration Satellite Service (EESS) and/or Automatic Identification System (AIS).[18] "Small Satellites" are space stations licensed pursuant to the streamlined small satellite process contained in section 25.122 of the Commission's rules.[19] The Space Stations (Small Satellites) category also includes "small spacecraft" licensed pursuant to the analogous streamlined procedures of section 25.123 of the rules.[20] In addition, there is a single category of earth station payors – Earth Stations: Transmit/Receive & Transmit only.[21] Since our fiscal year 2020 proceeding, non-U.S. licensed space stations granted market access to the United States through a Petition for Declaratory Ruling or through earth station licenses are subject to regulatory fees.[22]

8. For FY 2023, the regulatory fee amount per category of space and earth station payor were as follows:[23]

Fee Category	**FY 2023 Fee Amount**
Space Stations (Geostationary Orbit)	$117,580
Space Stations (Non-Geostationary Orbit)—Less Complex	$130,405
Space Stations (Non-Geostationary Orbit)—Other	$347,755
Space Stations (per license/call sign in non-geostationary orbit) (Small Satellites)	$12,215
Earth Stations: Transmit/Receive & Transmit only (per authorization or registration)	$575

9. Under the existing methodology of calculating regulatory fees for space and earth station payors, the Commission multiplies the space station and earth station FTE allocation percentages by the target goal of collections (overall total amount to collect), respectively, to determine the amount to be collected from each regulatory fee category. Since 2020, the space station allocation percentages reflect

[16] 47 CFR § 1.1156.

[17] 47 CFR § 1.1156(a).

[18] *Assessment and Collection of Regulatory Fees for Fiscal Year 2021, Assessment and Collection of Regulatory Fees for Fiscal Year 2020,* Report and Order and Notice of Proposed Rulemaking, 36 FCC Rcd. 8580, 8583-84, para. 7. (2021) (*FY 2021 NPRM*). EESS is defined under the Commission rules as "a radiocommunication service between earth stations and one or more space stations… in which… information relating to the characteristics of the Earth and its natural phenomena, including data relating to the state of the environment, is obtained from active sensors or passive sensors on Earth satellites… ." 47 CFR § 2.1(c).

[19] 47 CFR § 25.122.

[20] 47 CFR § 25.123.

[21] 47 CFR § 1.1156.

[22] *Assessment and Collection of Regulatory Fees for Fiscal Year 2020,* Report and Order and Further Notice of Proposed Rulemaking, 36 FCC Rcd 1731, 2020 WL 5247255 (2020) (*FY 2020 R&O and FNPRMI)*

[23] *Id.*

an 80/20 split between the GSO and NGSO regulatory fee categories, respectively.[24] The amount to be collected by the space station and earth station regulatory fee categories, divided by the projected number of units, determines the fee rate. There are several space station regulatory fee categories – GSO, NGSO "other," NGSO "less complex," and small satellites – and each of these regulatory fee categories has its own respective FTE allocation percentage to determine the fee rate. The small satellite fee rate is calculated by taking the average of the calculated fee rate for space stations in the NGSO "other" and NGSO "less complex" categories. The average fee rate is then multiplied by 5% (1/20) and rounded to the nearest $5 to determine the small satellite fee rate. The small satellite fee rate is then multiplied by the number of small satellite units, and the amount derived is divided by an 80/20 split and reduced from the target goals of NGSO-Other and NGSO-Less Complex, respectively. After reducing the NGSO "other" and NGSO "less complex" target goal amounts, the fee rates for both of these NGSO regulatory fee categories are re-calculated (dividing the revised target goal by its respective unit count) to reflect a slightly lower fee rate.

10. The units of assessment for GSO and NGSO space station regulatory fee categories differ in that the fee for Space Stations (Geostationary Orbit) is assessed per satellite in geostationary orbit, whereas the fee assessed for Space Stations (Non-Geostationary Orbit), either "less complex" or "other," is per "system" of satellites,[25] with no limit on the number of satellites per system. Fees for Space Stations (Small Satellites) are assessed per license/call sign, which can include up to 10 satellites or spacecraft.[26] This means that the unit of regulatory fees for GSO space stations is a single satellite, whereas the unit of regulatory fees for NGSO space stations can include tens, if not thousands, of satellites. Thus, although the single highest regulatory fee for space stations for FY 2023 is $347,755 for Space Stations (Non-Geostationary Orbit) – Other, this fee reflects the regulatory burden associated with the licensing and oversight of numerous space stations in the system, usually subject to processing rounds, complex spectrum sharing arrangements, and providing global coverage. By contrast, the per unit fee for Space Stations (Geostationary Orbit) for FY 2023 is lower at $117,580, but an operator providing global coverage may be paying regulatory fees on multiple space stations in geostationary orbit, which could result in annual regulatory fee payments by a single fee payor in aggregate far greater than the regulatory fee for Space Stations (Non-Geostationary Orbit) – Other providing similar services and coverage.[27] Earth station regulatory fees are assessed "per license or registration,"[28] and each license or registration may include a single earth station, or multiple earth stations.

11. In addition, regulatory fees are assessed solely on "operational" space stations.[29] A space station is considered to be operational when the operator reports under the Commission's reporting

[24] In 2019, the Commission sought comment on a proposal to examine the allocation of FTEs among GSO and NGSO space and earth station operators. *Assessment and Collection of Regulatory Fees for Fiscal Year 2019*, Report and Order and Further Notice of Proposed Rulemaking, 34 FCC Rcd 8199, 2019 WL 4072476 at *23, para. 67 (2019) (*FY 2019 Report and Order and FNPRM*). For FY 2019, the annual regulatory fee per unit for GSO space stations was $159, 625, and the comparable fee per unit for NGSO space stations was $154,875. *FY 2020 R&O and NPRM*, 35 FCC Rcd at 4993, para. 39.

[25] Regulatory Fees Fact Sheet: FY 2022 Regulatory Fees – International and Satellite Services (Sept. 2022) at 2,3.

[26] *Id.* at 3.

[27] As an example, we calculate that one GSO fee payor was assessed fees for 48 space stations in geostationary orbit for FY 2023, for a total regulatory fee assessment of $5,643,840.

[28] Regulatory Fees Fact Sheet: FY 2022 Regulatory Fees – International and Satellite Services (Sept. 2022) at 2 (explaining fee calculation is "per license or authorization").

[29] *Id.* at 2-3 (stating that the fee calculation for GSO space stations is "per operational station in geostationary orbit" and that the fee payment for NGSO space stations is required upon commencement of operation of a system's first satellite); *see infra*, section III.B.6 (explaining that the origin for assessing regulatory fees on space stations when they become operational, rather than when authorized, was the statutory text of section 9 of the Act from 1993, which has subsequently been deleted by Congress).

requirements for space stations that the space station or stations have been successfully placed into orbit and that operations conform to the terms and conditions of the space station authorization.[30] Similarly, if an earth station's license limits its operational authority to a particular satellite system, a regulatory fee payment is not due until the first satellite in that system becomes operational.[31]

12. For FY 2023, the number of units for the earth station fee category was 2900.[32] The number of units for Space Stations (Geostationary Orbit) was 136; the number of units for Space Stations (Non-Geostationary Orbit)—Other was nine; the number of units for Space Stations (Non-Geostationary Orbit)—Less Complex was six; and the number of units for Space Stations (Small Satellites) was seven.[33] These unit counts and fees resulted in a total expected regulatory fee revenue of $21,656,110 from space and earth station payors for FY 2023, which is the sum of $1,667,500 expected to be paid by earth station payors (7.69% of all space and earth station regulatory fees), $15,990,880 expected to be paid by Space Stations (Geostationary Orbit) (73.84%), $3,129,795 expected to be paid by Space Stations (Non-Geostationary Orbit) – Other (14.45%), $782,430 expected to be paid by Space Stations (Non-Geostationary Orbit) – Less Complex (3.61%), and $85,505 expected to be paid by Space Stations (Small Satellites) (0.39%).[34]

III. DISCUSSION

A. Space Bureau FTEs

13. Pursuant to section 9(d) of the Communications Act, the Commission's methodology for assessing regulatory fees must "reflect the full-time equivalent number of employees within the bureaus and offices of the Commission, adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities."[35] We first set forth the anticipated number of full-time equivalent number of employees, or FTEs, that will be in the new Space Bureau for purposes of assessing regulatory fees for FY 2024. The Commission previously anticipated that the changes in the satellite industry, which led to the reorganization of the International Bureau into the Space Bureau and the Office of International Affairs, might result in a larger number of FTEs devoted to space and earth station licensing, regulation, industry analysis, and oversight due to increased regulatory complexity that resulted from technological changes in the industry.[36] Accordingly, the Commission stated that it would closely review the Space Bureau and Office of International Affairs FTEs to determine the appropriate number of FTEs in each entity as a result of the reorganization and how they will be apportioned among the different services.[37]

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[30] Regulatory Fees Fact Sheet: FY 2022 Regulatory Fees – International and Satellite Services (Sept. 2022) at at 3. *See also* 47 CFR § 25.121(d).

[31] Regulatory Fees Fact Sheet: FY 2022 Regulatory Fees – International and Satellite Services (Sept. 2022) at 1.

[32] *FY 2023 R&O,* 2023 WL 5197492 at *47, Appendix B. The number of earth station units is based on International Bureau licensing data and actual FY 2022 payment units. *Id.* 2023 WL 5197492 at 48, Appendix D.

[33] *FY 2023 R&O,* 2023 WL 5197492 at *47, Appendix B. The number of GSO and NGSO space station units is based on International Bureau licensing data and actual FY 2022 payment units. *Id.* 2023 WL 5197492 at 48, Appendix D.

[34] *FY 2023 R&O,* 2023 WL 5197492 at *47, Appendix B.

[35] 47 U.S.C. § 159(d).

[36] *FY 2023 R&O,* 2023 WL 5197492 at *22, para. 72.

[37] *FY 2023 R&O,* 2023 WL 5197492 at *22, para. 72. In addition, Intelsat previously observed that it would be immensely helpful for the Commission to provide as much information and guidance as possible regarding the reallocation of FTEs located in the International Bureau to the Space Bureau and Office of International Affairs. *Id.* at 22, n.127.

14. Our Human Resources Management office provided initial data identifying 54 FTEs in the Space Bureau to be counted for FY 2024. We anticipate that these FTEs will be categorized as direct FTEs, with the exception of a small number of FTEs that work exclusively, or nearly exclusively, on administrative activities, with the staff of the Office of International Affairs on covering ITU World Radiocommunications Conference (WRC) agenda items,[38] or with the staff of the Office of Engineering & Technology on experimental licenses involving space or earth stations. We expect such FTEs to be categorized as indirect FTEs, since such work does not focus on the oversight and regulation of a specific category of regulatory fee payors, but instead benefits the Commission, the telecommunications industry, or the public as a whole, or in the case of work done on experimental licenses, is in furtherance of licenses that are not subject to a regulatory fee.[39] We also anticipate that a small number of FTEs from the Office of Economic and Analytics and the Public Safety and Homeland Security Bureau will be attributed as direct FTEs to the Space Bureau.[40] For the sake of efficiency, we will make our final proposals regarding the Space Bureau's total share of all Commission direct FTEs, as part of a notice of proposed rulemaking to be released at a later date for the Commission-wide assessment of regulatory fees for FY 2024.

15. Nonetheless, we anticipate that the number of direct FTEs in the Space Bureau for FY 2024 will be greater than the 28 direct FTEs that were allocated to the International Bureau for FY 2023.[41] Based on initial estimates, the Space Bureau FTEs could account for 10.76% of all Commission direct FTEs for FY 2024, compared with the International Bureau accounting for 7.77% in FY 2023.[42] We also expect that space and earth station payors will pay significantly more in regulatory fees in FY 2024 than in FY 2023. This is chiefly because we anticipate there will be more direct FTEs in the Space Bureau attributable to space and earth station fee payors than there were in the International Bureau, due to the increased regulatory complexity and oversight required, which will result in a larger percentage of overall regulatory fees being allocated to the Space Bureau, assuming there is no offsetting increase in the number of FTEs in other core bureaus and offices. Accordingly, there is increased importance in examining how FTEs are apportioned among the categories of Space Bureau fee payors to ensure that the fee apportionment methodology is administrable, fair, and sustainable.

B. Space Station Fee Proposals

1. Allocation between GSO and NGSO Space Stations

16. If the existing methodology for assessing regulatory fees for space stations is maintained, we propose to change the allocation of the regulatory fees between GSO and NGSO fee payors to reflect more accurately the apportionment of current FTE work between these two classes of regulatory fee

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[38] *FY 2023 R&O,* 2023 WL 5197492 at *23, para. 76. WRCs are held every three to four years. It is the job of WRC to review, and, if necessary, revise the Radio Regulations, the international treaty governing the use of the radio-frequency spectrum and satellite orbits. The Radio Regulations facilitate equitable access to and rational use of the natural resources of the radio-frequency spectrum and geostationary satellite orbits. They also ensure the availability of the frequencies provided for distress and safety purposes and assist in the prevention and resolution of cases of harmful interference between the radio services of different administrations. Further, the regulations facilitate the efficient and effective operation of all radiocommunication services and, where necessary, regulate new applications of radiocommunication technology. See ITU, Publications, *Radio Regulations 2020*, https://www.itu.int/hub/publication/r-reg-rr-2020/ (last visited Nov. 17, 2023).

[39] *Assessment and Collection of Regulatory Fees for Fiscal Year 2022*, Report and Order and Notice of Inquiry, 37 FCC Rcd. 10845, 2022 WL 4079045 at *30-32, paras. 76-80 (2022) (*FY 2022 R&O and NOI*).

[40] For FY 2023, 1 FTE in the Office of General Counsel and 2 FTEs in the Office of Economics and Analytics were attributed as direct FTEs to the International Bureau. *See FY 2023 R&O,* 2023 WL 5197492 at *14, para. 47.

[41] *FY 2023 R&O,* 2023 WL 5197492 at *23, para. 76 ("Based on our review of the FTEs in the International Bureau, we find that the allocation of direct and indirect FTEs should remain the same for FY 2023, i.e., 28 direct and 53 indirect FTEs.")

[42] *Id*. at *8, para 22.

payors. Under the existing allocation adopted in 2020, 80% of space station regulatory fees are allocated to GSO space station fee payors and 20% of the space station regulatory fees to NGSO space station fee payors.[43] For the reasons stated below, we propose to change this allocation to 60% of space station regulatory fees being allocated to GSO space station payors and 40% to NGSO space station payors.

17. In proposing this change in allocation, we employ the same methodology that was used by the Commission in 2020 in adopting the "80/20" split between GSO and NGSO space station fee payors.[44] Specifically, we focus on three factors that collectively reflect the Commission's oversight of GSO and NGSO operators: the number of applications processed, the number of changes made to the Commission's rules, and FTEs devoted to oversight of each category of operators.[45]

18. First, using the advanced search function of the International Communications Filing System (ICFS),[46] we identified all applications for space stations (service type: SAT) filed during the three most recent fiscal years (that is, FY 2021-2023) for both GSO (class of service: SSG) and NGSO (class of service: SSN).[47] A total of 526 distinct applications for space stations were filed during this time period, with 322 applications being filed for GSO space stations (61%) and 204 applications for NGSO space stations (39%). Thus, the number of applications received during this three-year period supports a larger allocation of FTE time to GSO fee payors than to NGSO fee payors, but in a narrower range than the current 80/20 split.

19. Second, using compiled data through a search of the FCC's Electronic Comment Filing System (ECFS)[48] and a cross check of items on the webpages of the FCC and the International Bureau/Space Bureau for the last three fiscal years, we identified docketed proceedings originating from the International Bureau's Satellite Division, or from the Space Bureau, and considered to the involvement of GSO and NGSO space stations in each proceeding. We analyzed the data to estimate whether a particular docketed proceeding involved GSO or NGSO space station payors, or both. We did not count docketed proceedings for transfer of control or assignment applications or other docketed proceedings that did not make changes to the Commission's rules. We included, however, a docketed proceeding to modify the conditions relating to the International Telecommunications Satellite Organization placed on the licenses of a GSO space station operator,[49] even though it was not a rulemaking proceeding, because it involved changes to the conditions on a large number of space station licenses that required significant FTE resources to process.

20. We identified 16 proceedings during FY 2021-2023, of which 8 substantively involved GSO space stations (50%)[50] and 12 substantively involved NGSO space stations (75%).[51] Accordingly,

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[43] *Assessment and Collection of Regulatory Fees for Fiscal Year 2020*, MD Docket No. 20-105, Report and Order and Notice of Proposed Rulemaking, 35 FCC Rcd. 4976, 4993, para. 41 (2020) (*FY 2020 R&O and NPRM*).

[44] *Id.*

[45] *Id.* The agency is not required to calculate its costs with "scientific precision." *Central & Southern Motor Freight Tariff Ass'n v. United States, 777 F.2d 722, 736 (D.C. Cir. 1985*). Reasonable approximations will suffice. *Id.; Mississippi Power & Light, 601 F.2d at 232; National Cable Television Ass'n v. FCC, 554 F.2d 1094, 1105 (D.C. Cir. 1976); 36 Comp. Gen. 75 (1956).*

[46] ICFS is available online at https://licensing.fcc.gov/myibfs/.

[47] Unlike the methodology used in 2020, we do not look at disposition of applications, only applications filed. The prior evaluation in 2020 did not reveal significant disparity in the number of applications received and disposed of. *FY 2020 R&O and NPRM*, 35 FCC Rcd at 4994, para. 42.

[48] ECFS is available online at https://www.fcc.gov/ecfs/search/search-filings.

[49] Request By Intelsat License LLC, As Debtor In Possession, For Modification Of License Conditions Relating To The International Telecommunications Satellite Organization, IB Docket No. 20-417.

[50] The proceedings that we identified as substantially involving GSO space stations were (1) IB Docket No. 20-330 (R&O); (2) IB Docket No. 20-417; (3) IB Docket No. 18-314 (R&O); (4) IB Docket Nos. 17-95 & 18-315 (R&O

(continued….)

the data presented suggests that there were more rulemakings substantively involving NGSO space stations than GSO space stations.[52] Similarly to our analysis in 2020, we note that, quantifying only the most recent rulemaking activities does not take into account past rulemakings that are of continued relevance to space stations and are administered by Commission FTEs either through licensing, interpretation and application of those rules in other proceedings, or in consultation with the space station regulatees. Thus, attributing a value to rulemaking activities directly is not an exercise in scientific precision, but rather an exercise in reasonable analysis and a mechanism to verify the other data we review below.[53] On balance, however, we tentatively conclude that these rulemaking data support a greater allocation of regulatory fees to NGSO space station payors than is currently the case.

21. Third, we considered whether we could examine FTE activities directly, but although there has been a change in the number of FTEs attributable to satellite regulatory activities due to the creation of the Space Bureau, it remains challenging to segregate the time spent by FTEs on work done on GSO versus NGSO matters. As was the case in the International Bureau,[54] staff time spent in the Space Bureau on authorizations and rulemakings may benefit both categories of satellite operations. Based on our experience and judgement, we estimate as closely as possible the relative percentage of FTEs that are attributable to benefitting either GSO or NGSO systems based on the factors above.

22. While there are issues of fact, law, engineering, and the physics of electromagnetic propagation that may be unique to GSO or NGSO space stations, many issues that Space Bureau staff work on are not segregable in a manner that is beneficial to clearly apportioning FTE time between GSO and NGSO regulatory fee categories. Taking all of the foregoing factors and data into consideration we tentatively conclude, however, that the GSO/NGSO ratio should be adjusted to reflect that GSO space stations derived roughly 60% of the benefit from the Commission's regulatory efforts and NGSO space stations derived roughly 40%. Accordingly, for FY 2024, we propose that GSO and NGSO space stations will be allocated 60% and 40% of space station regulatory fees, respectively. We seek comment on this tentative conclusion and proposal.

2. Allocation between NGSO – Other and NGSO – Less Complex

23. If the existing methodology for assessing regulatory fees for space stations is maintained, we propose to maintain the existing allocation of the regulatory fee burden between "Space Stations (Non-Geostationary Orbit) – Less Complex" and "Space Stations (Non-Geostationary Orbit) – Other." Currently, 20% of NGSO space station regulatory fees are allocated to Space Stations (Non-Geostationary Orbit) – Less Complex and 80% are allocated to Space Stations (Non-Geostationary Orbit) – Other fee payors.[55] As discussed earlier in this *Notice*,[56] the Commission has defined "less complex" NGSO

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and FNPRM); (5) IB Docket No. 18-313 (2nd R&O); (6) IB Docket No. 22-411 & 22-271 (NPRM); (7) IB Docket No 22-272 (NOI); and (8) IB Docket No. 22-411 & 22-271 (R&O & FNPRM).

[51] The proceedings that we identified as substantially involving NGSO space stations were: (1) IB Docket No. 16-408 (2nd R&O); (2) IB Docket Nos. 17-95 & 18-315 (R&O and FNPRM); (3) IB Docket No. 18-313 (2nd R&O and FNPRM); (4) IB Docket No. 21-456 (Order and NPRM); (5) IB Docket Nos. 22-411 & 22-271 (NPRM); (6) IB Docket No. 22-272 (NOI); (7) IB Docket Nos. 22-273 (R&O and NPRM); (8) IB Docket Nos. 22-271 & 18-313 (2nd R&O); (9) IB Docket No. 21-456 (NPRM); (10) IB Docket No. 23-22 (NPRM); (11) IB Docket No. 23-29 (R&O & FNPRM); and (12) IB Docket No. 21-456 (R&O and FNPRM).

[52] In identifying the involvement of GSO or NGSO space stations, some proceedings involved both GSO and NGSO space stations and, as a result, the total number of proceedings involving either GSO or NGSO space stations is greater than the 16 identified proceedings.

[53] *FY 2020 R&O and NPRM*, 35 FCC Rcd at 4994, para. 43.

[54] *Id.*, 35 FCC Rcd at 4994, para. 44.

[55] *Assessment and Collection of Regulatory Fees for Fiscal Year 2021*, MD Docket No. 21-190, Report and Order and Notice of Proposed Rulemaking, 36 FCC Rcd 12990, 13018-19, para. 58 (2021) (*FY 2021 R&O and NPRM)*.

systems as NGSO satellite systems planning to communicate with 20 or fewer U.S. authorized earth stations that are primarily used for EESS and/or AIS.[57] The Commission has concluded that EESS systems are less burdensome to regulate than other types of services when the systems plan to communicate with 20 or fewer earth stations.[58] NGSO satellite systems outside of this definition are included in the NGSO "other" fee category, unless they qualify as "small satellites" under Commission rules and are included in the regulatory fee category for small satellites.

24. We tentatively conclude that there have not been any significant changes to the amount of FTE burdens allocated between these two fee categories since the "20/80" split of regulatory fees between NGSO "less complex" and NGSO "other" subcategories was adopted in 2021.[59] As was the case in 2021, we consider our experience and analysis of the time that FTEs in the International Bureau and the Space Bureau devote to oversight and regulation of "less complex" and "other" NGSO systems.[60] Specifically, now – as then - we consider the number of applications processed, the number of changes made to the Commission's rules, and the number of FTEs working on oversight for each category of operators.[61] This methodology is the same as used for determining the allocation of regulatory fees among GSO and NGSO space station fee payors. In evaluating the FTE time devoted to the "less complex" and "other" subcategories, we consider the adjudicatory role of the Commission in connection with different types of NGSO systems, which is typically more intensive for those systems authorized as part of processing rounds.[62] We also consider the number of rulemakings over the last three fiscal years, as well as current rulemakings, and which types of NGSO systems are implicated in those rulemaking activities.[63]

25. Based on our experience and judgement, we estimate as close as possible the relative percentage of FTE time attributable to oversight of each subcategory of NGSO space stations. Our examination does not reveal any rulemaking proceedings in the last three fiscal years that are specific to EESS space stations eligible for the "less complex" NGSO subcategory, but did reveal several rulemakings in that same period specific to NGSO "other" systems.[64] Similarly, an examination of

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[56] *See supra*, section II.B.

[57] *FY 2021 NPRM,* 36 FCC Rcd at 8583-84, 7.

[58] *FY 2022 R&O and NOI,* 37 FCC Rcd., 2022 WL 4079045 at *11, para. 27, citing *FY 2021 Report and Order*, 36 FCC Rcd at 13014, paras. 50-57. In adopting the 20 or fewer proxy for the "less complex" NGSO space station fee category, the Commission clarified that it is the number of planned earth stations in the system design provided in the NGSO space station application that is relevant, since some more complex NGSO systems may communicate with a small number of earth stations during the initial operational phases, but actually intend to communicate with a significantly larger set of earth stations. *Id.*

[59] *FY 2021 R&O and NPRM*, 36 FCC Rcd at 13018-19. para. 58.

[60] *Id.*

[61] *Id.*, 36 FCC Rcd at 13019-20, para. 60.

[62] *Id*.

[63] *Id*.

[64] For example, the following proceedings appear specific to NGSO "other" systems: (1) Update to Parts 2 and 25 Concerning Non-Geostationary, Fixed-Satellite Service Systems and Related Matters (IB Docket No. 16-408); (2) Amendment of Parts 2 and 25 of the Commission's Rules to Facilitate the Use of Earth Stations in Motion Communicating with Geostationary Orbit Space Stations in Frequency Bands Allocated to the Fixed Satellite Service et al.; Facilitating the Communications of Earth Stations in Motion with Non-Geostationary Orbit Space Stations (IB Docket No. 17-95; IB Docket No. 18-315); (3) Revising Spectrum Sharing Rules for Non-Geostationary Orbit, Fixed-Satellite Service Systems Revision of Section 25.261 of the Commission's Rules to Increase Certainty in Spectrum Sharing Obligations Among NGO FSS Systems (IB Docket No. 21-456); (3) Amendment of Parts 2 and 25 of the Commission's Rules to Enable NGSO Fixed-Satellite Service (Space-to-Earth) Operations in the 17.3-17.8 GHz Band (IB Docket No. 20-330; IB Docket No. 22-273); and (4) Single Network Future: Supplemental Coverage from Space (GN Docket No. 23-65)

applications filed over the previous three fiscal years (FY 2021-2023) shows that 44 NGSO applications out of 204 NGSO applications were by systems categorized as NGSO "less complex" (22%).[65] Our consideration of activities engaged in by Commission staff and the time spent on oversight of different NGSO systems does not indicate any change from our consideration in 2021, which resulted in a determination that NGSO "other" were the majority beneficiaries of FTE efforts.

26. We recognize the considerable challenge of segregating the time spent by Space Bureau staff among the subcategories of NGSO space stations, nonetheless the considerations above support the tentative conclusion that more FTE time is spent on the NGSO "other" subcategory than on the NGSO "less complex" subcategory. The number of applications in the NGSO "less complex" subcategory received over the last three fiscal years supports a tentative conclusion that the relative regulatory burden of such "less complex" space stations remains consistent with the current 20% allocation.[66] We seek comment on this tentative conclusion.

27. We do not propose at this time to revisit the definition of "less complex" NGSO space stations, which has been adopted and affirmed over the course of several regulatory fee rulemaking proceedings.[67] As expressly recognized, however, we do not foreclose the possibility of designating other categories of NGSO systems as "less complex" systems in the future if our experience supports a finding that our regulatory work for such systems is significantly less than those for other NGSO systems.[68] Our experience to date has not supported such a designation for other types of NGSO systems, and we do not have a sufficient record to make proposals for such designations at this time.

3. Creation of Tiers of NGSO – Other

28. If the existing methodology for assessing regulatory fees for space stations is maintained, we propose to divide the existing regulatory fee subcategory of "Space Stations (Non-Geostationary Orbit) – Other" into two tiers: "Large Constellations" of more than 1,000 authorized space stations; and "Small Constellations" of 1,000 or fewer authorized space stations. Currently, there is a single subcategory for NGSO "other" space station systems, which assesses the same annual regulatory fee – $347,755 for FY 2023 – for all NGSO space station systems that are not categorized as "less complex" or "small satellites." NGSO space station payors have argued that this "one fee fits all" assessment is unfair, as it assesses the same regulatory fee on an NGSO system consisting of 100 space stations as the fee assessed for an NGSO system consisting of potentially 10,000 or more space stations.[69] The current single regulatory fee for all NGSO "other" space station payors resulted in requests by fee payors of smaller NGSO systems seeking to be assessed regulatory fees as NGSO "less complex" systems, even though the record at the time did not support a finding that the regulatory work for such systems was significantly less than other types of NGSO systems.[70] We use this proceeding to explore whether our

[65] The remaining NGSO applications were for NGSO Other (104), for systems categorized as small satellites (49), or for RPO, OOS, or OTV missions (7).

[66] In this regard, we note that comments in response to the notice of proposed rulemaking for assessing FY 2023 regulatory fees contended that the Commission should revisit the "20/80 split" between "less complex" and "other" NGSO space station fee payors and that the Commission's regulatory fee structure should "not remain stagnant" regarding the nature of "less complex" NGSO space station systems. *FY 2023 R&O* at para. 98.

[67] *FY 2023 R&O,* 2023 WL 5197492 at *30-32, paras.98-106 ; *FY 2022 R&O and NOI,* 37 FCC Rcd., 2022 WL 4079045 at *11, para. 28; *FY 2021 R&O and NPRM*, 36 FCC Rcd at 13014-18, paras. 50-57.

[68] *FY 2023 R&O,* 2023 WL 5197492 at *31, para. 103, citing FY 2021 NPRM, 36 FCC Rcd at 8588, para. 16.

[69] *See, e.g.*, Comments of Kinéis, MD Docket No. 22-301, at 4 (observing an "unacceptable result" that an NGSO space station system consisting of 4000 or more space stations is provisionally assessed the same regulatory fee as an NGSO space station system with a much smaller amount of space stations); Comments of Myriota Pty Ltd., MD Docket No. 20-105 at 1 (arguing that the Commission's "one-size-fits-all" approach to fees does not accurately reflect the costs of regulating or the benefits that accrue to parties from Commission action).

[70] See *FY 2023 R&O,* 2023 WL 5197492 at *30-32, paras. 98-106.

existing regulatory fee structure can be better tailored to the varying nature of NGSO systems and differing levels of licensing and regulatory oversight burdens required for these various systems, while maintaining a system that is fair, administrable, and sustainable.

29. The unit of assessment for Space Stations (Non-Geostationary Orbit), either "less complex" or "other," is "per system" of satellites.[71] This unit of assessment reflects the ability of applicants to apply for, and be authorized to operate, a "system" of NGSO space stations,[72] with no limit on the number of space stations per system. Each initial application for authority is granted under a single "call sign" as a regulatory identifier. In many cases the Commission has assessed a single regulatory fee for an NGSO system consisting of space stations requested and authorized under different call signs.[73] The assessment of regulatory fees for NGSO space stations on a "per system" basis extends back to the first time that the Commission assessed regulatory fees for "Low Earth Orbit (LEO) Satellite Systems" in 1996.[74] The choice of a "system" as the unit of assessment for LEO satellites was based in the original text of section 9 of the Act, which included a "Schedule of Regulatory Fees" that the FCC was required to assess and collect, until amended by the Commission. The Schedule of Regulatory Fees included fee categories for "Space Station (per operational station in geosynchronous orbit)" and "Space Station (per system in low-earth orbit)."[75] The Schedule of Regulatory Fees, however, was deleted from section 9 by the RAY BAUM's Act.[76]

30. The sole exception made to assessment of NGSO space station regulatory fees on a "per system" basis is for small satellites, for which the Commission adopted a separate regulatory fee category in which small satellites are assessed on a "per license/call sign" basis.[77] The Commission found that adopting the regulatory fee on a per-license basis would not only accurately reflect the increased oversight and regulation for these small satellite systems when an operator has multiple small satellite licenses,[78] but also it would be more efficient and administrable because it avoids potential complications

[71] Regulatory Fees Fact Sheet: FY 2022 Regulatory Fees – International and Satellite Services (Sept. 2022) at 2, 3.

[72] *See* 47 CFR §§ 25.103 (defining a "satellite system" as a "space system using one or more artificial earth satellites.") and 25.157(a) (specifying the procedures for considering license applications for "NGSO-like" satellite operation, which includes "[o]peration of any NGSO satellite system").

[73] As an example, the Commission assessed a single NGSO "other" regulatory fee for the SpaceX Ku/Ka-band system licensed under two separate call signs. *FY 2023 R&O,* 2023 WL 5197492 at *50, Appendix F. The Commission has similarly assessed a single NGSO "less complex" regulatory fee for Maxar License's "WorldView 1, 2 & 3, GeoEye" system licensed under two separate call signs, and for Spire Global's "LEMUR & MINAS" systems also licensed under two different call signs. *Id.*

[74] *Establishment and Collection of Regulatory Fees for Fiscal Year 1996*, Report and Order, 11 FCC Rcd 18774, 18791 para. 48 (1996). The Commission later changed the name of the fee category from "Space Station (low earth)" to "Space Stations (Non-geostationary)" because advances in satellite technology made possible medium and high orbit satellite systems operating in non-geostationary orbits. *See Assessment and Collection of Regulatory Fees for Fiscal Year 1998,* Report and Order, 12 Communications Reg. (P&F) 392 (F.C.C.), 1998 WL 320272 at *15, para. 56 (1998).

[75] *See, e.g.*, 47 USC §159(g) (1995).

[76] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2019*, Notice of Proposed Rulemaking, 34 FCC Rcd 3272, 3275, para. 7 (2019) ("In the RAY BAUM'S Act modifications, Congress deleted the obsolete schedule of regulatory fees codified in the former section 9(g) of the Act and directed the Commission to establish a new schedule of regulatory fees and to provide annual updates thereafter.") (citations omitted)

[77] Regulatory Fees Fact Sheet: FY 2022 Regulatory Fees – International and Satellite Services (Sept. 2022) at 2, 3.

[78] *FY 2021 R&O and FY 2022 NPRM,* 2022 WL 2045858 at *13, para. 37. In contrast, the Commission has observed that when traditional NGSO space station operators hold multiple licenses for a single NGSO system, the regulatory burden does not increase with the grant of each additional license, since traditional NGSO systems are substantially more complicated to regulate from the outset, such that additional authorizations create at most a nominal, if any, adjustment to the burden to regulate. *Id.*, 2022 WL 2045858 at *13, para. 38.

and additional FTE time spent in determining whether various sets of small satellites are part of the same system.[79]

31. In creating the separate fee categories of "less complex" NGSO space stations and small satellites operating in non-geostationary orbit, the Commission has recognized that not all NGSO space stations are the same, and that different NGSO space stations can be assessed different regulatory fees based on the differing amount of FTE regulatory work is devoted to them, consistent with the statutory obligations of section 9 of the Act. Accordingly, the default unit of fee assessment for NGSO space stations – the "system" – by itself does not indicate the amount of regulatory fees to be recovered from a particular NGSO space station payor. Instead, the Commission has used other factors as proxies for the amount of regulatory work required for a category of fee payors.[80] For "less complex" space stations, the Commission relied on the primary service to be provided (EESS or AIS) and the number if U.S.-licensed earth station planned for communications (20 or fewer) as proxies for other factors for determining whether a category of NGSO space station system involved less staff resources to license and regulate than NGSO space station "other" systems: whether processing rounds are required, whether the system will have a global presence, the range and intensity of spectrum needs, and the variety of frequency bands, technical issues, and services presented.[81]

32. We now seek to explore whether the number of space stations requested for an NGSO system could serve as a proxy for the Commission's regulatory burden, when combined with other factors that went into determining whether an NGSO system is, or is not, "less complex" for our regulatory fee assessment purposes. Does a greater number of space stations authorized per system equate to greater staff burdens to license and regulate, if the greater number of space stations per system also correlates to the other factors relevant to NGSO systems that do not qualify for inclusion in the NGSO space stations "less complex" subcategory (that is, they fall within the "other" NGSO fee category because they are subject to processing rounds, have a global presence, have significant spectrum needs, and present a variety of frequency bands, technical issues, and services)? If so, is it reasonable to assume that a greater number of space stations authorized per system would equate to greater amount of FTE time to license and regulate? Although the Commission has previously stated that number of space stations in an NGSO system does not always correspond to increased regulatory complexity,[82] those statements were based on consideration of the regulatory impact of the number of space stations in isolation, not when considered in connection with the other factors relevant to non-"less complex" NGSO space station systems.[83] Is it a

[79] *Id.,* 2022 WL 2045858, at *13, para. 37. In addition, the Commission found that applying the fee on a per-license basis would be consistent with statutory obligations to recover its costs while taking into account differences between the regulatory framework for small satellites compared to other space stations. *Id.*

[80] For example, in the instance of small satellites, the Commission looked at multiple factors, including the streamlined processing procedures used for licensing and regulating small satellites. *Id.*, 2022 WL 2045858 at *11, para. 33 ("This fee methodology simultaneously accounts for the characteristics of small satellites and the relatively few work hours anticipated to be spent by International Bureau FTEs in regulating them compared to FTE time spent on non-small satellite NGSO space stations, since small satellites have streamlined processing, often limited operational capabilities, spectrum compatibility requirements, and can only be licensed for a period of up to six years.")

[81] *FY 2023 R&O,* 2023 WL 5197492 at *31, paras. 102-103.

[82] *FY 2021 R&O and NPRM*, 36 FCC Rcd at 13018, para. 57 ("Our cumulative experience to date is that the number of satellites in a constellation is not the key driver of the amount of FTE time devoted to regulatory oversight of such constellations"); *FY 2021 NPRM,* 36 FCC Rcd at 8589, para. 19 ("It is not our experience that the number of satellites (or satellite mass) is the key driver of system complexity and regulation. For example, an NGSO system with a small number of satellites, authorized as part of a processing round to operate in the FSS to provide broadband to user terminals in a particular area, will receive significant continuous benefits reasonably related to our regulatory work.")

[83] We note that there has been a significant increase in requests for NGSO systems over the last 10 years.

reasonable expectation that, if an NGSO space station system is not found to be "less complex" for regulatory fee assessment purposes, the amount of FTE resources needed to license and regulate that system increases as the number of space stations increases because, on average, the greater the number of space station considered, the greater the amount of spectrum resources required for the system, the greater complexity of spectrum sharing with other systems, the more complicated the orbital debris mitigation plan will be, and the greater number of earth stations required to support the space station system?[84] We seek comment on this expectation.

33. Accordingly, if we maintain the existing space station regulator fee methodology, we propose to transform the existing "Space Stations (Non-Geostationary Orbit) – Other" category into a two-tiered category, with one tier for "Large Constellations" and one tier for "Small Constellations." The proposal to create tiers of NGSO space station regulatory fees is not new, being first made in 1999.[85] As recently as 2021 and 2020, the Commission was presented with proposals to assess NGSO space station regulatory fees based on the total number of satellites deployed, but it declined to do so because the evidence in the record at the time was insufficient to establish different fees for different sized NGSO space station systems.[86] We propose to use this *Notice* to establish such a record to evaluate the appropriateness of adopting regulatory fees for large and small NGSO systems. Although we acknowledge that it is inherently challenging to establish the dividing line between such tiers, we propose 1,000 space stations as the dividing number for large and small systems. We seek comment on this proposal. Is 1,000 the right number, or is there a different number, greater or less than 1,000, that better reflects the delineation in the amount of FTE burdens to license and regulate NGSO systems of variable sizes (for example, 500 space stations)?

34. If we adopt the tiered approach for the NGSO space station "other" category under our existing methodology, we propose to create two tiers, rather than three or more tiers, in order to facilitate administrability, because there are relatively few units within the existing NGSO space station "other" category, and dividing that category into many tiers with a narrow range of space stations per tier may result in only one payor being responsible for the entire cost of the tier, or there being no payor for a particular tier in a fiscal year, shifting the costs of that tier to payors in other tiers. Importantly, it may be harder to justify the difference in FTE burdens when tiers are more narrowly defined. We tentatively conclude that a two-tiered approach will not only appropriately account for differences in regulatory burdens between NGSO space station systems of different sizes, but also provide a measure of consistency from one year to the next in the number of payors and the per unit fee. We seek comment on the proposal to use two tiers in our approach and our tentative conclusion that a two-tiered approach will result in greater administrability than a multi-tiered approach. We also propose that our tiered approach be based on the number of authorized space stations in a system, rather than the number of space stations that are operational in a system at the moment that regulatory fees for a particular fiscal year are assessed.

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[84] This is not to say that an NGSO system consisting of a single satellite cannot present significant orbital debris-related risks, depending on the design and proposed operations, that require substantial FTE resources to address, which is why the Commission declined to adopt the number of space stations as the sole or main driver of whether a NGSO space station system is "less complex" to regulate. *FY 2021 R&O and NPRM*, 36 FCC Rcd at 13018, para. 57.

[85] *Assessment and Collection of Regulatory Fees for Fiscal Year 1999*, MD Docket No. 98-200, Report and Order, 14 FCC Rcd. 9868, 9884-85, paras.45-46 (1999) (noting a proposal from a commenter to create a new regulatory fee category for small NGSO constellations of up to five satellites per system, and stating that the concept of establishing separate categories for small and large constellations may warrant consideration, even though further study and more operational systems would be needed before the Commission could properly evaluate its appropriateness).

[86] *See FY 2021 NPRM,* 36 FCC Rcd at 8589, para. 19; *FY 2020 R&O and FNPRM*, 2020 WL 5247255 at *16, para. 50.

This proposal is consistent with our proposal below that all regulatory fees be assessed on authorized, rather than operational, space and earth stations.[87] We seek comment on this proposal.

35. We propose to divide the total NGSO – "other" fees between the two subcategories on a 50/50 basis (that is, half of the NGSO "other" fees paid by "large constellations" and half paid by "small constellations"). We acknowledge the difficulty in allocating regulatory fee burdens between "large constellations" and "small constellations," because staff in the Space Bureau may work on both types of constellations and our rulemaking proceedings often do not differentiate between large and small constellations. We accordingly seek comment on our proposal to divide the total NGSO – "other" fees between small and large constellations on a 50/50 basis. If the fees are not divided on a 50/50 basis, what would be a more appropriate division and why? We note that although the total costs would be allocated evenly between "large" and "small" constellations, we expect that there will be a greater number of units in the "small constellations" tier than the "large constellations" tier, and that that number of units in the "small constellations" tier will increase in the future, thereby resulting in a smaller per payor fee for the "small constellations" tier for future years. By contrast, we expect that there will be only two to three payors in the large constellation tier for FY 2024, and that it is unlikely that that number will increase substantially in the foreseeable future. We seek comment on this proposed division and our expectations.

36. We find that the proposal to create fee categories for NGSO large and small constellations would be an amendment as defined in section 9(d) of the Act.[88] Such an amendment must be submitted to Congress at least 90 days before it becomes effective pursuant to section 9A(b)(2).[89]

37. We also seek comment on other possible proxies that might reasonably equate with the share of FTE burdens associated with each system within the "Space Stations (Non-Geostationary Orbit) – Other" category, as alternatives to the 50/50 two-tiered approach proposed herein. Other possible proxies include assessing regulatory fees for NGSO space station "other" using any of the following individual metrics: (1) per space station; (2) per subscriber; (3) per unit of spectrum authorized; (4) per class of service provided; and (5) per unit of on-orbit mass. We describe each possible proxy below.

38. *Per Space Station*. Under this metric, the overall FTE burden of a NGSO "other" system would be proxied on the basis of the number of authorized space stations in the system, without utilizing a tiered system. The fee would be assessed on a per space station basis, with the total fee amount attributable to Space Stations (Non-Geostationary) – Other being divided by the number of space stations authorized in that category to establish a per space station fee unit. Each space station in the system would add incrementally to the amount of regulatory fees paid by the system. This alternative avoids the situation where a system may exceed the number of space stations eligible for the small constellation tier by only a few space stations, which will result in the system paying the substantially higher fee for large constellations. The alternative potentially presents the situation, however, where systems with a very large number of authorized space stations (for example, 20,000 or more) could effectively end up paying all, or nearly all, the regulatory fees for the NGSO "other" category, since the number of space stations in that system could be more than all other systems combined in that category.[90] Such an outcome may not accurately reflect the FTE burdens imposed by the various payors of the NGSO space stations "other" category by substantially underrepresenting the amount of FTE resources spent on all other fee payors in the NGSO "other" category. Could this concern be addressed by setting a "cap" or "ceiling" on the

[87] *See infra*, section III.B.v.

[88] 47 U.S.C. § 159(d).

[89] 47 U.S.C. § 159A(b)(2).

[90] We note it could also result in some payors in the NGSO space station "other" small constellation subcategory eventually paying less in regulatory fees than payors in the NGSO space stations "less complex" category if the addition of units in the "small constellation" subcategory outpaces the addition of units in the "less complex" category.

number of authorized space stations for which regulatory fees would be assessed or having a decreasing fee for each additional space station? Although the Commission has previously disagreed with proposals to assess space station regulatory fees on a per space station basis,[91] we nonetheless seek comment on the use of number of space stations as an alternative metric for assessing the regulatory fee burden for each NGSO "other" system.

39. *Per Subscriber*. Under this alternative, regulatory fees for NGSO space stations "other" would be assessed on a per subscriber basis, possibly using tiers of subscribers. We observe, however, that not all NGSO systems have subscribers, and we do not currently collect information regarding subscriber numbers. Thus, to utilize subscriber information a review of an additional information collection may be required in order to assess regulatory fees on this basis.[92] The time required to obtain the approval and collect the information would make the possibility of assessing fees on this basis for FY 2024 unlikely. We also expect that it would require substantial FTE resources to calculate and assign fees for individual systems based on yearly subscriber numbers, which could in turn result in more FTEs being attributed to space station systems for regulatory fee recovery purposes.[93] Furthermore, we seek comment on whether subscriber numbers are considered confidential by regulatees and, if so, how would that impact this approach?.

40. *Per Unit of Spectrum Authorized.* An alternative proxy for the amount of FTE burden associated with a system in the NGSO space station "other" category could be the amount of spectrum resources authorized for the system. Systems that involve the use of a large amount of spectrum can require more FTE resources to license and regulate due to the likelihood of the increased need to coordinate with, and to address the interference concerns of, other spectrum users, compared to systems with smaller spectrum requirements. Thus, regulatory fees for NGSO space stations "other" could be assessed per unit of authorized spectrum, for example, per megahertz of spectrum authorized for the system. We observe that the distinction between NGSO "other" and NGSO "less complex" already takes into account spectrum usage and ease of coordination in delineating between these two fee categories, so it is unclear what further delineation could be made within the NGSO space station "other" category based on authorized spectrum. In addition, not all spectrum is uniform in its complexity to license and regulate. For example, it may be easier to license and regulate an NGSO system operating in 500 megahertz of spectrum allocated to NGSO space station use on a primary basis than licensing and regulating an NGSO system operating in 20 megahertz of spectrum operating on a secondary or non-interference basis.[94] We note that the Commission has previously found that total bandwidth is not

[91] *FY 2021 R&O and NPRM*, 36 FCC Rcd at 13018, para. 57 ("Our cumulative experience to date is that the number of satellites in a constellation is not the key driver of the amount of FTE time devoted to regulatory oversight of such constellations"); *FY 2021 NPRM,* 36 FCC Rcd at 8589, para. 19 ("It is not our experience that the number of satellites (or satellite mass) is the key driver of system complexity and regulation.")

[92] To fulfill its responsibilities under the law, the FCC must often ask its applicants or licensees to fill out forms, maintain records, or disclose information to others. These are known as information collections. The Paperwork Reduction Act (44 U.S.C. Part 35) requires us to submit our information collections for review by the Office of Management and Budget (OMB). We separately submit each of our information collections for OMB review. *See* https://www.fcc.gov/general/paperwork-reduction-act-pra-and-fcc-information-collections.

[93] The Commission reached the same determination previously when it considered an analogous proposal to assess regulatory fees for NGSO space station systems based on market share, which is similar to the subscriber proxy described above. *See FY 2021 NPRM,* 36 FCC Rcd at 8589, para. 19.

[94] Under the Commission's rules, stations operating on secondary basis "(i) Shall not cause harmful interference to stations of primary services to which frequencies are already assigned or to which frequencies may be assigned at a later date; (ii) Cannot claim protection from harmful interference from stations of a primary service to which frequencies are already assigned or may be assigned at a later date; and (iii) Can claim protection, however, from harmful interference from stations of the same or other secondary service(s) to which frequencies may be assigned at a later date." 47 CFR § 2.104(d)(3).

consistently indicative of the complexity of NGSO regulation.[95] We seek comment, however, on this alternative proxy and whether there any basis to question the Commission's previous conclusion that total bandwidth does not consistently reflect the complexity of NGSO regulation.

41. *Per Class of Service Provided*. Commenters in previous regulatory fee assessment proceedings have suggested that the type of services provided by NGSO space station systems could be used as a proxy for the amount of FTE resources dedicated to licensing and regulating such systems.[96] In addition to the orbit used (GSO or NGSO), space stations are regulated by the type of service that they provide, for example mobile-satellite service (MSS), fixed-satellite service (FSS), direct broadcast satellite service (DBS), and satellite digital audio radio service (SDARS). The Commission has previously found that the type of service primarily being provided (EESS and/or AIS) was a relevant factor in determining whether an NGSO system was "less complex" for purposes of regulatory fee assessments, when combined with another factor (the number of earth stations authorized by the United States with which the system plans to communicate).[97] The Commission has not found, however, that other types of satellite services warrant a determination that a NGSO system is "less complex" for regulatory fee purposes, although it did not rule out the possibility of doing so if the record supported such a finding.[98] Although we do not propose that any particular additional service be considered as a factor that an NGSO system is "less complex" for regulatory fee purposes, it may be possible to use the type of service provided as a proxy for FTE resources to delineate additional fee subcategories within the "Space Stations (Non-Geostationary Orbit) – Other" category. We seek comment on this possibility. Comments should focus on the specific licensing and regulatory factors that differentiate the services and explain how the Commission would be able to allocate FTE time among these services. Comments should also address the administrability and sustainability of subcategories of regulatory fees in the NGSO space station "other" category based on the services provided by the space stations.[99] For example, if a space station is authorized to provide multiple types of services, such as both FSS and MSS, how would it be determined which regulatory fee subcategory it belongs to? If it is determined based on the primary service that is authorized for a system, how should the Commission determine which service is primary? Would fee categories based on the service provided be relatively stable from year to year, or is it possible that there could be substantial changes in the number of fee payors in a service category year to year? Would every single service provided by a system need to be taking into account, or just the primary service? Would substantial FTE resources be needed to calculate and assign fees for individual systems based on primary services provided, which could in turn result in more FTEs being attributed to space station systems for regulatory fee recovery purposes?

42. *Per Unit of On-Orbit Mass*. Comments in previous years' regulatory fee assessment proceedings have suggested to use the mass of space stations as one proxy for an NGSO system's

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[95] *FY 2021 R&O and NPRM*, 36 FCC Rcd at 13017, para. 56; *FY 2021 NPRM,* 36 FCC Rcd at 8589, para.19.

[96] *FY 2023 R&O,* 2023 WL 5197492 at *32, para. 104 (observing a proposal that the Commission adopt a rulemaking proceeding to develop the record to separate the various systems in the NGSO space station "other" category into more homogenous categories that group providers together with others that provide similar types of services).

[97] *FY 2021 NPRM,* 36 FCC Rcd at 8585, para. 11.

[98] *FY 2021 NPRM*, 36 FCC Rcd at 8588, para. 16 ("We do not, however, foreclose the possibility of designating other categories of NGSO systems as "less complex" systems in the future if our experience supports a finding that our regulatory work for such systems is significantly less than those for other NGSO systems.")

[99] We note that the Commission has previously disagreed with formula-based proposals that present multiple tiers of regulatory fee subcategories for NGSO space stations based on multiple factors, including the type of services being provided. *See FY 2021 NPRM,* 36 FCC Rcd at 8589, para. 19 (finding such proposals overly-complex and requiring the additional expenditure of Commission resources to calculate and assign fees for each individual system).

complexity.[100] This suggestion is similar to our proposal above to use of number of authorized space stations in an NGSO system as a proxy for regulatory burdens of systems in the NGSO space station "other" category, but considers the mass of the space stations in an NGSO system rather than the number of space stations. Thus, an NGSO system with 10 space stations with a mass of 1,000 kilograms each would pay more in regulatory fees than a system of 100 space stations with a mass of 10 kilograms each. Under this proposal, it is assumed that space station mass is a proxy for other factors relevant to the amount of FTE work required for the licensing and regulation of the system, such as how much spectrum the system will use, the number of earth stations that the space stations will communicate with, and the complexity of a system's orbital debris mitigation plan.[101] Although the Commission has previously found that space station mass is not a key driver of NGSO system complexity,[102] we seek comment on using space station mass as a proxy for the regulatory burden involved with an NGSO system. Is it correct that regulatory complexity increases in proportion to the mass of the space stations in an NGSO system? If so, should mass be assessed on a per space station or on an aggregate basis for all space stations in the system? Would mass be addressed on a "wet" basis (that is, including the mass of fuel and other consumables) or "dry" basis (that is, the mass of the space station without fuel and consumables)? Which basis – wet or dry – would more accurately reflect regulatory burdens for that system? Furthermore, the Space Bureau no longer collects information regarding the mass of a space station as part of the technical information required as part of an application for a space station authorization or a petition for U.S. market access.[103] Thus, to utilize this information in assessing regulatory fees may require a review of an additional information collection under the Paperwork Reduction Act. We also observe that the time required for such review, together with the time needed to collect the information, would rule out the possibility of assessing fees on this basis for FY 2024. We seek comment on the consequences of this observation. Although the mass of a space station may be a factor disclosed in the orbital debris mitigation plan provided as a part of a space station application, the spacecraft mass is disclosed for the specific purpose of that analysis, and it is not clear whether it should be relied on for the purpose of assessing regulatory fees. Even if it may be possible to obtain information about the mass of space stations from third party sources, we question whether it is reasonable to rely on information obtained from such sources rather than from the fee payors themselves. We seek comments on these issues. In addition, would substantial FTE resources be needed to calculate and assign fees for individual systems based on on-orbit mass, which could in turn result in more FTEs being attributed to space station systems for regulatory fee recovery purposes?

43. We find that the creation of fee categories for "other" NGSO space stations based on any of these other possible proxies would be an amendment as defined in section 9(d) of the Act.[104] Such an

[100] *See, e.g.,* Comments of Kinéis, MD Docket No. 23-159 at 16 (suggesting the Commission adopt a multi-tiered approach to NGSO regulatory fees derived from analysis of factors such as the number of satellites, and specific satellite metrics such as orbital altitude, mass and lifetime, as well as the scope and types of earth station deployments).

[101] This possible proxy appears to assume that the mass of equipment and antennas on a space station becomes greater as the amount of spectrum used in a system increases, and that a high aggregate mass of an NGSO system would also reflect a large number of space stations that must be coordinated and require a greater level of review for orbital debris mitigation plans.

[102] *FY 2021 NPRM,* 36 FCC Rcd at 8589, para. 19 ("It is not our experience that the number of satellites (or satellite mass) is the key driver of system complexity and regulation.")

[103] The Commission eliminated the requirement to specify spacecraft weight and dimensions as part of a space station application in 2013. *See Comprehensive Review of Licensing & Operating Rules for Satellite Services*, 28 FCC Rcd. 12403, 12432, para. 89 (2013).

[104] 47 U.S.C. § 159(d).

amendment must be submitted to Congress at least 90 days before it becomes effective pursuant to section 9A(b)(2).[105]

4. Small Satellites

44. We seek comment on a proposal to set the regulatory fee for "Space Stations (per license/call sign in non-geostationary orbit) (47 CFR part 25) (Small Satellite)" for FY 2024 and future fiscal years at the level set for FY 2023 ($12,215), with only an annual adjustments to reflect the percentage change in the FCC appropriation, unit count, and FTE allocation percentage from the previous fiscal year. As explained earlier in this *Notice*,[106] the small satellite fee rate is calculated by taking the average of the calculated fee rate for space stations in the NGSO other and NGSO "less complex" categories, multiplying this average by 5% (1/20) and rounding it to the nearest $5. The small satellite fee rate is then multiplied by the number of small satellite units and deducted from the NGSO share of space station regulatory fees. This remaining amount is then divided between NGSO "other" and NGSO "less complex" based on an 80/20 split and reduced from the target goals of NGSO "other" and NGSO "less complex" respectively.[107] Because the small satellite fee is based on the fees assessed for NGSO other and NGSO "less complex" categories, the increased fees expected for these two categories would lead to greatly increased fees for the small satellite regulatory fee category beginning in FY 2024.

45. Our examination reveals that the number of applications, rulemaking procedures, and FTE staff working on small satellite matters has not increased greatly since the original methodology of assessing regulatory fees for small satellites was adopted. To the contrary, we expect that the additional FTE resources allocated to the Space Bureau as a result of the reorganization of the International Bureau are not intensively involved in the licensing and regulatory oversight of small satellites, so that the overall percentage of FTE burden for small satellites may be less than the 1/20th burden of NGSO space stations. We seek comment on this expectation and whether it supports the reduction of fees paid by small satellites. In addition, the proposals made in this *Notice* to create subcategories within the NGSO "other" category for "small" and "large" constellations will add to the complexity of determining the appropriate marker for determining the appropriate share of FTE resources allocated to small satellites. We propose the administrability and sustainability of our regulatory fees for small satellites would be better served by treating them as we have historically treated the regulatory fees for earth stations – that is, a fixed regulatory fee that is adjusted from year-to-year on, rather than as a percentage of the Space Bureau's overall share of regulatory fee allocation, or as a percentage of other categories of space station fee payors. We seek comment on all these proposals, examinations, and expectations.

5. Treatment of RPO, OOS, and OTV

46. We propose, on an interim basis, to assess regulatory fees on spacecraft primarily performing Rendezvous and Proximity Operations (RPO) and On-Orbit Servicing (OOS) by including them in the existing regulatory fee category "Space Stations (per license/call sign in non-geostationary orbit) (Small Satellites)" regardless of the orbit in which they are designed to operate in. OOS and RPO missions can include satellite refueling, inspecting and repairing in-orbit spacecraft, capturing and removing debris, and transforming materials through manufacturing while in space.[108] Due to the nascent nature of OOS and RPO industry, or more generally "in-space servicing" industries, there is not a distinct regulatory fee category for such operations, despite that fact that spacecraft have begun to operate under part 25 of the Commission's rules for radiocommunications while conducting these types of operations.[109] Although the Commission has previously determined that the record is not sufficiently

[105] 47 U.S.C. § 159A(b)(2).

[106] *See supra*, section II.B.

[107] *Id.*

[108] *FY 2023 R&O,* 2023 WL 5197492 at *33, para. 108.

[109] 2023 WL 5197492 at *33, para. 110.

complete to adopt a separate regulatory fee category for spacecraft performing OOS and RPO,[110] we tentatively conclude that it is appropriate to assess regulatory fees on RPO and OOS space stations as we do for small satellites, rather than as Space Stations (Geostationary orbit) or Space Stations (Non-Geostationary Orbit) – Other. We also tentatively conclude that it is appropriate to assess regulatory fees on Orbital Transfer Vehicles (OTV) in the same manner.

47. The Commission first considered adopting additional fee categories for RPO and OOS in the notice initiating the FY 2022 regulatory fee assessment proceeding.[111] Commenters proposing such additional fee categories cited the similarities between the characteristics of small satellites and RPO and OOS.[112] The commenters distinguished between OOS spacecraft and traditional NGSO satellites in that OOS spacecraft have limited duration and scope of use, as well as a limited number of earth stations; require a smaller investment in OOS technology; require less ongoing regulation owing to the shorter duration of OOS spacecraft; will likely be licensed on a shared use of spectrum basis, and without the need for processing round procedures or post-processing round disputes over matters such as interference protection and spectrum priority.[113] Commenters also submitted that a fee category for RPO services would provide much need permanency and clarity to support this nascent infrastructure.[114]

48. The Commission found, however, that it was premature at that time to adopt new fee categories for OOS and RPO operations.[115] It observed that there have been a limited number of such operations and these were treated on a case-by-case basis, without a specific license processing regime.[116] It also expressed the expectation that most OOS and RPO operations would involve NGSO space stations, but tentatively concluded that it was too early to identify exactly where operations such as those in low-Earth orbit might fit into the regulatory fee structure in the future.[117] Accordingly, it found that the record was insufficient to propose to establish fee categories or a methodology for assessing fees to such categories.[118] The Commission sought comment on those tentative conclusions, as well as whether and how to assess fees for RPO and OOS spacecraft that operate near the GSO arc.[119]

49. Since that time, the Commission has continued to find that the record was insufficient to adopt a new regulatory fee category for in-space servicing operations, such as OOS and RPO. In the order adopting regulatory fees for FY 2022, the Commission determined that the record was insufficient to support adopting new regulatory fee categories for OOS and RPO due to the nascent nature of these systems and the need for more experience with the operations of such systems and the FTE time required to support them.[120] For the same reasons, the Commission declined to adopt separate fee categories for OOS and RPO in the FY 2023 regulatory fee proceeding, again finding that the record remained too incomplete and concluding that there was insufficient understanding of the nature and regulation of such spacecraft to consider concrete proposals for assessing regulatory fee categories for OOS and RPO space

[110] 2023 WL 5197492 at *34, para. 111

[111] *FY 2021 R&O and FY 2022 NPRM,* 2022 WL 2045858 at *15-16, paras. 45-47.

[112] *FY 2021 R&O and FY 2022 NPRM,* 2022 WL 2045858 at *15, para. 45.

[113] *Id.*

[114] *Id.*

[115] *FY 2021 R&O and FY 2022 NPRM,* 2022 WL 2045858 at *16, para. 46.

[116] *Id.*

[117] *Id.*

[118] *Id.*

[119] *Id.* The GSO arc lies on the plane of the Earth's equator at an altitude of approximately 35,786 kilometers. *See Mitigation of Orbital Debris*, Second Report and Order, 19 FCC Rcd 11567, para. 1, n.4 (2004).

[120] *FY 2022 R&O and NOI*, 2022 WL 4079045 at *18, para. 45.

stations at that time.[121] The Commission noted that it was still in the early stages of considering the regulatory environment for such services as a whole, and the definitions of which services would fit into OOS and RPO were yet to be adopted.[122] Instead, the Commission stated it would continue to develop a record that would inform possible establishment of a fee category for OOS and RPO and an appropriate methodology for assessing fees for such a category.[123]

50. We propose that we should no longer delay adopting a regulatory fee category for OOS and RPO space stations, even if we have not yet adopted a separate regulatory environment for such services. In 2022, the Commission initiated a Notice of Inquiry regarding the regulatory needs related to in-space servicing, assembly, and manufacturing – or "ISAM" – that could include such services as RPO and OOS.[124] The Commission has since adopted a Notice of Proposed Rulemaking seeking comment on a framework for licensing ISAM space stations.[125] This proceeding is still in the early stages of considering the regulatory environment for such services. Nonetheless, the Space Bureau has considered applications for space stations performing RPO and OOS and issued licenses for such space stations under the existing regulatory framework of part 25 of the Commission's rules,[126] and such stations are already operational and subject to payment of regulatory fees. The Space Bureau anticipates that it will receive additional applications for such services in the near future, likely before the conclusion of any proceeding that may consider a separate licensing regime for such systems. Accordingly, there is a need to propose a method for assessing regulatory fees on spacecraft primarily performing RPO and OOS now, even while the consideration of the regulatory environment for such services is ongoing.

51. Although the record remains insufficient to propose a new category of regulatory fees for these services, we propose, on an interim basis, to include RPO and OOS within an existing category of regulatory fees. In this respect, we tentatively conclude that the regulatory fee categories of Space Stations (Geostationary Orbit) and Space Stations (Non-geostationary Orbit) – Other do not reflect the amount of regulatory work required by these nascent RPO and OOS services. Those fee categories are reflective of the greater FTE burden associated with regulation of more numerous and more complex space stations that primarily provide "always on" communication services, using spectrum and orbital resources on a protected basis, subject to processing rounds or "first-come, first-served" procedures, and requiring the use of a large number of associated earth stations. We also tentatively conclude that the regulatory fee category of "Space Stations (Non-geostationary Orbit) – Less complex" is not the most appropriate fit, since space stations providing primarily RPO and OOS do not fall within the existing definition of "less complex" NGSO space stations, which is limited to space stations primarily providing EESS and/or AIS and the regulatory framework for RPO and OOS space stations is not sufficiently clear at this time. We do not propose to use the existing NGSO "less complex" fee category for RPO or OOS space stations, since we tentatively conclude that the regulatory burden of RPO and OOS space stations is currently far less than that of "less complex" NGSO space stations. The Space Bureau has received relatively few applications for RPO or OOS space stations, and although it anticipates receiving more in the near future, the amount of FTE resources required at the present time to regulate these services is not comparable to the resources required for regulation of NGSO "less complex" space stations. It is possible that, in the future, the regulatory burden of RPO and OOS may significantly increase and justify revisiting

[121] *FY 2023 R&O,* 2023 WL 5197492 at *34, para. 111.

[122] *Id*.

[123] *FY 2023 R&O,* 2023 WL 5197492 at *34, para. 112.

[124] *See Space Innovation; Facilitating Capabilities for In-space Servicing, Assembly, and Manufacturing*, Notice of Inquiry, 37 FCC Rcd 10022 (2022).

[125] *See Space Innovation; Facilitating Capabilities for In-space Servicing, Assembly, and Manufacturing*, Notice of Proposed Rulemaking, FCC 24-21 (Feb. 16, 2024).

[126] *See, e.g.*, Space Logistics LLC, IBFS File No. SAT-LOA-20191210-00144 (granted Mar. 25, 2020); Space Logistics LLC, IBFS File No. SAT-LOA-20170224-00021 (granted June 20, 2019).

this tentative conclusion, but at the present moment the regulatory burden of RPO and OOS space stations is more similar to that presented by small satellite space station licensees, which are also few in number and involve a relatively small number of space stations that have limited duration and scope of use and operate using shared spectrum resources.

52. Although the Commission previously declined to adopt an interim fee for RPO and OOS space stations, including one equivalent to the fee assessed for small satellites, it did so due, in part, to time constraints that would not allow for the adoption of a new fee and the desire for more experience before adopting a separate fee for RPO and OOS space stations.[127] Here, we are not proposing to adopt a new fee for RPO and OOS space stations, but rather, on an interim basis, to assess fees using the existing Space Stations (Small Satellites) fee category. Given the immediate need to assess regulatory fees on RPO and OOS space stations now and in the near future, we tentatively conclude that the purposes of section 9 of the Act would be best met by erring on the side of caution and assessing regulatory fees under the category of fees associated with the least-burdensome set of space station regulatees, rather than waiting for additional experience and in the interim potentially subjecting existing RPO and OOS space stations subject to regulatory fees for Space Stations (Geostationary Orbit) or Space Stations (Non-Geostationary Orbit) – Other, that may not reflect the amount of regulatory work required by these nascent services. As we gain more experience with the regulation of RPO and OOS space stations, we will be in a better position to adopt a separate fee category for RPO and OOS space stations, if appropriate. We seek comment on this proposal and tentative conclusions.

53. We also propose to assess RPO and OOS space stations using the small satellite fee category on an interim basis, regardless of the orbit utilized. Small satellites are limited to NGSO operations under our part 25 rules,[128] and we stress that we are not proposing or suggesting that RPO or OOS space stations would meet the definition of a "small satellite" or "small spacecraft" under our part 25 rules. Instead, solely for the purpose of assessing regulatory fees, we propose to include RPO or OOS space stations within the existing Space Stations (Small Satellite) regulatory fee category, rather than creating a new regulatory fee category for RPO and OOS space stations. We tentatively conclude that the rational above for using the small satellite regulatory fee category to assess fees on RPO and OOS space stations applies regardless of whether the RPO or OOS space stations operate in GSO or NGSO. We also propose to assess the regulatory fee for RPO or OOS space stations on a "per license/call sign" basis as is the case for small satellites payors, rather than on the "per system" basis used for Space Stations (Non-geostationary Orbit). In addition, we propose to assess regulatory fees on OTV space stations in the same manner; that is, to assess regulatory fees for OTV space stations using the existing regulatory fee category of small satellite space stations on a per license/call sign basis. Like RPO and OOS space stations, OTVs are also few in number and involve a relatively small number of space stations that have limited duration and scope of use and operate using shared spectrum resources in a manner that reduces the amount of FTE resources needed for their licensing and regulation. The Commission has already licensed OTV space stations under its existing part 25 regulatory framework, and we anticipate that additional applications for OTV will be filed in the near future. Accordingly, the same rationale applies to erring on the side of caution and assessing regulatory fees under the category of fees associated with the least-burdensome set of space station regulatees, at least until we gain more experience in this matter. We seek comment on these proposals and tentative conclusions. We also seek comment on whether this proposed approach for assessing regulatory fees for RPO, OOS, and OTV could also be applied to all space stations that fall within the definition of ISAM.

54. We find that the proposal to assess regulatory fees for RPO, OOS, and OTV space stations using the existing fee category for small satellites would be an amendment as defined in section

[127] *FY 2022 R&O and NOI,* 37 FCC Rcd., 2022 WL 4079045 at *18, paras. 44-45.

[128] 47 CFR § 25.103 (defining "small satellite" as an "NGSO space station eligible for authorization under the application process described in § 25.122"); 47 CFR§ 25.122(a) ("This section shall only apply to applicants for NGSO systems… .")

9(d) of the Act.[129] Such an amendment must be submitted to Congress at least 90 days before it becomes effective pursuant to section 9A(b)(2).[130]

55. Finally, we propose that RPO or OOS space stations that are attached to another space station as part of servicing or mission extension operations be assessed regulatory fees separate from, and in addition to, any regulatory fees assessed on the space station that is being serviced or that is having its mission extended. We acknowledge that this tentative conclusion is the opposite of the Commission's prior tentative conclusion that RPO and OOS space stations joined to GSO space stations during servicing or mission extension operations should not be assessed separate regulatory fees, despite the RPO or OOS space stations being assigned their own call signs, which is the unit usually used to assess regulatory fees for space stations.[131] This tentative conclusion was never adopted, and as such was only tentative in nature. Upon further consideration, we tentatively conclude that the requirements and purpose of section 9 of the Act would be better met by assessing regulatory fees on such attached RPO or OOS space stations.

56. The premise underlying the prior tentative conclusion was that the RPO or OOS space station is operating as part of an existing GSO space station, rather than as a separate independent space station, and therefore there is no independent operating space station for a separate fee assessment and that the regulatory fee burden for the RPO or OOS space station would be included in the fees collected from the GSO space station fee payors.[132] Upon further consideration, we tentatively conclude that this premise is not correct. As long as a RPO or OOS space station retains a separate authorization, with its own call sign, it is a separate space station for our regulatory purposes, so that there is a space station for a separate fee assessment independent of the space station being serviced or having its mission extended. Regulatory work is associated with the licensing and regulation of the RPO or OOS space station that is separate and independent from the regulatory work associated with the space station that is being serviced or having its mission extended. FTE work expended on reviewing license applications, issuing licenses, and exercising regulatory supervision of the RPO or OOS space stations is completely separate from the FTE work associated with the licensing and regulation of the space station being serviced or having its mission extended. In addition, we observe that it would be difficult to administer regulatory fees for RPO or OOS space stations under the Commission's prior tentative conclusion, since the status of the RPO or OOS space station for regulatory fee purposes would depend on whether the RPO or OOS space station is attached to another space station on the date when regulatory fees are assessed, or whether it may be operating unattached, for example, between servicing missions, which could lead to uncertainty as to whether regulatory fees are due or not, as well as potential gaming of regulatory fees through the timing of missions. Section 9 of the Act requires the Commission to assess regulatory fees to recover all of its FTE work based on how FTE time is used. We tentatively conclude that we would not be able to meet that requirement if we were to consider the RPO or OOS to be part of the serviced space station, and not subject to separate regulatory fees. We seek comment on our proposal and the reasoning in support of it.

6. Assessment of Fees on Authorized, but not Operational, Space Stations

57. We propose to assess regulatory fees on all authorized space and earth stations, not only on stations that are "operational." Currently, regulatory fees for space stations are payable only when the space stations are certified by their operator to be operational.[133] An earth station payor is required to pay

[129] 47 U.S.C. § 159(d).

[130] 47 U.S.C. § 159A(b)(2).

[131] *FY 2023 R&O,* 2023 WL 5197492 at *33, para. 110.

[132] *Id*.

[133] Regulatory Fees Fact Sheet: FY 2022 Regulatory Fees – International and Satellite Services (Sept. 2022) at 2-3 (stating that the fee payment for a space station is required "upon commencement of operation of a system's first satellite as reported annually pursuant to sections 25.142(c), 25.143(e), 25.145(g), or upon certification of operation (continued….)

a fee once it has certified that the earth station's construction is complete, but in the rare instances in which a license limits an earth station's operational authority to a particular satellite system, the fee is not due until the first satellite of the related system becomes "operational" within the meaning of our rules.[134] A space station is authorized, in contrast, after an application or petition has been reviewed and granted by the Commission and the grant is effective.[135] Because significant FTE resources are involved with the licensing of space and earth stations, we tentatively conclude that the objectives of section 9 of the Act would be better met by assessing regulatory fees once a space or earth station is licensed,[136] rather than, as now, when a space station becomes operational.

58. The origin for assessing regulatory fees on space stations when they become operational, rather than when licensed, was the statutory text of section 9 of the Act from 1993. The Omnibus Budget Reconciliation Act of 1993 that created section 9 and proposed regulatory fees in section 9(g), which identified two fee categories and amounts for space stations: (1) "Space Station (*per operational station* in geosynchronous orbit) (47 C.F.R. Part 25)" and (2) "Space Station (per system in low-earth orbit) (47 C.F.R. Part 25)" (italics added).[137] The Commission adopted the requirement that GSO space stations be operational before regulatory fees are assessed as part of 1994 regulatory fee proceeding, basing that decision on the statutory language.[138] In that same proceeding, the Commission also applied to NGSO space stations the requirement that space stations be operational before regulatory fees are payable, even though the text of section 9(g) did not include the word "operational" for systems in low-earth orbit, as it did for GSO space stations.[139] The Commission has kept the "operational" requirement for assessing regulatory fees on space stations through subsequent annual regulatory fee assessment proceedings without comment or reevaluation.

59. We tentatively conclude that there is no statutory bar to assessing regulatory fees on authorized, but not yet operational, space and earth stations. Section 9 of the Act explicitly gives the Commission authority to adjust its regulatory fees by rule if it determines that the schedule of fees requires amendment, and such adjustment by rule is what is being proposed in this *Notice*.[140] In addition,

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of a single satellite pursuant to section 25.121(d).") We note that sections 25.142(c), 25.143(e), and 25.145(g) are currently reserved or have been deleted, and we will make changes to our regulatory fact sheet to reflect this fact.

[134] *Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for Fiscal Year 1994*, Report And Order, 9 FCC Rcd. 5333, 75 Rad. Reg. 2d (P & F) 399, 1994 WL 250172 at *23, para. 94 (1994).

[135] Whether done by grant stamp or order, a grant is effective upon the date indicated upon the instrument of grant, usually "upon release."

[136] This tentative conclusion also applies to non-U.S. licensed space stations that petition, and are granted, access to the U.S. market.

[137] Pub. L. No. 103-66, Title VI, 6002(a), 107 Stat. 397 (approved August 10, 1993).

[138] *Amendment of Parts 0 and 1 - Assessment and Collection of Fees*, Report and Order, 9 FCC Rcd 5333, 5364, para. 91 (1994) ("Section 9(g) requires that the payment of a regulatory fee by the operator of any "operational" space station in geosynchronous orbit. We agree with the commenters that a satellite does not become "operational" immediately upon its launch. Therefore, as proposed by the commenters, we will consider a space station in geosynchronous orbit to be subject to the fee when it has been certified by its operator to be operational in accordance with section 25.121(d) of the rules. This certification indicates that the satellite has been placed in its authorized orbit and is operating in the authorized frequency bands at the authorized power levels.").

[139] *Id.* at 5364, para. 92 ("Also, we will consider a space system in low earth orbit (LEO) subject to the fee payment when its first satellite becomes operational even though all its space stations are not yet operational. Similar to our treatment of geosynchronous satellites, the system will become subject to a fee payment upon the certification by the licensee that the operations of the first satellite in its system conform to the terms and conditions of its authorization pursuant to 47 CFR 25.120(d).").

Congress deleted section 9(g), which was the textual basis for the operational requirement for assessing regulatory fees on space stations, in the 2018 RAY BAUM's Act.[141] Accordingly, the original textual language of section 9(g) appears no longer relevant to our amendments of regulatory fee schedules. We seek comment on this tentative conclusion and the reasons underlying it.

60. For the reasons below, we tentatively conclude that now is an appropriate time to reevaluate the current policy that a space station must be operational before regulatory fees can be assessed. The recent creation of Space Bureau provides an opportune time to revisit past conclusions about the regulatory burdens associated with space and earth station fee payors and how those fees should be assessed. The increased burdens of regulating space stations as a result of the changes in the satellite industry and the creation of the Space Bureau will increase the share of regulatory fees to be assessed on space and earth station regulatees, compared to the number of FTEs regulating space stations in the International Bureau, so we should look to have as broad a base as possible for our regulatory fees in a manner that accounts for all regulatees that benefit from Space Bureau oversight as a matter of making our regulatory fees more fair.[142]

61. We observe that a licensee or grantee already benefits from the substantial FTE resources used to review and grant the application or petition, as well as from the FTE resources used to protect the benefits conferred by the grant of a license or of U.S. market access, such as use of spectrum and orbital resources and protection from interference, which convey upon issuance of the license or grant.[143] Moreover, given the bespoke nature of many satellite systems, Space Bureau staff expertise is utilized by the industry before, during and after an application (including modifications thereof) or petitions for rulemaking are filed. In addition, as observed earlier in this *Notice*, NGSO space stations are taking an increased share of FTE burdens relative to GSO space stations and are being assessed higher regulatory fees, so there is also increased importance to make sure that all NGSO beneficiaries of those FTE burdens are assessed fees. For example, if five NGSO FSS systems are licensed through a single processing round, FTE licensing work is necessitated by all five systems, but under the current policy only the operational systems would be required to pay regulatory fees, and the entire regulatory burden for that category of space stations would be paid only by operational systems.[144] Systems that become operational later, or not at all, would not be assessed regulatory fees associated with that FTE work for potentially many years, or perhaps never.[145] As a result, systems that become operational earlier than other licensed

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[140] 47 USC § 159(d) ("In addition to the adjustments required by subsection (c), the Commission shall by rule amend the schedule of regulatory fees established under this section if the Commission determines that the schedule requires amendment so that such fees reflect the full-time equivalent number of employees within the bureaus and offices of the Commission, adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities. In making an amendment under this subsection, the Commission may not change the total amount of regulatory fees required by subsection (b) to be collected in a fiscal year.").

[141] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2019*, Notice of Proposed Rulemaking, 34 FCC Rcd 3272, 3275, para. 7 (2019).

[142] This is particular relevant when certain space station fee categories, such as Space Stations (Non-geostationary Orbit) – Other, which have a relatively small number of payors on which fees are assessed. The broadening of the base of payors by only a single unit could have significant decrease on the regulatory fee born by each payor.

[143] Although the term of the license does not begin until the space station or system of space stations is operational, 47 CFR § 25.121, the term goes to the duration of the benefits and protections provided by a license or market access grant, which commence upon authorization, rather than upon commencement of the license term.

[144] We note that regulatory fees are a zero-sum situation, so any decrease to the fees paid by one category of regulatees necessitates an increase in fees for others. *FY 2019 Report and Order*, 34 FCC Rcd at 8195, para. 16. If an authorized space station never becomes operational, then the licensee would never be subject to regulatory fees to recover the FTE resources associated with regulating such space stations, and other licensees with operational satellites must bear the costs associated with space stations that were authorized, but never become operational.

systems would bear the entire fee burden of regulatory work done on behalf of all regulated systems. We seek comment on these observations.

62. We propose that the intent of Congress in section 9 would be better fulfilled by recovering the costs of licensing and regulatory oversight based on authorized space stations, rather than operational space stations. Congress has directed the FCC to recover its annual S&E appropriation through regulatory fees, and the S&E appropriation includes funding for FTE time spent reviewing and granting applications, which is accrued regardless of when a space station becomes operational.[146] In most cases, the amount of FTE spent on reviewing applications corresponds to the number of space stations requested to be authorized, rather than the number that become operational, since Commission staff must spend resources assessing the space station system as proposed in the application, regardless of whether all the space stations actually become operational.[147] In addition, once a space station is authorized, it is subject to regulatory oversight by the Space Bureau and is entitled to all the benefits and privileges that come with an FCC license or market access grant. We seek comment on this proposal.[148]

63. We also propose that assessing regulatory fees based on authorized space stations, rather than operational space stations, should not present challenges to administer.[149] No additional information collection would be needed to determine whether a space station is authorized (as opposed to operational), since the FCC's license or grant of market access displays the authorization particulars, including the date of grant and the number of space stations authorized, and the grants and the information contained within the grants are readily available to the Commission and the public.[150] We propose to continue our practice of publishing a list of the space stations and systems that would be subject to regulatory fees as U.S.

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[145] This is true for space stations that are authorized but never brought into operation, as well as for categories of space stations with operational lifetimes of less than a year. For example, an NGSO space station may require significant FTE resources to issue a license, but the space station may become operational after the date on which regulatory fees for the current fiscal year are assessed and may cease operations a few months afterwards before the date of assessment of the following year's regulatory fees. In that situation, none of the FTE resources spent on licensing would be recovered under our existing policy of assessing fees solely on operational space stations.

[146] We note that, although Congress has also required the Commission to assess filing/application fees under section 8 of the Act to recover the costs associated with filing of a specific application with the Commission, fees assessed under section 8 do not go towards recovering our S&E appropriation and do not obviate the requirement of section 9 to collect an amount equal to our full S&E appropriation through the offsetting collection of regulatory fees.

[147] Although this observation is particularly true for NGSO systems, it also true for GSO space stations. For example, it still takes FTE time to review and grant application for GSO "on-orbit spare" space stations, which are reviewed as if the space stations become operational, but may not in fact become operational for many years, or not at all. Such "on orbit spares" have been considered to be non-operational under our current policy of assessing space station regulatory fees and have not been assessed regulatory fees for that reason.

[148] To the extent that assessing regulatory fees on authorized, rather than operational, space stations provides an incentive for licensees to make their systems operational sooner in a manner similar to our part 25 bond requirements designed to prevent warehousing of scarce orbital and spectrum resources, we note that such considerations do not address the statutory basis of our regulatory fees requirements and are more appropriately addressed in proceedings relevant to our part 25 licensing rules. *See* 47 CFR §§ 25.165 (requiring most GSO and NGSO space station licensees and market access grantees to post a bond within 30 days of the grant of its license or market access that is forfeited if the space station or stations are not made operational within certain time periods).

[149] By contrast, the Commission frequently is notified of errors in the list of U.S. licensed space stations and non-U.S. licensed space stations with U.S. market access that are identified as "operational" in our annual regulatory fee proceeding.

[150] For example, a list of space stations with an FCC license or U.S. market access grant is maintained by the Space Bureau and is available via the FCC's website at https://www.fcc.gov/approved-space-station-list.

licensed space stations or non-U.S. licensed space station that have been granted U.S. market access.[151] As is the case now, we propose that any party identifying errors will be able to advise Commission staff of the error and seek correction. We also propose that NGSO licensees may seek to modify their licenses under our existing part 25 rules to have the number of authorized space stations modified to reflect the number of actual operational space stations if not as many space stations become operational as were applied for, or the number of authorized space stations diminishes due to the retirement of space stations at the end of their missions.[152] We acknowledge that permitting payors to reduce the number of authorized space stations after an application is granted could be inconsistent with the proposal that regulatory fees should be based on the number of space station licensed, rather than the number of operational space stations, but we tentatively conclude that it is easier to administer our fees if they are based on the number of space stations authorized in the current license, rather than having to look back at previous iterations of license grants in order to fix the fee at the highest number of space stations licensed. Furthermore, we do not anticipate that licensees or grantees will seek to reduce the number of authorized satellites significantly after authorization to avoid regulatory fees; rather, we anticipate that such reductions will be marginal and be due to business or operational considerations, rather than due to regulatory fee considerations. We seek comment on these proposals. We also seek comment on whether, if the proposal to assess regulatory fees based on authorized, rather than operational, space stations is adopted, we should assess fees on this basis in the current fiscal year, or whether it would be more appropriate to assess fees on this basis beginning in FY 2025.

64. We recognize that assessing regulatory fees before a GSO space station, or a system of NGSO space stations, is operational could lead to collateral effects that are outside the FTE-focused methodology required under section 9 of the Act. For example, assessing regulatory fees on authorized, but non-operational, space stations could provide an incentive for applicants to request the Space Bureau to defer action on applications until after the period has passed for assessing which payors owe regulatory fees for the fiscal year, so as to defer the assessment of regulatory fees until the subsequent fiscal year.[153] Alternatively, it could provide an incentive for space station operators to seek licensing outside the United States, and to apply for U.S. market access only once the system has become operational, thereby deferring the assessment of regulatory fees in a manner not available to U.S.-licensed space station operators. It could also increase the costs to the operator at the initial funding phases of a space station or system of space stations. We seek comment on these, or any other, potential collateral effects, and whether they weigh against assessing regulatory fees on authorized, but not yet operational, space stations. In addition, if the Commission does not adopt the proposal to begin to assess regulatory fees when a space station, or system of space stations, is authorized, could the benefits for the proposal still be realized in part by assessing regulatory fees on the number of authorized space stations in the system, once the system has been notified as operational, as defined under section 25.121(d)(2) of our rules, 47 CFR § 25.121(d)(2)?

65. We find that the proposal to assess regulatory fees on authorized, rather than operational, space and earth stations would be an amendment as defined in section 9(d) of the Act.[154] Such an amendment must be submitted to Congress at least 90 days before it becomes effective pursuant to section

[151] *FY 2020 R&O and FNPRM*, 36 FCC Rcd at para. 52 (creating an Appendix F to our annual regulatory fee notice of proposed rulemaking and report and order that lists space stations and systems that would be subject to regulatory fees).

[152] If no space stations are operational under a license or market access grant, then the license or grant will be either be surrendered or terminated and no regulatory fee would be assessed, just as is the case for regulatory fees assessed for operational space stations under our current policy. *See* 47 CFR § 25.161(c) and (d).

[153] We note the same incentive exists for space station payors to defer the commencement of operation of their space station or space stations until after the period has passed for assessing which payors owe regulatory fees under the current system of assessing regulatory fees on operational space stations.

[154] 47 U.S.C. § 159(d).

9A(b)(2).[155]

66. Summarizing the proposed changes to the existing regulatory fee methodology for space stations, we propose to modify the fee categories for space stations contained in section 1.1156 of our rules to read as follows:[156]

Fee Category	Fee Amount
Space Stations (per authorized station in geostationary orbit) (47 CFR part 25)	[TBD]
Space Stations (per authorized system in non-geostationary orbit) (47 CFR part 25) (Other – Large Constellations)	[TBD]
Space Stations (per authorized system in non-geostationary orbit) (47 CFR part 25) (Other – Small Constellations)	[TBD]
Space Stations (per authorized system in non-geostationary orbit) (47 CFR part 25) (Less Complex)	[TBD]
Space Stations (per license/call sign) (Small Satellite)	[TBD]

C. Earth Station Fee Proposals

67. We propose to increase the amount of regulatory fees assessed on earth stations in order to reflect more accurately the amount of FTE resources dedicated to their regulatory oversight. Currently, there is a single regulatory fee category for earth stations - Transmit/Receive & Transmit only (per authorization or registration). For FY 2023, the fee amount for this category per authorization or registration was $575. For the reasons set forth below, the methodology used to assess regulatory fees for earth station payors may underestimate the FTE burdens associated with regulatory oversight of this category of fee payors, and we seek comment on proposals to adjust our regulatory fees to more accurately recover the amount of FTE resources devoted to licensing and regulation of earth stations.

68. The unit for assessing regulatory fees for earth stations – per authorization or registration – is not uniform.[157] In some cases, an authorization can be for a single earth station, such as a feederlink station in the mobile-satellite service.[158] In other cases, a single authorization could be for several thousand earth stations under what is often called a ”blanket license.”[159] When first established in 1994, the fee category for earth stations had four sub-categories with different fee amounts. These sub-categories were: (1) VSAT & Equivalent C-band antennas (per 100 antennas) - $6; (2) Mobile Satellite

[155] 47 U.S.C. § 159A(b)(2).

[156] While we initiate the examination and review of the existing methodology for assessing regulatory fees for space and earth station payors in this *Notice*, we will propose and finalize the regulatory fee rates for space and earth station payors as part of our annual Commission-wide regulatory fee proceeding for FY 2024.

[157] Under our rules, an authorization is not needed to operate a non-transmitting earth station in the fixed-satellite service that only receives signals from U.S.-licensed space stations or from non-U.S. licensed space stations that have been approved for U.S. market access, but such receive-only earth stations may be registered with the Commission in order to protect them from interference from terrestrial microwave stations in bands shared co-equally with the fixed service. *See* 47 CFR § 25.115(b)(1).

[158] A “feeder link” is a “radio link from a fixed earth station at a given location to a space station, or vice versa, conveying information for a space radiocommunication service other than Fixed-Satellite Service. The given location may be at a specified fixed point or at any fixed point within specified areas.” 47 CFR § 25.103.

[159] A “blanket license” is defined under our rules as “A license for: (1) Multiple earth stations in the [fixed-satellite service] or [mobile-satellite service], or for [satellite digital audio radio service] terrestrial repeaters, that may be operated anywhere within the geographic area specified in the license; or (2) For multiple space stations in non-geostationary orbit.” 47 CFR § 25.103.

Earth Stations (per 100 antennas) - $6; (3) Less than 9 meters (per 100 antennas) - $6; and (4) 9 Meters or More – Transmit/Receive and Transmit Only (per meter) - $85; Receive Only (per meter) - $55.[160] In 1995, the Commission deleted receive-only earth stations as a service subject to regulatory fee requirements and determined that assessing fees on a per authorization or registration basis was more equitable method than on a per meter or per 100 earth station basis.[161] The Commission set the earth station regulatory fee per authorization or registration at $330 for all three remaining sub-categories (i.e., VSAT, Mobile-Satellite Earth Stations, Fixed Earth Stations – Transmit/Receive & Transmit Only).[162] Section 25.1156, however, lists only a single category and fee for earth station payors: Earth Stations: Transmit/Receive & Transmit only (per authorization or registration).

69. The Commission has not assessed earth station regulatory fees as a percentage of overall bureau regulatory burdens. Rather, the assessment of regulatory fees for earth stations has been based on the initial per unit fee for earth stations – Transmit/Receive & Transmit only (per authorization or registration) that was established by the Commission in 1995.[163] This initial fee has been adjusted on a year-to-year basis, but usually only in terms of a percentage change in the fee to reflect the changes in the amount of appropriated S&E each year and the number of anticipated units of payors. Since 1995, the Commission has periodically discussed earth station regulatory fees or considered adjusting earth station regulatory fees for factors beyond a change in the annual S&E appropriation or the number of units of earth station fee payors. In 2014, the Commission increased the earth station regulatory fee per unit by 7.5%, from $275 in FY 2013 to $295 for FY 2014, in order to reflect more appropriately the number of FTEs devoted to the regulation and oversight of the earth stations in response to concerns raised by commenters that space stations paid an unreasonably high portion of the regulatory fees for the regulation of the satellite industry.[164] The following year, in 2015, the Commission sought comment on whether to

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[160] *FY 1994 R&O*, 1994 WL 250172 at *36. VSAT means "very small aperture terminal" and was described by the Commission as follows: "Earth station systems comprising very small aperture terminals make up authorized networks operating in the 12 and 14 GHz bands and provide a variety of communications services to other stations in the network. Each system, authorized pursuant to blanket licensing procedures in Part 25 of the Rules, consists of a network of technically-identical small fixed-satellite earth stations which often includes a larger hub station." *FY 1994 R&O*, 1994 WL 250172 at *54.

[161] *Assessment and Collection of Regulatory Fees for Fiscal Year 1995*, MD Docket No. 95-3, Report and Order, 10 FCC Rcd. 13512, 13548, paras. 105-106 (1995) (*FY 1995 R&O)*. The Commission explained its decision to base its regulatory fee for earth stations on a per authorization or registration basis on the following reasoning:

> "[A]ll satellite earth stations require a certain amount of regulatory activity. Commenters have focused on individual elements of our regulatory activities in arguing against the changes in fees for particular types of earth stations. For example, certain classes of earth stations require more international activity than others (i.e., coordination and consultation); other classes of earth stations require more rulemaking and enforcement activity than others (i.e., zoning related matters). Since we do not yet have a cost accounting system capable of assigning the cost of specific regulatory activities to specific classes of earth stations, we find that assessing the fee on a per authorization or registration basis, rather than a per meter or 100 antennas basis is the most equitable method of allocating the regulatory costs assigned to satellite earth stations. Moreover, we find no reasonable basis for charging a per meter fee when it appears that the regulatory costs associated with a five or nine meter antenna are similar and the benefits to the payer are no less at five meters than at nine meters." *Id.*

[162] *FY 1995 R&O*, 10 FCC Rcd at 13459, para. 107 and Appendix G.

[163] 47 CFR § 1.1156(a).

[164] *Assessment and Collection of Regulatory Fees for Fiscal Year 2014*, MD Docket Nos. 14-92, 13-140, 12-201, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd. 10767, 10773, para. 12 (2014). This percentage increase in the earth station regulatory fee was also due to a reduction in the allocation of submarine cable/bearer circuit fee categories that resulted in an increase in the space and earth station allocation percentage from 59% to approximately 64% of all International Bureau regulatory fees. The Commission elected to collect this

(continued….)

raise the earth station regulatory fees again, but declined to do so finding that the issue required further analysis.[165] In particular, due to comments suggesting that the Commission adopt different regulatory fees for different types of earth stations and an ongoing proceeding that held the possibility of affecting the distribution of FTE work, the Commission deferred the issue for the next year's proceeding.[166] The Commission ceased consideration of different regulatory fees for different types of earth stations in 2016, however, when the commenter chiefly advocating for such consideration ceased to back its earlier proposal and no other entity commented on the record in favor of the proposal to assess different levels of regulatory fees on different types of earth station licensees.[167] In 2020, commenters in the annual regulatory fee assessment proceeding proposed that the Commission review the apportionment of regulatory fees between earth and space station payors and implement different earth station subcategories for regulatory fee purposes.[168] The Commission declined to do so, finding that there was insufficient evidence in the record at that time to increase apportionment of fees paid by earth station licensees or on which to base the creation of subcategories of earth station fees.[169]

70. Our focused examination today of space and earth station fees as a result of the creation of the Space Bureau provides an opportunity to reconsider whether our regulatory fees adequately reflect the amount of FTE resources devoted to licensing and regulation of earth stations. We tentatively conclude that they do not, and that a change in methodology in assessing regulatory fees for earth stations is required. Specifically, for the reason set forth below, we propose to adopt an apportionment of the total regulatory fees allocated to the Space Bureau between space and earth station payors on a percentage basis, similar to the manner that space station fees are apportioned between GSO and NGSO space stations, and propose that the apportionment be 20 percent for earth stations and 80 percent for space stations. We seek comment on this proposal and apportionment.

71. For FY 2023, earth station licensees were assessed a total of $1,667,500 in regulatory fees, which amounted to 7.69% of the $21,656,110 in regulatory fees assessed for all space and earth station payors. Several factors lead to our tentative conclusion that this percentage underestimates the amount of FTE resources dedicated to earth station licensing and regulation. First, unlike the case for apportionment of space station fees between GSO and NGSO space stations, or among various subcategories of NGSO space stations, it may be feasible to attribute Space Bureau FTE resources that are dedicated exclusively, or nearly exclusively, to earth station licensing and regulation. Within the Space Bureau is the Earth Station Licensing Division (ESLD), which lists eleven staff members that work almost exclusively on earth station licensing and regulation and that are not routinely involved in matters of space station licensing or regulation.[170] If each staff member were to account for an FTE, these eleven staff members would account for approximately 20% of the 54 FTEs that could be categorized as direct FTEs for the Space Bureau for FY 2024, minus a small number of FTEs that may be categorized as

(Continued from previous page)
five percent increase for space and earth stations solely through raising the per unit regulatory fee for earth stations by 7.5%, rather than having both space and earth station payors bear the increase. *Id.*

[165] 30 FCC Rcd. 10268, 10274 para. 14 (2015)

[166] *Id.*

[167] 31 FCC Rcd. 10339, 10344, paras. 13-14 (2016).

[168] *FY 2020 R&O and NPRM*, 35 FCC Rcd at 4995, para. 46.

[169] *Id.,* 35 FCC Rcd at 4995, para. 48 (finding that commenters had not provided an alternative apportionment of fees between earth and space station payors, or provided support for their claim that a separate, higher fee should be assessed for blanket-licensed earth stations because such licensees required more regulatory oversight).

[170] ESLD is responsible for the technical analysis, review, and licensing of applications and special temporary requests for satellite earth stations. See https://www.fcc.gov/earth-station-licensing-division. Although requests for U.S. market access for a non-U.S. licensed space station may be submitted as part of an earth station filing, the review of such requests and oversight of U.S. market access is chiefly done by Space Bureau staff outside of ESLD.

indirect FTEs as discussed earlier in this *Notice*. We tentatively conclude that apportioning regulatory fee percentages between earth and space station payors based on the percentage of direct FTEs involved the licensing and regulation of each category, where feasible to do so, is a reasonable way to fulfill Congress' mandate in section 9 of the Act that our regulatory fees must "reflect the full-time equivalent number of employees within the bureaus and offices of the Commission, adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities."[171] We seek comment on whether using FTEs in the ESLD to determine the proportion of earth station fees relative to space station fees is reasonable and reflective of Congressional intent. Are there other factors that are reasonably related to the FTE resources provided to earth station licensees that are not reflected in our proposal? Are there alternatives to using the percentage of direct FTEs involved in earth station licensing and regulation that we should consider?

72. We recognize that the proposal to apportion 20% of all Space Bureau regulatory fees to earth station licensees beginning in FY 2024 will result in a substantial increase in the per unit regulatory fee paid by earth station licensees, both because the percentage share of Space Bureau regulatory fees is likely to increase as a whole due to the increased number of direct FTEs in the Space Bureau compared to the International Bureau, and because the percentage share of earth station fees of Space Bureau fees would increase from around from around 8% to 20% under our proposal. Nonetheless, we tentatively conclude that the increase in earth station regulatory fees is consistent with the mandate given by Congress in section 9 of the Act for the Commission to recover its costs of regulation through fees that reflect the full-time equivalent number of employees within the Commission that provide the regulatory benefits to the payors. We seek comment on this tentative conclusion and observation.

73. In light of our tentative conclusion that earth station licensees should be apportioned 20% of all fees allocated to Space Bureau fee payors, we seek to revisit the question of whether to create subcategories of earth station regulatory fee payors to better differentiate the amount of regulatory burdens associated with different types of earth station licenses. For example, should VSAT, Mobile-Satellite Earth Stations, and Fixed Earth Stations – Transmit/Receive & Transmit Only be reinstated as distinct fee categories, each with a separate fee assessment? We also seek to develop a record as to whether there are types of earth station licenses that require more FTE resources to license and regulate, and that account for a higher share of FTE burdens than other categories of earth station licensees, for which a higher regulatory fee should be assessed. Likewise, are there categories of earth station licensees that require less FTE resources to license and regulate and therefore should be assessed a lower regulatory fee? For example, in the past commenters have suggested that blanket-licensed earth station licensees involving multiple antennas under a single authorization should pay higher fees than other earth station licensees because blanket-licensed earth stations require more regulatory oversight.[172] We ask commenters to provide evidentiary support for their propositions and to provide specific proposals for what these categories should be and how to allocate fees among any categories. Furthermore, comments should address the administrability of any proposed categories and whether the Space Bureau would be able to assign costs of specific regulatory activities to any proposed categories of earth station regulatory fees.

74. We find that the creation of any new fee categories for earth stations would be an amendment as defined in section 9(d) of the Act.[173] Such an amendment must be submitted to Congress at least 90 days before it becomes effective pursuant to section 9A(b)(2).[174]

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[171] 47 U.S.C. § 159(d).

[172] *FY 2020 R&O and NPRM*, 35 FCC Rcd at 4995-96, para. 48.

[173] 47 U.S.C. § 159(d).

[174] 47 U.S.C. § 159A(b)(2).

75. If the proposals made in this *Notice* are not adopted, we seek comment on whether the Commission should, at a minimum, increase the amount of the per unit fee for the existing fee category of "Earth Station - Transmit/Receive & Transmit only (per authorization or registration)" in order to reflect the increase of the Space Bureau's share of overall Commission regulatory fees as compared to the International Bureau's share in FY 2023. If so, how should this increase be calculated and what should be the percentage increase over the FY 2023 fee?

D. Alternative Methodology for Assessing Space Station Regulatory Fees

76. The proposals made earlier in this *Notice* are amendments or adjustments to the existing methodology of assessing regulatory fees for space stations. This existing methodology was founded on the original regulatory fees proposed by Congress in 1994, which provided for earth station regulatory fees and separate categories of space station fees depending on the orbit used by the space station(s): geostationary or non-geostationary. Since then, the Commission has created subcategories for NGSO space stations and has continuously tried to adjust the allocation of FTE burdens among GSO space stations and the various subcategories of NGSO space stations. We now seek comment on an alternative methodology for assessing space station regulatory fees that eliminates the distinction between GSO, NGSO, and all the subcategories of NGSO, while preserving a separate fee category for small satellites. For the reasons discussed below, we seek comment on whether this alternative methodology would be more administrable, fair, and sustainable than the existing methodology, even if all the proposals made earlier in this *Notice* are adopted.

77. The initial stages of the alternative methodology are the same as under the existing methodology. We would first determine the Space Bureau's share of the total FCC annual S&E appropriation for the given fiscal year using the existing methodology used by the Commission. After the Space Bureau's share is determined, we propose that the share be allocated between earth station and space station fee payors proportional to the Space Bureau FTE resources that are involved in the licensing and regulation of each segment. As stated earlier in the *Notice*, we tentatively conclude that it is feasible to attribute Space Bureau FTE resources that are dedicated exclusively, or nearly exclusively, to earth station licensing and regulation. We anticipate that the FTE resources attributed to earth stations will be 20 percent of the total Space Bureau share, resulting in 80 percent of regulatory fees to be attributed to space station regulatory fees. Earth station fees would be determined by dividing the total share attributable to earth station licensing and regulation by the number of units for the fiscal year, which were 2900 in FY 2023.[175]

78. Our alternative methodology also would preserve a separate fee category for Space Stations (per license/call sign) (Small Satellite), with the inclusion of RPO, OOS, OTV, and potentially other ISAM space stations in this category on an interim basis, as was proposed earlier in this *Notice*.[176] It would also retain the proposal to set this regulatory fee at the level set for FY 2023, with only an adjustment each year to reflect the percentage change in the FCC appropriation from the previous fiscal year.[177] This fixed regulatory fee for Space Stations (Small Satellite) would be multiplied by the number of small satellite licenses/call signs required to pay regulatory fees for the fiscal year, and this total

[175] We have sought comment on revisiting the possibility of creating subcategories of earth station regulatory fee payors to better differentiate the amount of regulatory burdens associated with different types of earth station licenses. *See supra*, section III.C. If adopted, we propose also to use these subcategories as part of our alternative methodology for determining space station fees.

[176] We have proposed, on an interim basis, to assess regulatory fees on RPO and OOS space stations as we do for small satellites, rather than as Space Stations (Geostationary orbit) or Space Stations (Non-Geostationary Orbit) – Other. We also have tentatively concluded to assess regulatory fees on Orbital Transfer Vehicles in the same manner. *See supra*, section III.B.4. If adopted, we also propose assess RPO, OOS, and OTV, in the same way as part of our alternative methodology for determining space station fees.

[177] *See supra*, section III.B.4.

amount would be subtracted from the amount of space station regulatory fees to be assessed on all remaining space station payors. Fees would be assessed on authorized space stations, not just operational space stations, as proposed in this *Notice*.[178] This treatment of small satellite regulatory fees would be consistent with our existing methodology for assessing space station regulatory fees, taking into account the proposals made in this *Notice*.

79. The main change from the existing methodology is a proposal to establish a common initial unit of regulatory fee payment for all space stations, regardless of which orbit they are designed to operate in, and to eliminate separate fee categories for Space Stations (Geostationary Orbit), Space Stations (Non-Geostationary Orbit) – Less complex, and Space Stations (Non-Geostationary Orbit) – Other. The alternative methodology would have a single space station fee category for "Space Stations (Per Call Sign in Geostationary Orbit or Per System in Non-Geostationary Orbit)." The category would be tiered, with a single GSO space station or a NGSO system with up to 100 authorized space stations constituting this initial tier and being counted as one unit for assessment of space station regulatory fees. Additional tiers would be created to account for NGSO systems with more than 100 authorized space stations, for example 500 or 1,000 space stations per NGSO system per additional tier. Each tier would be counted as an additional unit for assessment of space station regulatory fees.[179] The total number of units (initial and additional units) would be added together and the total space station allocation of the Space Bureau share would be evenly divided among the total number of units, resulting in a per unit regulatory fee for the fiscal year.

80. If the unit tiers are defined per 500 additional authorized space stations, the initial unit range will be 1-100 authorized space stations, the first additional unit will be assessed to systems with 101-500 authorized space stations, and an additional unit will then be assessed for each additional block of 500 authorized space stations. Similarly, if the additional unit tiers are defined per 1,000 additional authorized space stations, the initial unit range will be 1-100 authorized space stations, the first additional unit will be assessed to systems with 101-1000 authorized space stations, and an additional unit will then be assessed for additional block of 1,000 authorized space stations. For example, a single GSO space station or a NGSO system of 100 authorized space stations or fewer would be assessed one unit's share of space station regulatory fees. If that NGSO system were to have 500 authorized space stations, it would be assessed an additional unit's share of regulatory fees, regardless of whether the additional tiers are based on 500 or 1,000 additional space stations per NGSO system. If that NGSO system were to have 1,000 authorized space stations, it would either be assessed one additional unit's share (if the additional tiers are based per 1,000 authorized space stations) or two additional units' share (if the additional tiers are based per 500 authorized space stations). Accordingly, GSO payors and NGSO systems of 100 authorized space stations or fewer would be assessed the lowest regulatory fees, while payors with multiple authorized GSO space stations or with NGSO systems with more than 100 authorized space stations would be assessed higher regulatory fees, with the highest regulatory fees assessed to payors with a large number of GSO space stations and to payors with NGSO systems consisting of thousands of authorized space stations.

81. We seek comment on whether this alternative methodology would be more administrable, fair, and sustainable than the existing methodology. First, it could be more administrable because it does not require the Space Bureau to make the challenging determination of how FTE resources are allocated among space station payors. The Commission has previously recognized the considerable challenge of apportioning regulatory fees among space stations fee categories.[180] Under the alternative methodology,

[178] *See supra*, section III.B.5.

[179] As a result, an NGSO system with thousands of authorized space stations would account for only a single unit under the existing methodology (even under the proposal to create sub-tiers for large constellations of NGSO space stations), whereas it would account for several units under the alternative methodology.

[180] *FY 2020 R&O and NPRM*, 35 FCC Rcd at 4995, para. 45.

tiered units are used as a proxy for the amount of FTE resources that are attributable to the system without having to repeatedly make challenging determinations of the amount of FTE resources attributable to particular categories or subcategories of space station regulatory fee payors. Furthermore, unless the number of authorized space stations substantially decreases over a year, the amount of regulatory fee assessed to a system on a per unit basis is unlikely to increase and is likely to remain stable (or possibly decrease) year to year. The alternative methodology does not utilize any characteristics of a space station system other than the number of authorized space stations in the system and is not dependent on potentially difficult evaluations of the complexity of a system under our licensing and regulatory framework. It would not require the Commission to collect more information from operators. Thus, we anticipate that it can remain stable longer than our existing methodology for assessing space station regulatory fees. We seek comment on these issues.

82. We seek comment on whether the alternative methodology is more fair than the existing methodology, because it better corresponds FTE resources spent on licensing and regulating space stations with the types of space station systems that benefit from the FTE resources, thereby decreasing the per unit regulatory fees for space station payors that benefit less from FTE resources. Under the alternative methodology, higher aggregate fees will be assessed to systems with large numbers of authorized space stations, GSO or NGSO, but we expect those higher fees will be borne by payors that benefit from more FTE resources in support of licensing and regulating their systems. The alternative methodology also increases the number of units over which space station regulatory fees are spread, thereby decreasing the per unit regulatory fees for all space station payors as additional units are added, regardless of their orbital configuration. The tiered system also avoids the situation where systems with a very large number of authorized space stations could effectively end up paying all, or nearly all, space station regulatory fees, and where the fee per unit for a single GSO space station or a NGSO system of up to 100 authorized space stations would be diluted to an amount that may not adequately reflect the amount of FTE resources allocated to such fee payors.

83. In addition, under the existing methodology, regulatory fees for a particular category of fee payors go down per payor as more space stations or systems become operational in that category. Although such a decrease is beneficial for payors in that category, it may not reflect the increased amount of FTE resources required for that category of fee payors because of the additional resources needed for authorizing and regulating an increasing number of space stations or systems. This can lead to a discrepancy in that a category with rapidly increasing number of space stations or systems becoming operational is assessed lower regulatory fees than a category where the number of payors remains steady or even declines. This discrepancy continues until the Commission makes the challenging determination to alter the allocation of regulatory fees among the fee categories, which could take years to implement. For example, if additional NGSO systems become operational under the existing methodology, the regulatory fee per system for that particular subcategory of NGSO system would decrease because of the broader base over which the fees for that category would be spread, but it would not decrease the fees assessed on GSO space station payors or on NGSO space station payors in other NGSO subcategories – unless the Commission reallocates the percentage of space station regulatory fees among the GSO and NGSO categories. Under the alternative methodology this discrepancy is eliminated, because the addition of units of authorized space stations will automatically decrease the per unit regulatory fee for all space station regulatory fee payors, because the denominator used to divide the overall space station regulatory fee amount becomes larger. For example, the per unit regulatory fee for GSO space stations will decrease if the number of units assessed to NGSO space station systems increases, even if the number of units assessed to GSO space stations remains the same. Under this example, the per unit regulatory fee for all NGSO space stations would decrease as well. Furthermore, the alternative system avoids assessing the same regulatory fee on systems with a small number of authorized space stations as the fee assessed on systems with a large number of authorized space stations, as is the case under the existing NGSO space stations "other" subcategory. We seek comment on these issues.

84. Finally, we seek comment on whether the alternative methodology is more sustainable than the existing methodology. We have reason to expect that the number of authorized space stations

will increase in the future, rather than decrease, which will result in an even broader base on which to assess space station regulatory fees and which will lower per unit fees for all space station payors, regardless of the orbit in which the space station operates or the services it provides. Because fees are spread across all space station payors, it avoids the situation where the loss of a single payor in an existing fee category could result in significant increases to the regulatory fees paid by the remaining payors in that category, absent Commission action to reexamine fee allocations. We seek comment on these issues.

85. We observe that this alternative methodology relies exclusively on the number of authorized space stations to assess space station regulatory fees, rather than the more nuanced approach of the existing methodology of assessing the complexity of a system (and thus the amount of FTE resources required to regulate the system) based on a number of factors. We also acknowledge that the Commission has previously found that the number of space stations in a system is not the key driver of the amount of FTE time devoted to regulatory oversight of such systems.[181] For example, an NGSO system consisting of a single space station that is designed to operate in a novel manner, subject to a processing round, and in a way that requires extensive coordination of spectrum and orbital resources may require significantly more regulatory oversight than a NGSO system of hundreds of space stations having non-exclusive use of spectrum and operating under well-established parameters. But is it reasonable to assume that NGSO systems with hundreds or thousands of authorized space stations require more FTE resources, on average and ignoring outliers, than NGSO systems with 100 authorized space stations or fewer, since as the number of space stations in a system increases, the complexity of spectrum sharing, frequency usage, and orbital debris mitigation plans also increases, generally speaking? While the number of space stations in a system may not be the key driver of the amount of FTE devoted to regulatory oversight of such systems, we expect that it may be a driver, and one that is easier to administer than the more nuanced approach of the existing methodology or the use of other possible proxies for complexity, such as spectrum usage, services provided, or on-orbit mass. In order to gain the potential advantages of the alternative methodology above, the number of space stations authorized may be the more administrable metric to serve as a proxy for the amount of FTE resources devoted to a system in order to accomplish our objectives under section 9 of the Act, rather than to continue the challenging task of determining which categories or aspects of NGSO systems are more or less complex to regulate on a recurring basis, particularly as new technologies, services, and orbital operations rapidly develop. We seek comment on these issues.

86. Although the regulatory fees that would be assessed under the alternative methodology for most space station fee payors may be roughly the same or potentially lower than those that would be assessed using the existing methodology, even with the changes proposed in this *Notice*, the fees assessed for some space station payors could be substantially higher under the alternative methodology. For example, NGSO systems with more than 500 authorized space stations that are categorized as "less complex" under the existing methodology could pay more under the alternative methodology. For NGSO systems that are categorized as "less complex" under our existing methodology, it may be possible to reflect that categorization by allowing a greater number of space stations to be included in the first or second tier for those systems. For example, an NGSO system used primarily for EESS and/or AIS communicating with 20 or fewer U.S.-licensed earth stations with up to 500 authorized space stations could be assessed only the initial unit of fees, even though it exceeds the proposed limit of up to 100 authorized space stations for the initial unit. We seek comment on these issues.

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[181] *FY 2021 R&O and NPRM*, 36 FCC Rcd at 13018, para. 57 ("Our cumulative experience to date is that the number of satellites in a constellation is not the key driver of the amount of FTE time devoted to regulatory oversight of such constellations"); *FY 2021 NPRM,* 36 FCC Rcd at 8589, para. 19 ("It is not our experience that the number of satellites (or satellite mass) is the key driver of system complexity and regulation. For example, an NGSO system with a small number of satellites, authorized as part of a processing round to operate in the FSS to provide broadband to user terminals in a particular area, will receive significant continuous benefits reasonably related to our regulatory work.")

87. Furthermore, if NGSO systems have a significantly larger number of authorized space stations than is the case today, it is possible that tiers of units based on 500 or 1,000 space stations could result in such NGSO systems being assessed a very large percentage share of all space station regulatory fees. In this case, the concern is similar to using a "per space station" basis as a proxy for the complexity of a space station system that was discussed above in this *Notice*.[182] As was discussed above, we seek comment on whether a "cap" or "ceiling" on the number of authorized space stations on which regulatory fees are assessed could alleviate this concern.

88. The use of tiers also presents the situation where a system with only a handful of authorized space stations over the cut off number of space stations in a tier would be assessed fees under the next higher tier. For example, under a tiered system where an additional unit of fees is assessed per 500 additional authorized space stations, an NGSO system with 501 authorized space stations would be assessed fees for three units (the initial tier of up to 100 authorized space stations, the second tier of up to 500 authorized space stations, and the third tier of 501-1,000 authorized space stations), even though it crossed the second tier threshold by a single authorized space station. While the payor in such a case could seek authorization for one less space station, or modify an existing space station license to remove an authorized space station from its license, this may not make sense from a systems engineering perspective, particularly if the "spill over" is 50 or 100 additional authorized space stations. A potential remedy for this situation is to allow partial units for assessing regulatory fees. For example, if the additional authorized space stations per unit is set at 500, and an NGSO system has 508 authorized space stations, it could be assessed 1.016 additional units (508/500) instead of rounding up and being assessed two additional units. If the same NGSO system had 580 authorized space stations, it could be assessed 1.16 additional units (580/500) instead of two additional units. This fractional approach could result in more granular assessments of regulatory fees than a tiered system using cut offs. We seek comment on these issues, particularly on the feasibility of implementing such an approach and whether it requires too much precision in assessing the number of authorized space stations in a system.

89. We seek comment on all aspects of this alternative methodology for assessing space station regulatory fees. Would it be more administrable, fair, and sustainable than the existing methodology? Is it reasonable to use the number of authorized space stations in a system to reflect the amount of FTE resources devoted to a system, as proposed in the alternative methodology? Is the regulatory burden of one GSO space station approximate to the regulatory burden of an NGSO system of up to 100 authorized space stations? If tiers of units are utilized, what should the number of additional authorized space stations per tier be set at? Would 500 or 1,000 additional authorized space stations be a reasonable number? Should there be a cap on the number of space stations on which tiers of units are assessed, in order to prevent NGSO systems with tens of thousands of authorized space stations from potentially being assessed a fee that is disproportionate to the amount of FTE resources devoted to licensing and regulating such systems? Should partial units be utilized instead of cut offs for tiers, as discussed in the previous paragraph? Under the alternative methodology, should small satellite fees be fixed, as proposed for changes to the existing methodology earlier in this *Notice*?

90. Summarizing the proposed changes under the proposed alternative regulatory fee methodology for space stations above, section 1.1156 of our rules would be proposed to read as follows:[183]

Fee Category	Fee Amount
Space Stations (Per Call Sign of Authorized Space Station in Geostationary Orbit or Per System of 100 or Fewer Authorized Space	[TBD]

[182] *See supra*, section III.B.3.

[183] While we initiate the examination and review of the existing methodology for assessing regulatory fees for space and earth station payors in this *Notice*, we will propose and finalize the regulatory fee rates for space and earth station payors as part of our annual Commission-wide regulatory fee proceeding for FY 2024.

Stations in Non-Geostationary Orbit)	
Space Stations (Per Tier of Up to 500 [or 1000] Additionally Authorized Space Stations in Non-Geostationary Orbit)	[TBD]
Space Station (per license/call sign) (Small Satellites)	[TBD]

91. We find that the proposal to use the alternative methodology to assess regulatory fees for space and earth stations would be an amendment as defined in section 9(d) of the Act.[184] Such an amendment must be submitted to Congress at least 90 days before it becomes effective pursuant to section 9A(b)(2).[185]

E. Other Matters

92. *Changing the Title of Section 1.1156.* We propose to change the title of section 1.1156 in part 1, subpart G, of our rules to make it clear that it contains space and earth station regulatory fees.[186] Currently, satellite regulatory fees are contained in section 1.1156, which is titled, "Schedule of regulatory fees for international services."[187] We propose to rename this section as "Schedule of regulatory fees for space and international services" to reflect more accurately that the section contains the regulatory fees for space and earth stations, as well as the fees for international bearer circuits and submarine cables regulated by the Office of International Affairs. The current title of section 1.1156 was accurate when all categories of fees within it were regulated by the International Bureau. After the reorganization of the International Bureau into the Space Bureau and the Office of International Affairs, the current title can cause confusion by suggesting that only the fees for regulatees of the Office of International Affairs are contained within section 1.1156. We tentatively conclude that it would be easier to change the title of section 1.1156 than to create a new section in part 1, subpart G, containing space and earth station regulatory fees.[188] We seek comment on this tentative conclusion and proposal.

93. *Digital Equity and Inclusion.* The Commission, as part of its continuing effort to advance digital equity for all,[189] 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[190] and

[184] 47 U.S.C. § 159(d).

[185] 47 U.S.C. § 159A(b)(2).

[186] 47 CFR § 1.1156.

[187] *Id.*

[188] We note that the regulatory fees for our core bureaus are currently set forth in sequential order starting at section 1.1152 (Schedule of annual regulatory fees for wireless radio services) and ending at section 1.1156. Section 1.1151 is currently in use (Authority to prescribe and collect regulatory fees), and sections 1.1157 through section 1.1167 are also all currently in use and unavailable for the creation of a new section for space and earth station fees. Thus, a new section for space and earth station fees would need to be separate from other regulatory fees, which could cause confusion. In addition, space and earth station regulatory fees have been contained in section 1.1156 since 1995, so moving them to a new fee section would break the continuity and make it harder to trace changes in the regulatory fees over time.

[189] 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.

[190] 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,

(continued….)

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. We note that diversity and equity considerations, however, do not allow the Commission to shift fees from one party of fee payors to another, nor to use fees under section 9 of the Act for any purpose other than as an offsetting collection in the amount of our annual S&E appropriation.

94. *Space Innovation Agenda.* The Commission has an open proceeding on advancing opportunities for innovation in the new space age by taking measures to expedite the application processes for space stations and earth stations, consistent with our objective to "promote a competitive and innovative global telecommunications marketplace via space services."[191] In September 2023, the Commission adopted a Report and Order that further streamlined our application review process, including establishing clear timeframes for placing space and earth station applications on public notice.[192] The Commission also sought comment on several proposed changes to further streamline the licensing process and reduce applicant and staff burdens.[193] Finally, the Commission announced a Transparency Initiative with the goal of providing information and guidance, in a variety of forms, to interested parties so they can understand the Commission's procedures and what is needed to obtain authorization for their proposed space station and earth station operations.[194] We seek comment, generally, how that proceeding and initiative might inform our consideration of the issues raised in this *Notice*.[195]

IV. PROCEDURAL MATTERS

95. *Initial Regulatory Flexibility Act Analysis.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis 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." Accordingly, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning potential rule and policy changes contained in this Notice of Proposed Rulemaking. The IRFA is set forth in Appendix A. 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

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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).

[191] *See Space Bureau Order* at para. 4.

[192] *Expediting Initial Processing of Satellite and Earth Station Applications; Space Innovation*, IB Docket Nos. 22-411 & 22-271, Report and Order and Further Notice of Proposed Rulemaking, FCC 23-73 (rel. Sept. 22, 2023) (*Streamlining R&O and FNPRM*).

[193] *Id.* at paras. 88-113.

[194] *Id.* at paras. 10-14.

[195] The Space Innovation docket is addressing the new space age with modernized regulations to match the new realities, support for technological innovation in this burgeoning economic sector, and taking seriously the space sustainability questions that come with rapidly growing and changing public and private space endeavors. *See FCC Adopts New '5-Year Rule' for De-Orbiting Satellites to Address Growing Risk of Orbital Debris*, News Release, Sept. 29, 2022. The Transparency Initiative goals are intended to reduce administrative burdens on both applicants and staff and to further expedite the processing of applications. The guidance will take a variety of forms, including "frequently asked questions" or helpful links on the FCC's website. In other cases, public workshops may be held to explain certain requirements. *Streamlining R&O and FNPRM* at para. 11. To the extent any filings in response to this *Notice* relate to issues pending as part of our Space Innovation agenda, they must also be filed in IB Docket No. 22-271 (Space Innovation).

designating them as responses to the IRFA.

96. *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 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, 35 FCC Rcd 2788, 2788-89 (OS 2020), https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.

97. *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).

98. *Ex Parte Rules*. The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the 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.

99. *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.

100. For further information contact Stephen Duall, Space Bureau, at 202-418-1103 or by e-mail to Stephen.Duall@fcc.gov.

V. ORDERING CLAUSES

101. Accordingly, IT IS ORDERED that, pursuant to sections 47 U.S.C. §§ 4(i), 4(j), 9, 9A, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 159, 159A, and 303(r), this Notice of Proposed Rulemaking IS HEREBY ADOPTED.

102. IT IS FURTHER ORDERED that the Commission's Office of the Secretary, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, and shall cause it to be published in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Federal Communications Commission (Commission) has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the Notice of Proposed Rulemaking (*Notice*). Written comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadline for comments specified on the first page of this *Notice*. The Commission will send a copy of the *Notice*, including the 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. The Commission is required by Congress pursuant to section 9 of the Communications Act of 1934, as amended (Communications Act or Act) to assess and collect regulatory fees each year to recover the regulatory costs associated with the Commission's oversight and regulatory activities in an amount that can reasonably be expected to equal the amount of its annual appropriation.[4] As part of last year's adoption of regulatory fees,[5] the Commission noted that FY 2023 would be the last year where the Commission will do so for the International Bureau, given the creation of the Space Bureau, and Office of International Affairs.[6] The Commission also noted that an examination of the regulatory fees, and categories for non-geostationary orbit (NGSO) space stations would be useful in light of changes resulting from the creation of the Space Bureau, and as part of a more holistic review of the FTE[7] burden of the Space Bureau in FY 2024.

3. The *Notice* commences the examination and review of regulatory fees for space and earth station payors regulated by the new Space Bureau, specifically seeking comment on a range of proposed changes to the assessment of regulatory fees for space and earth stations under the existing methodology. It proposes to: (1) change the allocation of fee burdens between geostationary orbit (GSO) and NGSO space stations and maintain the existing allocation of fee burdens between the categories of "less complex" and "other" NGSO space stations; (2) create new fee categories within the existing fee category

[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. 847 (1996).

[2] 5 U.S.C. § 603(a).

[3] *Id.*

[4] *See* 47 U.S.C. § 159 (requiring the Commission to assess and collect regulatory fees to recover the costs of carrying out its activities in the total amounts provided for in the Appropriations Act.

[5] *Assessment and Collection of Regulatory Fees for Fiscal Year 2023*, Report and Order, FCC 23-66, 2023 WL 5197492 (rel. Aug. 10, 2023) (*FY 2023 Report and Order*).

[6] *Id*. at *22, para. 72.

[7] One FTE, a "Full Time Equivalent" or "Full Time Employee," is a unit of measure equal to the work performed annually by a full-time person (working a 40-hour workweek for a full year) assigned to the particular job, and subject to agency personnel staffing limitations established by the U.S. Office of Management and Budget. *See generally* Executive Office of the President, Office of Management and Budget, Circular No. A-11, Preparation, Submission, and Execution of the Budget (August 2022), https://www.whitehouse.gov/wp-content/uploads/2018/06/a11.pdf. *See* section 85.5(c) for a detailed explanation of how FTEs are calculated. In this proceeding when we state that 1.5 FTEs work on a particular subject matter, that might mean three individuals spend 50% of their time on that area. Moreover, any change in FTE allocation described here is solely for regulatory fee purposes and does not reflect any change of personnel in the various organizational work units.

of "Space Station (Non-Geostationary Orbit) – Other" to make assessment of our regulatory fees fairer, more administrable, and more sustainable; (3) set the regulatory fee for "Space Stations (per license/call sign in non-geostationary orbit) (47 CFR part 25) (Small Satellite)" for FY 2024 and future fiscal years at the level set for FY 2023, annually adjusted to reflect the percentage change in the appropriation from the previous fiscal year; (4) include, on an interim basis, space stations that are principally used for Rendezvous & Proximity Operations (RPO) or On-Orbit Servicing (OOS), including Orbit Transfer Vehicles (OTV), in the existing fee category for "small satellites" until the Commission can develop more experience in how these space stations will be regulated; (5) assess regulatory fees on all authorized space stations, not just on operational space stations, in order to adhere more closely to the framework of section 9 of the Communications Act, and to make the Commission's fees fairer, more administrable, and more sustainable; and (6) increase the allocation of fees payable by earth station licensees in order to reflect more accurately the fee burden attributable to their licensing and regulation and seek comment on whether additional earth station fee categories should be created.

4. Additionally, the *Notice* proposes to amend the title of section 1.1156 of the Commission's rules,[8] currently titled "Schedule of regulatory fees for international services," to clarify that section 1.1156 includes space and earth station regulatory fees, following the reorganization of the Commission's International Bureau. The *Notice* also proposes an alternative methodology for assessing space station regulatory fees by eliminating the separate categories of regulatory fees for GSO and NGSO space stations, as well as existing subcategories for NGSO space stations, while retaining the existing separate regulatory fee category for small satellites and spacecraft licensed under sections 25.122 and 25.123 of the Commission's rules. The goal of these proposals is to update the regulatory fees and categories for earth and space stations in light of changes resulting from the creation of the Space Bureau and as part of a more holistic review of the regulatory fees for earth and space stations in FY 2024.

B. Legal Basis

5. The proposed action is authorized pursuant to sections 154(i), and (j), 159, 159A, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and (j), 159, 159A, and 303(r).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

6. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[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]

[8] 47 CFR § 1.1156.

[9] 5 U.S.C. § 603(b)(3).

[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.

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 here, 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. 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]

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."[19] U.S. Census Bureau data from the 2017 Census of Governments[20] indicate that 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

[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*.

[16] 5 U.S.C. § 601(4).

[17] The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. *See* Annual Electronic Filing Requirement for Small Exempt Organizations — Form 990-N (e-Postcard), "Who must file," https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard, (last visited May 5, 2023). 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), https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf , (last visited May 5, 2023). The 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] 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* Table 2. CG1700ORG02 Table Notes Local Governments by Type and State_2017.

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 populations of less than 5ll governmental jurisdictions."[25]

10. *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.[26] Transmission facilities may be based on a single technology or combination of technologies.[27] Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution; and wired broadband Internet services.[28] By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.[29]

11. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[30] U.S. Census Bureau data for 2017 show that 3,054 firms operated in this industry for the entire year.[31] Of this number, 2,964 firms operated with fewer than

[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.

[25] This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) 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.

[26] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[27] *Id.*

[28] *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).

[29] *Id*.

[30] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[31] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

250 employees.[32] 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.[33] 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.

12. *Fixed Satellite Small Transmit/Receive Earth Stations.* Neither the SBA nor the Commission have developed a small business size standard specifically applicable to Fixed Satellite Small Transmit/Receive Earth Stations. Satellite Telecommunications[34] is the closest industry with an SBA small business size standard. The SBA size standard for this industry classifies a business as small if it has $38.5 million or less in annual receipts.[35] For this industry, U.S. Census Bureau data for 2017 show that there was a total of 275 firms that operated for the entire year.[36] Of this total, 242 firms had revenue of less than $25 million.[37] 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.[38] Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees.[39] Consequently, using the SBA's small business size standard, a little more than half of these providers can be considered small entities.

13. *Fixed Satellite Very Small Aperture Terminal (VSAT) Systems.* Neither the SBA nor the Commission have developed a small business size standard specifically applicable to Fixed Satellite Very Small Aperture Terminal (VSAT) Systems. A VSAT is a relatively small satellite antenna used for satellite-based point-to-multipoint data communications applications.[40] VSAT networks provide support for credit verification, transaction authorization, and billing and inventory management.[41] Satellite Telecommunications[42] is the closest industry with an SBA small business size standard. The SBA size

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[32] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[33] *See 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).

[34] *See* U.S. Census Bureau, *2017 NAICS Definition, "517410 Satellite Telecommunications,"* https://www.census.gov/naics/?input=517410&year=2017&details=517410.

[35] *See* 13 CFR § 121.201, NAICS Code 517410.

[36] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 517410, https://data.census.gov/cedsci/table?y=2017&n=517410&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.

[37] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[38] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[39] *Id.*

[40] HARRY NEWTON WITH STEVE SCHOEN, NEWTON'S TELECOM DICTIONARY 1382 (31st ed. 2018).

[41] *Id.*

[42] *See* U.S. Census Bureau, *2017 NAICS Definition, "517410 Satellite Telecommunications,"* https://www.census.gov/naics/?input=517410&year=2017&details=517410.

standard for this industry classifies a business as small if it has $38.5 million or less in annual receipts.[43] For this industry, U.S. Census Bureau data for 2017 show that there were a total of 275 firms that operated for the entire year.[44] Of this total, 242 firms had revenue of less than $25 million.[45] 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.[46] Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees.[47] Consequently using the SBA's small business size standard, a little more than half of these providers can be considered small entities.

14. *Home Satellite Dish (HSD) Service.* HSD or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers and involves the home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers' receipt of video programming. Because HSD provides subscription services, HSD falls within the industry category of Wired Telecommunications Carriers.[48] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[49] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated for the entire year.[50] Of this total, 2,964 firms operated with fewer than 250 employees.[51] Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

15. *Mobile Satellite Earth Stations.* Neither the SBA nor the Commission have developed a small business size standard specifically applicable to Mobile Satellite Earth Stations. Satellite Telecommunications[52] is the closest industry with a SBA small business size standard. The SBA small business size standard classifies a business with $38.5 million or less in annual receipts as small.[53] For

[43] *See* 13 CFR § 121.201, NAICS Code 517410.

[44] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 517410, https://data.census.gov/cedsci/table?y=2017&n=517410&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.

[45] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[46] 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.

[47] *Id.*

[48] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[49] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[50] *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.

[51] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[52] *See* U.S. Census Bureau, *2017 NAICS Definition, "517410 Satellite Telecommunications,"* https://www.census.gov/naics/?input=517410&year=2017&details=517410.

[53] *See* 13 CFR § 121.201, NAICS Code 517410.

this industry, U.S. Census Bureau data for 2017 show that there were 275 firms that operated for the entire year.[54] Of this number, 242 firms had revenue of less than $25 million.[55] Thus, for this industry under the SBA size standard, the Commission estimates that the majority of Mobile Satellite Earth Station licensees are small entities. Additionally, based on Commission data as of February 1, 2024, there were 16 Mobile Satellite Earth Stations licensees.[56] The Commission does not request nor collect annual revenue information and is therefore unable to estimate the number of mobile satellite earth stations that would be classified as a small business under the SBA size standard.

16. *Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs)*. SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are included in the Wired Telecommunications Carriers' industry which includes wireline telecommunications businesses.[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 total, 2,964 firms operated with fewer than 250 employees.[60] Thus under the SBA size standard, the majority of firms in this industry can be considered small.

17. *Satellite Telecommunications.* This industry comprises firms "primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications."[61] Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business with $38.5 million or less in annual receipts as small.[62] U.S. Census Bureau data for 2017 show that 275

[54] *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.

[55] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. 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.

[56] Based on a FCC Space Bureau, International Communication Filing System (ICFS), Advanced Search on February 1, 2024, https://licensing.fcc.gov/cgi-bin/ws.exe/prod/ib/forms/reports/swr030b.hts?set=. Search Terms used - Nature of Application Service = SES - Satellite Earth Station; Application Type = All; Class of Station = MES – Mobile Earth Station; and under "Filing Status" = Current.

[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] *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] *See* U.S. Census Bureau, *2017 NAICS Definition, "517410 Satellite Telecommunications,"* https://www.census.gov/naics/?input=517410&year=2017&details=517410.

[62] *See* 13 CFR § 121.201, NAICS Code 517410.

firms in this industry operated for the entire year.[63] Of this number, 242 firms had revenue of less than $25 million.[64] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 65 providers that reported they were engaged in the provision of satellite telecommunications services.[65] Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees.[66] Consequently, using the SBA's small business size standard, a little more than half of these providers can be considered small entities.

18. *All Other Telecommunications*. This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.[67] This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.[68] Providers of Internet services (e.g. dial-up ISPs) or Voice over Internet Protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry.[69] The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small.[70] U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.[71] Of those firms, 1,039 had revenue of less than $25 million.[72] Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements for Small Entities

19. The *Notice* does not propose any changes to the Commission's current information collection, reporting, recordkeeping, or compliance requirements for small entities. Small and other

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[63] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 517410, https://data.census.gov/cedsci/table?y=2017&n=517410&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.

[64] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[65] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[66] *Id.*

[67] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517919 All Other Telecommunications,*" https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[68] *Id.*

[69] *Id*.

[70] *See* 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

[71] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 517919, https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.

[72] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

regulated entities are required to pay regulatory fees on an annual basis. The cost of compliance with the annual regulatory assessment for small entities is the amount assessed for their regulatory fee category and should not require small entities to hire professionals to comply.

20. Small entities that qualify can take advantage of the exemption from payment of regulatory fees allowed under the de minimis threshold. In addition, as described in the *FY 2023 Report and Order*,[73] small entities may request a waiver, reduction, deferral, and/or installment payment of their regulatory fees. The waiver process is an easier filing process for smaller entities that may not be familiar with our procedural filing rules.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

21. The RFA requires an agency to describe any significant, specifically 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."[74]

22. The *Notice* seeks comment on a number of amendments to the existing methodology of assessing regulatory fees paid by space and earth station payors. While this *Notice* initiates the examination and review of regulatory fees for space and earth station payors under the existing regulatory fee methodology, the Commission will propose and finalize the regulatory fee rates for space and earth station payors as part of its annual Commission-wide regulatory fee proceeding for FY 2024. Commenters will have an opportunity in that proceeding to provide comments on the proposed regulatory fee rates for space and earth station payors. This *Notice* gives parties an opportunity to file comments on possible changes to the existing methodology for assessing space and earth station regulatory fees. If any of these proposals are adopted, it may reduce the regulatory fee burden on some satellite entities.

23. Specifically, the *Notice* seeks comment on a proposal to divide the existing regulatory fee subcategory of "Space Stations (Non-Geostationary Orbit) – Other" into two tiers: "Large Constellations" of more than 1,000 authorized space stations; and "Small Constellations" of 1,000 or fewer authorized space stations. The current single regulatory fee for all NGSO "other" space station payors has resulted in requests by fee payors of smaller NGSO systems seeking to be assessed regulatory fees as NGSO "less complex" systems. If adopted, the proposal for the tiered approach for the NGSO space station "other" category would likely reduce the regulatory fee burden on smaller satellite constellations, and likely on smaller entities.

24. As another example, the *Notice* notes that, based on preliminary calculations, the fee amount for the small satellite category for FY 2024 could be substantially greater than the fee assessed for FY 2023. The *Notice* proposes that the administrability and sustainability of regulatory fees for small satellites would be better served by treating them as the Commission has historically treated the regulatory fees for earth stations – that is, a fixed regulatory fee that is adjusted from year-to-year on, rather than as a percentage of the Space Bureau's overall share of regulatory fee allocation, or as a percentage of other categories of space station fee payors. This proposal if adopted would significantly minimize the economic impact of regulatory fees potentially faced by small satellites.

[73] *FY 2023 Report and Order*, Appendix I "Final Regulatory Flexibility Analysis," at para. 36.

[74] 5 U.S.C. § 603(c)(1) – (4).

25. The *Notice* also proposes, on an interim basis, to assess regulatory fees on spacecraft primarily performing Rendezvous and Proximity Operations (RPO) and On-Orbit Servicing (OOS) by including them in the existing regulatory fee category "Space Stations (per license/call sign in non-geostationary orbit) (Small Satellites)" regardless of the orbit in which they are designed to operate in. The Space Bureau has received relatively few applications for RPO or OOS space stations, and although it anticipates receiving more in the near future, the amount of FTE resources required at the present time to regulate these services is more similar to that presented by small satellite space station licensees, which are also few in number, and involve a relatively small number of space stations that have limited duration and scope of use and operate using shared spectrum resources. Therefore, the *Notice* tentatively concludes that the purposes of section 9 of the Act would be best met by erring on the side of caution and assessing regulatory fees under the category of fees associated with the least-burdensome set of space station regulates which would result in lower regulatory fees, and have less economic impact.

26. The *Notice* also seeks comment on possibly creating subcategories of earth station regulatory fee payors to better differentiate the amount of regulatory burdens associated with different types of earth station licenses. This may reduce the regulatory fee burden on some smaller earth station payees who could face a substantial increase in the per unit regulatory fee if the proposal in the *Notice* to apportion 20% of all Space Bureau regulatory fees to earth station licensees beginning in FY 2024, is adopted.

27. Finally, the *Notice* seeks comment on an alternative methodology for assessing space station regulatory fees that eliminates the distinction between GSO, NGSO, and all the subcategories of NGSO, while preserving a separate fee category for small satellites. The alternative methodology would have a single category for "Space Stations (Per Call Sign in Geostationary Orbit or Per System in Non-Geostationary Orbit)," which would be tiered, with a single GSO space station or a NGSO system with up to 100 authorized space stations constituting the first tier and being counted as one unit for assessment of space station regulatory fees, and additional tiers added to account for NGSO systems with more than 100 authorized space stations, with the possibility of 500 or 1,000 additional space stations per NGSO system per tier. Each tier would be counted as an additional unit for assessment of space station regulatory fees. Accordingly, GSO payors and NGSO systems of 100 authorized space stations or fewer would be assessed the lowest regulatory fees, while payors with multiple authorized GSO space stations, or with NGSO systems with more than 100 authorized space stations would be assessed higher regulatory fees, with the highest regulatory fees assessed to payors with a large number of GSO space stations, and to payors with NGSO systems consisting of thousands of authorized space stations. The Commission believes this alternative methodology could be more administrable, fair, and sustainable than the existing methodology, and the *Notice* seeks comment on all aspects of this alternative methodology for assessing space station regulatory fees.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

28. None.