ORAL ARGUMENT NOT YET SCHEDULED

United States Court of Appeals
For the District of Columbia Circuit

No. 21-1075
(FCC-86FR11432)

Petition for Review of Order Issued by the
Federal Communications Commission

Children's Health Defense, Dr. Erica Elliot, Ginger Kesler, Angela Tsiang, Jonathan Mirin, Petitioners
v.
Federal Communications Commission and United States of America, Respondents

PETITIONERS' REPLY BRIEF

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GLOSSARY

ADA - Americans with Disabilities Act

CHD - Children's Health Defense

CPE - Customer Premises Equipment

FHA - Fair Housing Act

OTARD - Over The Air Reception Device

WISPA - Wireless Internet Service Providers Association

SUMMARY OF ARGUMENT

1. All Petitioners in this appeal have standing to challenge the *Order*. The petitioners are people suffering grievous harm to their health and loss of personal and property rights. There must be a process and means to obtain individual pre-deprivation relief.

2. The issues here are separate from the FCC's general emissions limits and arise directly from the rule change.

3. The amendments are not "modest." They contemplate massive deployment of carrier-grade base stations and antennas in residential areas despite significant local impact, opposition and harm. They extinguish vested rights and processes deemed to "restrict" this new activity.

4. The Commission lacks authority to take the action below. The amendment is inconsistent with Congress' chosen regulatory regime and the statute's savings clauses.

5. The FCC Brief contains extensive *post-hoc* rationalizations by counsel that cannot be considered. The Commission is required to address the individual/civil rights issues in an order.

6. The Court must vacate the rule to prevent severe ongoing injury pending disposition on remand.

ARGUMENT

I. Overview

The amendments are not "modest." They contemplate massive deployment of carrier-grade base stations and antennas in residential areas despite significant local impact, opposition and harm. They extinguish vested rights and processes deemed to "restrict" this new activity.

The amended rule governs provider placement of commercial equipment in residential areas. It eliminates local review whether the specific project is appropriate for that area, removes any ability by affected residents to get notice or object and prohibits standard permit conditions governing aesthetics. Until now local authorities could determine that an emissions-compliant[1] facility is inappropriate for that specific location for any number of reasons.

The *Order* excuses OTARD facilities from the same aesthetics or electrical/structural safety as are applied to personal wireless service (traditional cell phone) facilities in that jurisdiction. It disarms local opposition and overrides any ability to enforce state-granted personal and contractual rights (such as deeds

[1] The emissions rules do not require that facilities transmit at full power. 47 U.S.C. §324 mandates "the minimum amount of power necessary to carry out the communication desired." The operator could agree to reduce power or not "cover" one or more small areas in exchange for approval at that location to avoid denial.

and restrictive covenants) under state law, even though the objector has never waived them. Pet. Br. 63-64.

These case-by-case adjudications and land use issues have historically been handled at the local level. The individual rights issues belong in state or federal court, or before a civil rights agency. The amended rule eliminates all this without any meaningful replacement and establishes the FCC as the sole and exclusive authority, even though the rule's dispute process is wholly inadequate for the task. The rule grants unconstrained prerogative to the service provider and deprives a host of vested rights held by all others. The FCC does not have the authority for this drastic action.

The debate over venue, process and "rights," however important, distracts attention from the far more critical issue. The FCC's action is wrecking peoples' lives. The already sick will get worse. Some will die. Many will be constructively evicted from their home, which is the last refuge they have in a world and society that is increasingly unavailable to them because of already-pervasive, torturous radiation. The Commission says Petitioners are barriers and is intent on stripping all their rights in the name of universal deployment. But this Court has the independent duty to ensure citizens are not illegally deprived of all dignity under color of law.

II. All Petitioners Have Article III Standing[2]

FCC Br. 2-3, 16-17, 19-28 contest the individual Petitioners' and CHD's organizational standing. The main contention is that Petitioners do not adequately deal with the "modest" change. As shown in Part III this argument fails. The rule amendment, not the prior rule, is the direct immiserating cause.

A. Individual Petitioners

Each CHD affiant presented specific facts demonstrating a substantial likelihood the new kind of system will appear, unannounced, nearby. CHD member Hoffman showed that one has already been installed and then supplemented. Tachover@11-12; Hoffman@11-12, 46-49.

The FCC's contentions regarding risk of harm are irrelevant. The petitioners *are* "directly subject to regulation," *c.f.*, FCC Br. 19,[3] so the "increased risk-of-harm" analysis in *Food & Water Watch, Inc. v. Vilsack*, 808 F.3d 905, 914-915 (D.C. Cir. 2015) does not apply. The rule does not say "antenna users can do X without restriction"; it says "people and authorities invoking state and local law

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[2] The FCC does not contest Petitioners' Hobbs Act standing or dispute that vacatur and remand would provide redress.

[3] The rule does regulate the use of Petitioners' property, *c.f.*, FCC Br. 55, since it effectively deprives them of any use at all. More important, it regulates Petitioners by forbidding any action by them that might lead to a "restriction."

cannot restrict X." The rule directly regulates Petitioners and state and local governments that seek to enforce restrictions. *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 373 (1982).

The rule change has already invalidated Petitioners Elliot and Kesler's homeowners' association restrictive covenants prohibiting the equipment "protected" by the amendment. The restriction is part of their deeds, and their right to enforce it is eliminated by the amended rule. Every petitioner just lost all available relief options.

Petitioners meet the increased risk of harm test in any event. The injury is not hypothetical or speculative. They show *direct causation* from the rule. To the extent third party action and standing depends on a "chain of causation between the challenged Government conduct and the asserted injury" (*Pub. Citizen, Inc. v. Nat'l Highway Traffic Safety Admin.*, 489 F.3d 1279, 1291 (D.C. Cir. 2007)), the few links are solid and injury is certain. CHD member Hoffman now has one of the new systems nearby and it has already injured him and his family. The other Petitioners have also lost rights and there is a substantial likelihood they will soon suffer more injuries.

The rule amendment "protects" activity that will directly cause harm to specifically-identified CHD members. They or part of their family will become

even more ill. Their homes will be uninhabitable. Pet. Br. 40-42. This is not "remote," "speculative" or based on statistics like in *Pub. Citizen*; it is certainty.

B. Organizational standing

Hundreds of CHD members (some named petitioners, many others not) have individual standing. Pet. Br. 39-42, 44. CHD therefore has representational standing. *Pub. Citizen*, 489 F.3d at 1289. That ends the matter. Despite the arguments in FCC Br. 26-29, CHD also has organizational standing.

FCC does not deny the Commission's action conflicts with CHD's mission. Tachover@6, 66. Nor does FCC dispute that CHD has expended resources to counteract the harm. Pet. Br. 43. The argument merely replays the "modesty" argument debunked in Part III to claim these counteractive measures are misguided or misinformed. FCC Br. 27-28. FCC then asserts CHD's "advocacy," "education" and "litigation counseling" do not qualify for standing purposes. FCC Br. 26-27. The FCC's characterization misclassifies CHD's activities. CHD will have to expend all these activities "in order to counteract the harm" and "injuries" flowing from the rule change. *Equal Rights Ctr. v. Post Props.*, 633 F.3d 1136, 1140 (2011). Tachover@61-88 demonstrates the rule change has already stimulated demand for, and will make even more difficult, CHD's ongoing non-legal counseling and referrals to other medical and mitigation professionals. CHD has

had to divert resources from other ongoing projects. The amendment harms CHD's "services," *Food & Water Watch*, 808 F.3d at 919, "daily operations," *People for the Ethical Treatment of Animals v. U.S. Dep't of Agric*., 797 F.3d 1087, 1094 (D.C. Cir. 2015), and "activities," *Am. Anti-Vivisection Soc'y v. U.S. Dep't of Agric*., 946 F.3d 615, 619 (D.C. Cir. 2020).

The amendment causes an "information injury." Pet. Br. 43. CHD and its members could track base station deployment before the rule by monitoring land use permit applications. There is no other known database or resource for CHD to identify these systems and test them for compliance. This gives standing under *Havens Realty*, *PETA* and *Action All. of Senior Citizens v. Heckler*,789 F.2d 931, 937 (D.C. Cir. 1986).

III. OTARD Rule Change Not "Modest"

The claim of rule "modesty" (*Order* ¶¶1, 27 n.110; FCC Br. 2, 16, 41, 45) is impostrous. The *Order* radically expands the facilities and uses protected from restrictions. The Wireless Internet Service Providers Association (WISPA)–which sought the change–proclaimed a "vast" expansion. Tachover@10. *Order* ¶14 claims the change will allow providers to activate 25-30% more sites in the first year; one provider alone will be able to reach "more than one million additional homes." WISPA has "700 service provider members," *Chairman Pai Statement*,

and many others like Google affiliate Webpass (*Order* ¶30 n. 121) will undoubtedly take advantage.

The infrastructure will be located "closer to end users," *Chairman Pai Statement* and *Order* ¶¶ 7, 10 & nn.30, 31, and often much closer to the ground than was the case when macro towers predominated. As FCC Br. p. 43 n.11 observes, exposure level in relation to emission power is a direct function of distance, so closer and lower vertical placement in combination with higher power means people will be exposed to far more radiation.

FCC Br. 2, 16, 41, 45 assert the rule change is so "modest" Petitioners cannot demonstrate they are affected by it. The FCC Brief contends Petitioners either cannot or will not be able to discern whether an installation is "old" or "new" OTARD, and therefore Petitioners cannot show increased risk of harm. As shown below, this argument is delusory.

A. "12 foot Exception" Irrelevant

FCC Br. 7, 22-23, 40 notes prior decisions have allowed local siting authorities to require permits for OTARD-associated masts more than 12 feet above the roofline. This "exception" is not in the rule's text. It comes from later interpretations of 1.4000(b)(1)'s limited retention of state and local authorities' rights to regulate "safety." FCC Br. 7, 22, 40, 45; *see also Restrictions on Over-*

the-Air Reception Devices, 13 FCC Rcd 18962, 18976-18978 ¶¶27-38 (1998); *Competitive Networks*, 15 FCC Rcd 22983, 23028, ¶100 n.258 (2000); *Association International, Inc.*, 19 FCC Rcd 5637, 5642-5644, ¶¶1, 9-12 (2004).

The OTARD rule allowed local authorities to enforce limited safety regulations so long as they do not prevent necessary reception quality.[4] The local authority can ensure the mast is safely constructed, but it cannot regulate placement or modification of equipment on the mast, at the base or in the equipment room. *Commission Staff Clarifies FCC's Role Regarding Radio Interference Matters and its Rules Governing Customer Antennas and Other Unlicensed Equipment*, 19 FCC Rcd 11300 (2004); *Stanley and Vera Holliday*, 14 FCC Rcd 17167, 17171, ¶12 (1999). See Part III.D.

The mast near Hoffman may project more than 12 feet over the roofline. FCC Br. 23-24. That means nothing. The mast was initially installed some time ago. It was used to provide "private only" service to the premises owners.

[4] The amount of "necessary" equipment for acceptable quality was decided on a case-by-case basis. *Holliday v. Crooked Creek Vills. Homeowners Assoc.*, 759 N.E.2d 1088, 1093-1095 (Ind. Ct. App. 2001). The amendment eliminates even this prior limited deference to local authorities.

Hoffman@11, 46.[5] The provider upgraded before the amendment became effective by adding omnidirectional antennas and a base station. The operator did not obtain a permit. Hoffman had the unqualified right to seek enforcement of the local siting rules. Hoffman@12; Tachover@12. On June 7, 2021 (after the rule change became effective) another omnidirectional antenna was added.[6] Hoffman@46-49. But by then Hoffman had lost any right to complain about the illegal pre-change modifications (base station plus antennas) or the June 7 modification (another antenna). All this is entirely independent of mast height.[7]

B. FCC Overstates Pre-existing Relay Capability

FCC Br. 23 takes another tack with Petitioner Mirin by asserting he does not address whether the system he opposed before the local board used relay. The original plan submitted to the local board was designed to serve users on many different properties. Mirin@44-47. This was no unidirectional point-to-point-to-point relay to a select few. The provider faced intense local opposition and

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[5] FCC Br. p. 24 incorrectly claims Hoffman did not allege the antennas serve a customer on whose premises it is located. Hoffman@45 directly so states by noting the system was originally "private use only." Tachover@12 avers that "[i]n exchange, the owner of the property gets free Internet."

[6] As a result of the modifications the "antennas transmit to a 3-5 mile radius in all directions." Tachover@12.

[7] FCC Br. 22 and 25 n.3 make the same argument about Petitioner Mirin and Dr. Elliot. The same answer applies.

ultimately withdrew the application. *Order* ¶14 & nn.45, 48, ¶17 & n.78 make clear the FCC is directly attacking such outcomes. The provider in Mirin's example can now bypass all local regulation by placing the facility on a nearby home.

The FCC Brief expansively mischaracterizes the prior "relay" capability in its effort to claim amendment modesty. A "relay" is for "networks using a 'point-to-point-to-point' architecture" or "mesh networks." FCC Br. 8. In other words, a relay merely resends a *directional* fixed wireless signal to another specific device. A "fixed relay station" is "a station at a specified site used to communicate with another station at another specified site." 47 C.F.R. §90.7. The relay capability had to be ancillary to the premise customer's own primary use. FCC Br. 8. OTARD relay capabilities were quite limited in scope.

The rule now allows omnidirectional antennas covering a wide-area and serving thousands of users, so long as there is also some small incidental use by the premise customer. The supposedly "fixed" system can also support "private mobile service." *See* 47 U.S.C. §332(c)(2). *Order* ¶¶2 and 11 indicate the rule change will

"spur the rapid development of fixed wireless networks needed for 5G." "5G" is a mobile technology. *United Keetoowah Band of Cherokee Indians in Okla. v. FCC*, 933 F.3d 728, 735-736 (2019).These are significant changes. 5G mobile service support was not previously protected.

The amendment extends to hundreds-foot tall "macro-cells" for private carrier fixed and mobile service. The local authority can ensure electrical and structural "safety" if the ordinance is sufficiently precise, but it cannot otherwise regulate placement, construction, modification or aesthetics. Part III.D.

The rule change allows installation of completely different and more powerful facilities with different uses. This all derives from the now-protected "primary" use and the new definition of "hub or relay antenna." Pet. Br. 27 n.29.

C. FCC Ignores Newly-authorized Base Stations

The FCC Brief conspicuously avoids the more important expansion of "hub" capabilities. As *Order* ¶4 explains, the prior rule did not allow systems "designed primarily for use as hubs for distribution of service" but the amendment removed this prohibition. *Order* ¶¶8-9; Pet. Br. 47-48, 52-55, 57-59.

The providers' filings and *Order* ¶¶6, 10 n.30, 14, 19 n.73, 20 n.81, 26 n.106 are explicit. The amendment now allows private carrier base stations.[8] Base stations are complicated switching/routing systems that use completely different omnidirectional antennas to support service to the public. They are not used to service a couple of individuals at one location with some small amount of point-to-point relay to a few other specific locations.

These "hubs" function just like any other wireless base station by facilitating connections between thousands of unaffiliated users. The provider employs *omnidirectional* antennas reaching out miles in every direction. This is a major change wholly separate from the supporting mast, its height or the prior limited ability to do point-to-point-point fixed relay on an ancillary basis.

Order ¶19 n.73 admits these hubs will meet its traditional definition of a base station, including that contained in 47 C.F.R. §1.6100(a)(1). That note explains the base station is not eligible for "must approve" treatment under 47 U.S.C. §1455(a) and 47 C.F.R. §1.6100(c). But for the amendment it would have still been fully subject to local permitting, including discretion over location,

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[8] FCC Br. 40 quibbles with Petitioners' use of "base station" but the 7 references in the *Order* and several of the decisions cited in *Order* nn.11-17 each declare that "hubs" "used primarily for distribution of service" are "base stations." Pet. Br. 54.

aesthetic and other values. In other words, the local jurisdiction could decide the proposed location is inappropriate under its zoning plan. The amendment removes this authority. Local citizens could seek and obtain relief before the rule change but now they cannot.

The amendment is not "modest." It has vast portends.

D. Competitive Parity Justification Improper and Incorrect

Order ¶12 claims the rule change puts fixed wireless providers "on equal footing" with other wireless companies that provide telecommunications service and commingled service. The effort to obtain competitive parity in the OTARD rule demonstrates how unanchored the rule is from its original purpose. *See Restrictions on Over-the-Air Reception Devices*, 13 FCC Rcd at 18981, ¶42 (Section 207 does not justify attempt to "calibrate" "competitive advantages").

Local jurisdictions now have no authority regarding placement, construction, and modification over newly-allowed OTARD based stations/antennas, except for some small ability to ensure mast "safety." The preemption is far more extensive than that for personal wireless service facilities, and especially base stations, under 47 U.S.C. §332(c)(7) and 47 C.F.R. Part 1, Subpart U.

"[T]here is no 'aesthetics exception' under the OTARD rule," *Order* ¶21, so although they can enforce some "safety" requirements local jurisdictions cannot

require that OTARD masts align with local visual and concealment preferences, regardless of size. *Satellite Broadcasting & Communications Associatio*n, 33 FCC Rcd 3797, 3819-3821, ¶¶51-57 (2018). This is far more limiting than for personal wireless service. *Compare, City of Portland v. U.S.,* 969 F.3d 1020, 1039-43 (9th Cir. 2020).

Similarly, a local jurisdiction cannot exercise any meaningful authority or discretion over OTARD facility location. It cannot require that the installation be somewhere else. *Satellite Broadcasting & Communications*, 33 FCC Rcd at 3803-3813, ¶¶13-34. In contrast, local jurisdictions *can* still oversee placement and location of personal wireless facilities, subject to the nondiscrimination and "effective prohibition" tests in 47 U.S.C. §§253(a) and 332(c)(7). *City of Portland*, 969 F.3d at 1033-1035. They can keep disruptive commercial systems out of residential areas.

Even in the safety area local authority is far more restricted than for personal wireless service. With OTARD the local authority must clearly specify and justify individual safety code provisions; it cannot generally require compliance with the entire code. *Frankfort*, 18 FCC Rcd 18431, 18432-34, ¶¶6-8 (2003), *Wireless Communications Association*, 19 FCC Rcd at 5644, ¶12 n.37. With personal wireless service, however, it is perfectly fine to demand "generally-applicable"

safety code compliance. No specificity or detailed written justification is required. *Improving Wireless Facilities Siting Policies,* 29 FCC Rcd 12865, 122951, ¶202 (2014).

Efforts to obtain competitive parity between personal wireless service and private wireless service is inconsistent with the OTARD rule's original purpose. And the result is *not* parity. Private carrier service is now far more immunized from local regulation and citizen input in traditionally protected residential areas where people live.

IV. Commission Lacks Authority

A. Section 303 Affords Only Implied Preemption

Section 207 (Pub. L. No. 104-104, §207, 110 Stat. 56, 114 (1996)(codified in notes to 47 U.S.C. §303) and 47 U.S.C. §332 do not provide authority for the amendment. Nor do any other provisions in the Communications Act, including 47 U.S.C. §303. FCC Br. 5, 15, 17, 33-34 invoke Section 207 for the changes. It also summons 47 U.S.C. §332(c)(7). Neither applies.

Section 207 was about "receiving devices" for wireless home video delivery services, not transmitting devices for Internet or private mobile service. The Commission so acknowledged in *Competitive Networks*, 14 FCC Rcd 12673, 12732-12733, ¶69 (1999)(inquiring about telecommunications and video services

"not within the scope of Section 207"). In every relevant decision the FCC has ultimately relied on 47 U.S.C. §303 as the ultimate source for rulemaking authority. *Competitive Networks*, 15 FCC Rcd at 23030-23031, ¶¶105-106; *Competitive Networks*, 19 FCC Rcd 5637, 5638, 5641, 5645, ¶¶2, 8, 21 (2004).

The FCC Brief's invocation of §332 fails since that section nowhere grants preemptive authority over local and state decisions relating to private carrier facilities. The limited preemption in 47 U.S.C. §332(c)(7) relates only to personal wireless services, and the OTARD revision expressly excludes facilities covered by that provision.

47 U.S.C. §303 grants general rulemaking authority, but that alone does not provide express power to prodigiously preempt all other laws that incommode Commission-favored private carrier regulatees. This is best illustrated by the Spectrum Act, 47 U.S.C. §1455(a). Congress retained local siting authorities' land use powers in this specific context. The local agency "must approve" "minor modifications" to qualifying existing facilities, including "base stations" and towers associated with both personal wireless service and private carrier fixed and mobile wireless service. *Improving Wireless Facilities Siting Policies,* 29 FCC Rcd at 12927, ¶149. But even with qualifying facilities an application at the local level

is still required. Congress fully retained robust local jurisdiction over *non*-qualifying facilities, including the very ones in issue here.

FCC Br. 29-34 proffer various "policies" and "goals" the Commission is supposedly advancing. But it mentions only two specific subsections: §303(d) and (r). Subsection (r) grants general rulemaking power for "regulations not inconsistent with law," but does not express preemption authority. All the preemption decisions arising under it apply implied preemption principles, and that is a distinct area of law where most appeals courts do not grant Chevron deference. Pet. Br. 28, 35-39; *c.f.* FCC Br. 15.

47 U.S.C. §303(d) allows the Commission to "determine the location" of stations. FCC Br. 31-32. This provision was in the original 1934 Communications Act, 73 P.L. 416, 48 Stat. 1064, 1082, 73 Cong. Ch. 652 (Jun. 19, 1934). Despite this wording the courts have long recognized that local authorities retain significant police power over land use matters, including wireless facilities placement. *See Guschke v. Okla. City*, 763 F.2d 379, 385 & n.6 (10th Cir. 1985).[9] 47 U.S.C.

[9] Courts have held the Act affords preemptive authority over local efforts to regulate "technical matters" like "RF interference," but "local authority over siting of broadcast towers, based on considerations not within the exclusive regulatory authority of the FCC, remains unimpaired." *Freeman v. Burlington Broads., Inc.,* 204 F.3d 311, 324 (2d Cir. 2000). The same obtains for amateur radio facilities *Zubarau v. City of Palmdale*, 192 Cal. App. 4th 289 (2011).

§§332(c) and 1455(a) both clearly reserve local land use regulation except as expressly preempted.

The FCC has taken "limited" preemptive action over local land use rules that effectively prohibit or discriminate against authorized wireless communications. It always addressed the issue in terms of implied, and usually conflict preemption. *E.g.*, *Preemption of Local Zoning and Other Regulation of Receive-Only Satellite Earth Stations*, 51 FR 5519, ¶¶23-29 (1986); *Federal preemption of state and local regulations pertaining to Amateur radio facilities*, 101 F.C.C.2d 952, 958-961, ¶¶20-26 (1985); *Earth Satellite Communications, Inc*., 95 FCC 2d 1223, 1233 (1983).

The Commission has, until now, recognized and tried to accommodate local authorities' historical land use powers, especially when the project is in a residentially-zoned district and a variance is required. *DePolo v. Bd. of Supervisors Tredyffrin Twp*., 835 F.3d 381, 384 (3d Cir. 2016)(addressing FCC "limited preemption," collecting cases, dismissing for failure to exhaust state administrative remedies). In other words, FCC never tried to use its Article III *implied* authority to affect complete field preemption and leave little to no role for the states' traditional police and land use powers. The 1996 revisions reaffirm this scheme by including a "no implied effect" provision preserving "Federal, State, or local law

unless expressly so provided." Pub. L. No. 104-104, § 601, 110 Stat. 56, 143 (1996)(codified in notes to 47 U.S.C. §152).

Pre- and post 1996 agency and court decisions relating to land use planning for private and personal wireless service reveal similar operating principles. Traditional local land use regulation is not preempted. Siting authorities have the first shot at deciding whether the equipment is necessary (*e.g.*, not "duplicative"[10]) but cannot effectively prohibit or discriminate against authorized services.

The prior OTARD preemptive action made sense. The antenna was for a single user or group of users on the same premises, which was usually a residential property so it had to be there. But this case is about carrier-grade facilities that will primarily serve the public over a wide area, with only incidental use by the site premises owner. Each antenna may be one meter in size, but they will be qualitatively different and do many more things, all of which affect local residents far more than did the original OTARD receiver dishes mounted on a balcony or rooftop.

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[10] *Holliday (FCC)*, 14 FCC Rcd at 17171, ¶12; *Holliday (Indiana)*, 759 N.E.2d at 1093-1095.

1996 Original OTARD

2021 Amended OTARD – **Hoffman**

Base stations and antennas serve a wide area rather than a single premise. There will usually be several potential places within that area that would not cause disruption while still allowing service to the public and the same individual user. These decisions have always been left to local land use siting authorities.

The Communications Act does not support this action under implied authority. If the FCC truly believes that good policy and technological change

justify entirely displacing state and local land use regulation over base station and antenna siting it can ask Congress for express power.

B. Rule Inconsistent With Title III's Basic Structure and Operation

The FCC Brief does not meaningfully respond to Petitioners' showing that the amended rule is "oppugnant to the licensing and provider/user regime intended by Congress." Pet. Br. 23-24, 46-60. The FCC may fervently believe that the Communications Act's "carrier provider/end user customer" construct no longer makes practical sense because of technological change. FCC Br. 41-42. The Commission can ask Congress to abandon this statutory framework. Meanwhile we must all operate under the statute, including the parts of 47 U.S.C. §303 requiring that those who provide wireless services to the public by radio be licensed or registered and do so on a common carrier or private carrier basis. Pet. Br. 50, 55-57. And those parts differentiating "carrier" equipment and "end user" equipment. Pet Br. 52-55. Article III grants rulemaking power within its interstices but it has a mandatory internal structure and outer confines.

Nor does the FCC Brief have an intelligible answer to Petitioners' showing that the new rule construct is wildly dissonant with other FCC rules, especially those dealing with the "carrier provider/end user customer" construct and how they manifest in the Commission's emissions rules. Pet. Br. 55-59.

FCC Brief 7-8, 17, 30 repeat the *Order's* mantra that "end use" equipment can now do many things.[11] But it never disputes Petitioners' showing that the plain intention is to allow far more powerful *carrier-grade* equipment for entirely different uses. Pet. Br. 46-48, 52-59.

The failure to explain how the rule change actually works given what these other important regulations actually say and require speaks volumes. The Court cannot follow the Commission's reasoning and justification or understand what the rule truly intends and does. Pet. Br. 60.

The FCC Brief does make clear service providers will be the primary users of these carrier-grade facilities. FCC Br. 43. But it entirely fails to explain how this can be reconciled with the *Order* ¶¶19-20 conclusion that the on-premises

[11] The *Order* pretends the facilities in issue are merely low-power "customer-end" equipment with lower emissions. Pet. Br. 58, 52-59.

customer is somehow still "the antenna user" and the on-premise equipment is still CPE for regulatory purposes even though it is actually high-power carrier-grade equipment, a commercial operation right next to people's homes.

Equipment is end user "mouse" or carrier "elephant"; it cannot be both. *Genus Med. Techs. LLC v. United States FDA*, 994 F.3d 631, 637-644 (D.C. Cir. 2021). The FCC Brief festoons end-user habiliments on carrier-grade equipment, but it ultimately and fatally admits to forcing ungulates into places Congress intended for small rodent habitancy absent local land use authorization.

V. Refusal to Resolve Petitioners' Issues Was Error

A. Issues Not Outside Scope

The Communications Act does not authorize an FCC-issued "license to kill." Pet. Br. 39, 75-76. Nor does it permit rules disarming citizens of all self-defense measures. FCC Br. 34-37 argues these issues were irrelevant to the scope of the rule. *Comptel v. FCC*, 978 F.3d 1325, 1331 (D.C. Cir. 2020). The questions, however, all directly relate to the specific facilities and uses now protected by the amendment.

The FCC did not "consider and reject" Petitioners' points. *C.f. Covad Communs. Co. v. FCC*, 450 F.3d 528, 550 (D.C. Cir. 2006). It expressly refused to

address them. *Order* ¶34.[12] Some do not involve exposure limits. CHD comments pp. 18-19 extensively discussed shortcomings in the complaint portion of the OTARD rule, 1.4000(d)-(h) (JA___). Although the *Order* addresses homeowner associations governing the project site, it did not "consider and reject" neighbors' separate and unrelinquished property-related issues. CHD Br. 63-64.[13] These contentions are central to and directly raised by the OTARD revision.

FCC Br. 34-37 suggests the FCC might resolve the Petitioners' issue later in some other proceeding such as the recent remand of the exposure limits proceeding. This is not a satisfactory response. The Court's *Emissions Remand* decision held that the constitutional and disabilities related claims pressed by CHD were not adequately preserved below. 2021 U.S.App.Lexis 24138 *39-*41, slip. op. at 27-29. They *were* squarely presented in this proceeding. The guidelines case

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[12] *Order* ¶34 and nn.131, 133. The FCC refused to address CHD's showing of individual harm by pointing to its emissions guidelines and a 2019 order finding those guidelines adequately protect general public health. This Court remanded the 2019 decision because the FCC ignored substantial evidence indicating the guidelines are inadequate. *Envtl. Health Tr., et al. v. FCC*, Nos. 20-1025, 20-1138, 2021 U.S. App.LEXIS 24138 (D.C. Cir. Aug. 13, 2021) ("*Emissions Remand*"). The *Order* ¶34 assumption that OTARD facilities are safe therefore has no basis.

[13] The takings analyses in *Bldg. Owners & Mgrs. Ass'n Inter. v. FCC*, 254 F.3d 89, 95-100 (D.C. Cir. 2001) and *Order* ¶¶20, 32-34 do not apply to Petitioners.

is not about where OTARD facilities are placed, what rights a neighbor who objects to that placement has, or where those rights can be vindicated.

Nothing in the FCC Brief commits to address any of this in the emissions remand. The FCC apparently intends to keep those issues homeless and avoid dealing with them as long it can, just as it is content with–indeed intent on–turning the Petitioners and those like them out in the street with nowhere to live.

The FCC cannot enhance and then release a Kraken exquisitely patterned for Petitioners' houseboats and then claim immunity for the ensuing shipwrecks pending update of the rules of engagement for all Commission-created Hydra. FCC wants the Court to look past the damage from OTARD specific Leviathans, independent of all other FCC *lusus naturae*, in the meanwhile. The Court should vacate and remand. The Commission can then take all the time it needs to lawfully revise OTARD, in whatever proceeding it prefers.

B. Failure to Provide Notice Mechanism Arbitrary and Capricious

FCC Br. 37-39 disputes any need to provide a replacement notice mechanism. It assumes local opposition is entirely premised on radiofrequency emissions harm. As Part III explains, there are several other issues as well. The "notice" issue also relates to monitoring and enforcement. A local authority can ensure structural/electrical "safety" like FCC Br. 7, 22-23, 40 claim only for

systems it knows about in advance. People must have some way to locate these powerful systems so they can ensure the emissions comply with whatever limits obtain and then have a means to report violations. The elimination of all local notice and the refusal to devise a replacement resource was arbitrary and capricious.

C. Cannot Consider *Post-hoc* Rationalizations

The *Order* contains none of the analysis appearing in FCC Br. 43-56. It is *post-hoc* rationalization by counsel that cannot be considered. *SEC v. Chenery Corp.*, 318 U.S. 80, 87 (1943); *SEC v. Chenery Corp.*, 332 U.S. 194, 196 (1947);*Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 50 (1983); *Williams Gas Processing-Gulf Coast Co., L.P. v. FERC*, 475 F.3d 319, 330 (D.C. Cir. 2006). The Commission must resolve these issues in an order, not hide behind counsel. We will not know its complete and formal position until it finally publicly confronts them.

D. Amended Rule Violates Due Process

The evidence below was unrebutted and uncontested. Deployment allowed by the amendment directly harms a significant portion of the population that–for whatever reason–cannot tolerate exposure at or under the general emissions limits.

Pet. Br. 62-63.[14] FCC Br. 35-37 imply that issue might be resolved in the emissions remand proceeding, but the general emissions rules are just that – general. They have no relief valve for great wrongs in unique or individual cases. There is no means to secure interim or permanent relief from harmful exposure from specific facilities and, as FCC Br. 51-54 forcefully notes, no ability to recover damages after the fact.

The authorization to place and operate these facilities arises from the OTARD rule. It has a complaint process in 47 C.F.R. §1.4000(d)-(h), although it is entirely inadequate. It does not contemplate complaints by anyone other than service providers, antenna users or governmental entities. It precludes interim relief and damages.[15] Its presence nonetheless demonstrates the Commission's intention that OTARD-related disputes be handled under the OTARD rule.

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[14] The FCC has admitted certain frequencies cause people to suffer "[a]dverse neural stimulation effects…includ[ing] acute effects such as perception of tingling, shock, pain, or altered behavior due to excitation of tissue in the body's peripheral nervous system." *Targeted Changes to the Commission's Rules Regarding Human Exposure to Radiofrequency Electromagnetic Fields*, 34 FCC Rcd 11687, 11743-11744, ¶122 n.328 (2019). The equipment here uses those frequency variations as part of its modulation (JA__, __). The symptoms noted by the FCC are the same as those experienced by people with Radiation Sickness (JA__, __, __, __).

[15] The FCC Brief does not address Petitioners' discussion of these shortcomings. Pet. Br. 79.

The solution for individual disputes over specific deployments therefore lies within the OTARD rule, not the general emissions rule. One approach would be to require notice and add a savings clause stating that civil rights claims and remedies, including effective accommodations,[16] are not preempted and should be disposed under those statutes in their designated venues. Similarly, any purely constitutional claims must be taken to an Article III court.

E. FCC Must Address Individual Rights in an Order

The FCC Brief *ad hoc* legal argument (contending the ADA, FHA and state equivalents do not apply and there are no Constitutional rights to be vindicated) cannot be considered. Petitioners presented the case for applicability to demonstrate there are plausible arguments. The FCC–not its appellate counsel–must address these questions in an actual order. The FCC claims absolute authority over the question. FCC Br. 51-52.[17] But it refuses to actually address it.

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[16] FCC Br. 19,44 assert the amendment has no effect on "application" of the ADA, FHA or state equivalents. But it then admits those laws are preempted if an accommodation will "directly restrict" OTARD placement. FCC Br. 6, 44-45, 51. In other words there can be no "accommodation" that in any way "unreasonably delays, prevents, or increases the cost of antenna installation, maintenance, or use." 47 C.F.R. §1.4000(a)(3). This guts any viable disability remedy.

[17] The FCC still refuses to seek input from "sister" federal and state civil rights agencies. Pet. Br. 66, 69, 71; FCC Br. 45.

The Commission is not reluctant to tell the courts when they are wrong (or right) when it wants to resolve a matter. *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, 33 FCC Rcd 9088, 9101-9109, ¶¶34-42 (2018). It should do that on remand. But in the interim the Court must protect those whose lives and homes are already being destroyed by OTARD deployments.

The FCC Brief's *post-hoc* analysis of the individual rights issues was largely an exercise in empty denial and deflection. For example, it does not address Petitioners' contention they are effectively conscripted into the provider's service when it floods their homes and penetrates their bodies. The service, not the provider, is the object of ADA Title III. Pet. Br. 68-70. Similarly, the FCC Brief fails to address the showing that the Petitioners will suffer a constructive eviction under color of law. Pet. Br. 19, 40, 67. Nor did the FCC Brief even acknowledge Petitioners' "negative rights" analysis. Pet. Br. 73-77. Petitioners do not claim the government has a duty to ensure a "contaminant-free, healthy environment," FCC

Br. 53; they assert the government cannot take knowing affirmative action that poisons the Petitioners and drives them from their homes.[18]

This is not like water fluoridation. FCC Br. 53-54. People are "not compelled to drink the fluoridated water, [their] freedom to choose not to ingest HFSA remains intact." *Coshow v. City of Escondido*, 132 Cal. App. 4th 687, 710 (2005). Petitioners *are* compelled to accept the bodily intrusions from nearby FCC-authorized emitters. They cannot avoid it if they stay in their home.

VI. Amendment Must Be Vacated

The *Allied-Signal* test strongly favors *vacatur*. *Allied-Signal v. United States Nuclear Regulatory Comm'n*, 988 F.2d 146, 150-151 (1993). The action was seriously deficient. The amendment has no legal basis. Any claim of serious disruption is meritless. The Commission opposed Petitioners' stay request, so they assumed the risk. The old version of the rule will be reinstated, and service under that rule can continue. The providers can apply for permits at the local level if they want to retain any ineligible facilities or uses. The Petitioners and many others are suffering grievous injuries now and any continuation would be highly inequitable.

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[18] FCC Br. 53 seems to claim the FCC is not deliberately introducing this toxin or trying to conceal its actions. It took affirmative action after clear notice and has assiduously sought to suppress all evidence indicating RF is harmful to individuals with Radiation Sickness.

CONCLUSION

The FCC lacks authority to assert and then misuse preemption in this way. The FCC's radical action purges local control Congress expressly retained. It dehumanizes people into mere "barriers to deployment" to justify serious injury and stripping all rights and due process. People have already been severely injured. Many will be driven from their homes–their last refuge–when private carriers rush to massively deploy powerful and dangerous carrier-grade equipment on residential roofs and in back yards across the country.

The Court must vacate the *Order* and associated rule amendments and remand to the FCC.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with requirements of Federal Rule of Appellate Procedure 32(g)(1) and this Court's Order dated May 27, 2021 because it contains 6,403 words according to the count of Microsoft Word.

/s/ *W. Scott McCollough*
W. Scott McCollough

CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2021 I filed the foregoing in the United States Court of Appeals for the District of Columbia Circuit via the CM/ECF system. I further certify that all parties are registered CM/ECF users, and that service will be accomplished via electronic filing.

/s/ *W. Scott McCollough*
W. Scott McCollough

United States Court of Appeals
For the District of Columbia Circuit

No. 21-1075
(FCC-86FR11432)

Petition for Review of Order Issued by the
Federal Communications Commission

Children's Health Defense, Dr. Erica Elliot, Ginger Kesler, Angela Tsiang, Jonathan Mirin, Petitioners
v.
Federal Communications Commission and United States of America, Respondents

PETITIONERS' REPLY BRIEF ADDENDUM PERTINENT STATUTES AND REGULATIONS

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REPLY ADDENDUM TABLE OF CONTENTS

Federal Statutes

47 U.S.C. §1455

§ 1455. Wireless facilities deployment

(a) Facility modifications.

(1) In general. Notwithstanding section 704 of the Telecommunications Act of 1996 (Public Law 104-104) or any other provision of law, a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.

(2) Eligible facilities request. For purposes of this subsection, the term "eligible facilities request" means any request for modification of an existing wireless tower or base station that involves—

(A) collocation of new transmission equipment;

(B) removal of transmission equipment; or

(C) replacement of transmission equipment.

(3) Applicability of environmental laws. Nothing in paragraph (1) shall be construed to relieve the Commission from the requirements of the National Historic Preservation Act [16 USCS §§ 470 et seq.] or the National Environmental Policy Act of 1969 [42 USCS §§ 4321 et seq.].

(b) Federal easements, rights-of-way, and leases.

(1) Grant. If an executive agency, a State, a political subdivision or agency of a State, or a person, firm, or organization applies for the grant of an easement, right-of-way, or lease to, in, over, or on a building or other property owned by the Federal Government for the right to install, construct, modify, or maintain a communications facility installation, the executive agency having control of the building or other property may grant to the applicant, on behalf of the Federal Government, subject to paragraph (3), an easement, right-of-way, or lease to perform such installation, construction, modification, or maintenance.

(2) Application.

(A) In general. The Administrator of General Services shall develop a common form for applications for easements, rights-of-way, and leases under paragraph (1) for all executive agencies that, except as provided in subparagraph (B), shall be used by all executive agencies and applicants with respect to the buildings or other property of each such agency.

(B) Exception. The requirement under subparagraph (A) for an executive agency to use the common form developed by the Administrator of

General Services shall not apply to an executive agency if the head of an executive agency notifies the Administrator that the executive agency uses a substantially similar application.

(3) Timely consideration of applications.

(A) In general. Not later than 270 days after the date on which an executive agency receives a duly filed application for an easement, right-of-way, or lease under this subsection, the executive agency shall—

(i) grant or deny, on behalf of the Federal Government, the application; and

(ii) notify the applicant of the grant or denial.

(B) Explanation of denial. If an executive agency denies an application under subparagraph (A), the executive agency shall notify the applicant in writing, including a clear statement of the reasons for the denial.

(C) Applicability of environmental laws. Nothing in this paragraph shall be construed to relieve an executive agency of the requirements of division A of subtitle III of title 54, United States Code [54 USCS §§ 3001 et seq.], or the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(D) Point of contact. Upon receiving an application under subparagraph (A), an executive agency shall designate one or more appropriate individuals within the executive agency to act as a point of contact with the applicant.

(c) Master contracts for communications facility installation sitings.

(1) In general. Notwithstanding section 704 of the Telecommunications Act of 1996 (Public Law 104-104; 110 Stat. 151) or any other provision of law, the Administrator of General Services shall—

(A) develop one or more master contracts that shall govern the placement of communications facility installations on buildings and other property owned by the Federal Government; and

(B) in developing the master contract or contracts, standardize the treatment of the placement of communications facility installations on building rooftops or facades, the placement of communications facility installations on rooftops or inside buildings, the technology used in connection with communications facility installations placed on Federal buildings and other property, and any other key issues the Administrator of General Services considers appropriate.

(2) Applicability. The master contract or contracts developed by the Administrator of General Services under paragraph (1) shall apply to all publicly accessible buildings and other property owned by the Federal Government, unless the Administrator of General Services decides that issues with respect to the siting of a communications facility installation on a specific building or other property warrant nonstandard treatment of such building or other property.

(3) Application.

(A) In general. The Administrator of General Services shall develop a common form or set of forms for communications facility installation siting applications that, except as provided in subparagraph (B), shall be used by all executive agencies and applicants with respect to the buildings and other property of each such agency.

(B) Exception. The requirement under subparagraph (A) for an executive agency to use the common form or set of forms developed by the Administrator of General Services shall not apply to an executive agency if the head of the executive agency notifies the Administrator that the executive agency uses a substantially similar application.

(d) Definitions. In this section:

(1) Communications facility installation. The term "communications facility installation" includes—

(A) any infrastructure, including any transmitting device, tower, or support structure, and any equipment, switches, wiring, cabling, power sources, shelters, or cabinets, associated with the licensed or permitted unlicensed wireless or wireline transmission of writings, signs, signals, data, images, pictures, and sounds of all kinds; and

(B) any antenna or apparatus that—

(i) is designed for the purpose of emitting radio frequency;

(ii) is designed to be operated, or is operating, from a fixed location pursuant to authorization by the Federal Communications Commission or is using duly authorized devices that do not require individual licenses; and

(iii) is added to a tower, building, or other structure.

(2) Executive agency. The term "executive agency" has the meaning given such term in section 102 of title 40, United States Code.

47 U.S.C. §253

§ 253. Removal of barriers to entry

(a) In general. No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

(b) State regulatory authority. Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254 [47 USCS § 254], requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

(c) State and local government authority. Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.
(d) Preemption. If, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates subsection (a) or (b), the Commission shall preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.
(e) Commercial mobile service providers. Nothing in this section shall affect the application of section 332(c)(3) [47 USCS § 332(c)(3)] to commercial mobile service providers.
(f) Rural markets. It shall not be a violation of this section for a State to require a telecommunications carrier that seeks to provide telephone exchange service or exchange access in a service area served by a rural telephone company to meet the requirements in section 214(e)(1) [47 USCS § 214(e)(1)] for designation as an eligible telecommunications carrier for that area before being permitted to provide such service. This subsection shall not apply—

(1) to a service area served by a rural telephone company that has obtained an exemption, suspension, or modification of section 251(c)(4) [47 USCS § 251(c)(4)] that effectively prevents a competitor from meeting the requirements of section 214(e)(1) [47 USCS § 214(e)(1)]; and
(2) to a provider of commercial mobile services.

47 U.S.C. §303

§ 303. Powers and duties of Commission

Except as otherwise provided in this Act, the Commission from time to time, as public convenience, interest, or necessity requires, shall—
(a) Classify radio stations;
(b) Prescribe the nature of the service to be rendered by each class of licensed stations and each station within any class;
(c) Assign bands of frequencies to the various classes of stations, and assign frequencies for each individual station and determine the power which each station shall use and the time during which it may operate;
(d) Determine the location of classes of stations or individual stations;

(e) Regulate the kind of apparatus to be used with respect to its external effects and the purity and sharpness of the emissions from each station and from the apparatus therein;
(f) Make such regulations not inconsistent with law as it may deem necessary to prevent interference between stations and to carry out the provisions of this Act: *Provided, however,* That changes in the frequencies, authorized power, or in the times of operation of any station, shall not be made without the consent of the station licensee unless the Commission shall determine that such changes will promote public convenience or interest or will serve public necessity, or the provisions of this Act will be more fully complied with;
(g) Study new uses for radio, provide for experimental uses of frequencies, and generally encourage the larger and more effective use of radio in the public interest;
(h) Have authority to establish areas or zones to be served by any station;
(i) Have authority to make special regulations applicable to radio stations engaged in chain broadcasting;
(j) Have authority to make general rules and regulations requiring stations to keep such records of programs, transmissions of energy, communications, or signals as it may deem desirable;
(k) Have authority to exclude from the requirements of any regulations in whole or in part any radio station upon railroad rolling stock, or to modify such regulations in its discretion;
(l)

(1) Have authority to prescribe the qualifications of station operators, to classify them according to the duties to be performed, to fix the forms of such licenses, and to issue them to persons who are found to be qualified by the Commission and who otherwise are legally eligible for employment in the United States; except that such requirement relating to eligibility for employment in the United States shall not apply in the case of licenses issued by the Commission to (A) persons holding United States pilot certificates; or (B) persons holding foreign aircraft pilot certificates which are valid in the United States, if the foreign government involved has entered into a reciprocal agreement under which such foreign government does not impose any similar requirement relating to eligibility for employment upon citizens of the United States;
(2) Notwithstanding paragraph (1) of this subsection, an individual to whom a radio station is licensed under the provisions of this Act may be issued an operator's license to operate that station.
(3) In addition to amateur operator licenses which the Commission may issue to aliens pursuant to paragraph (2) of this subsection, and notwithstanding section 301 of this Act [47 USCS § 301] and paragraph (1) of this subsection, the

Commission may issue authorizations, under such conditions and terms as it may prescribe, to permit an alien licensed by his government as an amateur radio operator to operate his amateur radio station licensed by his government in the United States, its possessions, and the Commonwealth of Puerto Rico provided there is in effect a multilateral or bilateral agreement, to which the United States and the alien's government are parties, for such operation on a reciprocal basis by United States amateur radio operators. Other provisions of this Act and of the Administrative Procedure Act [5 USCS §§ 551 et seq., 701 et seq.] shall not be applicable to any request or application for or modification, suspension, or cancellation of any such authorization.

(m)

(1) Have authority to suspend the license of any operator upon proof sufficient to satisfy the Commission that the licensee—

(A) has violated, or caused, aided, or abetted the violation of, any provision of any Act, treaty, or convention binding on the United States, which the Commission is authorized to administer, or any regulation made by the Commission under any such Act, treaty, or convention; or

(B) has failed to carry out a lawful order of the master or person lawfully in charge of the ship or aircraft on which he is employed; or

(C) has willfully damaged or permitted radio apparatus or installations to be damaged; or

(D) has transmitted superfluous radio communications or signals or communications containing profane or obscene words, language, or meaning, or has knowingly transmitted—

(1) false or deceptive signals or communications, or

(2) a call signal or letter which has not been assigned by proper authority to the station he is operating; or

(E) has willfully or maliciously interfered with any other radio communications or signals; or

(F) has obtained or attempted to obtain, or has assisted another to obtain or attempt to obtain, an operator's license by fraudulent means.

(2) No order of suspension of any operator's license shall take effect until fifteen days' notice in writing thereof, stating the cause for the proposed suspension, has been given to the operator licensee who may make written application to the Commission at any time within said fifteen days for a hearing upon such order. The notice to the operator licensee shall not be effective until actually received by him, and from that time he shall have fifteen days in which to mail the said application. In the event that physical conditions prevent mailing of the application at the expiration of the fifteen-day period, the application shall then be mailed as soon as possible thereafter, accompanied by

a satisfactory explanation of the delay. Upon receipt by the Commission of such application for hearing, said order of suspension shall be held in abeyance until the conclusion of the hearing which shall be conducted under such rules as the Commission may prescribe. Upon the conclusion of said hearing the Commission may affirm, modify, or revoke said order of suspension.

(n) Have authority to inspect all radio installations associated with stations required to be licensed by any Act, or which the Commission by rule has authorized to operate without a license under section 307(e)(1) [47 USCS § 307(e)(1)]; or which are subject to the provisions of any Act, treaty, or convention binding on the United States, to ascertain whether in construction, installation, and operation they conform to the requirements of the rules and regulations of the Commission, the provisions of any Act, the terms of any treaty or convention binding on the United States, and the conditions of the license or other instrument of authorization under which they are constructed, installed, or operated.

(o) Have authority to designate call letters of all stations;

(p) Have authority to cause to be published such call letters and such other announcements and data as in the judgment of the Commission may be required for the efficient operation of radio stations subject to the jurisdiction of the United States and for the proper enforcement of this Act;

(q) Have authority to require the painting and/or illumination of radio towers if and when in its judgment such towers constitute, or there is a reasonable possibility that they may constitute, a menace to air navigation. The permittee or licensee, and the tower owner in any case in which the owner is not the permittee or licensee, shall maintain the painting and/or illumination of the tower as prescribed by the Commission pursuant to this section. In the event that the tower ceases to be licensed by the Commission for the transmission of radio energy, the owner of the tower shall maintain the prescribed painting and/or illumination of such tower until it is dismantled, and the Commission may require the owner to dismantle and remove the tower when the Administrator of the Federal Aviation Agency determines that there is a reasonable possibility that it may constitute a menace to air navigation.

(r) Make such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this Act, or any international radio or wire communications treaty or convention, or regulations annexed thereto, including any treaty or convention insofar as it relates to the use of radio, to which the United States is or may hereafter become a party.

(s) Have authority to require that apparatus designed to receive television pictures broadcast simultaneously with sound be capable of adequately receiving all frequencies allocated by the Commission to television broadcasting when such

apparatus is shipped in interstate commerce, or is imported from any foreign country into the United States, for sale or resale to the public.

(t) Notwithstanding the provisions of section 301(e) [47 USCS § 301(e)], have authority, in any case in which an aircraft registered in the United States is operated (pursuant to a lease, charter, or similar arrangement) by an aircraft operator who is subject to regulation by the government of a foreign nation, to enter into an agreement with such government under which the Commission shall recognize and accept any radio station licenses and radio operator licenses issued by such government with respect to such aircraft.

(u) Require that, if technically feasible—

(1) apparatus designed to receive or play back video programming transmitted simultaneously with sound, if such apparatus is manufactured in the United States or imported for use in the United States and uses a picture screen of any size—

(A) be equipped with built-in closed caption decoder circuitry or capability designed to display closed-captioned video programming;

(B) have the capability to decode and make available the transmission and delivery of video description services as required by regulations reinstated and modified pursuant to section 713(f) [47 USCS § 613(f)]; and

(C) have the capability to decode and make available emergency information (as that term is defined in section 79.2 of the Commission's regulations (47 CFR 79.2)) in a manner that is accessible to individuals who are blind or visually impaired; and

(2) notwithstanding paragraph (1) of this subsection—

(A) apparatus described in such paragraph that use a picture screen that is less than 13 inches in size meet the requirements of subparagraph (A), (B), or (C) of such paragraph only if the requirements of such subparagraphs are achievable (as defined in section 716 [47 USCS § 617]);

(B) any apparatus or class of apparatus that are display-only video monitors with no playback capability are exempt from the requirements of such paragraph; and

(C) the Commission shall have the authority, on its own motion or in response to a petition by a manufacturer, to waive the requirements of this subsection for any apparatus or class of apparatus—

(i) primarily designed for activities other than receiving or playing back video programming transmitted simultaneously with sound; or

(ii) for equipment designed for multiple purposes, capable of receiving or playing video programming transmitted simultaneously with sound but whose essential utility is derived from other purposes.

(v) Have exclusive jurisdiction to regulate the provision of direct-to-home satellite services. As used in this subsection, the term "direct-to-home satellite services" means the distribution or broadcasting of programming or services by satellite directly to the subscriber's premises without the use of ground receiving or distribution equipment, except at the subscriber's premises or in the uplink process to the satellite.

(w) [Omitted]

(x) Require, in the case of an apparatus designed to receive television signals that are shipped in interstate commerce or manufactured in the United States and that have a picture screen 13 inches or greater in size (measured diagonally), that such apparatus be equipped with a feature designed to enable viewers to block display of all programs with a common rating, except as otherwise permitted by regulations pursuant to section 330(c)(4) [47 USCS § 330(c)(4)].

(y) Have authority to allocate electromagnetic spectrum so as to provide flexibility of use, if—

(1) such use is consistent with international agreements to which the United States is a party; and

(2) the Commission finds, after notice and an opportunity for public comment, that—

(A) such an allocation would be in the public interest;

(B) such use would not deter investment in communications services and systems, or technology development; and

(C) such use would not result in harmful interference among users.

(z) Require that—

(1) if achievable (as defined in section 716 [47 USCS § 617]), apparatus designed to record video programming transmitted simultaneously with sound, if such apparatus is manufactured in the United States or imported for use in the United States, enable the rendering or the pass through of closed captions, video description signals, and emergency information (as that term is defined in section 79.2 of title 47, Code of Federal Regulations) such that viewers are able to activate and de-activate the closed captions and video description as the video programming is played back on a picture screen of any size; and

(2) interconnection mechanisms and standards for digital video source devices are available to carry from the source device to the consumer equipment the information necessary to permit or render the display of closed captions and to make encoded video description and emergency information audible.

(aa) Require—

(1) if achievable (as defined in section 716 [47 USCS § 617]) that digital apparatus designed to receive or play back video programming transmitted in digital format simultaneously with sound, including apparatus designed to

receive or display video programming transmitted in digital format using Internet protocol, be designed, developed, and fabricated so that control of appropriate built-in apparatus functions are accessible to and usable by individuals who are blind or visually impaired, except that the Commission may not specify the technical standards, protocols, procedures, and other technical requirements for meeting this requirement;

(2) that if on-screen text menus or other visual indicators built in to the digital apparatus are used to access the functions of the apparatus described in paragraph (1), such functions shall be accompanied by audio output that is either integrated or peripheral to the apparatus, so that such menus or indicators are accessible to and usable by individuals who are blind or visually impaired in real-time;

(3) that for such apparatus equipped with the functions described in paragraphs (1) and (2) built in access to those closed captioning and video description features through a mechanism that is reasonably comparable to a button, key, or icon designated for activating the closed captioning or accessibility features; and

(4) that in applying this subsection the term "apparatus" does not include a navigation device, as such term is defined in section 76.1200 of the Commission's rules (47 CFR 76.1200).

(bb) Require—

(1) if achievable (as defined in section 716 [47 USCS § 617]), that the on-screen text menus and guides provided by navigation devices (as such term is defined in section 76.1200 of title 47, Code of Federal Regulations) for the display or selection of multichannel video programming are audibly accessible in real-time upon request by individuals who are blind or visually impaired, except that the Commission may not specify the technical standards, protocols, procedures, and other technical requirements for meeting this requirement;

(2) for navigation devices with built-in closed captioning capability, that access to that capability through a mechanism is reasonably comparable to a button, key, or icon designated for activating the closed captioning, or accessibility features; and

(3) that, with respect to navigation device features and functions—

(A) delivered in software, the requirements set forth in this subsection shall apply to the manufacturer of such software; and

(B) delivered in hardware, the requirements set forth in this subsection shall apply to the manufacturer of such hardware.

47 U.S.C. §324

§ 324. Use of minimum power

In all circumstances, except in case of radio communications or signals relating to vessels in distress, all radio stations, including those owned and operated by the United States, shall use the minimum amount of power necessary to carry out the communication desired.

47 U.S.C. §332

§ 332. Mobile services

(a) Factors which Commission must consider. In taking actions to manage the spectrum to be made available for use by the private mobile services, the Commission shall consider, consistent with section 1 of this Act [47 USCS § 151], whether such actions will—

(1) promote the safety of life and property;

(2) improve the efficiency of spectrum use and reduce the regulatory burden upon spectrum users, based upon sound engineering principles, user operational requirements, and market-place demands;

(3) encourage competition and provide services to the largest feasible number of users; or

(4) increase interservice sharing opportunities between private mobile services and other services.

(b) Advisory coordinating committees.

(1) The Commission, in coordinating the assignment of frequencies to stations in the private mobile services and in the fixed services (as defined by the Commission by rule), shall have authority to utilize assistance furnished by advisory coordinating committees consisting of individuals who are not officers or employees of the Federal Government.

(2) The authority of the Commission established in this subsection shall not be subject to or affected by the provisions of part III of title 5, United States Code [5 USCS §§ 2101 et seq.], or section 3679(b) of the Revised Statutes (31 U.S.C. 665(b)) [31 USCS § 1342].

(3) Any person who provides assistance to the Commission under this subsection shall not be considered, by reason of having provided such assistance, a Federal employee.

(4) Any advisory coordinating committee which furnishes assistance to the Commission under this subsection shall not be subject to the provisions of the Federal Advisory Committee Act [5 USCS Appx].

(c) Regulatory treatment of mobile services.

(1) Common carrier treatment of commercial mobile services.

(A) A person engaged in the provision of a service that is a commercial mobile service shall, insofar as such person is so engaged, be treated as a common carrier for purposes of this Act [47 USCS §§ 151 et seq.], except for such provisions of title II [47 USCS §§ 201 et seq.] as the Commission may specify by regulation as inapplicable to that service or person. In prescribing or amending any such regulation, the Commission may not specify any provision of section 201, 202, or 208 [47 USCS § 201, 202, or 208], and may specify any other provision only if the Commission determines that—

(i) enforcement of such provision is not necessary in order to ensure that the charges, practices, classifications, or regulations for or in connection with that service are just and reasonable and are not unjustly or unreasonably discriminatory;

(ii) enforcement of such provision is not necessary for the protection of consumers; and

(iii) specifying such provision is consistent with the public interest.

(B) Upon reasonable request of any person providing commercial mobile service, the Commission shall order a common carrier to establish physical connections with such service pursuant to the provisions of section 201 of this Act [47 USCS § 201]. Except to the extent that the Commission is required to respond to such a request, this subparagraph shall not be construed as a limitation or expansion of the Commission's authority to order interconnection pursuant to this Act.

(C) As a part of making a determination with respect to the public interest under subparagraph (A)(iii), the Commission shall consider whether the proposed regulation (or amendment thereof) will promote competitive market conditions, including the extent to which such regulation (or amendment) will enhance competition among providers of commercial mobile services. If the Commission determines that such regulation (or amendment) will promote competition among providers of commercial mobile services, such determination may be the basis for a Commission finding that such regulation (or amendment) is in the public interest.

(D) The Commission shall, not later than 180 days after the date of enactment of this subparagraph [enacted Aug. 10, 1993], complete a rulemaking required to implement this paragraph with respect to the licensing of personal communications services, including making any determinations required by subparagraph (C).

(2) Non-common carrier treatment of private mobile services. A person engaged in the provision of a service that is a private mobile service shall not,

insofar as such person is so engaged, be treated as a common carrier for any purpose under this Act. A common carrier (other than a person that was treated as a provider of a private land mobile service prior to the enactment of the Omnibus Budget Reconciliation Act of 1993 [enacted Aug. 10, 1993]) shall not provide any dispatch service on any frequency allocated for common carrier service, except to the extent such dispatch service is provided on stations licensed in the domestic public land mobile radio service before January 1, 1982. The Commission may by regulation terminate, in whole or in part, the prohibition contained in the preceding sentence if the Commission determines that such termination will serve the public interest.

(3) State preemption.

(A) Notwithstanding sections 2(b) and 221(b) [47 USCS §§ 152(b) and 221(b)], no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services. Nothing in this subparagraph shall exempt providers of commercial mobile services (where such services are a substitute for land line telephone exchange service for a substantial portion of the communications within such State) from requirements imposed by a State commission on all providers of telecommunications services necessary to ensure the universal availability of telecommunications service at affordable rates. Notwithstanding the first sentence of this subparagraph, a State may petition the Commission for authority to regulate the rates for any commercial mobile service and the Commission shall grant such petition if such State demonstrates that—

(i) market conditions with respect to such services fail to protect subscribers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory; or

(ii) such market conditions exist and such service is a replacement for land line telephone exchange service for a substantial portion of the telephone land line exchange service within such State.

The Commission shall provide reasonable opportunity for public comment in response to such petition, and shall, within 9 months after the date of its submission, grant or deny such petition. If the Commission grants such petition, the Commission shall authorize the State to exercise under State law such authority over rates, for such periods of time, as the Commission deems necessary to ensure that such rates are just and reasonable and not unjustly or unreasonably discriminatory.

(B) If a State has in effect on June 1, 1993, any regulation concerning the rates for any commercial mobile service offered in such State on such date,

such State may, no later than 1 year after the date of enactment of the Omnibus Budget Reconciliation Act of 1993 [enacted Aug. 10, 1993], petition the Commission requesting that the State be authorized to continue exercising authority over such rates. If a State files such a petition, the State's existing regulation shall, notwithstanding subparagraph (A), remain in effect until the Commission completes all action (including any reconsideration) on such petition. The Commission shall review such petition in accordance with the procedures established in such subparagraph, shall complete all action (including any reconsideration) within 12 months after such petition is filed, and shall grant such petition if the State satisfies the showing required under subparagraph (A)(i) or (A)(ii). If the Commission grants such petition, the Commission shall authorize the State to exercise under State law such authority over rates, for such period of time, as the Commission deems necessary to ensure that such rates are just and reasonable and not unjustly or unreasonably discriminatory. After a reasonable period of time, as determined by the Commission, has elapsed from the issuance of an order under subparagraph (A) or this subparagraph, any interested party may petition the Commission for an order that the exercise of authority by a State pursuant to such subparagraph is no longer necessary to ensure that the rates for commercial mobile services are just and reasonable and not unjustly or unreasonably discriminatory. The Commission shall provide reasonable opportunity for public comment in response to such petition, and shall, within 9 months after the date of its submission, grant or deny such petition in whole or in part.

(4) Regulatory treatment of communications satellite corporation. Nothing in this subsection shall be construed to alter or affect the regulatory treatment required by title IV of the Communications Satellite Act of 1962 [47 USCS §§ 741 et seq.] of the corporation authorized by title III of such Act [47 USCS §§ 731 et seq.].

(5) Space segment capacity. Nothing in this section shall prohibit the Commission from continuing to determine whether the provision of space segment capacity by satellite systems to providers of commercial mobile services shall be treated as common carriage.

(6) Foreign ownership. The Commission, upon a petition for waiver filed within 6 months after the date of enactment of the Omnibus Budget Reconciliation Act of 1993 [Aug. 10, 1993], may waive the application of section 310(b) [47 USCS § 310(b)] to any foreign ownership that lawfully existed before May 24, 1993, of any provider of a private land mobile service that will be treated as a common carrier as a result of the enactment of the Omnibus Budget Reconciliation Act of 1993, but only upon the following conditions:

(A) The extent of foreign ownership interest shall not be increased above the extent which existed on May 24, 1993.
(B) Such waiver shall not permit the subsequent transfer of ownership to any other person in violation of section 310(b) [47 USCS § 310(b)].

(7) Preservation of local zoning authority.

(A) General authority. Except as provided in this paragraph, nothing in this Act shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.

(B) Limitations.

(i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof—

(I) shall not unreasonably discriminate among providers of functionally equivalent services; and

(II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

(ii) A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.

(iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.

(iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.

(v) Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.

(C) Definitions. For purposes of this paragraph—

(i) the term "personal wireless services" means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services;
(ii) the term "personal wireless service facilities" means facilities for the provision of personal wireless services; and
(iii) the term "unlicensed wireless service" means the offering of telecommunications services using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to-home satellite services (as defined in section 303(v) [47 USCS § 303(v)]).

(8) Mobile services access. A person engaged in the provision of commercial mobile services, insofar as such person is so engaged, shall not be required to provide equal access to common carriers for the provision of telephone toll services. If the Commission determines that subscribers to such services are denied access to the provider of telephone toll services of the subscribers' choice, and that such denial is contrary to the public interest, convenience, and necessity, then the Commission shall prescribe regulations to afford subscribers unblocked access to the provider of telephone toll services of the subscribers' choice through the use of a carrier identification code assigned to such provider or other mechanism. The requirements for unblocking shall not apply to mobile satellite services unless the Commission finds it to be in the public interest to apply such requirements to such services.

(d) Definitions. For purposes of this section—

(1) the term "commercial mobile service" means any mobile service (as defined in section 3 [47 USCS § 153]) that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the Commission;
(2) the term "interconnected service" means service that is interconnected with the public switched network (as such terms are defined by regulation by the Commission) or service for which a request for interconnection is pending pursuant to subsection (c)(1)(B); and
(3) the term "private mobile service" means any mobile service (as defined in section 3 [47 USCS § 153]) that is not a commercial mobile service or the functional equivalent of a commercial mobile service, as specified by regulation by the Commission.

73 P.L. 416, 48 Stat. 1064, 1082, 73 Cong. Ch. 652 (Jun. 19, 1934) (1934 Communications Act - §303)

[CHAPTER 651.]

AN ACT

June 19, 1934.
[S. 3040.]
[Public, No. 415.]

To give the Supreme Court of the United States authority to make and publish rules in actions at law.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Supreme Court of the United States shall have the power to prescribe, by general rules, for the district courts of the United States and for the courts of the District of Columbia, the forms of process, writs, pleadings, and motions, and the practice and procedure in civil actions at law. Said rules shall neither abridge, enlarge, nor modify the substantive rights of any litigant. They shall take effect six months after their promulgation, and thereafter all laws in conflict therewith shall be of no further force or effect.

Supreme Court of United States.
Power to prescribe rules in civil actions at law.

Rights of litigant.

Effective date.

Rules in equity and law may be united.

SEC. 2. The court may at any time unite the general rules prescribed by it for cases in equity with those in actions at law so as to secure one form of civil action and procedure for both: *Provided, however*, That in such union of rules the right of trial by jury as at common law and declared by the seventh amendment to the Constitution shall be preserved to the parties inviolate. Such united rules shall not take effect until they shall have been reported to Congress by the Attorney General at the beginning of a regular session thereof and until after the close of such session.

Proviso.
Right of trial by jury.

Effective date of united rules.

Approved, June 19, 1934.

[CHAPTER 652.]

AN ACT

June 19, 1934.
[S. 3285.]
[Public, No. 416.]

To provide for the regulation of interstate and foreign communication by wire or radio, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Communications Act of 1934.

TITLE I—GENERAL PROVISIONS

Purposes of Act.

PURPOSES OF ACT; CREATION OF FEDERAL COMMUNICATIONS COMMISSION

SECTION 1. For the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of the national defense, and for the purpose of securing a more effective execution of this policy by centralizing authority heretofore granted by law to several agencies and by granting additional authority with respect to interstate and foreign commerce in wire and radio communication, there is hereby created a commission to be known as the "Federal Communications Commission", which shall be constituted as hereinafter provided, and which shall execute and enforce the provisions of this Act.

Federal Communications Commission created.

Application of Act.

APPLICATION OF ACT

SEC. 2. (a) The provisions of this Act shall apply to all interstate and foreign communication by wire or radio and all interstate and foreign transmission of energy by radio, which originates and/or is received within the United States, and to all persons engaged within the United States in such communication or such transmission of energy by radio, and to the licensing and regulating of all

To interstate and foreign communications; transmission of energy by radio.

Persons to whom applicable.

Territories and insular possessions.

(b) The Virgin Islands, Puerto Rico, Alaska, Guam, American Samoa, and the Territory of Hawaii are expressly excluded from the zones herein established.

General powers of Commission.

GENERAL POWERS OF COMMISSION

SEC. 303. Except as otherwise provided in this Act, the Commission from time to time, as public convenience, interest, or necessity requires, shall—

Classify radio stations.

(a) Classify radio stations;

Prescribe nature of services.

(b) Prescribe the nature of the service to be rendered by each class of licensed stations and each station within any class;

Assign frequency bands.

(c) Assign bands of frequencies to the various classes of stations, and assign frequencies for each individual station and determine the power which each station shall use and the time during which it may operate;

Determine locations.

(d) Determine the location of classes of stations or individual stations;

Regulate transmitting apparatus.

(e) Regulate the kind of apparatus to be used with respect to its external effects and the purity and sharpness of the emissions from each station and from the apparatus therein;

Prevent interferences

(f) Make such regulations not inconsistent with law as it may deem necessary to prevent interference between stations and to carry out the provisions of this Act: *Provided*, *however*, That changes in the frequencies, authorized power, or in the times of operation of any station, shall not be made without the consent of the station licensee unless, after a public hearing, the Commission shall determine that such changes will promote public convenience or interest or will serve public necessity, or the provisions of this Act will be more fully complied with;

Proviso. Consent of station licenses to changes of frequencies.

Study new radio uses.

(g) Study new uses for radio, provide for experimental uses of frequencies, and generally encourage the larger and more effective use of radio in the public interest;

Establish zones.

(h) Have authority to establish areas or zones to be served by any station;

Regulate chain broadcasting.

(i) Have authority to make special regulations applicable to radio stations engaged in chain broadcasting;

Regulate keeping of station records.

(j) Have authority to make general rules and regulations requiring stations to keep such records of programs, transmissions of energy, communications, or signals as it may deem desirable;

Make exclusions from requirements.

(k) Have authority to exclude from the requirements of any regulations in whole or in part any radio station upon railroad rolling stock, or to modify such regulations in its discretion;

Prescribe station operator qualifications.

(l) Have authority to prescribe the qualifications of station operators, to classify them according to the duties to be performed, to fix the forms of such licenses, and to issue them to such citizens of the United States as the Commission finds qualified;

Suspend license of operator.

(m) Have authority to suspend the license of any operator for a period not exceeding two years upon proof sufficient to satisfy the Commission that the licensee (1) has violated any provision of any Act or treaty binding on the United States which the Commission is authorized by this Act to administer or any regulation made by the Commission under any such Act or treaty; or (2) has failed to carry out the lawful orders of the master of the vessel on which he is employed; or (3) has willfully damaged or permitted radio apparatus to be damaged; or (4) has transmitted superfluous radio communications or signals or radio communications containing profane or obscene words or language; or (5) has willfully or maliciously interfered with any other radio communications or signals;

Inspect transmitting apparatus.

(n) Have authority to inspect all transmitting apparatus to ascertain whether in construction and operation it conforms to the requirements of this Act, the rules and regulations of the Commission, and the license under which it is constructed or operated;

Designate callletters.

(o) Have authority to designate call letters of all stations;

Cause publication of call letters.

(p) Have authority to cause to be published such call letters and such other announcements and data as in the judgment of the Commission may be required for the efficient operation of radio stations subject to the jurisdiction of the United States and for the proper enforcement of this Act;

Require lighting of radio towers.

(q) Have authority to require the painting and/or illumination of radio towers if and when in its judgment such towers constitute, or there is a reasonable possibility that they may constitute, a menace to air navigation.

Waiver by licensee.

WAIVER BY LICENSEE

Claim to use of particular frequency.

SEC. 304. No station license shall be granted by the Commission until the applicant therefor shall have signed a waiver of any claim to the use of any particular frequency or of the ether as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise.

Government - owned stations.

GOVERNMENT-OWNED STATIONS

Exemption from designated provisions.

SEC. 305. (a) Radio stations belonging to and operated by the United States shall not be subject to the provisions of sections 301 and 303 of this Act. All such Government stations shall use such frequencies as shall be assigned to each or to each class by the President. All such stations, except stations on board naval and other Government vessels while at sea or beyond the limits of the continental United States, when transmitting any radio communication or signal other than a communication or signal relating to Government business, shall conform to such rules and regulations designed to prevent interference with other radio stations and the rights of others as the Commission may prescribe.

Ante, p. 1082.

Assignment of frequencies to.

Requirement to conform to regulations to prevent interference.

Regulation of stations aboard United States vessels.

(b) Radio stations on board vessels of the United States Shipping Board Bureau or the United States Shipping Board Merchant Fleet Corporation or the Inland and Coastwise Waterways Service shall be subject to the provisions of this title.

Call letters of Federal stations.

(c) All stations owned and operated by the United States, except mobile stations of the Army of the United States, and all other stations on land and sea, shall have special call letters designated by the Commission.

Foreign ships.

FOREIGN SHIPS

Regulations governing signals on, within U.S. jurisdiction.

SEC. 306. Section 301 of this Act shall not apply to any person sending radio communications or signals on a foreign ship while the same is within the jurisdiction of the United States, but such communications or signals shall be transmitted only in accordance with such regulations designed to prevent interference as may be promulgated under the authority of this Act.

Allocation of facilities.

ALLOCATION OF FACILITIES; TERM OF LICENSES

Station license, granting authorized.

SEC. 307. (a) The Commission, if public convenience, interest, or necessity will be served thereby, subject to the limitations of this Act, shall grant to any applicant therefor a station license provided for by this Act.

Pub. L. No. 104-104, §207, 110 Stat. 56, 114 (1996)(codified in notes to 47 U.S.C. §332)

TELECOMMUNICATIONS ACT OF 1996, 1996 Enacted S. 652, 104 Enacted S. 652, 110 Stat. 56, 113, 104 P.L. 104, 1996 Enacted S. 652, 104 Enacted S. 652

Sec. 207. RESTRICTIONS ON OVER-THE-AIR RECEPTION DEVICES.

Within 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.

Pub. L. No. 104-104, §601, 110 Stat. 56, 143 (1996)(codified in notes to 47 U.S.C. §152)

TELECOMMUNICATIONS ACT OF 1996, 1996 Enacted S. 652, 104 Enacted S. 652, 110 Stat. 56, 143-145, 104 P.L. 104, 1996 Enacted S. 652, 104 Enacted S. 652

Sec. 601. APPLICABILITY OF CONSENT DECREES AND OTHER LAW.

(a) Applicability of Amendments to Future Conduct.--

(1) AT&T consent decree.-- Any conduct or activity that was, before the date of enactment of this Act, subject to any restriction or obligation imposed by the AT&T Consent Decree shall, on and after such date, be subject to the restrictions and obligations imposed by the Communications Act of 1934 as amended by this Act and shall not be subject to the restrictions and the obligations imposed by such Consent Decree.

(2) GTE consent decree.-- Any conduct or activity that was, before the date of enactment of this Act, subject to any restriction or obligation imposed by the GTE Consent Decree shall, on and after such date, be subject to the restrictions and obligations imposed by the Communications Act of 1934 as amended by this Act and shall not be subject to the restrictions and the obligations imposed by such Consent Decree.

(3) McCaw consent decree.-- Any conduct or activity that was, before the date of enactment of this Act, subject to any restriction or obligation imposed by the McCaw Consent Decree shall, on and after such date, be subject to the restrictions and obligations imposed by the Communications Act of 1934 as amended by this Act and subsection (d) of this section and shall not be subject to the restrictions and the obligations imposed by such Consent Decree.

(b) Antitrust Laws.--

(1) Savings clause.-- Except as provided in paragraphs (2) and (3), nothing in this Act or the amendments made by this Act shall be construed to modify, impair, or supersede the applicability of any of the antitrust laws.

(2) Repeal.-- Subsection (a) of section 221 (47 U.S.C. 221(a)) is repealed.

(3) Clayton act.-- Section 7 of the Clayton Act (15 U.S.C. 18) is amended in the last paragraph by striking "Federal Communications Commission,".

(c) Federal, State, and Local Law.--

(1) No implied effect.-- This Act and the amendments made by this Act shall not be construed to modify, impair, or supersede Federal, State, or local law unless expressly so provided in such Act or amendments.

(2) State tax savings provision.-- Notwithstanding paragraph (1), nothing in this Act or the amendments made by this Act shall be construed to modify, impair, or supersede, or authorize the modification, impairment, or supersession of, any State or local law pertaining to taxation, except as provided [*144] in sections 622 and 653(c) of the Communications Act of 1934 and section 602 of this Act.

(d) Commercial Mobile Service Joint Marketing.--Notwithstanding section 22.903 of the Commission's regulations (47 C.F.R. 22.903) or any other Commission regulation, a Bell operating company or any other company may, except as provided in sections 271(e)(1) and 272 of the Communications Act of 1934 as amended by this Act as they relate to wireline service, jointly market and sell commercial mobile services in conjunction with telephone exchange service, exchange access, intraLATA telecommunications service, interLATA telecommunications service, and information services.

(e) Definitions.--As used in this section:

(1) AT&T consent decree.-- The term "AT&T Consent Decree" means the order entered August 24, 1982, in the antitrust action styled United States v. Western Electric, Civil Action No. 82-0192, in the United States District Court for the District of Columbia, and includes any judgment or order with respect to such action entered on or after August 24, 1982.

(2) GTE consent decree.-- The term "GTE Consent Decree" means the order entered December 21, 1984, as restated January 11, 1985, in the action styled United States v. GTE Corp., Civil Action No. 83-1298, in the United States District Court for the District of Columbia, and any judgment or order with respect to such action entered on or after December 21, 1984.

(3) McCaw consent decree.-- The term "McCaw Consent Decree" means the proposed consent decree filed on July 15, 1994, in the antitrust action styled United States v. AT&T Corp. and McCaw Cellular Communications, Inc., Civil Action No. 94-01555, in the United States District Court for the District of Columbia. Such term includes any stipulation that the parties will abide by the terms of such proposed consent decree until it is entered and any order entering such proposed consent decree.

(4) Antitrust laws.-- The term "antitrust laws" has the meaning given it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that such term includes the Act of June 19, 1936 (49 Stat. 1526; 15 U.S.C. 13 et seq.), commonly known as the Robinson-Patman Act, and section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that such section 5 applies to unfair methods of competition.

Federal Administrative Rules

47 C.F.R. §1.4000

§ 1.4000 Restrictions impairing reception of television broadcast signals, direct broadcast satellite services or multichannel multipoint distribution services.

(a)

(1) 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, 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:

(i) An antenna that is:

(A) Used to receive direct broadcast satellite service, including direct-tohome satellite service, or to receive or transmit fixed wireless signals via satellite, including a hub or relay antenna used to receive or transmit fixed wireless services that are not classified as telecommunications services, and

(B) One meter or less in diameter or is located in Alaska;

(ii) An antenna that is:

(A) Used to receive video programming services 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, and

(B) That is one meter or less in diameter or diagonal measurement;

(iii) An antenna that is used to receive television broadcast signals; or

(iv) A mast supporting an antenna described in paragraphs (a)(1)(i), (a)(1)(ii), or (a)(1)(iii) of this section; is prohibited to the extent it so impairs, subject to paragraph (b) of this section.

(2) For purposes of this section, "fixed wireless signals" means any commercial non-broadcast communications signals transmitted via wireless technology to and/or from a fixed customer location. Fixed wireless signals do not include, among other things, AM radio, FM radio, amateur ("HAM") radio, CB radio, and Digital Audio Radio Service (DARS) signals.

(3) For purposes of this section, a law, regulation, or restriction impairs installation, maintenance, or use of an antenna if it:

(i) Unreasonably delays or prevents installation, maintenance, or use;
(ii) Unreasonably increases the cost of installation, maintenance, or use; or
(iii) Precludes reception or transmission of an acceptable quality signal.

(4) Any fee or cost imposed on a user by a rule, law, regulation or restriction must be reasonable in light of the cost of the equipment or services and the rule, law, regulation or restriction's treatment of comparable devices. No civil, criminal, administrative, or other legal action of any kind shall be taken to enforce any restriction or regulation prohibited by this section except pursuant to paragraph (d) or (e) of this section. In addition, except with respect to restrictions pertaining to safety and historic preservation as described in paragraph (b) of this section, if a proceeding is initiated pursuant to paragraph (d) or (e) of this section, the entity seeking to enforce the antenna restrictions in question must suspend all enforcement efforts pending completion of review. No attorney's fees shall be collected or assessed and no fine or other penalties shall accrue against an antenna user while a proceeding is pending to determine the validity of any restriction. If a ruling is issued adverse to a user, the user shall be granted at least a 21-day grace period in which to comply with the adverse ruling; and neither a fine nor a penalty may be collected from the user if the user complies with the adverse ruling during this grace period, unless the proponent of the restriction demonstrates, in the same proceeding which resulted in the adverse ruling, that the user's claim in the proceeding was frivolous.

(5) For purposes of this section, "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.

(b) Any restriction otherwise prohibited by paragraph (a) of this section is permitted if:

(1) It is necessary to accomplish a clearly defined, legitimate safety objective that is either stated in the text, preamble, or legislative history of the restriction or described as applying to that restriction in a document that is readily available to antenna users, and would be applied to the extent practicable in a non-discriminatory manner to other appurtenances, devices, or fixtures that are comparable in size and weight and pose a similar or greater safety risk as these antennas and to which local regulation would normally apply; or

(2) It is necessary to preserve a prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion on, the National Register of Historic Places, as set forth in the National Historic Preservation

Act of 1966, as amended, 16 U.S.C. 470, and imposes no greater restrictions on antennas covered by this rule than are imposed on the installation, maintenance, or use of other modern appurtenances, devices, or fixtures that are comparable in size, weight, and appearance to these antennas; and

(3) It is no more burdensome to affected antenna users than is necessary to achieve the objectives described in paragraphs (b)(1) or (b)(2) of this section.

(c) [Reserved].

(d) Local governments or associations may apply to the Commission for a waiver of this section under § 1.3 of this chapter. Waiver requests must comply with the procedures in paragraphs (f) and (h) of this section and will be put on public notice. The Commission may grant a waiver upon a showing by the applicant of local concerns of a highly specialized or unusual nature. No petition for waiver shall be considered unless it specifies the restriction at issue. Waivers granted in accordance with this section shall not apply to restrictions amended or enacted after the waiver is granted. Any responsive pleadings must be served on all parties and filed within 30 days after release of a public notice that such petition has been filed. Any replies must be filed within 15 days thereafter.

(e) Parties may petition the Commission for a declaratory ruling under § 1.2 of this chapter, or a court of competent jurisdiction, to determine whether a particular restriction is permissible or prohibited under this section. Petitions to the Commission must comply with the procedures in paragraphs (f) and (h) of this section and will be put on public notice. Any responsive pleadings in a Commission proceeding must be served on all parties and filed within 30 days after release of a public notice that such petition has been filed. Any replies in a Commission proceeding must be served on all parties and filed within 15 days thereafter.

(f) Copies of petitions for declaratory rulings and waivers must be served on interested parties, including parties against whom the petitioner seeks to enforce the restriction or parties whose restrictions the petitioner seeks to prohibit. A certificate of service stating on whom the petition was served must be filed with the petition. In addition, in a Commission proceeding brought by an association or a local government, constructive notice of the proceeding must be given to members of the association or to the citizens under the local government's jurisdiction. In a court proceeding brought by an association, an association must give constructive notice of the proceeding to its members. Where constructive notice is required, the petitioner or plaintiff must file with the Commission or the court overseeing the proceeding a copy of the constructive notice with a statement explaining where the notice was placed and why such placement was reasonable.

(g) In any proceeding regarding the scope or interpretation of any provision of this section, the burden of demonstrating that a particular governmental or

nongovernmental restriction complies with this section and does not impair the installation, maintenance, or use of devices used for over-the-air reception of video programming services or devices used to receive or transmit fixed wireless signals shall be on the party that seeks to impose or maintain the restriction.
(h) All allegations of fact contained in petitions and related pleadings before the Commission must be supported by affidavit of a person or persons with actual knowledge thereof. An original and two copies of all petitions and pleadings should be addressed to the Secretary at the FCC's main office, located at the address indicated in 47 CFR 0.401(a). Copies of the petitions and related pleadings will be available for public inspection in the Reference Information Center, Consumer and Governmental Affairs Bureau, located at the address of the FCC's main office indicated in 47 CFR 0.401(a).

47 C.F.R. §1.6100

§ 1.6100 Wireless Facility Modifications.

(a) [Reserved]
(b) Definitions. Terms used in this section have the following meanings.
(1) Base station. A structure or equipment at a fixed location that enables Commission-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in this subpart or any equipment associated with a tower.
(i) The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
(ii) The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks).
(iii) The term includes any structure other than a tower that, at the time the relevant application is filed with the State or local government under this section, supports or houses equipment described in paragraphs (b)(1)(i) through (ii) of this section that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.
(iv) The term does not include any structure that, at the time the relevant application is filed with the State or local government under this section, does

not support or house equipment described in paragraphs (b)(1)(i)-(ii) of this section.

(2) Collocation. The mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

(3) Eligible facilities request. Any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving:

(i) Collocation of new transmission equipment;

(ii) Removal of transmission equipment; or

(iii) Replacement of transmission equipment.

(4) Eligible support structure. Any tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the State or local government under this section.

(5) Existing. A constructed tower or base station is existing for purposes of this section if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.

(6) Site. For towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground. The current boundaries of a site are the boundaries that existed as of the date that the original support structure or a modification to that structure was last reviewed and approved by a State or local government, if the approval of the modification occurred prior to the Spectrum Act or otherwise outside of the section 6409(a) process.

(7) Substantial change. A modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

(i) For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater;

(A) Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act.

(ii) For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;

(iii) For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;

(iv) It entails any excavation or deployment outside of the current site, except that, for towers other than towers in the public rights-of-way, it entails any excavation or deployment of transmission equipment outside of the current site by more than 30 feet in any direction. The site boundary from which the 30 feet is measured excludes any access or utility easements currently related to the site;

(v) It would defeat the concealment elements of the eligible support structure; or

(vi) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in § 1.40001(b)(7)(i) through (iv).

(8) Transmission equipment. Equipment that facilitates transmission for any Commission-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private,

broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

(9) Tower. Any structure built for the sole or primary purpose of supporting any Commission-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.

(c) Review of applications. A State or local government may not deny and shall approve any eligible facilities request for modification of an eligible support structure that does not substantially change the physical dimensions of such structure.

(1) Documentation requirement for review. When an applicant asserts in writing that a request for modification is covered by this section, a State or local government may require the applicant to provide documentation or information only to the extent reasonably related to determining whether the request meets the requirements of this section. A State or local government may not require an applicant to submit any other documentation, including but not limited to documentation intended to illustrate the need for such wireless facilities or to justify the business decision to modify such wireless facilities.

(2) Timeframe for review. Within 60 days of the date on which an applicant submits a request seeking approval under this section, the State or local government shall approve the application unless it determines that the application is not covered by this section.

(3) Tolling of the timeframe for review. The 60-day period begins to run when the application is filed, and may be tolled only by mutual agreement or in cases where the reviewing State or local government determines that the application is incomplete. The timeframe for review is not tolled by a moratorium on the review of applications.

(i) To toll the timeframe for incompleteness, the reviewing State or local government must provide written notice to the applicant within 30 days of receipt of the application, clearly and specifically delineating all missing documents or information. Such delineated information is limited to documents or information meeting the standard under paragraph (c)(1) of this section.

(ii) The timeframe for review begins running again when the applicant makes a supplemental submission in response to the State or local government's notice of incompleteness.

(iii) Following a supplemental submission, the State or local government will have 10 days to notify the applicant that the supplemental submission

did not provide the information identified in the original notice delineating missing information. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified in this paragraph (c)(3). Second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.

(4) Failure to act. In the event the reviewing State or local government fails to approve or deny a request seeking approval under this section within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The deemed grant does not become effective until the applicant notifies the applicable reviewing authority in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

(5) Remedies. Applicants and reviewing authorities may bring claims related to Section 6409(a) to any court of competent jurisdiction.

47 C.F.R. §90.7

This document is current through the September 9, 2021 issue of the Federal Register.

Code of Federal Regulations, Title 47 Telecommunication, Chapter I — Federal Communications Commission, Subchapter D — Safety and Special Radio Services, Part 90 — Private Land Mobile Radio Services, Subpart A — General Information

§ 90.7 Definitions.

220 MHz service. The radio service for the licensing of frequencies in the 220-222 MHz band.

800 MHz Cellular System. In the 806-824 MHz/ 851-869 MHz band, a system that uses multiple, interconnected, multi-channel transmit/receive cells capable of frequency reuse and automatic handoff between cell sites to serve a larger number of subscribers than is possible using non-cellular technology.

800 MHz High Density Cellular System. In the 806-824 MHz/ 851-869 MHz band, a high density cellular system is defined as a cellular system which:

(1) Has more than five overlapping interactive sites featuring hand-off capability; and

(2) Any one of such sites has an antenna height of less than 30.4 meters (100 feet) above ground level with an antenna height above average terrain (HAAT) of less than 152.4 meters (500 feet) and twenty or more paired frequencies.

900 MHz broadband. See 47 CFR 27.1501.

900 MHz broadband licensee. See 47 CFR 27.1501.

900 MHz broadband segment. See 47 CFR 27.1501.

900 MHz narrowband segment. See 47 CFR 27.1501.

900 MHz SMR MTA-based license or MTA license.

(1) A license authorizing the right to use a specified block of 900 MHz SMR spectrum within one of the 47 Major Trading Areas (''MTAs''), as embodied in Rand McNally's Trading Areas System MTA Diskette and geographically represented in the map contained in Rand McNally's Commercial Atlas & Marketing Guide (the ''MTA Map''), with the following exceptions and additions:

(i) Alaska is separated from the Seattle MTA and is licensed separately.

(ii) Guam and the Northern Mariana Islands are licensed as a single MTA like area.

(iii) Puerto Rico and the United States Virgin Islands are licensed as a single MTA-like area.

(iv) American Samoa is licensed as a single MTA-like area.

(2) The MTA map is available for public inspection at the Federal Communications Commission's Reference Information Center, located at the address of the FCC's main office indicated in 47 CFR 0.401(a).

The MTA map is available for public inspection in the Reference Information Center (Room CY-A257), 445 12th Steet, SW., Washington, DC.

Antenna height above average terrain (AAT). Height of the center of the radiating element of the antenna above the average terrain. (See §90.309(a)(4) for calculation method.)

Antenna height above sea level. The height of the topmost point of the antenna above mean sea level.

Antenna structure. Structure on which an antenna is mounted.

Assigned frequency. Center of a frequency band assigned to a station.

Assigned frequency band. The frequency band the center of which coincides with the frequency assigned to the station and the width of which equals the necessary bandwidth plus twice the absolute value of the frequency tolerance.

Authorized bandwidth. The frequency band, specified in kilohertz and centered on the carrier frequency containing those frequencies upon which a total of 99 percent of the radiated power appears, extended to include any discrete frequency upon which the power is at least 0.25 percent of the total radiated power.

Automobile emergency licensee. Persons regularly engaged in any of the following activities who operate radio stations for transmission of communications required for dispatching repair trucks, tow trucks, or other road service vehicles to disabled vehicles:

(1) The operation of a private emergency road service for disabled vehicles by associations of owners of private automobiles; or

(2) The business of providing to the general public an emergency road service for disabled vehicles.

Average terrain. The average elevation of terrain between 3.2 and 16 km (2 and 10 miles) from the antenna site.

Base station. A station at a specified site authorized to communicate with mobile stations.

Basic trading areas. Service areas that are based on the Rand McNally 1992 Commercial Atlas & Marketing Guide, 123rd Edition, at pages 38-39, with the following additions licensed separately as BTA-like areas: American Samoa; Guam, Northern Mariana Islands; Mayaguez/Aguadilla-Ponce, Puerto Rico; San Juan, Puerto Rico; and the United States Virgin Islands. The Mayaguez/Aguadilla-Ponce BTA-like service area consists of the following municipios: Adjuntas, Aguada, Aguadilla, Anasco, Arroyo, Cabo Rojo, Coamo, Guanica, Guayama, Guayanilla, Hormigueros, Isabela, Jayuya, Juana Diaz, Lajas, Las Marias, Maricao, Maunabo, Mayaguez, Moca, Patillas, Penuelas, Ponce, Quebradillas, Rincon, Sabana Grande, Salinas, San German, Santa Isabel, Villalba, and Yauco. The San Juan BTA-like service area consists of all other municipios in Puerto Rico.

Carrier frequency. The frequency of an unmodulated electromagnetic wave.

Centralized trunked system. A system in which there is dynamic assignment of communications paths by automatically searching all communications paths in the system and assigning to a user an open communications path within that system. Individual communications paths within a trunked system may be classified as centralized or decentralized in accordance with the requirements of §90.187.

Channel loading. The number of mobile transmitters authorized to operate on a particular channel within the same service area.

Communications zone. The service area associated with an individual fixed Roadside Unit (RSU). The communications zone is determined based on the RSU equipment class specified in section 90.375.

Contention-based protocol. A protocol that allows multiple users to share the same spectrum by defining the events that must occur when two or more transmitters attempt to simultaneously access the same channel and establishing rules by which a transmitter provides reasonable opportunities for other transmitters to operate. Such a protocol may consist of procedures for initiating new transmissions, procedures for determining the state of the channel (available or unavailable), and procedures for managing retransmissions in the event of a busy channel. Contention-based protocols shall fall into one of two categories:

> **(1)** An unrestricted contention-based protocol is one which can avoid co-frequency interference with devices using all other types of contention-based protocols.

(2) A restricted contention-based protocol is one that does not qualify as unrestricted.

Control point. Any place from which a transmitter's functions may be controlled.

Control station. An Operational Fixed Station, the transmissions of which are used to control automatically the emissions or operation of another radio station at a specified location.

Conventional radio system. A method of operation in which one or more radio frequency channels are assigned to mobile and base stations but are not employed as a trunked group. An "urban-conventional system" is one whose transmitter site is located within 24 km (15 miles) of the geographic center of any of the first 50 urbanized areas (ranked by population) of the United States. A "sub-urban-conventional system" is one whose transmitter site is located more than 24 km (15 miles) from the geographic center of the first 50 urbanized areas. See Table 21, Rank of Urbanized Areas in the United States by Population, page 1-87, U.S. Census (1970); and table 1 of §90.635.

Critical Infrastructure Industry (CII). State, local government and non-government entities, including utilities, railroads, metropolitan transit systems, pipelines, private ambulances, volunteer fire departments, and not-for-profit organizations that offer emergency road services, providing private internal radio services provided these private internal radio services are used to protect safety of life, health, or property; and are not made commercially available to the public.

Decentralized trunked system. A system which monitors the communications paths within its assigned channels for activity within and outside of the trunked system and transmits only when an available communications path is found. Individual communications paths within a trunked system may be classified as centralized or decentralized in accordance with the requirements of §90.187.

Dedicated Short-Range Communications Services (DSRCS). The use of radio techniques to transfer data over short distances between roadside and mobile units, between mobile units, and between portable and mobile units to perform operations related to the improvement of traffic flow, traffic safety, and other intelligent transportation service applications in a variety of environments. DSRCS systems may also transmit status and instructional messages related to the units involved.

Dispatch point. Any place from which radio messages can be originated under the supervision of a control point.

EA-based or EA license. A license authorizing the right to use a specified block of SMR or LMS spectrum within one of the 175 Economic Areas (EAs) as defined by the Department of Commerce Bureau of Economic Analysis. The EA Listings and the EA Map are available for public inspection at the Federal Communications Commission's Reference Information Center, located at the address of the FCC's main office indicated in 47 CFR 0.401(a).

Economic Areas (EAs). A total of 175 licensing regions based on the United States Department of Commerce Bureau of Economic Analysis Economic Areas defined as of February 1995, with the following exceptions:

(1) Guam and Northern Mariana Islands are licensed as a single EA-like area (identified as EA 173 in the 220 MHz Service);

(2) Puerto Rico and the U.S. Virgin Islands are licensed as a single EA-like area (identified as EA 174 in the 220 MHz Service); and

(3) American Samoa is licensed as a single EA-like area (identified as EA 175 in the 220 MHz Service).

Effective radiated power (ERP). The power supplied to an antenna multiplied by the relative gain of the antenna in a given direction.

Emergency medical licensee. Persons or entities engaged in the provision of basic or advanced life support services on an ongoing basis that operate radio stations for transmission of communications essential for the delivery or rendition of emergency medical services for the provision of basic or advanced life support.

Enhanced Specialized Mobile Radio System (ESMR). A specialized mobile radio (SMR) system operating in the 800 MHz band which employs an 800 MHz cellular system as defined in this section.

Equivalent Isotropically Radiated Power (EIRP). The product of the power supplied to the antenna and the antenna gain in a given direction relative to an isotropic antenna (absolute or isotropic gain).

Film and video production licensee. Persons primarily engaged in or providing direct technical support to the production, videotaping, or filming of motion

pictures or television programs, such as movies, programs, news programs, special events, educational programs, or training films, regardless of whether the productions are prepared primarily for final exhibition at theatrical outlets or on television or for distribution through other mass communications outlets.

Fire licensee. Any territory, possession, state, city, county, town, or similar governmental entity, and persons or organizations charged with specific fire protection activities that operate radio stations for transmission of communications essential to official fire activities.

First Responder Network Authority. An entity established by the Middle Class Tax Relief and Job Creation Act of 2012 as an independent authority within the National Telecommunications and Information Administration and designated by that statute to hold a nationwide license associated with the 758-769 MHz and 788-799 MHz bands for use in deploying a nationwide public safety broadband network.

Fixed relay station. A station at a specified site used to communicate with another station at another specified site.

Forest products licensee. Persons primarily engaged in tree logging, tree farming, or related woods operations, including related hauling activities, if the hauling activities are performed under contract to, and exclusively for, persons engaged in woods operations or engaged in manufacturing lumber, plywood, hardboard, or pulp and paper products from wood fiber.

Forward links. Transmissions in the frequency bands specified in §90.357(a) and used to control and interrogate the mobile units to be located by multilateration LMS systems.

Frequency coordination. The process of obtaining the recommendation of a frequency coordinator for a frequency(ies) that will most effectively meet the applicant's needs while minimizing interference to licensees already operating within a given frequency band.

Frequency coordinator. An entity or organization that has been certified by the Commission to recommend frequencies for use by licensees in the Private Land Mobile Radio Services.

Geographic center. The geographic center of an urbanized area is defined by the coordinates given at table 1 of §90.635.

Geophysical telemetry. Telemetry involving the simultaneous transmission of seismic data from numerous locations to a central receiver and digital recording unit.

Harmful interference. For the purposes of resolving conflicts between stations operating under this part, any emission, radiation, or induction which specifically degrades, obstructs, or interrupts the service provided by such stations.

Interconnection. Connection through automatic or manual means of private land mobile radio stations with the facilities of the public switched telephone network to permit the transmission of messages or signals between points in the wireline or radio network of a public telephone company and persons served by private land mobile radio stations. Wireline or radio circuits or links furnished by common carriers, which are used by licensees or other authorized persons for transmitter control (including dial-up transmitter control circuits) or as an integral part of an authorized, private, internal system of communication or as an integral part of dispatch point circuits in a private land mobile radio station are not considered to be interconnection for purposes of this rule part.

Internal system. An internal system of communication is one in which all messages are transmitted between the fixed operating positions located on premises controlled by the licensee and the associated mobile stations or paging receivers of the licensee. (See subpart O).

Interoperability. An essential communication link within public safety and public service wireless communications systems which permits units from two or more different entities to interact with one another and to exchange information according to a prescribed method in order to achieve predictable results.

Itinerant operation. Operation of a radio station at unspecified locations for varying periods of time.

Land mobile radio service. A mobile service between base stations and land mobile stations, or between land mobile stations.

Land mobile radio system. A regularly interacting group of base, mobile and associated control and fixed relay stations intended to provide land mobile radio communications service over a single area of operation.

Land station. A station in the mobile service not intended to be used while in motion. [As used in this part, the term may be used to describe a base, control,

fixed, operational fixed or fixed relay station, or any such station authorized to operate in the "temporary" mode.]

Line A. An imaginary line within the U.S., approximately paralleling the U.S.-Canadian border, north of which Commission coordination with the Canadian authorities in the assignment of frequencies is generally required. It begins at Aberdeen, Washington, running by great circle arc to the intersection of 48° N., 120° W., then along parallel 48° N., to the intersection of 95° W., thence by great circle arc through the southernmost point of Duluth, Minnesota, thence by great circle arc to 45° N., 85° W., thence southward along meridian 85° W. to its intersection with parallel 41° N., to its intersection with meridian 82° W., thence by great circle arc through the southernmost point of Bangor, Maine, thence by great circle arc through the southernmost of Searsport, Maine, at which point it terminates.

Line C. An imaginary line in Alaska approximately paralleling the border with Canada, East of which Commission coordination with Canadian authorities in the assignment of frequencies is generally required. It begins at the intersection of 70° N., 144° W., thence by great circle arc to the intersection of 60° N., 143° W., thence by great circle arc so as to include all the Alaskan Panhandle.

Location and Monitoring Service (LMS). The use of non-voice signaling methods to locate or monitor mobile radio units. LMS systems may transmit and receive voice and non-voice status and instructional information related to such units.

Major trading areas. Service areas based on the Rand McNally 1992 Commercial Atlas & Marketing Guide, 123rd Edition, at pages 38-39, with the following exceptions and additions:

(a) Alaska is separated from the Seattle MTA and is licensed separately.

(b) Guam and the Northern Mariana Islands are licensed as a single MTA-like area.

(c) Puerto Rico and the United States Virgin Islands are licensed as a single MTA-like area.

(d) American Samoa is licensed as a single MTA-like area.

Manufacturers licensee. Persons primarily engaged in any of the following manufacturing activities:

(1) The mechanical or chemical transformation of substances into new products within such establishments as plants, factories, shipyards, or mills which employ, in that process, powerdriven machines and materials-handling equipment;

(2) The assembly of components of manufactured products within such establishments as plants, factories, shipyards, or mills where the new product is neither a new structure nor other fixed improvement. Establishments primarily engaged in the wholesale or retail trade, or in service activities, even though they fabricate or assemble any or all the products or commodities handled, are not included in this category; or

(3) The providing of supporting services or materials by a corporation to its parent corporation, to another subsidiary of its parent or to its own subsidiary, where such supporting services or materials are directly related to those regular activities of such parent or subsidiary which are eligible under paragraphs (1) or (2) of this definition.

Meteor burst communications. Communications by the propagation of radio signals reflected off ionized meteor trails.

Mobile relay station. A base station in the mobile service authorized to retransmit automatically on a mobile service frequency communications which originate on the transmitting frequency of the mobile station.

Mobile repeater station. A mobile station authorized to retransmit automatically on a mobile service frequency, communications to or from hand-carried transmitters.

Mobile service. A service of radiocommunication between mobile and base stations, or between mobile stations.

Mobile station. A station in the mobile service intended to be used while in motion or during halts at unspecified points. This includes hand carried transmitters.

Motor carrier licensee. Persons primarily engaged in providing a common or contract motor carrier transportation service in any of the following activities: Provided, however, that motor vehicles used as taxicabs, livery vehicles, or school buses, and motor vehicles used for sightseeing or special charter purposes, shall not be included within the meaning of this term. For purposes of this definition, an urban area is defined as being one or more contiguous, incorporated or

unincorporated cities, boroughs, towns, or villages, having an aggregate population of 2,500 or more persons.

(1) The transportation of passengers between urban areas;

(2) The transportation of property between urban areas;

(3) The transportation of passengers within a single urban area; or

(4) The transportation, local distribution or collection of property within a single urban area.

MTA-based license or MTA license. A license authorizing the right to use a specified block of SMR spectrum within one of the 51 Major Trading Areas ("MTAs"), as embodied in Rand McNally's Trading Area System MTA Diskette and geographically represented in the map contained in Rand McNally's Commercial Atlas & Marketing Guide (the "MTA Map"). The MTA Listings, the MTA Map and the Rand McNally/AMTA license agreement are available for public inspection at the Reference Information Center in the Consumer and Governmental Affairs Bureau.

Multilateration LMS system. A system that is designed to locate vehicles or other objects by measuring the difference of time of arrival, or difference in phase, of signals transmitted from a unit to a number of fixed points or from a number of fixed points to the unit to be located.

Mutually exclusive application. Two or more pending applications are mutually exclusive if the grant of one application would effectively preclude the grant of one or more of the others under Commission rules governing the services involved.

Non-multilateration LMS System. A system that employs any of a number of non-multilateration technologies to transmit information to and/or from vehicular units.

On-Board unit (OBU). An On-Board Unit is a DSRCS transceiver that is normally mounted in or on a vehicle, or which in some instances may be a portable unit. An OBU can be operational while a vehicle or person is either mobile or stationary. The OBUs receive and contend for time to transmit on one or more radio frequency (RF) channels. Except where specifically excluded, OBU operation is permitted wherever vehicle operation or human passage is permitted. The OBUs mounted in vehicles are licensed by rule under part 95 of this chapter and communicate with Roadside Units (RSUs) and other OBUs. Portable OBUs are

also licensed by rule under part 95 of this chapter. OBU operations in the Unlicensed National Information Infrastructure (UNII) Bands follow the rules in those bands.

Operational fixed station. A fixed station, not open to public correspondence, operated by, and for the sole use of those agencies operating their own radiocommunication facilities in the Public Safety, Industrial, Land Transportation, Marine, or Aviation Radio Services. (This includes all stations in the fixed service under this part.)

Output power. The radio frequency output power of a transmitter's final radio frequency stage as measured at the output terminal while connected to a load of the impedance recommended by the manufacturer.

Paging. A one-way communications service from a base station to mobile or fixed receivers that provide signaling or information transfer by such means as tone, tone-voice, tactile, optical readout, etc.

Person. An individual, partnership, association, joint stock company, trust or corporation.

Petroleum licensee. Persons primarily engaged in prospecting for, producing, collecting, refining, or transporting by means of pipeline, petroleum or petroleum products (including natural gas).

Police licensee. Any territory, possession, state, city, county, town, or similar governmental entity including a governmental institution authorized by law to provide its own police protection that operate radio stations for transmission of communications essential to official police activities.

Power licensee. Persons primarily engaged in any of the following activities:

> **(1)** The generation, transmission, or distribution of electrical energy for use by the general public or by the members of a cooperative organization;
>
> **(2)** The distribution of manufactured or natural gas by means of pipe line, for use by the general public or by the members of a cooperative organization, or, in a combination of that activity with the production, transmission or storage of manufactured or natural gas preparatory to such distribution;

(3) The distribution of steam by means of pipeline or, of water by means of pipeline, canal, or open ditch, for use by the general public or by the members of a cooperative organization, or in a combination of that activity with the collection, transmission, storage, or purification of water or the generation of steam preparatory to such distribution; or

(4) The providing of a supporting service by a corporation directly related to activities of its parent corporation, of another subsidiary of the same parent, or of its own subsidiary, where the party served is regularly engaged in any of the activities set forth in this definition.

Private carrier. An entity licensed in the private services and authorized to provide communications service to other private services on a commercial basis.

Radio call box. A transmitter used by the public to request fire, police, medical, road service, or other emergency assistance.

Radio teleprinting. Radio transmissions to a printing telegraphic instrument having a signal-actuated mechanism for automatically printing received messages.

Radiodetermination. The determination of position, or the obtaining of information relating to position, by means of the propagation of radio waves.

Radiofacsimile. A system of radiocommunication for the transmission of fixed images, with or without half-tones, with a view to their reproduction in a permanent form.

Radiolocation. Radiodetermination used for purposes other than those of radionavigation.

Radionavigation. Radiodetermination used for the purposes of navigation, including obstruction warning.

Railroad licensee. Railroad common carriers which are regularly engaged in the transportation of passengers or property when such passengers or property are transported over all or part of their route by railroad.

Regional Economic Area Groupings (REAGs). The six geographic areas for Regional licensing in the 220-222 MHz band, based on the United States Department of Commerce Bureau of Economic Analysis Economic Areas (see 60

FR 13114 (March 10, 1995)) defined as of February 1995, and specified as follows:

REAG 1 (Northeast): REAG 1 consists of the following EAs: EA 001 (Bangor, ME) through EA 011 (Harrisburg-Lebanon-Carlisle, PA); and EA 054 (Erie, PA).

REAG 2 (Mid-Atlantic): REAG 2 consists of the following EAs: EA 012 (Philadelphia-Wilmington-Atlantic City, PA-NJ-DE-MD) through EA 026 (Charleston-North Charleston, SC); EA 041 (Greenville-Spartanburg-Anderson, SC-NC); EA 042 (Asheville, NC); EA 044 (Knoxville, TN) through EA 053 (Pittsburgh, PA-WV); and EA 070 (Louisville, KY-IN).

REAG 3 (Southeast): REAG 3 consists of the following EAs: EA 027 (Augusta-Aiken, GA-SC) through EA 040 (Atlanta, GA-AL-NC); EA 043 (Chattanooga, TN-GA); EA 069 (Evansville-Henderson, IN-KY-IL); EA 071 (Nashville, TN-KY) through EA 086 (Lake Charles, LA); EA 088 (Shreveport-Bossier City, LA-AR) through EA 090 (Little Rock-North Little Rock, AR); EA 095 (Jonesboro, AR-MO); EA 096 (St. Louis, MO-IL); and EA 174 (Puerto Rico and the U.S. Virgin Islands).

REAG 4 (Great Lakes): REAG 4 consists of the following EAs: EA 055 Cleveland-Akron, OH-PA) through EA 068 (Champaign-Urbana, IL); EA 097 (Springfield, IL-MO); and EA 100 (Des Moines, IA-IL-MO) through EA 109 (Duluth-Superior, MN-WI).

REAG 5 (Central/Mountain): REAG 5 consists of the following EAs: EA 087 (Beaumont-Port Arthur, TX); EA 091 (Forth Smith, AR-OK) through EA 094 (Springfield, MO); EA 098 (Columbia, MO); EA 099 (Kansas City, MO-KS); EA 110 (Grand Forks, ND-MN) through EA 146 (Missoula, MT); EA 148 (Idaho Falls, ID-WY); EA 149 (Twin Falls, ID); EA 152 (Salt Lake City-Ogden, UT-ID); and EA 154 (Flagstaff, AZ-UT) through EA 159 (Tucson, AZ).

REAG 6 (Pacific): REAG 6 consists of the following EAs: EA 147 (Spokane, WA-ID); EA 150 (Boise City, ID-OR); EA 151 (Reno, NV-CA); EA 153 (Las Vegas, NV-AZ-UT); EA 160 (Los Angeles-Riverside-Orange County, CA-AZ) through EA 173 (Guam and the Northern Mariana Islands); and EA 175 (American Samoa).

Regional license. A license authorizing the right to use a specified block of 220-222 MHz spectrum within one of six Regional Economic Area Groupings (REAGs).

Relay press licensee. Persons primarily engaged in the publication of a newspaper or in the operation of an established press association.

Roadside unit (RSU). A Roadside Unit is a DSRC transceiver that is mounted along a road or pedestrian passageway. An RSU may also be mounted on a vehicle or is hand carried, but it may only operate when the vehicle or hand-carried unit is stationary. Furthermore, an RSU operating under this part is restricted to the location where it is licensed to operate. However, portable or hand-held RSUs are permitted to operate where they do not interfere with a site-licensed operation. A RSU broadcasts data to OBUs or exchanges data with OBUs in its communications zone. An RSU also provides channel assignments and operating instructions to OBUs in its communications zone, when required.

Roadway bed surface. For DSRCS, the road surface at ground level.

Secondary operation. Radio communications which may not cause interference to operations authorized on a primary basis and which are not protected from interference from those primary operations.

Service availability. The use of a public safety broadband network on a day-to-day basis for operational purposes by at least fifty users.

Signal amplifier. A device that amplifies radio frequency signals and is connected to a mobile radio transceiver, portable or handset, typically to the antenna connector. Note that a signal amplifier is not the same thing as a signal booster.

Signal booster. A device at a fixed location which automatically receives, amplifies, and retransmits on a one-way or two-way basis, the signals received from base, fixed, mobile, and portable stations, with no change in frequency or authorized bandwidth. A signal booster may be either narrowband (Class A), in which case the booster amplifies only those discrete frequencies intended to be retransmitted, or broadband (Class B), in which case all signals within the passband of the signal booster filter are amplified.

SMSA (Standard Metropolitan Statistical Area). A city of 50,000 or more population and the surrounding counties.

Special industrial licensee. Persons regularly engaged in any of the following activities:

(1) The operation of farms, ranches, or similar land areas, for the quantity production of crops or plants; vines or trees (excluding forestry operations); or for the keeping, grazing or feeding of livestock for animal products, animal increase, or value enhancement;

(2) Plowing, soil conditioning, seeding, fertilizing, or harvesting for agricultural activities;

(3) Spraying or dusting of insecticides, herbicides, or fungicides, in areas other than enclosed structures;

(4) Livestock breeding service;

(5) The operation of a commercial business regularly engaged in the construction of roads, bridges, sewer systems, pipelines, airfields, or water, oil, gas, or power production, collection, or distribution systems. The construction of buildings is not included in this category;

(6) The operation of mines for the recovery of solid fuels, minerals, metal, rock, sand and gravel from the earth or the sea, including the exploration for and development of mining properties;

(7) Maintaining, patrolling or repairing gas or liquid transmission pipelines, tank cars, water or waste disposal wells, industrial storage tanks, or distribution systems of public utilities;

(8) Acidizing, cementing, logging, perforating, or shooting activities, and services of a similar nature incident to the drilling of new oil or gas wells, or the maintenance of production from established wells;

(9) Supplying chemicals, mud, tools, pipe, and other materials or equipment unique to the petroleum and gas production industry, as the primary activity of the applicant if delivery, installation or application of these materials requires the use of specifically fitted conveyances;

(10) The delivery of ice or fuel to the consumer for heating, lighting, refrigeration or power generation purposes, by means other than pipelines or railroads when such products are not to be resold following their delivery; or

(11) The delivery and pouring of ready mixed concrete or hot asphalt mix.

Specialized Mobile Radio system. A radio system in which licensees provide land mobile communications services (other than radiolocation services) in the 800 MHz and 900 MHz bands on a commercial basis to entities eligible to be licensed under this part, Federal Government entities, and individuals.

State. Any of the 50 United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, American Samoa, and Guam.

Station authorization. A license issued by the Commission for the operation of a radio station.

Taxicab licensee. Persons regularly engaged in furnishing to the public for hire a nonscheduled passenger land transportation service (which may also include the occasional transport of small items of property) not operated over a regular route or between established terminals.

Telecommand. The transmission of non-voice signals for the purpose of remotely controlling a device.

Telemetering (also telemetry). The transmission of non-voice signals for the purpose of automatically indicating or recording measurements at a distance from the measuring instrument.

Telephone maintenance licensee. Communications common carriers engaged in the provision of landline local exchange telephone service, or inter-exchange communications service, and radio communications common carriers authorized under part 21 of this chapter. Resellers that do not own or control transmission facilities are not included in this category.

Transitioned market. A geographic area in which the 900 MHz band has been reconfigured to consist of a 900 MHz broadband license in the 900 MHz broadband segment and two 900 MHz narrowband segments pursuant to part 27 of this chapter.

Travelers' information station. A base station in the Public Safety Pool used to transmit non-commercial, voice information pertaining to traffic and road conditions, traffic hazard and traveler advisories, directions, availability of lodging, rest stops, and service stations, and descriptions of local points of interest.

Trunk group. All of the trunks of a given type of characteristic that extend between two switching points.

Trunk (telephony). A one or two-way channel provided as a common traffic artery between switching equipment.

Trunked radio system. A radio system employing technology that provides the ability to search two or more available communications paths and automatically assigns an open communications path to a user.

Universal Licensing System (ULS). The consolidated database, application filing system and processing system for all Wireless Telecommunications Services. The ULS offers Wireless Telecommunications Bureau (WTB) applicants and the general public electronic filing of all applications requests, and full public access to all WTB licensing data.

Urbanized area. A city and the surrounding closely settled territories.

CERTIFICATE OF SERVICE

I hereby certify that, on September 15, 2021, I filed the foregoing in the United States Court of Appeals for the District of Columbia Circuit via the CM/ECF system. I further certify that all parties are registered CM/ECF users, and that service will be accomplished via electronic filing.

/s/ W. Scott McCollough
W. Scott McCollough